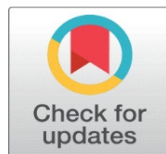


PUBLIC POLICIES, INTELLECTUAL PROPERTY AND CREATIVE ECONOMY

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ABSTRACT

Introduction. I.- The Origins of Studies on Agenda Formation and Public Problems. ii.- The Formation of Agendas Like Object of Study of Political Science. iii.- What They are and How Agendas are Formed. iv.- The Institutional Variable. V.- The Effectiveness and Efficiency as Distinctive Signs of Policies Public. Vi.- The Decision-Making Process of Public Policies. Vii.- The Adaptability of Public Policies in Contexts Different. Viii.- Differences that the Concepts Keep Between Each Other Polity, Politics and Policy from The Disciplinary Side Of Public Politics. Ix.- Approaches And Distances Between Public Policies and Governmental Policies. X.- Policies Public, Democracy and Governance. Xi.- The Flow of Policies Public. Xii.- Steps for the Analysis of Public Policies. Xiii.- The Political in Different Properties. Xiv.- Public Policies, Intellectual Property and Creative Economy. Conclusions. Bibliography.

Keywords: Public Policies, Intellectual Property, Creative Economy Overrun

1. INTRODUCTION

This research aims to determine what have been the origins of studies on the formation of agenda for the containment and in the best of cases solution of public problems. This will involve delving into the basic principles that political science provides in the field of agenda formulation, so its conceptualization and formation will be investigated.

Furthermore, the present study seeks to verify that effectiveness and efficiency, as distinctive characteristics of public policies, are conditioned by the institutional variable as an organizational structure and instrument for attributing powers, as well as for detecting and exercising resources destined to each governmental actor to formulate its own agenda and assess the possibilities not only of placing the problems on the agenda, but of resolving them through the proposed alternative.

Starting from the basis that development management corresponds not only to the State but also to individuals individually or through civil society organizations through pressure or power groups, the decision-making process of public policies is equally important in this research, since the making of strategic decisions will depend on assertive planning, which must be adaptable to the varied contexts in which it is necessary.

Likewise, it is essential to identify in this study the differences between the concepts polity, politics and policy from the disciplinary aspect of public policies, and this will only be achieved if the elements of existence of all public policy are considered: (i) government involvement; (ii) the perception of problems defined as public or that require State intervention; (iii) the delineation of objectives, and (iv) the execution of the process leading to its approval and implementation into practical action, which will inevitably lead to knowledge of the map of said process (identification of the problem; definition of the problem; identification of responses or solution alternatives; evaluation of solution options; selection of public policy options; implementation of solution alternatives and continuous evaluation of the results).

Subsequently, emphasis will be placed on the similarities and differences between public policies and government policies, which will undoubtedly lead to understanding the interaction between public policies, democracy and governance (understood as that new way of governing that arises from the measured relationship between the State and organized society to participate in the various markets and thereby achieve development and social well-being).

The analysis of the flow that marks the tenor of the development of public policies will make known each of the successive steps to be taken, and thus better understand the various aspects of politics.

Finally, reference will be made to the impact that public policies have in the sphere of intellectual property rights and particularly in the domain of the creative economy, thus showing the conclusions obtained after addressing each of the aforementioned topics.

2. THE ORIGINS OF STUDIES ON AGENDA FORMATION AND PUBLIC PROBLEMS

The integration of an agenda and the identification of those problems to which the public character should be attributed, develop, and in fact support, the public policy process. Unfortunately, the formation of a public agenda is based on successful experiences and does not consider the causes of absence, abandonment, or elimination of public topics from priority government work.

At the factual level, the analyst who defines public problems and the consequent designer of public policies for their solution, is guided by purely axiomatic ideas when it would be desirable to rely on shared considerations among people with common interests, but mainly antagonistic, thus avoiding the randomness of power games and participating in negotiation processes aimed at prioritizing this or that issue on the public agenda.

Thus, it is up to political science and sociology to guide the analyst to recognize that attention to social demands implies a competitive exercise of interests, so he must assimilate that the agenda of issues in the public sphere reveals an imbalance where the ability of the agents will be decisive, resulting in the restrictive and even elitist nature of the agenda able issues.

From a procedural perspective, and referring to the agenda-setting, it will be necessary to distinguish between: (i) the agenda of a systemic nature (which includes those issues that society considers susceptible to attention), and (ii) that of an institutional nature (which publicly submitted to the consideration of public entities and where their attention will depend on the genealogy of the problem, the organizational influence and proximity of the social group that submits it to governmental consideration, and the required budget sufficiency).

The hijacking of government action is a reality that can erode the plural representation of social interests since informal negotiation practices and deal making undermine the principles of any democratic rule of law and the attention to government priorities. Thus, the benefits of pluralism are questioned by the concurrence of theories of groups and social action, so its would be necessary to reflect on the relevance of returning to the notion of the endogeneity of public problems for the purposes of the government agenda.

3. THE FORMATION OF AGENDA LIKE OBJECT OF STUDY OF POLITICAL SCIENCE

The public agenda formation process includes the integration of the following stages: (i) establishment of the agenda; (ii) specification of available alternatives; (iii) choice of the desired option, and (iv) implementation of the decision.

The influence of political science on the implementation of public policies and, consequently, on the formation of the public agenda, is explained by its impact on the understanding that: (i) actors with decision-making capabilities must identify the problem and attribute to it the status of priority in its governmental work.

(ii) the quality of actor with decision-making capacity is attributed by the organizational structure of the government, (iii) it is through the political system that it can move from a political proposal to a government decision or public policy, (iv) political projects see their materialization on the public agenda, (v) public policies entail the struggle for power not only in electoral times but also in the exercise of government, (vi) political ideas and proposals become reality through public policies and regulatory creation, (vi) the ability to guide and execute the actions of the public agenda is in itself defining the power of the ruler or political group.

4. WHAT THEY ARE AND HOW THEY ARE FORMED.

Ma. Amparo CASAR and Claudia MALDONADO, give us a compelling concept of them, stating that:

Public policies are a set of public decisions that go through a process that goes from the establishment of the problem to be resolved, to its processing and conversion into authoritative decisions through the rules of operation of the political system itself. [Casar & Maldonado \(2008\)](#), 10

It should be noted that agenda setting includes the following three modalities: (i) the public agenda, (ii) the political agenda, and (iii) the government agenda.

The determining factors of the topic that deserves to be scheduled and the alternative solutions to the problems they entail are: (i) the participants, and (ii) the process of attributing relevance to the alternatives.

From a purely procedural perspective, the following stages are identified: (i) recognition of the problem, (ii) fertilization of proposals for possible alternatives, (iii) timing of the event in which its adoption will be announced and implemented.

5. THE INSTITUTIONAL VARIABLE

This is considered the organizational structure and attribution of powers from which: (i) the resources allocated to each government actor are identified and obtained so that they are in a position to formulate their agenda, and (ii) the non-existent possibilities are assessed only to place the problems on the agenda, but to resolve them through the proposed alternative.

This will imply the potential fusion, overlap, and collaboration of powers (despite the theoretical separation of these).

The exercise of power in matters of agendas is not limited to setting them, but also to preventing those with decision-making power from deploying them or prosecuting them, even though this implies leaving a problem without a solution.

6. EFFECTIVENESS AND EFFICIENCY AS DISTINCTIVE SIGN OF PUBLIC POLICIES.

It is entirely legitimate that the citizen desires to have public administrators who implement actions that produce the desired effects and therefore seek to satisfy the general interest, as well as the generation of a social benefit with the consequent optimization of public resources.

Thus, we find that effectiveness and efficiency are characteristic elements of public policy.

Governmental work has a dual dimension: (i) on the one hand we find the political factor where the achievement of generalized social benefit prevails and which must be subject to compliance with regulatory provisions, and (ii) on the other we find the technical aspect that legitimizes the relevance of its introduction.

However, the cohabitation of both components can lead to the presence of two scenarios: (i) an adequate conjunction of them derived from the dominant social acceptance of the actions undertaken as a consequence of the fulfillment of the established objectives, or (ii) its hesitation when noticing inconsistencies between what was offered and the impossibility of executing it (given its lack of feasibility or onerous implementation) or when verifying the dire political consequences that generate technically reasoned measures.

7. THE DECISION-MAKING PROCESS OF PUBLIC POLICIES.

The public policy decision-making process was formally born in the United States of America around the middle of the 20th century. This includes the stages of: (i) design; (ii) decision; (iii) execution; (iv) conclusion, and (v) adaptation or modification.

The disdain of public policy by political science made visible the need to know the: (i) assumptions, (ii) considerations, (iii) procedures, (iv) and interaction of participants in its design and implementation.

This discipline known as public policy owes its birth to the American political scientist and communications theorist Harold Dwight Lasswell who delved into the causal relationship between managerial effectiveness (obtained through scientific knowledge) and the appropriateness of government decisions in the fulfilment of the purposes of the state.

Therefore, public policy aims to obtain the necessary mechanism to increase the government intelligence function by considering it comparatively proportional to the increase in political rationality.

Its objective is deployed in two aspects: (i) knowledge of public policy itself (through the study of its evolutionary process), and (ii) knowledge in public policy (which will lead to the implementation of the methodology and examination of the results resulting from the creation of public policies and will guide the redirection of actions that require correction in order to make them effective and efficient).

The merit of public policy lies in placing emphasis on the effectiveness of government actions supported by its epistemic aspect and leaving the political-institutional aspect to the background, which means that it aims to legitimize the leadership capacity contained in the determinations of who exercises political power more than the institutional legitimacy of the prevailing system, which will allow us to reach the point set and never lose the course of the objectives outlined towards the achievement of general well-being.

It is based on the fact that there is no room for discussion regarding the fact that government determinations (as decisions emanating from institutions that enjoy legitimacy) benefit from political values typical of the rule of law prevailing in democratic regimes, the only thing what remains to be justified is the character and degree of scientificity, as well as the technical content printed in its adoption, a task that is precisely in charge of public policy.

Based on what was previously stated and from the perspective of Luis F. AGUILAR VILLANUEVA:

It was correct then that the nascent discipline was called more specifically “policy sciences of democracy” and was conceived as an interdisciplinary set of sciences concerned with whether democratic government incorporates methods, theorems, and technologies in their decisions to be in a position to solve social problems and generate well-being for their citizens without exception. When governing, the sciences and technologies that enable the democratic government to have directive effectiveness matter, and not only the democratic institutions. Sciences and not only institutions, knowledge and not only laws. [Aguilar Villanueva \(2012\)](#).

Public policy is not a generic plan of government actions (whether national, state or municipal) but rather a particular one, considering that it seeks to satisfy purposes aimed at preventing or solving problems of public content but of specific scope, with the challenge of improving the social conditions of the citizen's daily life, preferably addressing those difficulties of prolonged presence over time or of considerable severity.

In a synthetic way we could highlight the position of Luis F. AGUILAR VILLANUEVA who states regarding the mechanics of creating actions:

Therefore, it is a government that designs adjusted, peculiar actions, tailored to those specific problematic situations, based on the premise that the government recognizes its legal, cognitive, financial, organizational, etc. limits. [Aguilar Villanueva \(2012\)](#)

8. THE ADAPTABILITY OF PUBLIC POLICIES IN DIFFERENT CONTEXTS

Harold LASSWELL is credited with the authorship of the initial formulations aimed at establishing an area of interdisciplinary knowledge responsible for delving into the instruments of action used by the State, which is why he became the generator of a conceptual framework specific to this flourishing subject that was applied to the factual scope of government activity.

However, achieving the scientific nature of public policy and the consequent weighting as a reference of universal application requires verifying its applicability in scenarios other than that of its birth, consequently identifying the conditions of its emergence.

Corroborating the above implies identifying: (i) the political regime under which a public policy is intended to be applied, (ii) the management models that can be used to implement them, (iii) the mechanisms for regulating the actions implemented, and (iv) the cultural and symbolic traditions specific to each context. [Cabrero Mendoza \(2000\)](#), 191 of particular relevance is the public nature of the policies and involves the conjunction of state wisdom based on the logical reflection of its determinations and citizen participation. Thus, we find ourselves facing pluralism or neocorporatism, the State that is the product of social will, but where the supremacy of state domination is taken care of with respect to particular interests and exercises preponderant actions among the group of participating agents.

To show the contrast between the various democratic traditions, Enrique CABRERO MENDOZA shows the position of Harold LASSWELL who considers that public policy “deals with the knowledge of and in the decision-making process in public and civil order” and confronts it with the position of Yves MÉNY and Jean-Claude THOENING who believe that “it is nothing other than the study of the action of public authorities within society.” [Cabrero Mendoza \(2000\)](#), 195

Regarding the Latin American political tradition, there are movements from regimes with high authoritarian content towards democratic transitions characterized by the presence of a social link of a vertical nature where limited citizen participation has favoured the presence of an intermediation between social groups and actors politicians, a situation that Favours the centralization of State power and clientelism as a manifestation of collective action, a situation that leads to scenarios of political segmentation, thus dividing the elements participating in democratic action whose lassitude allows the State to impose its will.

From my perspective, the most important phase of public policy is precisely that concerning its design, which is identified as policy analysis that is based on logical foundations and the model known as public choice.

Given that this phase is based mainly on science and technology, citizen participation is conditional on prior training and the use of ordinary language or the formation of groups of experts, both governmental and independent.

Regarding the actual implementation of public policies, the participation of the various levels of government and non-governmental agencies is required, but in both cases, it will imply strict control, synchronization, direction and even negotiation. [Cabrero Mendoza \(2000\)](#), 205

Finally, in the evaluation stage of the implementation of public policies we find potential cycles of mistrust between rulers and citizens as a result of

misinformation, [Cabrero Mendoza \(2000\)](#), 209 which merits a policy learning process of policy learning. [May \(1992\)](#).

9. DIFFERENCES THAT THE CONCEPTS OF POLITY, POLITICS, AND POLICY HAVE AMONG EACH OTHER FROM THE DISCIPLINE SIDE OF PUBLIC POLICIES.

For Guillermo EJE, the term polity denotes elements of statist content, since its influence, both legal and political, is exercised in a certain territorial constituency. [Ejea Mendoza \(2006\)](#), 2

Procedural facticity is what distinguishes the concept of politics, by focusing on purely competitive aspects that involve the assumption of agreements and the deployment of power.

As regards the term policies, it should be understood as that set of strategies that deploy concatenated actions oriented towards a purpose.

Coining the concept of policy involves focusing on the search for the best possible solution to a problem considered public, based on stable actions resulting from a strategic design. Thus, public policies have the double mission of investigating the origins of the methods from which decisions are adopted and identifying the optimal solution for each problematic scenario defined as public based on rational criteria supported by political science and technology.

10. APPROACHES AND DISTANCES BETWEEN PUBLIC POLICIES AND GOVERNMENTAL POLICIES.

As distinctive notes of public policies, we can see the interest of social sectors in promoting, through their qualified opinion, attention to a problem that affects them, which is why the individualism of a specific sector prevails. On the other hand, government policies are identified by their extension and even vagueness, as they encompass a considerable number of government actions.

The public nature of the policies is limited to the formal alternative of citizens to interact with government authorities in the search for common interests from which the relevant strategies will be designed that lead to triggering the appropriate actions so that the needs are satisfied with which they reciprocally identify.

It is from this proximity (where the problematic context, the various dimensions that make it up, and even those challenges to be overcome are revealed), that social actors would be able to sensitize public entities - on the basis of rationality - of the priority that merits attention to this or that problem, and it will be from a reflective approach that the design and implementation processes will be exhausted.

It should be noted that the cycle of public policies is not limited to its constructive consensus, but rather extends to its implementation, dissemination, and monitoring, which will make it easier to assess its efficiency and warn, where appropriate, of the corrections or adjustments that are warranted.

11. PUBLIC POLICIES, DEMOCRACY AND GOVERNANCE

Public well-being, as the supreme goal of the State, is directly proportional to its functionality, which will only be maintained in those countries with a democratic budget. This means that every democratic regime implies the active participation of

its citizens in the adoption of relevant decisions, that is, the delineation of the priority actions of the State. Seen in this way, it is through the democratic participation of society in a framework of freedom that the benefit of the community is achieved.

Given that democracy fosters a plurality of ideas and therefore a variety of social requirements, it will be necessary to face the fact that there will be a considerable margin of exposure to antagonism between the various groups and social strata, and the claims of those with greater capacity will be prioritized of negotiation, thus leaving pending the satisfaction of a diversity of demands, which can be met by a new alternative that faces this reality: governance (understood as that alternative of heterogeneous government and horizontal alignment that combines the efforts of public entities and the capacities of private initiative to achieve the simultaneous, harmonious and balanced development of the interests of civil society, general well-being and the economy.

12. THE FLOW OF PUBLIC POLICIES

Its diagram obeys more to questions of logic than of prospection of the temporality along which its process develops, so its stages do not necessarily have to be successive, which allows an abandonment of any presumption of linearity, which allows such a dynamism that its transposition, anticipation and repetition are allowed.

According to Guillermo EJEJA, the admissible succession of steps in matters of public policies is the following: “1) emergence and definition of the problem; 2) inclusion in the agenda; 3) program formulation and adoption; 4) implementation, and 5) evaluation, to which I would add 6) feedback or termination.” [Ejea Mendoza \(2006\)](#), 10

13. STEPS FOR THE ANALYSIS OF PUBLIC POLICIES

From the perspective of Eugene BARDACH, policy analysis is more of an art than a science since it is deployed from intuitive work with methodological support. [Bardach \(1998\)](#), 13

It is a structured (and even somewhat automated) exam called “the path of eight steps”, which is intended to serve as a form to keep in mind the significant dimensions of the problem and the potential alternative solutions.

It should be noted that the eight steps suggested by the author are not necessarily applicable to every situation, nor should they be exhausted successively.

The eight allusive steps are: (i) definition of the problem; (ii) obtaining the information; (iii) construction of alternatives; (iv) selection of criteria; (v) projection of results; (vi) cost confrontation; (vii) making the decision, and (viii) telling your story.

Eugene BARDACH points out that a considerable part of the suggested guidelines have an eminently conceptual support, and therefore with a high index of abstraction. Only a few are factual character based on recurring realities.

As a preliminary conclusion regarding the content and scope of a public policy analysis report, Eugene BARDACH proposes:

... the problem that you want to mitigate or solve must be coherently described; some of the actions that can be taken will be described; to each course of action you will have to add the projected results that you consider could be of interest to the client or public, pointing out the bases on which such conjectures were

reached. If no action is clearly better than another according to the chosen evaluation criteria, the costs and benefits of each of these policy options must be indicated. Depending on the expectations of his "client", the analyst may or may not give his own recommendation about what will be the best option. [Bardach \(1998\)](#)

Let us briefly address the first two suggested steps below, considering them to be the most significant:

Regarding the definition of the problem, we can attribute to it the triple function and goodness of offering the analyst: (i) causes or reasons to exhaust the task and stay on track in the identification of a single problem; (ii) guidance on the important data or documentary support to be collected that will provide you with an analytical advantage, and (iii) structural support for the proposal you propose.

Some useful rules in the argumentative construction of the definition of the problem to be addressed are: (i) focus on issues that, due to excesses or deficiencies, have a social impact; (ii) consider whether a private problem deserves to be resolved with a public budget; (iii) consider the quantitative dimension of the problem; (iv) prescribe and delimit the origins of the problem that deserve to be mitigated or eradicated; (v) consider the loss of an opportunity as a problem, so efforts must be made to identify thriving opportunities with the support of creativity, and (vi) define the problem only from a descriptive perspective, thus avoiding evoking, even tacitly, the solutions possible.

Regarding obtaining information, it is worth highlighting: (i) the importance of collecting only and exclusively those revealing data that can be translated into valuable knowledge; (ii) that are descriptive of facts and reveal distinctive notes of the problem and even its probable alternative solutions; (iii) the true benefit of the information lies in the degree of impact it will have on the adoption of the best possible solution to the problem through tools such as the decision tree; (iv) the foundation leads to improvement given that it generates reliability and therefore fosters the consensus necessary for the acceptance of the alternative solution.

14. THE POLITICAL IN DIFFERENT PROPERTIES

Harold LASSWELL delves into the broad panorama of approaches that the political supports. Firstly, he makes a distinction between the political and business spheres, thus identifying the interests, values and motives that support the statesman and the businessman respectively. Likewise, it discovers the essence of the contrast between the term's integration (of common interests intended by the political) and commitment (of satisfying private interests). It also evokes the value sought by the politician and which consists of the ability, and generally the will, to impose his or her own priorities as permanent or temporary reasons for his or her work. Finally, it unravels the function of the political element in science, economics, art, social life and religion:

The concept of the statesman has long carried the implication that anyone who exercises social power outside the government is in hot pursuit of an exclusively private advantage. [Lasswell \(1951\)](#), 47

Some of the many senses in which the "politician" is used may be disposed of by drawing a clean distinction between the "businessman" and the "politician." The business man may be defined as one who pursues a private advantage with little regard for conceptions of public right. [Lasswell \(1951\)](#), 47

The politician, in the here-selected "best" sense of the word, uses persuasion on behalf of his conception of public right. The politician pursues a genuine

integration of interests in the community; the businessman is satisfied with a compromise among competing private interests. [Lasswell \(1951\)](#), 47-48

An integration of interests is the solution of a conflict in such a way that neither "party" recognizes that so much has been won and so much has been lost in the outcome. [Lasswell \(1951\)](#), 47-48

The essence of the contrast between integration and compromise is that between a synthesis and a trade. The politician is a discoverer of inclusive advantages, and the businessman is a higgler for special advantages. [Lasswell \(1951\)](#), 48

Thus, the political man is the one whose principal value is the pursuit of power. The essence of power is understood to be the capacity, and usually the will, to impose one's own values as permanent or transitory motives upon others. [Lasswell \(1951\)](#), 50

The political man in science tends to substitute rhetoric for truth and to use ideas as forces (in the sense of Fouillée).

In economics the political man tends to reach his ends by diplomacy and negotiation, by intimidation or violence, or by other political means.

In art the political motive leads to efforts to impress by flamboyant decorative display.

In social life the political motive, with its forcible urge toward self-aggrandizement, must usually disguise itself in fostering the interests of some collectivity.

The god of the political man in religion is a god of might who requires mighty men to serve him. [Lasswell \(1951\)](#), 50

15. PUBLIC POLICIES, INTELLECTUAL PROPERTY AND CREATIVE ECONOMY

1) Public policies- Policy should be understood as the establishment of guidelines that take materiality through lines of government action that arise as a result of a prior deliberation of purposeful ideas for solutions to problems that impact the general population or in spheres delimited by groups of interest, thus coinciding with the position of Jorge Rafael DIAZ DUMONT:

... the policy establishes guidelines that will be transformed into actions that characterize a government in a certain specific context as a result of a debate of ideas or proposals.

... In this order of ideas about the concept, it can be established that the purpose of all public policy lies in the solution of problems, which arise from the diverse needs of citizens, such that it allows them to have quality of life and live in harmony in a social group. [Díaz Dumont \(2018\)](#), 91- 92

The concatenation of decisions that can be transformed into lines of action based on a prior strategic design also includes the provision of ex ante, concomitant and ex post evaluation mechanisms, so that the stages in which public policies are deployed converge in turn into processes that make up a network of interests and rights to be weighed in the universal framework of validations and consensus:

It should be noted that public policies are born from the need to solve citizens' problems; they are complex systems that involve a series of decisions and control. Considering the technical issue, it is important to specify that the

implementation of a public policy is not an isolated event, but which is rather articulated with other existing or to be created. [Díaz Dumont \(2018\)](#), 94

It is inevitable to mention the public political locution and its immediate meaning, for which purpose the contribution of André-Noël ROTH DEUBEL will serve as support, which refers not only to its basic ingredients but also to the way in which they interact to give it execution: (i) proactive state participation; (ii) formulation of objectives; (iii) triggering of a process, and (iv) a situational change:

...there are four central elements that allow the existence of a public policy to be identified: government involvement, perception of problems, definitions of objectives and process.

So, it is possible to say that a public policy exists as long as state institutions fully/partially assume the task of achieving objectives estimated as desirable or necessary, through a process aimed at changing a state of affairs perceived as problematic. [Roth Deubel \(2002\)](#), 27

2) Intellectual Property- In general terms, intellectual property law aims to protect creativity that is manifested through its two fundamental modalities: (i) industrial property (which mainly includes items such as trademarks, patents, invention, industrial designs, utility models, industrial secrets, and geographical indications), and (ii) copyright (which basically encompasses literary and artistic works). One of the areas of opportunity that arise for public policies consists of promoting the interaction between the creative or orange economy and intellectual property, given that technological advances or propensities continually arise that generate new aspects that are likely to complement meritorious protection activities of creativity.

3) Creative economy- Let's begin by defining the creative or orange economy based on the contribution made to this effect by Felipe BUITRAGO RESTREPO and Iván DUQUE MÁRQUEZ who highlight the origin of the notion, its nature and scope:

The color orange is usually associated with culture, creativity and identity. [Buitrago Restrepo & Duque Márquez \(2013\)](#) , 44

The creative economy, hereinafter the Orange Economy (you will see why), represents enormous wealth based on talent, intellectual property, connectivity and of course, the cultural heritage of our region. [Buitrago Restrepo & Duque Márquez \(2013\)](#) . , 10

For its part, the United Nations Educational, Scientific and Cultural Organization [UNESCO \(n. d.\) \(s.f.\)](#) on the occasion of the pronouncement of Resolution A/RES/74/198 dated December 19, 2019, by which it declares the International Year of The Creative Economy for Sustainable [Development Bank \(n. d.\)](#), reaffirms the content and importance of the concept of creative economy by expressing in its considering part, which implies the approximation of notions such as knowledge, ideas, creativity, technology, cultural values, as well as artistic heritage and cultural, which affect development and economic growth:

... Recognizing that the creative economy, known as the “orange economy” in a number of countries, involves, inter alia, knowledge-based economic activities and the interplay between human creativity and ideas, knowledge and technology, as well as cultural values or artistic, cultural heritage and other individual or collective creative expressions...

... Acknowledging that creative industries can help to foster positive externalities while preserving and promoting cultural heritages and diversity, as well as enhance developing countries' participation in and benefit from new and dynamic growth opportunities in world trade...

For this organization, the impact of the creative economy represents the conjunction of content resulting from creativity and that favorably affects the strengthening of the ownership of those rights that are materially and intangibly linked to goods or services resulting from ingenuity and innovation:

Recognizing the need to optimize the economic, social and cultural benefits stemming from the creative economy by creating an enabling environment for the promotion of the creative economy, such as the development of digital technology, innovative and digital economy, e-commerce, building relevant digital infrastructure and connectivity for supporting sustainable development, increased public and private sector investment in creative industries and the development of relevant legal frameworks . [UNESCO \(n.d.\)](#)

It is up to the United Nations Conference on Trade and Development (UNCTAD) to highlight the progression, significance, implications and comprehensiveness that the concept of creative economy has shown:

The "creative economy" is an evolving concept based on creative assets potentially generating economic growth and development.

- It can foster income generation, job creation and export earnings while promoting social inclusion, cultural diversity and human development.
- It embraces economic, cultural and social aspects interacting with technology, intellectual property and tourism objectives.
- It is a set of knowledge-based economic activities with a development dimension and cross-cutting linkages at macro and micro levels to the overall economy.
- It is a feasible development option calling for innovative, multidisciplinary policy responses and interministerial action.
- At the heart of the creative economy are the creative industries. [UN \(2010\)](#), 9-10

Thus, we find ourselves faced with production cycles of both goods and services, which attribute creativity, innovative capacity and intellectual capital as indispensable ingredients to be considered in the input matrix.

In the keywords section of his work on the Creative Economy (through which he aims to explain how people make money with their ideas), the analyst John HOWKINS cleverly defines the concepts creativity and creative product. Likewise, reference is made for the first time to the concept of creative economy.

For John HOWKINS, **creativity** by itself has no economic value until it takes shape, means something, and materializes into a product that can be marketed. This, in turn, needs a market with active sellers and buyers, some basic rules about laws and contracts, and some conventions about what constitutes a reasonable deal. [Howkins \(2013\)](#), 10-11

According to John Howkins, a **creative product** should be understood as an economic good, service or experience resulting from creativity whose main economic value is based on creativity. It may have other characteristics of beauty, knowledge or other symbolic and intangible virtues, but these are optional. The defining characteristics are two: it results from creative activity and its economic value is based on creativity. [Howkins \(2013\)](#), 10-11

Finally, John Howkins considers that a **creative economy** is a system for the production, exchange and use of creative products. Economics deals with the problem of how individuals and societies manage to satisfy their wants, which are infinite, with resources that are finite, and is primarily about the allocation of scarce resources. I calculate the market value of a creative economy by looking at the number and value of transactions. [Howkins \(2013\)](#), 10-11

Thus, from John Howkins' perspective, many, but not all, creative products qualify as intellectual property (IP) with intellectual property rights (IPR). The government and courts define the nature of property and the rights of the owner. [Howkins \(2013\)](#), 10-11

Of the amalgam between creativity and economics, John Howkins believes that neither is new, but what is new is the nature and scope of the relationship between them and how they combine to create extraordinary value and wealth. [Howkins \(2013\)](#), 10-11

The influence of John HOWKINS has been of such magnitude that he serves as a reference in this area for the United Nations Conference on Trade and Development (UNCTAD), particularly with regard to: (i) his concept (a starting from the notion of system); (ii) scope (as it includes the production, exchange and use of creative products); (iii) classification (given on the basis of two basic branches based on the ability of people and the effect that creative products generate in the market, but extends to 15 significant industries); (iv) characteristics (by building income, promoting employment, promoting social inclusion, favoring the interrelation of economic, cultural and social factors, strengthening the economy, and (v) requirements (such as the adoption of public policies that promote knowledge of this alternative and the effective protection of intellectual property):

Howkins' use of the term "creative economy" is broad, covering 15 creative industries extending from arts to the wider fields of science and technology. According to his estimates, in the year 2000, the creative economy was worth \$2.2 trillion worldwide, and it was growing at 5 per cent annually.

For Howkins, there are two kinds of creativity: the kind that relates to people's fulfilment as individuals and the kind that generates a product. The first one is a universal characteristic of humanity and is found in all societies and cultures. The second is stronger in industrial societies, which put a higher value on novelty, on science and technological innovation, and on intellectual property rights. [UN \(2010\)](#)

José Miguel BENAVENTE and Matteo GRAZZI develop a concept of creative economy based on the conjunction of various elements typical of the inventive and innovative ideology that translates into the materialization of goods, as well as services, and that consequently merit access to their protection:

...the orange (or creative) economy is considered to be the group of activities through which ideas are transformed into cultural and creative goods and services, the value of which is or could be protected by intellectual property rights (IPR). [Benavente & Grazzi \(2017\)](#).

Of significant contribution is the classification made by these authors regarding the defining ingredients of the creative economy. For them, the orange economy maintains an inseparable and integrative link with the following elements:

(i) traditional and artistic activities present in every culture; (ii) the creative industry, and (iii) activities aimed at creative support.

In turn, traditional and artistic activities include: (i) the visual arts, and (ii) the performing arts. Both make up what is known as cultural economy.

For its part, the creative industry encompasses: (i) the cultural industry (whose variables are crafts, publishing, audiovisual and phonographic), and (ii) functional creations (among which are software with a boom unusual in the inventiveness of video games, new mass media, fashion, advertising, interior, graphic, illustration and jewellery design, content creation for news agencies, architectural services, landscaping, and advertising.

Regarding the activities considered as creative support, those inherent to: (i) product design are identified; (ii) packaging design and (iii) the marketing of products and services.

Before moving forward in defining the public policies that the Mexican government must implement, it is necessary to evoke the concept of innovation contributed by Juan Carlos NAVARRO, José Miguel BENAVENTE and Gustavo CRESPI:

Innovation is the transformation of new ideas into economic and social solutions.

Innovation can be the implementation of a new way of doing things more efficiently (more effective use of resources); a new or significantly improved product (good or service) or process.

a new marketing practice; or a new method of organization in business practices, workplace organization, or external relations. [Navarro et al. \(2016\)](#), [Benavente & Grazzi \(2017\)](#), 17

If innovation consists of the transformation of new ways of thinking and doing, until they become the solution to problems defined as public, and is also considered as a direct factor of economic development; a government policy that deserves immediate conformation is that related to investment in the generation of creative and innovative energy (where not only functional, technical or objective innovation is considered, but also the so-called soft innovation since said transformation will refer to varying the way of perceiving a product or service).

The Mexican state has been passive in the adoption of public policies that encourage the protection of rights derived from the creative economy, since in the best of cases its programs have been framed in the context of its usual efforts, this is limited.

The generation of wealth and therefore development from creativity are subject to a series of variables that make them operate in a framework of uncertainty, such as: (i) the characteristics of the environment where the result of the inspiring spirit (goods or services) will have a presence and where the laws of supply and demand will prevail; (ii) the behavior of the consumer that will define its acceptance or percussion (occasionally conditioned by issues purely of novelty), (iii) as well as the degree of interest and government support provided through lines of action specific to the implementation of programs from which it is intended to solve, mitigate or contain problems defined as public through the implementation of the relevant policies:

...activity based on human creativity is by definition uncertain in many respects. The creativity process depends on talent, inspiration, previous experiences, and exposure to other creative works, among other factors. But none of them determine how long the process will take. Additionally, the value of a creative product will vary substantially depending on consumer reaction which is very difficult to predict. This implies that the risks associated with creative activities are very high and difficult to predetermine before the process begins.

...The coordination and market failures mentioned above make a compelling argument for public intervention in various aspects of the creative economy. [Benavente & Grazzi \(2017\)](#), 29-31

Juan Carlos NAVARRO, José Miguel BENAVENTE and Gustavo CRESPI manage to identify the central visions of the public policies and government programs implemented to encourage the creative economy, which range between:

(i) stimuli of an economic nature; (ii) educational measures of intellectual capital. (iii) appropriation and consolidation of good practices inherent to corporate governance (conceived as the set of rules, principles and procedures that regulate the structure and operation of the governing bodies of a company.), and (iv) even regulatory improvement (as a public policy consisting of the establishment of clear rules, the design of simplified procedures and services, as well as effective and efficient institutions for their creation and implementation, which are aimed at achieving the greatest possible value from the available resources and of the optimal functioning of commercial, industrial, productive, service and human development activities of society as a whole).

These programs have varied widely depending on the justification for public intervention and include direct and indirect financial support provided to both the supply and demand of goods and services; human capital formation (through educational systems and formal training programs); regulatory infrastructure (especially copyright law and control of the printing and media industries, including television quotas); and mechanisms to improve the circulation of information, technology and market development. [Benavente & Grazzi \(2017\)](#), 31

For his part, Jorge Rafael DIÁZ DUMONT, when addressing the problem of written intellectual property, concerning the practice of students copying and pasting without citing the source, said author reveals that this is due to the absence of public policies that Favor sufficient knowledge of the various areas that intellectual property includes, coupled with the inappropriate use of Information and Communications Technologies (ICT), which entails not only unethical conduct, but also potential legal sanctions, to this end, it proposes an Objective Tree that includes public policies aimed at the promotion and protection of intellectual property, explaining its reasons below:

With respect to diagram 2, regarding the objectives, these should be part of a series of policies, programs, projects and/or activities that have the purpose of promoting respect for written intellectual property, enhancing knowledge about it, its adequate treatment in the courses and the appropriate use of ICT. [Díaz Dumont \(2018\)](#), 90

It is important that property rights are safeguarded by the State through the implementation of certain mechanisms, this must guarantee that creativity and human effort are rewarded; Intellectual capital is a valuable asset that contributes to the economic development of nations. [Díaz Dumont \(2018\)](#), 97

4) Relationship between public policies, intellectual property and creative economy- To answer the inevitable question about the link between intellectual property and the creative economy, the opinion of Esteban SANTAMARÍA HERNÁNDEZ will serve as support:

How is intellectual property (IP) related to the creative economy? Through the figures offered by IP, a creator can protect his creation and thereby obtain recognition from an authority that would allow him to prevent others from using it without his authorization. [Santamaría Hernández \(2022\)](#), 1

From the perspective of Esteban SANTAMARÍA HERNÁNDEZ, the intellectual property instruments whose most significant interrelation could be generated with respect to the creative economy are: (i) **copyright** (both in relation to its moral and patrimonial rights, as well as related rights, and its protection includes creations of literary or artistic works, and covers the expression of the work itself, but not the ideas or elements that are explicitly excepted by the regulations, thus seeking healthy moderation between the rights of its creator that claim its royalties and those of the public who request access); (ii) the **brands** (since regardless of whether their classification corresponds to those identified as traditional or non-traditional, and includes collective, certification, and destination brands, they confer on their trademark owner the power to exclude third parties from its use and includes exclusively the segment of products or services with respect to which the leading trademark was registered, provided that they contain distinctive signs that have characteristics that allow them to differentiate them from others, but that do not contain elements not susceptible to registration); (iii) **invention patents** (provided that they meet the requirements of being novel, having an industrial application and are derived from an inventive activity, and whose protection consists of the invention not being reproduced, used in any way, distributed with claims of commercial profit, nor is it transferred for consideration, without having previously obtained the authorization of its owner, but its protection is only possible in the territorial district of each country where it is registered); (iv) **industrial designs** (territorial protection in the country of registration is reflected in the novelty of the physiognomy or aesthetic appearance of a product, and which is materialized in drawings respecting its figures, lines, and colors, as well as in fundamentally three-dimensional models); (v) the **commercial secret** (the object of protection is the series of information and documentation that provides its owner with a competitive advantage as a particular and long-term sustainable characteristic that allows its owner to stand out from its competitors in the same market segment, and consequently gives it a privileged position thanks to the particularity of its industrial and manufacturing secrets, as long as it is not in the public domain, nor are its content and scope obvious); (vi) **traditional knowledge** (a set of knowledge that can be materialized on a factual level and transmitted from generation to generation in the core of the same community of people with related activities, and that commonly denotes their cultural and spiritual identity), (vii) as well as **traditional cultural expressions** (these are the product of folklore and are manifested through music, dance, art, designs, signs, symbols, interpretations, ceremonies, architectural forms, craft objects, narratives, etc. Authorship or creation of traditional knowledge and traditional cultural expressions is attributable to a group of people, so we are faced with collective or community property. [Santamaría Hernández \(2022\)](#), 4 -40

We identified a diverse approach between these three aspects in the study carried out by Luis Carlos PLATA LÓPEZ and Karen Isabel CABRERA PEÑA on public policy in the field of science, technology and innovation based on economic development based on the Colombian regulatory experience, where the double role of the state is highlighted: (i) motivating private investment, and (ii) maintaining a balance between accessibility to the products resulting from the creative and knowledge economy, versus the protection of inventive work:

It has been held, as an almost universal premise, that any public policy that seeks to encourage the generation of science and technology in a country, to link it with levels of economic growth, must use as a legal instrument an effective system of protection of intellectual property rights, this with the double purpose of generating incentives for private investment and, in addition,

of formulating mechanisms for access to protected products and knowledge. [Plata López & Cabrera Peña \(2011\)](#), 93

The reason why new rights have emerged to be protected based on knowledge, inventiveness and creativity is the weighting rearrangement that the factors of production have been subject to as the traditional ones (land, capital and labor) have been progressively displaced and are replaced by those resulting from scientific advance (Information and Communications Technologies and intellectual capital):

Currently, the most important economies and companies around the world have changed the traditional economic model based on land, capital and labor as factors of production and wealth generation for a new model based on information, technology and intangible assets. [Plata López & Cabrera Peña \(2011\)](#), 93

In the international context, the World Trade Organization (WTO) has promoted the adoption of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) of April 15, 1994, which among its scope includes aspects related to the effective protection of intellectual property:

TRIPS comprises five general aspects: (1) how the basic principles of the international trade system and other treaties on intellectual property should be applied, (2) how to provide adequate protection to intellectual property rights, (3) how member countries they must adequately enforce such rights in their territories, (4) how to remedy disputes over intellectual property rights among WTO members, and (5) transitional provisions for the implementation of the agreement (World Intellectual Property Organization - WIPO -, 2007). [Plata López & Cabrera Peña \(2011\)](#), 94-95

If favorable conditions are present at the international level, the lack of harmonization in domestic intellectual property law has been the cause of the aforementioned agreement not achieving its beneficial purposes and is specifically due to: (i) the lack of public policies aimed at the adoption of the proposed international standards; and (ii) the lack of seriousness in timely and complete compliance with the commitments assumed by the member states.

In this regard, and according to the synthesis prepared by Luis Carlos PLATA LÓPEZ and Karen Isabel CABRERA PEÑA, the Colombian experience is translated into the contributions of the National Council of Economic and Social Policy (CONPES), through a series of documents that express the country's need to strengthen capabilities regarding the generation, management and use of knowledge with a view to improving this aspect: (i) CONPES 3439 (on the institutional framework and guiding principles of policy for competitiveness and productivity, with the purpose of providing the country with instruments that strengthen its insertion in international markets and optimize the actions of both the government and the private sector to improve the record that the country has in terms of competitiveness); (ii) CONPES 3527 (on competitiveness and productivity policy that aims to improve the country in the competitiveness ladder as a means to achieve success in the global market, since it is a means to generate formal employment opportunities and combat poverty and inequality, and (iii) CONPES 3582 (which proposes as strategies: promoting innovation in the productive apparatus; strengthening human resources for research and innovation; promoting the social appropriation of knowledge, in the use of the media; focusing the action of the State in the development of strategic sectors, characterized by the production of goods and services with high scientific and technological content and therefore, high added value; strengthen capabilities in science, technology and innovation through the design of cooperation plans for the research and that leads

to the development of various strategies in order to protect intellectual property. Plata López & Cabrera Peña (2011), 98-99

16. CONCLUSION

First- The need and sense of belonging and appropriation are inherent to human beings, so the State is obliged to implement the mechanisms that are necessary for their recognition, enjoyment, protection, and, where appropriate, vindication.

Second- Creativity and innovation promote development and well-being, and therefore deserve to be subject to the benefits that intellectual property provides.

Third- Respect for intellectual property rights, particularly those created in the field of the creative economy, whose wealth is based on talent and innovative energy, deserve to appear on the public agenda and be the subject of government policies whose strategies and lines of action encourage its knowledge, generation and also guarantee its protection with the support of governance. These policies must be adaptable to the different evolutionary contexts in which the rights to be protected are presented.

CONFLICT OF INTERESTS

None.

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