

THE RISE OF PARTICIPATORY GOVERNANCE IN CHINA: EMPIRICAL MODELS, THEORETICAL FRAMEWORK, AND INSTITUTIONAL ANALYSIS

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An important norm in traditional Confucian political thought requires the government to take into account the opinions of the people subject to its jurisdiction. That norm, however, was usually respected only in theory but not implemented in practice. To date, China's model of governance has continued to be closed to outsiders, including the governed. The Republican and Communists' Revolutions during the twentieth century did not fulfill their promises to change this basic structure. China's government remains a very hierarchical and closed party-state structure. Such a political structure has been variously described as "totalitarian" and "authoritarian."¹ It can be quite efficient in policy implementation, but it has been much weaker in terms of sensitivity and responsiveness to public opinions and perceptions.²

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¹ See, e.g., Sujian Guo, *Totalitarianism: An Outdated Paradigm for Post-Mao China?*, 14 J. NORTHEAST ASIAN STUD 62–90 (2015) (describing the political structure as totalitarian); SUJIAN GUO, *POST-MAO CHINA: FROM TOTALITARIANISM TO AUTHORITARIANISM?* (2000) (describing the change in political structure from totalitarian to authoritarian); JIE CHEN & PENG DENG, *CHINA SINCE THE CULTURAL REVOLUTION: FROM TOTALITARIANISM TO AUTHORITARIANISM* (1995) (describing the change in political structure from totalitarian to authoritarian). See generally Andrew J. Nathan, *Authoritarian Resilience*, J. OF DEMOCRACY 6–17 (2013) (describing the political structure as authoritarian).

² See *IMD Announces the 2011 World Competitiveness Rankings and the Results of the "Government Efficiency Gap"*, INT'L INST. FOR MGMT. DEV. (May 17, 2011), <http://www.imd.org/news/IMD-announces-the-2011-World-Competitiveness-Rankings-and-the-results-of-the-Government-Efficiency-Gap.cfm> [<https://perma.cc/9LTN-FMQ3>] (noting that China ranks 19th in IMD's 2011 World Competitiveness Rankings, which places the US and Hong Kong as the most competitive countries). For instance, during the Great Leap Forward Movement between the late 1950s and early 1960s, under the erroneous perception of having an agricultural breakthrough and that greater grain procurement was compatible with the peasants' welfare, the Chinese party-state had effectively conducted massive grain extraction, only to result in the tragic 1959–1961 famine. This is a perfect example of high effectiveness but low responsiveness in the Chinese governing model. See Bertein, *Stalinism, Famine, and Chinese Peasants: Grain Procurements during the Great*

We argue in this Article that China's traditional governing model is changing. The development of a market economy and the diversification of interests in Chinese society have undermined the foundation of the old governing model and its rejection of much input from outside the party-state. Both the general public and the leadership have recognized the old model's practical shortcomings under current conditions. Local officials have launched experiments of administrative reform, one feature of which is to respect and protect people's rights to participate in government administration. As a result of these experiments, local governments have become more responsive to the public in dealing with public affairs. These developments imply that a new model of governance may be emerging in China.

We identify two models of administrative governance in China: the traditional "managerial model" and the emerging "participatory model." We focus our discussion on administrative decision-making processes because of the central role they play in administrative governance.

This Article proceeds in three parts. In Part I, we define the main features and flaws of the managerial model. In Part II, we analyze the failures of the traditional model and the emergence of a new, participatory model through the use of case studies. In Part III, we consider in more detail the characteristics of the emerging new model, including its political legitimacy, essential values and institutional components.

I. THE MANAGERIAL MODEL AND ITS FAILINGS

The longstanding model of decision-making in China was based on a planned economy and centralized political system (with deep roots in the politics and bureaucratic structures of imperial times). Although in the reform era China has largely shifted to a market economy, this decision-making model remains relevant and

Leap Forward, THEORY & SOCIETY 362–65 (1984) (describing the famine). For policy implementation in the reform era, see DAVID M. LAMPTON, POLICY IMPLEMENTATION IN POST-MAO CHINA (1987) (detailing the policy implementation in post-Mao China). For the general descriptions to the problems of the lack of sensitivity and responsiveness of Chinese administration, the research could be found widely from the research of Chinese authoritarianism, Andrew J. Nathan, *supra* note 1.

even dominant. We call it the “managerial model,” whose basic features can be summarized as follows:³

1. In terms of ideology, the party-state bureaucracy is regarded as the representative of the public interest and the arbiter of the common good; individuals and social groups are considered to represent partial and parochial interests. The party-state governs and the people are the governed.

2. In terms of organizational structure, the arrangement is pyramidal, bureaucratic and hierarchical. Decision-making agendas and goals are passed down from higher to lower levels. Lower levels have little authority and incentive to respond to public opinion and demand. Cadres at the lower levels of the party-state are often ordered to achieve rigidly defined targets, and are evaluated based on their fulfillment of those targets.

3. In terms of agenda-setting in day-to-day governance, the party-state bureaucracy and its affiliated think tanks are dominant. The public has little opportunity to influence the agenda-setting except for filing petitions—or seeking for media attention—which the authorities can often ignore.

4. In collecting and controlling the information flow that is vital to governance, the party-state decision-making bodies usually steer the process, initiating investigation and consultation as they see fit. The public therefore may be consulted, but there is no process to guarantee that decision-making agencies will respond to public input or that issues of concern to significant parts of the public will reach the decision-makers. More often than not, information that the government collects and that shapes its decisions is kept within the party-state’s decision-making bodies. If such information is disclosed to the public, the purpose is often to mobilize the people to help implement policy and the disclosure is typically highly selective.

5. To the extent that public input is encouraged or allowed, it generally must be expressed and represented through officially designated channels, for example, villagers through Village Committees, women through Women’s Associations, young people through Youth League organs, workers through official labor unions,

³ The following observation draws from our previous work. See Wang Xixin & Zhang Yongle, *Woguo Xingzheng Juece Moshi Zhi Zhuanxing—Cong Guanli Zhuyi Moshi Dao Canyushi Zhili Moshi* (我国行政决策模式之转型—从管理主义模式到参与式治理模式) [The Transformation of Chinese Model of Decision-Making—from Managerial Model to Model of Participatory Governance], 5 ZUEL L. J. (2012).

and so on. Unauthorized associations and expressions of opinion on matters of policy and governance are discouraged (even when officially approved channels frequently function poorly).

6. To foster public acceptance of official policy (which party-state authorities recognize is helpful in reducing the costs of implementing policies), decision-making bodies often try to shape the policy preference of the general public through political and social mobilization.⁴ If such efforts prove ineffective, it rarely prompts a change in policy, unless decision-makers conclude that the cost of implementing a policy that has failed to win public acceptance is simply too high. Yet overall decision-making bodies rarely modify the original decision in response to the public's policy preferences.

7. The decision-making process offers only underdeveloped mechanisms for receiving feedback or correcting errors. Public input that contradicts the preference of decision-makers is generally not welcomed. The public's options are usually limited to trying to bypass the local-level or immediately relevant authorities to complain to higher authorities. But lower-level authorities are often able to suppress this kind of "leapfrog petition." When complaints do reach and persuade higher level leaders, even the top leadership has often to rely on ad hoc political mobilization within the bureaucracy to rectify errors and change policy implementation.

We call this model "managerial" because governance is reduced essentially to decision-making agencies' top-down management. Decision-making agencies shape the public's policy preferences, while the policy preferences of the public do not have any effective mechanism to influence the agencies' decisions. During China's struggle for national independence (through the 1940s) and its period of rapid industrialization (which began during the 1950s), the managerial model was effective in "pooling resources of all sides for accomplishing large undertakings."⁵ With its ability to achieve firm resolution of policy issues and strict discipline in implementing

⁴ During this political process, a mobilization model came into being, which political scientists call "participatory mobilization." In participatory mobilization, leaders try to inspire the enthusiasm of the masses, but do not expect pre-arranged guidelines, strategies/principles, and policies to be changed. Zhu Rongji (朱镕基), Zhengfu Gongzuo Baogao (政府工作报告) [Report on the Work of the Government] (2002); XINHUANET, http://english.gov.cn/official/2005-07/29/content_18337.htm [<https://perma.cc/A67L-W2ZN>] (last visited Sep. 27, 2017).

⁵ *Id.*

policies, this system built a solid foundation for China's economic and social development. Even under the planned economy, however, the managerial model's serious defects were evident. The party and government bureaucracy tended to become an autonomous group that was relatively unresponsive to society. This tendency was also a breeding ground to corruption in the party-state. Many commentators agree that during the Cultural Revolution (1966-76), Mao Zedong launched mass campaigns in an effort to reinvigorate the bureaucracy and to make it more responsive to the people. But his radical prescription failed disastrously. It led to full-scale chaos and paralysis of the party, the state and society. In the end, it did not displace the traditional managerial model.⁶

In December 1978, the Third Plenum of the 11th Central Committee of the Chinese Communist Party (CCP) made economic development the top policy priority for the party-state.⁷ But reform of the decision-making system was not yet on the agenda. The managerial model continued to function reasonably well in some respects from the early 1980s, when pro-development policies combined with policies of fiscal decentralization have given local governments strong incentives to develop the local economy and thereby to increase their revenues through capturing some of the gains from rapid growth.⁸ Still working within the managerial model, local governments shifted their entrepreneurial energy from the political realm to the economic realm, mobilizing financial, human, and institutional resources to promote local economic development. This "local state corporatism" greatly enhanced China's economic dynamism.⁹ Competition among local governments for better

⁶ See HARRY HARDIN, *ORGANIZING CHINA: THE PROBLEM OF BUREAUCRACY* (1981) (explaining how the efforts to improve the bureaucracy were not beneficial); YICHING WU, *CULTURAL REVOLUTION AT THE MARGINS: CHINESE SOCIALISM IN CRISIS* (2014) (showing the problems with bureaucracy during the Cultural Revolution). For a different view on Mao's anti-bureaucratic agenda for the Cultural Revolution, see MARTIN K. WHYTE, *WHO HATES BUREAUCRACY? A CHINESE PUZZLE* (1984) (explaining a different opinion—that improving the bureaucracy was not what Mao Zedong intended).

⁷ *Xi explains China's reform plan*, XINHUANET (Nov. 16, 2013), http://china.org.cn/china/third_plenary_session/2013-11/16/content_30619850.htm [<https://perma.cc/5NR9-D39D>].

⁸ See Justin Yifu Lin & Zhiqiang Liu, *Fiscal Decentralization and Economic Growth in China*, 49 *ECON. DEV. AND CULTURAL CHANGE* 1 (2000) (explaining and describing how the economy was developed).

⁹ See Jean C. Oi, *RURAL CHINA TAKES OFF: INSTITUTIONAL FOUNDATIONS OF ECONOMIC REFORM* 139 (1999) (explaining how the Chinese economy grew).

economic performance in their localities helped achieve the astonishing “China speed” of development, but it also exposed weaknesses in the traditional model of governance. First, as rapid development produced high social and environmental costs, local governments often responded by trying to avoid the “fiscal burdens” of dealing with the resulting problems, especially as growth in local government revenues slowed or declined. This in turn led to the shrinking of budgets for public services and social welfare, the widening of the disparities between the rich and the poor, and serious environmental degradation. Moreover, operating with great discretionary powers inside an essentially closed system, party cadres and state officials were particularly susceptible to corruption.¹⁰

Predictably, the development of the market economy and the resulting pluralization of social interests have gradually undermined the foundation of the managerial model. It has become increasingly difficult to identify “the public interest” or “the common good” in this more complex environment. At the same time, the party-state’s status as the authoritative representative of the public interest and definer of the common good has become more and more contested. With the development of the internet and other changes that have made it easier and cheaper to collect, disseminate and exchange information and views, members of the public have a greater opportunity to assert their interests and express their policy preferences.¹¹ As Wang Shaoguang points out, in recent years, ordinary citizens’ agenda-setting capacity has increased significantly.¹² The party-state and its think tanks can no longer dominate public discourse and monopolize agenda-setting. Citizens are increasingly outspoken in criticizing public policies and putting pressure on decision-making agencies to

¹⁰ See Xiaobo Zhang, *Fiscal Decentralization and Political Centralization in China: Implications for Growth and Inequality*, 34 J. COMP. ECON. 713 (2006) (explaining how the government policies aligned with the fiscal policies to create a potential for increasing gaps in equality).

¹¹ According to the 22nd Statistical Report of China’s Internet Development published by China Internet Network Information Center, by June 2008, China’s Internet users have reached 253 million, rated as number one in the world. *22nd Statistical Report of China’s Internet Development*, CHINA INTERNET NETWORK INFORMATION CENTER 8 (June 2008), <http://www.cnnic.cn/gywm/zzkw/cnnicndbg/201206/P020120612352143162427.pdf> [<https://perma.cc/VH3T-S35J>]. Moreover, the amplitude of Internet users is surprisingly large: in the first six months of 2008, China’s Internet users have increased by forty-three million. *Id.*

¹² Shaoguang Wang, *Changing Models of China’s Policy Agenda Setting*, 34 MODERN CHINA 56, 59 (2008).

reflect their preferences and address their concerns.¹³ Greater recognition of citizens' rights to association has brought about a significant increase in the number of social organizations¹⁴ and has strengthened citizens' capacity to take collective action.

With these changes, the managerial model has become increasingly inadequate and unsustainable. First, as will be shown in our case studies below, in a more pluralistic and complex society, decision-making agencies face more challenges in grasping the "public interest" that must inform their policymaking. They need to understand the ever-changing structure of, and the relationships among, increasingly diverse interests and groups in society. Approaches under the managerial model—such as government-initiated unidirectional investigation—are often incapable of gathering and interpreting the information necessary for informed and effective decision-making. Second, the increased ability of the general public to articulate and assert its interests, evaluate policies, and undertake collective action means that the policies must attain a higher level of public acceptance if they are to be effective. A policy that contradicts the preferences of the public may well face fatal public resistance to its implementation. Cooperation from the general public has become much more important for policy implementation than before. The most effective and reliable way to secure the public's cooperation is to attend to the public's policy preferences throughout the process of policy-making—something the managerial model has difficulty in achieving. Third, China's transition from a "shortage economy" to a much more prosperous society has provided interest groups with greater incentives and abilities to "capture" policymaking bodies. The managerial model is particularly vulnerable to capture, and corruption, because of its low levels of transparency and openness to input by a wider public.¹⁵ Such capture

¹³ *Id.* at 70–73.

¹⁴ Shaoguang Wang & Jianyu He, *Associational Revolution in China: Mapping the Landscapes*, 35 KOREA OBSERVER 1 (2004); *see also* Gao Bingzhong & Yuan Ruijun, ZHONGGUO GONGMIN SHEHUI FAZHAN LANPI SHU [THE BLUEBOOK CONCERNING CHINA'S NATIONAL & SOCIAL DEVELOPMENT] (2008) (discussing the social development and some of the social organizations).

¹⁵ It is widely agreed in the literature on regulatory capture that increased transparency can reduce the likelihood of agency capture. *See e.g.* DANIEL CARPENTER & DAVID A. MOSS, PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT (2013) (explaining how to limit the likelihood of regulatory capture). *See China GDP: How It Has Changed Since 1980*, GUARDIAN,

and corruption can give rise to public discontent, which undermines the government's legitimacy and capacity to implement policies.

China's ruling party and the central government have already become very aware of the urgent need to carry out political and administrative reforms to address these problems associated with the managerial model. Reforms to expand citizens' participation in political and administrative processes have constituted a key part of the agenda. The official Report of the 16th National Congress of the CCP called for the party to "improve democratic institutions, develop diverse forms of democracy, expand citizens' orderly political participation, protect people's right to democratic election, democratic decision-making, democratic management and democratic supervision, safeguard people's extensive rights and freedom, respect and protect human rights."¹⁶ The Report of the 17th Party Congress committed to "improve transparency and public participation in decision-making and publicly consult the people when making laws, regulations and public policies that are closely related to the interest of the people."¹⁷ In the Report on Government Work at the second session of the 10th National People's Congress (NPC), Premier Wen Jiabao stated that the government should:

[I]nsist upon democratic and scientific decision-making, develop a decision-making mechanism that combines public participation, expert consultation and government decision-making, guarantee the scientificness and correctness of policies, accelerate the construction and improvement of collective decision-making system for major issues, expert consultation system, public scrutiny and hearing system, and decision-making accountability system. All important issues must be decided through

<http://www.theguardian.com/news/datablog/2012/mar/23/china-gdp-since-1980> [<https://perma.cc/L2Z9-KCWM>] (last visited May 19, 2017) (stating that China's GDP in 2012 is more than thirty times comparing to GDP in 1978).

¹⁶ *Full Text of Jiang Zemin's Report at 16th Party Congress*, 16TH CONGRESS, <http://www.china.org.cn/english/features/49007.htm> [<https://perma.cc/TM6D-3HQ5>] (last visited Apr. 7, 2015).

¹⁷ *Full Text of Hu Jintao's Report at 17th Party Congress*, BEIJING REVIEW (Oct. 24, 2007), http://www.bjreview.com.cn/17thCPC/txt/2007-10/25/content_83051.htm [<https://perma.cc/KE9Z-FYUE>].

collective discussion based upon intensive investigation, extensive consultation of opinions, and sufficient scientific evidence. This should be a basic working rule of the government that is to be insisted upon over the long term.¹⁸

Against this background, a series of administrative reforms emerged in many localities, which finally ring the death knell of the managerial model. Under all of these local reform experiments, decision-making authorities have ceded—voluntarily or involuntarily—part of their decision-making power to the general public. In some places, this revised sharing of decision-making power even received institutional endorsement.

In the next Part, we examine several concrete examples of how the managerial model failed and gave way to new practices of governance and administration. The cases discussed here occurred during a relatively recent two-year period, and include: Xiamen city resolving the “PX crisis” (concerning the siting of a polluting plant) through public participation;¹⁹ the Shanghai municipal government listening to the opinions of residents concerning a magnetic levitation railway program;²⁰ the Chongqing government resolving a strike by taxi drivers through constructive conversations with them;²¹ and Hunan province adopting an administrative procedure regulation which prescribes public participation for major decision-making (*zhongda xingzheng juece*).²² There are many other similar cases

¹⁸ Premier Wen’s Government Work Report, PEOPLE’S DAILY ONLINE (Mar. 16, 2004), http://english.peopledaily.com.cn/200403/16/eng20040316_137651.shtml [<https://perma.cc/K9ZT-LMMT>].

¹⁹ For the report of the event, see *Chinese Residents Force Relocation of Chemical Plants in Xiamen, 2007*, GLOBAL NONVIOLENT ACTION DATABASE, <http://nvdatabase.swarthmore.edu/content/chinese-residents-force-relocation-chemical-plant-xiamen-2007> [<https://perma.cc/9LWK-KXS5>] (last visited Apr. 7, 2015) (providing background information regarding the relocation of chemical plants in Xiamen city in 2007).

²⁰ For the report, see Royston Chan & Sophie Taylor, *Hundreds Protect Shanghai Maglev Rail Extension*, REUTERS, <http://www.reuters.com/article/2008/01/12/us-china-maglev-protest-idUSPEK32757920080112> [<https://perma.cc/2SQ9-XUBH>] (last visited Jan. 12, 2008) (providing examples of how the public influenced the railway program).

²¹ For the report, see Sky Canaves, *Cab Drivers Stage Strike in China City*, WALL ST. J. (Nov. 4, 2008), <http://online.wsj.com/news/articles/SB122573906150693971> [<https://perma.cc/KJ4A-X9XV>] (describing the strike).

²² See Jamie P. Horsley, *Public Participation in the People’s Republic: Developing a More Participatory Governance Model in China*, YALE L. REV. (2009) (explaining the different methods of decision-making).

across the China, some of which predate those analyzed in this article.²³ We choose to analyze these four recent cases here because they are particularly revealing about the differences between the traditional “managerial” and emerging “participatory” models of governance, the complexity of the transition from the old model to the new model, and the structural components of the new model.

II. CASE STUDIES OF THE DECLINE OF THE MANAGERIAL MODEL AND RISE OF THE PARTICIPATORY MODEL

1. *The PX Crisis in Xiamen*

The PX crisis in Xiamen is a landmark in the history of rising public participation in China’s administrative governance. Facing criticism and street protests against a planned chemical plant, the municipal government responded constructively, listening to resident’s opinions and eventually changing its original decision.²⁴

In early 2001, two Taiwan corporations applied to the Xiamen municipal government to construct a PX project with annual productive capacity of the chemical at 800,000 tons in the Haicang Economic Development Zone.²⁵ The Haicang Economic

²³ For example, the “democratic talkfest” practice in Taizhou City, Zhejiang Province emerged in late 1990s. *See generally* TAIZHOU DEPARTMENT OF PROPAGANDA, JICENG MINZHU ZHENGZHI JIANSHE: ZHEJIANG SHENG TAIZHOU SHI MINZHU KENTAN YANJIU [BUILDING GRASSROOT DEMOCRACY: THE RESEARCH TO THE DEMOCRATIC DELIBERATIVE MEETING IN TAIZHOU CITY IN ZHEJIANG PROVINCE] (2003) (discussing democratic practices in a particular province); *see also* Lang Youxing *Shangyi Minzhu yu Zhongguo de Difang Jingyan: Zhejiang Wenling shi de ‘Minzhu Kentanhui’* [Deliberative Democracy and Chinese Local Experience: ‘Democratic Talkfest’ in Taizhou, Zhejiang], in XIESHANG MINZHU DE FAZHAN: XIESHANG MINZHU LILUN YU ZHONGGUO DIFANG MINZHU GUOJI XUESHU YANTAO HUI LUN WENJI [THE DEVELOPMENT OF DELIBERATIVE DEMOCRACY: ANTHOLOGY OF THE INTERNATIONAL CONFERENCE ON THE THEORY OF DELIBERATIVE DEMOCRACY AND LOCAL DEMOCRACY IN CHINA] 206–16 (2006) (discussing democratic practices and how they have developed).

²⁴ For other systematic discussions about this case, *see generally* WANG XIXIN, GONGZHONGCANYU HE ZHONGGUO XINGONGGONGYUNDONG de XINGQI [PUBLIC PARTICIPATION AND THE RISING OF NEW PUBLIC MOVEMENT IN CHINA] (2008) (explaining how change in the involvement of the public came about historically).

²⁵ *See also* Tian feilong: *Gongzhong Canyu de Shidai Biaoben—Xiamen PX Shijian de Guocheng Fenxi yu Moshi Guina* (公众参与的时代标本——厦门PX事件的过程分析与模式归纳) [A SAMPLE OF PARTICIPATION ERA: THE PROCESS AND MODEL OF THE PROTEST FOR PX INDUSTRIAL PROJECT IN XIAMEN] in GONGZHONG CANYU YU ZHONGZHONG XINGONGGONG YUNDONG DE XINGQI [PUBLIC PARTICIPATION AND THE RISE OF CHINA’S NEW PUBLIC MOVEMENT] (2008) (examining the protest in Xiamen).

Development Zone was established in 1990 specifically for chemical industries. The zone struggled. Although twenty square kilometers in the zone were set aside to attract investment from the famous Taiwanese tycoon Wang Yongqing, the effort proved unsuccessful.²⁶ During the following decade, only a few chemical companies moved into the zone and carried out only small-scale production.²⁷ Around 2000, Haicang became a hot spot for residential real estate development. In this case, with so many homes in the area, the establishment of a large chemical factory might well pose health risks to public health.

The Xiamen government welcomed the PX project because it promised to provide considerable fiscal revenue. The government followed proper procedures in approving the project, conducting an environmental impact evaluation.²⁸ In March 2007, when the Chinese central government's annual "Two Meetings"—the plenary sessions of the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC), respectively—were being held in Beijing, 105 CPPCC members, led by Professor Zhao Yufen, a member of the Chinese Academy of Science, submitted a proposal to the CPPCC annual meeting, seeking to relocate the PX project by arguing that the project would cause significant environmental pollution.²⁹ This proposal soon became the most celebrated proposal of that year's CPPCC session and also immediately attracted the attention of Xiamen residents, especially homeowners in the "Future Seashore" estate in the Haicang Economic Development Zone.³⁰ Such information was disseminated

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *Xiamen PX Xiangmu Huoyou Renda Paiban* (厦门PX项目或由人大拍板) [*The Local People Congress may decide the Xiamen PX project*], 厦门, CAIJING.COM, <http://www.caijing.com.cn/2007-12-15/100041974.html> [<https://perma.cc/Q52R-Y7LP>] (outlining a comprehensive environmental impact evaluation).

²⁹ See *Xiamen Baiyi Huagong Xiangmu Cheng Lianghui Jinji Yian Bei Zanhuan Pizhun* (厦门百亿化工项目成两会紧急议案被暂缓批准) [*The Xiamen Chemical Industrial Program Cost Tens of Billions Led to a Urgent Bill, The Project was Suspended*], SOHU (Mar. 19, 2007), <http://news.sohu.com/20070319/n248820116.shtml> [<https://perma.cc/A4YV-82JL>] ([proposing relocation of PX project](https://perma.cc/A4YV-82JL)).

³⁰ See *Xiamen PX Shijian* [*Xiamen PX Protest*] SINA, <http://news.sina.com.cn/c/2007-09-27/165713986641.shtml> [<https://perma.cc/5XL5-24HB>] (noting Xiamen residents' approval of proposal to relocate PX project).

quickly among Xiamen residents through the internet and cell phones, resulting in widespread public worry and even panic.

The Xiamen municipal government responded swiftly. On May 28, 2007, the director general of the Xiamen Environmental Protection Bureau openly addressed the rising concerns about the potential pollution of the PX project in an interview published in the official municipal party newspaper *Xiamen Daily*. The next day the CEO of the company in charge of the PX project published a long article in *Xiamen Evening* defending the project. On May 30, Ding Guoyan, Xiamen's vice mayor, held a press conference to announce the postponement of the project.³¹

Extraordinary though these steps were, they failed to satisfy the public. On June 1, thousands of residents demonstrated at the PX project construction site and another road in the nearby residential area. Citizens called their collective action "going for a walk" rather than a "demonstration" or "protest," which might receive a much less tolerant response from local authorities.³² The collective "walk" lasted until the nightfall of the next day. No physical conflict occurred. Later in June, the Xiamen government asked the Chinese Academy of Environmental Science (CAES) to conduct an environmental evaluation of Xiamen's municipal planning.³³ The CAES report, released for public consultation on December 5, 2007, posited two conflicting identities for Haicang: on the one hand, it is identified as a chemical industrial zone; on the other hand, it is recognized as an area famous for its scenery and vital tourism sector. The public consultation process involved a two-day public forum on environmental evaluation held from December 13 to 14. Two days before that, more than 100 representatives of the public were selected to participate through a voluntary sign-up and televised lottery. The forum included invited government officials, twenty-one experts and more than 100 resident public representatives. Almost 90% of resident representatives opposed the PX program. The forum was broadcast live on local television. Zhu Zilu, the Xiamen city

³¹ *Id.*

³² *Xiamen*, *supra* note 30.

³³ *Zhongguo Huanjing Kexueyuan Huiyu Xiamen PX Xiangmu "Gongzhong canyu" Yijian* (中国环境科学院回复厦门 PX 项目 "公众参与" 意见) [*China Academy of Environmental Science Respond to the Opinions from Public Participation of Xiamen PX Project*], ENORTH.COM (Dec. 19, 2007), <http://it.big5.enorth.com.cn/system/2007/12/19/002517134.shtml>.

government deputy secretary-general, acknowledged that this forum was unprecedented in terms of its transparency and procedural openness. Ultimately, the Xiamen government reconsidered its approval of the PX project, and later the project was relocated to Gulei Peninsula in Zhangzhou, about seventy kilometers from Xiamen.³⁴

The Xiamen PX case makes it clear that the legality of an administrative decision to approve a project is not alone sufficient for the decision to be accepted by the public and, in the end, implemented. Other conditions are necessary as well, and the managerial model of administrative governance employed by the Xiamen municipal government was ill-suited to realize those conditions. First, whether a decision is reasonable in substance is significant as well, and input from those with expertise is important to making that determination. In the case of the PX project, the Xiamen PX project did go through all the legally required procedures. The PX project was approved by the National Bureau of Environmental Protection, as required by relevant laws and regulations.³⁵ The Bureau has a mandate only to conduct environmental evaluations of particular projects, but not to consider the broader contexts, including other aspects of municipal planning that affect the environment. The latter falls under the jurisdiction of the municipal government.³⁶ This limitation on the Bureau's power leaves too much discretion to local government to ignore environmental issues.³⁷ Once members of the public mobilized to resist the PX project, the Xiamen government sought additional input from relevant experts in the relevant field. But the purpose of the municipal government's entrusting the China Academy of Environmental Science to conduct an environmental evaluation was to use third-party expertise to enhance the credibility of the government's decision to approve the project. Therefore, the

³⁴ *Id.*

³⁵ Huanjing Yingxiang Pingjia Fa (环境影响评价法) [Environment Impact Assessment Law], art. 23 (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2002, effective Sep. 1, 2003).

³⁶ *Id.* art. 7–8.

³⁷ See Tian Feilong (田飞龙), *Cong "Shumu" Dao "Senlin": Guihua Huanping Lifa de Zhili Shiming* (从“树木”到“森林”: 规划环评立法的治理使命) [From Trees to Forests: the Mission of Legislation on Environmental Evaluation of Planning] in *Gonggong Canyu Guancha* [Public Participation Watch], RESEARCH CTR. FOR GOV'T. BY LAW (Nov. 25, 2007), http://law.china.cn/features/2007-11/25/content_2994671.htm.

government was still following the managerial model, and even then its effort fell short because the evaluation report concluded that the problem was one of municipal planning which environmental experts could not resolve.³⁸

Second, the PX case shows that the acceptability to the public of certain policy initiatives does matter, and that the managerial model has difficulties in achieving just that. As mentioned, perhaps to the government's surprise, the local people rose up against the PX project, mobilizing themselves through cell phones and the internet. After becoming aware of people's fear and discontent, the government tried to reshape public opinion through official media. This strategy failed, and the crisis deepened as it turned out unsuccessful in defusing public concerns. This set of events calls into question the premise that decision-making agencies "naturally" represent the public interest.

Moreover, it also demonstrates the shortcomings of a system that does not provide institutionalized channels for members of the public to express their views of the public interest. Ordinary Chinese people have very limited channels to file complaints and express concerns to the government. The main function of the "letters and visits" (*xinfang*) system is to provide information to officials.³⁹ Yet this function is realized only to a limited extent because individual *xinfang* petitions rarely attract the attention of high-level decision-makers.⁴⁰ Opportunities for organized collective action are limited as well. Although the PRC Constitution promises in Article 35 the right to demonstrate and protest, exercise of this right is constrained in practice. The same is true for the constitutional right to association prescribed in the same article, as it is very difficult to formally establish non-governmental organizations to represent citizens' interests. In the PX case, the residents in Xiamen developed an ingenious strategy to bypass these limitations. The residents established informal networks rather than formal organizations, and

³⁸ Wang Xixin & Zhang Yongle, *Experts, The Public and Use of Knowledge: An Analytical Framework for Administrative Rule Making*, 3 SOC. SCI. IN CHINA 113 (2003).

³⁹ For a source describing the "letters and visits" system in China, see generally KEVIN J. O'BRIEN & LIANJIANG LI, *RIGHTFUL RESISTANCE IN RURAL CHINA* (2006) (showing that the function of the "letters and visits system" is for information gathering and dispersal among officials).

⁴⁰ Carl F. Minzner, *Xinfang: An Alternative to Formal Chinese Legal Institutions*, 42 STAN. J. INT'L L. 103 (2006).

did not “protest” but merely “walked” together.⁴¹ In this way, they did not directly challenge the government’s authority and they expressed their concerns and opposition without making government officials lose face. Hence, they did not elicit the kind of pushback from local authorities commonly seen in cases of street protest.

Eventually, the two-day public forum helped the government come to a policy decision that ultimately won public acceptance. Although the public forum was only an ad hoc arrangement and just for consultation, it enhanced procedural transparency and fairness in decision-making and opened up a space for each side to express its opinions. At the forum, opponents of the PX project asked the government to consider, among other topics, the following: the conflict between the project and the need to preserve Xiamen’s value as a seashore tourism site; the failure of the project to satisfy national energy-saving and emissions reduction criteria; and the potential that the PX project could produce serious pollution and other harm.⁴² Proponents of the project called for striking a balance between economic development and environmental protection, and asked whether there were special interest groups behind the protest.⁴³ On both sides, citizens actively participated in administrative decision-making.

In summary, the Xiamen PX case involved a spontaneous effort by members of the public to organize themselves around informal networks and protest against unreasonable or undesired (rather than illegal) administrative decisions in an institutional environment that was unfriendly to public participation. The government responded to this effort in a moderate way, offering innovative channels for public participation and dialogue between the government and citizens to resolve the crisis. Although the PX crisis did not result in an institutionalized mechanism for participatory

⁴¹ Liu Xianghui & Zhou Lina (刘向晖 & 周丽娜), *Baowei Xiamen Faqizhe Jiangshu Xiamen PX Shijian Shimo* (保卫厦门发起者讲述厦门 PX 事件始末) [*Organizer of the Defending Xiamen Campaign Tells the Story of Xiamen PX Incident*], SINA.COM (Dec. 28, 2007, 10:13 AM), <http://news.sina.com.cn/c/2007-12-28/101314622140.shtml> [<https://perma.cc/DG9Y-WU6C>].

⁴² Zhu Hongjun, *Huanping Zuotanhui Quan Jilu: “Wo Shisi Hanwei Ni Shuohua de Quanli”* (环评座谈会全记录: “我誓死捍卫你说话的权利”) [*Full record of the Forum of Environmental Evaluation: “I Defend to the Death Your Right to Say It”*], SINA.COM (Dec. 20, 2007, 10:38 AM), <http://news.sina.com.cn/c/2007-12-20/103814564723.shtml> [<https://perma.cc/N82E-YSC9>].

⁴³ Wang & Zhang, *supra* note 38.

decision-making, it does indicate a shift in Xiamen away from Xiamen's managerial model of administrative decision-making, toward a more open and participatory process. The result was a "win-win" situation: the crisis of a growing confrontation between citizens and the government was resolved peacefully, members of the public saw their concerns addressed, and the government's authority was preserved.

2. Extension of the PX Crisis model: the Magnetic Levitation Crisis in Shanghai

Shortly after the PX case arose in Xiamen, a similar set of events emerged in Shanghai, with roots that dated back to early 2007.⁴⁴ On January 18, 2007, the Shanghai Magnetic Levitation Company submitted an environmental evaluation report to the National Bureau of Environmental Protection for approval of the construction of a magnetic levitation railway to connect the city's two airports. The completion time was set to be for 2010, when the Shanghai Expo 2010 would take place. The Report, which was made available online, revealed that the railway would be allowed to come within twenty-five meters of residential buildings.⁴⁵ Worried about the health effects of possibly living too close to a source of magnetic radiation, local residents began to lodge complaints with the authorities through the "letters and visits" system.⁴⁶ In mid-March, the National Bureau of Environment Protection sent a delegation to Shanghai's Minhang District to evaluate the environmental report submitted by the magnetic levitation railway company. More than 5000 residents went to the district government to submit petitions concerning the report. Their challenge was based on procedural grounds, suggesting that the report was neither published in the media nor posted in residential areas, and therefore, it did not meet the

⁴⁴ *Gongzhong Danxin Dianci Wuran Shanghai Cixuanfu Youhua Fang'an Rengzao Zhiyi* (公众担心电磁污染 上海磁悬浮优化方案仍遭质疑) [*The Public Still Worries about Magnetic Pollution*], QQ.COM (Jan. 14, 2008, 9:36 AM), <http://finance.qq.com/a/20080114/001399.htm> [<https://perma.cc/24ZP-AYND>].

⁴⁵ *Id.*

⁴⁶ Zhang Feng'an & Li Peng (张凤安 & 李芑), *Shanghai Cixuanfu Gongsi Kudeng Sannian Kui Shi Yi, Huanjing cheng Zuida Tiaozhan* (上海磁悬浮公司苦等三年亏 10 亿环境成最大挑战) [*The Shanghai Magnetic Levitation Waited for Three Years and Suffered More than One Billion Lost: The Environment has been the Biggest Challenge*], SOHU (Jan. 15, 2008, 12:35 AM), <http://news.sohu.com/20080115/n254654327.shtml> [<https://perma.cc/SK6C-3NZH>].

requirement of transparency. Also in March, officials of the Minhang district government, together with many experts, went to local communities to talk with individual residents in an effort to make up for the lack of public participation in the initial decision-making process. Two months later, the residents were notified that the project was postponed. On December 29, the Shanghai Bureau of City Planning published online an amended project plan open for public comment until January 18, 2008. According to the amended plan, the railway line would be shortened from 34.8 km to 31.8 km. One part of the line would be relocated closer to a river, and farther away from residential areas, while the other part would be built underground. Nonetheless, local residents opposed the revised program. They contended that the revised standard of thirty meters between the train line and residential areas was still inadequate because it was shorter than the fifty meter distance which was the common practice in China, and far short of the German standard of 300–500 meters.⁴⁷ An environmental evaluation of the amended program, posted on the official website “Shanghai Environment Hotline” for public consultation between January 2 and January 15 concluded that the magnetic radiation from the proposed railway met relevant standards and was safe.⁴⁸ This conclusion, too, immediately drew public opposition. Some residents with expertise in relevant fields argued that the computational method used in the environmental evaluation report was inappropriate and failed to reflect the risks accurately.⁴⁹

Residents soon mobilized themselves in efforts to make their voices heard.⁵⁰ Similar to the PX case in Xiamen, the participants were careful to avoid any provocative labels such as “protest” or “demonstration.” Some residents gathered at Ganghui Plaza under the rubric of “shopping together” at Guanghai Plaza on January 6. Six days later, they gathered again for the purpose of “taking a walk” through the People’s Square, and then on busier adjacent streets, including the famous Nanjing Road. The protest was largely peaceful

⁴⁷ *Id.*

⁴⁸ Yang Wanguo, *Shanghai Cheng Jiang Lunzheng Cixuanfu Gongzhong Yijian* (上海称将论证磁悬浮公众意见) [*Shanghai Says Public Opinions on Magnetic Levitation will be Evaluated*], FENGHUANGNET (Jan. 19, 2008, 3:31 AM), http://news.ifeng.com/mainland/200801/0119_17_370675.shtml [<https://perma.cc/4DHX-437L>].

⁴⁹ *Id.*

⁵⁰ *Gongzhong Danxin*, *supra* note 44.

and provoked no conflict between protesters and the police. On the same day as the People's Park Square and Nanjing Road protests, the Shanghai Center for Radioactive Environment Monitoring Center responded to residents' requests and conducted a test at the magnetic levitation railway's model line, with representatives of the residents present. The representatives later used the result of the test to challenge the accuracy of the magnetic levitation railway company's original environmental evaluation report.⁵¹

The local government responded as follows.⁵² On January 7, Chen Jun, the head of the Minhang district government, went to the site of the magnetic levitation railway model line with officials from various district departments and consulted twelve resident representatives. On the evening of January 8, the Letters and Visits Office of the Minhang district government organized a meeting that included magnetic levitation experts, district officials, and resident representatives to address the following controversial issues: how to conduct public consultation on the proposed project; the time period for consultation; the negative impacts of the project including noise, vibration, and radiation pollution; and the potential infringement of the property rights of local residents. The district government subsequently established four public consultation centers. Many residents discontinued their "walking" protests and turned to these centers to voice their concerns. On January 18, a public notice was published on both "Shanghai Environment Hotline" and the official portal of the Shanghai Bureau of City Planning, expressing the local authorities' appreciation of the active participation of residents during the period of consultation and encouraging local residents to continue communicating with the government after the comment period. Although the government rejected residents' request to extend the period of public comment and hold a public hearing on this issue, it did demonstrate a willingness to consult with the public.⁵³

The pattern apparent in the Shanghai magnetic levitation railway case is similar to that of the Xiamen PX case: at the initial stage, decision-making bodies did not take into account the policy preferences of local residents, and thus missed an opportunity to build public acceptance of the policies. This was particularly obvious in

⁵¹ *Gongzhong Danxin*, *supra* note 44.

⁵² Feng'an & Peng, *supra* note 46.

⁵³ Feng'an & Peng, *supra* note 46.

the local government's approach to soliciting public comment: the initial announcement was published online but not in other media such as newspapers or posted in the residential communities. The local government therefore appeared to seek to keep a low profile and to avoid the attention of local residents. Once local residents became aware of the matter, they mobilized swiftly to pursue collective action, including "letters and visits," "shopping together," "going for a walk," and so on. These protests created a public crisis which the government could not ignore. Pressure from the public thus had a substantial impact on the government's agenda-setting.

Over the two-year course of the controversy, the local government shifted significantly from passive listening to the public (if at all) toward active consultation with the people. Once members of the affected public started to see "letters and visits" as an ineffective means to express their concerns and moved to more protest-like tactics, the government became more willing to engage in "listening to opinions in an open manner."⁵⁴ Effective dialogue and communication ensued.⁵⁵ Eventually the proposed project never materialized. Apparently, after the public row, relevant authorities understood that they needed to consider the acceptability to the public of their policy decision and to take into account the preferences of the public in their decision-making.

3. *Taxi Drivers' Strike in Chongqing*

On November 3, 2008, more than 8000 taxi drivers went on strike in the city of Chongqing to protest their exploitation by taxi companies.⁵⁶ The strike was a result of the power imbalances between employers and employees in Chongqing's taxi industry. In many Chinese cities, including Chongqing, the taxi industry is regulated by a licensing system: the government sells licenses to taxi

⁵⁴ See *Guangzhou Guizhang Zhiding Gongzhong Canyu Banfa* (广州市规章制定公众参与办法) [*Guangzhou Provisions on Public Participation in Rule-Making*], https://law.yale.edu/system/files/documents/pdf/Intellectual_Life/CL-PP-Final_GZ_PP_Measures_%28Chinese%29.pdf [https://perma.cc/MJ3D-DCRA] ("Listening to opinions in an open manner means that undertaking department listens to public opinions in a certain period of time and in appointed places.").

⁵⁵ *Id.*

⁵⁶ *Chongqing Yongchuan Fasheng Chuzuche Tingyun Shijian* (重庆永川发生出租车停运事件) [*Taxi Drivers' Strike happens in Yongchuan, Chongqing*], XINHUANET (Nov. 19, 2008), http://news.xinhuanet.com/newscenter/2008-11/19/content_10381564_1.htm.

companies, which then assign the licenses to individual taxis and lease the licensed taxis to drivers, charging high fees.⁵⁷ As a result, the bulk of the income from taxi fares goes to the taxi companies, resulting in a distribution that many drivers regard as unfair.⁵⁸

The second day into the strike, the Chongqing government held the first of five press conferences in a four-day period.⁵⁹ It publicly apologized for the inconvenience caused by the strike and promised to lower the excessive management fees charged by the taxi companies, to increase the number of gas stations across the city, and to crack down on the illegal operation of unregistered taxis.⁶⁰ On November 4, many of the striking taxi drivers went back to work. On November 5, the management fee charged to drivers was reduced by 50 RMB per day. On the same day, all taxis resumed operation and the strike came to an end.⁶¹

On November 6, Bo Xilai, the party secretary of Chongqing at the time, promised to take steps to address the problems facing the taxi industry and presided over a consultation meeting that included forty taxi driver representatives, twenty residents' representatives, five representatives from the taxi companies, and two representatives from gas stations.⁶² The three-hour consultation meeting, at which most of the speakers were taxi drivers, was broadcast live by the official Xinhua news agency and on Chongqing's main websites, radio and television stations.⁶³

The Chongqing taxi strike case differs from the Xiamen PX and Shanghai magnetic levitation railway case in a few interesting respects. First, although each of the three cases involved the local government, a group of affected citizens, and an interested third party (e.g., the taxi companies), the "third party" was much more actively engaged in the consultative phase of the Chongqing case. In this

⁵⁷ *Chongqing Chuzuche Tingyun Xuanji* (重庆出租车停运玄机) [*The Logic Behind the Taxi Driver's Strike*], SOHU (Nov. 7, 2008, 6:58 AM), <http://business.sohu.com/20081107/n260490082.shtml> [<https://perma.cc/USY2-5P3H>].

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Xin Siwei Yingdui Gonggong Shijian* ("新思维" 应对公共事件) [*Dealing with Public Events in "New Way of Thinking"*], 163.COM (Nov. 7, 2008, 08:53 AM), <http://news.163.com/08/1107/08/4Q4RDOC1000120GU.html> [<https://perma.cc/3H4J-7463>].

⁶³ *Id.*

sense, participation in administrative decision-making from outside the government was more complex and arguably broader.

Second, unlike the residents in Xiamen and Shanghai, the taxi drivers in Chongqing undertook a full-fledged protest in the form of a strike. The right to strike is *not* recognized in China's constitution and has no basis in Chinese law.⁶⁴ Nonetheless, the Chongqing government did not clamp down on the strike. Instead, and even absent the more widespread public dissatisfaction in the other two cases, the Chongqing government was in some respects more accommodating than its counterparts in the other two cities. It communicated swiftly with the stakeholders and the broader public, adopted a form of public participation in order to re-examine the regulatory framework of the taxi industry, and ultimately adjusted the rules in accordance with the opinions expressed during the public consultation process.⁶⁵

Third, Bo Xilai and the Chongqing Municipal Commission of Transport Management considered a proposal which, if adopted, could have created a new channel for effective public participation in decision-making: namely, to establish a new association to represent taxi drivers in Chongqing. Such an association could have reduced the imbalance of power between employers and employees in terms of their potential influence on government policy-making. Chongqing's Taxi Industrial Association is an organization of employers, which does not represent the interests of employees.⁶⁶ Taxi drivers have no similar organization to press for their interests when the government solicits outside input with regards to decision-making. This pattern holds true across sectors throughout China. Employers in specific industrial sectors have well established associations, and they also have the comprehensive Association of Industry and Commerce. For sure, employees are technically represented by the All-China Federation of Trade Unions (ACFTU), but it does not provide an effective corporatist arrangement—much

⁶⁴ Article 29 of the 1975 Constitution and Article 45 of the 1978 Constitution did recognize the right to strike. However, this right was revoked in the 1982 Constitution. See *1982 Nian Xianfa Weihe Quxiao Le Bagong Ziyou* (82 年宪法为何取消了“罢工自由”) [*Why did 1982 Constitution Revoke the Freedom of Strike*], 21CCOM.NET (July 17, 2011), http://www.21ccom.net/articles/ljld/lccz/article_2011071739766.html (explaining why drafters of 1982 Constitution revoked the right to strike).

⁶⁵ See Author's last name, *supra* note 91.

⁶⁶ See *id.*, *supra* note 91.

less an independent trade union structure—to represent workers' interests. The ACFTU system lacks the clear demarcation that is necessary between the rights and interests of workers versus those of their employers.⁶⁷ China's intra-company labor unions are largely controlled by employers.

However, the ACFTU rejected Chongqing's proposal above.⁶⁸ This prevented a novel approach that could have resulted in a "win-win" for the local government and affected citizens (in this case, taxi drivers) in Chongqing. Such an arrangement could have reduced the transaction costs for the government in obtaining (and responding to) meaningful input from the taxi drivers. If the taxi drivers were allowed to have their own representative organization, communications between them and the government could be made much more effective and efficient—in both directions. It would also make it easier for the local government to manage issues in this sector. Moreover, such an organization would make it easier for government decision-makers to avoid the dominance of the more powerful and organized group (employers); to offer adequate representation for the relatively weaker group (employees); and thereby to support more participatory decision-making and achieve more widely acceptable policy outcomes.

4. Hunan Administrative Procedure Rules

All of the above three case studies illustrate increased public participation—but in each case, that was the result of a discrete crisis, and it depended to a large extent upon the personal qualities of individual local officials. Undoubtedly, these factors constitute a

⁶⁷ See ZHANG JING, CORPORATISM 164 (2005) (“[T]he pre-condition of a corporatism arrangement is the differentiation of interest groups. Corporatism is an integrating program for the problems of interest group politics. The more essential question is that it is based upon a series of structures with differentiated rights. Corporatism tends to make adjustments upon this basis.”).

⁶⁸ See Quanguo Zonggonghui Bushu Tui jin Chuzuche Qiye Zujian Gonghui Gongzuo (全国总工会部署推进出租车企业组建工会工作) [All-China Federation of Trade Unions Arranges the Organization of Trade Union in Taxi Companies], RENMIN RIBAO [PEOPLE'S DAILY] (Nov. 15, 2008), <http://acftu.people.com.cn/GB/8345487.html> [<https://perma.cc/DV89-8SN4>] (stating that the Federation's rejection is based upon the Constitution of Chinese Trade Union, which stipulates that members within the same enterprise, public service institution, government departments and other social organizations should be included in a single grass roots level trade union organization).

fragile foundation for public participation to be institutionalized in administrative decision making. But in some localities, there have been promising efforts to accomplish just that.⁶⁹ A notable step in this regard was taken by Hunan Province with the Administrative Procedure Rules (“Hunan APR”) it enacted in October 2008.⁷⁰

Chapter 3 of the Hunan APR provides that every “major administrative decision” (*zhongda xingzheng juece*)⁷¹ must be formulated through a multi-step process that includes preliminary investigation, expert review, “notice and comment,” lawfulness review, and consensus decision-making.⁷² Popular input is anticipated at two of these stages, preliminary investigation before a plan for decision-making is formulated, and then again after a draft plan is ready and made public. At the preliminary investigation stage, the undertaking agency is directed to carry out in-depth research on the subject matter of the contemplated decision, to collect all necessary information, and to consult relevant parties for negotiation and coordination.⁷³

Once the draft plan for a “major administrative decision” is published, the Hunan APR directs the undertaking agency to “seek the opinions of the general public,”⁷⁴ choosing among several potential methods that include “convening discussion forums, holding consultations, [and] listening to opinions in an open manner.”⁷⁵ In certain circumstances, *e.g.*, “when the general public has major differences on the decision-making plan,” a public hearing

⁶⁹ Among laws, regulations enacted by the State Council, and rules, the Price Law and the Temporary Method for Public Participation in Environmental Protection stipulates some procedures for public participation.

⁷⁰ Hunan Province Xingzheng Chengxu Guiding [Hunan Province Administrative Procedure Rules] [hereinafter Hunan APR] (promulgated by No. 222 Order of Hunan Provincial Government, Apr. 17, 2008), available at https://law.yale.edu/system/files/documents/pdf/Intellectual_Life/CL-PP-Hunan_APA_Bilingual.pdf [<https://perma.cc/Z5EA-4ZAV>].

⁷¹ According to Article 31 of the Hunan APR, major administrative decisions are those made by people’s governments at the county level and above concerning matters that involve the overall economic and social development situation of the region, have extensive social ramifications, involve a high degree of specialization and are closely linked with the people’s interests. Specifically, such decisions include major policy measures for economic and social development, master spatial plans, budgeting, major government investment projects, major matters about the disposal of state-owned assets, etc.

⁷² Hunan APR, *supra* note 70, art. 34–43.

⁷³ Hunan APR, *supra* note 70, art. 34.

⁷⁴ Hunan APR, *supra* note 70, art. 35.

⁷⁵ Hunan APR, *supra* note 70, art. 37.

should be held.⁷⁶ As to the scope of public participation, generally, and the selection of participating representatives, the Hunan APR indicates that these “should be determined to ensure fair expression of opinions by those in the general public who would be affected by the decision-making.”⁷⁷ Somewhat analogous to the practice of “notice and comment” under Section 553 of the U.S. Administrative Procedure Act,⁷⁸ the Hunan APR also provides that “the opinions of the general public and the situation regarding their adoption should be made public to society.”⁷⁹

Because meaningful and effective public participation often depends upon access to information, the Hunan APR emphasizes open government principles throughout its provisions—requiring greater disclosure than even the national Regulations on Open Government Information.⁸⁰ Specifically, the Hunan APR requires not only disclosure of substantive government information, but also procedural openness, for example the openness of administrative meetings convened by local governments to address policy issues.⁸¹ It was reported that during the first year since the enactment of the Hunan APR that 125 administrative meetings had been made public.⁸² Worth noting is that this is actually broader than the national government transparency regime first established in 2008 under the Open Government Information Regulations, which only requires publication of completed administrative decisions.⁸³ Information concerning unfinished administrative procedures has been

⁷⁶ Hunan APR, *supra* note 70, art. 38.

⁷⁷ Hunan APR, *supra* note 70, art. 37.

⁷⁸ 5 U.S.C. § 553 (1966).

⁷⁹ *See supra* note 103.

⁸⁰ *See generally* Regulations of the People’s Republic of China on the Disclosure of Government Information (promulgated by Decree No. 492 of the State Council, Apr. 5, 2007) (discussing the government information disclosure regulations).

⁸¹ *See, e.g.*, Hunan APR, *supra* note 70, art. 130 (“Administrative hearings should be held in an open manner except when state secrets, commercial secrets that are protected in accordance with the law, or the privacy of individuals are involved.”).

⁸² HUNANSHENG XINGZHENG CHENGXU GUIDING YIZHOUNIAN JUECE TINGZHENGHUI 227 Ci 湖南省行政程序规定一周年 决策听证会 227 次 [One Year Anniversary of Hunan APR Public Hearings on Decision-making for 227 Times], REDNET.CN (Sept. 18, 2009, 11:42:25 PM), <http://hn.rednet.cn/c/2009/09/18/1827549.htm> [<https://perma.cc/LMC8-B92V>].

⁸³ Regulations of the People’s Republic of China on Open Government Information (promulgated by the State Council, Jan. 17, 2007, effective May 1, 2009), available at https://law.yale.edu/system/files/documents/pdf/Intellectual_Life/CL-OGI-Regs-English.pdf [<https://perma.cc/3ACL-3JFY>].

categorized as undisclosable processual information by the General Office of State Council since 2010.⁸⁴

Altogether, the Hunan APR can be regarded as a prototype administrative procedure law for China, which despite decades of scholarly efforts remains wanting of its own comprehensive legislation on administrative procedure.⁸⁵ It is the sort of local government rule that, by accumulating experience, can help to propel forward future legislation at the national level. Already, it has influenced other local jurisdictions to adopt similar rules. For instance, since 2008, 12 localities across China have followed the footsteps of Hunan to promulgate their own comprehensive rules on administrative procedures.⁸⁶ The impact of Hunan APR upon subsequent local rules of administrative procedures is notable on a variety of fronts from basic structure to substantive prescription such as explicit mentioning of the proportionality principle, which is originally a German import.⁸⁷ Additionally, in April 2017, the Office of Legal Affairs of State Council published a draft version of the revised Regulations on Procedures of Formulating Administrative Rules for public comments, which contains very similar provisions concerning basic requirements of rule-making procedures as the Hunan APR does. All of this can be seen as the positive repercussion from the Hunan APR.

⁸⁴ Available at http://www.gov.cn/zhengce/content/2013-09/13/content_1472.htm [<https://perma.cc/X37H-XPUJ>].

⁸⁵ *Xingzheng Chengxufa Nanchan 25 Nian Beihou: Quanli Buyuan Zifu Shoujiao* 行政程序法难产 25 年背后: 权力不愿自缚手脚 [Behind the Stillbirth of Administrative Procedure Act: Power does not want Self-restraints], CHINANEWS.COM (May 14, 2010, 1:56 PM), <http://www.chinanews.com/gn/news/2010/05-14/2283088.shtml> [<https://perma.cc/UDL4-XJMP>].

⁸⁶ *Shengshixian Sanji Yichutai 12 Bu Difang Xingzheng Chengxu Guiding* 省市县三级已出台 12 部地方行政程序规定 [Twelve Administrative Procedures Rules have been Promulgated by Governments at Provincial, Prefectural and County Levels], XINHUANET.COM (Nov. 26, 2015, 1:31:01 PM), http://news.xinhuanet.com/politics/2015-11/26/c_128471785.htm [<https://perma.cc/8GQ4-ALU3>].

⁸⁷ Zhang Jiansheng, *Cong Difang dao Zhongyang: Wo Guo Xingzheng Chengxu Lifa de Xianshi yu Weilai* (从地方到中央: 我国行政程序立法的现实与未来) [From Local to Central: Realities and Prospects of Administrative Procedures Legislation in China], STUDY OF ADMIN. L. 54 (2017).

5. *The Participatory Model's Features and Prospects*

In addition to the developments described above in Xiamen, Shanghai, Chongqing, and Hunan, similar efforts to reform decision-making processes have been taking place in many other localities across China over the last decade or so, including (but not limited to) “democratic consultation meetings” in Taizhou city of Zhejiang Province,⁸⁸ public participation in rule-making in Guangzhou,⁸⁹ and the reform of administrative decision-making in Shenzhen.⁹⁰ These examples suggest a transition from the traditional, closed “managerial” decision-making model to a new, more open “participatory” model, as local government leaders increasingly see the need for such change.

How have local governments been able to promote participatory governance while the basic structure of the party-state bureaucracy has not substantially changed? Part of the answer lies in the growing recognition by central authorities that the style and method of administrative governance affects whether policies will succeed.⁹¹ This central-level realization gave local officials latitude—and incentive—to undertake experiments in administrative reform. Part of the answer also lies in changes in the policy aims dictated by the top national leadership. Once the CCP and central government started promoting the “outlook of scientific development”

⁸⁸ Chen Tiexiong (陈铁雄), *Jiceng Xieshang Minzhu zai Taizhou de Xianxing Tansuo yu Shijian* (基层协商民主在台州的先行探索与实践) [*The Pilot Exploration and Practice of Grass-root Democracy in Taizhou*], DANGJIAN.CN, (Apr. 1, 2014), http://www.dangjian.cn/djgz/jc/201301/t20130104_1011744.shtml [https://perma.cc/S7S4-GL8R].

⁸⁹ Lian Hongyang (练洪洋), *Guangzhou rang Gongzhong Canyu Zhengfu Guizhang Zhiding Gonggong Juece Minyi Shuo le Suan* (广州让公众参与政府规章制定公共决策民意说了算) [*Guangzhou lets the Public to Participate in Government Rule Formulation—Public Opinions Count in Public Decision-making*], PEOPLE.COM (July 20, 2006, 07:44 AM), <http://politics.people.com.cn/GB/30178/4609116.html> [https://perma.cc/H2AW-6V55].

⁹⁰ Zhang Xiaolin (张小玲), *Shenzhen Shi Zhongda Xingzheng Juece yao xian Cha Hefaxing* (深圳市重大行政决策要先查合法性) [*Major Administrative Decision-making Must First Check Legality*], NANFANG METROPOLIS DAILY (Nov. 10, 2016), http://epaper.oeeee.com/epaper/A/html/2016-11/10/content_92457.htm#article [https://perma.cc/YD2A-TAKU].

⁹¹ Evidence for this point can be found not only in CCP and central government work reports, but also in the enactment of the Regulations on Open Government Information, *supra* note 80.

around 2003,⁹² the criteria for evaluating cadres' performance changed from a one-sided emphasis on economic performance to a more balanced and diverse set of considerations that include provision of public services, environment protection, and social stability.⁹³ Likewise, the process of evaluation came to include wider use of democratic assessment and opinion polls.⁹⁴ These changes mean that local leaders have more reasons to focus on—and compete in—pursuing participation-enhancing administrative reforms that are helpful in satisfying the new (not purely economic-growth focused) criteria.

The cases analyze above reveal the main features of the emerging, more participatory administrative decision-making model:

1. The public interest is recognized as the product of plural and diversified interests that can be expressed by the public themselves. From Xiamen to Shanghai, for decision-making on major construction projects, identifying the public interest is now seen as requiring government bodies to recognize and synthesize particular citizen interests. Administrative decision-making bodies shoulder the responsibility of identifying the public interest and making decisions according to the public interest. Because they are not able to define the public interest entirely on their own, decision-making bodies need to rely on the cooperation and input of the public.
2. Although the organizational basis of decision-making is still hierarchical and bureaucratic, reforms over the last decade

⁹² *Scientific Concept of Development and a Harmonious Society*, CHINA.ORG (Oct. 8, 2007), <http://www.china.org.cn/english/congress/227029.htm> [<https://perma.cc/6C7L-PBZ4>].

⁹³ Mao Xiaolin (毛小林), *Kexue Fazhanguan yu Guanyuan Nengli Pingjia Tixi Goujian* (科学发展观与官员能力评价体系构建) [*Scientific Development and Constructing the Evaluation System of the Capacity of the Officials*], PEOPLE'S TRIB. (Nov. 2009), http://paper.people.com.cn/rmlt/html/2009-11/11/content_389191.htm [<https://perma.cc/2W2Y-LPY2>] (last visited Sep. 16, 2017).

⁹⁴ In July 2006, the Organizational Department of the CCP Central Committee announced the “Experimental Method to Assess Local Party and Government Leaders according to the Concept of Scientific Development.” In 2013, the finalized ordinance about reforming cadre evaluation system was promulgated. See Jiang Tao (蒋涛), *Zhongzubu Chu Kaohe Xingui; Zhongquan Pochu GDP Chongbai* (中组部出考核新规 重拳破除 GDP 崇拜) [*COD Initiated New Rules Aiming to Exclude GDP Worship*], CHINANNEWS.COM (Dec. 12, 2013 07:45 PM), <http://www.chinanews.com/gn/2013/12-12/5613882.shtml> [<https://perma.cc/CZH9-HU6D>] (making major adjustments to cadre assessment indicators and procedures, which directly impact officials' conceptions of political achievement and focus attention on the party and government's responsiveness to local citizens).

have made this structure more open to public input and participation. Aforementioned reforms that added public service, environmental protection and social stability to the list of policy targets and cadre evaluation criteria, and introduced procedural techniques such as democratic assessment and opinion polls in cadre evaluation have given local administrative decision-making bodies more incentives to respond actively to the demands and opinions of the public. Additional reforms—such as the extension to higher levels of the competitive electoral system that already applies to village self-governance—would provide even greater impetus for local officials to be responsive to the public.

3. In terms of agenda-setting in daily governance, party and government agencies share power, to some degree, with the public. Both the Shanghai and Xiamen cases documented above demonstrate that the public now enjoys increased opportunities to influence government agenda-setting through procedures adopted by the government or through expressing public opinion in the media and on the internet.

4. Since the 2008 OGI Regulations, administrative transparency has become more institutionalized, giving the public more reliable access to the information needed in order to formulate opinions and participate in shaping administrative decisions. Administrative agencies are required to respect and uphold the public's right to know. Many members of the public now actively provide decision-making bodies with information about their interests, and decision-makers pay more attention to information provided by the public when making decisions, as evidenced by the participation of large number of citizens in both the Xiamen and Shanghai protests.

5. Decision-making bodies have come to adopt multiple channels for the representation and expression of public interest beyond the few, highly constrained ones that characterized the managerial model of decision-making. These new channels include consultation meetings, deliberation meetings and public hearings, all of which were present in the cases discussed above.

III. PARTICIPATORY GOVERNANCE: THEORETICAL FRAMEWORK

We have set forth the key features of China's emerging participatory mode of governance. In this section, we offer arguments about why the participatory governance model is more normatively attractive than the managerial governance model, and why it is appropriate for contemporary Chinese society.

1. *Participatory Governance: A Normative Assessment*

The participatory model can surpass the managerial model in enhancing government legitimacy. It can do so because the participatory model regards citizens as stake-holders (or cooperative partners) who influence the process of governance, not as mere subjects of governance who occasionally provide information to bureaucrats (who set targets, make policy choices, and implement policy).

This emerging model, in China, is broadly consistent with the PRC Constitution's principle of popular sovereignty, which is reflected in the constitutional provision that the National People's Congress—the organ of popular sovereignty—is the supreme organ of state power.⁹⁵ The legislature expresses the will of the people, while the authority of the executive derives from that of the legislature.⁹⁶ When the government faithfully obeys the will of the legislature, the democratic legitimacy of the legislature can be

⁹⁵ XIANFA art. 2 (1982) (China). Article 2 of the 1982 Constitution declares that “All power in the People's Republic of China belongs to the people. The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.” This provision is generally held as defining the “popular sovereignty” principle of the Chinese Constitution, *i.e.*, all state power ultimately derives from “the people,” who exercise such power through the national and local people's congresses. See Zhang Qianfan, *From Popular Sovereignty to Human Rights: On the Paradigm Transformation of Chinese Constitutional Jurisprudence*, 1 ASIA L.Q. 1, 1–20 (2009), http://www.klri.re.kr/uploadfile/AK21/ALQ_200901_01.pdf [<https://perma.cc/3KKV-WY4S>] (showing the power dynamic set forth in the Constitution of the People's Republic of China). Thus, the legislature holds primary authority. Administrative and judicial powers derive from the legislative power and are under legislative supervision. See XIANFA art. 57 (1982) (stating “[t]he National People's Congress of the People's Republic of China is the highest organ of state power.”).

⁹⁶ *Id.*

transmitted to the executive's policy decisions.⁹⁷ Judicial review plays an auxiliary role, ensuring that when the government's sanctions affect citizens, those actions remain within the bounds set by the legislature. The prominent American administrative law professor Richard Stewart once called this the "transmission belt" model of legitimate administrative action.⁹⁸ In this model, the state's executive organs play the role that Weber conceived for bureaucrats: a relatively mechanical function that takes orders from the legislature and executes those orders.⁹⁹

The "transmission belt" model has certain shortcomings, however, from the perspective of a participatory model of governance. Under the "transmission belt" model, public participation in administrative decision-making is only indirect—limited to the selection of legislative representatives, and to whatever forms of public participation are available in the legislative process. Moreover, with the legislature constrained in its capacity to regulate an increasingly complex society, more and more power is delegated to the executive, expanding bureaucratic jurisdiction and discretion. Since bureaucrats inevitably have their own interests and preferences, and do not necessarily follow the will of the legislature,¹⁰⁰ constraint over the executive thus become less stringent than the "transmission belt" idea might suggest. Given the ease with which government can satisfy the requirements of formal legality without taking public interests and preferences into account, formal legality therefore looks increasingly ineffective in securing substantive legitimacy for administrative decisions.¹⁰¹

Expertise might offer a separate basis for legitimating administrative decision-making that is "participatory" in the limited

⁹⁷ Wang Xixin (王锡铎) & Zhang Yongle, (章永乐), *Zhuanjia, Dazhong yu Zhishi de Yunyong* (专家、大众与知识的运用) [*The Public, Experts and the Use of Knowledge*] 24 SOC. SCI. IN CHINA 113 (2003).

⁹⁸ Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667, 1675 (1975).

⁹⁹ Max Weber, *Bureaucracy*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 232-35 (H.H. Gerth & C. Wright Mills eds. & trans., 1958).

¹⁰⁰ See generally ANTHONY DOWNS, *INSIDE BUREAUCRACY* 4-5, 79 (1967) (describing the internal and external motivations for bureaucrats).

¹⁰¹ See Stewart, *supra* note 98, at 1684 (discussing the failure of both "transmission belt" theory and traditional "expertise" model to legitimate agency action when the agencies are only considered to "adjust competing private interests" without taking the public into account).

sense that it requires input from actors outside of party-state organs. Expertise is legitimating because experts are professionally trained, with rigorous disciplinary qualifications, and thus can be assumed to make decisions that are substantively rational and politically neutral.¹⁰² During the New Deal period in the United States, the Roosevelt administration used this justification to expand administrative power.¹⁰³

Rooting government legitimacy in professional expertise is inferior, however, in several respects, to a more fully participatory approach. Experts can be very good at finding the best means to achieve pre-determined ends—but they are not especially capable of choosing among different or even conflicting ends. Choices among ends often entail choices among values, which are political choices. Secondly, experts are inevitably subject to the limitations of their disciplines. Their views of complex problems can be partial and parochial. When experts from different fields are brought together to address a policy problem, the process does not necessarily lead to an optimal policy outcome. There may well be irreconcilable conflict between their perspectives. Finally, the professionalism of the experts does not guarantee rational application of their expertise to promote general welfare. When there is room for substantial discretion (as there often is in policy making), “governance by experts” may satisfy the requirements of formal legality while favoring special interest groups.¹⁰⁴

Moreover, the advent of the information age has undermined the advantages and legitimacy of relying on experts in policy-making. Experts’ monopoly on knowledge and information has been broken.¹⁰⁵ Equipped with new technology, many more people can collect information—and even develop their own skills and expertise—to make independent judgments on policy matters, with less deference to the authority of experts. This pattern is quite evident in China. For example, in the Xiamen and Shanghai cases discussed above, the public challenged environmental experts’ supposedly “scientific conclusions.”¹⁰⁶ Even though environmental protection standards and impact assessments involve highly technical matters,

¹⁰² Wang & Zhang, *supra* note 3.

¹⁰³ Stewart, *supra* note 98, at 1684.

¹⁰⁴ See Wang & Zhang, *supra* note 3 (analyzing from an epistemological perspective).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

which may not be fully understood by ordinary citizens, the residents in Xiamen and Shanghai had information that empowered them to be more critical. They were able to compare China's national standards with those used in developed countries and see the notable gap between them. This became the basis on which the citizens challenged the experts' conclusions and authority. This phenomenon was unimaginable before the advent of the information age.

The more direct public participation in governance that is emerging in China can address the deficiencies of both the "transmission belt" and "expertise" paradigms canvassed above, and better enhance the legitimacy of administrative governance. Such public participation can make up for the weakness of legislative control over the executive, and hence make the practice of the government more truly representative of the public interest. (At the same time, by giving the public a more direct role to play in decision-making, it can enhance public acceptance of government policies as well.) Greater public participation can also introduce additional information and analysis into decision-making to complement—and constrain—experts' input, enhancing policy rationality. In official Chinese terminology, these legitimacy and rationality-enhancing functions of public participation represent "the democratization and scientification" of government decision-making.¹⁰⁷

Actually, greater public participation in the processes of administrative governance has been a global trend since the 1980s.¹⁰⁸ Throughout the world, there has been ever more emphasis on the recognition and protection of the people's "right to know" and their right to participate in administrative decision-making.¹⁰⁹ Global trends, however, cannot simply be assumed to offer models that are well suited for contemporary China. Different countries at different stages of development pose very different conditions, and attempts at

¹⁰⁷ Wang & Zhang, *supra* note 97.

¹⁰⁸ See, e.g., 7th Global Forum on Reinventing Government Building Trust in Government (June 26–9, 2007), Vienna, Austria, *Public Administration and Democratic Governance: Governments Serving Citizens* (Jan. 2007) (highlighting the role of the public in governance).

¹⁰⁹ For a historical account of this phenomenon, see Michael Schudson, *THE RISE OF THE RIGHT TO KNOW: POLITICS AND THE CULTURE OF TRANSPARENCY, 1945-1975* (Harvard Univ. Press, 2015) (providing a historical outlook of how the "right to know" rose in popular political culture). For an evaluation of the global growth of government transparency legislation, see John M. Ackerman and Irma E. Sandoval-Ballesteros, *The Global Explosion of Freedom of Information Laws*, 58 ADMIN. LAW REVIEW, 85–130 (2006) (analyzing the political culture that favors transparency).

“legal transplant” can fail for many reasons. The key question, then, is whether participatory governance may be appropriate for China and its society today?

2. *Does Participatory Governance Suit China?*

The case studies presented in Part II of this article illustrate an almost simultaneous emergence of participatory governance in many places across China that was not the direct result of intentional design or political campaigns initiated from the central government. Rather, participatory governance has emerged both from local governments responding to local crises and from local leaders' ambition to be at the forefront of political and administrative reform in China. These dynamics provide evidence that participatory governance is rooted in China's current social context, can work in China, and ought not be dismissed as a passing fad. This assessment has far-reaching implications for China's future governance.

Why is this emerging model suitable to contemporary Chinese society? First, participatory governance has clear instrumental utility. As discussed earlier, broader public participation can make policy decisions easier to implement because they are more likely to be acceptable to the public. Opportunities for the public to participate in decision-making also can serve as a safety valve to relieve mounting social tension and dissatisfaction in China today.

Since the beginning of the twenty-first century, China has entered a period of increased social unrest. The number of “mass incidents” has increased significantly, from 8700 in 1993, to more than 90,000 in 2006.¹¹⁰ The increase in mass incidents is not the result of economic stagnation or recession, but rather the consequence of the imbalances that have accompanied the rapid economic growth that China has achieved so far.¹¹¹ For a variety of reasons, many ordinary people's grievances often have not been addressed properly by local governments, giving rise to increased social tension and instability.

¹¹⁰ See “Liao Wang” Wenzhang: *Qunti Xingshi Jiantui Dong Fansi* (“瞭望” 文章: 群体性事件推动反思) [*Collective Turbulences Push Forward Reflection*], LIAOWANG (Dec. 22, 2008), http://news.xinhuanet.com/legal/2008-12/22/content_10541258.htm (describing the social unrest in the twenty-first century).

¹¹¹ Murray Scot Tanner, *China Rethinks Unrest*, 27 WASH. Q. 137 (2004).

In recent years, central authorities have taken new steps to address mass incidents, including the development of a public emergency management system in the form of the 2007 Law on Emergency Response and a program at the central Party School to train county party secretaries on how to respond to public emergencies.¹¹² While all of this focuses on *ex post facto* diffusion of the conflict, participatory governance offers a more fundamental and proactive approach to the problem. In principle, it provides marginalized social groups with channels to participate in and influence government decisions and policies, which will then help lessen the prospects for social unrest.

Second, participatory governance is suited to increasing urbanization in China. According to official statistics, urban areas are now home to more than half of China's people, and China's urbanization rate may reach 65% by 2030.¹¹³ Urban areas feature higher levels of social diversification and pluralization, higher levels of education, greater access to information technology, and, in turn, greater capacity among citizens to take action to influence government decision-making. In addition, the population density of urban areas means that citizens' collective action usually can have a more significant and widespread impact on society. Local governments in such areas consequently face more severe challenges if they adopt poorly designed policies that have not benefited from public input or secured public acceptance. Ongoing rapid urbanization therefore is likely to accelerate the expansion of participatory governance in China, including as a means to relieve social grievances resulting from rapid urbanization itself.

¹¹² See JACQUES DELISLE, EMERGENCY POWERS LAW IN ASIA 342 (Victor V. Ramraj & Arun K. Thiruvengadam eds., 2010) (describing the emergency response law); *Zhongyang Dangxiao dui Xianwei Shuji Lunxun Guanzhu Tufaxing Shijian Chuli Deng* (中央党校对县委书记轮训关注突发性事件处理等) [*Party School of the CCP Central Committee Trains County Party Secretaries in Rotation with a Focus on How to Deal with Emergencies*], CHINA NEWS.COM (Nov. 15, 2008), <http://www.chinanews.com.cn/gn/news/2008/11-15/1450314.shtml> [<https://perma.cc/AN6Z-5ENQ>] (explaining the government-implemented emergency response protocols).

¹¹³ See CHINA ACADEMY OF SOCIAL SCIENCES, 2008 Nian Zhongguo Chengshi Jingzhengli Lanpishu: Zhongguo Chengshi Jingzhengli Baogao (2008 年中国城市竞争力蓝皮书: 中国城市竞争力报告) [*A Blue Book on the Competitiveness of Chinese Cities in 2008: China Cities Competitiveness Report*] (2008).

At the same time, conditions favoring participatory governance are emerging even in China's rural areas.¹¹⁴ Many villages are no longer purely agricultural societies, but instead are under the ubiquitous economic and cultural influence of urban areas. As China's rural economy and society change accordingly, the information needed for policy-making becomes more complicated and the managerial mode of governance less adequate. Furthermore, some changes in rural China are reducing the previously high cost of citizens' collective action. For example, the penetration rate of computers and internet in the countryside grew at more than a 60% annual rate—albeit from a low baseline of a mere 52.7 million—from 2007 to 2008.¹¹⁵ As the difference in life circumstances between people living in urban and rural China shrinks, their previously different modes of governance are likely to converge toward the participatory governance model.

Third, participatory governance offers important psychological and cultural benefits to Chinese citizens. The practice of self-governance, especially the experiences of collective communication and deliberation, can reduce the psychological alienation felt by many citizens under the managerial model and can enhance social trust and social solidarity.

The problem and danger of alienation in Chinese society is reflected in the worrying phenomenon described by the Chinese sociologist Yu Jianrong as “mass incidents without actual interests

¹¹⁴ It should be noted that competitive elections were introduced in China's rural areas earlier than in urban areas. See Kevin J. O'Brien, *Understanding China's Grassroots Elections* (Aug. 22, 2009), <http://polisci.berkeley.edu/sites/default/files/people/u3854/OBrien-Introduction.pdf> [<https://perma.cc/EA7V-6YZ3>] (noting that rural areas in China had competitive elections before urban areas had competitive elections). However, the existence of village elections does not mean that the governing mechanism in rural areas changed substantially. In most places, villagers have nothing to do with public affairs after casting their votes. Villages with successful participatory governance are hard to find. See Tong Zhihui, *Cunmin Zizhi Sanshinian* (村民自治三十年) [Three Decades of Village Self-Governance], *STUDY TIMES* (April 7, 2008), <http://www.sociologyol.org/yanjiubankuai/fenleisuoyin/fenzhishehuixue/nongcunshehuixue/2008-04-16/5158.html> [<https://perma.cc/ME3M-XEC6>] (highlighting lack of participation from villagers in rural areas).

¹¹⁵ *The 23rd Statistical Report of Internet Development in China*, CHINA INTERNET NETWORK INFORMATION CENTER (Jan. 22, 2009), http://www.cnnic.net.cn/research/bgxz/tjbg/200906/t20090615_18388.html [<https://perma.cc/KF26-6VAC>].

involved.”¹¹⁶ Those who participate in this kind of incident often do not have a particularized interest at stake. They merely express general discontent. If such discontent cannot be handled effectively by established social channels and political institutions, it can lead to ever greater social antagonism and, ultimately, explosions of unrest.

Xiamen’s PX case provides a good example of how the participatory model of governance can help to address such problems of alienation. Xiamen residents banded together to pursue a specific goal in which they had a direct stake: protecting the environment of their city. During this process, many residents felt that they united into a community that shared the same destiny. The process produced a sense of self-fulfillment and solidarity. Participation was a form of social therapy. To be sure, the Xiamen PX case and other incidents that have spurred the development of participatory governance at local levels also involve tension and even confrontation among participants. Social groups with different interests may well hold conflicting opinions. But orderly public participation offer a preferable means for addressing such conflicts—one that is much better than trying to cover up differences and letting them fester.

Finally, China’s emerging model of participatory governance offers a promising and reliable pathway to carrying out China’s broader agenda of political and administrative reform in an orderly way. The goal of broadening citizens’ participation in politics was officially endorsed at the Seventeenth Party Congress. Left open was the question of the means to achieve that goal. The participatory model of governance that is emerging in China is, in its nature, a project of “orderly participation” that promises to avoid the social turbulence that has often accompanied democratization in developing countries. China’s model of participatory governance adopts a path of incremental reform, using existing political and administrative organizations as the basic platform on which to widen citizens’ participation. In this process, pragmatic considerations often drive adjustments of the basic political structure. In its operation, participatory governance is highly flexible, and can reflect the

¹¹⁶ Yu Jianrong, *Shehuixiefengshijian Zhong Quntixinliyanjiu: Dui “Wen’anshijian” Fashengjizhi De Yizhongjieshi* (社会泄愤事件中群体心理研究—对“瓮安事件”发生机制的一种解释) [*Study on the Collective Psyche in Social Anger-Venting Incidents: An Explanation of the Originating Mechanism of Wen’an Incident*] *SOCIOLOGY PERSPECTIVE*, Feb. 28, 2009, <http://www.sociologyol.org/yanjiubankuai/xuejierenwu/yujian/2009-02-28/7376.html> [<https://perma.cc/5BWV-LMVQ>].

demands of different situations in different localities. Moreover, participation can be promoted alongside the rationalization of administrative organization. In principle, this process of reform can utilize as fully as possible the knowledge and expertise of administrative officials, while at the same time opening decision-making processes to the wisdom of the people.

In sum, the most compelling argument for participatory governance in China is not just that it follows some global trend or standard, but rather that it well suits China's particular conditions and can help resolve China-specific problems.

IV. INSTITUTIONAL COMPONENTS OF PARTICIPATORY GOVERNANCE

We now turn to the basic institutional framework for a participatory model of governance to be more fully realized in China. These components include core institutional infrastructure, supporting institutions and procedural techniques.

In terms of the core institutional infrastructure, two elements are particularly crucial: (i) a system of open government information and (ii) collective representation of interests. The first, open government information, is based upon the simple idea that information is the basis for decision-making. So, if members of the public know little or nothing about the operation of the government, they cannot adequately supervise the government or make any meaningful criticisms or suggestions concerning government policy.¹¹⁷ Sharing of information is the first step toward sharing of decision-making power. Because bureaucracies' default position is often to withhold information, many countries have enacted legislation to impose duties to disclose information on the government. In China, national OGI Regulations enacted in 2008 impose such duties and specify the categories of information that the government must make public.¹¹⁸ While the OGI Regulations does not establish explicitly the principle that

¹¹⁷ See generally THE RIGHT TO KNOW: TRANSPARENCY FOR AN OPEN WORLD (Ann Florini ed., 2007) (addressing what information governments and other powerful organizations should disclose); JAMIE P. HORSLEY, TOWARD A MORE OPEN CHINA (2005), http://policydialogue.org/files/publications/Toward_an_Open_China_Horsley.pdf [https://perma.cc/4GW2-UNN3] (discussing the development of government transparency in China, "as well as the prospects for China's further opening").

¹¹⁸ See [Author name], *supra* note 111, art. 19.

“disclosure is the rule and non-disclosure is the exception,” nor does it prohibit local governments from promulgating open government rules that require disclosure of an even wider range of information than mandated at the national level (unless other laws require that the information be kept secret).

Second, collective representation of interests is crucial to participatory governance because the transaction costs of negotiating with unorganized individuals in an area with a large population (which is often the case even at very local levels in China) are impossibly high. Efficient decision-making requires that individuals with common interests band together so that their interests can be expressed and represented collectively by associations. With these channels of representation and expression, administrative agencies are more likely to be assured that the information they receive is reliable and the policies they make are accordingly more likely to be accepted by the members of the affected public, including those who do not directly participate in the decision-making process.

Of course, for collective representation to work most effectively, China will need to gradually relax the limitations that have previously been placed on people’s right to associate, so that interest groups can establish organizations capable of expressing their views and interests.¹¹⁹ To ensure robust collective representation, attention must be paid to mechanisms for empowering weaker and more diffuse groups of interested parties. This is necessary to avoid disproportionate influence by stronger social groups with higher levels of organization and, in extreme cases “regulatory capture.”¹²⁰ Decision-making bodies therefore should take measures to empower disadvantaged social groups by reducing the costs of organizing collective action and to assure their ability to express their interests and make their voices heard in policy-making processes.

Beyond these two core institutions, effective participatory governance in China also depends on several additional supporting institutions, which still need further reforms to be truly complementary.

¹¹⁹ See generally QIANFAN ZHANG, *THE CONSTITUTION OF CHINA: A CONTEXTUAL ANALYSIS* (2012) (addressing the still dormant political and religious rights in China).

¹²⁰ On regulatory capture, see generally Jean-Jacques Laffont & Jean Tirole, *The Politics of Government Decision-Making: A Theory of Regulatory Capture*, 106 Q.J. ECON. 1089 (1991) (discussing an agency-theoretic approach to interest-group politics).

1. Legislative supervision of administration

In China, it is both necessary and possible to promote participatory governance and legislative empowerment simultaneously. The latter can support the former. At the same time, embrace of participatory governance could strengthen legislative capacity to control and supervise government administration, as well. In performing oversight functions, for example, over government budgets that are technically mandated under Chinese law but not fully realized as of yet, legislative supervision would serve as a (less direct) form of public participation, by raising opinions that the public shares or protecting interests that the public would assert.¹²¹

2. Courts and judicial review

Administrative litigation is another important support institution for meaningful public participation in governance. Lawsuits to challenge administrative actions are especially significant for members of the public who are under-represented in administrative decision-making processes. The effectiveness of administrative litigation is limited in China, however, because until 2015, courts were authorized to review only “specific” administrative acts, not the underlying rules that might be the basis for such acts. Since the 2015 revision to the Administrative Litigation Law, Chinese courts are now allowed to review the underlying rules. Yet it remains to be seen whether the updated judicial review system can help the public to challenge effectively government decisions of a more generalized nature.

3. The Chinese People’s Political Consultative Conference (“CPPCC”)

Designed to represent diverse social groups, the CPPCC—and lower-level political consultative conferences—can also play, at least in theory, a significant supportive role in the process of participatory governance. Through their proposals at conference

¹²¹ For a critical assessment of the lack of representation in China’s local congresses, see MELANIE MANION, INFORMATION FOR AUTOCRATS: REPRESENTATION IN CHINESE LOCAL CONGRESSES (2015) (forming an opinion on the lack of public representation in local government).

sessions, conference members can set agendas for administrative decision-making through their rights to “participate in and deliberate on public affairs.”¹²² Then, during the process of administrative decision-making, political consultative conference members can also represent the policy preferences of members of the public to government decision-makers.

4. Think tanks and expert consultation

In the process of participatory governance, decision-making bodies and the public need input from experts on many technical matters that arise in the context of administrative decision-making. The development of think tanks and expert consultation systems therefore can contribute to the improvement of participatory governance.

5. Mass media and the dissemination of views and information

Mass media can perform several vital roles in supporting participatory governance. The media can publish government information and report public opinion. Both the public and administrative bodies may engage in agenda-setting, discussion of issues, or even policy debates through the media. Media coverage also provides an important platform for policy feedback and supervision after decisions are made.

V. TECHNIQUES FOR ADMINISTRATIVE DECISION-MAKING

Furthermore, a participatory model of governance entails several procedural techniques for administrative decision-making. From our perspective, the following are the most fundamental:

1. Specifying the Scope of Public Participation

Although a significant role for public participation in government decision-making is central to the participatory model of governance, it would be impossible to have public participation in

¹²² THE NATIONAL COMMITTEE OF THE CHINESE PEOPLE’S POLITICAL CONSULTATIVE CONFERENCE, THE CHINESE PEOPLE’S POLITICAL CONSULTATIVE CONFERENCE CHARTER (1982), <http://www.cppcc.gov.cn/2011/09/14/ART11315980170869872.shtml> [<https://perma.cc/Q8PW-S7TB>].

every instance. Decision-making inevitably operates within limits imposed by technology, fiscal pressure, available time, and other constraints on resources. As John Clayton Thomas argues, sometimes the substantive policy choice is clear, the government already has adequate information without public participation, and public acceptance is not crucial for policy implementation.¹²³ In these cases, administrative agencies can make decision without public input.¹²⁴ But such situations are rare. On most issues, public participation is vital or at least helpful.

In the absence of national administrative procedure legislation in China, provisions governing the scope of public participation are scattered across many statutes, regulations, and local rules.¹²⁵ Some of these provisions notably support widened public participation. For example, Article 35 of the Hunan APR stipulates that, except for matters that other laws provide shall not be made public, decision-making bodies must publish a draft of “major administrative decision-making” plans and solicit opinions from the general public for a period of not less than twenty days.¹²⁶ Furthermore, Article 38

¹²³ See John Clayton Thomas, PUBLIC PARTICIPATION IN PUBLIC DECISIONS: NEW SKILLS AND STRATEGIES FOR PUBLIC MANAGERS 8 (1995) (opining that the public is not always needed to make decisions in the government, particularly when all the relevant information is available to the government but may not be available to the public).

¹²⁴ *Id.*

¹²⁵ See, e.g., Huanjing Yingxiang Pingjia Gong Zhong Canyu Zanzing Banfa (环境影响评价公众参与暂行办法) [Provisional Ordinance Concerning Public Participation in the Evaluation of Environmental Influence] (promulgated by National Environmental Protection Bureau, February 14, 2006, effective March 18, 2006) (providing the example of the use of the public in decisions regarding environmental issues); Guizhang Zhiding Chengxu Tiaoli (规章制定程序条例) [Ordinance Concerning the Procedures for the Formulation of Administrative Rules] (promulgated by the St. Council, November 16, 2001, effective January 1, 2002), art. 15 (providing the example of the use of the public in decisions regarding administrative rules); Xing Zheng Fa Gui Zhi Ding Chengxu Tiaoli (行政法规制定程序条例) [Ordinance Concerning the Procedures for the Formulation of Administrative Regulations] (promulgated by the St. Council, November 16, 2001, effective January 1, 2002), art. 12, 19, 22 (providing the example of the use of the public in decisions regarding administrative regulation issues); Lifa Fa (立法法) [Law on Legislation] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000), art. 58, 2000 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ., 112 (providing the example of the use of the public in decisions regarding legislative issues); Jiage Fa (价格法) [Price Law] (promulgated by the Standing Comm. Nat'l People's Cong., December 29, 1997, effective May 1, 1998), art. 23, 1998 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (providing the example of the use of the public in decisions regarding pricing issues).

¹²⁶ See Hunan Sheng Xingzheng Chengxu Guiding (湖南省行政程序规定) [Hunan Province Administrative Procedure Rules] (promulgated by No. 222 Order of Hunan

requires a hearing before major administrative decision-making under any of the following circumstances: (i) a decision involves an important interest of the general public; (ii) there are notably differences in views among the general public toward the policy proposed; (iii) the policy decision might affect social stability; or (iv) laws, regulations or rules stipulate that a hearing be held.

2. Sharing Agenda-Setting Power

The power to set agendas is often more important than the right to participate in discussions. Framing the agenda determines to a large extent the scope and depth of deliberation. Influence at this stage enables citizens to play an initiating role in administrative decision-making, and not simply serve as the passive objects of governance. Therefore, when outlining procedures for public participation, it is necessary to prescribe that the public has the right to propose issues to be decided. Article 2 of Hangzhou's Provisions on Open Decision-Making Procedures provides a good example of just such a rule. It states that "citizens, legal persons and other organizations can submit their proposals to be deliberated and decided on to the Office of People's Opinions, and these proposals should be forwarded to the General Office of the municipal government."¹²⁷

Public participation in the agenda-setting phase can, and should, extend to proposing draft plans, especially in contexts where the decision-making process includes public hearings. The Price Law provides good examples of this necessity. Article 23 of the law requires that hearings be held for decisions that involve major price adjustments.¹²⁸ And many hearings have been held in many places, generating some enthusiasm among the public. Nonetheless, many people have found such hearings to be disappointing, in that they are

Provincial Government, Apr. 17, 2008), art. 31 (defining "major administrative decision-making" as involving issues that are closely related to the overall economic and social development at the local level, have significant social implications, require professional expertise, are closely related to the people's welfare, or need high acceptance from the public).

¹²⁷ Available at <http://www.hangzhoufz.gov.cn/details/gfwjdetail.aspx?id=1440>.

¹²⁸ Jiage Fa (价格法) [Price Law] (promulgated by the Standing Comm. Nat'l People's Cong., December 29, 1997, effective May 1, 1998), art. 23, 1998 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ.

employed to justify raising prices. Despite many objections voiced by participants, it seems that almost every hearing held under the Price Law has led to an approval of price increases.¹²⁹ This outcome partly reflects the weakness of public participation in agenda-setting: administrative bodies usually have a well-structured proposal in place well before they disclose any draft plan. The agenda is already fixed before any public hearing is held. Administrative bodies often use hearings to improve the acceptability of price increases that the body already plans to approve. Accordingly, criticism about “show hearings” have frequently captured media headlines.¹³⁰ To make the hearing process more meaningful as a process for public participation, a crucial step is to recognize a place for the public in agenda-setting and to allow members of the public to raise their own policy plans.

Of course, recognition of rights is not the same thing as generating capacity to utilize those rights. Even the best formal procedures cannot guarantee that public participation will be effective. How much agenda-setting power the public can exercise meaningfully upon the people’s capacity to make systematic, feasible, and convincing proposals. This in turn depends upon development of institutions such as the media, associations, and other mechanisms for collective representation of interests, as well as a pool of experts outside the party-state and its think tanks who are willing and able to address policy issues.

3. Channels for Public Participation

Several procedural techniques can provide channels for fair and effective public participation in administrative decision-making, including: notice and comment, discussion meetings, consultation meetings, public hearings, and “listening to opinions in an open manner.” For important policy issues involving the public interest, notice and comment should be the required procedure. Other procedural techniques can be added where they are appropriate and helpful in fostering public participation, and their requirements

¹²⁹ *Jiage Tingzhenghui Jue Da Duoshu Shi Zhangjia: Tingzhenghui Zhishi Zuoxiu* (价格听证会绝大多数是涨价: 听证会只是作秀?) [*Most Price Hearings for Increasing the Price: Are Those Hearings Just for Show?*], TENCENT FINANCE (Jan. 8, 2010), <http://finance.qq.com/a/20100108/001844.htm> [https://perma.cc/43F4-HWM3].

¹³⁰ *Id.*

should be clearly defined. The choice among procedures can be guided by the principle of equal and fair expression of interests, which means that both individualized and organized interests should be allowed to voice.¹³¹ Administrative bodies should make sure that interest representation is balanced and no interested party is excluded from the procedure. What this requires will differ, depending on whether there is strong collective representation, partially collective representation, or non-collective representation. Important interested parties should have their own representatives in the decision-making process. And this may require special efforts to ensure that an interested party with a low level of organization is not excluded from the procedure. Other procedures may be necessary when there are major disagreements among the public. In this situation, fair representation of parties with different opinions is especially important. When policy implementation demands high acceptance from the public, administrative agencies should adopt procedures to facilitate compromises among stakeholders and affected parties with conflicting views.

Although particular procedures may be better-suited to various circumstances, every procedural technique has its own weaknesses. Notice and comment procedures, for example, may fail to reach sufficiently wide public audiences due to time limitations and thereby unduly constrain the public's access to information and opportunity for participation. As noted above, in the Shanghai magnetic levitation railway case, notices were posted on two government websites but not in the residential communities along the proposed railway line. This made it difficult for busy residents or residents without internet access to learn about the proposed decision

¹³¹ See Hunan Xingzheng Chengxu Guiding (湖南行政程序规定) [Hunan Province Administrative Procedure Provisions], art. 37 (promulgated by Hunan Province People's Government, April 17, 2008, effective October 1, 2008) (providing that "the scope of participation by the general public and the selection of participating representatives should be determined to ensure fair expression of opinions by those in the general public who would be affected by the decision-making"); Hangzhou Shi Renmin Zhengfu Zhongda Xingzheng Shixiang Shishi Kaifangshi Juece Chengxu Guiding (杭州市人民政府重大行政事项实施开放式决策程序规定) [The Provisions of Hangzhou Municipal People's Government Concerning Open Decision-Making Procedures], art. 7 (promulgated by Hangzhou Municipal People's Government, Jan. 13, 2009, effective Jan. 13, 2009) (stating that the procedure is more elaborate and that "when consulting the opinions of trade associations, intermediaries, interested parties, mass organizations and the public by discussion forums, hearings, negotiation forums, interested parties, especially the defected, unemployed, and new immigrants should receive fair expression of opinions.").

and to get access to necessary information. For those who have no access to internet, alternative channels for information and participation must be made available if they are to have fair and equal opportunities in express their views and have their interests represented in administrative decision-making.

In government decision-making processes in China today, consultation meetings and negotiation meetings are more and more widely used. In the Xiamen, Shanghai and Chongqing cases analyzed above, consultation meetings rather than public hearings were used. Compared with public hearings, consultation meetings and negotiation meetings are more flexible. Although this flexibility has advantages in terms of cost and adaptability to the circumstances of a particular policy decision, it can also hinder public participation. Compared to public hearings and other more formal techniques, consultation and negotiation meetings impose fewer procedural constraints on the decision-making bodies. They can communicate with interested parties separately, rather than all of them collectively. They do not need to include all interested parties, announce meetings publicly beforehand, or provide written records afterwards. More flexible, less formal approaches can make resulting decision less credible or less acceptable to the public, especially groups that have not been fully and equally included in the process. Where important decisions concerning the public interest are being made, formal public hearings are necessary to provide for adequate public participation.

5. Legal Consequences of Public Participation

If public participation is to have meaningful impact on administrative decision-making, decision-making bodies must bear a legal duty to respond to public input. The most fundamental safeguard here is a legal duty to give reasons: decision-making authorities must be required to provide an account of the basis on which the policy is made, including especially the reasons some public opinions were accepted and others were not. Article 37 of the Hunan APR offers a notable version of the type of requirement that should apply where the procedural technique is consultation meetings where the “responsible department should classify the opinions and suggestions submitted by the general public on the major administrative decision-making and adopt those reasonable

suggestions. For those opinions that are not adopted, reasons should be provided.”¹³²

Where more formal procedural techniques such as public hearings are employed, administrative authorities should be under more stringent legal obligations. Article 139 of the Hunan APR offers an example of the requirements that should apply in these contexts. Written records of a hearing shall be made to faithfully record the views and reasons presented by the speakers. Audio and video recordings may also be made. The written records of a hearing should be signed or stamped by the participants after being checked and confirmed. Administrative authorities should take comprehensive consideration of all opinions presented by the participants and adopt those that are reasonable. Adoption or rejection of suggestions made by the participants should be made public. Reasons for not adopting suggestions made at a hearing should be provided.¹³³ Although the Hunan Rules commendably impose on decision-making authorities a duty to give reasons for accepting or rejecting public input in its Article 37, additional procedural safeguards should be required in cases where public hearings are the technique adopted for public input. We suggest that the sole permissible basis for making decisions after a public hearing should be what is recorded in the minutes of the hearing.

6. Policy Feedback and Error-Correction Mechanism

Finally, a public participation model of governance requires effective mechanisms for policy feedback and error-correction. Decision-making is not a one-off event and it does not end with the announcement of a decision. Many decisions need modification after their adoption or initial implementation. Policy feedback is a significant stage in the decision-making process, and in some cases can trigger a new round of decision-making processes. After the announcement of a decision, policy-makers should continue to take into account opinions from the public. This requires decision-making authorities in China to revise the mentality of the old, managerial

¹³² Hunansheng Xingzheng Chengxu Guiding [Hunan Province Administrative Procedure Rules], art. 37 (promulgated by No. 222 Order of Hunan Provincial Government, Apr. 17, 2008).

¹³³ *Id.*

model. It is well known that China has taken an innovative experimental approach to reform and development for decades, which has to date been met with considerable success.¹³⁴ Yet *ex post facto* evaluation and modification of government decisions is as important as *ex ante* experimentation leading up to decisions. They should not regard administrative litigation, administrative review or critical reporting in the media as burdensome or as something to be resisted. Rather, they should regard administrative litigation and review and media coverage as mechanisms for useful policy feedback. Accordingly, government should avoid interfering with the freedom of the press to criticize public policies, specifically during the phase of policy implementation.

VI. CONCLUSION

In this Article, we have argued that a new model of participatory governance is emerging as a trend of administrative reform in China. The decision-making process of government organs, particularly at the local level, is increasingly open and public participation in administrative process is widening and deepening. Through case studies of recent developments in several localities, we have shown how administrative innovation toward a more participatory model has been taking place. On that basis, we have identified and discussed the essential components and main features of the emerging model of participatory governance.

China's move to a participatory model follows a global trend towards more public participation in governance. However, we argue that the emergence of the participatory model in China is attributed more to its indigenous roots and the fact that it offers a better solution to many of China's problems. Greater public participation can help avoid imbalances in policy-making, resolve social tensions, and improve the quality of administrative decisions. Through regular participation in policy decision-making, the public's capacity to take political action can improve. In this way, the participatory model also serves as a form of civic education. The participatory model can help relieve the sense of alienation that has become a problem in the Chinese society, and enhance social trust and solidarity. As a

¹³⁴ Sebastian Heilmann, *From Local Experiments to National Policy: The Origins of China's Distinctive Policy Process*, 59 CHINA J. 1, 1–30 (2008).

mechanism of “orderly participation,” the participatory model also can serve as a guide for China’s ongoing political and administrative reform. We believe that with further economic and social development, especially increasing urbanization, the applicability of participatory governance will continue to expand.

Underlying the development of participatory governance is the reframing of the state-society relationship. Effective participatory governance needs a strong society as well as a strong state; it requires an open government and mature institutions for public participation, as well as a society with well-developed mechanisms for interest representation and expression. With the development of the public’s ability to define, express and argue for its diverse and sometimes conflicting interests in the processes of policy decision-making, society can increasingly share the responsibility of public governance and China can move toward a “participatory society.”

We believe that the development of participatory governance can improve fairness in the Chinese society. Over more than three decades of reform, competition among local governments for higher growth has given rise to China’s miraculous economic development. But this competition has also led to serious and consistent imbalances in public policy and to the slighting of many aspects of the public interest and public opinion. In the decision-making process, many local officials act in favor of the interests of the party-state bureaucracy and powerful economic actors while overlooking the interests and preferences of other less privileged social groups. Participatory governance promotes more inclusive and equal representation and the expression of plural interests in the administrative decision-making process, as well as the realization of the public interest in specific cases. In the relatively near term, we expect to see a new wave of competition among local governments for the advancement of “scientific and democratic decision-making,” which includes the key aspects of a participatory model of governance. If this happens, China will witness huge progress in the development of political civilization after three decades of success in economic development.