

The Public, Expert, and Government in the Public Decision-Making Process:

A Study of China's Price-Setting
Hearing System and Its Practice

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Abstract:

As a systematic innovation of involving public participation in administrative decision-making, the system of price decision-making hearing has become an important symbol of promoting the democratization and rationalization of public decision-making. However, this system is encountering a systematic distortion in practice, and is facing a crisis in public confidence. In analyzing the dilemma of public participation in cases of price decision-making hearings, this paper will discuss the structural problems of public decision-making, by examining the role and the power of the public, the experts and the government in the price decision-making system. The author believes that the dilemma of price decision-making hearing is rooted in several factors, namely, the "marginalization" of the public and experts, the weakness of their right of participation, and the government's monopoly of the right of discourse and the right of decision. Therefore, behind the dilemma, is the structural problem of the decision-making system. Based upon the above consideration, this article believes that in the present "administrative state", blind faith in technical methods and positivism, is likely to face a double crisis of justice and ra-

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tionality in public decision-making. The crux rests with the monopolistic "knowledge—power" structure in the public decision system. In China, because of long-term unilateral emphasis of the authority of the government's decisions, the monopolistic color of the "knowledge—power" structure is stronger. Squeezed by this systematic structure, the public takes on the role as a symbolization and is marginalized. This is also the structural obstacle to the effectiveness of all forms of public participation including hearings.

The author believes that in order to break the monopolistic "knowledge—power" structure in decision-making, the public's dual "person of right" and "main body of knowledge" roles should be stressed, and a "restrictive force" over the government's decision must be formed through enriching the public's right of participation. This paper tries to demonstrate the following: First, from the perspective of knowledge theory, the nature of the process of decision-making is also a process of realizing proper exertion of participants' "knowledge" through communication and mutual learning. Second, the public is an extremely important main body of knowledge, which cannot be neglected in the process of decision-making. From this angle, public participation is not only an element that strengthens the justice of decision-making, but also an element of achieving real public and rational decision-making. Based on this observation, the article introduces the perspective of "deliberative democracy" to find a new public decision-making system that helps to achieve effective communication, reflection and learning between the public, experts and government.

Text:

I. DEFINING THE ISSUE

In recent years, the rising of the hearing system has become an important symbol in the field of China's public decision-making context. Legislative hearings, price adjustment hearings, city planning hearings, and environmental impact assessment hearings etc. have been normal

practices in the public administrative field.^[1] In the reform process of the public decision-making system, the hearing system was once considered an important systematic innovation of democratization and rationalization of public decision-making.^[2]

Indeed, the practice of the hearing system can be considered a change of the forms of our country's public decision-making, i. e. the decision-making mode transferring from the government's "solo" to "chorus" mode, in which the government, experts and the public are all involved. However, we find that in this process of change, the government expresses its constant and passionate "enthusiasm", but on the other side, the public is losing confidence in the hearing system.^[3] If we take the hearing as a "game", through which public decisions are made, we can find a very interesting phenomenon: in this same game, some players are untiringly interested in the game while other players are feeling upset

[1] By searching "legislative hearing" through "Baidu" (www. baidu. com), there showed 433,000 relevant web pages (last visited May 4, 2006). The practice of legislative hearing has been conducted all round China; on the other hand, on September 27, 2005, the hearing of personal income tax law held by the Commission for Legal Affairs under the Standing Committee of National People's Congress brought the legislative hearing to a climax. Since 1998, the number of price adjustment hearings has become even more surprising. The search result of "hearing" on "Baidu" reaches up to 2, 160,000 results (last visited May 4, 2006). City planning hearings and environmental impact assessment hearings have been playing important roles in the process of administrative decision-making in recent years. Without any exaggeration, we can say that "hearing" has become the "key word" that appears most frequently in our country's legislative and public decision-making fields.

[2] For example, a typical observation is that "The public hearing system in public decision-making is an important systematic design pushed forward by modern democratic society to ensure that all interested parties can equally participate in the process of public decision-making to make the decisions more democratic, open, fair, and scientific." 彭宗超、薛澜 (Peng Zongchao and Xue Lan), "政策制定中的公众参与: 以中国价格决策听证制度为例" (*Public Participation in Policy Making: Taking China's Price Decision Hearing System as an Example*), 《国家行政学院学报》, the 5th periodical, 2000.

[3] An investigation conducted by Guangzhou Social Situation and Public Opinions showed that the value of hearings has decreased among citizens. In total, 62.5% of the informants believed that the hearing "has no function", "has limited function" and "is an externalism", among which 15.5% of them thought the hearing was an "externalism". 赵燕华等 (Zhao Yanhua et al), "听而不证——流于形式——广州市民直言听证会贬值" (*Hearings are not heard—Citizens in Guangzhou Comment on the Hearing Depreciation*), 《报刊文摘》, October 27, 2002.

and weary.〔4〕

Some players' upset, weary and even repulsed attitudes and actions may probably overturn the function of the hearing system: after all, as a systematic innovation, the hearing system is originally established to hear opinions from various participants through encouraging their expression, negotiation and reconciliation. This reflects the "democratic nature" of the process of decision-making, and therefore provides legitimacy for the public decision-making. If the participants lose their passion and confidence in the hearing, and if the public no longer trusts this system, then the functional expectation of "democratization" and "legitimacy" will become an air castle.〔5〕

Perhaps because of the above problems, the criticism of and reflections on the system of hearing will not stop. However, most of the present criticism and reflection concentrate on the procedural problems of the system of hearing itself; namely, the neutrality of hearing hosts, the selection of hearing representatives, and the legal binding force of hearing records etc.〔6〕 Although these criticisms are pertinent, in the author's opinion, they neglect the more essential problem behind the hearing—the systematic structural problem of the country's public decision-making. The systematic structure of public decision-making generally consists of two aspects: participants of decision-making and their power allocation. The basic observation this paper will discuss and elaborate on is: the current public decision-making system is essentially a monopolistic

〔4〕 According to a statistics article about the price hearings during 1998 to 2000 in Beijing, the proportion of the representatives that were actually presented to those who should be presented is continually descending along with the time, and the proportion once even reached as low as 53.5%. 彭宗超、薛澜, "政策制定中的公众参与:以中国价格决策听证制度为例", supra note 2, p. 67.

〔5〕 As one price hearing falls here, another rises there, but behind this prosperous hearing phenomenon, we must pay attention to some crucial problems: the public is becoming more and more tired of the price hearing; some price hearings are mere formalities of the government, which makes price hearings basically "price hike hearings"; the public is showing great doubt toward the effectiveness and fairness of the system of hearing. The hearing is failing with a serious crisis of public confidence. 王锡锌(Wang Xixin), "听证会必须坚守民主底线" (*Hearings Should Hold the Baseline of Democracy*), 《法制日报》, first page, April 24, 2006.

〔6〕 王万华(Wang Wanhua), "我国政府价格决策听证制度缺陷分析" (*Analysis of the Defects of Our Country's Governmental System of Price Decision Hearing*), 《法学论坛》, 2005(4), p. 74.

structure of "knowledge—power" dominated by the government. In this systematic structure, both experts and the public are in its margin (play a marginal role?), without reasonable restrictive force toward the government's power of decision. Such restricted roles of the participants and power allocation in the structure reflect the embarrassment and dilemma of the hearing system. In breaking the dilemma of public participation, the hearing itself, and the process of public decision-making, there should be a rethinking and adjustment of the roles and power allocation of the public, experts and government in the system of public decision-making in terms of systematic structure of decision-making.

Based upon the goal of the research, this paper defines public decision-making as the decision-making activities undertaken by administrative organs in the process of administration. The concept of "the public"^[7] refers to two aspects: (1) individuals or groups whose interests are affected in the process and/or by the result of the decision-making. These individuals or groups may diverge on their interests, or, in fact, they probably have completely opposite and competing interests, e. g. applicants (businessmen) and consumers in the price hearing; and (2) common people who have a psychological demand, expectation and responsibility of the public decision-making and administrative justice. They may not have direct interests involved in any specific decisions, but they may be relevant and indirect stakeholders of the decision; or because of factors like their individual social responsibility, value preference and conscience, they may hope to participate in the

[7] "The public" in this paper generally refers to citizens or groups that care about their own interests, and based on their different identities in different communities, care about the interests of their communities. In this sense, the public do not have only one common interest. As a matter of fact, they have plural and competitive interests. However, the concept of "the public" in this paper is different from Arendt's when she criticized totalitarianism, which will be further discussed and analyzed later. In Hannah Arendt's research of totalitarianism, the public are some atomized individuals who only care about their own interests, and thus lead to the growth of totalitarianism. The public referred to in this paper do not have the meaning of "atoms". Hannah Arendt, *The Origins of Totalitarianism* (Chinese edn), 林德华译 (Lin Xianghua trans.), 时报出版社 1995 年版.

comment of the public decision-making and thus influence the decision.^[8] "Experts" discussed in the paper refer to neutral individuals who provide consultation, evaluation and other knowledge-related support for the public decision-making based upon their professional knowledge and skills.^[9] Lastly, public decision-making discussed in the paper are mainly decisions in the process of administration, therefore, the "government" referred to in the paper, if without other specific explanation, only refers to administrative organs that exert the power of public decision-making.

The paper mainly aims to observe the basic problem of China's systematic structure of administrative decision-making: the roles of participants and their power allocation,^[10] i. e. how to construct a systematic structure of public decision-making to promote effective expression and communication between the public, experts and the government, and to promote the legitimacy and rationality of the decision-making in terms of both the democratic process and knowledge sharing.

In order to put the discussion into a concrete context to be analyzed, the author chooses price hearing as the form of participation in

[8] In fact, in the process of public decision-making, the situation that some participants are not directly connected with the discussed interests does universally exist. For example, in the price hearing, except for hearing representatives, common people also participate in the process of decision-making in the forms of public-opinion poll, comments, written letters of opinions etc. Participation in the latter forms does not need recognitions of "qualification of participation". That is to say, from the perspectives of collecting information of decision-making and promoting the democracy of decision-making, everyone in society can be the participant. In some countries, e. g. in the process of making government regulations in the US, the "notice-comment" procedure even permits every person, including foreigners, to participate in the process of commenting the draft of the regulations.

[9] If experts do not appear with neutral identities to provide consultation and evaluation for decision-makers, no matter what kind of professional support they give, they should be considered as a part of "the public", being participants who have competing interests. However, in some cases, experts cannot be purely neutral, and their neutrality is only a legal fiction. For example, in the price hike hearing of rent fee of taxi, we can say that any experts have their interests involved in the final decision, because they all can be potential "consumers".

[10] Of course, the system of public decision-making is not limited to participants of the decision-making and their power allocation, but includes dynamic processes such as the methods, procedure, measures of the decision-making. This paper's observation on the hearing system belongs to the latter (dynamic processes of the system of decision making), but the goal of this observation is used to further analyze the static structure of the system of decision-making.

the process of decision-making to make a case study. The reasons why this perspective is selected to analyze the country's system of public decision-making are: (1) Not only does price decision-making involve specific industries and groups, it is also a socially sensitive topic. Every important price adjustment attracts people's sensitive attention, and therefore stimulates people's enthusiasm of public participation. (2) Since the Price Law establishes the system of hearings, price hearings have been widely practiced throughout China and at all levels of the government, giving us a large amount of materials for observation. (3) The process of price decision-making reflects general procedural elements and signs of China's public decision-making, e. g. public participation, hearings, expert evaluation meetings, government decision-making etc. and (4) More importantly, the hearing system in price decision-making is on the one hand vigorously pushed forward and supported by the government, but is on the other hand wracked with pervasive doubt and repulsion from the public. This obvious contradiction gives researchers a dramatic perspective of hinting that the state of the tense relationship between the two sides cannot be sustainable. Therefore, it is urgent to study this problem. The main thread of this paper is to observe the practices of price hearings in the systematic structure of price decision-making by analyzing that structure, and on that base, to further reflect, rethink, and reconstruct this country's systematic structure of public administrative decision-making.

II. UNDERSTANDING THE GAME OF PRICE HEARING

In the field of price decision-making, the use of the hearing as a method and form of the decision-making process, was established under The Price Law in 1998. The 23-article law prescribes that "In determining government-set and government guided prices for public utilities, non-profit services and commodities under natural monopoly that involve the vital interests of the masses, public hearings presided over by the government price department should be conducted to solicit views from consumers, business operators and other stakeholders to discuss the necessity and feasibility." This article is thought to "have created the first case where the hearing process is introduced into our country's adminis-

trative decision-making field. It is an important symbol in our country's publicity of administrative affairs and the process of democratic decision-making."^[11]

A. Interpretation of the Functions of the System of Price Hearing

From the level of its system design, what is the hearing expected to do in the process of price decision-making? At the beginning of the "Measures for Hearing on Government Price Decisions" issued by the State Development and Reform Commission in 2002, the major function of price hearing was to make the price decision-making open, scientific, democratic and normative.^[12] According to this prescription, the designers of the system have a very high expectation toward the functions of price hearing in the process of decision-making. How are these functions realized? The Measures define the hearings as follows: "The price decision-making hearing in the Measures refers to the necessity and feasibility study of the price, before fixing (including adjusting) government-set and government-guided prices for important products and services. The study is organized by the government's price department and participated in by interested parties of society."^[13] This article clearly points out that this country's price decision-making hearings have basically the same function as a "feasibility study": the government's price department organizes interested parties to study the necessity and feasibility of the price fixing.

What is a feasibility study meeting? Is there any difference between a feasibility study meeting and a hearing? In China's legislation, "panel discussions, feasibility study meetings, and hearings" are usually used as parallel concepts. For example, the Legislation Law prescribes that in the process of drafting an administrative regulation, the gathering of opinions may take various forms such as panel discussions, feasibility

[11] "汪洋同志在铁路价格听证会新闻发布会上讲话并答记者问" (Wang Yang's Speech and Answers in the Press Conference concerning Railway Price Hearing), *China Price*, the 2nd periodical, p. 3.

[12] Article 1 of "价格决策听证暂行办法" (*Measures for Hearing on Government Price Decisions*), issued on December 20, 2002, by the State Development and Reform Commission.

[13] Article 2 of "价格决策听证暂行办法" (*Measures for Hearing on Government Price Decisions*), *Id.*

study meetings, hearings etc.^[14] From the perspective of semantics and legislation skills, those three concepts should be different, otherwise it would not be necessary to enumerate them one by one. From the perspective of function, however, the three concepts may lead to the same function—solicitation of opinions. In fact, if there were no specific differences in their respective procedural rules, panel discussions, feasibility study meetings, and hearings may be exactly the same in terms of the structure and function. In another words, in this country, panel discussions, feasibility study meetings, and hearings share the same function, but differ in their procedures and rules.

Unlike panel discussions and feasibility study meetings, hearings are not a native concept, but were introduced into China from British and US legal systems. Both the ancient British "Natural Justice" in common law and the "due process clause" in the American Constitution emphasize that when the government is going to make any decision that is unfavorable for the interested party, the interested party should have the opportunity to be heard.^[15] In these situations, the function of hearings and the right to be heard are not to ensure the rationality of substantive decisions but to show procedural justice and fairness. Its aim is to provide the psychological sense of fairness and to restrict the government's arbitrariness.^[16] In this sense, people generally will not understand the function of hearings from the aspect of "the democratization of decision-making", as people will not understand the interested party's right to defense in the judicial process as a mechanism of democratization of the judicial process.

The above concepts of hearings do not necessarily refer to the formal and highly judicialized hearing. As a matter of fact, the hearing can take

[14] "中华人民共和国立法法" (*The Legislation Law of People's Republic of China*), Article 58: "In the process of drafting an administrative regulation, the drafting body shall gather opinions from a wide circle of constituents such as the relevant agencies, organizations and citizens. The gathering of opinions may be in various forms such as panel discussion, feasibility study meeting, hearing etc."

[15] See D. J. Hewitt, *Natural Justice*, Butterworth, 1972, p. 10. See Paul Verkuil, *Cross-currents in Anglo-American Administrative Law*, 27 *William and Mary L. Rev.*, pp. 685—671.

[16] Grand Justice Douglas of the Supreme Court of the United States stated clearly in one written judgment: "It is the procedure that distinguishes rule of law and arbitrary rule of man." See, *Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, 179 (1951).

various forms; it can be before the fact or after the fact, written or oral, formal or informal.^[17] The one key of these various forms of hearing is the expression of opinions to respect people's nature. Some scholars believe that due process, with the core being the right to be heard, reflects the essential value of recognition and respect of human dignity.^[18]

However, even in the British and US administrative laws, the form of the hearing is not equal to "formal hearing". For example, Articles 554, 556 and 557 of the American Administrative Procedure Act prescribe that formal hearings are a procedure of highly judicialized adjudication; the hearings are hosted by a highly independent administrative law judge (ALJ); the ALJ, who hosts the hearings, should not have any interests involved in the case, and cannot have unilateral contact with any interested party; participants of the hearing shall present their proofs in oral or written form in the hearing process, disproving each other, and through cross-examination until the facts are clear; hearing records have exclusive force in the final decision, which should be supported by the "substantive proofs" recorded in the hearing records.^[19] It is not difficult to see that in this kind of hearing process, all other aspects are quite similar with an adversarial judicial procedure except that the host (presidor) is not a judge. Formal hearing procedures prescribed in the Administrative Procedure Act do not automatically apply to all administrative decisions. In fact, only when a certain law clearly requires the administrative organ to "make a decision according to the hearing record," should the procedure of formal hearing be triggered.^[20] As to administrative legislation actions, the Administrative Procedure Act also prescribes that the formation of formal regulations and rules shall adopt

[17] In the US, it is recognized in theory and practice, that the exertion of the right to be heard may not be the formal hearing, but "a certain form of hearing". See Henry J. Friendly, *Some Kind of Hearing*, 123 *Univ. of Penn. L. Rev.* (1973), pp. 1277--1278.

[18] Jerry Mashaw, *Administrative Due Process: The Quest for A Dignity Theory*, *B. U. L. Rev.* (1981), p. 885.

[19] 5 U. S. C. A § 554, 556, 557.

[20] When the procedure of "judicial hearing" prescribed in the Administrative Procedure Act should be triggered has enjoyed a process of changes in practice. The Court sometimes gives broad interpretations and sometimes gives very strict ones. See Alfred C. Aman and William T. Mayton, *Administrative Law* (West Group, 1992), pp. 202 - 209.

the formal hearing procedure mentioned in Article 556 and 557.^[21] Because "price fixing" is legislative activity in its nature, the procedure of formal hearing may apply to it.^[22] However, the function of the procedure of formal hearings is mainly to thoroughly investigate the "disputes of fact", this procedure receives many restrictions (instead of encouragement). Especially in the administrative legislation, the procedure of formal hearings is used very cautiously because there is a problem of selection between policy and value.^[23]

The brief view above of the hearing system, including informal and formal hearings, tells us a simple but misunderstood fact in this country's practice of price decision-making, i. e. the hearing in the field of this country's price decision-making, is neither an expression of opinions in terms of due procedure, nor a formal hearing that is characterized with judicial procedures and the aim of investigation of facts, but a "new" system or a form of decision-making. Although this new system uses the concept of "hearing", its function and procedural rules have nothing to do with the hearing system. It bears the "name" of hearing, but does not have the structural and procedural "substance" of a hearing. The function of China's price hearing is essentially a discussion and a study of problems of price decision-making according to some game rules.

B. Players of the Game and Their Roles

Hearings in China's price decision-making do not have the real content of the original hearing, but this does not necessarily mean that we should direct our system of price hearings to a formal and judicial hear-

[21] 5 U. S. C. A § 553 (c).

[22] It is interesting that there was a very important case of American administrative law about "price hearing", i. e. *United States v. Florida East Coast Railway*, 410 U. S. 224, 93 S. Ct. 810, 35 L. Ed. 2d 223 (1973). The key problem was that whether the Interstate Commerce Commission's adjustment of the railway transportation expense should adopt the procedure of formal hearing prescribed in Articles 553, 556, 557 of APA. The Court of Appeal believed that ICC should adopt the formal procedure of rulemaking, but the Supreme Court's final judgment said that ICC did not have to use the procedure of formal hearing prescribed in APA.

[23] "Like what the US Supreme Court pointed out, informal notice-comment procedure perhaps is more suitable for policy-making." See Hamilton, *Procedures for the Adoption of General Applicability: The Need for Procedural Innovation in Administrative Rulemaking*, 60 Cal. L. Rev. 1276 (1972).

ing system. As stated above, the basic function and advantage of judicial hearings rest on investigation of disputes of fact, while price policy deals with many value choices. It is obvious that when facing plural values, we should not try to build an adversarial system to let one side win over the other side. A more proper strategy is to realize compromise and balance through negotiation and discussion. In this sense, China's price hearing, neither being formal nor judicial, does not have a defect in its design. In a similar way, we do not have enough reason to change our hearings into a judicial form when we are criticizing our current system of price hearing.⁽²⁴⁾

If price hearings are essentially feasibility study meetings, then in this game, are the participants' roles and the rules of the game reasonable? Are they helpful to discuss the problem?

When we observe the current system of price hearing, we can find there are several participants at different levels: (1) Government department that hosts the hearing. It is usually the organ that has the final say on the price, and is the key party of the price decision-making, and sometimes the only party. In price hearings, the host appears to be in a comparatively neutral position; for example the price adjustment plan is not brought out by the decision-making organ, and, in the hearing, the host does not give any opinion or comment. However, if in fact the aim of the price hearing is to study the necessity and feasibility of a certain plan, logically the plan should be provided by the decision-making organ, and explained, interpreted and responded by the organ. (2) Applicants of the hearing. They are often enterprises, their representatives, or representatives of business operators who bring out the price (hike) adjustment plan. Their roles in the process of the hearings are to provide optional plans, statistics of the plans, facts and reasons, responses to other participants' doubts and questions. Here, the business operators act

[24] It is a pity that most of the current criticisms of the system of price hearing are based upon the American APA's "judicial hearing". For example, they advocate the introduction of the "doctrine of rolls", independent hearing host, and judicialized procedures in the price hearing. However, judicial hearing's aim is to investigate disputes of fact, and is not used to solve problems concerning value and policy. In the price decision making, not only are there skill problems, but also many problems concerning value and policy. Overemphasis of the formal hearing procedure is not practical and unreasonable.

as participants of the hearing, and at the same time, are providers of optional plans. They are actually "agenda setters". (3) Representatives of interested parties. Because price decision-making made through price hearings deals with a large number of interested parties, and therefore, representatives of interested parties, in a certain sense, can be considered as representatives of the public. Generally speaking, they lack necessary knowledge and information about the necessity, rationality and feasibility of the optional plans. Their roles in the price hearing, are actually not to study the plan, but to express their value preferences and emotional demands to affect other participants. (4) Representatives of scholars and experts. In the current process of price hearings, their role has not been clearly defined. Their participation is based upon professional knowledge related to the decision plans, not upon whether they are experts or not. In other words, professional knowledge referred to here is the knowledge that is related to technical problems of the decision plans. Their role should be to give opinions, comments and judgment on the problems of specialty and technique. They should not be judging the plans' value. Otherwise their role would be distorted to become representatives of the interested parties. and (5) Representatives of relevant government departments. The current rules of hearing procedures do not define the role of representatives of relevant government departments. But because they participate in the hearing representing relevant government departments, their activities and opinions should represent their departments instead of individuals. The purpose of their participation is to provide opinions on the optional plans from the perspective of governmental policies' coordination.

Through simple descriptions of the participants and their roles in the rules of hearing, we can find that the role setting of participants is unreasonable in terms of structure-function. Besides, because of the ambiguity of the role setting, it is easy to lead to role malposition. Firstly, the hearing is a study and consultation of public decisions hosted by the government, so the optional plans should be provided by the government

department. These plans belong to agenda setting,^[25] which should be the government's responsibility. Secondly, because hearings are held to provide study and consultation for government's decisions, it is not reasonable to make opponents among between the business operators and consumers. The more reasonable way is to allow both sides to provide discussion and study of the decision-making plans from their different perspectives. Thirdly, the role of the experts is vague in terms of function and responsibility, and their relation to other participants is also unclear. The question is then asked "Who are the experts, and in what fields are their expertise?" Fourthly, who do representatives of relevant government departments represent? Do they represent their departments or themselves? If they only represent themselves, why should they be titled as representatives of government departments? Finally, and most importantly, because price hearings are only public discussions and a study in its function, the public has a right to give their comments and opinions in various forms, even if they do not participate in the process of the hearing. However, in current price hearings, common people are absent and excluded from the hearing by the game rules.

C. Chaotic Game Rules

Besides functional malpositions of the participants' roles in the system of price hearing, there is also an inconsistency between the rules of procedure and systematic function. From the perspective of "structure-function", the arrangement of systematic structure should serve its function. (1) Because hearings are only held for providing study and consultation for government's price decision-making, it is difficult to justify the proportion of the business operators, representatives of consumers, representatives of experts and scholars, and representatives of govern-

[25] "Agenda Setting" refers to setting topics or providing, defining problems and optional plans, and is the central power in the public decision-making. Sometimes, the problem itself needs interpretation or "construction". Some problems are thought to be problems by some people while are not thought to be problems by others. Therefore, the setting of the problem itself is an important right of discourse and an important part of the decision-making. See 郭巍青 (Guo Weiqing), "公众充权与民主的政策科学:后现代主义的视角" (*The Empowerment of the Public and Democratic Policy Science: From a Perspective of Post Modernism*), 白钢、史卫民主编 (Bai Gang and Shi Weimin eds.), "中国公共政策分析" (*The Analysis of China's Public Policy*), 中国社会科学出版社 2006 年版, p. 293.

ment departments. As a matter of fact, if we only judge from the effectiveness of the study, the function of experts should be more reliable. (2) In order to make the study more effective, the host department should disclose much more sufficient information, but the hearing rules are greatly deficient in this aspect. (3) If the hearings only provide a study, in the current hearing rules, there is a so-called "bright spot" rule, i. e. "When most of the representatives of the hearing oppose the price adjustment plan, the organ of price decision-making shall adjust the plan with the applicant or organize a new hearing."⁽²⁶⁾ This rule is not a reasonable one, because such rules endow the hearing a certain function of "voting".

In sum, there are three conspicuous problems existing in China's current system of price hearing. The first one is the uncertainty in its faction function and being unworthy of. On the one hand, the system of hearing appears in the name of "hearing", but in reality its function is "consultation" or "study"; on the other hand, although price hearing is a consultative activity, the system designers want it to assume the functions of democratization of decision-making and justification of the result. The way to achieve that is to combine and mix some elements in the participants and procedural rules of the hearing. The second problem is that the participants of the hearing suffer from serious malposition. The most obvious example is that because the hearing is a study and consultation of public decisions hosted by government, the optional plans should be provided by the government department instead of by the applicants. Here, the government is seemingly "behind the curtain" standing aloof, but it cannot cover the fact that only the government enjoys the right of price decision-making. The third problem is that the hearing rules try to reconcile the (conflict between the) "exclusiveness" of the hearing procedure and "openness" of the procedure of the feasibility study meeting. For example, there are some selection rules and proportion rules of representatives of the hearing, and the progress of the procedure also has some rules, which are imitations of the hearing procedure. At the same time, all those procedures are open. For exam-

(26) Article 25 of "价格决策听证暂行办法" (*Measures for Hearing on Government Price Decisions*), supra note 12.

ple, there is no strict definition of the qualification of representatives, and the hearing record has no procedural binding force.

We cannot help but ask why there are obvious inconsistencies and conflicts. The author believes that those obvious inconsistencies and conflicts in the function, its participants and the rules of the system of price hearing are not an unconscious mistake in system designing, but a conscious systematic arrangement when facing the reality of the current system of public decision-making. In other words, the dilemma of the system of price hearing is determined by the systematic structure of the current system of public decision-making. The following discussion will analyze the problem from the systematic structure perspective of price decision-making.

III. PRACTICES OF PRICE HEARING IN THE SYSTEM OF PRICE DECISION-MAKING: A SUCCESSFUL FAILURE?

Since there are so many serious problems in the system of price hearing, do China's price hearing practices have a failing record? This is an embarrassing and complicated question. It's interesting that if we carefully analyze participants' profits and psychological feelings in the price hearing, we can find that it is not a question with a simple "Yes" or "No" answer. Faced with the same game of price hearing, different participants may give different evaluations based upon their different roles and profits, and feelings in the game. Furthermore, from the perspective of the design and arrangement of the system, because price hearing is a "subsystem" embedded in the system of price decision-making, maybe one of the important goals of the systematic arrangement is to ensure that the basic framework of the system of decision-making is not to be broken through. As long as the hearing game is carried on within the framework of the system of decision-making, no matter its process and result, the government can believe that the hearing is a success, because the hearing does not give any substantive challenge to government's power of decision-making.

A. Frustration of Consumers and the Public as Participants

For participants of the hearing, "failure" may mean "frustration" due to being overlooked, marginalized or manipulated in the process of

participation. It may also mean their disappointment and dissatisfaction toward the result, or it may be the combination of the two. Generally, some participants (mainly representatives of consumers) of the price hearing and common people are full of frustration and disappointment towards the system of price hearing. On the representatives of the consumers' perspective, their frustration comes from the following aspects: (1) Most of them believe that they cannot substantively affect the result of price decision-making, because "the decision in fact has been made"^[27]; (2) Compared with full preparation and confidence of the representatives of the business operators, these representatives are in an inferior position both factually and psychologically, because of information asymmetry, lack of knowledge of technical problems and limited time for preparation.^[28] (3) Because those representatives are not produced by a certain justified system, they perhaps lack a strong sense of participation and confidence,^[29] and (4) Even if they put forward their opposing opinions and corresponding reasons toward the price adjustment plan, they usually will find that the final plan neither adopts their opinions nor gives any response toward those opinions.^[30] All the above-mentioned factors may lead to and exacerbate the frustration of the representatives of the consumers, making them feel disappointed and tired

[27] See 刘炳路 (Liu Binglu), "一场预设结论的供热听证会" (*A Heat-Supply Hearing with a Settled Result*), 《新京报》, September 15, 2004.

[28] For example, in the entrance ticket price hike hearing of the Forbidden City, the Great Wall held in Beijing 2004, many representatives said that they did not know the reason and information of the price hike. This scenario is very common in price hearings. See 《人民日报》, December 2, 2004, the 5th page. Quoted from a secondary source www.sina.com.cn (last visited May 13, 2005).

[29] "Representatives of the hearing are invited by the government's price department. Volunteer signing up, recommendation by units and selection by relevant social groups can be the forms of producing representatives of the hearing." See Article 10 of "价格决策听证暂行办法" (*Measures for Hearing on Government Price Decisions*). Because these representatives are not selected or assigned by interested parties, they often take the hearing as a "task", lacking of enthusiasm and diffident of their own representativeness.

[30] 赵燕华等, "听而不证,流于形式——广州市民盲言听证会贬值", *supra* note 3.

of the game they have involved themselves in.^[31]

For common people, although they do not participate in the hearing process, there is no reason to doubt that they have a strong expectation in, and pay attention to, the hearing activity because they have a direct interest in connection with the price decision. Before every important price decision, the public show their strong will and action to participate. For example, before the latest price hearing on the adjustment of the rent fee of taxis in Beijing, many citizens expressed their strong attention to the price decision through the internet and other mass media.^[32] The public's disappointment and concern toward price hearings have become the "theme" of many price hearing related stories. Descriptions like "price hearing is equal to price hike meeting", "price hearings are almost price shows", "price hearings are expensive performances" have reflected the public's frustration toward price hearings.^[33] It has been discovered that the public have two reasons to doubt the price hearing system: (1) They have reasons to doubt the qualifications of the participants and the rationality of the rules of the game. and (2) Once the price hearing is held, it usually means that common people's right of participation and right of discourse are restricted or even deprived, because the decision-makers often use the opinions of the rep-

[31] There is an increasing tendency that more and more representatives do not participate in the hearing. Although there may be various reasons why they give up the chances to be representatives, it is not difficult to guess and conclude that they do not have any interest in participating in such a game. Or else, it is hard to imagine why they are absent once they are chosen to be the representatives. See 彭宗超等 (Peng Zongchao et al.), "听证制度: 透明决策与公共治理" (*The System of Hearing: Transparent Decision-making and Public Administration*), 清华大学出版社 2004 年版, pp. 67, 58.

[32] "北京市出租车调价听证赞成人数与民调出入太大" (*Big Gap between the Assent Number of the Price Hearing and the Public-opinion Poll on Adjustment of Rent Fee of Beijing's Taxi*), at <http://news.sina.com.cn/c/2006-05-03/15229775173.shtml> (last visited May 13, 2006).

[33] See "中消协与甘肃省消协近日联合发布观点: 听证会应防止走过场" (*China Consumers' Association and Gansu Provincial Consumers' Association Expressed the Opinion Recently: Hearing Should not be only a Formality*), at <http://admin.tjgp.com/news/ShowArticle.asp?ArticleID=72958> (last visited May 13, 2006).

representatives to replace or "fictionalize" public opinions.^[34]

B. Who are the Winners of the Game?

However, not all the participants are "losers" in the price hearing. Because the price hearing cannot substantively affect the current systematic structure of decision-making and its power of decision-making and at the same time provide various "resources" for the final decision, the price decision-making organ always believes that price hearing is a "successful system and practice"^[35]. Under the current framework of price hearing, we can find the following reasons for the price decision-making organ's preference for price hearing: (1) When representatives of all sides are studying the price decisions in the price hearing, the decision-making organ stands in a seemingly fair and aloof role. This "looks nice"; (2) The decision plan is discussed and studied by representatives of all sides, and when the future facts prove that the plan was a failure, the hearing system will partake in the responsibility of the failure of the decision; (3) The price hearings are usually thought to be a major measure to realize the democratization of decision-making by the decision-making organ. This means the hearing can be used as a resource to justify the power of administrative decision-making, no matter whether the hearing affects the decision or not; and (4) All these "profits" do not harm the basic systematic structure of the decision-making organ which monopolizes the power of decision-making. In a certain sense, they even reinforce the power. If so, then why does the decision-making

[34] For example, on April 26, 2006, a price hearing on adjustment of rent fee of Beijing's taxi was held in Beijing. There were 25 representatives in total. After the hearing, Beijing Development and Reform Commission (the host) announced that 16 representatives supported the price hike plan, and 9 opposed it. This result gave us a hint that most people supported the price hike. Here, there is a suggestion that the opinions of the representatives were used to replace the public opinions. In fact, according to Sina's online investigation, 90% of the informants opposed the price hike. See "价格听证会与民意的差异, 考验政府执政能力" (*Differences between the Price Hearing and Public Opinions Test the Government's Ability of Governance*), at <http://www.jecq.cn/News/xxkd/mtt-phoenixtv/153901888.htm> (last visited May 13, 2006).

[35] "听证会达到预期效果, 中国听证制度迈出历史性一步" (*Hearings Reached the Expected Effect, A Historic Step of China's System of Hearing*), at http://www.cctv.com/special/362/1_32394.html (last visited May 13, 2006).

organ not go ahead with it.^[36]

Through the process and form of price hearing, the decision-maker can easily exert its monopolized power of decision-making. Then the business operator who applies for the price adjustment (price hike in most cases) can conveniently communicate with the decision-maker in and out of the price hearing process. Although, on the surface, there are many participants in the process of price hearings, including consumers, experts and scholars, representatives of government departments and even some common people, in the whole process of the price decision-making, especially before and after the hearing, there are only two permanent participants: the decision-making organ and the business operator. This evidence makes us worried and concerned that the price hike is a huge prompting factor for the business operator, and that the business operator has absolute information advantage in terms of persuading the decision-making organ. The business operator can even get "custom made" expert opinions to support its application. In the situation where other participants are marginalized or even absent, the communication between the business operator and the decision-making organ will easily lead to "the capture of the governor".^[37] This means that the current system of price hearing cannot form a "balance" force through the participation of consumers and experts, but at the same time, it provides the business operator a monopolistic chance of communicating with the decision-making organ. In sum, the business operator is also a

[36] This can explain why the government decision-making organ keeps high interest in the system of hearing when the other participants and the public are losing their interest in the system. The form of hearing has expanded from the price decision-making field into other fields of public decision-making. For example, Ji'nan and Qingdao (cities of Shandong Province) recently promulgated local regulations requiring that the system of hearing should be introduced into the process of decision-making concerning unexpected public events. On the one hand, it may mean the rising of the sense of public participation in the field of China's public decision-making; on the other hand, most of those systems of hearing copied the mode of price hearing. Therefore, whether or not they can bear the function of public participation is still a question that is worthy of further attention.

[37] There are various reasons why the administrative organ is captured by the governed. One of the conspicuous reasons is the dependence of professional and technical knowledge in the process of decision making. In the fields where professional and technical management are stressed, this phenomenon is more obvious. See J. Landis, *The Administrative Process* (Harvard University Press, 1938), p. 75.

winner in the hearing game. It is not strange to see that most price hearings end up with the applicants' goals achieved.^[38]

Therefore, in the practice of China's price hearing system, we find a fancy picture in which the public universally believes that the price hearing has become a "show" and "formality", and that the price hearing is facing with a crisis of public confidence. For the price decision-making organ and the government, they think that the system of price hearing is a successful practice, with a high interest in holding hearings of various forms. Facing the same system, different participants based upon different expectations give completely opposite evaluations. In this sense, we can call the system of price hearing "a successful failure".

It should be emphasized that in the process of the decision-making organ's "successful" operation of the hearing system, it also has costs. If the decision-making organ only settles on the form of the hearing instead of the feeling of participants and the public, then when the specific decision-making organ gets its "profits" in the hearing, "negative external effects"^[39] in the economic sense may appear. The negative external effects include: the public confidence of the government is damaged; price decision-making organ may get profits, but the government should take the loss of the resources of the public confidence; if the decision-making organ repeats the same action, the public will lose interest in the hearing system in the repeated disappointment and frustration. This means that there is diminishing marginal utility when the organ repeats the similar activity, and that the practice of price hearing itself is not sustainable.

C. Question the Crux of the Paradox

"The successful failure" is a tragic paradox. Why does the system

[38] Just because of this reason, for the public, the price hearing has become a "price hike meeting". See "价格听证要防止走过场" (*The Price Hearing Cannot be a Mere Formality*), at <http://news.sina.com.cn/o/2006-05-11/05438891802s.shtml> (last visited May 13, 2006).

[39] In economics, "the external effects" is a cost or benefit from an economic transaction that parties "external" to the transaction receive. In the government decision-making hearing, the decision-making organ's indifference toward the opinions of the representatives of the hearing and the public often causes the public doubt toward the effectiveness of the hearing system and government's credibility. In this sense, we can say the action produces "negative externality".

of price hearing lead to such a paradox felt by both the participants and observers? When we raise such a question, we are approaching the crux of the system of price decision-making and the systematic structure of public decision-making, i. e. who is the main body enjoying/having/holding the power of public decision-making, and how is the power distributed?

Generally speaking, the system of public decision-making consists of two aspects—the main body of decision-making and the allocation of the power; and the form, method and procedure of the decision-making. The former is structural and static, while the latter is progressive and dynamic. In other words, although the process of the decision-making is important, if the participants do not have any power of decision-making or can scarcely form any structural restriction toward the power, then no matter how the procedure of participation is designed, the process of participation will be meaningless to the result of the decision-making.

Unfortunately, however, although the government is expressing stronger and stronger interest in hearings and other forms of participation in the price decision-making as well as other fields of public decision-making, the current systematic structure of public decision-making does not really endow the public and experts with substantive roles and the right of participation. The result of this may be that on the surface and in its form, the public participation is quite vigorous, but it has uncertain influences on the result of the public decision-making; the deeper the public participates in the process, the more frustration and disappointment they may feel.⁽⁴⁰⁾ The crux is: although the public is encouraged to participate in the process of public decision-making in various forms, they do not have restrictive power that can restrict the main body of the decision-making; in the participation process, the public is indeed speaking, expressing and acting, but in the structure of the decision-making system, both the experts and the public are marginalized. They

(40) Such feelings are not limited in the participants and the public of price hearings. In some legislative hearings and open solicitation of opinions, participants and the public also feel that their participation activities are full of frustration. See Xinhuanet, "听证制度不应是民主决策的幌子" (*The Hearing System Should not be the Camouflage of Democratic Decision making*), at http://www.nmg.xinhuanet.com/xwzx/2006-04-30/content_6885882.htm (last visited May 13, 2006).

lack the ability of participating in real decision-making. In brief, because of the public's inconsistent roles in the two period "structure-process", public participation is perhaps a sort of "present absence" in the system of public decision-making.

IV. REFLECTION ON THE SYSTEMATIC STRUCTURE OF PUBLIC DECISION MAKING

In the public decision-making process, we can see the figures of the public and experts as participants. If we continue to seek the front end of the public decision-making system, i. e. systematic structure of public decision-making, along the various process of participation, then what will we find?

A. A Brief View of Current Systematic Structure of Public Decision-making

The current systematic structure of public decision-making emphasizes the combination of "public participation, experts' evaluation and government's decision-making." In this current systematic structure of public decision-making we can indeed see that the participants and main bodies are not only the government, but also it tries to form a structure of power allocation and a system of restricted power among the public, the experts and the government. We should admit that compared with the past emphasis of the government's monopoly in its exertion of power of decision-making, this systematic structure of public decision-making is a huge progress.

As to the connotation of China's system of public decision-making, Premier Wen Jiabao gave a general explanation in The Government Work Report for the 2nd Session of the 10th National People's Congress:

We will adhere to scientific and democratic policy-making. We need to improve the policy-making process by integrating public participation, expert evaluation and government decision-making to ensure that our policies are scientific and correct. We need to speed up the formation and improvement of systems for making collective decisions on major issues, for soliciting opinions from experts, for keeping the

public informed and holding public hearings, and for accountability in policy-making. All major policies must be decided collectively on the basis of in-depth research, on widely solicited opinions, and on full evaluation by experts. These procedures must be closely followed as one of the long-term basic systems for government work.^[41]

Premier Wen Jiabao's elaboration of the system of public decision-making is very encouraging, and at the same time gives us space for imagining the reform of the system of public decision-making. However, in such a systematic structure of decision-making involving the public, experts and government, how public participation, expert evaluations and the government's decision-making can form a democratic, effective and public interest oriented system of decision-making, will be the core of the problem. The construction of various procedural systems is important. What's more important is that we should clarify the power allocation of participants in the system of public decision-making. If the right and the roles of participation of the public and experts are not substantively empowered, even if there are procedural rules, it may lead to such a situation that in the process of the decision-making, we can see the shadows of the public and experts, but their participation in the decision-making is just a symbol, and that they cannot form a rational restrictive mechanism toward the government's power of decision-making; at the same time, the goal of promoting "democratic and scientific decision-making" will become water without a source. The current systems of announcement, the hearing system and the system of experts' feasibility study have shown some of the above tendencies. The price hearing system analyzed in this paper is a clear proof. The result will be that in the structure of the public, experts and government, the allocation and exertion of the power of decision-making are still lacking a certain restrictive mechanism.

B. Reflection on the System of Decision-making: Looking for the Missing Public and Publicity

Undoubtedly, publicity should be the nature of public policies, and the nature requires that the process of public decision-making reflect pub-

[41] <http://www.cctv.com/news/china/20040305/100692.shtml> (last visited May 13, 2005).

lic spirits, activities of public participation and its effects. Unfortunately, in the present administrative state, with the increasing growth of government's regulator power, the rule of technology, and the combination of "knowledge-power", in terms of the relation between the public, experts and the government, in the system and process of the public decision-making, the public has been squeezed out and marginalized by various systems and forces. Public participation, as Robert Dahl coins as the "footstone of democratic administration," disappears from the process.^[42]

In the West, even in the political framework of representative democracy, there is also the problem of the marginalization of the public and the loss of publicity in the process of the decision-making. This happens against the background of the slogan of "modernity" and the "technical course" of the public policies. Democratic politics emphasizes the desirability of the governance, and, therefore, public participation in the political framework is broad and sustainable. However, in the administrative process, the thought of "modernity" such as the increasingly complicated professional decisions and methods of policy analysis of positivism, under the name of the emphasis of rationality and technical and professional knowledge, carries out a "technical course" of public decision-making. This pushes the experts and elite decision-makers into the central position. This thought tries to gain rationality and legitimacy from the perspective of technical rationality for the decision-making of the administrative organ.^[43] Because modern government

[42] See 郭巍青, "公众充权与民主的政策科学:后现代主义的视角", supra note 25, p. 283.

[43] In democratic politics, when the administrative organ makes policies and legislative rules, it will definitely face the problem of legitimacy. In the US, the early theories are two: the transmission-belt theory and the theory of experts' rationality. The transmission-belt theory believes that the legitimacy of administrative policy-making and rulemaking comes from the authorization of the representative organ; the action of authorization can be visually understood as that the legitimacy of the democratic representative organ is transmitted to the administrative organ. The theory of experts' rationality believes that the legitimacy of administrative policy-making and rulemaking comes from technical rationality. However, facing people's doubts of the legitimacy of administrative policy-making, these two theories are greatly challenged.

"The transmission-belt theory" is discussed in F. Goodnow, *The Principle of Administrative Law of United States* (G. P. Putman's Sons, 1905), pp. 6-7; as for the introduction of "The theory of experts' rationality", see Richard B. Stewart, *The Reformation of American Administrative Law*, 88 Harvard L. Rev. (1975).

is organized by bureaucracy, and is supposed to have technical knowledge,^[44] the government can be considered a structure of “knowledge-power” with both the power of decision-making and the monopoly of the right of discourse and knowledge. For example, in the US, according to the observation of some scholars, this “complete rational mode” of public decision-making with the structure of this “knowledge-power” has been the dominating position since 1960.^[45]

However, just as what concerns some scholars, modernity and its “technical course” not only negatively affects the quality of the public decision-making, causing many policy failures, but also harms the publicity and democracy of public decision-making.^[46] The influential British scholar of public administration sciences Christopher Hood pointed out that people should cautiously treat “modernity” in the public administration. “The opinion that the whole world’s organization formation is turning to the unilateral ‘modernity’ is a fraud and vicious circle.”^[47] Perhaps under this background, and since the end of the last

[44] Analysis of the governmental bureaucracy is discussed in Peter Blau’s *Bureaucracy in Modern Society* (Chinese edn), 马戎等译 (Ma Rong et al. trans.), 学林出版社 2001 年版。

[45] In a paper entitled “The Norm of Policy-making in Administrative Law” published in *Harvard Law Review*, Professor Collin S. Diver of the University of Boston believes that the basic norms of policy-making can be divided into two categories—the gradual mode and the complete rational mode. The former stresses the scattering and empirical knowledge of the policy-making while the latter stresses the significance of all-sided knowledge for the decision-makers. He thinks that from the Roosevelt’s New Deal to 1960’s, the leading norm of policy-making is the gradual mode, but since 1960’s, the complete rational mode keeps the weather. See Collin S. Diver, *Policy-making Paradigms in Administrative Law*, 95 *Harvard L. Rev.* 393.

[46] Scholar of public administration, James C. Scott, analyzed this point deeply. He pointed out that many failures of public policies can be attributed to the structure of “knowledge-power”. In order to make decisions and manage affairs, the government often simplifies complicated knowledge by its power, called “state simplification” by Scott. Because the government organs do not have, and are not capable of having, more interest and ability to describe the reality of the whole society, they need to sift the complicated social knowledge to a manageable degree. The sifted knowledge by the government have 5 features, i. e. practical knowledge interested by the government, textual facts, collective facts, static facts, facts expressed by average values. This kind of classification and exclusion are essentially a monopoly of classification and choice. See James C. Scott, *Seeing Like a State How Certain Schemes to Improve the Human Condition Have Failed* (Chinese edn), 王晓毅译 (Wang Xiaoyi trans.), 社会科学出版社 2004 年版, pp. 104–105.

[47] Christopher Hood, *The Art of the State: Culture, Rhetoric and Public Administration*, (Chinese edn), 上海人民出版社 2004 年版, p. 221.

century, a thought called "argumentative turn" of policy analysis has appeared in the field of public administration in the West. Its basic spirit is the constructiveness based upon reflection and criticism. Its aims are to challenge the positivism of decision-making, to advocate the break of the monopolistic "knowledge-power" system formed by the bureaucratic elites and intellectual elite, to oppose the indifference and isolation of the social science researches toward real life, and to emphasize the concern of people's difficult positions and social problems.^[48] In the level of practice, what the "argumentative turn" of policy analysis stresses is the empowerment of the public's right of participation and the reconstruction of balanced roles of the government, experts and the public in the process of policy-making so as to seek a democratic process of policy-making.

In China, although the political framework has always been emphasizing the people's leading position, in the system of public decision-making and the process of decision-making, the decision-making mode of the trinity of "public participation, experts' feasibility study, and government's decision-making" is also established. As analyzed previously, the public and experts in this system and process are not endowed with "substantive rights". Their roles are imaginary, and the basic restrictive mechanism that should have affected the government and that should have been produced by them does not exist at all. Whether or not the government accepts the opinions, choices and feelings of the public and experts is optional. In other words, in this "trinity" decision-making structure, the government has monopolistic power over the decision of the problem and related plans in terms of the "knowledge-power" structure.

If the above observation is basically close to reality, then we have no reason to refuse to seriously think about the problem of legitimacy of the public decisions made in such a system and process of decision-making. Perhaps we can use the "technical rational course" theory to explain the problem of the legitimacy of the government's decisions (may-

[48] See 郭巍青, "公众充权与民主的政策科学:后现代主义的视角", *supra* note 25, p. 283.

be in our words, scientific and normative)—the decision-making organ of the government is formed by technical bureaucrats who are rich with experiences, and the decisions made by them are closer to the “scientific and normative” requirement. However, if we use the theory of bureaucratic organization and its rational function to interpret the above problem, we should be aware of the following: the rational decision-making function of the bureaucratic organization can only be realized when it satisfies the basic organizational features described by Weber and when it has sufficient and accurate information. Unfortunately, these conditions currently cannot be fully satisfied. Furthermore, the organization of our government’s organs is far from the ideal criterion of bureaucratic organization.

The basic framework of current government structural establishment is formed under the condition of implementation of a planned economy. The most conspicuous evil is that there is not a clear line between the functions of the government and enterprises, which causes government’s direct interfering in the enterprises’ business operations ... It easily leads to unclearness of responsibility and error of decisions, and the foundational function of the market in the resource allocation cannot be fully developed. ... At the same time, unilateral emphasis on the mutual restriction between the comprehensive departments and specialized departments lead to functional overlap, government orders of multi-sources, disputes over trifles, and low efficiency.^[49]

Comparing the above paragraph and Weber’s analysis of the ideal mode of bureaucratic organizational features, the description above is just a feature of irrationalized bureaucracy. Thus, if we indiscriminately use the technical rationality of bureaucracy to interpret the legitimacy of the public decision-making, it would become very unreliable.

Here, we find that the system and process of public decision-making far from justify the final results of the decisions. The author believes

[49] These are the problems pointed out by Luo Gan, General Secretary of the State Council in 1998. Until now, these problems still exist, and can be used to generalize many difficulties in our country’s government organizational structure. See “关于国务院机构改革方案的说明”, 《国务院公报》(*Gazette of the State Council*), 1998, No. 9, pp. 103-109.

that in the current systematic structure of public decision-making, there is an omission of public participation and expert's rationality. On the one hand, by the power allocation and procedural arrangement, this systematic structure maintains the government's monopoly of the power of decision-making, and thus causes the marginalization of the public and experts. On the other hand, this system endows the administrative organs the power of decision-making, but because of the administrative system's irrationality, it is very hard for the administrative decisions to gain "legitimacy produced by rationality".^[50]

Facing such irrationality of the government administrative organization, the government has actually given its response at the policy level—to reform the organizational structure and transform government functions. We must admit that this response is pertinent and timely. However, the reform of the organizational structure and transformation of government functions can hardly be realized by internal self-reform. External stimulative and restrictive mechanisms must be introduced. This is mainly because the organization itself has a tendency towards self-protection, to copy and reorganize that is driven by its interests, and "the organization will divert its attention from many substantive problems to the process of ceaseless reorganization."^[51] China's round after round of reform of its organizational structure proves the difficulties of public organizations' self-reform to a large extent. Again and again it reminds us that we need to introduce external forces to stimulate the study desire and reflection ability of the public power, to restrain the irrational exertion of power, to elevate the professional qualities of the staff in public organizations, and to promote the rationality of the system of public organization. The providers of the external forces can only be the public, those who have interests involved, have the desire and ability of organizing, have the spirit of participating in public life, and

[50] As to "legitimacy produced by rationality", see 王锡锌、章永乐 (Wang Xixin and Zhang Yongle), "专家、大众与知识的运用" (*Experts, the Public and the Use of Knowledge: A Framework of Analysis in the Process of the Formulation of Administrative Rules*), 《中国社会科学》, No. 3, 2003.

[51] Dunleavy and Hood, *From Old Public Administration to New Public Management*, in *Public Money and Management*, 1994, pp. 9-16.

most importantly, those who are capable of forming a power to stimulate and restrict the organizations of public power.

If the right of public participation can be fully implemented to establish a restrictive mechanism for the decision-making organs, the rationality of the organization of the public power will be greatly promoted and the "publicity" of the public decision-making will be reconstructed to a large extent. Whether these two goals can be achieved rests on whether we can empower the originally shadowy right of public participation in the systematic structure of decision-making.^[52]

C. Empower the Right of Public Participation: A Framework of Theory, System and Practice

As mentioned above, the weakness of the public and the lost of publicity in the field of public decision-making are rooted in the "shadowiness" of the system and process of public decision-making. If so, then to empower the public right of participation and regain real public participation would be the foundation stone of democratic governance.

In my opinion, the "empowerment" of the right of public participation in China's systematic structure and process of public decision-making cannot be done/achieved without the people's participation in political life and their effective right to speak and the right to choose. In this sense, the implementation of the right of public participation in the system and process of decision-making will rely on developing orderly and effective political participation. But we should be aware that public participation in political life is not equal to a meaningful right of participation in the system and process of administrative decision-making. That's because any system and process of public decision-making will emphasize professional knowledge and technique, the positivist decision-making methodology and the structure of "knowledge-power" allied by the intellectual elite and the public power, likely causing the loss of the public's right of discourse and participation.

In other words, we need a theory, a system and a practical framework that aim at the concrete context of public decision-making. We

[52] See 郭巍青, "公众充权与民主的政策科学:后现代主义的视角", *supra* note 25, p. 283.

also need to emphasize the publicity, legitimacy and accountability of the decision-making to provide reliable and practical support for public participation in the process of decision-making and to introduce the public, as actors and stakeholders, into the process of making public policies. This point has been universally accepted as a huge challenge toward democratic theory and practice.^[53]

In the author's opinion, this framework should be thought about and understood from three levels.

Firstly, on the theoretical level, open knowledge definitions and reflection methodology should be introduced. At this level, openness and demonopolization of knowledge and the advocating of equal sharing of the right of discourse shall be emphasized; the publicity of public decision-making is not only expressed in a form where the public is merely present, but all kinds of knowledge should be sufficiently considered and exercised in the decision-making. Different from how the word "knowledge" is generally understood, we are emphasizing the plural and multidimensional features of knowledge. Expert knowledge is about the analyses and the plans of the technical problems, whereas the government's knowledge is about the integration (or simplification) of relevant information. The public is also the main body of knowledge, in that they have their own unique and not neglectable knowledge about their understanding of their own interests, about their concerns of value problems, and about their feelings and reactions to their life dilemma. Such knowledge is one that should be respected and seriously treated if the process of public decision-making wants to acquire the proper "publicity" and "legitimacy". Reflection methodology means to ceaselessly sum up and reflect on the "policy failures", to seek the problems of the system and process that produce those failures, to reflect on the problem of "technical course", and to reflect on the irrational features of the public organizations. Some people reduce this methodology to "post

[53] American scholars of political science and public administration Frank Fischer and John Forester pointed out the most important lesson in previous development was the necessity to introduce the citizens into the process of making policies; they believed that this was a big challenge toward modern democratic theory and practice. See Frank Fisher and John Forester ed., *The Argumentative Turn in Policy Analysis and Planning* (Duke University Press, 1993), p. 36.

positivism" methodology and policy analysis. ⁽⁵⁴⁾

At the second systematical level, a deliberative mechanism should be introduced in. The key of the public deliberative mechanism is to build a restrictive mechanism in which the public "speaks to" the government, where the marginalized speak to the center. At this level, we need to (1) Encourage orderly public organization and organizational interests, because the participation of "atomized" individuals will detract the theme of the discussion, reduce the efficiency of the process of participation and lower the public's voice to the government;⁽⁵⁵⁾ (2) Improve information publicity. The amount of information controlled by the participants and the public will greatly affect their right of discourse and ability of expression, and their ability of expression will then determine their ability of taking actions after communication. In this sense, information is power; and (3) Strengthen the mechanism of dialogue, deliberation and response among participants. Dialogue and deliberation are central contents of public participation in decision-making, and the "debate" in the process of dialogue and deliberation is the basis of communication, common understanding and common action. In the process of participation it is unimaginable that there are only words without any desire of seeking common places. However, if it is short of a systematic mechanism that requires the government to respond to the appeals of the participants, that unimaginable situation will perhaps become a universal fact in the process of participation. Therefore, to construct a response mechanism and accountability mechanism for our government, we need to make the process of participation more open and to introduce external forces (e. g. judicial review).

On the third level, practice and action, the process of decision-making should be one that is open. Its basic requirement is that the

[54] John S. Dryzek, *Policy Analysis and Planning: From Science to Argument*, in Frank Fisher and John Forester ed., *The Argumentative Turn in Policy Analysis and Planning*, supra note 53, p. 213.

[55] This is very clear in the price decision-making and the process of price hearing. Whose interests do those individual representatives actually represent? Who gives them the right of representatives? At the same time, when the public with various interests appeals raise the previous question, they will find that they do not have a proper organization that can integrate and magnify their voices.

process of decision-making does not take place in a procedural and sealed framework (like formal hearings and feasibility study meetings), but it encourages and absorbs public participation in the process. The result of the public decision-making affects not only those who have participated in the formal procedure, but also the general public. Considering the variety of knowledge, differences of feelings and diversification of the definitions of "problems", the process of public decision-making should sufficiently take care of the progress of decision-making's function of "public study" and the publicity of the result of the decision to improve the efficiency of the decision-making. On the other hand, open public participation will definitely increase the attractiveness and transparency of the decision-making process, which will be very helpful to the rational evaluation and supervision of the participants in the procedure.

V. RE-CONGNITION THE ROLES OF THE PUBLIC, EXPERTS AND GOVERNMENT: AN ATTEMPT TO RECONSTRUCT THE SYSTEMATIC STRUCTURE OF PUBLIC DECISION-MAKING

On the basis of discussing the problem of empowerment of the public's right of participation, it is necessary to further discuss a systematic structure in which the public, experts and government can gain their new roles in the system and process of public decision-making. In this section, I am trying to bring out an idea to reconstruct the systematic structure of public decision-making from the perspective of exertion of knowledge.

A. The Perspective of Epytimology: Another Dimension of Understanding the Process of Decision-making

In the fields of public administration and administrative law, the process of public decision-making usually concerns two basic values: the legitimacy and rationality of the decision-making. However, these two values cannot always be achieved simultaneously. The legitimacy mainly emphasizes the acceptability of the result of the exertion of the right of decision-making, which is often achieved by fair procedure and balanced participation. On the other hand, people believe that the ra-

tionality of decision-making relies on techniques, statistics and even accurate calculation; all of which are irrelevant to public participation. In discussing the changes of American administrative law, an American scholar of administrative law described three modes that were used to justify the exertion of administrative power, i. e. the transmission-belt mode, the mode of experts' rationality and interest representation participation mode.^[56] We can find that in his descriptions of the mode of experts' rationality and participation mode, legitimacy and rationality are realized by inter-transformation. For example, his mode of experts' rationality actually uses rationality to achieve legitimacy, while participation mode uses legitimacy to achieve rationality. In procedure designing, there are also relevant cognition modes. For example, the American administrative law scholar Martin Shapiro pointed out that there are two different cognition modes in the American administrative procedure—first mode, under the core of public interests theory, it is believed that the operation of the administrative power is to protect public interests, enhance public happiness and benefits and maintain administrative efficiency; second mode, under a core interest group, it is believed that administrative procedure is a systematic phenomenon for fair competitions between various interests.^[57] In the author's opinion, Shapiro's first mode is mainly the procedural mode of experts' rationality, and the second mode is close to the designing system of the representative participation mode.

The dichotomy of rationality and legitimacy mainly roots itself in the understanding of professionalism and technicalization of "knowledge" relied on by public administration in the administrative state. This is just a feature of the "modernity" of public administration. However, the problems are (1) overemphasis of professionalism and technicalization of "knowledge". This will inevitably weaken or even deprive the general public's discourse right of participating in public administration, and substantively reduce the efficiency of the participation; and (2) Does

[56] See Richard Stewart, *Reformation of American Administrative Law*, 88 *Hav. L. Rev.* 1667 (1975).

[57] See Martin Shapiro, *APA: Past, Present, and Future*, 72 *Va. L. Rev.* 447 (1986).

public administration and decision-making need only professional knowledge? The answer is definitely negative. First of all, some observers find that the so-called "professional knowledge" is perhaps self-given by some experts for their own interests with the goal of maintaining their expert status and monopolizing the discourse right of some knowledge.^[58] In the second place, a lot of technical knowledge contains some premises concerning value; for example, the economic cost-profit analyzing method and related knowledge actually suggests the monopolistic position of the value of economic calculation. Lastly, even if professionalism and technicalization of knowledge is important, there is no reason to emphasize its superior position over the public's knowledge. Since the audience of public decision-making are the public, rather than the experts who make those decisions, decision-makers should consider the huge amount of knowledge provided by the public, such as their interest appeals, value preferences and even subjective feelings toward problems. If the above valuable knowledge that should be respected by decision-makers is neglected, the degree of rationality of the decision-making will be rebated. To break the monopoly of the right of knowledge and interpretation in the open dimension of epistemology, the author believes that rationality and legitimacy are completely reconcilable. This means that undemocratic decisions themselves are not scientific.

The process of decision-making is essentially a process of competition and the choosing of interests. In this process, every interested main body is a main body of cognition, and of specific knowledge. Through various procedural platforms, they exchange, study and integrate knowledge about interests and plans of decision-making. As a plan of allocation of interests, the final result must be established on the basis of a huge amount of knowledge from interested main bodies and the public. Therefore, both the system and process of the decision-making can be understood from the perspective of epistemology. Considering the "knowledge element" of public decision-making, the author tries to raise a perspective of understanding the roles of participants in the sys-

[58] See Fredric, *State of Professionals*, edited by Richard J. Stillman (Chinese edn), 李方、潘世强等译 (Li Fang, Pan Shiqiang et al. trans.), 中国社会科学出版社 1988 年版, pp. 336-338.

tematic structure of public decision-making and the practices of actors in the process of decision-making. Its basic proposition is that the process of public decision-making can realize the functions of legitimacy and rationality through the proper exertion of the actors' knowledge.^[59] It is necessary to point out that the epistemology perspective and the democratic process perspective are not contradictory but are supplementary. In the perspective of methodology, the collaboration, representation and fair examination of interests can be turned into a problem of absorbing and exerting all kinds of knowledge. A fair and reasonable system of decision-making should build a balance between knowledge of the public, the experts and the government, between the general knowledge and local knowledge, and between collective knowledge and individual knowledge.

B. The Second Reading of Roles and Functions of Participants

The significance of participation in the process of decision-making is interpreted by the mainstream theories from the democratic process perspective. From the perspective of democratic process, the legitimacy of the participants' participation in the process of public decision-making mainly stresses the significance of interest representation. The roles of participants represent different interested main bodies. As discussed above, the perspective of epistemology can be a very important supplement to this perspective of interest representation—interests and their negotiation is essentially a process of exchange of cognition and knowledge. Therefore, the roles of participants can be read from the perspective of the main bodies of cognition and knowledge.

1. The Public's Knowledge and its Scale

In this paper, the public refers to citizens who are concerned about their own interests and the interests of the interest groups they are in. They understand their own interests, and have different and authentic value preferences. At the same time, these different interests and value preferences, as a whole, form the basis of "public interests" and

[59] See 王锡锌、章永集, "专家、大众与知识的运用", *supra* note 50.

"public values" exactly.^[60] Therefore, the public is an important main body of knowledge. Their knowledge and value preferences about individual interests must be considered and not be neglected by the public decision-making. Their knowledge is as important as technical knowledge in the process of decision-making. This means that the public is as important as the experts and government in the decision-making, and that they shall have the equal right of discourse and the right of interpreting knowledge. The public should not be dominated in the sense of knowledge.

Based upon the above features of public knowledge, we can understand the roles and knowledge functions of the public in terms of public participation from the following aspects: (1) the public can provide basic facts and all kinds of information about the topics of decision-making, helping the real distribution of interests; (2) the public is the most important main body of value and normative knowledge, therefore, public participation is the most important mechanism of value selection in the process of decision-making. In a normal but not dividing and collapsing society, we have a reason to believe that the basic value preferences are generally consistent, and public decision-making should seriously treat the value preferences expressed by the public; (3) public knowledge can form a restrictive force toward the power of decision-making. Because public knowledge has an unneglectable uniqueness and a collective feature, it is difficult for the power of decision-making to select among the decision plans only according to its monopolistic knowledge; and (4) with their knowledge to participate in the process of decision-making, the public should conduct equal and respectable communication, negotiation and study with other participants to promote the legitimacy of public decision-making.

However, we should treat the public's knowledge and efficiency of participation rationally. Firstly, we cannot expect the factual information and knowledge provided by the public to be accurate and complete.

[60] Walter Gellhorn, famous American scholar of administrative law, pointed out that as to the definition of "public interest" in the context of public decision making, the public interests was just compromise of different interests through negotiation. See Walter Gellhorn, *Public Participation in Administrative Proceedings*, Yale L. J., Vol. 81 (1972), pp. 359-360.

As a matter of fact, because what the decision-making process provides is a kind of "public product", usually only a few citizens and groups whose interests receive comparatively greater impact will have incentive to participate. Therefore, the "free rider" phenomenon may appear. This may lead to the problem of unbalanced knowledge, where the "silent majority" may appear. Secondly, public participation itself perhaps includes many competing interests within the public. Not all people have equal resources and the ability to provide knowledge and persuasion. Due to their own interest appeals, the participants will probably vigorously exaggerate the importance of their interests, and depreciate their opponents' interests. This means that knowledge provided by the public should be further analyzed. At last, the public's knowledge about value preference is very likely to be numerous and even conflicting. In other words, knowledge about value preference and selection itself cannot necessarily provide the plan of value preference for decision-making. Even if the value option is preferred by most people, the public institution should cautiously examine it for the consideration of the minority's rights.

2. Experts' Knowledge and Its Scale

Experts in the process of public decision-making, in many cases, are bureaucratic institutions and are staffed by people in the bureaucratic system. For many people, we get the theoretical images of experts of public administration from Weber's study of bureaucracy. For example, the experts that the "experts' rationality" decision-making mode in American administrative law discusses, are just public administrative institutions.^[61] However, in the view of public administration, experts usually refer to individuals or groups that have professional and technical knowledge, and have mastered the methods of policy analysis and consultation and related utilities. This paper discusses the experts' knowledge and roles in this sense.

The experts' deep and broad involvement in the process of public decision-making perhaps is a typical characteristic of the public administration's "modernity". In the time stressing "technical course", no one

[61] Richard Stewart, *Reformation of American Administrative Law*, supra note 56.

can negate the important roles experts are playing in the process of public decision-making. From the perspective of epistemology, experts have an increasingly stronger "comparative advantage" in professional and technical knowledge. From the perspective of rational decision-making, they gain their justifiable "entrance tickets" of participating in the process of administrative decision-making. It is generally believed that expert knowledge have the following characteristics, (1) accurate analysis of factual and technical problems; (2) because experts appear to be "neutral" consultants, the knowledge they provide is thought to be objective and disinterested; and (3) expert knowledge can often be examined or even calculated in terms of its cognition and offering methods. It therefore becomes a correction mechanism for the knowledge provided by the public, which is usually based upon their interests and emotions. This is especially true regarding factual judgments.

However, we do not need to overly worship expert knowledge. Firstly, the advantage of expert knowledge rests on the analysis of factual and technical problems. In many cases, however, technical, factual and value problems are hard to distinguish. For example, in price decision-making, "the necessity of price hike" is a technical problem of experts, which can be solved through cost-profit calculations. But the public sees it just as a value problem. Secondly, the experts' usual appearance of neutrality is just a hypothesis. The practices of public decision-making show that experts can also be "employed", serving interest groups in the participation of the process of decision-making and becoming the tool of "capturing the governor" in terms of epistemology. They can also be employed by the government to provide "expert opinions customized by the government"^[62], becoming the tool for achieving the plan

[62] For example, some observers find that in the process of making policies of "positivism", the policy brain trust gets unprecedented opportunity of development. Experts of policy analysis ally with their "clients", decision-making organs that "order" their knowledge and plans, to form a system of "bureaucracy-experts" to monopolize the knowledge and discourse right in the process of public decision-making. See Frank Fischer, *Reframing Public Policy: Discursive Politics and Deliberative Practices* (Oxford University Press, 2003), pp. 3—4. In China, experts' space of survival and development is greatly dependent on the government, and therefore this situation will be more obvious. In many processes of decision-making, the customized experts' opinions do appear according to government's wishes, and there is no exception in the hearing of price decision making.

that the government favors. Finally, even if experts are really neutral in providing knowledge about technical problems, because of the lack of enough reliable utilities for rational analysis in many cases, their knowledge is not unquestionable truth.^[63]

3. Government: Knowledge and Power

The above analysis about expert knowledge and its limitations also applies to the analysis of the government in the process of public decision-making. This is because in the process of decision-making, compared with the public, people usually believe that the decision-making organ of the government has some expertise over the problems in a specific field. However, compared with the experts, the government in the decision-making not only has professional knowledge but also has actual public power of authority and responsibility to choose public policies. The possession of public power and responsibility of public governance on the one hand can enable the government to get broader knowledge. It should be noted that different participants are trying to provide knowledge for the government, so in theory and practice, the government is likely to gain broader knowledge about the event and the topic. At the same time, the government has systematic knowledge about what they are governing, which the public and experts likely do not have. On the other hand, this may lead to problems of "simplified treatment" and "selected treatment" of knowledge for the government's necessity of management. In order to shift pressures, responsibility and topics, the government may intentionally suppress, exaggerate and distort its knowledge and information, causing the monopolistic "knowledge-power" structure.^[64]

The above analysis of knowledge and its scales of the public, the

[63] About this point, we can refer to Hayek's reflection on the limitation of legislative rationality in the theoretic level. He pointed out that the order is in reality produced by active individuals' actions instead of intentional designs, and that people can only understand it according to some principle, but it is hard to master it with analysis. See Hayek, Friedrich August von, *The Use of Knowledge in Society*, in *Individualism and Economic Order* (Chinese edn), 贾湛等译 (Jia Zhan et al. trans.), 北京经济学院出版社 1991 年版。

[64] American scholar Frank Fischer focused on analyzing the "knowledge-power" structure in the theme of policy failure of modern society. He advocated that "it is necessary to rediscover the nature of social science." See Frank Fischer, *Evaluating Public Policy* (Chinese edn), 吴爱明, 李平等译 (Wu Aiming, Li Ping et al. trans.), 中国人民大学出版社 2003 年版, p. 12.

experts and the government from the perspective of epytimology shows that the three participants have different sets of knowledge that cannot be substituted by one another. If we understand the process of decision-making as a process of democratization and proper exertion of knowledge, we can also believe that we should clarify the roles of the public, the experts and the government in the systematic structure of decision-making. A systematic arrangement of knowledge supplementary deliberation, learning and acceptability should be established in the process of decision-making.

C. Move towards the System of Public Decision-making of a "Deliberative Democracy Mode"

The interpretation of the roles of the public, the experts and the government in the process of decision-making from the perspective of epytimology helps us to analyze the efficiency of the process of public decision-making and the systematic structure of public decision-making from the exertion of knowledge perspective. Going back to the price hearing problem at the beginning of this paper regarding the roles of participants in price hearing, we find that, in the form, there are clearly different roles for the public, the experts and the government. Also, the role of the public is played by two competing main bodies; namely, the business operators and the consumers. This role arrangement is reasonable in terms of epytimology. However, the superficial role arrangement cannot ensure that all kinds of knowledge can be reasonably exerted and properly balanced in the process of decision-making. This is because the realization of the function of the roles is also determined by a mutual relation and the power of different roles. The question is whether those participants can play their roles with equal identities, and whether a restrictive mechanism can be formed to prevent the monopolistic situation of knowledge and discourse among different participants in different roles. It is a pity that in current price hearings, all those requirements are not satisfied. The "study" and "consultation" functions of price hearings mean that participants of different roles are standing in unequal positions. The shortcomings of response mechanism and accountability mechanism lead to the fact that participants' knowledge cannot form a restrictive factor toward the decision-making organ. All these problems,

although related to unreasonable procedural rules of the hearing, are due to the structure of the system of decision-making. This problem is evidenced in the current systematic structure of public decision-making, where there is not a systematic arrangement that recognizes and protects participants' equal status and allows a reasonable right of discourse and resources for participation.

If the participants cannot get the identity of an equal knowledge provider and dialogist in the systematic structure of decision-making, such a hypothesis must follow that although participants have different knowledge, some of the knowledge is prior to the other. Therefore, role setting and power allocation are actually the allocation of the right of discourse.^[65] The central problem in the current systematic structure of public decision-making is the lack of recognition of equal discourse right of the different participants. On the contrary, the current structure equates political power with more reliable knowledge, and takes it as the knowledge basis of public decision-making.

Unfortunately, we have discovered that this type of public decision-making requires that the decision-making organ have absolute advantage over the knowledge, which is definitely a myth. To equate public power with knowledge for decision-making will form a "knowledge-power" monopolistic structure. This will not only squeeze out public participation from the process of decision-making, but will also marginalize the public, causing the loss of publicity and democracy of public decision-making. It will also harm the reasonable exertion of knowledge, passivate the government's ability to learn and reflect, and ultimately make the results of the public decision-making unscientific.

The key to breaking the monopolistic "knowledge-power" structure, is to empower the public's right of participation, as discussed above. However, it is necessary to notice that the effective implementa-

[65] Discourse includes speaking, interpretation, communication, taking collective actions etc. It is an important right. In the process of decision-making, discourse is a right that deals with agenda setting, definition of problems, providing and selection of plans etc. In fact, some scholar points out that the actual content of applying post modernism to scientific policy analysis is that "policy discourse" is challenging and replacing the process of public decision-making of technical methodology and experimentalism. See Frank Fischer, *Reframing Public Policy: Discourse and Deliberative Practices* (Oxford University Press, 2003), vii.

tion of the public's right of discourse and the right of participation does not mean that both the systematic structure and procedural arrangement of decision-making must follow the "public dominated" mode or even "the public deciding" mode. Perhaps from the democratic sensibility, the public dominated decision-making seems very emotionally powerful. The concept of the "public deciding" is a beautiful dream, but maybe bad in practice. From the perspective of epytimology, it is not difficult to find: (1) that the public's knowledge is individualized, competing and scattered. The sharing of knowledge may be exaggerated or oppressed by different appealing interest; (2) that different value preferences among the public's knowledge should have an equality nature in the sense of democracy, and therefore it is questionable whether the majority can require the minority to accept the value preferences that they deny. and (3) that in terms of the public's exertion of the right of discourse, the ability and effects of participation are restricted by individual factors as well as economic and social resources, causing the inequality of the degree and efficiency of the participation. All these problems show that public decision-making needs public participation. However, public participation itself does not necessarily make decision-making more rational. Therefore, the participation of public power is also necessary. As long as the existence of the government is still practically reasonable, it is necessary for both the public and the government authorities to discuss, cooperate and take actions in the public life. This has been a complicated and permanent discussion in both political philosophy and democratic theory.

Thus, we can face the central question of this paper raised at the very beginning—how can a systematic structure of public decision-making be constructed to promote effective expression and communication between the public, the experts and the government, and to promote the legitimacy and rationality of the decision-making both in terms of the democratic process and knowledge sharing?

Obviously, this question is a challenge to our wisdom and courage. The practice of public administration shows that in terms of the system of decision-making, the public authority dominated mode, the public deciding mode and the technical course accompanying "modernization"

bring a series of difficulties about values and actions in public life. Perhaps the dilemma about values and actions can be attributed to human nature and our shortage of knowledge about the world and ourselves. However, this kind of reasoning does not mean that we have discovered the ultimate reasons to avoid problems.

Here, the author is not pretending to offer a concrete mode concerning systematic structure and an arrangement of public decision-making. Rather, I am just trying to introduce a theoretic perspective for the reflection, learning and modification of our system of public decision-making; namely, the perspective of deliberative democracy. The author believes that this theoretical perspective has reflective and constructive meanings for China's current reform of the public decision-making system.

Deliberative democracy (cautious democracy) theory appeared at the end of the last century, and developed rapidly thereafter.^[66] Advocates of deliberative democracy believe that the basis of deliberative democracy is on one side liberalism theory and on the other side criticism theory.^[67] It emphasizes that the individuals' interests, knowledge and rights should be respected (liberalism). It also cares much about how to get rid of oppressive forces in public life and how to improve the ability of study, observation and communication through public participation, as well as emphasizing the compromise and preference shift in political practices. Its supporters think that deliberative democracy has a series of advantages in its value appeals (1) that it can cultivate citizen virtues that maintain healthy democracy and can promote the citizen's character of mutual understanding in political communities; (2) that it can elevate the citizen's sense of collective responsibility of public life; (3) that in modern society in which plural cultures and interests interweave, it can

[66] See Joseph M. Bessette, *Deliberative Democracy: Majority Principle in Republican Government*, in Robert A. Goldwin and William A. Schambra ed., *American Enterprise Institute* (1980), *How Democratic Is the Constitution?* pp. 102—106. As to general introduction and discussion about deliberative democracy, refer to 陈家刚 (Chen Jiagang), "协商民主: 民主范式的复兴与超越" (*Deliberative Democracy: Renaissance and Transcendence of Democratic Mode*), in 陈家刚编, "协商民主" (*Deliberative Democracy*), 上海三联书店 2004 年版。

[67] John S. Dryzek, *Deliberative Democracy and Beyond* (Oxford University Press, 2000), p. 3. 陈家刚, "协商民主: 民主范式的复兴与超越", supra note 66, pp. 5—7.

effectively promote the communication and understanding between main bodies of different cultures and interests; and (4) that through open structure and the process of discussion, it can promote the legitimacy of public decisions and enlarge the horizon of knowledge and rationality.^[68]

It is necessary to explain that deliberative democracy as a theory and systematic plan was brought forward based upon the criticism and reflection of the procedural "participation democracy". Critics of participation democracy point out that a strictly procedural democracy only cares about the expression and aggregation of opinions, and stresses the formation of public decisions through the majority principle. This will harm the communicative function of democracy and lead to the inferiority of the minority. The substitution they give is deliberative democracy, which emphasizes making public decisions based upon the participants' serious and responsible expression, communication and mutual understanding. In deliberative democracy, "discussion" is endowed with the function of promoting the legitimacy and rationality of decision-making through the participants' mutual expression of reasons, persuasions and the seeking of common ground.^[69] It is very interesting that the introduction of deliberative democracy into the process of public administrative decision-making may produce an improved thought for the "knowledge-power" structure of the public decision-making organ. In practice, deliberative democracy will help to elevate the participants' status, thus promoting the growth of the restrictive mechanism of the systematic structure of public decision-making.

The significance of public participation and its effects in the process of decision-making is not a certain method or a set of formal rules, rather, it is the respect of the public's rights and knowledge. It is important to unfold an effective open discussion, dialogue and process of seeking mutual understanding through introducing the public's knowledge and

[68] See 陈家刚, "协商民主: 民主范式的复兴与超越", *supra* note 66, pp. 8-10. Detailed analysis see Jorge M. Valadez, *Deliberative Democracy, Political Legitimacy, and Self-democracy in Multicultural Societies* (Westview Press, 2001), pp. 34-39.

[69] James Phelan, *Deliberation as Discussion*, in 陈家刚编, "协商民主", *supra* note 66, p. 2.

values. The government needs to join in such a structure of dialogue and exert all kinds of knowledge shown in the discussion in the process of choosing plans. From this perspective, public participation is meaningful, yet it is not a simple substitution of the power of decision-making of public power institutions. The core of public participation is to strengthen both the position of the public as the subject to form an effective restrictive mechanism toward the discourse and the power of public decision-making organs. At the same time, this structure can also promote the knowledge communication, the reflection and learning between the public, the experts and the government, making the public decision-making an open process of policy learning that unfolds with the accumulation of knowledge and the development of rational practices.^[70]

VI. CONCLUSION

The central problem of the public administrative decision-making system is the roles and power allocation of the participants. Judging from various efforts of China's reform of the system of public decision-making, the introduction of the forms of decision-making such as hearings, forums, panel discussions, feasibility study meetings, and open solicitation of opinions etc. can be considered as helpful trials of the mechanism of absorbing public participation in the process of decision-making. However they still have not clarified the roles of the public as the participants in the systematic structure of decision-making. The power allocation between the public and the government, and between the public and other participants is still unclear. This unclearness is the crux of the problem that makes the system of public participation malfunction. The absence of democratization and rationality in the price decision-making hearings discussed in this paper is a good example.

Furthermore, the paper's reflection on our country's current system of the "trinity" of "public participation, expert studies and government decision-making" shows that although public participation and expert

[70] "Policy learning" refers in the process of policymaking, it is necessary to reflect on the reasons of the past policy failures; the process of sharing knowledge and conducting discussion by the main bodies that participate in the policy analysis is actually a process of policy learning. See Peter J. May, *Policy Learning and Failure*, *Journal of Public Policy* (1992), pp. 342-343.

studies are stressed in the current system, the shadowiness and weakness of the public's role are obvious, due to the absence of "substantive rights" of public participation in the systematic structure. In practice, both the public and experts are marginalized in the system of decision-making, and their right of discourse and influence of public decision-making are receiving a systematic squeeze. As a result, no restrictive system to supervise the governmental decision-making organ is in place, whereby a monopolistic structure of "knowledge-power" is formed.

In order to break this monopolistic "knowledge-power" structure, empowerment of the substantive contents of the right of public participation is crucial. For a real implementation of the right of participation, a new understanding of the role of the public is needed. From the perspective of epistemology, the public are not only interested parties in the decision-making, but more importantly the provider of knowledge. Also a process of public decision-making must consider the rational exertion of all kinds of knowledge. This means that in the process of public decision-making, it is necessary to enhance the deliberation and discussion between participants to seek common ground instead of the monopolistic exertion of power. This also means that the structural allocation of the power of decision-making may be changed. In the field of public administration, this change is one of the important contents of the transformation from single-centered "management" to multi-centered "public governance".