

INTERNATIONAL PHD IN LAW AND SOCIETY "RENATO TREVES"

Regulating Signifiers: Collective Trademarks and Artisanship in Michoacán, Mexico

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INDEX

Acknowledgements	3
Glossary	6
Introduction	8
1. Culture in México's colonial history and Michoacán's artisanal sector	17
1.1 México: historical space in construction	20
1.2 Pinpointing Michoacán	30
2. The turn toward intellectual property for Michoacán	42
2.1 Methodology	44
2.2 Indigenous cultural expressions and the limitations of Intellectual	48
Property	
2.3 Problems and inspirations: where it all began	52
2.4 Intellectual property in the technocratic agenda: the rightist project	63
2.5 The artisanship in Michoacán's law	69
2.6 Intellectual property in the pluricultural agenda: the leftist project	81
3. The implementation of the Collective Trademarks public policy	90
3.1 Negotiating Collective Trademarks	92
3.2 The integration of a pilot project	100
3.3 CASART trade marketing Michoacán	108
3.4 Heterogeneity within the state	115

4. Collective Trademarks through the shifts in Michoacán's public administration	118
4.1 The changes in the CASART administration and its effects for Collective Trademarks	121
4.2 The SEDECO's involvement with Collective Trademarks	129
4.3 The Collective Trademarks in Michoacán's PRI administration	137
4.4 The heterogeneity of the state and the political field	140
5. Living the collective trademarks: The meaning of collective trademarks for Michoacán's communities	143
5.1 Methodological approach	145
5.2 Where did the trademarks go?	152
5.3 Persisting with Collective Trademarks	162
5.4 Intellectual property and epistemic hegemonies	171
5.5 Counter Hegemonic possibilities	180
Conclusions	188
References	197

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GLOSSARY

CASART: Artisanry House

CIATEJ: Centre of Research and Assistance in Technology and Design of the Jalisco Province

COLMICH: College of Michoacán

CONACYT: National Council of Science and Technology

CONAGO: National Conference of Governors

CT: Collective Trademark

DPSM: Development Plan for the State of Michoacán

EZLN: Zapatist Army of National Liberation

FLIP: Federal Law of Industrial Property

FLRA: Federal Law of Rights of Authors

FOMICH: Fund for Industrial Promotion of Michoacán

FONART: Arts Fund

GI: Geographical Indication

ICATMI: Institute of Work Capacitating of Michoacán

INEGI: National Institute of Statistics and Geography.

IP: Intellectual Property

IMPI: Mexican Institute of Industrial Property

LCDM: Law for the Cultural Development of the State of Michoacán of Ocampo

LDAM: Law for the Development of Artisanry in the State of Michoacán of Ocampo

CCTM: Council of Collective Trademarks of Michoacán

MORENA: National Regeneration Movement

NAFTA: North American Free Trade Agreement

PAN: National Action Party

PRI: Institutional Revolution Party

PRD: Democratic Revolution Party

PROFEPA: Federal Attorney for Environmental Protection

Promiorigen: Program of Industrial Property

SEDECO: Secretary of Economic Development

STASPE: Union of Workers of the Executive Power

TRIPs: Agreement on Trade-Related Aspects of Intellectual Property

UMSNH: Universidad Michoacana de San Nicolás de Hidalgo

UNESCO: United Nations Educational Scientific and Cultural Organization

UNIAMICH: State Union of Artisans of Michoacán

USA: United States of America

USAID: United States of America Agency of International Development

WIPO: World Intellectual Property Organization

WTO: World Trade Organisation

INTRODUCTION

On August 21st, 2014, the Collective Trademark (CT) “Ate¹ de Morelia Región de Origen” (Ate from Morelia Region of Origin) was formally given in a public ceremony to the producers of the city of Morelia, by a representative of the Mexican Institute of Industrial Property (IMPI) in the city’s Municipal Hall. According to Hugo Gama, this “distinctive sign grants the monopoly in the exploitation of the name and the geographical indication to the original producers” (2014). This statement is rather significant since it expresses the way in which CTs in Michoacán² have gathered a meaning that goes well beyond the letter of the law. CTs and Geographical Indications (GIs) have different aims and are regulated in different ways, but CTs in Michoacán indeed make reference to a geographical origin. Hence, CTs constitute a hybrid signifier for the artisanal production that effectively manages to extend the possibilities established in legislation.

Michoacán is the province in México with the largest amount of CTs, most of which have been established as part of the local cultural and economic policy and as a legal hybrid in practice. With an expanding number of over 50 CTs – mainly achieved between 2005 and 2010 – Michoacán’s production is increasingly framed in what some of its promoters call *Region of Origin Trademarks* because of the way these trademarks resemble GIs. The gap between CTs and GIs is bridged by stating in the trademark the place of origin of the product, and the phrase *region of origin* which, although is not a formal legal term in Mexican legislation, also refers to a certification of quality in

¹*Ate* is the regional way of calling a kind of sweet made out of fruit, sugar and water turned into a jelly like paste. This preparation is commonly done with quince, *membrillo* in Spanish, which is why it is more commonly known as *Quince Cheese* in English and directly *membrillo* or *dulce de membrillo* in countries like Spain or Argentina. In México, *ate* is considered traditional from the state of Michoacán where it can be done with different fruits like quince, guava or apple.

² Although I will speak in general of the state of Michoacán, the full name of this federal entity is Michoacán of Ocampo, though this denomination is rarely used.

relation to the territory in which the designated item is produced. Hence, CTs in Michoacán attempt to express the link that exists between the products and the cultural practices of a community in a specific territorial area. However, the characteristics of CTs, as they exist in Michoacán, not only do not draw directly from the legal text but actually go against the legal text, as both strategies to provide a geographical link are forbidden.

How and why did this legal hybrid come to be? Law is negotiated in social dynamics, which are in turn informed by economic concerns and historically shaped cultural perspectives, and the CT policy is representative of this.

The first of these CTs was granted to the Cotija cheese in the year 2005, under the name “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin), and its process shaped the entire policy. The Cotija case was being handled by a group of scholars and agents from Michoacán’s administration who had aimed to get a GI from the IMPI. The process that followed would be central for the configuration of CTs in Michoacán, and will be further analysed within this research. According to the agents involved in the process, whose accounts were substantial for this research, they have never received a formal answer to their application from the IMPI, but they were informed personally that the application would not be successful. This decision was not based on any formal legal objection; in fact, they had managed to gather the necessary requirements in an outstanding way. IMPI’s opposition was much more pragmatic than it was legal. The institution’s agents, who were also interviewed as part of this research, believe that GIs are an excellent tool for the promotion of Mexican products in the export market. Hence, it is only those producers strong enough and “Mexican” enough to take advantage of this market whom in their view will be suitable for the award of a GI. GIs are not seen by IMPI as a protection for rural producers, as they have been in Europe (Schultz 2005, pp. 460–463, Coombe and Aylwin 2011, p. 2034, Aylwin and Coombe 2014, pp. 20–21). The ideal product to be granted a GI, according to the IMPI, is one that is already recognized internationally as representative of México, and produced by a strong sector focussed on the export market. The team from Michoacán however would not give up so easily and a negotiation process then began, which would result in the important policy later applied in Michoacán.

Although several elements were actually negotiated between the federal government through the IMPI and the local government through the Cotija team, aided by the Secretary of Economic Development (SEDECO) and the Artisanry House (CASART), other elements of the policy seemed to be attributable to mere accidents, and rather substantial ones for that matter. The suggestion of using a trademark came from the IMPI, in order to avoid further insistence on a GI for Cotija, but the actual name of the CT that has allowed creating a legal hybrid is mostly attributed to a blunder in the IMPI itself. The team behind the Cotija application agreed to the CT, but they would still try to make it closer somehow to the principles of a GI, that link cultural practices and territory with the product, so they put forward a series of names that would give this impression one way or another. They were aware of the prohibitions to use a geographical name as trademark as this had been a problem in trademark law that they had talked about with IMPI representatives. They still had to give options for the name of the CT and tried to find ways to include the geographical reference, expecting that some of the proposed names would be rejected. Hence, they were pleasantly surprised when the IMPI approved a name which was so close to their expectations and in many ways eliminated the limitations which would result from rejection of the GI. So far there is no explanation of why the IMPI approved the name “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin). The best guess is that someone – and most likely a person with a technical job who had not been involved in previous negotiations – chose it without thinking much about it, since every single word in that name is illegal according to Mexican trademark law³. The agents from IMPI’s administration in México City had already expressed that it was not possible to get the CT with the name “Queso Cotija”. However the application was not handled by the headquarters in México City. Instead, the application would be made to the Bajío Regional Office of IMPI, located in the city of León, in the state of Guanajuato. The Bajío agents give no account as to why or who determined to accept the name of Cotija cheese’s CT as it is, but since the persons involved in the negotiation were set against the use of a geographical reference, the choice in the name must have come from someone uninvolved in the larger political process.

³Since all trademarks which have been granted are still subjected to legal challenge, I will not discuss in detail the specific legal dispositions and arguments that can be made against Michoacán’s trademarks, in order not to give further information that can have a negative effect on the project and the holders of CTs.

In a rather ironic turn, after a long negotiation and IMPI's constant refusal to grant a GI to Cotija, without legal arguments for refusing, IMPI ended up allowing the reshaping of CTs to better resemble GIs against the actual formal legal requirements. Michoacán's administration took the advantage and registered over forty CTs in the first five years of the policy. They also became involved in a national policy through cooperation with the Arts Fund (FONART), which was expanded to over 17 of the 31 provinces of México, in its first stage. Through different institutions, the policy continues to be part of Michoacán's cultural policy scene.

This process in Michoacán placed CTs at a crossroads between cultural policy, Intellectual Property (IP) and cultural rights, creating an explicit legal framework for culture that is informed by cultural notions shaped through history and current economic agendas. Focusing on this experience, this research analyses how this legal framework for culture was designed and instrumentalised in Mexico, in the context and challenges of a diverse society in which indigenous peoples have had a complex historical relation with a dominant mestizo culture. The notion of culture's legal framework refers to the interactions of three different but intertwined legal regimes, which are directly meant to address a peoples' culture: IP, cultural rights and cultural policies. Since culture's legal framework is as wide as it is complex, it is necessary to establish some kind of focus, so I have selected a specific public cultural policy, which is the CTs project in Michoacán. The CTs exemplify the interactions within a legal framework of culture which, in turn, depends on the practices of state agents as political class, and in particular their conceptions of the indigenous in the context of globalization.

The socio-legal approach deployed in this research departs from the simple yet fundamental comprehension, necessary to every critical perspective on law, which is that law is not limited to its formal normative dimension, and that this formal dimension is not sufficient in itself as coherent, self-explanatory and self-producing. The legal phenomenon must be understood as social process. This also means that the normative classifications that divide the different spheres of law are also linked and intertwined. My analysis of the regulation of culture is also set in the wider perspective of a political economy approach as I aim to a better understanding of the way economic agendas as well as deep cultural conceptions delineate state actions regarding cultural minorities. I

attempt to see the process that turns economic concerns and cultural preoccupations into cultural policy by moving away from an abstract conception of the state, and analysing it in terms of the sociological construction of a field in which different disputing agents act.

To understand the design and implementation of the cultural policy of CTs I have based my analysis on the relational biographies method inspired by Pierre Bourdieu. Further described along the research, this approach allows understanding how the connections amongst the agents involved, and the strategies used in the negotiation, determine the final design and implementation of the policy, which goes far beyond the letter of the law. However, I do not focus only in the interactions and negotiations, but I seek to understand the way in which their points of view permeated the policy, moulding it according to their cultural identity and their economic agenda. The observation of how they negotiated gives important elements of a political and economic agenda that is promoted by the agent and that relates profoundly to their own institutional and political interests. But digging into the reasons why they emphasized certain conflicting elements, and how they implemented the policy, is fundamental to understanding current relations between the still dominant mestizos, holders of the decision making process in the state institutions, and the indigenous cultures which have been given a legitimate place in pluricultural state narratives.

In accordance with the pluralist perspective that expresses paradigm of acceptance and promotion of indigenous cultures by the Mexican state, the main aim of this research was then to analyse how México's legal framework interacted with indigenous cultures. This was to be done particularly in relation with the implementation of cultural policy that promoted the use of collective forms of IP. Therefore there were two important sides to be analysed: the design of the policy and the implementation of the policy. Some elements of this first intention changed, as the research on the institutional design became extremely rich and the impact of the policy proved to rather show the challenges of law. The research became significant in showing relevant elements for the understanding of the state, and the way law is shaped by the agents that both design its instrumentalisation and live it in their everyday practices.

In order to understand the influences that determine how IP is instrumentalised in México and Michoacán, the first chapter will explore the context in which the CTs public policy was established. This contextualization will be necessary to provide a basis for understanding the historic meanings and power relations in which the process was settled. I will begin by discussing the role of cultural policy as a political field in which identity is negotiated and how it is also mediated by culture's legal framework. Afterwards I will explore some elements of the historical relation between indigenous peoples and the Mexican state, through which several conceptions of indigenous cultures and their role in the nation's development were conceived and remain until today. Then I will focus on the state of Michoacán, beginning to explore the historical conditions that explain the current configuration of the artisanal sector and its relevance for the region.

To understand the design of the CT policy, from idea to implementation, the second chapter will explore the confrontation of agendas over GIs which shaped the CT policy. As this is the first chapter which is not based on purely documentary sources, I will begin by describing the methodology that was designed and followed to obtain the accounts of the agents involved in the process. I mostly look at the main actors and their account of the experience, aiming to unveil not only their interactions among each other through state agencies, but also how their background and places of struggle gave CTs an identity beyond the letter of the law. Furthermore, I believe that this account will clarify how this identity reflects a particular political moment in Michoacán's and México's history; a moment which has itself a historical background and is determined by globalization. Previous to addressing the actual project that led to the CTs, I will begin by analysing the conflicts that have risen against IP and that have made it necessary for collective IP protection to be developed; namely, the objections posed by indigenous cultural expressions. Parting from these, I will explore the initiative of "Queso Cotija Región de Origen" (Cotija Cheese Region of Origin) that was the first trademark and established the basis for the project. Then I will present the objections posed by México's federal government, through the IMPI, which are evidence of the conceptions and points of view of the currently ruling technocratic right wing. The federal project shows the continuity of the negative conceptions of indigenous peoples, explored in the first chapter and deeply rooted in México's history. Before explaining

the contesting mestizo project of Michoacán's administration, I will address the legal context in which the CTs policy was set. Rather than explaining the technical details of IP law regarding trademarks, I will focus on the laws that are relevant to the design of public cultural policy, analysing the conceptions of culture and the views of development and commodification that are expressed in Michoacán's legal discourse. The legislation then will serve as a background for the following section, which will present the project and conceptions of the agents of Michoacán's administration, who entered into negotiation with those of the federal government in order to create the first CT and the ones that followed. Mirroring the ambiguities of the legislation, their views on the project express the conflicts and contradictions of the implementation of a pluralist discourse in the context of international trade policy by a left wing government.

In the third chapter I will follow the process which developed from the Cotija trademark to the almost 50 trademarks that were registered in Michoacán, all with the direct participation of the CASART or the SEDECO, including the pilot of a national project that was handled by representatives of Michoacán's CASART. This will be done again through the main agents involved with the policies and the possibilities they found within the institutions in which they worked (as most of them have moved on). Three different phases will be explored. The first phase comes as a conclusion to the Cotija process and it is when the tensions between different mestizo projects come to define the characteristics of CTs in Michoacán. After the first trademark was achieved, the second phase implies the activation of pilot project meant to extend the achievements of the negotiation between the IMPI and Michoacán's administration; which takes the CT policy to the CASART. In the third phase, a massive project that aimed to create and position CTs as fast as possible within the public sphere was implemented; this part of the project was mainly handled by CASART and carried forward the design that resulted from the negotiation previously explored. Finally, I will address some of the insights that can be drawn from this experience regarding the state and its agents.

However, the continuation of the CT policy proved to be more complicated with the change in Michoacán's public administrations; as will be explored over the fourth chapter. First, I address the changes within the CASART which came with a different focus and plans for the institution, and that are related with changes in Michoacán's

administration. Second, I approach the orientation that the project took once it was taken up by the SEDECO. The SEDECO not only changed the kind of communities and products which were targeted, but also the strategies; and, most importantly, the SEDECO period involved preparations for the permanence of the CT project beyond state institutions despite political transition by creating Council of Collective Trademarks of Michoacán (CCTM). The third phase is still in process, and conflictive since the change of government in 2012 which opens up some possible lines of development for the CT project. In these different phases, the structures that determine the actions of the agents, and which are given by the institutions, become much more evident and show the fractures of a heterogeneous state.

Up to this point the thesis has treated the CT project as it has been developed by and through state agents, so the fifth chapter will explore some of the effects that the CTs have had for the artisans' communities in Michoacán. The original planning for this chapter changed significantly during the research. I originally intended to explore the use of the trademarks in three communities and the differences of incorporation in the discourse of the presidents and in the regular artisans. However, the first explorations and interviews provided little grounds to continue with this perspective. Therefore, I will begin this chapter exploring the changes in methodology which have been re-focused the study to understand the actual implementation of CTs in Michoacán. The new focus of the study became the incorporation of the CT policy by the artisans' leaders, who occupy the position of presidents of the CT and tend to have a better knowledge of the strategies that can be carried through the state. Considering that the main objective of any trademark is to act in the public sphere to position an image or name and give it a commercial meaning, I will then explore the visibility of the trademark in shops, workshops and exhibitions. This will be done in two separate sections: first exploring the dominant cases in which the trademarks were abandoned and the significance of this fact for the expectations placed upon the TC project; and second, analysing the conditions of the communities that have managed to turn the project into a profitable experience, dealing as well with the role of the CCTM, in order to identify the context in which CTs can bring benefits and what benefits have been achieved. The final two sections of this chapter will turn into a deeper analysis of the possibilities of the use of law. By analyzing the issues that underlie the IP system and

questioning its role in defining knowledge and making knowledge available, I will attempt to relate the findings in this study to the criticisms raised against IP in other fields. And by analysing the more successful experiences, I will attempt to draw the elements that can integrate an emancipatory agenda that places cultural demands as part of demands for political participation and autonomy.

The thesis will conclude by presenting the main results of the research. I will explore the relevant contributions that can be drawn from the CTs experience in Michoacán.

1. CULTURE IN MÉXICO'S COLONIAL HISTORY AND MICHOACÁN'S ARTISANAL SECTOR

To understand the regulation of signifiers it is necessary to place them in the wider considerations regarding culture's legal framework, which is the part of the legal field that directly and explicitly deals with culture; it includes cultural rights, the Intellectual Property (IP) rights system and public cultural policies. In this vision, the IP rights system is a hegemonic construction and a power battlefield, where the interests of several agents interplay nationally and internationally within the context of globalization, the politics of development; it is even relevant to discussions on the social construction of knowledge. IP rights have a complex interaction with cultural rights which, from a dogmatic point of view, are the rights that persons have to involve with their culture as part of a people; expressing the belief that the practice and development of said culture is essential to human dignity. However, cultural rights need to be understood as they have historical roots in colonization, which also gives them content and meaning in the contemporary globalization context. The need for cultural rights expresses that there is an unavoidable relation between cultural diversity and the state, and that a state's cultural policy is fundamental to understand and help define its citizens' identity. This does not entail that the state has a monopoly on defining identity. Resistance and contestation are part of every cultural dynamic, and even if the state does not endorse a particular culture or cultural trait, its agents can and will find ways to ensure its continuity. This has happened not only in the case of indigenous' cultural practices that remained even despite the negative historical connotations (as will be further explored), but also in cases of countercultural expressions which often have even found their rationale or inspiration in being considered "inappropriate" in the canons of cultural correctness. Hence, cultural policy is not just the union of technical and administrative operations, but a space of communication, confrontation and construction

amongst different power groups (Guerrero 1995, p. 47), which is highly influenced by an economic agenda and has a substantial impact on a people's identity. Cultural policy is informed by cultural rights and IP, but it also bears its own normative framework.

Through public policy's several tools, the state acts in the present to shape the meaning of the past and the possibilities for the future. There is education's fundamental role in the way a people understands its past and produces a future. "Us" is something learned and reproduced, and both activities are done through the education system. However, the meaning of the past is present far beyond history classes, and perhaps much more significantly in the way cultural heritage is managed and portrayed in and beyond the state. The projection of what our culture will be, and what it is considered that it ought to be is negotiated in media and popular culture, far more than in museums, theatres or art galleries. Still, there are many ways in which a state's cultural policy deals with the objects, symbols and meanings that constitute the public sphere and shape what we experience as our culture.

Regarding the past, there are two dimensions of what we consider our cultural heritage. Beyond technical definitions that list the sort of objects and practices that can be considered tangible or intangible cultural heritage, there is an institutionalization of the processes through which we structure the symbols of our past, to give meaning and projection to a people's identity. As the wording suggests, cultural heritage is composed by those things that both come from generations before us and we consider worthy of being transmitted. On one side, peoples are defined by their history; oppression and war, victory and prosperity, the past is a source of belonging. The immediate past defines complete generations and our entire history gives reason to what we understand as ours in terms of traditions. Even when we rebel against our cultural tradition, we rebel against those things that have been considered important enough to be taught and deemed correct. However, what is in fact considered important does not come naturally; it is constructed from social processes in which some meanings are privileged over others (Meskell 2002, Smith 2006, 2007). But once we step into the legal field, cultural heritage is also status that is given to cultural elements that are officially recognized as important. On another side, cultural heritage is settled in the legal status that portrays a state or institution's values system which is objectivised in certain cultural products. Monuments and holidays have been used through history to preserve history itself, but

this process has become much more significant given the attention of institutions like the UNESCO (United Nations Educational Scientific and Cultural Organization). This side of heritage is also the result of process of signification of the past, in which there is a political calculation and, more and more, an economic agenda based around tourism concerns (Aragón and Guerrero 2013, p. 48).

The future of a people's culture is also dealt with by cultural policy. Coombe identifies cultural policy as a way "to govern or regulate permissible expressions of social and cultural identity" (2009, p. 398); there being many ways in which the non-permissibility can be expressed and several examples to be gathered around the world. Evidently, the most extreme cases can happen when the cultural expression is subjected to actual criminalization. This has often happened in cases of dictatorships which have banned cultural expressions that go from music and flags, to the languages themselves; this happened, i.e., with the Basque language during Franco's dictatorship. But there are also cases, like the ban against gay propaganda in Russia, i.e., which can put a question mark in the democracy of a government otherwise unrecognized for being dictatorial. But there are other, more subtle ways, in which certain cultural expressions can be limited. The mere neglect or selective promotion of cultural traits or expressions can have an impact as well in the ways and possibilities that a people can have to express its culture. As will be explored in this chapter, indigenous peoples have been historically accused of holding cultural traits that keep them poor and underdeveloped – an obstacle for a country seeking modernization – which has, in turn, translated in little promotion of their cultural expressions.

However, the role of cultural policies cannot be defined in absolute terms, because no policy means the same in every context. As wide as "official" history is spread, it is often contested. There is, after all, the understanding that history is usually written by the winning side, and that in this account there are processes through which some meanings are privileged while others are de-legitimated or denied voice. This understanding often calls into question the very assumptions that are taken for granted in official versions of history. A declaration of heritage can help to pinpoint relevant elements of history to give them continuity in a people's memory. Cultural heritage is even used in some parts of the world as a tool for social groups to validate their right to decide upon the important points of history, as Michael Brown (2003a) has

documented. But a declaration of heritage can also mean exclusion for the people that live with, in, or through it, in the name of “conservation” as some sort of “greater good” (Rosas *et al.* 2011, pp. 9–10, Aragón and Guerrero 2013, pp. 54–59). Permitted and non-permitted, just as legal and illegal, do not in any way guarantee visibility or continuity. On the one hand, the state promotion of, say, a dance can make it relevant even beyond its local origin (as happened with Tango in Argentina or the Jarabe Tapatio in México). On the other hand, while state promoted expressions can become static within their promotion, the neglected cultural traits can find a fertile development by extremely committed actors outside state boundaries (as can be seen in Basque cultural expressions during the dictatorship, or even in the case of Capoeira in Brazil before it was endorsed by the Brazilian state).

And so, to understand the workings of the use of Collective Trademarks (CTs), promoted as a public policy in the state of Michoacán in México, it is necessary to pay attention to the historical socio-legal- context in which this policy is embedded. Therefore, the first section of this chapter will, however briefly, give account of indigenous people’s role within México’s geographical space. The second section explores the history of the state of Michoacán in relation to the configuration of artisanship activity as central to indigenous communities’ life. Finally, the third section gives a general overview of the framework that currently regulates artisanship and within which the public policy of CTs was designed.

1.1 México: historical space in construction

Despite its deep historical roots in a wide and complex variety of cultures that existed and continue to exist in several ways, México is a country shaped by colonization; like every other in the world, but not in the same way. Colonization has meant something everywhere in the world, contemporary states have all been involved with it and, even though the colonizer and colonized positions in historical relations are quite clear; this does not entail a uni-directional flow of influence. Contemporary Spain

is as determined by colonization as México is, but definitely not in the same way. Yet the process cannot be understood as homogeneous even when it comes to regions positioned on the same side of the scales. In Latin America it is impossible to assert that the colonization process happened the same way or with the same results in every country. However, relevant similarities can give clues to realities constructed emerging from colonization processes that formed complex power dynamics in complex societies. Resistance in particular is a common trait in postcolonial societies. The remaining diversity of societies, such as the Mexican, is proof of indigenous peoples' struggle to keep their cultures alive; an achievement of no less importance because it was accomplished in a context of state discrimination since the colonial period.

Without denying the diversity and complexity of pre-colonial México, one has to admit that the colony played a substantial role in redefining social relations in the region and introducing many of the structures that subsist to date. Between the XVI and the XIX centuries, the Spanish empire occupied current Mexican territory and did so, along with the evident violence against aboriginal peoples, with the use of rather common legitimizing discourses that allowed European empires to extend their dominance over the rest of the world. An important legitimizing discourse, which is identified as a notable domination strategy (Scott 1990, Bonfil 2008), holds the cultural superiority of the settler over that of the natives. This argument, went in some cases as far as to deny the very humanity of indigenous (García 2011a, p. 186), which allowed legal institutions such as the *encomienda*, through which the Spaniards were given a piece of land and, in exchange of keeping the military alert and spreading the Christian faith, they were allowed to keep the tribute from the people in that territory, including their work which made the *encomendero* able to dispose of the workers as he saw convenient (García 2011a, pp. 179–180).

The negative attributions given to indigenous peoples did not continue to such extremes all through the colony in all cases – although there are much more recent cases that show that the question on indigenous humanity remained for far longer⁴ – but its

⁴Julieta Lemaitre (2009, pp. 281–287), for example, exposes La Rubiera case, which was documented from 1968 to 1972 in Colombian press. Eight habitants of La Rubiera were convicted for the murder of sixteen Cuiva indigenous persons; however, it is not the murder alone which was both notable and appalling, but the fact that they did not believe to have done anything wrong. Indigenous hunting was

less extreme version did not mean a valuation of indigenous cultures. While some considered that they should be punished with slavery for being pagan and savage, others – like Francisco de Vitoria or Bartolomé de las Casas – considered that indigenous people should be recognized as having the same natural rights as any other human being (García 2011a, p. 186). This was also possible, according to García (2011a, p. 186), because the superior cultural traits of the peoples in México; which included their institutions, political organization and property practices. The act of acknowledging their humanity meant also to acknowledge that they indeed had a *soul*, but a soul lost in the profane that needed to be saved (Bonfil 2008). Indigenous people were human, but they were also savages in need of guidance, if not slavery, which would be provided by the goodness of the settler, particularly through the Catholic religion. Regardless, other elements came into discussion, like their rights to their property structures, at least to some extent because the force and the law of the Spaniards would continue to prevail. In this context, the “dense of the Indians” was “not only a conduct principle but a tool in the political game” (García 2011a, p. 186)⁵. Still, perhaps Catholicism is the strongest inheritance of the Spaniard institutions in terms of prevalence through history; even after the Spanish empire was expelled, its religion remained. Within that religion, it is true, some pre-Hispanic elements managed to be introduced. Indigenous people managed to maintain pre-Hispanic cultural elements through three centuries of colonization. To some extent this was because the settlers probably never really meant to eradicate them. Indigenous people were considered immature, as if they were minors, which implied legal limitations and social inferiority (García 2011a, p. 186); their differences were marked as signs of how irremediably uncivilized they were, and so they continued to justify the necessity of the Spaniard empire.

México’s independence (1810) affected the country’s higher elites, but did very little for the lower classes, especially indigenous peoples. They were active participants

seen as a “common sport, with its own verb: *guahibear*” (Lemaitre 2009, p. 284), and the argument for the defence, at the time, was that the people from La Rubiera did not know that indigenous were persons.

⁵As part of the restructuration of land ownership which came with the colony, the matter of the indigenous’ right to land was also considered. Once their right was acknowledged, the redistribution of land among the settlers could only be done over land which did not have a specific owner. However, “the legitimacy of the process was a concern not, or not very much, for what it meant in front of preexisting peoples’ rights and their inhabitants, but because it was a matter that needed be clear for Spaniards themselves: who gave what to whom and with what right; in other words, who had jurisdiction over what” (García 2011a, p. 210).

in the struggle for independence, but not the architects of the rebellion; as they would not be the architects of the emerging country. The Mexican independence struggle was able to get rid of the Spaniard elite who had kept at bay the *criollo* elite (Bonfil 2008). Most if not all of the independence leaders were *criollos*, the sons or grandsons of Spaniards who were born in México and therefore could never reach the top power positions, reserved for peninsular Spaniards. Agustín de Iturbide, the leader of the Spaniard army who ultimately signed the peace with the rebels, was a *criollo* who became the first Mexican emperor of independent México. For the indigenous peoples who had fought for Mexican independence, this meant that there was little or no answer to their claims. As for their culture, it remained the exotic and ignorant obstacle to be overcome by Mexico's civilization and modernization process.

There was a shift in the Mexican elites throughout this period which would define cultural policies over the next century: the *criollo* domination would die away, giving space to that of the *mestizo*. Since the colony and all through México's history, words like "indigenous", "Spaniard" and afterwards "mestizo", do not just refer to a person's birth; but make reference to their culture and context (García 2011b, pp. 222–223). The communication and interaction within these categories makes it impossible to assert a cultural purity. Although the word *mestizo* was used during the colony to describe those who had been born out of the relation between a Spaniard and an indigenous person, and other kinds of mixtures had different names (Hausberger and Mazin 2011, p. 292), now it refers to those who are born and live within a culture developed from the interaction between the Spaniards' culture and those that existed before the colony in the Mexican territory, and even the African ones that came with the colonization. The emphasis of the mixture in the mestizo culture makes it different from that of the indigenous peoples, which retains cultural traits like the dressing attire or the language, but most significantly, the notion of being indigenous that prevails even when traditional clothing and the language is lost.

I avoid the definition of mestizo as mixed-blood or half-blood mostly because of its biological implications. It would be hard to be confident that the indigenous people themselves nowadays do not also have some ancestor of European or African origin, but the distinction between an indigenous person and a mestizo in México goes beyond biological traits and into the cultural context in which each individual is raised. From

this perspective, it is accepted that indigenous is a category created through the colonization process and therefore defined by it, as is the mestizo culture. Indigenous cultures are understood as they relate to cultural traits from a diversity of origins, but also as they contextualize and re-interpret those influences. And while indigenous cultures and mestizo culture are not entirely separated, and indigenous cultures do have traits inherited from the colonization, they are also not the same and understand themselves as different.

Yet, it is hard to speak of a coherent cultural policy over the first hundred years of independence beyond the basic notion of the obstacle posed by indigenous cultures, and the attempts in Porfirio Díaz long dictatorship to begin building national unity. Independence came with a long period of social, economic and political instability; war was a constant for a country that could not quite decide on what form it should take. Indigenous people were always a part of the struggle and managed the most important achievement of the lawful recognition of their territorial organization. But from Benito Juárez, a man of indigenous background who reached the position of President, and the annihilation of the second Mexican empire, to Porfirio Díaz, México's dictator with a preference for French architecture, indigenous peoples remained in the "problem" sphere, considered archaic in comparison with the many modernizing views which paraded through the Mexican government. Indeed, Porfirio Díaz long dictatorship (1876-1911 with a few interruptions), is significant as it represented the consolidated perspective on indigenous peoples: while the pre-Hispanic past was idealized, indigenous peoples were seen as lazy, servile, distrustful, unclean and with a tendency towards vagrancy and alcoholism (Kunts and Speckman 2011, p. 520). Some of the practices that characterized Díaz's cultural politics remained well after he did. On one hand, this period is marked then by the effort put in the rescue of archaeological sites as well as the overall emphasis on engraving history in the public sphere⁶. On the other hand, education was plainly identified as the best place in which to create a national culture. The project of an education that was free, compulsory, secular, uniform, patriotic and comprehensive, also prohibited teaching in indigenous languages to favour integration by promoting the use of Spanish (Kunts and Speckman 2011, p. 529). As

⁶The history of México was engraved in the names of the streets and in the emphasis put on civic celebrations. An extra effort was put through the many monuments and museums that were created during that period (Kunts and Speckman 2011, p. 529).

Bonfil indicates, “There was no thinking about developing the aborigine cultures, because they were denied validity in advance and deemed illegitimate, excluded from any national project” (1999, p. 139). The plans for México were many, centralized or federal, sometimes lay and at others Catholic, even Austrian or French, but indigenous cultures had no place in any of them.

After the Mexican Revolution (1910) the matter of *Mexican identity* became central to state policy. If stability was to be found, it would be grounded in the homogeneity of a national culture; of *something* or *some things* that would represent the notion of Mexican within and to the world. But just as the settlers positioned their culture above that of the native to legitimize their domination, the national identity would be fixed in the mestizo culture with the same aim; after all “Authenticity supports power, just as power creates authenticity” (Burns 2008, p. 52). In this context, as Javier San Martín Sala (1999, p. 37) states, the national cultural identity becomes a myth, useful for the political elites to establish themselves as representatives of a deeply historical identity.

So México was found in the cultural union of European with indigenous traits, in the mixture but not in the isolated elements. Isolated they only had meaning as part of the grandeur of two pasts that entwined to produce the rich mestizo culture of contemporary Mexico. Bonfil (2008) illustrates this point referring to the art sponsored by the Mexican government between the 1920s and the 1940s, stating that in promoting a nationalist tendency, the mestizo artists who spoke of the two pasts were highly celebrated, while the individuals of the present were ignored. In many of the public buildings in México City, as well as some through the nation, one can see murals by artists such as Diego Rivera, David Alfaro Siqueiros, Dr. Atl, José Clemente Orozco or Rufino Tamayo. Their work shows the richness and diversity within mestizo culture, but it is also representative of the time that Bonfil speaks about; a time in which the state sponsored these artists, to the extent of giving them some of the most important buildings in the country’s capital as a blank canvas for their work. They portrayed the archaeological sites, which were being recovered at the time as well, the achievements of those cultures in science and agriculture, and the different wars of México’s history. This was mixed with the dominant Marxist ideology of the time (Marx is actually portrayed in some of the murals), which was represented by multiple references to the

industrial revolution and the struggles of the working class. The indigenous peoples who in the past had fought against the colonizer, were mirrored and blurred within the working class struggling against capital; and indeed the murals themselves highlighted the new regime's commitment with the majority sector of the poor and exploited (Aboites and Loyo 2011, p. 602).

The mechanics of constructing a national identity did as much for the pre-Hispanic past as it did little in favour of surviving indigenous cultures. Díaz's dictatorship was terminated, but his attempts at homogenization were not abandoned; they survived not only de Revolution period but lived well beyond it. The education system designed from the central government was finally achieved with the creation of the Secretary of Public Education (SEP) in 1920, with the direction of José Vasconcelos.

The SEP attributed to the education system the responsibility to contribute to a national identity and to forge a new, healthy, moral and productive man through the spreading of the national language and a homogeneous lifestyle that gave an end to cultural diversity. Vasconcelos proposed integrating indigenous peoples to the rest of the country, to civilize them under the postulates of a humanist culture which was considered as universal (Aboites and Loyo 2011, p. 602).

Vasconcelos resigned in 1924 but the project of integration continued in what is now known as the "indigenist" period in public cultural/education policies. As Blancarte explains, "when it comes to the real Indian the interest wanes and even poses a problem for development and national integration, as its diversity and remoteness from western canons apparently makes it difficult for the country to reach the desired cultural unity" (2007, pp. 19–20). In discourse and in the design of public policies, indigenous cultures remained perceived as the same obstacle they had been since the colony; deemed poor because of their language, poor because of their traditions (as is shown by Warman 2003, Bonfil 2008). Even from the frontiers of academia, anthropologists and sociologists at the time considered that the only true way to help communities was to integrate them to "modernity", seen as a separation from indigenous tradition (Marroquín in Stavenhagen 2002, p. 27). But beyond discourse,

this notion of Mexican, meant to transcend class and ethnicity, is not merely rhetorical, as Bartra explains: “the concept of Mexican is created and then the reality is tried to be forced to imitate the invention” (Bartra 2005, p. 25).

Many examples can be cited on this period. During Calles government (1924-1928), Puig Casauranc worried about the “improvement of the race” and as Secretary of Education created the Psicopedagogy Department that implemented anthropometric and intelligence trials (Aboites and Loyo 2011, p. 614). The sub-secretary Moisés Saénz did his own experiment by taking 200 young men from their home towns and concentrated them in a boarding school in Mexico City in order to transform their cultural manifestations and later send them back with the task of promoting "good civilization" (Aboites and Loyo 2011, p. 614). Another example of this was the celebration of the Interamerican Indigenist Congress in Pátzcuaro, Michoacán, in 1940 organized also by Saénz during Lázaro Cardenas’s administration (1934-1940). The Congress gathered representatives of the entire continent, who were nevertheless non indigenous, and the policies of the next three decades were defined as to favour the quick integration of indigenous peoples into national agendas. This was in line with the position of Lázaro Cárdenas government, then in his last year as president, who did create institutions to tend to indigenous demands, but continued and supported indigenist policies in a period in which the indigenous cultures were targeted to promote integration to mestizo culture (Aboites and Loyo 2011, p. 633). Education and development policies stigmatized indigenous traditions, language and knowledge systems, rendering them archaic and promoting their eradication; a mission which was successful to a certain degree⁷.

Systematic stigmatization of their cultures had not however killed indigenous movements, which by the 1980s were transcending the limits of Latin American states. Five centuries after the Spaniards’ arrival in America (1492), indigenous struggles became more visible than ever. In México, 1994 saw the rise of the Ejército Zapatista de Liberación Nacional (EZLN), with its anti-neoliberal agenda and on the same day that the North American Free Trade Agreement (NAFTA) took effect. In that year México also experienced an economic crisis known internationally as the “Efecto tequila”, in

⁷Public policies representative of the “integration” paradigm have been studied extensively by several authors, some important collections include the ones edited and/or coauthored by: Bonfil (1982), García (1987), Granillo (1997), Sieder (2002).

which the peso suffered a dramatic devaluation due to the lack of foreign-exchange reserves. The EZLN would play a fundamental part in restating indigenous demands and making them central to the discussion. And, although it is impossible to do justice to the complex and long process that followed the EZLN rising⁸, one cannot deny that it represented a fundamental turning point for Mexican politics regarding indigenous peoples. The EZLN entered a process of negotiation with the Mexican state which reached a final point, understood by some as a success of the movement (Speed 2008), with the indigenous constitutional reform, although the reform was hardly supported by the EZLN itself. Still, the EZLN movement managed not only to create communication and unity among indigenous movements all through México, but it articulated with other indigenous movements in Latin America, each with their own history but united by their postcolonial history and search for recognition and rights. The effect of those transnational movements was fundamental for the revaluation of indigenous cultures. The entire Latin American region entered a period marked by a politics of recognition that aimed at the rescuing of indigenous cultures and an acknowledgement of their value (Stavenhagen 2002, p. 24).

As part of the negotiation with indigenous movements and within the Latin American politics of recognition, in 2001 México adopted legally the discourse of pluralism. Granted, México's diverse configuration had been briefly acknowledged in 1994 by a reform of the 4th Constitutional Article. But it was not until 2001 that the second article of the constitution came to be about indigenous peoples. This article begins by stating: "The Nation has a pluricultural composition originally based on its indigenous peoples, which are those that descend from the populations which inhabited the current national territory when the colonization started, and who maintain their own social, economic, cultural and political institutions or part of them".

Within the wide range of indigenous rights that were adopted by Latin American constitutions, the right to culture was taken as a contextualized need of groups whose culture diverges from a dominant national one. Cultural rights indeed are brought forward parting from the acknowledgment that, as was earlier explored, the State can

⁸Although several accounts of the EZLN movement can be found either through media coverage or scholarly documentation, an relevant account of the movement, its relation with state law and human rights can be found in Shannon Speed's "Rights in rebellion" (2008).

and does have an important influence in the way cultural expressions develop, and also that historically this has been seen in attempts at cultural genocide. Therefore cultural rights are first understood as the declaration that it is incorrect for a government to act against an indigenous minority's culture (Burns 2008, p. 49). In a wider notion, cultural rights are the rights that people have regarding the ties that bind them to their cultural heritage, to actively involve as a participants, consumers and creators of their culture, to allow not only its maintenance, but also its continuity and development. In México, these rights make a great deal of sense when one takes into account the historical processes described earlier. And so, in the 4th Constitutional Article (2000) the Mexican State compromises itself to promote cultural rights “attending to cultural diversity in all its manifestations and expressions”, and indigenous peoples have the right, recognized in the 2nd article (2001), to “preserve and enrich their languages, knowledge and every other element that constitutes their culture and identity”.

However the incorporation of this pluralist discourse is hardly enough to represent by itself a change in the relation between state and indigenous peoples. As will be further explored later in this chapter policies in México are now impregnated with a discourse of pluralism that speaks of the protection and promotion of indigenous cultures, as representatives of the diversity within the country. But the discourse has yet to be proven to be paradigm shifting. Indeed, qualitative research (García and Piedras 2006, Ibarra 2011) has made a case that the implementation of cultural policies in indigenous communities, more often than not, still implies different degrees of integration and assimilation and brings about important alterations in local systems of value and organization. Furthermore, the argument has been made that some aspects of the reform of policy towards the indigenous have acted more to justify the state's involvement in ever more spaces of indigenous societies. While also being highly influenced by hegemonic transnational forces such as the World Bank, the Inter-American Development Bank and the USA Agency of International Development (USAID), in order to create adequate legal frameworks for free trade (Aragón 2014, pp. 119–121). Therefore, the comprehension of the workings of cultural policies, as a space in which indigenous peoples and state agents interact, is central to the comprehension of how this interaction deals both with the demands of indigenous people and state's interests; while intersecting with an economic context.

1.2 Pinpointing Michoacán

Michoacán is one of 31 states⁹ that comprise the Mexican federation. With almost 60,000 square kilometres and over four million habitants¹⁰, Michoacán is located in the central west side of México (figure 1.1). The state has 113 municipalities, being Morelia its capital and the largest city (almost 730,000 habitants). According to the data produced by the National Institute of Statistics and Geography (INEGI)¹¹ in 2004, Michoacán's economy is based mainly in activities of manufacture, commerce and services.

As for the ethnic configuration of the state, official calculations from INEGI (2010) report that about 3.5% of Michoacán's population speaks an indigenous language (figure 1.2). This places the state in the 11th place in ethnic diversity and underneath the national percentage. Although it is considered that indigenous peoples are defined by self-adscription and that language is not an appropriate criteria to calculate indigenous population, official statistics do tend to use this criteria in the definition of the ethnic configuration of the country. The deeper debate on the topic of the language relates to the cultural elements that define indigeneity, which digs into the complications to define the identity of a person or a people. However, beyond its theoretical significance, the decades of indigenist policies that attempted to eradicate indigenous languages make it inaccurate at the very least to use this criteria to calculate indigenous peoples in México. Regardless, it is acknowledged that there is a greater density of indigenous population in the south east of México. Michoacán's statistics on indigenous population, however, are significant as they show the clear current existence

⁹México is integrated by 32 Federal Entities, this includes 31 states and the Federal District, which is México City.

¹⁰The INEGI statistics on Michoacán's population for 2010 can be found here: <http://cuentame.inegi.org.mx/monografias/informacion/mich/poblacion/default.aspx?tema=me&e=16>

¹¹The information produced by the 2004 INEGI's economic census for the state of Michoacán can be found here: http://www.inegi.org.mx/est/contenidos/proyectos/ce/ce2004/carpetas_tem.aspx?_file=/est/contenidos/proyectos/ce/ce2004/doc/ct_michoacan.pdf

of four different indigenous peoples: *Purhépecha*¹², *Náhuatl*, *Mazahua* and *Otomie*¹³ (figure 1.3). However, it is important to also note that the majoritarian indigenous group in Michoacán is the Purhépecha people, which has had presence in the territory since before colonial times.

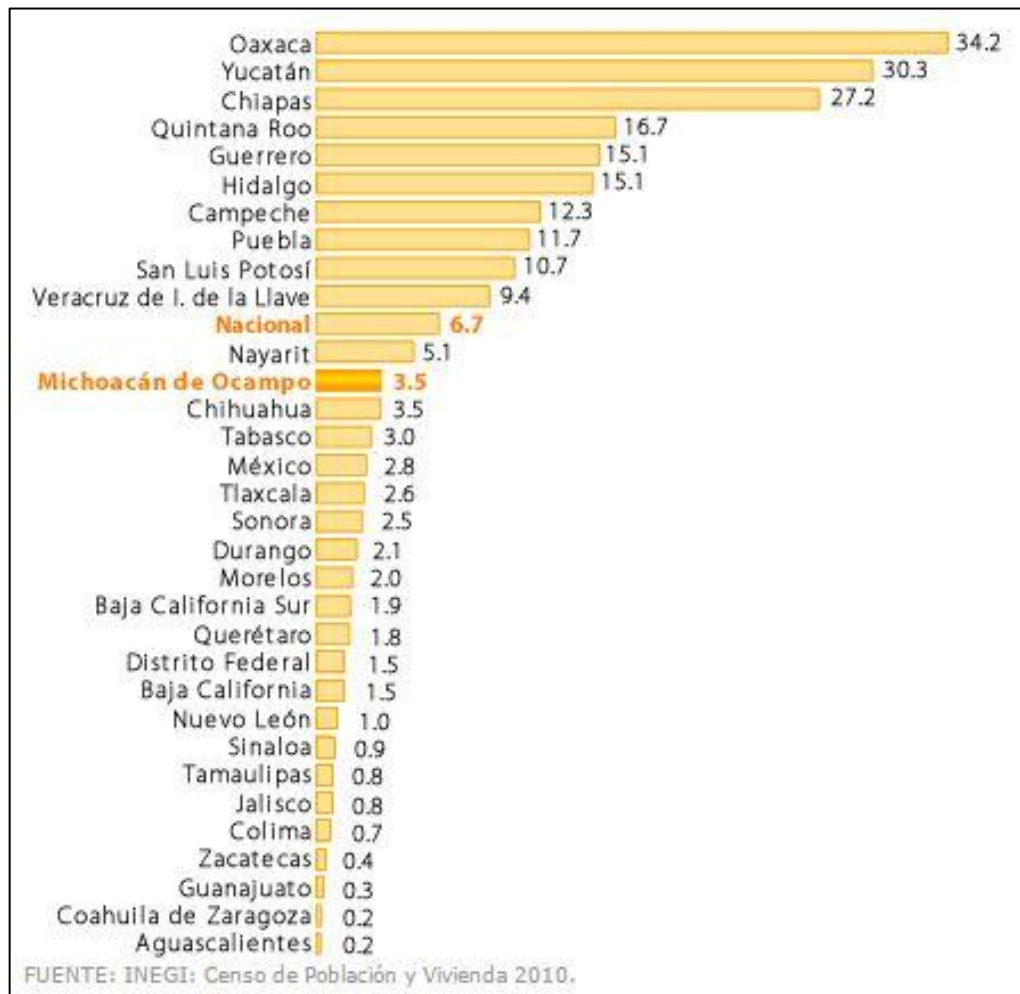


Figure 1.1¹⁴

¹²The spelling of the majoritarian indigenous group in Michoacán is written differently in the text and in the figure. The Purhépecha language does not currently have a standard for its writing which is representative of the complications that have made it hard to reach an agreement between the different communities that subscribe to the Purhépecha people. I have chosen to use the spelling that is more commonly found in literature, without this meaning to assert that I consider it correct over others. The same people was also previously known as Tarasco.

¹³INEGI statistics in the figure 1.2 speak of Mixtec languages instead of Otomie. The large diversity in languages in México makes for classifications that often group the languages of otherwise considered different indigenous peoples. Hence, the indigenous people that speaks a Mixtec language in Michoacán subscribes as part of the Otomie indigenous people.

¹⁴Source: INEGI (2010). Available at: <http://cuentame.inegi.org.mx/monografias/informacion/mich/default.aspx?tema=me&e=16>

Figure 1.2¹⁵

Lengua indígena	Número de hablantes (año 2010)
Purépecha	117 221
Náhuatl	9 170
Mazahua	5 431
Lenguas mixtecas	1 160

FUENTE: INEGI. Censo de Población y Vivienda 2010.

Figure 1.3

¹⁵Figures 1.2 and 1.3 are available at: <http://cuentame.inegi.org.mx/monografias/informacion/mich/poblacion/diversidad.aspx?tema=me&e=16>

However, in order to understand how and why the CT project was developed in Michoacán, it is not enough to look at its current ethnical configuration and/or the historical relation between the Mexican state and indigenous peoples; one must look at some historical elements of Michoacán itself. Evidently, the state of Michoacán is part of Mexican history and, as such, the processes described earlier were also lived in Michoacán. There are, however, some particular elements that I consider important to highlight due to the role they played in giving a specific identity to the artisanship field and to the CTs that have emerged from it.

As an example of how the past is handled in a country's agenda, the history of Michoacán before and during the conquest is somewhat obscured in México's national narrative; as García states "México did not only conquered Michoacán, it also conquered its conquest" (García 2011b, p. 239). It is considered that the conquest of the territory where México is now settled was achieved by the Spaniards in the moment the Aztec/Mexica empire fell in their hands in 1521; regardless that the territory of Michoacán, along with a good part of the current Mexican territory, was not a part of this empire (García 2011a, p. 169). Michoacán's geographical space was dominated at the time by the Tarasco/Purhépecha people, an empire on its own terms which had been the main military concern for the Mexicas (Escalante 2011, p. 149). Purhépechas were a warrior people and this characteristic had kept them out of the reach of the Mexica Empire despite being such close neighbours. In pre-Hispanic times, the Purhépecha communities did not pay tribute with products, but with work and the social stratification was less complex than in those of the Náhuatl or Mexica peoples; which in turn implied a smaller noble class and settlements which were also less wide and urbanized than others in Mesoamerica (Escalante 2011, p. 150).

Maybe also because of this, when the Purhépecha empire fell to the Spanish invasion the indigenous hierarchies were somewhat assimilated within the colonial structure. The notion of neighbourhood that existed in Mesoamerica was also present in the Purhépecha people; "more than territorial subdivisions of the settlements; they were strongly cohesive communities, corporative groups which gathered several families and identified themselves as basic social units for the life of the larger political unit" (Escalante 2011, p. 155). The assimilation was not the kind that just incorporates whatever social structures exist, but the kind that gives a space to the elites, although a

space that is reshaped and restructured. The military occupation of the Tarasco empire operated by making the *Cazontzi* (name given to the king¹⁶) recognize the authority of the Castile crown, and keeping him as the main local authority; this implied submission but not defeat (García 2011a, p. 178, 2011b, p. 238). The structure of a “comisariado de bienes comunales” was created by the Spaniards as a sort of government for indigenous people within their towns. Some of those towns were kept as they were in pre-Hispanic times, but others were even re-located, their boundaries defined by the Spaniards.

This territorial reconfiguration has probably been the most relevant problematic in the region, since ambiguous town boundaries raised constant confrontations for Michoacán’s communities, highly dependent on agricultural activities. The very authority of the *Cazontzi* was eventually overruled by the Spaniards and, in order to reinforce Spanish dominance over the region, the capital of the state was eventually moved from Tzintzuntzan, which was one of the original capitals of the Purhépecha empire, to Pátzcuaro, and finally to the city of Valladolid (now Morelia). Valladolid was the first city in México created with the express end of being a political capital and a Spanish city, it was meant to be a symbol of their dominance over indigenous people. The first city to impose its grid onto the chaos of pre-Hispanic towns it was also built relatively far from water, which was provided by the construction of an aqueduct, also a show of the Spaniards’ technical prowess. Practically and symbolically, Spaniards would give indigenous peoples a space, but kept control over how that space was to be used; a process that to some extent can still be perceived in the design of the policy analysed in this research. Currently there are also other indigenous peoples within Michoacán’s boundaries. Mazahuas, Otomies and Náhuatls have ended up in Michoacán either due to arbitrary territorial divisions that left them inhabiting more than one state, or by migrating to different regions of the state through history. The geographical configuration of the state and the internal organization of communities have then much more relation with the colony than they do with the pre-Hispanic constructions, and, as will be seen later on, many of the logics of interactions between mestizo and indigenous also survived over time and despite changes in the discourse that legitimates the policies.

¹⁶Although *Cazontzi* is the most common known name given to the Tarasco/Purhépecha ruler, it is also affirmed that this was a denomination given by other peoples and afterwards adopted by colonial narrative; while the Tarasco/Purhépecha ruler was actually called *Irecha* (Aguilar 2007, p. 45).

The development of the artisanship field in Michoacán also owes quite a lot to the Spanish conquest, and the Spanish bishop Vasco de Quiroga is central to this process. Vasco de Quiroga, who was sent first as a judge¹⁷ for the Spanish crown in the XVI century to deal with the problems left by Nuño de Guzmán's government (Miranda 1997, p. 37, Aguilar 2007, p. 43,48, León 2007, p. 34, García 2011b, pp. 238–239), became the first bishop of Michoacán and had great influence in the political configuration of the state; notably he decided on the change of capital from Tzintzuntzan to Pátzcuaro (Aguilar 2007, p. 43,50). He is recognized for designing what was known as hospital-towns, an ideal of a town inspired by Tomas Moro's Utopia (León 2007, p. 34), the first of which was Santa Fe de los Altos (1532) near México City, and the second was Santa Fe de la Laguna (1533) in Michoacán (León 2007, p. 33). As León (2007, p. 33) explains, the notion of hospital was understood in medieval Spain in a wider sense than now; it was a charitable institution to keep and educate the poor, the sick, and the elderly, and as a refuge for pilgrims. Due to Quiroga's insistence on social services, the educative aspect of evangelization were highlighted (García 2011b, p. 239).

In addition to the other elements of organisation designed by Vasco de Quiroga in the hospital-towns, indigenous populations were settled in communities in which some of the pre-Hispanic guilds organization prevailed (Miranda 1997, p. 38). The guild organization would allow for everyone in town to have a productive activity in which they would specialize and which they would hand down to their children. This created a unity and communication among the different families that integrated each guild, effectively reinforcing the collective nature of the social structure in each town. It was also considered that this structure would make the towns would be self-sustaining¹⁸. It is very likely that this last element would be fundamental for the survival of indigenous cultures, despite the attacks of the indigenist period, as their economic sustenance continues to be deeply connected with other aspects of their social organisation.

¹⁷ The Spanish empire had as the highest justice institutions the Royal Hearings, and the judges that belonged to them were called *Oidor*. Such was the role of Vasco de Quiroga when he arrived to México.

¹⁸ Although not in direct interest of the topic here addressed, it is important to note that problems amongst the inhabitants of the hospital-towns also had to be settled amongst themselves without involving external courts (León 2007, p. 33). This tendency towards the resolution of conflicts within the indigenous community to avoid involvement with external authorities became rather common in México and persisted through time, as was later studied as harmony ideology by Laura Nader (1990); and it is also relevant to understand the juridical pluralism that persists in México.

Within the guild organisation designed by Vasco de Quiroga, an artisans' guild was also contemplated, which strongly represents the link between economic activities and social structures (Miranda 1997, p. 38, Oikión 1997, p. 22, León 2007, p. 33). In fact, the artisans were organised in guilds all through México following colonial structures (Guzmán 1998, pp. 47–49). Each indigenous community was also to develop sustainable economic activity that could be supplementary to working the fields, which continued to be the main occupation in the towns and was also organized and performed collectively (León 2007, pp. 33–34), and could generate extra income for the community.

Some elements of this design were significant in defining the particular characteristics of the artisanal sector in Michoacán. The fact that such activity was organised within the guild, meant that it would normally be one or maybe two activities, created collectively within the artisan guild. The selection of the artisanship vocation was also not casual; in each town it would take advantage of the resources in the area and, where possible, it would develop from any pre-Hispanic artisanship vocation. The pottery tradition in Michoacán, in particular, is dated all the way back to civilization of Chupícuaro, which existed in the region between the 400 B.C. and the 100 A.C. (Velásquez 2011, p. 57) and is considered to have cultural continuity until de Spaniard invasion (Nalda 2011, p. 83); however, it is much harder to assert that there is some sort of continuity of the pottery until current times and indeed most peoples in the world have actually engaged in this activity. While we cannot confidently say that current pottery production is some sort of “descendant” from the civilization of Chupícuaro, we can say that at the moment of the conquest there was a pottery tradition in the region, as well as metalwork and textiles (Aguilar 2007, p. 43). This is why many of the different products created in Michoacán claim a deep tradition in the communities to which they belong (Alvarado 1997, p. 118, Cruz 1997, pp. 145–149, Miranda 1997, pp. 38, 40–48, Oikión 1997, pp. 21–22, Pedraza 1997, pp. 130–132, Guzmán 1998, pp. 41–42, Moctezuma 1998, pp. 91, 94).

Another important element, which Vasco de Quiroga promoted in the hospital-towns and in other communities in Michoacán, is the development of differentiated artisanship traditions in each community. On the one hand, this allowed the creators from each community not to compete among each other. And on the other hand, it

created potential markets in the other communities; to be explored in the market places located in each community on their religious holidays which incidentally, being dependent on the patron Saint of each community, were also normally on different dates. It was already recognized in the XVIII century by Francisco Javier Clavijero that Vasco de Quiroga had given each town a specific field of commerce, in order to create a reciprocal dependence which kept them united in the region; this would also allow the arts to be perfected and for everyone to have resources to live of (Clavijero in Sánchez 2007, p. 18).



Figure 1.4. *Michoacán el alma de México*. Gobierno del Estado de Michoacán¹⁹.

Vasco de Quiroga is hardly responsible for every occupation that is community-based in Michoacán, but he planted a seed for subsequent developments until today. In Michoacán, most small towns have a secondary activity to working the fields: some work with copper, others do pottery (each one of a different kind), or textiles or furniture. But, despite the pre-Hispanic reference that is often made when talking about Michoacán's artisanship (figure 1.4), not all of those activities date all the way back to pre-Hispanic times, not even to the colony. This is due, on one side, because indigenous cultures are truly not just static museum objects and do incorporate new practices over time. But, on the other side, it is also because the structure managed to prove itself

¹⁹“Artisanal Tourism. Magical hands, the foundations that have forged the colorful towns of copper, pottery, feathers and wood, mixing the color and skill in millenary artisanship. Michoacán is a well-known artisanal production center worldwide. Some branches are pottery, metal, wood, textiles, toys, miniature, saddlery, stonework, popotería and vegetable fibers, among other. Most of the production has pre-Hispanic origins and in some cases they are still produced with ancestral techniques. Did you know? Michoacán has one of the most important diversity in woods, textiles, pottery and carvings. Visionary, Vasco de Quiroga promoted the teaching of an art with no equal in each and every one of these magical materials”. *Michoacán el alma de México*. Gobierno del Estado de Michoacán.

useful in time; it brought some benefits to the communities that have historically found in such work a good secondary economic activity. And so, some elements have managed to become permanent in time by becoming functional for the communities and got replicated precisely because of this reason. The structure has even surpassed the indigenous world. As will be further explored, not all towns in which artisanship is currently developed according to this structure are necessarily indigenous. There are however common elements that remain regardless of the ethnicity that is dominant in each town:

- Outside their boundaries, each town is known for its production, which is unique in reference to that of the other communities. This makes for a rich artisanal production in the Michoacán, which is as wide as it is diverse, and in which each tradition is deeply grounded in each community.

- Inside the communities, the artisans are still often organized in guilds that share knowledge, tradition and even the work itself. More recently, the contact with state institutions – mainly the Artisanship House (CASART) – has made for the creation of artisans organisations, with leader that deal directly with the CASART in the handling of funds. The organisations have meant a more explicit and formal structure for the artisans and, often, also processes of internal conflicts (Ibarra 2011, pp. 17–18). Regardless, the artisanal sector remains organised as a guild structure.

- Even in those cases where the production is not community based, the basic production unit is the family. This implies a social structure of production that promotes the interaction of the family members and the continuation of the traditions via oral traditions that engrave the techniques in the social practices of the communities.

- Not only are orders handled by the family, but it is common that pieces are created through collaboration between adults and even with the younger members of the family learning the trade. The collective nature of the production is thus asserted. While this is a main element that caters to the collective options of IP, it is also an element that complicates the interaction with the state, as will be seen further along this research.

- The production of artisanship, despite its importance for the local economy, remains an informal sector of the economy. The people employed in artisanship more

generally do not have any legal status as workers, and there are also no registrations for tax purposes. Even their exportation activity is done through family members in that have migrated, mainly to the USA²⁰.

And so, Michoacán is characterized by a wide variety of what Barragán (2011a, 2011b) characterizes as *thick cultural density products*. Barragán, a human geographer native of the Cotija region, was one of the architects of the first CT in Michoacán “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin). His role in attaining this CT and the projects which followed will be further explored in the following chapters, but I can point out here that his understanding of Cotija’s production managed to identify some key elements in Michoacán’s artisanship production. Barragán understood that the cheese made by Cotija’s ranchers was special due to a combination of the geographical situation of the place and the cultural practices of their producers; but not only that, he understood that the product was also instrumental to the continuation of those cultural practices in relation to the place.

The territory is thus understood as a social construction that combines physical and ecological characteristics with the cultural heritage that creates an interpretation of the space. In this sense “a natural resource doesn’t exist as such, and it isn’t even recognized, if not in relation with the technical knowledge and the institutions, the social values and their representations, that determine its use in a given social sphere” (Linck et al. 2006, p. 99). But these elements were not exclusive to Cotija, the historical configuration of the productive activities in Michoacán produced a wide variety of products that are tightly linked to the lifestyles of the communities behind them. This deep comprehension of the place of a community is often attributed more explicitly to indigenous peoples. It is considered that the land has meaning for indigenous peoples beyond the economic and into the spiritual elements of their cultural survival (Stoll and Hahn 2004, p. 15), as is further explored below (ch. 2.3)

Due to its historical settling in the region, the artisanal sector becomes then one of the most fertile and dynamic cultural expressions in the state of Michoacán, while also

²⁰According to statistics by the INEGI (2010), 98 out of every 100 migrants from Michoacán migrate to the USA. Further information available at: http://cuentame.inegi.org.mx/monografias/informacion/mich/poblacion/m_migratorios.aspx?tema=me&e=16

having an important role in the economic life of the communities. Even though there is no legal recognition of artisanship as part of Michoacán's cultural heritage, this sector is recognized as depository of the communities' worldviews and traditions. Artisanship is both inherited and constantly transformed to give a new and changing meaning to tradition. Evidently, historical heritage is fundamental for the construction of identity, but artisanship is the present cultural expression where the future is built on daily basis. The artisanal sector is also one that openly assumes its economic role for communities, embedded in its cultural role. In this sector it is evident that the cultural dimension makes a substantial contribution to economic development. But it is also evident that the survival of a culture highly depends on peoples' economic conditions. As García explains, communities' sustainability is highly dependent on artisanship:

Without requiring big investments in material, machines or qualified work forces, it increases rural households' earnings through the occupation of women, children and men during agricultural downtime. Landless peasants are enabled to find another means of subsistence. The central position in many indigenous cultures of artisanship traditions inherited from pre-Columbian times, has influenced certain government agents to imagine that this kind of production can 'fix' the problems of rural areas. While the most elementary knowledge of rural issues calls for disillusionment as to this kind of 'patch-up' solution, Anne Lise and Rene Pietri's study on the conditions of employment and migration in Michoacán shows that artisanship is so far the main means of retaining the rural population in this region: the lowest migration rates are amongst artisans' offspring (2002, p. 116).

In the artisanal sector it is evident that the cultural dimension is indeed substantial for the concerns of peoples' economic development, as it is for the notions of dignity of life that derive from human rights in general, and from cultural rights in particular in México and in other parts of the world as well²¹. In this sense, the role of the UNESCO has been fundamental for the incorporation of cultural concerns in economic development agendas, which in turn indexes deeper social concerns about cultural diversity, social cohesion and even governability amongst other things (Aylwin *et al.* 2010, p. 6, Aylwin and Coombe 2014, p. 769).

²¹A reflection on the artisanal sector in Australia, i.e., can be found in (Lucas-Schloetter 2004, pp. 259–260).

At this point, it becomes necessary to make some clarifications of what the word *artisanship* refers to. In previous work (Ibarra 2011, p. 32) I had favoured the use of the notion *indigenous art*, considering that other terms could imply a valuation that I did not wish to make. Indeed the word *artisanship*, along with the notion of *popular art*, have been used as a way to undervalue cultural expression created in non-western canons in some contexts, or in others in a different sphere than that of elite art. The term *indigenous art* was then useful to differentiate creations that belong to an indigenous context, as opposed to the mestizo one, but without claiming the superiority of either, and despite acknowledging that creators, academics and public institutions use the word *artisanship*. The shift in terminology does not entail an acceptance of the valuation that I had opposed, but responds to reasons directly related with the topic of this research and precisely the general use of the word *artisanship* made by both artisans and public administrators. *Artisanship* is a much wider category than *indigenous arts*; it includes creations and products that, to begin with, do not have to be by indigenous people. Even if a good majority of Michoacán's production comes from indigenous communities, some of the most relevant productions are made by mestizos, especially those relevant to this investigation, like Paracho's guitars or Tlalpujahuá's glass ornaments. Furthermore, *artisanship* also includes products that are not necessarily artistic but which are represented in CTs and could be characterized as thick cultural density products, such as Cotija cheese itself which will be explored further below as being fundamental to the understanding of the CTs development.

2. THE TURN TOWARD INTELLECTUAL PROPERTY FOR MICHOACÁN

The Intellectual Property (IP) rights system has expanded in ways that are ever more varied and ever more all-encompassing. Already a challenging way of appropriation, IP establishes exclusivity rights over ideas, knowledge and creation, as embodied in a form which may be a commercial commodity. The abstract, when expressed in material form, can become privately owned. And as humanity's creation develops through ever increasing communication amongst different geographical spaces, the scope and the limits of what and how IP is to be understood extends as well. This extension, although unavoidably embedded in discussions over cultural diversity and the development of knowledge for humanity's good, has become a great economic concern in the global and local spheres. In this context, the discussions and negotiations over the IP legal system are mostly considered within a framework of international regulation. However, as Coombe indicates:

The so-called 'level playing field' for trade works ideologically to obscure fundamental inequalities of bargaining power in the global arena, and to ignore significant forms of creative activity. These imbalances and exclusions are now sites of struggle in emerging social movements that promise to further politicize the field of intellectual property (2004, p. 382).

Even if representation in the global sphere of decision making is formally limited to states and transnational institutions, the interests represented are strongly identified with those of large corporations, but also, to some extent but increasingly, with the claims of some subaltern groups.

Hence, a main aim for this research is to analyse the collective options within the IP rights system, as they became a public cultural policy that is fundamental for indigenous peoples' cultural rights in the context of Michoacán, México. In this way, IP is analysed as part of what I have called culture's legal framework, which attempts to

connect it with other aspects of state law that directly and explicitly deal with culture. Culture's legal framework then becomes the framework for contests and struggles regarding culture which, as was analysed in the previous chapter, is particularly relevant in the context of cultural diversity. It is not, however, an expression limited to the letter of the law. Seen from a socio-legal perspective it is necessary to pay close attention to the actual practice of the state's regulation of culture; which can only be done through its institutions and agents.

This chapter then attempts to understand how the cultural policy emerged and developed from idea to implementation, as was stated in the introduction, focusing especially on the development of a project which achieved the creation of almost 50 Collective Trademarks (CTs) in the state of Michoacán, México, through state institutions and agents. In order to do this, I intend to look at the experience of the key agents involved in the creation of the policy, through state agencies which motivated and shaped the integration of IP into the policies of the state's development agenda. This aims not only to unveil their interactions, but also how their background and places of struggle gave CTs an identity beyond the letter of the law. Indeed, the design of CTs was negotiated between competing mestizo projects, which in turn highlights the inherent ambivalences and contradictions that the shift of paradigms, from the integration of indigenist policies to pluralism's focus on diversity, has produced for the mestizo project and identity. The monopoly of the mestizo project in the design of the policy – even if it is neither homogenous nor finished – comes with challenges to CTs' emancipatory potential for indigenous peoples, who ended up being the main users of the policy.

To put forward my argument, I will first make some reference to my methodological approach, which will begin by explaining the mestizo monopoly in the design of the policy. In a second section, I will address the limitations of the IP system as they have been exposed by the obstacles posed by indigenous cultural expressions. The following section will explore the case that became the first CT in Michoacán, "Queso Cotija Región de Origen" (Cotija Cheese Region of Origin), which began with a GI application and shaped the way CTs would be conceived both in Michoacán and in the rest of México. The fourth section will present the objections posed by the Mexican Institute of Intellectual Property (IMPI) to the Cotija initiative, as representative of the

technocratic right wing project of México's federal government. Given this opposition, the Cotija project could only be carried forward thanks to the involvement of state institutions and agents, and so it interacted with a mestizo left wing project in Michoacán; a project whose ambivalences represent the complications of taking the pluralist discourse to reality. Hence, the fifth section of this chapter explores how these ambivalences are represented in Michoacán's law. The following section takes the complex discourse interactions in the law to how they are mirrored by the discourses and actions of the agents of Michoacán's administration.

2.1 Methodology

To understand the different connections through which the translation from the idea to the public policy was made, I used the relational biographies method, inspired by the theories of Pierre Bourdieu. This method implies using biographies of key agents as starting-points to “suggest what capitals and resources have been brought into play at different stages of structuration” (Madsen 2006, p. 36). The biographies of the agents show their life story which gives an identity to the public policy, giving sense to its shape in the intentions and notions that give it meaning and purpose from the agents' perspectives. In this sense, Bourdieu's (2008a) concept of habitus facilitates an explanation of the agents' actions in relation with the institutions in which their work and the different fields that interconnect in their behaviour within these institutions. Agency and structure then interact to explain the agent's actions and the institutions and practices that emerge from them. This allows understanding of the ideology and intentionality of the state apparatus, due to the inertia in the actions of the agents based on the bureaucratic habitus formed within the legal field. Due to this inertia, agents tend to consider each possibility by reference to the interests of the dominant political class.

To begin to give shape to the sample that would be the core of this part of the research, the first stage of this research involved mapping out the local institutional arena to identify the state institutions that were relevant to the CT project. The first was

the Artisanry House (CASART) of the state of Michoacán, as the institution with the central responsibility for the development of the indigenous artisanry. Then, the Secretariat for Economic Development of the State of Michoacán (SEDECO) appeared with great influence in the negotiation of the project, and indeed it was a main contact with some of the most active CTs. At the federal level it was relevant to include the IMPI, which deals with the applications for CTs. Also at the federal level the Arts Fund (FONART) was notable for the development of a project to replicate Michoacán's experience in at least 17 of the 31 Mexican states; but since the project was designed and executed by the same employees of Michoacán's CASART who were in charge of Michoacán's CTs, there was no account to be gathered in FONART itself.

To use the relational bibliographies method it was then necessary to determine a sample for interviews within the institutional frame that was identified as relevant for the research. The interviewees were selected through a snowball sample that began with the identification of the main relevant agents in the CASART and in the first CT and grew from there taking into account the relevant persons mentioned by the interviewed agents themselves. In a sense, the institutional analysis does not begin with the institutions since the first CT in México was not handled by state agents, but by the community of Cotija. The Cotija Cheese was the first product in México that was granted a CT, which makes it fundamental to understand the experiences that followed and the development of the policy at the institutional level. Therefore an exploration of the case provided some of the elements which shaped the CTs which have been later used aiming for the protection of indigenous artisanry. The sample was considered complete once it reached the point of saturation both in terms of content and of agents involved, which is to say that the accounts were not only reaffirming the information gathered, but there was also no further significant mention of relevant agents to be interviewed.

In accordance with the relational biographies method, twelve semi-structured interviews were carried out, and complemented with attendance at three conferences: two given by one of the coordinators of the first CT and one by the former head of SEDECO. This means that, with the exception of two of the persons involved in the Cotija project, all interviewees worked or continue working in public administration. Evidently, information on each agent's background was also gathered, as well as about

their participation in the CT project and declarations given by the agents and appearing in newspapers and other media outlets. To gather enough accounts of the process so as to allow challenging self-representations of institutions and officialised discourses (Madsen 2006, pp. 37–38), interviewees include: the team that handled the Cotija application; at least three administrations of the CASART and one of the SEDECO in Michoacán's local government; and people who occupy managerial positions at the IMPI at the national level. Through the accounts of these different agents, the way that the CTs were shaped and the role played by the institutions within the communities became more apparent. The use of semi-structured interviews provides a frame in which the discourse of the different agents regarding CTs can emerge in relation to their aims and how successful they believe the policy to be, but also in respect to how much of their own ideology and interests became translated into the policy. However, since most of the agents involved are to some extent public figures involved in local politics and/or academics, other forums of debate were also attended. This includes the conferences mentioned above, and a course on how to get a trademark given by an IMPI employee in the Morelia office of the Federal Secretary of Economy on 2011.

However, the interviews sample also has some significant elements that provide initial findings that speak of the constitution of the political class in terms of gender. There were only two women interviewed in this part of the research. One of them is a researcher who participated in the Cotija project, although her involvement was mostly technical in the bio-medicine field, and she did not directly participate in the political negotiations. The other woman was, in fact, almost entirely excluded from the other agents account. She was one of the first persons I contacted and I was informed of her involvement on the project by a mutual friend. The snow-ball sample had her accounts as parting point for the rest of the design, but perhaps if my first interview had been with another person, her account would never have been included. Her interview was rich in information about the artisans and the communities since she did most of the work directly with them to register associations and explain the project. However, she occupied a lower position in the institution and was under the orders of the man in charge of the project in the CASART; her participation is almost completely ignored by most agents. While I do not believe that her exclusion from the accounts necessarily comes from an undermining of her role in regards to her gender, I do believe that this

fact is significant to exemplify, at least, how the public administration remains dominated by males occupying high managerial positions.

Initial findings that can be drawn from the constitution of the sample, also include information about the ethnicity dominant in public administration. All of the interviewees were mestizo, because there was no mention of any indigenous person at any point of the design of the policy. Therefore the indigenous voice will be absent despite the fact that most CTs in Michoacán actually belong to indigenous communities. The consequences of this absence will be further discussed later on, but it is important to notice at this point that, because of this fact, the projects under discussion essentially reflect the mestizo identity, even as it relates to and conceives indigeneity. It is also important to note, as previously, that this fact shows how managerial positions in public administration remains male, but also mestizo, as the dominant ethnicity in México.

The variety of agents and institutions gathered by a snow-ball sample is also significant for the information it provides about the state which in itself gives some insight into the findings of this research. Through the research it was possible to gather the “overlapping and even opposing texts” (Madsen 2006, p. 38) that one should aim at to break up the official story which is constructed in the habitus of a field. But this breaking up and highlighting of conflict, does not only refer to the interactions within fields, but it also shows how the ‘state’ category is anything but homogeneous. Through their accounts it is possible to analyse how state practices change, shift and contradict among different areas of government in the course of the many and intricate human interactions that constitute it. This research shows, as I mentioned earlier and will explain over this chapter, how competing projects are negotiated at different institutional levels within the state. The agents’ accounts show how the process of legibility, as the state’s strategy to approach social reality²² and make it understandable, differs from the homogeneous notion that Scott’s (1998) work sometimes seems to portray, and how it is negotiated between the competing visions of state agents, who in turn translate some of their identity into the legal and public policies.

²²Scott’s (1998) notion of legibility implies the use of scientific and technical knowledge to simplify social reality in order to make it understandable and controllable by the state. This process would then allow the state, and its law, to encompass more space in society.

All the interviews were recorded with the informed consent of the participants in this research. Interviewees were personally informed that they would be recorded; that they were participating in a PhD research for the International PhD Program in Law and Society “Renato Treves” based at the University of Milan; that the general topic was the cultural public policy of CTs in Michoacán; and of their right to withdraw from the project at any given point. They were also informed that the privacy of the participants would be protected by the removal of identifiers from all primary data and from the reports originated from this research. It was also clarified that it would be unavoidable to mention some details about their workplace, current or previous depending on whether they were still involved with CASART, SEDECO or IMPI. However, all interviewees on the institutional side indicated that they had no problem with their names being mentioned in the research. Hence, I have indeed used their names whenever I considered it necessary, but otherwise I have chosen to keep a less personal identification for two reasons: first, while they all said that they had “no problem” with the use of their names, none of them actually asked me to put their name to each of their statements; and second, because my work involved identifying the elements that were more general across their discourses, when I use examples they are representative of something observed in other interviews as well.

2.2 Indigenous cultural expressions and the limitations of Intellectual Property

The CT project in Michoacán, developed in the context of a cultural and economic policy, is a case that shows the possibilities of IP’s expansion. The process, as will be seen throughout this research, exemplifies how the letter of the law has expanded to give place to collective creative agendas. This project also shows how the practices developed from seeking IP protection can go even further into a wider significance of names and geographical references in the public sphere. However, to understand the expansion of IP itself, it is necessary to address first the deficiencies of IP that had been identified and that made it necessary for it to change and expand. CTs and GIs, have

gathered notoriety because of their collective nature that caters to indigenous cultural expressions, which have made strong points to question the pertinence of certain kinds of IP protection.

Indeed one of the many objections posed to the IP system has arisen precisely from the fact that indigenous cultural expressions seemed for a long time to be completely incompatible with IP. This incompatibility that was first expressed in the complication of using conflicting terminology. It is important to note that the terms *traditional knowledge*, *traditional cultural expressions* (Graber and Burri-Nenova 2008, p. xi) or *expressions of folklore* (Lucas-Schloetter 2004, pp. 262–265, Kongolo 2008, p. xxii, Tobin 2009, pp. 127–128), even *indigenous heritage* (Stoll and Hahn 2004, p. 16), are also used to refer to what I denominate *indigenous cultural expressions*. *Traditional knowledge* has been used by WIPO in a rather broad sense, including everything that results from the intellectual activity that is tradition-based; which is to say that has been transmitted from generation to generation and is identified with a specific people (WIPO in Kongolo 2008, p. 34). However, scholarly studies tend to refer only to the expressions of indigenous communities (Oehlerich de Zurita 1999, Stoll and Hahn 2004, Kongolo 2008) and, as will be seen further in this analysis, the process analysed here calls for an extension of what the notion of *traditional* is meant to represent. As for the word *folklore*, although it seems to have been introduced to refer to rural and uneducated groups, with mainly oral cultures (Dommann 2008, p. 5), it was later recovered by African nations to refer to their cultural heritage in disputes over IP after World War II (Lucas-Schloetter 2004, p. 259, Dommann 2008, p. 9). I believe its connotations are rather diffuse today, which makes it too imprecise for the distinctions necessary in the critique of IP analysed here; and indeed the term seems to be suffering a process of abandonment (Lucas-Schloetter 2004, p. 264). I have however chosen to keep the notion of *cultural expressions* as tending to the broadest conception that can accommodate the indigenous cosmology, which concurs with the critique to IP outlined in the following paragraphs.

Indigenous cultural expressions opened up a line of critique of the IP system and particularly to the more traditional categories of IP, such as patents, author's rights and

copyright²³. The first reason usually given relates to their individualist nature, since a recognisable individual author is fundamental, particularly for copyrights and author's rights (Oehlerich de Zurita 1999, pp. 28–29, Dommann 2008, p. 6). And the second reason is IP's focus on innovation, which is often considered to be related to the genius attributed to the author or innovator for, as Dommann states, "Originality (in German *Eigentümlichkeit*) legitimizes property (in German *Eigentum*)" (2008, p. 7). These two elements are considered rather fundamental for IP, as can be seen in the debates of the 1967 Stockholm conference to revise the Berne Convention, where it was stated that folklore expressions (at the time related to African cultures) cannot be covered by IP, since they "might represent the creative efforts of a number of unidentified indigenous authors [...] were therefore not only anonymous works [...] but also joint works, since in nearly all cases they were unfixed and represented a constantly changing pattern produced by successive performers and authors" (WIPO in Dommann 2008, pp. 10–11). These elements clash with indigenous cultural expressions' which are seen as created in a collective manner (Oehlerich de Zurita 1999, pp. 28–29, Lucas-Schloetter 2004, pp. 294–297, Kongolo 2008, p. 39,43), and through continuous processes that flows through time (Lucas-Schloetter 2004, pp. 292–294, Kongolo 2008, p. 31). Adding to these objections, studies of indigenous cultural expressions usually highlight the fact that the technical and the social cannot be separated and that even the notions of traditional knowledge as separate from traditional cultural expressions or folklore are pragmatic normative choices that do not correspond to indigenous cosmology (Oehlerich de Zurita 1999, p. 19, Lucas-Schloetter 2004, p. 264, Stoll and Hahn 2004, p. 16, Kongolo 2008, pp. 30–31, 34, Teubner and Fischer-Lescano 2008, pp. 25–27, Tobin 2009, pp. 127–128).

However, the prominence that the topic has gained both in scholarly and policy making circles is closely related to the processes of globalisation and the dangers of misappropriation and commercialisation of indigenous cultural expressions (Lewinski

²³The use of either copyrights or author's rights depends mostly on the legal cultures. Author's rights are considered to come from the French tradition that considers both the economic rights and what is known as moral rights, referring to the permanent recognition of the author as such (Tolila 2007, p. 76). While copyrights are considered to come from a British tradition that is more focused on the economic aspect of reproduction of artistic works. In México, local legislation subscribes to protection of artistic creations through author's rights, although international instruments such as the NAFTA have introduced IP practices more related with copyrights (Ibarra 2008).

2004, p. 1, Lucas-Schloetter 2004, p. 259, Graber and Burri-Nenova 2008, p. xi, Kongolo 2008, pp. xxi–xxiii, 29–30, 35–36, Tobin 2009, pp. 138–139). The matter of indigenous traditional cultural expressions is not necessarily linked with the indigenous mobilisations that demanded recognition and rights both in national and international spheres; though as was discussed in the first chapter, the demands for the right to their culture can be closely related to IP matters and it can be argued that these mobilisations increased awareness about indigenous peoples in general (Lewinski 2004, pp. 1–2). However, mobilisations on IP matters are more closely related to the dangers shown by the several documented cases of misappropriation and/or commercial exploitation of indigenous cultural expressions which are often related as an introduction to the topic²⁴ (Oehlerich de Zurita 1999, pp. 31, 117–131, Kur and Knaak 2004, pp. 221–223, Lucas-Schloetter 2004, pp. 260–261, Dommann 2008, pp. 3–4, Teubner and Fischer-Lescano 2008, pp. 17–18).

These concerns have given rise to some attempts at regulation that extends IP's field of action, both in México and internationally, although hardly consolidated and widely contested. México's legal framework addresses this tension by creating special and rather limited provisions regarding indigenous peoples. México's legislation on IP is expressed in two different pieces of legislation, the Federal Law of Industrial Property (FLIP) and the Federal Law on Rights of Authors (FLRA), although only the latter addresses indigenous creations through a special section: "Title VII. On the Author's Rights over National Symbols and Popular Cultures' Expressions". In this legislation *expressions of popular culture* are defined as those in which no author can be recognized, and they extend to the artisanal sector; which actually deals directly with at least one of the critiques expressed above. However, as I have explored in a previous article (Ibarra 2010, pp. 33–35), this section only gives "communities or ethnic groups" a very limited protection over their cultural expressions. While they recognized what is understood as "moral rights" – the right to be named as authors, and to oppose any alteration which may damage the reputation of the said communities or ethnic groups – no economic benefits are granted. Indeed the "patrimonial rights" that give an author a

²⁴Despite the understanding that indigenous cultural expressions have a holistic nature, the misappropriation for scientific knowledge has been categorized as "biopiracy" and represents a big concern both in activism and academia (Oehlerich de Zurita 1999, pp. 117–131, Kongolo 2008, pp. xxii–xiii, Teubner and Fischer-Lescano 2008, p. 26, Tobin 2009, p. 128).

right to economic gain are not contemplated in this law. While this deals with the misrepresentation and even with some misappropriation concerns put forward by indigenous communities in other contexts (as explored by Lucas-Schloetter 2004, pp. 261–262), it leaves out the economic aspect. This is particularly damaging for the artisanal sector, as it is essential for the economic sustenance of several communities and, therefore, a good part of its practice depends precisely on the possibility to achieve an economic benefit from the activity.

However, collective IP options, such as Geographical Indications (GIs) and CTs have been suggested as possibilities to deal with the problem of indigenous peoples' exclusion from IP (Oehlerich de Zurita 1999, p. 59, Kur and Knaak 2004, p. 223, Lucas-Schloetter 2004, p. 364), and because they can also influence other social processes. Indeed, given the combination of cultural and economic dimensions in IP and in indigenous cultural expressions, which can also be understood as high cultural density products, the discussions over the relationship of these two dimensions must become fundamental to the concerns of sustainable economic development. GIs and CTs are contemplated in a context in which it is necessary to deal with issues like economic improvement, cultural pride and democratic governance (Kongolo 2008, p. 129, Aylwin *et al.* 2010, Aylwin and Coombe 2014). As it is, the mere extension of the IP system means little by itself; as Aylwin and Coombe indicate: “its legitimacy needs instead to be evaluated in terms of the qualities of empowerment, governance, and the sustainability of local livelihood improvements” (2014, p. 2). However, the ways in which law's potentialities are activated highly depend on the specific political context in which it is embedded; as much as it is also embedded in globalization.

2.3 Problems and inspirations: where it all began

It has indeed been acknowledged that collective forms of rights within IP (CTs and GIs) can be suitable for indigenous cultural expressions, but Michoacán's experience shows that it can also be relevant for other “traditional” products of cultural

significance that go beyond the indigenous and even the rural realm. The expectations placed on GIs and CTs were particularly relevant in Michoacán given the historical process, described previously (ch. 1.2), which shaped the artisanal sector and gave it relevance in Michoacán's economic, social and cultural configuration. The artisanal sector is deeply embedded in the social practices of many communities in Michoacán; most but not all of them of indigenous nature. In fact, as we shall see later on, some of Michoacán's most relevant artisanal products are made by non-indigenous communities. Nevertheless, it is important to bear in mind the main elements of Michoacán's artisanal sector which are relevant for this study and were described in the first chapter (1.2):

- The artisanal tradition in Michoacán is deeply embedded in the history of the region. Many of the artisanal traditions in Michoacán date back to the colonial period, although evidently there have been changes and alterations over time. And while there are also specific artisanal traditions which are much more recent, it is the artisanal vocation itself which is part of the traditional structures of the communities.
- Artisanal production takes place in guilds that are part of the traditional social structures within the community; there people also share knowledge, style and often even the work itself, the family being the most common production unit. This collective structure of production results in products which can be said to have a thick cultural density because of their central role in the lifestyles of a part of the community.
- Commercialization is mostly done locally in a market circuit established according to religious holy days. It also often does not have a regular or formal registration for tax purposes and even exports are done through family and friends in an informal manner.
- Finally, the artisanal production tends to be different in each town to facilitate trade amongst them. This also results in the wide variety of products of a traditional nature that can be found in Michoacán, which are in fact closely identified with the communities where they are produced.

All these elements result in the rich artisanal production which has been given a legal framework thanks to the CT public policy in Michoacán.

But while the CT public cultural policy developed mainly thanks to the participation of the CASART and the SEDECO, the first CT in Michoacán belongs to the “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin) and it arose from a project which began outside the realm of the state. Cotija is a small town in the north of Michoacán; however, the cheese²⁵ for which the town is known is actually made in ranches nearby. The Cotija region is located in what is known as the Jalmich mountain chain, extending through the states of Jalisco and Michoacán (figure 2.1). In fact, Cotija is a mestizo region, but their production had some elements in common with that of indigenous communities: the production unit is the family, and the different techniques and procedures are shared among all the ranchers (Barragán 2008) who also do not hold a regular or formal registration for tax purposes. The production and commercialization of the Cotija cheese is particularly expensive due to the living conditions of the ranchers who can live quite far away even from the town of Cotija. However, their remoteness, lack of industrialization and even the fact that their cows do not produce milk all year, is considered to be fundamental to the high quality of the cheese (Chombo 2005, 2008, Boucher 2006, Linck *et al.* 2006, Linck and Barragán 2010, pp. 260–261).

Cotija’s ranchers however were facing difficulties that threatened the continuity of their production. While the prestige of Cotija cheese was indeed somewhat established even outside Michoacán, this did not mean that they were getting the benefits of their good reputation. Among the many problems that Cotija’s ranchers were facing, “market invasion” was identified as a main concern for the continuity of the production of Cotija cheese. Cotija was and in fact continues to become a common way to name aged cheeses in general in México. This process was not passing unnoticed and it was said to be endangering not just the production of the cheese itself, but the lifestyles of Cotija’s ranchers which in fact depended on this activity (Barragán and Chávez 1998, Barragán 2008); hence the notion of Cotija’s cheese being of high cultural density. Again on this

²⁵Cotija cheese is an aged cheese. It is not achieved through a pasteurization process, but through the use of rennet and salt, and aging it over several months. Further information on the production of Cotija Cheese can be found on the *Rules of Use* of the CT (Álvarez *et al.* 2005).

point there is a similarity between Cotija and other artisanal producing communities in Michoacán. Market invasion has indeed a central role in the accounts of the agents from the public administration, as well as in the accounts of many producers and was one of the main points addressed during the discussions organized by Michoacán's Congress in preparation for a proposal for a new law for cultural development. Both public administrators and producers consider that market invasion is one of the biggest menaces for Michoacán's artisanal production, as import products become increasingly visible in market places both in touristic cities and small towns.



Figure 2.1 The Cotija Region. (Álvarez *et al.* 2005).

In this context, it is clear that the protection of IP was sought because of the need to “protect authenticity” from the dangers of globalization. “Market invasion” is a common concern that leads to IP protection (Rangnekar 2009) and it often implies the belief that the local product is in fact “authentic”, as a way to assert its legitimacy against others produced somewhere else or some other way. Authenticity then becomes the first notion to be filled by meaning in the process of getting a GI or a CT. It is a process in which identity itself becomes defined through thinking about the product. Certainly, this process can offer a chance for the communities' producers to think about their own identity as it is actively produced in the public sphere, which builds borders

and differentiation (Aylwin and Coombe 2014). Nevertheless, the process is not only productive in terms of subjectivity and internal identity; it also builds the “other” as it is seen as an invader which must be excluded.

The logic of the invader also suggests colonial power is relevant firstly in market relations that facilitate the entering of products to compete with the local ones. This concern must not be forgotten, since it reminds us that producers who turn to IP are not being introduced to market dynamics; they are very much in there already as their business is commerce. This does not mean that money is their only concern, or that this is the only dimension that should be taken care of. But it does defend us from the idealized and fundamentalised notions of indigenous communities or other rural producers in particular, and of “alternative” economic practices in general. Indeed, when indigenous people are involved in development projects, the local or traditional interacts with the global and with capital in a fluctuating manner that is characterized by constant ambivalence (Costa 2012). In this case, there is an expectation that the symbolic role of CTs and GIs should be translated into rents, as a fundamental way to maintain the specificities and local practices of the ecosystem (Barragán 2008, Aylwin and Coombe 2014, p. 25). The question is not, then, whether artisanal communities should commodify their production, as it is already commodified, but in what conditions this commodification happens and how it is positioned in a larger context of cultural and economic policies in globalization.

However, Cotija’s turn toward IP did not come from a general acceptance of IP as a way to deal with market invasion, but from the inspiration drawn from Europe, particularly regarding GIs, by the main agents involved in the process. This initiative then shows how the local and the cosmopolitan dialogue in the construction of a development agenda address and integrate many different concerns. The project was handled by a group of scholars with three fundamental things in common: they had a close personal relation with Cotija, either because of family relations or themselves having been born there; they were scholars with academic training in Europe; and they had further resources either through working in a leading academic institutions or working in or close to the local government. The main persons involved in the beginning of the Cotija project were:

- Esteban Barragán, who was born in the Cotija region, comes from a ranching family that produces Cotija cheese. He studied commercial relations at Jiquilpan's Technological Institute, and later was part of the first group of students of the Master in Rural Studies at the Colegio de Michoacán (COLMICH), which is the most prestigious academic institution for social sciences in Michoacán. He then went on to study a PhD in Human Geography and Rural Development in the University of Toulouse le Mirail II, France, where he graduated in 1994. He is now a professor and researcher of the COLMICH in the Centre for Rural Studies, where he conducts research about ranchers and the Cotija cheese in relation with the development of the region.
- Ruben Álvarez Barajas, was born and raised in México City, but his family was from Cotija and he spent quite some time there growing up. He studied in the Universidad Nacional Autónoma de México (UNAM) in México City, getting a master in Animal Nutrition; however, he also got a scholarship to study a speciality in Bovine Zootecnia in Italy. On coming back to México he entered the Institute for Biomedical Research at the UNAM, where he was hired to do research regarding bovine nutrition and alimentation. After almost a decade, he created a "spinoff" from academia and opened a factory to produce a food for bovines that he developed during his research. Later on he becomes involved with politics and enters working at the City Hall of Cotija as a Councilman and begins working in projects related to the Cotija cheese promotion, being the Cotija cheese fair one of the most relevant.
- Finally, Patricia Chombo Morales is Ruben's sister in law and visited him often in the town of Cotija. She got a first degree in the pharmaco-chemical field from the UNAM, and afterwards studied a M.S. in Science of Food, specializing in milk, in England. Her interest in dairy products research and her contacts with Cotija lead her to research the milk and the cheese from the region, as she is a researcher working for the Centre of Research and Assistance in Technology and Design of the Jalisco Province (CIATEJ) in a project for the National Council of Science and Technology

(CONACYT). Incidentally, the project that she was working on aimed to study the problems of the dairy sector in western México to integrate a collective vision, together with agro-economics, in order to understand the demands of the North American Free Trade Agreement (NAFTA).

The contact among these main agents in the Cotija project began in the early 90's when Ruben Álvarez was involved in the municipal administration and began the project of the Cotija cheese fairs as an activity to promote the product and attract tourism to the region. The fairs would include not only tastings of the cheese, but also conferences on its production process, cultural activities and even cooking and environmental protection contests, all to take place in Cotija. At the same time, Ruben Álvarez began a partnership with Patricia Chombo in order to develop and apply sanitation measures necessary for further improvement and promotion of the product. They then created the Regional Association of Cotija Cheese Producers in order to spread and organize the sanitation procedures and new commercialisation strategies, thus gathering over 90 dispersed local producers from five different and remote municipalities (Boucher 2006), and increasing the possibilities to grow a project that would benefit as many of them as possible. It was also during the same period that the two agents met Esteban Barragán at an event organized by CONACYT regarding research project financing. Rubén Álvarez and Patricia Chombo already knew about Esteban Barragán's work which approached more the social aspect of the product rather than the technical, and warned about the loss of the product that would endanger the live styles of the Cotija ranchers. Álvarez and Chombo then invited Barragán to give a conference at the next Cotija cheese fair in order to speak about the relation of the cheese with its geographical and social context, as well as of the dangers it was facing. All three of them continued working with the Regional Association of Cotija Cheese Producers and engaged in several meetings looking for options to improve the living conditions of the ranchers and the commercialization of Cotija cheese. All this eventually resulted in the GI project.

Each of these persons contributed then to some degree to the Cotija process being shaped the way it was. Their personal connection with Cotija was the obvious reason why they had separately studied the quality of the product, its relation to the place and its possible future extinction (Barragán and Chávez 1998, Chombo 2005, Linck *et al.*

2006, Barragán 2008, Linck and Barragán 2010); and indeed two of them were even heading major research projects on the region in highly respected institutions which put the product in the forefront of their academic interests. Each of them had also observed the success of GIs in Europe where there is a history of protecting European rural elite traditions and products through the exaltation of their quality in relation with geography and human practices (Schultz 2005, pp. 460–463, Coombe and Aylwin 2011, p. 2034, Aylwin and Coombe 2014, pp. 20–21). This gave them grounds to seek for the necessary evidence that related the biological specificity of Cotija's cheese with the production conditions. This was not only done by addressing the geography of the territory and the specificities of the animals which produced the milk, but also taking into consideration elements of the lifestyle of the ranchers related with their rural context, the way they handled their resources and even the family structures and organization of the work. They also agreed that such a product and its quality could be further explored and benefited by obtaining recognition of quality that such a GI could provide.

In a way, their life experiences were turned into actions which managed the transplanting of a transnational entrepreneurial model that is more common and relevant in the development practices in Europe. For them, the Cotija cheese was no ordinary product, but rather a high quality cheese that could compete with others they had seen in Europe and which are not so common in México. Their interests managed the characterization of the product by its study and the development of strategies of sanitation that would allow for further commercialization without changing the specificity of the product, but the GI could also encompass the cultural practices that were fundamental for the continuation of the production of the Cotija cheese in conditions that guarantee their quality. GIs are much related to a sort of geographically situated pride and have been used extensively to provide market benefits for that which Esteban Barragán calls *high cultural density products* – a concept further explored in the first chapter (ch. 1.2) – and which is itself a notion from French agricultural studies. In the lectures given by Esteban Barragán, one in a formal academic setting (Barragán 2011a) and another in an entrepreneurial environment (Barragán 2011b), he made constant references to the European experience, as he does in an article in which he connects Cotija with the Roquefort region, (Linck *et al.* 2006). The research that he led

would aim to explain why the Cotija cheese was “not just a cheese, but a lifestyle”, which is a common basis for a claim to a GI through which products get their value from a variety of factors, the soils, the temperature, the altitude, but also the habits and lifestyle of the people that makes them.

In fact, according to the industrial property legislation in México, a GI would seem appropriate for the aims of the Cotija team. As article 156 of the FLIP states, a GI is “the name of a geographical region of the country which is useful to designate a product which originates in it, and which quality or characteristics are owed exclusively to the geographical environment, this understood as the natural and human factors”. This means that the GI application must satisfy the requirement of providing a detailed description of the product and, in exchange, it will provide an institutionalization of the origin of a product and establish this origin as a value that sustains its quality. The exclusion mechanism here established is particularly relevant since it effectively denies the right to other products to assert the same origin if they are not duly authorized to do so by the Mexican state. In Cotija’s case, this would mean that Cotija Cheese would be a denomination reserved for the producers in the Cotija region and would be denied to other producers of aged cheeses in the country. International recognition of GIs is rather less uniform, and the USA is particularly reluctant to uphold them, which makes them less useful as a transnational control and exclusion mechanism, however the local restrictions could be deemed sufficient for the Cotija team’s agenda.

However, the value of GIs for producers goes far beyond the formal legal exclusion system that can be established by them, and turns into the appreciation of a product in the global sphere. Collective notions of pride and prestige, related to the human and physical characteristics of a space are also approachable by law through IP. GIs are being used in different parts of the world as a way to legally, and therefore bindingly, identify a good as essentially linked to a specific territory that will give it particular characteristics and reputation. This is a recognition of a product’s value but also a recognition of the value of the cultural practices behind it and even of the importance of the conservation of the natural resources in a certain territory (Lucas-Schloetter 2004, pp. 311–312, Linck *et al.* 2006, Kongolo 2008, pp. 118, 129, Rangnekar 2009, Linck and Barragán 2010). In this way, GIs can promote the continuation of sustainable production practices that were formerly ignored by the

discourses of value in the public sphere, contributing then to the conservation of natural resources and the preservation of traditions and even of cultural heritage.

The kind of linkage between nature, social practices and culture that is established in a GI, then becomes a legal formula that can easily be related with the notion of thick cultural density products described previously (ch. 1.2), but also with the conceptions of territory that are often attributed to indigenous peoples and that can be expanded beyond the realm of ethnic difference. As Stoll and Hahn explain, “Land means much more to indigenous peoples than the mere basis for economic existence” (2004, p. 15), it is not just about the use of natural resources, but it is also connected with the religious and traditional practices, there is a belonging that makes the human and the natural embedded in each other. This linkage was attacked by the introduction of private property rights introduced with the colonization processes “which have deprived these communities not only of their rights to their lands, but has also destroyed their traditional bonds to these territories and posed a serious threat to indigenous collective identity, their rights systems and their understanding of ownership” (Stoll and Hahn 2004, p. 15). However, the objections to IP posed by the integral nature of indigenous cultural expressions – further explored in the previous section – would suggest that an integral understanding of territory in the realms of culture is a current reality in indigenous worldviews. Furthermore, under the light of the interests expressed in GIs, it becomes evident that this perspective exists beyond the ethnic differences of indigenous peoples. The notion of thick cultural density products explored in the first chapter (ch. 1.2) involves a territorial conception of human geography that views territory as a social construction and extends this integral vision to natural resources that can only be such when linked with the technical knowledge and the social values that determine its use (Linck et al. 2006, p. 99). The case of Cotija illustrates this extension, as it is not about an indigenous community, but it still requires and presents an integral understanding of the territory and the relevance of the products that originate in it.

Cotija’s challenge, as well as its aim, was then to prove that the Cotija cheese is one of these products which are relevant to the cultural and natural sustainability of a region, and special because of it. The Cotija team fulfilled the conditions to ask for the GI since they were representing an association of producers, as is necessary by law, but this was only the first step. They needed also to prove the connection with cultural

practices and geographical specificities that gave something different to the product than what can be achieved in other territories. For this, their combined experience in human geography, biomedicine and veterinary science would be fundamental, as well as their institutional resources which allowed the small town of Cotija to manage the extensive and expensive demands of the IMPI (Barragán and Chávez 1998). It is well known that the process of getting a GI requires the mobilization of a huge amount of people and resources. This comes as no surprise as it is necessary to prove that there is a connection between product, space and human practice, through history (Chombo 2005, Boucher 2006, Barragán 2008, Rangnekar 2009), in a way that the state law can accept as valid. Hence, the complications of the process make it so that a small poor community simply cannot access GIs by itself.

Cotija's case was further complicated by the need to create official sanitary norms that would apply to the product. According to article 159, section IV, of the FLIP “to establish the relationship between the geographical indication and the product, it is necessary to indicate the official norms established by the Secretariat of Economic Affairs to which the product, its extraction, its elaboration or production processes and its packaging techniques conform”. This would leave open the possibility that such norms were not necessary, but the lack of a norm was named as the one formal obstacle that needed to be overcome in the negotiation with the IMPI that will be described along this chapter. They then also had to struggle on that front, although this struggle would be settled after the CT was already accomplished. Despite the complications resulting from the norm PROY-NOM-243-SSAI-2005 that was published in 2008 and made illegal all cheeses that were not made through a pasteurization process, such as Cotija's²⁶, the NMX-F-735-COFOCALEC-2009 which was passed in 2009, legalised the Cotija cheese process. This norm regularised the procedure to make Cotija cheese, asserting the conditions under which it is possible to guarantee the innocuous condition of a traditional Cotija cheese. The norm itself was also not necessarily something that

²⁶The PROY-NOM-243-SSAI-2005 norm established that it was forbidden to make cheeses out of raw milk, making mandatory the process of pasteurization. As was asserted publicly by scholars of different institutions, this made illegal several traditional cheeses in México which were made by processes that did not imply pasteurization, but that, nevertheless, had other ways to achieve the health requirements that made them adequate for human consumption (Espinoza *et al.* 2010). Although the norm has not been eliminated, its enforcement, if there is any, has not been denounced and the latter norm for Cotija cheese was still approved, despite the fact that it clearly contradicts the previous regulation.

Cotija opposed beyond the complications required to achieve it, since the norm would provide the legal bases for their quality claim.

The Regional Association of Cotija Cheese Producers, created with the help of Patricia Chombo and Ruben Álvarez, and counting now with Esteban Barragán's support, applied for a GI and started campaigning for it at the IMPI, but success was not guaranteed. Thanks to the research projects of Patricia Chombo and Esteban Barragán, they had gathered a vast amount of technical data to uphold their application. The producers' organisation also supported the application and continued working on other aspects of the improvement and commercialization of the cheese. They even had the support of the local government. They were powerful enough to achieve meetings with the regional office of the IMPI and even with the national office. But while there was no explicit denial of their application, IMPI officials assured them that they would not get the GI granted, a position still upheld by the IMPI today.

2.4 Intellectual property in the technocratic agenda: the rightist project

To understand the context and content of the opposition to granting a GI to the Cotija cheese, it is necessary to understand the role of the IMPI in the Mexican state, and how it represents the economic agenda of the Mexican neoliberal technocracy. The IMPI itself is the final materialization in the IP field of the neoliberal technocratic project that reached a peak with Carlos Salinas's government and the negotiation of the NAFTA, through which the *Agreement on Trade-Related Aspects of Intellectual Property* (TRIPs), promoted by the USA at the World Trade Organization (WTO), was adopted early by México (Aboites and Soria 2008). In this process new legislation for industrial property was promulgated, and so the FLIP was created in 1991, which mandated the creation of the IMPI as the administrative authority regarding Industrial Property. The IMPI is a decentralised organism, with its own legal personality and patrimony. It handles everything that falls, under Mexican legislation, within the category of industrial property: patents, trademarks, GIs, industrial models and designs,

etc. Since its creation the IMPI has been the federal institution that reflects the stances and discourses of the technocratic right wing that has long governed in México; for most of the 70 years of the Institutional Revolution Party (PRI) governments, and through the National Action Party (PAN) right wing governments (2000-2012), after which the PRI returned to power.

The continuity of this economic agenda despite the political alternation that the country has experienced over the last couple of decades²⁷ is shown by the stability in the IMPI administration. The IMPI was directed by the same person for eighteen years – from its foundation in 1993 until 2011 – and through the government of four different presidents, from two political parties, and eight different secretaries of economics (Suárez 2011). This is also the period during which the Cotija GI application was dealt with and most of Michoacán’s CTs were granted. For his part, the Deputy Director General of Industrial Property, who can be considered the second in command in matters regarding GIs and CTs, continues to hold his post, which he has occupied also since the IMPI was created. These government officials do not represent to the USA-educated lawyers and economists that are identified as shaping the political and economic futures of many Latin American states in studies like the one carried by Dezalay and Garth (2002). They are, however, an economist and a lawyer who were trained in high profile private universities in México, partially in universities closely linked with the USA and partially in catholic universities, either from the Legionaries of Christ congregation or the Opus Dei. Another thing they have in common is that they were both involved in the negotiation of the NAFTA which was central to the creation of the IMPI itself. If there is a change in Mexican politics with the political transition between the PRI and the PAN, it is clear that it does not extend to the economic agenda that is pursued through the IMPI, since this stability of the agents in an institution expresses a continuity of the project that the agents embody as part of a field.

It was within this institution that the Cotija cheese application for a GI was handled with some reluctance. As I mentioned earlier, the Regional Association of

²⁷ After 70 years in government, the PRI was already considered in México and abroad to be somewhat of a “perfect dictatorship”. Hence, the wining of the PAN in the 1999 elections was considered by some as a transition towards a democratic regime in México. This consideration however is far from being entirely accepted as an interpretation of said political period in the country. Indeed, as the process here described suggests, the change of political party hardly represented a change in the country’s political agenda.

Cotija Cheese Producers had the right to apply for the GI, and they had also managed to obtain the necessary requirements to uphold their application, but still the IMPI agents that they met with denied the possibility of an approval. The reasons for the informal denial did not rest then in deficiencies of the application, or on a failure to gather the necessary requirements established by the law; despite the complications regarding the official norm described above. The reasons lay not in the formal normative provisions but in the economic agenda of the IMPI and how it reflects in the use that it makes of IP protection.

Cotija cheese was not considered by the IMPI as an ideal GI product because it is not an export market product. Due to the characteristics of their product and their own economic conditions, the producers of Cotija cheese are not in a position to take advantage of export markets and their product is not sufficiently recognised as a Mexican in the international sphere. It is said that 80% of Cotija cheese production is carried to the USA by Mexican migrants (Boucher 2006), but this is not a formal commercial channel and therefore it is irrelevant for the IMPI.

The fact that Cotija was not seen as a suitable GI product, regardless of the fact that it fulfils all the formal requirements, is extremely meaningful to understand the economic concerns behind IMPI's actions. IMPI sees GIs as an appropriate vehicle for the largely industrialized and powerful producers of national and international relevance, but does not approve of their use by smaller scale producers. From a strictly normative point of view, this would seem contradictory since GIs have very limited international legal protection (Rangnekar 2009, p. 9). But as market signifiers, where GIs are popular this meaning is halfway constructed from the start. A GI can mean quality even if the product is previously unknown, it can also automatically exploit the discourses of “social responsibility”, “fair trade” and even “sustainability” (Chombo 2005, Aylwin and Coombe 2014). For this to happen either the notions have to exist in a relevant manner in the public sphere, or the GI must come with strategies to position them; the problem is that neither is the case in Mexico (Schultz 2005, pp. 467–468). Seeing this from the perspective of Bourdieu's (1999) considerations about the international circulation of ideas, it would seem that IMPI's reading of GIs could actually be more coherent with both the field of origin and the field of reception, than that of Cotija's agents. Another point to bear in mind, although it is not possible to

explore it further here, is the question of whether the focus on the export market has been so positive for the Mexican economic agenda. The way in which neoliberal expectations fixed the legal considerations on culture in Michoacán into a free-trade perspective of culture which remains compatible with pluralist notions will be explored over the following section, but a similar observation can be made as regards the way IMPI conceives GIs. This renews the need to observe how, 20 years after being signed, the NAFTA is criticized for its failure to bring better economic conditions to several sectors, despite the fact that exports have indeed increased (Villarreal 2012, Brooks 2013, González 2013a, 2013b, Miranda 2013, Castañeda 2014, Notimex 2014, Pérez 2014, Rosas 2014, Weisbrot *et al.* 2014). However, as some South American countries embark on the search for a post-neoliberal agenda, México seems oblivious of the failure of the neoliberal agenda to improve the country's economic conditions.

To better understand how GIs represent the neoliberal technocratic interests through the IMPI, the Tequila case can be seen as IMPI's idea of the "perfect" GI. Certainly, México's Tequila GI seems to be inspirational internationally for being successful in enhancing the market value of a local spirit and increasing its international visibility (Rangnekar 2009, p. 6, Barnette 2012, p. 103, Bowen 2012, p. 93). However, Tequila producers in México are not a subaltern community in need of economic relief, governance or even acknowledgement of the value of their product; or at least those being benefited by the GI do not fall into this category. Why? Because the Tequila GI does not regulate the places where the raw materials are grown, but those where the product is distilled (Benni and Reviron 2009, p. 70). While there are agave producers in rural areas who may be in need of economic support, they do not hold the authorisation from the IMPI. Instead, it is rather rich bottlers and distillers who hold the GI and obtain the benefits, and they have more in common with the European rural elites that have historically used GIs. They even achieved a better economic position due to Tequila's industrialization process which further consolidates their position as elite producers – not even rural elite producers (Schultz 2005, pp. 466–467). This is the reason why Tequila's GI has been questioned on the grounds of the social and ecological sustainability expectations that a GI is considered to generate (Benni and Reviron 2009, p. 76, Barnette 2012, Bowen 2012), because it has tended to undermine the position of traditional agave producers, in favour of distillers and bottler/distributors.

But there is more in this conception of GI than an economic agenda, embedded in it there is also a deep historical comprehension of what culture is valuable for the Mexican state. Tequila itself is representative of the region of Jalisco in México, which is a region that has managed to position many of its cultural traditions as representative of México in general. Aside from tequila, the traditional music performed by mariachis also comes from the rich landowners in Jalisco, and the regional traditional dress and dances are also some of the best known all through México and abroad. On the other hand, Michoacán's history has in general had a much less relevant presence in national narratives, although its artisanal tradition is diverse and important economically, as I explained in the first chapter (ch. 1.2). However the IMPI gives little importance to Michoacán's artisanal production in the development agenda, despite its already asserted relevance in the economic conditions of several communities. The artisans in Michoacán are not industrialised and they do not pay taxes or engage in formal practices of transnational commerce so, for the IMPI, these reasons put them outside its interest. As the agents at the IMPI would assert: "it is really very sad that we can't do anything to help them but, as you can see, it is out of our hands" (EI 17-01-2013).

IMPI's standpoint is not innocuous, it is characterised by an underlying mestizo project that retains many of the arguments and beliefs of the integrationist paradigm inherited from colonial times and explored previously in the period of indigenist policies (ch. 1.1). Indeed since the colonial period and for most of México's history, indigenous peoples were deemed an uncivilized element that needed to be eradicated or at the very least integrated into the modernizing project represented by the mestizos (Bonfil 1999, 2008, Stavenhagen 2002, Warman 2003, Aboites and Loyo 2011, Kunts and Speckman 2011). The mestizo project that historically aimed for the integration of a single Mexican ideal homogeneous in race and culture also aimed at the elimination of collective property and production. Despite multiple attacks, collective property persisted into the twentieth century often linked with indigenous and rural context, but also to some extent in the cities (Kunts and Speckman 2011, p. 519). This tendency towards the collective is also present in the artisanal production in Michoacán in coherence with the indigenous objections to IP and extending into other traditional products with thick cultural density. Hence it also continues to be problematic, along

with other elements that seem to continue making traditional production appear inadequate for the IMPI's vision of development.

In accordance with this view IMPI agents are rather reluctant to accept the notions that portray indigenous peoples as holders and legitimate owners of knowledge, let alone that this knowledge could be valuable. They say that, as indigenous people are Mexicans, their knowledge is to be considered Mexican as well. Furthermore, they see artisanship as rather rudimentary, with an aesthetic that would be easy to imitate and not likely to provide suitable means for sustainability. Marketable difference for the IMPI refers much more to the Mexican in the world, than to the indigenous in México. That is to say that Tequila's cultural narrative is seen more as a part of the mainstream "mexicanity" than as it relates to any specific territory within México (Barnette 2012, Bowen 2012). Hence, it is the most fetichized aspects of Mexicanity that they intend to allow to be projected to the world through GIs. IMPI's role then becomes defined not as a means to give security to small scale producers, but to further engrave Mexican identity in those products popular enough and Mexican enough to be sold abroad.

IMPI's stance is particularly relevant when seen in contrast with the position that the global south is supposed to be taking regarding IP in the global sphere. It is clear that national agendas shape the struggles in the international legal field (Madsen 2006, p. 31). In the case of the European Union, its long tradition in the use of GIs for the commercialization of certain agricultural products has translated into proposals to make it easier to guarantee their international protection within the context of the TRIPs Agreement, although the proposals have not been received well by many WTO members (Kongolo 2008, pp. 121–126). While the global south had often opposed the strong enforcement of IP (Kongolo 2008, p. xxi), and some countries continue to be reluctant to accept the implementation of a mandatory registration system, other countries from the global south pressure in the WTO for stronger protection for GIs in the TRIPs beyond wines and spirits, seeing them as a way to use cultural heritage and biodiversity as tools to improve livelihoods (Kongolo 2008, p. 129, Rangnekar 2009, pp. 8–9). This interest has also increased pressure on the World Intellectual Property Organization (WIPO) to embark on a development agenda (Rangnekar 2009, p. 12, Aylwin *et al.* 2010, Coombe and Aylwin 2011, p. 2032, Aylwin and Coombe 2014, pp. 1, 5–6). Nonetheless, although IMPI does involve itself in WIPO discussions – for it has

become an important international forum for the discussions regarding indigenous cultural expressions amongst different states (Kongolo 2008, p. 31) – it has no agenda at the international level to address the needs of artisans who do not hold the same economic, politic and symbolic power as Tequila’s producers; as a matter of fact, there is no such agenda at the national level either.

2.5 Artisanry in Michoacán’s law

IMPI’s stance against a GI from Cotija was negotiated with the agenda of Michoacán’s administration; however, before addressing it, I consider important to further describe the legal context in which the future CT policy would be settled. CTs came to be designed and applied within the socio-historical context described in the previous chapter; however, they also belong within a specific legal frame and legal dynamics. Evidently there is the FLIP which regulates CTs, but as CTs have been used specifically for artisanry productions, it is important to understand how this cultural-economic sector is positioned within the law as state discourse in Michoacán.

The discourse of the state law regarding culture constitutes a political, cultural and economic agenda that needs to be considered, as it shapes the possibilities that are meant to be sought by cultural policies. In his analysis of different positions that can be portrayed by a state, Baker (2004, pp. 243–255) holds that the construction of state discourse and cultural policy agenda through the regulation of the cultural field, determines and is determined by three different perspectives on culture itself, and on its role in national development. Understanding that there is an intertwining amongst culture, the market and democracy, this author states that it is possible to identify a notion of culture that informs and makes sense of a state’s cultural policy:

- The first perspective is the free-trade perspective, which closely relates to the commodification of culture in the understanding that culture is basically a good for consumption, and, according to the author, is mainly held in countries like the USA. From this perspective, cultural objects should be treated as any other object; therefore,

the rules of free market should be applied to their circulation. In this sense, the state's role is to keep itself at the margins and not interfere with the circulation or protection of cultural objects, because promotion or protection goes not only against the mandates of free market, but also against the freedom of expression and, to a lesser extent, the right to culture. In this perspective, culture is produced through continuous social processes, it is never finished and never destroyed, but fluctuates and it is transformed according to the inclinations and desires of a people.

- The second perspective, attributed to countries with “protectionist” attitudes toward their culture like France²⁸, is identified as the “museum” or “artifact” conception of culture. In this conception culture would have a superior and non-negotiable value for peoples' identity, but it would also be static and closed. Given that there is a pretension to protect cultural traits against what is considered as an invasion or contamination from external influences, it is considered that this perspective sees culture as a finished process which is, therefore, susceptible of being damaged and lost. Informed by this perspective, countries put in place a series of policies to promote local cultural traits, while putting obstacles to the development and diffusion of other cultural traits. The later is done especially by limiting the spread of other nations' cultural products

- The third perspective suggested by the author would also be protectionist of cultural production, but from a “discourse” or “dialogic” conception of culture, which emphasizes the role of cultural actors and the creation of spaces where the communities have meaningful chances to maintain and create their culture. It “treats culture as the integration of a specific heritage into a current behavioral discourse” (Baker 2004, p. 251). Culture becomes then a process of signification which is produced everyday life, but this does not entail that actions of the state to influence it will necessarily imply an authoritarian action. On the contrary, from Baker's perspective, it is necessary for the state to actively engage in the construction of cultural spaces which allow equalitarian access to the public sphere for the mosaic of cultural expressions of a people. In this process the objective is to overcome the limitations that the free market imposes to individuals, and peoples, with lesser economic possibilities to participate in the creation and spread of culture.

²⁸ Similar attitudes are also attributed to the USA and France by other authors (i.e. Arizpe and Alonso 2001).

Aside from informing a particular cultural policy agenda and even though Baker does not address this point, there is also a different notion of cultural rights portrayed in each perspective of culture previously described. From the first perspective, cultural rights are connected with a liberal vision which focuses on freedoms; it is a vision which holds the state's non-participation based on freedom of expression. The museum conception of culture is based on a vision of cultural rights which the state cannot guarantee if it is kept at bay, it needs then to actively participate in a context which has been shaped unequal through historical processes of colonization; and which becomes even more unequal in the context of free market. Finally, Baker's dialogical perspective draws on the later vision of cultural rights, but its stress on cultural agents emphasizes a fundamental element of cultural rights, that of the participation of persons, not only as consumers of culture, but as producers of it.

However, I suggest that through looking at the artisanal sector's legal framework these perspectives can be seen as they act in state discourse in a much less confrontational way than the one suggested by Baker (2004, pp. 256–259), while keeping the economic dimension as a main concern. Despite that at least the first two perspectives analyzed by Baker seem to be rather contrasting and irreconcilable, as do the cultural policy designs that would be inspired by each perspective, this seems to be the case only in matters of dispute between countries – which is actually the context studied by Baker. However the discourses can, and indeed are, used opportunistically in the shaping of local cultural policies which actually aim to the positioning of cultural products in the market dynamics; for which all of the discourses can be used in different circumstances.

This can be seen in the legal discourses of Michoacán and the first two administrations of the Democratic Revolution Party (PRD) governments, which took power from 2002 to 2012 with a strong campaign for recognition of indigenous rights and promotion of cultural diversity. The PRD is the political party self-positioned in the left wing of mainstream politics²⁹. In fact Michoacán is considered the birthplace of the PRD, although it was founded in 1989 in México City, because of the important role

²⁹It is important to clarify that there is further diversity and complexity within what could be considered right or left in any country, both positions encompass a series of stances that connect, conflict and shift over time.

played by Cuahutemoc Cárdenas Solórzano – who incidentally was the son of Lázaro Cárdenas del Río, former president of México (1934-1940) who achieved the nationalization of the oil industry and was the founder of the PRI. But Michoacán had previously always been governed by the PRI, as was most of the country, and it was not until the anthropologist Lázaro Cárdenas Batel – the son of Cuahutemoc Cárdenas and grandson of Lázaro Cárdenas del Río – came to power in 2002 that any political alternation was managed. The political campaign of Lázaro Cárdenas Batel was also significant for the way it highly represented the pluralist discourse that the country had assumed in its constitution in 2001.

Being so, there is an important part of legal framework for cultural development in the state of Michoacán, which was highly influenced by the pluralist discourse that had established itself as the new paradigm of the relation between the Mexican state and indigenous peoples, and highlights the value of tradition, art, knowledge, etc. (ch. 1.1). So says the *Development Plan for the State of Michoacán (DPSM) 2003-2008*, designed as a guideline for the administration of Governor Lázaro Cárdenas Batel, when it notes the importance of the right to diversity, stating:

There has been an attempt in different fields to impose a culture which is racist, discriminatory, homophobic and expresses intolerance against what is not part of the hegemonic pattern. The cultures of indigenous peoples, for example, have been placed as expressions of backwardness, and their demands for recognition of their rights have been accused for attempting against sovereignty, national unity or the principle of equality.

Facing these cultural expressions, which have severe consequences in the social, economic and political fields, it is necessary to spread public policies and positive actions which assert the full right of all, individuals and groups, to diversity (DPSM, 2003-2008, p. 11).

In the DPSM 2003-2008, culture is considered as a core concern for development and it must be free of bureaucratic criteria and privatization processes (DPSM, 2003-2008, p. 70-71). Even though the same discourse is notably absent in the DPSM 2008-2012, which belongs to Governor Leonel Godoy Rángel's administration, it does state an agreement with the notions of culture expressed by its predecessor. Being so, PRD governments hold a notion of culture's social role much closer to Baker's (2004, pp.

250–253) dialogic conception. The discourse is based not only on cultural expressions' value beyond commerce, but it also highlights the role of cultural agents.

However, artisanship's incorporation as cultural heritage within the protection discourse is quite ambiguous. The DPSM 2003-2008 states that artisans support must "acquire a sense that transcends the simple commodification idea" (DPSM 2003-2008, p. 84). And the DPSM 2008-2012 identifies the artisanal sector as one that can contribute to "social and cultural integration", and "the creation of jobs and income generation". These notions acknowledge the substantial need for a cultural dimension to be included in politics of economic development, in agreement with Coombe's statement that, as a feature of development, culture "indexes concerns about maintaining cultural diversity, respecting local value systems that ensure social cohesion, and ending discrimination against the socially marginalized" (2009, p. 18.10). However, the DPSM 2003-2008 identifies artisanship as a development area, but not as cultural heritage. And the DPSM 2008-2012 refers to indigenous peoples' participation in the cultural policy design, but does not include the artisanal sector as one of its strategic areas; not even in the section entitled "Renovation of the cultural pact with indigenous peoples and communities".

This uneven incorporation of the artisanal activity within the pluralist discourse is evident also in the *Law for the Cultural Development of the State of Michoacán of Ocampo* (LCDM), which regulates the cultural policy implemented through the Secretaries of Culture, Education and Tourism, as well as the municipalities. The LCDM, envisages the need for society's greater involvement in cultural programs and projects, "particularly those regarding indigenous peoples' culture, aiming for the consolidation of the respect towards cultural, ethnical and linguistic plurality" (LCDM 2007, Art. 4); and it recognizes in its 2nd article as cultural activities, goods and services "all which create, produce, distribute or convey cultural expressions, regardless of their individual or collective origin, market value, or civil or commercial nature". But the neglect of the artisanal sector extends to the sections about the creators, and about the cultural component in development planning and financing. The artisanal sector is only mentioned in article 5, which declares the role of the Secretary of Culture to "Promote, encourage and support the development of artisanship and popular cultural expressions, in all genres" (LCDM 2007, art. 5), without further considerations. Incidentally the

regulation of the CASART as the public institution which specially devotes to the artisanal sector is also not considered within this legislation. Also, as part of an open list of cultural heritage, CTs and appellations of origin are considered along with monuments, towns, etc., but without any mention of artisanship, not even of popular art.

The matter of citizens' participation in general and of indigenous peoples in particular, in design and development of the cultural agenda, is rather limited in its execution possibilities; despite being fundamental for Baker's dialogic perspective. Although the 4th article of the LCDM indicates that cultural policy must promote "an increase participation of society, communities and individuals, in the culture program and projects, particularly those of indigenous peoples in the state, aiming to consolidate the respect to cultural, ethnical and linguistic plurality", there is no mandatory disposition that indicates means to achieve this participation. This law also mandates the creation of the *State Program of Culture* which must be published in indigenous peoples languages and take into account regional diagnosis, and even include the participation of specialists. However, there is no consideration regarding the obligation to fulfil the right to consultation of indigenous peoples, which is contemplated in the Mexican Constitution and in the International Labour Organization (ILO) 169 Convention.

The most the pluralist notions and the elements of Baker's dialogic perspective, present in various legal instruments of the state of Michoacán, tend to disappear when discussing specific problems and objectives, but not in a way in which the dialogic perspective is actually denied. The free-trade perspective discourse presents itself sometimes parallel to the pluralistic discourse and most times is justified by it as its "natural" consequence. Therefore, as I mentioned earlier, discourses interact in the law in a way which is much less marked by conflict, and more complementary as state resources to carry a public policy agenda.

Even the DPSM's approaches of 2003-2008, with its highly pluralistic discourse, approaches the artisanal sector highlighting its cultural conditions of production as obstacles; underestimating precisely the community elements that characterize this sector. The artisanal sector is identified by having "low technology levels", "family production units", "regional marketing" and "strong middlemen" (DPSM 2003-2008, p. 83). All these elements are substantially identified as problematic. Hence, the state's

government commits to supporting artisanship by “organizing, training, giving technical assistance and developing new designs, as well as the marketing and distribution of Michoacán artisanship elsewhere in the country and abroad” (DPSM 2003-2008, p. 84). In the same vein, the DPSM 2008-2012 identified as continuing problems in the artisanal sector “low levels of technological production, limited financial capacity, market saturation, excessive commercial middlemen, low commodity prices, external goods competition, the provision of raw materials, the lack of associability and sector statistics” (DPSM 2008-2012, p. 63). To solve these problems lines of action are established that include to enhance the use of new technologies; increase credits; promote dissemination, preservation and rescue strategies linked to tourism; and strengthen micro-entrepreneurs by consolidation of micro-entrepreneur and artisans’ registration activities.

There is in these notions a tacit acceptance of mercantilist development models that do not attempt to take into account the cultural side of artisanship. At this point, there is no discourse about diversity or historical challenges, not even about traditions. The value of technology over tradition is not discussed, and non-industrial production is seen as a disadvantage. Despite the fact that artisanship can only be so as long as it is non-industrial. Taking this into account, the added value of artisanal products is found precisely in the “uniqueness” achieved in each particular piece. But also, the value of the artisanship sector as it has been developed in Michoacán, depends highly on the historical production traditions which are deeply embedded in the lifestyle of several communities; hence the notion of thick cultural products described earlier (ch. 1.1). An industrialized artisanship cannot exist, not only because it is inherently contradictory, but because industrialization implies a different configuration of the social fabric of the community that produces it.

The negative connotation given to the emphasis of commercialization in local markets is also much more related with the neoliberal ideology expressed by IMPI’s expectations, than with the possibilities and needs of Michoacán’s artisanal sector. Michoacán’s producers hardly have the means to sustain formal exportation practices; they do involve in informal exportation through family members abroad (especially in the USA), but they hardly can fulfil the requirements of formal exportation procedures; most of them do not even register in Secretary of Finance. The configuration of the local

market that exists until today has been developed through a long duration historical process which, as was explained before (ch. 1.1), relates a pragmatic logic with a religious structure. The diversity of Michoacán's artisanship allows and is allowed by the need for the artisans to take their products around the territory in the religious holydays. Furthermore, as was brought forward when discussing IMPI's views on GIs, the exportation expectations are part of a neoliberal ideology which is hardly justified nowadays in México. This is evidenced by the failure of several processes related with the NAFTA 20 years after being signed, particularly those related to agriculture and employment, despite achieving the goal of increasing Mexican exportations (Villarreal 2012, Brooks 2013, González 2013a, 2013b, Miranda 2013, Castañeda 2014, Notimex 2014, Pérez 2014, Rosas 2014, Weisbrot *et al.* 2014).

The pluralistic perspective, focused in the artefact or in the dialogic perspective of culture, that ends up in a mercantilist model can be seen with an even stronger emphasis in the *Law for the Development of Artisanship in the State of Michoacán o Ocampo* (2000) (LDAM), which deals specifically with the artisanal sector through the regulation of the CASART and was promulgated before the PRD governments. The fact that this legislation was not touched during the PRD government periods is quite significant, as it is central to a sector that is formally acknowledged as fundamental in turn to the cultural and economic development of the state. This law's aims are expressed in its first article, as to "promote and encourage the recovery, preservation, development, promotion, improvement and marketing of Michoacán's artisanship" (LDAM 2000, art. 1). But the more practical and specific strategies again emphasize the need for a culture of competitiveness and the promotion of micro-enterprises; paying special attention to sale spaces and strategies.

Interestingly, CASART's aims and regulations do not only seem to express a pro-trade conception of culture, as described by Baker (2004), but they seem to assume in it also the negative aspects of the artefact conception. They embody a conception of culture as a commodity to be handled by the State; "as a type of good—as an object or a state of affairs, valuable for its potential to be consumed, experienced, or used" (Holder 2008, p. 11), leaving little room for individuals to challenge decisions made by the State in this regard. But the conception of culture that appears in CASART's regulation also encourages public officials to think of culture as essentially static and external to both

individuals, who exhibit, exercise or consume culture, and to the relations between individuals that are expressed and reinforced in the culture. Evidently, to understand how or even if CASART actually puts in practice the aims and objectives expressed in its regulation it is necessary to look at the actions and public policies implemented by CASART's agents. Although there is previous work which explores some of CASART's policies (Ibarra 2011), the role of the institution in regarding to the CTs will be further explored in the following chapters.

Nevertheless, the interaction of discourses regarding culture and its role in the market makes much more sense through Randeria's (2003a, p. 306, 2003b, pp. 2–4, 2007, pp. 6–7) notion of the *cunning state*. This is a state that is capable of taking various positions, even if they are apparently opposed, according to its specific purposes. It is a state which mediates between national and international regulation, and between opposing legislations and positions, taking them as tools to deal with each domestic situation. Thus, pro-trade, artefact and dialectical conceptions of culture, as well as any mixture of them, are only part of the discursive possibilities that can be drawn by a state to legitimately support its actions. The positions not only do not conflict, but they complement each other; the commodification agenda can and indeed is derived from an artefact or even a dialogic perspective of culture. As will be seen in the positions expressed and therefore personified by state agents; which indeed depend of a state logic of convenience according to their belief systems, without meaning that state logic is uniform or coherent also within itself.

In a sense, this interaction between protection and commodification – which Baker (2004) sees in its tension and I find that can also be expressed in an interaction – can be seen in the relation between cultural rights and IP rights when their discourses are seen separately. In order to identify the different visions of culture and its aims in these different facets of law one must also separate the cultural rights and IP discourses. Although it is common to consider IP as part of the cultural rights both in theory (Coombe 2009, p. 10.3) and in legislation (*International Covenant on Economic, Social and Cultural Rights* 1966), it is also suggested that cultural rights do not necessarily need to include intellectual property rights as currently conceived (Macmillan 2008). In fact, Graber and Buri-Nenova (2008, p. xi) argue that one of the problems in the safeguard traditional cultural expressions is the fragmentation and even collision of the

different legal regimes on intellectual property, cultural economic and human rights. So I suggest that by facing these lack of coherence and seeing them separately it is possible to identify two discursive and political fields that allows us to, at the very least, challenge their correspondence with one another both in theory and in practice. So there is a duality of discourses with contrasting conceptions of culture, although once again they are not necessarily opposed; furthermore, they are useful to each other. On one side cultural rights, as institutional discourse regarding cultural heritage, do not often speak against the market driven mentality. They speak of historical injustice, and the rights of citizens against the oppressor state. Even if they are part of a human rights discourse that has often been identified as one of capitalisms universalizing tools. At the same time, IP rights are explicitly conceived as market tools while they do use the arguments of promotion of culture to legitimize themselves.

The distinction I suggest is an analytical tool which aims to highlight some contradictions in the correspondence between IP rights and their design and the stated aims of cultural rights; but I also believe there is a perhaps a more pragmatic and political point in the inclusion of IP rights within the cultural rights universe. Cultural rights interaction with IP rights can show that they do not truly question pro-trade agendas, which is why they can be used as legitimating source for cultural policy that participates in the promotion of neoliberal agendas. This interaction within discursive duality is also replicated by policy designers, as will be explored in the next section.

At the same time, it is important to recognize that IP rights are fundamental to the practice of cultural rights because of their instrumental possibilities for individuals. IP indeed plays a great role in defining some of culture's greatest concerns – like what is knowledge and what is art (ch. 5.4) – as well as who and how culture is produced. In this sense, considering IP as a part of the rights to culture is not an affirmation of coherence but a demand; it would be precisely to subject IP to being critiqued for the exclusion it creates. But to make sense of this, it has to be inserted in a larger agenda of rethinking human rights. Indeed the inclusion of IP as part of the cultural rights in the Declaration of the Rights of Indigenous Peoples, extends to the respect of their territory and resources, and even to the recognition and respect of their laws (Tobin 2009, p. 137). In this sense, the integration of IP into human rights can bring further questions

about the possibility of cultural rights in the context of the demands over autonomy rights, as will be explored later on (ch. 5.5).

Another controversial matter involved in the issues discussed here is the commodification of culture. Some authors' work (amongst others: Coombe 1995, 2009, Brown 2003a, Comaroff and Comaroff 2009, Coombe and Aylwin 2011) would warn against the demonization of market oriented strategies, such as the ones posed by IP tools. Under certain circumstances, these authors would claim that these strategies can mean a way for subaltern groups to retake control over their realities, narratives and symbols (ch. 5.5). They can also help to increase communities' autonomy, political presence and material circumstances. This would be an achievement of no small importance given the colonization processes described earlier in this chapter. These authors are not oblivious to power dynamics that affect the process of commodification, but manage to make a case for the possibilities within it that I believe should not be taken for granted when analysing the CTs.

However, these kinds of claims will hardly find themselves legitimized within dominant discourses in Mexican academia (García 2002, Rosas *et al.* 2011) and political activism on the topic of cultural heritage. They sustain that these same strategies make little contribution to empowerment and constitute a colonizing impetus themselves as they manage to impose a market driven logic as the main concern and really care very little for the conditions of the peoples. Notably, UNESCO's 2011 declaration of the Pirekua as Cultural Heritage of Humanity has raised strong opposition from indigenous groups that were expressed in the *Declaración Piréri relacionada al reconocimiento de la Pirékua como Patrimonio Cultural de la Humanidad por la UNESCO* and the *Carta a la UNESCO, del Consejo Indígena, PIRÉKUA como Patrimonio Humanidad*. For these social sectors the notion of cultural heritage is of no use when oriented to market arenas like tourism or the construction of consumption spaces. Their opposition is based strongly on the elitist exclusion elements of those strategies which, they argue, bring little benefit to cultural agents, such indigenous communities. In many ways, it is understandable that the opposition posed by these groups is much more related to the specific context of México where, in most cases, cultural policies have favoured private and often transnational enterprises to invest in the country, while the communities lose their lands and resources, become underpaid

employees who can't afford to be tourists themselves, and can only perform their culture as it is design by the developers.

Regardless of the disagreement, a key element for both positions is the discussion regarding who and why in decision making processes and the control of the ideologies that dominate cultural policy, which I aim to explore throughout this dissertation. Even those authors who remain optimistic regarding commodification, identify as a key element for the exponents of such cultures to be the ones in control of how they are portrayed and participate in the public sphere. Regarding this matter, the lack of recognition of the indigenous element in artisanship has certainly allowed for it to be regulated without any participation of the communities. Even if the sector is not limited to indigenous people, ILO's 169 agreement obliges the Mexican state to implement consultation processes over legislation that affects indigenous communities; however, the right to consultation is limited in the Mexican Constitution to matters related with the politics of economic development. This fact allows for the state to manoeuvre the right to consultation as it is seen convenient. Aragón (2014, pp. 130–131), i.e., shows how the indigenous rights matter has been avoided by authorities intentionally by omitting the use of the word *indigenous* in the indigenous judicial reform and using the word *communal* instead. In the legislation that attends to the artisanal sector this strategy seems to be replicate. On the one side, as was mentioned earlier, the LCDM mentions indigenous cultures and communities but does not make any reference to the right of consultation; which could be justified in the fact that this law does not refer directly to economic development. And on the other side the LDAM, which does approach the artisanal sector as relevant to the economic development of the state, fails to mention the fact artisanship is produced mainly in indigenous peoples.

However, to fully understand the meaning of these discourses and how they are put in practice, it is necessary to look further into their construction and application in society. It is, above all, necessary to understand legal institutions as their meaning depends on social dynamics that make sense of them and which they attempt to regulate. Evidently, the discourses that manage to be represented in law must be disseminated and accepted enough, at least in certain spheres. But ultimately, they do not have the monopoly on determining state actions. Policies are designed by individuals with ideologies derived from their social origin, and who live specific

decision making moments. Therefore, a central element throughout this research is to explore the way the different perspectives that are expressed in culture's legal frame and its interactions are replicated in the positions and actions of the agents involved in the CT public policy, and what this has meant for the indigenous communities.

2.6 Intellectual property in the pluricultural agenda: the leftist project

For the Cotija initiative to overcome IMPI's opposition, it was necessary to create an alliance with the PRD and its own mestizo political agenda, which was expressed to some extent in the laws previously analysed. As I explained in the previous section, Lázaro Cárdenas Batel won the elections with a campaign that highly represented the pluralist discourse that the country assumed in its constitution of 2001 after the EZLN uprising (a process further explored in 1.1). Hence, Michoacán's government agents and their discourses represented then the many complications and ambivalences of the mestizo left wing conception of identity in the pluralist paradigm which mirrors the conflicts that can be identified in Michoacán's cultural legislation.

It was the willingness of the PRD administration at the time that made Cotija a reality through the support of agents in CASART and SEDECO who came into close contact with the Cotija team. The first contact was made by Alfredo Ramírez Bedolla who was the Undersecretary for Development of Micro, Small and Medium Enterprises (a department in the SEDECO). Alfredo Ramírez is a lawyer trained in the local public university, Universidad Michoacana de San Nicolás de Hidalgo (UMSNH). He had previously coordinated the Institute of Work Capacitation of Michoacán (ICATMI) and was later the leader of the PRD (2011-2012). He is latter would pass on to heading the Secretariat of Cooperativism, Solidary Economy, Civil and Social Movements in the newest left wing political party in México which has derived from the internal rupture of the PRD over the last election period, the National Regeneration Movement (MORENA); of which he is now the regional coordinator in Michoacán.

SEDECO was involved with some traditional producers in Michoacán, but it was CASART that came into contact with a wider variety of traditional producers. Taking

this into consideration Alfredo Ramírez organised a meeting with José René Carrillo González, the director of CASART. José René Carrillo is an architect who had been in office since 2002, and by then had a consolidated experience in the artisanship field. He moved to Morelia during Cuahutemoc Cárdenas' government to work a sub-director of the CASART from 1980 to 1986; working in the period between 1986 and 2002 in the area of entrepreneurial promotion in Michoacán, and then in FONART. José René Carrillo also brought along a lawyer trained at the UMSNH who was working at the time on a project on IP for the CASART, Héctor Chávez Castillo.

For Michoacán's government the success of the Cotija cheese would be extremely promising as it could be widely extended throughout Michoacán's territory. As was explained in the first chapter (1.2), historically an extensive and diverse artisanship tradition developed in Michoacán which had several points in common with Cotija. Aside from the production structures that Cotija had in common with other artisan communities, some of them also not indigenous, it experienced the problem of market invasion which was already identified as a main concern that leads to seek IP protection. SEDECO was dealing with the concerns of towns like Tlalpujahuá, where there is a semi-industrialized production of glass ornaments that were seeing their market flooded by cheaper products of inferior quality. While the same problem was being brought forward to the CASART by the producers of towns like Paracho, with a long tradition of artisanal guitars which had seen the invasion of guitars of Chinese origin which would claim in their tags to be from Paracho and could be found even in the guitar shops in Paracho itself. Héctor Chávez from CASART was the man responsible for dealing with this matter and he had explored different facets of the IP regulation in México to no avail. Here once again the objections to IP from the perspective of indigenous cultural expressions prove themselves to travel beyond ethnicity, since both Tlalpujahuá and Paracho are not indigenous communities and yet they were facing the same problems of exclusion, and to some extent of misappropriation that have been faced by indigenous cultural expressions (ch. 2.2).

Given the impossibilities already identified in the Mexican IP legislation, the local government was already attempting some options when the Cotija project came to define a common line of action. The CASART was developing a project for a legal reform to allow artisans to register patents or assert author's rights, while SEDECO was

exploring options to prove unfair competition. When meeting the Cotija project, a new set of possibilities was put in place. In fact GIs in México, although few, are already not limited to food products. The Tequila GI continues to be considered the most successful GI in the country and it is accompanied by GIs for mezcal (1994), bacanora (2000) and charanda (2004), also spirits, and coffee from Chiapas (2003) and Veracruz (2000) and mango (2003) amongst others. But there are other GIs on artisanal products such as Olinalá (1994), Talavera (1995) or amber from Chiapas (2000).

The actions and expectations of Michoacán's public administration were set within the pluralist paradigm in which the implications of market invasion go far beyond the economic and extend into the realm of culture. There is indeed a "revaluation" of culture in "meaning and income" (Aylwin and Coombe 2014, p. 1), but it comes also with a shift in what culture (or cultures) are being revalued in discourse. Diversity, which has historically been seen as posing a threat to the strength of the nation-state, is now seen as "valuable" under the dictates of pluralism (ch. 1.1). As a result, development now deals with its "cultural" consequences in what is being described as "human rights based development", which is concerned with notions like empowerment and the production of conditions in which minority cultures can "survive" (Aylwin and Coombe 2014). As occurs in Michoacán's cultural legislation, the agents from Michoacán's administration speak about the importance of indigenous and traditional cultures. They do not refer to tradition or indigenous as a problem to be overcome. No longer an inadequate element as it was in the discourse of the IMPI agents, Michoacán's agents hold tradition as a value and a selling point, as something to be preserved and enhanced.

However, the ambiguity observed in Michoacán's legislation is shown in the discourses of the agents of Michoacán's public administration; some of which are closely related to identity matters. There is, of course, an overcoming of the integrationist paradigm that held mestizo to be the truth of Mexican identity to be imitated by the indigenous (ch. 1.1), but how the indigenous are to interact with the globalized world economy is a much more ambiguous matter. Mestizo state agents do deeply retain the idea of true mexicanity, even if such cultural purity is essentially contradictory to their identity which was born from colonial contact. As was explained in the previous chapter, Mexican society is marked by processes of mestizaje which

make it hard to confidently assert cultural or genetic purity; rather, indigenous, Spaniard and mestizo are cultural contextual categories (ch. 1.1). In this context, indigenous and mestizo currently refer to the dominance of cultural traits which are embedded in everyday life and how “western” or “Spanish” elements in them are perceived. However, in the cultural discourse of the public administrator, mestizo and indigenous are permitted Mexican identities, but they are not allowed the same cosmopolitanism. Their notion of indigenous cultures is closely related to the museum perspective of culture, as described by Baker (2004, pp. 249–250), in which culture is seen as finished and complete, and threaten by change; while the same perspective is not applied to mestizo culture. It seems that for them the indigenous should not change, but their own change is not thought of as a negative thing. For “mestizo”, “indigenous” does need to keep some degree of purity in order to make sense in the left agenda which often seems to look for a resistant subaltern, even if for mainstream politics it still has to be a very moderate one. Ultimately, it continues to be the indigenous need for aid which justifies the mestizo policies.

Thus, we can talk about cultural contamination without thinking about our own culture as being polluted; because the enemy is no longer the Spaniard, but the forces of neoliberal capitalism and cultural invasion of indigenous communities. This is also the reason why Cotija could exploit the cultural discourse – as other mestizo producers eventually did, like those of Paracho and Tlalpujahua – because their production can be enclosed as “traditional”, in opposition to the massive industrialization that takes one’s mind to transnational enterprises. And indeed as part of the colonial narrative, the term *traditional* has a historical use in opposition to the notion of *civilized*, and is associated with the oral culture associated with the *New World* since the 17th century (Dommann 2008, pp. 4–5). Therefore these productions continue to be seen as apart from the influence of global neoliberalism. Michoacán’s agents shift at this point from the mestizo/indigenous dynamic towards the urban/rural, which comes with a transfer from indigenous cultural expressions to community based knowledge and products. Community based knowledge has the same essential components of indigenous cultural expressions without confining itself within the indigenous dimension, so its products gather the thick cultural element that sees them as fundamental to the communities’ lifestyles, without the need for the ethnicity component.

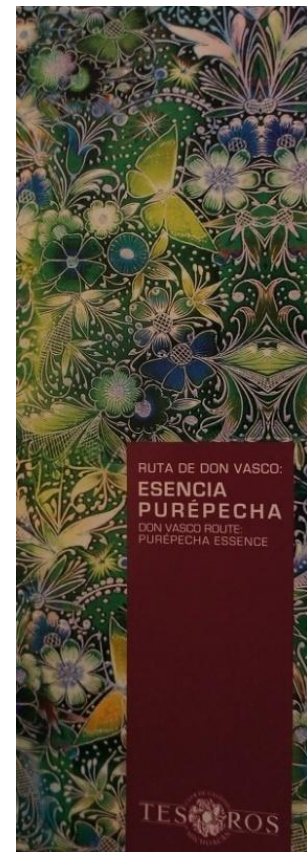
However, this already ambivalent discourse also interacts with an attempt to get producers to modify certain aspects of their production techniques and commercialisation practices in order to engage with transnational commerce. The interaction between valorising tradition and promoting the abandonment of some of its elements in favour of efficiency, is a contradiction that runs through the Mexican mestizo project and its cultural policies (García 2002, García and Piedras 2006, Ibarra 2011), but not exclusively since it can be observed in other regions of the world (Chan in Aylwin and Coombe 2014, p. 25). This tension was further analyzed in the previous section in the context of Michoacán's cultural legislation, particularly regarding artisanship, but it is also mirrored in the discourses of Michoacán's public administrators. Once again, when they speak about the actual strategies to protect the artisans, the solutions turn towards increasing their chances of exportation and achieving "modernization" in certain aspects of their production. Some of the suggestions do think about improving the conditions of the local market to increase the value in the minds of mestizo consumers, but the implementation of these strategies had a short lived implementation (ch. 4.2). Although the policy strategies that derived from the Cotija process will be analysed in the following chapters, it is important to note that in the very approach to the GI initiative an excuse was being found in tradition, but oriented more to the market value of tradition than to the value of tradition itself.

IP's collective options in general also portray this tension, they are seen as both neoliberal tools to enter the market and a protection against the threat of cultural homogenization brought by neoliberal market. Protective IP regimes for traditional cultural expressions tend to a commercial instrumentalisation aiming for the adaptation of indigenous groups to modern markets (Teubner and Fischer-Lescano 2008, p. 21). The GI project in Michoacán, also in its evolution into the CT project, reflects how this is conceived by agents in the public administration. The first benefit they would see in a GI would be the market protection of the products' authenticity, as a way to fight off market invasion. But the GI was also meant to imprint the notion of 'local products' as closely related to the notion of 'ethnic products' which is becoming fashionable in the public sphere (Lewinski 2004, p. 1), to the point that different products and even authors seem to be using indigenous names (Kur and Knaak 2004, p. 222). This is enhanced by the notion of 'traditional products' which portrays a historical depth which

is also increasingly appealing. But these discourses become problematic as they constitute themselves as empty market signifiers. Hence, Barragán³⁰ joins Linck in the critique of the mercantilist use of GIs:

The measure involves a privatization process which induces a double movement of dispossession and deceit. The application of ‘modern’ procedures and resources in substitution of the environmental resources and local knowledges implies a weakening of the territorial base of the production activity and, therefore, the abandonment of the components which mark the product’s typology, both in its sensorial and symbolic dimensions. Here, the deceit is drawn from the fact that the mention of origin cannot but be reduced to a mere image, a fictional staging of the product. The very process of displacement and destruction of the local resources comes from logic of dispossession which reminds in many aspects of the movements of primitive accumulation which have preceded the high point of mercantile capitalism and, later, industrial capitalism during the XVI and XVIII centuries. The qualification dispositive³¹ sustains an expropriation process not only of the territory but of everything in which its productive, social and symbolic value is based; the technical and rational knowledges in which the symbiosis between the local population and ecosystem is based, as well as the social cohesion which unites individuals around the same patrimony (Linck and Barragán 2010, pp. 250–251).

Tradition does become valuable as a market asset but the interest in its content and the connection with the communities wanes. Contemporary treatment of the Vasco de Quiroga history exemplifies the way this interaction happens. “Vasco de Quiroga should be the patron saint of entrepreneurs with a social sense, because there is nobody else who has organized so many people, has



³⁰It is important to note that this critique is made by one of the main agents involved in the Cotija case, its content indeed represents some of the concerns derived from the evolution of this project. However the continuation of this process will be further explored in the following chapters.

³¹The term qualification dispositive refers to the organisms, usually independent from the producers, which are established to assert and control the quality of the products produced by those who work within the realm of a GI. Although CTs do not need to have this kind of tools, according to their regulation at least, the problem of how the quality of the products was to be guaranteed became a matter of disagreement between state institutions and artisans latter in the process (ch. 4.2 and 4.3).

created so many sources of employment, which have lasted for centuries and with the humanist sense that he gave them”, these are the words of Marco Antonio Ramírez Villalón (2007, p. 237), who is the Vice President of the Ramírez Organization which is one of the most successful companies in Michoacán, in the book *La Ruta de Don Vasco*. The book is named after a tourism project that attempts to cater to “cultural tourism”, as practiced by educated people with an interest in local traditions. But rather than promoting the communities or showcasing the actual traditions, the touristic circuit has given its seal of approval to high end hotels, restaurants and galleries, bringing little benefits for artisans who are said to be the inheritors of Vasco de Quiroga’s life work. If he was a humanist who defended Michoacán’s indigenous peoples, his legacy is now transformed into that of an entrepreneur who created a nice theatre set for people to enjoy.



Figure 2.2 Map of the *Don Vasco* Route. Booklet: *Tesoros. La Ruta de Don Vasco: Esencia Purhépecha (Don Vasco Route: Purhépecha Essence)*

Indeed, the first to enjoy the market of tradition that Michoacán was attempting to create were the IMPI agents who needed to be convinced. The Cotija team, SEDECO and CASART began campaigning with the intention to change IMPI’s decision. Some of the strategies were actually just a continuation of the activities that were already being organised in Cotija: they continued working to showcase the Cotija Cheese fair,

now with the help of Michoacán's administration in addition to Cotija's local administration; and they continued also presenting papers and events in which they could showcase the research already done and in continuation about the product. Indeed when I contacted Esteban Barragán, he was still working on a project for the COLMICH (Barragán 2011a) and presenting the experience in many diverse forums, including a culinary program at the ICATMI (Barragán 2011b).

Other strategies were less visible, but also more targeted. They began lobbying in the legislature to promote a change in México's IP legislation that would further open the possibilities within GIs, and they even speak of a legislative reform draft that were thought of to bring forward by PRD representatives. They also organised several meetings with CASART representatives, not only in México City – where the central IMPI offices are located -- but also in Michoacán. Some of those meetings were not just gatherings in an office, but actual tours of Michoacán and encounters with the artisans and their traditions, in an attempt to convince IMPI of the value of the products that Michoacán wanted to protect. To this day, the Deputy General Director of Industrial Property at the IMPI showcases a fruit bowl made out of copper with one of the traditional techniques used in the town of Santa Clara del Cobre (note the use of the word copper in the very name of the town). Though this piece was shown to me to exemplify how Michoacán's artisanship is "easy for anyone to imitate" (EI 17-01-2013), so perhaps this part of the strategy was not all that successful. With the excuse of the upcoming 7th Cotija cheese fair, they also used media to report on Cotija cheese and their expectations for a GI. In fact, even when the project shifted towards CTs, the media strategy was constantly used, both to give notoriety to the CTs as to pressure the IMPI into continuing with the registrations.

IMPI had to enter into negotiation with a project in Michoacán that was held by the political will of several agents in the administration; but perhaps the result of this negotiation has had an impact beyond what the IMPI feared at the time. Indeed, the concessions made in this period have had deep consequences in the way IP protection is seen by the artisanal sector in México, and this has involved even federal institutions like the FONART. As shall be seen over the following chapters, this process would shape a massive policy and begin a long standing process of interaction between

different levels of México's administration and some of the artisan producers in Michoacán.

3. THE IMPLEMENTATION OF THE COLLECTIVE TRADEMARKS CULTURAL POLICY

The Cotija cheese was awarded the first Collective Trademark (CT) in Michoacán in 2005, under the name “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin), a name which is extremely significant due to its origin. The process that led to this CT initiated with the confrontation of views that marked the negotiation between the federal government, represented by the Mexican Institute of Industrial Property (IMPI) and agents of different agencies in Michoacán’s administration. Some key points of this negotiation need to be taken into account to continue the analysis of the role of CTs in the economic and cultural policy in Michoacán and in the lives of indigenous and non-indigenous communities in which artisanal products are produced.

One important element to take into account is that the CT policy actually began with a Geographical Indication (GI) application (ch. 2.3). This is important, first, because it helps to explain the reference to geographical locations contained in the names of almost every CT in Michoacán. And second, it is relevant because that reference to specific territories as a reason for differentiation is closely related to the way the artisanal sector has been shaped historically in Michoacán. The diversity of Michoacán’s artisanal production and its important role in the several communities in which it is one of the main economic and cultural activities, are elements embedded in Michoacán’s history since colonial times and have evolved in the market for local production over time (ch. 1.2).

Another significant element for the continuation of the project, and which is also drawn from the previous chapter, is the fact the competing agendas in discussion are eminently mestizo agendas. I have mentioned previously that most CTs in Michoacán represent the products of communities devoted to artisanship as a part of a model created during the colonial period (ch. 1.2), hence the fact that most CTs belong to

indigenous communities. But Cotija is not an indigenous community, nor are the persons involved in the initiation of the project. Thus, the visions on GIs that would latter translate into CTs were negotiated between two competing mestizo cultural and economic agendas. On the one hand, the federal government technocratic right wing interests were represented by the IMPI, an institution that was reluctant to deal with Cotija's application; while, on the other hand, the agents of Michoacán's government represented the local interest to promote artisanship in the context of a pluricultural discourse. However, rather than seeing this as a mark that the project is non-indigenous, I believe that this fact provides a basis for extending the indigenous objections to IP beyond ethnicity and for questioning how the interests of indigenous communities are managed in the context of a policy agenda which is based on a pluricultural discourse. This is because, regardless of IMPI's reluctance, once the CT for the Cotija cheese was granted, Michoacán build on the public policy which was meant to reinforce the achievements of the negotiation through the Artisanship House (CASART) and extended it to the several indigenous communities that now hold CTs.

Drawing from the field work that also gave content to the previous chapter, the present chapter explores the way in which the dispute between the federal and the local projects shaped the CT public policy in Michoacán. First I will address precisely how the different inputs that were analysed over the previous chapter, concluded in a structure of CTs as a hybrid that integrated some elements more common to GIs. Then I will analyse the pilot project that was developed in the CASART to expand the achievements of the negotiation and create the CT cultural policy. The third section will then explain the main elements that constituted the CT policy, which was marked by the political interest of the PRD administration. Finally, and as a way to summarize the main findings of this chapter, I will explore the significance that this interaction between competing mestizo agendas and the interests of the local political class, may have for the way we see and think about the state and its relation with indigenous peoples.

3.1 Negotiating Collective Trademarks

The pressure put on IMPI to grant a GI to the Cotija Cheese (ch. 2.6) did not change their determination against it, but was enough to make them attempt to find a middle ground, and then the CT option was suggested. It was, after all, quite clear thanks to the showcase put on by Michoacán's government that they were interested in more than the Cotija cheese GI, and the IMPI is particularly reluctant to grant a large number of GIs. It is likely that for them the large-scale GI strategy would diffuse the exclusivity perception value of GIs in general. It would also increase their workload considerably, as there are many more procedures for the IMPI to take care of for granting authorisations for GIs. But the main reasons given continued to relate to the lack of industrialisation and export possibilities. IMPI representatives continued to argue that it would be almost impossible to grant the GI for Cotija cheese although, as I mentioned above (ch. 2.3), a formal answer is yet to be delivered on this issue and Cotija has not given up the application (Informador 2011, Jornada 2013). However, the IMPI showed some flexibility to find a mechanism that would allow registration of a CT for the Cotija cheese, as well as other artisanal products, and this was found to be another collective option with possibilities to become a valuable market tool if well used (Linck and Barragán 2010, p. 263).

By formal definition, a CT is like any other trademark, but with an extended use among a collective or group. The normative definition of a trademark, according to the Federal Law of Industrial Property (FLIP), indicates that a trademark is “any visible sign which distinguishes products or services from others of their same species or class in the market” (Art. 88). CTs extend the use of the sign to producers' associations or societies, manufacturers, sellers or service providers which are legally constituted to distinguish the products or services of their members from those of others (FLIP Art. 96), which basically means that a group of persons can be identified with the same signifier without it constituting a conflict. While the fact that trademarks do not need the novelty element for their registration and have a broad scope of application was already seen as promising for indigenous cultural expressions (Lucas-Schloetter 2004, p. 307), it is precisely their collective element that has led to considering CTs as a possibility for

indigenous cultural expressions (Oehlerich de Zurita 1999, pp. 57–58) and perhaps also for other collective based products.

But the role of trademarks in the public sphere, whether collective or not, gives different meanings to the signifier of distinction that they create. On the one hand, the role of trademarks is seen as a protection against confusion, both for producer and consumer. They are a guarantee that consumers will find their way to the authentic producer that the trademark is meant to represent (Coombe 1996, p. 110, Oehlerich de Zurita 1999, p. 57, Lucas-Schloetter 2004, p. 308, Boucher 2006, Kongolo 2008, p. 103). There is then an identity value in trademarks as signs. As Coombe (1996, p. 110) indicates, trademarks make reference to a point of origin and give an identity to the manufacturer. Trademarks need to be understood, as Coombe characterizes them, as an expression of “the commodified imagery of late capitalism” (Coombe 1996, p. 105); through them images are sold and acquire a commodified meaning. Through mass media they make reference to a point of origin and give an identity to the manufacturer. But the exclusivity rights produced are also seen as a way to ensure the development of the cultural forms to which they belong, when linked to the geographical space (Linck *et al.* 2006, Rangnekar 2009), as was attempted in the Cotija case, because they bring added value to the objects. In a way, a trademark's value is entirely dependent on visibility, precisely on its ability to create that discourse that binds not only the object to the conditions of its producer, but that also connects the buyer to those two elements. A trademark must mean something for the consumer, must be capable of creating the asset of “loyalty” (Coombe 1996, p. 109), otherwise it has no commercial value.

There is also a rather valuable possible benefit in the use of trademark by subaltern groups to reshape the way they are portrayed in the public sphere in the context of diversity which originated in colonization processes. As was explained in the historical account presented in the first chapter (ch. 1.1), an important part of the colonization process and the subsequent discriminatory practices of the independent states, both in México and in other countries, was the denial of value of the indigenous peoples' cultures as the settler established himself in a position of superiority by comparison. In these processes, the dominant class took over the right of naming the *other* that indigenous represented and choosing the images to represent it with. But, in some places, this was accompanied by the inappropriate use of traditional names in the

hands of majority settlers in the form of trademarks. Reports of this inappropriate use are mainly seen in countries like USA, Canada, New Zealand and Australia (Coombe 1996, Brown 2003b, Kur and Knaak 2004, pp. 221–222). In these cases, the trademarks are not symbols representative of an identity, they are borrowed/stolen from their cultural frame to represent something entirely different, while still being attached to their origin. In fact, according to the FLIP (Art. 87) any trademark can be used in industry, commerce or services, but a right to exclusive use can only be obtained through its registration at the IMPI. The trademark registration is valid for ten years starting from the date in which the application was submitted and it can be renewed for the same time period (LIP Art. 95). During this time, the use in commerce of the words and images that compose it are exclusive to the right holders, who then have legal grounds to contest any other use. This means that the signifiers in the public sphere are owned privately. If the signifier is owned by a person who does not represent the community, this can exclude entire peoples from their own culture signifiers.

There are some documented cases in which trademarks have been used by indigenous peoples to recover control over how they are portrayed in the public sphere (Coombe 1996, Brown 2003b). In these cases, the registration of CTs by the indigenous peoples or traditional uses of the symbols in question can be a way to make a pro-active use of IP, retake control over the signifier and even exclude others from making improper use of it (Kur and Knaak 2004, p. 223), enabling the continuity and development of cultural expressions that have been historically endangered (Coombe and Aylwin 2011) (ch. 5.5). The rights that this kind of property are beginning to allow for subaltern groups, as indigenous populations, is seen by authors like Coombe as an opportunity “to construct identities and communities, to challenge social exclusions, and to assert difference” (Coombe 1996, p. 106). The main difference between the appropriation made by the dominant culture of indigenous or traditional imaginary and CTs is that through the latter the narratives would seem to go back to the peoples that represent or own them. After all “The bodily incorporation of the advertising image is different when the image one consumes is a stereotyped version of one's self” (Coombe 1996, p. 112).

But CTs do not really impose further control on productive processes, other than as they limit the use of specific names of images by anyone aside from their legal users.

This is a problem still identified within the Cotija project. Esteban Barragán writes in 2010 that CTs, although giving official recognition, represent more inconvenience than advantages, because they do not imply any technical obligation, which implies that they do not guarantee authenticity in any way (Linck and Barragán 2010, p. 263). CTs are meant to connect buyer with producer, but the producer must already have an appeal for the buyer. And even if this condition is achieved, CTs have weaker regulatory regimes than GIs, which means that there are no binding obligations, or accountability and regulation structures to guarantee that the product which holds that name indeed has the quality it is said to have. Hence, the arguments put by Barragán and Linck (2010, pp. 250–251) and explored previously (ch. 2.6), regarding the fiction created by GIs as a commodification strategy, become even more dangerously true in the case of CTs. The results of this, however, will be further analysed in the following chapter.

At the time, there were several arguments given by the IMPI for the convenience of CT in the Cotija case, and also in subsequent cases. The most pragmatic arguments were that the procedure would be simpler and cheaper. CTs do not require any kind of norms from the Secretariat of Economic Affairs to be satisfied at state level in order to be granted, as do GIs (ch. 2.3), nor do they need proof of any kind of territorial basis or cultural depth. Cotija itself had not yet achieved the approval of the norm, which came in 2009 with the NMX-F-735-COFOCALEC-2009 norm. Although Cotija had managed other technical requirements, the IMPI agents involved were not oblivious to the fact that it would be hard for most communities in Michoacán to gather the resources that Cotija had needed. There were downsides to this lack of regulation, but I will explain how they were dealt with later on. Still, this also had an effect on the CT's cost, since it was not just that the application at the IMPI was less expensive, but also that there was no need to further prove and characterise in detail the cultural and geographical elements that made each product special.

But the most convincing argument to opt for the CT instead of a GI had to do with the actual ownership of the registration and the different levels of dependence from the state apparatus. The GI constitutes a way in which the state formally declares a product to be special due to its origin, but it has further consequences. The state also grants itself the possibility to guarantee that the certified products will fulfil the expectation created by this legalization of regional pride, and to do so it establishes control mechanisms

over the production. As is established in the law itself (art. 167 FLIP), the GI belongs to the Mexican state, and it can only be used through the authorization given by the IMPI which is held for 10 years with the possibility of renewal for the same time period. This also means that others who would be interested in joining the GI would have to deal at some point with the state apparatus, just like the producers would have to deal with the qualification dispositive. In contrast, the CT would be owned by the producers' association. This leaves in the hands of the producer the possibility of extending the authorization to others who work under the same trademark and, to some extent, also the decision over the means of quality certification of the products that represent the CT. Hence, under a CT the producers' association would have the entire autonomy to determine who would enter and who would not. Interestingly, this argument says much about the distrust that the agents involved would attribute to the state in the process of negotiation; despite the fact that some of the agents involved, and actively distrusting, were at the time working in public administration themselves. Once again this argument was not necessarily ill founded although, as will be seen in later on, the integration and structure of the associations also proved problematic through time.

The CT option, however, still did not completely respond to Cotija's expectations. There was the problem already addressed that CTs would provide a much softer exclusion system than a GI. But there was also the thought that CTs do not automatically portray the notion of quality that the Cotija team had been aiming for and I explored earlier (ch. 2.3). GIs have a pre-conceived value for them as signifiers of quality, while CTs needed to be positioned in the public sphere to gather the same meaning, not only for CTs themselves but to each product that applied for one. Other objections were perhaps less market oriented but related profoundly with the identity that the Cotija project had gathered due to the background of the agents involved with it. There was, for the Cotija team, a big concern to articulate the connection between territory and community that is central to GIs (Chombo 2005, Linck *et al.* 2006, Barragán 2008), and CTs did not do this by themselves as they had no geographical reference within them. And so, it was necessary to engage in further negotiation with the IMPI to make CTs more responsive to the expectations of Michoacán's agents.

The negotiations between IMPI and Michoacán's agents displaced the GI, but it also changed CTs in a way that now makes them more like a GI when the first CT in

Michoacán was granted in 2005 under the name “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin) (figure 3.1). The Cotija team was still not ready to give up on basing their product in the geographical setting of Cotija’s ranchers, so they proposed several names as options for the CT which made reference to the town of Cotija as the origin one way or another. They were aware that some of the options they put forward were not only absent in the law, but that they were actually forbidden since different dispositions in trademark law did not allow for geographical references to be placed in the names of trademarks,³² but still they tried. And so they were pleasantly surprised when, contrary to the formal legal position, the name approved by the IMPI was almost the same as it would have been if it was a GI, effectively eliminating the prohibitions that they disagreed with.



Figure 3.1 Correct placement of the Cotija Cheese tag. Source: (Álvarez *et al.* 2005).

The reason why it was allowed for Cotija’s CT to be named that way is explainable only by guesses. So far there is no formal account as to why the IMPI approved the name “Queso Cotija, Región de Origen” (Cotija Cheese Region of Origin). The most likely reason is that someone – and most likely a person in a technical job who had not been involved in previous negotiations – chose it without thinking much about it, since every single word in that name is illegal according to Mexican trademark law. The name “Queso Cotija” (Cotija Cheese), which was desired by the

³²Since all trademarks are still subjected to revision, I will not make reference to the specific legal dispositions and arguments that can be held against Michoacán’s trademarks, in order not to give further information that can have a negative effect of the project and the holders of CTs.

Cotija team, had indeed been negotiated with agents from the IMPI, who had already opposed the breach of the law that would allow the geographical reference that the agents from Cotija wanted. But this was done in the central office of the IMPI in México City. However, the application itself would not be handled by this office, but by the Bajío office, located in the city of León, Guanajuato, and which tends to applications made in the states of Guanajuato, Zacatecas, Aguascalientes, San Luis Potosí, Queretaro and Michoacán (figure 3.2). The agents in the Bajío office gave no answer as to why that name was chosen among the options given by the Regional Association of Cotija Cheese Producers, or who made that decision. They maintain that the phrasing is “merely nominative” and that it has no deeper implications for the CTs. The name of the first CT is treated as if there was nothing special, or particularly questionable about it. Since the persons involved in the negotiation in the central offices of the IMPI were set against the use of a geographical reference, the choice of the name must have come from someone uninvolved in the larger political process. Hence, in a rather ironic turn, after a long negotiation and IMPI’s constant refusal to grant a GI to Cotija, without any legal argument for this rejection, IMPI ended up allowing the reshaping of CTs to better resemble GIs against the actual formal legal provisions.



Figure 3.2 Geographical circumscription of the Bajío Regional Office (IMPI). Source: <http://www.impi.gob.mx/QuienesSomos/Paginas/OficinaRegionalBajio.aspx>

Another element which bridged the gap between CTs and GIs in Michoacán's experience was the way 'rules of use' were conceived. Admittedly there is a larger state regulatory structure for GIs, which is meant to guarantee the quality of the products by establishing a production mechanism and certification authorities that review and control producers' practices. CTs do not have such dispositions or structures within the state, but each application for a CT must include rules of use (FLIP Art. 97) which establish basic common practices among the different producers who hold the CT. They are meant to clarify the way all the CT's producers are supposed to work, to give a general description of the production mechanisms and processes in relation to geographical context and social practices. But the Cotija team had already worked and studied to characterise the product and its quality to an extent worthy of being included in a legal norm. So all that work would still be put to use through the rules of use, which are not only descriptive but also rather explanatory of the reasons behind the Cotija cheese's quality (Álvarez *et al.* 2005). Although more descriptive than mandatory, the rules of use have been seen as a quality guarantee relatable to actual norms, as can be observed in the recent statements by Hugo Gama – who was an integral part of the Secretariat of Economic Development (SEDECO) team that gave continuation to the project (ch. 4.2) - in the press. He explained that a CT has “the added advantage to become a tool to guarantee the quality and authenticity given that it includes rules of use which could well become official Mexican norms (as is the case with Cotija cheese), as well as enabling the promotion of the products and its places of production” (2014).

Thanks to their complicated and contested origin, CTs in Michoacán have a life which extends well beyond the letter of the law; they are legal hybrids with important implications for the cultural and economic agendas of Michoacán and México. According to Michoacán's public administration agents, CTs can protect the prestige of an artisanal product or technique of a region or a community; helping to identify the product for its quality. CTs are said also to be able to help the integration of an artisanal sector by proving elements of articulation within the association. While some have ended up believing that a CT and a GI are actually the same thing (Fregoso 2011), most of Michoacán's agents know the difference, and still many even speak of the CTs in terms of “Region of Origin Marks”, as if this was a formal legal concept.

3.2 The integration of a pilot project

The CASART was created in 1970, as a decentralised organism of the public administration with the purpose to deal with the vast and diverse artisanal sector in Michoacán. The institution is currently ruled by the *Law for the Development of Artisanship in the State of Michoacán or Ocampo* (LDAM) enacted in 2000, during the government of Victor Manuel Tínocho Rubí from the PRI, which was further analysed in the previous chapter (ch. 2.5) and was not modified during the PRD governments. However, the LDAM has been under revision during the past couple of years and the fourth forum for consultation on the new *Law for the Endorsement, Development and Promotion* was held on the 20th of February 2014. The CASART's offices are in the capital of Michoacán, the city of Morelia, where its activities are coordinated. The top governing body of the CASART consists of: Michoacán's Governor as the president, the Secretary for Economic Promotion as vice-president, the Secretary of Education, the Secretary of Tourism, the General Treasurer, the Coordinator of Administrative Control and Development, the General Coordinator of the State Committee for Development Planning and the Director of the Culture Institute of Michoacán. However, the orientation of CASART's policies is mostly dependant on the decisions and points of view of its director.

When the CT project was designed and during the first part of its execution, the director of the CASART was José René Carrillo Ramírez. Although he is an architect, José René Carrillo had a long standing career working in the public administration in areas related with the artisanship field. He first moved to Morelia from Mexico City to work with the governor Cuahutemoc Cárdenas Solorzano as sub-director of the CASART, from 1980 to 1986, taking care of commercial aspects of the institution. As I have explained previously (ch. 2.5), Cuahutemoc Cárdenas is the son of former president Lázaro Cárdenas del Río. Following on his father's political career Cuahutemoc Cárdenas was governor of Michoacán from 1980 to 1986 with the Institutional Revolution Party (PRI), but was also a fundamental agent in the creation of the Democratic Revolution Party (PRD). After leaving the CASART at the end of

Cuahutemoc Cárdenas's government, José René Carrillo went to work at the Mixed Fund for Industrial Promotion of Michoacán (FOMICH), where he carried out a financing program for artisans. Later he worked in the Art Fund (FONART) at the national level; an institution that also works closely with the artisanal sector and which was also involved with the CT project, as shall be seen further below. Having his career closely linked to that of the Cárdenas clan, a family with a long standing political presence in Michoacán, José René Carrillo returned to the CASART in 2002, with the government of Lázaro Cárdenas Batel, son of Cuahutemoc Cárdenas and the first governor in Michoacán from the PRD.

Under the mandate of José René Carrillo, the CASART gathered a political identity closely linked to the agenda expressed by the political left represented by the PRD. José René Carrillo considered that the period in which he had formerly worked in the CASART, under the leadership of Jorge Solórzano and during Cuahutemoc Cárdenas's government, had been rather successful and he resumed some of the policies he had adopted then. This meant assuming the double nature of artisanship as an important economic activity and a meaningful cultural outlet; which in turn interacts with the embedded discourses of the value of cultural pluralism and the economic development agenda, both explored in the previous chapters. The analysis presented in the previous chapter (ch. 2.5) of this thesis shows how the practical and specific strategies projected in the LDAM for the CASART focus on mercantilist perspectives based on competitiveness and on a notion of culture that sees it not only as static but also external to the persons and the interactions that give it meaning in a specific context, while continually seeking legitimacy in the postulates of cultural pluralism. Then I explored the way in which this interaction of discourses can also be seen in the accounts of the agents involved with the design of the CT policies (ch. 2.6). Both these interactions are the context in which the CTs were devised and developed within the CASART.

The participation of the CASART in the design of the CTs project and the achievement of the first CT – “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin) – was more in a supportive role, seeing the possible advantages of the project on the basis of CASART's own experiences. As I described earlier (ch. 2.6), CASART had been working for a while with the community of Paracho, which was facing an

invasion of the guitar market in México. The problem for Paracho was affecting particularly small semi-industrialised factories, which were selling their guitars outside Paracho. Some of these factories were not properly registered to pay taxes, so it became clear quite soon that they would not be able to prove unfair competition or an effect on local production in order to ask for the imported guitars to be further taxed. `

Here Héctor Chávez, a lawyer from the local public university, Universidad Michoacana de San Nicolás de Hidalgo (UMSNH), becomes particularly relevant. He tried different possibilities at the IMPI, thinking also to find an option for products beyond Paracho's guitars. However, the people from the IMPI had asked him not to pursue the matter further given the complications due to the informality of the artisanal sector. According to the accounts of the CASART agents, their own discussions led to CTs since there were no justifications for any other IP protection option, while they were also aware that the CTs would not protect the actual knowledge. But whether this option had already been mentioned to them or not, it is clear that it was the Cotija experience that truly brought this option to reality. This was not only because it was Cotija cheese that got the first CT, but also because Héctor Chávez was at the time focused on seeking a change in legislation that could open up the possibility of author's rights for artisans.

Once the Cotija CT was achieved, the CASART became the best option to continue with the policy, which also changed some of the CTs' focus, taking the project away from the food sector. While the SEDECO was meant to devote itself to the promotion of several economic sectors, it was the CASART that had a close connection with the artisanal sector. This was hard to change given the informality of the artisanal sector which made it hard for SEDECO to increase the interaction. And it was evident from the start that it was the artisanal sector which could better benefit from the CT option as it had been configured by the process described in the previous chapter. After all, Michoacán's artisanal production was deeply rooted in historical processes and had the geographical basis (ch. 1.2), which are both elements that the Cotija team had fought hard to represent in the CT name. But there were also some aspects that would diverge from the Cotija experience, aided by the greater flexibility of CTs compared with GIs, since they allowed a more diverse set of products to have access to IP protection. Unlike Cotija's cheese the producers that came into contact with the CASART did not make

food products, engaging more frequently in pottery, textiles and carpentry (Guzmán 1998, Moctezuma 1998).

The continuation of the project within the CASART was then approved and the first CTs to be the pilot of the policy were selected. The choice of the products to be included is reminiscent of several important elements of the artisanal tradition in Michoacán that results in a variety of thick cultural density products (ch. 1.2). There is a mixture of formal and informal production units, as well as a mixture of indigenous and non-indigenous producers. Most of the products are also quite representative of the region, and either have or make reference to a historical depth which is seen as an added value. The first registered CTs were then:

- Guitarras de Paracho Región de Origen (Guitars from Paracho Region of Origin) (figure 3.3): Paracho is a town in a region heavily populated by indigenous communities, but is itself a mestizo town. The town is famous for the production of quality guitars in a wide range of prices; the production is mostly handmade and semi-industrialised, although there are some smaller family workshops. The production of guitars is an important economic activity which also gives the town a particular identity. It is said that the production of guitars is also an inheritance from Vasco de Quiroga's work (ch. 1.2) and there is even a sculpture of the colonial bishop in the main square, but the CASART agents reckon that the production of guitars does not go further back than a hundred years. Still the entrance of the town welcomes visitors with a large guitar sculpture and the town holds a famous guitar festival only second to the Cantoya globes festival in which guitars are usually also showcased.



Figure 3.3 Guitarras de Paracho Region de Origen.

- Cobre Martillado de Santa Clara Región de Origen (Hammered Copper from Santa Clara Region of Origin) (figure 3.4): Although the official name of this town is Villa Escalante, it is commonly known as Santa Clara del Cobre, and its foundation is attributed to Vasco de Quiroga (Alvarado 1997, p. 117), the acknowledged father of many of the structures and artisanal traditions of Michoacán (ch. 1.2). The production of copper in Santa Clara existed well before colonial times, but it is also considered that it was greatly modified during the colonial period (Alvarado 1997, p. 118). Nowadays the copper remains present in the name of the town, as an important economic activity and the town's decorations are even made out of copper. The town also holds an annual Copper festival. Although the CT refers particularly to a technique of working the copper which involves the use of hammers by groups of artisans to slowly shape each piece, there are in fact different techniques being used in the town and the final products vary greatly, from the functional, like pots, to the ornamental. Although Santa Clara is a town with an important indigenous presence, not all the production of copper is currently done by indigenous persons. Santa Clara's products were less susceptible to a problem of market invasion; however, there had been talks about the benefits that could arise from a GI or a "certification of authenticity" to eliminate the problem of the excesses of intermediaries between producer and buyer (Alvarado 1997, p. 127). The production sites vary from small informal family workshops to larger semi-industrialised formal factories.

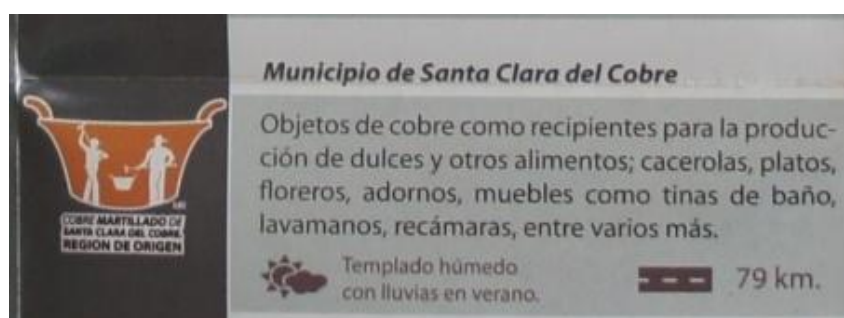


Figure 3.4. Cobre Martillado de Santa Clara del Cobre Región de Origen. Mapa de Compras. Gobierno del Estado de Michoacán.

- Maque³³ de Michoacán Región de Origen (Maque from Michoacán Region of Origin) (Figure 3.5): Maque is more significantly produced in the city of Uruapan. Uruapan is the second largest city in the state of Michoacán after Morelia. The area where the city is located was populated before the arrival of Spaniards in the region, but it is mainly a mestizo city nowadays; although it is surrounded by many indigenous communities. The maque technique is considered of pre-Hispanic origin (Pedraza 1997, pp. 130–132, Lechuga 2004, p. 292), although again it significantly changed and evolved during the colonial and subsequent periods. The pieces of maque are usually wooden objects, although it is also common to use jícaras, which are the fruits of a tree called Jícara (Calabash). The objects can range from plates to hair ornaments, which are then painted with a deep black varnish made out of local insects and plants, from which different patterns, usually of flowers and birds, are carved out and then painted in a technique known as inlaid (Pedraza 1997, p. 142, Lechuga 2004, p. 296). The maque is entirely hand made in the family workshops of the artisans in Uruapan and neighbouring communities.

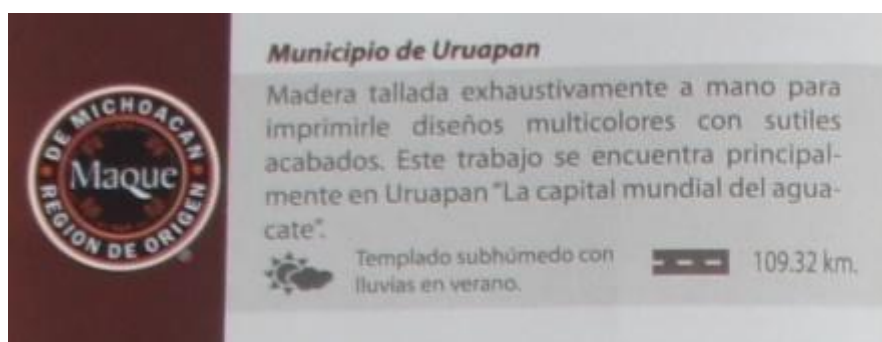


Figure 3.5. Maque de Michoacán Región de Origen. Mapa de Compras. Gobierno del Estado de Michoacán.

- Pasta de Caña de Maíz de Pátzcuaro Región de Origen (Cornstalk paste from Pátzcuaro Region of Origin) (figure 3.6): It is perhaps the use of cornstalk paste which holds the most meaningful place among the pre-

³³Although there is no direct translation to English for the word “maque”, similar techniques are also known as lacquer.

Hispanic techniques inherited and reshaped through colonization into current times. Cornstalk paste was already used in pre-Hispanic times to represent the local Gods, many of whom were said to come from corn itself in the cultures of the inhabitants of México. The destruction of the images of Gods also made the missionaries notice the lightness of the sculptures and, on learning the technique used to make them, they chose to continue its use but to make Christian sculptures to put in churches (Cruz 1997, pp. 145–148). México has many different varieties of corn, and though it no longer has a central part in the majority of Mexican spiritual practices, it remains the most important element in the Mexican diet and the plant itself has several other uses. In the case of cornstalk paste sculptures these involve the selection of the plants according to their qualities, using the harder ones for the structure that supports the sculpture and the softer ones for the actual paste that will cover the structures and that will be moulded (the process is described in Cruz 1997, pp. 149–158). Unlike the other artisanship traditions that were first selected to apply for a CT, the cornstalk paste sculptures are not representative of a majority of artisans in a community, rather few artisans in the lake region of Michoacán keep the tradition alive. Accounts from the CASART agents mention from nine to twelve artisans. Their inclusion in this first phase of the policy seems to be owed more to the close relationship between the CASART agents and the artisans that are devoted to this kind of work.

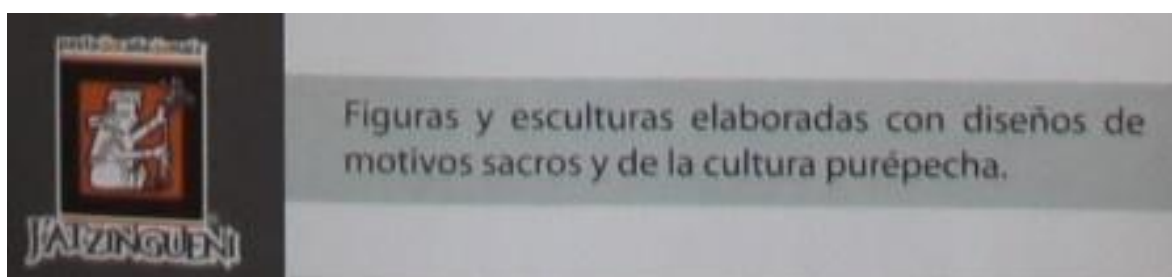


Figure 3.6. Pasta de Caña de Maíz de Pátzcuaro Región de Origen. Mapa de Compras. Gobierno del Estado de Michoacán.

In the original plans of the CASART, the new CTs would have to be as inclusive as possible, trying to reunite all the artisans devoted to the same kind of production in each community. After all, they would lose some of the control after the registration since the CT is not registered in favour of a government institution, but by producers' associations. It was deemed necessary then to consolidate the artisans' associations that needed to be created to apply for the CTs, so they would be representative and therefore able to legitimately own the representation of a product that was said to owe its quality and relevance to the local cultural practices and structures. Hence, they believed that while it would be possible for artisans to give up their participation in the CT later on, if they wished to do so, the initial registration would be all the more able to hold over time if it could include all the artisans in each community.

There was also a need to define the rules of use that would be settled to represent the production technique used by all or most of the artisans, as they would be the practical regulatory basis to assert the quality of the products. It is important to remember that, based on the expectations that Cotija earlier placed in a GI application, the CT's rules of use were being considered as the parameters to judge the quality of the products. This meant that the rules of use should be detailed in a manner that would register the importance of both the geographical location and the cultural practices. In order to do this, it was deemed necessary that the producers should come to an agreement on the basic production techniques and commit themselves to follow whatever production technique was most representative of the local artisanal tradition. This, of course, entailed that techniques would thereafter be fixed in the procedures that were settled by the rules of use. Although that fact alone could be problematic for processes that owe their characteristics to being developed over time, the bigger problem would come precisely from the lack of participation of the artisans, or of many of the artisans, since that would mean that the definition of the artisanship would be left in the hands of a non-representative few. However, very few or no products had a documented process and they hardly had the resources at hand in Cotija to document it.

These issues were found to be the first of several complication that would be faced in the following CTs processes. Indeed, the pilot project, though considered successful as all proposed CTs managed registration, already placed the biggest obstacles to be faced. This gave the agents from the CASART a good understanding of

how the CTs needed to advance, however, political pressure would mark the continuation of the project, further complicating the issues brought forward by the pilot project.

3.3 CASART trade marketing of Michoacán

After the first five CTs were achieved by the CASART, the CT policy became relevant in the political agenda of governor Lázaro Cárdenas Batel, which would increase the pressure to register more CTs from different artisanal products in Michoacán. This meant that, subsequent experiences would not only be lacking Cotija's resources, but they would also lack the time to complete the procedure because of the political expectations put on the CTs policy. The new CTs had to be achieved fast despite the many obstacles presented by the complexity of the artisanal sector. The CT, with rules to guarantee tradition and quality, and the reference to a specific geographic space, appeared to the CASART a worthy solution to deal with market invasion and to promote Michoacán's artisanship locally and internationally, but it was equally important for this to be done before there was a change in the state government. The first CT was granted in 2005, and Lázaro Cárdenas Batel was meant to finish his period as governor in 2008, which put extra pressure on the CASART to consolidate the policy within that time frame. There was, of course, the concern that when administrations change, the focus and relevance of the policiesshift as well, and the best way to guarantee that the projects would continue would be for them to be strongly established and demanded by the artisans. But there was also the need for the governor to leave office with positive results, not only for his own political career, but also to better guarantee that his successor could come from the same political party. After a campaign that had highly exploited the pluricultural discourse, it was necessary to have results in the promotion of indigenous cultures and the CT project was seen as an asset to advertise, provided it was grand enough.

Hence, this period was characterised by the support and expansion of the CT project. This is evident first by the number of CTs registered or in process, which amounted to over 40 by 2009. There was also financial support both from the CASART and from the SEDECO through the Fund to Support the Micro, Small and Medium Enterprises (MSMEs), which took care not only of the costs of the application to the IMPI, but also of the production of the rules of use and the design of the logos that would be used by the CTs. The support from the state institutions also came in the distribution of tags and holograms (figure 3.7) to be put on the products, bearing the CTs' logos; this was supposed to give buyers the certainty of the quality of what they were buying (Arredondo 2007), so in some communities the artisans were instructed to use them in only in the more expensive pieces. The CASART also took care of distributing banners (figure 3.8) to be located in shops, workshops and marketplaces. The banners bore not only the image of the CT and its name, but also the logos and colours of Michoacán's government and of the CASART.



Figure 3.7. Hologram from the Collective Trademark “Diablitos de Ocumicho Región de Origen

The massive registration of CTs then began. In order to register a CT, the first step was to call all the artisans in the community to an information meeting. CASART representatives would go to the communities to give a rapid explanation of the project and its benefits, focusing mainly on the way the CTs could be used to obtain further government support and the fact that they did not entail a fiscal registration, which implied paying taxes. Michoacán's artisanship sector is characterised by a long standing dependence on the interaction with and support from public institutions (Ibarra 2011, pp. 11–12), so means to increase these would tend to be popular. Also, as has been

asserted (ch. 1.2), most of the artisanal production is considered to be informal work and therefore the tax status of CTs would be a big concern which could discourage the artisans. These are the main reasons why these elements were chosen to be presented first of all as relevant information regarding CTs. After presenting the benefits of obtaining a CT, the artisans would be asked to put their names down in order to create a list which would be registered in the civil registry as a civil association. This registration was, and continues to be, the most complicated matter in the functioning of CTs in Michoacán.



Figure 3.8. Banner from the Collective Trademark “Alfareria Punteada de Capula Región de Origen”

The CT project introduced a new artisans’ organisation in a context where the structures of relation between artisans were already complicated. Most communities already have artisans’ organisations within them and the artisanal sector, even working in guilds, is extremely problematic in most communities; and this is not unrelated with the practices of the public administration (Ibarra 2011). There was, of course, a social

organisation that derives from the fact that Michoacán's artisans work within guilds inside the community, which in indigenous communities often even form part of the larger organisation of the community: they can have a role in the religious holidays and be part of the charges³⁴ of representation that govern the communities (ch. 1.2). However, one of the effects of the *modus operandi* of the state in relation to the artisans in Michoacán is the structuring of the artisanal sector in formal organisations to act as intermediaries between individuals and the state. As the CASART agents state: “the Artisanry House has always had a relation with the communities’ leaderships” (EI 5 13-07-2012). It is important to note that in this first term of the PRD government, workspaces as a department specifically devoted to the organization and the registration of CTs were part of the CASART structure, which denoted an understanding of the artisanry sector as community and guild oriented. However, this formal organisation of the artisanal sector has also given rise to several fractures over time, which means that some communities can and indeed do have more than one organisation of artisans, which conflict in the search of resources from the state. In some cases, there are different leaders in relation to each of the policies of the CASART; there would then be one leader handling the contests and a different one handling exhibitions, which are two policies handled by the CASART with an important role in the lives of the artisans in Michoacán (Ibarra 2011). Hence, the intention to create another such structure, in a context where this had already created internal divisions, could not be simple.

In fact, dealing with the internal differences and conflicts in the artisanal sector of each community became the first real challenge to overcome. Some meetings would scarcely gather enough artisans, if the organisations were conflicting with the CASART at the time, and so the CTs would not be viable. These would be very few communities however, since the organisations depend greatly on the CASART. In other communities there would be a dominant organisation that would include the majority of the artisans; and then the organisation and registration would just be another formalisation of an organisation already established and functioning, most likely also already registered. But in the majority of the communities the meetings would gather members of different

³⁴ A “charge” is a responsibility that a person assumes in the community, often related with the celebrations, but also connected with other aspects of the local government. It basically means that a person is “in charge” of something. The charges system dates back to colonial times and the position usually has no remuneration, but is an honour for the person that occupies it.

and conflicting associations and then long negotiations would take place. Some artisans would often not be willing to sign up if the other associations were to be included; nor would they want to be left aside if the other associations were to be included. And even when all, or the majority, had signed, the representation of the association would become a source of discomfort since nobody would want someone from the opposing group to take over the position, or some artisans would be reluctant to give even more power to the already established leaders. This issues, to a certain extent, show the complications of trying to turn social organisation, with its contingent nature, into the stricter forms that can be more easily encompassed by law.

Another reason that made some artisans reluctant to participate was the fact that there is already in Michoacán an artisans' organisation that gathers representatives from many communities. The problem increased the already explosive relations within the artisanship sector both inside and outside the communities. The State Union of Artisans of Michoacán (UNIAMICH) is the strongest organisation of artisans in Michoacán and it even acts as mediator in disputes between different groups in the same community. Some artisans then considered that the new associations being registered for the CTs would then compete with the UNIAMICH and, since they would not want to be on bad terms with this already established general association, they would choose not to participate or to participate in a moderate manner.

Given the complicated internal relations within the communities, especially between different associations, the new structure could only increase the competition for resources from the Mexican state and the conflicts among the artisans. The support from SEDECO was also problematic with the UNIAMICH, which had a long relationship almost exclusively with the CASART and the FONART – especially since the UNIAMICH handled most of the travel financing for artisans of Michoacán to attend exhibitions and other promotional events – but it did not have such strong contact with SEDECO. So indeed, as some feared, the CTs seemed to be competing as an organising structure for artisans to achieve further resources to improve their livelihoods. It was clear then that the introduction of a new association would be likely to increase the reasons for disagreement among the already struggling artisans.

Although there was more time and effort put into the first CTs registered after Cotija in Michoacán, it was impossible to accomplish the inclusion of all the eligible artisans in the associations that registered them. This was not achieved in any of the almost fifty communities in which a trademark was registered and so the basis for further exclusion was thus established. An artisan could not work in the CT because of having refused to be included or also because she was not reached by the CASART when the project first began. But then the persons occupying the directive positions of the CTs would begin to prevent an expansion of the membership, sometimes even attempting to charge years of contributions to anyone that desired to join the CT. This defect in the implementation of the policy has brought greater problems in functioning of the CTs; however the resulting situations will be further discussed in the following chapter (ch. 5.2 and 5.3).

Still, although one of the aims of the policy was to achieve a greater union of the artisanal sector, the need for the project to be carried out so fast left little time for negotiation and seeking agreement among the artisans. There was no time to deal with the communities' internal conflicts, so the registration included whoever or whatever group would agree to put their names down in the list. But this was also a reason for conflict since the ones left aside were now facing exclusion from the financing projects that were promised through the CTs. And, in fact, in the first phase of the policy there seemed to be some possibility to get benefits from this registration. For the CASART administration this was a defect of the project that they were well aware of, but it was also one that they believed could be fixed later. This was nonetheless a false hope as the changes of the administration would make it impossible.

Another element that made it more important to register CTs fast was the continuation of IMPI's reluctance towards the IP project in Michoacán. As was explained in the previous chapter, the IMPI had been reluctant to accept granting IP protection in the form of GIs to the town of Cotija (ch. 2.4), and had instead suggested the use of CTs, but the final name of the Cotija CT extended it into the realms of GIs. The agents of Michoacán's administration wanted to take advantage of the window of opportunity that the IMPI had opened, but in the succeeding applications, which also were very numerous (figure 3.9), the IMPI again became uncertain of the solution they had themselves put on the table.



Figure 3.9. Map of Collective Trademarks. Mapa de Compras. Gobierno del Estado de Michoacán.

Again there was reluctance from the IMPI, and again it was necessary to put in practice different political pressure strategies. The first five CTs were achieved and then José René Carrillo went to the media again to insist on the need for CTs to “prevent

other national and international artisans to copy or use the techniques, the fame and the names of Michoacán's artisans" (Carrillo in Arredondo 2006) and make public that ten new applications for CTs had been presented to the IMPI. As the policy grew indeed it became harder for the IMPI to deny the CTs, since Michoacán rapidly became the leader in CTs registration with the achievement of 25 CTs by 2007; an accomplishment that even led Héctor Chávez to revive the plans for the achievement of author's rights for some artisanal productions (Arredondo 2007).

The CT project, with many of its defects, also had an impact outside of Michoacán thanks to the FONART. The FONART is a national institution devoted to the promotion of the arts, and José René Carrillo had worked there before taking the position as Director of the CASART. FONART organises national annual forums in which all the states participate, presenting advances and proposals for the promotion of Artisanship. In 2006, Michoacán presented the CT projects and in 2007 the institution then decided to create 6 CTs in other Mexican states. The project was carried out by Héctor Chávez and Yedyd Ojeda, who was his assistant and was central to the work with the CTs project in Michoacán. By 2009 there was a working group on CTs established to promote and perfect the model for the other Mexican states. The agents of Michoacán worked in 17 different states which developed a trial project to create a CT. It is notable that most if not all of those CTs imitate both the structure of the rules of use created for the Cotija Cheese, stressing the geographical identity, and also the use of the phrase "region of origin" in the name of the product. The national project, however, had another thing in common with the project in Michoacán, that is, the fact that it needed to be carried out fast, with all the problems that this caused for CTs in Michoacán.

3.4 Heterogeneity within the state

The transit from GI to CT in the Cotija case and how it came into the realms of the state is not only a tale about the implementation of IP. It also gives a relevant socio-legal basis for understanding the way the legibility process operates, embedded in the

habitus developed by a political class that makes sense of its historical setting and its contradictions. The notion of legibility is used by Scott (1998) to refer to the state's strategy to approach social reality, making it understandable as well as manageable. Scott's study approaches mainly policies that attempt to manage the distribution of the space in cities and rural settlements, including production practices in the former. However, it is the process of dealing with reality through abstractions made by its technical appraisal which becomes relevant to understanding the state as a machinery of regulation. Through the legibility process the state aims to regulate ever more spaces of social interaction in a fashion that makes it seem like machinery advancing over our lives with the help of legal regulation.

The process here explored does speak of a translation of social conditions and of producers' expectations into the logics of government that are formed through history and are saturated with cultural conceptions and economic agendas, but it also shows how this translation happens in the interaction between different agents who conflict and negotiate. The negotiation between the IMPI and Michoacán's local government shows the fractures that keeps the state from being homogeneous, and the competing mestizo projects that occupy the mainstream of Mexican politics. In this process law gets modified and adapted to the structures and interests of actors in different levels of government. There is not one state as a monolithic structure, but rather a struggle that constantly shifts in aims while keeping one goal safe above all: the presence of law in everyday life. It is not all about rupture however. Despite the opposition presented by the IMPI, this phase of the process shows how different instances of government can also work together to achieve an end.

The process also shows how the simplification of a reality by which it becomes legible for the state (Scott 1998) is in itself a necessary element of the governmental rationale. The process of legibility is said to imply the use of technical or scientific knowledge to turn reality into simple enough processes for the state and the law to deal with it. And indeed what can be observed in the first phase of the CT project is how reality is obscured in its complexity to create coherent and simple structures that can be handled by the law and, to some extent, by the state institutions. But rather than this being the result of a technical over simplification done by the use of scientific knowledge, the simplification in this case responds to a conscientious decision by the

public administrators to prioritise their political needs over the social problems that they were well aware of. The agents that led this phase of the CT project knew the defects of the ways in which CTs were being registered; they were, and still are, aware of the complexity of the artisanal sector that made the registration of new associations a problematic matter. They were even attempting to make the new associations into more inclusive structures than the ones that already existed as a possible way to bring more unity to the artisanal sector. But when it came to the political interests of the party in power, they propelled the project on faster and rather hoped that problems could be solved later on.

Yet through this process the ethnicity element seems to be lost despite the fact that most CTs in Michoacán do belong to indigenous communities. Although this issue is explored further in the previous and following chapters, the main conclusion that can be drawn here is that in Michoacán the policies have been negotiated between competing mestizo agendas, which seems to leave little room for community participation, indigenous or not; even if the mainstream left wing with a pluralist discourse leads the negotiation. In Michoacán's process, the identity of the public policy as it was at birth, while it does represent much of the mestizo struggle within itself, remains as something that falls into indigeneity because there is no other place to put it. This does not mean that any participation or promotion made by the state would automatically mean a loss of the benefits that CTs and GIs could bring, but it does put a question mark on the notion that the collective element in CTs entails that they “are based on collective tradition and collective decision-making process” (Addor and Grazioli in Aylwin and Coombe 2014, p. 20). And it makes very clear that mainstream politics and policy in México still have a mestizo identity at the core.

4. COLLECTIVE TRADEMARKS THROUGH THE SHIFTS IN MICHOACÁN'S PUBLIC ADMINISTRATION

“They think of themselves as the necessary agents of a necessary policy, capable of generating happiness for the people despite the people”

Pierre Bourdieu (2013, p. 539).

The first time I ever saw the image of a Collective Trademark (CT) was in the indigenous community of Ocumicho in 2010. Having been trained as a lawyer, it was my first attempt to do fieldwork, since the M.A. in Sociology of Law of the Oñati International Institute for the Sociology of Law (IISL) required that I have some empirical data. At the time I was doing research on the relation between Ocumicho and the Artisanry House (CASART), which is the state institution that deals with the artisanry sector, focusing particularly on the effects of contests and exhibitions which were particularly relevant for the life of the community's artisans (Ibarra 2011). It had been suggested that I should look into collective Intellectual Property (IP) protection, but I had barely heard of this at the time. I did only a few interviews, but I saw in two houses a sign that bore the mark “Diablitos³⁵ de Ocumicho Región de Origen” (Little Devils from Ocumicho Region of Origin). I got my M.A. in September, but November brought the huge artisanal exhibition for the celebration of the day of the dead in the city of Pátzcuaro and I went there with a group of friends. The CT signs were visible on most of the stands in which the artisans sold their work; this was a bit of a surprise since when I had asked in CASART about the CTs they had told me it was a project no longer being carried on, yet to me it seemed quite alive. What I did not realize at the time is that there are many ways and places in which a project can live, and many ways

³⁵ Ocumicho is famous for the production of colourful sculptures that portray the devil in common scenes of everyday life (ch. 5.1).

in which it can die. CTs in Michoacán have gone through a long and varied process over the course of their promotion in state institutions; and again, this is a process which sheds light on the many ways in which the state mutates in relation to the agents who are involved in it and to their actions.

To reinforce what had already been won in the negotiation with the Mexican Institute of Industrial Property (IMPI) by Michoacán's administration, the first step involved the consolidation of the Cotija CT. This was done in the 7th Cotija cheese fair to be celebrated in the same year of 2005, which was advertised emphasizing the importance of the achievement of a CT for the product. However, other actions were performed in the attempt to consolidate Cotija's name and prestige. Following this line of thought, the Cotija team also ensured Cotija's participation in the prestigious 2006 World Cheese Championship in Cremona, Italy, where the Cotija cheese won the prize for best foreign cheese (Jornada 2006, Michoacán 2006, Schwartz 2007), as a way to further justify the pertinence of the CT they had achieved. In fact, the prize is often mentioned when talking about the prestige of the Queso Cotija (Maldonado 2010, Informador 2011). The association of producers that had been formed earlier continued to work now under the name of "Queso Cotija Región de Origen" (Cotija Cheese Region of Origin) and managed to get financing for some projects. They also began to use their logos and tags to position the product in state events and with other producers; as can be seen in the alliance forged between Cotija and some mezcal producers in Michoacán, who were also trying to be admitted into the mezcal GI.

As was explored in the previous chapter, it was thanks to the involvement of the CASART and the Secretariat of Economic Development (SEDECO) that the CT policy grew and spread. The majority of the CTs created involved indigenous communities that devoted a good part of their productive activities to artisanship, and they reached over forty CTs between 2005 and 2010. The project expanded beyond Michoacán as it was later replicated at the federal level through a project in the Arts Fund (FONART). This project would not only be inspired by the experience in Michoacán, but it would actually be developed with the involvement of agents from the CASART in Michoacán that were put into contact with similar state agencies in other parts of the country. The CT policy, however, was not limited to the registration of trademarks, but was the

trigger and therefore set in a wider set of actions of promotion and regulation of artisanship in Michoacán. As Hugo Gama explained recently:

the public policy also included the protection of products under the geographical indications concept, considering that Michoacán had three of these, Tequila, Charanda and Mezcal; to this strategy we must also add the artisanal knowledge certification for producers of collective trademarks that was initiated in 2010 by the ICATMI, which recognized and certified the craft in an individual manner based on the rules of use, this was an act of social justice towards our master artisans, since they finally achieved an official document from an education institution that recognized their knowledge and skills. This is then an integrated strategy, which is to be taken account of at a national level (2014).

The first impulse of the policy was very much related with the political context in which it was placed, but it wouldn't necessarily remain as such. Political change is a constant of government administrations and, as the project of the CTs was promoted by state agents, this chapter will explore how it was highly dependent of state funding and interest. This indeed presented a challenge given the government transitions over the past decade, which has meant constant shifts and adaptations in the aims and processes related with CTs. Once again, this has implications both for the possibilities of IP protection in the realities of the communities and for how the state is understood in its contingency and in terms of the interests of the agents that constitute it. The CTs are not fixed in the way they were designed, but have their own contingent identity reflecting the political context in which they are embedded. And this can be extended to law in general and to the legibility processes by which the state deals with reality.

This chapter then explores the different moments of the CT policy in Michoacán's administration, the political reasons that shaped these moments and the role of the agents involved. In order to do this, I will first explore how the changes in the CASART administration also changed the evolution of the CT policy. The second section of this chapter will look at the shift of the CT policy from the CASART to the SEDECO and the effects that this shift had on the identity of the policy and the strategies implemented through it. After this phase in the CT policy, there was a larger political change in Michoacán when the Democratic Revolution Party (PRD) was followed in the local government by a return of the Institutional Revolution Party (PRI)

in 2012, this change meant new political conditions in which the CT project would have to be renegotiated to reshape their role in Michoacán's political and economic policies; this phase will be covered in the third section of this chapter. Finally, I will discuss the insights into the workings of the state apparatus that can be drawn from the transitions of the CT project through the public administration.

At this point, it is important to make a methodological clarification. This chapter is based on the same methodological approach and set of interviews that was explained in the second chapter (ch. 2.1). Thus, I continue exploring the set of twelve interviews carried out with agents from Michoacán's administration, the Cotija team and the IMPI through the relational biographies method (Madsen 2006, pp. 36–38). The most significant difference is that the previous chapters were more focused on the agents who played a relevant role in the first stages of the policy. This gave a bigger emphasis on the accounts of the agents involved in the Cotija team and the IMPI, while this section will focus almost exclusively on the accounts of the policy makers in Michoacán through different administrations, both in the local government and each institution involved in the implementation of the CT policy. Another important difference is that this chapter is also largely informed by media reports of the political processes here described and the CT project's evolution after 2005. The presence of Michoacán's political struggles in the media is only to be expected since the media reports of the CT project are owed to a dynamic of struggle with the IMPI that was established in its design and has continued afterwards.

4.1 The changes in the CASART administration and its effects for Collective Trademarks

2007 saw the elections for the new governor in Michoacán and by 2008 Leonel Godoy Rángel came to power, to be in office until 2012. Leonel Godoy is a lawyer trained in the local public university, the Universidad Michoacana de San Nicolás de Hidalgo (UMSNH), with a PhD in law from the National Autonomous University of

México (UNAM). Before and after his period as Michoacán's governor he was a senator in the Mexican Congress, and from 2004 to 2005 he was the president of the PRD. Leonel Godoy was the second governor in Michoacán that came from the PRD and, therefore, inherited some of the policies and political positions held by his predecessor Lázaro Cárdenas Batel. As I mentioned earlier (ch. 2.5), Leonel Godoy's Development Plan took up the cultural agenda of his predecessor, mentioning even the success in the protection and promotion of Michoacán's artisanship achieved with the registration of 25 CTs by 2008 (DPSM 2003-2008, p. 30). This was not surprising taking into account not only the political party to which Leonel Godoy belonged, but also the fact that his own political career had been closely linked with the Cárdenas clan since the foundation of the PRD. He initiated his career working in Cuahutemoc Cárdenas' government first as General Sub-Procurator of Justice and then as Secretary of Government, a position that he occupied again from 2002 to 2006 in Lázaro Cárdenas Batel's administration.

But although the next government was also formed by the PRD, the administrations are not necessarily uniform, and this was reflected in the CASART's activities. José René Carrillo remained as director of the CASART until 2009, but afterwards the leadership of the institution was left in the hands of Sergio Herrera Álvarez who was in office from 2009 to 2011. Unlike José René Carrillo, Sergio Herrera did not have a notable career in public administration and this, together with his being unavailable for interviews in the course of this research, has made it harder to find biographical information about him and the reasons for his appointment. Sergio Herrera is mostly known for being a local entrepreneur and owning a relatively high class restaurant in the city of Morelia

As the new director of the CASART, Sergio Herrera introduced several institutional changes. There is, as I have mentioned, a wide variety of activities developed by the CASART – contests, artisanship fairs, training, selling, etc. – and the change of administration had an impact on the relevance of each activity. The previous administration seemed to bear in mind the composition of the artisanship sector as community and guild oriented, having not only a department for the CTs, but also one in charge of keeping a registration of the artisans and artisans' organisations (ch. 3.3). But in the following administration the CASART focused on individual development of artisans through competitions and exhibitions. The CASART shops also became a big

priority in Sergio Herrera's administration, and there was a substantial boost to the highest quality and most expensive artisanship against the smaller more common pieces. Sergio Herrera was attempting a change in the institutional profile of the CASART, so the institution would promote the kind of artisanship that was both expensive and appealing to high class and educated buyers. The identity of the CASART began to turn into something closer to a high end gallery of popular art than an institution for the promotion of artisanship all over the state. As an entrepreneur, Sergio Herrera's businesses had this very orientation, so it is not hard to understand the inspiration that led his administration.

In this new CASART orientation there was also little space for the CT policy, which meant that the policy was dropped by the CASART in Sergio Herrera's administration. On his appointment, the also newly appointed Secretary of the SEDECO, Isidoro Ruíz, highlighted the competitive advantage of Michoacán's artisanship asserted by the several CTs that had been achieved (Michoacán 2009), but Sergio Herrera's administration did not continue financing this project. Héctor Chávez continued in his position for about a year after René Carrillo left and continued pushing for the CT policy to advance but, as he and others reckon, Sergio Herrera argued that the policy was inconvenient since it required important investments from the CASART without bringing in return economic gain for the institution. As I mentioned in the introduction, by 2010, when I began studying Michoacán's artisanal sector, the market places on the Day of the Dead and on Palm Sunday, which are the most important in Michoacán, were filled with banners bearing the CTs' images. However, CASART employees knew the CT project only as something that had happened but was over. And, in accordance with the very identity of its leader, CASART employees' discourses at the time were marked by an entrepreneurial idea of the institution (Ibarra 2011, p. 16) without much content on the pluricultural discourses held by agents from the previous administration like René Carrillo or Héctor Chávez.

However, Sergio Herrera's vision of the CASART turned out to be extremely unpopular and problematic both with the artisans of Michoacán and with the CASART employees. Already in 2009, a month after his appointment, Sergio Herrera was being publicly denounced by the artisans of Paracho for refusing to meet with them and refusing to continue buying products from them because of the CASART's new

direction towards the commercialisation of collection pieces (Ángeles 2009). By 2010 Sergio Herrera's administration was already being accused of irregularities in the purchases made on his account and the workers closed down the CASART for five weeks asking for his dismissal as director (Zaragoza 2010). Adding insult to injury, the orientation of the shops also proved a failure, as the income from the shops was less than half than the previous year. The situation was hardly improving and on February 2011 the accusations about irregularities in the commercial activities of the CASART were again brought forward in the celebration of the 41st anniversary of the creation of the CASART and XVII Contest of New Design. The event was marked by the complaints from the president of the UNIAMICH regarding the institution's abandonment of several policies including the CT project and, again, the employees' accusations of bad treatment and asking for the dismissal of Sergio Herrera (Herrera 2011).

Given the complicated situation of the CASART, which had reached a point at which the entire Union of Workers of the Executive Power (STASPE) closed down the administration in protest, Víctor René Ocaña Rivera was appointed as the new director of the CASART on April 14th 2011. Víctor René Ocaña had in common with Sergio Herrera some elements of his background, being also a businessman. He has a fiduciary institution in California, USA, and also acts as executor to the government of that USA state. A couple of decades ago, he retired to live in Michoacán, in the city of Pátzcuaro which is about an hour away from the capital Morelia. Once there, he built the first ecological hotel certified by the Federal Attorney for Environmental Protection (PROFEPA) located in ten hectares of land. But far from retiring in his hotel, his fondness of Michoacán's artisanship led him to an exploration of the field and the creation of an artisanship gallery. This contact with Michoacán's artisanship made him develop some strategies for its promotion, and so he started working in projects related with the artisanal sector during the government of Víctor Manuel Tínoc Rubí – the PRI predecessor of Lázaro Cárdenas Batel. Later he met Lázaro Cárdenas Batel and also carried out some projects with him in matters related with the artisanal sector. But he entered formally into the public administration working as advisor on artisanal matters in Leonel Godoy's government. From there, he was called upon to take the position in

the CASART when the problems of Sergio Herrera's administration came up and it became necessary to change the leadership in this institution.

Once again, CASART's policies and strategies shifted as Víctor René Ocaña came with his own agenda and ideas of the needs of Michoacán's artisanal sector. Víctor René Ocaña was much more aware of certain organisational and collective elements of the artisanal sector than his predecessor. On the one hand he saw that the CASART dealt almost exclusively with the State Union of Artisans of Michoacán (UNIAMICH), and considered that this was not very democratic and that it was necessary to extend the support. During his administration the CASART financing was set up in the form of loans and training for the artisans, but instead of being handled through the UNIAMICH, this support was given to any organised group of artisans, regardless of previous registration in the CASART. He also considered that the contests did not agree with the perspectives of the artisans, especially for the indigenous artisans, because their competitive nature did not allow for the sharing of knowledge which had been essential for the development of the techniques; so he tried to promote encounters of artisans instead. The encounters were meant to be spaces in which artisans could meet, discuss the artisanship and share their knowledge. Víctor René Ocaña came into the position when the government period of Leonel Godoy was close to its end, so he occupied the position for only seven months. Not much could be achieved in this period, but at least a couple of encounters were managed during this time.

The plans of Víctor René Ocaña, in great measure because of his own background, also gave great priority to the exportation of products and the culture to which they belonged. He had the previous experience of getting some of Michoacán's artisans to go to the USA, to a great extent thanks to his personal contacts in Chicago where a museum of México was created holding the biggest collection of artisanship from Michoacán. The tough situation that Michoacán was going through because of the problems faced by the country – such as the H1N1 influenza virus and the escalation of violence – had had a negative impact on tourism in the region and therefore on the economy of the artisans, which gave Víctor René Ocaña the grounds to create policies that would take the artisans to where they could get more money from their pieces. The celebrations would continue in Michoacán, but he also saw the need to take the artisans both to the rest of México and to the USA. In this line of thought he created the

caravans of Michoacán which had three routes: from San Diego to Los Angeles, although the intention had been to end in Canada; then from El Paso, Texas, to Chicago through the Midwest of the USA; and finally the third one began in Laredo and finished in Massachusetts. The routes consisted of making exhibitions of the celebrations in Michoacán with ten artisans, who would change from time to time and would both sell artisanal products and interpret local dances and other traditional ceremonies. While abroad, the artisans had the opportunity to sell more than they usually did in their own towns and at better prices, and in fact artisans already increase prices for tourists from the USA in their own hometowns³⁶. But it was impossible to mobilise larger numbers of artisans and the projects often were cut short for lack of resources.

Similar events were done in México City as cultural expositions in which the artisanship was presented along with dances and painting exhibitions, as well as food. The artisanship was presented as part of the “complete package, which is how artisanship should be sold – from my [Víctor René Ocaña] point of view – presenting the culture of a people so that each person knows that artisanship represents a part of this great culture” (EI 24-07-2012). Víctor René Ocaña's view portrays a sense of artisanship that is deeper and more significant than what the previous administration had envisaged. Additionally, this also meant an expansion of the artisanal products that the CASART was involved with, including now the food and the music of artisanal origin, along with other artistic products. The culture representation that this strategies implied, however staged, aimed to setting the products and asserting their value as integral part of the culture of a people.

The CT policy, for its part, remained a rather unimportant matter for Víctor René Ocaña's administration. Once again, when presenting the position of CASART director to Víctor René Ocaña, Isidoro Ruíz, Secretary of SEDECO, mentioned in his speech the national relevance of Michoacán's artisanship proved by the 41 CTs achieved by then (Quadratín 2011); and once again this did not mean that the project would continue to be supported. For Víctor René Ocaña, the CTs were there to give certainty to the artisans that some registration existed that verified that their artisanship was from

³⁶ Artisanship commerce is marked by bargaining dynamics in which the artisan sets a first negotiable price. In this dynamic usually the artisans also sets prices according to her expectations of the economic possibilities of the buyer. Foreign buyers, who are commonly thought to be from the USA regardless of their actual origin, are thought to be more solvent and therefore prices are usually set higher for them.

Michoacán. He also considered that the CTs were a great success in achieving some kind of IP protection for the artisans, but considered that it was necessary to review the legal grounds on which they were founded (Rivera 2011). He was conscious of the limitations of the protection given by CTs and did not hold the same interpretation that other agents in the public administration were upholding. In addition, he knew that by then the SEDECO had taken over the policy and considered that this had changed their possibilities of success because it had focussed entirely on the promotion and had left aside the cultural basis of the CT.

According to Víctor René Ocaña, during his period the CASART did support the CT policy, but with an intention of promoting the culture and not just CTs, and so they were fused into other policies, like the exhibitions described above. In his vision: “The CT, alone, is not going to represent more than a nice ornament in the world, and we wanted the CT to represent a culture” (EI 24-07-2012). He also states that help was provided with funding but, as all funding was given to any group of artisans, the support was not really for the CT policy, even if some artisans involved in the CTs did benefit from it. Víctor René Ocaña considered that the CTs were missing something, and therefore could only be part of the integral policies he had in mind, but there was no interest in the CTs themselves. During this period, the CASART was hardly interested in recovering the CTs from the neglect in which they had fallen during the previous administration.

It is clear that the administrations of Sergio Herrera and Víctor René Ocaña differ greatly, but why the CTs were incompatible with their plans is less clear if one only looks at the explicit aims of their agendas. Each director of the CASART came with his own agenda and his own vision of the role of artisanship in Michoacán and how the sector should be handled. On one hand, Sergio Herrera attempted to turn the CASART into an institution for the promotion of high end artisanship. In this search the CTs could have been an asset, since the plan that formed them attempted to create the CTs’ rules of use as a quality measure for each artisanship brand. In fact, the tags and holograms were already being used almost exclusively for the most expensive pieces of greater quality. And, on the other hand, Víctor René Ocaña conceived the artisanal sector as part of a holistic cultural “package”. For the creation of this notion of artisanship as an expression of an entire culture, the CTs could again have been a

suitable instrument; not necessarily as they are expressed in the letter of the law, but in the notions that had been attributed to them in the hybrid with GIs that was constructed in the CT process in Michoacán. The CTs in Michoacán attempted to express, in their connection with a specific territory, their importance as an expression of cultural practices rooted in a geographical area (ch. 3.1). Indeed the notions of thick cultural identity and the integral comprehension of territory (ch. 1.2) were attempted to be transmitted through the CTs in the original plan. This could have been promoted further and would have been an option for the aims of Víctor René Ocaña's agenda.

The reasons why the CTs failed to have a place in the administrations that came after José René Carrillo's could have more to do with the interests of the agents of the public administration. It is not that either of the directors could make no use of the CTs and, in fact, they were both openly encouraged to adopt a policy that continues to be spoken of as a success of the CASART and the SEDECO. But each was also committed to a project that attempted to distinguish itself from previous administrations and the CT project was clearly seen as part of the work and success of the previous administration. This was a need even though the administrations explored in this section had acted under a government from the same political party that implemented the policy in the first place. In this sense, the logic and actions of the administrators are not only subjected to their notions of the well-being of the field in which they act, but rather become a secondary concern after their own positioning within that field. Competition between the agents to position themselves within a field is in fact a constitutive part of Bourdieu's (2008a, p. 113) theory. It means that agents will try to depart from the doxa established by those who have held the hegemony of the field as a way to counter their authority and establish their own. Their actions then, while they do not question the pertinence – and even the need – of the institution's roles in society, are more clearly meant to position the agents themselves.

4.2 The SEDECO's involvement with Collective Trademarks

The SEDECO is a secretariat specifically devoted to the economic activity in Michoacán, and it has an important interaction with other secretariats and departments devoted to the cultural industries. Evidently, like any other public institution devoted to the economy, the SEDECO holds an important position in Michoacán's public administration. Michoacán, however, is not characterised as an industrial area, although there is some relevant agricultural production that constitutes important economic activities in certain regions; particularly the production of avocados, lemons and berries. But the agricultural activities only represent the 11.27% of Michoacán's PIB, while 68.76 % of the GDP comes from tertiary economic activities which include commerce, restaurants and hotels with 20.44%, and transportation and mass communication with 10.8%. These are closely related with cultural industries which can be found among the 7.8% of the GDP attributed to cultural activities, sports, recreational services, services for enterprises and other items. Manufacturing constitutes 12.5% of the GDP,³⁷ but it is unclear how many of the artisanal activities are included in this category. Regardless, it is clear that the cultural industries and activities related with tourism are an important concern for Michoacán's economy, which in turn explains SEDECO' involvement with at least some of the artisanal productions.

Although it was not responsible for carrying out the first stages of the CT policy, SEDECO was fundamental for its creation. As was detailed in the previous chapter (ch. 2.6), it was Alfredo Ramírez Bedolla, a lawyer from the UMSNH with a political career in the PRD, who put together the alliance that would connect the Cotija Project with the SEDECO. Together with the CASART and the team from Cotija, they achieved the deal with the IMPI that ended up in the conception of CTs with the hybrid elements that they present in Michoacán (ch. 3.1). And as I explained previously (ch. 3.2), a significant part of the funding that made possible the continuation of the project in the CASART was also due to the SEDECO. Although it did not have the leadership in the first stage

³⁷All economic data relates to the year 2009, and was obtained from the National Institute of Statistics and Geography (INEGI). Available here: cuentame.inegi.org.mx/monografias/informacion/mich/economia/default.aspx?tema=me&e=16

of the project, the agents from SEDECO did remain close to the development of CTs in Michoacán.

Therefore, when in 2009 the new administration of Sergio Herrera in the CASART cut support for the CT policy, it was the SEDECO which continued to have an interest in the policy and took it over. After all, it was not only Alfredo Ramírez who had participated in the negotiations with the IMPI and had political capital invested in said policy, but José René Carrillo himself also went to work in the SEDECO after leaving the CASART directorship, and he reinforced the interest in the CTs project within the SEDECO. They both considered that the CT policy still belonged in the CASART, as the best place to continue working with and contacting artisans to join in the project. However, since Héctor Chávez's efforts to continue the project under the new administration seemed fruitless, the CT project was drawn to the Undersecretariat for Development of Micro, Small and Medium Enterprises coordinated by Alfredo Ramírez. The CASART continued to participate in the policy in some events, but the main responsibility for having the CTs represented was still with the SEDECO. Indeed, there was no visible presence of the CTs in events that were the exclusive responsibility of the CASART during Sergio Herrera's administration, not even in that of Victor René Ocaña.

Once the CT policy went to the SEDECO, Hugo Gama Coria, who worked in the Department of Attention and Services for Business Management from 2007 to 2011, was left in charge of the project. Hugo Gama Coria is also a lawyer trained at the UMSNH and with a political career in the PRD administration. Although he was not involved in the first stages of the project, he was in charge of the registration of new CTs in the administration of Leonel Godoy. He has even continued to work closely with the CT projects after he left public administration as a lawyer for Michoacán's Council of Collective Trademarks (CCTM) and continues a political career close to that of Alfredo Ramírez in the new political party that was founded as a spinoff from the PRD, the National Regeneration Movement (MORENA) which is of late led by Alfredo Ramírez himself (ch. 2.6). He was responsible for the institutional development of the CT project during this period, but also tied himself and his political capital closely to the project. His coordination then continued in close contact with Alfredo Ramírez's agenda and even with that of Leonel Godoy.

Aside from the political investment of certain agents, another motivation to keep the policy within the state's support and control was the continuation of the struggle with the IMPI regarding the possibilities and extension of the CT project. Even when the CASART was still handling the project, the SEDECO had also pronounced itself against IMPI's opposition which was not only about whether or not more CTs would be granted, but also about the meaning and implications of the already existing CTs (Ramírez *et al.* 2008). The IMPI's public discourses had become increasingly bipolar over time, arguing sometimes that the CTs were a protection of the name and prestige of Michoacán's products and, at other times, upholding a stricter interpretation of the law and declaring that the CTs gave no exclusivity rights and trying over and over to deny registration to the CTs that followed the Cotija formula with the argument that the suggested names were not valid in law. On the other hand, the team of Cotija,³⁸ along with the SEDECO, continued to present a vision of the CTs which made them into a geographical indication that was meant to grant exclusivity rights to its holders and accused the IMPI of denying further protection through actual GIs (Ramírez *et al.* 2008, Barragán 2010). While they were ready to exploit the beneficial sides of the IMPI discourse in CT events, its reluctance made them aware that the CTs, as they were constituted at the moment, would only continue while they were promoted by the state.

For the agents of SEDECO, their involvement was then meant to further institutionalise and strengthen the CTs as part of a program that gave great economic benefits to the artisanal sector. To do this they needed to make the policy even more visible and have it recuperate a space within Leonel Godoy's administration. And so, in 2008 they created the Program of Industrial Property (Promiorigen) which was meant to increase the funds specifically for the CT project (Michoacán 2010). Interestingly enough, the name Promiorigen which was used to describe the program, makes reference rather to the geographical emphasis that the CT had gathered by using the word "origin", than to industrial property in general. And indeed a big part of the aims of this program was precisely the promotion of CTs.

³⁸ As was previously mentioned (ch. 2.3), Cotija was also facing the another threat in the form of a project for a national health norm that would prohibit making cheese with raw milk, turning into illegality over thirty varieties of artisanal Mexican cheeses that are done with milk which is not pasteurised, among which Cotija (Barragán 2010, Espinoza *et al.* 2010).

And so, by 2010 Leonel Godoy was heading the Commission of Artisanal Development in the National Conference of Governors (CONAGO) and was asking for legislation on promotion of artisanship at a national level. According to the SEDECO agents, they would continually ask for the implementation of another IP option in México, but in a different sense than the ideas of Héctor Chávez from the CASART (ch. 3.3). They wanted to incorporate the “certificate of origin” in México’s legislation; even as they believed that CTs had that function and that international law could be called upon to uphold it. Although Leonel Godoy’s suggestion was supported by the other members of the CONAGO, no legislation has yet been passed. Even so, his position and his initiative show the relevance that the artisanal sector was gathering in Michoacán and also the relevance of CTs in the discourse of the public administration as they were the only IP protection possibility mentioned in point 9 of the 16 points of the *Statement for the Creation of a Law of Artisanship* which was released by the CONAGO on Leonel Godoy’s initiative.

The IMPI’s reluctance held, but SEDECO also persevered in the CT registration; however, the participation of SEDECO in the project would irremediably change some of its characteristics, like the products which would now hold CTs. The new CT applications would stem from the kind of products associated with the CASART, many of which in fact already had a CT or an application being handled by the IMPI. Those applications continued to be supported and some new traditional artisanal products were also considered but, in some ways, the CT project would also return to its origin in Cotija, extending into food products like bread, lemons, chorizo, bananas and other cheeses. At the same time, the SEDECO increased the pressure on the IMPI for the granting of the Cotija cheese GI and the extension to Michoacán of the mezcal GI.³⁹ This last measure was explained by the SEDECO agents as a result of the identification of the remaining defects of CTs and their vulnerability to continue protecting the prestige of Michoacán’s production.

The focus of the SEDECO was also on the advertisement of the CTs outside the communities. They continued supporting the artisans to attend exhibitions in representation of CTs both in Michoacán and in the rest of México, but in 2009 they

³⁹Mezcal is an agave distillate which is produced in several parts of México. However, the GI was limited to Oaxaca and a couple of surrounding states, leaving Michoacán outside.

also began implementing an advertising program in Michoacán which implied a change of perspective in the public display of artisanship. Instead of displaying the piece, they wanted to portray artisanship as a luxury item creating images in which the artisanship was inserted into everyday life of the mestizo middle and high class society. The idea was then not only to take the piece away from its context of origin, but to give it a new context in which its economic value would be increased. Evidently while the economic possibilities of the piece were thought to be increased by its incorporation into this new environment, there was little thought of the cultural isolation that this could produce from the community of origin. Indeed the promotion became about isolated objects without origin and culture; they were stripped of the very geographical pride that the CTs' names attempted to keep.

Despite the critiques by the SEDECO agents of Sergio Herrera's neglect of the CT policy, this initiative had many things in common with the one being carried out by the new president of the CASART. Not only because of the homologous structure of production between the luxury goods established as fashion and the luxury goods established as high culture or art (Bourdieu 2008b), but because both attempts are completely focussed on the product over the culture and community of origin. Both attempt to cater to a richer buyer and completely neglect both the local commercial circuits and the actual possibilities of the artisans to commercialise their pieces without the help of state institutions. The artisanship was then showcased in luxury houses and kitchens, or incorporated into the lifestyle of mestizo middle and upper class. The propaganda was placed in society magazines and tourism advertisements. This of course shows the compatibility discussed above between the CT policy and Sergio Herrera's vision of the CASART, but it also shows how easily the communities can be eliminated from the CT narrative. Still, the effects that this kind of promotion could have had are hard to assert since the advertisement side of the policy was dropped by November 2011 when the funds ran out, and it was not taken up by the following administration.

The institutionalisation of artisanship was carried out through the CTs by other means as well, including processes of formal education and certification; although not in ways which would promote the autonomy of the artisans. As explained in the previous chapter (ch. 3.1), the rules of use had been thought of in CTs as quality parameters to overcome the lack of a certification body that existed in GIs. But,

although the Promiorigen put an emphasis on the creation, regulation and promotion of the organisms that would certify the quality of the products, there was little done in this respect. Rather the SEDECO focussed on increasing the strength of CTs by the large number of registered CTs. Instead, other elements were also added to the policy, including the implementation of training and certification to make effective the rules of use for the artisans that integrated the CTs. When talking about this, the agents of Michoacán's administration make reference to the certification of the artisans' guild in the colonial structures (Guzmán 1998, pp. 47–52), which made them consider the importance for artisans themselves to hold some document that upheld their training and abilities. Alfredo Ramírez had previously worked in the Institute of Work Capacitation of Michoacán (ICATMI) and the connection with this institution to organise training programs for the artisans was a natural option. The replacement would indeed put in ICATMI's hands the final decision on the elements that would constitute the quality of the artisanship, leaving outside the decision making any collegiate group from the community; which sustains Linck and Barragán's assertion that "The qualification dispositive sustains an expropriation process not only of the territory but of everything in which its productive, social and symbolic value is based; the technical and rational knowledges in which the symbiosis between the local population and ecosystem is based, as well as the social cohesion which unites individuals around the same patrimony (Linck and Barragán 2010, pp. 250–251) (ch. 2.6). However for the agents of the SEDECO the real benefit would be the institutional legitimacy of the quality of the products.

The agents working at the SEDECO during this phase of the project felt that the certification through the ICATMI could become another way to protect the knowledge behind the artisanship. And they considered the process less marked by exclusion because there was some participation from the artisans since instruction would still be done by master artisans of each technique, and they would also help to create exams to certify the knowledge. Usually one artisan from the community would be chosen, and often the artisan would be the president of the CT. But, as a matter of fact, often the same system and structure would be used for training the artisans in new techniques to be incorporated into an existing artisanship. Evidently, the new technique would be taught by a person who was not part of the community and was not devoted to the same

artisanal tradition; and still the new technique would somehow become part of what the artisans were to consider as instrumental for a quality product. The ICATMI would arrange for the artisans to be evaluated through an examination by the master artisan or the instructor of the new technique, and those who managed to pass the exam would get a certificate, which is an official document meant to serve as the equivalent of a technical degree. They expected that the certificate would then uphold the work of the artisans and give them the social prestige of having a degree and the validation of quality with their buyers.

Once again, this meant that the concerns of the pluricultural agenda and the protection discourse would sustain practices based on a free trade perspective of culture. As I explained in the second chapter (ch. 2.5), Baker (2004) sees these perspectives as contradictory, but the use of the discourses in Michoacán's cultural legislation shows how the perspectives can complement each other, and the free trade perspective gathers legitimacy and is based on the protectionist discourse. This same interaction was seen in the discourses of the public policy makers of Michoacán, who speak against neoliberal globalisation and at the same time for incorporation into neoliberal globalisation (ch. 2.6). This section, along with the rest of this chapter, shows how the discourses actually turn into a policy which leaves aside most if not all of the cultural concerns and focuses entirely on the use of IP as part of larger market strategies. Some of this turn, or its exacerbation, can be explained in the fact that SEDECO is a secretariat concerned almost exclusively with economic matters, regardless of the cultural concerns that the agents involved in the CT project have incorporated into their discourses; and regardless as well of the huge impact it has on cultural industries.

The extension of the CT project towards an even more diverse variety of products and its consolidation in institutional processes, however, continued for the most part to ignore the defects of the first phase of the policy in CASART. As I mentioned earlier (ch. 3.3), political urgency made it necessary for the CASART to start registering CTs as fast as possible, as they would be the heritage left by Lázaro Cárdenas Batel's administration. This resulted in CTs that often were not representative of the artisanal group and/or the artisanal technique. When the policy was taken over by the SEDECO there was a first attempt to remedy the problems of representation and they tried to continue the growth of the associations that held the CTs. During 2008 and 2009 they

organised meetings with the artisans and managed to make the associations grow considerably, in some cases increasing by 300% the registration numbers. But they still did not manage the registration of the majority of artisans, which is clear from the problematic of CTs until today, which will be further analysed in the following chapter (ch.5.2). The fact that such an increase in the artisans involved in the CTs was possible is rather a proof of the deficient registration done in the first stage of the project. But later on, the conflict with the IMPI and the orientation of the project toward commercialisation techniques and certification processes became part of an agenda that intended to make CTs into a more visible political project. Another effect of these policies was also the increased popularity of the SEDECO agents with some of the artisans' leaders, which is accounted for in the way the CTs and the agents invested in them continue to manifest loyalty to the way the project was conceived over this period (ch. 5.3). Nevertheless, this left little to no space to remedy the basic problems that were inherited in this period by the former handling of the CTs project.

Despite there being a significant amount of work in further institutionalisation of the CT policy, the SEDECO agents also understood the fickleness of public administration and so they attempted to ensure the future of CTs without institutional support. The change of administration in the CASART had already created obstacles for the CT policy; despite it being a change within the same political party, and that there was a good public tacit perception of the policy and even explicit encouragement to continue it. But 2012 would bring another change in the government of Michoacán and the political environment was not one of continuation for the PRD. Indeed the next term marked the return of the PRI to Michoacán's government with the victory of Fausto Vallejo Figueroa. If previous changes in administration after 2005 – when the first CT was granted – had been a problem, this change would imply a bigger turn in the local administration; which would unavoidably endanger the political capital of the agents involved in the CT project at the SEDECO.

To deal with the change in the public administration and assure the continuation of the project, they created Michoacán's Council of Collective Trademarks (CCTM). In May 2010 the SEDECO organised the *National Symposium on Popular and Social Economics, Collective Trademarks and Geographical Indications*, and after its inauguration the CCTM was formally constituted under the presidency of Abel Castillo

Martínez (Hernández 2010), who is an artisan from Tlalpujahua, president also of the CT “Esferas de Tlalpujahua Región de Origen” (Spheres from Tlalpujahua Region of Origin). The artisans from this CT were some of the first to be certified by the ICATMI and, as I mentioned earlier (ch. 2.6), the market problems faced by this group of artisans had already been a concern for the SEDECO since before the CT project was initiated. There was then a close connection between Abel Castillo and Alfredo Ramírez, and through the continuation of the CT project this extended as well to Hugo Gama. In fact, Hugo Gama became the lawyer of the CCTM as soon as he finished working in the public administration. Although the current role of the CCTM will be further analysed in the following chapter (ch. 5.3), it is notable that it has been through this organisation that Hugo Gama, and to some extent Alfredo Ramírez, have kept the political capital they invested in the CT project during their time working at the SEDECO.

4.3 The Collective Trademarks in Michoacán’s PRI administration

By 2011, the political climate in Michoacán was not favourable for the PRD and led to Fausto Vallejo becoming governor, who came into office in 2012 to inaugurate a rather unstable period of the PRI administration. The PRD’s public image was highly damaged by the increase of the violence from organised crime in Michoacán, which has increased in all of México, and in Michoacán was connected with the public administration. In the elections, the candidate from the PRD was far behind Fausto Vallejo who came in first, and the candidate from the PAN, who was the sister of the Mexican president, and came in second with a small percentage behind the first position. Fausto Vallejo is a lawyer from the UMSNH with a PhD in Political Science and Comparative Constitutional Law from The Sorbonne University. From 2008 to 2011 he occupied the position of Municipal President of the City of Morelia. Fausto Vallejo’s administration, however, has hardly been successful in terms of uniformity and continuity. He took leave in April of 2013 due to health issues leaving Jesús Reyna García, another lawyer from the UMSNH with a longstanding career in the PRI, to

occupy the position until October of the same year. However, in June 2014 Fausto Vallejo finally quit the governor position definitely arguing health issues. Both Fausto Vallejo and Jesús Reyna have faced major political scandals after their leaving office, in which they have been connected with organised crime in Michoacán⁴⁰. Still, the new governor appointment came as a surprise. Salvador Jara Guerrero was not a notable PRI politician, rather he has a more significant career as a scholar. He holds a first degree in Physics and Mathematics from the UMSNH, with a speciality in Experimental Physics from the University of Berkeley and a M.S. in Educational Technology from the Latin-American Institute of Educational Technology; he has a PhD in Philosophy of Culture from the UMSNH and another in Philosophy of Science from the National Autonomous University of México (UNAM). From 2011 and until the date of his appointment as governor, he was the rector of the UMSNH. Salvador Jara's government has been linked with the national coordination of the PRI rather than with the local PRI politicians of Michoacán.

The instability of Michoacán's government did translate to some parts of its administration. The CASART has not suffered many changes in its local structure. Rafael Paz Vega, an accountant from the Technological Institute of Monterrey (usually known as Tec de Monterrey), was appointed to head the CASART by Fausto Vallejo and has continued in the position to date. He is the latest representative of a tradition of coordinators with a background in business and not related with cultural policy. The SEDECO, however, was another story. The parade of Secretaries who have passed through this institution since 2012 include: Ricardo Martínez Suárez, Juan Pablo Arriaga Diez, Manuel Antúnez Álvarez and Carlos Pfister Huerta Cañedo. The changes of the SEDECO administration have made it hard to identify any particular turn of the policies with any of the heads of SEDECO. It is more likely that the policies that were continued were those which already had a budget assigned to them and were left in the charge of the permanent staff of the administration.

⁴⁰ The governments of the PRI period in Michoacán has been highly problematic in terms of the political stability in relation with the activities of the organised crime. The dominance of the organised crime in the state has even resulted in the emergence of vigilante groups in the state. The self-defence groups that denounced the complicity of the local government, have also denounced the ill performance of the federal government to guarantee the security of the citizens. Perhaps more than ever, the emergence of these groups has put into question the rule of law in Michoacán.

The instability which has marked this period of the SEDECO administration has created a great obstacle for the CT project. As Hugo Gama recently denounced “Sadly Fausto Vallejo Figueroa’s government, and now that of Salvador Jara Guerrero, abandoned the public policy, while the federation has not turned to face the issue” (2014). Most of the budget assigned to the CT project was finished by the end of Leonel Godoy’s administration, and both Alfredo Ramírez and Hugo Gama left the SEDECO when the PRI came back to power⁴¹, as they did not occupy a permanent position in the Secretariat. There was no interest left in the policy and the conditions in the SEDECO have not allowed for a renewal of the policy. The CCTM leader has managed to contact the SEDECO and, at different times, agents from the SEDECO have declared an intention to continue the support; but he also complains that this support has come to nothing.

The CASART, on the other hand, saw itself pressured by the CCTM to continue supporting the policy, and indeed Rafael Paz seemed to have committed himself to promoting at least three of the existing CTs, which would include the CTs from Tlalpujahua, Paracho and most likely Capula. The pressure has come mostly in the form of media declarations of the lack of attention given by Rafael Paz’s administration to the policy and public events to showcase the CTs and the attempts to negotiate with the CASART (Martínez 2012, Michoacán 2012, MiMorelia 2012, Quadratín 2012); both techniques which had been previously used in the negotiations with the IMPI. At two different times two different CASART employees have been leading projects to continue the CT program. However, their perspectives on the CTs came closer to that of the IMPI, considering that the CTs were wrongly registered and that they needed to remove the geographical reference in order to fully function. They did not suggest further commercialisation, but only new registration of artisanship products although without the “defect” of having a geographical connection. This has been opposed by the CCTM, as it has opposed the creation of regulatory bodies for the CTs by the CASART. While regulatory bodies were in fact an aim when the policy was first implemented by the SEDECO, these were supplanted with the certifications from the ICATMI and now the CCTM attempts to continue with the dynamics of training and certification by this

⁴¹ It should be remembered that, despite the prominence of the Cárdenas family, which founded the PRD, before 2002 Michoacán had always been governed by the PRI, which incidentally was also consolidated in government by Lázaro Cárdenas del Río, grandfather of the first governor by the PRD (ch. 2.5).

education institution; also following the policy instituted by Alfredo Ramírez and Hugo Gama.

Some continuation of the CT project has been achieved through Morelia's municipality. The latest CT that was granted for "Ate de Morelia Región de Origen" (Ate from Morelia Region of Origin) was handled by the Secretariat for Economic Promotion of Morelia's Municipality. Furthermore, the new CT has given grounds for the agents previously involved in the policy to continue promoting their vision of CTs as a hybrid with GIs. This can be seen in Hugo Gama's recent declarations in the press regarding the project to obtain a CT for Morelia's mezcal, saying that "it would be the first geographical indication trademark within an origin denomination, which is to say, it would further highlight the attributes and qualities of a specific region as part of a general region" (Gama 2014). It is interesting to note that the same view of CTs is replicated by the CASART official website,⁴² attributing to CTs the possibility to rescue and protect artisanal techniques and to protect the objects from being copied illegally, even though the CASART has not re-instated the project.

4.4 The heterogeneity of the state and the political field

There is, of course, in the development of this chapter, further proof of the heterogeneity within the state and of the dependence of the legibility process on that heterogeneity. The agents of Michoacán's public administration, despite many background elements in common, do not share the same understanding of Michoacán's political agenda, nor do they see the pertinence of the CT policy in the same way. Regardless of their differences, their legibility process does contain a simplification of reality, in this case of the reality of the artisanal sector, but it is much more connected with their personal background which they hardly disguise as technical knowledge, if at all. In Scott's (1998) work, this type of simplification often leads to the failure of state

⁴²<http://casart.michoacan.gob.mx/index.php/servicios/marcol>

intervention, but here another question can be posed, and it relates to the actual aims of the policy makers. What would count as success for this policy?

If the previous chapter showed, in the birth of the CT policy, the economic agenda and cultural conceptions that inform different competing visions of the state, this chapter shows how the policy continues to be dependent on the agents whose visions include the policy in question. The main agents involved in the implementation of the CT policy in Michoacán, as demonstrated in this chapter, have constructed the policy in a way that makes it their own and makes it necessary their involvement in some way. They indeed feel themselves as necessary, both as agents of a state who understand the economic principles to help the people and as disinterested public servants who aim to help (Bourdieu 2013, p. 539). But more than the economic benefits for the artisans that they sustain as their aims, the policy is meant to increase their political capital and their relevance in the political field. As I mentioned earlier, the struggle is a constitutive part of every field and, hence, the main objective of the agents is to uphold themselves within that field. This does not need to be a conscious decision on the agents' part, but it is rather the functioning of an established habitus (Bourdieu 2008a, p. 119).

It is also notable that their interests lying in the political field establishes it as determinant over the legal field. Another property of a field, according to Bourdieu (2008a, p. 114) is that all the agents involved in the struggle within it have in common their interest in and agreement over the importance of the position of the field itself. The internal struggle only reaffirms the field and its hegemony. In this case, it is evident that the local oligarchy has several background elements in common, like the fact that most of the agents in high positions have studied law in the local public university, the UMSNH. Although perhaps a note should be made of the fact that a technocratic background is only dominant in the CASART, devoted to artisanship, where recent leaders have not come from the UMSNH or even from a long-standing career in public administration; even over the SEDECO, devoted to the economy. This fact is bound to be interesting at the very least. But it is also notable that the lawyers do not attempt to uphold the value of the law itself. Their main concern is to keep the political investment they have in the practical manipulation they achieved of the letter of the law. Even the attempts to change the law are dependent on this aim, as are the structures they develop to continue with the project once they leave the public administration.

Their political interest is also higher in their concerns than their interest in the position of the government and its institutions as necessary for the lives of the citizens. It is not that they believe the institutions to be unnecessary or problematic, especially not during the periods when they work in the public administration. But they do speak of the insecurity that comes from keeping a project dependent on the political will of whoever occupies the public administration. One could say this comes from experience, but it also comes from the way in which the projects are conceived. The agents embody the project in the same way that the projects are signed and marked by the agents' identity, which unavoidably makes them a heritage that the next administration will not want to keep. Just like they do not act like lawyers defending the letter of the law above all, they are not bureaucrats who integrate into a system in which they disappear in favour of the institution. The agents from the public administration involved in this project act mostly politicians who attempt to embody all the successes of their administration. It is they, as politicians, who are necessary.

Nevertheless, there is an element that originates with the policy and that remains constant throughout this period, and that is the missing voice of the indigenous communities. The many trademarks that were registered throughout this period are mainly indigenous, and the comprehension of the artisanal sector of some agents of the public administration does recognise this, as it recognises that the elements of this sector are marked by its collective nature. But the indigenous voice remains missing as the CT policy continues to be negotiated between competing mestizo agendas. This increases the way in which the processes of commercialisation sustain a system of economic dependence, on the one hand, and, on the other hand, keep the visible interpretation of the artisanal sector in the hands of a mestizo-dominated state. The missing indigenous is not just a problem in terms of identity representation, but also a problem for the recognition of the factual conditions that CTs need to address.

5. LIVING THE COLLECTIVE TRADEMARKS: THE MEANING OF COLLECTIVE TRADEMARKS FOR MICHOACÁN'S COMMUNITIES

“Una marca me ha vendido ya la forma de mi cabeza”⁴³

Lyrics of “No tengo tiempo” by Rockdrigo González

Artisanship is set at a crossroads between culture and economics, as is the project of Collective Trademarks (CTs) itself. As I have asserted over the course of this work, artisanship is a fertile ground for cultural expression; most artisanal vocations in Michoacán are traditional practices central to the cultural life of the communities. At the same time, the artisanal vocations are an important means of economic sustenance for many families who have depended on these activities over decades. In many ways, the original planning of the CT project represented this dual nature. For the agents who worked towards their achievement, the CTs are as much a way to protect artisanship from the dangers of the market as a way to enter a wider market beyond the local possibilities of the artisans (ch. 2.6). The beginning of the project was marked by the concern of Cotija agents for the lifestyles of the Cotija ranchers (ch. 2.3), and this concern was transferred to most of the almost fifty CTs registered in Michoacán thanks to the work of the Artisanship House (CASART) and the Secretariat for Economic Development (SEDECO) (ch. 3.2, 3.3 and 4.2). Still, the question of what did these CTs mean for the communities of artisans in Michoacán remained.

A main concern of this research was, originally, to examine how Michoacán's communities were using CTs. I was interested in the trajectory of CTs from idea to public policy, and then into the lives of indigenous artists who were meant to be the beneficiaries of the policy. Indeed, my interest began precisely in the communities, in

⁴³ A trademark already sold me the shape of my head. “No tengo tiempo”, lyrics by Rockdrigo González.

looking at the banners of CTs in artisans' houses and wondering what these images meant for them. I was not familiar with Mexican trademark law at the time, and I wondered what the collective element meant and how it came about. I wondered mostly why the communities would want CTs and what they were good for. But, I felt that I first needed to understand CTs themselves, so I turned first to look into the workings of the public administration. As I was developing the first part of the research, looking into the design of the CTs, the CTs began to disappear.

In the previous chapter, I analysed the way the shifts and changes in Michoacán's public administration had important implications for the CT project, but this chapter will further explore the implications for the communities of the CTs' trajectory through the state. The CT project has depended on the interest and promotion of state institutions and, therefore, the transitions in Michoacán's public administration have generated policy challenges that have shaped the way it developed over time. These different transitions have also had an impact on the way the CTs are lived by the communities. While the policy expanded in numbers, its meaning and presence in the communities has waned, which has also modified significantly the development of this research. The presence and visibility of CTs in the community diminished over time, and the use of the CTs has in general become rather limited. The lack of use of the CTs implied that there was little to no account of them in the communities by the time I was researching the effects of the policy. Instead of studying the different elements that interacted with the policy, I turned then to reflect on the implications of their lack of appropriation by the communities.

While I had originally planned an exploration of three communities and their CTs, the current structure of this chapter aims to explore the lack of appropriation on a more general scale and the implications that it might have. This chapter then will begin with a methodology section in which I will explain the changes that were necessary in the methodological approach due to the deficiencies in the incorporation of the CTs policies in the communities; which evidently will be fundamental for the structure of the entire chapter. The second section of this chapter will explore the loss of visibility of the CTs in the communities and what this means for intellectual property (IP) protection with such an important role as a public sphere signifier. However, a few CTs have managed to survive, to some extent, the changes in the public administration. Therefore, the third

section will explore the elements that have allowed these CTs to continue to be present. This section will also explore the work of Michoacán's Council of Collective Trademarks (CCTM) as the body meant to maintain the CT structure beyond each individual CT. The fourth section of this chapter will underline the epistemic structures seen when observing the workings of IP, while also attempting to connect the findings of this research with other cases of IP struggles. Finally, I return to the CT problematic to discuss some of the elements considered positive in similar studies and explore the lines of action drawn from the CT experience.

5.1 Methodological approach

The original design of this research aimed to explore the impact that the creation of CTs might have had in the life of the indigenous communities of Michoacán, focussing on three communities. To gather a more complete comprehension of the policy, the analysis of its design would be complemented by an analysis of the actual conditions of implementation. This would continue with an approach focussed on the agents, but it would shift the analysis to some indigenous communities that owned CTs in Michoacán and their accounts of the CT experience. Drawing from my previous work (Ibarra 2011), I intended to see if there were any aspects of the community life that had been modified in relation with the implementation of the CT policy. For this, a first approach would be made through non-participant observation to register the interaction of artists with each other, in relation with the CT, and with state agents; which would be followed by semi-structured interviews with indigenous artists. The observation would also aim to explore the relation between the artists and state agents that were handling the CT project. I planned to attend events and situations in which representatives of government agencies would be in town.

As there were already almost 50 registered CTs, I selected three communities in which to carry out the research. The first was Ocumicho which is an indigenous community where the artisans are devoted to polychrome pottery of a purely ornamental

nature, and where I had done previous research about the relation between the community and the state institutions. The second was Capula, which is also an indigenous community and holds three CTs for different kinds of pottery that vary from the functional to the ornamental. The third was Santa Clara del Cobre, where there is an important production of copper objects also ranging from the functional to the ornamental.

Once there was enough information on the local structure, interviewees would be selected to observe differences between the understandings of the agents with respect to how they were positioned in relation to the CT. Previous research (Ibarra 2011) had also suggested that there was a significant difference in the comprehension of public cultural policies between those who occupied a leadership position and those who did not. The creation of a CT, as done through the establishment of a formal artists' organization, implies some hierarchy in their internal relationships, since at least one of them is the leader/handler. The form of this organisation was itself particularly relevant, as it interacted with previously established artisans' structures (ch. 3.3). In addition, one must bear in mind that Purhépecha communities have an internal organization that has developed aside from the state, has an intimate relation with religious roles and is the means through which local hierarchies are established. The original planning then involved interviewing the presidents of the CTs, as those who would be most likely to be able to give an account of the communities' motivations and aims to be achieved through the policy. Leaders tend to act as translator⁴⁴ between institutions and community, they occupy a position that can itself have an impact on the policies, and their discourse expresses a high degree of political awareness of identity matters. However, I also considered it important to interview agents who did not occupy a leadership position within the CTs. The artists that locate themselves on the peripheries of the power phenomenon, and their experiences, the differences and similarities of their discourse with that of the leaders, were considered as fundamental to understanding the local needs at the most basic level and their involvement and acceptance of the use of CTs.

⁴⁴ Indeed the leaders that mediate between the state institution and the communities, do have an input in the information and processes articulated through them. In several cases there is an actual translation from Spanish to Purhépecha. But there is also a relevant shaping of the institution's proposals to the internal dynamics of the communities.

Following this research design, I began interviewing leaders and non-leader artisans after finishing the research at the institutional level. To design a better research in the communities, I believed it was important to understand first the design of the CT policy and the different influences that had defined its direction. However, the preparation for the interviews had already delivered some significant insights for the continuation of the project. It was clear that the communities had had little to no participation in the design of the policy, as was explored in the previous chapter. But as I continued visiting the communities it also became evident that the CTs were not visible and that there was little mention of them in the contests and exhibitions, which are cultural events central to the economy of some communities (Ibarra 2011). The CTs were also less visible in the workshops. However, it was not until I began interviewing that the lack of incorporation of the CT policy became evident. The interviews were meant to explore the artisans' experience with the CTs, but also other aspects such as the relations between the members of the community, their links with the state agencies and how they perceive the role of their activity. I wanted to draw from the interviews, not only the specifics of the impact that the creation of CTs has had on the artisans' lives, but also their expectations and understanding of what their activity is for, as possible expression of identity or/and as economic activity to perceive an income.

The first interviews were carried out in Ocumicho. Ocumicho is part of the region of the purhepecha people who are the dominant indigenous group in Michoacán and, therefore, central to the institutions' actions. Evidently, as indigeneity is a category marked by its internal diversity, it is relevant to review different elements that might affect the experiences even within communities identified within the same cultural group. However, Ocumicho shares with other indigenous communities the relevance of the artisanship tradition for the economic and cultural life of the community. Ocumicho, with a population of 3,208 habitants (INEGI 2005), is located in a remote place in the north of the State of Michoacán, but is of central importance to the indigenous arts in the country, having won the *2009 Science and Arts National Award* in the *Popular Arts and Traditions* field. Its remoteness is due mostly to the lack of information as to its whereabouts, since it is actually at about 30 minutes from the city of Zamora which is one of the four largest in the State. However in the streets of Ocumicho there are usually few to no buyers and, although there are many workshops in the houses of the artists

where they sell their art, there are no visible shops where the art can be seen. The production of Ocumicho is of a style called “polychrome pottery” and constitutes mostly of ornamental sculptures portraying scenes of everyday life, of which the most popular are those in which the devil is a main character. Hence, the CT of Ocumicho is “Diablitos de Ocumicho Región de Origen” (Little Devils from Ocumicho Region of Origin). Because of its renown and their lack of functional aspect, Ocumicho is somewhat considered as representative of the *high arts* of indigenous production, in opposition to functional objects in which an artistic element is less recognized, and which attracts rather specialized buyers.



Figure 5.1. Alfarería Tradicional de Capula Región de Origen

I then continued interviewing the leaders and some of the artisans in Capula. The community of Capula, with a population of about 4,417 people (INEGI 2005), is located a very short distance (around 30 minutes) from the capital of the state of Michoacán, the city of Morelia. Despite its location, the community is far from being a popular touristic spot and, therefore, it is far from benefiting from the commercialization that this condition would bring. Capula is still better known than Ocumicho and there are many visible shops around the main square and the town’s streets for the potential buyers that tend to visit over weekends. In Capula there can be identified two different kinds of

production. On one side, the town is widely known for the creation of “Catrinas”, sculptures of a skeleton woman dressed in luxurious attire that were popularized by the graphic artists José Guadalupe Posadas and have been appropriated by the artists in town. This production is eminently ornamental, like the Ocumicho devils, and therefore this is also recognized in terms of its artistic value. In addition, the Catrinas have their own CT “Catrinas de Capula Región de Origen” (Catrinas from Capula Region of Origin). Nevertheless, in Capula the production of functional objects is also popular: plant pots, mugs, dishes, etc. For this, there are two CTs depending on the kind of painting done on the objects. There is the CT called “Alfareria Punteada de Capula Región de Origen” (Painted Pottery from Capula Region of Origin), which is painted with tiny points made with a single hairbrush and therefore of greater value both in artistry and in price. Then, there is the CT called “Alfareria Tradicional de Capula Región de Origen” (Traditional Pottery from Capula Region of Origin) (figure 5.1), which covers all other pottery produced in Capula, which is painted with traditional motifs mostly of flowers.

I attempted to follow the project as planned in Ocumicho and with one of the CTs of Capula, which covers traditional pottery, but the results of the interviews were rather unsuccessful in using the CT project as a filter to look at the artisans’ social structures and relations with the state. The main reason was precisely the lack of incorporation of the policy. The interviews with the leaders of the CTs – who also occupied leadership positions in other artisanal organisations – exposed several of the problems faced by the artisans in their relation with the state, but gave little to no information about the CTs. The first leaders that I interviewed had very little understanding even of what a CT was, focusing more on other aspects of the policy which will be further explored below. With the non-leader artisans, the situation was rather more dramatic, since they seemed to be unaware that the CTs even existed or what they are. The interviews once again highlighted several of the problems faced by the artisanal sector and the demands of the artisans on the state institutions, but it was all unconnected with the CTs. In both cases, when I tried to push the focus on the CTs, either the interviews would come to an end or the artisans would go back to talking about the general conditions of the artisanal sector. At some point I would end up giving a general explanation of what the CTs were, but most of the information seemed new to the interviewees.

Based on the initial findings of the observation, and the problems arising in the interview process, I changed the approach in the interview structure. Instead of continuing the research focusing on the three communities chosen, each became a starting point to begin a more general exploration of the conditions of existence of CTs in Michoacán. The previous research (Ibarra 2011) indicated that the level of comprehension of cultural policies was greater in the case of leaders than in the case of non-leaders, and the first interviews showed that indeed the little knowledge of CTs of the leaders was greater than that of non-leader artisans who had no knowledge of CTs at all. I decided then to extend the sample to the leaders of other CTs in Michoacán. Interviews would then focus on the leaders of the CTs, and only if the leaders had a deeper understanding of the CTs I would continue to interview other artisans. Eight presidents of a CT were then included in the research, including the president of the CCTM, and the interviews focused more substantially on their comprehension and use of the CTs. This would evidently mean shifting the analysis of the research away from the structures of the communities as they relate to state institutions. Instead, I have connected the findings of this research to the use of IP protection.

As a result of the changes in the interviews agenda, the focus of this part of the research also shifted from an approach based on interviews, and ethnography became an important tool to evidence the absences. While the process remained central to the research, the agents account would then be complimented by an exploration of the conditions in which the CTs could be considered as visible signifiers in the public sphere. I have recounted in the previous chapter how my initial interest in the CTs began with the observation of banners in the artisanal fair on the 2010 Day of the Dead in Pátzcuaro, but by 2012 the CTs were already eradicated. I had been observing that CTs were not visible in different contests and exhibitions. I carried out observations not only in the massive fairs for the Day of Dead and Palm Sunday from 2012 to 2014, but also in the artisans' contests in Ocumicho and Capula, as well as Paracho. However in order to assert the conditions of the use of CT symbols, I deemed it necessary to also visit different towns on regular days to see if any of the images were in sight. This activity extended to Ocumicho, Capula, Pátzcuaro, Paracho, Uruapan, Morelia, Quiroga, Cuanajo, Patamban, San José de Gracia, Cocucho, Tlalpujahuá, Tzintzuntzan, Santa Clara del Cobre and Cotija. Accordingly, this involved the observation of the conditions

of visibility of 23 CTs. In simpler terms, I explored the towns and events looking for visible signs of the CTs that asserted their relevance as public sphere signifiers. As I will detail later on, the observation was often rather the registration of the lack of presence of the images of CTs in the public sphere. The extension of the sample, however, kept in line with some of earlier determinations made of it. I chose to work with artistic expressions, leaving aside other kinds of products, like edibles, that have been identified as products with “high cultural density” (Barragán 2011a), although I would hardly sustain the importance of one over the other. However, since the CT experience has been dominated by artistic expressions I am specifically interested in exploring this kind of production.



Figure 5.2. List of Michoacán’s Collective Trademarks. Mapa de Compras. Gobierno del Estado de Michoacán.

The content of the present chapter resulted from the research carried out according to this modified methodology. The fact that the internal structures of the communities were one of the most problematic points of the first implementation of the policy (3.3) continued to be of significance for the life of some of the CTs studied. However, as will be seen further below, it was an element that interacted with others in the loss of relevance of CTs in the public sphere. The lack of incorporation of most of the CTs into the structures of the communities shed further light onto the challenges that IP continues to pose for creators who work in a collective manner. This element allows connecting the CT public policy experience in Michoacán with other experiences and as part of a structural problem related with IP.

5.2 Where did the trademarks go?

When I began researching the artisanal sector in Michoacán the CTs were visible in the public sphere, and they have remained to some extent present in the political discourse. I began the previous chapter by explaining how the CTs were present in every stand of the Day of the Dead artisanal fair in the year 2010, but this was not the only way in which CTs were evident in the public sphere. As part of the strategy to deal with the opposition of the Mexican Institute of Industrial Property (IMPI) throughout the implementation of the CT public policy, the achievement and relevance of CTs was also to some extent visible in the media (ch. 3.1, 3.3, 4.2). Perhaps also due to a political strategy, the fact that Michoacán holds the largest amount of CTs in Michoacán has also been highlighted as one of the successes of Michoacán's administrations on several occasions (ch. 4.1, 4.2). There was, for the agents that designed and implemented the CT public policy, a comprehension that the CTs needed to establish themselves as a guarantee of quality in the mentality of the consumers in order to achieve equal benefits to those achieved by Geographical Indications (GIs). It was because of this understanding that when the project was left in the hands of the SEDECO they turned to the implementation of media advertisement of the CTs; but the project was too short

lived to assert its implications (ch. 4.2). It is, however, undeniable that, along with the different elements that integrated the policy, the agents who designed and implemented the CT policy did not ignore the role of trademarks as signifiers constitutive of the public sphere.

Despite these efforts, the unstable situation of the CT project within Michoacán's public administration, explored in the previous chapter, negatively affected the visibility of CTs. The changes in the administration of the CASART brought two different leaders, after José René Carrillo, who did not continue supporting the CT initiative (ch. 4.1). This, of course, was part of a deeper institutional change in the CASART, but for a project which was itself rather new within CASART's structure, it was perhaps much more damaging. Many artisans already had the large banners that could be seen in workshops and the artisanship fairs, but they stopped displaying them and bringing them to fairs. In most communities that were included in this research, it was hard to find banners clearly visible in workshops. The few banners found in workshops were hidden for the most part, or lost among many other posters. They were also dusty and often folded, used to cover up things to protect them from the dust or forgotten in some corner of the workshop (figure 5.3).



Figure 5.3. Muebles de Cuanajo Región de Origen.

Most communities also had received hologram tags to put on each individual object to indicate that the artisan who made it was part of the CT, and in some way certified by it. Nevertheless, when the policy was dropped by the CASART it also stopped producing these tags, which were also particularly expensive to produce. Only in a couple of communities did the artisans of the CT organise themselves to pay for new tags to be produced. But in many communities the whole tags idea was itself foreign to local practices. In most artisanal traditions in Michoacán, it is uncommon for the artists to sign their pieces. It is a practice of appropriation and identification between the artist and the work that state institutions have tried to motivate among the artisans; which has generated controversial opinions (Gouy 1987, p. 54, García 2002, p. 143) but has mostly been unsuccessful. The obstacles are not only related to the link between artist and object, but may also be rooted in the collective element in the production that would make the signature a fiction that does not correspond with the collective authorship within the family unit. Although this does not apply to all artisanal vocations in Michoacán, signed pieces remain uncommon in most of them; and this is perhaps linked with the phenomenon that tags never were seen as a necessity by the artisans. Despite the fact that the agents promoting the policy emphasise the tags and ask the artisans to use them only on special pieces, it was rarely that I would find one of the hologram tags. When I did find holograms and attempted to photograph them, they would usually offer to give it me, as it was probably something left on an old piece. In one case, the leader of the CT had kept the tags himself, not being clear what they were meant to be used for.

But it was not only that the tools related with the CTs were unsuccessful or disconnected from the communities; the CTs themselves were not explained to the communities in an understandable way. There had been information meetings before each CT was created (ch. 3.2) where the artisans were told about the CT project and the benefits of obtaining a CT. However, taking into consideration the accounts of the institutional agents, it is likely that the meetings diverged from the description of the CTs, given the complications of establishing the associations that would register them. This was a major problem given the complicated internal social structure of the artisanal sector and the biggest obstacle to be overcome in the registration of CTs. Hence, the information meetings might have focused so entirely on this that the explanation of the

CTs seems to have got lost. The presidents of the CTs understand that the CTs aimed to be a means to get financing and further support from state institutions; they make emphasis on being told that they were going to get help for the production, as well as the official documents that certified their trade. Indeed, the further support and the training and certification were part of the policy. They, however, have little to no knowledge about the commercialisation strategies or the exclusive use of a name or a symbol that are both central to the actual CTs. It is not that trademarks are unknown in all artisan sectors. In cases like the Tlalpujahua glass ornaments and the textiles from Pátzcuaro artisans are not only aware of what trademarks are, but many already have trademarks registered for their products. In these cases, the lack of incorporation relates to the lack of conviction as to the convenience of using the CT over their individual trademark.

This puts a question mark on the matter of the control over established IP rights. The holders of the right, especially as representatives of the associations that registered the CTs, seem to have little control over the protection, since they have little knowledge of the possibilities that it opens. This becomes clearer in the context of those CTs that belong to an indigenous community. The international human rights system, as I have discussed, has a close relation with IP (ch. 2.5); not only as far as cultural rights in general are concerned, but also particularly in relation with the rights of indigenous peoples. The right over their cultural productions and the IP related with them are both acknowledged in the Declaration of the Rights of Indigenous Peoples, as well as retroactive protection for cases of misappropriation, which is indeed the main concern that has driven the discussions over the complicated relations between indigenous peoples and IP (ch. 2.2). This would be recognition of the rights of indigenous peoples even if over objects which could be considered within the public sphere (Tobin 2009, p. 137). Out of the eight CT presidents interviewed, five of them were indigenous; while of the remaining two mestizo presidents, one represented a CT which was also not in use. This connects the lack of incorporation with an ethnicity factor, but not in an exclusive manner. As pointed out throughout this research and will continue to be a factor to take into consideration, the concerns raised in the CT case extend beyond ethnicity.

Some elements can help account for the lack of appropriation of the CTs by the artisans' communities in Michoacán. At the beginning of the CT project, its design indeed took up the notions of high cultural density products which could be derived from the notion of territory that is often attributed to indigenous peoples (ch. 1.2, 2.2 and 2.3); as an integral notion that sees land, resources and spiritual conceptions as embedded (Stoll and Hahn 2004, p. 15). But despite the relevance of these notions throughout the first experience that shaped in many ways the structure of later CTs, it does not seem to have passed on to the holders. There is, of course, the problem derived from how fast the public policy was implemented (ch. 3.3) which made for a defect from the start in the lack of comprehension of the policy. However, further reasons can be found in the characteristics of Michoacán's artisanal production (ch. 1.2), which both connects with the indigenous peoples' objections to IP and also extends beyond into a sector that is pluricultural and includes mestizo communities.

One substantial element to account for the lack of integration is precisely the structure of the collective nature of production, based on the family as the production unit (ch. 1.2). On this account, while usually one or two members of the family tend to be included in the organisations, the entire family remains unconnected even from the limited information available within it. In general, the collectivity of the artisanal sector is of a more organic nature than that of any legally constituted association. The artisans' guild grows as the new generations take over the activity, and people learn from their own family members. The collective nature of production poses a challenge for any identification marker. But while the structure works in terms of continuation of the practice, it is not designed to build on commercialisation strategies, much less if they require the investment of resources which are themselves scarce. In the context of economic need in which most artisans live, it is hard to gather common funds that can be used strictly to develop a market strategy which could give CTs the visibility they need as public sphere signifiers. This factor is not exclusive to the case of Michoacán's CTs, as Kur and Knaak (2004, p. 255) identify the lack of organisational structure and financial resources as one of the main obstacles for trademarks and GIs to effectively protect indigenous names, signs and designations. The creation of a common understanding and practice of artisanal production is also hard to assert in a collectivity that is not structured around cohesive institutions in which all participate. The CTs

aimed to create unity in a collectivity which works in a more disarticulated way than an association of producers would normally work under a CT. Overcoming this would have required the solution of internal disputes, evidently, but it would also have to include introducing new interaction dynamics amongst the artisans.

Another element which made the incorporation of the CTs difficult is related to the characteristics of the artisanship field in the market. Michoacán's artisanal production is mainly an informal trade (ch. 1.2). The artisans hardly have any formal registration other than the common attempts made by the CASART on this account. In several cases, the artisans do not pay taxes; and, in fact, according to the interviews I carried, their reluctance towards registration was to a great extent due to their fear of being noticed or somehow included in the tax system. The artisans expressed in the interviews an interest in gathering further resources, which were promised when the promotion of the CTs was made. And they were even interested in the certification project that accompanied the CT initiative, as was conceived by state agents in different stages of its design and implementation. But they did not care for any strategy that implied adopting marketing strategies, as it would probably come with greater fiscal responsibilities. It is important to note, on this account, that even the export activities that the artisans are involved with are done through friends or family members who live or work in the USA, therefore remaining informal and out of the institutional structure for exports (ch. 2.4). CTs, as market signifiers which open up possibilities for commercialisation, meant little for the artisans and it is possible that even if they had meant something, they would have lacked the resources to take advantage of them.

Overall, the CT structure was not able to develop enough relevance to overcome the previous structure of the artisanal sector. The State Union of Artisans of Michoacán (UNIAMICH) has established itself as the most important artisans' organisation in Michoacán. Although it certainly does not include all artisans, its direct dealings with the CASART, and the fact that it has been favoured as the channel through which support and financing are spread through Michoacán's artisanal sector, has given it a central role in the relations and concerns of the artisans. The UNIAMICH was a major concern for the artisans invited to join the CTs, as they were worried that the organisation would see the CTs as competing structures and therefore would cease to support the artisans involved in it (ch. 3.3). Nevertheless, as the state support for the CT

structure fell, the UNIAMICH has remained the most relevant organisation for Michoacán's artisans. Especially with the artisans who did not occupy leadership positions, but to some extent also with the leaders, whenever I would mention an association or organisation of artisans that registered CTs they would refer directly to the UNIAMICH. Remarkably, the Michoacán Council of Collective Trademarks (CCTM) is little known even among some of the leaders of the CTs. The UNIAMICH holds such a central position amongst the artisans that on occasions it can even be involved in solving conflicts.

Although the context of production of the artisanal sector presented many challenges for the CT project, it is undeniable that the political shift was substantial for its failure. The previous chapter explored the different political stages that the CTs passed through, and how, in the effort to position themselves within the struggle that is part of every field (Bourdieu 2008a, p. 113), the agents of Michoacán's administration turned the policy into individual/personal political capital. On one side, this meant that the agents committed to the policy saw its success as linked with the future of their career; and on the other side, it made subsequent administrations reluctant to continue with the policies. This made for an uneven support and structure of the CT policy, which greatly affected its integration. The leaders of the CTs recall the secondary elements of the policy, like the financing and the training, but they mostly recall that the support was short-lived and that afterwards there was no more activity on that front and so they did not continue exploring the associations or the possibilities of CTs.



Figure 5.4. The iconography of the PRD government.

However, to account for the disappearance of the images of the CTs from the public sphere it is important to remember that the change of public administration also has an impact on the visual environment. When the Democratic Revolution Party (PRD) left power and the Institutional Revolutionary Party (PRI) took over (ch. 4.3), the image of the public administration changed. Evidently, all the stationery of the public administration changed to match the colours and motifs of the new administration, but the change went much further. Car plaques and drivers' licenses were also renewed dropping the colour yellow and the image of the monarch butterfly adopted by the PRD. Administration buildings, which were previously painted yellow, were all painted red, which is one of the PRI colours. This alteration in the political landscape, which brought changes in the actual visual landscape of Michoacán, also affected the CTs. The tourism office in Morelia would display the informative brochures, but employees were no longer allowed to give them away or show them further. They had hundreds of brochures stacked in the office, but those were marked with the colours and symbols of the PRD administration and therefore not allowed (figure 5.4). There was only one brochure from the PRI administration, and so tourists would have to wait until the new brochures arrived in order to get further information. Although the brochures for the most part did not refer to the CTs, one of them was a "Shopping Map" (figure 5.5) created with the collaboration of the CCTM and included precisely a map of the CTs in Michoacán, as well as a short description of each product. This map only mentions one public institution, the Secretary of Economy, which is federal, and there is little linking visually it with the PRD; yet the Secretary of Tourism discontinued it. The change of image of the administration accounts for the disappearance of the banners in some public spaces as well. The images of the CTs were presented in conjunction with other symbols of the PRD administration, and therefore were no longer welcome at public events after 2012. This meant that all the banners were effectively excluded from the fairs and contests, replaced by banners that did not have yellow monarch butterflies and used a multicolour butterfly (figure 5.6) instead, used as the symbol of the new PRI administration. In fact, during 2012 the change in the image of the public administration made touristic information scarce.

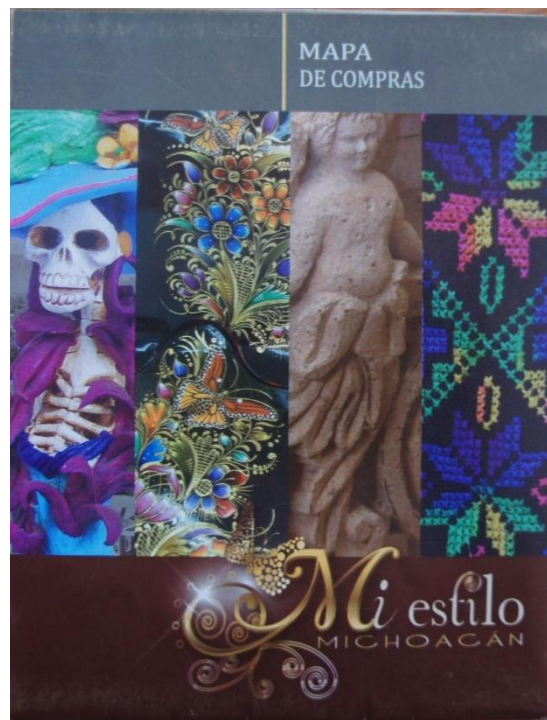


Figure 5.5 Mapa de Compras.



Figure 5.6. The Iconography of the PRI government.

The lack of visibility of the CTs in the public sphere itself presents a legal problem for an initiative that already had a complicated institutional situation. Even despite all the work that was put into the registration of CTs against the inclinations of the Mexican Institute of Industrial Property (IMPI) both at the beginning and during the development of the project, existing CTs face legal challenges which could end their existence. This can happen even without interference, or perhaps because of the lack of interference. It is important to note that if any trademark, collective or not, is not used for three years, then its registry expires (FLIP Art. 130). In addition, the renewal of the registration of a CT must be requested within 6 months after the expiration of the registry at the latest (FLIP Art. 130). If this does not happen, the registration also expires. On one side, the CTs' lack of visibility is equivalent to a lack of use, as it is not representing the products or producers that it means to represent in the market. On the

other side, most CTs lack the incorporation structure that would allow anyone to request the registration. Even the presidents of the CTs have in mind the more relevant position of other artisans' organisations, and have little knowledge and resources to continue with the process at the IMPI even at just a technical level. However, in practice, the opposition of IMPI itself was subdued in the past by the mobilisation of such resources as political pressure, which extends the obstacle for the continuation of CTs well beyond the mere technical requirements.

The lack of use of CTs in Michoacán gives grounds to question the value of trademarks when their main role as signifiers becomes compromised. Trademarks make sense in the comprehension that people do not just sell products, because some products express the lifestyles behind them and the pride that the creators take in what they do. But what if the name of the trademark means nothing for the audience? This has been identified as a major problem for the protection of indigenous names, signs and designations at the international level by Kur and Knaak (2004, p. 255). At the international level protection is generally dependent on the knowledge and perception of the audience of each country, which means that foreign names and designations can only be prohibited as trademarks if they convey the same specific meaning that they do in their country of origin. In this case the protection would be different since the CT already exists and potentially should be respected in any country which validates and respects Mexican trademarks. The problem here again concerns the material possibilities of the artisans to find out about competing trademarks and demand their dismissal. Still, the problem is even bigger if we consider trademarks as signifiers that connect the product with a specific producer in the public discourse (Coombe 1996, p. 110, Oehlerich de Zurita 1999, p. 57, Lucas-Schloetter 2004, p. 308, Boucher 2006, Kongolo 2008, p. 103). And indeed, as I explored earlier (ch. 3.1), this is even more important for subaltern communities which lost the control over the narratives as part of the colonial process. For a trademark to make sense, people need to care about the name of the trademark as a source of thick identity significance, which means that this kind of IP protection only means as much as the intended audience believes and understands its meaning.

In the case of CTs, as they include some references to the territory that comes closer to that of GIs, it is necessary that the towns are well known for their production

and that the CTs are understood in the public sphere precisely as certifications of value. If the first, the second has secondary importance; and if the second, the first can be easier to achieve. But the second element was not achieved in Michoacán, and therefore the CT products do not hold a special meaning for buyers over any product that claims the same origin. Still, the problem is deeper because the artisans do not understand CTs as valuable signifiers, since they hardly concern themselves with publicity strategies. What happens if the name of the trademark also lacks meaning for the holder?

5.3 Persisting with Collective Trademarks

Despite the more general lack of use of CTs in Michoacán, the CTs have not entirely disappeared and some are in fact used. As I have explained, most communities never incorporated any notion of trademark and few have continued to use and develop individual or personal trademarks. However, some CTs have remained not only visible, but present in the discourses and concerns of their holders, despite the little support from the state. In fact, those CTs that have continued to be used have done so to some extent precisely because of an opposition to the state and as a tool to pressure for more support and for the continuation of programs that have been endangered by political shifts in the administration. These artisans continue asking for financial support, training and certification for themselves and their products. By doing this they have also kept the CTs in the media and visible in the landscape of Michoacán in different ways. However, the groups of artisans who continue using CTs also understand that the value of the CT is dependent on its visibility and they seek to extend the images that identify them to other spaces like fairs and other state events.

Among the CTs that continue in use the case of Cotija is perhaps the most successful in terms of keeping the CT in use as a market signifier. Aside from being the first CT registered in Michoacán (2.2), agents related with Cotija have continued requesting a GI for the Cotija cheese (Informador 2011, Jornada 2013), but this does not mean they have given up the struggle on the CT side. They have continued sustaining

the wide interpretation of CTs developed during the process of their registration and held by the agents, both from the state and from Cotija, involved in the negotiations with the IMPI. They argue that CTs should be considered as a protection against other products imitating theirs and, therefore, a protection against piracy (Quadratín 2013). This is in line with the political role acquired by CTs by the process of their creation. However, they are also aware that the CT needs to be visible to create the notions in buyers that its symbol actually means the authenticity of the identification between product and its origin and its producer. The CT “Queso Cotija Región de Origen” (Cotija Cheese Region of Origin) is only visible to some extent in Cotija, where there is only one establishment – *El meson del queso Cotija* – which sells the product from this producers’ association. Nevertheless, the CT is increasingly visible in other places of Michoacán and Guadalajara. Esteban Barragán has been central in achieving this, as I realized when I met him, giving a talk for the chef students at the Institute of Work Capacitation of Michoacán (ICATMI)⁴⁵ to promote the use of Cotija cheese in traditional as well as new ways (Barragán 2011b). He has also managed an alliance with some of the mezcal producers in Michoacán, so Cotija cheese is sold in their stores and recommended as a side dish for the popular drink. Along with this, he has positioned the Cotija cheese in the shops which specialise in Michoacán’s products that opened in Morelia over the last few years⁴⁶. The cheese is also sold in some high-end restaurants in Morelia and México City, which have developed menus advertised for their use of Cotija cheese, taking advantage of discourses around the use of local organic products to support local sustainability and pride. The alliances made by the Cotija association in the process are evidenced by the signatories of their latest accusation against piracy which include the owners and representatives of several restaurants, shops and academic institutions (Quadratín 2013). All these actions contribute to give visibility to the CT and establish it as the guarantee that a Cotija cheese is indeed authentic.

⁴⁵ Incidentally, this institution also coordinates and carries the training for the CTs’ artisans, and their certification.

⁴⁶ In the year 2011 Michoacán’s government opened up a shop to sell different local products that range from food, to cosmetics and artisanship. The shops belonged to an agency specialised in helping producers to export their products, by improving their packing methods and public look, mostly. After the change of administration in 2012, the shop changed administration and the persons that handled the project with the PRD opened up another shop of the same characteristics a few blocks in the same street from the “institutional” location.



Figure 5.7 Centro de Articulación Productiva para la Marca Colectiva “Guitarra de Paracho Región de Origen”

Another CT that has a continued relevance for the community in which it is used is the CT “Guitarras de Paracho Región de Origen” (Paracho Guitars Region of Origin). The market invasion in Paracho had been a main concern that had made the CASART turn towards analysing the possibilities of IP protection (ch. 2.6), so their inclusion in the pilot to first expand the CT project (ch. 3.2) was no surprise. Paracho is famous for the production of quality guitars that are produced both in family workshops and in semi-industrialised workshops. The CT in Paracho is embedded in a complicated social context, which in part has helped its continued use. The CT does not include all of the producers; it is representative of a group of producers who are active in seeking a relationship with state institutions and in demanding further support. In this demand, the CT has become for them a possibility to position themselves as the legitimate representatives of Paracho’s tradition. When the policy was at its high point in the institutions, the CT artisans in Paracho managed to get a space in one of the municipality’s buildings to place a museum/workshop and an administration office for the CT (figure 5.7). They also continue to be very active in the processes of training and certification. They have demanded from the ICATMI to continue the certification of the

artisans related with the CT, and the expansion of the training towards the creation of concert guitars, which are more expensive and specialised instruments than the more common work done in Paracho. Their insistence on using the CT aims to reinforce the notion that their products are in fact of better quality than those of other artisans in Paracho. The CT has gained them visibility at the cost of effectively being an exclusion mechanism within Paracho itself. The CT artisans are reluctant to admit new members, and for those who want to join they demand the payment of previous years of contributions for the CT; while they hold the expectation that the state institutions should favour or even deal exclusively with artisans associated with the CT.

The case of the “Esferas de Tlalpujahua Región de Origen” (Spheres from Tlalpujahua Region of Origin) is also pertinent. Tlalpujahua is located in a colonial mining region that was active until 1963 (Martínez 1997, pp. 193–196), after this activity ceased it was necessary for the people of Tlalpujahua to find employment and this was done by developing a few different artisan vocations. Among these, Tlalpujahua is famous for the production of glass ornaments, especially crystal spheres to decorate Christmas trees. These are created with a technique that implies blowing air into a glass tube to create a bubble which is perfected with the help of fire and the hands, the spheres are coloured or covered in silver and then hand painted with patterns which may vary from season to season (Martínez 1997, pp. 198–199). Tlalpujahua is a town in which different indigenous peoples have converged – the Purhépecha, the Nhuatl and the Mazahua – with foreigners drawn there for the mining activity from Europe but also from the USA and China (Martínez 1997, p. 197). However the production of glass ornaments is mostly made in semi-industrialised factories owned by mestizos. The case of Tlalpujahua was already relevant for the SEDECO when the CT project began (2.4) and the CT was obtained under the leadership of Abel Castillo. In practice, the CT only features marginally both in the spheres business and the spheres fair that is organised in Tlalpujahua during winter. However, Abel Castillo’s position as the president of the CCTM has also given the Tlalpujahua CT presence in the media and in state sponsored events like the local products fairs organised every month in the city

of Morelia⁴⁷. As it is, the Tlalpujahua CT, both as political tool and market signifier, depends strongly on Abel Castillo and his role as president of the CCTM.

Although it is hard to assert it as a success as a CT, the case of the “Catrinas de Capula Región de Origen” (Catrinas from Capula Region of Origin) is significant for an incorporation of a CT image in the public sphere without its context of origin. The use of the image of the Catrina has gained more and more popularity over the years, and this has given some notoriety to the CT. The Catrinas CT is only one of three CTs that belong to the community of Capula, and perhaps one of the most recent productions there, but it has gained remarkable popularity in relation with the celebration of the Day of the Dead in Michoacán. Although the Mexican artist José Guadalupe Posada created the image of the Catrina in the early twentieth century with no reference to the Day of the Dead it has become associated with this celebration. The image of an elegantly dressed skeleton has an easy connection with the dead – at least as a relatable symbol if not in its intended meaning⁴⁸. Over the last three years, the Day of the Dead was accompanied by the Catrina Festival that includes a Catrina contest as well as a market place installed in Capula. The Catrina even featured prominently in the posters made by the government for the promotion of the Day of the Dead in Michoacán. However popular the Catrina image is, this does not mean that the CT itself is very visible since the Catrinas used are varied and differ from the one that represents the CT. Nevertheless, and probably unintendedly, the CT has been incorporated since the artisans have found a use for the banners and tags previously distributed (figure 5.8), and reasons to send for more to be made. In a sense, the use of the Catrinas CT is perhaps the more strictly related with a market purpose than as a political tool. The CT has not been used to promote certification, or the legitimacy of some artisans over others, and it has not been deployed as a political discourse to pressure state institutions. It has been integrated in the imagery of commodification of Catrinas in the public sphere, losing its specificity as an exclusion signifier.

⁴⁷ The Council of State Development of Michoacán (CODEMI) has organised over the last five years monthly events in which several local producers are invited to sell their products. Incidentally, many of the products that one can find in the specialised shops of Michoacán’s products can also be located in this monthly fairs.

⁴⁸ The work of Posada is supposedly meant as a mockery of México’s high-class and their European pretensions.



Figure 5.8. Tags of the Collective Trademark “Catrinas de Capula Región de Origen” in the Catrina Festival of the Day of the Dead 2012.

There are certain elements that successful CTs have in common which can be significant for the possibilities of this kind of IP protection. It is not surprising that Paracho, Tlalpujahua and Capula were the communities being considered to continue with the CT project by current CASART administration (ch. 4.3). Although Capula’s position clearly relates to the visibility of the Catrinas than with the actual use of the CT, Paracho, Tlalpujahua and Cotija do have in common the use of CTs in their extended meaning – closer to GIs – and in their role in the political struggle within the artisanal sector. But this is not the only element they have in common that diverges from the most common characterization of artisanal production in Michoacán as explored in the first chapter (ch. 1.2).

One thing they have in common concerns the formal element of the productions, which implies conformity with the Mexican fiscal system and a greater correspondence with legal elements. Unlike the majority of Michoacán’s artisanal production – and CTs – that develop as informal trades, the CTs that remain visible have other connection points with the state and its law. Overall, artisanship’s informality has made it hard to assert its actual commercial value as well as the effects of piracy and the percentage of the economic benefits that go to the artisans (Lucas-Schloetter 2004, p. 260). However, Paracho and Tlalpujahua are semi-industrialised productions, which means that the artisans are organised in small factories as the basic production unit. Although the work remains manual for the most part, the factories have a registration, pay taxes and pay regular salaries to their workers. The case of Cotija is somewhat different. The cheese producers of Cotija had more elements in common with other producers in Michoacán,

since they work outside state regulation. However, even before there was any thinking about CTs, the producers of Cotija were organised in an association. The association is itself adapted to formal regulation and, therefore, even if the artisans keep some informality in their trade, the association was already created to fulfil the demands of the Mexican state. The association has also introduced elements of industrialisation into Cotija cheese production. It constitutes itself as a collecting centre that later takes care of packing and distribution. This means that the CTs that work belong to communities that already have some adaptation to state law. They have greater understanding of law because they have dealt with law in different previous ways. They adapt better to legal forms because they already exist as legal forms. Since being semi-industrialised and having a regular fiscal registration are not shared elements of the majority of Michoacán's artisans, the success of CTs seems to depend on an incorporation to the market parting from the integration of artisans to the state's fiscal systems.

In the context of Michoacán's artisanal sector, the formal element of successful CTs makes it possible to exploit some of the value signifiers of environmental sustainability and/or social responsibility attributed to market signifiers such as CTs or GIs. Increasingly over time, these kinds of discourses have become an asset for companies all over the world. However, the actions meant to ground the public image of such companies are, more often than not, ambiguous in the actual benefits that they bring for the communities. The case of the Body Shop is one of many that can illustrate this. This company exploits the discourses of environmental responsibility, opposition to animal cruelty and fair trade. However, the exclusivity over names and words that the company achieves by their registration as part of its trademark constitutes an exclusion over the signifiers of the very communities that they are supposed to be treating fairly (Oehlerich de Zurita 1999, p. 59). In the case of CTs in Michoacán, it is only the communities that have a regular fiscal status which can interact with other companies interested in exploiting these kinds of discourses. The shops in Morelia specialising in products from Michoacán are not able to do business with informal producers, who are also not invited to the fairs organised for this purpose; and it is important to note that both these spaces have strongly benefited Talpujahua and Cotija.

Another element shared by the CTs that continue to be visible, and which differs from the majority of Michoacán's artisanal production, is the mestizo identity of the

producers. Although most CTs in Michoacán refer to products made by indigenous communities, Cotija, Paracho and Tlalpujahua are either mestizo communities or their products are handled by the mestizo population of the community. This would indicate that it is easier for mestizo communities both to integrate and to be integrated into market dynamics shaped by state defined legality. However, other elements must be taken into consideration on this account, which have in fact been constant throughout this research. It is notable that the community production of artisanship is not exclusive to indigenous communities; rather, collective production and shared knowledge cuts across ethnic differences. The same can be said then of the objections to IP brought forward by indigenous cultural expressions (ch. 2.2), making the obstacles created by IP a problem beyond ethnicity.

The ethnic configuration of CTs is significant as well for the use of discourses of ethnicity and tradition as commodification strategies. The indigenous factor is often used as a selling point for the CT policy even when it is acknowledged that this was not an indigenous oriented policy and that it includes non-indigenous products and communities. After the latest CT was granted, Hugo Gama stated, “More can be done. For example, protecting Michoacán’s berries, specifically the blackberry, which is endemic to the purépecha region” (2014). Despite the fact that his own involvement in the project makes him aware that the policy has no particular aim towards indigenous peoples in its design; but also, despite the fact that blackberries in Michoacán, though produced in an indigenous region, make for a market that is hardly controlled by any Purhépecha persons, let alone communities. However, and more appropriately, public discourse on CTs is more likely to diffuse the ethnic reference appealing to the protection of tradition.

The turn towards the cultural concern in connection with a market strategy was a distinguishable element of the PRD administration under which the CT project was born, as can be seen in the planning of the Vasco de Quiroga route. The role of Vasco de Quiroga in Michoacán as a promoter of indigenous artisanship has indeed translated into a touristic route that benefits certain local entrepreneurs rather than the communities and their traditions (ch. 2.6). This initiative, however, is indicative of the cultural tourism turn of Lázaro Cárdenas’ administration, in line with his anthropological education. The touristic route of Don Vasco aimed to explore the

different spaces in which Vasco de Quiroga had been relevant, as well as the remains of the artisanal traditions he initiated. The book *La ruta de Don Vasco* (Luna 2007) is rather significant in many ways to understand this project. It begins with a presentation by Cárdenas (2007) where he highlights Vasco de Quiroga's role as a humanist and an educator, but he also makes reference to the "hospitality" he promoted, especially for travellers, and the artisanal traditions for which he was so important. His protectionist perspective on culture is represented in the following statement: "He not only avoided their [indigenous peoples'] judgement, but for them to learn and develop new cultural processes" (Cárdenas Batel 2007, p. 5). Cárdenas' presentation is followed by another by Genovevo Figueroa (2007), then Secretary of Tourism. He focuses on "cultural tourism" which is characterized by tourists who are educated and wish to interact with the habitants of the communities for a deeper knowledge of their environment and culture.

However, to understand fully the possibilities for some communities within the artisanal sector, it is necessary to look at the configuration and functioning of the CCTM. The CCTM was created in 2010 (Hernández 2010) thanks to the support of SEDECO agents to give continuity to CTs regardless of their institutional conditions with the changing administrations (ch. 4.2). The coordination of the council is carried out by Abel Castillo, the president of the CT "Esferas de Tlalpujahuá Región de Origen" (Spheres from Tlalpujahuá Region of Origin). For the artisans who continue working within CTs, the CCTM has helped to connect their interests and reinforce alliances among them. It has also given them a platform from which they can continue seeking to shape Michoacán's cultural policies. Not only has Abel Castillo, as president of the CCTM, taken to the media to complain against the abandonment of the CT project, but also to express other political demands of the artisanal sector and even suggestions for the political positions in state institutions (Quadratín 2014) in the context of the political instability that has accompanied the PRI government period (ch. 4.3). This has the benefit of turning the CT project into a means to increase the artisans' political participation.

However, the CCTM struggles to be an organisation that can be representative of the majority of the artisanal sector. As I mentioned earlier, one of the major problems found when analysing the implementation of the CT project, and CCTM as well, is the

fact that it has not achieved a relevant position among the majority of the artisanal sector. Several of the CT presidents do not know that the CCTM exists. Without their knowledge, the CCTM acts as the representative of a significant part of Michoacán's artisanal sector. Not only does this put a question mark on the legitimacy of its actions, but also it further highlights the obstacles to achieve benefits through CTs for this sector.

Abel Castillo himself is a mestizo artisan who owns a small factory in Tlalpujahua. When he talks about his demands as representative of the CCTM he stresses the fact that they are an economic force in Michoacán; that they pay taxes and therefore deserve to be beneficiaries of the policies implemented by state institutions. He speaks of artisans without realising that many are not like him, especially in regards to the financial responsibilities that they endure, but also in the economic conditions that their trait brings them. However, there are some parts of his demands which, although they may not represent the reality of the artisanal sector, do show the problematic structural conditions enabled by state institutions. In the interview that he was kind enough to grant me, Abel Castillo speaks against the prejudices that see artisans as dirty and uneducated; he says that they might work with their hands, but this does not mean that they are not clean persons or that their knowledge is less valuable than that of others. He also denounces the conditions given by the institutions for artisans in fairs and contests: the artisans are forced to sleep on the floor in buildings that are not for housing, like schools or barnyards, sometimes even at the very sites of the fairs; their food is scarce; and their treatment is marked by racism and prejudice. His condition as a privileged artisan makes him feel all the more the injustice of how artisans are treated and the poor conditions that they are forced to endure.

5.4 Intellectual property and epistemic hegemonies

In this chapter, I have analysed the obstacles derived from the implementation of the CT project in Michoacán, México. However, these relate to the general problematic

of IP as a legal institution fundamental for the economic conditions of a country and informed by an epistemic comprehension deeply connected with colonial processes. As IP expands in the context of a development that is no longer seen as purely economic, it is necessary that both IP and development become accountable for their cultural effects (Aylwin and Coombe 2014, p. 32). From the point of view of development based on human rights, there is “a universal responsibility to provide peoples with an economic framework adequate to the pursuit of human dignity and social participation” (Aylwin and Coombe 2014, p. 759), which is fundamental for the ideals of cultural rights. To achieve the continuation of the world’s diversity of cultures, it is necessary to overcome the domination processes of some cultures over others that are expressed in local or national values that permeate economic structures (ch. 1.1). IP is a clear expression of this interaction, as it is fundamental to the economic structure of the contemporary world, as well as determinant for the continuation possibilities of cultures. The CT policy explored here has also proved to be shaped both by the economic agenda of certain agents and historical understandings of the role and constitution of both indigenous and mestizo cultures.

However, IP has proven inaccessible for some, as is the case of the problems posed by indigenous cultural expressions. As was explained in the second chapter (ch. 2.2) , the obstacle results from two of its demands that clash with the way that knowledge and creations are produced by indigenous cultures: the focus on the individual creator (Oehlerich de Zurita 1999, pp. 28–29, Dommann 2008, p. 6) and the focus on innovation (Dommann 2008, p. 7). This issue has become particularly relevant due to the several cases of misappropriation of indigenous cultural expressions all over the world (Oehlerich de Zurita 1999, pp. 31,117–131, Kur and Knaak 2004, pp. 221–223, Lucas-Schloetter 2004, pp. 260–261, Dommann 2008, pp. 3–4, Teubner and Fischer-Lescano 2008, pp. 17–18). The cases of conflict and misappropriation make evident the role of IP, and its connection with cultural heritage, in the promotion of multiculturalism and cultural diversity in the context of sustainable economic development (Kongolo 2008, p. 59). However, as can be seen throughout this study, the conditions attributed to indigenous cultural expressions are not necessarily dependent on ethnicity.

The clash between IP and indigenous cultural creations, or why it is easier to identify the clash in the case of indigenous cultural creations, can find an explanation in the colonial processes that shaped contemporary diverse societies. Indeed the misappropriation began with the colonisation process (Tobin 2009, p. 143, Picciotto 2011, p. 284), and since then there has continued to be a translation of traditional knowledge into western structures of culture. Much has been already said about the historical accounts that shape identities according to winners' versions and the role of history in obscuring the lives and experiences of many; of how the colonization process stripped or obscured entire peoples and their history (ch. 1.1). Colonization processes were substantially legitimated by the discourse of an inferior "other" through the structuring of humanity in binomial constructions of good vs. bad, educated vs. ignorant, religion vs. paganism, law vs. the ever uncivilized habits of the unpolished, unsophisticated and often inhuman others. All of these are false and unfair dichotomies which legitimized violent processes of dispossession. However, this colonialism is not only configured by history and education, it is framed and settled through different aspects of the law. Particularly, I focus on the way intellectual property rights retain these colonialist notions in a growing fashion that imposes an epistemic dominance.

IP carries a hierarchy of knowledge and a conception of how it is produced, based in an ideal of knowledge production developed by the colonizer mostly identified in Europe as the colonial global north. There is a global south in the way we understand the world, or rather there is a global north that has attempted to establish its understanding of the world as the only understanding of the world. This understanding is embedded in the deepest and most fundamental aspects of our life experience. The discussion over the incompatibility of indigenous cultural expressions and the IP rights system has mostly been treated as a problem of legal technique and design, without much reflexion of an epistemic issue which is not mere incompatibility but actual domination. The dominant interpretations of IP categories establish an understanding of the correct way of producing knowledge and creation, and these are largely based on the very notions that the global north attributes to its knowledge and creation. Although many creative ways to challenge that understanding have expressed the possibility of contestation, dominant interpretations remain a matter to be dealt with and a relevant

source of misappropriation. In the dominant interpretations, indigenous peoples are seen as the exception, the “other” knowledge that barely is (Santos 2010, p. 31).

This is what Teubner and Fischer-Lescano name “Cannibalizing epistemes” in its meaning both as cannibalization of knowledge and cannibalization through knowledge: “It is always about the maximization of the inherent rationality of hyperstructures inside global society in its enhanced need for information – of functional systems, formal organizations, of networks and epistemic communities – tearing stocks of knowledge of regional cultures out of their vital context and inexorably drawing them into their wake” (2008, p. 26). As was explained previously (ch. 2.2), one of the challenges posed by indigenous cultural expressions to IP lies in their holistic nature that does not match with the most traditional and dominant IP classifications. IP then becomes instrumental for the scientific and economic processes attempting to “brutally cut off “holistic”, particularly religious, relations inherent in traditional knowledge forms and use them in favour of their own specialized rationalities” (Teubner and Fischer-Lescano 2008, p. 24) which continues to define what is seen as unprofitable knowledge or not knowledge at all.

The IP rights system is undeniably a product of the industrial revolution from the global north, for the global north. Currently it is also a system negotiated in an international field which is dominated by the economic interests expressed by states, and mostly informed by economic agendas which determine the way in which cultural products are integrated in the public sphere. Its consequences shape our everyday life in constantly invisible ways.

When indigenous peoples’ IP disputes are taken to the state tribunals they frame indigenous cultural expressions in the categories decided upon by IP regulations (Teubner and Fischer-Lescano 2008, p. 19) which are in turn decided in the transnational negotiations explored above. Teubner and Fischer-Lescano argue that dependency on state legal frames and institutions gives public interest lawyers “the opportunity to connect to existing legal regulations and also opens scenarios for the incremental legal innovations” (2008, p. 19). However, I believe that connecting to existing legal regulations is not a benefit in itself, but a matter that strongly depends on the reasons and the outcomes of that contact. Hence, the fact that the disputes arise from

cases of misappropriation of indigenous cultural expressions makes the contact with law something that arises from suffering a damage in some way, and can hardly be considered beneficial for the indigenous communities. In the same line of argument, and as previously asserted regarding new IP forms, the expansion of law must not be considered as a good in itself, but rather it needs to be assessed in terms of its social causes and effects. The danger of being determined by a conceptual system that the authors identify then becomes much more relevant. The separation of the categories of *traditional knowledge* and *traditional cultural expressions*, explored in the second chapter (ch. 2.2), is indeed already indicative of the lack of conceptual and institutional frameworks in international spheres to understand the configuration of indigenous cultural expressions (Tobin 2009, p. 128). For Teubner and Fischer-Lescano “the problem for regulation is how to protect the generation of traditional knowledge as such” (2008, p. 19). However, the “as such” part of their statement digs into a deeper epistemic question that underlines IP struggles.

The question to be asked is whether only indigenous peoples create and know the world in a collective, fluid manner that integrates notions of science, arts and beliefs. IP is constantly challenged from different fronts that nevertheless often fail to communicate. As is shown in this research, indigenous peoples are not the only groups which can find it hard to fit into the structure of creation defined by CTs. Many of the communities that had been unable to avoid misappropriation of their techniques and prestige were mestizo communities, that is the case precisely of Ocumicho, Paracho and Tlalpujahua. And those communities, perhaps even more than the many indigenous communities that had not even thought of looking into IP, were finding that the legal system had little to offer. Nevertheless, this is only one example from several other objections that have been posed against different aspects of IP and which, together, can further challenge the pertinence of the existing IP system.

An aspect which has become increasingly problematic, and is directly related with the social process explored here, is the way IP makes social signifiers private, turning our environment away from alternative legal interpretations. Trademarks, copyrights or author’s rights shape the public sphere making words and symbols private. They frame almost every symbol in our world; almost every symbol in our world belongs to someone, most often to a company (Coombe 1998). We cannot legitimately use such a

symbol even if its meaning is more socially constructed than it is under the control of its “owner”. Or we can, but then we become pirates. And how can we create something if we do not have a right to the symbols in our world? The notion that everything is owned by someone excludes us all from legitimately interpreting our world. The act of creation becomes itself a constant act of illegality.

But perhaps the most ironic justification for the intellectual property system is the one that holds that its value is in the interests of creators. In music, in literature, in photography, in cinema, in the arts in general it is well known that the main beneficiary is hardly the creator. The economic benefits of the creations often fall into and stay in the hands of large corporations which appropriate the benefits (Picciotto 2011, pp. 269–270), despite the fact that they only participate as distributors of the work. This for a property that defies the tragedy of the commons since the value of the objects does not diminish through time or use, and rather increases with dissemination (Macmillan 2007, pp. 2–3, Picciotto 2011, p. 269). There is little to no market value for a book or a song if nobody has ever read it or heard it. And the market value for those songs or books that we pay to have access to means little for the author when compared with that of the record companies or publishing houses. The genius of the author is hardly rewarded in the IP system. The benefits of IP rights going to the corporations are meant to reward their investment in the product, and motivate future investment in innovations. However, this comes at the expense of users and even of creators.

And yet this does not guarantee that misappropriation will not happen. The music industry has countless examples of misappropriation, precisely because not all authors can fulfil the requirements of the IP system. Monika Dommann (2008, pp. 3–4) narrates the way Afghanistan’s monarchy in the 1950’s contracted with the US record company Tempo to give it exclusive recording rights in Afghanistan, not only creating an economic exploitation monopoly, but also positioning itself as the national holder of musical tradition. In this case, it is not merely the theft of a song or a style by an individual or a company, but the actual privatisation and monopolisation of a national tradition. However distant this episode may seem, and it is not very distant, it continues to be relevant as diverse societies continue to present a challenge for most states. Indigenous communities’ impossibility to be the legal authors of their cultural products

continues to create a rather convenient situation for states that have not yet renounced the role of representatives of a nation even if they had to admit to it being diverse.

The case of CTs in Michoacán also shows the dangers of the options of IP protection for collective creations. Although GIs and CTs are much more flexible than more traditional forms of IP rights, the knowledge associated with them is available for anyone to use; while the other exclusion system remains. After all, one does not need to be part of the association to gain access to the rules of use, and there is no disposition against the replication of the procedures there explained. The agents involved in the CT project often assert that this is no big problem as the production techniques were not exactly secret and in some cases, like in Cotija (ch. 2.3), the specificity of the product is indeed linked with the geographical space. However, if techniques were not secret they were also not easily accessible, and the communities have hardly made a conscious decision on the matter since the implications of the rules of use are hardly understood. And while tradition and resources of a space are relevant elements which have shaped the artisanal sector in Michoacán (ch. 1.1), this does not mean that products, with perhaps less deep meaning but similar characteristics, can be produced by persons who do not belong to the communities. This means that while it is feasible to limit the access to western knowledge, subaltern groups that choose to use GIs and CTs can only protect their name and the use of some of their symbols. Their knowledge is still as unrestricted as it was without the legal tool, even a little bit more since it is documented within the application process. By doing so, IP law also confirms an epistemic hierarchy that refuses to recognize indigenous knowledge as such. Yet Coombe recognizes the irony that the “most successful” (Coombe 1996:111) way to challenge stereotypes is still the appropriation through trademarks made by the subaltern groups.

There is of course the point that maybe not all those communities actually would desire to establish monopolies over their knowledge, and even the bigger question of whether knowledge should be monopolized at all (Tobin 2009, p. 144). Both these matters are not minor or to be taken lightly because, in a way, the discussion over the forms of IP that the subaltern may use can often obscure discussions that should not be taken for granted as they continuously produce exclusion and widely unfair benefits for some actors over others. Still, the collective concerns which brought on the birth of the policy would actually plead against the statement that the problems with IP are only a

problem of or for ethnic minorities. Within the context of the CT case studied here, the shift towards the notion of community and its importance as the origin of the products can further the argument over IP's pertinence in contemporary world.

Rather than collective forms such as the CT being an expression of indigenous exception, which means that their difference is once more put on the table, their comprehension seems to me much closer to how we all actually think, understand and create the world. Lewinsky states that “for indigenous peoples, the living heritage is important for the entire life, the identity and self-determination to a much higher degree than for Western civilizations” (Lewinski 2004, p. 1). But I believe this needs to be challenged as well. Whether we realize it or not, as long as we live in society the living heritage will determinate the life, identity and self-determination of every person in the world. Thinking otherwise may only be a reaffirmation of the pretension of a western civilisation detached from the religious, the sentimental and the mythical. The colonialism of our minds shapes what we understand as knowledge and science, and how we think about art and creation. But it is also part of how we live the relation with our body through our concerns with health and even thought in community; the fact that we think in communities is the first to be obscured.

The points raised by indigenous cultural expressions are not inherent to indigenous people and foreign for the rest. In fact, the discussions over the inappropriate structure of IP in relation with the nature of intellectual and creative work marked the birth of IP (Picciotto 2011, p. 207). It has also been a concern in the international arena in different moments. The discussions over the universality of copyright law were brought forward by African and Asian nations after World War II and repeatedly after that in UNESCO conferences (Dommann 2008, pp. 9–10). After UNESCO's adoption of the Recommendation on the Safeguarding of Traditional Culture and Folklore, in 1989, WIPO has taken on the challenge to integrate traditional knowledge and folklore (to use WIPO's terms) into the IP rights system, discussing traditional cultural expressions not only in relation to their cultural value for humanity, but also their role in economic development (Dommann 2008, pp. 13–16). History shows that dominant interpretations of art and culture expressed in IP is far from absolute and uncontested. The intellectual property rights system has more to do with a legalization of a colonizing rationale instead of a “natural”, “exclusive” and “unique” way of

understanding the world. And we are not genius authors who create something individual and innovative, but members of intellectual communities and part of them, and we learn and we walk with them.

Other options to improve the IP system or create alternatives have been tried or suggested. Some appeal for a sui-generis system to be incorporated into IP to tend to the needs of indigenous communities and their cultural expressions (Oehlerich de Zurita 1999, p. 45). This, however, would continue to be limited by ethnicity boundaries and, therefore, by the belief that their modes of creation are exceptional. There are initiatives like that of Creative Commons that provide options to navigate in the world of illegalization of culture through the legalization of culture. These kind of projects do acknowledge the rights of the creators, but become a tool for those very creators to opt for a more collective form of artistic and intellectual production and decide how to define it. As Fiona Macmillan explains:

Intellectual property rights are not eschewed, but a blanket licence is given by rights holders for the use of all or some of the exclusive rights attaching to the relevant intellectual property. The end result is a creative community that is bounded by intellectual property rights, but within which there is considerable freedom to pursue productive synergistic interactions (2007, p. 8).

These initiatives have even been popular as a means for protecting indigenous cultural expressions (Tobin 2009, p. 144). But perhaps the model of individual creation based in innovation, which indeed remains standing, does need further questioning. While the options available still give questionable benefits, it is not fruitless to wonder if what we lack is the possibility to imagine a world without IP and solutions that challenge more radically the possibilities that it presents.

The IP system is not inexorably locked into a logic of epistemic domination, but a space for interaction. It is not beyond the scrutiny of the agents that find it faulty from different geographical frontiers and kinds of creation. In this sense, local processes are fundamental to understand the malleability of the law. It is, after all, because there have been objections worldwide to the exclusion of some practices and the disregard of social needs, that collective options have been devised to create places of inclusion and exceptions have been made in the face of great need. However, the critique of IP law,

while it is defined by ethnicity, remains contained. Bourdieu (2008b, p. 196) stated that it was allowable for the ethnological discourse to say certain things about far away populations, while it was not allowable to say the same things about our own societies, in his case, about European societies. The exceptions are allowed, but a questioning founded in the parts of society that have defined normality does in fact become a greater challenge to established structures. It is important then to overcome the discourse of exception and articulate experiences in a more general critique. This does not imply renouncing the understanding resulting from studying ethnic defined cases. However, it shows the need to also understand how they can connect with others and even evidence the need to question certain social understandings that are present in wider sectors of the society.

5.5 Counter Hegemonic possibilities

Looking at the objections posed from different fronts to the IP system draws one to question the system itself; however, it is important to look at the possibilities that can be obtained through it and beyond it. The challenge to IP needs to be seen beyond ethnicity and each individual case, to identify common trends among different experiences. This does not necessarily entail to completely give up on the activation of IP protection; or perhaps in the design and use of other means to avoid misappropriation. The assertion of IP rights over indigenous cultural expressions achieves both a positive and a defensive protection. This means that indigenous groups can assert rights to the protected material, as well as prevent others from gaining adverse rights over it (Kongolo 2008, p. 36). Evidently, for those who consider IP assets as valuable, it is also the collective options that can provide an alternative way for indigenous cultural expressions to assert the authenticity of their products (Lucas-Schloetter 2004, p. 364). The possibilities go further, as they are seen by authors like Coombe as an opportunity “to construct identities and communities, to challenge social exclusions, and to assert difference” (1996, p. 106).

Indeed, as I mentioned in the third chapter (ch 3.1) there are contexts in which trademarks have been used by indigenous peoples to recover control over how they are portrayed in the public sphere. In colonisation processes, the dominant class took over the right of naming the *other* that the indigenous represented and choosing the images to represent it with. Not so long ago this was also done through trade marking in countries like the USA, as the works of Brown (2003b) and Coombe (1996) explore when dealing with the branding of indigenous identity.

The discourse of commerce projected images of barbarism, conquest, and servitude to construct the subject positions of mass consumer and American citizen. Images, descriptions, and indicia that made reference to African-Americans, Indian Peoples, Hispanic and mestizo subjects, as well as perceived “tribal” groups colonized by American imperial expansion (e.g. Filipinos, Hawaiians, “Eskimos”) were mass reproduced and projected on a national scale through the medium of trademarks (hula dancers, pineapples, igloos, fur parka bonnets, etc.). Through magazine and streetcar advertising, trade cards, billboards, packaging and premium concepts of savagery and civilization, primitivism and progress were legitimated (Coombe 1996, pp. 108–109).

The cases studied by Coombe and Brown represent examples of the construction of an “American” consumer in the late nineteenth century, at the expense of the use of symbols of minority ethnicities, a process that was contested by the minorities themselves a century later. The process that follows is one in which authenticity is put on the table and ownership is established over it. The Snuneymuxw First Nation, for example, effectively managed the protection of the petroglyph images through the use of trademark law in C  nada, stopping their use by local shops and even a museum (Brown 2003b, pp. 83–84).

In postcolonial nations, symbols move between the local cultures, national identities and the discourses of the market, but through the use of trademarks the discourses of the market acquire legal control over those symbols. The owners of a trademark that they do not embody came eventually to deal with those identity symbols they use and the legitimacy of their practices came into question, but for the “others” the process became one that defined them. In the public sphere and in the context explored by Coombe, trademarks represent and emphasize the “different”, the “other”, and by doing so they assert the normality of those who are able to “transcend the given realities

of their bodies and their status” (Warner in Coombe 1996, p. 239). The possibility to sell without selling oneself becomes a prerogative exclusive to the “normals” whose bodies do not make them “special”; while the special is identified as those who cannot separate from their body to make claims: women, indigenous, disabled. Yet the image of some of those “others” that are so very dependent on their body, is owned by the “normals” through intellectual property, and so the question of ownership is also a question of identity politics.

Trademarks owned by indigenous peoples change the dynamic by returning the ownership of words and symbols to the communities from which they come from. In this context, the possibilities of trademarks in general can provide both a generative condition and a prohibitive boundary (Coombe 1996). They provide a generative condition because, since they are meant to spread, they inscribe social difference and produce identifiers for specific origins. The prohibitive boundary is created as they provide a control over “authorizing true copies”. They are the control of mimesis in capitalist societies in the hands of their true owners. However, these processes are usually marked by a mobilization from the communities themselves, which makes the conditions of the decision-making process and the way indigenous peoples were portrayed in the public sphere quite different from the Mexican case addressed here. The CT project in Michoacán is marked by the control of state agents in the design and projection of the content that CTs were meant to portray. This puts a question mark on their possibility to achieve the same return observed by Coombe and Brown in the USA.

CTs in Michoacán belong to a different context, and therefore attempt to shape the public sphere in a different way. In this sense, the case explored here does not attempt to return signifiers to indigenous communities. GIs and CTs become a way to deal with the problem of misappropriation and pretend to give peoples the right to control how these products, so closely related with a specific territory, are dealt with. GIs and CTs are sustained as a way to ensure that if someone is going to own the name, and some exclusivity rights are going to be given, they go to the peoples whose lifestyle the products and images are supposed to represent (Rangnekar 2009). This would also give them the right over the narrative through which they are represented. From there, the exclusivity rights produced are seen as a way to ensure the development of the cultural forms that belong to a specific territories, since they also give added value to the

production coming from the geographical space (Linck *et al.* 2006, Rangnekar 2009). Not only are GIs and CTs also representative of specific commercialization strategies, but they actually aim at a commercial appreciation of the products they represent, that targets an increased market value (ch.2.3). However, the CTs only guarantee that the product comes from a member of the association that registered it. A wider set of meanings is attributed to certification marks, which cover the geographical origin and the quality of the product (Lucas-Schloetter 2004, p. 308). Due to their inspiration drawn from the possibilities of GIs, CTs in México were designed by Michoacán's agents in a way that was meant to enable them to function practically as certification marks. However, it becomes important to look closely at how the tools are applied, in order to understand the way they are working for the products that have characteristics projected as "special" in relation to their place of origin, and the peoples whose lifestyles are closely linked to their production. Especially since implementation could have other less desirable effects.

CTs, even in their extended meaning, do not establish monopoly over knowledge, but they also are not only about monopoly of names and symbols, they are instrumental to other processes through which local actors and policy makers see possibilities of survival for communities and their cultures. Through CTs in Michoacán, communities could get financing and state support in the form of material supplies. CTs were also a way in which the notions of the added value of local consumption can be popularized within Michoacán's and Mexico's market. They could also represent a tool through which organization of the artisans guilds can be promoted. All of this, in short, supports the notion that "the expansion of this area of IP in developing countries cannot be appropriately dismissed merely as another instance of IP expansionism; instead, its legitimacy needs to be evaluated in terms of the qualities of empowerment, governance, and the sustainability of local livelihood improvements MICO [Marks Indicating Condition of Origin] initiatives enable" (Aylwin and Coombe 2014). And so the real question, that demands much further work in the communities that have chosen to use the tools, is whether they have come to fulfil their needs and expectations. But this has to be answered bearing in mind on what level those expectations are constructed from a place in which indigenous peoples are positioning themselves in control of their narratives.

GIs and CTs also run the danger of becoming a means through which culture is forced into a static perspective that tries to preserve it as a museum exhibit or souvenir. Since the cultural production becomes defined in the application procedure, its elements become static and standardized (Rangnekar 2009), which leaves little to no room for reinterpretation of the elements. In terms of indigenous peoples this becomes a reminder of the times in which any change to their practices became interpreted as the death of their culture. While western culture is allowed to evolve and modify itself, indigenous communities have had to face the fundamentalist way in which their culture is seen in as authentic only as it is “exotic” and provides a reference to antiquity. These notions permeate the discourses of the agents of Michoacán who, under a pluralist discourse, maintain different criteria for the role of mestizo and indigenous cultures (ch. 2.6). Understanding that culture evolves and that indigenous peoples also perform a reinterpretation of the influences of the world, their culture should not be treated as a museum artefact, but as a living changing expression of identity, which challenges the static conception of IP norms.

And yet, while the production process is being frozen in time, other changes do become necessary for the communities to make use of the IP protection. It is still necessary for collectivities to be structured in a way that normativity can understand them, which has important effects in the internal hierarchical structures of the community. Furthermore, the use of GIs and CTs puts forward a commodification agenda that could interact badly with the lifestyle it is meant to protect because of the impact it can have on production processes. This way of entering the market might require a compliance with standards that are not natural in the place where implemented. One of those forms of compliance might refer to the construction of identity itself. To market an indigenous product, the imaginary of the buyer regarding what indigenous means will also have an impact on the production, regardless of how it relates or not to the actual indigenous people. There seems indeed to be a collision between the global market and communications systems’ interests and indigenous traditions and expectations (Graber and Burri-Nenova 2008, p. xi, Teubner and Fischer-Lescano 2008, p. 22). The process is all the more complex as it compromises the narratives over indigenous peoples in Michoacán, keeping them in the hands of state institutions. While the market is an undeniable factor that delimits creativity and all

artistic production, the added control of the state over indigenous narratives leaves little space for the participation of those who live, create and maintain their culture.

Effectively, the chance for indigenous communities to take part in defining their image in the market is overshadowed by the control kept by the state over the narratives. The design and implementation of the CT project in Michoacán shows that there is a control over cultural policy kept by state institutions that are eminently mestizo in the identity of their agents. This asserts the dependant condition in which this puts the artisans who strongly depend on the economic support given by those very institutions; as can be seen from the centrality gathered by organisations and leaders that handle state support in the communities (ch. 3.3, 4.1, 4.2). For example, in the case of Ocumicho it is evident that the policies implemented by the CASART are more likely to increase the relevant position of the institution in the community than to increase the control in the hands of the artisans (Ibarra 2011). The lack of incorporation of CTs indicates that indeed the future of cultural policies is dependent on their support by public institutions. After all, the lack of integration depended on the communities only as they did not see what benefits could be obtained. It seems more a case of abandonment for lack of information, than a result of a reflexive process in which the communities decided against the use of CTs. Very few agents outside the state have been enabled by the CT policy to make use of political pressure. Most of the work to this end was handled by the state agents and the privileged agents from academic institutions connected with Cotija, and only specific leaders, like Abel Castillo, have taken this option to promote their agenda; and in this case the legitimacy of the representation is highly questionable. Perhaps a policy that had enjoyed a more stable condition within state institutions could better show the agency of artisanship producers to determine the conditions in which they interact with the market and the state, but this is hardly the case for the CT policy.

However, while there has been discussion and regulatory dispositions about the need for indigenous peoples to have rights over their cultural production, the forms in which this can be achieved may vary from IP protection. There are initiatives to use databases as tools to map indigenous cultural expressions, particularly those identified in connection with scientific knowledge (Kongolo 2008, p. 38, Tobin 2009, pp. 142–143). However, this has faced several critiques. Indigenous peoples “see the problem of bad patents as being due to faults in the patent system rather than due to a lack of

available information” (Tobin 2009, p. 143). Databases, furthermore, do not deal with the processes that generate that knowledge (Teubner and Fischer-Lescano 2008, p. 21,41), making culture into the static finished object expressed in the artefact notion of culture, as described by Baker (2004, p. 250) and explored in the second chapter (ch. 2.5). Another solution has been the implementation of mandatory disclosure of origin to avoid misappropriation (Tobin 2009, p.140), which would allow for the communities not to lose their connection with their knowledge and creations. Another option implemented to protect the rights of indigenous peoples regarding their cultural production, involves the requirement of prior informed consent to access the use of indigenous cultural production. This tends to be accompanied by mutually agreed terms that include matters of benefit sharing (Tobin 2009, p. 130), which takes the benefits further by also accounting for the economic.

There are, however, suggestions that address more deeply the need of communities to control their cultural expressions, like the option to turn to indigenous law (Graber and Burri-Nenova 2008, p. xi, Tobin 2009, pp. 128, 144–146). A first try at placing the control in the hands of indigenous communities rather than in the decisions of state law and institutions can be the development of protocols to be able to do research (Tobin 2009, p. 151). But in a context in which indigenous law is recognised as part of the legitimate legal landscape, its role should be taken seriously as a means to protect cultural expressions. This would entail that instead of trying to adapt IP law to problems of technique in its instrumentalisation, it would have to deal directly with the worldviews that come into play and permeate the content and manner of creation.

Against the possibilities of using customary law to protect indigenous traditional expressions there is the fact that its recognition is limited to indigenous communities, and that its diversity complicates the creation of an international regime (Tobin 2009, p. 145). Both elements put a question mark on the enforcement possibilities (Stoll and Hahn 2004, p. 19). While the first objection is indeed an aspect that needs further reflexion, the second seems to address the matter of any attempt at an international legal regime. The very history of the evolution of IP in the international arena is proof of the complications of generating international standards and the overtly contested measures that still have not managed to accommodate the uneven interests of states, marked by a variety of local economic configurations. The regulation of IP is characterised for being

extremely fragmented and diverse, as it is relevantly discussed in several international agencies (Teubner and Fischer-Lescano 2008, p. 20). The international dimension indeed adds to the complication, aside from regional treaties and national or even local normative arrangements. Therefore new developments still fail to achieve greater inclusion within the IP system in general.

The proposal to turn to indigenous law integrates the matter into a wider agenda of indigenous self-determination. The solution expresses that the matter of regulation is not just a matter of “cultural clashes”, as if cultures were the totalities (Teubner and Fischer-Lescano 2008, p. 23) – again close to the artefact conception of culture (Baker 2004, p. 250). It is a matter of power inequalities and deeply rooted colonial epistemic categories that define the audibility of a voice in the public sphere and its role – or lack of – in the decision making processes. Taking the protection into the realm of indigenous law effectively makes the matter about protecting not only the actual production, but the conditions in which it is produced (Lucas-Schloetter 2004, Teubner and Fischer-Lescano 2008). Maintaining the conditions of production is fundamental for the protection and development of traditional cultural expressions; something that is hardly achieved by IP alone (Aylwin and Coombe 2014, pp. 19–20).

However, once again, the limitation to ethnicity could be an obstacle for the protection of other kinds of collective productions, like some of those included in this study. It is possible to see the limits that the objections to IP can have when they are so intrinsically linked with ethnicity. As happens with the right to consultation, it becomes a special benefit of indigenous peoples. This is appropriate for indigenous peoples to have, but the question remains whether it is only indigenous peoples who should be consulted in matters as relevant to the local communities as the development plans, to mention a field in which this has been extremely relevant recently. Taking the proposals beyond the ethnic ascription can effectively bring out general problems that other persons in the creative sector can identify with.

CONCLUSIONS

The state of Michoacán has around 50 registered Collective Trademarks (CTs) for a wide variety of artisanal products. The map of the CTs in Michoacán is representative of the local cultural diversity, as well as of historical processes that have shaped the cultural and economic landscape of the state. However, the number of CTs in Michoacán does not come from a process of measured integration of intellectual property (IP) into the dynamics of the artisanal sector. It is also not a mere coincidence, but the calculated consequence of the design and implementation of a public cultural and economic policy that has shaped and transformed the IP paradigm in México, and the modes of its collective forms.

This research has explored in detail the design and implementation of the CT policy in Michoacán, through which IP protection has come to put a picture and a name to the artisanal landscape, while being itself shaped in new hybrid ways. CTs have turned the history of Michoacán, expressed in the vast and diverse artisanal traditions, into commodifiable symbols and names through the use of collective forms of IP protection. Nevertheless, CTs have also been constructed as a legal hybrid that takes references and inspirations from Geographical Indications (GIs) and turns them into a more flexible and approachable structure for artisanal producers. Relevantly, CTs have managed to project a geographical reference to the territory in which a product is produced that goes well beyond the elements attributed by legislation. And, at the same time, CTs have designed particular interpretations of the mechanisms of control that regulate the GIs production, which are more independent from the state while they continue to seek the recognition of the value of artisanal production by the state.

Indeed, the possibilities and limitations of CTs have depended little on legislation, being shaped by processes of political negotiation among different agents at a federal and a national level. The international field has not been absent in this conflictive

process, giving a framework of legal reference in the content of IP law; a source of inspiration in the experiences of GIs; and an object of desirability as the most relevant commercialisation arena in the minds of several administration agents both in the local and in the federal level, although in different ways. However, it has been the local structure of the artisanal production which has provided the requisites to be fulfilled. Even as they were homologated to the experiences in other countries in the minds of the designers of the CT project, and although indeed relevant connections can be made, the conditions of the Michoacán's artisanal production are grounded in local historical processes that make sense of the CTs as have been developed in Michoacán. And it has been the political interests of the local agents involved in the negotiation, and the very negotiation with the IMPI at the federal level, what has more significantly defined the way in which the CTs in Michoacán were formulated and applied. CTs in Michoacán can only be understood in the context of the views and interests of Michoacán's public administrators.

Among the conclusions that can be drawn from this process, perhaps the most evident for a socio-legal scholar, is a confirmation, and even an extension, of the flexibility of law well beyond what is contained in the letter of the law. A positivist or formalist approach, which nevertheless continues to be dominant in legal education and institutions, would state that the law is restricted to its written form with the limited possibilities of interpretation of the judiciary. As any socio-legal researcher knows, this says very little about law. From socio-legal perspectives even the law as written is already indeterminate (Tushnet 2001, p. 120). Rather than being as specific and clear as traditional or positivist legal doctrine often claims, the language of law generally tends to be open to interpretation; which leaves room for the manoeuvres of the legal agents.

However, this research has shown different aspects of law's instrumental possibilities and its flexibility even beyond the limitations expressed in the letter of the law. The Mexican legislation is quite clear in its prohibition to use geographical references as trademarks and yet this was achieved by the first CT in Michoacán and replicated several times. Law, as most socio-legal research suggests, is not contained nor limited by the legal text. The adaptability of a legal provision to a reality is far greater than any written text can achieve; greater in fact, than the legislative processes can control.

The same flexibility can be ascribed to the instrumental and symbolic role of the law, although perhaps it is the symbolic role which becomes more relevant for the producers who have managed to achieve CTs. The CTs in Michoacán reshape the instrumental possibilities, while exploiting its symbolic power beyond what is expressly allowed. The claims of Michoacán's agents to indicate the existence of Region of Origin Trademarks, are not based in the legal text, but can claim legitimacy in the actual meaning of CTs as they persist in the public discourse. It is not just about the efforts of the agents involved in the design of the CT policy in their own discourses, since most discourses existing about CTs, by users and in media, also consider them in a role closer to that of GIs. Perhaps the reference to CTs as geographical referents could be identified as a confusion if one was to settle to the understanding of law that sees only state legislation. But the understanding of trademarks as public sphere signifiers and the understanding of law as social process gives legitimacy to the claim that CTs in Michoacán are in fact a legal hybrid. The instrumental possibilities in terms of protection are rather limited, as is proven by the efforts to oblige the Mexican Institute of Industrial Property (IMPI) to protect CTs in the same way that they would protect GIs (Quadratín 2013). Given the economic limitations of artisanal producers it is possible that this activation of the law would be hard to manage even if there was a formal possibility to do so. But the possibilities achieved by CTs through media mobilisation show how the exploitation of the symbolic role of law does not entirely depend on the actual possibilities of the producers to activate the judiciary, or even administrative mechanisms to seek implementation.

The achievements of the CTs project in Michoacán, by effectively challenging the formal legal provisions, show the possibilities of a legal system, even when it is so widely recognised for catering to interests that are not those of subaltern groups. The creative use of CTs that has expanded the flexibility of IP is proof of the possibility to overcome the limitation of the economic and epistemic models that permeate IP rights. Once again, this process is not limited to the actual changes in legislation, which remain hard to achieve for subaltern groups as they are mainly dealt with in the international sphere. It is the political will and the instrumentalisation by different kinds of agents that has truly defined the meaning of IP rights. The CTs case shows a role of GIs in an economic agenda which caters to the transnational market, stripping GIs of the benefits

they have offered for subaltern groups in other places (e.g. Rangnekar 2009). But it also shows how the expectations of such benefits can shape other kinds of IP protection like CTs. And indeed, it was precisely the expectation generated by GIs which shaped several of the hybrid elements of CTs.

This places the possibilities of the law well beyond the legal text, but one should not fall into the comfortable thinking that those possibilities are within anyone's reach. Indeed, the political economy approach of this research showed the way that economic agendas delineate state actions, but it also showed that these agendas are those of agents with exploitable capitals in the political field. There is not a single community in Michoacán that has registered a CT without being connected with the agents from Michoacán that led the negotiations with the IMPI. Be it the agents from the Cotija team or those who worked at the Secretariat of Economic Development (SEDECO) or the Artisanship House (CASART), all CTs are connected with the original CT project in some way. Communities do not seem to access CTs alone, and the resources that Cotija had, and even those of Tlalpujahuá and Paracho, were missing in other communities to effectively turn CTs into the political tools that they could have been.

The ways and direction in which law can be moved by the different agents depends on power dynamics played out in the political field. The achievements of the CT project in Michoacán were the results of struggles which involved different agents at different levels of government. This does not mean that law is entirely determined by those who are in the government. Agents like the very producers of Cotija or the scholars involved with the Cotija project, can have and, indeed, have had a relevant impact in IP law in México. The Council of Collective Trademarks of Michoacán (CCTM) has also managed to use the platform of CTs and the organization of artisans to have an input, not only in regulation but also in other aspects of the political life of Michoacán and the public institutions; as well as other artisans' organizations. But the mobilisation and instrumentalisation of law to exploit its flexibility, by state and non-state agents equally, often requires investments and efforts in non-legal means. The media, for example, were a relevant means to construct the social and political expectations that gave meaning to the CTs in Michoacán. The development of the CT policy shows clearly that cultural policy cannot be understood separately from the economic agenda of a country, but it also shows that law cannot be separated from the

political processes that give it meaning. Approaches that focus only on the economic determinacy or in the cultural narrative that informs policies can provide with accounts that unveil some of the influences of cultural policies. But policies are born in the political struggle and it is that struggle which truly shows the way the legal is shaped in social processes.

As the results of this research suggest, the relation between the political and the legal fields runs deep. According to Bourdieu (2008a, p. 114) all the agents involved in the struggle have in common their interest in an agreement over the importance of the position of the field itself. The internal struggle only reaffirms the field and its hegemony. In this case, it is evident that the local oligarchy has several background elements in common, like the fact that most of the agents in high positions have studied law in the local public university, the Universidad Michoacana de San Nicolás de Hidalgo (UMSNH). Although perhaps a note should be made of the fact that a technocratic background is only dominant in the CASART, devoted to artisanship, where recent leaders have not come from the UMSNH or even from a long-standing career in public administration; even over the SEDECO, devoted to the economy. This fact is bound to be interesting at the very least, since a state agency devoted to the economy could be expected to be integrated by agents with a technocratic background; much more in fact than a state agency that deals with artisanship. But it is also notable that the lawyers involved in the process do not attempt to uphold the value of the law in a purely abstract sense. Their main concern is to retain the political investment they have in the practical manipulation they achieved of the letter of the law. Even the attempts to change the law are dependent on this aim, as are the structures they develop to continue with the project once they leave the public administration.

Their political interest is also higher in their concerns than their interest in the position of the government and its institutions as necessary for the lives of the citizens. It is not that they believe the institutions to be unnecessary or problematic, especially not during the periods when they work in the public administration. But they do speak of the insecurity that comes from keeping a project dependent on the political will of whoever occupies the public administration. One could say this comes from experience, given the very trajectory of the CT policy, but it also comes from the way in which the projects are conceived. The agents embody the project in the same way that the projects

are signed and marked by the agents' identity, which unavoidably makes them a heritage that the next administration will not want to keep. Just as they do not act like lawyers defending the letter of the law above all, they are not bureaucrats who integrate into a system in which they disappear in favour of the institution. The agents from the public administration involved in this project act mostly politicians who attempt to embody all the successes of their administration. It is they, as politicians, who are necessary.

The possibilities of law, while still not entirely accessible, clearly depend on the manoeuvres in the political field. Law is not static; law can be changed both in practice and in its text. The question is not whether this is possible, but how it can be achieved. By highlighting the political processes that underline the configuration of CTs it becomes clear that there is unavoidably a power dynamic to be seen, but there is also the understanding that power dynamics do not circumscribe to a lineal top-down process of domination. It is of no use to think that law is innocuous, or to believe it truly is aside from power dynamics. Its semi-independent nature as a field, does not put it beyond the political processes and so the political processes should be addressed. This, however, should not be understood as an affirmation that only those on top can participate in defining law; not even that this can only be done by lawyers as the legitimate agents in the legal field. It should, instead, be a cautionary statement against mobilising law without explicitly considering its political context. In a way this gives ground to analyse the very possibilities of the legal field. It calls upon lawyers to understand the influence that non-legal tools have on law, such as demonstrations, media and expert knowledge. And it shows that non-lawyers, those with a profane vision in Bourdieu's (2001, pp. 186–187) words, can actually find ways to determine law drawing from the struggles in the political field⁴⁹.

The political processes that underline the CT also show that the state is not circumscribed to a fixed agenda, or a homogeneous structure of governance beyond the reach of non-state agents. The process of legibility through which the state makes sense of reality (Scott 1998) is defined by certain elements that have historical grounds, like the projects of a national identity. However, other elements shift significantly, which

⁴⁹ The undermined position of the profane in Bourdieu's theory has been identified as a shortcoming that needs to be overcome to see how certain social processes shape the law (Gómez 2009, pp. 116–117).

makes for a contingency in the aims and expectations projected through state agencies. The contingency is defined by the political needs and interests of the agents and it is perhaps here where the mobilisation of law should focus. It is clear that to shape the law according to the needs of subaltern groups there is a need for these groups to gather strength, and often to make alliances. It is not a unique circumstance to México that different groups dispute in the political field, but rather a general condition of every field (Bourdieu 2008a, p. 119), and it is in those conflicts that different interests can be balanced and acquire relevance in the political agenda.

The interest of Michoacán's agents to build upon possibilities for the continuation of the CT project despite the likely end of support by the state is a proof of the flux in power structures connected with the state. The political interests that shaped the state's actions then become contingent as the agents shift and yet the contingency is also not uniform. While the local government shows rather dynamic shifts, the federal government would seem to retain more stability in its structures. The agenda of the federal government is not fixed, as the historical accounts of the first chapter of this study recounts, but the stability of the technocratic agenda portrayed by the IMPI does suggest less transition even despite the political party changes in México's government. The creation of the CCTM was meant as a way for the CT project to survive the administration changes that had already threatened the project. It was, however, not merely for the sake of the project itself, but for the sake of the political capital that the agents had invested in the project and which they attempted to protect after losing their position in the local government. Their embodiment of the power of the state was temporal and understood as such. While this shows the perversity of actions that are more about power than about the missions and responsibilities of the public administrator, it also provides some room to manoeuvre with the possible political alliances that can bring certain matters to the forefront of the political agenda. While power is contested it cannot be absolute.

While this study has provided relevant insights into the government structures, it has also shown places from which IP law is locally shaped. While being a place of active formulation of objections to IP law, it is clear in the CT case that the concerns drawn by the objections posed by indigenous cultural expressions are in fact not limited by ethnicity. The question of ethnicity has been a transversal concern over the study and

has proven to be overcome in several ways. As I have shown, the notions of territory as a construct defined by the social practices that makes products into thick cultural density products is not limited to the ways in which indigenous communities relate with their environment. In the same way, collective creation is not something that belongs only to indigenous peoples' social interactions. Despite the fact that most CTs do belong to indigenous communities, the identity of CTs was based mainly in the needs and expectations of non-indigenous communities. While other elements have made it harder for indigenous communities to take advantage of the CT policy, it is not related to the production model and epistemic understanding embedded in CTs. Rather, it has been the lack of compliance with other aspects of legality, mostly related with the fact that artisanship remain mostly an informal economic sector, which has defined the lack of use of CTs. Indigeneity becomes then an inspiration that more clearly highlights the problems of the legal system and the government practices, but it should not be a limitation for the possibilities of transformation.

Seen from this perspective, the need to integrate cultural rights into a wider agenda of self-determination becomes increasingly significant. It is the matter of self-determination which truly puts the question mark on matters of participation and decision-making that directly address the power dynamics which have historically turned entire peoples into subaltern groups. Indigenous peoples have long been the objects of cultural policies that, despite the change in paradigms that have brought the values of pluralism into discussion, are yet to make a difference in the relation between state and indigenous peoples. The change is not one that can be managed by discourses that acknowledge the value of indigenous cultures and practices alone, however valuable or politically convenient they may be. Effective possibilities of emancipation can only come by setting the practices of cultural rights in wider settings of self-determination. The right to self-determination, central for indigenous peoples' struggles, remains the most uncomfortable aspect of indigenous rights precisely because it is meant to be a way to have an impact on the conditions of political participation.

However, as this study suggests, the same issues can be seen beyond the frontiers of ethnicity. This brings to the forefront the questions over citizen participation in public policies and the understandings and possibilities of contemporary democracies. The venues for participation in the political field, though not entirely monopolized,

remain significantly dominated by agents who continue to belong to limited cultural groups and social classes. Experiences like the CT project here analysed show that law can and in fact is instrumentalised beyond the letter of the law and institutional will, to some extent. Nevertheless, this flexibility of the law that the CT project shows, remains constricted to the possibilities of agents to gather political and/or legal capital, and it does not have a more substantial impact on government structures. In other words, the possibilities of participation emerge from each struggle, and do not change institutions and practices in a way that allows for subaltern groups to have further impact. Hence, while the case opens up possibilities, it does not revert the hegemonical configuration of the state. This should not be taken as a confirmation that the state cannot be changed; but rather as a suggestion that a true change in the relation between the state and indigenous peoples, and other subaltern groups, needs to include effective venues for citizen participation.

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