
TRANSPARENCY, PARTICIPATION, AND RESPONSIVENESS IN HONG KONG CONSULTATIVE POLICYMAKING

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ABSTRACT

Although consultation promises to bolster the legitimacy of government decisions, it is possible that—in practice—instruments such as the notice and comment process fail to promote transparency, participation, and responsiveness in policymaking. In this article, we examine the operation of the notice and comment process in Hong Kong, by collecting and analyzing information about hundreds of consultations conducted over a 25-year period. We find that participation has been a more consistent element of consultative policymaking than transparency or responsiveness. Our analysis also demonstrates that consultation practices have not eroded over time, despite the increasing influence of the Chinese Communist Party over the Hong Kong government. Although these results demonstrate the procedural robustness of consultative policymaking, it remains possible that the notice and comment process provides little more than a veneer of participation in a system in which decisions are largely made without consideration of public opinion.

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Introduction

Consultation is a primary means through which public policy is made by governments throughout the world (Dwider 2022, Saltane 2016). One manifestation of consultation is the notice and comment process, in which government agencies make public draft policies and solicit feedback on proposed courses of action. Such processes have the potential to bolster the legitimacy of government decisions, by promoting transparency, participation, and responsiveness in policymaking (Beetham 1991, Scharpf 1997, Scharpf 1999, Schmidt 2013).

Despite this promise, it is possible that—in practice—consultative policymaking fails to enhance government performance along these dimensions (Elliott 1992, Rangone 2022). Government notices may not be constructed in a manner that facilitates public comprehension of agency proposals. Organizations and individuals may not respond to draft policies in robust numbers. Stakeholders that offer feedback may not convey knowledge or experiences relevant to the decisions agencies are making. Officials may not give serious consideration to public input, irrespective of the quality of the information submitted.

These possibilities raise the following research question. To what extent is consultative policymaking characterized by transparency, participation, and responsiveness? In this article, we address this question in the context of the notice and comment process in Hong Kong. We collect, code, and analyze information about more than 500 hundred consultations conducted by the Hong Kong government over a 25-year period. This information makes it possible to evaluate the degree to which benchmarks of transparency, participation, and responsiveness—derived from previous research and experiences—have been met in Hong Kong notice and comment policymaking since the transfer of sovereignty from the United Kingdom to the People’s Republic of China (PRC).

Hong Kong is a salient context for evaluating the practice of the notice and comment process. Hong Kong has throughout its history as a special administrative region of China made policy through approaches historically associated with advanced industrialized democracies of North America and Western Europe (Joseph 2016). Hong Kong therefore has the potential to be in the vanguard in East Asia with respect to the implementation of consultative policymaking. By contrast, Hong Kong’s status as a territory of the PRC—an authoritarian one-party state—possibly serves as a limiting factor for the achievement of transparency, participation, and responsiveness (U.S.-China Economic and Security Review Commission 2021).

Irrespective of outcomes, our comprehensive, detailed analysis advances understanding of notice and comment policymaking in Hong Kong, as research has thus far largely consisted of case

studies and general information (Cheung 2011, He and Ma 2021). Furthermore, our emphasis on Hong Kong complements existing research on the notice and comment process, much of which has focused on Western countries such as the United States (Potter 2019).

The benchmarks evaluated in the article—such as the number of pages in consultation documents, the duration of feedback periods, and the nature of government responses to public input—are specific to implementation of the notice and comment process. It is therefore beyond the scope of the analysis to compare policies developed through consultation with policies during which the notice and comment process did not occur. Rather, the research assesses variation in transparency, participation, and responsiveness across instances of notice and comment policymaking. Under what conditions is consultation relatively likely to be characterized by transparency, participation, and responsiveness?

The analysis reveals two main patterns regarding transparency, participation, and responsiveness in the notice and comment process in Hong Kong. First, participation is a more consistent element of consultative policymaking than transparency or responsiveness. Second, there has not been an erosion over time in the benchmarks of consultation, despite the fact that the Chinese Communist Party (CCP) has expanded its influence over the institutions of Hong Kong's government. Although this latter result demonstrates the procedural robustness of consultative policymaking, it is nevertheless possible that the notice and comment process provides little more than a veneer of legitimacy in a system in which decisions are largely made without consideration of the substance of public opinion.

Consultative Policymaking

Contemporary governments confront fundamental challenges with respect to the legitimacy of their decisions. Across political systems, the failure of processes and outputs to adequately address pressing economic, environmental, and public health concerns is associated with diminished levels of public trust (Bishop 2022). Consultation has long been viewed as a promising means of remedying deficits in transparency, participation, and responsiveness (Davis 1971, Wang 2008).

Transparency is “the extent external actors are afforded access to information about the way public organizations operate” (Cucciniello, Porumbescu, and Grimmelikhuijsen 2016). In consultative policymaking, a core component of transparency is the provision of detailed information regarding proposed courses of action (Grimmelikhuijsen, et al. 2013). In addition, transparency is associated with the presentation of information in a manner that is comprehensible to interested parties (Dawes 2010).

Participation in consultative policymaking is distinct from other instruments of public input. In the notice and comment process, organizations and individuals submit feedback on proposed government actions. Such feedback is commonly communicated via written comments, although agencies convene in-person forums as well (Dudley 2021). Irrespective of the means of submission, the notice and comment process does not constitute a form of deliberation (Leib and He 2010). In contrast to collective bargaining and other forms of negotiation, the opportunity to comment is open to all interested parties and is not designed to foster interaction among participants (Harter 1982).

The canonical conception of responsiveness is that government policies are consistent with public preferences (Erikson, Wright, and McIver 1993). The notice and comment process, however, is not a plebiscite in which agencies craft policies by tallying expressions of directional preferences (Farina, Newhart, & Heidt, 2012). In the United States, the Supreme Court has stated that agencies are not required to process comments in an equivalent manner: “[C]omments must be significant enough to step over a threshold requirement of materiality before any lack of...consideration becomes of concern” (Dooling 2011). In this context, responsiveness is gauged not by the association between majority sentiment and government decision making, but rather by the degree to which officials engage with substantive information presented in comments.

One implication of this discussion is that in order for consultative policymaking to advance government legitimacy, it must facilitate specific manifestations of transparency, participation, and responsiveness. As a result, a core task is to operationalize benchmarks of transparency, participation, and responsiveness that are salient in the context of the notice and comment process in Hong Kong. In what follows, we establish such benchmarks, drawing upon existing research and experiences with consultative policymaking in Hong Kong and throughout the world. We begin by discussing the operation and current state of understanding of the notice and comment process in Hong Kong.

Notice and Comment Policymaking in Hong Kong

The notice and comment process operates under guidelines established by Hong Kong’s Constitutional Affairs Bureau.¹ The guidelines are for the most part rather generic, as the following examples illustrate. On transparency: “The public should be presented with

¹ These guidelines are available at <https://www.legco.gov.hk/yr03-04/english/panels/ca/papers/ca1117cb2-337-2e.pdf>.

comprehensive information relating to the subject, including the background and all relevant factors considered in drawing up the proposal.” On participation: “Sufficient time should be allowed for the public and interested parties to study the consultation document and prepare their submissions.” On responsiveness: “All comments and representations received from members of the public or interested parties have to be carefully read and collated.”

There are a number of respects in which the guidelines are detailed and specific to Hong Kong. The guidelines lay out a variety of methods beyond the submission of written comments that agencies are encouraged to employ—if appropriate—in soliciting feedback. These methods include seeking the views of Legislative Council panels, District Councils, District Offices, and Advisory Boards and Committees. Furthermore, the guidelines recommend that agencies advertise proposed policies through a variety of legacy and new media channels. Finally, agencies are advised to identify and consult with a broad range of organizations, parties, and individuals plausibly affected by proposed policies.

According to the World Bank, the notice and comment process in Hong Kong operates in a manner consistent with international standards of transparency, participation, and responsiveness.² For example, the full texts of draft policies are published, comments are solicited through a variety of channels, and the results of consultations are publicly disseminated.

There are, however, a number of methodological attributes that limit the applicability of the World Bank’s findings. Information was collected through a survey of Hong Kong policymakers, rather than an examination of consultation documents, public comments, and government responses. In addition, the survey focused solely on economic policymaking. It is therefore unclear the degree to which the results apply to other policy areas. Finally, the survey prompted respondents to reply on the basis of their agency’s most common practices. As a result, the analysis obscures variation across instances of notice and comment policymaking.

Other research on consultative policymaking in Hong Kong highlights shortcomings in the notice and comment process (Cheung 2011, Joseph 2016). Public participation is in certain instances dominated by businesses and other stakeholders whose interests are significantly affected by proposed policies. Officials at times limit the dissemination of information about the manner in which feedback has been incorporated (or not incorporated) into government decisions.

Despite such shortcomings, it is nevertheless the case that practices are relatively robust in particular consultations (Cheung 2011, Joseph 2016). Researchers, for example, have touted the

² Information about the Global Indicators of Regulatory Governance is available at <https://rulemaking.worldbank.org/en/rulemaking>.

consultation that occurred during the development of an urban renewal plan in Wan Chai (Cheng and So 2015). Not only did local organizations, professional groups, area committees, and schools participate in the process, more than 1,000 residents offered viewpoints on how to improve living conditions as well.

Survey research demonstrates the importance of consultative policymaking for the legitimacy of the Hong Kong government (He and Ma 2021). Respondents who believe that officials consider their opinions when making decisions report greater satisfaction with policy outputs and outcomes. Such satisfaction is in turn associated with higher levels of trust in government.

Does consultation, however, in practice facilitate the transparency, participation, and responsiveness necessary to promote legitimacy over time and across policy areas? Existing research has collectively answered this question in a somewhat contradictory manner, with robust instances of consultative policymaking occurring within a system characterized by fundamental shortcomings. This article engages with such contradictions. By collecting and coding detailed information about hundreds of consultations over a 25-year period, our analysis makes it possible to identify both general patterns and systematic variation in the implementation of the notice and comment process.

Benchmarks of Transparency, Participation, and Responsiveness

To evaluate the operation of the notice and comment process in Hong Kong, it is necessary to establish benchmarks for transparency, participation, and responsiveness. In what follows, we develop such benchmarks on the basis of existing research and experiences with consultative policymaking. These benchmarks concern government actions with respect to transparency, the provision of opportunities for participation, and responsiveness. The benchmarks also address the nature of the public input that occurs during the notice and comment process.

Transparency

Transparency occurs (or does not occur) both at the outset and at the conclusion of the notice and comment process. At the outset, transparency entails the provision of information about proposed government policies that is both thorough and comprehensible to interested parties (Dawes 2010, Grimmelikhuisen, et al. 2013). At the conclusion, transparency pertains to the availability of information regarding comments submitted in response to proposed policies, as well as government responses to public feedback.

We operationalize the thoroughness of transparency at the outset as the number of pages in consultation documents, on the assumption that lengthier documents provide more detailed information about proposed courses of action. Document length has long been a common measure in research on consultative policymaking (Kerwin and Furlong 1992). We establish two benchmarks for the comprehensibility of consultation documents. The first benchmark consists of Flesch reading ease scores, which utilize the average number of words per sentence and the average number of syllables per word to measure the clarity or difficulty of written language (Flesch 1948).³ Readability scores have been used in previous research on consultative policymaking (Røed and Hansen 2018). Consistent with governments throughout the world, we view plain language as a manifestation of transparency.⁴ The second benchmark is whether the proposed policy is disseminated in graphical—as opposed to text-only—format. Figure 1 provides an excerpt of a consultation document that incorporates graphical features. Such documents are designed to enhance the transparency of prospective government actions to broad audiences (Cheung 2011).

At the conclusion of the notice and comment process, agencies have a number of opportunities to foster transparency. One such opportunity—endorsed as a minimum standard by the European Commission—is the publication of a document communicating the results of the consultation (Rangone 2022). Specific characteristics of results documents serve as benchmarks of more advanced levels of transparency. The inclusion in response documents of the identities of commenters and the texts of comments circulates information about public interest in and sentiment surrounding pending government actions.

³ Flesch reading ease scores are calculated according to the following formula: $206.835 - 1.015(\text{total words}/\text{total sentences}) - 84.6(\text{total syllables}/\text{total words})$.

⁴ The Plain Writing Act—enacted in 2011 by the United States government—is a statutory example of the notion that clear agency language facilitates public understanding of government decision making. <https://www.govinfo.gov/content/pkg/BILLS-111hr946enr/pdf/BILLS-111hr946enr.pdf>.

Figure 1: Consultation Document with Graphics



Note: Screen shot taken by the authors
(<https://www.gov.hk/en/residents/government/publication/consultation/docs/2021/tableware.pdf>)

Opportunities for Participation

At the outset of the notice and comment process, agencies make decisions with implications for the robustness of opportunities for participation. One such decision is establishing the duration of comment periods. As a general matter, comment periods of longer duration facilitate participation by providing interested parties with sufficient time to comprehend proposed policies and “do the research needed to produce informed comments” (Lubbers 2006, 297). Governments vary in the amount of time viewed as sufficient in this regard. In 2018, the Chinese government recommended that comment periods be open for a minimum of 30 days (Horsley 2018). American presidents have for decades called for comments periods of at least 60 days.⁵ Such standards provide benchmarks against which to evaluate opportunities for participation in Hong Kong consultative policymaking.

Another decision concerns the instruments through which participation is solicited. Throughout the world, the submission of written comments—whether on paper or over the Internet—has historically operated as a baseline form of participation in consultative policymaking (Dudley 2021). Commenting is limited in that it does not facilitate interaction among participants and therefore does not provide a means of resolving stakeholder conflicts (Elliott 1992). One potential antidote to these limitations is in-person participation, in which interested parties are given opportunities to listen and respond to one another’s arguments and evidence (Coglianese 1997). Research on consultative policymaking in Hong Kong highlights instances in which public forums have been held on proposed policies (Cheung 2011, Joseph 2016). In the analysis that follows, we examine the extent to which—as a general matter—public forums supplement written comments as a means of participation in consultative policymaking.

Occurrence of Participation

A straightforward benchmark for the occurrence of participation is the number of comments submitted in response to proposed policies. An established pattern throughout the world is that the vast majority of consultations generate few comments, with occasional proposals attracting unusually robust levels of participation. In Guangzhou—a Chinese city located not far from Hong Kong—the municipal government receives an average of 114 comments in response to draft laws and regulations (Balla and Xie 2021). This average is inflated by two proposed policies that generated volumes in excess of 1,000 comments, orders of magnitude greater than any other consultation. Does such a skewed distribution hold in Hong Kong as well?

⁵ This expectation is articulated in Executive Order 12866, which is accessible at <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>.

Another benchmark concerns the identity of participants. Research in advanced industrialized democracies demonstrates a tendency for participation in consultative policymaking to be dominated by business interests (Beyers and Arras 2020, Yackee and Yackee 2006). There are instances in which business domination has characterized consultative policymaking in Hong Kong as well (Cheung 2011). Our analysis evaluates the extent to which the notice and comment process in Hong Kong exhibits a bias toward business as a general matter.

Responsiveness

According to the Constitutional Affairs Bureau, agencies are expected to engage with information communicated by interested parties during the notice and comment process. This expectation establishes the centrality of procedural responsiveness—the process of addressing participation—in consultative policymaking in Hong Kong (Qiaoan and Teets 2020, Su and Meng 2016). In the analysis that follows, we evaluate two benchmarks of procedural responsiveness. The first benchmark is whether the agency publicly disseminates responses to feedback submitted on proposed policies. The second benchmark pertains to consultations in which such responses occur. Does the agency provide responses to specific comments on an individual basis? Such specificity represents a robust approach to responsiveness, relative to the alternative of issuing general statements about public input in the aggregate.

Hypotheses for the Achievement of Benchmarks

With a variety of benchmarks established, we next state hypotheses regarding the implementation of the notice and comment process in Hong Kong. The first hypothesis pertains to the degree to which agencies and stakeholders are likely to meet standards of transparency, participation, and responsiveness, respectively. Research on notice and comment policymaking in China demonstrates that the process has been more effective in enhancing transparency than participation (Balla and Xie 2021). Throughout the world, it has been difficult to demonstrate the responsiveness of agencies to feedback submitted on proposed policies (Golden 1998, Shapiro 2007, West 2004). Taken together, this evidence suggests that transparency is the most likely standard to be advanced in notice and comment policymaking in Hong Kong.

Transparency Hypothesis: Benchmarks of transparency are more likely to be achieved in the Hong Kong notice and comment process than benchmarks of participation and responsiveness.

Throughout its time as a special administrative region of the PRC, Hong Kong has had a contentious history with transparency, participation, and responsiveness. Demonstrations for

democratic reforms have occurred on a periodic basis, with the most recent example being protests sparked by the introduction in 2019 of a bill permitting the extradition of wanted fugitives to jurisdictions—including mainland China—with which Hong Kong has not signed a formal extradition treaty.⁶ Despite such mass movements, the Chinese government has taken a series of actions limiting transparency, participation, and responsiveness in Hong Kong. One such action is the enactment in 2020 of a national security law establishing the possibility of substantial penalties for broadly defined crimes such as secession, subversion, terrorism, and collusion with foreign forces.⁷ With the expansion of CCP influence over Hong Kong, it is reasonable to expect that transparency, participation, and responsiveness in consultative policymaking have eroded in the period under analysis.

Erosion Hypothesis: Benchmarks of transparency, participation, and responsiveness are less likely to be achieved over time in the Hong Kong notice and comment process.

Research demonstrates that transparency, participation, and responsiveness in consultative policymaking vary across policy areas. In China, for example, notice and comment practices have historically been more advanced in economic policymaking than in other areas (Balla and Xie 2022). A primary reason for this distinction is that—as a condition of its accession to the World Trade Organization—the Chinese government committed to increasing consultation in the development of economic policy (United States Trade Representative 2021). In Hong Kong, by contrast, examples suggest that the notice and comment process is relatively robust in environmental policy, with implementation lagging in economic affairs (Cheung 2011, Joseph 2016). Given our Hong Kong focus, we posit that environmental policy is in the vanguard of consultative policymaking as a general matter.

Environmental Hypothesis: Benchmarks of transparency, participation, and responsiveness are more likely to be achieved in the Hong Kong notice and comment process in environmental policy than in other areas.

Data Collection

To assess the hypotheses, we assemble information about the implementation of the notice and comment process in Hong Kong over a 25-year period. The primary source is GovHK, a one-stop portal operated by the Hong Kong government. We specifically utilize the “Consultation

⁶ BBC News, “The Hong Kong Protests Explained in 100 and 500 Words,” <https://www.bbc.com/news/world-asia-china-49317695>.

⁷ BBC News, “Hong Kong National Security Law: What Is It and Is It Worrying?,” <https://www.bbc.com/news/world-asia-china-52765838>.

Papers in Archive” section of the website.⁸ This section provides access to 517 policies that agencies proposed between 1997 and 2021. These policies constitute the complete set of actions that were developed through the notice and comment process for which information is available via GovHK.

As Figure 2 illustrates, the website contains links to consultation documents. These documents describe the actions that agencies are proposing. The information contained in the documents is useful for measuring a variety of benchmarks of transparency and participation, such as the number of pages in the proposal and the duration of the comment period. Other benchmarks, however, must be measured at the conclusion of the consultation. Examples include the number of comments submitted and whether the agency publicly responded to feedback.

To obtain such measures, it is necessary to inspect results documents issued at the close of the notice and comment process. Results documents are not posted to GovHK. As a result, we turned to other sources, including the website of the agency that implemented the consultation. We also conducted Internet searches using the title of the consultation and similar phrases as parameters. The end result of this process is what we believe to be the most comprehensive, detailed collection of information about notice and comment policymaking in Hong Kong yet assembled.⁹

⁸ <https://www.gov.hk/en/residents/government/publication/consultation/archives.htm>.

⁹ It nevertheless remains the case that—even after extensive searching—results documents were not available for all consultations. Consultations with and without accessible response documents are similar to one another along a number of dimensions. For example, consultation documents with accessible response documents average 57 pages in length, while the mean for consultation documents without accessible response documents is 50 pages. This difference is not statistically significant.

Figure 2: Excerpt of Hong Kong Notice and Comment Website

The screenshot shows the Hong Kong Government website's 'Consultation Papers in Archive (2021)' page. The page includes a navigation menu on the left with categories like 'Government Structure', 'Accounts of the Government and Government Reports', and 'Government Information and Publications'. The main content area displays a table of consultation papers with the following data:

Consultation Paper	Closing Date
Public consultation on proposed updates to safety standards for toys and children's products	31.12.2021
Public Engagement on Control of Single-use Plastics	29.12.2021
Public consultation for mid-term review of domestic free television programme service licences and sound broadcasting licences	9.11.2021
Public consultation on proposed code of practice for third party funding of mediation	15.10.2021
Consultation on amendments to the limits for harmful residues in Chinese herbal medicines and related measures for implementation in Hong Kong	30.9.2021
Franchises of Citybus Limited (Franchise for Airport and North Lantau Bus Network), Long Win Bus Company Limited and New World First Bus Services Limited	10.9.2021

Note: The “Consultation Paper” column provides links to consultation documents. Screen shot taken by the authors (<https://www.gov.hk/en/residents/government/publication/consultation/2021.htm>).

Descriptive Analysis

Table 1 provides descriptions and summary statistics for the benchmarks of transparency, participation, and responsiveness included in the analysis. Before turning to an evaluation of the hypotheses, we discuss these statistics as a means of understanding the general manner in which the notice and comment process is implemented in Hong Kong. It is important to note that we have not established definitive thresholds for the achievement of transparency, participation, and responsiveness. For example, there is no specific number of pages above which a consultation document is considered to be transparent. With this limitation in mind, the analysis in this section provides an overarching description of transparency, participation, and responsiveness in notice and comment policymaking in Hong Kong.

Table 1: Variable Descriptions and Summary Statistics

Variable Name	Variable Description	N	Mean	SD	Min	Max
<i>Transparency</i>						
NumbPage	Number of pages in consultation document (CD)	485	53.98	64.10	4	470
Readability	Flesch reading ease score of consultation document (CD)	462	37.78	15.44	-7.19	115.13
Graphical	1 if consultation document includes graphical features, 0 otherwise (CD)	484	.35	.48	0	1
ResultsDoc	1 if results document is publicly available, 0 otherwise (RD)	517	.58	.49	0	1
CommIdentity	1 if the identity of commenters is disclosed, 0 otherwise (RD)	287	.54	.50	0	1
CommText	1 if comment texts are available, 0 otherwise (RD)	287	.15	.35	0	1
<i>Opportunities for Participation</i>						
Duration	Number of days of comment period (CD)	513	72.79	34.40	9	256
PublicForum	1 if one or more public forum was held, 0 otherwise (RD)	289	.73	.45	0	1
<i>Occurrence of Participation</i>						
NumbComm	Number of comments (RD)	267	3,648.20	15,905.64	0	139,000
BusComm	Percent of comments submitted by business interests (RD)	97	38.00	30.28	0	100
<i>Responsiveness</i>						
CommResp	1 if responses to comments are disclosed, 0 otherwise (RD)	287	.67	.47	0	1
SpecResp	1 if responses to specific comments, 0 otherwise (RD)	191	.02	.12	0	1

Note: N denotes the number of consultations for which the variable is measured. CD and RD indicate that the data were collected from consultation documents or results documents, respectively. There are a total of 517 consultation documents and 301 results documents. Ns less than these totals occur because of information that is not available in particular documents. SD, Min, and Max denote the standard deviation, minimum value, and maximum value, respectively.

Transparency

The data suggest that agencies for the most part provide detailed information about proposed courses of action. The average consultation document consists of 54 pages, with approximately 90 percent greater than 10 pages in length.

Consultation documents, however, are often difficult to comprehend. Flesch reading ease scores above 60 are indicative of plain language.¹⁰ Only 7 consultation documents have scores in this range. The average consultation document has a score of 38, well below the plain language threshold.

One approach to offsetting difficult language is the inclusion of graphics in consultation documents. Two-thirds of consultation documents, however, are comprised solely of text. Put differently, the majority of consultation documents do not feature graphics oriented toward enhancing the comprehensibility of proposed policies to broad audiences.

The data indicate that it is common for agencies to not foster transparency at the conclusion of the notice and comment process. Results documents were identified for only 58 percent of consultations. This broad pattern of results documents not being available for substantial proportions of consultations holds throughout the period under analysis. For example, 56 percent of results documents were located for consultations that occurred in 2002 or earlier.

The content of results documents is indicative of a regular lack of transparency with respect to the nature of public input. Nearly half of the results documents do not state the identities of organizations and individuals who submitted written feedback. It is especially unusual for agencies to make the texts of comments available to the public. Such disclosure occurs in only 15 percent of consultations.

Opportunities for Participation

Agencies generally provide robust opportunities for public participation in the notice and comment process. The average duration of comment periods is 73 days. The most common duration is 60 days, with relatively large numbers of 30- and 40-day durations as well. These data demonstrate that consultation practices in Hong Kong are broadly consistent with standards for comment period duration established by jurisdictions as diverse as China and the United States.

¹⁰https://web.archive.org/web/20160712094308/http://www.mang.canterbury.ac.nz/writing_guide/writing/flesch.shtml.

The robustness of opportunities for participation is also indicated by the frequency with which agencies convene public forums during notice and comment policymaking. Such in-person events—which include District Council meetings and town hall-style events—occur during nearly three-fourths of consultations. This rate of occurrence—which is more than twice that of the United States (Balla 2005)—is consistent with the provision in the Constitutional Affairs Bureau’s guidelines for consultative policymaking encouraging agencies to facilitate participation beyond the submission of written comments.

Occurrence of Participation

Public participation in the notice and comment process is often rather substantial. Agencies received an average of 3,648 comments in response to proposed policies. This mean is orders of magnitude larger than the average number of comments generated by draft laws and regulations issued by the Guangzhou municipal government. As an additional point of comparison, rules proposed by the United States Department of Transportation result in the submission of an average of several hundred comments (Balla and Daniels 2007).

One manner in which participation in Hong Kong is similar to other jurisdictions is that the distribution of comments is skewed. The median number of comments is 111, much smaller than the mean. More than 20 percent of proposed policies generated in excess of 1,000 comments, with three consultations characterized by more than 100,000 comments. One of these consultations—conducted in 2015—concerned universal suffrage as a method of selecting the chief executive, an issue that has historically been quite contentious in Hong Kong.

On average, 38 percent of comments were submitted by business interests such as facilities, companies, and associations representing industries. There is substantial variation, however, across consultations in the prevalence of industry comments. On occasion, business interests account for most if not all of the feedback submitted in response to proposed policies. By contrast, the submission of comments is at times dominated by organizations and individuals advocating on behalf of public sector, non-profit, and citizen interests.

Responsiveness

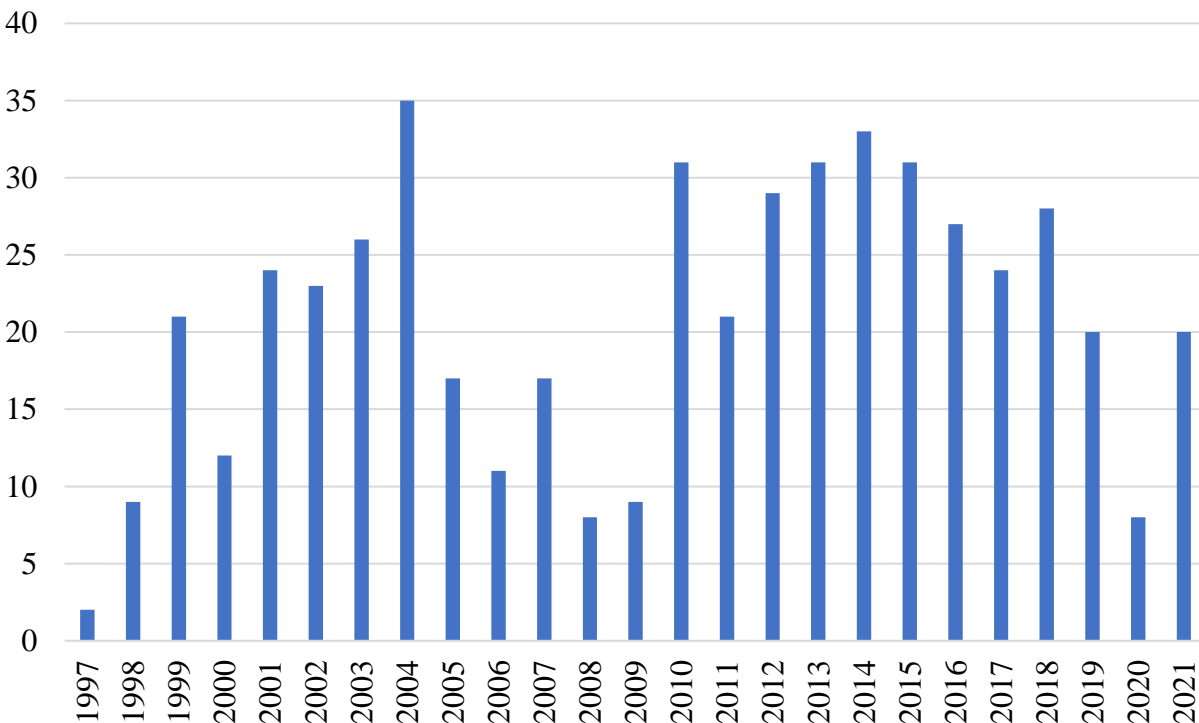
The analysis demonstrates mixed results with respect to government responsiveness. Two-thirds of results documents publicly disseminate responses to feedback submitted on proposed policies. Only three results documents, however, evidence the robust approach of responding to specific comments on an individual basis. The vast majority of responses constitute general statements about public input in the aggregate. The following is an example of such a statement, taken from

a 2017 consultation on Hong Kong’s iconic Star Ferry: “Besides expressly supporting the extension of the Star Ferry’s franchise, some views specifically requested for granting a franchise of 15 years to the Star Ferry.”¹¹

Analyzing the Hypotheses

As a means of providing context for the analysis of the hypotheses, we present information about the implementation of the notice and comment process over time and across policy areas. Figure 3 documents the number of consultations conducted on an annual basis. After an initial rise following the transfer of sovereignty, notice and comment policymaking has taken place with fairly consistent regularity. Most years are characterized by the occurrence of 20-30 consultations. The two main exceptions are 2020 and the late 2000s. Both periods coincide with significant worldwide disruptions—the coronavirus pandemic and the global financial crisis, respectively.¹²

Figure 3: Number of Consultations, by Year

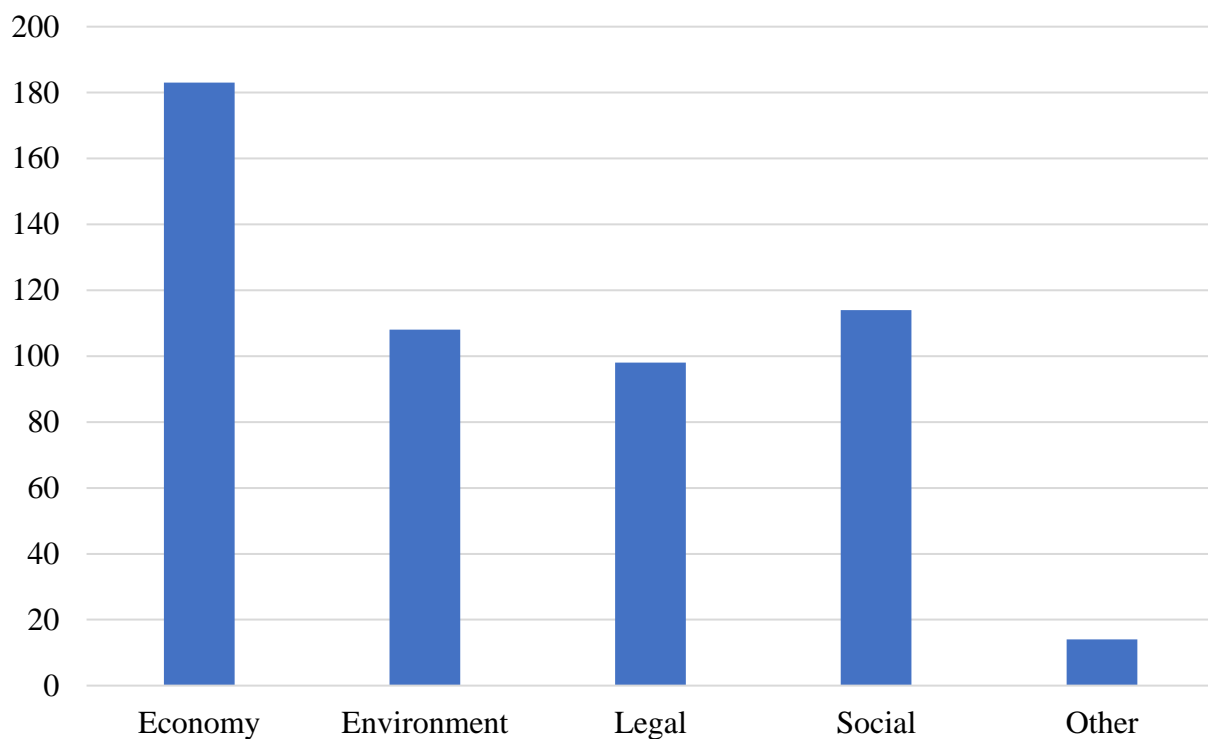


¹¹ <https://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170224cb4-1274-1-e.pdf>.

¹² These disruptions do not necessarily directly account for the declines in notice and comment policymaking.

Figure 4 breaks consultations down by broad area of policy. The most common category is economic policymaking. This category includes issues under the jurisdiction of the Bureau of Commerce and Economic Development and the Bureau of Financial Services and the Treasury. We define environmental policy as consultations addressing air and water quality and other matters for which environmental concerns are central given the existence in Hong Kong of fragile ecosystems. Consultations regularly occur in social policy areas such as education and labor, and routinely address legal, constitutional, and security concerns.

Figure 4: Number of Consultations, by Policy Area



Note: “Other” denotes consultations addressing issues not falling into the enumerated categories.

Transparency Hypothesis

The information presented in Table 1 indicates that implementation of the notice and comment process is not consistent with the transparency hypothesis, which states that benchmarks of transparency are more likely to be achieved than benchmarks of participation and responsiveness. By most measures, agencies are not transparent at the outset of the notice and comment process. Although detailed information is circulated in consultation documents, proposed policies are not typically presented in a comprehensible manner. Furthermore,

transparency at the conclusion of the process is significantly circumscribed. Results documents are often not accessible to the public and—when available—contain limited information about the identity of participants and the content of comments.

The performance of agencies is similarly inconsistent in the achievement of benchmarks of responsiveness. Agencies routinely provide responses to public input. These responses, however, are general statements that rarely engage with specific comments in a thorough manner.

In contrast to this uneven performance with regard to transparency and responsiveness, both opportunities for participation as well as the occurrence of participation are consistently robust in the consultations under analysis. Agencies provide extensive opportunities for public participation, measured by both the duration of comment periods and the holding of public forums. Furthermore, substantial numbers of comments are submitted in response to proposed policies, often by diverse arrays of interested parties. In these respects, notice and comment policymaking in Hong Kong compares favorably with jurisdictions throughout the world.

Erosion Hypothesis

The logic behind the erosion hypothesis is straightforward, in that the expansion of CCP influence over Hong Kong in recent decades is associated with a decline in consultative policymaking. Contrary to this expectation, however, the benchmarks fail to demonstrate consistent decreases over time in transparency, participation, and responsiveness.

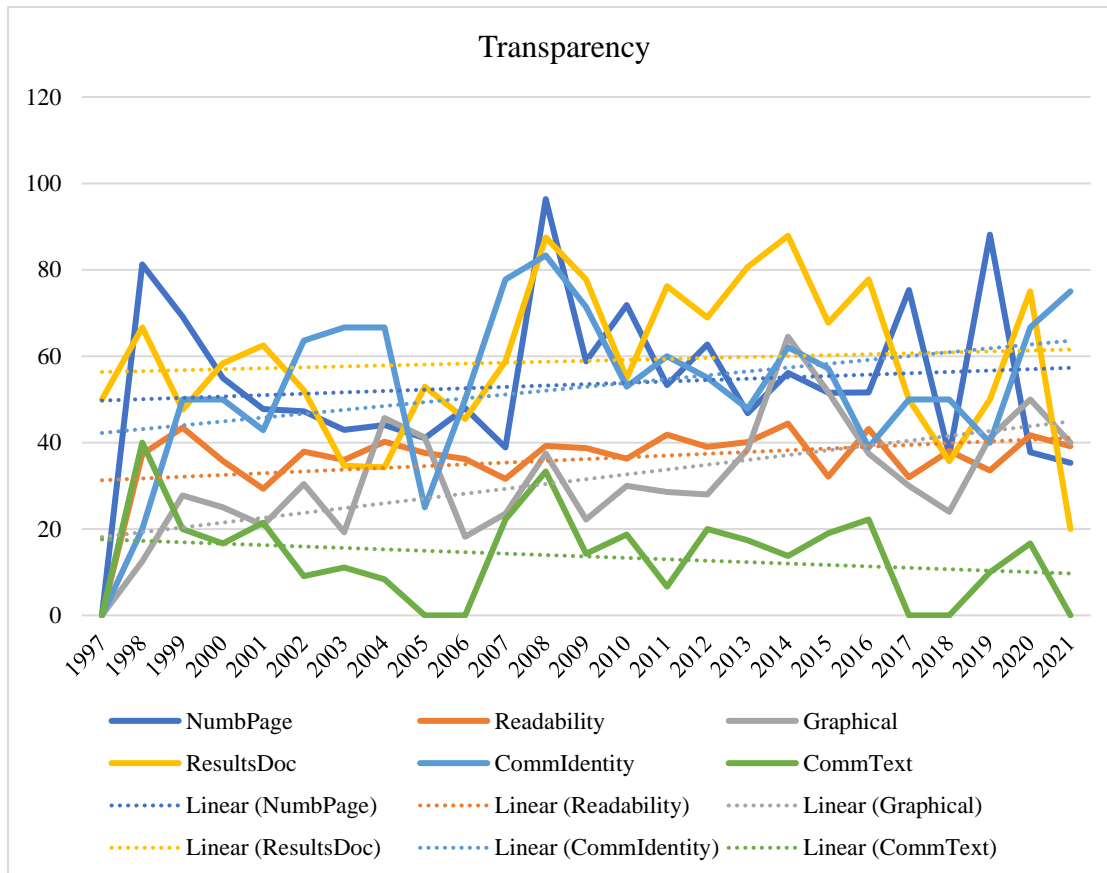
One way to observe the lack of association between the benchmarks and the passage of time is through correlation coefficients. For example, the correlation between the number of pages in the consultation document and the year in which the policy was proposed is .005.¹³ In general, all correlations between the benchmarks and chronological time are small in magnitude and none are negative and statistically significant.

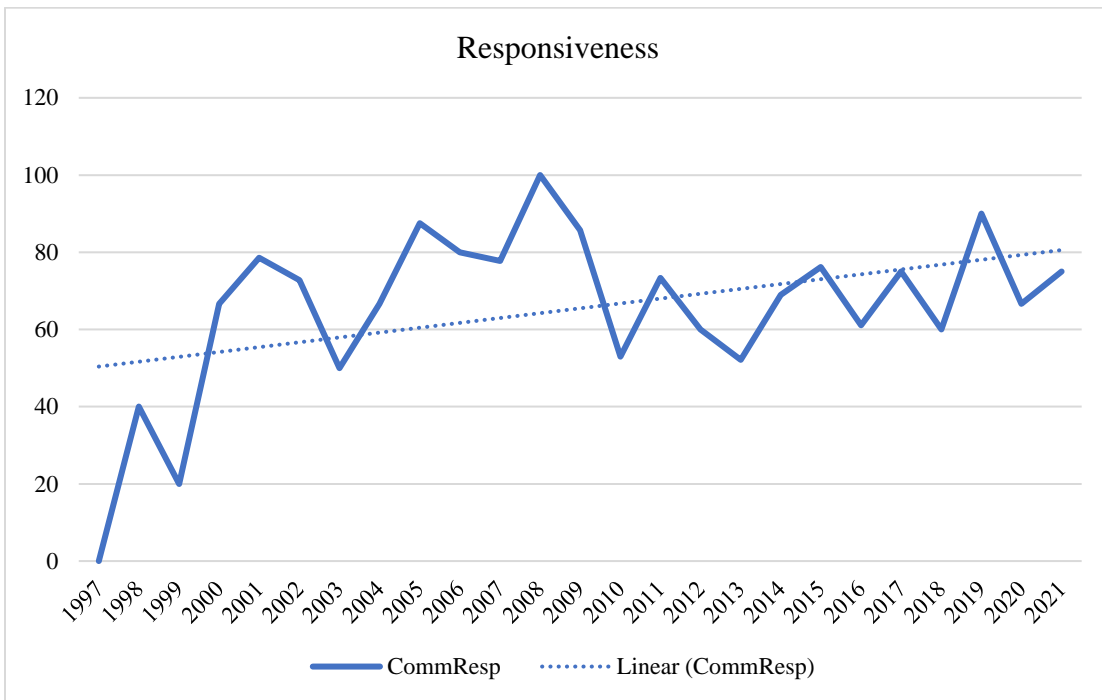
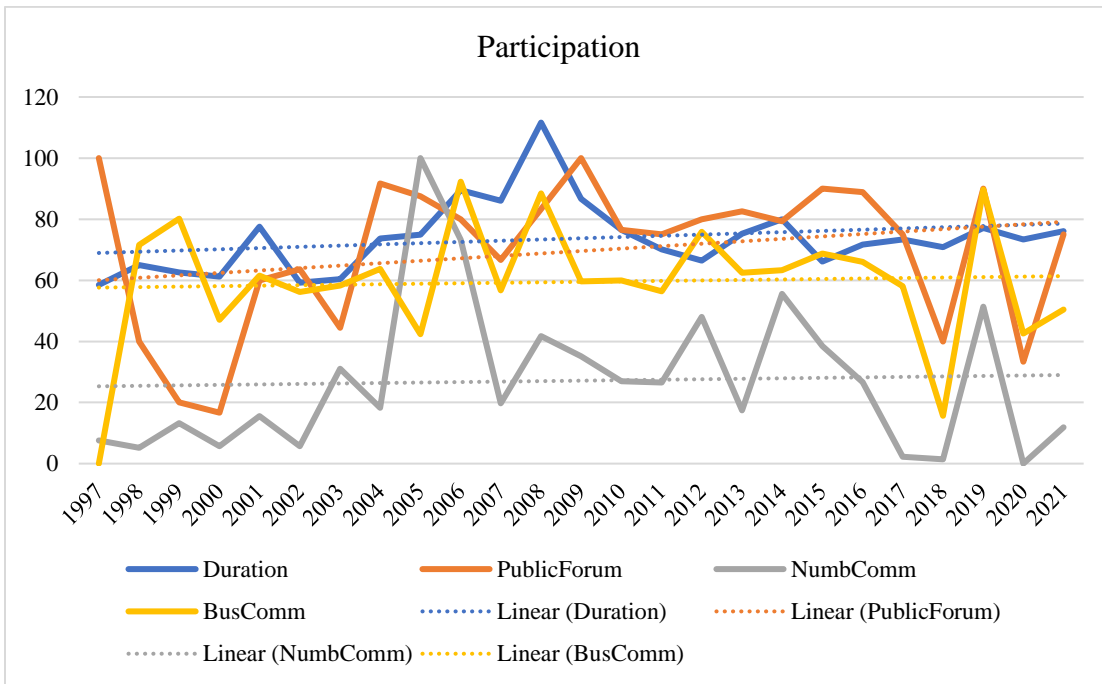
An alternative way to visualize evidence relevant to the erosion hypothesis is illustrated in Figure 5. Each line presents information for a particular benchmark on an annual basis. For continuous benchmarks, the lines are averages. The line associated with the number of pages in consultation documents, for example, is the average for all policies proposed in each year under analysis.¹⁴

¹³ All analyses discussed in the text and not presented in figures or tables are available from the authors upon request.

¹⁴ One exception is the number of comments submitted in response to proposed policies. Given the skewed distribution of this benchmark, the median is utilized instead of the mean.

Figure 5: Benchmarks of Transparency, Participation, and Responsiveness, by Year





Note: In this analysis, BusComm is measured as the percent of comments submitted by interests other than business.

For discrete benchmarks, the lines are percentages, such as the percent of consultations proposed in each year for which response documents were identified.

The evidence in Figure 5 is not consistent with the erosion hypothesis, which suggests a downward slope over time in the benchmarks of transparency, participation, and responsiveness. No benchmark—with one exception—exhibits a downward trend.¹⁵ The exception is the percent of response documents that contain the texts of public comments submitted during the consultation. The correlation between this percentage and the year in which the policy was proposed is $-.05$. This correlation is not statistically significant and, therefore, indicates an association that is indistinguishable from zero.

The bottom line is that the notice and comment process has not as a general matter witnessed a decline over time in transparency, participation, and responsiveness. In these respects, notice and comment policymaking has operated as an instrument of procedural stability in a period during which democratic governance in Hong Kong has confronted existential threats. Such stability is consistent with evidence suggesting that consultative policymaking is to some degree compatible with authoritarianism (Gueorguiev 2021). A salient concern in this regard is the extent to which opportunities for participation and the occurrence of participation—historical hallmarks of the notice and comment process in Hong Kong—continue to exhibit robustness in the years ahead.

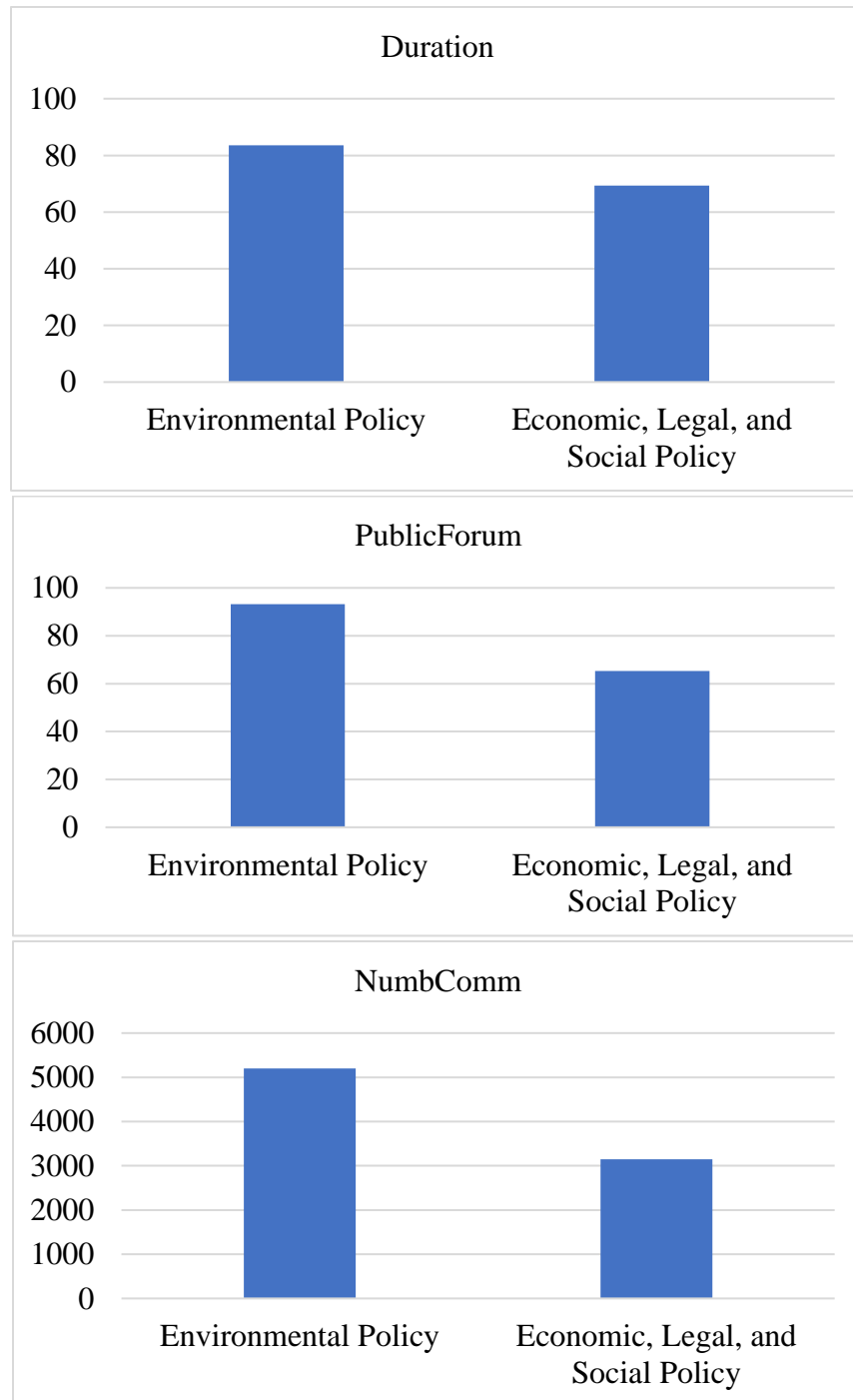
Environmental Hypothesis

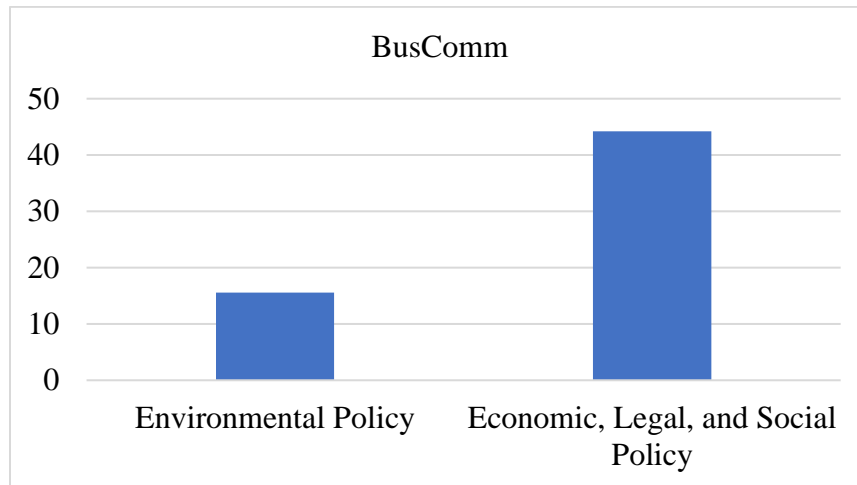
Case studies of consultation in Hong Kong suggest that the notice and comment process is relatively advanced in environmental policymaking, relative to other areas such as economic affairs (Cheung 2011, Joseph 2016). Our analysis, however, provides mixed evidence regarding the extent to which environmental policymaking is generally in the vanguard of transparency, participation, and responsiveness.

Opportunities for participation are relatively robust in environmental consultations. This robustness is illustrated in Figure 6 by a pair of benchmarks. First, comment periods are on average 15 days longer in environmental policymaking than in economic, legal, and social policy consultations. Second, public forums are nearly 30 percent more likely to occur in environmental consultations, in comparison to other policy areas.

¹⁵ One benchmark—the annual percent of consultations for which agencies provide responses to specific comments on an individual basis—is excluded from the analysis, as specific responses were provided in only three consultations.

Figure 6: Participation Benchmarks in Environmental versus Other Consultations





Note: The y-axes measure the average number of days of comment periods, the percent of consultations during which public forums were held, the average number of comments submitted, and the percent of comments submitted by business interests, respectively.

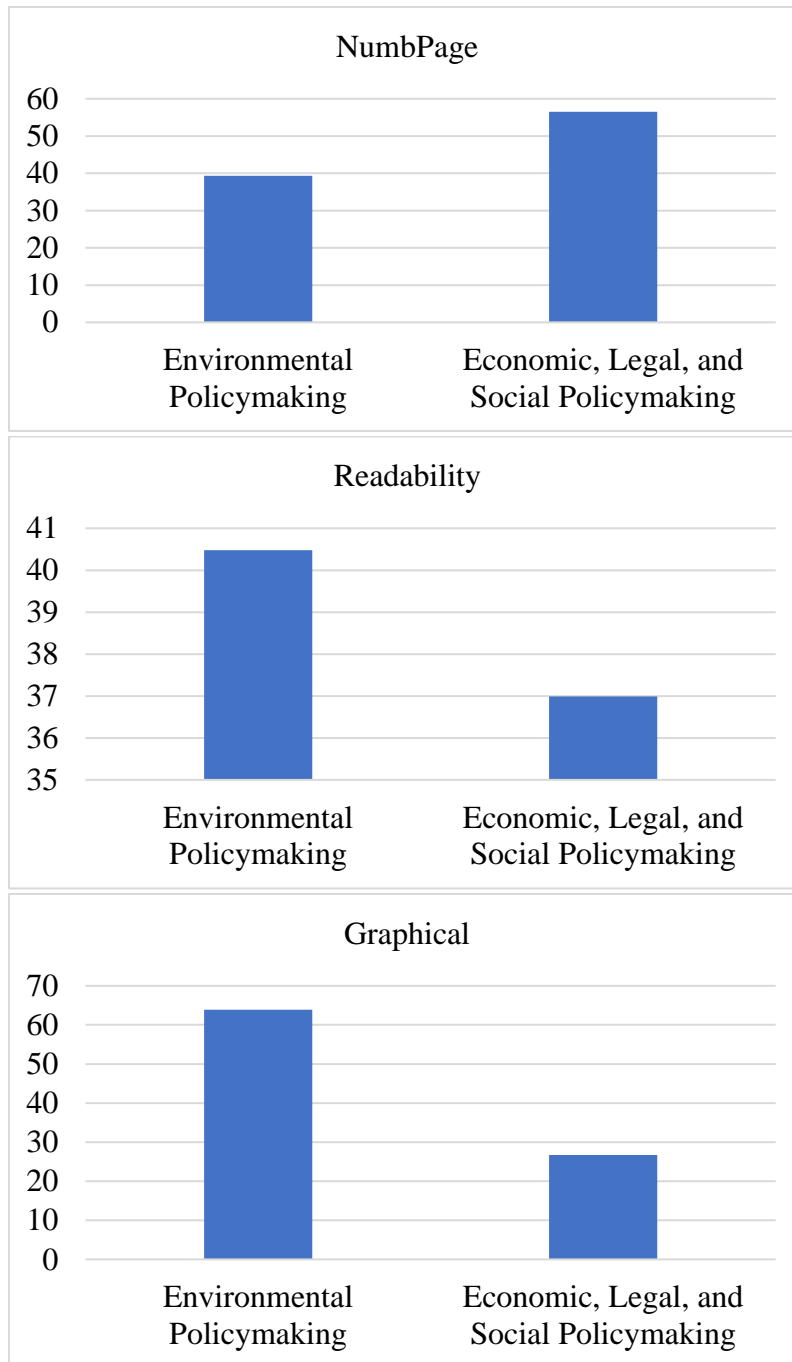
Perhaps as a byproduct of these opportunities, the average number of comments submitted during environmental consultations is larger than in economic, legal, and social policymaking. Furthermore, business interests do not dominate the submission of comments in environmental policymaking.¹⁶ None of the consultations in which business interests accounted for most if not all of the feedback occurred in environmental policymaking.

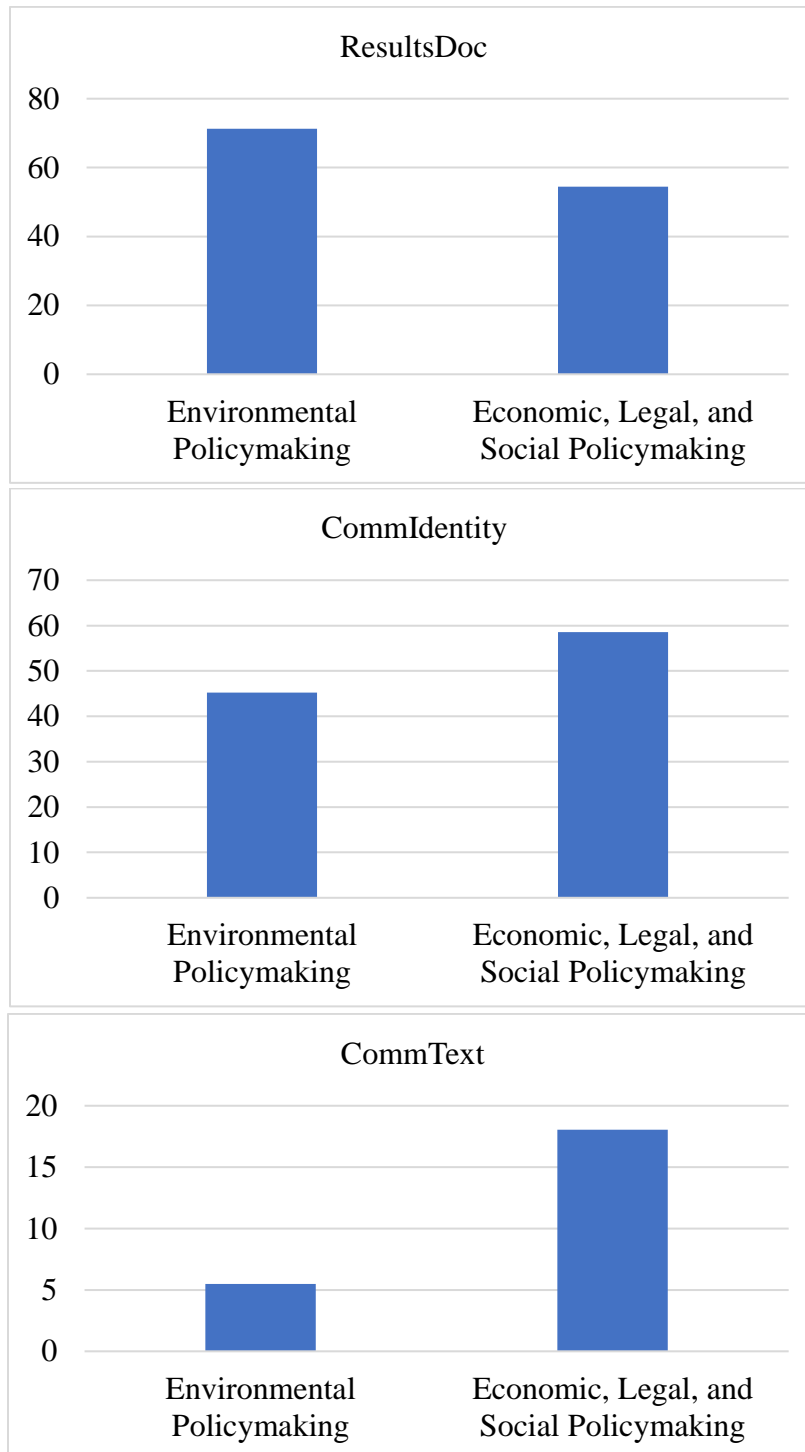
The evidence is mixed regarding the extent to which environmental policymaking is characterized by higher levels of transparency than economic, legal, and social policy consultations. As Figure 7 illustrates, environmental policy consultation documents are less difficult to read and more likely to contain graphics than consultation documents in other policy areas. Environmental policy results documents, however, are less likely to disclose the identities of commenters and include the texts of comments.¹⁷

¹⁶ The comment period duration, public forum, and business comment differences are statistically significant. The number of comments difference, however, is not statistically significant.

¹⁷ The differences discussed in this paragraph are statistically significant.

Figure 7: Transparency Benchmarks in Environmental versus Other Consultations



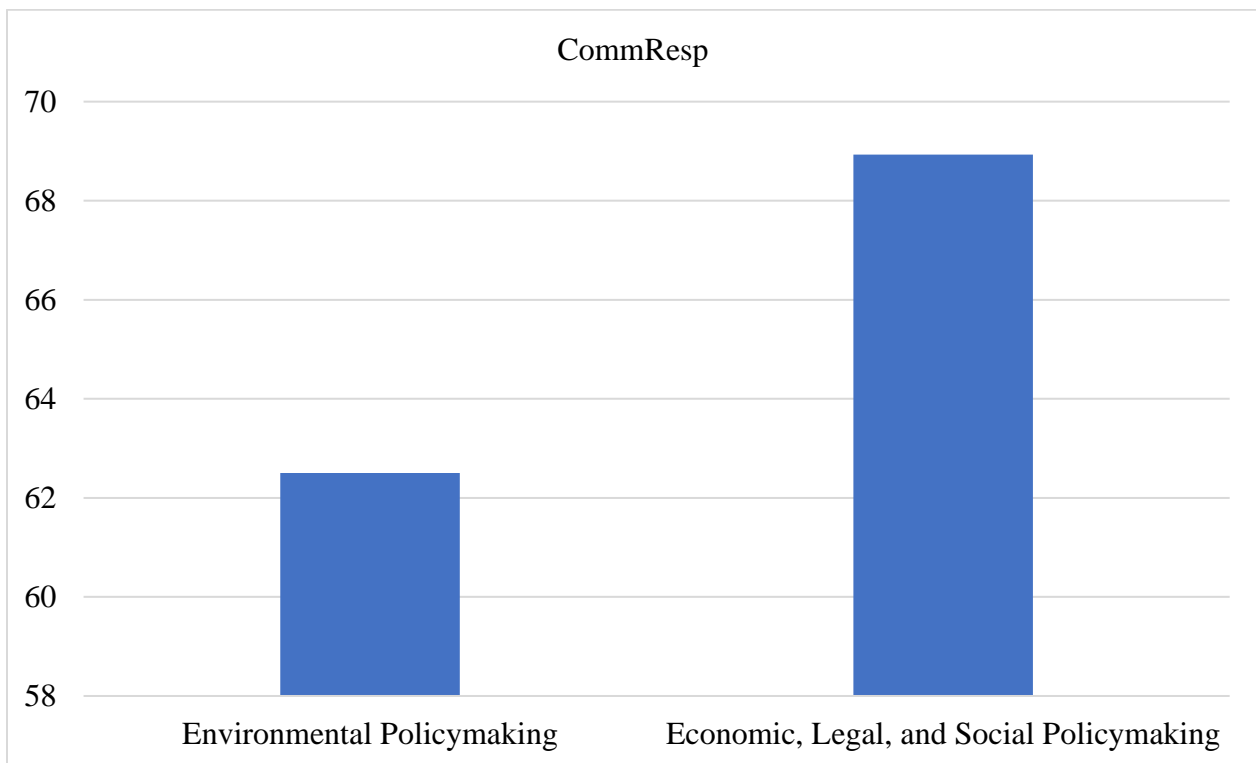


Note: The y-axes measure the average number of pages in consultation documents, the average Flesch reading ease scores of consultation documents, the percent of consultation documents that include graphical features, the percent of results documents that are publicly available, the

percent of results documents that disclose the identity of commenters, and the percent of results documents that include comment texts, respectively.

Finally, as highlighted in Figure 8, environmental consultations lag behind other areas in the dissemination of government responses to feedback submitted on proposed policies.¹⁸ Note that of the three consultations during which responses were provided to specific comments on an individual basis, one addressed environmental policy. The other two consultations pertained to economic policy and legal policy, respectively.

Figure 8: Responsiveness Benchmark in Environmental versus Other Consultations



Note: The y-axis measures the percent of results documents that disclose responses to comments.

¹⁸ This difference is not statistically significant.

Summary of Analysis

Our comprehensive, detailed analysis of the operation of consultative policymaking in Hong Kong has generated a number of novel insights. Participation is a more consistent feature of the notice and comment process than transparency or responsiveness. Agencies provide robust opportunities for the submission of feedback on proposed policies, and diverse arrays of organizations and individuals offer comments on consultation documents. Across benchmarks of transparency, participation, and responsiveness, there has not been an erosion over time in the process of consultation. This procedural persistence has manifested despite the fact that the CCP has in recent years expanded its influence over the institutions of Hong Kong's government. In the closing section, we consider the implications and shortcomings of these findings for researchers, policymakers, and stakeholders affected by agency decisions.

Conclusions and Implications

Despite decades of implementation, there is little broad-based knowledge regarding the practice of consultative policymaking in Hong Kong. Although insightful, previous analyses have been characterized by data limitations and resulting uncertainties with respect to generalizability. By collecting a wide variety of information about consultations conducted by agencies from across the Hong Kong government over a 25-year period, we have advanced understanding of both general patterns and systematic variation in the operation of the notice and comment process.

Our investigation of consultation documents, public comments, and government responses has produced insights that are more nuanced than prior research on the notice and comment process in Hong Kong. Diverse collections of organizations and individuals participate in consultative policymaking by submitting comments on proposed government policies. Although the government provides interested parties with ample opportunities to offer feedback, agencies do not consistently operate in a transparent and responsive manner. Agencies are particularly deficient at the conclusion of the notice and comment process, as demonstrated by a regular lack of accessibility and thoroughness of documents reporting the results of consultations.

These findings point to a number of evidence-based suggestions for the practice of consultative policymaking. The Hong Kong government should mandate that agencies make results documents readily available, preferably on GovHK alongside the consultation documents that are currently posted to the portal. Furthermore, agencies should be expected to enhance—to the extent practicable—the comprehensiveness of results documents in two specific ways. First, agencies should make the full texts of comments accessible to the public. Second, agencies

should publicly respond to substantive comments on an individual basis, rather than offer overarching statements about feedback in general.

One important limitation of our analysis is a lack of focus on the content of public comments and government responses. In other words, we have examined a variety of procedural elements of consultative policymaking without considering the substance of feedback and response documents. Are organizations and individuals generally in favor of or opposed to proposed government actions? To what extent do agencies revise policies on the basis of information communicated in comments and at forums?

Going forward, research on such questions is crucial to further understanding of consultative policymaking in Hong Kong. Practically speaking, enhanced transparency on the part of the Hong Kong government is an essential prerequisite for facilitating systematic analysis of the substance of public comments and agency responses. Absent such analysis, it remains possible that although consultation is procedurally robust, the notice and comment process fosters little more than a veneer of participation in a system in which decision makers give minimal consideration to arguments and evidence raised by interested parties. In the long run, unmet expectations of responsiveness run the risk of fostering popular discontent with the policymaking process and therefore threaten the legitimacy of the Hong Kong government (Dickson 2011, Gallagher 2006).

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