

「文化基本法」：一份學界
參與文化立法的紀實與反思
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「文化基本法」：

一份學界參與文化立法的紀實與反思*

Culture Basic Law:

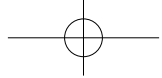
A Critical Reflection on the Academia's Participation in the
Legislative Process

◎劉俊裕**

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* 本文初稿曾發表於「2011年文化基本法學術研討會」，臺北市：臺灣文化法學會，2011年12月3日。作者感謝二位匿名審查人給予本文的審查意見，使作者對文化基本法的思慮與分析更趨周延和緊密。

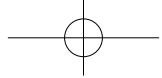
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摘要

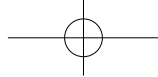
2011年11月10日文建會（今文化部）經過草案研擬、諮詢、公聽會以及行政院院會等程序，通過了政院版「文化基本法」草案。然而，隨著2012年國會的全面改組和新一屆國會民意的產生，「文化基本法」草案依規定必須由行政院於新會期重新提出，而時至2013年4月文化部方才重啟內部草擬諮詢程序。有鑑於此，作者針對個人參與文化基本法草案的研擬、諮詢、公聽會等過程中所思考的核心議題，提出一份來自學界的紀實與省思，從學術角度探究國家文化基本法所必須面對的關鍵議題。核心問題包括：一、文化基本法應如何處理臺灣核心文化價值與基本精神特色？二、文化基本法如何界定並賦予人民文化基本權利和文化人權？三、文化基本法能否針對國家的文化治理體制，提出完整而周延的架構？四、文化基本法對國家文化政策的基本方針與範疇規範是否完整、明確？五、文化基本法相對於政治經濟的實務運作，是否彰顯文化的主體性與殊異性？個人主張，只有透過當代臺灣在地文化治理的開放論述，以及藝文界、學術界、文化產業界、輿論界、民間社會、藝術文化協會與獨立第三部門對文化公部門理性的永續監督，方能使臺灣文化治理體制產生內在反身性與價值典範轉移，進而引領臺灣文化公共領域的結構轉型。

關鍵詞：文化基本法、文化權利、文化政策、文化治理、文化公共領域



Abstract

After a series of consultation, public hearing and executive meeting processes, the Council of Cultural Affairs (now the Ministry of Culture) submitted the draft proposal of national Culture Basic Law (hereafter the CBL) to the Legislative Yuan on November 10th of 2011. However, with the reshuffle of a new national Congress, the draft of CBL has to be resubmitted by the executive body, and the Ministry of Culture seems to be awaiting there for the proper moment to come. The article intends to raise a critical reflection on the CBL through the author's experiences of academic participation in the cultural legislation process, and to identify the core issues that the CBL involves. These include: (a) How does the CBL serve to converge the core cultural values and spirit of Taiwan? (b) How does the CBL define cultural rights and cultural citizenship in Taiwan? (c) Could the CBL instigate a comprehensive restructure for the regime of cultural governance in Taiwan? (d) Does the CBL clearly define the direction and scope for the state's cultural policy? (e) Does the CBL manifest the subjectivity and particularity of culture with respect to its interaction with state political economy? The author argues that only through the open cultural discourses in contemporary Tai-



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wan, and the persistent monitoring of the state cultural administrative bodies from the independent third sector, could the regime of Taiwanese cultural governance maintain its internal dynamism and reflexivity, and lead to a potential paradigm shift of values in Taiwanese cultural public spheres.

Keyword : Culture Basic Law, cultural rights, cultural policy, cultural governance, cultural public sphere

