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Formalizing informal homes, a bad idea: The Credibility Thesis applied to China's "extra-legal" housing

Abstract

Discussions about informal housing in developing, emerging economies often revolve around the need for prohibition, privatization and formalization. Private title is seen as a guarantee against indiscriminate expropriation leading to tenure security, better access to utilities and mortgage, and higher investments. However, the argument that formalization and privatization out of necessity lead to better rights of otherwise "victimized slum-dwellers" can be questioned. In addition, prohibition of informal housing can marginalize socially weaker groups, while drawing on critical resources for enforcement. We argue that to avoid externalities, one first needs to probe into the perceived function of existing property rights before considering institutional form, irrespective whether formal or informal. China's extra-legal housing – or "Small Property Rights' Housing" (SPRH) – is a case-in-point. Extra-legal housing is estimated to account for one-third of the Chinese urban housing stock. In light of this scale, we maintain that extra-legal housing performs a vital function in providing social security, i.e. affordable housing for low(er) income groups. The argument is supported through a survey amongst 300 respondents in 7 medium and large-sized cities. The survey finds that – despite alleged tenure insecurity – SPRH rallies a high level of perceived credibility along three dimensions: economic, social and psychological. Our findings indicate that urban planning and housing policy should consider institutional differences in line with existing functions. Put differently, whereas formalization, privatization or prohibition could be contemplated when credibility for informal housing is low, maintaining status-quo might be more sensible when that credibility is perceived to be high.

Key words

Social welfare and security; slums and squatter settlements; Chinese urban village; development and housing policy; affordable housing; low-cost and social housing

1. Introduction

The Land Administration Law of China stipulates that if any entity or individual needs to use land for construction, they must apply for the use of urban, state-owned land. In recent years,

a large amount of housing has been built on rural collectively owned land, and sold to individuals whose *hukou* (household registration) is not registered in the corresponding collective.¹ Compared to formal commercial housing built on urban, state-owned land with a legal title issued by the county government or higher authority, such housing does not have legal titling. It is why in Chinese it is popularly referred to as “Small Property Rights Housing” (*xiaochanquan fang*) as opposed to “Large Property Rights Housing” (*dachanquan fang*) with full ownership. However, rather than labeling it as “illegal” or “informal” housing, it could be more aptly described as “extra-legal” rural-urban housing because of a dual reason: i) it is formally forbidden, yet, informally condoned and thus operates with silent statutory approval *outside* of the law;² ii) it is sold at the rural *and* urban real estate market, more specifically the rural-urban fringe.

According to unofficial data, total housing in urban China amounts to 18.6 billion m², of which 6.6 billion m² is Small Property Rights Housing (hereafter: SPRH) (Liu, 2009). Otherwise stated, over one third of the total housing in urban China (accounting for approximately 70 million housing units) is considered informal or extra-legal (Li, 2014). SPRH is believed to have emerged earliest in Guangdong Province in the early 1990s because of migrant workers’ increasing demands for affordable housing in receiving cities (Huang, 2011). Nowadays, such housing is widespread across China and an increasing number of citizens purchase and live in it despite lack of legal titling. The southern metropolis of Shenzhen is regarded as the city with the highest ratio of extra-legal housing, accounting for 49% of total municipal housing in 2010 (Gao, 2012). While the phenomenon of SPRH has made national headlines in China, it has only recently begun to draw attention from the international academic community (Shen and Tu, 2014).

By contrast, extensive research has been conducted on China’s informal settlements – of which SPRH are a part. In addition, the literature on these informal settlements, called “urban villages” (*chengzhongcun*), focuses on rental markets, the experiences of renters, and the positive impact of urban villages on migrants (Ma and Xiang, 1998; Tian, 2008; Wang et al, 2009; He et al, 2010; Liu et al, 2010; Li and Wu, 2013; Wu et al, 2013; Huang and Tao, 2014). Over the years, however, a substantive number of people has *purchased* informal housing, instead of renting it. What is thus by and large missing from the literature is an analysis at the

¹ For more information on the origins of the *hukou* system, see (Cheng and Selden, 1994).

² As also argued by Liu et al. (2012), who assert that the Chinese government has tolerated and implicitly accepted informal housing development.

micro-level, seen from the perspectives of the buyers and home-owners, and focusing on informal housing rather than the settlement; hence the current writing.

There are widely diverging opinions and suggested approaches for the regulation of extra-legal housing in China. For instance, Paik and Lee (2012) argue that SPRH provides opportunities for collective action by local officials, entrepreneurs, farmers and citizens. Liu et al. (2012) point out that by building, selling or renting extra-legal housing, local villagers are able to profit from the “surplus value” created during urbanization. A review of relevant literature reveals that the legal perspective is of significant interest among Chinese scholars (Cheng, 2012). Due to the lack of formal rights, SPRH is deemed illegal by some scholars, who simultaneously assert that its development should be contained and cracked down upon (Zhao, 2008; Hua, 2014). Conversely, others argue that the prevalence of extra-legal housing challenges the state’s monopoly on land development rights, and indicate that existing property laws and policies have become an anachronism in a context of rapid urbanization (Zhou, 2007; Cai, 2013). Informal housing is also regarded as a form of grassroots’ spontaneous urbanization promoted by local village communities (Liu, 2014, p.127).³ The wide variety of opinions and approaches is, in fact, the reflection of China’s huge regional differences and varied building environments. It is why some advocate differential treatment based on local experimentation (Yang, 2013; Tao and Wang, 2014).

The vexing question that surfaces is what indicators can be used to guide such differential treatment according to regional context and planned over time. We maintain that the answer to this question might perhaps lie in discarding a fixation on institutional Form in lieu of Function. In different wording, the choice for certain institutional forms – i.e. private/public, formal/informal, legal/illegal property – should be made contingent on actors’ perceived function that institutions already fulfill at a given time and place. Form follows from Function, as what institutions do determines their shape, regardless whether that lies in catering for commercial transfer, speculation, rent-seeking, cultural cohesion, or welfare and insurance. This article aims to demonstrate how function could be better assessed via actors’ *aggregate* perceptions of the credibility of institutions. Institutions are here defined as a set of endogenously evolved rules. Seen from this perspective, formal law or private title can be regarded as an institution, inasmuch as customary land tenure or extra-legal housing can be seen as such.

³ More information about urban social movements around housing in China is also provided in (Zhu and Ho, 2008).

Apart from the introduction and conclusion, the paper is divided into three separate sections. In the following section, we describe the theoretical underpinnings of our analysis, in terms of its main premises, concepts and underlying assumptions. In the second section an overview of the origins, magnitude and development of SPRH in China is given. The third section introduces the research methods, the survey sample, and presents the research findings divided along social actors' perceptions of economic, social and psychological credibility.

2. From Form to Function: The importance of being extra-legal

Worldwide, it is estimated that more than one billion people live in informal settlements, a number expected to grow to 1.4 billion by 2020 (UN-Habitat, 2003). The importance of formal property rights for development has been a source of ongoing debate among housing researchers (e.g. Kiddle, 2010; Mukhija, 2012). According to figures of UN Habitat, globally between 30% and 50% of residents in urban areas allegedly lack legal security of tenure (2006, p. xi). According to neo-liberal, neo-classical postulates of development, private and formal property rights are vital for facilitating sustained economic growth. It is maintained that property rights that fail to respond to shifting economic opportunities will change into more efficient, institutional arrangements due to market forces. In this light, insecure and informal tenure are deemed at odds with modern, urbanized societies that thrive on legally described, thus titled, assets (e.g. Ellickson, 2012; Miceli, 2000). These scholarly principles go back to members of the so-called "Chicago school of economics" (e.g. Coase, 1960; Alchian and Demsetz, 1973) which advocated private, formal and secure property as the most efficient institutional arrangement.

It is *not* being insinuated that a single body of literature exists that represents the "neo-liberal" or "neo-classical" theory that is consistent in its entirety. Instead, their premises comprise diverse inconsistencies and constituent elements that may concur or be contradictory in nature.⁴ However, it *is* asserted that certain neo-liberal, neo-classical postulates or assumptions exist around which scholarly debate *and* empirical validation occur (Ho, 2013). These wield significant ascendancy over developmental policy and intervention. These neo-liberal postulates include: i) property rights affect the economy (in a directly measurable,

⁴ See (Lawson, 2013) for more information on the neo-classical school.

causal relationship); ii) property rights can be designed intentionally and exogenously (and be subsequently enforced); and lastly, iii) secure, private, and formal tenure (as institutional structures) are imperative for stable development.

In contrast, the alleged relation between institutional form (formal, secure, and private) versus institutional performance (i.e. economic growth) has proven difficult to validate empirically. Research in widely diverging contexts did not find straightforward relationships between form and performance (cf. Ho and Spoor, 2006; Sjaastad and Cousins, 2009). A variety of case-studies on land and housing (i.e. homestead) ranging from the United States (Ward et al., 2011), Mexico (Monkkonen, 2012), Colombia (Gonzales, 2009) and Peru (King, 2003), ascertained no relation between formal title and economic performance (irrespective whether that was expressed in terms of home improvement, access to mortgage, property value, or poverty reduction). Even more, based on empirical data in Vietnam and China, Kim (2004) and Ho (2015) found that its housing market emerged despite a lack of legal title. Studies on Peru (Calderon, 2004) and Mexico (Varley, 1987) found that as long as dwellers perceive housing as secure, they will improve and invest in it, even when lacking title. Similarly, Lanjouw and Levy (2002) showed that granting legal title in Ecuador did not increase transaction value as dwellers of informal property unlikely sell their main abode.

When reviewing these studies, a confounding enigma surfaces. If informal property rights are economically inefficient and “perverse”, why do they persist? The “Credibility Thesis” (Ho, 2014) might have several critical contributions to make here. For one, it maintains that when property rights apparently “persist” over time they are *not* inefficient, yet, likely perform an endogenously, evolved function within society or a community of users, otherwise they would have changed or gone extinct (compare with e.g. Cheung, 1968; Caballero, 1983). Moreover, the thesis posits that what is misperceived as “persistence” or “stagnation” of inefficient, informal institutions is, in fact, a matter of minimal, yet, *continuous* functional adaptation over time (Thelen, 2002: 101). The answer to understanding the existence of certain institutional arrangements thus lies in abandoning focus on form, as it clouds analysis of what institutions mean and do in a certain context. Put differently:

“[W]hat ultimately determines the performance of institutions is not their form in terms of formality, privatization, or security, but their spatially and temporally defined function” (Ho, 2014: 13).

That function can be expressed and measured by its institutional credibility, that is, the *perceived* social support at a given time and space. In so doing, the Credibility Thesis shifts institutional analysis from form to function (see Dixon, 2012; Chang, 2008: 19; Aron, 2000: 128). Examining institutional credibility *a priori* requests the study of *what* institutions do in their time and space-specific environment prior to form-oriented labels such as “inefficient,” “second-best,” or “perverse” being considered.

We believe that when certain property rights arrangements “persist”, one needs to be cautious in considering institutional interventions, as that persistence points to a spontaneously ordered institutional fabric engendered through actors’ multitudinous interactions (Ho, 2013). What is first and foremost needed is a comprehensive assessment of the temporally and spatially determined effects of property rights. These can be analyzed and measured through actors’ and economic agents’ aggregate perceptions of institutions’ credibility. According to the level of credibility that a certain property rights arrangement enjoys amongst a community of users, one might be in a better position to assess what kind of institutional intervention (on a scale from non-interventionist to interventionist) is likely successful: i) Condoning; ii) Co-opting; iii) Facilitating iv) Prohibiting; v) Ordaining (see Table 1 below).

Table 1: Scales of Credibility and Intervention

[Insert Table 1 about here]

Source: (Ho, 2017)

It is posited that when the credibility of existing institutional arrangements is found to be high or rising (i.e. from medium high to high), condoning or co-opting could be the better option. Facilitating approaches that pro-actively identify, nurture and support bottom-up innovation can be suitable when the majority of institutions features little change. Conversely, only when

credibility is low or decreasing might there be a fair chance for success for interventionist measures that actively aim to change institutions (such as by prohibition or command). When applying this to our case, a high or medium-high credibility of informal housing would either involve the acceptance of daily praxis (as the Chinese say: “open one eye, and close the other” (*zheng yizhi yan, bi yizhi yan*), or the cooptation thereof.⁵ Would the institutional arrangements of informal housing be perceived as neutral, one could on the one hand, consider stimulating privatization and titling, while encouraging upgrading inferior-quality housing through, for instance, subsidies or tax-breaks for home-owners, home-owners’ associations, property management companies and developers. Contrarily, would social actors’ perceive credibility to be medium-low and low (or tending towards it), one could resort to more interventionist measures such as bans, conversion to formal social housing, sale of informal housing (i.e. formalization as marketable, affordable housing), or even the demolition of inferior-quality constructions.

Having said this, the above depicted “Scales of Credibility and Intervention” are not to be seen or applied as policy prescriptions or institutional blue-prints, but all the more as a safeguard against precipitous intervention. In different wording, the choice for *non-intervention* should always be as seriously considered as intervention. Furthermore, credibility and institutional interventions are conceptualized as posited on a relative, contextualized continuum (Ho, 2014: 16) in contrast to a set of absolute, positivist indicators. Paradoxically, societal reality often features the launch of strict prohibitions and ordinances in a demonstration of political will and ambition, subsequently leading to the establishment of “empty” institutions decoupled from praxis and actors’ realities (e.g. Aubert, 1966; Aalders, 1984; Ho, 2005, p.73).

Titling and privatization of land and housing run that risk, as they are more often than not pushed for political reasons. What is disregarded is that private, formal and secure institutional arrangements generally function for the transfer of property as economic assets. Yet, that might *not* be the function of institutions that exist and persist. By contrast, common, informal and allegedly “insecure” property rights often do not cater for economic transaction, but for an institutional function that is altogether different: namely social welfare (Ho, 2014; Davy and Pellisery, 2014; Guhan, 1994; Charlesworth, 1983). In this paper, we argue that

⁵ This would be similarly the case for an institutional credibility that over time or space increases from medium-high to high, or from neutral to medium-high. Hence, the word “trend” in the sub-heading of the table’s first column.

China's informal, extra-legal housing fulfills that very same function, and as such, does not benefit from formalization and titling (at least, not in the *current* stage of development).

3. An Overview of Small Property Rights Housing in China

3.1 Early development and typology

Arguably, the earliest occurrence of (commercially sold) SPRH in China is said to have occurred in Guangdong province (Huang, 2011). After the start of the economic reforms in the late 1970s, a significant influx of FDI (Foreign Direct Investment) led to the establishment of numerous factories and enterprises in the coastal cities of Guangdong Province such as Shenzhen, Shantou and Zhuhai. Large numbers of migrant workers started to move to Guangdong in search of job opportunities, and at the same time *en masse* looked for housing in the receiving cities. In this context, informal housing built on cheaper, rural collectively owned land catered for the swelling demand.

Based on the different types of rural collective land, three forms of SPRH sprouted in Guangdong which are: i) housing on farmers' residential plots (*zhaijidi*); ii) on land for township enterprises, township/town/village facilities and public infrastructure (*jianshe yongdi*); and iii) on arable land (*nongyongdi*), also referred to as "contract land" (*chengbaodi*), which is leased to individual farmers. Farmers' residential plots are regarded as one of the most important land use types in China (Wang et al., 2008). Villagers living on the urban fringe often demolish their own homes to build small apartment buildings, and then proceed to sell the property to migrant workers. This transaction is illegal as residential plots are distributed to villagers at no cost for their own housing construction use, and is not allowed to be sold to others. The second form of extra-legal housing is built on rural collective construction land, such as land for township enterprises, township/town and village facilities and public infrastructure, which is generally self-organized by the rural collective. That is to say, large scale housing complexes consisting of many housing units are built and then sold to migrant workers. In addition to these two forms, SPRH housing is also built on arable land. The law expressly prohibits the construction of any housing on arable land, while stipulating a minimum norm of 120 million hectares of arable land that needs to be strictly reserved to ensure food security (Liu, 2014, p.9).

Nowadays, the three forms of extra-legal housing are widespread across China in both large cities and small towns, with the latter form (built on arable land) being estimated to be smallest. Shenzhen is the city with the highest ratio of extra-legal housing, while its main form is built on farmers' residential plots (Gao, 2012). In Beijing, the main form consists of large, extra-legal complexes constructed by rural collectives.⁶ It was estimated that in 2006, the amount of SPRH in Beijing was 10 million m², accounting for 18% of its total housing and accommodating 0.3 million households (Yang, 2013,p.37). Additionally, such housing is also commonly found in other major cities like Tianjin, Chengdu, Nanjing, Xi'an, and Zhengzhou (Yuan, 2013).

[Insert Figure 1: about here]

Source: illustrated by authors

Figure 1 illustrates the procedures of the development of formal versus extra-legal housing. The rural and urban land markets in China are strictly separated, while each features a complex two-tier institutional structure that governs economic transactions.⁷ According to Article 43 of the 2004 Land Administration Law, only state-owned land can be used for commercial real estate development. Therefore, rural collectively owned land should first be expropriated from the village collective by the county/city (or higher level government) against the payment of compensation to farmers for loss of assets and income. Subsequently, its ownership can be altered from (rural) collective to (urban) state-owned land. Following this, a real estate developer needs to apply to the government for commercial land use rights against the payment of a land conveyance fee (*churangjin*) at the so-called primary land market (*yiji shichang*). As shown in Table 2, revenues from land conveyance form a key source of income for the local government. In 2010, the land conveyance fees accounted for as much as 68 percent of total local fiscal revenues (Liu and Wang, 2014). Following the approval of the land use application, the county or city government, issues a certificate for the commercial land use of state-owned land (in effect: a land lease permit) to the developer. The

⁶ A typical example are the large-scale complexes in Zhenggezhuang, Beijing (Liu, 2008).

⁷ A detailed description of the institutional structure and workings of the Chinese rural and urban markets is provided in (Ho, 2013).

developer can then start constructing the property, and after completion, sells the various housing units and its underlying individual land lease rights to buyers on the “secondary land market” (*erji shichang*).

[Insert Table 2 about here]

Source: Liu and Wang (2014, p. 65)

In contrast, the construction of SPRH circumvents this entire procedure as it is directly built by rural collectives-turned-developer, externally hired real estate companies, or individual peasants. As a result, significant costs for expropriation and land conveyance can be avoided, which explains the significant economic incentives that drive the supply and demand of SPRH. The costs for the development of extra-legal housing can be as low as one-third of the equivalent of formal housing (Cheng, 2012, p.34). This is a decisive factor for the rent-seeking around the supply and development of SPRH. Similar rent-seeking also occurs at the demand-side, and propels the booming market in SPRH, with prices that may range as low as between 40%-60% of the price of formal housing in the same neighborhood (*ibid.*, p.9). The downside, of course, is that extra-legal housing lacks the necessary permits: i) the formal home ownership permit issued by the local government (and *not* the collective, i.e. village or township), and ii) the individual land lease permit also issued by the local government.

3.2 Explaining the prevalence of extra-legal housing

There are three main factors underlying the prevalence of SPRH. First, the increasing demand for housing in cities due to the ongoing urbanization. In 1978 only 18% of the total population lived in urban China. In 2013 this figure reached 54%, or about 731 million out of its 1.36 billion citizens. Of these 731 million residents in urban China, 245 million were migrant workers (National Bureau of Statistics, 2014). Due to the large number of people migrating to the cities, the demand for urban housing has risen tremendously (Liu, 2014). Second, the affordability of informal housing relative to formal commercial housing. Migrant workers and

low income urban citizens (e.g. elderly, sick/disabled urban residents, college graduates and young professionals) generally cannot afford to purchase formal housing in cities due to its high prices. For example, in Beijing the housing price has risen five-fold over the past decade (Liu, 2014). In this context, more and more people are interested in purchasing informal housing since the price range is more affordable to them. Third, the lack of social housing. Although China boasted a huge stock of urban, public housing during the Maoist era, its subsequent privatization during the 1998 Housing Reforms left a lasting gap in the provision of social and affordable housing ever since. Therefore, instead of relying on the government, migrant workers and the urban poor have to solve housing issues on their own. Purchasing SPRH is one of the only options available to them. It is worth noting that in China's 12th Five-Year Plan, the central government announced that 36 million units of social housing are to be built between 2011 and 2015 (State Council, 2011). However, this number of social housing is still inadequate to meet the large demand of the urban poor, while migrant workers may not be eligible to apply for these because of their rural residential status (*hukou*).⁸

In the following section, the research methods and survey sample are described, followed by the presentation of the empirical data and analysis of the institutional credibility of SPRH along three dimensions: economic, social and psychological.

4. Methodology and empirical results

4.1. The survey

To reflect urban and regional variation, we selected seven different large, middle and small-sized cities as fieldwork sites. These are: Beijing, Tianjin, Guangzhou, Chongqing, Xi'an, Nanchang (Jiangxi) and Qingyang (Gansu province). Data collection was conducted in these sites from November 2013 until February 2014. Apart from population size, various motivations guided the selection of these cities as shown in Table 2. First, the cities are spread over different macro-regions, thus representing the major geographical differences of the Chinese nation. Guangzhou and Nanchang are located in southeastern China, Chongqing in the southwest, Beijing and Tianjin in the northeast, and Xi'an and Qingyuan in the northwest.

⁸ As a result, rural migrant workers are generally also excluded from other facilities in the Chinese cities, such as education and health care. However, in recent years the *hukou* or household registration system has been gradually relaxed depending on the region.

Second, the selected sites present different levels of economic development. Based on municipal GDP per capita in 2013, Guangzhou is the highest at 120,105 yuan, followed respectively by Tianjin (101,689 yuan), Beijing (94,237 yuan), Nanchang (65,009 yuan), Xi'an (57,105 yuan), Chongqing (42,615 yuan), and Qingyang (27,790 yuan).⁹ Three, seen from a provincial level, Beijing, Tianjin, and Guangdong can be classified as receiving areas of migrant workers, while, Shaanxi, Gansu, Jiangxi and Chongqing are sending areas. In the year 2014 it was estimated there were 274 million rural residents migrating to more prosperous cities for employment (National Bureau of Statistics, 2015). Purchasing SPRH is regarded as an optimal option if they decide to settle down in the receiving cities.

[Insert Table 3 about here]

Source: Authors' fieldwork and (Shan, 2014a, b; National Bureau of Statistics, 2011)

Triangulation is applied during data collection, that is, the analysis of information collected through a variety of methods (Patton, 1990:187). This research combines four methods: documentary analysis, in-depth interviews, participant observation, and a quantitative survey (i.e. questionnaire). First, the documentary analysis of law, policies, and regulations at different administrative levels is the main source used to explore the government's measures and political views on extra-legal housing historically and currently. Second, a total of 13 in-depth interviews with various stakeholders represent an overview and detailed source for understanding the process of informal property development. Three in-depth interviews were conducted with the constructors, three with the sellers, five with the buyers and two with local officials. The interviews were anonymized and conducted in Guangzhou and Chongqing. Third, participant observation was done to offer a closer perspective on the people involved in extra-legal housing. During the fieldwork, one of the authors participated as a potential buyer interested in purchasing SPRH in Beijing, Tianjin, Guangzhou and Chongqing. Through this method, intensive interaction was possible with the constructors, sellers, and buyers.

Fourth, a quantitative survey through questionnaires was conducted on the basis of data collected from the former three methods. The survey was used to test the main, alternative hypothesis (H_1), i.e. the institutional arrangements of SPRH are perceived as credible by its buyers (despite the lack of formal property rights). The null hypothesis (H_0) was formulated as: the institutional arrangements of SPRH are *not* perceived as credible. The survey sample

⁹ This includes state council-level administered municipalities, such as Beijing, Chongqing and Tianjin. One Chinese yuan (or RMB) was approximately 0.16 US Dollar during the fieldwork period.

consist of 300 opportunistically selected buyers and home-owners of SPRH (each representing 1 household),¹⁰ with 50 in Beijing, Tianjin, Guangzhou, Chongqing and Xi'an, 30 in Qingyang and 20 in Nanchang. Although the data from the survey sample cannot be generalized for the total population, it may have a certain degree of representativeness with n=291.¹¹ Among them, 62% were male respondents and 38% female respondents; 76% of respondents were between 21 and 49 years old, 22% above 50 years old and 1% below 20 years old. Regarding the educational background, 6% of the respondents attended primary school or were illiterate, 55% received a high school degree, 38% obtained college or a university degree, and even 1% got a degree from the graduate school. As for occupation, the majority of the respondents (75%) were employed in urban informal sectors, 16% in urban formal sectors, and 9% were engaged in farming (see Appendix).

4.2 Measuring Credibility

4.2.1. Economic credibility: housing price and home improvement

For one, SPRH buyers' perceptions on housing price and investments reflect its credibility from an economic angle. It was found that 70% of respondents stated affordability as the main reason for purchasing extra-legal housing. As one respondent described:

"I bought my apartment in 2009. The main reason for me to buy it is because it was cheap, 5,000 yuan/m². At the time, the formal housing price in the same area was already 12,000 yuan/m², which I could not afford. The difference between the two types of housing was 7,000 yuan/ m², and the size of my apartment is 70 m², which means I paid 490,000 yuan less by choosing this one." (oral communication, 27 /11/2013, buyer Qin XX, Beijing)

Across the nation, the price of extra-legal housing is significantly lower than that of formal commercial housing. As shown in Figure 2 (n=291), the calculated average housing price is

¹⁰ The respondents were thus not randomly selected, but interviewed when people were willing to participate. This was generally done by starting a causal chat with SPRH dwellers in the public spaces of the community. After gaining their trust, they generally became the first interviewees. Through snowball sampling, these interviewees, in turn, facilitated in approaching additional respondents in the community.

¹¹ As stated earlier in the paper, the estimated number of SPRH is 70 million units (Li, 2014). The required representative sample for a population of this size would amount to 385 at an error margin of 5% and a confidence level of 95%.

50% of the price of comparable formal housing in the vicinity. The price difference between SPRH and formal housing varies regionally. In Beijing the average price of all respondents' housing was 4,410 yuan/m², compared to 7,604 yuan/m² of that of the formal commercial housing (i.e. 58% of the price for formal housing).¹² Guangzhou exhibits the largest price difference, where the price of SPRH is just 30% of that of formal housing, while Qingyuan is 67%, representing the smallest difference among the seven research sites. The figures for the other cities are respectively 39% in Nanchang, 48% in Tianjin, 60% in Chongqing, and 62% in Xi'an.

[Insert Figure 2 about here]

Source: This survey (n=289)

Furthermore, SPRH is also economically credible from the angle of payments and investments. For starters, upon receipt of the ownership permit 97% of the respondents had already paid off the total housing price – either in installments or as a lump sum. As showed in Table 3, the average price of all respondents' extra-legal housing is 245,265 yuan, while the amount spent on investment is 61,569 yuan on average, which equals 30% of the total housing price. The ratio between the housing price and investments varies from region to region. For example, in Guangdong, the money spent on investment (62,700 yuan) is almost equivalent to half of the total housing price (146,800 yuan), while in Beijing, the former is only around 13% of the latter. It is surprising to find that in some cases the amount of money spent on investment exceeds the total housing price. For example, one interviewee bought his housing in 1998, which was 1100 yuan/m². The size of his apartment is 90 m². Therefore, the total housing price he paid is 99,000 yuan. Subsequently, he had spent 100,000 yuan investing in his home (oral communication, 26 December 2013, buyer Mr. Xiang XX, Guangdong).

[Insert Table 4 about here]

Source: This survey (n=289)

4.2.2. Social credibility: Perception of ownership and other socio-cultural factors

¹² At the time of the survey, 1 Chinese Yuan roughly equaled 0.16 US Dollar.

Markedly, 93% of respondents believe that the SPRH is owned by them and their family. Such a perception indicates a high degree of institutional credibility of SPRH's extra-legal property rights. Certain scholars (Zhong, 2008) have suggested that people are being tricked into purchasing extra-legal housing due to their low legal awareness. We have found no indication of this during the in-depth interviews. By contrast, a large number of the interviewed buyers (62%) openly state that – *prior to* the purchase of the house – they were aware of the difference in ownership between SPRH and formal housing. This percentage is all the more significant, as admitting to buying SPRH is tantamount to admitting that one has purchased property deemed illegal by the state.

In addition to the affordability of SPRH, other reasons for purchase include socio-cultural factors such as getting married, employment, children's education, and elderly care (see Figure 4 below). First, in answer to which (multiple) reasons they had to buy SPRH, 19% of respondents noted they purchased the property for getting married. It is an open secret in Chinese society that having housing is a customary prerequisite for men to ask women for marriage (Hu, 2013). As men outnumber women by 34 million in China (National Bureau of Statistics, 2011), having one/more housing(s) would increase men's competitiveness when finding a women. One interviewee mentioned "*I could not propose to my wife without this house*" (oral communication, 21/12/2013, buyer, Jiangxi).

[Insert Figure 4 about here]

Source: This survey

Second, 16 percent of the respondents stated that they bought extra-legal housing because it is an easier commute to work. Third, due to large differences in educational quality and facilities between the rural and urban areas, it is common to find rural parents purchase housing in urban China to allow their children better access to urban schools. 15% of respondents consider this as one of the reasons for them to purchase SPRH. A respondent stated:

"The primary schools and high schools in this neighborhood have a good reputation which is much better than the one in our village. We bought this apartment mainly for my son's schooling since he could walk to the school in 15 minutes" (oral communication, 5/1/2014, buyer Ms. Liu XX, Chongqing).

Fourth, against the background of better healthcare services in urban than in rural China (Liu and Sun, 2015), 10% of respondents also replied that they bought extra-legal housing as it was more convenient for the elderly.

4.2.3. Psychological credibility: herd behavior and little fear of eviction

SPRH has also been found institutionally credible in a psychological sense as evident through herd behavior and the perception of the likelihood of eviction. Herd behavior, defined by Banerjee (1992, p.798) as “everyone doing what everyone else is doing”, has a significant impact on social actors’ attitude and behavior. 67% of respondents said they decided to buy after noticing that their peers had purchased or were considering to purchase SPRH. An interviewee:

“You can find lots of people who have bought SPRH here. Three of my friends and one of my cousins bought such housing around 2000 and lived inside comfortably, which had no difference from formal housing and no risk at all. After consulting with them, I decided to purchase this housing in 2004” (oral communication, 29/12/2013, buyer Mr. Wang XX, Guangdong).

The above might also lend credence to the argument by Prechter and Parker (2007) that herding can reduce perceived uncertainty. Due to the informality of extra-legal housing, buyers try to reduce their sense of uncertainty by observing and following the behavior of their peers.

From a neo-classical perspective, fear of eviction is regarded as a serious obstacle to purchase informal property. Despite the fact that SPRH is not legally recognized, people are interested in purchasing and investing in it because they do not feel that eviction is likely to happen. Merely 2% of respondents state they would refrain from improving and furnishing the housing because the government may evict them. An interviewee expressed:

“I am sure the government would not evict us. If it would happen, we would lose our homes. Where should we live then? [mockingly] Maybe we would just get together and sleep at Tian’anmen square, while guys would probably even resort to violence.” (oral communication, 21/11/2013, buyer Ms. Zhang XX, Beijing).

Zhang's statement touches on a wider and increasingly shared sentiment amongst Chinese citizens and peasants that they are justified to organize demonstration or take violent action against the government if they are evicted (cf. Pils, this volume{ }). Since maintaining social stability is regarded as a top priority by the Chinese government (Doyon and Laederich, 2012), it is not likely that large-scale, government-backed expropriation to enforce planning and building regulations will occur any time soon.

4.3. Function in social welfare

Over the past decade, the purchase of formal housing for reasons of investment and speculation has greatly increased (Guo and Huang, 2010). Contradictorily, the overall majority of SPRH was bought to fulfill the function of a primary home. Our survey found that 95% of the respondents indicated the SPRH was purchased to have housing for them and their family. Additionally, 3% of the respondents replied "for rent" while no respondent answered "for sale".¹³ These figures confirm the findings of another survey of 240 respondents by (Chen and Guo, 2012: 33) who found that only 5.42% of the interviewees replied they bought SPRH "for investment".¹⁴

Moreover, the main social group purchasing and living in extra-legal housing belongs to the low(er) income groups. As Table 5 shows, the gross monthly income of the majority of respondents (varying from 71% to 100%) is below the local average income. For example, respondents' income in Beijing, Chongqing and Qingyuan, is without exception lower than the average income in the respective cities. Moreover, a considerable percentage of respondents' income is below the local minimum income. This varies from 33 percent in Guangzhou up to 92 percent in Qingyuan.

[Insert Table 5 about here]

Source: This survey (n=288) and National Bureau of Statistics (2012)

Another indication of the social status of those living in SPRH, is provided by the number of property they own. Prior to purchasing extra-legal housing, 45% of the respondents rented a

¹³ The remaining 2% mentioned for "other reasons".

¹⁴ The survey was carried out from November 2010 to January 2011 in the provinces of Jiangxi, Anhui, Hubei and Guangdong.

house in the cities, whereas another 33% lived in their original housing in the home village. In sum, the majority of the buyers did not have their own housing in the city. Echoing other in-depth interviews conducted during the fieldwork, a certain Ms. Liu shared her story:

“I came to Guangzhou as a migrant worker in 1999. After renting places to live for 10 years, my husband and I bought this house in 2009. I feel delighted to have our own place” (oral communication, 29 December 2013, buyer, Guangzhou).

In the cities, a large group of migrant workers such as Ms. Liu have been longing to have a “home” of their own to experience a proper family life. The significance of extra-legal housing is not to be underestimated: 58% stated that SPRH is the only property they have, while another 30% maintained that they also own one rural property in the countryside. In different words, for 88% of respondents, SPRH is the only house they have in the city (Figure 3).

[Insert Figure 3 about here]

Source: This survey (n=291)

From the above, it can be derived that SPRH provides an affordable, good-quality option for rural-urban migrants and low(er) income groups. Of those who have bought extra-legal housing, the overall majority (93%) felt it was worth the money, with merely 1% feeling it was not worth the value. As a large proportion has been professionally developed and built by real estate companies, SPRH provides a decent form of housing in terms of quality, location, and basic infrastructure; unlike other forms of informal settlements, such as slums, squatters and migrant dormitories. This fact is also reflected in the survey: only 7% of respondents found the quality of extra-legal housing bad.

5. Conclusion: Extra-legality, a credible alternative?

Small Property Rights’ Housing in China is particularly sensitive due to its evident violation of national laws and regulations, in combination to its sheer magnitude – an estimated one-third of the total urban housing stock. The central authorities are heavily divided over the issue: some advocate its formalization through titling, others favor clampdown to uphold the

state's legitimacy and credibility. Symbolic for the divided stance is the outcome of the 18th Party Congress in 2013, when the Chinese Communist Party heralded the commercialization of rural collective construction land with “*similar rights and similar prices*” (*tongquan tongjia*, CCP Central Committee, 2013, Section 11). Merely one and a half week later, the Ministry of Land and Resources and Ministry of Housing and Urban-Rural Development (2013, Section 1) jointly rushed to issue an urgent notice which clearly ruled to “rigorously curb the construction and sale of Small Property Rights’ Housing.”

There are several reasons why both strict suppression, as well as formalization might need rethinking. For one, suppression will put a serious drain on state resources for enforcement – be it financial, material and personnel resources. It also raises the immediate question what to do with the inhabitants of SPRH. The reality of the millions who bought and live in informal housing *a priori* rules out a clampdown as it would merely solve a problem by creating an even bigger one. Moreover, an important question relating to formalization regards its legal effect: does private title imply that the owner is allowed to sell? If so, is that allowed with or without payment of the land conveyance fee, and other associated costs for altering rural collective land into urban state land? Refraining from such requirement might be tantamount to opening the gate for even greater rent-seeking over land originally set aside for exclusive use within the rural collective. If ownership is contingent upon payment of the land conveyance fee, one may wonder who can bear these costs, which leads to the issue of who buys and lives in SPRH.

This article has argued that the problem's solution might lie in shifting away attention from institutional form to function. In other words, what does SPRH do and mean for its owners and users on the ground? When looking into this question it becomes obvious that China's SPRH fulfills a critical function for its owners – not as a marketable asset, but as a form of social security. For one, as its average price is only half that of formal, commercial housing, it might not come as a surprise that over two-thirds of the respondents indicated it was one of their motivations for buying. In addition, those who buy generally belong to the lower income groups. In all research sites, the majority of the respondents (varying from 71 to 100%) fell below the average income level, and in many cases also below minimum income.

Owners did not only buy because of its low price, but also as they regarded it as good value for money. In addition, multiple socially motivated reasons are mentioned for the purchase, including for marriage (19%), work (16%), children's education (15%), and healthcare for the

elderly (10%).¹⁵ Interesting is the finding that despite the lack of relevant government-issued land use and home ownership permits, SPRH owners make significant investments for home improvement that on average add up to 30% of the price against which the property was bought. SPRH owners feel confident about their property rights with 93% of the respondents stating they have full ownership. At the same time, a majority of the respondents (63%) is well aware of the difference in property rights between formal housing and SPRH, while only 2 per cent would be deterred from home improvements because of the prospect of expropriation.

From the above, it is not difficult to see that SPRH is perceived as credible by its buyers regardless whether that is assessed in economic, social or psychological terms. The lower income groups – not in the least the millions of peasants who have left their home villages for employment in the cities – are the social groups that are unable to afford formal property after the price hikes in urban real estate of the past decades. They also fail to entitle for official social housing – even more difficult to obtain for non-local *hukou* holders – as local social housing projects continue to lag behind national targets and aims. Against this backdrop, SPRH appears to pose an affordable, good-quality and all in all, credible alternative at the *present stage* of China's development.¹⁶ It is a conclusion that resonates with research in a wider developing context (e.g. Davy and Pellissery, 2013; Chand and Yala, 2012, p.152). In fact, it also resonates with research from the past, as Mangin (1967, p. 85) aptly noted on Latin American informal settlements: “The squatter settlements represent a solution to the complex problem of rapid urbanization and migration, combined with a housing shortage.” This being the case, rather than having the discussion whether SPRH should be outlawed or formalized, maintaining its current *extra-legal* status, i.e. officially prohibited, yet, unofficially condoned, might for now perhaps be the preferred option.

Does that imply that privatization and titling are by definition a bad idea in dealing with informal housing? Definitely not. Yet, it is vital to consider the conditions under which certain institutional interventions are attempted. *That* consideration critically hinges on a solid understanding of existing institutional function, measurable through the levels of perceived credibility (see also Table 1 above). Put differently, actors' aggregate perceptions of the function of an existing institutional arrangement determine what kind of policy measures are

¹⁵ Answer categories belonging to the same question with regard to the price. Quality and value for money were measured separately.

¹⁶ The function of informal housing in the provision of social welfare has been underscored by various other Chinese researches (Huang and Tao, 2014; He et al., 2010; Wang et al., 2009; Lin, 2009).

likely to succeed or fail. In this regard, it must not be forgotten that private, titled institutions by and large function for the economic transfer of commodities, and much less so for the provision of social welfare and security (cf. Ho, 2014; Davy and Pellisery, 2014; Guhan, 1994; Charlesworth, 1983). Most owners and buyers of SPRH do not aim to sell their property, because it is seen as their primary abode and first entry to the Chinese city and its facilities, not as an asset for investment.

At a later stage in development, for instance, when the demand for affordable housing tapers off, or when formal social housing has been developed at a larger and sufficient scale, a differential treatment of China's extra-legal housing could be considered. *Ergo*, institutional changes catering for new housing functions could then perhaps be pursued:

- i) For rural-urban migrants' and low(er) income social groups' who continue to live in SPRH; conversion into (state-supported) social rental housing.
- ii) For those with the economic means and wish to sell; voluntary titling as affordable, yet, marketable housing on the condition of (whole or partial) payment of the land conveyance fee.
- iii) For those living in inferior-quality housing, while sufficient alternative social housing is available; demolition and cracking down on cases of severe violations of building quality and spatial planning (see also Jiang, 2014).

However, whatever option is considered, government interventions that aim to change existing property rights arrangements are better guided by a thorough understanding of the meaning and function that actors accord to it.

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Appendix

[Insert Table 6: Characteristics of survey sample]