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Using Intellectual Property Rights to Protect Indigenous Cultures:Critique on the Recent Development in Taiwan*

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ABSTRACT

After the establishment of the Council of Indigenous Affairs, the indigenous people's movement in Taiwan began to turn its attention to the problem of passing special legislations to advance and consolidate gains and benefits. One of the major developments in recent years was the use of intellectual property rights to protect and promote indigenous cultures. Examining the "Protection Act for the Traditional Intellectual Creations of Indigenous Peoples" passed by the legislators in 2007, this article points out that even though the Act tries to circumvent limitations of current intellectual property right law, its basic assumptions about the nature of cultural tradition are too idealized and rigid to cope with the complexity of socio-cultural dynamics in Taiwan. The political construction of ethnic classification by various colonial regimes in the past and the flexible tradition of indigenous art and crafts in the present all challenge any attempt to erect hard boundaries among different ethnic cultures. Thus, this article argues that the Protection Act is not just unnecessary but could be detrimental to the vitality and creativity of indigenous cultures in contemporary Taiwan.

Keywords: intellectual property rights, indigenous peoples in Taiwan, cultural rights, traditional intellectual creation.

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用智慧財產權來保護原住民文化:對臺灣最近的發展之批判

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摘 要

行政院原民會成立以後，臺灣的原住民運動的重心轉向如何在體制中爭取立法的保障與經費的分配。近年來，一個重要的進展就是朝向以各種特別法來保護原住民的文化。這篇文章以 2007 年通過的「原住民族傳統智慧創作保護條例」為例，一方面指出以智慧財產權的概念來作為這種文化保護用途的限制；另一方面指出這些法條對原住民文化性質的假設，往往過分理想化與化石化，忽略了原住民族群文化的互動與採藉，以及族群界限政治建構的歷史。最後，本文並指出這種立法的可能遭遇的實際限制與社會與文化後果。

關鍵字：智慧財產權、臺灣原住民、文化權、傳統智慧創作

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INTRODUCTION

On May 2003, the Executive Yuan of Taiwan finalized a draft bill called the "Protection Act for the Traditional Intellectual Creations of Indigenous Peoples" (*Yuanzhumin chuangtongzhihuichuangzuo baohutiaoli* 原住民族傳統智慧創作保護條例) (hereafter "the Protection Act") and sent it to the Legislative Yuan pending to be passed. This bill was promised by the ruling Democratic Progressive Party (hereafter DPP) government to its indigenous supporters during the presidential election of 2000, and later was put into writing in the thirteenth article of "the Basic Laws of Indigenous Peoples." The draft was commissioned to Mr. Tsai Ming-cheng, a law professor at National Taiwan University specializing in Intellectual Property Rights (hereafter IPR) at the request of the Council of Indigenous People. Revealed in the standing committee of Interior Affairs on May 20, 2003, it immediately drew fire from both Han Chinese and indigenous critics. One indigenous legislator complained the bill was too restrictive and could harm the creativity of future generations. An indigenous activist, Taipou Sasala, thought it did not do enough to cover other forms of cultural products, such as medicinal herbs and spices.[1] But most of all, many Chinese legislators argued that this bill was intrinsically unfair to other ethnic groups, even though that was precisely what this bill was originally intended for: to create a set of special rights to protect disadvantaged minorities. Subsequently, the draft bill was put aside without any further action.

However, with the "Basic Laws of Indigenous Peoples" coming into effect in 2005, the Legislative Yuan were under pressure to pass some forms of legislation to protect "the biodiversity knowledge and intellectual creation of indigenous peoples" specifically stated in one of its articles. Thus, even though the draft Act had never been fully discussed or revised in any significant way, it was passed on December 7, 2007 and became the first of the special legislations that aimed to protect the indigenous cultures of Taiwan. Another draft bill called "The Traditional Biodiversity Knowledge of Indigenous People Protection Act" (*Yuanzhumin chuangtong shengwu duoyangxing zhishi baohutiaoli* 原住民傳統生物多樣性知識保護條例), was also introduced to the public on August 2006.[2] This second bill would offer protection to the biological,

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ecological, and even cosmological knowledge of indigenous peoples, and in many ways, could be even more controversial than the previous one. Even though the final passage of the second draft bill is still not clear, it is obvious that using some form of intellectual property rights to protect indigenous cultures has become a major trend in the indigenous people's movement in Taiwan. After the establishment of a cabinet-level ministry in the central government in 1996, many activists of the movement have now turned their attention to passing legislation and gaining more government funding instead of grass-root organizing. The major battleground is now shifted to the legal and political arena inside the government bureaucracy, and the claim of cultural rights has become a major rhetoric device in getting recognition from the majority population of Taiwan.

This trend is of course not unique in the world. After all, many scholars have already pointed out that in the past few decades there has been a dramatic increase in the talk of "rights" and "culture" in the public sphere around the globe (ex: Cowan 2001, Benhabib 2002, Yudice 2003). Various social groups and political institutions at different levels that engage in struggles for redistribution and recognition in the name of cultural identity often phrase their issues in the language of "rights": rights to be different, rights to be heard, rights to be able to continue being different.[3]

Culture has always been about being different. What is new is that people now are using cultural identity as a marker for legal recognition and resource allocation, and demand that the state take up the responsibility of preserving and protecting their cultural differences.[4] By drawing the state into cultural wars, new sets of legal language are introduced and new domains of political struggle at both national and supra-national levels are created. This paper is about one emergent form of cultural politics in Taiwan: the introduction of the concept of intellectual property rights to the discourse of the indigenous movement and the demand for special treatment in the name of cultural diversity. Specifically, I will use the case of the Protection Act mentioned above to discuss some of the dilemmas we faced in trying to surpass the limitations of the present legal framework, and the difficulties of applying these new laws against the social reality of contemporary Taiwan, should they be implemented.

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THE IPR AND THEIR LIMITATIONS

The question of IPR has always been controversial. After all, knowledge intrinsically cannot be monopolized unless it is either kept strictly private and secret, or forceful means are used to prevent others from spreading it. Ideas are fluid, and others cannot be excluded from using them once they are known. Thus, the term "intellectual property" itself is a contradiction by nature.

However, in the age of the global information society, the movement of material goods is now much less important than the flow of information and knowledge. More attention is paid to ways to control and codify knowledge than before. How to establish institutional barriers to inhibit the free flow of information and extract more economic benefits from the usage of knowledge emerges as a major concern for various large corporations. Thus, IPR law has become one of the fastest growing areas of the legal system in the capitalist economies around the world in the past two decades (May 2000).

With information becoming property subject to ownership at a fast pace, IPR are deployed more often than before to defend and express ownership's legal benefits including the right to charge rent for use, to receive compensation for loss, and to collect payment for transfer or sale. There are two traditions of thought to justify these forms of extraordinary arrangement. The first one is the natural rights argument that property is a suitable reward for human labor; rights to own products of intellectual labor are the natural extension of this thesis. The second one is the utilitarian argument that by rewarding those who come up with new ideas, IPR will stimulate innovation, improve market efficiency, and benefit society as a whole.

The natural rights argument is primarily a moral one. It proposes that property rights are justifiable by virtue of humans' industrious spirit, and those same rights for protection should extend to ideas and information that is similarly produced by mental labor. This argument, however, is weakened by the fact that ideas and forms of property rights are created differently in different social and historical contexts, and property rights as a system of legal and economic institutions is dependent on the state to offer different degrees of protection. If these rights were natural or moral, why

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should they be manifested in such different forms? Why should they be limited to a period of time rather than permanently? Why should they exist only after the emergence of a nation-state? Thus, this tradition of argument is largely abandoned, or at least no longer a primary one.

The utilitarian argument is currently the most widely accepted theory in Western legal reasoning. It is frequently argued that by allocating value to a particular resource (including knowledge or information), users will be required to constantly assess the costs and returns of their property, and create an efficient market system. Rewarding economic benefits to innovators in society will encourage those who are willing to invest more time and resources to develop new ideas and products, and eventually benefit society as a whole.

The utilitarian argument also has its shares of critics. One important study has demonstrated that some of the most important technological progress in the past has actually been the result of collective efforts by many producers sharing and experimenting with small improvements available through reciprocal exchange (Allen 1983). Patents were irrelevant to this process, and granting them for each small improvement by the producers was actually difficult and arbitrary.

Furthermore, there are no solid empirical data to prove IPR has played a significant role in promoting technological innovations (Levin et al. 1987). Their perceived usefulness was more the result of management preference and overseas investment strategy. IPR are usually difficult to obtain and hard to enforce in modern societies. Only those with considerable resources and deep pockets can play the game. In recent years, they were often used by large companies to stymie competition by employing numerous IPR lawsuits to slow down the introduction of new products and technology from rivals, practices that are directly contrary to the original intent of the laws.

Thus, IPR cannot be easily justified by either the natural rights or utilitarian argument. Their existence is probably more to do with the economic structure of the present capitalist system and the powerful interests behind it.

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The range and classification of IPR vary in different countries. Under the uniform pressure of the World Trade Organization and GATT, however, in recent years IPR are increasingly modeled on the stricter and more complicated versions of industrialized nations, especially Anglo-American ones. There are five general categories of intellectual property in most of the industrialized nations: patents, copyrights, trademarks, trade secrets and plant breeder rights (Brush 1993; Greaves 1994; Zhao et al. 2004; Xie et al. 1995).

A patent is a legal certificate that gives an originator the right to exclude others from producing, using, or selling his or her product, process, or discovery, usually lasting for 17–20 years. Once patented, this right can be bought, sold, hired or licensed. A patent must exhibit several characteristics to qualify for approval. The idea should be:

(1) novel, and thus, not already be known (in the public domain).
(2) not obvious, which means it is not common sense to a person in the technology and more than a self-evident solution using available knowledge and technology.
(3) useful (or have industrial application), the idea must have a clear function, which is to say it has a practical use and could be manufactured immediately to this function.

Copyrights give the author legal protection to several types of works: literary work (fiction or nonfiction), musical work, artistic works, works of applied art, maps, technological drawings, photography, audio-visual works, computer programs and databases.

Copyrights are intended to protect authors by granting them exclusive rights to sell copies of their work and forbid reproduction without express permission. Protection typically lasts 50 years beyond the life of the author, and it covers only authors' particular expression of their ideas in a tangible medium, not the ideas themselves.

A trademark serves to distinguish the products of one company from another. It consists of a distinctive design, one or more words, and it is often placed on the product

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label or displayed in advertisements.

Trademarks do not have to be registered, but doing so enables owners to sue infringers and license them out for other use. A trademark does not need to be novel or non-obvious, just distinct, and it will not expire as long as the owner continues to use it.

Trade secrets are practical information that may give a company or a person some competitive advantage. They may be bought, sold or licensed as long as they remain confidential. Therefore, their protection is conditioned on their owners' ability to demonstrate that reasonable efforts have been used to keep others from obtaining the valuable information. Using a trade secret without permission, presumably by obtaining it illegally, could result in liability to its original owner for any generated profit.

Plant breeder rights protection is not as widely accepted as others forms of IPR.[5] Living organisms are usually excluded from patent protection, but to encourage long-term investment in agricultural improvement, plant breeder rights give large corporations and professional farmers exclusive rights to produce or sell propagating material of new plant varieties for a period of 15 to 30 years. The breed, however, has to be (1) distinctive, (2) uniform, (3) stable and (4) novel in order to be qualified (Posey and Dutfield 1996). Plant breeder rights protection is not as strong as a patent; it allows other farmers to use and experiment with the new breed, and to commercially produce new generations of plants, so long as the farmers do not sell the protected plant and its seeds. But to qualify for a new breed, breeders have to go through a very complicated and strict process of verification, including detailed documentation of the breeding process which usually would require several generations of plant manipulation. Thus, it is too expensive and too complicated for most traditional farmers to apply for these rights.

Generally speaking, patents, trade secrets and plant breeder rights provide protection to ideas, knowledge and know-how behind innovative products, processes and discoveries. The owners have various rights of control excluding others from free access to these protected ideas. Copyright and trademarks on the other hand, protect only expression of ideas, symbols or devices, rather than ideas themselves. There is no

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exclusion of right to use the ideas, but they may not be reproduced in their original form without authorization. These two types of rights could serve as different kinds of protection to different indigenous cultural productions if used creatively and carefully. There are several cases of indigenous artists using the existing IPR to make legal challenges to commercial usages of their cultural expressions, but mostly these have been confined to Australia and the United States.[6]

For those who try to use IPR to protect indigenous knowledge and cultural production, the conventional IPR are often perceived to be unsuitable or at least inadequate. Three conceptual problems immediately come to attention: (1) Copyrights and patents are for new knowledge, not for traditional, existing knowledge. Even though there are different degrees of requirement to qualify, these rights are not to be used to cover those ideas available through what could be called the public domain (2) Copyrights and patents are conferred upon individuals or corporations, not collective communities or groups. (3) Copyrights and patents are supposed to be temporary, not permanent. Ideas or expressions should be returned to public domain after rights of ownership lapse.

Trademark protection does have the advantage of not expiring as long as it is registered and renewed periodically, but it covers only graphic design and simple words. Trade secrets on the other hand may protect indigenous knowledge as long as the information can be proven commercially useful and providing competitive advantage. However, since indigenous knowledge is communal in nature, it is very hard to argue that the indigenous community has provided reasonable efforts to prevent public disclosure.

Confronted with these difficult problems, many legal scholars advocate a *sui generis* legislation to tackle the elusive nature of indigenous knowledge and cultural products.[7] Indeed, there are several examples of special legislation aimed at protecting the collective rights of local communities in the world, notably, *Panama Law No.20 of June 26, 2000*, *Provisional Measure No.2 186-16 of August 23, 2001* (Brazil), and *No. 27811 law* of Peru (Zhou 2005). The legislation in Taiwan is obviously inspired by these precedents.

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THE PROTECTION ACT

The majority of legal scholars in Taiwan prefer a *sui generis* solution to the problem of indigenous IPR, probably a reflection of their lack of confidence in the ability of the rigid and conservative court system in contemporary Taiwan to creatively interpret the existing laws (ex: Zhang 1999; He 1999; Chen 2001) for the indigenous population.

The Protection Act is mandated in *Basic Laws of Indigenous Peoples* together with other special rights created specifically for indigenous peoples in Taiwan, including housing, education, employment, language, cultural preservation and development, media, land ownership, etc. It is a comprehensive list of special rights, which if fully implemented, could seriously undermine many existing laws and administrative practices of government, and disrupt many common business practices in the private sectors. But the laws were passed swiftly without much debate in the Legislative Yuan in 2005, and many special legal bills are now required to fulfill the mandates specified in these articles.

The Protection Act consists of 23 articles. To avoid lengthy details, I will simply highlight its significant features for discussion.

According to its opening statement, this act is a response to the growing need of Taiwan to protect and maintain the integrity of indigenous traditional cultures that are disappearing at an alarming speed. It is also an answer to the calling from the international community to offer better legal regulations to preserve the indigenous cultures.

Thus, the first article states that the purpose of this legislation is to protect traditional intellectual creation (hereafter TIC) and promote indigenous cultural development. The act is authorized by the thirteenth article of *Basic Laws of Indigenous Peoples*, and the proper authority in charge of implementing this act is the Council of Indigenous Affairs, a cabinet-level ministry in the government of Taiwan (Article 2).

The subject of protection is called the ‘traditional intellectual creations’ of

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indigenous peoples, which includes religious rituals and ceremonies, music, dance, sculpture, weaving, patterns, clothing, folklore crafts, and other unspecified cultural products. But the bill only protects the expressions of cultural ideas, not the ideas themselves (Article 3). Although this provision does not require these cultural creations to be new, novel, or original, the language employed is rather ambiguous. "Creation" (*chuangzuo* 創作) seems to suggest they are somehow to be new, novel and distinct. This could be open to a wide range of interpretation for lawyers and judges.

For a TIC to be recognized and receive protection, it needs to be brought to the proper authority to be registered first. The proper authority will then form an ad hoc committee to decide whether or not an application is qualified to be TIC. The committee should consist of relevant officials, experts, scholars, and indigenous representatives, with the latter composing no less than one half of the committee members (Article 4 & 5). This is the most controversial part of the Act, which I will discuss later.

The application is restricted to an indigenous group or tribe; no individual except the elected representative from this group is authorized to register (Article 6). This provision of course will create the question of who has the right to represent an indigenous community when indigenous peoples in Taiwan are not dispersed according to administrative or geographic division. In fact, over one third of the indigenous populations are now living in urban areas far away from their original tribes. The act simply avoids this problem by asking the proper authority to decide the method of electing the tribal representative in the future.

TIC rights can be awarded to a tribe or a group, or several tribes or groups, depending on the extent of their contribution to the formation of knowledge. When the actual creator of TIC is unable to determine this, rights of TIC will go to the indigenous peoples in Taiwan as a whole (Article 7).

Ownership rights of TIC consist of intellectual property rights and moral rights of the author. Right of integrity of ownership requires that TIC is not subjected to any distortion, mutilation or other modification, or other derogatory actions in relation to

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the work which would prejudice the honor or reputation of the owner (Article10).

TIC rights, once recognized, are non-alienable and non-transferable. Those abandoned by the original owners for whatever reason, will automatically be given to all the indigenous peoples in Taiwan (Article11 & 12).

The owner of TIC has the right to authorize others to use or exploit this intellectual expression, but exclusive authorization would require a formal approval from the proper authority (Article13).

Each tribe or group should establish a public fund to manage the benefits derived from TIC rights, and indigenous peoples in Taiwan as a whole should establish a general fund to manage income from TIC rights (Article14). Again, who is going to manage all these funds? This is left to the proper authority to decide in the future.

TIC protection is permanent. It will never expire. Even after a tribe or group owning the rights ceases to exist, their rights will still pass on to the entire indigenous population in Taiwan (Article 15).

A large part of the Act contains rules concerning the request of injunction, the methods of remedies, principles of damage compensation, and fair use clauses. They are directly adopted from the existing intellectual property rights laws and civil laws with little change. Thus, I will not get into the details of these articles.

QUESTION OF COLLECTIVE RIGHTS

Even though the title of the act suggests the subject of protection is all traditional intellectual knowledge of indigenous peoples, the list of subject matters being protected covers only those cultural expressions embodied in certain objectified forms. It is clearly a bill with limited scope and modeled on the copyright protection provisions in the existing IPR with some modification to avoid their limitations. The protection of the bio-ecological and traditional knowledge of the indigenous peoples is left to a later bill to define and cover. This strategy has the advantage of reducing the complicated problem of cultural protection to a more manageable, technical matter of

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registration and recognition with some relatively tangible expressions. But as we shall see, the technical solution only obscures many fundamental questions that lie beneath the surface.

Protection Act defines ownerships of TIC as collective rights, indivisible, non-transferable, non-alienable, and permanent. It is based on an idealistic communal vision proposed by many legal scholars and indigenous activists without clear connotation. This absolute vision will create many problems in the attempt to implement the laws.

Since traditional cultural expressions are believed to be mostly the result of many persons' efforts without a clear author or exact moment of creation, any attempt to assign property rights to them will immediately face the problems of who should represent the rightful authors; they could include generations of the living and dead, mythical animals, and spirits of nature. Exactly when is the beginning of the effective period of the right claimed? For without a clear representative of this community, the court cannot assign ownership to a legal entity to exercise its rights; without a clear moment of creation, the court cannot establish a timeframe to determine what sort of cultural expressions are being protected. The bill tries to solve these problems by first introducing a registration system that requires those who wish their cultural expressions to be protected to go to a committee established by the government to register and get approval; second, it requires each indigenous tribe to elect a representative to complete the application. Other members of the tribe cannot register cultural expressions as the traditional, collective heritage of a group on an individual basis. By locating certain forms of cultural expression in one particular moment, the court could then establish some criteria to arbitrate legal disputes in the future. The special committee would be made up of relevant government officials, expert-scholars, and indigenous representatives (comprising no less than one half of the total number). They would review issues such as the validity of the claim and the legality of the application, and decide the merit of each case independently.

This registration system has been criticized as too troublesome and restrictive, and not offering enough protection to the socially and economically disadvantaged

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indigenous peoples (Lin 2004). But to me, that is probably a lesser problem. The indigenous peoples cannot predict all the possible forms of appropriation by future infringers before they occur. Therefore, they would have to apply for every distinct cultural possession of their tribes, or risk losing some of them to infringement due to late registration. As for the problems of deciding the authorship and reconstructing the diffusion process of each cultural expression, they can leave it to the registration committee to ponder. This will create a bureaucratic nightmare with lists and lists of cultural expressions rushing to be processed, and a number of similar cultural products competing for recognition as part of a traditional heritage.

In addition, the issues confronting the committee are no less overwhelming. How can anyone decide on the ownership of a cultural expression such as the motif of diamonds shared by the peoples of Atayal, Paiwan, and Rukai, with each tribe using it for different purposes and symbolizing different things? Ataya woman weavers frequently adopted new designs from other tribes to their traditional textiles, as long as they considered them beautiful. They also accept orders from tourists and visitors with particular style requirements. Weavings of Saisiyat, a small tribe with a long history of outside contact with Chinese Hakka and Atayal, are frequently indistinguishable from Atayal ones. Bunun people's weavings often incorporate elements of its neighboring tribes freely, and thus they vary from region to region without a clear "traditional" style. Flow of cultural information across social borders is not a new phenomenon among indigenous peoples in Taiwan, and many studies have shown that these peoples have had a long history of trade, migration, and warfare (ex: Huang 2001). Any attempt to assign intellectual property rights to a single community will have to artificially freeze the boundary between cultures and create inequity among the persons or communities involved.

In the cultural politics of contemporary Taiwan, every tribe is required to have its own clothing and weaving to distinguish one from another. Thus, tribes select some standard graphic motifs and patterns to be "traditional" in order to represent themselves to outsiders. However, if these cultural expressions are studied more closely, it is clear that most of them have been "invented" only recently. If committee

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members feel comfortable about recognizing these cultural creations as "traditional," it will open the door to all kinds of political maneuvers and cultural appropriation, turning this committee into an arena of fierce political struggle.

However, abandoning the registration system altogether is hardly a better choice. It would create a situation where no one knows exactly what would be considered "traditional knowledge of indigenous peoples," and what is being protected and what is not. Since the protection is permanent and there is no clear distinction between what is traditional and what is not, any form of cultural expression in the public domains with an "exotic" motif or flavor that could later be proven to be owned and utilized by a particular tribe in whatever form, could be subjected to litigation in the future. The court system of Taiwan could face many lawsuits of uncertain merit and unclear resolution. For example, what if a tattoo image of an Atayal man, recorded by a Japanese ethnographer more than seventy years ago and subsequently published in a report widely available in the university libraries of Taiwan and Japan, is used by a contemporary tattoo artist to create an image of a modern savage for commercial purpose? Can the contemporary Atayal people sue the artist for desecrating their cultural heritage, even though their custom of tattooing had been abolished more than fifty years ago? Without a time frame to exempt those cultural expressions already available in the public domain, without criteria to know what exactly the law is trying to protect, the potential to create limitless and inefficient lawsuits is quite real. Without a committee to determine the merits of each claim, we simply shift the burden of proof to a court system that is even less prepared to deal with these complicated issues.

Thus, we are facing the prospect of either an insufficient special committee or an inefficient court, and the legal protection promised in the bill remains uncertain and unfulfilled.

QUESTION OF CULTURAL IDENTITY AND GROUP REPRESENTATION

As mentioned, the question of who can represent a tribe or indigenous group is

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going to touch upon some major difficulties in any kind of legal protection applied to indigenous peoples in Taiwan. Many lawyers in Taiwan have already pointed out that under the current civil law, granting collective TIC ownership to an indigenous group or tribe rather than a legal individual would create many problems in managing TIC and its derived benefits (Chen 2001; Lin 2004:62–65). An indigenous tribe is a legally vague entity, and it cannot exercise any legal right without first getting approval from all of its members. This is a certain impossibility given the current demographic movement and dispersed pattern of indigenous population. Thus, there will be trouble realizing all the legal benefits of this legislation.

Furthermore, the legislation is based on the assumption that indigenous cultures are discrete, clearly bounded and internally homogenous. Every indigenous group has its own culture, and culture in turn defines its distinction among other cultures. This kind of static understanding of culture is what we call an essentialist view of culture.[8] This view, I will argue, is particularly unsuitable and politically objectionable in the context of colonial history in Taiwan.

Currently, there are thirteen indigenous groups recognized by the government, but the list could expand more if the current "ethnic re-identification" trend continues to saturate among many so-called "plain aborigines."[9] This shows how delicate and dynamic the question of cultural identity and ethnic boundaries is in contemporary Taiwan.

The present ethnic classification of Taiwan aborigines was largely established under the Japanese colonial government in the 1930s. In the early stages of colonization, the Japanese government partially inherited from the Qing Chinese the division of "raw" and "cooked" savages which classified aborigines according to their degree of subordination to government authority. The Japanese divided the aboriginal population into Mountain aborigines and Plain aborigines, with the latter considered as having been assimilated or soon to be assimilated. The Mountain or "raw" aborigines were subjects of intensive military and civilizing campaigns with the aim of eventually turning them into sedate farmers. During this long period of pacification, one of the major techniques the colonial government deployed was spatial classification and

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territorial differentiation. The raw aborigines were first isolated within the mountains by dividing lines, and then, after a series of military suppressions, were confined to a newly created "Aboriginal Reserve." The traditional hunting ground of the aborigines was shrunk to include only the immediate surroundings of settlements; a great chunk of mountains and forests in Taiwan was declared "no-man's land" and "nationalized." After the Wu-she aboriginal uprising of 1930, the colonial government launched the policy of forced immigration to aggressively resolve the so-called "indigenous problem" once and for all. Many small aboriginal settlements spread over a large area were removed and concentrated in a new large village with modern facilities including a school, police station, pig stile, public cemetery, clinic, irrigation system for wet rice, etc. Some tribes were moved from mountainous areas to lowlands, and then taught to plant wet rice. This spatial restructuring of aboriginal living space fundamentally transformed the social structure of all the indigenous groups. From then on, Taiwan aboriginal groups could no longer move freely across their traditional hunting grounds, form political alliances with other groups, or launch wars against each other. They had by and large been affixed to administrative spatial units constantly monitored by agents of the state.[10]

It was against this historical background that Japanese anthropologists began their cultural survey of aboriginal peoples in Taiwan. They meticulously recorded language, myth and legend, genealogies, material cultures, customs and physical features of many indigenous peoples, who, by now, had been largely pacified and confined to their designated areas. The results of many surveys were accumulated to form several different systems of ethnic classifications, some of them emphasizing language affiliation, some of them myth and genealogy, and some of them modes of subsistence. The nine-group system formulated by three prominent anthropologists, Utsurikawa Nenozō, Mabuchi Toichi and Miyamoto Nobuto, in 1935 was later recognized as the most authoritative one and adopted by the Japanese colonial government as the official classification system of Taiwan aborigines. After the National Chinese government took over Taiwan in 1945, this classification system was also inherited without any modification and became the basis of ethnic identification in contemporary Taiwan.

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The naming and classification of aboriginal groups, together with the reorganization and fixation of settlements, control of population movement and creation of aboriginal reservations contributed to a new concept of an ethnic group as an entity having a relatively clear social boundary and possessing a unique system of language, kinship, customs, arts, rituals and religion. The idea that an Atayal tribe or a Paiwan tribe should have its own culture became a possible reality.

The criteria for ethnic identification in the nine-group system mainly relies on a combination of linguistic differences and mythical genealogies, but many ambiguities remain. For example, Sedeq was classified under the category of Atayal, but in the classification system of one linguist, Ogawa Hisayoshi, it was classified as a separate category with twenty other linguistic groups. This linguistic distinction would later become the basis of Sedeq's demand for a separate ethnic identification. Many classifications appear to be rather subjective, depending on the academic preference of individual scholars.

But more importantly, this official system is not a reflection of social reality and political organization on the ground. For example: the contemporary Amis, the largest of all groups, has a population of over 150,000 spread over three administrative counties and many geographic regions, with many tribes speaking mutually incomprehensible dialects. Amis ethnic identity is often formed for many only after entering the modern school system and learning about the official classification from Chinese teachers. Thus, one of Amis' northern sub-groups, Sakizaya, had launched a campaign to separate from the rest of the sub-groups since 1990 and eventually gained official recognition from the government in 2007.

Thus, despite the official classification having existed for more than seventy years and having been frequently used by both Japanese and Chinese governments as a basis for resource allocation, it is still quite unstable and could be challenged from a local perspective. Thus, when the Nationalist government of Taiwan lifted its martial law in 1987 and began to democratize, many indigenous peoples started to mobilize and demand a new ethnic identity. Four new indigenous groups, Shao, Kavalan, Taruku and Sakizaya were added to the official list accordingly in 2001, 2002, 2004 and 2007.

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From the brief historical sketch above, we should know that the social and political structure of indigenous peoples in Taiwan has undergone several stages of political engineering; the contemporary cultural identities of indigenous peoples were at least a partial result of official classification and spatial reorganization from states. This is the reason why many "traditional" indigenous cultures, under careful scrutiny, often turn out to be recent inventions. Many cultural institutions and expressions had already become "history" when Japanese scholars did their survey, and many traditional rituals and customs were reconstructed in entirely different social and geographical conditions, sometimes with the help of anthropologists' records.

The purpose of my description, however, is not to deny the authenticity of contemporary cultural creation by indigenous peoples in Taiwan. One of the most interesting characteristics of indigenous cultures in Taiwan is precisely in their playful ability to adapt and appropriate new things to create new forms of expressions. It is what the essentialist concept of culture in the legal language could do to the vibrant and fluid inter-cultural relations among different aboriginal groups that causes my concern.

With many ethnic identities still being contested by various local tribes, many new identities are being discovered and re-discovered by various "plain aborigines" who were previously thought to have disappeared; a new hybrid pan-aboriginal culture is growing in the city as well. A rigid, static cultural registration system would turn into a mechanism to suppress any attempt to create new authenticity or what we might call "hybrid authenticity." The protection offered in this draft bill is basically a mechanism to certify authenticity for existing cultural expressions. Implemented carefully, it could certainly bring much needed benefit to the indigenous peoples of certain sectors, but at the same time, it could narrow the door for those struggling to have their intellectual creation fit into the current ethnic-cultural classification. It would be an unfortunate development if we should realize that it was this willingness to adopt and transgress cultural boundaries that has retained the vitality of indigenous cultures in Taiwan.

The social boundaries of indigenous groups in Taiwan are often ambiguous and unstable due to years of manipulation by both Japanese and Nationalist governments. Cultural identities are also constructed and re-constructed constantly at the margins of

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official classification. It is this dynamic between social and cultural, the past and the present that defies any simple solution. Giving certain groups special rights to control over a large amount of symbolic resources will entrench existing social-political establishment and render those cultural innovators weakened and discouraged.

THE ART OF GLASS BEADS AS A CULTURAL INDUSTRY[11]

Using legal language to determine whether some cultural products are "traditional" or not is contrary to what is happening on the ground. The innovation and creativity of today's indigenous artists in Taiwan have already surpassed any attempt to box them into easy categories. One of the most telling examples is the "renovation" of Paiwan's glass bead art in the past thirty years. With glass crafts now constituting one of the most significant cultural industries among indigenous peoples, the Protection Act is supposed to address their concerns directly.

The "*liulizhu*", or glass bead, was one of three prestigious objects of pre-colonial Paiwan culture. Strung together as necklaces, earrings, or hand rings, glass beads were often used by the Paiwan aristocratic class as emblems of power and beauty, and they also served as marriage dowry and gifts exchanged on important occasions. However, since Paiwan people and other indigenous groups in Taiwan did not have the technology to produce glass, *liulizhu* must have been acquired through long-distance trade with overseas merchants over many centuries. The styles of glass beads were hierarchically graded and named, and the amount available for circulation in each tribal village was limited. Accumulated mostly by Paiwan aristocrats over a long period of time, old beads grew more prestigious as time went on. Different myths and legends were associated with different styles of beads, and the highly graded ones were carefully saved in ancient pots and kept in a sacred place in the house (Xu 1992; Zhu 2003: 57-71). However, under the impact of Christianity and the discriminatory policies of both the Japanese colonial government and the postwar Chinese government, the beads were sold, destroyed and lost in such a quantity that they were in danger of disappearing from public display altogether by the 1970s.

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In May 1976, a Paiwan artist, Ruladeng Omass, using the technology and materials learned from a glass technology school in Xinzhu City and three years of his own experimentation, successfully produced glass beads of ancient Paiwan style for the first time in the village of Sandiman, Pindong County. The innovation was immediately embraced by the whole tribe and Omass was hailed as a cultural hero. Later, Omass established a workshop where he began to train students and assistants from other tribes and produce beads of both ancient styles and new and free styles. His students subsequently established workshops of their own, developed new techniques to solidify their own reputation, and became some of the most renowned glass artists among the indigenous peoples in southern Taiwan. The technology breakthrough revitalized the ceremonial life of Paiwan society. With a large amount of new, inexpensive, and colorful beads now available to average Paiwan people, the wedding, funeral and annual festivals have become more elaborate and splendid than ever. The art of glass beads has emerged as a major product of Paiwan culture, and one of the most important symbols of its ethnic pride.

Moreover, with the spread of glass making technology to other tribes, including non-Paiwan indigenous peoples, colorful glass beads and their derived products have become some of the most popular indigenous artifacts sold at various tourist destinations in Taiwan. Using new found materials and techniques, many young artists and artisans continue to apply glass beads to different products, such as clothing, necklaces, handbags, hairpins, earrings, paintings, furniture, key chains, lamp covers, etc., and forms and styles of glass bead have multiplied and transformed in so many ways that we can no longer draw a clear line between indigenous glass arts and non-indigenous glass arts. However, many Paiwanese still maintain a distinction between “ancient” style and “new” style glass beads produced after 1976. They decorate themselves with beads of the “ancient” style on ceremonial occasions and utilize beads of the “new” style to decorate homes and daily clothing. But to the younger generations, this distinction is becoming blurred. They enjoy the freedom and flexibility of the new beads, and continue to expand their uses and applications in different spheres of life.

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The renovation of glass beads among the Paiwan challenges the rigid dichotomy of traditional vs. modern or indigenous vs. foreign. Originally, glass beads were designed and produced in far away places and subsequently incorporated into the prestigious system of Paiwan aristocracy. Paiwan people did not and could not claim to possess the expressions or forms of glass beads which were believed to be the creations of various spiritual beings. Many highly valuable beads were themselves spiritual beings with wills of their own, and particular beads were often associated with noble families and their circulation was tightly restricted.

The successful production of new glass beads in 1976 changed the Paiwanese conception and meaning of glass beads. They were no longer the creations of spiritual beings but the products of individual artists, and common Paiwanese were able to purchase them in large quantity and used them to express their social aspiration. Glass beads emerged as a popular medium for the entire Paiwanese society to represent their cultural distinction to outsiders, and the ancient beads were viewed as ethnic heritage which required careful study and preservation. Many Paiwanese glass artists still consider themselves as the bearers of "tradition," but they are also fully aware that their works are different from those of the past and that they are combining new technology and ideas with old styles to create something entirely novel. But they insist that what they produce is "traditional" as long as they continue to imitate and reproduce the beads in ancient patterns, and if the production of glass beads is inspired by the ancient spirits from the past.

Omass, the artist who started this new cultural movement, dismisses those who consider his creations "non-traditional."He believes that "tradition" is always changing and transforming, and it is the ability to apprehend the spiritual aspect of the past that connects his works to "traditional" Paiwan culture. Thus, he considers himself a defender of Paiwan tradition and criticizes many young glass artists for producing beads with only superficial similarity to the ancient ones. He is clearly making a distinction between "authentic" and "non-authentic" traditions, and positioning his works as adopting new technology in order to return to "tradition"(Jiang 2003:97-98).

Other glass artists, such as the craftsmen in the popular Dragonfly (*qingtingyazhu*)

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and Shadao Workshop at the Indigenous Cultural Park in Sandiman, take a more relaxed view of "tradition". They continue to refine their techniques through intensive training and experimentation, and even accept suggestions and demands from customers to modify their products. Their beads are much brighter and more colorful than the ancient ones, and innovative applications and patterns are introduced to stores constantly. However, their creations are still based on the patterns and knowledge of the ancient beads, and most of all, through the pamphlets and instructions of store clerks to customers, they are selling not just crafts and souvenirs, but also myths and legends of origin associated with glass beads. Acquiring artifacts with exotic patterns and stories, tourists also purchase a piece of cultural imagination. Thus, these artists characterize their works as spreading and promoting Paiwan culture and initiating a dialogue between tradition and creativity（Jiang 2003:100-103）.

Today, the glass bead industry is not just an important source of income for many indigenous families. It has become a sphere of cultural creation and transformation. Recognizing the glass beads as gifts originating from outside, Paiwanese artists nevertheless embrace them as their cultural heritage, and commit themselves to their renovation and innovation. However, they do not claim exclusive rights to own the patterns of ancient beads. They promote the new glass technology in other parts of Taiwan, and offer classes to whoever wants to learn the craft. The art of glass beads is still located within the spectrum of Paiwan culture, but it is a flexible and changing tradition capable of generating various cultural projects. Different artists interpret this tradition differently; at the same time they continue to draw inspiration from within.

This is a living tradition that continues to evolve and inspire, and no one has monopolized the authority to determine the "authenticity" of each new cultural product. Thus, setting up a hard boundary between Paiwan tradition and other ethnic cultures, as prescribed by the Protection Act, will certainly privilege certain interpretations of this tradition and render others "inauthentic" and less "genuine." The vitality of the glass bead tradition is rooted in the Paiwan culture but sustained and nourished by its ability to entice and engage with other ethnic groups. Turning this cultural heritage into intellectual property threatens to disrupt the flow of creativity and damage the

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popularity that glass bead art currently enjoys.[12]

DO WE REALLY NEED THIS ACT?

So far, those who have joined the discussion of this bill in Taiwan are mainly lawyers, administrators, and indigenous activists; the issues have been largely surrounding the question of how best to utilize the present legal regime to protect the rights of indigenous people, and the pros and cons of each provision in the Act.[13] But in the end, we need to ask some hard questions that have been largely missing in the discussion. What if using IPR is not the best way to protect the endangered indigenous cultures?[14] What if the piracy of cultural heritage and the commoditizing of traditional knowledge by outsiders are not the major reasons for the disintegration of indigenous cultures in Taiwan?

Those who advocate more laws to protect the indigenous cultures often use several international incidents reported in the media, such as the case of Enigma infringing on the *Jubilant Drinking Song* of Ami people in Eastern Taiwan in 1993,[15] to create a sense of emergency, that without more legal protection, greedy international companies will come and steal our indigenous cultural traditions away. But in reality, there is no large demand for indigenous traditional arts and knowledge in Taiwan and the world market. The great majority of them are disappearing not because of stealing or acts of piracy from outside, but because of neglect, indifference, and even rejection on the parts of indigenous peoples themselves, especially younger generations. The case of Enigma probably has done more good than harm to the revitalization of indigenous cultures in Taiwan. It is ironic that behind all the outrage and anger, there was probably more surprise and pride to realize that an obscure traditional hymn of the indigenous peoples in Taiwan could turn into an international hit song. This incident inspired more young indigenous artists to return to their traditional heritage and increased the general public's demand for indigenous music in Taiwan for a long period of time. Thus, it is clear that such exploitation is likely to raise the profile of traditional knowledge and cultural expressions and inspire more innovations. Tangible economic benefit remains the single most important incentive to keep indigenous

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cultures in Taiwan vigorous. Thus, it could be argued that the promotion and protection of the traditional cultures of Taiwan's indigenous peoples does not necessarily depend on the passing of new IPR laws. Bringing the local artists and entrepreneurs together to create and distribute exciting new products is probably more effective and practical.

The existing IPR regime may not be adequate to deal with the unique situation facing the indigenous cultures, but they call attention to the unfair treatment of indigenous artists by the entertainment industry, and inspire more interest in indigenous arts. In the case of Enigma, the lawyers of the Amis couple decided to file the law suit in an American court instead of in a Taiwanese court because the court system of Taiwan was not equipped to deal with a multi-national dispute involving international conglomerates, and the American court system offered larger and better publicity and an easier environment for lawsuits. In terms of IPR, both countries did not have special legislation to protect the indigenous peoples, but the American court system did offer better protection to the injured party. Thus, it is clear that adequacy of IPR law alone is not the primary factor in deciding where to file the lawsuit. How to improve the present court system in Taiwan to handle international lawsuits and create a legal environment amiable to victims of illegal infringement is probably more important to the protection of indigenous cultures.

In addition, even though the passing of the Act is said to have improved the prospect of filing law suits for indigenous artists in Taiwan, it is still not clear how it will play out in the international legal arena. Without going through the process of reconciling differences between IPR laws of different countries, the outcome of international lawsuits remains doubtful.

It is certain that one of the major difficulties the indigenous artists and entrepreneurs in Taiwan encounter is that many of their products in the current tourist art markets are often reproduced or counterfeited by cheap imitators. This cuts into their profits, discourages innovations, and damages the reputation of indigenous arts. However, as far as I know, there has not been strong demand from indigenous communities to pass a special law to protect their cultural creations. The piracy of indigenous arts is indeed a serious problem and local indigenous artists often appeal to

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the government for stronger actions against counterfeiting. However, very few of them have suggested that establishing collective property rights could be the solution to their problem. There are several reasons. First, many of them are aware of the fact that their cultural creations are often the result of synthesizing various cultural elements from different cultural sources, including the arts of other indigenous groups in Taiwan, Chinese folk art, Austronesian arts in the South Pacific, or even African art, and that their cultural products can hardly be called "traditional" in the eyes of their fellow tribe members. Under the Protection Act, many of their cultural creations could become illegal as well. Second, they are often in partnerships with Chinese entrepreneurs to establish channels for selling and distributing their products, and their artisans are often recruited from many indigenous groups, even from Han Taiwanese and Southeastern Asian immigrants. Commercial ventures of indigenous art in Taiwan are often formed by multi-ethnic partners. It is not simply a problem of one innocent indigenous group against greedy Chinese capitalists. Third, the problem of counterfeiting is not exclusively coming from non-indigenous people. We can also find some indigenous merchants who copy other indigenous artists' creations to make a quick profit. The new law will not prevent this from happening. Thus, many indigenous artists I know do not put too much faith in government intervention. Instead, they try to adopt the strategies of upgrading the value of their creations, differentiating their crafts from mass commercial products, and accelerating the speed of introducing new production lines. To combat the problem of counterfeiting in a small and fluid market requires quick responses and fast resolutions. A long and treacherous fight in court for a legal claim is meaningless to these commercial artists.

The Act has been hailed by activists as a big step toward resolving the problem of piracy. However, if the laws are examined more carefully, it is clear that the problem of piracy actually has been covered in the existing copyright laws, and the new laws are simply adding another statute for the injured party to file a lawsuit. The reason violators seldom receive a penalty at present are that the cost of litigation is too high for a small market like indigenous art, the counterfeited goods are often manufactured in mainland China or Southeast Asia countries, and the court is not efficient enough to resolve the problem quickly. Passing a new law by itself will not change the basic

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conditions these indigenous artists face. They might have a more sympathetic court after the establishment of a registration system for indigenous traditional knowledge, but the burden of collecting evidence, identifying culprits, and bringing these acts of piracy to the attention of law enforcement still fall on their shoulders. Improving an inefficient court system and establishing a responsive mechanism to protect indigenous intellectual property is a long-term effort requiring meticulous processes of coordination, negotiation, and education. Simply adding a new law will not change the current situation of the indigenous art market.

Using the aggressive behavior of transnational music companies as the reason to argue for better legal protection for indigenous art also obscures the fact that behind one particular case of a popular musician, there are perhaps hundreds of struggling recording artists who adapt, re-arrange, and imitate folk and indigenous music from what they consider the "public domain." This legislation would require them to apply for permission and pay certain royalty fees before they could make any profit. Moreover, if the adaptation turns out to be "inappropriate" or "disrespectful" to the indigenous cultures, they could also be sued for libel.

There are three possible scenarios to this situation: first, given the advancement of computer technology and what the music industry calls "music sampling technique," it will be harder and harder to identify the perpetrator. Even if we can identify the perpetrator, it makes very little sense to pursue a lawsuit when the economic benefit is usually very small. Second, many small music companies could give up the application altogether because of the time-consuming and expensive process of obtaining permission. Third, should this law be carried out seriously and law enforcement begin to pursue violation diligently, the most likely effect would be that many artists will simply stop using anything related to indigenous cultures in Taiwan to avoid any legal trouble.

Many indigenous activists might consider these scenarios unfortunate but a small price to pay for protecting the indigenous cultures. But given the fact that there are many alternative cultural expressions available in other parts of world, non-indigenous artists can easily find similar substitutes for creative inspiration from other

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Austronesian cultures. This could result in indigenous cultures in Taiwan becoming more isolated than ever, and eventually diminish the general public's interests in indigenous art. It will in turn make the indigenous art market shrink even more than the current small one.

Because of growing popularity to indigenous tourism in recent years, many indigenous artists and entrepreneurs have the perception that their cultural products are a precious resource to outsiders, and, being the possessors of these special knowledge and objects, they should receive exclusive benefits from them. However, the sudden fortune of indigenous artists could prove to be short-lived, if public appetite for the exotic gradually diminishes after several years of intensive contact and commercial exchanges. The indigenous tourist and art market in Taiwan is still a small and fragile market with heavy competition from neighboring countries. It needs to have good publicity in order to maintain its current rate of growth. The balance between protection and accessibility is a delicate matter requiring careful management. A rigid IPR legislation could be counter-productive in the long run.

Another possible effect of this legislation is that once some of these IPR violations are prosecuted by authorities, they will be widely publicized in mass media and create a public backlash. After all, the general public is always having trouble accepting the concept of IPR. Passing the bill without sufficient public debate and general consensus was relatively easy, but once the practical effects of legislation are gradually known to average citizens, resentment and accusation will be sure to follow. Given the fiercely contested politics of ethnic culture in present Taiwan, I don't expect that representatives of other ethnic groups will sit idly on the sidelines. Hakka Chinese, who represent about 9% of Taiwan's total population, will be the next in line to demand special treatment of their ethnic culture which is also viewed by many as under pressure of assimilation from the majority Hoklo Chinese culture. One likely outcome of this sort of political maneuver is that the indigenous peoples' moral appeal as the victims of Chinese encroachment over the years will certainly be weakened.

For those who believe the ultimate goal of the indigenous movement in Taiwan is self-determination, this bill could also constitute a serious setback. The legal

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framework established in this bill will inevitably require government or semi-government agencies to become involved in the process of determining who is a real indigenous person and what qualifies as indigenous knowledge. The registration committee will set up a national standard to determine what constitutes genuine indigenous arts and crafts; who has the right to produce authentic indigenous culture; which indigenous social unit owns a particular style of clothing, dancing, ritual, etc. I don't know of any reasonable indigenous activist who would gain any comfort from knowing this possibility.

The idea of legal engineering, of achieving social and political changes through government law, has become the dominant way of thinking among political activists of the indigenous movement in Taiwan. Lawmakers are often pressured to pass legislation that only captures the desired socioeconomic conditions and practices in normative terms, and leave the rest to the so called "policy implementation." The passing of this bill is a good illustration of a naïve concept of law as being an effective means to transform social reality in whatever direction desired without seriously examining the social reality first.[16]

NOTES

1. See the news report in http://www.taipeitimes.com/News/local/archives/2000/08/23/49186.
2. http://seed.agron.ntu.edu.tw/ethnobotany／草案 200606.pdf
3. For the questions of human rights and cultural rights from anthropological perspective, see Messer (1993) ; Nadasdy (2002) ; Nieć (1998) ; Pottage and Munday (2004) ; Thompson (1997) ; Wilson (1997) , (2003).
4. For the issues derived from introducing the concept of intellectual property to human rights, see the discussion of Coombe (1998).
5. Taiwan has a "Plant Variety and Plant Seed Act" enacted since 1988.
6. Brown (2003: chapter 2 and 3) provides some examples, such as *Bulun and Milpurrurru v. R & T Textiles Pty Ltd* in Northern Territory of Australia, and Zia Pueblo's legal challenge to non-authorized use of their sun symbol in New Mexico.

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7. For examples: Christine Haight Farley, Joseph Githaiga and Michael Blakeney, cited in Chen (2001): 311.
8. There are numerous critiques on this concept of culture, and I will not review them here. For some good discussion on this topic, please read Brightman (1995) and Boggs (2004).
9. “Plain aborigines” refers to those aborigines who live among Chinese communities and have adapted to the Chinese way of living. They were previously believed to be assimilated into Chinese culture completely, but recent politics of cultural recognition in Taiwan has encouraged many of them coming out to proclaim their cultural and ethnic identities.
10. See Kai-shyh Lin (2006), for a more detailed history of this re-structuring process.
11. My observation of the Paiwanese glass bead market was conducted at the Indigenous Cultural Park in Sandiman, Pingdong county. This small area has probably the highest concentration of indigenous artists in Taiwan, and the art of glass beads is only one among their wide range of cultural products. Many innovative songs, dances, pottery, paintings, and jewelry are regularly brought forth by the artist community based here.
12. One reviewer of this article wonders if glass beads made by the contemporary artists are covered under the Protection Act. Actually, this is exactly the problem of this legislation. The Act was lauded as a law protecting the indigenous arts from piracy, but actually no one knows exactly what the so called “traditional creation” means, and what is required to be considered “traditional” enough for a contemporary cultural product. If the registration committee decides to actively combat the problem of piracy, it could accept almost anything claimed to be “traditional” by a tribe. Thus, if one of many Paiwanese tribes somehow successfully registers some pattern of ancient glass beads as a “traditional creation” entitled to be protected, the current art market of glass beads would be divided into many camps with each tribal group monopolizing certain styles of beads.
13. With the exception of Huang Chu Cheng (2005), who argue that the application of a single property system in a multi-ethnic society is doomed to be inefficient and costly, and could be detrimental to indigenous cultures.
14. More discussions on the problems of intellectual property from Melanesian perspective, see Hirsh & Strathern (2004) ; Harrison (1999).
15. For a detailed discussion of this case, read Lin Chian-I (2002).

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16. According to our interview with an official in the Council of Aboriginal Affairs, because guidelines to implement the Act are difficult to formulate, there has not been a single case of an application being processed by May 9, 2008 after the passing of the law in 2007.

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