

地方决策中的公众参与： 中国和德国

Public Participation in Local Decision-Making:
China and Germany

主编 刘 平 鲁道夫·特劳普-梅茨
Edited by Ping Liu and Rudolf Traub-Merz



上海社会科学院出版社
Shanghai Academy of Social Sciences Press

Shanghai Institute of
Administrative Law

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CONTENTS | 目 录

前言 001

地方政治中的公众参与——简评…………… 鲁道夫·特劳普-梅茨 001

德国公众参与程序综述…………… 汉斯-吕迪格·迪内尔 008

上海的地方立法听证实践…………… 阎 锐 021

公民陪审团和规划小组：冲突性问题解决中的协商民主进程
…………… 汉斯-吕迪格·迪内尔 025

德国城市规划和城市建设中的公众参与…………… 弗兰克·尤斯特 043

浦东新区制定社区规划公众参与的程序选择及实际操作
…………… 刘 璇 060

社区巴士线路设置决策的公众参与…………… 胡 荣 065

规划中公众参与在法律上的定位
——对本次研讨会中三个事例的点评…………… 朱 芒 070

欧洲的参与预算制：对中国的启示
…………… 维斯·辛特马 卡斯滕·赫茨贝格 安佳·若克 079



温岭公共预算民主恳谈的实践与思考	慕毅飞	106
公众参与的中德制度比较		
——“公共决策过程中的公众参与”中德研讨会综述		
上海市人民政府法制办公室 上海市行政法制研究所		116
关于作者		126

Contents

Foreword	129
Public Participation in Local Decision-Making — A Commentary Rudolf Traub-Merz	131
Public Participation Procedures in Germany: An Overview Hans-Liudger Dienel	139
The Conduct of Local Legislative Hearings in Shanghai Rui Yan	154
Citizens' Juries and Planning Cells: Deliberative Democratic Processes for Consultation on Conflictual Problems Hans-Liudger Dienel	159
Public Participation in Urban Planning and Urban Development in Germany Frank Jost	180
Public Participation in Pudong Local Planning: Procedure and Practice Xuan Liu	201
Public Participation in Decision-making: Transport Administration and Bus Line Planning Rong Hu	207
The Legal Position of Public Participation in City Planning — A Commentary on the Three Cases from the Seminar Mang Zhu	214
Participatory Budgeting in Europe — An Inspiration for China? Yves Sintomer Carsten Herzberg Anja Röcke	224



Participatory Budgeting Hearings in Wenling: Practice and Reflections

Yifei Mu

255

Institutional Comparisons of Public Participation in China and Germany — A Summary of the Sino-German Seminar on Public Participation in Public Decision-Making

Office of Legal Affairs, Shanghai Municipal Government

Shanghai Institute of Politics and Law

266

About the Authors

279

FOREWORD 前言

上海市人民政府法制办公室与德国弗里德里希·艾伯特基金会国际合作事务上海协调办公室有着多年的合作,重点致力于地方发展问题。来自行政机构、学术研究以及利益集团领域的中德两国专家相聚交流意见,比较各自的视角,相互了解最近的发展情况,希望从对方获得有关新的问题解决途径的启发。

2008年9月17~18日,上海市人民政府法制办公室与艾伯特基金会组织召开了主题为“公共决策过程中的公众参与”的研讨会。此前,法制办公室的一个代表团应艾伯特基金会邀请访问了德国,当时就定下了有关这个主题讨论的框架:在地方决策中至今形成了哪些公众参与形式?各种形式各自有哪些优势与劣势?参与机会被公众接受了还是被他们拒绝了?通过公众参与,城市行政管理机构作为的合法性是否提高了,抑或对地方政治的批评反而增加了?

当然,不可能在研讨会上讨论与概述中、德两国在地方公众参与中的所有尝试。研讨会的主办方必须就公众参与的模式以



及对此做介绍的专家进行挑选。但是，研讨会期间非常热烈的讨论表明，我们通过此次研讨会证实了地方层面民主发展方面的重要事件。

因此，我们决定公开发表这些报告，以飨更大范围的读者。德国专家在研讨会上的报告语言是德语，但是，我们在这里仍然用英语和汉语发表这些报告，希望借助于这两种世界性的语言，能使这本出版物引起更广大的读者群的兴趣。

上海市人民政府法制办公室与艾伯特基金会感谢各位作者以及所有为本书的出版做出贡献的人士所给予的非常好的合作。我们期待着这本书能引起您的阅读兴趣。

2009年3月，上海

上海市人民政府法制办公室主任 刘 华

德国弗里德里希·艾伯特基金会国际合作事务上海协调办公室主任

鲁道夫·特劳普-梅茨博士

地方政治中的公众参与——简评

鲁道夫·特劳普-梅茨

地方(这里是乡镇、市和县的集合概念)政治决策过程中的公众参与在德国以及许多其他欧洲国家呈现一片繁荣景象,它以许多种形式出现,从民意测验、公共听证会、未来工场、规划小组程序,一直到全民公决中程式化的表决(参见本书中汉斯-吕迪格·迪内尔的文章《德国公众参与程序综述》)。在过去 15 年里出现了一种新的公众参与的形式:参与预算。在欧洲,已经有 100 多个乡镇与城市引入了这种新的规划程序,在这种程序中,地方预算也向直接的公众参与开放(参见本书中维斯·辛特马、卡斯滕·赫茨贝格等撰写的文章《欧洲的参与预算制:对中国的启示》)。

类似的情况也出现在中国。在这里,地方行政机构以及市长职务也越来越多地接受公众的参与。地方行政机构公开规划中的项目计划,组织听证会,或者让公众通过手机短信或专门设立的网站提交改进意见。有些尝试,例如浙江温岭市泽国镇的实例,使得欧洲众多的公众参与形式相形见绌(参见本书中慕毅飞的文章《温岭公共预算民主恳谈的实践与思考》)。

一、公众参与的背景:公民抗议、政治厌恶 以及寻求重拾合法性

对于西方社会,人们可以发现,公众参与经常遵循一个两阶段的发展模式。在第一个阶段,形成公共抵抗,即当事人批评地方机构的决策,并对各个项目计划表示抗议。在第二个阶段,地方行政机构从中“吸取



了教训”，向公众主动开放，并试图重新为地方政治赢得接受度。

在德国，曾出现自我组织起来的团体自发的公众抗议行动，这些团体在 20 世纪 70~80 年代，以所谓公民倡议行动的形式，抵制地方行政机构的计划，以维护自身利益，并试图阻止经选举产生的政治代表的决策。对于地方行政机构而言，公众每一次成功的阻挠总是无异于一场政治灾难；它公开表明，官方的决策者实施的是一个并非反映民众意愿的项目。可能只在少数地方中，地方层面的政治代表能承受多个这样的公众自发抗议行动而不倒台。

在基于选举的民主政体中，存在着第二种公开抗议的形式，即拒绝参加选举。在德国的许多地方，地方选举的参选率降到了历史最低点。虽然上下波动幅度特别大，但是有一半以上的有选举权人去投票的情况越来越少，越来越经常发生的情况是，地方的参选率几乎还不到 25%~30%。在投票后的新闻报道中越来越经常地可以读到：“联邦德国成立以来最低的参选率。”在地方层面，拒选的选民如今成为最强大的力量。这是政治贫困的明证。描述这一趋势的德语概念是“政治厌恶”。

另外一个背景情况是：公众参与的高涨在德国的地方层面总是在经济奇迹早已结束的时候出现。低经济增长率以及旨在降低国民生产总值中国家部分比例的税收改革（在德国，国家部分的比例在 2000 年和 2006 年间下降了 5%）动摇了地方财政，并使之陷入持久性的危机之中。公众对国家以及地方政府提供良好的保障服务的期望仍旧维持在较高水平，而国家的保障服务能力尤其是在最底层面明显削弱了。如今，地方决策往往是就不能再做的事情做出决议，即哪些服务必须削减或哪个项目必须被取消。在保障的期望高涨而服务能力持续下降的情况下，越来越多的民众失望地离开或加入抗议运动，政治体制的合法性也就更进一步削弱了。

如果城市和乡镇引入公众参与程序并让公众在地方决策事务上共同决定，那么这是与这些相应高的期望联系在一起的。这就是要“重新赢回”那些远离政治的公民。把公民纳入进来，应确保决策者考虑到民

众的真实的利益情况,并以此为依据而作为。地方行政机构意欲重新赢取受大众欢迎度,赋予执政模式更多合法性,并由此确保其自身的续存。

至于各个行为体所承诺的公众参与是否能延续,这取决于诸多因素。公众参与形式的多样性已经表明,不存在一种始终且对任何一种情况都能给出正确答案的万能方案。说得极端一点,人们可以说,每个问题都是绝无仅有的,因此需要特别的解决方案。但是,在具体情况的独一无二性和需要与此相应的参与程序以外,也存在着在引入一种公众参与程序时应加以遵守的、可以泛化的相互关系和基本原则。这里我阐述其中的一些相互关系及其活力。

二、直接的公众参与和代议制民主：排挤抑或补充

公众在地方决策过程中的参与,首先可以根据公民做出的表决是否具有强制特征并由此必须为决议机构(议会或行政机构)所接受来加以区分(参见本书中弗兰克·尤斯特以及朱芒的文章《德国城市规划和城市建设中的公众参与》和《规划中公众参与在法律上的定位》)。如果一种公众参与形式被引入而且该程序获得了最终决议的地位,那么至今为止对此负责的政治和行政职务承担人就失去了其权限。这时就出现了排挤。

这一点例如体现在德国的建筑规划程序(参见本书中弗兰克·尤斯特的文章《德国城市规划和城市建设中的公众参与》)和公民请愿中。在建筑规划中设立的是个体的权利,而公民请愿则为集体权利。如果公民请愿达到了足够的票数(法定人数)——收集在签名表上,那么将实施公开表决。经选举产生的地方议会失去了它的管辖权,不能再就此做出决定,也就是说它被取代了。这类程序是有正式规定的,拥有明确的法律依据,而且是一个特例。

绝大多数的公众参与不是这种类型,它们并非经正式确定,而且不



具有“公众参与的结果对地方层面政治体制的决策机构有约束力”这一特征。这些公众参与形式主要“仅仅”具有咨询地位,即具有对行政机构和议会进行咨询的特征。换言之,公众所提出的建议,可以但并非必须为它们所接受。只要公众参与停留在咨询的范畴,那么它们就是成熟的政治系统的补充。

由此也能解释,为何许多公众参与是由地方行政机构和市长倡议的。这是因为经选举产生的代表基本不会去支持将把他的决策权转让给其他人并由此剥夺他自己权力的程序。

但是,在政治现实中,实际的相互关系可能往往会是另一番光景。几乎无法想象的是,倘若公众的建议不断地被行政机构拒绝或忽视,公众还会持久地对地方的参与程序感兴趣。通过公众参与也总是生成一种期待,即他们的意见和结果会得到认真对待乃至实施。倘若地方政府不遵循公众的建议,那么它很可能就得向公众明确说明它做出另外决定的原因。总之,我们可以推断,在许多情况下决策者会遵循公众的建议,虽然并非总是完全遵循,但至少在极大程度上或在方向上遵循公众的建议。毕竟,公众参与的合法性来自公众的意愿也能得到实施。

三、不要把公众参与限制在无关紧要的事情上

即使公众参与不是“由下层民众主动”的,而是“由上层领导倡议”的,但是,对于地方行政机构而言,公众参与似乎仍然大多是一个“恐怖怪物”,毕竟最终它们自身的决策自主权会受到限制。

地方行政机构走出这一困境的出路似乎是显而易见的。可以只把那些无足轻重的而且议会和行政机构可以随意地遵循任何公开表决结果的事务向公众参与开放;相反,较为重要的事务的决定则不置于公众参与程序之下,而是继续由决策者或“在办公室紧闭的房门后”做出决定。

地方决策往往涉及直接关系公民日常生活的事宜,例如供水、供电、

公共业余活动设施的建造、居住区道路设置以及公共短途交通的供给等。公众了解他们自身的需求和利益,因此能比较好地感受到,一个即将做出的决定是否具有本质重要性。倘若他们未参与对他们而言重要的决定,相反只是参与对他们来说不重要的决定,那么他们的参与动力不会持久。因此,一个想要获取合法性的行政机构必须把重要的事务向公众咨询开放。而且,一种体验的民主始终处在运动中。一旦开始,公众可能不久以后就要求在其他领域也获得参与机会。

四、公众参与必须有代表性

公众参与并不等同于全体公民的参与。虽然正式规定的程序——在这类程序中,表决权往往是与居住地权挂钩的——是如此,但是公开程序则不然。如果地方行政机构邀请公众参加讨论或确定另一种沟通介质(例如网上讨论、电话问询或问卷调查),那么民众马上可以分成四类:① 那些参与的人;② 那些对此不感兴趣的人;③ 那些在熟知情况下会参与的人;④ 那些想要参与但由于某种原因(例如没有时间、没有电脑等)而受阻的人。伴随着公众参与程序的选择,也就相应决定了这四类人的人数众寡。

许多公众参与通过一个挑选程序来运作,即确定一群人,由他们作为代表来表达整体的利益。这里就出现了代表的问题:应按照怎样的标准来挑选谁,而又不选谁?如果这些标准不是公开设定的,那么就面临操纵的指责。事实上,通过只让那些预期能提供专门建议的公民参与,可以最简便地取得所期望的结果。

事实上可以借助已有的科学方法,从一个完整的群体中做一个挑选,但同时又能确保经挑选出来的群体是与整个群体的利益状况相一致的。这个挑选出来的群体的组成必须在主要方面(如年龄、性别、职业、收入和居住地)反映全部居民的组成。只有这样才能假定,一个挑选出来的群体会和整个群体可能做出的决定一样。



如果公众参与是通过一个挑选出来的小群体实现的,这就需要一种回馈机制,即公众必须了解,公众参与是以何种方式进行的以及取得了怎样的结果。只有当所有的人都知道进行了什么,才能消除对“某个地方在含糊其辞”的怀疑。每一种通过挑选出的群体实现的公众参与的最终结果,都应对公众进行解释说明。

五、特殊利益、实务能力和协商

一种经常听到的意见认为,经选举产生的代表始终关注公益且借助于行政机构的专业知识也能获取必要的实务能力,而在公众参与中,只是各种特殊利益未经过滤地彼此争斗,而且专家的知识在就“正确的解决方案”的讨论中是欠缺的。难道公众参与是通过自私自利的个体利益和忽视,来取代公益导向和专业能力?

必须承认,并不能完全反驳这些论点。往往发生的情况是,公共听证会在公民的意见分歧中无果而终。并非每个人都有能力不做任何准备和不接受任何指导就能看懂技术图,就能解读支出计划,或者就能把他自己的个体利益置后,并与其他人就一个“共同分母”以及一个面向公益的意见达成一致。

事实上,在公众参与上,并不能保证会形成统一而又专业的公众意见。但是,如果公众参与表达的是众多的单个意见和个体利益,然后由行政机构来决定它考虑其中的哪些以及忽略其中的哪些,那么这个程序的合法性就又将遭到质疑。那样的结果会是公众不仅和行政机构而且他们彼此之间也会争论不休,这种公众参与决策过程就会帮倒忙。

在这种情况下,就需要在参与的公民之间进行讨论与磋商。在这一过程中,各方提供和交流,并对这些信息进行批评性地审查。重要的还有,没有一种意见被排斥在参与之外,而且平日里重要的因素(例如财产、权势或专家知识)不占据主导地位。如果讨论是在经规定的条件下进行(例如讨论由主持人主持),可以规定,单纯为追逐私利服务的论据

要被挡在讨论之外(主导原则是:唯论据说话)。这一自由的、面向实际解决方案的讨论是协商民主方案的核心。这种方案的一种特殊的变体就是规划小组程序(参见本书中汉斯-吕迪格·迪内尔的文章《德国公众参与程序综述》)。

总体上可以得出的结论是:参加讨论的人越多,那么这个程序最终得通过表决来结束的概率也就越大;相反,较小的群体更易于达成一个共同接受的结果,而无需通过正式的表决来强行取得这个结果。

六、结语

公众参与在许多地方都呈上升趋势。在某些地方,公众参与已是惯例,其他地方则在做初步尝试。但是,还有许多地方在旁观等待。无论是在德国还是在中国,情况均是这样。公众参与朝着何种方向发展以及以何种速度推进,取决于许多因素,尤其取决于公众对于政治决策过程开放的期望以及行政机构对此做出回应并主动应对的意愿。误解、过高的期望以及过度的担心都不可避免地是这一热潮的组成部分。公众与行政机构之间的一种新的互动形式的实现,不可能没有摩擦;但是,如果想要推进地方层面的公众参与,那么,这是所有利益相关者必须准备好付出的代价。

德国公众参与程序综述

汉斯-吕迪格·迪内尔

一、何谓公众参与

公众参与可以被理解为公民在议会选举以外在地方、地区、国家乃至超国家层面决策中的政治参与,它涉及的是直接民主和协商民主的形式。更加宽泛的“公众行动”的概念则除了包括狭义的公众的政治参与,还包括公民的面向公益的志愿行动。虽然面向公益的行动往往也施加某种政治影响,但是,这不是主要目的,而且这种影响经常也不是直接作用于狭义的政治制度。

在公众参与内部,可以区分正式程序和非正式程序。

正式程序是法律上规定的、直接民主型的公众参与程序,例如全民请愿和全民公决。这种直接民主型的公众参与在早期联邦德国——1949年以来是一个议会民主政体——拥有相对较少的发展余地和传统。瑞士则完全不同,在这个小国,以众多全民公决表现出来的直接民主是数百年来成熟实践。在德国,在联邦层面,除了联邦州地域的重新划分是一个例外以外,未规定正式程序。对本国公民持有这种审慎态度的理由是简单的:德国宪法《基本法》的创立人鉴于魏玛共和国以及纳粹统治期间的群众鼓动的经历,对其公民实践直接民主的能力表示出怀疑。在联邦州层面——德国是一个联邦制国家,目前拥有16个相对独立的联邦州,它们各自有自己的州长——情况则完全不同(请参见表1、表2、表3),在许多联邦州里数十年来越来越多地有全民请愿和全民公决,在地方层面全民请愿与全民公决则更经常出现。原则上可以说,

直接民主型的正式程序在过去 20 年里频次明显增加,而且变得越来越重要。其中请愿与公决是紧密联系在一起的:请愿总是第一步、第一个要越过的门槛,以便迫使举行全民公决,在许多情况下是出于反对议会多数决定的目的。但是,除了直接民主的程序,还有一系列的其他的公众参与的正式程序,尤其是在地方层面。对此,本文下面还会详作分析。

与正式程序相区分的是形式多样的非正式程序,它们往往是各种协商型也就是说咨询型的公众参与形式,它们虽然不是以法律形式规定的,但是在地方层面,常起着大得多的影响。这种非正式程序例如包括在本书的其他文章中所描述的规划小组/公民鉴定、未来工场、公民调查以及许多其他程序。当 1969 年首个社会民主党领导下的联邦政府上台以及联邦总理维利·勃兰特宣称“我们要勇于实践更多民主”之时,他主要是指要在共和国的各个层面扩大这种非正式的民主参与。但是,当时已经存在着公民社团尤其是德高望重者社团在地方层面的非正式参与的形式。这一公民参与形式是咨询式、建设性的,且政治上往往偏向于保守,它在 20 世纪 60 年代末以来被新一代行动所取代,这些在公民参与下的行动更多地是为了抵制现有的管理体系。这一“议会外的反对派”在地方层面体现在众多的公民倡议行动之中,它们旨在反对国家以及经济界的、尤其是交通与城市规划领域的项目计划,以及旨在同环境污染做斗争。通过这一广泛的运动,在德国阻止了许多超大型规划项目,公众参与却背上了“拖延与抵制”的名声。协商型民主程序的形成是对这一状况做出的反应,在这种程序中,建议和尝试的是建设性地解决问题的新方法,意欲“勇于实践更多的建设性民主”。在我们以下审视众多单个重要程序之前,我们先来总览一下正式与非正式的公众参与在联邦州和地方层面的发展情况。

二、联邦州层面正式的公众参与程序

在联邦州层面,作为直接民主的程序,全民请愿与全民公决是以法



律形式规定的。并不存在统一的规定,而是各个联邦州之间有着很大的差异。全民请愿与全民公决的必要条件是在各个联邦州的州宪法中加以详细的规定。正如表 1 所示,在法定人数、收到期限和最少参与人数等方面差异非常大:

表 1 德国各个联邦州的公众参与情况

联邦州	全 民 请 愿		全 民 公 决	
	法定签名人数	收到期限	法定同意人数 普通法律	法定同意人数 修宪法律
巴符州	16.6%	14 天	33%	50%
巴伐利亚州	10%	14 天	无法定人数要求	25%
柏林	7%,普通法律; 20%,修宪法律	4 个月	25%	50%+2/3 多数
勃兰登堡州	约 4%	4 个月	25%	50%+2/3 多数
不来梅	10%~20%	3 个月	25%	50%
汉堡	5%	21 天	20%	50%+2/3 多数
黑森州	20%	14 天	无法定人数要求	不可能
梅前州	—	无期限	33%	50%+2/3 多数
下萨克森州	10%	12 个月	25%	50%
北威州	8%	8 周	15%	50%的参与率以 及 2/3 多数
莱法州	约 10%	2 个月	25%	50%
萨尔州	20%	14 天	50%	不可能
萨克森州	—	8 个月	无法定人数要求	50%
萨安州	11%	6 个月	25%	50%+2/3 多数
石荷州	5%	6 个月	25%	50%+2/3 多数
图林根州	10%(F) 8%(A)	4 个月 2 个月	25%	40%

2008年,在柏林就市中心的滕珀尔霍夫机场是否要继续运营而举行的全民公决,由于略微少于法定人数而失利了。虽然投票的多数公民赞成继续运营,但是,仅有近22%的有表决权的公民参加了公决投票,而非所必需的至少25%。这个例子表明,法定人数在重要的议题、在如这里的案例中的、情感色彩很浓的议题上也是一个经常越不过去的高栏。

三、地方层面的正式程序

表2 德国联邦各州全民请愿与全民公决情况

联 邦 州	法定签名人数 地方层面全民请愿	法定同意人数 地方层面全民公决
巴符州	5%~10%	25%
巴伐利亚州	3%~10%	10%~20%
柏林(各区)	3%	15%
勃兰登堡州	10%	25%
不来梅(市)	10%	25%
不来梅港市	10%	30%
汉堡(各区)	2%~3%	否
黑森州	10%	25%
梅前州	2.5%~10%	25%
下萨克森州	10%	25%
北威州	3%~10%	20%
莱法州	6%~15%	30%
萨尔州	5%~15%	30%
萨克森州	5%~15%	25%
萨安州	6%~15%	25%
石荷州	10%	20%
图林根州	13%~17%	20%~25%



在地方层面不存在有关直接民主程序的统一规定,每个联邦州均自行规定。但是,所进行的程序数无论如何要明显多于联邦州层面。除了全民请愿以及全民公决以外,还存在着一系列直接影响政治的不同可能性。例如,在修订道路的营建计划以及实施所谓的计划确证程序时,必须向当地居民听证。但是,这些参与权一般只是把公民作为直接当事人,例如作为一条道路附近的居民,而不是把他们作为一个整体即国家的主人和责任人。它们规定的是诸如针对建造规划的申诉权和异议权等当事人权利。公民在这些程序中基本上只能表示反对或沉默。但是在过去数十年里,日益形成了公众更加建设性地参与地方规划过程的程序,例如“Planning for Real”模式。由此我们也已经过渡到了非正式程序。正如表 2 所示,全民请愿与全民公决在地方层面的法定人数要求更低,由此它们实施的门槛要明显低许多。

四、非正式的公众参与程序

我们现在来考察众多不同的公众参与的非正式程序,它们往往用于解决地方的问题,但绝非局限于此。下表不仅列出了所有从 20 世纪 70 年代以来形成的不同程序,而且也列出了它们的应用领域,也就是说对应的政治问题状况。这里我们总计区分五种不同的问题状况。乍一眼看来拥有优先性的是解决冲突性的政治问题——对于这类问题业已存在各种替代型解决方案——这一任务,这种问题类型——我们也可以把它细分为“解决冲突”和“决策”——原则上有别于那些其解决方案尚待形成的问题状况。我们在地方政治中这两种问题类型均可遇到,当然,存在着很大的重叠区域。但是,把这两种(三种)不同的问题状况从理想模式上加以区分,仍然是有意义的。

在这两种理想模式的问题状况以外,我们还可以区分另两种问题状况或者说功能,即信息问题或信息管理和投诉问题或投诉管理。许多程序较少是为了解决问题,而更多地是为了做准备,为了告知公众,或为了

接受和处理个体或集体的投诉。

表 3 就表明了各种非正式程序特别适合于解决上述哪类问题状况，我们不再对此做进一步阐释。

表 3 各种非正式程序适合解决问题情况

	公民会议	开放空间	公民调查	未来工场	调解	请愿书	公民展览会	规划小组
解决冲突					X			X
形成各种发展可能性/形成各种解决问题的建议	X	X	X	X				X
决策				X	X			X
提供信息/建立讨论的基础	X	X	X				X	
投诉管理					X	X		

(一) 未来工场

罗伯特·容克 (Robert Jungk) 和诺贝尔特·米勒特 (Norbert Müllert) 在 20 世纪 70 年代提出的未来工场的方法, 是让参与的公众自己制订具体的解决方案, 并在未来工场之后自己致力于这些解决方案的实施。罗伯特·容克想要让未来工场带给参加者能自己构建(自己的)未来的勇气, 并帮助他们从“无所事事”的听天由命的态度中走出来。因此, 未来工场特别适合于激励那些至今在政治上不大感兴趣或不大积极的人, 让他们参与进来。这一程序应用的领域是广泛分布的, 这是因为形成解决问题的点子, 是在不同背景下(经济、地方和教育领域)都需要的。这个程序拟由三个阶段组成: 在批评阶段之后是想象阶段, 最后是实现阶段。根据可能性, 各个阶段分别持续一整天 (Jungk, 1981)。



1. 程序的特征

- (1) 批评阶段：批评性审视问题状况；
- (2) 想象阶段：设计所希望的乌托邦(解决方案)；
- (3) 实现阶段：审查设计的解决方案的可实现性；
- (4) 允许并促进不同的视角。

2. 案例

针对萨克森-安哈尔特州年轻人和年轻家庭的、富有吸引力的乡村生活模式的未来工场,参见 <http://www.prolandleben.de/web/pdf/Zusammenfassung.pdf>。

(二) 规划小组/公民鉴定

20 世纪 70 年代初由彼得·迪内尔(Peter Dienel)开发的公众参与程序“规划小组”(若干年后,他又为这个程序补充了必需的公民鉴定,用以展示建议),它是对更多民主的贡献,目的不在于与国家斗争,而是要求国家机构通过委托规划小组来使更多民主成为可能。因为规划小组是从上至下倡议的,规划小组在某种方式上是公民倡议行动的对立面。

一个规划小组由一个大致 25 个随机挑选出的人组成,这些人被邀请来作为鉴定专家,并获得脱产,以便通常在 4 天时间里、在中立的主持人的协助下,就一个既定的问题制订解决方案。倡议者以及委托方一般是国家机构,专家和游说人士可以作为报告人进入程序,但是和在陪审法庭上一样,讨论只在公民之间举行。经常有 4~12 个规划小组平行地致力于一个主题,以便提高建议的代表性。规划小组的结果被归纳在一份公民鉴定报告中,该报告由公民在一次公开活动中呈送给委托方。规划小组和公民鉴定报告是高度务实的。由于参加者是随机选出的,所以它的建议在民众那里拥有很高的接受度(关于这个程序的形成与发展情况,也请参见汉斯-吕迪格·迪内尔在本书中的《公民陪审团和规划小组:冲突性问题解决中的协商民主进程》)。

1. 程序的特征

- (1) 公民经随机挑选产生；
- (2) 支付报酬和脱产；
- (3) 由有着不同意见的专家提供信息；
- (4) 小型工作小组且其组成不断在变化；
- (5) 在一份公民鉴定报告中公布结果。

2. 案例

针对柏林蒂尔加滕区马格德堡广场这个问题城区的未来的公民鉴定报告, 参见 <http://www.nexus-berlin.com/Nexus/Bereiche/Buergergesellschaft/magdeburger.html>。

(三) 调解

调解是一种古老的冲突解决方法(以色列国王所罗门就已经推行),作为一种被所有参与者接受的、旨在形成解决问题的方法的非正式、自愿程序,从20世纪70年代以来在美国和德国重又盛行。这个程序最主要的支持者中包括德国的霍斯特·齐乐森(Horst Zilleßen)。中立的主持人支持冲突各方的自我责任,并促进他们独立地制订解决冲突的各种可能方案。目前,德国有数百名经过培训的调解员,有专门的大学专业以及各种相应的进修课程。这个程序的政治应用领域包括在一名中立的、不偏袒的第三者调解下解决各方之间的冲突(Zilleßen, 1998)。

1. 程序的特征

- (1) 参与是自愿的,结果是开放的,参加者是了解信息的；
- (2) 冲突由冲突各方自行解决；
- (3) 在参与的冲突各方的利益之间进行衡量；
- (4) 未来的构建是这个程序的中心内容。

2. 案例

调解——位于慕尼黑的维也纳广场：在附近居民、商业业主、城市



行政管理机构和公民倡议行动之间,就慕尼黑维也纳广场的重构的成功调解,参见 <http://www.sellnow.de/docs/wienerplatz.pdf>。

(四) 请愿书

递交请愿书权是向国家的行政机构或议会递交呈文的权利,公民不用担心会因此遭受不利。在历史上的任何时候都存在向统治者递交呈文、请求和诉状的形式。在封建王朝和独裁时期,呈文往往是民众反对国家肆意妄为的唯一可能性。当时,个人处在请求者的位置,他向统治者提出其诉求,但不拥有获得答复乃至满足的法律请求权。在德国,对获得答复是存在法律请求权的。在 2005 年还引入了可以向联邦议院的请愿书委员会提交的网上请愿书,以及公开请愿书。通过这种方式,从个人的投诉权中就产生了一种协商程序。除了行政诉状以外,许多请愿书的内容有关于对社会与政治创新的建议(Bockhofer, 1999)。

1. 程序的特征

- (1) 个人请愿书: 某个人提交一份请愿书;
- (2) 集体请愿书: 一群人提交一份请愿书;
- (3) 公开请愿书: 一份请愿书被公开,每个人均可以在有限的时间里在请愿书上签名附和;
- (4) 请愿书在德国由一个请愿书委员会处理;
- (5) 请愿书体系的表现形式在各国差异明显。

2. 案例

要求联邦劳动事务所中的工作人员能更易于联系的请愿书(向德国联邦议院请愿书委员会提出的公共请愿书及其讨论的概览,参见 <http://petitionen.bundestag.de/>)。

(五) 公民会议/共识会议

由丹麦的技术后果评估机构首次引入的共识会议的方法,如今主要

在美国得到了推广。在德国,这个参与程序的引入,曾引起轰动的揭幕行动是 2001 年在德累斯顿举行的有关基因诊断学的首次共识会议。但是,从那以后,共识会议处理的不只是技术后果评估的主题,而是越来越多地还有完全不同的、有争议的主题。有时候,例如在德累斯顿,这个方法被冠以公民会议的名称。如果不是公民而是利益集团代表被挑选出来作为共识会议的与会者,那么这个程序会具有相反的作用:在会议结束时,利益集团代表比此前更强烈地固守其立场,这是因为他们在共识会议期间不能从他们作为特殊利益代表的角色中退出来。因此,这个程序的成功取决于,与会者承担一个新角色、采取一个新视角。公民要比具体利益的代表能更好地做到这一点。

1. 程序的特征

(1) 准备:专门个别邀请的利益相关者和专家或者还有随意挑选出的参加者在会议召开之前,在两个周末聚会,以便获取信息和向专家提出问题;

(2) 实施:向专家提出问题并与之讨论;

(3) 结束:编写和公开展示一份总结性文件。

2. 案例

“争议事件:基因诊断学”——德累斯顿德国卫生博物馆,参见 <http://www.bioethik-diskurs.de/Buergerkonferenz/Konsensus.html/>。

(六) 开放空间

据“开放空间”这一参与程序的发明人、美国的组织咨询顾问哈里森·欧文(Harrison Owen)自己所言,他是把这个程序作为一个由他筹备的国际会议的副产品加以开发形成的。在这次会议上,咖啡歇时间被证明是该次会议最有成效的部分。紧接着,欧文把公开的咖啡歇列为这个程序的基本原则:开放空间这一程序的参加者在没有事先计划的情况下,通过他们的行动确定过程的方向、进程和内容,自负责地同时致力于完全不同的分主题。如果在开始阶段很好地主持,开放空



间是非常有激励作用的,能激发创意点子。程序结束时产生的不是决策,而是更多的新的点子和倡议。这个程序特别适用于结构改组过程的准备以及就此达成一致意见。这个程序在德国有许多应用者,而哈里森·欧文在过去和现在也就相应地经常到德国来举办进修和培训班。

1. 程序的特征

- (1) 在全体会议开始时主持;
- (2) 紧接着非常开放的、自我组织的工作小组结构;
- (3) 工作小组可以随时更换;
- (4) 适用于几乎所有的大小小组。

2. 案例

开放空间——罗斯托克城区格罗斯—克莱恩“在格罗斯—克莱恩如到家”;主题:如何能使在格罗斯—克莱恩的居住重又变得有吸引力,参见 <http://www.buergergesellschaft.de/politische-teilhabe/modelle-und-methoden-der-buergerbeteiligung/ideen-sammeln-kommunikation-und-energie-buendeln/praxis-open-space-rostocker-stadtteil-gross-klein/103430/>。

(七) 公民调查

公民调查这个由赫尔穆特·克拉格斯(Helmut Klages)在世纪之交之后开发形成的程序,是定期、反复地对随机挑选出的公民就当前的地方政治的主题做标准化的提问。问卷被放在网上,因此所有的公民均有机会参与。因此,该程序完全是在没有讨论和意见形成过程情况下进行的。克拉格斯把他的民主发明理解为对面向小型群体的程序缺少推广的反应,这是因为通过未来工场、规划小组和开放空间并不能联系到众多公民;相反,问卷可以更好地向所有公众开放。

1. 程序的特征

- (1) 把广大的民众纳入进来,向民主选举产生的利益代表机构和行

政机构提供信息；

(2) 对一个由 500~1 000 人组成的有代表性的小组进行多年的问卷调查(每年询问 3~4 次)；

(3) 及时地把结果及其可行性回馈给所有公民、政治决策机构和行政机构。

2. 案例

公民调查“积极的阿恩斯贝格”：就地方性主题对公众进行定期的、有代表性的问卷调查,参见 <http://www.arnsberg.de/buergerpanel/index.php>。

(八) 公民展览会

公民展览会也是一种相对年轻的民主发明,它意欲通过生平、情感和美学要素使得公众参与及其结果变得更有吸引力。它的核心是一次展览会。在展览会上,每张海报介绍某一个人对一个既定主题的看法。因此,它使得个人在制订问题解决方案时的视角变得可视化,而且能够把视角展示给广大的人群。由海纳·雷格威(Heiner Legewie)和汉斯-吕迪格·迪内尔(Hans-Liudger Dienel)开发的公民展览会的基本思想,在于展示利益集团的观点、目的和动机,并紧接着使有关于此的公开对话成为可能。其中,出发点是就一个感兴趣的问题或主题询问不同的行为体。在这些采访中,行为体表述它们对该主题的态度,它们的行动、困难、希望和解决问题的点子等。同时也加入了美学元素,通常是照片,它们直观地展示行为体及其视角的核心。在这个基础上就形成了公民展览会,它把图片和访谈语句组合在了一起,由此以形象的方式就某一个主题或问题提供了新型的、活跃的视角。公民展览会用来提供信息和启发进一步的讨论,以及提高讨论和改变过程的透明度。

1. 程序的特征

(1) 把照片与高质量的访谈组合成一张海报；



- (2) 充满美感地、带有情感和生平因素地展示不同行为体的视角；
- (3) 在一场喜庆活动中为公民展览会揭幕是这个程序的组成部分；
- (4) 公民展览会作为提供信息、建立透明度和激发进一步讨论的手段。

2. 案例

公民展览会“外移与回归——马格德堡的回归故事”：在公民展览会上，展示外移者返回马格德堡的动机，参见 <http://www.partizipativemethoden.de/buergerausstellungen/>。

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上海的地方立法听证实践

阎 锐

按照“坚持科学立法、民主立法”的要求,根据《中华人民共和国立法法》规定,截至 2008 年 8 月,上海市人大常委会已经举行了 8 次立法听证会,数量在全国居于前列,也积累了一定的实践经验。

一、举行立法听证会的基本情况

2000 年颁布施行的《中华人民共和国立法法》确立了立法听证制度。2001 年 5 月 18 日,上海市人大教科文卫委员会就《上海市中小学生伤害事故处理条例(草案)》中的有关问题举行立法听证会,开了上海市立法听证会的先河。此后,上海市人大常委会又在《上海市劳动合同条例》(2001 年 9 月 29 日)、《上海市历史文化风貌区和优秀历史建筑保护条例》(2002 年 4 月 18 日)、《上海市住宅物业管理规定》(2004 年 2 月 26 日)、《上海市城市道路管理条例(修订)》(2006 年 8 月 16 日)、《上海市绿化条例》(2006 年 12 月 14 日)、《上海市燃气管理条例》(2007 年 9 月)、《上海市房地产登记条例》(2008 年 7 月)立法过程中,举行了 7 次立法听证会。

这 8 次立法听证会均为委员会立法听证,由市人大有关的专门委员会组织,邀请市人大常委会主任、副主任和其他组成人员参加。立法听证会所确定的听证事项,主要都是法规草案审议或者征求意见过程中社会较为关注、各方争议较大、与人民群众生活密切相关的问题。提议举行听证会的专门委员会通常对常委会审议意见、代表意见、区县人大常



委会及有关社会团体的意见、座谈会意见,以及向社会公开征求意见时收集的意见进行归纳和分析,从中提炼出 2~4 个适宜听证的问题。每次立法听证会都向社会公开,允许国内外媒体采访报道。从效果看,每次立法听证会都采纳或者部分采纳了听证会陈述人的意见,体现了社会公众的意愿。

二、举行立法听证会的程序

上海市 8 次立法听证会的举办程序大致包括以下几个阶段: 决定召开听证会,拟定听证会方案,发布听证会公告接受报名,举行听证会,制作听证会报告。具体如下:

(一) 决定举行听证会

一般由有关专门委员会在修改、审议法规草案的过程中提出,报经市人大常委会会议同意。从实践情况看,由于立法听证会往往在法规案第一次审议之后举行,因此,负责统一审议工作的法制委员会或法工委提出举行立法听证会的居多。

(二) 拟定听证会工作方案

为了保证听证会顺利进行,取得预期效果,在举行立法听证会前都制订了听证会工作方案。听证会方案一般包括如下内容: 召开听证会的依据、必要性和指导思想,组织单位及主持人,听证会公告的发布形式,举行听证会的时间、地点,需要听证的主要内容,选择听证陈述人和旁听人的原则、方法,听证陈述人的权利和义务,听证会纪律或者注意事项,听证会的宣传报道安排,听证会进行的程序,听证报告的制作与提交等。

(三) 发布召开听证会的公告

在召开立法听证会 10 日之前,一般由市人大常委会研究室联系媒

体发布听证会公告。目前的做法是既在报纸上发布公告,也利用互联网发布公告,发动社会公众积极参与。听证公告会注明听证的时间、内容、报名办法,听证会涉及的法规草案条款也会同时予以刊登,如果法规草案之前在媒体上全文公开征求意见的,则注明公开征求意见的媒体名称日期等。

(四) 接受公民和组织报名,遴选听证会陈述人

市民可以按照听证公告的要求,通过电话、传真、邮件等方式报名,报名者需在报名时表明自己对听证内容的基本要点及理由。听证陈述人名单由听证会组织者遴选决定,遴选时主要考虑听证陈述人与听证事项的利害相关性、发表意见的代表性等因素,人数一般是20~30人。对没有被遴选为听证陈述人的,一般作为听证会旁听人参加会议。听证陈述人确定之后,组织者会向其寄送书面的立法听证会通知。

(五) 举行听证会

听证会一般由委员会负责人主持,首先由听证会主持人介绍出席听证会的听证人、常委会组成人员,之后宣布听证会纪律及注意事项。听证会按照听证事项先后顺序逐项听证,一般先由法规草案提案人代表发言,介绍法规草案有关条款的背景和设计理由,之后由陈述人举手发言。在听证过程中,听证人可以向陈述人提问。听证会都是公开举行的,允许媒体报道。听证会时间一般是半天。

(六) 制作听证会报告

听证会结束后,会制作听证报告,全面、客观地梳理听证陈述人的不同意见,并在分析听证陈述人意见的基础上,提出初步的处理建议。在常委会审议时,听证报告作为参阅材料,提交会议作为审议该项法规案的重要参考。在后几次听证会实践中,我们还将听证报告通过网络向社会公开。



三、上海地方立法听证规则的制定和修改

2001年5月,在借鉴国内外立法听证会经验的基础上,市十一届人大常委会主任办公会议讨论通过了《上海市立法听证暂行规则》。根据该规则施行后的实践经验,在2007年对该规则进行了修改。经修改的《上海市地方立法听证规则》共18条,规定了立法听证会的组织主体、听证事项的范围、召开听证会的程序、听证会报告的内容及公开等内容。兹简要介绍如下:

(一) 关于听证事项的范围

为了推进立法听证会经常化,适当扩大了可以举行立法听证会的范围,具体包括七项:涉及本市社会、经济发展的重大问题的;对相关公民、法人或者其他组织的权益有较大影响的;不同利益群体之间有明显利益冲突的;对制订、修改或者废止地方性法规的必要性有较大争议,或者对地方性法规案的内容有较大争议的;在法规中设定行政许可、行政处罚、行政强制措施的;需要进一步搜集信息、广泛了解民意的;常委会会议认为需要听证的其他情形。

(二) 关于听证陈述人的范围

基于立法听证会具有发现事实、了解信息的功能,明确立法听证会的陈述人既可以是与听证事项有利害关系的当事人,也可以是能够提供相关事实的组织和个人,还可以是相关方面的专家。

(三) 关于听证报告的效力

立法听证会报告不是立法的直接依据,但应当作为市人大常委会制订、修改或者废止法规案的重要参考,规则中对此作了明确。

公民陪审团和规划小组：冲突性 问题解决中的协商民主进程

汉斯-吕迪格·迪内尔

一、引言：为何协商民主尚未大规模应用

20 世纪 70 年代,当时在德国伍波塔尔大学(www.planungszelle.de)任教的家父彼得·迪内尔(Peter Dienel)首先提出了公民陪审团的概念。他用的是一个德语单词“*Planungszelle*”(意为规划小组)。无独有偶,美国杰弗逊民主进程中心发起人奈德·克罗斯比(Ned Crosby)(<http://www.jefferson-center.org>)也于此时提出了类似概念。自此,他们在许多国家形成了追随者和实践者的队伍,尤其是在英国。日本最近也加入了这个队伍。克罗斯比的公民陪审团和迪内尔的规划小组有几个不同之处。其一是规模:克罗斯比的陪审团人数较少,在 18~24 人之间;迪内尔认为至少要有 4 个平行的规划小组,每组 25 人,总共 100 人,才能使结果具有足够的代表性。但两者之间的相似之处远远多于不同点。两者的进程都高度标准化,参与公民是随机选择出来的,有充足的时间形成意见甚至解决方案,有报酬,而且可以在 5 人小组中讨论既定议题。在两种进程中,充当陪审员使得公民有机会探讨并维护公众利益,而非一己私利。两位倡导者都预见到这种协商民主工具的大规模应用。迪内尔在他 1978 年撰写的基本文件“*Die Planungszelle*”中甚至预言说,联邦政府将会建立一个独立机构来组织全国各地的规划小组(Dienel, 1978)。



在本文中,作者将讨论德国式“公民陪审团”的特点和优势,但更重要的是,探讨规划小组和公民陪审团至今仍未被广为采用的原因,并提出解决之道。一言以概之,我想解释为何定制化和标准化的直接民主进程及工具在大规模应用时会出现问题,以及有什么办法克服它们。

大部分人在回答这些问题的时候会归咎于需求方,也即政治、政客和公共管理当局,认为后者从制度上和行为上抵制协商民主进程。除了从道德角度谴责那些试图将公民排斥在决策之外的人,人们也找出了一些理性的,乃至马基雅弗利式的原因,来解释为什么西方代议民主制中的选举获胜方会对与之相辅相成的直接民主工具心存疑虑(Pällinger, 2007)。相反,从未采用多党竞争这种西方代议民主制的政治体系可能在采用协商民主进程时会少一些迟疑。从长远来说,协商民主工具在未建立议会多党民主制的地方也许会有更多机会。

不过,西方直接协商民主的倡导者在同代议制团体作斗争的同时,也收集了一些支持在现存民主决策制度中加入协商民主进程的论据,例如议会、政党或政府当局若能在决策过程中加入协商民主工具,将能增强其合法性。

有关某一政治体系——也即需求方——是否已做好接受直接民主的准备的文献已经很多,本文恕不赘述。本文将强调与之对应的另一方,介绍一些论点和见解,以便制定更新、更好的策略,促成规划小组、公民陪审团和其他协商进程的更广泛采用。本文将评估各民主进程及其主要倡导者,并指出待改进领域。

首先,我们用可持续能源这个最近在经济学领域中跃居重要性首位的话题来做个对比。回顾自 20 世纪 70 年代以来的可持续能源技术史,我们会发现这些替代技术在至少 25 年的时间里仅被视为缝隙市场的活动。只有到了最近 10 年,可持续能源生产才成为一个快速增长的大众市场。在这次变迁中,可持续能源生产摇身变为大产业,许多老一辈的反文化预言家和绿色活动积极分子则因为他们从 70 年代就开始追捧替代影子经济而名声大噪。但是,随着该行业的壮大,这些人失去了对局

势的掌控力,逐渐销声匿迹(Bruns, 2008)。我在想,这些协商民主制的倡导者会不会因为他们所主张的全社会方法和学术意识形态较强的文化而阻碍了规划小组、公民陪审团和其他协商民主工具的应用?他们——抑或我们——真想离开缝隙去加入新的联合阵线,以推广协商民主工具的应用吗?

二、“规划小组”性质的公民陪审团之特点

德国的第一批规划小组建立于 20 世纪 70 年代早期。彼得·迪内尔将之命名为“*Planungszelle*”,部分反映了当时人们对规划的热情。时至今日,这个说法已经成为一个广为采用的术语,代表着该进程的最低标准,因此我们还将继续使用它。跟其他协商进程相比,“规划小组”性质的公民陪审团具有高度标准化的特点,因此质量方面的问题比较少。“规划小组”指的是公民小组在主持人的协助下为特定问题制定解决方案。此类公民陪审团有以下六个特点:

(一) 参与公民随机挑选

如从所有 16 岁以上登记公民(或登记选民)中挑选。除去专家和主持人,成立有 4 到 20 个平行陪审团,共 100 到 200 名随机挑选的公民,参加到进程中来。

(二) 公民获得充裕时间

他们为一个具体目标担任几天(通常 4 天)的顾问。每天最多有 4 个工作单元。这样他们一共可以讨论研究 16 个子议题,从而为一个较大的议题提供咨询意见和解决方案。

(三) 某个政府机构邀请公民参加并支付酬金

该进程是自上而下启动的,由某个政府机构组织并承担相应费用,



这样一来,后者就可以从日常活动中抽身开来并获得相应的报酬。

(四) 提供有争议性信息

专家和相关利益方向陪审员提供具有争议性的信息。

(五) 成员变更

小组成员不断变更,以保证广大公众有平等讨论机会。

(六) 汇编“公民报告”

陪审团的建议汇编成“公民报告”,并在一个公开仪式上递交给组织该次陪审团的政府机构。

规划小组的组织、议程的起草、专家的选择和讨论结果的加工成文都由一位中立的主持人来负责。该主持人独立于发起此次协商的政府机构之外。整个进程必须事先规划,以确保其顺利进行。

表 1 规划小组的组织进度表

准 备		实 施			评 估	
第 1~2 个月		第 3~4 个月			第 5~7 个月	
计划和材料		规划 小组 1	规划 小组 3	规划 小组 5	预评估;编制公民报告(第 5 个月)	递交公民报告给委托方和公众
挑选 公民	寄送 邀请	规划 小组 2	规划 小组 4	规划 小组 6		宣布进一步的步骤(在 1 年内报告公民)

这些特点在过去几十年间历经发展、试验和改进。而规划小组的组织进度表体现了长期经验。

参加公民陪审团的专家可能有“党派”之别,但主持人是中立的,这样可以确保公民陪审团成员能从各利益集团和不同视角获取信息。随机选择跨越了公民的年龄组、社会阶层和性别,从而确保了公民顾问的

多元化。

欧洲的公民陪审团目前持续 4 天,但也可能缩短。在日本,时间被平均缩至 2 天。参与公民有充足的时间思考问题并形成看法这一点非常重要。公民有充裕的时间来搜索信息并做出判断。为了不使公民陪审团受到个别参与者的不当影响,一般针对每一个目标都会设立几个公民陪审团。

表 2 典型的四天制规划小组工作计划

时 间	第 1 天 主题领域 1	第 2 天 主题领域 2	第 3 天 主题领域 3	第 4 天 反省
8: 00~9: 30	工作单元 1: 开始时的介绍	工作单元 5: 报告与讨论	工作单元 9: 报告与讨论	工作单元 13: 对结果进行反省
9: 30~10: 00	茶歇	茶歇	茶歇	茶歇
10: 00~11: 30	工作单元 2: 报告与讨论	工作单元 6: 报告与讨论	工作单元 10: 报告与讨论	工作单元 14: 对结果进行反省
11: 30~12: 30	午餐	午餐	午餐	午餐
12: 30~14: 00	工作单元 3: 报告与讨论	工作单元 7: 报告与讨论	工作单元 11: 报告与讨论	工作单元 15: 最终讨论与表决
14: 00~14: 30	茶歇	茶歇	茶歇	茶歇
14: 30~16: 00	工作单元 4: 报告与讨论	工作单元 8: 报告与讨论	工作单元 12: 政治家听证会	工作单元 16: 程序评估与结束

发起陪审团的政府机构提出待讨论解决的问题,主持人将其分解为工作单元。每位参与者都获得充分信息对于进程来说至关重要。为此,每个工作单元伊始,都有专家甚至游说者从不同角度提供广泛信息,包括摘要、听证会和调查报告。

实际工作以 5 人小组形式展开。这些小组没有主持人和顾问,公民们详细讨论目标,并寻求共同决策。各种解决方案得以成形、起草和排定主次。这种工作环境为每位公民提供了多个自我表达、形成共鸣和相互体谅的机会。讨论的目的在于进行评估和找到解决方案。在此期间,



个人观点逐渐成熟。

表 3 规划小组中的一个工作单元的典型结构

30 分钟	10 分钟	35 分钟	10 分钟	5
专家报告	提问	小组讨论	介绍结果	分析结果的权重

所有研究都表明,讨论结果在很大程度上符合共同利益。尽管大多数协商进程都为捍卫个别利益提供了机会,但公民陪审团使得寻求共同利益成为可能。这样的角色极具吸引力,所以公民们踊跃参加,提出符合共同利益的建议,即使伤害到自身利益也在所不惜。例如,美国的某些公民陪审团甚至呼吁加税(Crosby, 2005)。

规划小组和公民陪审团在准备、起草和递交“公民报告”的时候一般会吸引很多公众注意力。随机挑选这一过程,再加上几天的精心讨论,为公众及发起该进程的政府机构接受公民陪审团的建议打下了基础。公众相信,随机选出的公民顾问们在讨论和建议中代表了民意。

基于以上特点,规划小组性质的公民陪审团有一定的优势和长处,许多试点研究也证实了这一点:

1. 不受游说团体影响

公民顾问任职期很短,因此不受有组织的利益团体的影响,不会被错误信息误导。公民顾问没有升职或再次当选的顾忌,所以即使是不受欢迎的建议也可以说出来。随机选取的公民对议题持中立态度,一般没有直接个人利益掺杂其中,而且因为担任公民顾问的时间很短,所以也不可能采取同自身职业或事业相关的立场。

2. 共同利益

公民顾问是共同利益的代表。虽然其他参与性进程——例如圆桌讨论、共识会议等——以保护和捍卫个体利益来吸引人,公民陪审团成员却乐意代表公众思考行事。在公民陪审团中,公民顾问将共同利益置于个人利益之上,寻求一个得到各方认可的共同目标。其结果大体上是

以议题为导向的。

3. 结果的可接受性

随机选择赋予公民陪审团很大的合法性,因为人人都有机会参与。一般来说,公民陪审团的建议接受度很高。公民、议会和管理机构也乐意支持“公民报告”中的建议,因为它们代表了民意。即使公民陪审团发布了令人不快的信息或不为人称道的决议,也能获得广泛支持。如此一来,他们促进了解决有争议问题的政治进程,还提供了重要的意见。

4. 多元整合

公民陪审团制度让平时毫无接触的人坐到一起交流,让原本在民主进程中少有代言者的人群和社团参与进来。参加过该进程的人士介绍说,多元化的个人体验有利于集体理性决策。

5. 发动群众

公民陪审团激励公民为社会做贡献。实证调查表明,即使在参加陪审团后很久,公民顾问对社会和民主的看法仍受此次体验的影响。为了充分利用此种潜力,建议对参加陪审团的公民1年后做1次回访。

6. 发扬光大

公民陪审团的一个重要特点就是它们可以大规模推广。公民陪审团和规划小组的数量可以成倍增长,效果不会被稀释。公民行动在这方面碰到了较大问题。试想,如果公众辩论中有几个公民行动团体提倡某一解决方案,而另几个公民团体却持反对意见,那结果会如何?

从1975年开始,德国进行了约60个大规模规划小组试点项目,美国有过大约30个公民陪审团(www.jefferson-center.org)。图1列出了德国每年的规划小组数量。

考虑到这一流程的新颖性、创新性和花费昂贵,又是对民主程序的革新,以上数据给人留下了深刻印象。在此期间,规划小组曝光率很高,被收入所有协商进程的列表。然而,尽管规划小组有其独特优势,受众广泛,成功案例很多,但我们不得不承认,它们尚未达到大规模应用的程度。

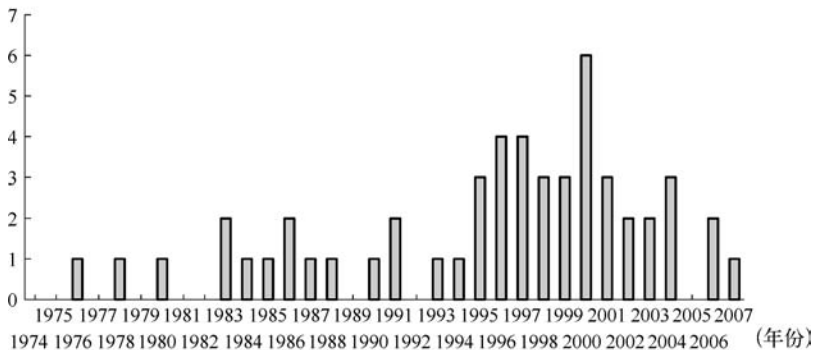


图1 德国的规划小组项目 (Vergne, 2008)

最近,从事治理研究的德国学者赫尔穆特·克拉格斯(Helmut Klages)写了一本小书,专门论述规划过程中用到的协商民主工具,并试图解释规划小组未被大规模应用这一令人沮丧的事实。他把重点放在供应方,而非需求方。他认为,许多协商进程可以追溯到20世纪70年代的平等主义反文化潮流。这一历史原因使得协商进程从某种程度上受困于一个次文化,因而不易推广传播。此外,许多协商民主的倡导者——如我在引言部分提到的环保主义者——似乎不情愿离开他们所处的反文化缝隙市场。克拉格斯尤其不赞同那种单纯依靠小组讨论的参与式进程。在他看来,这种小组讨论对很多公民的要求都过高了(Klages, 2007)。不幸的是,克拉格斯没有提供足够的实证资料来证明他的论点。尽管如此,他专注于倡导者这一点很值得进一步研究。在本文末尾讨论到日本案例时,我还会再次提到他的观点。有一些供应方的现象可以帮助解释为什么协商工具还没有从缝隙中走出来,成为可供大规模应用的标准化民主工具。我至少可以指出三点:

第一,协商民主工具在很多情况下被误用到了“错误的”政治问题上,即不太适用协商民主的问题上。换句话说,问题的类型和协商进程必须相互匹配(Fuhrmann, 2005)。

第二,协商民主工具通常的卖点是其创新性和新颖性。这对试点应用有利,但对推广不利。再用一次就称不上新颖了。

第三,协商民主进程通常被用于解决地方问题,而其实超国家层面的民主更有待提高。

我将在下文第三、四、五节讨论这三点。

三、问题的分类和民主工具

协商民主领域的倡导者认为某些工具可以解决所有社会问题。许多倡导者只支持一种进程,试图以一概全,例如哈里森·欧文(Harrison Owen)的“开放空间”,拉斯·克鲁弗(Lars Kluver)的“共识会议”,托尼·吉卜森(Tony Gibson)的“为真实而规划”,罗伯特·荣克(Robert Jungk)的“未来研究工作坊”,霍斯特·泽尔森(Horst Zillessen)的“冥想”,奈德·克劳斯比的“公民陪审团”,当然还有彼得·迪内尔的“规划小组”。有些进程,如公民行动,并无具体提出者。所有以上工具在解决特定问题时都有其独特的优缺点。直接民主工具相对来说不成功的一个原因是它们常被误用。当然,公民陪审团也不能解决所有政治问题。因此,有必要对政治问题进行分类,对民主进程进行分类,然后在宏观层面上对进程和问题进行匹配。

本文仅将问题分为两类:开放式问题和冲突式问题。开放式问题尚无解决方案,它们需要创意,因此是“头脑解放”的问题。与之相对的冲突式问题是“头脑碰撞”的问题:一些对立的、相互不兼容的解决方案早已摆上了讨论桌。冲突式问题需要在已知解决方案内做抉择。开放式问题需要利用协商进程,如“未来研究工作坊”,来发挥创意。就冲突式问题而言,人们对一个开放式问题已经提出了好几个解决方案,但将选择缩小到一个似乎不可能,因为总有来自少数派的强烈反对。为此我们需要其他工具。在代议制民主中,议会通常在冲突式问题上犹豫不决,因为下一次选举中可能需要在解决该问题时利益受到威胁的少数派的选票,因此议会试图推迟必要的决策。

公民陪审团尤其适合解决冲突式问题。它们有助于在相互矛盾的



解决方案中进行选择,并使各方都接受最后的决定。在我们社会的地方、国家和超国家层面上都有许多开放式问题:我们能理解必要的决策和解决方案,但我们没有政治工具来争取民众支持,因而形成的决定不具备约束力。公民陪审团尤其适合澄清冲突和打破僵局。总之,规划小组性质的公民陪审团有解决大量冲突式问题,如政府支出方面的问题的潜力。

所以,规划小组应该更多地被用于解决冲突式问题,而非开放式、创新式的问题。然而,到目前为止,它们大多被用于解决开放式问题,如未来发展模式,或城市、地区的愿景。原因很简单:目前的政治体系还不愿意将冲突式问题拱手交由公开的协商进程来解决。但是说到愿景和模式,其他工具——例如“未来研究工作坊”——更为合适。至于冲突性问题,我还没有找到比规划小组和公民陪审团质量更高的工具,尽管它们的潜力还没有完全发挥出来。

四、公民陪审团的创新性阻碍了标准化

从 20 世纪 70 年代伊始到今天,公共部门的管理当局一直不太愿意使用“公民陪审团”和其他参与性工具来解决特定的问题和提出建议。其中一个障碍是这些进程需要花费金钱,这就需要编制预算和拨给经费。有一种观点认为,有必要为公民陪审团提供资源,因为这种新型民主形式具有创新性。政府当局有时会利用此种论点来获取供研究和创新所用的额外资源。然而,这样的论点和策略在一个机构里只能用一次,因而不利于公民陪审团的长期实施。如果考察一下迄今为止的所有规划小组项目,我们就会发现很多项目没有任何跟进活动,巴伐利亚和柏林的项目除外。

测试一种新的民主工具并借此进行民主试验是管理机构在决定采用公民陪审团时的重要论点。尽管公民陪审团已经问世 30 年了,它还是被当作一种新工具,这对它是有利的。与此同时,正是这个论点阻碍

了它的经常使用。大多数官方机构只采用公民陪审团一两次,一般是在公众密切关注下进行的,形成的建议很明晰,而且通常被采纳。协商进程相当成功,但尚无标准化实施乃至大规模应用的迹象。

五、协商民主的空间维度：地方、地区、国家、超国家层面的公民陪审团

迄今为止,大多数公民陪审团被用来解决地方和地区性问题上。但其实无论在地方上还是地区、国家和超国家层面上,民主和具有约束力的集体决策都有待提高(Huget, 2007)。试以超国家的环境问题为例,全世界都迫切需要一个具有约束力的决策过程来应对环境问题,可是偏偏就在超国家层面上最缺乏直接民主。在这个层面上规划小组似乎特别适用,不过这有待未来进一步探讨。

直到两年前,也就是规划小组出现后 30 年,首个超国家团体(欧洲委员会)才下令组织规划小组为超国家问题提供咨询。这个决定虽然姗姗来迟,但所要解决的问题却极其重大:欧盟的未来。2008 年初发表的“公民报告”提出了几个经过深思熟虑的建议(Dienel, 2007),这表明欧洲公民有能力就超国家问题做出决定。此次公民陪审团隶属于一个更大的项目,即由欧盟发起的、受到欧盟委员会副主席玛戈特·瓦尔斯特伦特别支持的“欧洲公民协商”。比利时博杜安国王基金会担当协调工作,随机邀请了欧盟 27 个成员国的公民向欧洲委员会陈述他们对未来欧洲的愿景。该进程和“D 计划”(D 是英语单词“民主”、“对话”和“辩论”的首字母)表明欧洲各机构更有意于贴近欧洲公民。至少在 2005 年法国和荷兰公民否决了《欧盟宪法条约》后,欧洲委员会、欧洲议会和其他欧洲机构一直在探讨让公民参与到政治进程中的新途径,以及能够有效体现欧洲公民意愿的新民主方法和实践。玛戈特·瓦尔斯特伦青睐协商工具并支持其在超国家层面的应用,而公民陪审团和公民报告这两种方法有利于该新动向的发展。



许多超国家层面的问题不但没有解决方案,甚至没有令人信服的方法来做出具有约束力的集体决策(Pallinger, 2007),如联合国和八国集团不堪气候变化之类问题之重。因此,我们的中心目标应该是找到有利于形成超国家层面具有约束力的决策的新民主实践。公民陪审团是一种适宜的方法。有关欧洲未来的公民报告不但触及欧洲的未来,也可能塑造未来的民主形态。

六、展望未来：公民陪审团的标准化和大规模应用

只有两个国家有过多次公民陪审团的实践——英国从1995年开始,日本起步更晚,而其他国家的实践仍然很少。那么,这两个国家有什么与众不同之处呢?

英国是第一个大规模实施公民陪审团的国家(Kuper, 1996; Coote, 1997; Barnes, 1999)。政府向公民陪审团征询意见以制订卫生政策,还将之用于诸如遗传学等争议话题(Dunkerley, 1997)。迄今为止共组织过约100次公民陪审团,大多数只耗时一到两天。主要由政府提出动议,委托“意见领袖研究(OLR)”这家市场调研公司来组织公民陪审团。托尼·布莱尔和现任首相戈登·布朗都非常支持公民陪审团,还用它来提高各自政策的接受度。这种政治支持既有好处又有危险。例如,萨里大学的汤姆·韦克福德(Tom Wakeford)就指责公民陪审团缺乏独立性(Pimpert, 2001)。他认为,决定公民陪审团未来的关键在于更好的质量控制,以确保其公平性、中立性、代表性和透明性(Wakeford, 2002)。顺便提一句,罗雅尔(Segoline Royal)将公民陪审团在英国的成功视为典范。她在竞选法国总统时强调了类似做法,尽管最后她未能当选。英国的情况证明了我在上文中解释为何要大规模应用公民陪审团时所给出的三条原因中的两条。

第一,过去已有采用协商进程来解决冲突性问题的先例。当年英国政府试图寻求民众对新卫生政策的支持,而公民陪审团恰恰做到了这

一点。

第二,该进程已在不受任何一位概念提出者的直接影响下得到过务实的应用。不但进行过试点,而且还有过标准化的、解决特定政治问题的实践。

日本从 2006 年起大规模应用规划小组,但成功之路有别于英国。在日本,一个强大的非政府组织——“国际支部”(International Chapter)——自下而上地推动公民陪审团的更多实践,而政府对此做出响应。“国际支部”是一个具有遍布全日本 4 万多成员的保守派非政府组织。大多数成员是年纪较轻的工商界人士(现任首相也参加过这个团体)。它不同于左翼反文化势力,把直接协商民主看作以效率为导向的保守商业文化的中心。日本已召集过的规划小组耗时比德国短,成本也较低。很显然,这种新型社会文化框架方便了日本市长们召集规划小组,而他们在欧洲大陆的同侪却不能。尽管日本的成功原因有别于英国,但两者都证明直接协商民主进程目前有用,希望未来也能有用。

附：图示公民陪审团的工作



图 1 小组讨论



图2 政治家听证会



图3 小组讨论



图4 介绍结果



图5 标出结果的优先性



图6 标出结果的优先性

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德国城市规划和城市建设中的公众参与

弗兰克·尤斯特

一、前言

20 世纪 90 年代初以来,在各国以及国际讨论中形成了这样一种发展态势,即公众参与不仅用于满足公民业已提高的要求,而且也应加以拓展,用于调控地方的规划事务,以便汇总以及更好地利用一个城市中的各个行为体的潜力。尤其是 1992 年联合国里约热内卢环境与发展会议以及 1996 年联合国伊斯坦布尔人居会议(Habitat II)的总结文件强调“良治”与“参与”互为条件。因此,从全球层面到地方行动层面,就有了这样的实践:通过多种多样的方法来为其规划程序增加合作型规划元素,并认真对待增加参与的要求。为此,在有关行政结构改革的讨论——其中也涉及更高效地组织行政机关和技术流程——的框架里,特别是“贴近公民”的元素处在主要地位。有这样一种观点日益得到了贯彻,即地方行动的成败主要取决于公民承担责任以及参与协作的意愿。不仅听取公民的意见,而且让他们一起规划,如今几乎已经属于城市规划负责人的通常手段之一。参与越来越多地在地方事务的所有层面发生,无论是通过法律规定参与的传统形式,还是通过多变的或程式化的沟通形式。在冲突情况下的调解程序、在各种批准程序框架里的、针对大型项目的听证,甚至于编制地方预算过程中的参与形式(“参与预算”)也在增加。本文重点研究城市开发过程中的参与可能性。在简述框架



条件以及对概念加以限定之后,本文将分析德国公众参与城市规划与城市建设中的主要形式。

二、框架条件

正式规定规划过程框架里的参与权,这始于20世纪60年代初的德国西部。1960年的《联邦建筑法》规定要公示营建计划,以便让公众了解规划的意图。由此,人们可以表达倡议和顾虑,它们将在议会作出决议前,在进一步的程序里被审议。但是,这还不能被称作是“早期且积极地纳入规划过程”。这在后来几年才发生了改变。

“我们想要勇于争取更多民主。我们将开放我们的工作方式,并满足对信息的关键需求。我们将致力于让每个公民获得参与国家与社会改革的可能性。”——联邦总理维利·勃兰特1969年10月28日的政府声明。

60年代后期社会政策的变革以及与此相联系的普遍的政治觉醒氛围,也使得公民对规划问题上有更多自决的希望也在增长。特别是与城区整治相关联,形成了最初的倡议行动,它们表达了对参与决定可能性小的不满。由此,首次对于行政管理机关产生了提高信息与解释活动的必要性,以便实现对所计划的措施更好的接受度。这些变化也体现在1971年的《城市建设促进法》中,它首次给予了相关居民在整治措施中的更加具体的决定机会。如今,在“准备性调查”框架里,应了解“所有人、租户和其他有使用权者的态度与参与协作意愿,以及接受他们对于计划中的整治措施提出的建议,并与当事人讨论不利后果是否可避免”(《城市建设促进法》第4条)。

“相关的公民必须确信,乡镇的建筑发展不是跳过他们、由官方进行的。”——《城市建设促进法(草案)》的论证部分(1970年)

5年后,“准备性的参与”作为“提前的公众参与”被纳入一般的城市建设法中,由此,它不再仅仅适用于整治措施。

额外的规定,例如 1990 年的《建筑法典措施法》或者《统一条约》的特殊规定——它同样由 1993 年 5 月 1 日生效的《投资简化和住宅建设用地法》修订,目的在于减少现有的弊端(如住宅匮乏、联邦新州中的法律和建筑方面的不足)。实现这些目标最重要的手段在于使规划程序变得紧凑。这会导致提前的公众参与的取消或降低,或者例如导致通常的公示期限的缩短,这当然不是积极投入的公民的利益所在。这些原先临时性的规定通过 1998 年 1 月 1 日对《建筑法典》的修订,融入到《建筑法典》中,并因此无期限有效。

(一) 乡镇的规划权

根据《建筑法典》,城建规划属于城市与乡镇的自治任务。一个乡镇有义务自负责任地编制建筑主导计划,“只要且倘若这对于城建发展与秩序是必需的话”。至于什么时候建筑主导计划的编制或者其变更是“必需的”,在很大程度上属于城市在规划方面的裁量。公民无权例如出于经济或个人利益来编制或修改建筑主导计划。具体而言,议会的一个专门为此设立的委员会,即规划委员会,致力于规划问题。最终的决定由乡镇议会或市议会自己作出。

(二) 公众参与和参与

“公众参与和参与”的概念一般在规划项目方面是同义使用的。从法律视角看,不存在普遍有效的定义。更确切地说,公众参与概念的重要性取决于它所相应融入的法律规范。一般而言,属于其中的包括公民对行政决策和政治过程的参与和决定。这种参与可以有不同的强度等级,从普遍的参加选举,到公民提案和全民公决等更加直接的形式,再到参与公民倡议行动框架里的具体规划过程。如果在一个具体的规划案例中,公众参与是由国家机关引发的,可以称之为“从上至下的参与”;相反,若私人的倡议行动是一个参与过程倡导中的推动力,则可以将此称为“从下至上的参与”。



公众参与有着多种多样的功能。它是信息媒介、问卷调查手段,更进一步则是规划与构建手段,服务于质量控制(评估)、规划的改善以及促进接受度,它可以有目的地为特定社会阶层的融入与激励作出贡献,并充当决策的助手以及催化剂。它们之所以令公民感兴趣,是因为它们主要是施加影响的手段,并为规划的可持续性作出贡献。但是,“公众参与”不能与“当事人参与”相混淆。在后者,只有那些人才被纳入了审批程序,即由于即将做出的行政决定可能会使他们的、受《基本法》保护的主体权利(例如生命、健康、人身不可侵犯)受到损害,并由此拥有起诉权。

三、建筑主导规划的两个阶段

建筑主导规划在《建筑法典》中是作为两级的体制设定的。存在着两种建筑主导计划,它们相互处在等级关系中:土地利用计划和营建计划。建筑主导规划必须适应于空间秩序的目标。通过这一法律规定,保证了把当地主管的乡镇合理地纳入更高一级的相互关系里。空间秩序的目标包含在各个州的项目和计划中。例如,一个重要的州规划方面的手段是地域开发计划,它规定了整个城区,例如闲置空间和居住区域。这些规定对于乡镇安排新的住宅区或工商区是有约束力的。

(一) 土地利用计划

土地利用计划作为准备性的建筑主导计划,奠定了营建计划编制的基础。建筑主导计划应保证有序的城建发展以及与公益相符的、社会相宜的土地利用,并用于确保一个有人的尊严的环境、保护和开发自然的生活基础。在编制土地利用计划或对其修订时,必须遵守空间秩序和土地规划的规定。另外,土地利用计划需要与相邻乡镇协商。

土地利用计划的编制是每个城市和乡镇的义务,它初步规定了城建规划的基本特征。在土地利用计划中通过色彩、阴影线和符号说明这些

土地应服务于哪些目的,也就是说住宅用地、工商用地、公园等绿地、墓地、小型花园、体育与游戏用地、水厂和垃圾堆埋场等市政供给设施、农林业用地以及其他等等。因此,土地利用计划是整个城区规划的基本特征。



图1 一份土地利用计划的截图

土地利用计划应前瞻性地为大约未来10~15年调控整个乡镇的城建发展的方向,然后应重新拟订,以便能顾及变化了的条件和目标。如果短期里出现新的目标,现行的土地利用计划在部分领域要加以修改。土地利用计划由乡镇议会通过,在由区政府批准后对所有行政机关具有约束力。对于公民而言,从土地利用计划中并未形成任何直接的权利与



义务。但是,由于它是乡镇营建计划以及特定项目批准的依据,应有尽可能多的、感兴趣的公民参与其重新编制和修订,以便重要的预先决定不至于在没有广泛公众参与情况下做出。

(二) 营建计划

营建计划应保证有序的城建发展以及与公益相应的、社会相宜的土地利用。它服务于地皮的建造利用和其他用途的准备,并直接创建建造权。营建计划必须从土地利用计划中形成。对自然与景观的干预必须加以均衡。在营建计划的编制及其变更过程中,在程序框架里,公众与公共利益的载体有两次参与的机会。

营建计划有法律约束力地规定了编制区域的城建秩序。在一个建造区域,地皮的建造利用有约束力地按照种类与尺寸进行了规定。营建计划的一个重要作用是规定公共空间和私人空间,或者说公共地皮和私人地皮。它在尺寸上使地皮清晰可见,并且直接涉及每一位公民:它规定,允许在哪里、按何种规模以及以何种方式建造什么,而且清晰到小块土地。它明确规定道路的走向、绿地、游戏场所以及购物区域的位置,它决定工业和商业企业可以落户在哪里。由此,它决定环境的质量。并非乡镇区域为营建计划所全面覆盖,它们只涵盖城区的部分范围。

营建计划的许多规定(规划师习惯于称之为“确定”)是必要的,以便确保尽可能公正地在公共与私人利益之间衡量,以及实现城建规划的目标。为了取得一个符合这一要求的解决方案,重要的是要让公民尽早地和全面地参与规划。编制一份营建计划的程序在《建筑法典》中作了明确规定:由乡镇议会决定建筑主导计划,但是公民有两次直接施加影响的机会,来提出他们的倡议。营建计划是由市议会决定,在作为地方章程公告后对所有的公民、行政机构、当局和其他机构而言均是一部有约束力的法律性文件。按照在该计划中所作出的规定,将来将决定,在一个区域什么是允许的。

在没有预先知识的情况下,想要阅读、理解一份营建计划不是简单的事情。和在一张地图上一样,人们必须知道,特定的符号与字母组合

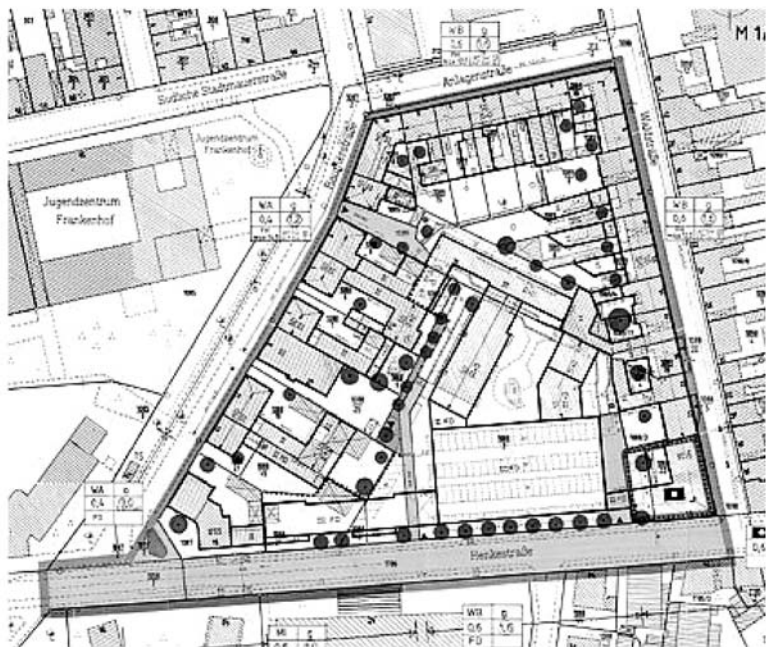


图2 营建计划

意味着什么,以及营建计划中和特定的颜色相关联的是什么。特定的字母、特定的颜色或线条在所有营建计划中意思是同样的,这是因为全德国统一的《规划符号条例》对这些符号和颜色作出了统一规定。这一《规划符号条例》连同《建筑利用条例》类似于所有营建计划的说明。其中例如规定了WA这两个字母表示的是“一般居住区”,以及营建计划中黄色标识、带绿色边界的面积标识的是公共街道与马路。“一般居住区”主要用于居住,因此,用于这个地区的供给的商店、酒馆、餐馆以及不会扰民的手工业企业和用于教会、文化、社会、卫生和体育目的设施总体上是允许的。而宾馆、园艺建造企业、行政办公楼或加油站等设施只有在例外情况下才是被允许的。

对于人们有意进行建造的自己的地皮或其他地皮而言,需要澄清的最重要问题如下:



对于这一地皮而言,哪类用途和建造是被允许的,而且哪些是普遍被允许的,而又有哪些只在例外情况下才被允许?

哪些利用方面的尺寸必须遵守?(允许我造多高?我的地皮上有多少平方米是我可在上面建造的?)

地皮的哪些部分上面允许建造,哪些不允许?(我可以建造离道路有多近?地皮的后面部分必须空置吗?)

还有其他规定吗?例如造型、噪声保护或生态方面的规定。

四、正式程序

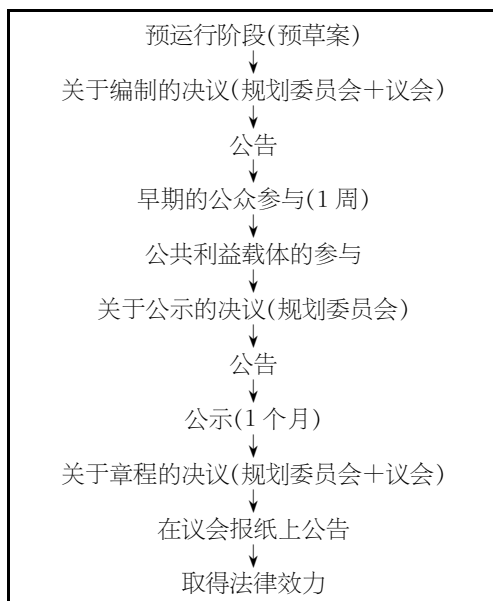


图3 一个规划过程的流程

在空间规划中,通过编制计划来制订目标和确立具体空间项目的条件,这是重要组成内容。立法机关在规划事务的许多领域,对这类编制程序作出了明确规定,例如在《建筑法典》、联邦和联邦州的《自然保护

法》、《环境适宜性审查法》，乃至在《行政程序法》（针对计划确证程序），或者在各州的《规划法》中。在其中，对于公众以不同程度纳入规划过程，作出了正式规定。

与此相关，可以称之为“传统形式的”公众参与。一方面，它们数十年来被以法律形式规定了下来；另一方面，它们单单由于地方领域的具体专业规划的规模而具有重要地位。如今，规划草案的公示、公民接待时间等参与形式构成了贴近公民的地方工作的主要内容。

（一）建筑主导规划中的公众参与

处在地方行动中心的是建筑主导计划的编制，作为对城建领域进行开发和重新规定的主要手段。在这里，公民在两个阶段参与到程序中。公众参与的第一个阶段在规划的早期，在土地利用计划或营建计划最初的计划草案编制完成后，根据《建筑法典》第3条第1款第1句，该草案必须加以“公开告知”，公众则有机会“表达意见和参与讨论”。

《建筑法典》第3(1)条：“必须尽可能早地公开告知公众有关规划的一般目标与目的、相互有重大差别的、可供一个地区的重构或开发考虑的解决方案以及规划的预期影响；应给予公众表达意见和参与讨论的机会。”

至于在地方日常实践中，这个阶段的参与沟通事实上走得有多远，取决于乡镇行政机关的各自的操作。计划展览会、行政机关或议会代表领导下的公民大会、具体讨论会、新闻出版物等是通常做法。如今，许多乡镇也利用媒体可能性以及在因特网中的全面报道，以便把尽可能多的公民纳入到具体程序（营建计划）以及城市开发（土地利用计划）中来。这里也是公众与乡镇互动的未来的重点所在。

《建筑法典》第3(2)条：“建筑主导计划的草案应连同解释报告或论证内容公示一个月。公示的地点和时间长短应至少提前一周按照地方上的常规做法加以公告，并附提示，在公示期间可以提出疑虑和倡议。”

按照《建筑法典》第3条第2款，公众参与的第二个阶段在于（暂时）最终的规划草案的公开告知与正式公示过程。与所谓的“早期的”或“提



前的”公众参与的第一个阶段相比,这一阶段的公众参与明显更多地建立在严格程式化的流程上。行政机关应作出答复和解释,公众则应表达倡议和顾虑,但是,在公众看来,单单行政机关要求书面或记录形式以及固定的参与期限就使这一可能性变得困难。另一方面,根据法律,符合程式的倡议要由乡镇审查,并加以权衡。这又明显增强了公众的地位以及他们提出自己利益诉求的意愿。因此,公众参与的这第二个阶段在法律上规定到了细节部分,乡镇只有很小的变动可能性。概括而言,一方面,法律规定的、建筑主导规划过程的公众参与,使得全面的参与要求成为可能,在此,每个公民无需证明自己的相关性就能参与;而另一方面,公众参与融入整个规划程序,被纳入了一系列规范中,它们仅允许乡镇在各自安排时可做较小变动。

建筑主导规划程序中的、经扩大的参与者圈也包括所谓的“公共利益的载体”,这些是其他的行政机构、当局、社团或协会,它们要么与规划相关,要么代表着公共利益。这里典型的例子是警察局、消防队或公共短途交通的承担机构。它们的参与在《建筑法典》的第4条作出了规定。

《建筑法典》第4(1)条:“在编制建筑主导计划的时候,应让作为公共利益载体并可能会与规划有关的行政机构与部门尽早参与进来。”

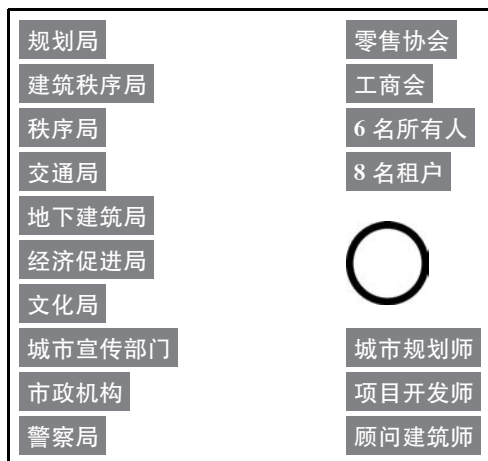


图4 一座城市广场的构建过程的参与者

（二）其他规划程序中的公众参与

其他法定形式的公众参与大多针对特殊的专业领域中的规划。最具有深远影响力的规范存在于自然保护、景观维护领域,而且在《城市建设促进法》和《中小学参与协作法》中也可以找到参与方面的规定。对于空间规划重要的主要有《自然保护法》和《环境适宜性审查法》中的规定。《联邦自然保护法》第 29 条规定了经认可的自然保护协会参与景观规划,目的在于自然保护与景观维护。这意味着,并非每个人都能参与,而是所谓的“非政府组织”,就像人们在当今的用语中所说的那样。一些州的法律走得更远,它们要求旨在保护自然和景观某些部分的条例或章程草案也要公开告知和公示。

在环境适宜性审查方面,根据《环境适宜性审查法》第 9 条第 1 款,主管的机构必须就一个项目的环境影响进行听证。公众参与的形式按照行政程序法的一般规定。首先,要按照建筑主导规划过程的公众参与第二阶段的模式,对该项目进行公告。随后,与有权提出异议的人,也就是说与该项目相关的人,进行讨论。与建筑主导规划相比,这些参与形式更加狭隘。参与者圈更小,以至于论据的收集依赖于公民的直接相关性。另一方面,乡镇在这里也经常插入了非正式参与的可能性,以便更好地让公民了解信息。在地方日常实践中,这些程序在公共意识中,重要性要比建筑主导规划程序小得多。因此,它们旨在让城市自我表现的公开展示,也明显少得多。但是,对这些参与可能性的法律规定仍然提供了非正式沟通的重要契机,尤其在环境与景观规划领域被专业协会、环境协会和机构充分利用了,并由此视具体情况还是取得了大的公众关注度。

（三）全民公决与公民请愿

全民公决是一种法律手段,它最初源自巴登—符滕堡州,也写入了其他联邦州的《乡镇规章》中。公决形式的公众参与使得全体公民能够就一个法律上能加以表决的乡镇事务进行点式表决,并由此排挤了乡镇



议会的决策权。举行全民公决的动因可以是乡镇议会关于把相关议题委托给全体公民的决定,也可以通过达到法定人数的有选举权的公民的公民请愿,来提出作出决定的申请。在这里,法律规定虽然把申请就一个最初的规划项目进行表决接受为惯例,而在事实上最经常发生的情况是:一个已经完成的规划应事后通过公民请愿来加以取消。这就是说,申请往往是对市议会的一个已经作出的决定的反应。对一个公民请愿所需法定人数的要求以及可以纳入表决的乡镇事务一览表,这在各个联邦州并不相同。最自由的是巴伐利亚的《乡镇规章》,根据该条例第 18a 条,众多地方事务,一直到建筑主导规划,可以成为全民公决的内容,而且全民公决的法定人数设定得很低。因此,恰恰在巴伐利亚的公民请愿模式中,在大众对表决参与的兴趣弱的议题上,存在着小型利益集团占主导的危险。

为此,反对意见表示,公民请愿从它的设计来看,是一个重要的、事后的程序纠正器。它作用于那些在公民看来一个委员会所作出的决定有错误的情形,并允许它们来阻止或修正规划的结果。因此,公民请愿有利于对权力的滥用进行纠正。



图 5 藤珀尔霍夫机场

2008年5月,柏林举行了第一次全民公决。这次全民公决在州层面上举行(柏林是一个独立的州),若全民公决想要取得成功,必须有柏林所有有选举权居民中25%的人投票赞成。有88万多柏林人参与了有关市内藤珀尔霍夫机场的继续开放的投票。州政府此前作出了关闭该机场的决定,原因是目前在柏林的南面要建造一个新的大型机场。全民公决最后未获成功,这是因为虽然取得了多数人的赞同,但是未达到“法定人数”。若全民公决想要取得成功,必须有柏林所有有选举权居民中25%的人投票赞成继续开放藤珀尔霍夫机场。但是在全民公决中仅取得了21.7%的赞成率。

相反,2008年7月13日在柏林弗里德里希斯海姆-克罗依茨贝格区举行的公民公决取得了成功。这次全民公决是在地方层面举行,在柏林州则相应地在区层面。这次全民公决的目标在于,阻止计划在施普雷河岸建造密集的办公大楼群:人们要求新建筑与施普雷河岸的距离至少为50米,而且没有一幢高楼允许超过22米的高度。近3.5万名参与



图6 计划在柏林的施普雷河岸建造的建筑物



者中有几乎 87% 的人投票赞同阻止计划中的建造活动,从而在区层面达到了 15% 的最低比例。这个“法定人数”和投票中的多数票均达到了。现在该区正在修改原计划。

(四) 居民提案和公民提案

这种形式的公众参与向一个乡镇的所有居民开放,并写入了各个联邦州相应的《乡镇规章》的规定中。这个程序的目的在于,给予居民以“小型请愿”的机会,这就是说,给予居民在地方的意志形成过程中的真正地位。但是,在规模上,各个联邦州还是有所差别。在很大程度上得到落实的是这样一种变体模式,即一个低的法定人数(占有选举权的人的 3%~10%)的提案可以迫使乡镇议会,在内容上就某一议题进行讨论。但是,在现实中,公民提案这一可能性很少被采用。显然,公民请愿这一作用更加有力的纠正措施,吸收了这一倡议型参与的形式。此外,由于存在着诸多正式和非正式参与地方规划的可能性,它们能耗力更少地把所希望的议题带入乡镇议会,因此,居民提案和公民提案这种形式的必要性就降低了。

五、非正式程序

尤其是从 20 世纪 80 年代以来,在法定的参与形式以外,合作和参与方法的多样性得到了显著扩大。具体有诸如论坛、倡议行动、治理委员会、律师规划会、调解、未来工场、工作小组碰头会、规划小组、公民大会以及其他形式,它们在规划过程中也被组合加以运用。由于这些参与方法未在法律规定中加以考虑,因此完全由乡镇权衡在什么时候以及运用哪些手段。例如,未来工场或工作小组碰头会在根据《建筑法典》规定的公众参与之前就被倡议实施,以便为正在开始的整治过程等制订基本的目标设想。此外,在这个早期阶段可以更容易地排除潜在冲突,它有利于规划过程在较少阻力情况下进行下去。

(一) 纯非正式程序

和正式程序不同,非正式程序中的公众参与的特征在于,对于沟通的最低要求没有正式条件。主要涉及的是在规划的初期就对公民的论据和利益进行定位。由于对于这类沟通不存在法律规定,程序按具体个案的要求展开,在此,完全可能运用混合形式。尤其是针对城建框架计划,乡镇根据所提出的任务的规模,在过去几年,通常事先举行公众参与,或与即将进行的法定程序同步进行公众参与。例如,一个未做规划的内城区域或者一个全新的城区、一个大型的、此前工业闲置地的重新居住或者各个中心的计划等,这些只是其中的一些例子。至于是以公开活动、听证会、工作小组碰头会或专家会议、各种预先进行的竞赛(其结果将被展示并紧接着被要求进行公开讨论)等形式,将视具体个例而定。同样在住宅业、整治区和开发措施中,有着许多不同的参与形式的实践,在这些领域,人们在规定的最低的参与活动以外,还致力于建立持久的沟通渠道,这特别是因为基于这样的认识,即尽早地把当事人以及他们的利益包容进来,往往在很大程度上能节约进一步程序中及其实施过程中的费用。

(二) 程式化的程序

程式化的程序是指通过一个程式化的流程把公众参与运用到规划中去的程序。与正式的程序不同,它们并未以法律形式规定,因此也未对某种规划硬性规定。它们的运用往往发生在当规划过程中出现冲突的时候,或者在这样的项目或规划状况中:在其中,一方面应集聚公民对一个空间规划的全面构建的论据和利益;但另一方面,公民也能通过制订前景方案和提出设想来为规划过程提供创意部分的内容。

但是,与纯非正式程序相区别,程式化的程序是在学术界或由有经验的主持人团队开发、形成的,是与既定的流程挂钩的。其中主要包括:

- (1) 规划车间;
- (2) “迪内尔(Dienel)式”规划小组;



(3) 社区规划程序/前景工场；

(4) 公民鉴定报告。

在所有这些程序方面，重要的是，预先澄清未来将要作出的决定的任务、目标以及问责。

六、困难与障碍

有时候，集中的公众参与受到了公众自己的阻挠，这是因为他们在政治参与和开发与规划参与方面缺少经验，乃至有时候有过负面的体验，这导致了他们的政治冷漠和听天由命式地自我限制。但是，这更多地要由缺乏灵活性的规划师和行政机关人员负责，他们作为专家未充分必要地谋求公众参与，并错过了指出参与的优点与可能性。之所以发生这一切，经常是由于缺少兴趣，以及由于对耗费增加和可能的影响的担心。另外，组织上和专业上被苛求以及害怕冲突是行政机关方面的一个主要的障碍，他们往往通过指出参与对规划过程会引起的拖延影响，来否认他们的责任。

在参与过程期间，沟通与互动的困难造成了大多数问题。误解往往是不同论理层面的一个结果。规划人员倾向于从专业技术上加以论证，而参与者更多地从感情上加以论证，这是因为规划恰恰涉及的是他们个人的关切以及他们的居住环境，且他们担心可能产生的不利结果。因此，行政机关缺少沟通能力往往是一个主要问题。这是因为沟通问题往往是误解的一个原因，而这种误解会导致规划过程的阻挠现象。在这里，需要充当主持人的人物。地方行政人员在从事调解与斡旋工作时给人会有偏袒的印象，这使得他们甚至于不能承担此任务。值得建议的是，由尽可能中立的主持人来沟通、磋商。

解决人与人之间的排斥的问题，则显得更为困难。在参与之前，例如在乡镇行政机关、投资者和土地所有人之间的非正式约定，一方面是澄清问题的一个重要机会，但带给其他人，例如可能以后才参与的公民，

一种被愚弄和欺诈的感觉以及被绕过的印象。类似的情况也会发生在各个专业局(如环境局)身上,它们可能会成为利益集团游说的对象。如果在这个过程中出现了制度性约束,因为例如只有特定的公民倡议行动得到偏爱,在其他参与者看来,则参与过程的可信度下降了。

消极的状况是,如果在特定的合作与互动形式(例如论坛、圆桌会议和规划小组)中,总是同样的人员汇聚,而且呈现出制度化和稳固化的趋势,这种趋势可能会阻碍开创性地致力于新议题。因此,在这类情况中,人员的流动能应对“职业相关人群”的问题。若是那些代表个体利益的或原则上持久地采取抵制态度的个别参与人员或专家占主导,会使参与式小组工作背上包袱。因此,应致力于,由地方行政的代表或其他合适人选对会议进行明确的结构化和主持。规划过程期间的职责不明确、决策的兴趣与决策权的分离会导致参与人员的困惑。另外,讨论、决策以及项目的实现之间间隔的时间过长,也会产生泄气的作用。在这一背景下,应争取使得规划过程变得紧凑。公众参与不能意味着决策的拖延,也不能意味着任何某个或多或少随意产生的多数人在作决定。

最后,特别要强调决策的透明度。如果公民参与到一个规划过程中去,那么他们也想要而且也应该能了解他们的建议被如何处理了。这是因为没有比倡议被“淹没”在规划机构的抽屉里更令人泄气的事情了。在规划过程中,私人与公共利益之间的权衡必须随时可被追溯,否则公众下一次就不再参与了。

浦东新区制定社区规划公众参与的程序选择及实际操作

刘璇

一、规划管理过程中公众参与的法定地位和主要环节

规划公众参与源于 20 世纪 40 年代的英国,后在欧洲多个国家及美国、加拿大等国进行了实践,成为现代规划管理过程中不可或缺的重要环节。规划公众参与就是在社会分层、公众需求多样化、利益集团介入的情况下采取的一种协调对策,它强调公众(市民)对城市规划编制管理全过程的参与。简单地说,规划管理的过程包括规划编制、规划审批和规划执行三个阶段,规划公众参与在这三个阶段中均有所体现。规划编制阶段:规划管理部门通过听取公众意见形成规划草案;规划审批阶段:公众代表作为规划审批机构的成员参与规划审批;规划执行阶段:规划信息进行公开,公众对规划执行过程中各种现象能够进行质询。

我国在城乡规划领域引入公众参与机制已历时 10 余年。20 世纪 90 年代中后期以后,以深圳为代表的大城市,在立法上确定了公众参与城市规划的制度。一是通过明确城市规划委员会作为城市规划审议机构的重要地位以及公众代表在规划委员会委员中的比例,来确保规划决策中的公众参与。二是通过确立规划审批前的规划草案公示制度,来保障公众对城市规划的知情权与参与权。上海市 2003 年 11 月颁布的《上海市城市规划条例》明确了制定城市规划应当听取公众意见;2006 年 7

月下发的《上海市制定控制性详细规划听取公众意见的规定(试行)》，细化了控制性详细规划层次的公众参与制度。在2007年10月28日颁布的《中华人民共和国城乡规划法》中，明确规定了将公众参与作为城乡规划管理中的法定环节(第9条、第26条、第48条、第50条)，确定了在规划编制阶段(包括规划调整)和规划执行阶段的公众参与的法定地位。

二、浦东新区制定社区规划公众参与的程序选择

(一) 规划层面的选择

根据《上海市城市规划条例》的规定，浦东新区人民政府有权审批浦东新区除世纪大道两侧和特定地区以外的控制性详细规划。此外，浦东新区人民政府并无审批总体规划、分区规划等法定层次规划的权力。从规划公众参与的实际开展情况看，居民及相关企事业单位对直接影响其利益的规划更感兴趣，这一点从浦东新区发展和改革委员会(简称新区发改委)历年信访处理内容及数量上即可证明。为此，从浦东新区规划管理的实际操作层面看，开展针对控制性详细规划编制的公众参与，符合浦东新区规划审批法律地位，同时也是对规划管理过程的突破性尝试。

上海市在《上海市城市详细规划编制审批办法》中对控制性详细规划界定为：指市和区、县人民政府根据城市各层次总体规划和地区经济、社会发展以及环境建设的目标，对土地使用性质和土地使用强度、空间环境、市政基础设施、公共服务设施以及历史文化遗产保护等做出具体控制性规定的规划。由此可见，控制性详细规划将城市总体规划、分区规划的宏观城市设计构想，以微观、具体的控制要求进行体现，并直接引导建设性详细规划的实施。因此，控制性详细规划不仅关系到宏观城市建设思想的落实，而且也关系到相关利益团体的切身利益。本层次规划公众参与的开展，是实现公平、公正规划目标的最有效方式，其带来的



不仅是对传统规划技术性手段的挑战,同时也是对政府行政管理公开性、公民自治管理民主性的洗礼。

由于在具体操作层面涉及诸多个体及相关团体,为了使工作效率更高,我们选择控制性详细规划的公众参与在同质区域的范围内进行开展,即以纯居住区、商业区、工业区等为单位开展详细规划的公众参与工作,以适应目前居民自治管理组织相对缺乏的现状。

从新区推进“社区规划公众参与”的初衷看,关心的是民生问题。因此,对于目前开展控制性详细规划公众参与的重点,可以先放在以居住区为主的控制性详细规划编制上,着重听取居民对其日常生活密切相关的公共设施分布、配置情况所提出的意见和建议。

(二) 机构职责的界定

根据《上海市城市规划条例》的有关规定,浦东新区除世纪大道两侧和特定区域之外的控制性详细规划,由浦东新区规划管理部门组织编制,报新区人民政府审批。同时,根据新区6个功能区的管理体制,浦东新区的各项控制性详细规划均由新区规划管理局与相关功能区域管委会共同组织编制。对于社区控制性详细规划制定过程中开展听取公众意见的活动和相关工作的主体,由新区规划管理局与各相关功能区域管委会共同承担。

对于修建性详细规划的编制,可以由相关单位受新区规划管理部门委托组织编制,因此,社区修建性详细规划编制过程开展听取公众意见的主体,由新区发改委及各相关功能区域管委会会同相关单位共同承担。

在具体工作开展过程中,涉及的相关街镇,应当作为公众参与的重要组织单位主动配合开展工作。浦东新区人民政府作为规划审批部门,负责对听取公众意见的过程进行指导和监督。

对于社区规划中由相关委办局牵头编制的专项规划,应由相关委办局会同各相关功能区域在规划制定过程中开展听取公众意见的相关工作。

（三）公众参与形式的选择

根据《上海市制定控制性详细规划听取公众意见的规定（试行）》，规划编制部门听取公众意见可采取发放、回收公众意见调查表、网上收集意见、召开座谈会、论证会或其他有效方式。从具体操作层面上看，座谈会面向居民代表可以达到面对面交流的目的，但技术性论证相对不足，且参与面相对较小；论证会主要由专家参加，重点讨论规划成果的技术问题，专业性太强，不适合普通居民的广泛参与；网上收集意见虽可最大程度实现规划参与面的扩展，但由于宣传不足及市民使用网络参与规划的习惯尚未养成，效果不尽如人意。在具体操作上，往往是一个社区规划方案，采取多种方式互为补充。

此外，还可在两个环节上保障公众对社区详细规划编制过程的参与。一是规划编制部门在规划草案编制完成后，必须采取发放、回收公众意见调查表、网上收集意见、召开座谈会、论证会或其他有效方式听取公众意见；二是在第一轮公众意见听取完毕后，规划编制部门需对公众意见采纳结果进行公布，若公众对不采纳的意见仍有较多异议，规划组织编制部门应当召开论证会，邀请专业技术部门或第三方对规划方案进行再次论证，并重新听取公众意见。

三、对社区规划中公众参与存在不足的思考

（一）公众意见未能充分、准确地表达

浦东新区发展和改革委员会规划部门在进行规划课题研究的统计调查中发现，规划公众参与过程中赞同规划的居民很少发表意见，而反馈意见的都是反对规划方案的居民。公众意见的不充分表达对我们客观、公正的评价规划方案造成了一定的干扰。但是，考虑到大范围听取居民意见会使行政成本提高及效率下降，对所有的社区规划均采取多种方案广泛听取居民意见是不现实的。因此，从效率和公平的角度出发，我们认为一方面可对各类规划公众参与范围进行界定，只有当在此范围



内公众参与规划的比例达到一定数量时,如统计学上有效样本的数量,才能称此规划有效地听取了公众的意见;另一方面可通过在听取意见程序上的优化,如在编制规划草案阶段及草案完成后正式公示阶段两次听取意见,或以网上公示“泛听”加矛盾较集中后“精听”的方式,尽量使公众充分、准确地表达意见。

(二) 规划决策过程中公众参与的力度还须加强

《城乡规划法》没有提及规划委员会制度,规划决策中的公众参与并不是我国规划管理制度中的重点。结合新区的实际情况,我们认为可以在两个方案做些突破:一是考虑借鉴深圳和广州的经验,在浦东新区规划委员会委员中吸收专家和市民代表,改变目前审议机构中公众代表缺失的情况。二是考虑增加对公示后居民反馈意见的采纳力度。对于此,广州市曾有过涉及旧区改造的居民需 70% 以上同意方能启动改造工作的处理方法,对此,可作为公众意见能够决定规划方向的主要决定性因素。即在规划公众参与面与有效性得到保障的前提下,超过半数或者更多(如 2/3 多数)公众的反对意见,应当成为否定该规划的依据。

社区巴士线路设置决策的公众参与

胡 荣

一、浦东新区公交管理的公众参与

（一）浦东新区公交管理中公众参与的背景

公众参与公共政策的决策,是现代民主制度发展的新趋势,也是法治政府的基本要求。浦东新区作为我国综合配套改革试点,在公交管理体制、机制的改革中一直坚持先行先试,突破阻碍公交发展的瓶颈和困难,取得了一定的成效。2006年,为促进政府和公交、公交和社区、公交和市民之间的良性互动,带动公交的优先发展,新区建交委在以往工作的基础上,提出了公交管理中社会协同、公众参与的管理办法。

（二）浦东新区公交管理中公众参与的概念

在公交管理过程中推进社会协同、公众参与,有利于拓宽民意渠道、保障公众的利益,有利于推动和促进新区和谐公交的建设,有利于综合配套改革试点的深入与拓展。

浦东新区公交管理中公众参与的指导思想是:充分尊重公众的主体地位,让公众充分地参与到新区公交的管理和决策中来,公众既是浦东公交发展的参与者,又是公交管理的监督者。

公交管理中公众参与的目标是:

1. 体现公众出行的需求

公众是公交服务的真正对象,通过管理过程中的公众参与,公众出行



需求和出行结构的变化都得以反映,线网调整将充分体现公众的需求。

2. 提高公交管理的效率

通过公众参与,有效发挥公众的监管作用,可以充分调动公众和社会的资源,从而弥补管理者效能的不足;可以推进公众和管理者相互的认同和共融,使得管理工作更加流畅,从而提高管理的效率。

3. 推进公交发展方式的转变

推进公交管理中的公众参与,是对原有公交管理理念的创新和变革,有助于提高公众的责任感和主体感,有助于推进公交发展方式的转变,有助于实现公交行业的长效发展。

(三) 浦东公交管理中公众参与的发展

浦东新区在多个领域、多个层次,通过多种方式推进公众参与。

1. 互动信息系统

2006年4月,浦东公交服务市民互动信息系统正式开通。信息系统由服务热线、邮政信箱、互动网站、短信查询和市民来信等方式组成。2008年上半年,公交互动平台网站访问量34.68万人次,接听来电9996人次。市民短信查询2.1万人次,处理网站,来电投诉461人次,投诉处理回访率达100%。

2. 共建和互动活动

通过听证会、征询意见会、座谈会、联系制度等方式促进共建活动深入开展。例如:2007年4月17日上午,在新区市民中心召开了轨道交通6号线(外高桥功能区)公交配套方案听证会,介绍轨道交通6号线全线28处站点的公交配置原则,征询社会公众对轨道交通6号线外高桥功能区内7处站点公交配套方案的意见和建议。此前,新区建交委已经在浦东公交市民互动系统(www.58752222.com)广泛征求了市民意见和建议。

3. 公交活动

通过开展浦东公交发展“献计献策”征文活动、浦东公交岗位练兵活动、“双迎三比选十佳”公交十佳明星选拔活动和“我为奥运添彩 争创公交流动

风景线”等活动,使得公众能够更加深入地参与到公交管理工作中来。

4. 听取代表意见

两会、人大代表是管理部门和公众交流的桥梁和纽带。新区发改委始终积极与人大代表、政协委员沟通、听取意见。针对代表的意见,在第一时间对现场进行了踏勘,和有关人员进行了认真研究,对于可行的马上进行落实,以解决公众的实际出行问题。

5. 监督员

组织由人大、政协两会代表、行风监督员以及各街镇社区代表参加的150人公交监督员队伍,从各方面明察暗访公交线路营运情况,将他们的意见直接反馈给相关企业。同时要求企业即知即改,及时落实各项整改措施。

二、社区巴士线路设置决策的公众参与

(一) 社区巴士概念的提出

随着城市轨道交通的迅速发展和城市交通公共服务功能的日趋健全,市民对于居民小区内公交线路穿过并与轨道交通相衔接的需求日益强烈;另外,开辟社区巴士能够补充周边主、次干路公交线路的不足,也为市民到达社区市民中心办事提供便捷的交通。

社区巴士主要有三种形式:开辟新线,形成服务圈,将沿线的重要服务点连成一线;调整原线,延伸服务网,拓展公交服务范围,解决空白区域的公众出行;设立站位,增加站点,满足新建小区、动迁基地住宅区的公众出行。

(二) 社区巴士线路决策的公众参与

社区巴士线路决策过程引进了深度的公众参与。线路走向通过听证会形式充分听取和采纳当地街、镇和市民意见。线路在正式开通前,还会进行公示,进一步听取公众的意见。



为方便花木社区居民的出行,新区建设和交通委员会酝酿要开通一条花木社区的社区巴士。2007年3月,浦东新区建交委在新区市民中心召开花木社区环线听证会,听取花木社区居民代表对环线设置的意见,这是浦东新区就公交线路开辟调整召开的第一次听证会。在充分听取花木街道、各小区居委会等意见的基础上制定了线路的初步方案。听证会上听取居民对车辆配置(采用票价2元的空调车还是1元的非空调车)、服务时间、班次、站点设置的意见。行业管理部门随后将依据居民的意见进行线路招投标。

在其后的社区巴士线路决策过程中,都采用了这一形式,并获得了非常好的效果。

(三) 对公众参与的发展和 innovation

公开听证是新区提高政府决策透明性、主动吸收居民参与城市管理的有效方式。除此之外,新区还通过其他方式提高公众在社区巴士决策过程中的参与度:

1. 线网优化进社区

充分征求有关功能区、街镇对每年公交线网计划和便民措施的意见;在新辟社区巴士和短驳线的规划阶段,召开居民听证会听取线路沿线居民的意见,根据居民需求制定线路走向、站点设置等。

2. 优质服务进社区

各公交营运公司或车队分别与街镇、居委会开展文明服务窗口共建活动,加强公交公司和社区的互动。

3. 文明宣传进社区

通过发放宣传资料、召开座谈会、发行《浦东公交》宣传资料、进行媒体宣传系列报道等方式,开展多种形式的宣传活动。

4. 将公众参与从线路调整、公交服务等拓展到管理的前期交通规划阶段

交通规划是对后续的公交工作的指导,体现了下阶段工作的总体战

略和思路。因此在这一阶段就引进公众参与能够更进一步提高其决策过程的科学性、公开性和公正性。

这些形式拓展了公众参与的渠道和深度,为公众参与进一步发展提供了契机。

规划中公众参与在法律上的定位

——对本次研讨会中三个事例的点评

朱 芒

感谢会议让我担任报告的点评人。

本次研讨会委托我进行点评的三个事例尽管都与城市规划有关,但由于其各自发生在不同的国家和不同的领域,各自所依存的法律背景也不尽相同,因此,要在研讨会这个有限的时间段内对三个报告中涉及的事例进行比较评论,对点评人而言无疑是一个很大的考验。自 2004 年起,我时断时续地对城市规划中的一些法律事项进行了思考和整理,并力图整理出一个能够全面,且能简明扼要地分析这类公众参与在法律上的定位问题的分析框架。今天,我尝试用这个分析框架来评论报告中的事例,希望与会的各位能够对此提出意见。

公众参与涉及的各类各种事项极为庞大和复杂,政治学、社会学等学科对此都有各自独特的研究视角。这里需要强调的是,由于我的专业是行政法学,因此,分析所涉及的仅仅是在法律领域内的问题。

一、分析框架的说明

这个分析框架基本上是由纵横两条轴线构成(图 1)。其中,横轴表示“行为的拘束程度”,即法律规定要求行政机关举行公众参与的义务的强烈程度。

横轴右面的顶端“强制”表示行政机关被设定了必须履行公众参与的义务。越向横轴的左方则拘束的程度越弱,到最左面的顶端,则是法

律上对行政机关没有任何义务性规定,但行政机关根据需要自行地设定参与规定或者自行施行公众参与措施,即对行政机关而言,拘束不是来自法律规定的义务要求,而是基于自身的裁量。

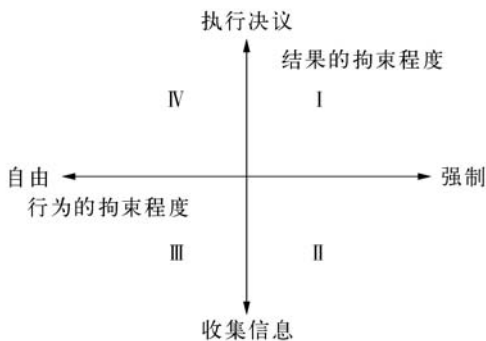


图1 分析框架一

纵轴“结果的拘束程度”表示参与者的意见对行政机关的行为的影响程度。有关这一问题至今已有大量的研究成果,尤其是在公共政策研究领域,许多研究成果基本上是集中地在讨论这个问题。例如,早期的谢利·阿恩斯坦(Sherry Amstein)的《公众参与的阶梯》就是这方面的经典之作。

纵轴的最下端表示行政机关所受的法律上的拘束力最小,相应的公众参与仅仅只是行政机关收集信息而已。行政机关在作出决定时需要参考这些相关信息,但不受这些信息的制约。纵轴越向上则法律上的拘束程度越高,最上端达到行政机关在做出相应行政决定时必须服从公众做出的决议的程度。这类例子中最典型的的就是“公决”。

在纵横两个轴相互交叉所形成的范围之内,存在着四个象限。四个象限各自反映出不同类型的参与方式,以及不同场合的参与事例在法律上的定位。四个象限分别意味着,在第I象限中,公众参与作为一项行政机关应履行的法定程序性义务,且在经过公众参与的程序之后,行政机关必须服从公众作出的决定,负有执行该决定的义务。在第II象限



中,公众参与同样是一项行政机关应该履行的法定程序性义务,但适用该程序的目的在于收集与规划有关的信息,如利害关系人的主张、学者专家的建议等。因此,参与者的意见主张只是提供给行政机关作出决定的参考资料,并不拘束行政机关必须作出怎样的决定。当然,不同的义务性法律规定中,对行政机关在考虑这些意见主张的义务强度上会有大小。第Ⅲ象限无论在“行为的拘束程度”还是在“结果的拘束程度”方面都是属于最弱的范围。在这个象限中,行政机关不负有法律上设定的施行公众参与程序的义务,是否施行公众参与的措施,因行政机关基于自身的认识和需要而自由裁量决定。同样,该程序中公众的意见主张也只是一供行政机关参考的信息。在第Ⅳ象限,“行为的拘束程度”是最弱的,而“结果的拘束程度”方面是最强的,这就是说,这一象限中是否存在公众参与,取决于行政机关是否和如何裁量设置自主的参与程序规则。当然,这个规则并不是法定的,而是类似一种公共契约。

下面,我将尝试把三个报告中提到的不同事例,放到这个框架之中去做分析,看看它们各自在法律上可以做到的定位,以及彼此的不同之处。

二、三个报告中的事例在框架中的定位

德方的一个报告和中方的两个报告所涉事项较多,我只能选择在微观方面在一定程度上具有共性的事例进行分析,即德国报告中B规划所涉及的柏林事例、中国报告中提到的浦东新区社区规划事例(简称“社区规划事例”)和社区巴士线路设置决策的事例(简称“线路规划事例”)。

首先,看社区规划事例所适用的法律依据。

目前,中国的城市规划适用的基本法律是《城乡规划法》。但该法律刚刚于2008年的1月1日起施行,因此,严格而言,社区事例应适用的基本法律是被《城乡规划法》替代的《城市规划法》。《城市规划法》没有明文对规划编制程序中的公众参与作出任何规定。作为地方性法规的

《上海市城市规划条例》在颁布的初期,其内容中原本也没有关于公众参与的规定,但该条例在 2003 年经修改之后,在第 26 条中设定了听取意见程序。

《上海市城市规划条例》(简称为《条例》)第 26 条共由两款构成,其中第 1 款规定的内容为“制定城市规划,应当听取公众的意见”,属于设定了编制城市规划的行政机关义务的规定。根据这款义务性规定,该条规定的听取意见程序可以定位与属于横轴右方的公众参与类型。但由于《条例》本身不具有法律的地位,因此在实施方面并不能完全达到横轴右端“强制”的程度。

根据《条例》这一款的规定,上海市规划局还制订了将其内容具体化的行政规定《上海市制定控制性详细规划听取公众意见的规定(试行)》(简称为《规定》)。社区规划事例就是适用该《规定》的例子。

《条例》第 26 条第 2 款在设置草案公布义务之后,将第 1 款设定的听取意见程序的施行方式规定为“可以采取座谈会、论证会、听证会以及其他形式听取公众的意见”。该款的规定将听取意见义务的施行方式转换成一种裁量(行为裁量),具体而言,编制规划的行政机关可以根据实施听取意见的目的不同,可以选择座谈会等具体的实施方式。

由于行政机关选择的方式不同,听取意见的结果也不尽相同。按事实上已经形成的惯例,“听证会”是面向一般大众征求意见,从众多的希望表达意见主张的人员中选择一定的人员使之成为参加者,即参加者是被邀请的;“座谈会”形式并无特定规则,一般范围较小,行使随意;“论证会”基本上限于听取专家意见。

在此前提之下,《规定》将《条例》规定具体化,注重对座谈会和论证会的运用,为此丰富了这方面的程序性规定。此外,《规定》还添加了问卷调查,进一步从《条例》第 26 条第 2 款规定的“其他形式”一词中例示性地抽出了一种具体形式。因此,就社区规划的公众参与而言,在法律体系的整体中缺少公众参与的制度安排的前提下,行政机关主导性地就社区规划设置了裁量性质的听取意见规定,并且付诸具体实施。这种公



众参与方式属于纵轴下端的位置上的类型。这样,这类听取意见的程序就整体而言,应该定位在第Ⅱ象限之内。

社区规划事例的报告提出了施行中的许多值得研究的问题,在下一个部分中,我想借助这个分析框架谈谈我的看法。社区规划事例报告中没有反映出在实际的实施活动中,行政机关有没有在《规定》之外创造性地做出过尝试。这方面十分遗憾。其实,在我的调查中,曾收集到浦东新区发展计划局于2002年在规划变更方面举行过听证会的事例,而且是在没有法定根据的前提下,创造性地设置了该听证会所能适用的制度,十分具有制度创建方面的价值。这个事例在外形上一定程度与国外看到的例子很相似。只是这次听证会之后,由此建立起来的相应规则是否适用于其后的同类听证会则不得而知。这个案例的一些情况(例如设置了对不采纳意见的回答义务)倒是可以看出一点由Ⅱ向Ⅰ发展的趋势。

其次,线路规划事例是在基本上没有法定义务的前提下,行政机关主动创造性地寻求目前可行的公众参与途径的一个案例。从行为并不存在法定义务的角度而言,线路规划事例所涉及的公众参与可以在横轴的左方找到定位。同时,从所采取的“听证会”和“服务窗口建设”等措施来看,这些都是属于主动听取公众意见的行为。该事例的报告提到了听证会的事例,但从报告中没有读到听证会的规则及其形成过程,听证会后“行业管理部门随后将依据居民的意见进行线路招投标”的形成机制,是参与者绝大多数人的主张,还是行政机关决定这项意见比较合理,则不太清楚。非常希望在这方面能够有具体的介绍。就总体上而言,这些意见在决策过程中并不具有法律上约束力,因此,与上述的社区规划事例的区别在于,这类公众参与属于第Ⅲ象限范围之内。

当然,这里引出一个值得研究的问题,在没有法定义务的前提之下,施行公众参与的初始动机是什么。上午,尤斯特先生的提问也涉及这个问题。当然,这类研究不一定限制在法学领域。就我了解的情况而言,初始动机并不是一些学者所称的那样,是为了民主或者为了群众利益等

等。如果在案例研究的开始就这样意识形态化地贴标签,对研究本身没有任何意义。例如,目前已经是众所周知的温岭市泽国镇实行民主恳谈制度,其初始动机通俗而言可以说是为了“减少麻烦”。

再次,就德国报告的事例来看,公众参与有着明文的根据约束。例如《建筑法典》第3条第1、2款和第4条第1款的规定形成的正式程序,由此该事例涉及的公众参与在横轴上可以定位在很靠右的位置。同时,由于在事例中也反映出还存在没有任何法律规定的非正式程序,这使得德国事例反映出来的公众参与的性质在横轴的左方也占有位置。另一方面,由于有“公民裁决”制度以及柏林机场事例所表现的市民投票等方式,这使得参与结果对行政机关有着极大的约束性。可以看出,这些现象表明相应的公众参与在纵轴上甚至可以定位在很靠上方的位置。这样,德国事例反映的公众参与可以明显地看出处在框架的第Ⅰ、Ⅱ象限的范围之内。上午,迪内尔教授的报告提到了非正式参与对政府的约束程度。很显然,这些约束属于政治上如选举等的约束,而在法律上并没有什么具体的约束,因此这类参与也在第Ⅲ象限有所表现。总之,德国的报告使我们知道,在法律上而言,公众参与的类型以及受法律约束的程度表现得多种多样。

三、从事例中反映出的几个需要深入讨论的问题

第一,社区规划事例中提到了中国在城乡规划领域引入公众参与机制起于20世纪90年代中后期,以深圳为代表。这是十分准确的判断。的确,在城市规划领域中,作为有法制规定和保障的公众参与制度源于深圳市自成一体的“法定图则”制度。

但是,需要注意的是,“法定图则”制度并非是源于或者适用1990年起施行的《城市规划法》的结果,而是深圳市另辟蹊径、独树一帜建立起来的具有探索性质的地方性制度所致。这样就引出两个值得讨论的问题。



其一,从《城市规划法》到《城乡规划法》的法律体系中,原本的中央集权制的规划审批制度究竟需要在怎样的社会转型的背景中,才可能出现立法上明确规定的公众参与制度? 尽管法律已经变化,但至今为止的规划编制审批制度在结构上是不是已经发生了变化?

其二,如何总结深圳“法定图则”制度的意义,包括其当时为什么要独树一帜,是在什么政治或社会力量的作用之下才有这样的立法结果,至今为止的实施情况如何(是不是如同我们阅读其文字内容就可以想象到的结果)?

考虑上述两个问题,意味着如何使得公众参与的性质由第Ⅲ象限向第Ⅱ象限乃至第Ⅰ象限扩展,进行制度建设的问题。

第二,参与制度所期待的目的,是考虑参与者的利益还是(吸收其他专家提出的)实现规划的技术理性(科学合理性)。在社区规划事例的报告中提到“公众参与的形式的选择”部分,实际上就触及这个问题。

从分析框架的角度看,我想能不能作进一步的尝试,即在纵轴上再添加一些要素,或者说再添加一条纵轴。这条纵轴与原本的纵轴重合(如图2以阴影和虚线部分表现的第二条纵轴)。

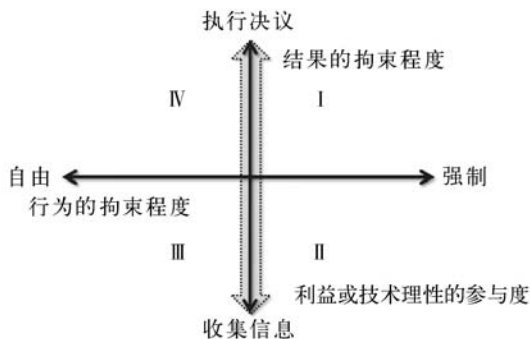


图2 分析框架二

严格而言,与一般的公众意见主张相比较,我个人并不主张将专家就技术问题所作的表达也归入公众参与的范围之内,即事实上在规划编

制过程中存在着行政机关、公众和专家三方的关系。但是,基于目前国内无论学界还是实务界都不对两者进行区分,而是在归入同一类型之后再区分其间的不同之处,因此,我在此也不把这两者作为两种关系看待。

正是因为利益主张和专业知识建议在公众参与中并不是同一类事物,所以两者之间的矛盾和沟通困难就出现了种种的问题。这些并不只是在浦东社区规划中碰到,应该说这是一个世界性问题。

在这个前提下,如果参与着重在于技术合理性的话,那么在结果约束程度方面的纵轴上,应该偏向于下端定位;反之,如果着重利益,那么最大程度尊重各种利益的方法就是让各种利益主张充分表达(极端的就是公决),这样,在纵轴上位置会走向上端。

但是,目前如何将技术问题和利益问题一同进行考虑,打通彼此之间的壁垒,这是许多人正在努力的课题。上午,迪内尔教授的报告提到的规划基层组织/公民鉴定应该是一种解决方式。在我的考察中,已经发现一些国家,尤其是在地方层面上,无论政府还是民间组织都在寻找能够化解彼此间壁垒的许多方法,且一些尝试已经具有相当的效果。如果彼此之间的壁垒能够消除,那么,这根轴在分析框架中的画法就会有变化。因此,我在这里没有明显地标示出这根纵轴的两端。

第三,关于赞成和反对意见各自在公众参与中的意义的问题。社区规划报告提到,有时尽管反对意见只是少数,但持赞成意见者并不积极参与其中,而只有少数持反对意见的人积极参与其中。其实,分析认识这个问题并不困难,这个框架也可以进行说明。如果编制规划的行政机关只是为了听取意见,吸收信息,那么,只要听取反对意见就足够了。即在实施公众参与制度时,可以在纵轴的下端位置,即在第Ⅱ和第Ⅲ象限中设计具体的制度。反之,如果是要了解公众和寻求公众支持的,或者需要公众进行表决的,或者政府需要按照公众态度的数量来做决定的,那就要取纵轴上端位置进行具体的制度设计工作。



总之,公众参与是一个当今不可避免的制度性问题,其在制度适用上极其广泛、适应技术上又十分复杂。在中国,城市规划领域中的公众参与还仅仅只是处于开始阶段,这需要大家不断深入研究,积极进行制度设计尝试,否则,公众参与只能是流于形式的一个空洞名词。

欧洲的参与预算制：对中国的启示

维斯·辛特马 卡斯滕·赫茨贝格 安佳·若克

2008年9月17~18日,弗里德里希·艾伯特基金会与上海市人民政府法制办公室组织了一场有关公民参与的研讨会,来自德国和中国的专家与学者应邀就公民参与基层地方政治和城市规划的问题交流了经验。这不是一项轻松容易的工作,因为德中两国的政治文化和政治制度差异甚大。德国是一个融入了欧洲联盟的西方民主政体国家,在其代议民主制(包括选举及公共领域的动员)这一大框架中,各市镇拥有广泛的职能,它们是各种形式的公民参与的场所,有关参与的形式包括各种协商机制(如公民陪审团、参与预算制等)和直接民主机制(如全民公决、公众动议等)。其之所以安排了这些参与工具,部分地是为了保证民众在对政党政治不满时,在参加选举的投票人数减少时,仍能拥有并发挥其民主权利。在中国,政治大背景与西方不同,整个国家目前又经历着巨大的经济与社会变迁,势不可挡的城市化进程给社会带来了各种挑战。假如民众能够增加其对于城市事务的参与,那将会在目前这一复杂的新情况下,促进维持行政部门与普通公民之间的良好关系。因此,在民众与基层决策者之间尝试新的沟通形式,在当今中国无疑具有显而易见的益处。

经验表明,从世界某一地区向另外的地区引入民主参与工具,总是一件困难和复杂的工作。同样,在中国,也不可能简单地“复制”参与预算制度。可是,司空见惯的是,人们把某些“最佳实践”当作“普适性”解决方案,似乎可以到处套用这些方案,而不必考虑当地的条件。这样的做法是远远不能让人信服的。参与预算制发源于巴西的阿雷格里港,而该制度进入欧洲后,其形式便大为不同。因此,假如这一工具被引入到



中国或其他亚洲国家,相信也会出现一个类似的适应当地情况的改造过程。有鉴于此,当阅读旨在总结欧洲参与预算制实践的本篇论文时^①,应当视之为包含着潜在的行为方式,而非提供了“必须遵守”的政策建议。文中分析的各种参与预算类型不过是理想性分类而已,它们固然可以为实际工作者提供某种“指南”,但决不是规定只能按照“某一”方式来约束实践。

本文聚焦于欧洲,我们拟就欧洲的公民参与新形式,首次进行全面系统的研究并且报告有关结果^②。在下文中,我们将简要描述参与预算制在巴西阿雷格里港的问世情况,并追溯其向欧洲的传播过程,在此基础上,我们会把各地采用的各种参与预算实践作一类型分析,并将探讨各自的潜在效果与不足。如果本文能够有助于深化洲际对话,如果中国的实际工作者和研究人员能从我们的研究成果中获得一些启发,那么它就算成功了。我们期待着就相关的理念与实践问题增加交流并扩大合作。

一、参与预算制的出现

参与预算制已成为过去 15 年中最为成功的参与性工具之一。参与预算制首先在巴西的阿雷格里港问世,此后,这一制度在拉丁美洲得到传播,到 2006 年时,在 1.6 万个城市中,可能已有超过 1 000 个市政府采

① 本文大部分内容曾刊于《城市与区域研究国际学刊》2008 年 3 月第 32.1 期。

② 本项“欧洲参与预算制”研究由柏林的马克·布洛赫中心与柏林的洪堡大学合作进行,汉斯-鲍克勒基金会和(法国)CNRS 机构给予了资金支持(参见 www.buergerhaushalt-europa.de)。2002~2005 年间,我们在 10 个不同的国家展开工作,并在 20 个城市作了广泛的分析,另在 30 多个城市收集了基础性数据。下列人员作为联合研究者参与了这一项目:比利时的 Ludivine Damay、Christine Schaut,法国的 Marion Ben-Hammo、Sandrina Geoffroy、Julien Talpin,英国的 Jeremy Hall,意大利的 Giovanni Allegretti(协调人)、Pier Paolo Fanesi、Lucilla Pezzetta、Michelangelo Secchi、Antonio Putini、Paolo Filippi,荷兰的 Hugo Swinnen;波兰的 Dorota Dakowska、Elzbieta Plaszczyk,葡萄牙的 Luis Guerreiro、Giovanni Allegretti、Nelson Dias,西班牙的 Ernesto Ganuza。

纳了该项制度(Cabannes, 2006)。与此同时,参与预算制也在全球范围内扩散开来,亚洲也不例外。在欧洲,它同时出现在10个欧洲国家(主要是西欧国家)中,另有4个国家目前正在规划实施这一制度,或已进入实施的初期阶段。总体而言,在2008年,100多个欧洲城市采用了参与预算制。它们中部分是大城市,如西班牙的塞维利亚,它拥有超过70万居民;另一部分是首都的城区,包括巴黎、罗马、里斯本、柏林这些城市的城区,伦敦也在2005年作过首次尝试^①。然而,也有中型城市,如德国的于尔岑和埃姆登,还有一些小型社区,如意大利的格劳塔迈尔和阿提道纳,同样采纳了参与预算制程序^②。在法国和意大利,另有三个地区也开始朝这一方向迈进。

参与预算制是在相当独特的环境下被发明的,一旦它被引入到塞维利亚(西班牙)、柏林(德国)、普洛克(波兰)这些各不相同的城市,并且因地制宜地作出调整后,是否还能说它仍然具有某种一致(尽管本身又是复杂)的动力机制,或者是否干脆说,各地的不同实施也许没有任何相同之处,不过仅有一个共同的名称,却用来标称迥然有别的实际情况?参与预算制的扩展是否只是一种赶时髦,还是通向某种新的城市政策的一条可持续道路?在欧洲存在着什么类型的参与预算制,它们在多大程度上并且在何种条件下能够促进政府行政的现代化,促进民主制的振兴,促进社会正义的增强?在下文中,我们将简要地描述参与预算制在巴西阿雷格里港的起源,并且追溯其向欧洲传播所走过的道路。我们希望展示一个事实,即参与预算制并非局限于“一个”模式;相反,它可能会展现多种多样的形式。随后,我们将就各地采用的多种参与预算制作一分类,并且探讨其潜在的效果与不足。一项更广泛的分析将需要涉及社会动力机制、规范性框架、相关的代议型政治与参与型政治之间的关系,而

① 伦敦的哈罗区拥有21.1万居民,巴黎20区拥有18万居民,罗马11区拥有14万居民,柏林利腾博格区拥有25.2万居民。

② 于尔岑拥有5.6万居民,埃姆登拥有3.5万居民,格劳塔迈尔拥有1.47万居民,阿提道纳拥有0.26万居民。



且需要建立另一种更为全面的分类系统(Sintomer、Herzberg、Röcke, 2008),不过那已超出本文的范围。在结论部分,我们将对欧洲参与预算制的潜能与不足发表若干评论。

二、阿雷格里港的理念

参与预算制是 20 世纪 80 年代末在巴西首先出现的,其成长环境明显不同于西欧的环境,最主要是,巴西为世界上收入差距最为悬殊的国家之一,而且,在其“委派式民主制”(O'Donnell, 1994)下,宪法规定的民主制度并不能如愿地正常运作,因为贪污腐败和权钱交易充斥政治与行政系统。尤其是在基层,头面政客鱼肉当地经济,用金钱和不实承诺赢得选票,此种现象比比皆是。阿雷格里港在一定程度上则有别于这一传统,该城市中的生活水准超过其他巴西城市的平均水平,而参与预算制对此颇有贡献。更主要的是,该制度导致政府开支的重点安排次序发生了逆转。在穷人生活的地区,建立起了基本的保健体制,学校和幼儿园的数量有了增长,同时,大量街道路面铺设了沥青,大多数家庭与生活用水及废水系统连接了起来。是什么样的条件带来了这一喜人进展,参与预算制又如何使得更为有效的政府行政成为可能,使得资源的配置有利于境况最为糟糕的居民,并使得政治开始民主化的?

参与预算制之所以问世于阿雷格里港,是因为随着 1988 年工党(Partido dos Trabalhadores)^①在选举中的胜利,曾出现过一个“机会之窗”(Abers, 2000)。当时,工党尚处于崛起之初,必须证明自己的执政风格有别于其他党派,它正寻求通过某种方式,把本党原先埋头基层的

^① 工党是一个多元主义的左翼政党,该党借 20 世纪 70 年代的工会运动而崛起。当时的工会运动尤其在圣保罗附近的工业区开展罢工,反对其时的独裁统治。其参与者包括中产的知识分子、解放神学的支持者、前左翼政党和极端左翼团体的成员,以及城乡社会运动分子。在该党的支持者中,“无地农民运动”在很长一段时间里被认为是与该党积极行动最为合拍的一个团体。尽管人们将工党的主要派别描述为倾向于社会民主制,但在阿雷格里港作为首府所在的州中,工党还是更呈现出“左派”的特点。

自我定位改造为视野开阔的市镇政治。然而,也不是新政府本身在推动参与预算制。公民社会,尤其是区一级的政策动议,也在要求能拥有更大的共同决策权。因此,这一新工具的发明实为自上而下和自下而上这两个过程双向作用的结果。巴西本已存在的政党“分赃”制最终证明也有利于创造这种公民参与的新空间,因为它使得市长能够聘用理念一致、办事高效的高级公务员。应当强调的是,阿雷格里港的参与预算制经过了4年时间,才演变成为一种新的参与型政府制度。工党执政15年后于2004年失去了市长一职,反对党取而代之,但是,参与预算制这一创新性制度至此已经充分融入了行政系统,以至于新政府哪怕缩小了其适用的范围,也不敢废除这一制度。

国际上的学者(Abers, 2000; Herzberg, 2001; Avritzer, 2002; Allegretti, 2003; Baiochi, 2005; Gret/Sintomer, 2005)向人们表明,在确立并运作参与预算制的过程中,有三项基本原则尤为紧要。① 第一项原则就是基层民主。该原则经由阿雷格里港16个区的公民大会而有效运作。这些公民大会的目标是要确定市区的优先要务,并且选举大会代表,并选出督促所提建议落实情况的督办人。会上除了讨论投资事宜外,也要讨论涉及市区教育、保健、文化等问题相关政策的政治指导原则。优先要务的确定遵循“一人一票”原则,每一公民都拥有可自行处置的同等票数。② 第二项原则就是社会正义。这里的社会正义通过一个分配公式来实现。每一投资区所能自行支配的资金应在各区之间分配,分配时应考虑居民人口数、原有基础设施的质量,以及当地列出的优先要务。这项原则能够保证基础设施匮乏的区比起生活质量较高的区,可获得更多的资金。③ 第三项原则就是公民监督。这一监督有赖于某些管理机构来实现。在这些机构中,例如设有参与预算理事会,该机构每周开会一次,为时两个小时,其成员经由区定期大会选出,他们的职责是,保证区的优先要务能最大限度地获得预算的支持。独立的非政府组织会对参与预算制的督办人进行培训,以促使他们能协同政府一起制定计划。此外,“参与预算理事会”也介入公共合同的分配事宜。



总体而言,即使面临着一些严重的挑战,某些挑战也还没有完全克服(Gret/Sintomer, 2005),但是,这三项原则的确导致公民社会(最明显的是工人阶级)的权力得到了强化。特别应当指出,这一成就的取得靠的是把两方面的努力结合起来,即一方面要靠基层政府拥有强烈而务实的政治意志,另一方面要靠自下而上的积极推动(Santos, 2005)。在巴西那些以自上而下方式推动参与预算制的城市中,莱昂纳德·埃维利泽告诉我们,制度实施的结果大相径庭(Avritzer, 2005; 2006)。阿雷格里港的实验意味着创造了一种富有创意的参与制度,尤其是创造了一支发挥制衡作用的力量。把这两者结合起来,正好构成了学者们在分析其他案例时曾提到的某种前提条件,即实现“权力强化后的参与性治理”的前提条件(Fung & Wright, 2003)。在 10 年的时间里,公民社会得到了增强,为了让自己的建议能够顺利地贯彻到参与预算的过程中,越来越多的公民加入到各种联合会和倡议行动当中。在这些新组织中,原来那种司空见惯的权钱交易基本上得到了克服,因为民主的透明规则取代了密室中闭门的讨价还价。此外,参与预算制使得公共投资的目标投向发生了改变,转而导向最为贫困的区域。其之所以出现这种变化,是因为本来往往不参与决策的低收入团体开始影响投资决策过程,新制度使得“无产者的公共空间”的形成成为可能(Baierle, 2006, p. 127),并有助于改善公共服务和基础设施。在阿雷格里港之外,巴西其他地区一些重要的参与预算实验项目也呈现了这种资源再分配的效应(Marquetti, Goddy do Campos, 2007; Bird, Worldbank, 2008)。

饶有兴味的是,在这一非常独特的环境中,诞生了一个新制度模式,该模式日后越来越被其他城市视为灵感的源泉。2001、2002、2003、2005 年,“世界社会论坛”前后 4 次在大里约首府召开会议,这也是参与预算制得以流传开来的一个重要原因。自此以后,阿雷格里港已成为更具参与精神的新型民主制的象征。十分令人惊奇的是,随着反全球化运动的高涨,连远非“颠覆性”的国际组织,如世界银行和联合国人居组织(UNDP, 2001; Cabannes, 2004a, 2004b)也来分析阿雷格

里港经验,视之为一个城市政治最佳实践的楷模。不过,拉丁美洲数以百计的其他参与预算制实验却具有迥然有别的政治、社会 and 行政后果(Cabannes, 2003)。

三、参与预算制是什么

任何比较研究都必然面临一个定义问题,这对在欧洲的参与预算制而言尤其如此,因为与拉美相比,欧洲预算分配程序中的公民参与形式迥然有异。在某些情况下,“参与预算制”这一术语仅指与预算相关的某种通报,并不包括与公民进行协商。然而,其他一些案例中,尽管在当地没有被称作“参与预算制”,却可能包括某种深度的参与过程。因此,为了使得比较研究切实可行,我们不能依赖于“唯名是从”或者“有名无实”的定义,即不能仅仅着眼于那些被指称为“参与预算制”的过程。一种本体论式的定义,即试图定义参与预算制在任何时候、在任何国家应该是怎么样的,是难以站住脚的,因为这一制度的做法在拉美和欧洲是各不相同的,况且,社会学家几乎不可能对某一制度的内容下什么定义。一种政治的(或规范性)定义是可以的,但本文并不追求这一目标。有鉴于此,有必要提出一种方法论的定义,该定义将包括一组最低要求,借以明确地把这一参与制度与其他制度(如街区资金做法)区分开来,同时,该定义又足够全面,以便能够充分包容那些在不同环境中实施的其他一些参与预算制形式。

大而言之,参与预算制允许那些未被选任的公民们也能参与到公共财政的规划和分配。为了能够更加精确地定义这一过程,需要补充5个标准(Sintomer, Herzberg, Röcke, 2008)来描述参与预算制的特点:其一,必须讨论财务或者财政问题,参与预算制本身就涉及有限资源的处置问题。其二,市政层面必须有所参与,或者至少一个区必须参与其中,该区应当具有较大的自主权,拥有一个经由选举产生的机构并对于行政系统具有某种控制力,就此而言,街坊或住宅小区层面是不够的。其三,



必须是个反复进行的过程,也即就财政问题单独开一次会或者搞一次公投,不足以成为参与预算制的案例。其四,有关过程必须包括某种形式的公共审议,这应当在具体会议或论坛的框架下进行,行政会议或者传统的代议机构的会议向“普通”公民开放,这并不是参与预算制。其五,对于实施结果需要有某种问责安排。

依照上述 5 个标准的定义,参与预算制在欧洲是一个新的、具有高度活力的过程。在 5 年中,参与预算制的项目数从 2000 年的 6 个增长到 2005 年的 55 个,而在 2008 年,已有超过 100 个试验项目。能够介入参与预算制过程的城市居民数量增加得更快,在两年中就翻了一倍,于 2005 年达到了接近 500 万。就在 2005 年,西班牙 5.2% 的人口已经生活在实施了参与预算制的城市中,不过,德国的比例只有 1.4%,在葡萄牙、意大利、法国和英国,该比例只在 1% 上下波动。与巴西相比,这完全不足挂齿,因为那里的比例在 2001 ~ 2004 年间达到了 43% (Marquetti, 2005)。与西班牙一样,在意大利可以见到项目实施案例特别强劲的增长,最近在葡萄牙也是如此,而英国看来在以后几年中会成为这一领域中的领先国家之一。

四、一个制度程序的分类

既然已有这么多的项目试验,任何比较研究都会面临两个相反的风险。第一个风险就是,在解释林林总总的实施案例时,采用某种单一的、片面的评估(比如声称欧洲的参与预算制只是一个政策问题而无政治影响),或者采用某种单纯的二分法(声称“真正”的参与预算制可以取代新自由主义全球化,而其他的参与预算制是虚假的)。第二种风险则是,迷失在五花八门的实施案例中,无法展示一个全球性的全景。为了克服这些问题,我们依照韦伯式的做法,对于世界各地的参与预算制作了一个分类,这一分类当然立足于经验研究过程中所构建的典型理想模式。借此方法,便可在一个半经验半理念的图形中确立不同的类型极,从而让

具体的项目实验各得其所(尽管它们不可能完全对应于某一个理想类型)。我们根据一组标准^①,区分出了6种模式,这些模式都深受其所在地既往条件的影响,呈现了明显的路径依赖。这6种模式是:

- (1) 为欧洲而调整的阿雷格里港模式;
- (2) 有组织利益团体参与的模式;
- (3) 基层和市政层面的社区基金模式;
- (4) 公共与私有部门谈判的模式;
- (5) 就近参与的模式;
- (6) 对公共财政进行协商的模式。

为使行文更加简洁,我们将按一组两个的方式来分析这些理想模式,并探讨相关的项目实验。

五、“为欧洲而调整的阿雷格里港模式”和“有组织利益团体参与的模式”

欧洲实施的某些项目特别受到过反全球化运动的推动,在此情况下,阿雷格里港模式对于一种全新制度的确立产生过直接的影响。例如,在西班牙那个拥有32万居民的考道巴镇,2001年开始实施的参与预算制基本上可以被视为属于“为欧洲而调整的阿雷格里港模式”这一理想类型。然而,在其他城市,巴西的榜样力量显得不那么直接,比如,参与不是针对个体公民的那些项目就是如此。在第二种理想类型中,次要性联合会、非政府组织、工会及其他有组织团体却扮演着主要的角色。这一模式以一种新社团主义的逻辑为基础,我们称之为“有组织利益团体的参与”。通常的情况是,如果有些地方本来就有相应的参与

^① 这些标准是:(1) 过程的启动;(2) 会议的组织(涉及街区、城市的会议;按主题召开的会议;闭门会议还是公开会议等);(3) 审议的方式(涉及讨论的话题、讨论的方式等);(4) 公民社会在该制度程序中的地位(涉及参与公民的类型、有关方法的共同制订等)。此外,每一模式的优点、缺点及挑战都得到了分析。



传统,即各种联合会和利益集团能够对某些领域的公共政策制订施加影响,那么该模式在这些地方就容易确立。虽然现在欧洲范围内至今还没有有组织团体参与的直接例子,但已有一些实验项目在往这一方向前进。拥有 15 万人的阿尔巴赛特镇所实施的参与预算制可以被认为是一种混合体,兼有阿雷格里港和有组织团体这两种模式的特点。

讨论内容的不同构成了这里所列两种模式之间的第二个差异。在为欧洲而调整的阿雷格里港模式中,参与性讨论主要涉及具体的投资与项目;对于利益团体模式而言,其讨论的核心往往是大的政治性指导原则,比如涉及住房、教育、环境及当地交通等政策的大政方针。两种模式之间的另一个差异事关公民建议获得处理的方法。在为欧洲而调整的阿雷格里港模式中,存在着很大的压力,要去实现那些参与预算过程中所涌现的建议,这是因为当地政府受义务约束,必须接受这些建议。尽管在预算问题上,相关决策还是继续由市政厅来最后定夺,但可以认为公民们“事实上”拥有了决策的能力。就如在巴西的情况那样,这一模式包括了一个投资分配公式,不过,有关标准未必就跟巴西的情况相同。其他的一些指标也可加以援用,如该区福利接受者的人数、参与会议的情况,或者公民自己能够推进所建议项目的程度。在有组织利益团体参与的模式中,相关规则比起阿雷格里港模式来可能不那么正规,或许只是引发某种非正式的商议过程。

案例：塞维利亚(西班牙)

塞维利亚的安达卢希亚市拥有超过 70 万的人口,是欧洲采纳参与预算制城市中规模最大的一个。该城市的文化传统声誉甚高,但社会问题却相当严重。这里的参与预算制起步于 2004 年,集中涉及三个市政领域中的投资与项目,这三个领域是公民活动、体育、城市风尚。该市所采用的做法与巴西的阿雷格里港非常类似,即整个过程以个体参与为基础,呈分散和非集中状态,按照街坊、区、市这三个不同的地域层次展开。公民积极分子组成核心的“推动小组”,他们与本地政府部门的技术人员

携手合作,组织召开会议。每年的3月份启动整个过程,先是在街坊层次召开会议,参会者可以提出建议并且选举参与区一级和市一级活动的代表。区一级代表的责任包括把街坊一级提出的建议按照轻重缓急进行优先排序。市级代表只讨论涉及全市的那些建议,诸如建设新的市级游泳馆或足球场这样的重大投资问题。在市级和区级,项目的优先排序是由一套复杂的标准来确定的,这套标准体系会充分考虑在再分配过程中,应向弱势或者边缘化的社会群体倾斜,其出发点是要最大限度地缩小各区之间和各街坊之间的不平等。当某地现有的基础设施薄弱时,或者当某一项目会有利于某一边缘化的社会群体时,它们就会得到优先考虑。

在参与预算制实行的第一年,共有265项建议被纳入安达卢希亚市的财政预算中,总额达1200万欧元。有关参与预算程序的方法本身是由一个包括了每个街坊的代表委员会制订的,而且,它作为一个程序性动议也要公之于众。另有一个委员会负责监督项目的实施。整个过程的具体组织则交由当地政府合同委托的一个外部机构来办理。

这两个模式的一个长处体现为拥有进行高质量审议的潜能^①。参与者不仅在大范围的全会上讨论问题,而且也可能在较小范围内的论坛或者代表委员会上这样做。在这些场合,可以展开深入的讨论,使得人们能够酝酿具体的解决问题的建议,并澄清某些重要的问题。甚至还有这种情况,参与者就学校设备问题或者少数族裔的融合问题提出专家报告。然而,这两个模式都面临一个挑战,即如何把参与预算制的程序与整个行政系统的全面现代化结合起来。还有一个挑战涉及如何处理好个体公民的参与和有组织利益团体的参与这两者之间的冲突。在某些接近阿雷格里港模式的项目实施中,可看到这方面的问题,例如,某些现有的联合会及其倡议行动担心自己的原有影响力及推动力

^① 判断审议质量的高低也有标准,包括:过程的包容程度、论辩的展开程度、清晰规则的存在程度。对审议的各种定义可在关于审议民主制的文献中查见,以往一两年中,这方面的文献有了骤然增加(Cohen, 1989; Bohman & Rehg, 1997; Elster, 1998)。



会受到损害。

六、“基层和市政层面的社区基金模式”和“公共与私有部门谈判的模式”

基层和市政层面的社区基金模式和公共与私有部门谈判的模式，至今在欧洲的参与预算制实践中只扮演了非主流的角色。但它们为未来参与预算制的发展，主要是在英国和东欧的发展，提供了一个潜在的强大基础。在这两种模式中，都设有基金，用于投资，或分别用于社会、环境、文化诸领域的项目。例如，在英国拥有 46.7 万居民的布莱福特市和波兰拥有 12.8 万居民的普劳克市，都存在这一基金。这些模式的另一个特点是，它们都相对独立于市政预算，因为涉及的资金并不来源于，或者部分并不来源于当地行政部门。因此，市政厅对建议的接受与否并无最后的决断权，相反，是委员会、专门小组或代表大会在确定何为应当优先解决的事务。有组织团体，如当地的或社区的联合会、非政府组织，在两种模式中都处于核心位置，不过，其中一种模式排斥经营活动，而另一种模式则非常重视经营活动。一般认为，两者的审议质量都是不错的，因为好几次会议召开时，参与者群体的规模都控制在便于管理的范围之内。

在公共与私有部门谈判的模式中，私有企业，或许还有国际组织，会筹集部分资金。例如，波兰奥莱恩石油公司除了向普劳克市政当局和一个联合国项目捐款外，还向该市一家总额接近 30 万欧元的基金捐助了其中的 50%。这种财务资助使得私有的赞助者能够影响有关制度程序的设计，与此对照，只伸手要钱而不捐助资金的公民们只扮演次要的角色。当国际行为体试图将公民团体或者非政府组织拉入公司合伙关系中时，可以应用这种模式。联合国人居项目就正式采用了参与预算制 (Cabannes, 2004)，但它很快就大幅度地偏离阿雷格里港模式，把这一工具定义为“一个创新机制，可以推动当地政府、私有部门和公民社会，

一起来修复事关共同利益的财政体制”^①。因此,阿雷格里港的影响只是间接的^②。

案例：布莱福特(英国)

布莱福特是个西约克郡的后工业社会城市,现有 47.4 万居民,以往 15 年中,该市的政治一直不够稳定,政治权力在各个联盟和勉强的多数派之间来回转移。在目前的市政机构中,没有形成完全控制的局面,但包括了 6 名最高市政委员的行政当局持有保守的政治理念。在最近的日子里,极右翼政治、社会紧张关系、多数派白人与少数派巴基斯坦社区之间的族际暴力现象在布莱福特市都呈上升趋势。英国在全国范围内开展着一个针对最贫穷的地区社会、经济和政治发展的社区复兴计划,“布莱福特地方战略伙伴委员会”,作为由私有企业部门、社区和志愿者团体等各方代表联合参与的机构,也设有一个专事社区复兴的团队,该团队于 2004 年启动了参与预算制程序。这项工作以当地社团资金方面的实验为基础,共有 70 万英镑可以用于布莱福特最贫困地区的地方改造工程。基层社区都得到鼓励,可申请 1 万英镑以上、10 万英镑以下的小额款项。选择项目的标准是,它们与当地既定的优先要务相关,而且曾经在当地范围内被讨论过。

2004 年中有两个工作日确定资金的分配,年初时曾确定过 30 万英镑,11 月份时又确定过 31.4 万英镑,“布莱福特前景”工作组在这两天中负责有关的协调和服务工作。每个工作日包括两次会议,会上,30 个候选项目每个都指派两个代表来介绍项目。所有的参会者都是来自当地各社区的代表,其中相当部分来自主要的移民团体。大家需要给自己项目之外的每一个项目打分,从 1 到 10,1 是最低分。每经过 10 个项目的介绍,就收集打分单子,输入电脑后,最后的分数便出现在投影屏幕上。

^① 联合国人居署官方通告,2005 年 7 月 28 日。

^② 反过来,2004 年工党在选举中败北之后,这一模式影响了阿雷格里港当地新政府的参与政策。所提出的“当地团结治理”计划包括了参与预算制的内容,当然还包括其他多重内容,该计划拟将当地的经营活动吸纳到参与过程中,直到现在效果还很不显著。



每一次打分会结束后,没有得到资金的项目还有一次机会,因为中选的项目参与者会从自己的资金中匀出一小部分来支持他人。这一过程运转得非常成功,将近 60%~70% 的中选团体会返还一些资金,平均为 250 英镑~500 英镑。这套程序在随后年份中多次重复执行(Jez Hall, “介绍布莱福德”,收于 Sintomer, Herzberg, Röcke, 2005)。

与此对照,当强大的当地参与传统与阿雷格里港的理念结合起来时,会导致当地的社区基金模式向城市层面扩展。在这一模式中,参与者们自主地商定社区基金的规则,经营活动被排除在外。资金支持跟随具体的政策纲领,比如跟随城市改造项目。举个例子,2004 年,英国布莱福特市一个总额超过 87.5 万欧元的参与预算基金按计划完全用于贫困区的居民群体。更重要的是,社区基金这一模式类型的参与者会自行推动项目。尽管公私谈判模式中也可能有自行推动的特点,但该特点在那里并不是必然的一个要求。

这两个模式也是既有优点又有缺点。例如,虽然市政厅因为筹集了部分款项而保留了一定的影响力,但在这两种模式中,与当地政治结构的联系均偏弱或者没有。在公私谈判模式中,私有投资者的影响力有赖于其捐款的多少,但显著地偏向更大的社会正义还是不大可能的。同样,社区基金模式为参与预算制提供了新的可能性,比如,各国或者欧洲范围内城市改造和基础设施完善的项目,可以与当地的参与预算制结合起来,以便改善贫困社区并提高当地居民群体的福利。这两个模式都有一个优点,就是为显著的公民参与提供了可能,因为参与者均有机会具体实施项目。

案例：普劳克(波兰)

波兰城市普劳克的居民人数将近 13 万,尽管失业率较高,它依然是波兰最大的石化工业中心,人均收入水平位居国内第二位。该市市长来自中右翼政党(即法律正义党),与此对照,市政当局中的大多数人则属于左翼政党派别(如民主左翼联盟、工会)。普劳克市的参与预算过程是在联合国发展署的框架中进行的,采取了公私部门携手合作的方式,包

括了作为新制度主要倡导者的普劳克市、位于普劳克市的波兰最大的奥莱恩石油公司、列维·斯特劳斯公司,以及当地非政府组织的代表。参与预算制从2002年开始实施,当年在“普劳克论坛”上,启动了“普劳克工程的资助基金”。第一轮“官方”资助于2003年发出,随后则是在2004、2005年发出。至今每年的资金将近30万美元,系由波兰奥莱恩石油公司、列维·斯特劳斯公司及当地政府提供。正式的目标是要促进可持续发展、推动经济发展、改善生活条件和公共治安、完善基础设施、保护文化遗产以及环境。

凡是在普劳克市注册了主要办公地址的非政府组织都可提交项目申请并争取资金支持。任一组织在提出申请时,都必须证明其良好的财务状况、呈现透明的筹资规则并表明致力于公民社会的建设。对于申请的评估,都列有清晰的规定,而且申请必须面向出资方所确定的六个领域,包括教育、经济、遗产保护、环境、高生活质量、城市建筑。作出决定的委员会中有当地公民、专家和官方项目出资方的代表。每个项目最高可申请1万美元,有关项目通过当地的公民社会协会具体实施(Elzbieta Plaszczyk,“介绍普劳克”,收于Sintomer, Herzberg, Röcke, 2005)。自从新预算程序实施以来,申请量有了增长,从2003年的53个(其中34个获准接受),上升到2004年的70个(其中32个获准接受),一直到102个(其中59个获准接受)。普劳克市的榜样已经在奥斯托鲁·威尔考保斯基镇引发了类似的一套预算程序(波兰奥莱恩石油公司又是捐助方之一),此外,其他城镇也表现出有兴趣采用类似的预算制度。与此同时,普劳克市又将有关资金整合为一个基金,借以发挥更大的效力。

七、“就近参与的模式”和“对公共财政进行协商的模式”

就近参与模式的例子绝大多数存在于法国,公共财政协商的模式则主要是德国参与预算制的特点。两者具有共同点,都仅包含了协商的过



程,这意味着讨论的结果由当地行政系统,而不是由参与的公民来加以归纳总结。与前已介绍的模式有所不同,这两个模式中的参与者并不投票选定或者酝酿制订何为优先项目,所采用的是一个“选择性倾听”的过程。也即参与过程完成之后,当地政府可以自主地或者说独断地将某些建议吸收到它的公共政策中去。况且,公民社会对于制度程序的设计只拥有微弱的影响力。需要指出的是,这些模式并不追求任何社会目标,参与过程中也没有特别的标准。另一个特点是,各种联合会很少在这一制度中扮演什么角色。参与是通过公开的理事会来进行的,而到会的个体公民是经由媒体、邮件或人际接触所传播的通告走到一起的。在德国以及在法国的某些实验中,参与者是按照选民登记册以随机挑选的方式来召集或补充召集的。(Röcke, 2005; Sintomer, 2007)这些个体接到市长发出的私人请柬,前往参加公民论坛。这一方法应用于埃姆登(3.5万居民)、于尔岑(5.6万居民)、弗劳特(2.1万居民)和柏林的特雷普特—考普尼克区(23.3万居民)等。柏林利腾博格区已成为德国最为成熟的参与预算制案例,公民会受到邀请去评估由行政部门所提供的“产品”,实行有关的服务。

案例：柏林利腾博格(德国)

柏林利腾博格共有 25.2 万居民,是柏林 12 个区之一,位于原由东德控制的一边。利腾博格区的大部分地区都是共产主义风格的高楼,剩下部分则较有历史风貌,人口构成十分庞杂。2005 年时,该区启动了参与预算程序,最初是一个试点项目,由柏林市政府出资支持。总体项目的关键点是要对 35 个预算产品进行参与性的评估,这里的产品是指区行政部门职权范围内的公共服务与设施,比如文化服务、额外社会服务、青年项目、经济发展项目、公共图书馆之类。召开参与预算制会议期间,会征询公民们的意见,看看选定的产品是否符合他们的需要,或者他们是否准备提出修改意见。项目建议可以通过三种方式来提出:通过因特网、通过邮寄,或者经由社区会议。在行政部门确定每一项目的成本之前,由公民和区级代表构成的一个委员会先期审核项目建议的可行

性。在区级的集中会议上,所有利益相关的公民均可投票,可以将其5张选票自由地分配并投向所建议的项目,借此决定其轻重缓急的次序。另外,也会随意选定某些公民,通过因特网或者邮寄方式,组织更进一步的票选。

公民参与的结果会传达给当地的区政厅,区政厅拥有最后权力,决定哪些建议项目可纳入预算计划中。区政厅有义务就公民最为关注的20个最优先的问题向公民详细报告自己的决策情况,作为一种反馈。在第一轮参与预算过程中,公民们表达的意愿涉及维护公共音乐学校、扩大体育和图书馆服务等。

这两种模式在启动方式上有所差别。就近参与模式往往依赖于原先的参与手段,比如街区基金或理事会,它们通常与参与预算制融为一体。这一进展的取得是在受到阿雷格里港观念影响之后发生的,不过,其与阿雷格里港实际上的相似性依然十分有限。公共财政协商模式可能保留了来自阿雷格里港的若干影响,但实际上更得益于“新公共管理”战略的参与趋势。在德国,这一模式是从新西兰克里斯丘吉市引进的,巴西的实验只是在以后才产生了影响力,从而导致混合模式的出现。

就近参与模式大多数涉及街区,并只关涉这一层面的投资。在作为总体的城市层面,这一模式不再涉及投资活动,而涉及总体政策目标,如建设“一个美丽城市”之类。一般而言,“就近”这一术语有两层含义。一方面,它指某种地理意义上的就近,譬如,就近在居住的街区组织几次会议,而不是在市政厅只开一次会议;另一方面,该术语也指市政领导或行政部门与公民之间要有密切接触。根据这一模式,拥有4.5万居民的鲍比尼市的市长一年召集两次公开会议,借以回应公民的各种关注。

公共财政协商模式首先涉及促进城市财务的公开透明,有关总体预算的信息通过小册子、因特网、新闻发布等形式而得到散发。这一模式有两种形式,在更为流行的那种形式下,公共服务和市政责任的领域应当公示,例如,应当公示图书馆、游泳池、幼儿园、街道保洁、污水处理、垃圾处置等方面各自的收入和开支情况。公民们可以在公开的大会或者



具体的论坛上提出自己的建议。在另一种形式下,重点放在平衡预算赤字上。比如,在埃姆登的北莱茵-威斯特伐利亚镇,2002年的参与预算过程是以旨在平衡预算的5个方案为基础的,这5个方案包括:降低人员成本,降低运行开支,减少志愿工作和责任,提取备用资金,增加税费。问卷手段得到采用,每个公民都被要求依照前述各种可能及其组合,提出自己的建议。在活动最后,则依据对个体公民所发表看法的计算,归纳出公民论坛的总体建议。统而言之,该模式的审议质量偏低,因为在多数情况下,没有什么时间来展开更为深入的讨论。相比之下,就近参与模式的辩论质量要高些,因为公民有时会分成小组,在较长的时间内反复开会。

案例：鲍比尼(法国)

鲍比尼市共有人口4.5万,地处巴黎的北郊,作为一个新建市镇,鲍比尼有很多现代住宅和高楼。这里大多数人口属于工人阶级,其中许多是来自法国海外领地的贫穷移民。为了改善居民的生活处境,市政当局提供了项目繁多的社会与健康服务。20世纪90年代下半期,市政府在社区和市镇层面开始实行一些参与性制度,参与预算制是这一实践中的一部分,不过并非核心部分。市长在每年两度的大会上讨论诸如停车、家政、治安等日常问题,所需投资较少的项目可以在委员会中确定,委员会则可向社区理事会提交建议。在市级层面,有一个战略规划机制,每两年都会针对不同的主题组织一次大会。在这些会议上,当地政府会筛选建议,然后拟定罗列具体建议的单子,准备在随后年份中加以落实。由利益相关或者抱有感兴趣的公民所组成的监察委员会会严密监督有关项目的实施,并准备详尽的报告,记录每一项建议的情况。该报告随后则分发给全体家庭,并在理事会上加以讨论。市政府努力通过研讨会的方式来落实参与预算制,借研讨会来解释总体财务状况,并协助公民拟定建议。虽然最初曾有过计划,但对于讨论的结果,至今尚无任何反馈意见(此涉及“问责制度”)。故此,该进程尚不能被视为本研究项目中所定义的参与预算制。不过,鲍比尼市准备在负责社会住房的市政机构中

启动一个新的试点项目,通过分发小额资助来支持居民身边的一些项目。

公共财政协商模式较有意思,理由是,它终究是当地官僚机构总体现代化的一个部分,即使限于一年一两次会议的讨论难以产生巨大的效果。而且,公民参与只构成了这一现代化进程的一个“附加物”,与社会问题和政治复兴没有直接联系。就近参与模式也许会引发公民与行政系统成员之间的讨论,但几乎不能在城市的层面产生现代化的效应。在这两种模式中,有关议案落实的问责制不够强,公民社会的自主性也比较弱。

八、参与预算制在欧洲的影响

如果现在就来系统地分析参与预算制在欧洲实践中的效果,还是相当困难的。首先,我们面对的此项制度毕竟实施未久;其次,要把这一特定因素与其他更为司空见惯的因素各自所产生的影响分离开来难度很大,比如难以测定参与预算制对于选民参选率的确切影响。此类分析所需要的量化数据目前还无法获得,我们研究的主要结果也是通过定性研究方法及对制度过程和制度环境的国别研究才取得的。另外,参与预算制的效果也因各自采用模式的不同而迥然相异,自然也无法脱离具体的社会经济条件与政治条件。既然存在着这些问题,关于参与预算制对行政现代化、政治复兴、社会正义的强化所能做出的贡献,我们目前能说些什么呢?

在参与预算制和要求更多透明度之间,显然存在着联系,这点既适用于参与预算制涉及的具体项目,也适用于总体的财政问题。然而,至今为止,透明度还不足以使得公民们能够实际控制城市的财政事务。除了透明度之外,行政现代化的其他四个趋势也在各种案例中得到了分析。这些趋势包括:根据公民的建议而完善公共服务;各行政部门之间更好地合作;提高行政系统内部运行的速度;公共行政系统更好地做出



反应。与此对照,通过参与预算制来寻求行政系统降低成本并改革结构,这反倒是一种例外。只有在某些城市,比如在西班牙,参与预算制才迫使行政系统拿出直截了当的结果来证明自己的绩效,来改善各部门之间的协调,来以透明的方式公示内部和外部的行政活动。不过,看起来非常合理的是,有一个重要标准足以衡量参与预算制所取得的成功,那就是在参与和全面现代化进程之间的联系。这一务实的目标实际上只有在公共财政协商模式中得到较好的实施,但总体的成就还是相当令人失望的。用来解释的理由是,在这一种参与预算制中,几乎见不到良好的审议,须知良好的审议是判别成功的另一个重要标准。与此相比,在阿雷格里港模式中,更可能出现良好的审议。一般而言,只有在公民大会和参与理事会进行充分讨论的地方,参与预算制的现代化效应才会体现出来。

参与预算制的潜在政治后果甚至更加参差不齐。在许多案例中,参与预算制有助于改善公民、行政系统、当地政治精英之间的沟通。然而,参与预算制是否将会扮演起政党过去所扮演的那种中介角色,这还是一个悬而未决的问题。人们普遍期望,参与预算制实行之后,选民参选率会上升,可是,实证数据并不能支持这一看法。在不少案例中,即使能够观察到执政党会有一些更好的结果,但这很可能不是实行参与预算后的直接效果。一个更可信的解释似乎是,选民参选率上升是由当地政府总体上采取的参与做法所带来的。当然,参与预算制对于政治文化和参与者的素质会有积极的影响,在某些情况下,会促进公民社会更好地协调,特别是在有些地方,如果不是只开一次年会,而是在较长时间里定期召开多次会议时,则效果更是如此。但是,市政当局很少把公民的具体建议当作其最后决策的“指南”,只有在西班牙和意大利有一些例外。这是因为,预算中的核心问题经常不会在参与过程中得到讨论。不管如何,欧洲参与预算制的切实政治影响只会在相当长的时期中才会明确显露出来,到目前为止,与阿雷格里港相比,欧洲实验的政治效应远没有那么显著。

欧洲与巴西情况的差异在社会正义这一方面表现得更加明显。意大利的格路塔麦市是唯一的一个例子,表明在实施参与预算制后,发生了根本性的社会改善。不过,在某些城市中,参与预算制可以调动那些边缘化群体前来参与。例如,在西班牙的阿巴塞特市,流动人口,以及少数族裔团体能够在参与预算代表委员会中占有永久席位,并因此促成了一个满足自己需要的社区中心的建设。为了取得社会正义方面更为全面的效果,参与预算制必须吸纳不同团体和不同社会阶层的参与,比如可通过更合适的程序和分配标准来实现这一目的。在某些倾向于“为欧洲而调整的阿雷格里港模式”和“社区基金模式”的案例中,可以见到这一迹象,尽管实施的程度还相当有限。

九、结论

我们在本文中已经表明,阿雷格里港参与预算制模式引入欧洲,呈现出一个高度纷杂的过程。在欧洲,参与预算制并不依赖于单一的制度程序,而是依靠了众多的手段。因此,在一项比较研究中,有必要对预算参与制作一清晰的方法论定义,并且确立理想类型,这样才能全局性地展现林林总总的制度实验。我们提出了六种分类模式,包括:为欧洲而调整的阿雷格里港模式、有组织利益团体参与的模式、基层和市政层面的社区基金模式、公共与私有部门谈判的模式、就近参与的模式、对公共财政进行协商的模式。这些模式体现出显著的差异,各地原有的参与传统和民主传统很大程度上造成了这些差异。

到目前为止,参与预算制主要由左翼政治家们在实施,不仅在较不富裕的国家是如此,在许多欧洲国家中也是这样,尤其是在法国、意大利、西班牙、葡萄牙。然而,就欧洲的情况而言,参与预算制没有(也许是尚未)产生政治领导人和积极推动者所期待实现的那些结果。这究竟只是个时间问题呢,还是一个政治环境问题?阿雷格里港曾经拥有的“机会之窗”不可能无中生有地生造出来,光靠参与预算制的“制度工具箱”



也难以在欧洲制造出与巴西那里同样的结果。不过,还是有一些参与预算制的“成功”例子,特别是在西班牙和意大利,这些较为可观的效果之所以能够取得,靠的是过程认真、规则明确,靠的是活跃的公民社会,靠的是当地政府与领导人努力学习如何展开合作。在另外一些案例中,有关过程虽被贴上了参与预算制的标签,但实际上更像是某个政客或城市的“作秀”,而不是什么公民的参与手段。在这种情况下,很有必要保持一段距离,进行冷静的评判,不能把理念的宣传与真正的成就混为一谈。这些部分地有赖于集体行动的具体活力,部分地有赖于各种制度程序的内在利益。

一般而言,要确立“唯一的最佳模式”是不可能的。例如,在社区基金模式和公私谈判模式中,公民直接参与项目的实施,这挑战了哈贝马斯和埃维利泽的观点,他们认为,参与只能合法地涉及决策过程和对行政系统的控制,实施公共政策的全权只能保留给公务员。这两种参与模式引发了社区活力和志愿群体,虽然这些东西未必就是解决任何问题的理想方案,但也不能一味认为,在服务于公共利益时,它们必然比公共行政系统或者市场机制效率低、方向差。这个问题在阿雷格里港实验中,并没有当作中心问题来关注。即使公私谈判模式似乎并不能有助于人们改变原有社会要务的优先次序,但它毕竟清楚地告诉大家,在阿雷格里港模式中,私有部门的所作所为被完全地隔离了起来,而实际上,这一部分对于城市发展确实是至关重要的。

另一个问题涉及公共行政系统的现代化。为了扭转以市场为衡量标准的新自由主义趋势,公共部门必须证明自己是有效率的,是能够为公众提供良好服务的,可是,要做到这一点,它必须首先改造自己的内部结构,改造自己的管理程序,并且给公众一个在此过程中发言的机会。某些专门研究巴西案例的学者已经强调了这一个方面,最值得注意的就是鲁夏诺·费多齐(Fedozzi, 1999、2000),但国际上的文献至今都还没有充分意识到这一非同小可的挑战。至于公共财政协商模式,即便其带来的结果令人失望,但它比欧洲式的阿雷格里港模式更为正面地在关注

这一问题。这一点是重要的,因为其对现代化的潜在贡献比起欧洲参与预算制的政治与社会方面,总体而言要远为显著,而且与拉美经验相比,这也是欧洲实践中最有意义的特点。

观照中国的情况,我们能够发表什么看法呢?一般而言,一项制度或者一套程序,当能与某些原有的参与传统结合起来时,会比那些与原有传统没有任何联系的“人为”的东西,给人们带来更多的效果。更具体地说,中国的几个试验性项目展示了某些与我们的理想类型颇为类似的特点,尽管操作的大背景差异甚大。例如,上海浦东新区公众参与公交系统的过程似乎与“对公共财政进行协商的模式”颇为类似,两者都立足于利用使用者的知识来改善当地的服务。在参与预算制情况下,讨论涉及总体的公共服务,在浦东,参与限于交通问题。中国的公务员胡荣明确地说,交通的使用者应当能够控制服务并决定是否能够接受没有空调但票价较低的公交车。以此观察,使用者的参与显然与“更大的效果、更高的效率”联系在一起。另一个例子是温岭市的项目,或许可将之视为一种参与预算制,介于“对公共财政进行协商的模式”与“就近参与的模式”之间。参与主要集中于进行年度预算计划,以及邀请随意选定的公民来评议或建议。组织者之一的慕毅飞公开宣示,该制度的目的之一就是要改善官员与当地公众之间的关系。

就德国与中国参与性实践两者间存在的异同得出概括性的结论,现在看来还为时过早,显然需要超越一些表面性的看法,进行真正的共同研究和对比工作。不过,有一点似乎是清楚的,在中国确实存在公民参与方面令人鼓舞的例子,在一定程度上它们也可以与欧洲的案例进行比较。在德、中两国,地方或基层的决策者越来越把参与看作是个机会而非威胁,不断地就这个问题交换实践经验和理论成果一定会丰富两国在这方面的探讨和实践。

为了在今后展开此类探讨,也为了总体上对参与性实践进行研究,需要指出一个重要的方面。在中国、拉美和欧洲反复出现的一个问题是,公民们在某件事情上最终可能倾向于某一个立场,可是这一立场跟



掌管此事或者掌管相关机构的某些领导人或公务员的想法却大相径庭，这种局面会带来什么影响呢？在拉美和欧洲的一些案例中，官员们会致力于接受公民的意见，而在另一些案例中，官员们会部分改变自己的看法，尽量形成一个新的更有弹性的混合方案，并与公民社会加强对话。还有一些情况下，他们只会采纳那些与自己的观点相符合的建议，却会拒绝接受公民们其他的意见，有时甚至也不作任何解释。这里所说的最后一种情况会产生非常负面的结果。假如人们的观点被长期地并且粗暴地置之不理，他们便不会再愿意参与当地事务，也不会再去跟当地的官员们谈论当地的问题和需要做的事情。因此，对于参与过程的结果应当落实明确的问责制，这一点将直接影响到基层公民参与是否会真正取得“成功”，也许这在任何一个洲当中都是一样的。

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温岭公共预算民主恳谈的 实践与思考

慕毅飞

从 2005 年开始,温岭市在新河、泽国两镇尝试公共预算改革,将民主恳谈引入基层人代会的预算审查,形成了对预算进行实质性审查与监督的“参与式预算”模式。2008 年以来,温岭将这种模式从 2 个镇推广到 5 个镇,从镇一级提升到市一级,将参与式预算引向深入。

一、温岭 2005~2008 年公共预算民主恳谈的发展

(一) 新河模式(2005~2007)

自 2005 年起至 2007 年,新河镇先后进行了 5 次年度预算审查和中期预算调整的参与式预算改革,时间分别是 2005 年的 7 月、11 月,2006 年的 3 月、7 月和 2007 年的 4 月。整个内容主要分会前初审、大会审议和会后监督三个阶段。一是会前初审,即在人代会召开之前,由镇人大主席团领导下的人大财经小组组织召开预算初审民主恳谈会,分工业、农业、社会事业三个专门小组进行讨论,参与者除人大代表主体外,动员各协会、社会团体、各界代表和公民自愿参与,会后各小组形成预算初审报告。二是大会审议。在人代会召开期间,人大主席团组织代表先分组讨论预算方案,再集中大会审议预算报告,镇政府负责人在会上回答代表提出的询问。随后,镇人大主席团和镇政府召开联席会议,根据代表提出的意见形成预算修改方案。联席会议之后,大会通报预算修改方案,代表再进行分组审议。在这个阶段,5 名以上代表联名可以提出预算修正案。最

后,大会投票表决预算修正案和已经修改的预算草案,代表联名提出的修正案若获得全体代表半数以上支持,则通过成为预算的一部分。三是会后监督。人代会闭会期间,由镇人大财经小组作为财经监督常设机构,对政府预算执行情况实行监督,并参与下一年的财政预算编制。

(二) 泽国模式(2005)

2005年,泽国镇建立了参与式预算的公众协商模式,由民众直接参与城镇建设项目资金预算安排决策过程。主要做法是:先由政府选出一批属于本级行政范围且事关民生问题的城建项目,由专业人员组成专家组对这些项目的可行性方案进行研究,同时提出每个项目的资金预算,形成预算项目民意调查问卷。再采用乒乓球摇号的随机抽样方式,按照千分之二比例,从全镇18岁以上的人群中随机产生恳谈代表,参与预算民主恳谈。恳谈代表会前先就这些项目的重要程度填写调查问卷,对优先投入的项目进行排序,表明自己的意见。通过数轮分大小组讨论和协商的方式不断地交流后,民意代表再次填写排序的调查问卷。此后,镇政府召开办公会议,讨论恳谈会上代表提出的建议和第二次调查问卷的预选结果,根据财力情况按顺序形成一份优先方案。在随后召开的镇人代会上,镇政府将上述方案提交大会审查讨论并票决通过。

(三) 实施交通部门预算民主恳谈

民主恳谈前,由市政府有关部门编制交通局2008年部门预算(草案),市人大常委会财经工委对此进行初审。随后在2008年1月13日,市人大常委会举行交通部门预算民主恳谈会,邀请了来自社会各个层面的市人大代表、普通公民、老干部、镇(街道)人大负责人、相关部门负责人及专家、常委会有关委办负责人及财经工委议事委员会成员等七类对象共80余人参加恳谈活动。与会人员先集中听取市发改委、财政、交通部门有关情况和财经工委初审情况的汇报,然后采取分组恳谈与集中恳谈相结合的方式,就交通局2008年部门预算进行深入恳谈,充分发表意



见和建议。分组恳谈活动根据与会人员的身份、地域分布状况分成四组进行；集中恳谈活动先由各组组长汇报分组恳谈情况，再让部门与代表、公众进行面对面恳谈，市政府领导最后作表态发言。恳谈结束后，常委会及时跟踪督促政府部门落实恳谈意见，完善预算编制工作，确保部门预算民主恳谈的质量和效果。同时，以电视专栏、报纸专版、温岭人大网专题的形式，对恳谈活动进行公开深入报道，让公众了解部门预算民主恳谈的全过程。2008年8月举行了检查该预算1~7月份执行情况的民主恳谈，会前安排与会代表视察交通工程项目，会上先听取市发改委、财政、交通等部门的情况汇报，再听取市人大常委会财经工委的调查报告，然后分组与集中结合进行恳谈，与会人员提出建议意见，相关部门负责人回答询问，并作表态性发言。

（四）温岭在乡镇层面开展参与式预算

五镇相继开展参与式预算。2008年年初的镇人代会上，新河、泽国、箬横、滨海、大溪相继开展了参与式预算。几个镇各有侧重、各有特色。如新河镇在原有基础上进一步深化，在大会最后一次全体会议票决预算修正案前，增加了大会辩论程序，让人大代表围绕两件预算修正案开展充分辩论，随后进行票决。虽然这两件修正案由于代表分歧过大最终都没有通过，但启发了代表如何更好地为自己所代表的选民争取利益。泽国镇将以往的城建预算项目拓展为整个财政预算，第一次围绕全镇年度预算进行会前民主恳谈。为便于代表审议，泽国镇还首次编制长达48页的《泽国镇2008年财政预算支出测算表》，对泽国镇24852.3万元的财政预算列出极为详细的预算开支清单，完全透明地呈现给代表。同时，借鉴新河模式，在人代会期间组织代表集中审查预算，并对预算修正案和预算草案进行票决，最后预算草案仅比法定过半数多6票而涉险过关，差点酿成全国首例乡镇预算被否决的事件。箬横镇“三审预算”，先是在人代会召开之前，邀请人大代表和公众代表搞了两次预算初审会。第一次在1月29~30日，按地域以白峰、东浦、高龙、箬横、山前、贯

庄等6个管理区为单位进行分片审议;第二次在2月20日,在组织代表进行财政预算审议和人大代表履职知识培训后,按功能分经济、社会、城镇建设三个专门小组进行初审民主恳谈会。两次初审间隔开来,让代表和公众有充分时间熟悉和讨论预算。最后,在2月22日下午~23日召开的镇十五届人大二次会议上进行第三次审议,并在二次全体会议上进行集中会审,最终预算获得通过。此外,滨海、大溪两镇也借鉴新河模式进行了参与式预算,并根据各自实际作了一些改进和创新,收到了初步效果。

二、参与式预算的成果

来自人大方面的总结认为:温岭公共预算改革的积极意义,至少表现在四个方面:

(一) 促进了公共预算

一方面,促使政府预算编制更为详细、更为科学。以前的预算草案仅列出十几个没有具体内容的支出大项,代表能看到的只是预算数字的汇总或堆砌,在审查和表决预算时,缺乏实质性的审查。现在要求政府制订预算时必须详细,与会者能理解并提出意见。这样就促使政府投入更多的时间和精力去编制预算,进一步提高预算编制水平。另一方面,促使预算进一步走向公共化。通过邀请社会各界民众广泛参与预算审议,体现了公众参与预算的广泛性和有效性,也进一步促进了预算的公开化。从参与式预算实践来看,不仅详细公开了预算报告和草案,使得公众对政府在本年度怎么花钱、钱花在哪里都清清楚楚,而且还公开了预算审议过程,无论是对每一个预算项目的审议,还是审议的每一个环节,都是在完全公开、透明的状态下进行。

(二) 激活了人大作用

过去,法律赋予的人大职权尤其是乡镇人大的不少职权并没有真正



到位,财政的预算和执行权实际上掌握在地方政府个别领导人手中,人大基本处于虚位状态。现在,从预算民主切入,把民主恳谈制度引入预算审查、监督过程,以民主恳谈激活人大作用,促进人大和人大代表更好地依法履行自己的权利。从实践来看,人大预算审查与监督中既有公众的参与,又从制度上完善了人大审查批准预算与监督预算的执行,使人大在公共预算中发挥越来越重要的作用。无论是增加人代会的会期和会次,设立人大财经小组,还是对代表进行履职能力培训,代表可以提出预算修正议案等,都是围绕着预算而展开,不仅极大地丰富了人大和代表工作内容,而且也使得人大在监督预算时行使职权更加到位。

(三) 改进了政府工作

对政府而言,参与式预算是一个接受代表、公民参与决策的过程,是一个吸纳“民意”的过程,是一个得到公众认同的过程。通过这样一个人大、政府、代表和民众互动的过程,减少了政府“拍脑袋”决策,使得决策更加科学化、民主化和规范化,进而使政府领导逐步确立这样的观念:必须对本区域内经济社会发展的进程有全面的掌握,必须对真正的民意有清晰的了解,必须对有限的财力用在刀刃上有准确的把握。只有这样,才能使政府工作更加贴近实际,更加得到民众的理解支持;同时促进政府及部门依法理财、科学理财和民主理财,积极控制财政赤字,努力建设节约型政府。另外,通过预算过程的参与、对话和协商,政府行为也更具合法性与正当性,工作效率更高,治政能力更强。通过预算民主恳谈,一定程度上改善了干部的工作作风,消除了滋生腐败的部分体制根源,促使政府树立服务意识,提供让民众满意、认同的公共产品和服务。

(四) 推进了民主进程

从参与式预算实践来看,扩大了公民有序政治参与,赋予了人大代表和民众充分的知情权、参与权、表达权和监督权,处处绽放出民主的光彩。各个层面围绕预算进行公开的、面对面的、有理有据的恳谈,为公民

自由、广泛、直接、真切地参与社会公共事务决策、管理和监督提供了新的渠道,也为公民监督政府预算的权利行使提供了新的方式,增强了民意的表达和公民在决策过程中的影响力。一定意义上来说,参与式预算在丰富民主形式、拓宽民主渠道上提供了很好的样板。同时,参与式预算也是一所很好的“民主学校”,通过这样一种民主操练,培育了公民意识,使公民的民主意识和民主观念不断增强、民主习惯不断形成、行使民主权利的能力不断提高,有利于形成一种更加民主的政治文明。

三、公共预算改革的特点

(一) 从启动特点看

温岭市的公共预算改革,属于问题启动和政府主导型。

第一,最初,民主恳谈的出现,就因为农村思想教育“我讲你听”的单调模式已经失灵,干群关系需要利益纽带加以紧密化。预算改革起步于新河,除了温岭的民主恳谈要寻找推进的新领域,温岭市人大在谋求自身的改革,更重要的是新河镇有较大的财政赤字,公众对预算安排总有这样那样的意见。这就是问题驱动。它指的是从解决问题的需要出发,没有预设的模式,有较大的创新空间。虽然它的起点比较低,往往缺乏成熟的理论指导,缺乏足够的法规和政策支撑,难免会遭遇人走政息的困局。但从问题出发,针对性比较强,有足够的实施动力,容易取得显性成效,因而更能转化成公众的生活方式,以此催发出植根苗长的生命力。

第二,从民主恳谈的启动来看,它的主导权一直掌握在政府手里。确定什么为议题,在什么时候举行,由哪些人来参与,按什么样的程序协商,最后的结果如何运用,都是政府确定的。当然,其要遵守法律法规的规定。

(二) 从实质特点看

温岭市的公共预算改革,属于预算民主和人大改革。



第一,将公民参与和协商民主引入人大的预算审查,使人大的预算审查日益规范化。通过人大预算审查环节的民主化,增强政府财政分配的合法性,增加公众对政府财政支配的认可度,协调有限财政资源分配有可能导致的矛盾冲突。

第二,人大从预算审查入手,运用法定的权限与程序,激活人大制度的应有功能,实现民主管钱,并由此直接或间接地实现民主管事、民主管人的目的。就预算审查而言,一是细化了递交审查的预算方案,由开始的一两张纸,寥寥几十个项目,到现在厚达近 50 页的一本,多达近千个细目,因看不懂而无法审查的问题得到了解决;二是提前将预算草案发放给人大代表,为人大代表通过交流、学习弄懂预算方案提供了可能;三是预算审查前由专家对参与者进行培训,发放专门的预算审查培训手册,提高了审查质量;四是增加了审查的列席人员,使预算审查置于公众监督之下;五是小组讨论之后增加了大会发言与咨询,这是最带有参与、协商实质意义的环节,对人大的民主功能也最具激活意义;六是建立了预算修正案的制度,由 5 名或以上代表联名提出的修正案,若获得全体代表半数以上支持,则通过成为预算的一部分,这使代表对预算修正拥有了实质性的权力;七是将只在人大会议期间工作的预算审查小组,调整为由镇人大财经小组作为财经监督常设机构,在人大闭会期间,对政府预算执行情况实行监督,强化了对政府预算的有效监督。

四、公共预算改革、协商民主和善治

(一) 从方式特点看

温岭市的公共预算改革,属于公民参与和协商民主。

第一,“扩大公民的有序参与”是中国民主政治建设的重要内容。温岭的公共预算改革,可称之为“参与式预算”,就其参与者而言,既有公民与公民之间的,也有公民与政府之间的;就其方式而言,主要通过对话、协商、讨论、咨询、答复等形式进行;就其结果而言,对公共政策和公共生

活产生了积极的影响。尤其是体现了公民参与最主要的特征,就是参与国家的政治生活和政治决策。由于它在人大体制内进行,将直接民主和代议民主有效地结合起来。

第二,温岭的民主恳谈在形成过程中,没有自觉接受过协商民主理论的指导,但它暗合了协商民主的基本特征,诸如集体决策权力的平等分配,参与者拥有平等和有效参与机会,使决策由受权力与财富影响的那部分人向受协商影响的那部分人转移,并使协商的力量转化为政府的力量。通过人大进行预算审查领域,因而使民主恳谈的商谈水平,不再只停留在原先如哈贝马斯所说的“实用商议”阶段。

(二) 从绩效特点看

第一,温岭市的公共预算改革,属于善治和增量民主。温岭参与式预算的绩效,体现在政府治理方式的改善上。它不再只是一套规则,一种活动,而是一个过程;其基础不再只是控制,而是协调;涉及的不再只是公共部门,也包括民间组织和个人;表现形式不再只是正式的制度,而是持续的互动。在一定程度上,它体现了政府与公民对公共生活的合作管理,使两者之间出现了新颖关系,实现着两者之间的最佳状态,共同谋求着公共利益的最大化。

第二,温岭参与式预算的绩效,表现出增量民主的基本特点。它在现有的政治和法律框架内进行,有足够的“存量”;它在实质和程序上都有新的突破,有足够的“增量”,并为大多数公民所认同;它的推进是渐进的,是历史发展的一种延伸;它坚持在不损害人民群众原有政治利益的前提下最大限度地增加政治利益,高度注重改革的稳定、有序和效益。

五、目前面临的问题

从目前的实践看,温岭的预算改革,还面临着一系列问题。



（一）参与式预算尚游离于制度框架之外

参与式预算作为一种预算监督民主形式,属于体制外的自然生长,尚没有法律地位。而这种形式如想获得生命力,具有合法性,必须与当前人大制度相结合,将它导入制度框架之内。这就涉及一个深层次问题,也就是参与式预算与法律法规和现行的人大制度如何协调的问题。

（二）参与者的素质特别是人大代表的素质有待进一步提高

作为参与式预算的主体,人大代表的素质是改革成功与否的关键。当前情况下,代表的素质还不能适应预算审查监督的要求,如不少代表对如何站在全局高度来考虑局部利益的思考不多,对预算审查知识仍缺乏了解,在审议过程中,针对预算方面提出的意见建议不够充分,而就政府具体工作内容提出的意见建议比较多。

（三）后续监督环节尚需进一步加强

也就是成果反映还不充分。从五个镇和交通部门实践来看,均存在这个问题。在镇一级,虽然在人代会闭幕后,设立了人大财经小组,作为日常的预算监督机构,但从新河的几年实践看,其功能发挥不够充分,监督还不是很到位。从交通部门预算民主恳谈来看,人大代表和公众就预算方面提出的意见和建议由于没有法律效力,对政府预算的修改缺乏刚性约束。如果人大不跟踪监督,预算是否进行修正和调整,主动权仍掌握在政府手中。公众参与预算民主恳谈后的反馈和监督机制尚需探索建立。

（四）公众参与的广泛性不够

从市镇两级改革实践来看,参与预算民主恳谈的对象大多数是市镇人大代表,此外便是一些村级干部或企业法人代表,普通公民的参与率不高。如何保障公民参与的公平性、代表性和广泛性,是未来推行参与式预算需要解决的一个问题。

(五) 作为政府层面,预算编制水平及公开化程度仍需进一步提高

虽然通过几年的实践,这个问题已明显得到了改进,但预算编制项目简单、过于笼统、透明度低的状况依然存在,审议人员看不明白预算的现象还是比较突出,政府在预算公开度上仍需进一步放开。

公众参与的中德制度比较

——“公共决策过程中的公众参与”中德研讨会综述

上海市人民政府法制办公室 上海市行政法制研究所

2008年9月17日,上海市行政法制研究所和德国艾伯特基金会上海协调办公室共同举办了中、德“公共决策过程中的公众参与”的研讨会。德方出席的专家包括德国柏林工业大学技术和社会中心主任汉斯-吕迪格·迪内尔教授、德国房产和城市发展协会弗兰克·尤斯特博士、德国马克·布洛赫中心卡斯滕·赫茨贝格先生。中方出席的专家有上海市人大法工委阎锐副处长、浙江省温岭市委党校慕毅飞先生、浦东新区建设和交通委员会胡荣先生、浦东新区发展和改革委员会刘璇女士、上海交通大学法学院朱芒教授,与会人员还有我市行政、司法部门工作人员及部分高校研究人员。

会议围绕“立法决策的公众参与”、“社区公共事务决策的公众参与”、“预算决策的公众参与”三个主题,就公众参与的必要性、公众参与的形式和种类、公众参与力度、公众参与程序等问题展开了热烈的讨论。市政府法制办主任刘华和德国艾伯特基金会上海协调办公室主任特劳普博士,分别致辞并做总结发言。现对研讨会主要观点综述如下:

一、公众参与提出的背景:民众政治热情的淡漠 或是知情权的薄弱

德国房产和城市发展协会弗兰克·尤斯特博士认为,德国公众

参与的政治背景有很多,德国西部 20 世纪 60 年代对于城市建设有很多批评,因此,《城市建设促进法草案(1970 年)》的论证部分提出,制定过程中有公众参与,参与理由是让当事公民确信,乡镇开发建设并非跳过了他们,由官方实施。公众参与后来在《建筑法》中也有体现。

德国马克·布洛赫中心的卡斯滕·赫茨贝格先生谈到,公共预算是公众参与的主要领域,在公共预算中引入公众参与的原因:一是西方普遍存在对政治的厌倦,政府希望通过公众参与预算,拉近和民众的距离;二是欧洲国家尤其是德国地方财政陷入危机;三是民众对公共服务预期的提高,希望有更好的服务。

上海市人大法工委阎锐副处长在谈到上海的地方立法听证实践时指出,在地方立法中引入听证程序的初衷在于:一是《立法法》中明确了立法可以采取座谈会、听证会等制度,这是直接动因;二是通过对西方立法听证的借鉴,可以使立法更公开透明,使立法朝民主化、科学化,提高立法质量的方向发展,这是引入的深层次原因。

对此,赫茨贝格先生指出,中国在立法过程中引入了听证程序,德国也有类似的反馈机制,但引入的主要原因是:在德国,民意代表和民众的距离越来越远,导致民众对政治感到厌倦。

市法制办刘华主任在总结时指出,对于公众参与的必要性,中德双方的认识是高度一致的:公众参与是公众的权利,也是政府的需求;公民有权表达主张。至于公众参与是否积极,这与议题内容相关度有关。对于政府来说,这不仅是政治姿态,更是一种内在的需求:一是可以借助民间智慧;二是可以在决策前了解公众反应;三是寻求民众对政策的理解配合;四是争取选民的支持。

可见,就公众参与的背景而言,在德国主要是因为民众政治热情的淡漠,而需要以此来激发其参与热情,在中国则主要是对公众知情权相对薄弱的一种改善。两国有着明显的区别。



二、公众参与的功能：以一种直接民主的方式

对代议制间接民主进行补充和优化

尤斯特博士谈到,2008年5月,柏林市的第一次全民公决,是关于市内滕珀尔霍夫机场的继续开放问题。有88多万柏林人参与了投票,最后虽然取得了多数人赞同,却因未能达到柏林有选举权居民中25%的法定比例人数而告失败。虽然此次全民公决未能成功,但柏林市几乎每个家庭都在谈论这个话题,超越了党派。因此,可以说,这也是公众参与的附带效应。2008年7月13日,柏林弗里德里希斯海姆-克罗依茨贝格的公民裁决,其目标是阻止计划在施普雷河岸建造的办公大楼群。近3.5万名参与者中有几乎87%的人投票赞同阻止计划中的建造活动。由于多数票和“法定人数”均达到了,公民裁决获得了成功。

赫茨贝格先生谈到,不同模式的公众参与预算,其效果也不同。以西班牙城市塞维利亚为例,每个社区有自己的利益,团体或者协会在参与决策中有参与决定权,以获得自己社区的利益。这种结构是多年形成的。有些利益团体和政府关系近些,有些和政府关系远些。塞维利亚之所以会引入公众预算,是因为政府更替,保守党下台,社会民主党上台。致力于社会公正,因此利用公众参与预算同不公正的分配作斗争。新政府要有论据不给原来的某个强势利益集体以资金,所以有意识地选择公众参与预算这种方式,这样,弱势城区就可以得到发展资金,从而能达到社会公正的目的。也就是说,塞维利亚的公众预算有政治意图在里面,主要为了消除庇护主义,避免每次都是强势集体得利,从而体现社会公正,促进社会弱势城区发展。而德国的希尔登市则比较简单,主要是通过告知公众,达到政治教育目的,从而让公众了解预算如何运作,进而提高公共服务质量,改进管理水平和效率。

特劳普博士对此发表了评论:首先,公众参与预算是一个反复的过程,尽管其结果不具有强制性的约束力。二是这种小城市和大城市的比

较,是有意选择的,很典型。三是有些公众参与是有利益集体参与其中的。四是公众参与不限于对整个预算参与,还有种思路是把预算中的某些项目拿出来进行公众参与。五是关于公众参与的中心内容,我们一般认为是为了公众决策,而塞维利亚则是为了消除不平等分配,起到均衡社会配置、社会福利的作用。

刘华主任认为,应当重视公众参与的效果。对公众来说,开始越来越重视其参与对决策是否具有影响力和约束力的问题;对政府来说,政府应当意识到,让公众参与不仅仅是让公众来说说话,公众参与最终形成的意见应该对决策具有一定的影响力和约束力。目前,在规划决策方面,公众的参与均已成为中德两国的法定决策程序,是一种刚性的规定;但是,在中国,其他领域的公众参与,对行政决策的约束力还需要进一步地探索和实践。而预算决策中的公众参与,将成为一个新的、重要的研究和实践领域,因为它涉及政府怎样公开、合理地花纳税人的钱的问题。

特劳普博士指出,无论是决策部门,还是公众都开始重视公众参与的影响力,对最终决策没有任何影响力的公众参与类型将会受到能否长期存在下去的挑战。

三、公众参与的方式:是多种多样的、因地制宜的

德国柏林工业大学技术和社会中心主任汉斯-吕迪格·迪内尔教授在作《乡镇、地区和(超)国家层面问题解决过程中的公众参与》的主题报告时谈到,公众参与的方式是多种多样的,以非正规程序为例,大体有以下8种:① 公民会议。通过向专家提问并与专家讨论的方式,编写最终的报告并进行公开展示。主要是对技术结果进行评估,对冲突性意见达成共识;② 开放空间。参与者通过在全体大会和工作小组之间转换,从不同视角了解决策的内容。其程序设计巧妙、灵活,无日程安排,具有很大的随意性;③ 公民调查。适用于各种各样的地方政策问题。主要是对随机选择的人群(500~1 000人)进行定期调查,提供客观信息;④ 未



来工场。其目的是为所遇到的不同背景下的困难情况(经济、乡镇、教育)寻求有创意的解决方案或方法。为期3天,第一天发牢骚,第二天激发梦想,第三天回归现实,提供方案。它不仅是一种公众参与形式,也是一种激励机制;⑤ 调解。通过一个中立的、不偏袒的第三方来解决多方冲突;⑥ 请愿。适用于提起行政复议,以及对社会和政治的创新提出建议的领域,包括个人请愿、集体请愿和公众请愿三种;⑦ 公民展示。一般针对地方政治主题,在问题解决过程中将个人的视角用海报等视觉效果展示出来。这种活动往往能拉近政府和市民的距离;⑧ 规划小组。适用于解决冲突,制订指导方针的领域。其方法是:随机挑选公民25名代表,分成5个工作小组(以5人为单位),用一周时间听取专家意见,开展小组讨论,过程中可随机更换成员,使他们在考虑公共利益的基础上提出决策建议。这种形式的公众参与,其结果是接受度很高,议会一般都会表示支持,因为它代表了广泛的民意,其合法性得到了高度认同。

迪内尔教授指出,不同的公众参与形式,其功能是不同的,对政府的约束度也不同。一些特定的问题,并不需要马上解决,而只是需要不同的视角,例如,开放空间这种公众参与形式。规划小组,则是要提出一个建议,虽然规划小组的意见无法律约束度,但是,如果在协商中达成一致建议,它有可能推翻政府原来的决定。例如,科隆市城市规划草案进行公开招标,某建筑事务所中标,提出划分城市为办公楼、居住住宅区域。另一个例子,汉诺威市交通规划,规划小组提出报告,认为政府应当加大公共交通投入,最终政府要投更多的钱到公共交通中去。

浙江省温岭市委党校慕毅飞先生作了《温岭公共预算民主恳谈的实践与思考》的专题报告,谈到从2005年开始,温岭市在新河、泽国两镇尝试公共预算改革,将民主恳谈引入基层人代会的预算审查,形成了对预算进行实质性审查与监督的“参与式预算”模式。2008年以来,温岭将这种模式从两个镇推广到5个镇,从镇一级提升到市一级,将参与式预算引向深入。

浦东新区建设和交通委员会胡荣先生着重介绍了浦东社区巴士线

路设置决策的公众参与,浦东新区在多个领域、多个层次,通过多种方式推进公众参与。① 互动信息系统。由服务热线、邮政信箱、互动网站、短信查询和市民来信等方式组成。② 共建和互动活动。通过听证会、征询意见会、座谈会、联席制度等方式促进共建活动深入开展。③ 公交活动。通过开展浦东公交发展“献计献策”征文活动、浦东公交岗位练兵活动等,使得公众能够更加深入地参与到公交管理工作中来。④ 听取代表意见。“两会”、人大代表是管理部门和公众交流的桥梁和纽带。⑤ 监督员。组织由人大、政协两会代表、行风监督员以及各街镇代表参加的150人公交监督员队伍,从各方面明察暗访公交线路营运情况,将他们的意见直接反馈给相关企业。同时要求企业即知即改,及时落实各项整改措施。

上海交通大学法学院朱芒教授在做点评时指出,公众参与的面很广、形式多样。其中可以理出三条线索:① 法律上有无强制性规定。有些公众参与是法律明确要求必须实施的,有些则没有要求,是政府自愿组织的;② 公众参与对决策结果的约束程度。有些公众参与,政府的目的只是收集信息,对政府行为没有约束力;有些则对政府行为有约束力,即公众参与的结果政府必须执行,如全民公决;③ 利益或者技术理性的参与度。利益相关度高,公众参与的热情也高;技术性强,专业要求高,公众参与度则较低。

特劳普博士指出,越来越多的公共决策开始引入公众参与,这已经成为中德两国共同的发展趋势。公众参与的方式呈现出多元化的特点,德国从20世纪70年代以来,公众参与呈现为多样化发展趋势,像今天谈到的公众预算就是公众参与的一种新形式。中国也有温岭模式、浦东模式等。不同城市公众参与的方式都有各自不同的特点,在一个城市获得成功的方式,不等于在另一个城市也获得成功。

刘华主任认为,公众参与的的方式的确是多元的。德国采用的“开放空间”、“未来工场”是两种互动的、有效的公众参与方式,值得上海借鉴;而上海浦东新区采用的通过征文献计献策、监督员信息反馈和浙江温岭



市的恳谈会形式很具有中国特色,是在我国行之有效的公众参与方式。在实践中,应当倡导多元化的公众参与方式。

四、公众参与的模式：既有正规程序，也有非正规程序

迪内尔教授谈到,在德国,公众参与主要有正规程序和非正规程序之分,正规程序是法律规定的公众参与程序,在联邦层面未作规定,在联邦州层面有公民创制、公民复决,在乡镇层面有公民请愿、公民裁决。非正规程序是不同于正规程序的公众参与方式,它非法律所规定,如规划组织/公民鉴定、未来工场、公民调查等。迪内尔教授认为,相对于正规程序,非正规程序的公众参与更为重要。

尤斯特博士在作《德国城市规划和城市建设中的公众参与》的专题报告时,也介绍了德国在该领域的正式程序和非正式程序。正式程序如《建筑法典》第3条“公众的参与”：“公众参与的第一阶段(规划阶段),必须尽可能早地公开告知公众有关规划的一般目标与目的、相互有重大差别的解决方案——它们在一个地区的重构或开发的考虑之列——以及规划的预期影响;应给予公众表达意见和参与讨论的机会。”“公众参与的第二阶段(公告),建筑主导计划的草案应连同解释报告或论证内容公示一个月。公示的地点和时间长短应至少提前一周按照地方上的常规做法加以公告,并附提示,在公示期间可以提出疑虑和倡议。”“公共利益载体的参与,在制订建筑主导计划的时候,应让作为公共利益载体并可能会与规划有关的行政机构与部门尽早参与进来。”非正式程序,其目标一般在于确证公众的论据与利益,以便在规划中对此予以考虑。对于这类沟通,不存在任何法律规定:如听证会、工作小组碰头会(座谈会)、竞赛。具体程序视相关形势的需要而定。

浦东新区发展和改革委员会刘璇女士谈到,我国在城乡规划领域引入公众参与机制已历时10余年。20世纪90年代中后期以后,以深圳为

代表的大城市,在立法上确立了公众参与城市规划的制度。上海市2003年11月颁布的《上海市城市规划条例》明确了制订城市规划应当听取公众意见;2006年7月下发的《上海市制订控制性详细规划听取公众意见的规定(试行)》,细化了控制性详细规划层次的公众参与制度。在2007年10月28日颁布的《中华人民共和国城乡规划法》中,明确规定将公众参与作为城乡规划管理中的法定环节(第9条、第26条、第48条、第50条),确定了在规划编制阶段(包括规划调整)和规划执行阶段的公众参与的法定地位。

浦东新区制订社区规划的公众参与,根据《上海市制订控制性详细规划听取公众意见的规定(试行)》,规划编制部门听取公众意见可以采取发放、回收公众意见调查表、网上收集意见、召开座谈会、论证会或其他有效方式。在具体操作上,往往是一个社区规划方案,采取多种方式互为补充。此外,还可在两个环节上保障公众对社区详细规划编制过程的参与:一是规划编制部门在规划草案编制完成后,必须采取发放、回收公众意见调查表、网上收集意见、召开座谈会、论证会或其他有效方式听取公众意见;二是在第一轮公众意见听取完毕后,规划编制部门需对公众意见采纳结果进行公布,若公众对不采纳的意见仍有较多异议,规划组织编制部门应当召开论证会,邀请专业技术部门或第三方对规划方案进行再次论证,并重新听取公众意见。

五、公众参与者的产生方式:自愿、邀请

还是随机抽样

阎锐副处长指出,立法听证会是通过接受公民和组织报名,遴选听证会陈述人的方式产生参与者。报名作为听证陈述人的市民,可以按照听证会公告的要求,通过电话、传真、邮件等方式报名,并在报名时表明自己对听证内容的基本观点和理由。听证陈述人名单由听证会组织者遴选决定,遴选时主要考虑听证陈述人与听证事项的利害相关性、发表



意见的代表性等因素,人数一般是 20~30 人。对没有被遴选为听证陈述人的,一般作为听证会旁听人参加会议。除了公开报名进行遴选的方式,也采取邀请听证陈述人的方式。

迪内尔教授在谈到公众参与的非正规程序时指出,像公民调查方式,就是对随机挑选的人进行定期调查,例如每年调查,连续几年进行。而针对地方政治主题的公民展示,其参与者也是通过随机抽样产生。像规划组织这种参与方式,其程序的长处就在于随机挑选公民和有代表性的人员构成使程序具有广泛的合法性,同时也使他们的建议更容易被接受。另外,随机挑选公民和极端的期限规定使之不会受制于利益集团的游说,它利用了公民的能力、经验和智慧。

慕毅飞先生谈到,温岭市泽国镇建立了参与式预算的公众协商模式,参加者是采用乒乓球摇号的方式,按照千分之二比例,从全镇 18 岁以上的人群中随机选取预算民主恳谈代表。

鲁道夫·特劳普-梅茨博士指出,公众参与中的代表应当具有代表性,让相关公众的代表都有机会参与,使得各个方面的意见都能够得到表达,不能给公众造成决策部门刻意挑选代表的印象。另外,公众参与的每个阶段都应该有专家的指导,以提高公众的参与水平,缺少公众参与专家的指导对公众参与的整个发展不利。

六、公众参与的现状与展望

公众参与,无论在德国还是在中国,都尚处于探索实践阶段,都尚未有十分成熟和在面上推广的模式。

阎锐副处长指出,从 2000 年至今,上海市人大常委会已经举行了 8 次立法听证会,从 2000 年的第一次到 2008 年 7 月份的最近一次,我们在以下方面有了明显进步:一是立法听证范围有所扩大;二是听证程序更加公开、透明;三是更注重结果反馈。在取得进步的同时,也有不足:一是听证会效果。我们举行立法听证,是希望从立法民主到发挥民主作

用最大化,但目前来看,效果还不理想;二是举行听证会的次数。现在基本每年组织一次。座谈会每年有 50 次左右。但由于组织成本高,听证会频率还比较低;三是公民参与的广泛性、积极性和代表性问题。我们的立法听证会,最多一次只有 157 个人报名,数量不尽如人意,另外,来的人是否真正代表民意,也值得思考。

刘璇女士认为,社区规划中的公众参与存在一定的不足:一是公众意见未能充分、准确地表达。因为规划公众参与过程中赞同规划的居民很少发表意见,而反馈意见的往往都是反对规划方案的居民。二是规划决策过程中公众参与的力度还须加强。

慕毅飞先生认为,温岭的预算改革,虽然取得了一定成绩,但也面临着一系列问题。第一,参与式预算尚游离于制度框架之外,没有法律地位;第二,参与者特别是人大代表的素质有待进一步提高;第三,后续监管环节需进一步加强;第四,公众参与的广泛性不够,普通公民的参与率不高;第五,作为政府层面,预算编制水平及公开化程序仍需进一步提高。

刘华主任总结说,目前中德双方在公共决策中的公众参与上,还共同面临一些难题:一是公众如何参与以及公众参与不足的问题;二是民意如何通过公众参与得到真实反映的问题;三是重要公共决策遭遇赞成与反对各半而搁置不决,如何有效解决的问题。这三个难题,将成为今后中德双方进一步研究、探讨和交流的问题。

与会专家和代表对公众参与在未来的发展都给予了积极和乐观的评价,德国联邦议院 2002 年公众参与专家委员会最终报告中也指出:“公众参与是‘一个民主社会未来能力’的一个重要先决条件。”而联邦政府 2004 年城建报告则指出:“公众参与是通向未来城市的一个不可或缺的先决条件。”对这一领域的探索,中德双方的专家都认为有必要更进一步跟踪研究,继续交流,共同探索有益经验。

(上海市行政法制研究所史莉莉整理)

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Foreword

The Legal Office of the Municipality of Shanghai and the Friedrich-Ebert-Stiftung's (FES) Office for International Cooperation in Shanghai have collaborated for a number of years, focusing particularly on the problems of local development. German and Chinese experts from public administration, academia, and various organizations come together to exchange opinions and information on new developments, compare views, and find mutual inspiration in new approaches.

On 17 and 18 September 2008 the Legal Office of the Municipality of Shanghai and the FES organized a Workshop on "Public Participation in Public Decision-making Processes." A framework had already been established for the topic in question by the visit of a Legal Office delegation to Germany at the invitation of the FES. What forms of public participation in local decision-making have been developed? What are the strengths and weaknesses of the different approaches? Has the public accepted participation or rejected it? Has the legitimacy of local authorities been increased or has criticism of local politics become more vocal?

Needless to say, it was not possible to discuss every instance of local public participation in China and Germany at the Workshop and to present a comprehensive overview. The organizers had to make a selection of the models and of the persons to present them. The animated debates during the Workshop showed, however, that we had identified some significant examples in the area of democratic development at the local level.

We therefore decided to publish the presentations and so make them accessible to a wider audience. The German experts made their contributions to the Workshop in German, but here we make them



available in English and Chinese in the hope that these two world languages will widen the publication's circle of interest.

The Legal Office and the Friedrich-Ebert-Stiftung would like to thank the authors and all those involved in this publication for their valuable contributions. We hope that this publication will be of interest.

Shanghai, January 2009

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Public Participation in Local Decision-Making — A Commentary

Rudolf Traub-Merz

Public participation in political decision-making at local level — which includes municipalities, cities, and districts — is now a topic of considerable interest in Germany and many other European countries. There are many variants, from opinion surveys and public hearings, through “Future Workshops” and “planning cell procedures,” to formal voting in referendums (see the contribution by Dienel). In the last 15 years a new variant has been added: participatory budgeting. In Europe over 100 municipalities and cities have submitted to this new planning procedure, in which municipal budgets were opened up to direct public participation (see the contribution by Herzberg).

We can observe a similar trend in China. Here too local governments and town halls are increasingly taking public participation on board. Municipal authorities are putting plans on public display, organizing hearings or seeking suggestions for improvements via text messaging or specially created websites. Indeed, some of these efforts, such as the one in the municipal district of Zeguo in the city of Wenling (Zhejiang province), put many public participation projects in Europe into the shade (see the contribution by Mu).

1. The Context of Public Participation: Public Protest, Disenchantment with Politics, and Attempts to Restore Legitimacy

It is evident that in many western societies public participation has experienced a two-stage development. In the first stage come public opposition, criticism of municipal decisions by those affected, and protests against individual plans. In the second stage, local government, having



"learned its lesson," opens itself up to collaboration with the public and attempts to regain public approval of municipal policies.

In Germany this took the form of spontaneous public protests by self-organized groups who sought to defend their interests against local government plans in so-called citizens' initiatives in the 1970s and 1980s and to overturn the decisions of elected politicians. For a municipal administration every successful case of public opposition is tantamount to a political disaster, as it testifies to the fact that official decision-makers have been pursuing a project that does not reflect people's wishes. There are surely few societies in which local government representatives could hold on to power after a succession of spontaneous public protests.

Electoral democracies do know a second form of public protest, namely withholding one's vote. In Germany turnout in local elections has sunk to an all-time low in many places. Certainly the spread has become particularly wide and there are cases of high interest by the electorate. However, it is becoming increasingly unusual to find more than half of eligible voters going to the polls, and more and more often turnout in local elections scarcely reaches 25–30 percent. Press reports on voter turnout all too frequently read something along the lines of "Lowest turnout in the history of the Federal Republic." At municipal level non-voters have emerged as the dominant force, a damning indictment of the political system. The German term for this trend is "*Politikverdrossenheit*" or "disenchantment with politics."

But a further context has to be taken into consideration: public participation has burgeoned, certainly in Germany, in municipalities in which the so-called *Wirtschaftswunder* ("economic miracle") has become a distant memory. Low economic growth and tax reforms, which have cut back the state contribution to gross national product — in Germany the ratio of government expenditure to GNP fell by 5 percent between 2000 and 2006 — have eroded municipal finances, instigating a deep-seated crisis. Although the public still expects a high level of state and municipal benefits the state's capacities in delivering public goods have been

weakened significantly, particularly at the lowest level. Today municipal decision-making often concerns what can no longer be provided, what benefits have to be cut back or what projects have to be cancelled. Continuing high expectations concerning delivery set against declining capabilities increases the likelihood that more and more people will become disenchanted or join protest movements, and that the legitimacy of the political system will diminish even further.

When cities and municipalities do introduce participatory procedures and allow members of the public to take part in municipal decision-making expectations are correspondingly high. The idea is to “win back” members of the public who have turned away from politics. Inclusion should ensure that decision-makers take proper account of the public interest and act accordingly. Local government would like to regain its popularity, restore the legitimacy of this form of government, and thereby safeguard its own survival.

Whether public participation keeps the promises and meets the hopes of the various actors depends on a number of factors. Its very multiplicity of forms indicates that there is no universal underlying concept able to supply the right answer in every instance. In a way we can say that every problem is *sui generis* and requires its own solution. Besides the uniqueness of every situation and the need for appropriate participatory procedures, however, there are also generalizable contexts and principles that should be taken into account if public participation is to have any prospect of being “accepted.” I shall look at a number of these contexts and their dynamics.

2. Direct Public Participation and Representative Democracy: Does One Drive Out the Other or Are They Complementary?

Public participation in municipal decision-making can be differentiated first of all in terms of whether a particular citizens recommendation is binding and so must be adopted by the responsible authorities (local parliament or administration) (see the contributions by



Jost and Zhu). When public participation is introduced and the procedure has the status of a final decision the political and administrative office-holders previously responsible lose their jurisdiction. This can be described as a process of displacement.

This applies, for example, to land use planning procedures (see the contribution by Jost) and to citizens' initiatives in Germany. In the case of land use planning individual rights are in play which can be contested in the court. With citizens' initiatives it is a matter of collective rights. If sufficient signatures (a quorum) can be gathered in a petition, a public vote is held. The elected municipal council loses its jurisdiction and is no longer entitled to make a decision in this case; that is, it is set aside. Such procedures are formally regulated and have a clear legal basis — but they are very much the exception.

For the most part, public participation does not take this form; it is not laid down formally and the results of public participation are not binding on the municipal decision-making authorities. Public participation is predominantly of a “consultative” nature, furnishing administrations and local government with advice, but the recommendations of members of the public do not have to be adopted, though they may be. To the extent that public participation is a matter of consultation it is complementary to the established political system.

This explains why many instances of public participation are initiated by municipal administrations and town halls. After all, elected representatives are hardly likely to support a process in which their decision-making powers are transferred to others and they are emasculated.

In daily politics, however, things usually work out different. People will put up with municipal participation procedures for long if their recommendations are constantly rejected or ignored by the authorities. The fact is that public participation by its very nature gives rise to expectations that people's opinions will be taken seriously and implemented. If a municipality fails to follow the recommendations of members of the public it would be well advised to explain to them clearly why a different option

was chosen. By and large, however, we can assume that in many cases decision-makers do follow such advice, if not always completely at least to a considerable extent or in broad outline. Public participation is ultimately legitimized by the fact that public wishes are implemented.

3. Trivializing Public Participation

Even if public participation is not “extracted from below” but “initiated from above” local government nevertheless tends to regard it as something of a bogeyman. At the end of the day its decision-making autonomy is reduced.

There appears to be a simple way out of this dilemma for local governments: Why not opening up only matters of lesser significance to public participation and in which local governments have no objection to going along with the public's views? In contrast, decisions on more important issues are not submitted to public participation and continue to be made by mandate holders or behind closed doors.

Such tactics don't pay. Local government decisions often concern matters that directly affect the daily lives of members of the public, such as water and electricity supply, the building of public leisure facilities, the routing of roads through residential areas, or the local provision of public transport. Members of the public know their own needs and interests and have a reasonable idea of whether impending decisions make sense or not. If they are not involved in decisions concerning matters that are important to them, only in those that are not so important, their motivation to participate at all will not be sustained for long. Municipal authorities that really want to acquire political legitimacy have no option but to open up important matters to public consultation. A living democracy is constantly on the move. Once mobilized, people are soon likely to want to participate in other areas, too.

4. Public Participation Must Be Representative

Public participation is not the same as the participation of every member of the public. This is approximated in the case of formal procedures



in which the right to vote is mostly linked to domiciliary rights, but not in the case of open procedures. When local government invites members of the public to take part in a discussion or chooses some other form of communication — for example, internet discussion, telephone survey, or questionnaire — the public rapidly divides into four groups: (i) those who participate, (ii) those who are not interested, (iii) those who would participate if they knew about it, and (iv) those who would like to participate but are prevented from doing so (they do not have time, they do not own a PC, and so on). Through its choice of procedure the local government in effect also decides how big each of these four groups will be.

Many instances of public participation function by means of a selection procedure. A particular group is designated as a proxy to express the interests of the whole. This gives rise to a further problem of representation. Who is to be chosen and in accordance with what criteria? Who is not to be chosen? If the criteria are not made public, there are likely to be accusations of manipulation. In the event, the desired results are most easily obtained by involving only those members of the public from whom a specific recommendation is likely to arise.

Methods are available that make it possible to select a smaller group from a larger one and be certain that its interests will concur with those of the larger group. Pre-eminent among such methods are so-called controlled sample surveys. Groups are identified by random selection which assures, that the composition of a selected group reflects the composition of the overall population in important respects (age, gender, occupation, income, place of residence); only in this way can it be assumed that the selected group will make the decisions that the collective group would have made.

If public participation is channeled through a selected small group feedback is required. The public has to be told how this instance of public participation was conducted and what the results were. Only if everyone knows what has taken place can suspicions be avoided that the whole thing was a fix. In the end, the general public must always be informed

about any form of public participation involving selected groups.

5. Special Interests, Expert Knowledge, and Deliberation

It is often claimed that while elected representatives tend to be keenly aware of the public interest and have access to the necessary expertise, public participation tends to be a struggle among unfiltered special interests and expert knowledge rather falls by the wayside in pursuit of the “right solution.” Is it really a matter of egoistic special interests and ignorance as opposed to an orientation towards the public interest and expertise?

These arguments are certainly not to be dismissed out of hand. To be sure, public hearings are often aborted without reaching any conclusions due to a clash of opinions among members of the public. Not everyone is able to grasp technical drawings or cost projections without preparation or guidance, or to put aside their individual interest and reach agreement with others on a common denominator and a recommendation oriented towards the public interest.

It is true that there can be no guarantee that public participation will result in a uniform and technically adequate opinion. Having said that, if public participation does no more than articulate a multitude of individual opinions and individual interests and it is up to local authorities which ones they take into consideration and which ones they ignore, the legitimacy of the procedure will be undermined, again. The members of the public involved would as a result come into conflict not only with the local administration but also with one another. This would represent a further significant blow to the decision-making process.

In other words, there must be a debate between the participating members of the public, in which the different parties bring to the table their own point of view, exchange opinions, and examine them critically. It is also important that no opinion is excluded, and that factors that in other circumstances have considerable weight, such as wealth, power, or expertise, should here not be allowed to dominate. If the debate is



formally regulated — for example, if there is a moderator — it can be laid down that arguments that merely serve to promote private ends be excluded from the debate (the guiding principle here is that only the arguments count). A free debate of this kind, oriented towards a rational solution in the common interest, represents the essence of the concept of deliberative democracy. A special variant of this is the so-called “planning cell procedure” (see the contribution by Dienel).

To summarize, the larger the number of participants in the debate the more likely it is that the process will have to be concluded with a vote. Smaller groups, in contrast, will find it easier to reach agreement without having to be compelled by a formal vote.

Concluding Remarks

Public participation is on the up. In many municipalities it is already routine, while elsewhere it is still at the experimental stage. In many places, however, there is a wait-and-see policy. This is the case in both Germany and China. The direction in which public participation develops and at what pace depends on many factors, above all public expectations on the opening up of political decision-making processes and the willingness of the authorities to take citizens' opinions on board and to address them proactively. Misunderstandings, unrealistic hopes, and exaggerated fears are an inevitable part of this development. Relations between citizens and local government cannot be established on a new footing without some sort of friction, but that is a price that all stakeholders must be willing to pay if participation in local government is to progress.

Public Participation Procedures in Germany: An Overview

Hans-Liudger Dienel

1. What Is Public Participation?

Public participation is the political involvement of citizens — besides parliamentary elections — in public decision-making at local, regional, national, or supranational level. What we are dealing with, therefore, is various forms of direct and deliberative democracy. The broader concept of public involvement, alongside public participation in politics in the narrower sense, also encompasses public interest oriented, voluntary engagement by citizens. Although public interest oriented involvement mostly entails a degree of political influence, that is by no means the main objective and often influence is not exerted directly on the political system in the narrower sense.

Within public participation we can distinguish between formal and informal procedures.

Formal procedures are direct democratic public participation procedures enshrined in law, for example, petitions for referenda and referenda proper. In the early days of the Federal Republic of Germany, a parliamentary democracy since 1949, direct democratic public participation had relatively little scope or tradition. The situation was very different in smaller Switzerland, where direct democracy has been practiced for a century in the form of frequent referenda. In Germany formal procedures at Federal level were not envisaged at all, with the exception of the reorganization of the *Länder*. The reason for such caution in relation to the citizenry is simple: the begetters of the Basic Law (the



German Constitution) were skeptical of their fellow citizens' aptitude for direct democracy in light of experiences of mass hysteria under the Weimar Republic and the Nazis. At the *Land* level — Germany is a federal state with, currently, 16 relatively autonomous *Länder* with their own prime ministers — things were very different (see Tables 1 and 2). In many *Länder*, and increasingly over the decades, there have been both petitions for referenda and actual referenda, and at municipal level even more often so-called citizens' initiatives and local referendums (*Bürgerentscheid*). Generally speaking, it's fair to say that over the last 20 years formal direct democratic procedures have increased in frequency and importance. Petitions and referenda are closely related here. A petition is always the first step, the first hurdle that has to be cleared to bring about a referendum or citizens' decision, in many cases counter to the established parliamentary majority. Besides direct democratic procedures, however, there is a whole series of formal procedures of public participation, in particular at municipal level. We shall say more about these in due course.

Besides the formal procedures just mentioned, there is a broad palette of *informal procedures*. This encompasses a wide variety of procedures mostly of deliberative — that is, consultative — public participation that are not enshrined in law, but, particularly at municipal level, play a much greater role in people's everyday lives. These informal procedures include, for example, the Planning Cells/Citizens' Reports described elsewhere in this volume, Future Workshops, Citizens' Panels, and many others. When Chancellor Willy Brand declared, when the first Social Democratic government came to power in 1969, "we want to dare more democracy," he meant first and foremost this broad extension of informal democratic participation at all levels. At that time, to be sure, there was already an established form of informal participation involving civic associations, primarily associations of "the great and the good," at municipal level. From the late 1960s onwards, however, this form of consultative, constructive, politically rather

conservative, though certainly civil participation was superseded by a new generation that understood public participation rather as opposition to the prevailing system. This extraparlimentary opposition took the form, at local level, of a plethora of citizens' initiatives against state and commercial projects, in particular in the area of transport and urban planning, as well as against environmental pollution. By virtue of this broad movement, which has prevented many outsized planning projects in Germany, public participation remains associated with delay and prevention. The development of deliberative democratic procedures was a response to this, proposing and trying out new methods for solving problems constructively that now wanted "to dare more constructive democracy." Before we proceed to examine a number of important individual procedures, let us take another look at the development of formal and informal public participation in *Länder* and municipalities.

2. Formal Public Participation at Federal State (*Land*) Level

As procedures of direct democracy, petitions for referenda and referenda proper are enshrined in law at federal-state (*Land*) level. Regulation is not uniform, however; there are major differences between the states. The conditions which must be met for petitions for referenda and referenda proper are laid down in detail in individual state constitutions. These regulations differ widely in terms of quorums, notice periods, and minimum participation, as Table 1 shows.

In 2008 a local referendum on keeping open Tempelhof airport in the center of Berlin failed because a quorum was not achieved. Although the majority of those who participated in the referendum were in favor of keeping the airport open, only 22 percent of those entitled to vote took part, short of the required 25 percent. This example shows that achieving the quorum represents a major hurdle that is often not cleared, even on important, and in this case emotional, issues.



Table 1

Petition for a Referendum			Referendum	
Federal state	Quorum of signatories	Deadline for receipt	Quorum for agreement for "simple statutes"	Quorum f. agreement f. law amending Constitution
Baden-Württemberg	16.60%	14 days	33%	50%
Bavaria	10%	14 days	none	25%
Berlin	7% for "simple statutes"; 20% for laws amending the Constitution	4 months	25%	50% + two thirds majority
Brandenburg	ca. 4%	4 months	25%	50% + two thirds majority
Bremen	10% / 20%	3 months	25%	50% + two thirds majority
Hamburg	5%	21 days	20%	50% + two thirds majority
Hesse	20%	14 days	none	not possible
Mecklenburg-Vorpommern	–	none	33%	50% + two thirds majority
Lower Saxony	10%	12 months	25%	50%
North Rhine Westphalia	8%	8 weeks	15%	50% + two thirds majority
Rhineland-Palatinate	ca. 10%	2 months	25%	50%
Saarland	20%	14 days	50%	not possible
Saxony	–	8 months	none	50%
Saxony-Anhalt	11%	6 months	25%	50% + two thirds majority
Schleswig-Holstein	5%	6 months	25%	50% + two thirds majority
Thüringen	10% (I), 8% (O)	4 months	25%	40%

3. Formal Procedures at the Municipal Level

There is no uniform regulation of direct democratic procedures

Table 2

Federal state	Quorum of signatures Citizens' initiative	Quorum of agreement Referendum
Baden-Württemberg	5%—10%	25%
Bavaria	3%—10%	10%—20%
Berlin (districts)	3%	15%
Brandenburg	10%	25%
Bremen (City)	10%	25%
City of Bremerhaven	10%	30%
Hamburg (districts)	2%—3%	None
Hesse	10%	25%
Mecklenburg-Vorpommern	2.5%—10%	25%
Lower Saxony	10%	25%
North Rhine Westphalia	3%—10%	20%
Rhineland-Palatinate	6%—15%	30%
Saarland	5%—15%	30%
Saxony	5%—15%	25%
Saxony-Anhalt	6%—15%	25%
Schleswig-Holstein	10%	20%
Thüringen	13%—17%	20%—25%

at municipal level, either. Each federal state has its own regulations. The number of procedures employed is everywhere much greater than at national level, however. Alongside citizens' initiatives and referendums, which is what referenda are generally known as at municipal level, there is a whole series of different possibilities for directly influencing political decision-making. Local residents have to be consulted, for example, on changes in development schemes and so-called planning approval procedures for roads. These participation rights as a rule concern only those who are directly affected — for example, those who live in a particular street — but not as bearers of sovereign rights and as responsible for the larger whole, namely the state. They regulate how the rights of those



affected are exercised, for example, rights to raise objections to planning projects. Within the framework of these procedures citizens can essentially either be “against it” or remain silent. To be sure, over the last few decades an increasing number of more constructive public participation procedures have been developed in the context of municipal planning, for example, “Planning for Real.” But this already puts us in the realm of informal procedures. Citizens’ initiatives and referendums are subject to lower quorums, as Table 2 shows. The hurdles that have to be cleared for their deployment are correspondingly lower.

4. Informal Public Participation Procedures

We now come to the wide range of informal public participation procedures, which are usually employed to solve local problems, but are by no means restricted to that. Table 3 presents not only a list of different procedures all of which have been developed since the 1970s, but also a list of areas of employment, that is, political problem situations. Here we shall distinguish between five different problem situations. At first glance, it would seem that priority is given to solving conflictual political problems, where a number of alternative solutions are already on the table. This type of problem, which we can also divide into conflict resolution and decision-making, differs fundamentally from problem situations in which solutions have yet to be developed. Both are familiar from municipal politics and naturally there is considerable overlap. Nevertheless, it makes sense to distinguish between these two (three) problem situations as ideal-typical.

Besides the two ideal-typical problem situations we can distinguish two others, and so also functions, namely information problems or information management, and complaint-related problems or complaint management. Many procedures are not so much for solving problems as for informing the public or gathering and dealing with individual or collective complaints.

Table 3 shows, without further explanation for the time being, the

characteristic strengths of individual informal procedures for resolving the listed types of problems.

Table 3

	Citizens' Conference	Open Space	Citizens' Panel	Future Workshop	Mediation	Petition	Citizens' Exhibition	Planning Cells
Conflict resolution scenario					X			X
Development of proposal for solutions	X	X	X	X				X
Decision-making				X	X			X
Information / Establishing basis for discussion	X	X	X				X	
Complaint management					X	X		

4.1 Future Workshops

The method of Future Workshops, developed by Robert Jungk and Norbert Müllert in the 1970s, gives the participants the opportunity to work out concrete solutions whose implementation they will also be involved in following the Future Workshop. Robert Jungk wanted Future Workshops to give participants the courage to shape their (own) futures and to enable them to overcome the attitude that "there was nothing they could do." Future Workshops are therefore particularly appropriate for activating and involving people who previously were not politically active or took little interest in politics. The areas of application are diffuse because the development of solutions for problems takes place in widely different context, e.g. business, local communities, education ... After a preparatory stage the procedure involves three phases: a "critique phase" followed by a "fantasy phase" and, finally,



an "implementation phase." The individual phases last a whole day, if possible (Jungk 1981).

Features of the procedure:

- (1) critique phase: the problem situation is examined critically;
- (2) fantasy phase: desirable options (solutions) are outlined;
- (3) implementation phase: possible solutions are tested for their feasibility;
- (4) eliciting and encouragement of different approaches and viewpoints.

Example:

Future Workshops for attractive models for rural living for young people and families in Saxony Anhalt <http://www.prolandleben.de/web/pdf/Zusammenfassung.pdf>

4.2 Planning Cells/Citizens' Reports

The public participation procedure of Planning Cells developed by Peter Dienel in the early 1970s (which he supplemented some years later with mandatory citizens' reports presenting recommendations) was also a contribution to enhancing democracy. The idea was not to oppose the state, but on the contrary to call on government bodies to facilitate more democracy by convening Planning Cells. Since they are initiated from above Planning Cells are to some extent the opposite of citizens' initiatives.

A Planning Cell is a group of around 25 people, selected at random, who are invited to act as consultants, having been granted leave from their place of work, to work out solutions to a given problem. They are assisted by neutral moderators and the process usually lasts four days at most. As a rule, Planning Cells are initiated and commissioned by state bodies. Experts and lobbyists have the opportunity to present their positions, but, like juries, discussions involve only the participating citizens. Often between four and twelve Planning Cells work on a topic in parallel

in order to boost the representativeness of the recommendations. The results of the Planning Cell are summarized in a citizens' report, which the citizens present to the commissioning body at a public event. Planning Cells and citizens' reports are predominantly goal-oriented. Because of the random selection process their recommendations are widely accepted by the public. (See the other contribution to this volume by Hans-Liudger Dienel on the development of this procedure.)

Features of this procedure:

- (1) random selection of citizens;
- (2) reimbursement and work release of participants;
- (3) provision of contentious information by experts; (good)
- (4) small working groups of changing composition;
- (5) publication of results in a citizens' report.

Example:

Citizens' report on the future of the area around Magdeburger Platz in Berlin's Tiergarten district, which had been declared "in particular need of development": <http://www.nexus-berlin.com/Nexus/Bereiche/Buergergesellschaft/magdeburger.html>

4.3 Mediation

Mediation is an age-old form of conflict resolution — King Solomon was an early practitioner! — which experienced a revival in the 1970s in the USA and Germany as an informal, voluntary procedure for developing solutions acceptable to all participants. Horst Zillesen was one of its leading proponents in Germany. A neutral mediator assists the autonomous conflicting parties, encouraging them to work out various options independently. There are now several hundred trained mediators in Germany, dedicated courses of study and various further education opportunities. One area of political application is the resolution of multi-party conflicts through the mediation of a neutral non-partisan third party (Zillesen, 1998).



Features of this procedure:

- (1) voluntary participation, transparency of outcome, well-informed participants;
- (2) conflicts are resolved by the conflicting parties themselves;
- (3) the interests of the conflicting parties are given due consideration;
- (4) planning for the future is central to the procedure.

Example:

Mediation: Wiener Platz in Munich: successful mediation between residents, business owners, the city council and citizens' initiatives concerning the redevelopment of Wiener Platz: <http://www.sellnow.de/docs/wienerplatz.pdf>

4.4 Petition

The right of petition denotes the right to deliver a petition to the state authorities or parliament without fear of the consequences. There have been petitions, requests and complaints to those in power throughout history. In monarchies and dictatorships the petition is often the sole means by which the people can defend themselves against an arbitrary state. The individual is in the position of a supplicant who addresses his or her concerns to the powers that be with no legal right to an answer, still less to redress. In Germany there is a legal right to an answer. In 2005, moreover, online petitions to the Petitions Committee of the Bundestag and public petitions were introduced. In this way individual rights of complaint developed into a deliberative procedure. Besides administrative redress many petitions contain proposals for social and political innovation (Bockhofer, 1999).

Features of the procedure:

- (1) individual petition: one person submits a petition;
- (2) joint petition: a group of people submits a petition;
- (3) public petition: a petition is published and people have a limited time in which to sign it;

- (4) in Germany petitions are dealt with by a Petitions Committee;
- (5) arrangements for dealing with petitions differ widely between federal states.

Example:

Petition for better access to officials of the Federal Employment Agency. (An overview of all public petitions to the Petitions Committee of the Bundestag, with online-discussions, is available at: <https://epetitionen.bundestag.de/>)

4.5 Citizens' Conferences/Consensus Conferences

The consensus conference, first introduced by the Danish authorities for the purpose of technology assessment, has since been adopted further afield, above all in the USA. This participatory procedure got off to a spectacular start in Germany with the first consensus conference on the future of genetic diagnostics, held in Dresden in 2001. Increasingly, other controversial topics are being addressed by this means, besides technology assessment. To some extent, as, for example, in Dresden, this method also goes by the name of citizens' conference. If stakeholders rather than citizens are selected as participants in a consensus conference the procedure can have the opposite effect: at the end of the conference the stakeholders are even more committed to their positions than at the beginning because they were unable to shrug off their role as representatives of particular interests during the consensus conference. Success using this procedure depends on whether the participants are able to adopt a new role and perspective. This is easier for citizens than for the representatives of concrete interests.

Features of this procedure:

- (1) personally invited stakeholders and experts, or sometimes selected participants, meet in the run up to the conference over two weekends in order to be given information and to formulate questions to be addressed to experts;
- (2) implementation: questions and discussion with experts;



- (3) conclusion: preparation and public presentation of a concluding document.

Example:

“Streitfall Gen-Diagnostik” [The case of genetic diagnosis] — German Museum of Hygiene, Dresden: <http://www.bioethik-diskurs.de/Buergerkonferenz/Konsensus.html/>

4.6 Open Space

On his own account, the inventor of the participation procedure Open Space, the American organization consultant Harrison Owen, developed it as a by-product of an international conference he had organized. At this meeting the coffee breaks proved to be the most valuable part of the conference. In light of that Owen made open coffee breaks the basic principle of the procedure: participants in Open Space have no advance agenda and determine the direction, course, and contents of the process through their own activities, and work independently and simultaneously on a wide range of subtopics. If well moderated, Open Space can be very motivating and stimulate creativity. As a result, what you get is not so much decisions as many new ideas and suggestions. It is particularly well suited for preparing and focusing people's minds in relation to restructuring processes. This procedure has been much used in Germany, and as a result Harrison Owen is often invited to Germany to take part in further education and training courses.

Features of this procedure:

- (1) preliminary moderation in a plenum;
- (2) following this, a very open, self-organised structure in work groups;
- (3) work groups can be shuffled at any time;
- (4) suitable for groups of almost any size.

Example:

Open Space — The groß klein district of Rostock “At Home in groß klein”: topic: how can living in groß klein be made attractive once again?

<http://www.buergergesellschaft.de/politische-teilhabe/modelle-und-methoden-der-buergerbeteiligung/ideen-sammeln-kommunikation-und-energie-buendeln/praxis-open-space-rostocker-stadtteil-gross-klein/103430/>

4.7 Citizens' Panel

This procedure, developed by Helmut Klages at the beginning of the decade, is a regular, reiterated and standardized survey of randomly selected citizens on current topics of local politics. The questionnaire is put online, so opening up participation to all citizens. The procedure therefore functions entirely without discussions and opinion formation processes. Klages views his democratic invention as a response to the poor dissemination of small-group oriented procedures. Many citizens cannot be reached by means of Future Workshops, Planning Cells, and Open Space. In contrast, surveys are more accessible to all citizens.

Features of this procedure:

- (1) inclusion of broader population segments, as well as providing elected democratic and administrative bodies with information;
- (2) surveying a representative group of 500–1,000 citizens over several years (3–4 surveys a year);
- (3) timely feedback concerning results and feasibility to citizens, political decision-makers, and the administrative authorities.

Example:

Citizens' Consultation "Active Arnsberg": regular representative surveys of the public on local topics: <http://www.arnsberg.de/buergerpanel/index.php>

4.8 Citizens' Exhibition

The citizens' exhibition is another rather recent democratic invention. Its aim is to make public participation and its results more attractive by means of biographical, emotional, and aesthetic elements. It is basically an exhibition of posters and other exhibits which present one person's



perspective on a given topic. It therefore gives visual form to personal perspectives in the working out of problem solutions and presents them to a wide range of people. The basic idea of citizens' exhibitions, developed by Heiner Legewie and Hans-Liudger Dienel, is to present the attitudes, goals, and motivations of interest groups, followed by public discussion. It starts with interviews with various people on a problem or topic of interest. In these interviews the interviewees talk about their attitude to the topic, what they feel about it, their difficulties, hopes, and ideas for a solution. At the same time, aesthetic elements — frequently photographs — are brought in that illustrate those involved and the essence of their perspective. On this basis the citizens' exhibition takes shape, in which pictures and interview excerpts are combined, thereby presenting in visual form a new, living viewpoint on the topic or problem. The citizens' exhibition serves to provide information, to stimulate further discussion, and to promote transparency concerning a debate or a process of change.

Features of the procedure:

- (1) a combination of photographs and qualitative interviews on a poster;
- (2) aesthetically attractive and emotional biographical presentation of the viewpoints of various participants;
- (3) the ceremonial opening of the citizens' exhibition is part of the procedure;
- (4) the citizens' exhibition is a means of providing information, increasing transparency, and stimulating further discussion.

Example:

Citizens' exhibition "Moving away and returning — stories of people who have come back to live in Magdeburg": people's motives for returning to the city were presented in the exhibition: <http://www.partizipative-methoden.de/buergeraustellungen/>

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The Conduct of Local Legislative Hearings in Shanghai

Rui Yan

In accordance with the principle of ‘adhering to scientific and democratic legislation’, as well as with the *Law of the People's Republic of China on Legislation*, the Standing Committee of the Shanghai People's Congress has held a number of hearings — eight in all — on proposed legislation by August 2008. In this way a considerable amount of experience has been accumulated; indeed, Shanghai is at the forefront in China in this respect.

1. The Basics of Conducting Hearings on Proposed Legislation

The regulations governing legislative hearings were laid down in the *Law of the People's Republic of China on Legislation* in 2000. On May 18, 2001, the first ever hearing was held on issues relating to the *Regulation on the Treatment of Injuries to High School Students and Pupils of Shanghai (draft)* by the Committee of Education, Science, Culture and Health of the Shanghai People's Congress. Since then, seven legislative hearings have been held by the Standing Committee of the Shanghai People's Congress, concerning (i) the *Regulations of Shanghai Municipality on Labour Contracts* (Sept 29, 2001), (ii) the *Regulations of Shanghai Municipality on the Protection of Areas with Historical and Cultural Features and Outstanding Historical Buildings* (April 18, 2002), (iii) the *Regulations of Shanghai Municipality on Residential Property Management* (February 26, 2004), (iv) the *Regulations of Shanghai Municipality on Road Traffic Administration (revised)* (August 16, 2006), (v) the *Regulations of Shanghai Municipality on Forestry* (December 14, 2006), (vi) the *Regulations of Shanghai Municipality on Fuel Gas Management* (September 2007), and (vii) the *Regulation of Shanghai Municipality on Real Estate Registration*

(July 2008).

All eight hearings were committee hearings, as organised by special committees of the Shanghai People's Congress, with the participation of the directors, deputy directors and others from the standing committee. The objects of the hearings were mainly issues closely related to people's everyday life, which had given rise to disputes among the different parties and had come to the fore in the draft deliberation or opinion soliciting process. The special committees convening the hearings typically selected two to four suitable issues from among the opinions collected in the open solicitation process, as well as from the deliberations of the standing committee, and opinions from delegates, the district or county people's congress and related social bodies. Each hearing was open to the public and domestic and foreign media coverage (including interviews). Consequently, opinions from the presenters in the hearings were all adopted partially or entirely for all hearings, reflecting the wishes of the public.

2. The Procedure of Legislative Hearings

The eight legislative hearings held in Shanghai proceeded mainly as follows: after it had been decided that a hearing should be held, a plan had been drafted, an announcement made and participants registered, the hearing was held and a report compiled.

(i) Deciding that a hearing should be held

Proposals were usually made by the special committees during the draft revision and deliberation process and submitted to the director for approval. In practice, since legislative hearings were routinely held after the first deliberation on the draft regulations, the majority of proposals were raised by the committee and legislative affairs office that were responsible for the entire work of deliberation.

(ii) Drafting a working plan for the hearing

To ensure the successful implementation of a hearing and to achieve



the desired effect, a working plan was drawn up before each hearing, which usually included: the basis, necessity and guiding principles for holding a hearing; the organising body and chairperson; how the hearing should be announced; the time and venue of the hearing; the contents of the hearing; the principles and method for selecting those who would be allowed to present their opinion and observers; the rights and obligations of presenters; the rules governing the hearing; arrangements for media coverage; the procedure of the hearing; compiling and submission of a report.

(iii) Announcing the hearing

The announcement was usually made by the research office of the standing committee of the municipal People's Congress together with the media ten days before each hearing, both in newspapers and on the Internet to invite the participation of the public. Time, content and registration details were given in the announcement; the related draft regulations were also published. If the draft had previously been made available in its entirety via the media to solicit the opinions of the public, the announcement had to indicate the relevant media outlets and the date.

(iv) Registration of citizens and organisations; selection of presenters

Those applying to be presenters could register by telephone, fax or e-mail, in accordance with the conditions laid down in the announcement; they were required to state their basic views and arguments on registration. Presenters would then be selected and finalised by the organiser, upon consideration of the interests involved and the representation of opinions. A typical list included 20–30 people. Those who were not selected as presenters usually participated as observers. The organisers would send notice of the hearing in writing to the selected presenters.

(v) Holding of the hearing

Hearings were usually presided over by the committee chair. After the invited participants and the members of the standing committee were introduced by the chair, the rules would be presented, along with a

number of remarks. Each agenda item was heard in turn. Representatives of those who proposed the draft bill usually started by introducing the background and rationale of the proposed regulations and those who had been selected to present their opinions followed. In the course of the hearing committee members might put questions to the presenters. All hearings were open to media reporting and usually lasted for half a day.

(vi) Compiling a report on the hearing

We would compile a report after each hearing to sort out the various opinions given by presenters in a comprehensive and objective way, and give preliminary feedback after analyzing the opinions. During the deliberations of the standing committee, hearing reports would be submitted as important reference material for the relevant draft regulations. For the last few hearings, we also published the hearing reports on the Internet.

3. Rule-making and Amending for Legislative Hearings in Shanghai

In May 2001, with reference to experiences of legislative hearings from home and abroad, the *Provisional Rules of Shanghai Municipality on Legislative Hearings* was adopted by the working conference of the standing committee of the 11th People's Congress of Shanghai. Amendments to the rules were made in 2007 based on practical experience accumulated in the meantime. The amended rules include 18 articles, covering the organising body of legislative hearings, the scope of hearings, the procedure and content of hearings, and the publication of a report. The main points are as follows:

(i) Scope of hearings

To institutionalise legislative hearings, the scope of hearings was extended to include seven categories: those related to the large-scale social and economic development of the municipality; those having a major impact on the rights and interests of citizens, legal persons and



other organisations; those involving obvious conflicts of interest among different groups; those concerning the disputed formulation, amendment or abolition of local regulations; those concerning disputes about the contents of local regulations; those concerning administrative permission, punishment and compulsory measures; and those requiring further information collection and wider solicitation of public opinion; as well as other circumstances deemed relevant by the standing committee.

(ii) Selection of presenters

Given the need for fact-finding and obtaining information, it is clear that presenters at legislative hearings can be stakeholders or organisations / individuals capable of providing related facts, or experts in certain fields.

(iii) The effectiveness of hearing reports

While reports on hearings do not serve as the direct basis for legislation, they should serve as a significant reference in the formation, amendment and abolition of regulations by the standing committee, as our rules confirmed.

Citizens' Juries and Planning Cells: Deliberative Democratic Processes for Consultation on Conflictual Problems

Hans-Liudger Dienel

1. Introduction: Reasons Why Deliberative Democracy Is Not Yet Being Applied on a Large Scale

Citizens' Juries were developed independently in the 1970s by my father Peter Dienel, of the University of Wuppertal in Germany (www.planungszelle.de) under the German name "*Planungszelle*" (Planning cells) and by Ned Crosby, founder of the Jefferson Center for Democratic Processes, in the United States (<http://www.jefferson-center.org>). Since that time they have attracted a wider audience and application in many countries, especially in the United Kingdom and, more recently, Japan. There are a number of differences between Crosby's Citizens' Juries and Dienel's Planning Cells. One is size: while Crosby worked with small juries of 18–24 citizens, Dienel sought a minimum size of at least four parallel Planning Cells of 25 citizens each — thus a total of 100 citizens — to make the results more representative. But the similarities outweigh the differences. In both — highly standardized — processes, the citizens are selected at random, have time to develop an opinion or even a solution, are paid, and can discuss the given problem in small subgroups of five. In both processes, the role of jury member gives citizens the opportunity to develop and pursue public rather than personal interests. Both inventors early on envisaged the mass application of their deliberative democratic tools. Dienel, in his basic text "*Die Planungszelle*" in 1978, even forecast the foundation of an independent Federal Government Authority to organize Planning Cells all over the country (Dienel, 1978).



In this paper, I will explain the characteristics and specific strengths of the German type of "Citizens' Juries." The main focus, however, is an attempt to provide reasons why Planning Cells and Citizens' Juries have not yet been applied in greater numbers and to suggest what to do to change this. In more general terms, I am interested in explaining why customized and standardized direct democratic processes and tools encounter problems when it comes to mass application and what to do to overcome these problems.

Most answers to this question refer to the demand side that is, to politics, politicians, and public administrations, blaming them for institutional and behavioral resistance to deliberative democratic processes. Besides the moral condemnation of those who seek to exclude citizens from decision making, rational, if Machiavellian, reasons have been identified to explain why elected bodies in Western representative parliamentary democracies might be skeptical of the tools of direct democracy, which offer a different, complementary form of democratic legitimacy (Pállinger, 2007). Political systems which have not followed the Western path of representative parliamentary democracy, with competing political parties, might be less hesitant in adopting direct deliberative democratic processes, however. It could be that, in the long run, deliberative democratic tools will have more opportunities to grow outside the realm of parliamentary party democracy.

However, protagonists of direct deliberative democracy in the Western world, alongside their struggles with representative bodies, have tried to collect arguments in favor of deliberative democratic processes for the established democratic decision-making institutions: for instance, the fact that parliaments, political parties, or government authorities are likely to enhance their legitimacy by integrating deliberative democratic tools in their decision-making processes.

This paper will not add new arguments and strategies to the extensive literature on the readiness of the political system to accept direct democracy — the demand side, in other words — but rather stress the

other side, introducing arguments and ideas that might contribute to new and improved strategies for the wider introduction of Planning Cells, Citizens' Juries, and other deliberative processes. It will assess deliberative democratic processes and their protagonists, pointing out where they can be improved.

Let me start by looking for comparative reasons in the quite different field of sustainable energy, which has recently experienced a quantum leap in economic terms. Looking back at the history of sustainable energy technologies since the 1970s, we can identify at least 25 years during which these alternative technologies were considered something of a niche activity. Only in the last 10 years has sustainable energy production become a fast-growing mass market. In the course of this shift, sustainable energy production became big business and many old countercultural prophets and green activists emerged from the alternative shadow economy they had been building since the 1970s. However, they did not feel at home any longer and disappeared from the now growing industry (Bruns, 2008). I wonder whether the protagonists of deliberative democracy, with their societal approach and rather academic and ideological culture, might constitute a major obstacle to the mass application of Planning Cells, Citizens' Juries, and other direct deliberative instruments? Do they — do we — really want to leave the niche and join new coalitions to bring about mass application of the tools of deliberative democracy?

2. Characteristics of Citizens' Juries of the "Planning Cell" Type

In Germany, the first Planning Cells were implemented in the early 1970s. Peter Dienel called his democratic invention "*Planungszelle*," a term which captures something of the planning enthusiasm of the early 1970s. However, the idiom has become a widely used technical term and has helped to secure minimum standards for the process. We should therefore continue to use it. Compared to many other deliberative processes, Citizens' Juries of the "Planning Cell" type have highly standardized



characteristics and thus suffer less from quality-related problems. Planning Cells are groups of citizens convened to develop solutions for specific problems with the assistance of moderators. Six attributes characterize a Citizens' Jury:

- (1) Citizens are selected at random, for example, from all registered citizens (or registered voters) at least 16 years of age. Between four and 20 juries are run in parallel, so that between 100 and 500 randomly selected citizens — besides experts and moderators — are involved in the process.
- (2) Citizens are given time. They work for several (usually four) days as consultants on a concrete objective. Each day has up to four working units. Thus, up to 16 sub-topics can be addressed and discussed to provide consultation and solutions to a more general problem.
- (3) Citizens are invited by a government body and are paid for their time. This frees them from their everyday obligations for the relevant period and duly compensates them. The process is thus initiated from the top down.
- (4) Experts and relevant interest groups provide jurors with controversial information.
- (5) The constantly changing composition of these small groups guarantees fair discussion opportunities for members of the public.
- (6) Recommendations are compiled as a Citizens' Report which is handed over by the citizens involved to the contracting government body which sought consultation in a public ceremony.

The organization of Planning Cells, the drafting of the program, the selection of experts, and the processing of the results are put in the hands of a neutral moderator, who should be independent of the government body which called for the deliberative consultation. The entire process must be structured and prepared beforehand in order to ensure that it runs smoothly and successfully.

Preparation		Conduction			Results/Evaluation	
Month 1–3		Month 4–5			Month 6–8	
Program, lecturers and input material		PC 1	PC 3	PC 5	Pre Evaluation Preliminary Citizen's Report (Month 5)	Delivery of Citizen's Report to Client (government) and the Public
Random selection of citizens	Mailing of invitations to citizens	PC 2	PC 4	PC ...	Edition of Citizen's Report Feedback of Citizens	Announcement of further steps (e.g. Report of government on implementation of recommend-dations within a year)

Figure 1 Time Frame for Organizing Planning Cells

These characteristics have been developed, tested, and improved over several decades. The detailed structure of Planning Cells incorporates long experience.

The experts involved in the Citizens' Jury work sessions may be "partisan," while the moderator is neutral and guarantees that the participants in the Citizens' Juries receive information from different interest groups and perspectives. Random selection guarantees a heterogeneous composition of citizen consultants which traverses age groups and social strata and provides an equitable gender representation.

The time frame for a Citizens' Jury in Europe is currently usually four days but may be shortened. In Japan, the time frame has been shortened to an average of two days. It is important that enough time is allowed for members of the public to think over the problem and to develop their own opinions (it seems that Japanese citizens can think faster than their European counterparts!). Citizens are given sufficient time to inform themselves and develop their own views. In order to protect Citizens' Juries from being disproportionately influenced by



individual participants, several parallel Citizens' Juries are generally convened for each objective.

Time	1. Day Thematic Field 1	2. Day Thematic Field 2	3. Day Thematic Field 3	4. Day Reflections
08:00—09:30	Working Unit 1: Introduction	Working Unit 5: Talk & Discussions	Working Unit 9: Talk & Discussions	Working Unit 13: Reflections of Results and its Connections I
09:30—10:00	Coffee break	Coffee break	Coffee break	Coffee break
10:00—11:30	Working Unit 2: Talk & Discussions	Working Unit 6: Talk & Discussions	Working Unit 10: Talk & Discussions	Working Unit 14: Reflections of Results and its Connections II
11:30—12:30	Lunch	Lunch	Lunch	Lunch
12:30—14:00	Working Unit 3: Talk & Discussions	Working Unit 7: Talk & Discussions	Working Unit 11: Talk & Discussions	Working Unit 15: Final Discussion and Voting
14:00—14:30	Coffee break	Coffee break	Coffee break	Coffee break
14:30—16:00	Working Unit 4: Talk & Discussions	Working Unit 8: Talk & Discussions	Working Unit 12: Hearing with Politicians	Working Unit 16: Feedback, Thanks, Conclusion

Figure 2 Typical Schedule for a 4-Day Planning Cell

The problem to be discussed and solved is provided by the contracting government authority. It is structured by the moderator into individual work units. It is fundamental for the process to ensure that every participant is adequately informed. For this reason, citizens are given a wide range of information from different perspectives at the beginning of every individual work unit by experts and even lobbyists, in the form of abstracts, hearings, and investigations.

The actual work takes place in small groups of five people. In these small groups, the citizens discuss the objective in detail without a moderator and advisor, and seek a common decision. Various solutions are developed, drafted, and/or prioritised. This kind of work situation provides

each individual citizen with many opportunities for expression, empathy, and consideration. The discussions are targeted towards evaluations and model solutions. In the course of this, individual views are developed.

20 min	10 min	45 min	10 min	5 min
Expert Inputs (talks)	Questions	Work (discussions ...) in small groups	Presentation of Results	Weighting / Prioritizing

Figure 3 Typical Structure of a Working Unit in a Planning Cell

All studies show that the outcomes are strongly oriented towards the common interest. While most deliberative processes provide an opportunity to defend personal interests, Citizens' Juries make it possible to seek the common good. This role is so attractive that citizens eagerly get involved and come up with suggestions in the common interest, even if they might harm their own interests. In the US, for instance, some Citizens' Juries have even called for higher taxes (Crosby, 2005, 112).

Planning Cells and Citizens' Juries normally attract a wide public audience during the preparation, drafting, and presentation of the Citizens' Report. The random selection process and the several days of groundwork form the basis for the acceptance of the recommendations of Citizens' Juries by both the general public and the commissioning body. The public is persuaded that the randomly selected citizen consultants are acting as their representatives in their decisions and recommendations.

Given these characteristics, Citizens' Juries of the Planning Cell type have certain strengths and advantages, which have been confirmed by many pilot studies:

- **Independence from lobbies:** The strictly short-term opportunity of being a citizen consultant protects Citizens' Juries from being infiltrated by organized interests and attempts to mislead them with fraudulent information. There is no possibility of advancement or re-election for the citizen consultants, and so they are free to come up



with unpopular suggestions as well. The randomly selected citizens are neutral as regards the topics under discussion and generally have no direct individual interest; because of their limited time as citizen consultants they are unlikely to seek to pursue occupational or career-oriented standpoints.

- **Common interests:** Citizen consultants accept the role of representatives of the common interest. While many other participation processes — such as round-tables, consensus conferences, and so on — make their appeal on the basis of the protection and vindication of individual interests, participation in Citizens' Juries fosters a willingness to think and act on behalf of the general public. Citizen consultants put common interests before personal interests in Citizens' Juries and pursue a recognizable common good in their work. The results are by and large topic-oriented.
- **Acceptability of the results:** Random selection gives Citizens' Juries great legitimacy because everybody has the chance to participate in the process. Recommendations therefore generally have a high acceptance rate. Citizens, parliaments, and administrations gladly stand up for the recommendations from Citizens' Reports because they indicate the will of the citizenry. Citizens' Juries can achieve wide acceptance even for unpleasant messages and unpopular decisions. In this way they can help the political process in resolving disputed topics and provide important talking points.
- **Diversity integration:** Citizens' Juries make people talk to each other who would usually have no contact, and bring in people and social groups who otherwise are barely represented in democratic processes. According to statements from former participants, diverse individual experiences contribute to the development of a collective rational solution.
- **Mobilization:** Citizens' Juries motivate the citizens involved to

make a contribution to society. Even long after the end of the process, participation in a Citizens' Jury still shapes the views of former citizen consultants on society and democracy, as empirical surveys confirm. In order to make use of this potential, it is beneficial to do a follow-up after a year or so.

- **Upscaling:** An important feature of Citizens' Juries is their potential to be used in great numbers. Citizens' Juries and Planning Cells can be multiplied, without detracting from their effect. Citizens' Initiatives, for instance, experience much greater problems in this respect. For instance, imagine a public debate involving a number of Citizens' Initiatives that favor a certain solution and several that are against it.

Since 1975, around 60 larger pilot Planning Cell projects have been implemented in Germany alone, with around 30 Citizens' Juries in the US (www.jefferson-center.org). Figure 1 displays the number of Planning Cells per year in Germany:

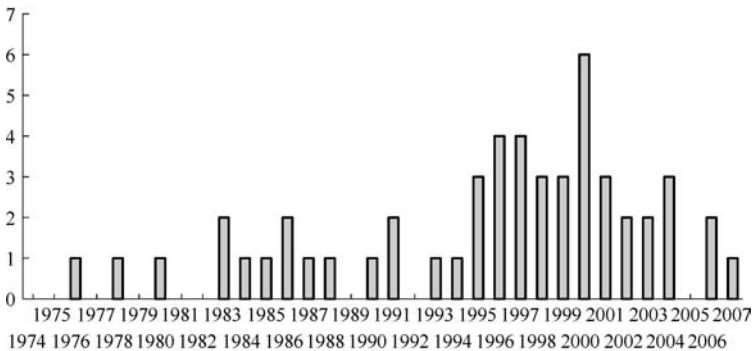


Figure 4 Planning Cell Projects in Germany (Vergne, 2008)

Given the fact that the process was new, innovative, expensive, and a reform of democratic procedures, these figures are impressive. At the same time, Planning Cells have enjoyed wide publicity and are included in every list of deliberative processes. But, despite their special characteristics, advantages, wide audience, and numerous successful



projects, we have to accept that Planning Cells have not yet reached the level of mass application.

In his recent booklet on experiences with the tools of deliberative democracy for planning purposes, the German governance researcher Helmut Klages tries to provide new answers to this frustrating state of affairs. His emphasis in the publication is more on the supply side than on that of demand, and he argues that many deliberative processes have their roots in the egalitarian counter-culture of the 1970s. Because of this history, deliberative processes to some extent remain trapped in a subculture which is limiting their dissemination. Furthermore, many protagonists of deliberative democracy — such as the environmentalists in my introductory example — seem reluctant to leave their counter-cultural niche. Klages is particularly unhappy with participative processes that rely on small group discussions. According to him, such discussions expect too much from many citizens (Klages, 2007). Unfortunately, Klages provides insufficient empirical evidence to support his thesis. Nevertheless, his focus on the protagonists seems very promising. I shall return to his hypothesis when I introduce the Japanese case at the end of my paper. But there are a number of supply-side phenomena that help to explain why deliberative tools have not yet emerged from their niche to become standardized and democratic instruments of mass application. I can envisage at least three more arguments:

- (1) Deliberative democratic tools have too often been applied to the “wrong” political problems — that is, to problems to which they were not ideally suited. In other words, there has to be better matching of problem types and deliberative processes (Fuhrmann, 2005).
- (2) Deliberative democratic tools have often been sold as innovative and new. This has facilitated pilot applications but hindered follow-ups. They are no longer new the second time around.
- (3) Deliberative democratic processes have mainly been applied to problems at local level. However, the democratic deficit is greatest

at the supranational level.

I discuss these three arguments in Sections 3, 4, and 5.

3. Typology of Problems and Democratic Tools

In the field of deliberative democracy, there are a couple of tools that have been promoted by its protagonists as a solution to all societal problems. Many protagonists have supported a single process, which they have sought to apply on every occasion. I might mention Harrison Owen's "Open Space," Lars Kluver's "Consensus Conferences," Tony Gibson's "Planning for Real," Robert Jungk's "Future Workshops," Horst Zillesen's "Mediations," Ned Crosby's "Citizens' Juries," and, of course, Peter Dienel's "Planning Cells." Some processes do not have a distinct inventor, for instance Citizens' Initiatives, but all of these tools have their own strengths and weaknesses in addressing and solving certain types of problem. One reason for the relative lack of success of direct democratic tools is the fact that these tools were often applied to solve problems for which they were not appropriate. Of course, Citizens' Juries, too, are not appropriate for solving every political problem. Therefore, it is important to develop a typology of political problems, a typology of democratic processes, and a meta-level method of matching processes to suitable problems.

In this paper, I shall distinguish only two types of problem: open problems and conflictual problems. Open problems do not yet have a solution; they are in need of new, innovative and creative ideas — they are "head opening" problems. Conflictual problems, in contrast, are "head banging" problems: a number of antagonistic and incompatible solutions are already on the table. Conflictual problems need decisions between known solutions. For open problems, deliberative processes must be used that offer possibilities for creativity, for example, Future Workshops. For conflictual problems, different solutions to an open question have already been put forward, but a decision opting for one of these solutions seems impossible because it would be resisted by a strong minority. For problems of this kind, we need other tools. In a representative democracy,



parliament often hesitates to decide on conflictual problems because the votes of threatened minorities will be needed at the next election; it thus tries to postpone necessary decisions.

Citizens' Juries are especially appropriate for solving conflictual problems. They generate acceptance for decisions between conflicting solutions and thus lead to binding collective decisions. We have many open problems in our societies at local, national, and supranational level: we can see the necessary decisions and solutions, but we do not have the political tools needed to obtain acceptance and so lead to binding collective decisions. Citizens' Juries are especially suitable for the clarification of conflicts and overcoming stalemates. In short, Citizens' Juries of the Planning Cell type have the potential to solve conflictual problems in great numbers; for instance, in relation to government spending.

Therefore, Planning Cells should be used more often to solve conflictual problems, but less often for open, innovative problems. So far, however, in most cases they have been applied to open problems; for instance, the development of future models or visions of cities and regions. The reason is simple: the political system is not yet willing or able to hand over conflictual issues to open deliberative processes. But for visions and models, other tools — such as Future Workshops — are often more appropriate. For conflictual problems, however, no other tool can match the qualities of Planning Cells and Citizens' Juries, though these have not yet had the chance to show what they can do.

4. The Innovative Character of Citizens' Juries as an Obstacle to Standardization

From the early days in the 1970s up until the present, it has been difficult to convince public authorities to give the go-ahead for "Citizens' Juries" and other participative tools to solve a certain problem and come up with a recommendation. Besides other obstacles, such processes cost money, which has to be budgeted for and disbursed. One argument for making available the resources needed to conduct

a Citizens' Jury is the innovative character of testing a new democratic format. Using this argument, government authorities have sometimes been able to obtain additional resources for research and innovation. This argument and tactic cannot be used twice for the same institution, however, and thus has hindered the implementation of Citizens' Juries in the long run. If we consider all Planning Cell projects so far, it is easy to see that many had no follow-up; exceptions include follow-ups in Bavaria and Berlin.

Testing a new democratic tool and thus conducting a democratic experiment remains an important argument in administrative decisions on using Citizens' Juries. It is therefore very much an advantage that Citizens' Juries are still considered a new instrument, despite the fact that they have existed for 30 years. At the same time, this very argument has obstructed regular utilization. The majority of public authorities use Citizens' Juries only once or twice, usually under great public scrutiny, resulting in clear recommendations that quite often were implemented. There has thus been considerable deliberative success, but no tendency towards standardized implementation of the procedure, leading to mass application.

5. The Spatial Dimension of Deliberative Democracy: Citizens' Juries at the Local, Regional, National, and Supranational Levels

So far, Citizens' Juries have been used mostly for problems at local and regional level. The democratic shortfalls and deficits of binding collective decision-making, however, spread from the local to the regional, national, and supranational levels (Huget, 2007). Consider, for example, supranational environmental problems. The world is in desperate need of binding collective decision-making processes to address these problems. It is at supranational level that the biggest deficits of direct democracy may be found, however. Planning Cells seem to be quite appropriate for this level. Here is a field of future growth for this deliberative process.



It took 30 years before — two years ago — the first supranational body (the European Commission) ordered the first Planning Cells to consult on a supranational problem. It was late in coming, but the problem was a big one: the future of the European Union. The Citizens' Report published in early 2008 presented a number of well considered suggestions (Dienel, 2007), demonstrating the ability of European citizens to take decisions on supranational problems. The Citizens' Juries were part of a larger initiative, the "European Citizens' Consultations," commissioned by the European Union, with the particular support of EC Vice-President Margot Wallström. It was coordinated by the Belgian King Baudouin Foundation and invited randomly chosen citizens from all 27 European member states to present their vision of a future Europe to the European Commission. The process and "Plan-D" ("for Democracy, Dialogue and Debate") underline the new interest of the European institutions in getting in closer contact with European citizens. At least since the rejection of the Constitutional Treaty by the citizens of France and the Netherlands in 2005 the European Commission, the European Parliament, and other European institutions have been looking for new ways of involving citizens in political processes and thus for new democratic methods and practices that effectively bring out the views of European citizens. Margot Wallström is in favor of deliberative democratic tools and supports their application at the supranational level. The method of Citizens' Juries and Citizens' Reports is capable of promoting this development.

For many problems at the supranational level there are not only no solutions, but even no convincing democratic methods for binding collective decision-making (Pállinger, 2007). The UN and the G8 are overburdened by questions such as climate change. The central objective, therefore, is to find new democratic practices for binding decision-making above the national level. Citizens' Juries are an appropriate method and therefore the Citizens' Report on the future of Europe was about more than just the future of Europe: it may well shape the future of democracy.

6. Looking Ahead: Standardization and Mass Application of Citizens' Juries

Only in two countries — in the UK since 1995 and more recently in Japan — have a great number of Citizens' Juries been implemented, while in all other countries the number has remained relatively small. So what is different about these two countries?

The United Kingdom was the first country to use Citizens' Juries on a larger scale (Kuper, 1995; Coote, 1997; Barnes, 1999). The government made use of Citizens' Juries to consult on and develop health policy, as well as other controversial issues, such as genetics (Dunkerley, 1997). There have been around one hundred Citizens' Juries so far, in most cases lasting only 1–2 days. The main proponent was the government, which commissioned Citizens' Juries from a market research organization Opinion Leader Research (OLR). Tony Blair and current Prime Minister Gordon Brown are great supporters of Citizens' Juries and have used this tool to develop acceptance of their policies. This political support has been both a blessing and a danger. Citizens' Juries were sometimes criticized as not independent enough (Pimpert, 2001), for instance by Tom Wakeford of the University of Surrey. He states that key to the future of Citizens' Juries is better quality control that ensures that they are fair, neutral, representative, and transparent (Wakeford, 2002). The English success story, by the way, was taken as a model by Segoline Royal, who emphasized a similar approach in her presidential campaign in France, though she was not elected. The British case underlines two of the three reasons I gave earlier in favor of the mass application of Citizens' Juries.

- (1) The deliberative process was used to consult on a conflictual problem. The British government was looking for a way to gain acceptance for a new health policy, and it was believed that Citizens' Juries would provide exactly that.
- (2) The process was used in a pragmatic way without direct influence from one of its inventors. It was not seen merely as a pilot project but as a standardized implementation of a tailored method to



solve a specific political problem.

Japan is the other country in which Planning Cells have been implemented in larger numbers since 2006. The success story there is very different, however. In Japan, a powerful NGO — the so-called International Chapter — was pushing for more Citizens' Juries on a bottom-up basis, and the government responded. The International Chapter is a conservative NGO with around 40,000 members all around the country. Most members are — younger — businessmen (the current prime minister is a former member). There is certainly no significant overlap with the leftist counter-culture. Direct deliberative democracy here is the central focus of an efficiency-oriented, conservative business culture. The Planning Cells that have been implemented are of shorter duration and cheaper than in Germany. This new cultural and social framework obviously makes it easier for mayors to call for Planning Cells in greater numbers than in continental Europe. But although the Japanese success has different roots and causes than in the UK, both stories confirm the dynamics and power of direct deliberative democratic processes both at the present time and, hopefully, in the future.

Appendix

Pictures on the work of Citizen's Juries



Picture 1 Discussion in small groups



Picture 2 Hearing with Politicians



Picture 3 Discussion in small groups



Picture 4 Presentation of Results



Picture 5 Prioritization of Results



Picture 6 Prioritization of Results

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Public Participation in Urban Planning and Urban Development in Germany

Frank Jost

1. Introduction

Since the beginning of the 1990s it has become clear in both national and international debates that public participation not only serves to meet the needs of a more demanding public, but also should be expanded in order to harness the potential of the various actors in a city. In particular the international declarations of the UN conferences in Rio de Janeiro in 1992 on the Environment and Development and in Istanbul in 1996 on Human Settlements (Habitat II) asserted that “good governance” and “participation” are mutually dependent. Transposed from the global level to the level of local action a broad range of methods have been introduced to enrich planning procedures with cooperative planning elements and to satisfy demands for greater participation. Within the framework of the debate on reform of administrative structures, which among other things has centred on more effective organisation of administrative machinery and of technical implementation, “public access” has come to the fore. The notion has increasingly come to be accepted that the success or failure of local action basically depends upon the public's willingness to take responsibility and to participate. Not only consulting members of the public but getting them to participate in planning has in the meantime become part of the general repertoire of those responsible for urban planning. Participation is increasingly taking place at all levels, whether it be classic forms of statutory participation, or variable or schematised forms of communication. Mediation procedures in conflict situations, consultations on large-scale projects within the framework of the most diverse approval procedures, even

forms of participation in municipal budgeting ("participatory budgeting") are increasing. In this contribution we shall have to concentrate on opportunities for participation in urban development. After outlining the basic conditions and some conceptual considerations we look at the fundamental forms of public participation in urban planning and urban development in Germany.

2. Basic Conditions

The first attempts to formally lay down participation rights within the framework of planning processes were made in the early 1960s in West Germany. The Federal Building Code of 1960 provided for the public display of binding land use plans in order to inform the general public about planning aims. Proposals and objections could be expressed which had to be examined before a decision was taken by the local council. There was no question of early and active involvement in the planning process at this stage. This would develop only in later years.

"We want to venture on more democracy. We shall open up our ways of working and satisfy the critical need for information. We shall work towards giving every citizen the opportunity to participate in the reform of state and society." Federal Chancellor Willy Brandt in his inaugural speech of 28 October 1969.

The radical socio-political changes of the late 1960s and the related general political euphoria also led to a growing public demand for more self-determination in planning questions. The first initiatives signalling public dissatisfaction with the meagre opportunities for participation took shape in connection with the redevelopment of urban areas in particular. For the municipal authorities this resulted in the need for the first time to put serious effort into providing information and explaining their intentions in order to obtain greater acceptance for planned measures. These changes are also reflected in the Promotion of Urban Development Act of 1971 (StBauFG). For the first time the people affected by particular redevelopment measures were given the opportunity for more concrete participation. Within the framework of "preliminary investigations" henceforth the "views



and willingness to participate of owners, tenants, leaseholders and other holders of rights of use" were to be ascertained, alongside their proposals for intended redevelopment, and how unfavourable effects could be avoided was to be discussed with those affected (§4 StBauFG).

"Members of the public affected must be certain that community development is not carried out over their heads ex officio."

Explanatory memorandum to the draft Promotion of Urban Development Act (1970).

Five years later "preliminary participation" was incorporated in general urban development law as "early public participation," as a result of which it no longer applies only to redevelopment measures.

Additional regulations such as the Planning Measures Act to the Federal Building Code (BauGB) of 1990 or the special provisions concerning the Unification Treaty, amended by the Investment Facilitation and Housing Construction Site Act that came into force on 1 May 1993, were aimed at reducing existing defects (housing shortage, legal and constructional deficiencies in the new Federal *Länder*). The most important means of achieving these aims is the tightening up of planning procedures. This can lead to the loss or reduction of early public participation or, for example, to the curtailment of the usual display periods, which is certainly not in the interest of the members of the public involved. These regulations were originally provisional, but they were incorporated in the Federal Building Code by the amendment of 1 January 1998 and so are now valid indefinitely.

Autonomy of the Municipalities in Planning

According to the Federal Building Code, urban development planning is one of the self-government functions of city councils and municipalities. A municipality is obliged to take urban land use plans under its own responsibility "as soon and insofar as this is necessary for urban development and regulation". Whether the drawing up — or alteration — of an urban land use plan is "necessary" is largely a matter

for the city council. On this basis, members of the public have no cause to have drawn up or altered an urban land use plan, for example, on the grounds of economic or personal interest. More particularly, the planning committee, a special council body set up for the purpose, deals with planning issues. The final decision is taken by the municipality or city council itself.

Public Participation

The concepts “public participation” (*Bürgerbeteiligung*) and “participation” (*Partizipation*) are, as a rule, used synonymously in relation to planning measures. From a legal standpoint, there is no generally valid definition. The meaning of the concept “public participation” depends on the particular legal regulation in which it is incorporated. In general, public involvement and codetermination in respect of administrative decision-making and political processes come into this category. Participation of this kind may have different levels of intensity, ranging from general electoral participation, through more direct forms, such as citizens' submissions or Citizens' Decisions, to participation in concrete planning processes within the framework of public initiatives. If public participation is brought in to a particular instance of planning by state bodies we talk of “top down” participation, while if initiatives by private persons are the driving force behind a participation process we talk of “bottom up” participation.

Public participation has diverse functions. It is a medium of information and a survey tool, as well as an instrument of planning and organisation; it serves the purpose of quality control (evaluation), improving planning and fostering public acceptance; it can contribute directly to the integration and motivation of specific social strata and function as a decision-making aid and catalyst. For members of the public it is of interest chiefly as a means of exerting influence and contributes substantially to planning sustainability. Public participation should not be confused with the participation of those affected by a particular measure, however; only those persons whose constitutional subjective rights — for example, life,



health, freedom from bodily harm — might be infringed by a pending official decision and who therefore have a right of action are included in permission procedures.

3. The Two Stages of Urban Land Use Planning

Urban land use planning is laid down in the Federal Building Code as a two-stage system. There are two kinds of urban land use plan which are in a hierarchical relationship to one another: the preparatory land-use plan and the binding land-use plan. Urban land use planning must be adapted to the purposes of spatial planning. This legal provision ensures the reasonable integration of the local authorities in higher levels. The aims of spatial planning are contained in federal state programmes and plans. One important federal state planning instrument, for example, is the regional development plan. It specifies for the whole municipal area, for example, open spaces and construction areas. These provisions restrict the municipality as regards the designation of new residential areas or commercial zones.

3.1 Preparatory land use plan

The preparatory land use plan provides the basis for drawing up binding land use plans. Urban land use plans are intended to ensure organised urban development and socially just land utilisation in accordance with the public good and so contribute to providing a humane environment, as well as to protect and develop the natural bases of life. In the drawing up of preparatory land use plans or their modification the provisions of spatial planning and federal state planning must be taken into account. Moreover, preparatory land use plans require the agreement of neighbouring municipalities.

Every city council and municipality is obliged to draw up a preparatory land use plan, which provides the rough outlines of urban development planning. Preparatory land use plans depict, by means of colours, hatching and symbols, the purposes that particular areas are to serve: for example, residential use, commercial or industrial use; for green

areas such as parks, cemeteries, allotments, sports and play areas; for utility services such as water works and waste disposal sites; for farming and forestry, and much more. Preparatory land use plans present the planning outlines for the whole municipal area.



Figure 1 Section of a Preparatory Land Use Plan

The preparatory land use plan is supposed to plot the direction of urban development for the whole municipality for the next 10 to 15 years, after which it will be redrafted to take account of new circumstances and aims. Should new aims emerge at short notice, the relevant parts of the current preparatory land use plan should be amended. The preparatory



land use plan is decided by the municipal council and after its approval by the regional administration it is binding on all authorities. No direct rights or obligations arise from the preparatory land use plan for members of the public. Since it forms the basis of the municipality's binding land use plans and for the approval of particular projects, as many interested members of the public as possible should participate in its redrafting and amendment, so that important preliminary decisions are not made without broad public participation.

3.2 Binding land use plan

The binding land use plan is supposed to ensure organised urban development and socially just land utilisation in accordance with the public good. It contributes to the preparation of building and other uses of land sites and directly creates planning and building laws and regulations. Binding land use plans should be developed on the basis of preparatory land use plans. Encroachments on nature and landscape are to be made good. Members of the public and public agencies are involved at two stages in the drafting or amendment of binding land use plans.

The binding land use plan creates the legally binding framework for urban development regulations for the concerned territory. The kind and extent of building use of land sites in a specific land use area is subject to compulsory provisions. An important function of the binding land use plan is to determine which areas or parcels of land shall be public or private. It is very precise in terms of land sites and affects each member of the public directly: it determines what may be built, where, in what dimensions and in what manner, and is very precise as regards plots of land. It lays down exactly where streets shall run; where green spaces, playgrounds and shopping areas shall lie; and where industrial and commercial enterprises shall be located. In this way it influences the quality of the environment. Binding land use plans do not apply to the whole municipal area, but cover only sections.

The plethora of regulations — planners call them “arrangements” — set out in binding land use plans are needed to ensure the fairest possible

balance between all public and private interests, and in order to realise the aims of urban development planning. If a solution is to be reached that meets this requirement it is important that the public be involved in the planning process early and extensively. The procedure for drawing up a binding land use plan is precisely laid down in the Federal Building Code. The municipal council decides on the urban land use plan, but the public can at two stages exercise direct influence through their input. The binding land use plan is decided by the city council and after its announcement as a byelaw becomes binding on all members of the public, authorities, offices and institutions. Henceforth what is permissible in a given area shall be decided in accordance with the arrangements contained in it.

To the uninitiated, reading a binding land use plan is no easy matter.

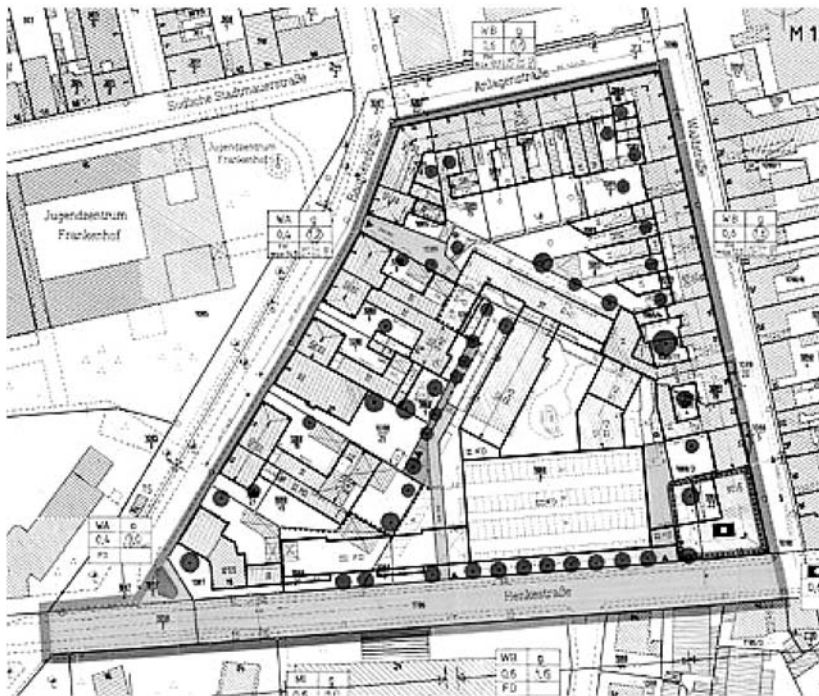


Figure 2 Binding Land Use Plan



Like reading a map, one has to know what particular symbols and letter combinations mean, and what particular colours signify. Certain letters and certain colours or lines indicate the same thing in all binding land use plans because a federal map notation code so stipulates. This map notation code, together with the use class order (US: zoning ordinance), furnishes the legend for all binding land use plans. Here it is laid down that, for example, the letters WA indicate “*allgemeines Wohngebiet*” or “general residential area”, and that areas coloured yellow with a green border indicate public streets and paths. “General residential areas”, naturally enough, are predominantly for the purpose of dwelling and so residential buildings, as well as unobtrusive workshops and facilities for religious, cultural, social, health care and sports purposes are generally permitted. Hotels, market gardens, administrative buildings or filling stations are permitted only in exceptional circumstances.

The most important questions that must be clarified as regards the development of one's own land sites or other land sites are as follows:

- (1) What kind of use and development is permitted for this land site; and what in general and what only exceptionally?
- (2) What restrictions are there on size? (How high am I permitted to build? How many square metres of my land site can I build over?)
- (3) What parts of the land site may be built over, and what not? (How close to the street may I build? Does the rear part of the land site have to remain open?)
- (4) Are there other provisions, for example, concerning layout, noise prevention or environmental arrangements?

4. Formal Procedures

In spatial planning drawing up plans is an essential part of formulating aims, as well as of laying down conditions for concrete projects. The legislature has explicitly laid down such drawing up procedures in many areas of planning; for example, in the Federal Building Code, in federal and state (*Land*) nature conservation laws, in the Environmental Impacts Assessment

Act, or in general in the Administrative Procedure Act (for planning permission hearings or in federal state planning laws). The involvement of the public in the planning process is formally regulated to varying degrees.

In this connection one may speak of the “classic forms” of public participation. They have been regulated for decades, but their importance depends on the degree of sectoral planning in the local area. Such forms of participation as the public display of planning drafts and public consultations today make up the bulk of local community work.

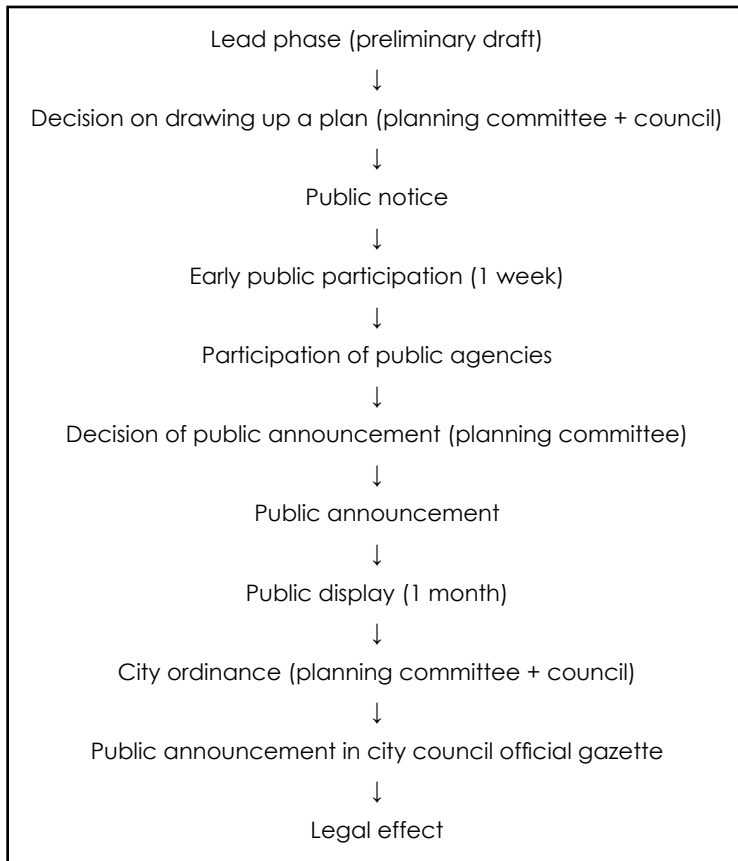


Figure 3 The Course of a Planning Process



4.1 Public participation in urban land use planning

At the centre of municipal actions in this regard is the drawing up of urban land use plans as the main instrument for the development and regeneration of urban development areas. Members of the public are involved in this at two stages. The first stage of public participation takes place in an early phase of planning. After the first planning draft of a preparatory land use plan or a binding land use plan has been elaborated it must be made available “for public notification” in accordance with §3, para 1, clause 1 of the Federal Building Code. Members of the public are given the opportunity to voice any objections and to make recommendations.

§3, para 1, Federal Building Code: Members of the public are to be informed at the earliest possible date about the general aims and purposes of the planning, about alternatives for the reorganisation or development of an area, and about the potential impacts of planning; they shall be given the opportunity to voice any objections and to make recommendations.

The extent to which participatory communication takes place in practice during this phase depends upon the individual municipal administration. Making plans available for public view, public meetings conducted by representatives of the administration or the council, detailed discussions, publication in the press, among other things, are the usual methods. Many municipalities also take advantage of the media and comprehensive presentation on the Internet to involve as many members of the public as possible in concrete procedures (binding land use plan) and urban development in general (preparatory land use plan). This can serve as a focal point for future interaction between members of the public and municipalities.

§3, para 2, Federal Building Code: Drafts of urban land use plans are to be put on public display along with the explanatory report or the explanatory memorandum for the period of one month. The place and duration of public display shall be made known locally at least one week in advance in order that objections and recommendations can be raised during the period of public display.

The second stage of public participation consists in the public announcement and formal public display of the (for the time being) final planning draft in accordance with §3, para 2 of the Federal Building Code. This phase of public participation, significantly more than the so-called “early” or “preliminary” first phase, is based on a strictly formalised procedure. Information and explanations are to be supplied by the administration. Objections and recommendations should be raised by members of the public, but the requirement that this should be done in writing or the fact that you have to go to the authorities to have your views recorded, as well as the strict period of participation are sufficient to act as hindrances as far as members of the public are concerned. On the other hand, formally correct recommendations must be scrutinised by the municipality and taken into account in their decision-making. This in turn considerably strengthens the hand of members of the public and the representation of their interests. The course of this second phase of public participation is therefore legally regulated in detail. Municipalities are left with only a narrow range of possibilities. In summary, legally regulated public participation in urban land use planning on the one hand makes available extensive participation rights on the basis of which members of the public can get involved without having to prove that they will be personally affected. On the other hand, the integration of public participation in the planning process as a whole binds it into a whole set of legal regulations that allow municipalities little room for manoeuvre in individual instances.

So-called “public agencies” belong in the broader circle of participants in urban land use planning procedure; that is, other authorities, offices, organisations or associations that either are affected



by planning or that represent the public interest. Classic examples include the police, the fire service or local public transport. Their participation is laid down in §4 of the Federal Building Code.

§4, para 1, Federal Building Code: Authorities and offices that represent the public interest and can be affected by the planning are to be involved as early as possible in the drawing up of urban land use plans.

Planning Office	Retail associations
Building Regulations Office	Chamber of Trade and Industry
Town Clerk's Office	6 property owners
Tourist Information Office	8 tenants and leaseholders
Civil Engineering Office	
Economic Development Aid	
Office of Cultural Affairs	
City Marketing	City planners
Public Utility	Project developers
Police	Consulting architects

Figure 4 Participants in the Redevelopment of a City Square

4.2 Public participation in other planning procedures

Other legal forms of public participation mostly concern planning in special areas. The most comprehensive regulations are to be found in the field of protection of nature and landscape conservation, but there are also provisions on participation in the Promotion of Urban Development Act and the School Participation Act. For spatial planning the regulations of nature conservation legislation and the Environmental Impacts Assessment Act are the most important. Article 29 of the Federal Nature Conservation Act provides for the participation of recognised nature conservation organisations in landscape planning for the purpose of protection of nature and landscape conservation; that is, not everyone can participate but only so-called NGOs. Some federal state laws go further, requiring

the public announcement and display of a draft statute or ordinance in relation to the protected status of parts of nature and the landscape.

In respect of environmental impacts assessment the relevant authorities must inform the public concerning the environmental effects of a particular measure in accordance with §9, para 1 of the Environmental Impacts Assessment Act. The form of public participation shall be determined in accordance with the general provisions of the Administrative Procedure Act. First, the announcement of the provision takes place on the model of the second phase of public participation in respect of urban land use planning. Subsequently, discussions are held with those entitled to raise objections; that is, those affected by the project. In comparison with urban land use planning these forms of participation are fairly restrictive. The scope of those participating is narrower, so that the arguments raised are related to how members of the public are directly affected. On the other hand, municipalities frequently make available informal forms of participation in order to better inform the public. In everyday municipal practice these procedures have lower status in terms of public awareness than urban land use planning procedures. Municipalities therefore tend to make less use of them for the purpose of promoting the city. Nevertheless, the legal establishment of these participation possibilities provides an important channel of informal communication that is utilised intensively, particularly in the areas of the environment and landscape planning by professional associations, environmental organisations and institutions, and in this way has in some cases given rise to considerable publicity.

4.3 Citizens' decisions and citizens' initiatives

The Citizens' Decision is a legal instrument that, originating in Baden-Württemberg, has found its way into the municipal codes of other federal states. This variant on the referendum makes possible a selective vote of all the citizens concerning municipal matters on which voting is legally permissible and to that extent supersedes the decision-making power of the municipality. A Citizens' Decision can be occasioned either on



the basis of a decision of the municipal council to delegate the issue to the public, or by means of a so-called Citizens' Initiative by a quorum of citizens who are entitled to vote. The legal regulations assume a request for a vote on an original planning project as the rule, but in reality the most frequent variant is that a planning project that has already been concluded is retrospectively repealed by means of a Citizens' Initiative; that is, the request is frequently in response to a decision already taken by the city council. The requirements for a quorum for a Citizens' Initiative and the list of municipal matters which may be subject to a vote vary from *Land* to *Land*. The most liberal is that of the Bavarian municipal code in accordance with which, under § 18a, a great variety of municipal matters, including urban land use planning, can be the object of a Citizens' Decision and the quorum for a Citizens' Initiative is kept low. The Bavarian model of the Citizens' Initiative has given rise to complaints of the danger of the dominance of small interest groups in cases in which there is little general interest in participating in the vote.

Against that it has been argued that the Citizens' Initiative due to its design represents an important supplementary procedural correction. It comes into play when, in the opinion of the public, something has gone wrong in the decision-making of a committee and allows them to bring a planning project to a halt or to correct it. The Citizens' Initiative therefore serves to correct abuses.

A referendum took place in Berlin for the first time in May 2008. Referenda are held at the *Land* level (Berlin is a federal state) and require, in order to be successful, a quorum of 25 per cent of those entitled to vote. More than 880,000 Berliners took part in the vote on keeping open the inner-city Tempelhof airport. The Senate had decided on its closure because a new major airport is being built to the south of Berlin. The petition for a referendum failed because although a majority was achieved the quorum was not reached. Success would have required that 25 per cent of all those entitled to vote in Berlin had voted for *Tempelhof*. They only managed 21.7 per cent.



Figure 5 Tempelhof Airport

In contrast, a Citizens' Decision in the Berlin district of Friedrichshain-Kreuzberg did succeed on 13 July 2008. Citizens' Decisions take place at municipal level — in the state of Berlin it is district level. The aim of the Citizens' Decision was to prevent the planned development of the bank of the Spree with office blocks to the extent envisaged. A minimum distance for new buildings of 50 metres from the bank of the Spree was demanded and no multi-storey buildings above 22 metres high. Almost 87 per cent of the around 35,000 people who took part voted for reining in the planned development. At district level a quorum of 15 per cent was enough. Both this and the majority of votes cast was achieved. The district is now changing the plans.

4.4 Residents' and citizens' submissions

This variant of public participation is open to all the inhabitants of a municipality and is laid down in the respective municipal codes of the federal states. The purpose of the procedure is to make available a "mini Citizens' Initiative" to the inhabitants; that is, to grant them an originating role in municipal opinion-forming. In terms of scope individual federal states vary, however. According to one widespread variant a



low quorum — between 3 and 10 per cent of those entitled to vote — shall oblige the municipal council by means of its submission to look into a particular topic. In practice, the possibility of a Citizens' Submission is seldom exercised. The more effective corrective of the Citizens' Initiative evidently incorporates this form of initiative-based participation. Add to that a reduced need for it, due to the many possibilities for formal and informal participation in municipal planning that bring the topic in question before the municipal council at lower cost.



Figure 6 Planned Development by the Spree in Berlin

5. Informal Procedures

The range of cooperation and participation methods, alongside those laid down by law, has grown considerably, above all since the 1980s. There are forums, initiatives, redevelopment commissions, advocacy planning, mediation, “future workshops”, workshops, “planning cells”, public meetings and more besides, which can be used in planning processes, also in combination. Since these participation methods are not taken into

account in legal provisions it is up to the municipalities when and which of these instruments is employed. For example, future workshops or workshops can be initiated before preliminary public participation in accordance with the Federal Building Code in order to develop, among other things, basic objectives for a redevelopment process that is just getting under way. In addition, at this early stage potential disputes can be got out of the way more easily, which makes it more likely that the planning process will run smoothly.

In contrast to formal procedures public participation within the framework of informal procedures is distinguished by the fact that communication is less wrapped up in red tape. First and foremost, it is a matter of identifying the arguments and interests of members of the public in the run up to a planning process. Since there are no legal provisions governing such communication the procedure takes shape in accordance with the requirements of the individual case. As a result, hybrid forms can easily come into being. Above all in the case of outline urban development plans municipalities, depending on the size of the task, have in recent years usually engaged in public participation in the run up to or in parallel with existing legal procedures. This includes, for example, inner zones for which there are no construction plans or an entirely new section of the city; the resettlement of large, previously industrial vacant sites; or else centre concepts; to mention only a few planning cases. Whether this takes place in the form of public meetings, hearings, workshops or expert meetings, different tender processes, whose results are published and afterwards invitations issued to a public discussion, is decided in individual cases. Similarly, there has been a great deal of experience with different forms of participation in the housing industry, in redevelopment areas and development measures where efforts were made, alongside stipulated minimum participation events, to build up continuous communication — not least due to the realisation that the early involvement of those affected and the integration of their interests often results in considerable savings in the further course of the process and in implementation.



6. Formalised Procedures

Formalised procedures are those which bring public participation into play in planning within the framework of a schematised sequence. In contrast to formal procedures they are not legally regulated and so are not conclusively stipulated for a particular planning process. They are frequently deployed in disputes in planning or in the case of projects or planning situations in which on the one hand the arguments and interests of members of the public concerning the overall design of an instance of spatial planning are to be collected, while on the other hand members of the public can also make a creative contribution to the planning process by developing concepts and ideas.

In contrast to purely informal procedures formalised procedures are, however, bound to a predefined course, as has been developed in social sciences or by experienced teams of moderators. These primarily include:

- planning workshops
- Dienel-style planning cells
- community planning procedures/perspective workshops
- citizens' reports

It is important in the case of all these procedures first to clarify the task, the objectives and the responsibility for later decision-making.

7. Difficulties and Obstacles

Sometimes intensive public participation is hindered by members of the public themselves because a lack of experience or negative experiences concerning political and development planning participation have led to political apathy and resignation. Far more often, however, inflexible planners and administrative officials are responsible when they, as experts, do not take sufficient trouble to involve members of the public and neglect to point out the advantages and possibilities of participation. This often occurs through lack of interest and fear of additional expenditure, as well as possible complications. Organisational

and technical overextension, as well as fear of conflict are also significant obstacles on the side of the administration, which often shirks its responsibility with reference to the alleged delays that participation would bring about for the planning process.

In the course of the participation process most problems are caused by communication and interaction difficulties. Misunderstandings are frequently the result of different levels of argumentation. Planners tend to argue on a technical basis, while those affected take an emotional approach because their personal interests and residential environment are at stake and they are worried about possible ramifications. The administration's lack of communication skills is often a major problem. Communication problems are often a cause of misunderstandings, which can lead to obstructions in the planning process. What is needed are persons who can act as moderators. Municipal officials are likely to be regarded as biased in mediation and arbitration processes, which often precludes them from this task. It is advisable to bring in moderators who are as impartial as possible.

Even more difficult is the problem of interpersonal friction. Informal consultations such as between the municipal administration, investors and landowners in the run up to participation on the one hand provide an opportunity to clear up particular issues, but on the other, from the perspective of members of the public, who might only become involved at a later stage, they suggest corruption and a "stitch-up", and give them the impression that things have been done behind their backs. The same applies in the case of specialist offices — for example, the environmental office — over which lobbies can try to exert influence. If this leads to institutional bias because, for example, only a special citizens' initiative is preferred, the participation process loses credibility in the eyes of other participants.

It is not a good thing if in particular forms of cooperation and interaction, such as forums, roundtables and planning cells, it is always the same people who get together and show tendencies of institutionalisation



and getting too familiar with one another, which can stymie creative responses to new topics. Greater turnover of participants can counteract this. The dominance of individual participants or experts who represent individual interests or basically take a permanent defensive stance puts a strain on participatory teamwork. For that reason every effort should be made to ensure a clear structure and moderation of meetings by municipal representatives or other appropriate persons. Unclear competences, as well as the coming asunder of decision-making interests and decision-making competence during the planning process can cause concern among those involved. Furthermore, too long a gap between discussions and decision-making and implementation of the project can be demoralising. Against this background every effort should be made to tighten up the planning process. It cannot be called public participation if decision-making is shunted off and any kind of majority that happens to be precipitated can decide.

Finally, we must emphasise the need for absolute transparency of decision-making. If members of the public get involved in planning processes they should also — and will want to — be able to understand how their suggestions are dealt with. Nothing is more demoralising than recommendations being filed away in the drawers of planning offices. The weighing up of private and public interests in the planning process must always be comprehensible — otherwise next time the public will simply stay away.

Public Participation in Pudong Local Planning: Procedure and Practice

Xuan Liu

1. Legal Definition of Public Participation in Planning

Public participation in the planning process started in the United Kingdom in the 1940s. Later it was also practiced on the European continent, in the United States, Canada and elsewhere, becoming an indispensable link in modern planning and its management. As a means of coordinating various social strata, the growing needs of citizens and diverse interest groups public participation in planning issues aims at involving members of the public in the whole process of urban planning and its management. Simply put, such a process includes three stages: (i) drafting of the plan, (ii) approval and (iii) execution. In the drafting stage, the planning authorities listen to public views and draft the plan on that basis. In the approval stage, public representatives participate by sitting on the planning approval board. In the execution stage, finally, all the relevant planning information is posted, so that the public can comment on any aspect of the planning process.

It has been a little over ten years since public participation in the planning process was officially launched in China. In the mid 1990s, Shenzhen and some other Chinese cities began to introduce this practice into urban planning. They ensured public participation in planning by clearly defining the crucial legal status of the Urban Planning Commission in the examination and approval process, and by clearly determining the number of local citizens who would sit on the planning approval board. It was also stipulated that any draft plan must be openly posted before approval, so that members of the public can duly exercise their rights of knowledge and participation. In Shanghai, the Regulations on



Urban Planning promulgated in November 2003 state that urban planning should go through a process of soliciting public opinion. The Draft Rules on Seeking Public Opinion for Detailed Planning in Shanghai, issued in July 2006, lay down specific rules regarding actual participation at different levels of detailed planning. Nationally, the Urban and Rural Planning Law of the People's Republic of China promulgated on October 28, 2007 provides for public participation as a legal link in urban and rural planning in Articles 9, 26, 48, and 50, with the legal role of public participation defined for stages of planning from codification to execution.

2. Public Participation in Pudong Local Planning

2.1 Initiation of the procedure

According to the Regulations on Urban Planning in Shanghai, the Pudong New District Government has the power to approve the regulatory plan of all locations other than the two sides of Century Avenue and some special locations. Beyond this, the Pudong government has no power of approval over the strategic plan and functional zone plans in Pudong. From the actual practice of public participation in planning, it can be seen that both local citizens and local organizations are more interested in those plans that have a direct bearing on their interests. This is proved by the contents and number of enquiries and complaints that the Pudong Development and Reform Commission has handled over the years. So far, pilot programs of public participation have been undertaken in a targeted manner regarding those urban plans where the Pudong government is empowered to grant approval.

As to the so-called regulatory plan, the Methods for the Drafting and Approval of Detailed Plans in Shanghai provide specific guidance. The municipal, district, and county governments in Shanghai can, in accordance with the master plan, make specific regulatory plans on the nature and intensity of land use, special environmental considerations, municipal infrastructure, public service facilities, protection of historical sites, and so on, for the purpose of facilitating regional economic,

social, and environmental development. Obviously, regulatory plans are enforced to provide specific planning controls and particular parameters for actual construction or other purposes by incarnating the spirit of the master plan and other strategic principles. It is on this level that the interests of various players in society may be directly influenced by planning. It is therefore logical that public participation should be enlisted for such regulatory plans, so that transparency and fairness can be promoted, and the views of experts can be balanced with those of local citizens.

In this experiment with public participation in local planning, initially we have designated locations with similar functions, so that efficiency can be achieved and the complexity of the work involved may be reduced. Consequently, purely residential neighborhoods, commercial quarters, and industrial zones have comprised the first batch of locations concerning which public participation is encouraged. This strategy was adopted because of the underdevelopment of civil society in China.

A primary concern in the experiment has been the protection and promotion of the welfare of local people. It follows that the priority is invariably regulatory plans that relate directly to neighborhoods. For draft urban plans that have such a bearing on local citizens, their opinions are particularly sought and valued, so that infrastructural facilities and services can be optimized in terms of location and function for the benefit of nearby residents.

2.2 The government authorities

The Pudong New District is divided into six functional zones. Apart from the two sides of Century Avenue and special locations, at the restrictive detailed level almost all plans concerning the six functional zones are the responsibility of the Pudong planning departments, with the final power of approval resting with the Pudong government. Of course, the administrative authorities of these functional zones also participate in planning at the restrictive detailed level. Therefore, these planning departments and the administrative authorities handle all relevant issues



when it comes to public participation in planning.

The drafting of restrictive detailed plans for the purpose of construction can be conducted by third parties, or the organizations affected, which can be commissioned to do so by the planning departments of the Pudong government. The process of involving local citizens in the drafting of restrictive detailed planning for construction purposes is therefore organized by the Pudong Development and Reform Commission and the administrative authorities of the functional zones.

In carrying out the experiment, certain local community authorities, such as the township government, may be involved, so their cooperation is important for public participation. The Pudong government, as the final approving party in the planning process in Pudong, is available to provide guidance and supervision in the canvassing of public opinion.

As regards particular plans related to technical departments, such departments or their heads shall be responsible for seeking public views on planning issues.

2.3 Forms of public participation

Based on the Draft Regulations regarding the Canvassing of Public Opinion on Restrictive Detailed Planning in Shanghai, planning parties may, for the purpose of canvassing public views, issue questionnaires, conduct online polls, hold meetings, conduct assessments, and so on. Experience shows that meetings attended by public representatives always provide a good opportunity for face-to-face communication, although they are usually not adequate for the discussion of more technical issues, and may not be big enough to allow for wider participation by members of the public. Assessments are mainly made by experts and focus on the technical side of planning, which present a barrier to wider public participation. Online polls may maximize public participation, but their results may be compromised by a lack of early notice or inadequate computer skills. In this situation, a range of approaches should be adopted rather than a single one.

Besides, there are two other ways in which good organizational work may ensure adequate public participation in restrictive detailed planning. First, after draft plans have been developed, or after public views have already been gathered in the drafting process, planning departments must go through a further round of questionnaires, online polls, meetings, and assessments, as well as other measures for seeking public views. Second, after this round of opinion-seeking, planning departments have to inform the public concerning what suggestions have been accepted, which ones have not, and why. If the local citizens still have substantial reservations, third party experts should be invited to make assessments before the plan is adopted, and public views may continue to be sought in the process.

3. Deficiencies in Participation and Reflections

3.1 Incomplete and imprecise expression of opinions

It has been found in the surveys organized by planning departments that there is a “silent majority” that must be taken into account in public participation in planning. Generally, those in favor of the posted plans choose to remain silent, while those which are opposed are always more vocal. This “incomplete” expression of opinions on the part of the general public makes it difficult to conduct an objective and fair assessment of the plans concerned. However, as it is costly and inefficient to survey members of the public on a large scale, it is unrealistic to try to canvass all views concerning all urban plans. Therefore, for purposes of equity and efficiency, a certain level of public participation should be determined — for example, a statistical percentage of the whole population — at which the process can be deemed representative. The process should also be optimized. Two rounds of participation seems reasonable, that is, one during and the other after the drafting of the plan. Additionally, first, online polls can be used for a more extensive canvassing of opinions, and then a more intensive hearing can be conducted on specific issues, so that some of the deficiencies may be overcome.



3.2 Greater participation is desired in planning

The national Law on Urban and Rural Planning makes no specific mention of the system of planning committees, indicating that public participation is not considered a key issue in the Chinese planning process. Based on actual conditions in Pudong, it is believed that breakthroughs can be made on two issues. The first is that Pudong can draw upon the best practices in Shenzhen and Guangzhou by including independent experts and citizen representatives in the planning committee, thus making up for the current absence of citizen representatives in the planning approval authority.

Second, more active account should be taken of public opinion once feedback has been collected. In Guangzhou, for example, at least 70 percent of the affected citizens should give their assent before an urban regeneration project is given the green light. This may serve as a guiding case for widening public participation. Similarly, opposition on the part of half or two-thirds of the general public should be considered good grounds for vetoing a plan.

Public Participation in Decision-making: Transport Administration and Bus Line Planning

Rong Hu

1. Public Participation in the Administration of Public Transport in Pudong New Area

1.1 Background of the public participation initiative

Public participation in decision-making on public policy, a new trend in the development of democracy, is a basic requirement of the law on local government. A pioneer in the comprehensive national pilot reform, Pudong New District has always insisted on implementing public participation in the reform of the public transport administration system, so as to break the bottleneck hampering the development of public transport and to meet the expectations of the public. In 2006, based on accumulated experience, Pudong began to launch administrative initiatives to promote social coordination and public participation for its transport reform. The purpose was to develop positive interactions between the government and the public transport operators, between the operators and the community, and between operators and members of the public, thereby facilitating the priority development of public transport in Pudong.

1.2 Concept of public participation

Promoting social coordination and social participation is conducive to expanding the channels of communication with citizens and better protecting their interests, upgrading public transport service capabilities and carrying forward and deepening the comprehensive pilot reform



program.

The guidelines of public participation in Pudong public transport administration are designed to fully respect the key importance of the citizens and to encourage people to take a greater part in the decision-making process and the administration of Pudong public transport, so that they are not only participants in the development of public transport, but also supervisors of public transport administration.

The objectives of public participation in public transport are:

(i) To elicit public transport needs

As the public are the actual users of public transport services, their needs and any changes in such needs can most readily be elicited through public participation in the administration process. The adjustment of bus lines on the basis of public participation is particularly suitable for this kind of approach.

(ii) To improve the efficiency of public transport administration

With public participation, citizens can play an effective role as supervisors, helping to ensure that the available resources are fully utilized and deficiencies in administration are corrected. Participation can also promote mutual understanding and harmonious interaction between the public and the administrators, allowing for greater flexibility in administrative work and helping to improve administrative efficiency.

(iii) To accelerate transformation in the pattern of public transport growth

Innovation is effected in public transport when public participation is encouraged in transport administration. Participation can also help to enhance citizens' sense of responsibility and the feeling that they are major actors in society, accelerate transformation in the pattern of public transport growth and bring about long-term development in public transport.

1.3. Development of public participation in transport administration

Pudong New Area has promoted public participation in various fields,

at various levels and through various methods.

(i) Interactive information system

In April 2006, the interactive information system of Pudong public transport, designed for the citizens, was officially opened to the public. The information system is made up of service hot lines, post office boxes, service websites, SMS inquiries, letters and other means of communication. In the first half of this year alone, visits to the online public transport interactive platform totaled 346.8 million, in addition to 9,996 phone calls, 21 million SMS inquiries, 461 telephone complaints and a 100% effective response to complaints.

(ii) Interactive and collaborative activities

Interactive and joint activities take the form of public hearings, advisory conferences, communicative meetings and other regular contacts. For example, a public hearing was held at Pudong Citizens' Center on the arrangement of support facilities for Metro Line No. 6 (in the Waigaoqiao Zone) on April 17, 2007. The meeting, while also introducing to the public the principles used in designing the 28 stations of Line No. 6, solicited public opinions and suggestions on the location of seven stations of the metro line within the Waigaoqiao Zone. Meanwhile, the Construction and Transport Commission of Pudong has consulted local citizens widely and regularly through the online interactive platform on this and various other issues related to Pudong public transport (www.58752222.com).

(iii) Public transport promotion activities

A host of promotional activities have been pursued to enable the public to take a more active part in public transport administration. They include: soliciting proposals for consideration by Pudong public transport administrators; conducting on-the-job training for public transport staff; voting on service excellence (up to ten stars may be awarded); undertaking support activities during the Olympic Games. All these campaigns have attracted public attention to public transport.



(iv) Listening to the views of public representatives

The members of the People's Congress and the Political Consultative Congress, are ready links for communicating with the public. The transport authorities in Pudong have always been keen to seek opinions from such public representatives so as to keep more channels open for receiving feedback from society. After reports have been received from public representatives, investigations are conducted as soon as possible, in which citizens' concerns are carefully considered, in order to find solutions as rapidly as possible.

(v) Appointment of supervisors

A regular supervisory team composed of 150 people from various levels of the legislature and administration, ranging from the People's Congress and the Political Consultative Congress to industrial associations and township authorities, has been established to monitor public transport. These supervisors are officially endowed with the authority and the duty to make open or secret investigations into various aspects of public transport operations, and report directly to the transport operators or their administrators. By notifying the operators of any problems they might discover, the supervisors can demand swift remedial measures.

2. Public Participation in the Design of Community Bus Lines

2.1 Emergence of the concept of community buses

Alongside the rapid growth of mass transit capabilities, there has been a steady rise in public expectations concerning more convenient urban public transport services. In particular, local inhabitants have developed a significant need for bus lines that go through their neighborhoods and connect easily to mass transit facilities. Such transport facilities, commonly called community buses or bus lines, should be able to make up for deficiencies in the current bus line layout, thereby helping to improve the accessibility of these usually newly-developed neighborhoods.

There are three major approaches to the provision of community bus

services. The first is to establish a new line, with the appropriate service coverage, and to use the line to connect important service points within its milieu. The second is to adjust existing lines, expand their service coverage, and close the gaps in public transport networks. The third is to set up new bus stations or adapt existing stations, primarily to satisfy the transport needs of residents of newly-developed communities or neighborhoods, many of which house people relocated from downtown areas.

2.2 Public participation in determining the community bus line layout

The process of designing community bus lines has involved in-depth public participation. Through public hearings or meetings at neighborhood and township level, the opinions of local residents are officially sought regarding the routing of bus lines and the location of bus stations. Once draft designs are worked out, they are posted in various forms for public consideration, in a further round of public opinion seeking, before they are modified and approved.

A case in point is the bus line layout for Huamu Community. A new line was planned by the Pudong Construction and Transport Commission to improve the accessibility of the new residential areas there. In March 2007, the commission held a public hearing on the layout at the Citizens' Center. The idea was that it would take the form of a ring-shaped line within Huamu Community. It was the first meeting ever held in Pudong for such a purpose. A draft design was worked out fairly smoothly, based on the opinions gathered from representatives of the residential areas involved. The draft design also specified the mixture of bus models (balancing air-conditioned buses charging RMB 2 yuan and ordinary buses charging RMB 1 yuan), their hours of service, their frequency, and the layout of the line and its stations. The final tender for constructing and operating the community bus line was based purely on the design emerging from the views of the public.

With the success of the first experiment, its process of opinion seeking and design determination was followed by other community bus projects,



all reporting favorable results.

2.3 Institutional innovation in public participation

Public hearings are an effective way of increasing the transparency of government decision-making, while encouraging public participation and increasing the efficiency of urban administration. Besides, the efficacy of new public goods is promoted as a result of greater public participation in the decision-making process, as testified by the higher satisfaction rate of local residents concerning the new bus system. Certain practices are particularly noteworthy as regards public transport projects.

(i) Planning and optimization of the community bus line layout takes place in neighborhoods. Opinions and recommendations are constantly sought not only from local residents, but also from employees working in the area, and they are invited to comment not only on existing projects, but also on transport projects still in the pipeline. In this way, early inputs regarding connections and routing may be programmed into the planning process.

(ii) Community bus services are improved for and in collaboration with neighborhoods. Bus operators or bus companies engage in campaigns to build “windows of services” together with residents in towns and neighborhoods through friendly interaction between the community and the bus industry.

(iii) Public relations concerning public transport engage neighborhoods. Various information materials are sent to local residents, which include bulletins and briefings such as “Public Transport in Pudong”. Meanwhile, mass media and other forms of publicity are used for communicating with members of the public on a broad range of issues, including but not limited to transport.

(iv) Regular mechanisms are put in place to collect feedback from citizens both before and after service provision. As local residents are the main users of community bus services, opinions are collected from them for the whole lifetime of the transport infrastructure. Therefore, not

only does the planning and implementation of transport projects need public participation, but daily services are to be subject to greater public supervision for the sake of constant improvement.

It is believed that these best practices developed for the public transport sector also have implications for public participation in other sectors.

The Legal Position of Public Participation in City Planning — A Commentary on the Three Cases from the Seminar

Mang Zhu

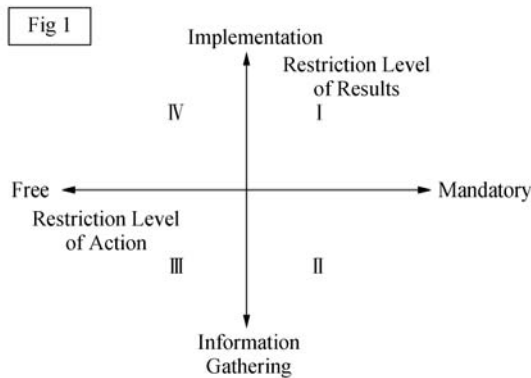
The three cases I shall comment upon are all related to city planning; however, because they derive from different countries and domains, the legal background is also different. Within the limited time available in this seminar, commenting upon and comparing the three cases is quite a challenge. Since 2004 I have worked on legal issues in city planning in the hope of developing a general framework for analysing the orientation of public participation in legal terms, one which is comprehensive, but also precise and apposite. Today, I shall attempt to use this framework to comment on the cases, and look forward to receiving your feedback.

All issues related to public participation are large and complex, upon which political science, sociology and other social sciences provide a unique perspective. I should point out here that, as my subject is administrative law, my analysis shall be confined to the legal field.

1. Explanation of the Analytical Framework

Basically, the framework with which I shall be concerned consists of one vertical axis (or ordinate), and one horizontal axis (Figure 1). The horizontal axis represents the “Restriction Level of Action”. It characterises the extent to which action is subject to legal obligation, that is, how strongly the law lays down that the administrative authorities should introduce public participation. At the right-hand end of the horizontal axis, “Mandatory” indicates that the administrative authorities are obliged to introduce public participation. Moving leftwards along the horizontal axis, the legal obligation becomes weaker and weaker. At the left-hand

end of the horizontal axis, the law lays down no regulations pertaining to the administrative authorities, in which case those authorities themselves need to lay down regulations on participation or to implement public participation procedures; in other words, the administrative authorities are not subject to mandatory legal requirements, but must follow their own judgement.



The vertical axis 'Restriction Level of Result' represents the level of importance of the views of participants for the administrative authorities' decision-making. A great deal of research is available relating to this problem, especially in the Public Policy field; for instance, Sherry Amstein's *A Ladder of Citizen Participation* is a classic study.

The bottom end of the vertical axis represents the weakest legal obligation imposed on the administrative authorities; correspondingly, public participation amounts to little more than information gathering on the part of the authorities. In their decision-making, the authorities should take the views of the public into account, but are not restricted by them. Moving up the axis, the level of restriction becomes higher. At the top of the axis, the authorities must abide by a public decision — typically reached by means of a referendum — before they make administrative decisions.

Four quadrants are formed by the intersection of the two axes. They each represent different participation methods and different levels of legal regulation of public participation. In the first quadrant, public participation is a legal and procedural duty for the administrative authorities. In



addition, in the wake of public participation, the authorities must adhere to whatever public decision has been reached and implement it.

In the second quadrant, public participation is both a legal and a procedural duty for the authorities, but the procedure in question is only aimed at information gathering — for instance, the recommendations of interested parties, and the views of specialists and academics. Thus the views and recommendations of participants are used merely as a reference point for the final administrative decision and are not mandatory. Of course, how strongly the authorities have to consider these views and recommendations depends on what legal regulations apply.

In the third quadrant, both the “Restriction Level of Action” and the “Restriction Level of Results” are the weakest. In this quadrant, the authorities have no legal duty to engage in public participation. Rather, whether they do so depends on their own judgement. And in this procedure the participants' views and recommendations are used merely as a reference point for the final administrative decision.

The fourth quadrant represents a weak “restriction level of action” and a strong “restriction level of result”. However, whether public participation exists in this quadrant or not depends upon whether and in which manner the administration lays down the regulations concerning voluntary participation. Of course, such regulations are not mandatory, but similar to a mutual covenant.

I shall try to analyse the different cases presented in the three reports in terms of this framework and in legal terms and examine the differences.

2. The Position of the Cases within the Analytical Framework

The three reports, one from Germany and the other two from China, contain too many cases to be analysed one by one, so I can only pick out individual cases with points in common from a micro-perspective. They are: (i) the Berlin event in Plan B from the German report, the community planning event of Pu Dong New District (hereafter “community planning event”) and the community bus route planning event (hereafter “route

planning event”).

First, let us take a look at the law as it applies to the community planning event.

At present, the applicable basic law for Chinese city planning is the *Urban and Rural Planning Law of the People's Republic of China*, which came into force on January 1, 2008. Strictly speaking, the community planning event should have been in compliance with the *City Planning Law of the People's Republic of China*, which has now been superseded by the *Urban and Rural Planning Law*. The *City Planning Law* has no clear regulation on public participation in planning procedures. As a local regulation, the *Regulations of Shanghai Municipality on City Planning* originally did not mention public participation, but a consultation procedure is included in Article 26 of its 2003 amendment.

Article 26 of the *Regulations of Shanghai Municipality on City Planning* (hereafter *Regulations*) consists of two parts. Part one — listening to the views of the public — is a must in city planning. It now constitutes a regulatory duty for city planning authorities. Accordingly, the public participation type of Article 26 falls on the left-hand side of the horizontal axis in Figure 1. However, the *Regulations* themselves have no legal status, so in terms of implementation they cannot fully reach the right-hand end of the horizontal axis, that is, “mandatory”.

In accordance with Article 26, the Shanghai Municipal Planning Bureau laid down a detailed administrative regulation, *Enactment on Listening to the Views of the Public to Establish a Regulatory Plan for Shanghai (provisional)* (hereafter *Enactment*). The community planning event is an applicable case for this *Enactment*.

After establishing a regulatory requirement to publish a draft, the second paragraph of Article 26 identifies the ways of implementing the information gathering procedure mentioned in the first paragraph as follows: gathering the views of the general public can take various forms, such as panel discussions, feasibility study meetings and hearings, and so on. This paragraph converts implementation of the requirement to gather



opinions into a discretionary procedure (behavioural discretion). To be more specific, the planning body may choose panel discussions or other implementation methods tailored in accordance with different opinion gathering aims.

Depending on the implementation method chosen by the administrative body, the results of the opinion gathering will differ. For example, hearings are aimed at the general public: participants are selected and invited from among a wide range of people who would like to express their opinions; panel discussions have no specific rules, and are usually confined to a small circle; feasibility study meetings, on the other hand, involve the expression of expert opinions only.

Under this precondition, the *Enactment* complements the *Regulations* with more detail, concentrating on the utilisation of panel discussions and feasibility study meetings, and so enriching the procedural requirements. Moreover, the questionnaire, presented obscurely in part two of Article 26 of the *Regulations* under the term “etc.”, is now clearly inserted in the *Enactment*. Thus, in the case of public participation in community planning, on the premise that the legal system as a whole lacks public participation, the establishment by the authorities of opinion gathering regulations for community planning and their implementation belongs to the lower end of the ordinate. In this regard, this kind of opinion gathering procedure should fall into the second quadrant.

The report on community planning presents a number of points whose implementation is worth studying. In the next section, I shall address a number of points in this connection in terms of the analytical framework. However, the report does not state whether the authorities have attempted to carry out implementation in a creative way beyond the *Enactment*. In my researches, I came across a case in 2002 in which Pudong New District Development Planning Bureau, without any legal requirement, on its own initiative held a public hearing on planning changes. As a valuable example of policy innovation, this case is to a certain extent very similar to examples from overseas. Nevertheless, we have no idea whether this

newly established regulation will be applicable to hearings of the same kind in future. Some practices in this case — for instance, informing people why their recommendations were not accepted — indicate that the trend is one of moving to the first quadrant from the second quadrant.

Secondly, in the bus route planning case, the planning bureau, without any legal obligation to do so, took the initiative and found a creative way of introducing public participation. On this basis, public participation in the route planning case should be positioned at the left-hand end of the horizontal axis. Meanwhile, in terms of the utilisation of hearings and in establishing a “service window”, these are all active ways of gathering public views. While the report mentions public hearings, it says little about their rules and development procedures. The hearing has taken place, but it is not made clear whether the decision — namely, that “the industry management department invited tenders for public routes in accordance with citizens’ views” — was made on the basis of the views of the participants or on the judgement of the authorities. Hopefully, detailed information will become available on this. On the whole, in the course of decision-making public views have no binding legal force, and so, in contrast to the community planning event, public participation of this kind belongs to the third quadrant.

At this point, an issue of particular interest arises, namely, the motivation for carrying out public participation if it is not prescribed by law. Mr Jost mentioned this in the morning session. This issue, of course, is not restricted to the field of law. However, in my opinion the motivation is not “democracy” or the public interest, as some scholars have claimed. The ideological grounds of such motivation are irrelevant for the study of the issue. For example, the motivation behind the famous “Democratic Consultation” System in Wenlin is simply to save *trouble*.

In contrast, the cases cited in the report on Germany illustrate a situation in which provisions are laid down for public participation: for instance, the official procedures determined by the first and second paragraphs of Article 3 and the first paragraph of Article 4 of the Federal



Building Code (*Baugesetzbuch*). For this reason, in relation to such cases public participation should be positioned towards the right-hand end of the horizontal axis. Such cases also indicate the existence of unofficial procedures without any legal reference, in which case public participation can also be positioned towards the left-hand end of the horizontal axis. On the other hand, within the framework of a Citizens' Initiative and a referendum in relation to Berlin's Tempelhof Airport, public participation strongly influenced the authorities' final decision. Accordingly, against this background public participation can be located at the upper end of the ordinate. Thus, cases in the report on Germany can be absolutely oriented towards the first and second quadrants.

In the morning session, in his report Professor Dienel mentioned the power of unofficial public participation to impose limits on government action. Obviously, such restrictions are political in nature, such as elections. In law, they have no specific sanctions. This kind of participation may therefore also be located in the third quadrant. In brief, from this report we conclude that, in terms of law, there are various types of public participation and levels of legal restriction.

3. Issues Meriting Deeper Discussion

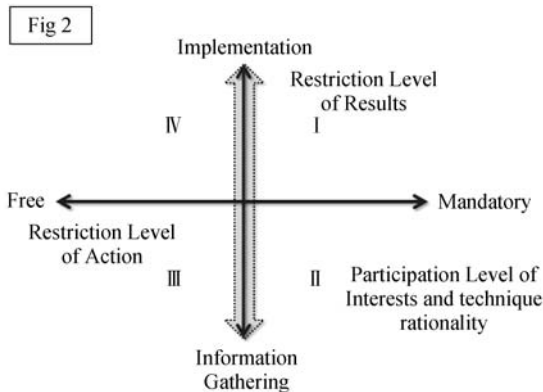
First, the presentation on community planning mentioned that China started to introduce public participation in urban and rural planning from the late 1990s, as represented by Shenzhen City. This is indeed the case. In the city planning field, as a system formulated and protected by laws and regulations, public participation derives from Shenzhen City's creative *statutory planning*. However, what we need to be aware of is that the *statutory planning* does not originate from the *City Planning Law of the People's Republic of China*, which came into force in 1990, but from Shenzhen's new, unique and innovative local institution. Therefore, two important issues arise.

Looking from *City Planning Law of the People's Republic of China* to *Urban and Rural Planning Law of the People's Republic of China*: One issue is against what kind of socially-transformative background can the

former centralised planning system embrace a public participation system clearly enshrined in the law? Although the law has changed, has the planning approval system undergone structural changes so far?

The other issue is the significance of Shenzhen's statutory planning institution, including why it was so unique at that time, what kind of social or political power was involved in bringing the new legislation into being and what is its current status as regards implementation?

These two issues indicate efforts to shift public participation from the second and third quadrants to the first; that is, they raise the issue of system construction.



Furthermore, should the aim of a participation system be to represent the interests of participants or to improve the functioning of the planning system (as other experts have proposed)? The section *Choosing the Types of Public Participation* in the community planning case touches upon this problem. In terms of the analytical framework, I am thinking of developing it further, for example, by adding some elements to the ordinate or adding another ordinate. This ordinate overlaps with the original one. (In Figure 2, the second ordinate is represented by a shadowed and dotted line.)

Strictly speaking, in contrast to the views of the general public, the technical recommendations of experts are not considered to form part of public participation. In that case, three parties are involved in planning:



the administrative authorities, the public and the experts. However, citizens' and experts' opinions are not distinguished or are deemed to be of the same type in both academic and practical studies (the differences between which we shall examine later on). I therefore do not regard them as separate.

However, it is because interests and professional advice are considered to be two different things in public participation that many problems arise in communication. This applies not only in the case of community planning in Pudong, but globally. On the assumption that public participation is weighted more towards professional advice, then it is oriented towards the lower end of the ordinate; however, if interest representation is given more weight, interests of all sorts should be fully expressed (the extreme case is the referendum); therefore, public participation will be located at the upper end of the ordinate.

However, how this barrier might be removed, so that expert opinion and public interest representation are considered as part of the same process, is hotly debated among scholars. The primary organizational layout and the process of citizen selection described in Professor Dienel's report might constitute one solution. In my survey, both governments and civil society organisations are attempting to break down the barrier, and some attempts have already experienced positive developments. If the barrier disappears, this axis in the framework will have to be changed. Thus, I do not clearly mark the two ends of the ordinate.

The third issue concerns the significance of approval and disapproval in public participation. The community planning case shows that although opponents of a given proposal tend to be few in number, those who approve are often reluctant to participate in the planning process, while most opponents show great enthusiasm for it. It is not difficult to understand why. If the planning/developing authorities are required merely to listen to opinions and gather information, they need only listen to counter-recommendations. Public participation may be oriented towards the horizontal axis, in the second and third quadrants. However, if

governments need to know the public's views, seek public support, require a public vote or must decide on a proposal in accordance with the public's views, detailed institution-development work must be carried out, bringing it to the top of the ordinate.

In a word, public participation is an issue which is widely applicable to institutions but very complicated in terms of how it is implemented. In China, public participation in city planning is in its initial stages, and so we should study it deeply, and design and put it into practice constructively; otherwise public participation will be nothing more than an empty and formalistic word.

Participatory Budgeting in Europe — An Inspiration for China?

Yves Sintomer Carsten Herzberg Anja Röcke

1. Introduction

On September 17–18, 2008, the Friedrich Ebert Foundation and the municipality of Shanghai organized a German–Chinese workshop on public participation. Practitioners and researchers from both countries were invited to talk about their experience with public participation in local politics and urban planning. It was not an easy task because the political cultures and systems of both countries are very different. In Germany, a Western democracy integrated in the European Union, municipalities have far-reaching powers and are subject to various forms of participation, within the system of representative democracy—elections, free press, freedom of expression (e.g. through demonstrations) mobilization in the public sphere — but also in the form of various consultative mechanisms (citizen juries, participatory budgeting, and so on) and direct democracy (referendums and popular initiatives). The provision of participatory instruments is partly a response to an increasingly evident democratic discontent among the population with regard to political parties and to declining voter turnout. In China, the political context is quite different and at present the country is undergoing huge economic and social changes. The significant growth of cities in China is challenging the traditional concept of a harmonious society. Increasing public participation in urban affairs could constitute a means of maintaining good relations between administration and citizens under these new and complex conditions. There is a clear interest in China in experimenting with new forms of communication between the population and local policy-makers.

Experience shows that the transfer of instruments from one part of the world to another is a difficult and complex affair. Participatory budgeting cannot be reproduced in China “without further ado.” Too often, “best practices” are proposed as “universal” solutions that should be imitated everywhere without taking into account local conditions. This approach is far from convincing. In Europe, participatory budgeting has taken a very different form from in Porto Alegre, Brazil, where it was developed. A similar process of local adaptation will be necessary if this instrument is introduced in China and other Asian countries. For this reason the present article,¹ which summarizes a report on European participatory budgeting, should be understood as presenting possible ways of doing things, but not “have-to” recommendations. The different models of participatory budgeting we analyze are ideal-types. They can serve as a “compass” for practitioners, but are by no means the only approach.

The focus of this article is Europe, as we present the results of the first comprehensive and systematic research on new forms of civic participation on this continent.² In what follows, we will briefly describe the origins of participatory budgeting in Porto Alegre, Brazil, and follow its path to Europe. On this basis, we will present a typology of the various procedures that are used and discuss their potential effects and limitations. This article can be considered a success if it is able to contribute to deepening the dialogue initiated between the two continents, and

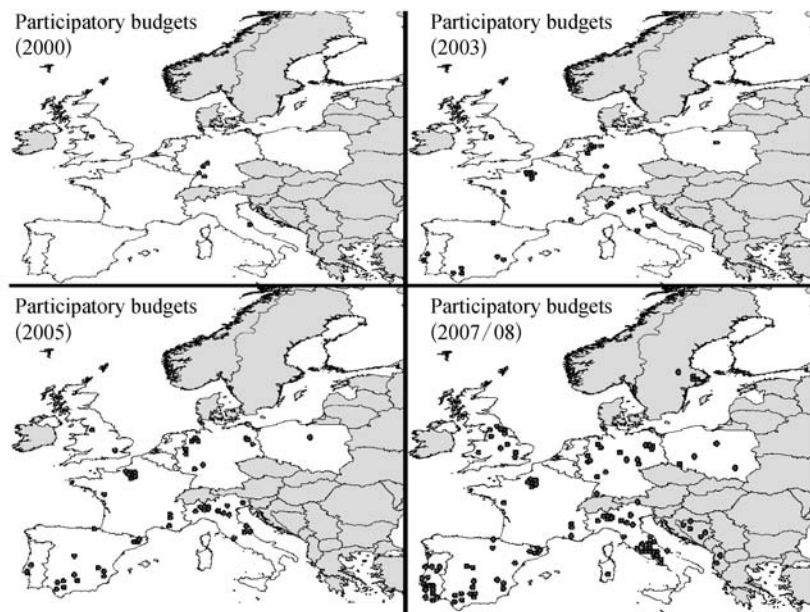
1. Parts of this article were published in the *International Journal of Urban and Regional Research* (March 2008), vol. 32.1.

2. The research was conducted by the Centre Marc Bloch in Berlin, in cooperation with Humboldt University in Berlin and with funds from the Hans Böckler Foundation and the CNRS (France) (see www.buergerhaushalt-europa.de). We worked in ten different countries and extensive analyses were conducted between 2002 and 2005 in 20 cities. Basic data were collected in more than 30 additional cities. The following individuals participated in the project as associated researchers: Belgium: Ludivine Damay, Christine Schaut; France: Marion Ben-Hammo, Sandrina Geoffroy, Julien Talpin; Great Britain: Jeremy Hall; Italy: Giovanni Allegretti (Coordinator), Pier Paolo Fanesi, Lucilla Pezzetta, Michelangelo Secchi, Antonio Putini, Paolo Filippi; Netherlands: Hugo Swinnen; Poland: Dorota Dakowska, Elzbieta Plaszczyk; Portugal: Luis Guerreiro, Giovanni Allegretti, Nelson Dias; Spain: Ernesto Ganuza.



if Chinese practitioners and researchers are inspired by the results of our research. We look forward to increased cooperation and an exchange of ideas and practices.

Origins of Participatory Budgeting



Participatory budgeting has been one of the most successful participatory instruments of the past 15 years. Since its invention in Porto Alegre (Brazil), it has spread, first, in Latin America, where more than 1,000 of the 16,000 municipalities that exist had introduced it by 2006 (Cabannes, 2006), and then throughout the world, including Asia. In Europe, participatory budgets emerged almost simultaneously in ten, mainly Western, European countries. Procedures are currently under way or are at a preliminary stage in four further countries. Altogether, in 2008 there are more than 100 European cities with a participatory budget. Among them are large cities, such as Seville in Spain with more than 700,000 residents or

districts of the capital cities Paris, Rome, Lisbon and Berlin (a first attempt was also made in 2005 in London).³ However, there are also medium-sized cities, such as Hilden and Emsdetten in Germany and small communes, such as Grottammare or Altidona in Italy.⁴ Three regions — in France and Italy — have also begun to move in this direction.

Participatory budgeting was invented in a quite specific context. Once imported and adapted in such different places as Seville (Spain), Berlin (Germany) and Płock (Poland) it is questionable whether one may still speak of a single (although complex) dynamic, or whether it would be more accurate to say that the name tends to be the only common link, labeling quite different realities. Is the expansion of participatory budgeting only a fashion, or a sustainable path towards a new type of urban policy? What kinds of participatory budget exist in Europe, and to what extent and under what conditions can they contribute to the modernization of administration, the renewal of democracy, and the strengthening of social justice? In the following, we will briefly describe the origins of participatory budgeting in Porto Alegre, Brazil, and follow its path to Europe. We want to demonstrate that participatory budgeting is not limited to *one* model. Rather, it may assume different forms. We will then present a typology of the various procedures used and discuss their potential effects and limits. A broader analysis should engage with the social dynamics, the normative frames, and the relationship between representative and participatory politics that are at stake and build another, more global typology (Sintomer, Herzberg and Röcke, 2008), but that is beyond the scope of this article. In conclusion, we will present a few remarks on the potential and limits of participatory budgeting in Europe.

Porto Alegre

Participatory budgeting emerged in Brazil at the end of the 1980s in

3. London-Harrow: 211,000 residents; Paris-XX: 180,000 residents, Rome-XI: 140,000 residents, Berlin-Lichtenberg: 252,000 residents.

4. Hilden: 56,000 residents, Emsdetten: 35,000 residents, Grottammare: 14,700; Altidona 2,600 residents.



a context which differs significantly from the situation in Western Europe. Most notably, Brazil has one of the world's widest income gaps, and in its "delegative democracy" (O'Donnell 1994) the constitutionally guaranteed democratic institutions do not operate as intended, because politics and the administration are largely characterized by corruption and clientelism. Especially at the local level, it is common that leading politicians are dependent on the business sector and that they purchase votes with money and hollow promises. The city of Porto Alegre partly differs from this tradition. Living standards are above the average of other Brazilian cities, and participatory budgeting has contributed to this. Moreover, it has provided for a reversal of priorities: primary health care was set up in the residential areas of the poor, the number of schools and nursery schools was increased, and in the meantime a large number of streets have been asphalted and most households have access to water supply and waste water systems. What have been the conditions for this development, and in what way has participatory budgeting made possible more efficient government, a reallocation of resources in favor of the most disadvantaged, and the democratization of politics?

Participatory budgeting emerged in Porto Alegre due to a "window of opportunity" which opened up in the aftermath of the electoral victory of the Workers' Party (Partido dos Trabalhadores-PT)⁵ in 1988 (Abers, 2000). At the time the PT was still on the way up, and it had to prove that its style of government was different from that of the other parties. This involved efforts to translate the grass-roots self-conception of the party into municipal politics. However, it was not only the new

5. The PT is a pluralist left-wing party that emerged from the trade union movement of the 1970s, which, in particular in the industrial area surrounding Sao Paulo, fought the then dictatorship by means of strike action. Middle-class intellectuals, Catholic supporters of so-called "liberation theology," former members of left-wing parties and extreme left groups, as well as social movements in the cities and in the countryside joined it. In particular, the Landless Peasants Movement was for a long time considered to be the party supporter most inclined towards activism. While the main faction of the party can be described as leaning toward social democracy, the PT in the state of Rio Grande do Sul, of which Porto Alegre is the capital, stands more to the left.

government which pushed participatory budgeting. Civil society, in particular community associations, also demanded more co-decision-making. The invention of this new device was the result of a conjunction of top-down and bottom-up processes. The spoils-system that exists in Brazil has proved a means of support in the creation of this new space for citizen participation, as it has enabled the mayor to hire committed and efficient higher-ranking civil servants. It is important to underline that it took four years for participatory budgeting in Porto Alegre to evolve into a new form of participatory government. However, when the PT lost the office of mayor to the opposition in 2004, this innovative methodology had been integrated to such an extent that the new government did not dare to abolish it, although it has reduced its scope.

International scholars (Abers, 2000; Allegretti, 2003; Avritzer, 2002; Baiocchi, 2005; Herzberg, 2001; Gret and Sintomer, 2005) have shown that three basic principles have been particularly important for the establishment and functioning of this approach.

- (a) The first principle, grassroots democracy, is carried into effect via citizens' assemblies in the 16 districts of the city. The aim of these assemblies is to determine priorities and to elect delegates and representatives who follow up on the development of proposals. In addition to investments, political guidelines for the design of municipal policies are discussed, for example in the areas of education, health, culture, and so on. Priorities are selected on the basis of the principle "one person, one vote."
- (b) Social justice, the second principle, is realized via an allocation formula. The funds available in each of the investment areas are distributed among the districts, taking into consideration the number of residents, the quality of the infrastructure, and the local list of priorities. These three criteria ensure, for example, that districts lacking infrastructure receive more funds than areas with a high quality of life.
- (c) Citizen control, the third principle, is realized by means of boards,



such as the Council of Participatory Budgeting, which convenes once a week for two hours and represents the committee with the most far-reaching competences. Its members are elected by the citizens' assemblies of the districts. It is their duty to ensure that the districts' priorities are taken up in the budget to the greatest extent possible. Independent NGOs train the representatives of participatory budgeting in order to enable them to co-plan with the administration. In addition, the Council of Participatory Budgeting is involved in the allocation of public contracts.

Overall, even though some serious challenges had to be faced and were not completely overcome (Gret and Sintomer, 2005), these three principles have led to a real empowerment of civil society and, most notably, of the working class. This achievement has been due to a combination of a strong and pragmatic political will on the part of the local government on the one hand, and bottom-up mobilization on the other (Santos, 2005). In those Brazilian cities where participatory budgeting has been only a top-down process, Leonardo Avritzer has demonstrated that the results have been very different (Avritzer, 2005). For a decade, civil society has been strengthened. Increasingly more citizens are joining community associations in order to have their proposals successfully represented in the process of participatory budgeting. Clientelistic structures were largely overcome in these new organizations because democratic and transparent rules replaced negotiations behind closed doors. In addition, participatory budgeting has led to a reorientation of public investments towards the most disadvantaged districts. This was possible because the process has led to the formation of a new public sphere, with the substantial participation of members of lower income groups who usually do not participate, and because it has contributed to an improvement of public services and infrastructure. This redistributive effect has characterized other important experiments in participatory budgeting, not just Porto Alegre (Marquetti, Godoy do Campos and Pires, 2007; Bird and World Bank, 2008).

Interestingly, in this very particular context, a procedural model was invented that has since been considered as a source of inspiration by other cities. Four times — in 2001, 2002, 2003 and 2005 — the World Social Forum has met in the capital of Rio Grande do Sul, and this has been a strong factor in the diffusion of participatory budgeting. Porto Alegre has become a symbol of a new type of more participatory democracy. Surprisingly, along with the anti-globalization movement, international organizations which are far from being “subversive,” such as the World Bank and UN-Habitat (UNDP 2001; Cabannes 2004a, 2004b), have analyzed Porto Alegre as an example of best practice with regard to urban policies. The hundreds of participatory budgets in Latin America have had very different political, social, and administrative outcomes (Cabannes, 2003).

2. What Is a Participatory Budget?

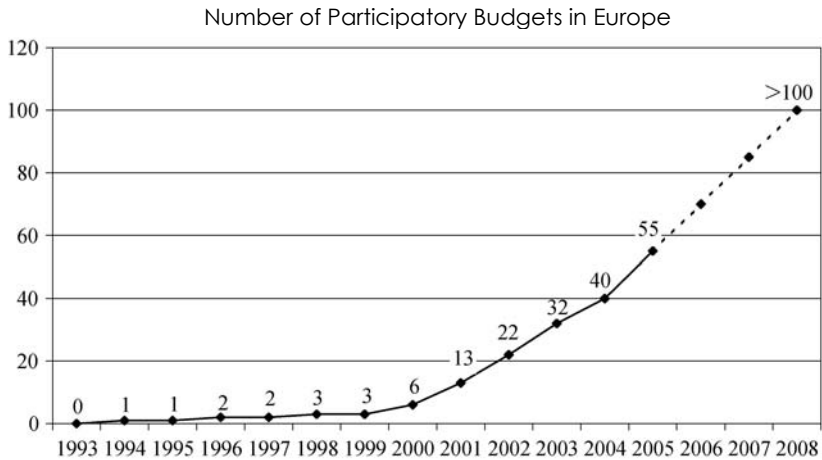
Any comparative research faces a problem of definition. This is even more difficult with participatory budgeting in Europe where, even more than in Latin America, very different forms of public participation exist in the budget allocation procedure. In some cases, the term “participatory budgeting” refers to mere public information events on local finances without even public consultation. Other examples, which are, however, locally not referred to as “participatory budgeting,” may feature an intensive participation procedure. This is why one cannot rely on a definition solely on the basis of what local actors call it. To seek a definition that aims to define what participatory budgeting should be, always and everywhere, seems misguided. A political definition restricting participatory budgeting to the “best models” would be possible, but that is not the aim of this paper. It is therefore necessary to develop a methodological definition which includes a set of minimal prerequisites in order to clearly differentiate this participatory procedure from others — such as neighborhood funds — and which, at the same time, is comprehensive enough to give sufficient leeway to procedures with different features.



Broadly speaking, participatory budgeting makes possible the participation of non-elected citizens in the conception and/or allocation of public finances. In order more precisely to define the process as it is practiced in Europe, five further criteria can be specified (Sintomer, Herzberg and Röcke, 2008):

- (1) The financial and/or budgetary dimension must be discussed; participatory budgeting deals with the problem of limited resources.
- (2) The city level has to be involved, or a (decentralized) district with an elected body and some power over administration (the neighborhood level is not enough).
- (3) It has to be a repeated process (one meeting or one referendum on financial issues are not examples of participatory budgeting).
- (4) The process must include some form of public deliberation within the framework of specific meetings/forums (the opening up of administrative meetings or classic representative bodies to “normal” citizens is not participatory budgeting).
- (5) Some accountability as regards output is required.

Defined in terms of these five criteria, participatory budgeting is a new and highly dynamic process in Europe. The number of experiments increased from 6 in 2000 to 55 in 2005, and there are more than 100 experiments in 2008. The number of people affected by participatory budgeting increased even more rapidly. Within two years (by 2005), it had doubled to nearly five million residents. That same year, 5.2 percent of the Spanish population already lived in cities with a participatory budget — the rate is only 1.4 percent in Germany and slightly above or below 1 percent in Portugal, Italy, France and Great Britain. In Brazil, however, the rate was 43 percent between 2001 and 2004 (Marquetti, 2005). Along with Spain, particularly strong growth is observable in Italy and, more recently, in Portugal, while Great Britain seems in the process of becoming one of the leading countries in this field in the coming years.



3. Procedural Typology

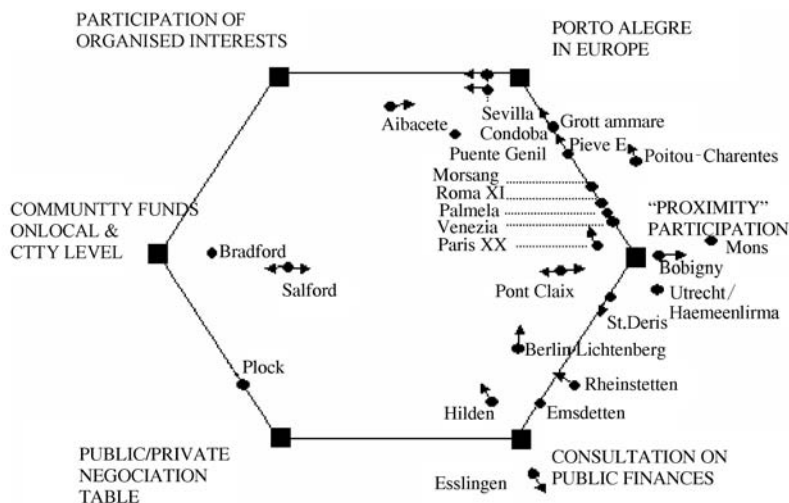
With such a large number of experiments, any comparative research faces two contrasting risks. The first is trying to account for the variety of cases in terms of a single, one-sided evaluation (stating, for example, that participatory budgeting in Europe is only a policy problem with no political impact) or to resort to a simplistic dichotomy (“real” participatory budgets are an alternative to neoliberal globalization, while others are merely pseudo-participatory budgets). The second is to get lost in the diversity of cases and so fail to present a global view. In order to overcome these problems, we have created, in Weberian fashion, a typology of participatory budgeting procedures which relies on ideal-typical models constructed in the process of the empirical study. In this way we are able to establish the poles of a semi-conceptual map on which it is possible to “place” concrete experiments (which never correspond exactly to one ideal-type). Based on a number of criteria,⁶ six models can be

6. The criteria are: (a) origin of the process; (b) organization of meetings (neighbourhood, city and/or thematic assemblies; closed vs. public meetings, and so on); (c) type of deliberation (topics of discussion, modalities of discussion, and so on); (d) position of civil society in the procedure (type of participating citizens, co-elaboration of methodology, and so on). In addition, the strengths, weaknesses, and challenges of each model have been analyzed.



differentiated, strongly influenced by path-dependency: (i) Porto Alegre adapted for Europe; (ii) participation of organized interests; (iii) community funds at local and city level; (iv) the public/private negotiation table; (v) proximity participation; and (vi) consultation on public finances. For brevity's sake, we shall analyze the ideal models in pairs.

Typology of Procedures



3.1 Porto Alegre adapted for Europe and the participation of organized interests

In some European experiments in which the influence of the anti-globalization movement has been particularly important, the Porto Alegre model has directly influenced the establishment of a completely new procedure. In the Spanish city of Seville (700,000 residents), for example, the participatory budget — introduced in 2004 — can largely be understood in terms of the ideal-type "Porto Alegre adapted for Europe." However, in other cities, the impact of the Brazilian example has been more indirect, such as in cases in which participation is not directed towards individual citizens. In the second ideal-type, secondary associations, NGOs, unions and other organized groups are the main actors. This model is based on a neo-corporatist logic and we call it

“participation of organized interests.” Very often, it develops in places where the previous participatory tradition had been based on the involvement of associations and interest groups in the determination of public policies in particular sectors. Although so far there is no direct example of the model of organized interests in Europe, some experiments are moving in this direction. The participatory budget in Albacete — 150,000 residents — can be considered as a hybrid of both the “Porto Alegre” and the “organized interest” models.

The content of discussions constitutes a second difference between the two types. In the model “Porto Alegre adapted for Europe” deliberation primarily deals with concrete investments and projects, whereas the discussion of broad political guidelines is at the center of the “participation of organized interests” process (that is, general orientation of housing, education, environmental or local traffic policies). A further difference is the way citizens’ suggestions are dealt with. In the model “Porto Alegre adapted for Europe” there is great pressure to implement the proposals which emerge during the participatory budgeting process because the local government is bound by its own commitment to accept them. Although the municipal council continues to be legally responsible for the final decision on the budget, citizens can be considered to have a *de facto* (co-)decision-making capacity. As in the Brazilian case, this model contains an allocation formula for investments. However, the criteria are not necessarily the same as in the Brazilian context. Other indicators can be used, such as the number of welfare recipients in the district, participation in meetings or the degree to which citizens themselves implement the proposed projects. In the model “participation of organized interests,” rules may be more informal than in the Porto Alegre model and may lead to a merely consultative process.

Seville (Spain)

The Andalusian city of Seville, with more than 700,000 inhabitants, is the biggest city with a participatory budget



process in Europe. The city is known for its cultural heritage, but has significant social problems. The process of participatory budgeting was started in 2004. It focuses on investments and programs in three municipal areas: civic engagement, sports, and urban planning. The procedure followed is very similar to that in Porto Alegre: it is a decentralized process based on the participation of individuals and takes place at three different levels (neighborhood, district and city). A core "driving group" of active citizens organizes the meetings in cooperation with the staff of local government departments. The process starts in March with meetings at the neighborhood level; participants can make proposals and elect their delegates for the district and city levels. It is the responsibility of the district delegates to prioritize the proposals that emerged at the neighborhood level. The city delegates discuss only those proposals that concern the entire city, for example, important investments such as the construction of a new municipal swimming pool or a soccer stadium. On a district as well as on a city level, the hierarchy of projects is established through a complex system of criteria, which takes into account redistribution towards socially disadvantaged or marginalized groups or areas. The idea is to minimize inequalities between districts and between neighborhoods. Priority is given when the existing infrastructure is weak or when the project benefits a marginalized social group.

In the first year of participatory budgeting, 265 proposals, involving €12 million, were integrated into the city budget. The methodology of the process itself was developed by a commission of delegates from every neighborhood and published as a procedural motion. Another commission oversaw project realization. Organization of the process as a whole was delegated to an external agency contracted by the local government.

A particular strength of both models is their potential for fruitful deliberation.⁷ Participants not only discuss matters in a large plenum, but may also do so in smaller fora, committees or on delegate boards. In these settings, an in-depth discussion — allowing the development of detailed suggestions to solve problems and the clarification of important matters — becomes possible. This may even include participants' developing expert reports on the equipment of schools or on the improved integration of minorities. One challenge for both models, however, is the connection of these procedures with a comprehensive modernization of the entire administration. A further challenge concerns the resolution of potential conflicts between individual citizens' participation and that of organized interests. In some experiments adhering closely to the Porto Alegre model, this has proved to be problematic, for instance when established community associations have feared that they might be sidelined.

3.2 Community funds at local and city level and the public/private negotiation table

The “community funds” and “public/private negotiation table” models have played only a marginal role in European participatory budgeting so far. Nevertheless, they represent a strong basis for its future development, most of all in Great Britain and in Eastern Europe. In both types, there is a fund for social, environmental or cultural investments or projects. There has been such a fund, for example, in the British city of Bradford (467,000 residents) and in the Polish town of Płock (128,000 residents). Another feature of these models is that they are relatively independent of the municipal budget, because the money at stake does not come — or only in part — from the local administration. Therefore, the municipal council does not have the ultimate say with regard to the acceptance of proposals. Rather, a committee, commission or assembly of delegates

7. Quality criteria for “good” deliberation include, amongst other things, the inclusiveness of the process, the mutual exchange of arguments, and the existence of clear rules. Various definitions of deliberation can be found in the literature about deliberative democracy that has burgeoned in the last couple of years (Bohman and Rehg 1997; Cohen 1989; Elster 1998).



determines priorities. Organized groups, such as local or community associations and NGOs, are at the core of both procedures, but business is excluded in one of them and central in the other. The deliberative quality can be considered to be fair, since several meetings take place with a manageable group of participants.

In the case of the public/private negotiation table, private enterprises and possibly international organizations raise parts of the money. The oil company ORLEN S.A., for example, contributes 50 percent to a fund in Plock totaling approximately €300,000, in addition to the municipality and the UN development program. This financial involvement enables the private sponsor to influence the design of the procedure, whereas citizens, who give no money but may apply for it, play only a secondary role. This model may be developed when international actors try to include citizen groups or NGOs in public/private partnerships. The UNO program HABITAT officially adopted participatory budgeting (Cabannes, 2004), but it soon came to differ significantly from the Porto Alegre model in defining this instrument as an “innovative mechanism that promotes the engagement of local government, private sector and civil society alike in the allocation of municipal resources.”⁸ The influence of Porto Alegre is therefore indirect.⁹

Bradford (Great Britain)

Bradford is a post-industrial city in West Yorkshire and has 474,000 inhabitants. Politics have been unstable in Bradford, with power repeatedly shifting between coalitions and marginal majorities over the last 15 years. There is no overall control in the current council, but the executive — consisting of six leading councilors — is Conservative. The recent history of Bradford has seen a rise of far right politics, social tensions, and inter-

8. Official round-mail from UN-HABITAT, 28/07/2005.

9. In turn, after the PT's electoral defeat in 2004, this model influenced the participatory policy of Porto Alegre's new local government: “local solidarity governance,” in which participatory budgeting is conceived as only one dimension among others, is supposed to integrate local business in the process — with sparse results during the first years.

racial violence between the majority white population and the minority Pakistani community. The Neighborhood Renewal — a national program aiming at the social, economic, and political development of the poorest areas in the UK — team within the Bradford Local Strategic Partnership (a structure linking representatives of private business, the community and the voluntary sector) initiated the participatory budgeting process in 2004. This was based on experiments with local community group funding. GBP 700,000 was available for local improvement works destined for the poorest areas of Bradford. Local communities were encouraged to apply for small sums of between GBP 1,000 and GBP 10,000. Projects could be selected only if they were linked to established local priorities, and if they had been discussed in the locality.

Bradford Vision coordinated and facilitated the process during the two "PB days," distributing GBP 300,000 in early 2004 and a further GBP 314,000 in November 2004. Each day consisted of two sessions, during which two representatives from each of the 30 pre-selected projects introduced their project. All participants were delegates of local communities, with a high attendance from the main immigrant groups. They had to give each project — except their own — a score from 1 to 10, with 1 being the lowest.

After 10 presentations, the score sheets were collected, transferred to a computer and the final scores displayed on a projection screen. At the end of each scoring session, those projects without funding were given a second chance, as successful participants could return a small part of their funding towards supporting them. This process worked out very successfully, as approximately 60–70 percent of the successful groups gave some money back (on average GBP 250–500). It has been repeated in subsequent years (Jeremy Hall, "Bradford," in Sintomer, Herzberg and Röcke, 2005).



By contrast, the combination of a strong local participatory tradition with the ideas of Porto Alegre has led to the extension of a local, community fund model to the city level. In this model, participants decide upon the rules of the community fund autonomously, and the business sector is excluded. Funding is provided through specific policy programs, for example for urban renewal. In this model, the promotion of socially disadvantaged groups is a key feature. In 2004, for instance, a participatory budgeting fund of more than €875,000 in the British city of Bradford was reserved exclusively for community groups from disadvantaged areas. Moreover, participants in the “community fund” ideal-type realize the projects themselves. While this is possible with the public/private negotiation table, too, it is not a requirement.

These two models have both advantages and drawbacks. The link to the local political structure, for instance, is weak or non-existent, even though the municipal council retains a certain influence since it raises part of the money. In the public/private negotiation table, the influence of private investors depends on the size of their contribution, and a radical shift towards more social justice is improbable. Likewise, the community fund model presents new possibilities for participatory budgeting. National and Europe-wide programs for the promotion of cities and infrastructure could, for example, be linked locally with participatory budgeting and promote disadvantaged neighborhoods or groups of residents. Both models share the advantage that they provide for a distinct form of public participation because those who participate also implement the projects.

Płock (Poland)

The Polish city of Płock (nearly 130,000 inhabitants) is — despite high unemployment — Poland's biggest center for the petrochemical industry and boasts the second highest per capita income. The mayor comes from a right-center party (PiS “Law and Justice”), but left-wing parties form the majority in the council (“Democratic Left Alliance”, “Labor Union”). The participatory budgeting process in Płock takes place within the framework of

the United Nations Development Program (UNDP) and consists of a public-private partnership between the city of Płock (the main initiator of the process), PKN Orlen (Poland's largest oil company, located in Płock), the Levi Strauss Company and representatives of local NGOs. The process started in 2002, when the so-called "Płock Forum" launched the "Grant Fund for Płock Project". The first "official" round took place in 2003 (and afterwards in 2004 and 2005). The fund — so far approximately USD 300,000 every year — is provided by PKN Orlen, Levi Strauss Company, and the local government. The official aims are sustainable development, the promotion of economic development, the improvement of living conditions, public safety, the improvement of infrastructure, and the protection of cultural heritage and the environment.

Applications for projects to be financed through the fund can be submitted by NGOs that have their main office in Płock. When applying, the organization has to demonstrate good financial standing, transparent fundraising rules, and a commitment to the development of civil society. There are clear rules for the evaluation of applications, which have to deal with the six areas identified by the partners: education, the economy, protection of cultural heritage, the environment, higher living standards, and urban architecture. A committee including local citizens, experts and representatives of the official project partners take the decisions, each project being eligible for up to USD 10,000. Projects are implemented by local civil society associations (Elzbieta Plaszczyk, "Płock," in Sintomer, Herzberg and Röcke, 2005). The number of applications has grown since the beginning of the process, increasing from 53 in 2003 (34 accepted), to 70 in 2004 (32 accepted) and 102 in 2005 (59 accepted). The example of Płock has already inspired a similar process in the town of Ostrow Wielkopolski (again, PKN Orlen is one of the donors), and others have shown an interest. In the meantime, the Płock device has been transformed into a foundation.



3.3 Proximity participation and consultation on public finances

While examples of the “proximity participation” model are found predominantly in France, the “consultation on public finances” model is characteristic of German participatory budgeting. Both are merely consultative processes. This means that the results of the discussion are synthesized by the local administration and not by the participating public. Unlike the models presented so far, participants here do not vote or develop priorities for projects. Rather, it is a process of “selective listening”; that is, the local government can freely — and arbitrarily — integrate some of the proposals in its public policies after the participatory process. Furthermore, civil society has only a weak influence with regard to the design of the procedure. It should be pointed out that these models do not pursue any social goals and that there are no distributive criteria. Another common feature is that associations barely play a role. Participation takes place on the basis of open meetings to which individual citizens are invited via announcements in the media, letter or personal invitation. In Germany and in some French experiments, participants are (also) mobilized on the basis of random selection from the registry of inhabitants (Röcke, 2005; Sintomer, 2007). These individuals receive a personal invitation by the mayor to attend the citizen's forum. This method is applied, for example, in Emsdetten (35,000 residents), Hilden (56,000 residents), Vlotho (21,000 residents), and in the Berlin district of Treptow-Köpenick (233,000 residents). The district of Berlin-Lichtenberg is one of the most developed examples of participatory budgeting in Germany. Citizens are invited to evaluate the “products” — as services are called — provided by the administration.

Berlin-Lichtenberg (Germany)

Berlin-Lichtenberg (252,000 inhabitants) is one of Berlin's twelve districts, situated in the former Eastern side of the city. Large parts of Lichtenberg are covered with communist-style tower blocks, while other quarters are more historical. The population is very

heterogeneous. The district started a participatory budget process in 2005 with a pilot project supported by the federal government and the city-Land of Berlin. The core of the project is a participatory evaluation of 35 budget products. Products in this case refer to public services and institutions within the competence of the district administration, such as cultural services, additional social services, youth programs, economic development programs, or public libraries. During the meetings that form part of the participatory budgeting process, citizens are asked whether selected products respond to their needs or if they would like to propose some changes. Proposals can be expressed in three ways: via Internet, by mail and at neighborhood meetings. A commission made up of citizens and district representatives checks proposal feasibility before the administration estimates the costs of each project. At a central meeting at the district level, all interested citizens can vote, establishing a hierarchy among the proposed projects by freely dividing their five votes. Further voting is organized via Internet and mail for randomly selected citizens.

The results are communicated to the local district council which has the final power to decide which proposals will be integrated in the budgetary plan. The council is committed to giving detailed feedback on its decisions on the citizens' first 20 priorities. During the first participatory budget cycle, citizens expressed wishes such as maintaining the public music school, or extending sports and library services.

The two procedures differ in their origins. The “proximity” model usually relies on previous participatory instruments such as neighborhood funds or councils, which tend to be linked together with participatory budgeting in a single instrument. The ideological influence of Porto Alegre may be discerned here, but the similarities remain very limited. The “consultation on public finances” model may retain some influence of Porto Alegre, but owes more to the participatory trends of New Public Management strategies. It was first imported to Germany from the city of Christchurch,



New Zealand; the Brazilian experiments had an impact only later on, leading to the emergence of mixed models.

The “proximity” model mostly involves neighborhoods and relates to investments at this level. At the level of the city as a whole this model does not deal with investments, but with general policy goals (such as “a beautiful city”). Generally speaking, the term “proximity” has two meanings. On the one hand, it refers to geographical proximity, in the sense for example of organizing several meetings within a neighborhood and not only one in the town hall; on the other hand, the term stands for close contact between the municipal leadership or the administration and the public. On the basis of this model, the mayor of Bobigny — 45,000 residents — organizes open meetings twice a year in order to respond to citizens’ concerns. The “consultation on public finances” model, in turn, seeks first and foremost to render transparent the city’s financial situation. Information on the overall budget is provided via brochures, the Internet, and press releases. There are two versions of the model. In the most widespread variant, public services and areas of municipal responsibility are presented; for example, the revenues and expenditures of libraries, swimming pools, nursery schools, street cleaning, waste water treatment or waste disposal. Citizens may voice their suggestions in an open plenum or in specific forum. The second variant aims at balancing the budget deficit. In the North Rhine-Westphalian town of Emsdetten, for example, participatory budgeting in 2002 was based upon five options for a balanced budget: cuts in personnel costs; cuts in operating expenses; the reduction of voluntary services; a withdrawal from reserve funds; or an increase in taxes and fees. Using a questionnaire, every participant was asked to make a recommendation based on a combination of the options given. At the end of the event an overall recommendation of the citizens’ forum was worked out on the basis of the individual opinions. In general, the deliberative quality of the model is low, because in most cases there is barely any time for a more intensive discussion. With the “proximity participation” model the quality of the debate may be better — citizens work in small groups that meet repeatedly over a longer period of time.

Bobigny (France)

The city of Bobigny — 45,000 — is located in the northern suburbs of Paris. Bobigny is a new town dominated by modern estates and tower blocks. The majority of the people are working class, among them many poor immigrants from former French overseas colonies. In order to improve the living conditions of the inhabitants, the municipality offers a large variety of social and health services. In the second half of the 1990s, the government started several participation processes at the neighborhood and city levels. Participatory budgeting is part of this development but not the core. The mayor discusses everyday problems such as parking, housekeeping and safety twice a year at open meetings. Projects requiring only a small investment can be worked out in committees, which may present their proposals to the community council. A process for strategic planning exists at the city level. Every two years, an assembly is organized on particular topics; in 2004, for example, housing, education, health, and public participation were discussed. The local government filters suggestions during these meetings and elaborates a list of concrete proposals to be implemented in the following years. A monitoring committee composed of interested citizens scrutinizes the implementation of these projects and prepares a detailed report, documenting each proposal. The report is then distributed to all households and discussed by the Council. The government has tried to apply a participatory budgeting process through workshops explaining the general financial situation and allowing citizens to formulate proposals. Despite initial plans, no feedback has been given on the results of the discussions (there has been therefore no “accountability”). Hence, this process cannot be considered a participatory budget. Bobigny, however, wants to start a new pilot project in the municipal agency for social housing around a small grant fund that citizens could distribute for local projects.



The “consultation on public finances” model is interesting in the sense that it is part of an overall modernization of local bureaucracy, although a discussion limited to one or two meetings a year can hardly be expected to bring about major changes. Furthermore, public participation only constitutes an “appendage” of this modernization process, with no direct relation to social problems and to a renewal of politics. The “proximity participation” model may induce a discussion between citizens and the administration/council members, but hardly produces modernization effects at the city level or in relation to social justice. In both models, accountability is low as regards the realization of proposals, and the autonomy of civil society is weak.

4. Impact of Participatory Budgeting in Europe

As yet it is difficult to analyze systematically the effects of participatory budgeting in Europe. First, we are dealing with a very recent phenomenon. Second, it is very difficult to isolate this factor from other, more general influences (for example, electoral turnout). Quantitative data that would make possible such an analysis is not available, and the main results we have relied on have been produced by qualitative methods and through ethnographic study. Furthermore, the effects of participatory budgeting differ significantly from model to model, and also depend on the specific socio-economic and political context. Despite these problems, what can be said about the contribution of participatory budgets to administrative modernization, the renewal of politics, and a strengthening of social justice?

A clear link can be found between participatory budgeting and the demand for more transparency. This applies to the overall budget situation as well as to the projects discussed. So far, however, transparency has not been sufficient to enable citizens to control the finances of the city. Beyond that, four other trends in administrative modernization have been analyzed in a variety of cases: an improvement of public services based upon citizens' proposals; better cooperation between individual administrative departments; acceleration of internal administrative operations; and

better responsiveness on the part of the public administration. By contrast, cost reduction and structural reforms of the administration through participatory budgeting tend to be the exception. It is only in some cities — for instance, in Spain — that participatory budgeting constrains the administration to be open about its performance, as well as to present administrative processes in a transparent manner, both internally and externally. It seems reasonable to suggest that one important criterion of success for participatory budgeting is the link between participation and a comprehensive modernization process. Although this pragmatic goal is more developed in the consultation on public finances model, the achievements of the experiments that it has inspired have so far been rather disappointing. The explanation is that another important criterion of success — good deliberation — is hardly to be found in this type of participatory budgeting; it is at a higher level in the Porto Alegre adapted for Europe and the community funds models. In concrete terms, modernization effects mainly occur where there is ample discussion within general assemblies *and* participatory councils.

The potential political consequences are even more contrasted. In many cases, participatory budgeting has contributed to improved communication between citizens, administration and the local political elite. Whether it could play the intermediary role that political parties performed in the past is an open question, however. The widespread expectation that voter turnout increases with participatory budgeting is not supported by empirical research. In a number of cases, even if better results can be observed for the governing party, this is probably not a direct result, but rather the consequence of the general policies adopted by the local government. In addition, participatory budgeting can have a positive impact on the political culture and competences of participants. In some cases, it leads to better coordination of civil society, especially when regular meetings are held over a long period of time instead of a single annual event. However, municipal councils rarely use citizens' proposals as the "compass" for their final decisions (with some exceptions in Spain and Italy). This is among other things due to the fact that central



aspects of the budget are often not discussed in the participatory process. In any case, it will be possible to judge the real political impact of participatory budgeting in Europe only in a mid — or long-term perspective. So far, the political dimension is far less developed in Europe than in Porto Alegre.

The contrast with the Brazilian situation is even sharper with regard to social justice. The Italian city of Grottammare is one of the only examples of fundamental social improvements being brought about due to participatory budgeting. In some cities, however, it has been possible to mobilize marginal groups; for example, in the Spanish city of Albacete. Here, the Sinti and Roma ethnic groups, as well as migrants, hold permanent seats on the delegate board of the participatory budget and have been responsible for bringing about the construction of a community center which meets their needs. In order to achieve more global effects in terms of social justice, participatory budgeting must include the participation of different groups and different social strata (for example, through appropriate procedures and distributive criteria). This has been the case, although on a modest scale, in some experiments oriented towards the model of “Porto Alegre adapted for Europe” and of the “community funds.”

5. Conclusions

In this article, we have shown that the importation of the Porto Alegre model into Europe has been a highly differentiated process. In Europe, participatory budgeting does not rely on one procedure but rather on a multitude of instruments. In comparative research, it is therefore necessary to give a clear methodological definition of participatory budgeting and to construct ideal-types in order to present an overview of the variety of concrete experiments. The six models we proposed — Porto Alegre adapted for Europe; the representation of organized interests; community funds at the local and city level; the public/private negotiation table; consultation on public finances; and proximity participation — show striking differences that are strongly influenced by existing political

traditions of participation and democracy.

So far, participatory budgeting has been taken up mostly by left-wing politicians, in the Southern Hemisphere and in many European countries (especially in France, Italy, Spain, Portugal), but this situation is evolving rapidly and the instrument is gaining broader legitimacy. However, with regard to the situation in Europe, participatory budgeting has not — yet? — achieved the results that politicians and activists hoped for. Is this just a matter of time and the emergence of different political circumstances? A “window of opportunity” similar to the one that opened in Porto Alegre cannot be created *ex nihilo*, and the participatory budgeting “institutional kit” alone is hardly likely to produce the same outcomes in Europe as in Brazil. There do exist “successful” examples of participatory budgeting, however — especially in Spain and Italy — in which a serious process with clear rules, an active civil society, and a local administration and executive that learned to cooperate have yielded considerable results. In other cases, the process is labeled “participatory budgeting” but in fact is merely “window-dressing” rather than an instrument of citizen engagement. It is crucial to maintain a critical distance and not to confuse ideological discourse and real achievements. This depends partly on the concrete dynamic of collective action and partly on the intrinsic logic of the various procedures.

Generally speaking, it is not possible to establish “the one best model.” For example, in the community funds and public/private negotiation table models, the direct involvement of citizens in the implementation of projects challenges the view of Habermas and Avritzer that participation can legitimately concern only the decision-making process and control of the administration, and that the monopoly of implementing public policies should remain in the hands of civil servants. The two models permit the development of a community and voluntary sector, which is perhaps not the ideal solution to all problems but cannot be considered as *a priori* inferior to public administration or the market in terms of efficiency or orientation towards the common good. This dimension has not been



addressed so centrally in Europe as in Latin American experiments. And even if the public/private negotiation table seems unlikely to promote serious attempts to change social priorities, it does underline that the private sector remained excluded in the Porto Alegre model, even though this sphere is crucial for urban development.

Another question concerns the modernization of public administration. In order to challenge prevailing neoliberal trends oriented towards market criteria, the public sector must prove that it can be efficient and provide good services, but it cannot do so without changing its internal structures and management procedures and without giving the public a voice in this process. Some scholars of the Brazilian experiments have underlined this dimension, most notably Luciano Fedozzi (1999, 2000), but the international literature has so far not been sufficiently conscious of this crucial challenge. The consultation on public finances model, even if it has led to disappointing results, has more centrally addressed this point than the Porto Alegre adapted for Europe model. This is important because, generally speaking, the contribution to modernization is potentially much greater than the political and social dimensions in the European participatory budgets. Indeed, this appears to be one their most interesting features in comparison with the Latin American experiments.

What can be said with regard to the situation in China? Generally speaking, a process which can be combined with existing traditions of participation might lead to more results than an "artificial" process with no links to existing structures. More concretely, it seems that several Chinese experiments share a number of features with some of our ideal-types, even if the context is quite different. For example, the participation process around issues of public transport in the Pudong district of Shanghai seems to have similarities with the ideal-type "consultation on public finances." Both are based mainly on the idea of incorporating user knowledge in order to improve local services. In the participatory budgeting case, the discussion deals with public services in general; in Pudong, participation focuses on transport questions; the Chinese civil servant Mr Hu Rong

explicitly says that transport users should be able to monitor services and to decide whether they would accept buses without air conditioning if fares were reduced. In this perspective, user participation is clearly linked to “more efficiency and efficacy.” Another example is the project of the city of Wenling, which could perhaps be considered as a process of participatory budgeting located between the “consultation on public finances” and “proximity participation” models. Participation focuses on the annual budget plan and citizens selected at random are invited to make recommendations and proposals. Mu Yifei, one of the organizers, declared that one aim of the process was to improve relations between politicians and citizens.

It is far too early to draw general conclusions concerning parallels and differences between European and Chinese participatory experiments. Comparative research would be needed to go beyond superficial observations. What seems clear, however, is that there are promising examples of public participation in China which can to some extent be compared with those in Germany. In both places, local policy-makers see participation more and more as an opportunity rather than a threat. An ongoing exchange on practices and theoretical reflections can only enrich the discussions and practices in both countries.

For these future discussions, and with regard to research on participatory practices generally speaking, one aspect is of particular importance. One of the most frequent questions — in China, Latin America and Europe — concerns the impact of a situation in which citizens take a view that differs widely from the one held by those in power (politicians or civil servants). In some Latin American and European cases, officials commit themselves to accepting the citizens' proposals. In other experiments, they partly change their views and try to reach a new and dynamic synthesis and to intensify the dialogue with civil society. In other cases, they integrate only those recommendations which fit in with their general program, sometimes without even explaining why some citizens' proposals have been rejected. This last case has



very negative consequences. If their views are simply and continuously disregarded, people will no longer be willing to participate or to discuss local problems and needs with local officials and politicians. This is why clear accountability as regards the results of participation is of prime importance for the real "success" of local citizen participation. This will be true in any continent.

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Participatory Budgeting Hearings in Wenling: Practice and Reflections

Yifei Mu

In 2005, the city of Wenling started budgeting reform on a trial basis in the towns of Xinhe and Zeguo by introducing hearings into the budgeting review procedure at the People's Congress at grassroots level. A participatory budgeting model which includes substantial reviewing and monitoring was thus established. In 2008, the trial has been rolled out to five towns, and has been upgraded from town level to city level, constituting a new step forward in participatory budgeting.

1. The Development of Participatory Budgeting Hearings in Wenling 2005–2008

1.1 Xinhe model (2005–2007)

Between 2005 and 2007, five participatory reviews of annual budgeting and revisions of intermediate budgeting were conducted in Xinhe (in July 2005, November 2005, March 2006, July 2006 and April 2007). Each trial comprised three stages: (i) preliminary review, (ii) Congress session review, and (iii) follow-up monitoring. Preliminary review involved the organization of a preliminary hearing by the finance committee of the People's Congress, led by the presidium, with discussions conducted under three special teams: industry, agriculture, and social affairs. Apart from Congress members, different associations, social groups, trade representatives, and members of the public were allowed to participate on a voluntary basis, and a report on the preliminary review was compiled by each team afterwards. The Congress session review involved the panel discussion of budgeting plans by teams organized by the presidium during the People's Congress before the deliberations of the plenary session,



during which local government leaders took questions from the floor. The presidium and the local government held a supplementary meeting afterwards to formulate a revised budgeting plan based on the opinions that had been presented. The revised budgeting plan was announced after the meeting and the panel discussion continued. During this stage, a revision plan may be proposed through the joint signature of five or more delegates. The session then put the revision plans and revised draft budgeting to a vote. If the jointly proposed revision plan won over half the votes, it was adopted as part of the budget. As for follow-up monitoring, between congresses the finance committee of the People's Congress functioned as a standing monitoring institution to monitor the implementation of budgeting by the government and took part in preparatory work for the following year's fiscal budget.

1.2 Zeguo model (2005)

In 2005, a public consultation model for participatory budgeting was established in the town of Zeguo to enable members of the public to be directly involved in decision-making on budgeting for local construction projects. The government selected a number of construction projects within its jurisdiction and of particular importance for people's everyday life, and expert groups carried out feasibility studies and capital budgeting for each project, designing questionnaires to survey public opinion. Stochastic sampling with ping-pong balls was used to select representatives for participatory budgeting hearings, involving 0.2 percent of all citizens above the age of 18. All representatives were asked to fill in questionnaires and vote on issue priority. After several rounds of group and panel discussions, representatives were again asked to list their priorities. Subsequently, the local government would hold working meetings to discuss the suggestions put forward during the hearings and the results of the second questionnaire, and to formulate a priority list, subject to financial considerations. In the town People's Congress held afterwards, the town government submitted the plan to the Congress for discussion and voting.

1.3 A budgeting hearing at city-level — department of transport

Before the hearing, the relevant authorities of the city government compiled the draft budget for the Department of Transport for 2008, on which the finance committee of the standing committee of the People's Congress conducted a preliminary check. On January 13, 2008, a hearing on participatory budgeting for the Department of Transport was held by the standing committee of the People's Congress, and over 80 people were invited, in seven categories: (i) Congress members, (ii) the general public, (iii) retired officials, (iv) the town (community) officer for Congress affairs, (v) experts in related fields, (vi) officials from related committees of the standing committee and (vii) members of the finance committee. The audience listened to the introduction given by the development and research committee, the Department of Finance, the Department of Transport and the preliminary examination of the finance committee, and joined in group and panel discussions on transport budgeting for 2008, during which views and recommendations were exchanged thoroughly. The panel discussion was organized in four groups, categorized in terms of the identity and location of the participants, and group discussions included a presentation from each panel leader and face-to-face dialogue between the authorities and the participants, followed by a conclusion delivered by officials of the city government. After the hearing, the standing committee followed up and monitored implementation of the agreement reached during the hearing, completed the budgeting work, and reviewed the quality and effectiveness of the hearing. Meanwhile, an in-depth report on the hearing was published in newspapers and on the website of the People's Congress of Wenling, as well as being publicized on TV, to inform the general public. In August 2008, a hearing was held for the purpose of monitoring implementation of budgeting for the first seven months, before which a field trip was organized to enable the representatives to visit the transport projects. At this hearing, reports were presented by the development and research committee, the Department of Finance and the Department of Transport, as well as a survey report



from the finance committee of the standing committee. Group and panel discussions were held afterwards to enable detailed Q&A.

1.4 Hearings at townships in Wenling 2008

Hearings were rolled out in five towns. At the town People's Congresses in early 2008, Xinhe, Zeguo, Ruoheng, Binhai, and Daxi held participatory budgeting hearings, with different focuses and characteristics. In the town of Xinhe, before voting on the revised budget plan at the last plenary session of the Congress, debate was introduced as a procedure in the course of which Congress members were allowed to conduct a thorough discussion of the two revised budget plans. Although neither revision was adopted due to serious disagreement among the representatives, a great deal was learned concerning voters' concerns and interests.

The town of Zeguo expanded the scope of the hearing beyond the construction budget to the entire fiscal budget, and considered the annual budget for the town. To facilitate deliberation, an unprecedented 48-page Fiscal Budget Expenditure Chart for the town of Zeguo was compiled for 2008, detailing for the representatives the fiscal budget of RMB 248,523,000 *yuan*. Meanwhile, with reference to the Xinhe model, representatives were put into groups during the Congress to examine the budget and to vote on the revision and the draft. The draft budget was finally passed, though by only six votes, so avoiding the distinction of being the first township budget to be vetoed.

The town of Ruoheng examined the budget plan in three stages. Congress members and citizens' representatives were invited to the preliminary examination before the Congress opened. The first one was conducted in accordance with geographical locations in Baifeng, Dongpu, Gaolong, Ruoheng, Shanqian, and Guanzhuang on January 29 and 30. The second was conducted on February 20 in accordance with such issues as the economy, social affairs, and town construction, after some training had been given to Congress members. Between the two preliminary examinations, Congress members and citizens were given sufficient time for training and discussion. The budget was finally approved

after deliberations at the two plenary sessions. In addition, Binhai and Daxi referred to the Xinhe model of participatory hearings and made some modifications and innovations based on their own circumstances.

2. Outcome of Participatory Budgeting

The People's Congress confirmed the positive outcome of participatory budgeting in Wenling in four respects. The first was the facilitation of public budgeting. On the one hand, the government budget has become more detailed and methodical — previous budget plans listed only a dozen major items, giving no details but showing only total figures to Congress members, who thus were hampered by lack of information when it came to considering the issues and voting. The new budget plans are detailed and comprehensible so that meeting participants are able to give a proper opinion. This has pushed the government to spend more time and efforts on budgeting and improving its capabilities.

On the other hand, budgeting has become more open to the public. With wider participation in deliberations from all walks of life, budgeting has become more fully representative and effective. Not only were the budget report and draft published in detail, so that members of the public got to know how the money would be spent that year, but also the deliberation procedure was entirely open.

Second, it activated the People's Congress. In the past, laws conferring rights and responsibilities on the People's Congress were not fully exercised, especially at the township level, with the real power of decision-making and execution concerning the budget remaining in the hands of a few local government officials, leaving the Congress with only nominal rights. The participatory hearing, introduced for the purpose of examination and monitoring, activated the congress, and both the institution itself and individuals were enabled to perform their duties better. In practice, with members of the public participating in the examination and monitoring of budgeting, the functioning of the Congress was enhanced at the institutional level, giving it an increasingly important role. The increase in the scope and frequency of meetings, the setting up of a



finance committee, training, and the right to put forward revisions were all centered around budgeting, which enriched the work of the Congress and its members, and improved performance.

Third, it improved the work of the government. For government, the purpose of participatory budgeting was to allow Congress members and members of the public to join in the decision-making process, in the course of which public views were adopted and budgeting took on a higher public profile. This interactive process, involving Congress, government, representatives and citizens, curbed hasty decision-making by the government alone, so that decisions became more methodical, democratic, and standardized. As a result, the government learned to approach budgeting as follows: it must acquire comprehensive understanding of economic and social developments; it must have a clear understanding of public opinion; and it must spend its limited financial resources on the most desirable projects. Only in this way can the work of government be properly adapted to reality and win public support. Moreover, it would also encourage the relevant departments to manage resources in a legitimate, methodical, and democratic manner, so as to control the fiscal deficit and develop resource-saving government.

Apart from that, participation, dialogue, and consultation rendered government actions more legitimate, with greater efficiency and stronger governance. The budgeting hearings reformed the bureaucracy to some extent, and eradicated the institutional roots of corruption, establishing in the government a certain ethos to provide better products and services to the public.

Fourth, it promoted the development of democracy. By means of participatory budgeting, political involvement on the part of the public was improved in an orderly manner, and rights enabling them to know, engage, express themselves, and monitor were given to representatives and the public, thereby improving democracy in general.

The face-to-face open hearings at all levels were firmly based on sound argument, providing new channels for the free, extensive,

direct, and concrete involvement of members of the public in decision-making and the management and monitoring of social public affairs, and new ways of implementing citizens' supervisory rights. The influence of citizens in the decision-making process and the expression of public opinion was enhanced. In a way, participatory budgeting is a good school for democracy, in which the practice of democracy nurtures the consciousness of citizens concerning the concept of democracy. The habit of democracy is formed, the ability to exercise democracy is improved, and a more democratic political culture becomes established.

3. Characteristics of Budgeting Reform

The driving force behind participatory budgeting reform in Wenling was the problems themselves and the guidance of the government. The emergence of hearings in the first place was a sign of the failure of the "I talk, you listen" model of ideological education in rural areas, which could no longer serve as a means of contact between officials and the general public. Budgeting reform started in the town of Xinhe, where, in addition to the need of the city of Wenling to find new avenues for hearings and reform of the Congress, there was also a considerable fiscal deficit and calls from the public for information on budgeting arrangements. Problems were a driving force in the sense that there was no pre-defined model to follow, which left room for innovation. Though it started at a low level and lacked theoretical guidance or legal/policy support, and was also vulnerable to personnel changes, it had a concrete objective and a strong driving force, making it more tangible and easier to accommodate to people's everyday concerns. It also made it more sustainable. As far as initiating hearings is concerned, the power remains with the government. The agenda, timing, participants, working procedure, and implementation were all decided by the government. Notwithstanding stricter adherence to the law and greater institutional efforts, there was no substantial change to the prevailing form of democracy.

The essential characteristics of participatory budgeting reform



in Wenling come under the headings of budgeting democracy and Congress reform. First, public participation and consultative democracy were introduced into the budgetary deliberations of the People's Congress and the budget deliberation of the People's congress got increasingly standardized. Through the democratization of deliberation in the Congress, the legitimacy of fiscal allocation was enhanced, public awareness of local government expenditure was improved, and possible conflicts of interest resulting from limited financial resources were moderated.

Second, the Congress started by examining the budgeting process, and activated the Congress system by employing existing legal rights and procedures to manage money in a democratic way, and so to manage its business and people, whether directly or indirectly. In terms of examining the budgeting process, the former two-page budget plan, which covered only a few projects, has become a 50-page text covering a thousand items, with details such as the RMB 10,000 *yuan* spent on ink powder over the year, as part of the stationary budget. Congress members should have no problem understanding such a budget plan in such detail.

Third, experts were invited to give training courses to participants before deliberation took place, and training manuals were also provided to improve the quality of deliberation.

Fourth, seats were provided to observers, to enable public scrutiny. Fifth, after panel discussions time was allowed for presentations and Q&A, which was the most interactive and substantial part and best, activated democracy in the Congress.

Sixth, the system of revision was established: a revision plan put forward by five or more representatives would become part of the budget if it managed to obtain over half of the votes. This gives representatives substantive rights to change the budget.

Seventh, the formerly temporary team examining the budget has now become a standing body for financial monitoring in the form of the finance committee of the town People's Congress. Between congresses,

budget implementation can be monitored effectively.

4. Budgeting Reform, Consultative Democracy and Good Governance

Budgeting reform in Wenling belongs in the category of public participation and consultative democracy. First, “expanding public participation in an orderly manner” is an important part of democratic and political construction in China. The budgeting reform in Wenling can be called “participatory budgeting,” with both citizens and government being involved in multiple ways, such as dialogue, consultation, discussion, Q&A, and so on. The influence on public policy and public life has been positive. The primary character of public participation — participation in political life and decision-making — has been affected. And since it took place within the framework of the People’s Congress, it effectively combined direct democracy and representative democracy. Second, though the hearings in Wenling were not guided by the theory of consultative democracy in their emergence, they are in keeping with the basics of consultative democracy, such as the equal distribution of decision-making power, and the equal and effective participation of all the people, so that decision-making is transferred from those having the power and money to those participating in consultation, and the strength of consultation transformed into more competence of the government. Deliberation on budgeting within the Congress upgraded the consultative level of hearings from the “practical consultation” stage described by Habermas.

Third, the application of budgeting reform in Wenling is related to good governance and incremental democracy. Improved governance means that, rather than a set of rules or an activity, it has now become a procedure, a continuous interaction rather than a dead system, and for coordination rather than control purposes. Participation has been extended from the public authorities alone to NGOs and individuals. To some extent, this reflects the co-management of public life by both government and citizens. It is an innovative relationship, with optimal



balance and maximization of the public interest.

Fourth, the emergence of incremental democracy may be discerned. In addition to existing democracy within the established political and legal framework, it represents a breakthrough in both content and procedure, giving rise to broad recognition of incremental power. Its development has been gradual, relying on previous practices but also making new headway. It has helped to maximize the public's political rights while protecting those already existing, with particular attention to the stability, order, and benefits of reform.

5. Remaining Problems

Judging from the results of budgeting reform in Wenling, a number of problems remain. First, participatory budgeting is still outside the systematic framework. As a democratic form of budget monitoring, participatory budgeting emerged spontaneously outside the system, with no legal underpinning. If it is to be sustained it needs legitimacy and must be linked to the existing Congress system, finding a place within its framework. This touches upon the basic issue of how participatory budgeting is to be coordinated with laws, regulations, and the prevailing Congress system.

Second, the competence of Congress members must be improved. As the main body of participatory democracy, Congress is the key to the success of reform. For the time being, Congress members are still ill-equipped for consideration and monitoring of budgeting; many of them lack the knowledge required for the consideration of specific interests and budget deliberation. Thus more views have been expressed concerning specific government activities than on budgeting.

Third, follow-up monitoring must be developed to improve the process overall. This affects all five towns and the Department of Transport. At the town level, although the finance committee of the Congress was set up as a permanent monitoring body even when the Congress is not in session, judging from experience in Xinhe, the committee has not been fully functional. As regards the Department of Transport, since the views

and recommendations of Congress members and the public have no legal force, revision of the government budget was not mandatory. With no monitoring by the Congress, the revision and correction of the budget is still a matter for the government. Feedback and monitoring mechanisms are yet to be established.

Fourth, participation is still not extensive. In the course of reform at both city and town level, most participants in hearings were city/town Congress members, or village officials and enterprise management, with few ordinary citizens. Fairness, representativeness, and universality remain a challenge for the rolling out of participatory budgeting in the future.

Fifth, the detail and openness of budgeting on the government side remain to be improved. Though progress has been made over the years, budget plans are still too simple, general, and vague for the purpose of proper understanding. Openness as regards budgeting requires another step forward.

Institutional Comparisons of Public Participation in China and Germany

—A Summary of the Sino-German Seminar¹ on Public Participation in Public Decision-Making

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Government Shanghai Institute of Politics and Law*

On September 17, 2008, the Shanghai Institute of Politics and Law co-organized the Sino-German Seminar on Public Participation in Public Decision-Making with the Shanghai Coordination Office of Germany's Friedrich Ebert Stiftung. German participants included: Professor Hans-Liudger Dienel, Director of the Center for Technology and Society at the Technical University, Berlin, Dr. Frank Jost of the German Property and Urban Development Association, and Mr. Carsten Herzberg of the Centre Marc Bloch. Chinese participants included: Deputy Director Rui Yan of the Legal Affairs Sub-committee of the Shanghai People's Congress, Director Yifei Mu of the Propaganda Department of the Wenling Party Committee, Zhejiang Province, Mr. Rong Hu of the Pudong New District Construction and Transportation Commission, Ms. Xuan Liu of the Pudong New District Development and Reform Commission, and Professor Mang Zhu of the Law School of Shanghai Jiaotong University, as well as officials from the administrative and legal branches in Shanghai, together with some researchers from local universities.

Three themes were addressed at the seminar: (i) public participation in legislative decision-making, (ii) public participation in community public

1. This text is a summary of some main discussions during the seminar. It was originally published in the Government Legal Affairs Bulletin and is reprinted here with the permission of the Office of Legal Affairs, Shanghai Municipal Government.

affairs and (iii) public participation in budgeting decisions. There were lively discussions on such topics as the necessity of public participation, the forms and types of public participation, the depth of public participation, and procedures of public participation. Director Hua Liu of the Office of Legal Affairs, Shanghai Municipal Government, and Dr. Rudolf Traub-Merz, Resident Director of the Shanghai Coordination Office of Germany's Friedrich Ebert Stiftung, opened and wrapped up the seminar.

1. The Context in Which Public Participation Emerged: Public Indifference towards Politics and Limitations on the Right to Know

Dr. Jost expressed the view that the political context of public participation in Germany is rich and varied. Owing to the widespread criticism of urban development in West Germany in the 1960s, the argumentation of the draft Urban Development Promotion Act (*Städtebauförderungsgesetz*) stated that the public had participated in its formulation so that citizens might be convinced that the government did not circumvent them in urban development. There was also public participation in the later Building Ordinance.

Mr. Herzberg said that public budgeting was a major area of public participation. Among the reasons for introducing public participation are, first, the fact that members of the public in Western countries are generally bored of politics and governments hope to reengage them by involving them in budgeting; second, Western countries are currently faced by fiscal crises, especially German local governments; and third, people's expectations of public services are growing.

Deputy Director Rui Yan justified the pre-legislation hearings in Shanghai in terms of the fact that the Law on Legislation of the People's Republic of China states that informal discussions and hearings can be included in the legislative process, so that it becomes the direct driver. By learning from the Western practice of pre-legislative hearings, legislation in China could be made more open, more transparent, more democratic, and more methodical.



In response, Mr. Herzberg said that there is a similar feedback system in Germany. However, the reason for introducing such a system was the above mentioned widening gap between public representatives and the people — people are getting bored with politics.

In her summary, Director Hua Liu pointed out that China and Germany agree on the necessity of public participation, the latter being both a public right and essential for good government. People are entitled to express their opinions. Their enthusiasm for public affairs depends on the relevance of the topics at stake. The government encourages public participation not only to clarify its political stance, but also to meet its own needs: to draw upon public knowledge, to assess public opinion before taking a decision, to solicit public understanding and support for a policy, and also to win more votes.

There are clear differences between Germany and China in the context of public participation: in Germany the main concern has been to reengage people in political affairs, while in China the aim has been to improve people's relatively weak right to know.

2. The Function of Public Participation: A Form of Direct Democracy to Complement and Optimize Indirect Democracy in the Representational System

Dr. Jost discussed the first referendum in Berlin, held in May 2008 to determine whether Tempelhof Airport in Berlin should remain open. Over 880,000 Berliners participated in the referendum. Although most of those who participated were in favor of the continued utilization of the airport, their number was below the 25 percent threshold of all eligible voters. As a result, the referendum failed. Nevertheless, almost everyone in Berlin, regardless of party affiliation, was talking about the issue, which could be described as a by-product of public participation. On July 13, 2008, another referendum was held, this time in Friedrichshain-Kreuzberg in Berlin, aimed at preventing the construction of office complexes along the bank of the River Spree. About 87 percent of the almost 35,000 participants voted against construction. Since the result met both the

majority requirement and the quorum, this referendum succeeded.

Mr. Herzberg said that in budgeting the effects of public participation differ depending on the model used. For example, in Seville, Spain, the community groups or associations that have voting rights in public decision-making have different interests, which have developed over time. Some interest groups are closer to the government than others. The introduction of public participation in budgeting resulted from a change of government, from the Conservative Party to the Social Democratic Party. The Social Democratic Party, committed to social justice, introduced public participation in budgeting in its campaign against unfair distribution of wealth. The new administration promoted public participation in budgeting so that weaker areas could obtain development funding, thereby promoting social justice. In other words, there is a political intention behind Seville's public budgeting, which is to eliminate bias in favor of stronger groups to achieve social justice and promote the development of formerly marginalized areas. The model in Hilden, Germany, on the other hand, is relatively simple. It informs the public in order to raise their political awareness, so that they understand the budgeting process. This in turn enhances the quality of public services and administration.

Dr. Traub-Merz made the following comments. First of all, public participation in budgeting is a reiterative process whose results may not be binding. Second, a comparison between a big city and a small city shows it can be applied in both cases. Third, sometimes interest groups are involved in public participation. Fourth, public participation is not limited to the overall budget; sometimes particular items are singled out for public participation. Fifth, public participation usually serves public decision-making, whereas in Seville it is aimed at eliminating unequal distribution of wealth, and therefore serves the purposes of social allocation and social welfare.

Director Hua Liu stressed the effectiveness of public participation. The public is increasingly concerned about whether its political participation has real influence. The government should realize that public participation



is not a matter of simply offering people a discussion forum, but rather for the purpose of making public opinion resonate in decision-making. Public participation is now a must in planning decisions in China. However, more investigation is needed of the binding power of public participation in relation to administrative decisions in other areas. Public participation in budgeting, for example, will be a new and important area of research and practice because it concerns how the government spends taxpayers' money in a transparent and reasonable way.

Dr. Traub-Merz pointed out that decision-makers and the public alike are paying more attention to public participation. Those types of public participation that have no influence on the final decision may be challenged in the long term.

3. Forms of Public Participation: Varied and Flexible

In his keynote speech entitled "Public Participation in Problem Resolution at Municipal, Regional and (Supra) national Level," Professor Dienel discussed the different forms of public participation. There are, roughly, eight types of informal procedure:

- i. Town hall meetings: people pose questions to and discuss the relevant issues with experts, resulting in a final report that is put on public display. This method is mainly used to evaluate technical findings and to reach consensus on controversial topics.
- ii. "Open space": participants alternate between plenary sessions and breakout sessions in order to get to grips with the substance of a particular decision from different perspectives. The design of such procedures is flexible, without any predetermined schedule.
- iii. Opinion polls: these are applied to a wide range of local policy issues and make it easier to obtain objective information by surveying random samples of people (500–1,000 persons) on a regular basis.
- iv. Future workshop: the aim here is to seek creative solutions to difficulties (economy, township, and education) encountered in

different contexts. Such workshops last three days: the first provides an opportunity for people to complain; the second is used to inspire people; and the third comprises a return to reality and the proposal of solutions. In other words, this is not only a form of public participation, but also of motivation.

- v. Mediation: a neutral third-party is invited to resolve disputes.
- vi. Petition: this relates to the filing of administrative reconsiderations and making recommendations for socio-political innovation. It includes individual petitions, group petitions, and public petitions.
- vii. Public display: this is usually found in local politics, where individual perspectives are displayed by visual means, such as posters. This kind of activity can often narrow the distance between government and members of the public.
- viii. Planning taskforces: they are used for the purpose of conflict resolution and guidance formulation. The usual practice is as follows. Twenty five public representatives are chosen at random to form five five-person taskforces, which spend a week consulting experts and engaging in discussions. During the process any member can be replaced. In the end, they are expected to give policy recommendations, bearing in mind the public interest. The results of such public participation are warmly welcomed. Parliaments are usually supportive, for such processes represent broad public opinion and have considerable legitimacy.

Professor Dienel expressed the view that the various forms of public participation have different functions and different levels of binding force in relation to the government. Some issues do not demand an immediate solution, but rather different perspectives. Under such circumstances the "open space" approach is ideal. In contrast, planning taskforces need to make proposals, albeit non-binding. However, if consensus is reached during the process, it is possible that the government's original decision could be overturned. For example, a firm of architects that won a public tender for urban planning for Cologne proposed that there be separate



zones for offices and residences. To take another example, the planning taskforce on urban transportation in Hanover took the view that the government should spend more on public transport, and eventually the government did so.

Director Yifei Mu gave a presentation entitled “Practice of and Reflection on Deliberative Democracy in Public Budgeting in Wenling.” Xinhe and Zeguo, two towns in Wenling, spearheaded reforms in public budgeting in 2005, whereby deliberative democracy was introduced in the examination of the budget at the grassroots-level People’s Congress, giving rise to the “participatory budgeting” model that involves the substantive examination and monitoring of budgets. In 2008, Wenling rolled out this model from two towns to five towns, from the township level to the municipal level.

Mr. Rong Hu focused his presentation on public participation in determining community bus routes in Pudong. Pudong New District has adopted a number of approaches to promote public participation.

- i. Interactive information system. This consists of service hotlines, mail boxes, interactive websites, SMS queries, and letters from members of the public.
- ii. Collaboration and interaction. Hearings, consultations, meetings, and contact systems are used to facilitate collaboration.
- iii. Initiatives by bus operators. They solicit suggestions from the public and promote service excellence among employees, so that the public can better participate in public transportation management.
- iv. Consultations with public representatives. Representatives from the People’s Congress and the Political Consultative Conference act as bridges between members of the public and administrators.
- v. Inspectors. A team of 150 public transport inspectors composed of representatives from the People’s Congress and the Political Consultative Conference, industry inspectors, and representatives from neighborhood committees conduct scheduled as well as

surprise inspections of bus operations, the feedback from which is handed directly to the operators concerned. The operators are supposed to take corrective measures immediately.

Professor Mang Zhu commented that the forms of public participation are indeed varied and flexible. They have three major characteristics: (i) public participation is not always mandatory; in some circumstances public participation is compulsory by law, while in others the government initiates public participation of its own free will; (ii) public participation may not be binding on decision-making — the purpose of public participation may be simply to gather information — but in other cases public participation is binding, a good case in point being referendums; (iii) interests or technical issues determine the level of public participation; the public is more enthusiastic when their direct interests are at stake, but less so when issues are more technical or specialized.

Dr. Traub-Merz pointed out that it has become a common trend in both China and Germany for the public to participate in a growing number of public decisions. The forms of public participation have become more diverse in Germany since the 1970s, such as the public participation in budgeting discussed at this seminar, whereas in China there is the Pudong model, the Wenling model, and so on. In different cities the features of public participation differ. A model that has worked in one city may not work in another.

Director Hua Liu agreed that the forms of public participation are diverse. Shanghai should learn from the two interactive and effective forms of public participation in Germany: “Open Space” and Future Workshops. Chinese characteristics are apparent in the Pudong approach of soliciting suggestions from the public and collecting feedback from inspectors, as well as in the Wenling approach of deliberative democracy, both being effective forms of public participation. But more diversity is needed.

4. Procedures of Public Participation: Formal and Informal

Professor Dienel introduced the formal and informal procedures of



public participation in Germany. Formal procedures are stipulated by law. There is no formal procedure prescribed by federal law, but there are citizen initiatives and citizen reconsideration at the state level, and citizen petitions and citizen rulings at municipal level. Unlike formal procedures, informal procedures are not mandatory. They include planning taskforces, citizen examinations, future workshops, and opinion polls. Professor Dienel expressed the view that the informal procedures of public participation are more important than the formal ones.

Dr. Jost also introduced the formal and informal procedures of public participation in his presentation "Public Participation in Urban Planning and City Development in Germany." An example of formal procedures can be found in Article 3 of the Building Ordinance: Public Participation. "At Phase I of public participation (planning phase), the general objectives of the plan, solutions of material differences that are under consideration for local restructuring or development, as well as the anticipated impact of the plan must be communicated to the public as early as possible. Opportunities should be created for the public to express opinions and take part in discussions." In Phase II of public participation (the announcement phase), construction-oriented draft plans, explanatory notes, and argumentations for the plan should be put on public display for a month. The place and length of display should be announced at least one week in advance according to regular local practice. There should also be a reminder that during the display period objections and suggestions are welcome. "When formulating construction-oriented plans, vehicles of public interest and relevant administrative agencies should get involved as soon as possible." The purpose of informal procedures is usually to ascertain public views and interests, so that they can be taken into account in planning. There is no legal prescription regarding such forms of communication as hearings, taskforce discussions, and tenders. Details of the relevant procedure are determined by the issue at hand.

Ms. Xuan Liu said that public participation in urban and rural planning has been implemented in China for over ten years. Starting in

the mid-1990s, major cities, led by Shenzhen, have passed legislation on public participation in urban planning. The *Shanghai Urban Planning Ordinance* issued in November 2003 states that public opinion should be solicited in urban planning. The *Regulations on Soliciting Public Opinion in Formulating Detailed Planning Guidance (Draft)* issued in June 2006 mandates public participation in detailed planning. The *Law of the People's Republic of China on Urban and Rural Planning* issued on October 28, 2007, provides for public participation in urban and rural planning (Articles 9, 26, 48, and 50), legalizing public participation at the plan formulation (including plan adjustment) and the plan implementation stages.

In accordance with the *Regulations on Soliciting Public Opinion in Formulating Detailed Planning Guidance (Draft)*, planning agencies in Pudong New District solicit public opinion by conducting surveys, online discussions, meetings, hearings and other measures after the completion of a draft plan. In practice, in community planning a combination of measures are taken. Planning agencies also publish details of how public opinion solicited in the first round has been considered or taken into account. If the public is strongly dissatisfied with this, planning agencies must hold a hearing to which specialists or a third party are invited to review the plan. Public views are then solicited again.

5. The Provenance of Public Participants: Voluntary, by Invitation or Random Sampling

Deputy Director Rui Yan said that people or organizations can apply to make a presentation at legislative hearings. Citizens who volunteer can apply by telephone, fax or mail, as specified in hearing announcements. When applying they must state their views on the issues to be heard, as well as their arguments. Hearing organizers select presenters from candidates on the basis of whether the candidate is a stakeholder and whether his or her opinion is representative. Usually 20 to 30 candidates become presenters. The rest of the candidates are usually invited to “audit” the hearing. Sometimes presenters are selected by invitation.

According to Professor Dienel, informal public participation



procedures, such as opinion polls, are implemented regularly — for instance, for several years in succession — among randomly selected people. Participants in public displays related to local political issues are also sampled randomly. The advantage of forms of public participation such as planning organizations, whose members are randomly sampled and representative of the general public, is that they thereby acquire considerable legitimacy, which means that it is easier to get their proposals accepted. Besides, randomly selected citizens and strict time limits make planning organizations immune to lobbying efforts by interest groups. Full use is made of the competence, experience, and wisdom of citizens.

Director Yifei Mu said that in Wenling's Zeguo Town, participatory budgeting selects public participants by a "powerball" system. Two out of every 1,000 residents above 18 are chosen to participate in deliberative democracy.

Dr. Traub-Merz pointed out that representatives in public participation should be truly representative, that all concerned parties should be able to send their own representatives, and that opinions from all sides should be heard, so that the public does not get the impression that representatives have been selected by policy-making agencies. In addition, experts should be available to offer guidance at each stage of public participation, so that the quality of the process can be improved. Lack of expert guidance is not conducive to the development of public participation.

6. Current Status and Outlook of Public Participation

Public participation is still at the experimental stage in both Germany and China. Large-scale rollout is yet to come.

Deputy Director Rui Yan said that the Shanghai People's Congress had organized eight legislative hearings since 2000. Progress had been made between the first hearing in 2000 and the latest one in July 2008:

- i. the areas covered by legislative hearings had been expanded;

- ii. the hearing procedure had become more transparent;
- iii. the results of hearings were considered to be valuable feedback.

However, there are still some weak points:

- i. the effect of legislative hearings is not satisfactory, although hearings are supposed to maximize democracy;
- ii. there is basically one hearing and 50 meetings every year; this low frequency is owing to the high organizational costs;
- iii. the extent of public participation, as well as the public's enthusiasm and level of representation, still leaves much to be desired. The largest number of participants to have signed up for a legislative hearing was a modest 157. Besides, it is still a matter of debate whether those attending were truly representative.

Ms. Xuan Liu expressed the opinion that there were a number of shortcomings in public participation in community planning: (i) public opinion is not expressed adequately and accurately because citizens supporting a particular plan seldom air their views, while those who do are mostly opposed to it; (ii) the level of public participation in planning decisions must be improved.

Director Yifei Mu also thought that Wenling's budgeting reform faces a number of challenges, alongside its achievements:

- i. participatory budgeting has not been institutionalized and enjoys no legal recognition;
- ii. the quality of participants, especially of People's Representatives, should be further improved;
- iii. more follow-up monitoring should be carried out;
- iv. public participation is not wide enough;
- v. the government must be more transparent in its budget planning.

Director Hua Liu summarized: At present there are still a number of challenges facing public participation in decision-making in both China and Germany. First of all, there should be more access to public



participation and more participants. Second, the public's views should be better communicated through public participation. Third, deadlock may occur when the supporters and opponents of a measure are equally balanced. These three challenges merit further research and discussion in both China and Germany.

Participants at the seminar were all optimistic about public participation. The definitive report by the Public Participation Expert Panel of the German Bundestag in 2002 declared that "public participation is an important prerequisite for the 'future competence of a democratic society'." The 2004 Federal Government Urban Development Report, too, stated that "public participation is an indispensable prerequisite for future cities." Experts from both China and Germany have agreed that further research and exchange in this field is necessary.

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