

Material Culture, Indigeneity, and Temporality

The Textile as Legal Subject

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ABSTRACT

Anthropological and ethnographic scholarship examining textiles in Mesoamerica has traditionally focused on gender, cultural continuity, space/place, its semiotics, and its reproduction of the universe. Literary studies approaches interpret this corpus as another form of literacy, discourse, and ontologies. Recently in Indigenous movements, weaving and textiles have acquired a more politicized edge. In 2019, the question of textiles inspired a flurry of discussions around intellectual property, and, especially, copyrights. This article examines the epistemological divides between authorship and weaving, commons and community, temporality and ancestors and how decolonizing the tenets of intellectual property law may help protect indigenous weavings.

Un señor me dijo que la tierra se formó con un tejido que ya había sobre el agua. Pero estaba muy chiquito este tejido y para hacerlo más grande le empezaron a tejer más de las orillas y así se hizo la tierra. (A man told me that the earth was formed with a textile that was already in the water. But the textile was too small and to make it larger, they began to weave the edges and that is how the earth came to be formed.)¹

In many languages [. . .] the verb to weave defines not just the making of textiles, but any creative act. Likewise, the noun *text* comes from the Latin verb *texere*, also meaning ‘to construct or to weave’. In Greek this verb, *tekhne*, refers to art, craft, and skill. Therefore, a weaver not only fashions textiles but can, with the same verb, contrive texts.²

1. Quoted in AGUILERA 2014, 107.

2. KRUEGER 2001, 29.

BIANNUALLY, THE FASHION INDUSTRY AROUND THE WORLD frenetically prepares for the showcasing of its upcoming collections: from the exceptionally designed, handcrafted, and prohibitively expensive dresses to the simplest and the most mundane manufactured accessories. In its June issue, the popular fashion magazine *Vogue* highlighted on its glossy pages “Resort 2000”, a line of clothing by Carolina Herrera conceived to attract “the active Parisian woman”. The designer leading the iconic fashion house in New York sourced some of its fabric motifs from indigenous Mexican weaving patterns. This fashion *faux pas* represented the culmination of a series of alleged plagiarism incidents involving designers such as Luis Vuitton and the French designer Isabel Marant.³ According to the press, in response to Herrera’s “Resort 2000”, the Secretary of Culture in Mexico, Alejandra Frausto, sent a letter to the fashion house’s creative director Gordon Wes and to Carolina Herrera inquiring about the legality of this blatant appropriation in 2019. The missive demanded a public explanation for their use of “patterns that are part of the cosmovision of peoples of specific regions in Mexico”, asking PUIG, the Spanish corporation that owns the brand to “clarify whether the communities that carry these garments will benefit from the sales proceeds of this collection”.⁴ In a public statement, Wes, the creative director, stated that indeed after travel to Mexico, he drew inspiration from the “wonderful and diverse craft and textile work of Mexican artisans”.⁵ Senate president Susana Harp swiftly moved to draft

3. Marant’s Etoile collection 2015 is an interesting case because both the Mixe community of Tlahuitoltepec and the French house Antik Batik accused Marant of plagiarism. Antik Batik went further, alleging they had copyrights over the design. The Parisian courts cleared Marant and mandated that Antik Batik pay Marant’s legal fees. Ironically, the courts upheld the claim that the designs came from the Mixe village and that Antik Batik did not have property rights over the designs. Marant’s lawyer claimed the blouses were inspired by Mixe designs, hence, not plagiarism. The role of indigenous weavers in this case was simply about acknowledging their community; they did not request any compensation: see <https://fashionunited.uk/news/business/isabel-marant-freed-of-plagiarism-accusations/2015120818656>.
4. For more on the letter and its contents, see https://i-d.vice.com/en_us/article/a3yx4/carolina-herrera-accused-of-cultural-appropriation-by-the-mexican-government.
5. Wes’s letter response circulated widely: <https://us.fashionnetwork.com/news/Carolina-herrera-s-creative-director-refutes-accusations-of-cultural-appropriation,1109222.html>. The designers’ response to plagiarism as homage and inspiration seems to be protected under copyright.

a legal bill for the Mexican senate to amend its author law and protect indigenous communities' creative work under copyrights to ensure that it is not plagiarized in commercial ventures without their consent. The bill — and its intent — quickly fell under criticism as senator Harp rashly included in the proposal a recommendation that if a design could not be identified as belonging to a specific community, the National Institute for Indigenous People or the Secretary of Culture (both Mexican state entities) could authorize its use to third parties. Hugo Aguilar Ortiz, who is in charge of the National Institute for Indigenous People, asserted that if this bill were to pass, it would paradoxically violate the rights of the very people it is attempting to protect, since no state institution has the legal or moral authority to sell or broker ancestral indigenous knowledge. Congress voted favorably for the General Law for the Safeguarding of the Elements of Culture and Identity of Indigenous, Afro-Mexican, and Comparable Peoples and Communities in February 2020. However, the law was passed with emendations and the details of how this new legislation would actually work out in practice are still under deliberation due to the constraints of intellectual property law definitions.

In contrast, since 2006, the women of the National Movement of Mayan Weavers in Guatemala have been unsuccessful in their lobbying of Congress for protection of their textiles and designs under national copyright law. The women assert that their works are “the books colonization couldn't destroy” and their designs a continuity of ancestral knowledge that occupation could not erase. In their assertion, the weavers contest the racist premise of Martínez Pelaéz in his *La patria del criollo* (loosely translated as “Whites' Fatherland”) published in the 1970s, in which he argued that Mayan dress was a colonial imposition. In 2016, the organization filed a legal action against the state of Guatemala for its omission in protecting women's textiles before the Constitutional Court. Despite favorable national opinion, the supportive meetings with a few government representatives, and the drafting of law initiative #5247 (*La iniciativa de ley 5247*), their petition has dragged on in court without any clear indication of any potential, favorable legislation by Congress on their behalf. I begin this essay by underlining these critical issues because indigenous material culture not only raises key concerns around epistemology, gender, and modernity — the more recognized subjects of interdisciplinary scholarship — but also elicits questions of cultural (mis)appropriation, intellectual property law (i.e., copyrights), and indigenous rights. In this discussion, I focus on how indigenous textiles and their producers call into question the western concepts of authorship, the legal and philosophical parameters

that define and separate Artisans from Artists, and the boundary lines distinguishing commercial enterprise from purely personal expression. I delineate the complex relationship between innovation and the preservation of tradition, community versus commons or public domain, as well as ancestral and modern temporality. I take as a form of departure Denise Arnold and Silvia Espejo's argument that woven textiles are not only material and spiritual objects, but subjects as well. The essay underscores the most recent demands of various indigenous communities seeking to bestow their textiles with legal rights, or more specifically copyrights, furthering our understandings of the non-human as legal subject.⁶ Taking a telescopic approach around indigenous women's weavings, I will foreground the textile's relationship to gender, poetry, and, ultimately, intellectual property rights. I will conclude by reflecting on the study of indigenous cultural productions from the field of interdisciplinary literary studies and how these may help us decolonize intellectual property protocols.

The Textile as Object/Subject

Theoretical approaches to textiles and their designs are interdisciplinary and trans-historical. Anthropologist Sabina Aguilera (2014) interprets textile patterns as symbolic line impressions, denoting personal and social expressions passed down as ancestral knowledge. In her analysis, these stand in for a sophisticated communication system that is closely knit within the spoken language, the ancestors, the universe, and cultural continuity. Works by experts De Ávila (1998) and Schaefer (2002) see pictograms as highly metaphorical. Other connoisseurs in the field like Margot Blum Schevill, Janet Catherine Berlo, and Edward B. Dwyer (1996) analyze these designs as projections of a conceptual reality that illustrates the spiritual and the physical world.⁷ Elizabeth M. Brumfiel (2007) argues that in their function, textile signs denote status and rank, ethnicity and gender within communities. While June Nash (1997) interpreted textiles as symbols of humility and subordination for women, other scholars like Thelma Sullivan (1982), focus on textile production as standing in for coitus, fetus, life, death, and rebirth. In a study by Elvira Espejo and Denise Arnold

6. Granting "sentient being" status with legal rights to non-humans is important to many indigenous communities, including those in Bolivia, Ecuador, and Colombia; for more information, see <https://www.openglobalrights.org/human-and-non-human-rights-convergence-or-conflict/>.

7. See BLUM et al. 1996.

(2013), the textile represents a three-dimensional object and subject as well as a site of transformation where social and ethnic relations are negotiated. In their study, Espejo and Arnold describe textiles as “living beings” or “beings in evolution” that have social lives.

The study of the material culture of the text has gained traction in efforts to revisit its aesthetic and cultural value in literary studies.⁸ These undertakings can help us appreciate the richness and treasure the complexity of indigenous textualities and their relationship to the book, language, authorship, and, ultimately, intellectual property. Building on Maya intellectuals like Pedro Gaspar Gonzalez’s introduction of *ts’üib* and non-indigenous scholars like Dennis and Barbara Tedlock’s *tzib*, (1985), Paul Worley and Rita Palacios (2019), for instance, demonstrate that Mayan cultural expressions lead us to look beyond literacy and belle letters and the need to study other models to engage with indigenous knowledge and praxis.⁹ Sue Haglund (2019) discusses the Guna textile or *mola* as a theoretical practice that expands digital discourse, illustrating the way that the weavings function nationally, internationally, and in diasporic cultural productions, spanning cloth, geography, performance, and paintings. Washuta and Warburton, in *Shapes of Native Nonfiction*, deploy the form and weaving of the basket along with its attendant technical terms to structure how the essays of their book mirror these techniques, arguing they represent “form as a practice in imaginative world-making to shape the page into a vessel” (2019, 16). In my own theoretical proposition of “Indigenous cosmolectics” and *ka’awil* (CHACÓN 2018), I argue that this double gaze exemplifies the relationship between various indigenous expressions and their vision of the cosmos ranging from pre-Colonial times and their manifestation in conventional genres, transcending nation-states, temporality, and culture/nature dichotomies. Miguel Rocha Vivas’s *Oralitegraphics* (2016) offers another capacious term to describe indigenous textualities that encompass pictogram poems to textiles in the Colombian context.

These salient studies offer some of the most novel approaches to the interplay between text/textile and author/authority. More than mere literary abstractions, these undertakings offer alternatives to understanding and addressing the question of collective and individual authorship, writing and weaving, form and substance. These works invariably demonstrate

8. For more background on material culture in Latin American textual history, see ALLEN and REYNOLDS 2018.

9. The Mayan term denotes writing, painting, ceramics, and weaving and varies in spelling, depending on the community.

that textiles move us beyond their utility and require distinct analytical lenses to discern the threads and shapes, and context of indigenous productions, not unlike how critics analyze a novel or poem. This said, the production of a textile and a conventional literary publication do not stand on equal footing: while copyright laws protect indigenous authors by their author status, textiles have not entered an analogous relationship with a similar cultural system and thus have entered the global market on unequal terms. In Western art systems, they are treated as expressions of folklore or ethnic materials existing in the public domain. Indigenous poets, however, insist weavings represent a type of writing because they communicate information that can be read at various levels and are unique individual and collective ancestral expressions.

Text, Textile, and Gender

Literary critics play with the etymological connection between the Latin verb ‘textere’ or the Greek ‘tekhne’, that is to make, to weave, to make a web.¹⁰ Feminist scholars have also explored the connection between textuality and sexuality (e.g., ABEL 1981). In other words, there is an enduring relationship between women, language, plot, and weaving (KRUEGER 2002). In Latin America, scholarship has also highlighted that lasting association between weaving textiles, feminine creation, and reproduction. The abundant scholarship focusing on the intersections between gender and textiles is in part due to the division of labor, fertility, and its recording in many oral traditions of Mesoamerica.¹¹ In the oral tradition, women acquire the skill of weaving from goddesses like Ixchel in the Maya context or Xochiquetzal in the Nahua and Zapotec stories. Ixchel, the moon goddess, taught the art of weaving and designated women as the transmitters of ancestral cultural symbols. In the Nahua and Zapotec oral stories, Xochiquetzal, who represents the goddess of the arts, is credited as founding the art of weaving (KLEIN 1997, 6–9; NASH 1997). Klein sees an “Indigenous cosmolectics” in many of the textiles produced in Oaxaca that allude to

10. See, for example, FANFANI, HARLOW, and NOSCH 2016 and KRUGER 2001.

11. Brumfiel (2006) offers a diachronic perspective across three different communities. She argues that textiles in Nahua communities during pre-Columbian times were used to differentiate genders, while in the Maya communities they were deployed to differentiate ranks, and that in the present they function to discern ethnicities.

the moon and the sun, the twins in many Mesoamerican textualities. The association of the moon, weaving, and menses are also present in these oral narratives, including those influenced by Catholicism. Rosa Ramírez Calvo in *Flor y pensamiento de los totikes* (1995) recalls a story about the great mother and father that resonates with Adam and Eve, for example. Considering multiple sources of textual evidence, Milbrath (1995), building on Thompson (1939), points out that “Female lunar deities are often linked to water-pouring, spinning, weaving, and childbirth, all female activities” (46). However, in the twenty-first century men also undertake the task of weaving and are involved in the production of textiles in Mesoamerica.

Decolonizing Intellectual Property

Copyright, trademark, and patents all fall under intellectual property law. Although intellectual property concerns in Europe originated in the fifteenth century, it is the Berne Convention for the Protection of Literary and Artistic Works, finalized in 1886, which established the main provisions nation-states adhere to in their legislation. This document has undergone several revisions throughout the last 124 years — with the most substantive changes made in Stockholm in 1967 and in the Paris Act of 1971. In 1952, UNESCO initiated the Universal Copyright Convention for those countries that were not providing minimum copyright protection as established by the Berne Convention for imported books coming from mainly European countries into developing nations (BROUILLETTE 2019). However, due to the organization’s steering mainly by members of highly industrialized Western European countries, the terms of protection outlined for literary works and other arts excluded indigenous (in)tangible textual productions, tagged as folklore in the 1970s. In the mid 1980s, the World Intellectual Property Organization (WIPO) worked with UNESCO to provide guidelines for developing nations whose cultural practices were particularly vulnerable. These guidelines offer models for developing countries to protect (in)tangible expressions of folklore. Indigenous peoples, in particular, have challenged the classification ‘folklore’ to describe their textiles and other productions. These oppositions led WIPO to change the nomenclature to “traditional knowledge”, “traditional cultural expressions”, or “indigenous intellectual property”, all identifying cultural productions that have been regularly excluded from protection due to the perception that they are in the public domain. In 1996, WIPO included performers of TCE’s (Traditional Cultural Expressions) that had previously been consid-

ered ineligible for intellectual property (IP) protection. Since then WIPO has held a number of meetings and drafted working papers to address the specific needs of indigenous intellectual property.¹²

It is noteworthy that the original provisions of the Berne Convention include a clause that when confronted with an unknown author whose nationality is apparent, it would be up to that nation to pass legislation. As Yana Yarovikova (2013) and Boateng Boatema (2019) adduce, the main pressing matter in the realm of indigenous traditional knowledge is the lack of protection. WIPO has recognized this point as an ongoing problem beginning in the twenty-first century, offering hands-on workshops to indigenous communities. WIPO's website also provides a link to UNESCO's guidelines for the protection of 'folklore'.¹³ These guidelines make explicit assertions that better legislation is needed to ensure that indigenous textiles and designs are not commercialized without the community's consent — cultural appropriation issues mainly affect developing nations. Indeed, we can't lose sight that "international copyright relations have always been inscribed within a colonial grid" (WIRTEN 2011, qtd. by BROUILLETTE 2019, 129).

WIPO has evolved in its view of the IP law and has convened an inter-governmental committee on intellectual traditional knowledge to tackle the problem. They state that they are currently working on negotiating the international legal protection of traditional cultural expressions. In fact, the group's inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore first met in 2001.¹⁴ In their working papers, the committee notes that the main question is whether or not additional IP-style should be established over the older, pre-existing materials currently regarded by IP as 'public domain'. This is part and parcel of Article 157 on the Federal Law on Rights of Authors in the Mexican case, whereby expressions considered popular culture are free to use in the public domain so long as they are not altered. WIPO'S committee underlines that a policy is needed to address issues of "(I) preservation, and safeguarding of cultural heritage; (II) the promotion of cultural diversity; (III) the respect for cultural rights; and (IV) the promotion of creativ-

12. WIPO's website includes many efforts to help indigenous communities maneuver IP laws; see https://www.wipo.int/tk/en/women_entrepreneurs/.

13. See UNESCO's record of resolutions @ <https://unesdoc.unesco.org/ark:/48223/pf0000084696.page=242#>.

14. For more background, see the WIPO's website @ <https://www.wipo.int/tk/en/igc/>.

ity and innovation as ingredients of sustainable economic development” (2003, 9).¹⁵ The latest consensus by this working group relays that in the face of globalization, policies must maintain a balance between protection and preservation of cultural distinctiveness and the exchange of cultural experiences.

In order to rethink the parameters of copyrights and their application to textiles, these laws must be scrutinized from a decolonial frame. Intellectual property law has conventionally and conveniently hierarchized cultural productions, valuing art over craft, modern acceleration of time versus ancestral temporality, and individualism as opposed to collectivity. Those differences reflect deep fissures from the manner in which indigenous peoples conceive of community, ancestors, knowledge, and the management of intellectual property regimes. Boatema Boateng (2011) accentuates in *The Copyright Thing Doesn't Work Here* that an unfolding historical shift between art and craft and authorship in the sixteenth century detrimentally affects indigenous cultural products in ideological and material ways. She illustrates how “intellectual property law [. . .] owes its naturalized status partly to the process by which ‘modernity’ was spread around the world” (2011, 45). Jennifer Gómez Menjívar and I have pointed out in *Indigenous Interfaces* (2019) that modernity did not give birth to technology; hence, crafts are also modern as they require skill, the arch definition of the term’s etymology. The prevailing ideological, aesthetic, and political process that divides cultural production in these ways, protecting only those that are legible under their definition of modernity — read mostly Western countries — should be interrogated for its Eurocentric values. Indeed, as Sabina Aguilera in her analysis of textiles adds, artifacts previously considered exotic and not art had to first go through a system of fine art or beaux arts, associated with the educated, leisure classes. Fine art became justified as a superior manifestation of human effort, as opposed to crafts (2014, 21). The real problem lies in not perceiving persons engaged in weaving a basket, creating textiles, or mask making as artists who deserve protection due to the assumption that crafts are not equal to fine art.

Textiles have acquired a social life outside their local context in the international markets and their association with indigenous communities indisputably serves as a kind of trademark. Indigenous weavers want to trade their works, but they also seek to protect their right to weave without

15. See WIPO’s 2003 working paper titled “Consolidated Analysis of the Legal Protection of Traditional Cultural Expressions/Expressions Folklore” @ https://www.wipo.int/edocs/pubdocs/en/tk/785/wipo_pub_785.pdf.

having to struggle against big companies who profit from branding their products as indigenous. In the live session held by the women of AFEDES (Asociación Femenina para el Desarrollo de Sacatepéquez), Maya social scientist Aura Cumes Simón raised an important example of a Guatemalan company named “Maria’s Bag” (2020). In their sale of textiles, the weavers and their communities become unknown persons. Furthermore, Cumes Simón insists that the issue in “Maria’s Bag” must be understood within the structures of racism Maya women face in Guatemala. To name this line of expensive bags “Maria” activates the racialized and gendered slur non-indigenous use against Mayan women. “Maria’s Bag” inscribes indigenous women as objects of transaction, compounding their anonymity without the attribution of the design’s or clothing’s sources to the intellectual producers of the items, poached by a company who claims to help the women. The Guatemalan state can indeed pass laws to protect the women under the recommendations of UNESCO and WIPO. For example, one of the most important additions to intellectual property law is that nation states can introduce sui generis laws to protect indigenous forms. Sui generis laws can be passed at national levels with only a missive to WIPO to alert all state members. The issue for indigenous weavers, however, is that this protection is different from copyright. It would be optimum for indigenous communities to be able to claim copyrights as authors because according to the Berne convention these rights do not require major international legislation or paperwork. Considering that some nation-states are hostile to indigenous communities, it makes sense that indigenous weavers would prefer copyright protections. Wayuu lawyer, writer, and designer Estercilia Simanca Pushaina stressed in our recent telephone conversation that copyrights protect those who plagiarize — not the indigenous communities that produce textiles even when sui generis laws are in place.¹⁶ She underscored that globalization and the economic needs by women compound the problems.¹⁷

16. In the United States, sui generis laws apply to Native American Arts and Crafts, but plagiarism happens quite a bit. A recent case against Urban Outfitters is a good example: <https://www.theguardian.com/us-news/2016/nov/18/urban-outfitters-navajo-nation-settlement>.

17. Telephone conversation of July 28, 2020.

“It is Said That We Dress in Books”

While the indigenous literary author is protected by copyright law and compatible with a western literary system, many of the women poets see their work as weaving. Moving past the metaphor in their poems, they call for decolonizing our perception of the textile as a non-modern craft and advocate for an understanding of it as a literary form. Indigenous women intellectuals and poets “invert the relationship between weaving and writing by investing it with ancestral and sacred authority”, adding nonalphabetic forms to the study of indigenous textualities (CHACÓN 2006, 2007a, 2018). An unequivocal equivalence between weaving and writing appears in poetry and spiritual petitions; for instance, Tsotsil intellectual Ramirez Calvo explicates how women make requests to the Great Mother or moon to assist them in acquiring the skill to weave or “to learn how to read and write” (1995, 122). She expounds that their pious appeal involves a ritual, as they must “leave [. . .] a piece of cloth, textile or a notebook with letters wherever our sacred mother finds herself” (1995, 122). In this act, a plea for a continuity and preservation of knowledge becomes transparent. Similar to pre-colonial records, the moon is associated with the act of labor and artistic expression. Similarly, Maya intellectual Juana Batzibal Tujal asserts that contemporary weavings are a Maya alphabet. She explains, “se dice que nos vestimos con libros que han sido escritos hace miles de años” [“it is said that we dress in books written thousands of years ago”] (2000, 34). Poets especially reference textile as inscription, textile as writing.

Tsotsil poet Ruperta Vásquez claims weaving as a form of writing in many of her poems, reinforcing its cultural value and meaning as a text. In one of her more iconic pieces, “Descendencia de espíritus”, Vásquez references indigenous systems of communication. In this poetic rendition, the practice of glyphs ended with the onslaught of colonization of the indigenous populations, forcing words to “sleep” in the oral tradition (CHACÓN 2006, 2007a).¹⁸ The poetic voice, however, proposes that these expressions do not vanish as girls materialize them through weaving as a form of defiance and resistance. The words transform into designs. This movement from the aural to the signifier on cloth is also present in the context of tribes in Africa (KRUEGER, 2001, 25–9). Echoing women weavers and their relationship to ancestral knowledge, the newer generation continues to entwine novelty with their cultural heritage despite the suppressive

18. The assertion that glyphic writing ended with colonialism may not necessarily be historically accurate.

hand of colonialism, as they valiantly confront the challenges of poverty and civil wars through both creative practices. In the poem, the speaker blurs existing distinctions between text and textile. Weaving, in particular, as portrayed in the poem converts into a form of sacred writing. Tellingly the designs offer women authority. The metaphysical and cultural elements coalesce as “la esencia sabia de las palabras se forma en la faz de las mujeres” [“the essence of wise words forms in the face of women”] (VÁSQUEZ 2005, 62). Knowledge/authority transcends the page or cloth, as the women embody understanding as they advance in age. Similarly, in Vásquez’s poem “Bordadoras”, young and old women embody/embroider/make and remake the sapience of the community (VÁSQUEZ 2005, 76). The erudition referenced in both poems is not meant for the commons or public domain. Here, I differentiate between those weavings meant for public consumption and sacred ones.¹⁹

Through these poems, readers can glean the critical distinction between community and the commons. The commons or public domain does not require reciprocity, an important tenet of indigenous communal, customary law.²⁰ In the second poem, “Bordadoras”, the first stanza pointedly underlines the girls’ undertaking as they reproduce the ancestors’ knowledge on the community’s textiles. In the next stanza, the voice affirms the position of elder women as weavers who represent the heart, community center, and ancestral wisdom. The third stanza profiles a young girl and an old woman whose hearts palpitate in unison. Their synchronized heart rhythms symbolize that their weaving and writing allow the community to thrive as they make or weave the world. Pointedly, the poem offers a chronological representation of women’s aging process and gradual acquisition of knowledge and power through weaving/writing. The last stanza reinforces a central theme in Vásquez’s poems: time grants women authority and spiritual power. In this context, the copyright protections afforded by an individual’s status of authority/authorship cannot be contained within the established temporal limitations of copyrights; instead, it is the connection to the ancestors that grants authority. Temporality in this poetic rendition works in reverse under intellectual property law, under which authority wanes after 50 years. Boateng makes similar observations and assertions in the context of Ghana. She writes, “authorization of cloth producers’ creative labor is bound up with ancestral authorship not just through general claims but sometimes in a literal or direct sense”, further noting that “the

19. Despite the differentiation I make, both should be protected.

20. See SOLIS BAUTISTA 2020 for a discussion of women’s huipiles and communal reciprocity.

ancestors' work authorizes new designs as part of an established tradition" (2011, 49).

Yet another foundational poetic example of the idea that weaving is a form of writing is found in the work of Q'eqchi' poet Maya Cu's "Ix Tzib (La mujer escribe)" (The female scribe). The title is telling as it recuperates the title of scribe or *ajtzib* as an occupation traditionally held by men. The speaker alludes to weaving as her mother's practice, a tradition she has lost. In this lengthy poetic text, she writes "mi madre, tejedora / transformaba en lienzos, las palabras / para que perduraran" ["my mother / weaver / transformed the cloth, the words / so that they would last"] (2011, 77). The reference to weaving as a form of writing for posterity is clear here, as the speaker herself has lost the ability to weave and instead writes words differently. Following that stanza, the speaker admits that she is moved by a necessity to bring letters and images together (2011, 78), but more importantly to "give form to the sounds of my steps, her steps /her textile / her lament" (2011, 78). The poem ends with the speaker as a wild plant that multiplies "to search for new symbols to reinvent words" (2011, 79). The reference to symbols to reinvent words conjures the textile designs. Indigenous poets, like weavers, have a fiduciary relationship with their communities; and in both cases, the textiles are not part of the common or public domain.

Like Ruperta Vásquez's work, Maya Cu's poems make clear that both tradition and novelty come together on the page and on textiles. These textual productions are both individual and collective, similar to the weavings of *molans* in the Panamanian context that Guna scholar Sue Haglund writes, "capture a piece of history and a moment in time, passing them down from one generation to another, [engaging] an evolutionary movement that is reciprocal between both the artist and the image itself [. . .] [and] show[ing] the intrinsic relationship among the Dule land and nature" (2019, 63). Contemporary indigenous poets engage in an epistemological and linguistic play by destabilizing the formal association of author/authority and text/textile, affirming weavers as producers of knowledge (CHACÓN 2006, 2007a).

Indigenous Weavers as Authors

While this connection of text/textile and author/authority abounds in Mesoamerican published poetry collections, writers do not face the affront that textile producers experience in terms of intellectual property and copyright infringement, as published materials are protected under national and

international copyright laws. The issue of authorship and textiles in the Mexican and Guatemalan cases offer different insights into the tense relationship of indigenous communities to nation-states, and their ambivalent relation to intellectual property. In the Mexican context, representatives of the nation-state clearly articulate their opposition to international brands blatantly reproducing indigenous designs. In Guatemalan cases, the weavers are compelled to demonstrate that indeed they are authors/artists/creators and that they have earned copyright protection. In both examples, the nation defines its identity through the indigenous community's cultural productions like textiles, music, and architecture. However, part of the Guatemalan state's reticence in crafting a law to protect Mayan women's textiles is rooted in historical discriminatory practices against indigenous peoples, whereas Mexico's national policy toward indigenous communities has been one of assimilation without blatant coercion. In concrete terms, a collective protection raises concerns about whether a law protecting indigenous women's cultural productions would apply to the state agencies and national businesses who use indigenous textiles as their own interfaces (i.e., the tourist industry).

As noted earlier in this essay, the National Movement of Weavers in Guatemala supported by the non-profit Mujeres de AFEDES held a live Zoom session to discuss their recent hand-made publication, *Nuestros Tejidos son los libros que la colonial no pudo quemar (Our Textiles are the Books that Colonialism Couldn't Burn)*.²¹ In that session, Maya social scientist Aura Cumes Simón along with other Mayan women discussed their efforts underway to safeguard the knowledge of their female ancestors. The women stated that they sought collective protection for their designs, affirming proprietary claims and defending their status as artists and authors. Angelina Aspucac, a vocal member of AFEDES and the National Association of Mayan Women Weavers, sees the fight for intellectual property as integral to indigenous struggles for territorial autonomy.²²

In Mexico, Zapotec and designer poet Natalia Toledo holds a government position as the Subsecretary of Culture. She poetizes weaving and textiles in many poems included in her book *El dorso del cangrejo/Deche biotope* and literalizes the textile/text by sometimes stitching symbolic words.

21. The session went live on Facebook on June 24, 2020. Due to Covid-19, copies of the book have yet to circulate in the United States; a recording may be accessed @ https://youtu.be/xfdl4PjN_ug.

22. Angelina Aspucac offered a talk in a student webinar in Guatemala about cultural appropriation on September 11, 2020; it may be accessed through AFEDES @ <https://www.facebook.com/mkteamurl/videos/611674642827988>.

In our recent telephone conversation, when I asked her about the General Law for the protection of indigenous designs, she stated that she could not give me an official answer as the Subsecretary of Culture, but unofficially she admits that the issue is complex and that how the law will be applied is still being honed out. She emphasized that their approach will stress “fair trade”, because attributing authorship to individuals may be too complicated in the various communities. A focus on “fair trade” departs from the invigorated call to change national copyright laws and protect indigenous rights made in 2019, which points to the challenge facing legislative change and indigenous knowledge systems.

Incommensurability between Textile Art and Intellectual Property Law

Copyright does not easily apply to the protection of textiles due to the cultural and aesthetic values driving contemporary understandings of intellectual property law. As I previously mentioned, this is due to its legal status as folklore, and in Western countries folklore is in the public domain or commons, which contrasts with the way indigenous communities perceive their practice of communal living, one that involves reciprocity. Although copyright laws on the surface appear neutral, they are not. The emphasis of an author as an individual under intellectual property law who produces “original” and “new” work hides intertextuality of any kind (BOATENG 2011, 48). Co-author status could be another avenue used by nation-states to recognize intellectual property as rights are recognized under “joint authorship”, but again this designation does not adequately address indigenous textiles, techniques, and designs and their expression of ancestral knowledge or tradition by a community (YAROVIKOVA 2013). Authorship restricted to one or two individuals or to an entity excludes the main governing principle of community and reciprocity. In addition, copyrights are often offered to a “legal person”, who is in reality a corporate body. In this context, companies or even universities function as legal persons under copyright law. Under the status of a “legal person” an indigenous community may offer licensing rights. This aspect needs to be considered, but as of now, how an indigenous community can become a legal person under the law is as complex as defining indigeneity.

Another major incommensurability between intellectual property law and indigenous communities’ notions of author/authority relates to the term or temporality of protection under copyright. Under Article 7 of the

Berne Convention, the duration of this protection has a limit of 50 years or 50 years after the passing of the author. The temporal limitation is due to the interest of consumers. Individual member countries of WIPO may apply to extend the terms. This copyright expiration applies to economic rights but not moral rights. In other words, the author is still recognized as having produced the work. The IP term of protection counters the authority gained by time as understood by weavers who are invested in cultural preservation and transmission. Weavers want their designs and practice protected permanently. In the poems discussed, authority/authorship also derives from the accumulation of years, which is the inversion of current copy law.

What can intellectual property law gain from recent literary approaches to indigenous literatures? For starters, it can gain an understanding that historically painting, writing, and weaving were not seen as separate practices (MIGNOLO, 2003) and that in many respects this perception is still palpable in indigenous works (see CHACÓN 2018; TEDLOCK 2005; HAGLUND 2019; WORLEY and PALACIOS 2019). While most people who live outside indigenous communities may not discern differences between, say, a Mayan K'iche' woven textile or a Mixtec one, indigenous communities would recognize them as their respective intellectual property. In effect, textiles and their designs are unique to each indigenous community and that difference functions as a form of authorship. Their uniqueness at a local level is reproduced as they enter global markets. In that sense textiles function as an unofficial trademark as well. In his 2009 work *Weaving Space: Textiles and Tales from Guatemala*, David B. Green examines the influence of space in textiles and tales from diverse Mayan communities to discuss how various Maya communities perceive themselves and others in these two artistic forms. He notes that for Dennis and Barbara Tedlock, "among the contemporary K'iche' weavers, textile designs are considered to be ancient, which makes their continued use something like the quotation of an ancient text" (2009, 37). Greene argues that textiles and tales function as analogies for one another. Furthermore, as Worley and Palacios point out based on conversations with weavers in Chiapas, the tension of the loom depends on the body of the weaver serving as a kind of signature. They pointedly note that "weaving also records the very body of the weaver through the tension among the threads themselves as the backstrap loom requires a woman's body to function, while a given weavings tension or lack thereof speaks directly to factors such as a woman's age" (2019, 40). In this sense, the weaver's body further imprints authorship.

Future Considerations

The issue of intellectual property in indigenous communities is constantly evolving. Whether subjecting indigenous textiles to western notions of authorship is a truly decolonial act can be debated. Nonetheless, what remains true is that according author status to the women weavers has real material consequences for their livelihood. A promising avenue would be for communities to become ‘persons before the law’ akin to any entity or corporation, but this change would entail a major task for nation states. Considering how indigenous and non-indigenous literary scholars and indigenous poets implement novel ways of thinking beyond the individual author, intertextuality, tradition, and innovation could offer insights for the protection of indigenous textiles. Above all, thinking through the conceptual distinctions between the commons or public domain versus community and reciprocity can initiate a decolonization of intellectual property law approaches. While *sui generis* laws for the protection of indigenous cultural expressions have played an important role in developing protection for textiles and their creators, these may not be as effective in deterring cultural appropriation — although they open avenues for legal battles to remedy misappropriation cases.²³ *Sui generis* laws do not typically refer to an author or individual, yet they do offer some basic protection of collective rights. A combination of Copyright and Industrial Property (which includes industrial designs and trademarks) in addition to *sui generis* national laws would be best for indigenous communities who sometimes create collectively or innovate ancestral designs. New designs would likely fit better under trademark protection. Applications for that type of protection have increased in number by indigenous communities, but a majority have not proceeded to registration, leading WIPO to conclude indigenous peoples need to learn more about applying and overcoming descriptive use of their trademarks (WIPO 2003, 49). This may be a result that trademarks are usually created for international trade. Industrial designs can be protected if they are new or original, which may contrast with the way indigenous peoples perceive their own creations. Nations affected by misappropriation of designs and textiles may take some important cues from how indigenous poets and weavers in Mesoamerica literalize weaving as writing and the poetic text as a form weaving. They both seek to legitimize their authority

23. *Sui generis* laws are in place, for example, in Brazil, Chile, Panamá, Canada, and the United States, but cases of misappropriation continue.

in the world and establish their words/designs as a continuity. Their verses, like weaving, are involved in a constant world-making, both individual and communal, ancestral and modern. Just as they do not perceive one practice as more modern or valuable, more individual than communal, nation states whose indigenous populations demand protection can rise to the occasion either transforming communities as legal persons before copyright laws or allowing weavers to assume author status. Intellectual property was not informed by indigenous knowledges and rights as states drafted the Berne Convention, but international laws exist that enhance indigenous claims to copyrights, which are automatically extended without the need for copious paperwork, which is not the case for sui generis laws, trademarks, or patents. Mexico's General Law for the Safeguarding of the Elements of Culture and Identity of Indigenous, Afro-Mexican, and Comparable Peoples and Communities will set an important precedent for copyright demands by other indigenous communities in Mesoamerica.

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