TAIWAN’S REFERENDUM ACT AND THE STABILITY OF THE STATUS QUO

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Abstract
The international community has watched Taiwan's first referendum, held on March 20, 2004, with great concern, for fear that it will destabilize the relations across the Straits. Less attention, however, has been given to the institutional foundation of Taiwan's referendum system. This article offers a thorough analysis on Taiwan's Referendum Act and discusses its general impact on the stability of the status quo. It finds that, with the exception of the "defensive referendum", the law in fact adds more veto-playing forces to the existing political system and raises the cost to change the status quo.

Referendum and Taiwan’s Democratization

On March 20, 2004, the citizens of Taiwan cast their ballots in the island's first-ever national referendum. Although the ballots were predominantly in favor of the posed questions, the referendum was annulled because the number of participated electors failed to reach the required fifty percent. The international community has watched this referendum with great concerns, for fear that it will destabilize the status quo across the Taiwan Strait. Little attention, however, has been paid to the constitutional foundation of Taiwan's referendum system. This article plans to fill this gap so that some important questions can be answered: How can a referendum be initiated in Taiwan? Is the process costly? Will the referendum become a constant component of Taiwan's political process? Will the referendum undermine the status quo?

As an essential institution of direct democracy, a referendum has been used to

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1 About 45 percent of the eligible electors participated in this referendum. The first question is: If China refuses 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 is: Would you agree that our government should engage in negotiations with China 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? For details, see Taipei Times, January 17, 2004.

2 A 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
scotch the abuse of legislative powers. The legitimacy of this institution grows, therefore, when the distrust of representative democracy broadens. It calls on the citizens to vote on issues, and is thought to be more rational than electoral democracy. Although referendum has been used most frequently in the advanced democracies – the Switzerland in particular – its popularity spreads quickly in nascent political entities. It has been widely employed by the post-Communist states to authenticate new constitutions, and on the recognition of the European Union (EU) memberships.

Taiwan is no exception. In the past two decades, the island has witnessed a quick upsurge of democratic waves. The process accompanied intensive constitutional reforms, in which the instituting of the referendum system was put on the agenda from the beginning. But the goal was never fulfilled. The Democratic Progressive Party (DPP) – Taiwan's major opposition party before May 2000 – has taken the establishment of this system as its major platform. Supposed to give the power back to the people, the referendum system is also popular among social activists. When the DPP controlled the presidency in May 2000, it was still a minority legislative party and thus failed to halt the building of the Fourth Nuclear Power Plant. Again, the referendum became an appealing alternative. In the Legislative Yuan (Taiwan's parliament), the DPP's legislators attempted to present their proposals of the Referendum Act, but could not breakout the blockage of the opposition parties. But the opposition camp, composed of the Kuomintang (KMT) and the People First Party (PFP), soon changed its attitude toward some important issues as the presidential election of 2004 approached. The race was a closed one, and each camp felt the necessity to take vote from the other side. When Chen Shui-bian, the president and the DPP's chairman, emphasized again in mid 2003 his intention to set the referendum

4 Since 1793, nearly one thousand referendums 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 in "Electoral Limits" in Limiting Leviathan.
7 For the history of Taiwan's democratization, see Hung-mao Tien, “Taiwan’s Transformation,” in Larry Diamond, Marc F. Plattner, Yun-han Chu, and Hung-mao Tien eds., Consolidating the Third Wave Democracies (Baltimore and London: The Johns Hopkins University Press, 1997), pp. 123-162.
9 Most opinion polls released by Taiwan's mass media indicated that the gaps between the KMT's presidential candidate Lien Chan and the DPP's Chen Shui-bian were mostly within five percent, which might be due to the error of sampling.
movement into action, the opposition parties suddenly made a U-turn on their attitude toward the referendum.

To compete with the DPP's proposal of the Referendum Act, the opposition parties – or the pan-blue camp – announced their bottom-line principles on the issue on July 3, 2003. Later on, the pan-blue camp even conceded that they do not exclude a referendum from dealing with constitutional revisions and the change of national symbols.\(^\text{10}\) 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 the law, Taiwan's citizens can now initiate new laws or vote on existing laws and constitutional amendments.\(^\text{11}\) This is not a surprise, however, because the pan-blue parties have long claimed themselves to be the followers of Sun Yat-sen. It is stipulated in the constitution of the Republic of China – the official national name professed by the government of Taiwan – that the people shall have the right of election, recall, initiative and referendum (article 17) and that the exercise of the rights of initiative and referendum shall be prescribed by law (article 136). The adoption of the Referendum Act is just a response to what the Constitution required.

But the tension is far from being resolved by the passage of the law. In addition to the discrepancy between the versions proposed by the government and the opposition camp, the law included a controversial "defensive clause" that gives the president the power to launch a referendum when the nation's sovereignty is being threatened (article 17). This article, plus the fact that the president comes from a independence-leaning party, soon put the international society on alert. The DPP has long insisted on Taiwan's independent sovereignty and persistently advocated the referendum as a way to reach self-determination. In this context, President Chen's decision to apply the defensive clause on the issues of Taiwan's security and cross-Strait negotiation prompted many to take it as a rehearsal for further moves toward independence.\(^\text{12}\)

The international community watched Chen's action cautiously. As can be expected, the referendum was regarded by the government of the People's Republic of China (PRC) as a preparation for independence.\(^\text{13}\) But even the United States President George W. Bush rebuked Chen's attempt to initiate the defensive

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\(^\text{10}\) There are other proposals of the Referendum Act, the most noticeable being the version recommended by the DPP's legislator Trong Chai, a major advocate of the referendum movement. Later on, I will address the difference among the competing versions of the law.

\(^\text{11}\) *Taipei Times*, November 28, 2003.

\(^\text{12}\) Chen Shui-bian had iterated in his campaign speech that he plans to initiate a new constitution through referendum in 2006. This move, if successful, will substantiate Taiwan's independence furthermore.

\(^\text{13}\) According to Kong Quan, 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.
referendum when meeting with Wen Jiabao, the PRC Premier, on December 9, 2003, in stern words. The leaders of Japan, France, and the EU followed, criticizing President Chen's decision with an unprecedented harshness. The reason for these democracies to repudiate Taiwan's right to hold a referendum can only be explained by their reluctance to anger the PRC, a country that is playing an ever important role in international political economy. They fear that Taiwan's referendum will destabilize the status quo across the Taiwan Strait, forcing the US and her allies to redraw their global strategies.

There are reasons for these countries to be worried. Given that the referendum involves the people's direct participation in decision-making, some would naturally be concerned about the populist upheaval that may follow. But with the attention given overwhelming to the political context of the defensive referendum, we may have lost sight of the legal-institutional foundation of Taiwan's Referendum Act. In any case, the law was passed by the pan-blue camp, who has been sturdily opposing Taiwan independence. Without such an analysis, we cannot see the long-term effects of the Referendum Act on Taiwan's decision-making in general. For instance, will the referendum undermine the status quo in other issues as well? What is its impact on, say, Taiwan's constitutional change? Who will benefit from this system? Is the system manipulable? Can the referendum achieve what the representative democracy cannot? Most important, will the referendum change the nature of Taiwan's democracy? How will the people of the PRC think about this direct way of democracy?

This article plans to tackle with these problems by first clarifying the definition of the referendum system. It will then discuss how various types of referendum designs could produce opposite outcomes and allow different rooms of strategic manipulation. It will then apply these findings to reassess the Referendum Act passed by Taiwan's Legislative Yuan, and measure the possibility for the status quo to be changed under different circumstances.

Referendum: the Definition and Types

Defined most loosely, referendum refers to the people's decision on public affairs. But this definition is far from being sufficient to reveal 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 on sovereignty change or constitution-making. Since the plebiscite is utilized to

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14 Bush's remark was more than a lip service to the PRC's delegate. Chen Chien-jen, head of the Taipei Economic and Cultural Representative Office in Washington, returned to Taipei to issue a warning to the government about the deteriorated relationship between Taiwan and the US after President Chen announced the referendum proposal. See *Taipei Times*, December 30, 2003.
legitimatize the political system itself, the decision process involves only the citizens. Nonetheless, the plebiscite (defined in this way) is rarely used in modern days. The referendum, in contrast, involves the participation of legislature and government, through which many subtypes of the system are created.

In a narrower sense, referendum designates the institution where the people reject or approve laws passed by the legislature.\textsuperscript{15} In Switzerland, where the term was first coined, referendum means “to report to”; in the US, it describes the process where delegates make laws \textit{ad referendum} to the voters. In sum, a referendum is a public vote on resolutions, laws or constitutional amendments adopted by the legislature.\textsuperscript{16} The initiator of a referendum is most frequently the legislature or the government, and less so the people. A referendum initiated by the people is called the popular referendum (or petition) referendum. In some cases, the referendum can be advisory and impose no legal constraints. The referendum can be mandatory or optional, depending if such a procedure is required by law.

In contrast, an initiative is a public motion of legislative measures or constitutional amendments. An initiative must be initiated by the people, but the decision could be processed in various ways. An initiative is indirect if the motion is sent to the legislature for approval, and is returned to the people for a decision only if the legislature fails to pass it. A direct initiative is submitted directly to the people for a decision. It is procedurally similar to direct legislation. In some situations, the people's initiative can call for a referendum on the motion, and the process is called the referendum initiative.

These are standard definitions. But they are too general to detail the difference among various referendum systems, let alone the impacts on policy making.\textsuperscript{17} Scholars tend to classify referendum by whether it is mandatory, decisive, constitutionally pre-regulated, or whether the people's role is active.\textsuperscript{18} Keeping these categories in mind, we still need to highlight the interplay among the citizens, the parliament, and the government, for this is the key that shapes the outcomes of the referendum.

To facilitate analysis, I define some terms. First, the agenda setter is one who writes the motion to be voted on. It could be the people, the government, or the

\textsuperscript{15} A referendum is rejective if the target is a recently passed law, it is abrogative if the target is an existing law. In both cases, the people enjoy only veto power and cannot amend the proposal.

\textsuperscript{16} In the US, the citizens cannot cast votes on national issues, although the constitutional amendments must be approved by referendum in all states except Delaware. Cronin, \textit{Direct Democracy: The Politics of Initiative, Referendum, and Recall}, pp. 2-3.

\textsuperscript{17} For the typology of referendum and the concrete experiences of its implementation, see Michael Gallagher and Piervincenzo Uleri, eds., \textit{The Referendum Experience in Europe} (New York: Macmillan Press, 1996).

\textsuperscript{18} For example, see Markku Suksi, \textit{Bringing in the People: A Comparison of Constitutional Forms and Practices of the Referendum. The Netherlands} (Dordrecht: Martinus Nijhoff, 1993), pp. 1-14.
legislature. When a referendum on a passed law is launched, the agenda setter is naturally the legislature. It varies in other cases. Second, an initiator is one who calls the referendum or initiative into action. While an initiative is necessarily started by the people, a referendum could be, depending on law, initiated by the people, the government, or the legislature. Third, an approver is the body that makes the final decision on an initiative or a referendum. The decision will have a 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 can preempt the decision by passing a similar resolution. Table 1 summarizes the players in various institutions of initiative and referendum. Finally, to give the term "referendum" a more specific meaning, the following analysis will apply its narrower sense, i.e., the people's decision on an existing resolution. Initiative and referendum will be inclusively called the "citizen ballot". ¹⁹

[Insert Table 1 here]

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

To the proponents of the citizen ballot, the greatest merit of this institution is the direct involvement of people in the decision-making process. To its opponents, greater participation does not ensure better quality. This section will address this debate by focusing on two issues: How do the various types of citizen ballot affect the stability of the status quo? Is the citizen ballot less manipulable than a parliamentary vote? The commonsense view would suggest that citizen participation should make the reform of the status quo easier, and in a more candid 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 ideological (policy) distance will enhance the stability of the status quo. ²⁰ According to table 1, the people, the legislature, and the government are veto players in

¹⁹ This term indicates not only the essence of the institution, but also its meaning in Chinese (gonmin toupiao). The official English translation of the Referendum Act uses "reconfirmation" to designate the people's vote on passed laws. To avoid confusion, I do not use this term.

particular settings. Namely, a citizen ballot is ineffective if the designated actors refuse to initiate or approve the petition, making the status quo unchangeable. It follows that the institution most conducive to status quo change is the direct initiative, because the people is the only veto player in this institution.\textsuperscript{21} By the same token, the status quo is most stagnant under the legislature-initiated referendum. In this case, the legislature and the people are both veto players, and the status quo is protected if either refuse to adopt any change. Later on, I will discuss the status quo-changing ability of each citizen ballot institution.

Second, agenda setting plays a very important role in the strategic manipulation of decision-making.\textsuperscript{22} The social choice theory gives a specific definition of manipulation: it happens if an individual or a minority group can change the outcome of collective choice through agenda setting or strategic voting.\textsuperscript{23} To set an agenda, the issue must be more complicated than a binary choice, so that the agenda setter can select the voting alternatives that are most favorable to him. To see how it works, consider the following cases.

When the issue is one-dimensional, the resolution must have multiple alternatives for the decision to be manipulable. The agenda can manipulate the outcome by choosing the most favorable ways to compare the alternatives. For instance, suppose the percentages of Taiwan's voters who support independence, the status quo, and reunification are thirty, forty-five, and twenty-five, and that the voters vote sincerely.\textsuperscript{24} Also suppose half of those who favors the status quo put independence as their second choice, and half list reunification as the second preference. A pro-independence initiator – the DPP's president, for example – can ask the public whether they want to keep the status quo. 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. The reunificationists can play a similar trick.

The social choice theory has demonstrated that, when the issue is multi-dimensional and when the 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.\textsuperscript{25} When the voters' preferences are nonseparable – i.e., the total

\textsuperscript{21} In this case, the lower the petition threshold, the easier for the status quo to be modifiable. Similarly, the status quo is more likely to be kept if the law requires a higher turnout rate for the citizen ballot to be valid.
\textsuperscript{22} For how the initiative and referendum are manipulated in reality to serve political ends, see Mark Clarence Walker, \textit{The Strategic Use of Referendums: Power, Legitimacy, and Democracy} (New York: Palgrave Macmillan, 2003).
\textsuperscript{24} This distribution in fact resembles Taiwan's actual situation quite closely.
\textsuperscript{25} An alternative is a Condorcet winner if it beats all other options in pairwise comparisons using
utility of an individual is not a summation of his utilities on each issue dimension, even a Condorcet winner is not guaranteed to win.\textsuperscript{26} In the legislature, this problem could be solved by issue-by-issue voting or vote-trading, but such mechanisms cannot be used in a citizen ballot, making the system more manipulable than a legislative decision.\textsuperscript{27}

Additionally, the cost of persuasion is another factor that affects the manipulability of a citizen ballot. For a decision to be manipulable, the agenda setter must estimate carefully the latent outcomes of a complicated issue and the initiators must have sufficient political knowledge and calculating capability. In the most extreme case, the agenda setter and the initiator can be just one person – the president, for instance. He is basically uninterrupted when designing the agenda, and can single-handedly launch a citizen ballot. In the other extreme, manipulation is most difficult when the motion and initiation of a citizen ballot has to be endorsed by a lot of people. In this case, the higher the petition threshold, the more difficult to manipulate the vote.\textsuperscript{28}

These two theories can then be used to classify the citizen ballot systems by their status quo-changing potentials and agenda manipulabilities. The findings are summarized by table 2.

[Insert Table 2 here]

The people is the only veto player in a direct initiative, so the status quo is relatively easier to be changed. Issue manipulation under this institution is difficult, however, because of the high persuasion cost.\textsuperscript{29} The people still have the final saying in an indirect initiative, but the intervention of the legislature makes the process more tedious. Should the legislature reject the initiative, the chance for the public to pass the same resolution could be reduced by the increased mobilization cost. Issue majority rule. See Richard D. McKelvey, “Intransitivities in Multidimensional Voting Models and Some Implications for Agenda Control,” \textit{Journal of Economic Theory} 12 (1976), pp. 472-480.

\textsuperscript{26} A good example of nonseparable preference is the sovereignty dilemma that many Taiwanese people face. To them, Taiwan independence is an acceptable choice only if it incurs no military threat. That is, we cannot determine their attitudes on the independence issue without adding the security condition.


\textsuperscript{28} Concerning Taiwan’s legislative reform, electoral system and legislative size are the most critical issues. When the reformists tried collect public signatures to protest the Legislative Yuan’s inaction, the issue of electoral system was dropped because it seemed too complicated to the ordinary people. Even the question of legislative size is simplified into: do you agree that the Legislative Yuan should be halved?

\textsuperscript{29} As such, direct initiative tends to bipolarize the public by simplifying an issue. This has been a common feature in the US, where the conservatives often use direct legislation, which is procedurally similar to direct initiative, to promote their platforms. See Cronin, \textit{Direct Democracy: The Politics of Initiative, Referendum, and Recall}, p. 3.
manipulation is difficult under the indirect initiative, for the agenda is set by the citizens.

When the citizens can only vote on the resolutions passed by the legislature, the status quo will become more stable. Even with a popular referendum, the public can at best abrogate a passed law and restore the status quo. Since the popular referendum is initiated by the people and they can only reject or accept a passed law, issue manipulation is also difficult. The situation is quite different if a referendum is launched by the legislature. Expecting a resolution to be voted again by the public, the legislative majority will obliterare the unwelcome stipulations. Or, the legislators could add articles that the public do not want to reject. In either case, the legislature-initiated referendum is manipulable. By referring the final decision to the people, however, the status quo becomes more difficult to be changed. The reason is that the public can only accept or reject the proposal, but not amend it. In comparison, a government-initiated referendum is even more manipulable, because the cost to set up the agenda is smaller. But for whether the status quo will become more unstable, the government's intention plays the decisive role. Two scenarios may exist. If the government attempts to preserve the status quo while the legislators wish to modify it, a government-initiated referendum is a helpful instrument to nullify the legislature's effort – insofar as the agenda is set up properly. In this case, the status quo will be stable. If the government's default plan is to change the status quo – through bureaucratic actions, for example, the reverse will happen. The key point to note is that the object of a government-initiated referendum could just be a policy principle rather than a passed law. The government could justify its endeavor to improve the status quo by resorting the issue to the public, especially when the legislature is at odds with the government.

To sum up, the foregoing analysis has found that the five major types of citizen ballot are all different. The government-initiated referendum is not only most manipulable, but also getting popular in reality.\textsuperscript{30} If the government attempts to adjust the status quo, a referendum could be of great help. The legislature-initiated referendum is also manipulable – though not as much as a government-initiated one, but it will not make the modification of the status quo easier. Most intriguingly, issue manipulation and status quo changing are both difficult in the popular referendum, although the system is highly participatory in appearance. With the initiative systems, the status quo is more adjustable and the agenda less manipulable.\textsuperscript{31} That, however,


\textsuperscript{31} After the 2004 presidential election, the pan-blue alliance suggested to initiate a citizen ballot on
still hinges on the legal requirements of turnout and petition thresholds. For the status quo to be removable, the thresholds cannot be set high. But a low petition threshold runs the risk of making the ballot manipulable.

Reassessing Taiwan's Referendum Act

On the basis of the above analysis, how do we evaluate Taiwan's Referendum Act? I will first elucidate the vital parts of Taiwan's Referendum Act, and then compare the major differences between the proposals submitted by the government 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 pro-government seats were outnumbered by the anti-government ones, but neither camp controlled a clear majority. The pan-blue camp, composed of sixty-six KMT legislators and forty-four PFP legislators, were three seats away from the majority. The support from the independent legislators are thus 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 the room for bargaining still existed.

At the right start (article 2), the Referendum Act specifies the matters for which a citizen ballot may be held. At the national level, a citizen ballot could be held to reconfirm a law, to create a legislative principle, to initiate or confirm a major policy, or to confirm the constitutional amendments. Except for constitutional amendments, the citizen ballot can be held at the local level on parallel matters. Budgets, taxation, investments, wages, and personnel matters shall not be proposed as citizen ballot issues. This article not only details the allowable issues for the citizen ballot, but also considers the institution's legal results. The initiative can only be applied on legislative principles or major policies, whereas the referendum on laws, major policies, or constitutional amendments.

According to article 31, a passed initiative on legislative principles should be
devised by related government organizations into bills and send to the legislature for review. For the established citizen ballot on important policies, the related authorities should take the necessary measures to realize the content. Most important, for adopted referendum on laws – which can only reject a passed law – 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 organization realizes the purpose of an initiative or referendum on laws before it is publicly announced, the citizen ballot 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 government or legislative organizations to realize the goals. Also, the referendum on existing laws is clearly a rejective one.

The Referendum Act specifically excludes the executive organizations from using any means to initiate the citizen ballot (article 13), but 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. Still, 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 citizen ballot to be valid. First, the number of initiators of a citizen ballot 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 citizen ballot must reach 5 percent of the total number of electors in the most recent presidential election (article 12). Lastly, a citizen ballot 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 support of the proposed measure (article 30).

These are high thresholds. Without the help of influential figures or political parties, the 5 percent threshold is difficult to reach. 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 to verify whether a matter is qualified for national citizen ballot, and to determine the similarity between citizen ballot proposals (article 34). However, this commission is beyond the control of the government. According to article 31, the Review Commission shall be composed of twenty-one commissioners with three-year terms, and the composition should reflect the proportion of seats held by political parties in the Legislative Yuan. To deliberate a citizen ballot proposal, more than half of the commissioners shall be present. A

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34 The details of the defensive referendum will be addressed later.
35 Using the 2000 presidential election as a base, the 5 percent threshold will be 773,130 electors.
36 Take the threshold of a valid citizen ballot for example. Many European countries in fact do not have a law to regulate the citizen ballot. For the 30 EU-related citizen ballots taken between 1972 and 2002, 6 were participated by less than half of the citizens. See Heidi Hautala, Bruno Kaufmann, and Diana Wallis, eds., *Voices of Europe* (Initiative and Referendum Institute Europe, 2002), p. 7.
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 citizen ballot by not showing up or vote negatively for the proposal.

As regards the role of the government in the citizen ballot, the Referendum Act has instituted a peculiar task for the president to take. According to article 17, the president may, via a resolution of the Executive Yuan general meeting, propose a matter crucial to national security to the citizens for a referendum, when the nation is confronted by an external force that could be regarded as a threat of change of the national sovereignty. This is the so-called "defensive referendum", and it is the only channel through which the government can launch a citizen ballot. 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 given a strong motivation to put the defensive referendum into practice.

Nevertheless, there are still some objections to the president's proposal for a 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 – 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 is still needed. Similarly, some cite article 2 and contend that the Review Commission shall 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 is just the president's plot to boost up his popularity. The strategy of the pan-blue camp was thus to deny the legality of this referendum.

Overshadowed by 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, it verifies the previous conjectures about a government-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 endeavored meticulously to refine the questions so that they would not be objected by the international community – the US in particular – and the electors in Taiwan. In any case, the questions should be made

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37 This is the term used by the media to characterize article 17. Since the 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.
to grasp the approval of the undecided voters. As for whether the passage of this referendum foretells a change of the status quo, many interpretations coexists. First, the referendum itself is something new. To the PRC, it indicates another outlet for the pro-independence voice to be articulated. Second, as for whether the cross-Strait stability is undermined, the defensive referendum probably makes little difference, at least at the policy-making level. In response to the questioning from the US, Chen Shui-bian asserted that the purpose of the referendum is "to maintain the status quo on both sides of the Taiwan Strait and has nothing to do with independence." However, the reaction of the international community toward the defensive referendum implies that a worry about its impact still exists.

What about other articles in the Referendum Act? Will, for instance, the Legislative Yuan initiate a referendum that may challenge the status quo in other issue areas? To be first underscored is the matter that a citizen ballot is allowed to raise. We have already seen the items that are specifically included or excluded as a citizen ballot matter. But for the matters related to national identity, the Referendum Act keeps a vague stance – it is neither listed nor prohibited. When the Legislative Yuan adopts a constitutional amendment related to the change of Taiwan's sovereignty status, for example, the urge to reconfirm this result through a referendum will be strong. Similarly, the citizens can launch an initiative or a referendum implicitly related to the adjustment of Taiwan's national symbols or sovereignty.

The real difficulty for these motions to be accepted is in the procedure. We have already discussed the manipulability and the status quo-changing capability of the government-initiated defensive referendum. The likelihood for an indirect initiative to be manipulated is not high, given the high endorsement threshold. The indirect initiative also has the best chance to modify the status quo. In contrast, the popular referendum can at best disapprove a passed law or policy, and is therefore status quo-preserving. Since the popular referendum is based on citizen endorsement, issue manipulation is unlikely. As regards the legislature-initiated referendum, it is manipulable but the consequence is status quo-protecting. Since the Referendum Act does not make the legislature-initiated referendum 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 undermine 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.

39 According to the DPP's calculation, voting in favor of these referendum questions may strengthen the incentives to vote for Chen Shui-bian.
40 President Chen concurred with the claim of the Ministry of Defense that, even if the referendum fails, Taiwan will still purchase the anti-missile devices from the US. See United Daily News, February 20, 2004.
41 Taipei Times, December 5, 2003.
For all cases, the fifty percent turnout rate requirement and the supervision of the Review Commission reduce the likelihood for a citizen ballot to be valid, let alone its ability to amend the status quo. In sum, except for the defensive referendum, Taiwan's Referendum Act in fact adds more veto-playing forces into the existing institution. Unless these standards are modified, the current Referendum Act is not very conducive to the change of the status quo.

The Contending Versions of the Referendum Act

Such a stringent referendum system is doubtless the product of power struggle. This fact will be elucidated by a comparison of the various versions of the Referendum Act. From this comparison, we can also foresee the possible ways for the Referendum Act to be amended should the seats of the Legislative Yuan be reallocated in the upcoming legislative election.

When the Legislative Yuan moved into 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. These two versions differ on the petition and endorsement thresholds, the initiation procedure, the review commission, the defensive clause, the schedule of voting, and the allowable matters of the citizen ballot. Piecing these items together, these two drafts could lead to quite different laws that exert diverse impacts on the stability of the status quo.

To begin with, the two sides held disparate views on the permissible matters of citizen ballot. While the pan-blue version attempts to exclude issues concerning constitution-making and the change of the national symbols – such as the official name, the anthem, the flag, and the boundary of territory, the Executive Yuan mentioned nothing about them. The blue camp also forbids the citizen ballot to deal with national security, diplomacy, military affairs, war-making, budgets, taxation, wages, and personnel matters. The government draft excludes only budgets, taxation, wages, and personnel affairs. Moreover, the pan-blue alliance assigns the initiative and the referendum procedures to different matters, while the Executive Yuan makes 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, is agreed to by the pan-blue alliance.

42 For the versions of the Referendum Act and the deliberation process, see lifayuan gongbao (The Official Gazette of the Legislative Yuan), vol. 92, issue 54 (December 6, 2003), pp. 118-296.
43 For why the pan-blue camp will give up their original insistence on the exclusion of the national identity matters, most observers agreed that the presidential election is the crucial factor. The pan-blue
The second dispute concerns the decision-making process of the citizen ballot. While the government's version allows the president to initiate a citizen ballot via the resolution of the Executive Yuan general meeting, the pan-blue camp attempts to exclude both the government and the Legislative Yuan as the initiator, even though the adopted Referendum Act keeps the initiative power of the Legislative Yuan (article 16). More seriously, the Legislative Yuan is allowed to launch a citizen ballot concerning the principle of important policies, a stipulation regarded by the Executive Yuan as a violation of the separation of power. A related controversy is about the reviewing of the citizen ballot. While the pan-blue camp intends to institute a Referendum Review Commission, the Executive Yuan sees this design as a disenfranchisement of the people's right. The pan-blue camp won again on this item.

The threshold of petition is another point of disagreement. For citizen ballot at the national level, the Executive Yuan proposes that the number of initiators must reach or exceed 0.5 percent of the total number of electors in the most recent presidential and vice-presidential election. The pan-blue alliance raises the number to one percent of the number of electors. As for the number of endorsers, the Executive Yuan suggests two percent for the citizen ballot on legislative principle and important policy, and five percent on constitutional amendment. The pan-blue alliance proposes five percent for all national level citizen ballots. The adopted article is a compromise between the two versions: 0.5 percent for the initiators and 5 percent for the endorsers. 44

Finally, regarding the issue of time period, the Executive Yuan proposes that the Central Election Commission shall carry out the citizen ballot within twenty-eight days to six months after its announcement, and that it could be held concurrently with national elections. The pan-blue camp is more specific. According to their proposal, the citizen ballot shall be carried out within three months after its announcement, and it can be held simultaneously with the Legislative Yuan or county council elections. But their version prohibits the citizen ballot to be carried out together with the elections for the president or county commissioners. The adopted Referendum Act stipulates that the citizen ballot may be held on the same day as a national election (article 24), but excludes the defensive referendum from applying this article.

Had the Executive Yuan's version being approved, Taiwan will have a quite different referendum system. 45 For instance, in line with the Executive Yuan's

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44 Interestingly, the Executive Yuan and the pan-blue both suggest a fifty percent turnout rate for the citizen ballot to be valid. See lifayuan gongbao, p.169.
45 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 process. Since the override from the Legislative Yuan requires only a majority vote, the veto was unsuccessful. See
proposal, the citizens or the government will have a chance to initiate a constitutional amendment and hold the citizen ballot jointly with the presidential election. A similar process can even be made to adjust the symbols of national identity. In such a case, the status quo – particularly that of the cross-Strait relations – will become more unpredictable. For that to happen, seats distribution in the Legislative Yuan has to be changed so that the pan-green camp can garner the legislative majority to amend the Referendum Act according to the DPP government's proposal.

**Conclusion**

Starting with Taiwan's recently held "defensive referendum", this article studies the impact of various initiative and referendum institutions on decision-making. The findings could shed light on the debate concerning the value and necessity of citizen ballot. To the advocates of this system, its greatest merit is the involvement of the people in the decision-making process. Giving the power back to the citizens can also help break legislative deadlocks or prevent special interests from usurping their privileges. Most important, this "participationist" view sees citizen ballot as a necessary mechanism to deepen democratization. To the critics of citizen ballot, this institution is costly and not necessarily producing optimal social outcomes. Worse, it hampers the quality of policymaking by fostering the populist tendency.

The picture illustrated in this article is more complicated than either view would expect. I begin by defining the existence of the status quo and investigate how it could be affected by the different systems of initiative and referendum. A simple analysis of the decision-making process suggests that the five major institutions of citizen ballot are all different. Generally speaking, the initiative institutions are more favorable to the change of the status quo, and they are less likely to be manipulated by the agenda setter. But the initiative, which involves the people's direct participation, could be difficult to initiate. The legislature-initiated referendum is easier to be launched, but the consequence could be status quo-preserving. The fate of the status quo is most unpredictable under the government-initiated referendum, but this system is surely the most manipulable one. In sum, no general assessment can be given to the various institutions of citizen ballot.

As for whether the citizen ballot 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 resulted from legislative gridlock can be broken by a government-initiated referendum

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or a direct initiative. Nonetheless, a status quo that is already socially optimal can be shifted by a government-initiated referendum or a direct initiative to favor special interests. Likewise, special interests could be protected by a status quo-preserving referendum system. Only in one case will the participationist argument hold: a citizen ballot is able to create a socially optimal outcome, whereas the representative government cannot. Presumably, this institution is the direct initiative. But even this outcome is contingent 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 are four possible scenarios constituted by two variables: whether the status quo is socially optimal or not, and whether the citizen ballot will destabilize the status quo. The most desirable situations are for the citizen ballot 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 citizen ballot 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 advantageous, of course, may vary by actors. Competing political interests may thus have different preferences toward the designs of citizen ballot. That explains why the pan-blue alliance would set up a restrictive Referendum Act, and why Chen Shui-bian would be hasten to activate the defensive referendum. Most likely, the power struggle to amend Taiwan's Referendum Act will continue, and so will the cross-Strait relations be put in an unpredictable future.

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Table 1. The Players in the Initiative and Referendum Institutions

<table>
<thead>
<tr>
<th>Institution</th>
<th>Agenda setter</th>
<th>Initiator</th>
<th>Approver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct initiative</td>
<td>People</td>
<td>People</td>
<td>People</td>
</tr>
<tr>
<td>Indirect initiative</td>
<td>People</td>
<td>People</td>
<td>Legislature (if it passes the motion)</td>
</tr>
<tr>
<td>Popular referendum</td>
<td>Legislature</td>
<td>People</td>
<td>People</td>
</tr>
<tr>
<td>Legislature-initiated referendum</td>
<td>Legislature</td>
<td>Legislature</td>
<td>People</td>
</tr>
<tr>
<td>Government-initiated referendum</td>
<td>Government</td>
<td>Government</td>
<td>People</td>
</tr>
</tbody>
</table>

Table 2. Citizen Ballot Systems Classified by the Status Quo-Changing Potentials and Issue Manipulabilities

<table>
<thead>
<tr>
<th>Institution</th>
<th>Unstable status quo?</th>
<th>Manipulable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct initiative</td>
<td>Yes: no other organization is involved.</td>
<td>Difficult: high persuasion cost.</td>
</tr>
<tr>
<td>Indirect initiative</td>
<td>Yes, but legislative participation makes the process more costly.</td>
<td>Difficult: high persuasion cost.</td>
</tr>
<tr>
<td>Popular referendum</td>
<td>No: citizens can only reject the change of the status quo.</td>
<td>Difficult: high persuasion cost.</td>
</tr>
<tr>
<td>Legislature-initiated referendum</td>
<td>No: citizens can only reject the change of the status quo.</td>
<td>Yes: the legislature can modify the proposal sent to the people.</td>
</tr>
<tr>
<td>Government-initiated referendum</td>
<td>Depending on if the government wants to protect or to change the status quo.</td>
<td>Yes: the government can modify the proposal sent to the people.</td>
</tr>
</tbody>
</table>