

**Tradition as Homi Bhabhaian “Hybridity”: A Postcolonial
Perspective on Taiwan’s Protection Act for the Traditional
Intellectual Creations of Indigenous Peoples**

Chun-Chi Hung*

Abstract

The Protection Act for the Traditional Intellectual Creations of Indigenous Peoples (“Protection Act”) has created a sui generis right for Indigenous peoples’ traditional cultural expressions under the legal framework of intellectual property. Some scholars suggest that it is not appropriate for Indigenous peoples’ traditional cultural expressions to be protected by modern intellectual property law. They argue that modern intellectual property law cannot respond to Indigenous peoples’ changing and diverse cultures and may result in Indigenous peoples being viewed as “the Other”. However, can modern intellectual property law only do harm to Indigenous peoples’ traditional cultural expressions?

If the Protection Act can recognize hybridity existing in Indigenous peoples’ traditional culture and allow Indigenous peoples’ actions through their cultural hybridity, the above-mentioned doubts can be avoided. In this article, I firstly analyze the main arguments against the Protection Act. Secondly, I adopt Homi Bhabha’s theory regarding hybridity, in-between, negotiation and translation to understand the characteristics of Indigenous peoples’ traditional cultural expressions and Indigenous peoples’ actions based on their cultural hybridity. Finally, I observe how the Protection Act recognizes the hybridity of Indigenous peoples’ culture and how Indigenous peoples describe and claim their tradition in the specifications in order to apply for registration of traditional cultural expressions.

* Assistant Professor, Institute of Law for Science and Technology, National Tsing Hua University.

E-mail: chunchihung@mx.nthu.edu.tw

This article has found that the Protection Act and its by-law have partially recognized the hybridity of Indigenous peoples' culture. Indigenous peoples have commenced a dialogue with the modern state and described their hybrid and changing tradition in the process of registering their traditional cultural expressions. Through obtaining the exclusive legal right to use their traditional cultural expressions, Indigenous peoples can maintain their power to narrate, negotiate and translate their culture. A way beyond isolating "tradition" to protect traditional cultural expressions has been created by means of the establishment of the Protection Act and the actions of Indigenous peoples.

Keywords: The Protection Act for the Traditional Intellectual Creations of Indigenous Peoples, traditional cultural expressions, Homi Bhabha, hybridity, negotiation, translation, registration system, postcolonial theory, the Other