

The Eagle and the Dragon: Comparing Government Consultation and Public Participation between the US and China

By: Steven J. Balla & Zhoudan Xie | March 27, 2019

Government consultation and public participation in rulemaking have been standard practices in the United States (US) for decades, but they are relatively rare in China. Our recent [working paper](#) looks into online consultation, a new manifestation of Chinese government consultation and public participation in the making of laws and regulations. By analyzing thousands of public comments submitted in response to hundreds of consultations implemented by two government organizations, the paper uncovers many features of government consultation and public participation in Chinese rulemaking.

Although not directly addressed in the paper, these features demonstrate an interesting comparison with US notice-and-comment procedures. This commentary shows that the US and China appear to have little variation in consultation procedures and participation levels, but major divergence in the level of transparency and the type of stakeholders who participate.

Legal Foundation

Although the concept of consultation and participation is [not new](#), soliciting comments from the public on draft laws and regulations is a recent government reform in China. In 2000, the [Legislation Law](#) established the broad principle that citizens have the right to participate in the policymaking process. Subsequently, the [State Council](#) issued two procedures for the promulgation of [administrative regulations](#) and [rules](#) (interchangeably referred to as “regulations” or “rules” here). The procedures recommended that the State Council, ministries, and local governments listen to opinions on draft regulations. The [2018 amendments](#) on the procedures [reaffirmed](#) this recommendation and further specified several operational details of consultation, including a general expectation of 30-day comment periods.

In brief...

The US and China appear to have little variation in consultation procedures and participation levels, but major divergence in the level of transparency and the type of stakeholders who participate in government consultation.

Regulators, however, still decide whether to solicit comments from the public on a case-by-case basis. In fact, such practices have only been [utilized](#) by a limited number of government organizations in a narrow range of contexts.

In contrast, notice and comment has been a standard procedure for US agency rulemaking since the passage of the [Administrative Procedure Act](#) (APA) in 1946. Subsequent congressional legislation, judicial decisions, and presidential executive orders further [strengthened](#) the legal foundation of the procedure. Currently, agencies publish a notice of proposed rulemaking (NPRM) in the *Federal Register* and give interested parties an opportunity to submit written comments for [most of](#) the regulations they promulgate.

Submitting and Posting Comments

The Internet changed traditional modes of communication in the notice-and-comment process in the US. Stakeholders no longer have to send postal mail or fax to participate in rulemaking, although such options are still available. [Regulations.gov](#) has become the central portal for agencies to communicate regulatory decision-making and for the public to submit comments on proposed regulations over the Internet.

In China, there is no portal for soliciting and submitting comments that is as comprehensive as [Regulations.gov](#). Governments conducting consultations mainly rely on their official websites to announce policy proposals and solicit comments. Most of the consultations accept comments via the Internet, although some also offer alternative channels such as email and fax.

While online consultation has become a primary form of rulemaking consultation in both China and the US, variation exists to the extent that governments disclose the comments submitted. In the US, agencies generally make the comments received available to the public on [Regulations.gov](#), including scanned copies of the comments submitted by postal mail or fax. However, in China, this is not a usual practice. An earlier [analysis](#) of more than one hundred Chinese ministry and local government websites finds that very few government organizations post the texts of public comments online, which implies a lower level of transparency compared to US consultations.

Among the small set of organizations that post comments to the Internet, the Ministry of Commerce and Guangzhou Municipal Government represent, by a variety of metrics, the best practices in China; they became the focal points of the analysis in our working paper.

Duration of Comment Periods

A core procedural element of online consultation is the duration of comment periods. Our evaluation of the consultations conducted by the Ministry of Commerce during 2002–2016 suggests an average duration of 22 days. The duration of comment periods also gradually increased over time. Since 2013, the average duration has reached 30 days. Similarly, most consultations conducted by Guangzhou Municipal Government during 2010–2016 offered a comment period of 25 days or longer. Hence, the duration of comment periods in both organizations has approached the amount of time for public feedback (30 days) recommended in the State Council’s latest amendments to its procedures.

In the US, the APA does not specify a minimum duration for comment periods. Although multiple executive orders (e.g., EOs [12866](#) and [13563](#)) recommended a minimum of 60 days for significant regulations, [empirical evidence](#) shows that the average duration of comment periods across federal agencies is 39 days. However, the duration varies substantially across agencies and proposed regulations. Generally the duration for [economically significant](#) regulations is longer, with an [average](#) of 45 days. Such variation in duration across policy proposals was not observed in China.

In sum, the typical duration of comment periods for Chinese consultations has been shorter than that in the US. However, with the State Council's very recent recommendation of 30 days, it is likely that the duration of comment periods in China will continue rising to a level close to the current average duration in the US.

Volume of Comments

Although the Ministry of Commerce and Guangzhou Municipal Government have solicited comments for hundreds of proposed regulations, the number of comments received for those regulations is typically rather modest. For both organizations, the volume of comments for most consultations is less than 10, and for nearly 90 percent it is less than 50. There are a few exceptions with a particularly large number of comments. For example, a proposal requiring elementary schools to provide after-school programs in Guangzhou solicited 4,807 comments, including strong support from parents and firm opposition from teachers. The policy proposals with a large number of comments generally concern controversial affairs related to people's everyday lives.

The volume of comments submitted for US regulations is usually higher, but not by a large degree. While recent news highlighted comments that [flooded in](#) for the net neutrality rule, receiving a large number of comments is not a typical phenomenon for most rulemaking consultations. Systematic analyses of rules issued by different agencies [suggest](#) fairly limited numbers of comments. For example, an [analysis](#) of 463 regulatory actions completed by the DOT between 1995 and 2003 reveals a median number of 13 comments submitted in response to the NPRMs. Apparently, these findings do not suggest a wide gap in the degree of public participation between Chinese and US consultations.

Who Participates?

A conventional wisdom about public participation in rulemaking is the dominance of business interests. Several [empirical studies](#) of US rulemaking have found that business participation in notice-and-comment rulemaking is more active than participation by other stakeholders.

Interestingly, this is not the case for notice and comment in China. During the submission process, participants in Ministry of Commerce consultations are given the option of identifying the organization with which they are affiliated. The Ministry received feedback from a diverse array of entities, with the largest number of comments from local governments, followed by private companies, individuals, non-profit organizations, and institutions of higher education. At the local level, most of the comments submitted to Guangzhou Municipal Government consultations were from citizens, as their policy proposals are less about national economic affairs than personal concerns, such as the after-school care of their children and the use of electric bicycles.

Conclusion

Many of the operational details of government consultation and public participation in China remain opaque. Yet the unpacked features of China's online consultation suggest that there is not a wide gap between China and the US in terms of consultation procedures (i.e., the use of the Internet and the duration of comment periods) and the degree of public participation (i.e., the volume of comments). Major divergences exist across the levels of transparency and the types of stakeholders participating in the consultations. Certainly, future research can further extend the comparison to other features such as the substance of comments. Moreover, in contrast to the US notice-and-comment process, which has long been a standard procedure in rulemaking, consultations and public participation for draft regulations in China have not yet become institutionalized to the same degree. Our [working paper](#) suggests that although promising, online consultation has a long way to go before it can be considered a procedurally and substantively institutionalized form of policymaking in China.

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