

**CARNEGIE ENDOWMENT  
FOR INTERNATIONAL PEACE**

**PUBLIC PARTICIPATION IN CHINA'S REGULATORY  
PROCESS  
AND REFORM OF GOVERNANCE IN CHINA**

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DR. VERON HUNG: My name is Veron Hung and I'm Associate of the China Program at the Carnegie Endowment for International Peace. The rise of the middle class in China has heightened the demand for public participation in the Chinese government's policy and decision-making processes. What experiments have taken place and to what extent can foreigners participate in these processes? What problems have been encountered? How does the Chinese government attempt to tackle these problems by enacting a piece of legislation called the Administrative Procedure Law?

Today we are very honored to have Professor Wang Xixin to address these issues. Xixin, a good friend of mine, is associate professor and associate dean of Peking University's School of Law. I asked Xixin to prepare a one-paragraph bio data. He did, but his description is too modest, so let me give you some details.

Xixin is a perfect example to illustrate how Chinese scholars can contribute to the political development in China. Despite his relatively young age, he is one of the few experts invited by the Chinese government to advise on the drafting of the Administrative Procedure law. Last week, he and his colleagues had a wonderful meeting with a group of U.S. administrative law experts to discuss a draft of China's Administrative Procedure Law.

Xixin's scholarship is also admired in this country. He is the first scholar ever named as a fellow by Yale University's China Law Center. He is now collaborating with a federal judge in this country to write a book on administrative law.

Xixin.

PROF. XIXIN WANG: Well, thank you very much, Veron. And I thank all of you. I'm sorry for taking you from your wonderful lunch to work right now.

I'm very sure that you got three great days during the weekend -- the capture of Saddam and the new hope in the Middle East might be a perfect gift for Christmas. The holiday season is not a good time for work; it's a time for celebration. So, if unfortunately you find my talk here is a little bit boring, just pardon me, that's not my fault. That's because we are doing important work during holiday time.

Well, everybody talks about rule of law now in China, but it is as Mark Twain said, everybody talks about weather but nobody can do anything to it. (Laughs.) Well, one of my old friends, Jerry Cohen, remarked the rule of law in China in the same way. He said that everybody talks about rule of law but nobody can do anything to it. However, I disagreed with him on some aspects. For one aspect, I am very sure that we are here -- we are doing something, trying to change the weather.

With that, I'm coming here for one of the most important issues in China's journey toward rule of law, that is, public participation in the regulatory process, including decision-making and policy-making, rulemaking processes, and for this important issue, I flew thousands of miles for

this occasion. And I am very sure that my 20-hour, cross-ocean, economy class flight is worthwhile. (Laughter.)

Okay. The need for public participation has been widely recognized as necessary, for many reasons. For one reason, we all know that the governing must obtain the consent from the governed. In China, since the foundation of the republic in 1949, you know, individuals' lives had been controlled, basically from the central government and furthered by some local officials. But things have been changing since the late 1970s when China's economic and legal reforms were initiated.

So during that process, we have been seeing the rise of the middle class, including private businessmen, legal scholars, and economic elite, who are demanding more and more participation in public life. So from this perspective we can find that there is a very strong demand from the society, but at the same time we also can perceive that within the government, the top level leaders and officials of local governments are calling for public participation to some extent. So this has resulted in very real experiments of public participation at both central and local levels in the process of regulation.

Let's first look at the experiments with public participation in the decision-making process which is -- when we're talking about participation-- the first area introduced by the 1996 Administrative Punishment Law. According to that law, agencies are required to introduce the opportunity to be heard, the right to participate of private individuals when an agency is going to impose an administrative sanction upon private individuals.

Since that law, when the government wants to make a decision directly affecting individuals' rights or interests (e.g. things like issuing administrative licenses and fixing the rate for public school tuition fees), then the opportunity of participation of the affected or the interested parties must be given. The participation must be offered and it must be encouraged. So this is one context which I believe is not so closely related to the concept of participation of the public in the West, but in China, this is one of the most important contexts that I want to mention.

Well, the second context of public participation relates to the policymaking process. By policymaking, I primarily refer to the making of fundamental policies in economic regulation, the regulation of social life by governments, and policies that will affect individuals' lives on a very large scale. So we have examples such as setting the price for railway, for airfare, and for telecommunication fees. In such examples, where the government wants to fix prices for use of public facilities, notice, comments, and/or formal public hearings have been employed by the government.

The third context of public participation that I want to mention would be the rulemaking process -- participation in rulemaking process. And as you might know, in the rulemaking process in this country, notices, comments, and procedures -- or formal hearing procedures-- shall be required by the Administrative Procedure Act of 1946. In China, usually rulemaking would not involve the participation of the public. Agencies will consult within the bureaucratic system, but not welcome opinions from the outside, from the general public. But in recent years, and particularly since the year 2000 when the Legislation Law was enacted by the National People's

Congress of China, public participation forums, including discussion meetings, public hearings, and sort of notice-comment procedures have been introduced into the rulemaking processes. For example, this year in Beijing when the city government formulated a rule concerning control of pets, they solicited opinions widely from the residents in Beijing. And we also can find examples of notice-comments procedures employed in the rulemaking processes in Shanghai and Henan province.

Well, I shall also mention the notice-comments procedures as a forum of public participation in the judicial process, which might be a little bit strange to all of you. For example, China's Supreme People's Court regularly issues interpretations -- judicial interpretation -- concerning relevant laws, and such interpretation of laws that might be deemed as legislative documents. In this process this year, the Supreme People's Court announced that in formulating such judicial interpretations of laws, they will consult with the general public. They will invite public comments on the judicial interpretation of laws and regulations. So that's also a very interesting phenomenon.

Okay. In the experiments of public participation I also want to mention that foreigners are promised to be deeply involved in the policymaking and rulemaking processes in China's protocol of the WTO. In the WTO protocol, we can find that the Chinese government promised that in formulating policies relating to international trade and service, that foreigners, as investors, will be encouraged to participate in terms of providing comments on the emerging policy or the emerging rule. And in practice, for example, we can see just this year the China's National Administration of Industry and Commerce has invited more than 15,000 comments from foreign investors on some normative documents and rules to be issued by the National Administration of Industry and Commerce. And the National Administration of Commerce and Industry found these very helpful to have those foreigners as affected parties as well as experts to participate in this process.

Now we turn to -- given so many experiments with public participation, we now turn to some problems that are plaguing the emerging system of public participation in China. As I have observed from my fieldwork research during the past few months, some problems are particularly serious and are plaguing the process of public participation.

First, we have found that the insufficiency of information disclosure by the government has hampered the effectiveness of public participation. We all know that information is power. And so if the public has not enough information, then they just have a very weak voice in the participating processes. And due to lack of information they might not recognize, where the real interest is, where the real stake is? So the disclosure of information will be, as I can identify, the number one problem.

Secondly, we also found that an imbalanced representation of different interests has been a problem. We found some industry groups -- they are rich. They have many more resources, so they can control the participation processes. And they have a loud voice. At the same time, some disadvantaged groups, like farmers, laid off workers, women, they have weak voices. Sometimes their interests might be ignored. So this imbalanced representation has caused injustice, even though the public are given the opportunity to participate.

Thirdly, we found sometimes the process of participation has been manipulated by government agencies. They manipulate the process by selecting preferable participants, by controlling information, and by controlling developmental improvement of non-government organizations. So that has caused a lot of practical problems in the context.

And fourthly, I should mention that in the participating process, accountability has not been taken very seriously. By accountability I mean from many comments from the public, the government agencies may not seriously respond to the public. And there will be very little -- very little legal responsibilities that can be imposed upon the agency or its staff.

And finally, I should mention that the resources and techniques have been -- to a very large extent --- limiting the effectiveness of the public participation process. For example, when I interviewed many agency leaders, they told me that, well, we would like to have -- we would like to have more participation of the public, but just simply, we don't have so many resources. We need money to publicize the notice in the Chinese newspapers. And it seems very strange to me that the newspapers may charge very highly if the government agency want to just publish their notice or a draft rule on the newspaper. Usually they charge them at the same price of advertisements.

So that's very expensive, and they simply don't have money to pay for that. And by techniques I mean -- in some cases we noted that, you know, the public was so interested in the issues and they were very active in sending comments to the agency, but the agency does not have enough working staff and familiarity with the necessary techniques to respond to the opinions of the public.

Given those serious problems, we are now trying very seriously to do some things. We're trying to find some solutions to those problems. Firstly, during the past two years, the State Council has been working very intensively on the drafting of a regulation concerning the disclosure of government information. This regulation is very similar to the Freedom of Information Act, the FOIA here. On the draft of these regulations, the government information is required to be made public. Also, individual parties are entitled to request the government agency to notify -- to make some relevant information public.

And secondly -- well, in publication of the government information I should mention a very good example. That's during the attack of SARS in Beijing earlier this year. At the beginning we all know that the government was very reluctant to disclose some vital information to the public, but as I told my students during that time -- I commented that, well, I believe that perhaps the government can control information; but it cannot control a virus. So finally we see that, you know, it has to be, and also because of, you know, Internet, is playing a revolutionary role in the process of freedom of information. And also, if you have stayed in China for some time, as I believe some of my friends here have, you know very well that the cell phone messages we call SMS, Short Message Service, are also playing a very important role in conveying some key information among individuals, although some of this information can never be proven true.

So I remain very optimistic about this regulation concerning publication of government information. And I also want to mention the improvements of non-government organizations in

China. As you know, non-government organizations in China now are primarily -- I would like to call them GONGOs, meaning government organized non-government organizations. So most of the NGOs -- so-called NGOs -- are controlled. They are financed by the government; their personnel will be appointed by relevant government agencies.

So the improvement of NGOs is how to get those NGOs more independent and to be really non-governmental. The solution to their problem might be resources, financial support, and the changing the ideas of our leaders because you must leave some room for the self-governance of the civil society. The government should not be responsible for everything within a society. And for this I have a particular idea to try to do something to provide professional support for those disadvantaged groups like farmers, laid-off workers, and women. And I have a plan to establish a center, the public participation supporting center, at Peking University to just support -- to support those unrepresented groups.

Well, finally, for the solutions, I should mention the Administrative Procedure Law that we are now drafting, as Veron mentioned. Last week, we had very, very good conferences with our American teams. We discussed the APA draft, and we're going to finalize this draft and we'll send it to the standing committee of China's National People's Congress for intensive discussion. In the Administrative Procedure Act, we tried to address issues such as general and fundamental principles of freedom of information, of public participation in rulemaking, policymaking, and decision-making processes. And most importantly, we emphasized that judicial review must be applicable in the context of public participation so that the judiciary can supervise the process and individuals may apply remedies now that their right to participate is now being protected.

With that, I believe that you might have gotten a very general picture of what is happening in the context of public participation in China's policymaking, rulemaking processes. By closing my talk, I would like to tell you a real story. At the same time I hope it is a joke.

One month ago, I went to do fieldwork in China's northwestern -- Shanxi Province. In a very small town I interviewed a grandma. I asked her, do you know the concept of a public hearing? And she told me, very surprisingly, of course I know that. And I asked her how could you know that? And she told me, well, I know that from watching TV, and particularly watching the report of Clinton/Lewinsky case -- (laughter) -- because there were so many public hearings in the TV reporting.

Well, this may sound very funny to you, but I would like to say that we cannot anticipate the public participation will be very effective and meaningful until the public hearing and public participation is experienced by individuals in real life. In other words, the participation of the public must be an essential part of any individual's life because that is the way they should determine their future, their personal businesses.

So we are looking forward to the hopeful days, as President Bush stated yesterday, and we believe that hopeful days will be arriving soon in the near future.

Well, I thank you for your great patience and for being here. Merry Christmas.

(Applause.)

DR. HUNG: Xixin, thanks very much. Before I open the floor I would like to raise two questions. The first question is this: What major deficiencies did those U.S. administrative law experts identify in the draft of the Administrative Procedure Law that you prepared -- that you and your colleagues prepared?

And the second question is: I noticed that in the audience we have representatives from the government, NGOs and also American businesses. In your opinion, what can they do to contribute to the strengthening of public participation in China's policy and decision-making processes?

PROF. WANG: Well, thank you, Veron, for your very good questions. Those questions are good, not only because they are very responsive to my very short talk, but also because you can give me more chances to talk. (Laughter.)

Well, for the deficiencies that were pointed out by our very distinguished American counterparts, basically the draft of Chinese Administrative Procedure Law includes some general principles governing administrative procedures, and also concerns the decision-making process, rulemaking process, and the legal responsibilities -- or accountabilities we should say.

So the major deficiencies -- by the way, they have been doing their work very, very carefully and they reviewed our draft article by article--- they pointed out at least three major problems. First, because in the principle -- in this draft we emphasized the significance of fundamental procedures governing the administrative process and we use the concept of due process of law. So they questioned whether China can understand and whether the agency, as well as Chinese courts, can apply due process in individual cases. Because we know that due process clause can only be understood in a political and a cultural background. You cannot just read language. So I think they raised a very, very important question because a Chinese court just cannot simply apply a very abstract principle to individual cases due to the written law tradition.

So that's the first question they asked. And secondly, very interestingly and very surprising, they questioned the deficiency of China's draft administrative law, is this law too ambitious? That means that the Chinese draft of APA is going to regulate the entire process of administration -- of exercise of executive powers. And given the fact that there are so many different areas, and given the fact that there are two Chinas -- not mean one China, one Taiwan, but urban China and rural China.

DR. HUNG: You made me nervous. (Laughter.) I almost wanted to do something to stop you.

PROF. WANG: How can a single law cover all these different realities? And we found that this is very crucial to the implementation of this law. Now, if you just make it too general, too unified, how can you implement that in practice?

And finally, they are very concerned about the role of the court in supervising, in reviewing agency actions violating administrative procedures. For that, I believe that we already have the

Administrative Litigation Law enacted in the year of 1989. And the practice of the Administrative Litigation Law in the past 13 years has been very encouraging.

So I think that we have to think those three points very carefully.

Well, for your second question, I think it's extremely good because -- I want to find some chance to speak some words to you. What kind of contribution can everybody here make -- in this country make? Well, if I can be permitted to make some advertisements of my center, I should say, among many things, at least one thing is certain- donate money to my center. (Laughter.)

DR. HUNG: I know you're not short of money, but -- (inaudible).

PROF. WANG: Well, seriously, I think, as I said earlier, we are trying to do something to change the weather. And to some extent, we are pretty successful. If you look at China's journey toward rule of law, not only through a telescope but also through a microscope, you obviously can find a lot of developments have been made. And during the process I am very sure -- and I am very clear -- that Americans have been making very great contributions to that process. And they can still continue to make even greater contributions to that process by providing technical supports -- for example, training of government officials, training of non-governmental organizations, working staffers, capacity building of NGOs, and to introduce some practical ways of how a similar system has been functioning in this country.

And finally, put money in this process. Okay. Thank you.

DR. HUNG: Thank you, Xixin. The floor is open now. Before you ask your questions, please identify yourself.

Thank you.

Q: My name is Alexander Liss from the Center for International Private Enterprise. In your speech, you identified a lot of disadvantaged groups that were having trouble participating in the advocacy process, like laid-off workers and such. And I was just wondering if there are any private sector groups right now which have had a lot of success participating in advocacy in China, and if you could tell us about them and what they're doing that makes them successful. Thanks.

PROF. WANG: Thank you. Thank you for your question.

For those disadvantaged groups, like farmers, like laid-off workers and women, we do have some groups which are trying to provide some support for them. For example, in the China University of Political Science and Law there is a group; which is specialized in providing support to farmers fighting against the government in the context of environmental protection, meaning that when local governments are trying to build some factories or power plants and those instructions might seriously affect the neighboring farmers, but because those farmers are not well educated, they don't have enough resources to fight, to struggle against the government, so this center at the China University of Political Science and Law has been providing a lot of support in negotiating with the government and litigating in the courts against the government agencies.

And there are some similar agencies like the women's – a group in Beijing providing support for women, in participating in some policymaking process seriously affecting some rights of women in particular.

Thank you.

DR. HUNG: Joe?

Q: Joe Onek, the Constitution Project. I know that some time ago Shanghai experimented with putting some regulations on the Internet and soliciting notice and comment by the Internet. I wondered to what extent that's being used and whether that might not even be a requirement, at least for certain government agencies -- not something of course we don't have in our Administrative Procedure Act, which antedated the Internet, but whether that couldn't even be a requirement for certain agencies.

PROF. WANG: Thank you. There's not only examples of putting proposed rules or regulations on Internet in Shanghai, but it is also pretty common in large cities such as in Beijing, in Shenzhen, and particularly in Beijing.

I think the disclosure or publication of proposed rules and regulations on the Internet is better than nothing. The successful aspect of that is the example I just mentioned, the publication of proposed rules or legal documents made by the National Administration of Industry and Commerce. Reportedly they have got 15,000 items of comments through the Internet, and they've found that that's very helpful for the final formulation of their rules and legal documents, because they got more information; they got to respond to the public more – (unintelligible).

For the unsuccessful aspect, I should say -- you know, we have a project called Government on the Internet, which has been promoted for around four to five years. But still, if you try to click some home page or website of government agencies, the only materials over there might be the name and the title rank of the leaders of the directors. No more, no less.

So the Internet might be a very helpful way, but at the current time I do not think they are so successful. And for whether or not this would be a legal requirement by relevant laws, the answer is, of course – of course. Both the regulation concerning publication of the information that I just mentioned and the draft APA require that.

Q: Hi. Eric Heginbotham, the Council on Foreign Relations. Thank you very much for an excellent and very interesting presentation. I was interested in your comments -- in your suggestion that we can provide administrative assistance to groups with insufficient resources. There are some groups, particularly urban groups, that would seem to have sufficient resources to organize the lobbying effort: homeowners associations – (inaudible) – what have you. And it would seem their primary complaint is not a lack of resources, but simply that the party – the government gets involved and prevents free association.

So I'm wondering what your group does or what your – well, first, what the state association law is in China now and whether there are moves to amend regulation of free association; and secondly, whether your group is waiting for that debate at all. (Inaudible.)

PROF. WANG: Well, the party control always seemed to be overestimated I think, particularly if we -- I just said if we look at the change, the improvements within society through a microscope, generally you will still find the control from the party and from the government over individuals and some associations, like the Consumer Protection Association and so forth. Well, I think that such associations -- what you have pointed to, to some extent is correct, that they are controlled by some relevant agencies. For example, the Consumer Rights Protection Association has been controlled by the National Administration of Industry and Commerce, which is responsible for the regulation of this area, but also because their inefficiency of, for example, very professionalized skills. Many of them are not lawyers. They are not real experts. And secondly, they don't have enough resources to participate.

So this has caused such – (audio break, tape change) – the fact that they are dependent on the government, both politically and financially. Moving toward a direction that the rightful free association which was promised by our constitution of 1982, I think we still have to be a little bit patient, although the movement is going forward. We can find more and more associations allowed to be created, and the establishment of my center at Beida, might be shown as a good example.

Q: Nick Lardy, Institute for International Economics. I wanted to ask Professor Wang a follow-up question on your discussion about hearings and how various groups come before rulemaking bodies that have the authority to set rules in various functional areas.

You talk a lot about the constraints that exist in terms of resources available to the government agencies making the rules, and a number of other factors. And it was very process oriented, and I'd just like to ask you if you can tell us a little more about how your research – if you're interested or if it addresses the question of how the outcomes are actually affected. In other words, how do you research that, if you do? And maybe you can give us an example, if there are any that come to mind, about how a government agency changed its policy or changed its policy direction as a result of new information brought to light by the hearing process.

Thank you.

PROF. WANG: Well, thank you for your very important question. We have both good stories and bad stories about the effectiveness of the meaningfulness of the public participation in policymaking and rulemaking processes.

A good story is that last year in China's southeast Anhui Province, the provincial government was preparing a rule concerning regulation of ground transportation fees within the province. So the provincial government invited relevant parties, including the private sectors who are doing ground transportation businesses and some consumers – have a public hearing. Before this public hearing, they also proposed – they also publicized their rule in the newspaper. So they had both notice comments of participation and a public hearing – a very formal hearing. So during the hearing process, many of participants disagreed with the proposal by the provincial

government. And in this extreme case, because they all rejected the proposed rule, so the provincial government finally gave up. They just said, well, we'll not consider making this rule anymore. We'll just give up. So this might be a story illustrating the successfulness of the participating parties in the process.

But there are many bad news. For example, there had been a lot of public hearings setting prices or rents of public facilities like, you know, the hearing arranged by China Telecom, the Ministry of Information Industry. So during the hearing it is revealed that every party except China Telecom rejected the proposal of increasing the rate of telecommunications. However, the outcome to the – the only winner is China Telecom. So, obviously that participation of the public, even the formal hearing, in many occasions as we criticized as a very costly show -- really it is a show -- and people began to lose their trust upon such performances. That's really our problem.

Q: Rana Siu, State Department. I was very happy to hear about the Anhui experience and that you've been to Liaoning (ph), and I'd like to hear some of your observations about regional variation in China. Are there areas that are in greater need of just basic training? Are there areas that are relatively sophisticated and can actually serve as models for other parts of China?

Thank you.

PROF. WANG: China is really a big country. And in the reforms of the legal system in the country we have been always encountering the imbalanced developments among different regions. So when we're talking about public participation, to be very frank, I just refer to those economically and politically developed areas and basically lots of cities, like Shanghai, Guangzhou, Beijing and Shenyang. And so, in your rural areas, participation of individuals might be taking a different form. I'm not going to say there is no kind of participation of individuals in public life. For example, we all know that village governance, which many foreign observers has termed as the real democracy maybe: individuals organize their own affairs through the villager committee but it is kind of participation of individuals in the public life. But obviously this is not what I just discussed.

So yes, in some rural areas resources are scarce and other elements resulted from underdevelopment have been affected some, you know, practices of participation, even in the participation of villager governance, in the local – in the rural areas. And for that, I think that many NGOs have been given much attention toward village governance in China. Also, I believe that there are – we tried to build some models for those undeveloped areas to follow, like in Beijing. In Beijing we tried to do some and, actually, we are working with Professor Paul Gewirtz, Director of the China Law Center at Yale -- work with them in cooperation with the Legal Affairs Office of China's State Council – to formulate a guideline for public participation. So that with that guideline, local governments just can follow some rudiment procedures governing the participating process.

DR. HUNG: Let me ask one follow-up question. I understand that you have conducted some research in seven provinces and cities. Based on your field research, which city or province has done the best in terms of public participation in these decision-making processes?

PROF. WANG: Can I mention more than one?

DR. HUNG: Of course. (Laughs.) And tell us which places you've been to.

PROF. WANG: So since the beginning of August this year I've been traveling to local areas, including China's Hunan, Hubei, Liaoning, Jiangxi, Shanghai, Guangdong (?) provinces. And I also conducted very detailed research in Beijing concerning the practices of public participation in policymaking and rulemaking processes. And for my observation, which I discussed very briefly earlier, we found very encouraging improvements. We also, not surprisingly, found a lot of problems. But the cities that most impressed me in this context are Beijing, Shenzhen (ph). For example, in Beijing, I noticed comments procedure has been internally required by the municipal government, meaning that when government agencies formulate a rule or internal policy – or even an internal policy -- by internal, I am not meaning they are made sacred, it just is going to be applied by agency staffs -- they invite public comments and, most importantly, I believe, that they did respond to those public comments very seriously.

And also, in Beijing it's very interesting that every year there would be a poll. So that poll would be on the Internet inviting all citizens – residents – to comment on the performance of the agency in that year, so they can grade – they can grade -- which one is the best, or which one is okay, and, which one is the worst. And this year, they ranked some agencies as the best for the reasons that when they -- before they were making policies they invited comments from the public and made the process more transparent, and they responded -- they took the opinions seriously. So I think that, you know, you can see some improvements from this poll.

Q: Earl Carr, I work here at the Council on Foreign Relations. In your presentation, you've talked about how many NGOs are heavily financed by the government, and the challenge is how NGOs can become more independent from the government. How can NGOs in China become more independent from the government?

PROF. WANG: Politically, first of all, we should understand the point – and I hope our leaders can understand – that the independence of NGOs would be a good thing for them, not a bad thing for them. So first, I just want to emphasize the ideology. You know, the reason why the NGOs remain dependent upon government is because leaders have been worried about, well, if they are independent then they may be out of control. But I hope they will change their ideas because we now have some independent NGOs – I'm meaning not those not controlled by the government. For example, we have a lot of legal aid centers who are doing very successful job for disadvantaged groups in litigating against the government and in helping the criminal suspects to defend themselves in a criminal procedure.

So how can we get NGOs more independent? First of all, my answer is, we need to educate somebody at the decision-making level. They've got to change their ideas. But that does not mean what we can do now is just waiting. We can do many things; for example, professional training for the NGO working staff, which I think is essential, even though, you know, as I mentioned, fundamentally you can see the government's control over NGOs. But obviously, government just cannot control every aspect. You still have very large room to do things that you want to do. And in this regard, the professionalization of those working staffs would be very essential.

DR. HUNG: I think that's – let me just add one note. I think that sounds very similar to what I observed in the courts. On the one hand we know that courts in China are controlled by local party organizations and local governments because they control the court's financial and personnel arrangements. However, if you have good court leaders –

PROF. WANG: Yeah.

DR. HUNG: -- who actually have very strong awareness of law and also strong respect for law, they try their best to find a more influential person to fend off different types of interference --

PROF. WANG: Exactly.

DR. HUNG: -- so that's why court leaders can help. In this regard, leaders of NGOs can be helpful, too.

PROF. WANG: And talking about the courts, I just want to give one very good example and very recent example that demonstrates how it is – how an individual judge can be a hero in the current system. Just three weeks ago in China's Henan province in Luoyang (ph) city -- which is a very beautiful city and I suggest that you might travel to that place -- a judge declared a local regulation made by Henan provincial congress unconstitutional in a judgment. Well, scholars have been fighting for many, many years, arguing that what courts should review the legality or constitutionality of pieces of legislation. But – and judges, they know – it might be impossible for them to do that. But if you do that then you at least raised a very serious and practical question – practical issue. So that case illustrates how individuals can change history at the right time in the right place.

Q: Margaret Pearson from University of Maryland. And if you wouldn't mind if I were to take you back to, again, this effort to look at the patterns of public participation that we're seeing. And you spoke about the urban-rural differential and the different cities -- which was better. What I'm curious about – and it is just my impression that where -- as a casual observer, that where we've seen the most public comment come tends to be on things like pricing and issues that are very important to consumers, to large numbers of people. And I'm wondering if I'm right in sensing that there are not only different regions where you see public comment and public participation moving more quickly, but there are also different kinds of questions – kinds of regulatory questions where you also see it moving more quickly -- pricing being one where it's moving more quickly, but other areas -- I don't know what they might be, maybe licensing and so forth – where public comment is moving much more slowly. In part – and this isn't necessarily a bad thing and I might think that public comment moving more quickly in issues having to do with prices would suggest a kind of responsiveness of government agencies to people -- maybe to win in the polls or maybe just to be responsive to a larger constituency.

(Off mike.)

Q: Oh, I'm sorry.

DR. HUNG: Just to make sure that Professor Wang understands the question. So could you please rephrase your question?

Q: In terms of different kinds of regulation, is something like price regulation – the price of railroad tickets – more likely to see public comment periods offered now than other areas that are not quite so popular?

PROF. WANG: Well, at the first stage that's true -- and the Chinese common people got to know the concept and word of hearing, of public participation from TV shows because in many, many price – we can call price hearings, the China-censored television station will broadcast live to the whole country. So people can watch TV and they just like watch a performance. Obviously, they were – this would be a very, very good way to educate people. So, yes, local governments have then followed the practices of the central government. For example, if the Ministry of Railway heard – they got a hearing, and then at local levels, similar agencies will also arrange some similar hearings. We always can find the legal reforms took the form of legal campaigns in this process. And the government just wants to mobilize the people.

But we can also find the areas are increasing -- expanding from very narrow regulatory contexts, spreading to other areas. For example, one context I must mention is the participation of the public in the context of environmental impact assessment. This is required by a recent law. Actually, this law is coming to force early this year -- the environmental impact assessment law of China. In this law it – for the first time – it articulates the concept of the right to participate for the general public and for individual. So this is a very, very broad field. It's a very broad area because when government agencies want to build a factory here, want to have a power plant here then you have the issue of how to assess the environmental impact upon the neighboring areas. And public participation is mandated by this law.

DR. HUNG: We have time for one more question.

Q: Hi, Adam Bobrow from the Department of Commerce. I had a quick question about the judicial review of administrative decisions, and that is taking, for instance, the two examples that you responded to Nick Lardy's question, the two hearings. In one case the regulation was scrapped; in the other case that they were planning to go forward in spite of the opposition. In either case who would have the right to challenge the decision of the agency and what would the standard the court would use – what standard would the court use to review that decision?

PROF. WANG: Well, I hope -- I wish you raise the question a few months later, not now – (laughter) -- because we are working to amend our administrative litigation law, and I assume that some of you might know that under the current administrative litigation law, which was enacted in the year of 1989, traditional view over agency actions is basically limited to the concrete agency action, meaning that only for the decision made by agency, not for rules documents made by the agency. For example, if an individual is not satisfied by a rule, you can go to another agency – higher level agencies – or apply to the standing committee of local people's congresses, or you can go to the Standing Committee of National People's Congress. So the constitution – we call that, maybe, the review of conflicting rules or illegal rules – you can go through the hierarchy of the agency and the standing committee, but not apply to courts.

So in response to your question, first of all, I should say we are trying to fulfill our commitment made in China's WTO protocol because on the WTO protocol it is a language that all administrative actions relating to international trade or service will be subject to judicial review. Right? So we are amending the litigation law. And second response to your question, in the current stage – obviously, if you think this law is illegal, for example, you can argue this rule is violating legally required procedures concerning public participation, then you can complain the law to the high, high level agency. And finally, you can go to a standing committee. You can file with the standing committee legal affairs office for intensive review. Thank you.

DR. HUNG: Xixin, thank you very much for giving us this excellent seminar and I'm sure the economy airfare is well spent. We may consider an upgrade next time. (Laughter and applause.)

PROF. WANG: Thank you very much and again, Merry Christmas. And I guess that 30 minutes later I have to head for the airport. I've got to leave to catch my flight back to Beijing. So everybody if you've got a chance to go to Beijing, please do not hesitate to call me. I will treat you with delicious Chinese food. (Laughter.) But not just pork. (Laughter.) Thank you.

(Applause.)

(END)