

Taiwan's Referendum Act and the Stability of the Status Quo*

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The international community has watched Taiwan's first referendum, held on March 20, 2004, with great concern, for fear that it would destabilize the relations across the Taiwan Strait. Less attention, however, has been given to the legal basis of this referendum. This article offers a thorough analysis of Taiwan's Referendum Act and discusses its effects on the status quo which is defined as the situation before any referendum is held. The article distinguishes among various types of referendum institutions, and demonstrates that many articles in the Act actually add more veto-playing forces to the existing political system and thus raises the cost for the status quo to be changed. These impacts on the status quo are diminished, however, by the high passage threshold. Based on this analysis, a concluding section projects the possible ways in which the Act can be revised.

KEYWORDS: Referendum Act; initiative and reconsideration; defensive referendum; plebiscite; 2004 presidential election; cross-Strait relations; Taiwan's democratization.

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On March 20, 2004, the citizens of Taiwan cast their ballots in the island's first-ever national referendum.¹ Although the ballots were predominantly in favor of the posed questions, the referendum was annulled because the number of voters who cast a referendum ballot failed to reach the required 50 percent mark.² The international community has watched this referendum with great concern for fear that it would destabilize the status quo across the Taiwan Strait. This referendum originated in the "defensive clause" (防禦性條款) of Taiwan's Referendum Act (公投法), which authorizes the President to initiate a referendum when the nation's sovereignty is confronted by external forces. This clause, however, is just one of the sixty-four articles of the law. An interesting question is thus whether the defensive referendum reflects the general nature of the Referendum Act or is an exceptional design. The answer to this question would lead to different expectations of Taiwan's referendum system.

The purpose of this article is to give a detailed account of Taiwan's Referendum Act in order to answer some important questions: How can a referendum be initiated in Taiwan? Who actually makes the decision? Will the referendum become a constant component of Taiwan's political process? If so, will the system undermine the status quo of the referendum issue? This article tackles these problems from a theoretical perspective, and begins by introducing the rise of Taiwan's referendum movement and then clarifying the definition of the referendum system. The next section then discusses how various types of referendum designs can produce opposite outcomes and allow room for strategic manipulation. The analysis will then apply these findings to reassess the Referendum Act passed by Taiwan's Legislative Yuan (立法院), and measure the possibility for the status quo to be changed by the referendum under different circumstances. The approach of this

¹ For a comprehensive description of the process of this referendum and its relationship with the presidential poll, see Bruno Kaufmann and Mattias Goldmann, *Taiwan 2004 Referendum Assessment Report* (Initiative and Referendum Institute Europe, 2004).

² About 45 percent of the eligible electors participated in this referendum. The first question was: "If the PRC refuses both to withdraw the missiles it has targeted at Taiwan and to openly renounce the use of force against us, would you agree that the government should acquire more advanced anti-missile weapons to strengthen Taiwan's self-defense capabilities?" The second question was: "Would you agree that our government should engage in negotiations with the PRC about the establishment of a 'peace and stability' framework for cross-Strait interactions in order to build consensus and for the welfare of the peoples on both sides?" About 88 percent and 85 percent of the eligible voters answered "yes" for the first and second questions, respectively. See *Taipei Times*, January 17 and March 21, 2004.

article is institutional. Unlike many countries where the constitution (or convention) is the only legal foundation of referendum, Taiwan defines the system's details by a law. The Taiwan case will show how the constitutional legitimacy of referenda can sometimes be affected by an article in a law.

Referendum and Decision-Making

As an essential institution of direct democracy,³ the referendum has been used to scotch the abuse of legislative powers.⁴ The legitimacy of this institution grows, therefore, when the distrust of representative democracy broadens. The referendum calls on the citizens to vote on issues, and is thought to be more reasonable than electoral democracy.⁵ Although having been used most frequently in the advanced democracies—Switzerland in particular, the popularity of the referendum has spread quickly in nascent political entities.⁶ This mechanism has been widely employed by both the post-communist states to legitimize new constitutions⁷ and by European states in deciding whether or not to seek European Union (EU) membership.⁸ Despite the growing popularity of referendum use, however, some critics are questioning whether this system, by presenting only one issue at a time, can really reflect the voice of the people.⁹ There are also studies showing the complicated roles

³ Direct democracy requires other conditions, however. See Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries* (New Haven and London: Yale University Press, 1984), 30-32.

⁴ Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge, Mass.: Harvard University Press, 1989).

⁵ A cross-regional econometric analysis shows that direct democracy via initiative and referendum systematically and sizably raises self-reported individual well-being. See Bruno S. Frey, "Happiness, Economy, and Institutions," *The Economic Journal* 110, no. 466 (2000): 918-39.

⁶ Since 1793, nearly one thousand referenda have taken place, and only four advanced democracies have not held a nationwide referendum—interestingly, the United States is one of them. See Gary M. Anderson, "Electoral Limits," in *Limiting Leviathan*, ed. Donald P. Racheter and Richard Wagner (Cheltenham, England: Edward Elgar, 1999), 176-202.

⁷ Andreas Auer and Michael Bützer, eds., *Direct Democracy: The Eastern and Central European Experience* (Aldershot, Hants, England/Burlington, Vt.: Ashgate, 2001).

⁸ David Butler and Austin Ranney, eds., *Referendums Around the World: The Growing Use of Direct Democracy* (New York: Palgrave/Macmillan, 1997). An empirical study verifies that, in the case of European integration, referendum use has led to more supportive voters than when this system was excluded. See Thomas Christin and Simon Hug, "Referendums and Citizen Support for European Integration," *Comparative Political Studies* 35, no. 5 (2002): 586-618.

⁹ Sherman J. Clark, "A Populist Critique of Direct Democracy," *Harvard Law Review* 112, no. 2 (1998):

of the use of referenda in policymaking, particularly the ability to change the status quo.¹⁰

Taiwan has been experiencing a similar debate on the merits of the referendum. In the past two decades, the island has witnessed a quick advancement of democratization.¹¹ The process has been accompanied by intensive constitutional reforms in which instituting a referendum system was placed on the agenda right from the beginning. This goal was never fulfilled, however.¹² The Democratic Progressive Party (DPP, 民主進步黨)—Taiwan's major opposition party before May 2000—has taken the establishment of this system as its major platform. Supposedly able to give the power back to the people, the referendum system is also popular among social activists. Having gained control over the presidency in May 2000, the DPP was still a minority legislative party and thus failed to halt the building of a fourth nuclear power plant; the referendum thus became an appealing alternative. In the Legislative Yuan (Taiwan's parliament), DPP legislators attempted to present their proposals for a Referendum Act, but could not overcome the roadblocks set up by the Kuomintang (KMT, 國民黨) and the People First Party (PFP, 親民黨). When President Chen Shui-bian (陳水扁), who is also the DPP's Chairman, emphasized again in mid-2003 his intention to set the referendum movement into action, the attitude of opposition parties on the referendum issue suddenly made a U-turn. The major cause was the presidential election of 2004. The race was such a close one that each camp sought to woo voters from the other side.¹³ The opposition's engagement of the referendum issue was certainly a counter-strike to Chen's campaign strategy.

To compete with the DPP's Referendum Act proposal, the opposition

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¹⁰ See, for example, Harold D. Clarke, Allan Kornberg, and Marianne C. Stewart, "Referendum Voting as Political Choice: The Case of Quebec," *British Journal of Political Science* 34, part 2 (2004): 345-56. The issue of the status quo will be addressed later.

¹¹ For the history of Taiwan's democratization, see Hung-mao Tien, "Taiwan's Transformation," in *Consolidating the Third Wave Democracies*, ed. Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien (Baltimore and London: Johns Hopkins University Press, 1997), 123-62.

¹² For details, see Jih-wen Lin, "Transition Through Transaction: Taiwan's Constitutional Reforms in the Lee Teng-hui Era," *American Asian Review* 20, no. 2 (2002): 123-55.

¹³ Most opinion polls released by Taiwan's mass media indicated that the gap between the KMT's presidential candidate Lien Chan (連戰) and the DPP's Chen Shui-bian was within about 5 percent, a difference which might have been due to sampling error.

parties—or the pan-Blue (泛藍) camp—on July 3, 2003 announced their principles on the issue. Later on, the pan-Blue camp even conceded that they would not exclude the use of the referendum on such topics as constitutional revision and the changing of national symbols.¹⁴ The contest soon put the issue on the legislative agenda, prompting the Legislative Yuan to pass the Referendum Act on November 27, 2003. According to this new law, Taiwan's citizens can now initiate new laws or vote on both existing laws and constitutional amendments.¹⁵ This outcome is not a surprise, however, because the pan-Blue parties have long claimed themselves to be the followers of Sun Yat-sen (孫逸仙). The Constitution of the Republic of China—the official national name professed by the government of Taiwan—stipulates that the people shall have the right of election, recall, initiative, and referendum (Article 17). The referendum had never been used in Taiwan because the Constitution also stipulates that the exercise of the rights of initiative and referendum shall be prescribed by law (Article 136). This stipulation also explains why, unlike the cases of many other democracies, Taiwan's referendum process must be regulated by law.

The Referendum Act specifies in detail the process through which initiative and referendum can be initiated and put to vote. As will be discussed later, the law opens only one channel for the executive branch to initiate a referendum.¹⁶ In Article 17, the law stipulates that the President is entitled to launch a referendum when the nation's sovereignty is being threatened. Since Chen Shui-bian has long been promoting referendum use and that his first term was to end in a few months, this article became his only instrument to realize that goal. For several reasons, Chen's announcement that he would put Article 17—or what is usually called the "defensive referendum"—into practice, soon put the international community on alert. First, President Chen comes from an independence-leaning party. In addition to social movements, nation-building is another source of Taiwan's referendum movement. The DPP party platform clearly states the relationship between Taiwan

¹⁴ There have been other proposals of the Referendum Act, the most noticeable being the version recommended by DPP legislator Trong Chai (蔡同榮), a major advocator of the referendum movement. I will address the difference among the competing versions of the law in a later section of this paper.

¹⁵ *Taipei Times*, November 28, 2003.

¹⁶ According to Taiwan's current constitutional system, the executive branch is composed of the Presidential Office (總統府) and the Executive Yuan (行政院). I will use these names to designate the initiators of Taiwan's referendum.

independence and the use of referendum. Most notably, the platform states that "the proposal to establish the Republic of Taiwan and a new constitution should be decided by the people in Taiwan via referendum" and that "any change of Taiwan's independent status quo should be decided by the people of Taiwan via referendum."¹⁷ Second, President Chen himself has reiterated in his campaign speeches that he hopes to establish a new constitution via the referendum mechanism in 2006. To those who already suspect Chen's intentions, the abolishment of the Constitution of the Republic of China will substantiate Taiwan's independence furthermore; to them, the defensive referendum use marks the first step toward reaching this end. For the same reason, the referendum becomes an indispensable component of Taiwan's national identity politics, which gives the DPP a powerful leverage to mobilize its supporters in the presidential election.

In this context, the defensive referendum was regarded by the government of the People's Republic of China (PRC) as preparation for independence.¹⁸ Even U.S. President George W. Bush sternly rebuked Chen's attempt to initiate the defensive referendum when meeting with Wen Jiabao (溫家寶), the PRC Premier, on December 9, 2003.¹⁹ Some analysts hold that the United States is justified in discouraging Chen's referendum attempt "as part of [Washington's] its broader effort to establish the conditions underlying its political and military support to the island."²⁰ The leaders of Japan, France, and the European Union followed the lead of the United States, criticizing President Chen's decision with unprecedented harshness. The reason that these democracies sought to repudiate Taiwan's right to hold a referendum can be explained by their reluctance to anger the PRC, a country that is playing an ever important role in international political economy. Many countries fear that Taiwan's referendum will provoke the PRC to take preemptive action, thereby forcing the United States and her allies to recast their global strategies.

¹⁷ See <http://www.dpp.org.tw>.

¹⁸ According to Kong Quan (孔泉), the spokesman of the PRC's Foreign Ministry, "some people on Taiwan are using the false pretext of democracy to hold what is in reality a Taiwan independence referendum damaging the stable situation in the Taiwan Strait." See *New York Times*, March 19, 2004.

¹⁹ Bush's remark was more than lip service to the PRC delegate. Chen Chien-jen (程建人), head of the Taipei Economic and Cultural Representative Office in Washington, returned to Taipei to issue a warning to the government about the deteriorating relationship between Taiwan and the United States after President Chen announced the referendum proposal. See *Taipei Times*, December 30, 2003.

²⁰ Michael D. Swaine, "Trouble in Taiwan," *Foreign Affairs* 83, no. 2 (March/April 2004): 39.

More specifically, the international community is concerned that Taiwan's referendum will destabilize the status quo across the Taiwan Strait. The DPP's platform has already made clear that any change of Taiwan's sovereignty status would involve the use of a referendum. Initiating the referendum, therefore, becomes a necessary step in the pursuit of Taiwan's independence. If the result or the practice of the referendum violates the "one-China" principle, the PRC would be forced to respond. Thus the international community has felt the need to discourage Taiwan's referendum effort in order to maintain a tight relationship with the PRC.

This apprehension is based on the assumption that the use of the referendum would provoke a change in the status quo. Here a distinction must be made regarding the meaning of the term "status quo." While many believe that the holding of a referendum is enough to modulate the existing process of decision-making—which can itself be regarded as a status quo, this article focuses on whether the result of a referendum can change the content of a policy or decision. For example, Taiwan's defensive referendum, a threat to Beijing no matter what the outcome may be, could very well likely change the *political* status quo across the Strait. By contrast, this article is concerned with the *policy* status quo: if the success or failure of the defensive referendum would influence either the procurement of Taiwan's anti-missile devices or the government's stance in cross-Strait negotiations. In fact, if referendum use fails to influence policymaking or legislation on a regular basis, its function as a political institution will be diminished. The purpose of this article is to show that, as an instrument of decision-making, the impact of the referendum mechanism is determined by its institutional designs. Thus, the subsequent sections will challenge the intuition that referendum is prone to upset the status quo.

This argument is made by first introducing the various types of referendum systems and then demonstrating their different status quo-changing capabilities. The focus of the analysis will be on how the referendum interacts with other parts of the decision-making process and whether referenda can be manipulated. This discussion will then facilitate our understanding of Taiwan's referendum system and its likely future impacts. The analysis will help us answer some important questions: How unique is the "defensive referendum"? Will other referendum designs undermine the status quo for other issues as well? Who will benefit from referendum use? Can referendum achieve what representative democracy cannot? Most important, will referendum transform the nature of Taiwan's democracy?

Referendum: Definition and Types

Defined most loosely, referendum refers to the people's decision on public affairs. This definition is far from sufficient, however, being unable to capture the nature of the system. In fact, the term "referendum" is conceptually confusing. A plebiscite, for example, indicates almost the same process, except that it is usually applied to public decisions regarding sovereignty change or constitution-making. Since the plebiscite is utilized to legitimize the political system itself, the decision process involves only the citizens. Nonetheless, the plebiscite (defined in this way) is rarely used in this day and age. The referendum, in contrast, involves the participation of both the legislature and executive, through which many subtypes of the system are created.

In a narrower sense, the referendum designates the institution where the people reject or approve laws passed by the legislature.²¹ In Switzerland, where the term was first coined, referendum means "to report to"; in the United States, it describes the process where delegates make laws *ad referendum* to the voters. In sum, a referendum is a public vote on resolutions, laws, or constitutional amendments adopted by the legislature.²² Sometimes the policies of the executive organizations can also become the object of a referendum. The initiator of a referendum is most frequently the legislature or the executive, and less so the people. A referendum initiated by the people is called the popular referendum (or petition referendum). In some cases, the referendum is advisory and imposes no legal constraints. The referendum can be mandatory or optional, depending on whether such a procedure is required by law.

In contrast, an initiative is a public motion on legislative measures, constitutional amendments, or government policies. The initiative is most frequently brought into being by the people, yet the decision can be carried out in various ways. An initiative is indirect if the motion is sent either to the legislature or the executive in

²¹ A referendum is rejective if the target is a recently passed law, and is abrogative if the target is an existing law. In both cases, the people enjoy only veto power and cannot amend the proposal.

²² In the United States, citizens cannot cast votes on national issues, although constitutional amendments must be approved by referendum in all states except Delaware. See Cronin, *Direct Democracy*, 2-3.

order to be realized, and is returned to the people only if the legislature or the executive fails to realize the object. A direct initiative is submitted straight to the people for a decision, and is procedurally similar to direct legislation. Under some situations, the people's initiative can call for a referendum on the motion—a process which is called the referendum initiative.

The above are all standard definitions. They are, however, too general to specify the difference among various referendum systems, let alone the impacts on decision-making.²³ Scholars tend to classify referendum by whether they are mandatory, decisive, constitutionally pre-regulated, or whether the people's role is active.²⁴ Keeping these categories in mind, we still need to highlight the interplay among the citizens, the parliament, and the executive—for this is the key dynamic that shapes the outcomes of the referendum.

To facilitate analysis, I first define some key terms. To begin with, the “agenda-setter” is the one—be it the people, the executive, or the legislature—who writes the motion to be put to vote. When a referendum on a passed law is launched, the agenda-setter is naturally the legislature (the agenda-setter varies in other cases). Second, an “initiator” is one who calls the referendum or initiative into action. While an initiative is usually begun by the people, a referendum could—depending on law—be initiated by the people, the executive, or the legislature. Third, an “approver” is the body that makes the final decision on an initiative or referendum. The decision will have legal effect if the initiative or referendum is decisive. For all systems of initiative and referendum, the final approver must be the people, although in an indirect initiative the legislature or the executive can preempt the decision by passing a similar resolution. Meanwhile, we should consider the legal outcomes of these systems by specifying the decision-making process. Table 1 summarizes the players in various referendum institutions. Finally, to be consistent with the popular understanding of the term “referendum,” the following analysis will apply in its broader sense—i.e., it includes all kinds of referenda on public affairs. I will use “reconsideration” to indicate the people's decision on an existing law or policy. A

²³ For a referendum typology and the concrete experiences of its implementation, see Michael Gallagher and Piervincenzo Uleri, eds., *The Referendum Experience in Europe* (New York: Macmillan, 1996).

²⁴ For example, see Markku Suksi, *Bringing in the People: A Comparison of Constitutional Forms and Practices of the Referendum. The Netherlands* (Dordrecht: Martinus Nijhoff, 1993), 1-14.

successful initiative suggests that the people are able to create a new law or a new policy by their motion. If a reconsideration is passed, the legal effect of the object—a law or a policy—is temporarily annulled.²⁵

[Table 1 about here]

Referendum and the Status Quo: Theories of Veto-Playing and Agenda Manipulation

To proponents, the greatest merit of the referendum system is the direct involvement of the people in the decision-making process; to opponents, greater participation does not ensure better quality. This section will address this debate by focusing on two issues. The first is how the various types of referendum affect the stability of the status quo. The second is whether the referendum is less manipulable than a parliamentary vote. The commonsense view would suggest that citizen participation should make the reform of the status quo easier, with the decision-making process thus being done in a more transparent manner. In the following, I will utilize two social science theories to cast doubt on this intuition. The derived findings will also enable us to decipher the political implications of Taiwan's Referendum Act.

First, according to the veto player theory, the increase of veto players (those whose agreement is required to alter the status quo) or the broadening of their policy distance will enhance the stability of the status quo.²⁶ A veto player can be a collective one if a quorum is required for this body to pass a resolution. For example, the legislature usually applies certain majority rules to initiate a referendum. In some countries, a referendum is invalid if either the number of endorsers or the turnout rate fails to reach the thresholds required by law. In this article, *the status quo is defined as the situation before a decision is being made*. Each constitutional system will depict its own decision-making process. The status quo can be modified by a legislative act or a government policy. If the decision-making process includes a referendum, several outcomes can follow (see fig. 1). The initiators of an initiative

²⁵ In Chinese, initiative, reconsideration, and referendum are respectively translated as *chuangzhi* (創制), *fujue* (複決), and *gongmin toupiao* (公民投票).

²⁶ See George Tsebelis, *Veto Players: How Political Institutions Work* (Princeton, N.J.: Princeton University Press, 2002).

can create a law or set up a new policy if this process is successful and decisive. If an initiative is claimed invalid, the situation will return to the status quo. A reconsideration must be based on the existence of a law or a policy. Suppose a law or a policy has been adopted to change the status quo. If a reconsideration is passed under this situation, the law or the policy is temporarily annulled and the status quo is restored. If this referendum fails, the status quo will be changed by the law or the policy.²⁷

[Figure 1 about here]

Second, agenda-setting plays a very important role in the strategic manipulation of decision-making.²⁸ In some sense, a referendum is always vulnerable to manipulation, no matter what the procedure is. Even direct initiative or direct legislation can be the result of elite manipulation. Here, however, we must distinguish between two kinds of manipulation tactics. The first is generally related to issues that are divisive; the alternatives are by nature binary, and the voters are "mobilized" to support or reject one of them.²⁹ The second type involves issues that are complicated and have multiple options. Since a referendum presents one issue at a time and asks the voters to approve or disapprove a statement, the room for manipulation is great in this circumstance. This is the "manipulation" defined by social choice theory: it occurs if an individual or a minority group can change the outcome of collective choice through agenda-setting or strategic voting.³⁰ Agenda-setting refers to the decisions on which issue to present and what binary choices to select. To distinguish this concept from what is intuitively understood as "manipulation," we will use the term "agenda manipulation" to depict this situation. Social choice theory has shown that agenda manipulation can lead to contradictory outcomes. To see how this is so, consider the following cases.

²⁷ In some cases, the status quo is set to change by itself, and a law or a policy is made to prevent this change. In this case, we should define the status quo as the situation that exists right before the law or the policy is to be adopted.

²⁸ For how the initiative and referendum have been manipulated to serve political ends, see Mark Clarence Walker, *The Strategic Use of Referendums: Power, Legitimacy, and Democracy* (New York: Palgrave/Macmillan, 2003).

²⁹ For how conservatives in the United States have used direct legislation to propagate their political ideas, see Cronin, *Direct Democracy*, 3.

³⁰ Peter C. Ordeshook, *Game Theory and Political Theory* (New York: Cambridge University Press, 1986), 86.

When the opinions on an issue can be listed on a single spectrum, the resolution must have multiple alternatives in order for the agenda to be manipulable. The agenda-setter can manipulate the outcome by choosing the most favorable ways to compare the alternatives. For instance, suppose that the percentages of Taiwan's voters who support independence, the status quo, and reunification are thirty, forty-five, and twenty-five, respectively (and that the voters vote sincerely).³¹ Also assume that half of those who favor the status quo put independence as their second choice, and half list reunification as their second preference. Although the voters have three choices in mind, a referendum question usually asks them to approve or disapprove one of the options. Therefore, a pro-independence initiator can ask the public whether or not they want to keep the status quo. If the voters vote sincerely, the status quo will be rejected because a majority ranks maintaining the current situation as the second choice. The voice for independence then prevails after the status quo is excluded from the options. Likewise, the backers of the status quo can obtain a favorable result by asking the voters to choose between the status quo and reunification.

Social choice theory has demonstrated that, when the issue is multi-dimensional and when a Condorcet winner does not exist, an agenda-setter can reach any result he wants by asking the voters to decide on issues where he enjoys majority support.³² When the voters' preferences are nonseparable (i.e., the total utility of an individual is not a summation of his utilities on each issue dimension), even a Condorcet winner is not guaranteed to win.³³ In the legislature, this problem could be solved by either issue-by-issue voting or vote-trading, but such mechanisms cannot be used in a referendum, making the system more manipulable than a legislative decision.³⁴

³¹ This distribution in fact quite closely resembles Taiwan's actual situation.

³² An alternative is a Condorcet winner if it beats all other options in pairwise comparisons using majority rule. See Richard D. McKelvey, "Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control," *Journal of Economic Theory* 12 (1976): 472-80.

³³ A good example of nonseparable preference is the sovereignty dilemma that many people in Taiwan face. To this group, Taiwan independence is an acceptable choice only if it incurs no military threat. Thus we cannot determine their attitudes on the independence issue without considering the security condition.

³⁴ Dean Lacy and Emerson M.S. Niou, "A Problem with Referendums," *Journal of Theoretical Politics* 12, no. 1 (2000): 5-31.

It is beyond the scope of any model to predict the type of a referendum issue. One thing, however, is certain: an initiator who belongs to a minority party or group can benefit from a referendum only if the issue belongs to the second type. Meanwhile, he must be able to estimate carefully the latent outcomes of a complicated issue. To accomplish this, the initiator must have sufficient political knowledge and be capable of strategic thinking. Assuming that most people do not have these talents, it follows that the likelihood of agenda manipulation goes up as the threshold to initiate a referendum goes down. In the most extreme case, the agenda-setter and the initiator can be just one person (the president, for instance), who thus basically has a free hand when designing the agenda, and can single-handedly launch a referendum. In the other extreme, agenda manipulation is difficult, if not impossible, when the initiation of a referendum has to be endorsed by the general public.³⁵ The writer of the motion can of course be a strategic calculator, but the probability for a manipulated referendum question to be put on the agenda is reduced when the required number of endorsers increases.

[Table 2 about here]

These two theories can then be used to classify the referendum systems by their potential to change the status quo and their agenda manipulability. The findings are summarized in table 2. According to table 1, the people, the legislature, and the executive are all collective veto players in particular settings. A referendum is ineffective if the designated actors refuse to initiate or approve the petition, whereby the status quo is made unchangeable. It follows from figure 1 that the institution most conducive to status quo change is the direct initiative; this is because the people constitute the only veto player in this institution.³⁶ The agenda-setter, the initiator, and the approver can be composed of different subsets of the people, but no other organization is involved. If we assume that the agenda-setter and the initiator are subsets of the approver, viewing people as a single veto player is still reasonable;

³⁵ Concerning Taiwan's legislative reform, electoral system and legislative size are the most critical issues. When the reformists attempted to collect public signatures to protest the Legislative Yuan's inaction, the issue of electoral system had to be dropped because it was too complicated for the ordinary citizen. Even the question of legislative size has been simplified into: "Do you agree that the Legislative Yuan should be halved?"

³⁶ In this case, the lower the petition threshold, the easier it is for the status quo to be modified. Similarly, the status quo is more likely to be kept if the law requires a higher turnout rate for the referendum to be valid.

this is because the agenda-setter, the initiator, and the approver in a direct initiative must take the same stance. With an indirect initiative, the legislature or the executive could redefine the objective of the initiative and adjust the shift of the status quo. An initiative put forward by the legislature or the executive is also prone to change the status quo, but the motion is more likely to be rejected because two collective veto players are involved.

As illustrated in figure 1, the effect of the reconsideration is the opposite of that of the initiative. If successful, a reconsideration can restore the situation before a law or a policy is made. The chance for a reconsideration to be adopted is again affected by the number of veto players. In a popular referendum, only one collective veto player is involved in reconsidering the object. The likelihood for the status quo to be reinstated under this institution is thus high. The reconsideration initiated by the legislature or the executive displays a similar status quo-preserving force, but the increase in the number of veto players reduces the probability for the motion to pass, in which case the status quo cannot be brought back.

In terms of the likelihood of agenda manipulation, several factors must be considered. Manipulation is difficult if a referendum is mandatory and no agenda selection is allowed. Otherwise, two variables are most crucial: the nature of the issue and the composition of the veto players. At the theoretical level, only the latter condition can be discussed. We have already seen how the likelihood for manipulation to occur is increased by the elitist inclination of the agenda-setting group. Ranking the groups according to the costs they face to manipulate the agenda from lowest to highest, we have: the executive, the legislature, and the people. For the legislature and the people, the cost goes up as the threshold to pass a resolution rises. When initiating a referendum, the executive could reframe the questions in order to generate maximum support. Similarly, a legislature asking the people to reconsider a policy will select the wording that maximizes the distrust toward the executive.

To summarize the foregoing analysis, we can identify four major types of referendum systems. Referendum systems in the first type are built to remove the status quo and are hard to manipulate. Examples are the direct and indirect initiative systems. Both systems are designed to create new laws or policies through the people's own volition. These features make the initiative the ideal type of referendum. Institutions in the second type also challenge the status quo, but are

easier to manipulate. Examples are the initiatives put forward by the legislature or the executive. Most likely, this type is employed when the legislative and executive branches are controlled by different parties. The legislature can initiate a policy that the executive branch refuses to implement, and the executive branch can ask the people to reconsider the law passed by the legislature. The third type includes referendum systems that are status quo-preserving and difficult to manipulate. The popular referendum is the only example we have studied. This system provides a channel for popular desire to halt the abuse of executive or legislative powers. The last type contains status quo-preserving systems that are manipulable. The reconsideration systems promoted by the executive and the legislature are the typical cases; again, they give the executive and the legislature more instruments with which to discipline each other.

Some referendum systems require that both the number of initiators and the turnout rate exceed particular thresholds. Since all referendum systems at some stage ask the people to cast their ballots, these requirements affect not only the ability of the citizens to enjoy veto power, but also the likelihood for the agenda to be manipulable. A referendum is more likely to be valid if the requirement on minimum turnout rate is low. Several scenarios are possible. First, suppose the supporters of the referendum questions have a higher chance to participate. A low threshold would then facilitate the passing of a manipulated agenda in this referendum. The effect on the status quo may vary by institution, however. A low threshold may reduce the cost to modify the status quo in an initiative, but the status quo also becomes more stable if the system is a reconsideration. Second, the reverse may occur if more people intend to reject the referendum question. By the same token, a referendum is more likely to be invalid if the minimum turnout rate is set high. In this case, attempts to change the status quo through an initiative have a higher probability to fail, regardless of the distribution of opinions. For the same reason, the people will find it harder to preserve the status quo by reconsidering the related law or policy. We can thus derive an interesting observation: for a referendum to become an effective political instrument, the system must relax its requirement on the minimum threshold of participation.

The foregoing framework not only provides a guideline to examine Taiwan's referendum system, but also brings to the fore the theoretical contribution of this study. In particular, it shows that referendum includes various institutions that exert diverse

outcomes, so that the normative judgment of referendum should also specify the details of the institution. The referendum adds a new veto player only if it asks the people to reconsider a passed law or policy. With a popular initiative, the people can bypass the executive or legislative body and single-handedly establish a law—that is, the institution makes the people the only collective veto player.³⁷ As for the role of referendum in agenda-setting, the above analysis suggests that the petition threshold matters. The next section will use the Taiwanese case to demonstrate how the institutional particulars affect the outcomes of a referendum system. This analysis will demonstrate how a phrase in a law can determine the fate of a referendum.

Reassessing Taiwan's Referendum Act

On the basis of the above analysis, how do we evaluate Taiwan's Referendum Act? What kind of referendum system does Taiwan have? What political outcomes could result from this law? The following will first elucidate the vital parts of this Act and compare the major differences between the proposals submitted by the Executive Yuan and the opposition camp. The discussion will then fit the Act into the theoretical framework.

The first fact to be emphasized is that, when the Referendum Act was passed by Taiwan's Legislative Yuan, the anti-government seats outnumbered the pro-government ones, but neither camp controlled a clear majority. The pan-Blue alliance, composed of sixty-six KMT and forty-four PFP legislators, was three seats away from a majority.³⁸ Gaining support from independent legislators has thus been crucial to the pan-Blue camp. Meanwhile, the upcoming presidential election forced the opposition parties to be wary about the attitudes of the undecided voters. On the whole, the Legislative Yuan was leaning toward the opposition, although room for bargaining still existed.

The Referendum Act specifies early on (Article 2) the matters for which a referendum may be held. At the national level, a referendum can be held to reconfirm a law, to create a legislative principle, to initiate or confirm a major policy,

³⁷ For how referendum use adds to the number of veto players, see Tsebelis, *Veto Players*, chap. 5.

³⁸ The New Party (新黨) also participates in the pan-Blue alliance, but the party has only one legislator in the Legislative Yuan.

or to confirm the constitutional amendments.³⁹ Except for constitutional amendments, the referendum can be held at the local level on parallel matters. Budgets, taxation, investments, wages, and personnel matters cannot be proposed as referendum issues. This article not only details the allowable issues for the referendum, but also considers the institution's legal results. The initiative can only be applied to legislative principles or major policies, whereas reconsideration is permitted on laws, major policies, or constitutional amendments.

According to Article 31, a passed initiative on legislative principles should be adopted by related executive organizations into bills and sent to the legislature for review. For established referenda on important policies, the related authorities should take the necessary measures to realize the content. Most importantly, for a law that is approved to be reconsidered, the original law should be annulled three days after the public announcement of the passage of the ballot. Article 20 stipulates that, if the legislative branch realizes the purpose of an initiative or reconsideration on a law before it is publicly announced, the referendum should be halted. Taken together, these articles suggest that Taiwan's voters are not given the right to launch a direct initiative, but must rely on the executive or legislative organization to realize the goals of the initiative.

The Referendum Act specifically excludes the executive branch from using any means to initiate the referendum (Article 13), yet gives this right to the Legislative Yuan (Article 16). The Act leaves only two options to the people: the indirect initiative and the popular referendum. Nevertheless, the likelihood for the public to improve the status quo through these means is affected by the legal requirements on turnout rate and petition threshold. The Act sets up three thresholds for a referendum to be valid. First, the number of initiators of a referendum proposal must reach 0.5 percent of the total number of electors in the most recent presidential election (Article 10). Second, the number of endorsers of a referendum must reach 5 percent of the total number of electors in the most recent presidential election (Article 12).⁴⁰ Lastly, a referendum is passed only if more than half of the qualified voters in the related constituency cast a ballot and more than half of the valid ballots are in

³⁹ The Chinese version of the Referendum Act can be found on the website of the Legislative Yuan: <http://www.ly.gov.tw>.

⁴⁰ Using the 2000 presidential election as a base, the 5 percent threshold would be 773,130 electors.

support of the proposed measure (Article 30).⁴¹

Compared with some democracies that have long used the referendum as a decision-making tool, Taiwan's 50 percent turnout requirement may seem stringent.⁴² However, there are also other countries that adopt strict regulations for referendum passage.⁴³ In any case, the turnout requirement creates a dilemma for Taiwan's referendum initiators. Many people will have no incentive to cast a ballot if the answer is obvious, which undermines the likelihood that the referendum will become valid. If the referendum involves sensitive or divisive issues (e.g., Taiwan's sovereignty), many people will be discouraged to vote in order to prevent political turmoil. Again, the result could be the nullification of the referendum. Concerning the initiation of a referendum, the 5 percent endorsement threshold could be hard to reach if no political party or interest group is organizing the petitioners. To exceed the 50 percent turnout rate, the issue has to be simplified, if not politicized.

Additionally, the Referendum Act has set other obstacles for the initiators to surpass. According to the Act, the Executive Yuan shall establish a Review Commission (公民投票審議委員會) both to verify whether a matter is qualified for national referendum and to determine the similarity between referendum proposals (Article 34). This Commission is beyond the control of the executive branch,

⁴¹ An interesting question is why the Act sets up such a high passage threshold. Since the versions proposed by the Executive Yuan and the pan-Blue alliance both installed a 50 percent threshold, the most possible answer is the concern of legitimacy. Both camps might be concerned that a referendum that fails to attract half of the voters to participate would be criticized as illegitimate. Another possibility is that, when less than half of the people turnout to vote, the number of people who approve the question might be outnumbered by those who vote against it.

⁴² These countries usually set the threshold on the number of initiators rather than the minimum turnout rate that makes a referendum valid. The Swiss Constitution stipulates that popular initiative for total or partial revision of the Federal Constitution must be proposed by at least 100,000 people, and that the referendum on Federal Statutes requires the proposal of 50,000 people. Given the size of the Swiss population, these thresholds amount to less than 2 percent of the eligible voters. Some states in the United States require that the signatures to start a referendum exceed certain thresholds, which could be higher than that in Taiwan, but do not specify the minimum turnout rate to validate a referendum. The French Constitution defines the procedure to initiate a referendum but imposes no legal threshold requirement.

⁴³ Italy is another European country where the referendum is frequently used. However, the system has been weakened by the 50 percent turnout quorum. See <http://www.iri-europe.org>. The United Kingdom uses simple majority rule to determine if a referendum question is accepted, but under some circumstances stipulates a more restrictive requirement. For example, the Scotland Act of 1978 stated that, for the Act to be repealed, more than 40 percent of the electorates must vote "yes" in the referendum. That explains why the Scotland referendum of 1979, which saw a turnout rate of 64 percent and an approval rate of 52 percent, was invalidated. See Denis Balsom, "The United Kingdom: Constitutional Pragmatism and the Adoption of the Referendum," in Gallagher and Uleri, *The Referendum Experience in Europe*, 209-25.

however. According to Article 31, the Review Commission is composed of twenty-one commissioners, each appointed for a three-year term, and the composition of the Commission must reflect the proportion of seats held by political parties in the Legislative Yuan. To deliberate a referendum proposal, more than half of the commissioners must be present. A proposal on the agenda will be passed when more than half of the commissioners present vote in favor of the proposal (Article 36). As such, the political parties can veto a referendum by either not showing up or by voting negatively for the proposal. This article has made the Review Commission another veto power, one composed of party elite.

In terms of the role of the executive branch in the referendum, the Referendum Act has provided the President with a peculiar power. According to Article 17, the President may, via a resolution of the Executive Yuan general meeting, propose as a referendum to the citizens a matter crucial to national security; the one stipulation is that this can only be done when the nation is being confronted by an external force that could be regarded as a threat to national sovereignty. This is the so-called "defensive referendum,"⁴⁴ and it is the only channel through which the executive branch can initiate a referendum. Given that the Referendum Act was passed only four months before the presidential election, and that its application requires no legislative approval, the President was provided with a strong motivation to put the defensive referendum into practice. Indeed, President Chen announced on January 16, 2004 that he intended to initiate a defensive referendum to be held jointly with the March 20 presidential election.

Nonetheless, there were objections to the President's proposal of this defensive referendum. First, some questioned the legality of holding the referendum and the presidential election on the same day. Article 17 stipulates that Article 24—which itself requires that the referendum and the national election may be held on the same day—shall not apply to the referendum described in Article 17. The vagueness of this stipulation caused a controversy concerning the true negation of Article 24. Second, some constitutional scholars argued that Article 17 is equivalent to the President's emergency power, so that legislative approval should still be needed.⁴⁵

⁴⁴ This is the term used by the media to characterize Article 17. Since this article says nothing about reconfirming a law, the term could cause some misunderstanding. Another peculiar feature is that this "referendum" does not necessarily aim at resolving a dispute.

⁴⁵ *Lianhe bao* (United Daily News) (Taipei), February 12, 2004.

Similarly, some cited Article 2 to contend that the Review Commission should determine whether an issue is a qualified referendum issue. Finally, some doubted the existence of the precondition of Article 17. The PRC's military threat does exist, they believe, but the emergency is neither present nor immediate. To Chen's opponents, the referendum was simply a ploy by the President to boost his popularity. The strategy of the pan-Blue camp was thus to deny the legality of this referendum.

Overshadowed by both these technical difficulties and the pan-Blue camp's boycott, the defensive referendum was nevertheless carried out on March 20, 2004. From a theoretical point of view, this verifies the previous conjectures about the executive-initiated referendum. The fact that no public deliberation was held regarding the forming of the referendum questions suggests that the issue was highly manipulable. Most likely, the President meticulously endeavored to refine the questions so that they would not likely be found objectionable by either the international community (the United States in particular) or the electors in Taiwan. In any case, the questions would have been designed to garner the support of undecided voters.⁴⁶

As for whether the holding of this referendum foretells a change in the status quo, there are many different interpretations. First, one should note that, as an institution, the defensive referendum is equivalent to an executive-initiated reconsideration on government policies. The executive branch can, of course, decide whether to procure the anti-missile devices or to engage in cross-Straits negotiation, but the legitimacy of implementing these contentious policies will be strengthened if they are accepted by the people in a referendum. When speaking to his supporters on the evening of March 20, 2004, Chen Shui-bian remarked that "the referendum has shown the majority will of the Taiwanese people" and the government will follow this opinion to implement policies related to national defense and cross-Straits negotiation.⁴⁷ This statement signifies that, although the referendum failed to reach the required turnout rate, the predominance of the approval votes still shows strong support for the questions posed by President Chen. Second, the referendum itself is something new. To the PRC, the establishment of the referendum system presents

⁴⁶ According to the DPP's calculation, voting in favor of these referendum questions would likely increase the likelihood that one would also vote for Chen Shui-bian.

⁴⁷ *Lianhe bao*, March 21, 2004.

another outlet for the use of pro-independence elements. Third, given that the defensive referendum was annulled, we are unable to evaluate the substantial impact of the referendum on cross-Straits relations. President Chen's intention was, however, to claim that the defensive referendum—even if it had passed—was meant to maintain the status quo across the Taiwan Strait and had nothing to do with independence.⁴⁸ The reaction of the international community toward the defensive referendum implies, however, that worry about its impact still exists.

[Table 3 about here]

What about other articles in the Referendum Act? For instance, can the Legislative Yuan initiate a referendum that challenges the status quo in other issue areas? Table 3 describes the referendum institutions articulated in Taiwan's Referendum Act. The Act gives the legislature and the people extensive rights to propose both initiatives and reconsiderations on law and policy, but excludes the executive organizations from launching any referenda. Still, the initiator of a referendum faces several obstacles. One such problem relates to the matter that a referendum is allowed to raise. We have already specified above the items that are explicitly included or excluded as a referendum matter. Although issues related to national identity and symbols are neither included nor excluded, putting them as referendum questions would be highly controversial.⁴⁹ If constitutional revisions related to sovereignty issues or national symbols are passed by the legislature, there would also be strong demands to reconsider the amendments. One can thus conclude that, except for the "defensive clause," the current Referendum Act opens little room for national identity issues to be raised.

Next, consider the status quo-changing capability and agenda manipulability of other referendum designs. The likelihood that an indirect initiative can be manipulated is low, given the high endorsement threshold. Among the institutions stipulated in the Act, the indirect initiative has the best chance to modify the status quo. In contrast, a popular referendum can at best disapprove a passed law or policy,

⁴⁸ *Taipei Times*, December 5, 2003.

⁴⁹ Compared with the drafts proposed by the pan-Blue alliance and the Executive Yuan, the vagueness of Article 2 reflects a compromise that provides both sides with some benefit. Although small, the possibility for matters related to national identity or sovereignty to be raised is still maintained. For the pan-Blue alliance, the absence of these matters from the Act could be interpreted as if they were excluded.

and is therefore status quo-preserving. Agenda manipulation is difficult under the popular referendum, because the Act sets a high threshold of initiation. Although the legislature-initiated reconsideration is manipulable, the consequence is status quo-protecting. Since the Referendum Act does not make the legislature-initiated reconsideration on law mandatory, the most likely initiator is the minority party dissatisfied with the adopted resolution. The majority will have to accept the referendum proposal if the issue could weaken the legitimacy of the legislature. Even so, there is still the opportunity for the legislative majority to reframe the issue so that it can be passed more easily. The Referendum Act also allows the legislature to activate an initiative or a reconsideration on important policies. This could be used as a legislative tool to force the executive to modify its policy output.

For all cases, the 50 percent turnout rate requirement and the supervision of the Review Commission both reduce the likelihood for a valid referendum and this in turn reduces the likelihood that the status quo will be changed. Although the Act adds more veto powers into Taiwan's political system, the high passage threshold mitigates their forces. Similarly, for the designs that facilitate the change of the status quo, the same threshold impedes their ability to do so. This last outcome is what occurred during Taiwan's first referendum.

The Contending Versions of the Referendum Act

Taiwan's Referendum Act was doubtlessly the product of power struggle. The passage of the law was prompted by a closely contested presidential election, but the stringent regulations also reflected the conservative atmosphere in the Legislative Yuan. This fact can be brought to the fore by a comparison of the various versions of the Referendum Act. From this comparison, we can also foresee the possible ways that the Referendum Act might be amended should the seats of the Legislative Yuan be reallocated in the year-end legislative election of 2004.

When the Legislative Yuan proceeded to the last reading of the Referendum Act, only the versions proposed by the Executive Yuan and the pan-Blue alliance were left on the table.⁵⁰ These two versions differ in regard to the petition and

⁵⁰ For the various versions of the Referendum Act and the general deliberation process, see *Lifayuan gongbao* (The Official Gazette of the Legislative Yuan) 92, no. 54 (December 6, 2003): 118-296.

endorsement thresholds, the initiation procedure, the Review Commission, the defensive clause, the schedule of voting, and the subject matter coverable by referenda. Piecing these items together, these two drafts would have led to quite different laws that would have exerted diverse impacts on the stability of the status quo.

To begin with, the two political camps held disparate views on the permissible matters of referendum. While the pan-Blue version attempted to exclude issues concerning constitution-making and the change of national symbols (such as the official name, the anthem, the flag, and the territorial boundaries)—all issues mentioned by the Executive Yuan, the pan-Blue camp sought to prohibit the referendum from applying to national security, diplomacy, military, budget, taxation, wages, and personnel matters. The Executive Yuan's draft excluded only budget, taxation, wages, and personnel affairs. Moreover, the pan-Blue alliance sought to assign the initiative and reconsideration procedures to different matters, while the Executive Yuan made no such distinction. The passed version maintains the pan-Blue's specification of the applicable procedures, but keeps the national identity issues in an undefined position. Most interestingly, the Executive Yuan's proposal of the "defensive referendum," a measure that could enhance the President's power, was accepted by the pan-Blue alliance.⁵¹

The second dispute concerned the decision-making process of the referendum. While the Executive Yuan's version allowed the President to initiate a referendum via resolution by the Executive Yuan general meeting, the pan-Blue camp attempted to exclude both the executive branch and the Legislative Yuan as the initiator, even though the adopted Referendum Act keeps the initiative power of the Legislative Yuan (Article 16). Furthermore, the Legislative Yuan is allowed to launch a referendum concerning the principle of important policies, a stipulation regarded by the Executive Yuan as a violation of the separation of powers. A related controversy regards the reviewing of referenda. While the pan-Blue camp intended to institute a Referendum Review Commission, the Executive Yuan saw this design as a

⁵¹ Why did the pan-Blue camp give up their original insistence on the exclusion of national identity matters? Most observers agreed that the presidential election was the crucial factor. The pan-Blue camp has simply been hesitant to take a strong stance on national identity issues in order not to hurt their chances for election. For a similar reason, the "defensive referendum" was included in the passed Act.

disenfranchisement of the people's rights. The pan-Blue camp prevailed again on this item.

The threshold of petition was another point of disagreement. For referenda at the national level, the Executive Yuan proposed that the number of initiators must reach or exceed 0.5 percent of the total number of electors in the most recent presidential election. The pan-Blue alliance raised the number to 1 percent of the number of electors. As for the number of endorsers, the Executive Yuan suggested 2 percent for the referendum on matters related to legislative principle and important policy, and 5 percent for those on constitutional amendment. The pan-Blue alliance proposed 5 percent for all national-level referenda. The adopted article is a compromise between the two versions: 0.5 percent for the initiators and 5 percent for the endorsers.

Finally, regarding the issue of time period, the Executive Yuan proposed that the Central Election Commission (中央選舉委員會) should carry out the referendum within twenty-eight days to six months after its announcement, and that the referendum could be held concurrently with national elections. The pan-Blue camp was more specific. According to their proposal, the referendum should be carried out within three months after its announcement, and could be held simultaneously with the Legislative Yuan or county council elections. Their version prohibited, however, the referendum to be carried out together with the elections for the President or county councilors. The adopted Referendum Act stipulates that the referendum may be held on the same day as a national election (Article 24), but excludes the defensive referendum from this article's coverage.

With the current Referendum Act, no initiative on constitutional amendment (let alone constitution-making) is allowed.⁵² Any referendum that attempts to make adjustments to the national symbols would encounter the objection of the Review Commission. Had the Executive Yuan's version been approved, Taiwan would have had quite a different referendum system.⁵³ For instance, in line with the Executive

⁵² If the current Referendum Act remains unchanged, the only way for President Chen to establish a new constitution by 2006 is to launch a plebiscite that puts the legitimacy of the whole state at stake.

⁵³ The Executive Yuan attempted an item veto on the Referendum Act, contending that the law deprives the people of their basic rights and allows the legislature to dominate the decision-making process. Since the override from the Legislative Yuan requires only a majority vote, the veto was unsuccessful. See *Lianhe bao*, November 28, 2003.

Yuan's proposal, the citizens or the executive branch would have had a chance to initiate a constitutional amendment and hold the referendum jointly with the presidential election. A similar process could even have been used to adjust the symbols of national identity. In such a case, the status quo—particularly that concerning cross-Strait relations—would become more unpredictable. For this above situation to occur, seat distribution in the Legislative Yuan would have to be changed so that the pan-Green (泛綠) camp could garner the legislative majority to amend the Referendum Act according to the DPP government's proposal.⁵⁴

Conclusion

From the starting point of Taiwan's recently held "defensive referendum," this paper has studied the impact that various initiative and reconsideration institutions have on decision-making. The resulting findings could shed light on the debate concerning the value and necessity of the referendum mechanism.⁵⁵ To the advocates of this system, its greatest merit is the involvement of the people in the decision-making process. Giving power back to the citizens can also help break legislative deadlock or prevent special interests from usurping the privileges of the public. Most important, this "participationist" view sees referendum as a necessary mechanism to deepen democratization. To the critics of referendum, however, this institution is costly and does not necessarily produce the optimal social outcome.⁵⁶ Worse, referenda actually downgrade the quality of policymaking by fostering populist tendencies.

The picture illustrated in this paper is more complicated than either view would expect. I began by defining the existence of the status quo and investigated how it could be affected by the different systems of initiative and reconsideration. A

⁵⁴ On April 21, 2004, the Ministry of the Interior (內政部) drafted a revision of the Referendum Act. This proposal covers the adjustment of thresholds, the initiative of constitutional revision, the removal of the Legislative Yuan's right to launch a referendum, and the abolishment of the Referendum Review Commission. This revised Act will unlikely be passed by the current Legislative Yuan, which is still dominated by the pan-Blue alliance. For details, see *Lianhe bao*, April 22, 2004.

⁵⁵ For a review of the pros and cons of referendum, see Cronin, *Direct Democracy*, 182-84.

⁵⁶ In welfare economics, the social optimum denotes the state where no changes can improve the collective benefit of the decision-makers. Thus defined, the social optimum is different from the maximization of individual preference.

simple analysis of the decision-making process suggests that the major institutions of referendum are all different. Generally speaking, the initiative institutions are more favorable to changing the status quo, and are less likely to be manipulated by the agenda-setter. The initiative, which involves the people's direct participation, could be difficult to initiate, however. The executive and the legislature can sometimes initiate a referendum that affects the stability of the status quo, but the process is highly manipulable and the purpose is usually a political one. In sum, no general assessment can be given in regard to the various institutions of referendum.

As for whether the referendum can improve the quality of democracy, the key variables are the nature of the status quo and the design of the institution. A status quo that results from legislative gridlock can be broken by an executive-initiated referendum or a direct initiative.⁵⁷ Nonetheless, a status quo that is already socially optimal can be shifted by an executive-initiated referendum or a direct initiative to favor special interests. Likewise, special interests could be protected by a status quo-preserving referendum system. The participationist argument holds only if a referendum is able to create a socially optimal outcome, whereas the representative government cannot. Presumably, this institution is the direct initiative. Even this outcome is contingent, however, upon many intervening factors, such as the distribution of the citizens' preferences.

We can use this framework to address the political consequences of Taiwan's Referendum Act. There exist four possible scenarios constituted by two variables: whether the status quo is socially optimal or not, and whether the referendum will destabilize the status quo. The most desirable situations are for the referendum to reduce the cost of replacing an unwanted status quo, or to increase the cost of removing a desirable status quo. The less fortunate situations are for the referendum to increase the cost of abandoning an undesirable status quo, or to decrease the cost of upsetting an optimal status quo. Whether the status quo is viewed as advantageous, of course, often varies by actor. Competing political interests may thus have different preferences toward referendum design. That explains why the pan-Blue alliance would set up a restrictive Referendum Act, and why Chen Shui-bian would

⁵⁷ A good example is how New Zealand fulfilled her electoral reform through referendum. See Jack Vowles, "The Politics of Electoral Reform in New Zealand," *International Political Science Review* 16, no. 1 (1995): 95-116.

hasten to activate the defensive referendum.⁵⁸ Most likely, the power struggle to amend Taiwan's Referendum Act will be carried on, and cross-Strait relations will continue to face an unpredictable future.

⁵⁸ Interestingly, the pan-Blue alliance changed their attitude after Chen Shui-bian won the 2004 presidential election. After the election, the pan-Blue alliance suggested the initiation of referenda on whether to establish a committee that would investigate the assassination attempt on Chen Shui-bian and whether to review documents related to the implementation of the national security mechanism on voting day eve. In response, Chen Shui-bian proposed that two referenda could be held regarding whether or not to halve the number of seats in the Legislative Yuan and whether to establish a committee to review the KMT's party assets. These referenda are apparently indirect initiatives. See *Taipei Times*, April 12, 2004.

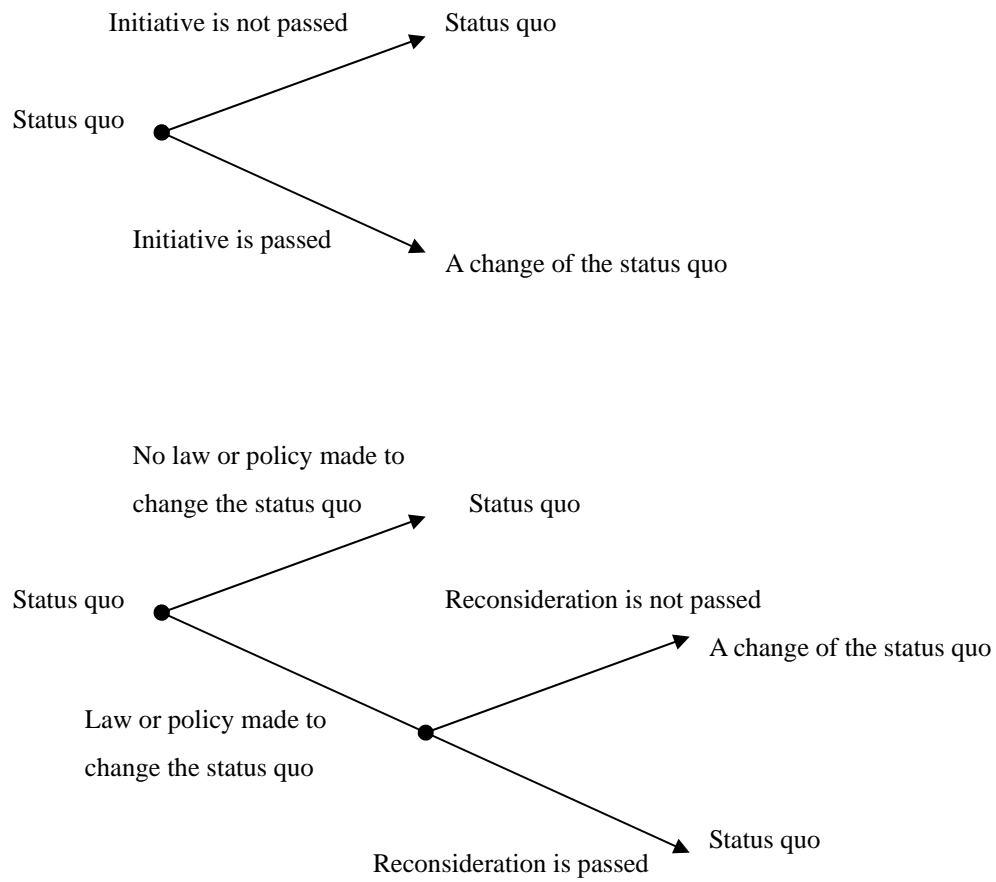


Figure 1
Initiative, Reconsideration, and the Fate of the Status Quo

Table 1
The Players in the Initiative and Reconsideration Institutions

Institution	Agenda-setter	Initiator	Approver	Result (if passed)
Direct initiative	The people ²	The people	The people	New law or policy
Indirect initiative	The people	The people	Legislature or executive (if they accept the motion)	New law or policy
Legislature-initiated initiative	Legislature	Legislature	The people	New law or policy
Executive-initiated initiative	Executive	Executive	The people	New law or policy
Popular reconsideration¹ (referendum)	The people	The people	The people	Annulment of law or policy
Legislature-initiated reconsideration	Legislature	Legislature	The people	Annulment of law or policy
Executive-initiated reconsideration	Executive	Executive	The People	Annulment of law or policy

Notes:

1. In reconsideration, the agenda is confined by the content of its object (i.e., a law or a policy previously made by the legislature or the executive).
2. Political parties and interest groups may play important roles in mobilizing the people to participate in referenda.

Table 2

Referendum Institutions Classified by Status Quo-Changing Potential and Agenda Manipulability

Institution	Status quo-preserving?	Agenda manipulation?
Direct initiative	No. Initiative involves the change of the status quo.	Difficult. The cost for the public to reach a consensus on a manipulated agenda is high.
Indirect initiative	No. Initiative involves the change of the status quo (yet the legislature or the executive could modify the substance of the initiative).	Difficult. The cost for the public to reach a consensus on a manipulated agenda is high.
Legislature-initiated initiative	No. Initiative involves the change of the status quo (yet there are two veto players, so the chance for the initiative to fail becomes higher).	Relatively easy. The legislature can modify its resolution so that the public finds it hard to reject.
Executive-initiated initiative	No. Initiative involves the change of the status quo (yet there are two veto players, so the chance for the initiative to fail becomes higher).	Easy. The cost for the executive to launch a manipulated initiative is small.
Popular reconsideration (referendum)	Yes. Reconsideration involves the annulment of law or policy.	Difficult. The cost for the public to reach a consensus on a manipulated agenda is high.
Legislature-initiated reconsideration	Yes. Reconsideration involves the annulment of law or policy (yet the increase of veto player reduces the chance for the motion to pass).	Relatively easy. The legislature can modify its resolution so that the public find it hard to reject.
Executive-initiated reconsideration	Yes. Reconsideration involves the annulment of law or policy (yet the increase of veto player reduces the chance for the motion to pass).	Easy. The cost for the executive to launch a manipulated reconsideration is small.

Table 3**Taiwan's Referendum Institutions as Stipulated in the Referendum Act**

Institution	Agenda-setter	Initiator	Approver	Result (if passed)
Reconsideration on legislative principle (2, 31)	The people	The people	The people	Annulment of law
Initiative on legislative principle (2, 31)	The people	The people	The people (legislature)	New law
Initiative on important policy (2, 31)	The people	The people	The people (executive)	New policy
Reconsideration on important policy (2, 31)	The people	The people	The people	Annulment of policy
Initiative on important policy (2, 16, 31)	Legislature	Legislature	The people	New policy
Reconsideration on important policy (2, 16, 31)	Legislature	Legislature	The people	Annulment of policy
Reconsideration on constitutional amendment (2, 31)	The people	The people	The people	Annulment of the constitutional amendment
Defensive referendum (17)	President	President	The people	Change of policy

Note: The numbers in parentheses designate the articles that result in the institution.

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