

In the Shadow of China

Notice and Comment Policymaking in Hong Kong and Taiwan

Steven J. Balla, Huang Chen, & Yat To Yeung | April 28, 2022

Introduction

In recent years, the Chinese government has [increasingly flexed](#) its economic, political, and military muscles around the world. Close to its mainland home has been no exception, as the Chinese government has taken actions to pressure officials in Hong Kong and Taiwan. In Hong Kong, which operates as a special administrative region of China, the independence of judges, the Legislative Council, and the Chief Executive [has been eroded](#) in an effort to ensure that government decisions hew to the dictates of the Chinese Communist Party in Beijing. Although Taiwan is a self-governed state, the Chinese government regards it as a separatist province and regularly subjects its air defense zone to [incursions](#) by People's Liberation Army fighter jets.

Both Hong Kong (as a former British colony) and Taiwan (as a multi-party democracy) make policy through approaches historically associated with North America and Western Europe. One prominent example is the [notice and comment process](#), in which government agencies make public draft policies and solicit feedback on these proposals. In this analysis, we compare and contrast notice and comment policymaking in Hong Kong and Taiwan during the 2016-2021 period.

These six years constitute a salient time for analysis, coinciding with an increase in Chinese government authoritarianism and assertiveness vis-à-vis the outside world. To the extent that this assertiveness has been consequential, we might expect spillover effects in jurisdictions particularly susceptible to the influence of the Chinese government. Although both Hong Kong and Taiwan

This insight reflects the views of the author and does not represent an official position of the GW Regulatory Studies Center or the George Washington University. The Center's policy on research integrity is available at <http://regulatorystudies.columbian.gwu.edu/policy-research-integrity>.

Steven J. Balla is an Associate Professor of Political Science, Public Policy & Public Administration, and International Affairs, Huang Chen is a Ph.D. candidate in the Trachtenberg School, and Yat To Yeung is a Ph.D. candidate in the Department of Political Science at the George Washington University. The authors thank Andrew Wan for assistance with data collection, and Susan Dudley and Zhoudan Xie for insightful comments.

are part of [Greater China](#), the Chinese government has the authority to constrain policymaking in Hong Kong in a manner well beyond its reach with respect to Taiwan. It is therefore reasonable to expect less robust notice and comment policymaking in Hong Kong than Taiwan during the 2016-2021 period.¹

To examine this possibility, we have collected—from the Hong Kong and Taiwan governments—information about notice and comment policymaking. We focus on the notice and comment process because [evidence suggests](#) that administrative procedures are to some degree compatible with authoritarianism. In other words, it is plausible that the notice and comment process was robust during the period under analysis not only in Taiwan but Hong Kong as well.

Irrespective of the substance of the results, the analysis is oriented toward offering insight into the operation of administrative procedures in the shadow of Chinese authoritarianism. On the one hand, a relative dearth of robust practices in Hong Kong would indicate that the notice and comment process has not been immune from pressures that have characterized other elements of Hong Kong’s political system. On the other hand, a lack of difference across Hong Kong and Taiwan would suggest that notice and comment policymaking is to some degree resistant to authoritarian incursions against consultative processes.²

In what follows, we compare and contrast Hong Kong and Taiwan with respect to the frequency of notice and comment policymaking, the duration of comment periods, and government responsiveness to comments. Our analysis focuses on the operation of the notice and comment process in general as well as disaggregated by policy areas.

At the outset, it is important to note that both Hong Kong and Taiwan implement notice and comment policymaking through centralized online platforms, which serve as our primary data sources.³ Hong Kong’s portal dates back to 1997, the time of the transfer of sovereignty from the United Kingdom to the People’s Republic of China. The Taiwan website contains information about notice and comment policymaking from 2016 to the present. Both Hong Kong and Taiwan carry out the notice and comment process under general guidelines, rather than highly specified

¹ Although the robustness of the notice and comment process can be operationalized in a variety of ways, we focus (as discussed below) on three aspects—the frequency of notice and comment policymaking, the duration of comment periods, and government responsiveness to comments.

² Alternatively, a lack of difference might suggest that Chinese authoritarianism has negatively impacted governance in Taiwan as well as Hong Kong. Although we cannot conclusively rule out this possibility, we are skeptical that geopolitical imbalances across the Taiwan Strait manifest in Chinese government influence over the implementation of administrative procedures in Taiwan. In general, we believe that Taiwan is a good baseline of comparison for Hong Kong, in that it shares the cultural, linguistic, and historical commonalities of Greater China while maintaining independence in its political system.

³ These websites are <https://www.gov.hk/tc/residents/government/publication/consultation/archives.htm> and <https://join.gov.tw/> for Hong Kong and Taiwan, respectively.

requirements. For example, the Hong Kong government has not established precise standards for the duration of comment periods, but rather recommends that “sufficient time” be allowed for public feedback on proposed policies.⁴

Frequency of Notice and Comment Policymaking

The overall number of occurrences of notice and comment policymaking in the 2016-2021 period is 5,772 in Taiwan and 127 in Hong Kong. This vast difference is perhaps attributable to the fact that Taiwan is a sovereign democracy while Hong Kong is controlled by the Chinese Communist Party. In addition, Taiwan is substantially larger than Hong Kong, both geographically (13,892 vs. 428 square miles) and in terms of population (23.8 vs. 7.4 million).

An alternative approach is to compare the relative rate at which Hong Kong and Taiwan implement the notice and comment process in particular policy areas.⁵ We focus on four policy areas that are salient in both jurisdictions—economic affairs, education, the environment, and health, labor, and welfare.⁶ As Table 1 illustrates, 24 percent of notice and comment consultations in both Hong Kong and Taiwan addressed economic affairs. The percentages are higher in Taiwan for education, the environment, and health, labor, and welfare. The percentage of consultations addressing issues other than the enumerated policy areas is, by contrast, greater in Hong Kong. These issues include constitutional, legal, and security concerns that reflect Hong Kong’s status as a special administrative region of China. For example, the Constitutional and Mainland Affairs Bureau routinely utilizes the notice and comment process when implementing Hong Kong’s overarching governance principle of “[one country, two systems](#).”

⁴ Hong Kong’s “Guidelines on Public Consultation” are available at <https://www.legco.gov.hk/yr03-04/english/panels/ca/papers/ca1117cb2-337-2e.pdf>.

⁵ Another alternative is to divide the number of occurrences of notice and comment policymaking by the number of government actions, as a means of calculating the percentage of actions developed through this process. It is not readily apparent, however, how to identify the relevant denominator. The notice and comment process is used during the making of a wide array of actions, not all of which are systematically documented and archived in a publicly accessible manner.

⁶ We classified policy areas according to the government agency that conducted the consultation. For example, we consider consultations implemented by the Education Bureau in Hong Kong and Ministry of Education in Taiwan to be occurrences of education policymaking.

Table 1: Frequency of Consultations

Policy Area	Hong Kong		Taiwan	
	Frequency	Percent	Frequency	Percent
Economic Affairs	30	23.62	1369	23.72
Education	4	3.15	474	8.21
Environment	6	4.72	609	10.55
Health, Labor, & Welfare	15	11.8	1177	20.39
Others	72	56.69	2143	37.13
Total	127	100	5772	100

In sum, the substantive focus of the notice and comment process is in some respects similar across jurisdictions, with economic affairs constituting a particularly common policy area in both Hong Kong and Taiwan. In Hong Kong, perhaps surprisingly, notice and comment policymaking is at times implemented in the context of constitutional, legal, and security issues fraught with geopolitical sensitivities.

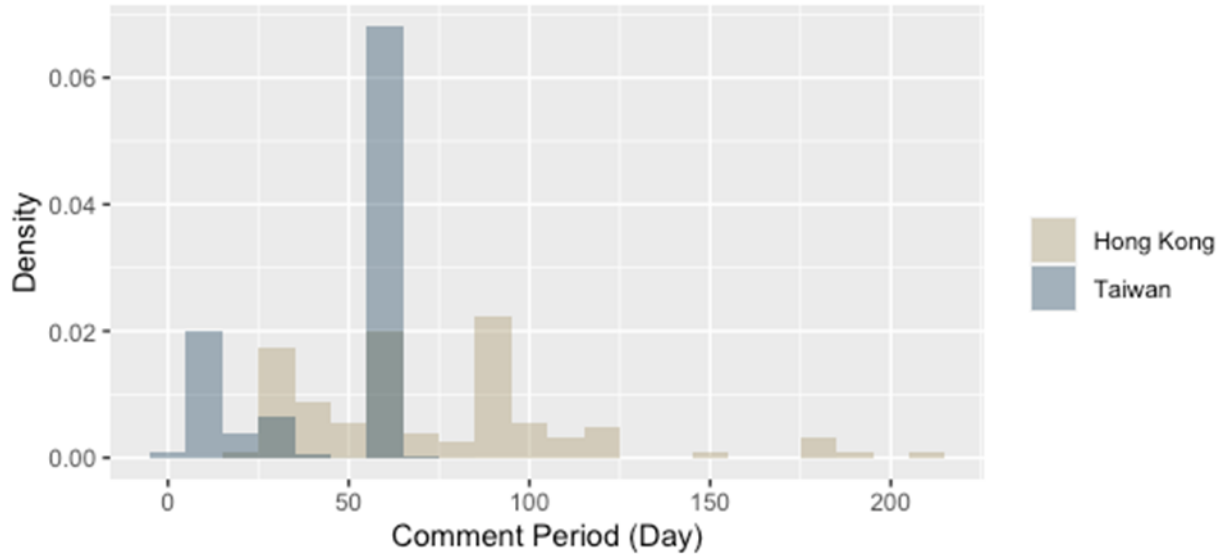
Duration of Comment Periods

The duration of comment periods is an indication of the robustness of public participation opportunities in the notice and comment process. In China, the State Council [recommends](#) that draft laws and regulations be open for comment a minimum of 30 days. The median duration of comment periods is 62 days in Hong Kong and 60 days in Taiwan. Interestingly, these typical durations are consistent with [Executive Order 12866](#) in the United States, which associates 60 days with the provision of a “meaningful opportunity” to comment on proposed rules. In other words, comment periods in both jurisdictions hew more closely to the standards of the United States government than the Chinese Communist Party.

As Figure 1 illustrates, the distribution of comment period durations varies across Hong Kong and Taiwan. In Hong Kong, the duration of comment periods ranges from 21 days to 212 days. In Taiwan, the minimum duration is two days with a maximum of 180 days. Forty-four percent of comment periods in Hong Kong are longer than 75 days, a duration that characterizes only two comment periods in Taiwan. By contrast, 20 percent of comment periods in Taiwan last two weeks or less, while no comment periods in Hong Kong are open for fewer than 21 days. The relative prevalence of lengthy comment periods in Hong Kong and brief comment periods in Taiwan holds not only in the aggregate, but in the context of economic affairs, education, the

environment, and health, labor, and welfare as well.

Figure 1: Duration of Comment Periods



Government Responsiveness to Comments

The robustness of the notice and comment process is in part contingent on government responsiveness to public participation. Unmet expectations of responsiveness [run the risk](#) of fostering popular discontent with government performance and accountability. As a means of assessing this element of robustness, we collected—from the Hong Kong and Taiwan governments—documents responding to public input on proposed policies. Our analysis focuses on the extent to which such documents are available to the public, irrespective of the substance of the responses.⁷

In Taiwan, response documents were identified for 17 percent of notice and comment consultations. In Hong Kong, eight percent of consultations were characterized by the availability of response documents. In all four policy areas, the rate at which response documents are publicly accessible is higher in Taiwan than Hong Kong.

One limitation of the data collection protocol is that information was gathered solely from the Hong Kong and Taiwan government consultation platforms. Given that response documents are at times available from other sources (e.g., the Hong Kong Legislative Council), our protocol

⁷Illustrative examples of Hong Kong and Taiwan responses are available at https://www.pets.gov.hk/english/animal_health_and_welfare/files/fseh20200421cb2-832-4-e.pdf and <https://join.gov.tw/policies/detail/b22a9846-f44f-41c7-88f7-8eab43bacd6a>, respectively.

understates the prevalence of government responsiveness.⁸ This understatement, however, does not compromise our ability to compare responsiveness across Hong Kong and Taiwan, in that the protocol is consistent across jurisdictions. We therefore can conclude that the provision of response documents on consultation platforms is less common in Hong Kong than Taiwan.

Conclusions and Implications

Although the world is closely watching as the Chinese Communist Party increasingly places pressure on the Hong Kong and Taiwan governments, little attention has been paid to the operation of administrative procedures in these jurisdictions. In what manner are instruments such as the notice and comment process implemented in Hong Kong and Taiwan during a time of assertive authoritarianism in Greater China?

It is reasonable to expect that notice and comment policymaking is less robust in the Hong Kong Special Administrative Region in comparison to the sovereign democratic nation of Taiwan. Consistent with this expectation, documents responding to public input during the notice and comment process are less likely to be accessible in Hong Kong. Comment periods, however, are on average of longer duration in Hong Kong. The fact that comment period durations are typically robust in both Hong Kong and Taiwan indicates the utility of public participation to policymakers across political systems. Going forward, the imperative to [mitigate information deficits](#) through instruments such as the notice and comment process may only increase in an increasingly authoritarian—and therefore more insulated from public opinion—Hong Kong government.

There are a number of attributes of notice and comment policymaking that have been left unaddressed in this analysis. For example, we have not explored the identity of the organizations and individuals who submit comments on proposed policies. In addition, we have not examined the extent to which government officials revise draft laws and regulations in response to public comments. Such attributes remain concerns for future research, which we look forward to contributing to through additional data collection and analysis.

⁸ In separate research on Hong Kong, we conducted expansive Internet searches for response documents. Since we have not implemented such searches in the context of Taiwan, the resulting information about the availability of Hong Kong responses does not provide a suitable basis for comparison across jurisdictions.