

# **Elections by Customary Law in Oaxaca, Mexico: Expression of Cultural Rights or Violation of Democratic Electoral Norms?**

## **Center for Democracy and Election Management Case Study #1**

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**July 9, 2006**

*This case study is suitable for use in upper-level undergraduate and M.A.-level courses in political science (democratization, ethnic politics, Latin American politics), as well as in sociology and anthropology courses addressing indigenous rights movements and multiculturalist versus pluralist systems of government. With a focus on usos y costumbres customary rights in Oaxaca, Mexico, this case study offers the opportunity for students to explore the debate between multiculturalists and pluralists. The debate is part of a broader one in Mexico, stimulated by the Zapatista uprising of 1994, and elsewhere in Latin America, as evidenced by Bolivian President Evo Morales' indigenous movement. While the issues considered relate more generally to citizenship and identity than explicitly to elections, municipal leader selection through usos y costumbres (customary law rather than secret votes and ballot boxes) is the "choke point" between "liberal" individualist and communitarian views. For a copy of the instructor's notes, please email Todd Eisenstadt at <[eisensta@american.edu](mailto:eisensta@american.edu)>.*

When a score of women in 1998 "crashed" the traditionally all-male community assembly in the remote Mexican hamlet of Asunción Tlacolulita, they tipped the balance of local politics away from generations of tradition. Voting for a left-leaning opponent of the local *cacique* (political boss) associated with the long-ruling Party of the Institutional Revolution (PRI), several of the women said they wanted to promote the representation of new groups, such as women from families other than those favored by the PRI for more than seven decades. One of the leaders of the women who insisted on attending the plebiscite, Anastasia Zenón Flores (interview), stated that they did so because: "we had to defend our rights. We have seen that in many places women have even held public offices. We are taken for ignorants, but [the] human rights [activists] have always told use we have the same rights as men."

Asunción Tlacolulita is a remote village 15 miles from any paved road which has actually lost nearly 40 percent of its population since 1980, when 1,567 residents lived there (Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003). Only about 1/2 of the population is economically active

(Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003), as many people work in the “informal economy” or live off of remittances sent back by relatives working in nearby cities, elsewhere in Mexico, or in the United States. The village has no modern clinic, no education above middle school, and while the village used to boast a weekly regional market on the cinder block-paved town square, that tradition has trailed off, forcing merchants to sell their wares in neighboring towns. As of 2000, 56 percent of the residents over 15 had not finished grade school, and 16 percent were illiterate (Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003). Most (but not all) of the village’s 236 households possess electricity, but some 34 percent still do not have sewage, 30 percent have unsanitary dirt floors, and over 60 percent are built with “temporary” roofs made of straw or mud (Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003). Despite its poverty and isolation, by Oaxaca standards Asunción Tlacolulita is a relatively large and relatively affluent community, as living conditions have improved markedly with the arrival of electricity and plumbing to most households over the last decade. For rural Mexico, its living conditions are about average (CONAPO 2002, 118).<sup>ii</sup>

Politically, Asunción Tlacolulita is atypical of rural Mexico’s longstanding bastions of support for the Party of the Institutional Revolution (PRI), which governed Mexico at the national level from 1929 to 2000 without interruption, and which in Oaxaca continues to rule, despite a close race in 2004 when the PRI’s new governor withstood an alliance between the Nacional Action Party (PAN) on the right and the Party of the Democratic Revolution (PRD) on the left. Governed by customary law “*usos y costumbres*” (which in Asunción Tlacolulita means selecting mayors through an assembly of resident men) since 1995, the village gave Mexico’s Communist Party (PCM) one of its first local victories anywhere in 1980, before falling back into PRI rule in the late 1980s and early 1990s when PRI candidates again ran unopposed (but still only drew about 1/3 of the electorate to vote).

While only some 8 percent of Asunción Tlacolulita’s residents are considered indigenous (speaking the Chontal of Oaxaca language), the municipality was ratified by Oaxaca’s unicameral legislature in 1995 as among the 412 of Oaxaca’s 570 municipalities where *usos y costumbres* would be enacted over elections with party-based candidates and secret ballots. Proponents of *usos y costumbres*, mostly from the ruling

PRI-majority legislative and executive branches, argued that – especially in the wake of the 1994 indigenous insurgency in neighboring Chiapas – it was high time to “legalize” and legitimize leadership selection practices extending back to colonial times. They argued that legalizing *usos y costumbres* merely gave indigenous customs the dignity they deserved, and that even before these forms of selecting local leaders were “legalized,” towns and villages all over the country selected their leaders through their own procedures and then legitimized this selection by running their chosen leader as the unopposed candidate of the PRI in state-sanctioned elections.

The women who stormed Asunción Tlacolulita’s 1998 leader selection assembly argued a different position. Claiming that *usos y costumbres* was a myth to perpetuate the power of the PRI over indigenous Mexico against recent encroachments by opposition parties, and that *usos y costumbres* varied according to the convenience of its advocates, they argued that these procedures precluded their participation in local politics. Indeed, challenges to PRI rural bosses had been sustained when Tlacolulita conducted its local elections through parties, and the village had experienced fewer intra-village conflicts between indigenous and non-indigenous citizens than much of rural Oaxaca, where it was not uncommon for all of a community to speak indigenous languages rather than Spanish. Some communities were divided among members of Oaxaca’s seven prominent linguistic groups (de la Vega Estrada 2002, 48) – the Zapotecos (some 417,500), the Mixtecos (275,200), the Mazatecos (177,700), the Chinantecos (116,300), the Mixes (107,700), the Chatinos (41,300), and the Triques (17,000) – and many residents are monolingual speakers of native languages only.<sup>iii</sup> Political conflicts in Asunción Tlacolulita were said by residents to derive from family-based monopolies of power, bolstered by the PRI monopoly, rather than on broader clashes between linguistic groups or cultures, as elsewhere.

Cipriano Flores Cruz, director of the Oaxaca electoral institute during the Tlacolulita post-electoral conflict, recalled a struggle between the PRI and PRD over power, rather than a struggle for women’s rights (interview). While *usos y costumbres* conflicts are submitted to a special mediator in the Oaxaca State Electoral Institute (IEE) rather than to the state electoral court (where party-based election conflicts are resolved), no strict laws exist governing this mediation process, only the norms established in a “catalogue”

of *usos y costumbres* traditions described for each municipality. The Electoral Tribunal of the Judicial Power of the Federation (TEPJF), Mexico's highest court for adjudicating post-electoral disputes, confirmed federal jurisdiction in 2000 over *usos y costumbres* by invalidating the 1998 local election in Asunción Tlacolulita. The ruling was part of the electoral court's establishment in the late 1990s of final jurisdiction over what had been intransigent post-electoral conflicts nationwide (Eisenstadt 2004, 60-93), claiming some 196 lives in México since 1989. These conflict-related fatalities occurred in Oaxaca greatly out of proportion with the rest of the country. Some 20 percent of the fatalities occurred in a state containing only 3.5 percent of Mexico's 2000 estimate of 97 million people (Eisenstadt and Ríos Contreras 2005, 35).

### **Oaxaca's Indigenous Communities in Broader Context**

While only 7 percent of Mexico's population over 5 years old spoke indigenous languages in 2000, the indigenous population in Mexico was the largest in Latin America, if not the most politically united.<sup>iv</sup> Among the 30 percent of Mexico's population broadly labeled as "ethnically indigenous," practices of picking leaders via town assemblies, Councils of Elders, or through other longstanding traditions, have been routine - but not legally sanctioned - since the indigenous communities were fully incorporated into the Mexican state in the middle of the 20<sup>th</sup> century. Contrary to other regions - such as neighboring Chiapas - which have been victimized more persistently by widespread environmental degradation, class and ethnic conflict instigated by oppressive elites (see for example Collier and Quarello 1999) - many of Oaxaca's violent conflicts have been internal.<sup>v</sup> The timing of the permeation of traditional communities by state corporatism<sup>vi</sup> in Mexico differed greatly in Oaxaca and in Chiapas, as the Oaxacan indigenous population was decimated by the Spanish conquest, but was then allowed to reorganize into the small, closed communities they populate today. According to the historian Chance (1986, 180), "the Spaniards were most concerned with replacing Indian structures above the community level, and in Oaxaca, where

these were either tenuous or nonexistent, a substantial portion of the indigenous sociopolitical organization survived the conquest years.”

In Chiapas, weak communities of indigenous citizens were co-opted as peasant laborers by large landowners and the state in the mid-20<sup>th</sup> century, who set about assimilating indigenous citizens, however displaced and repressed, through policies of *indigenismo* which sought to integrate indigenous communities into the state through local political operatives of the PRI, such as bilingual teachers (Rus 1994, Pineda 2002). In Oaxaca, this cooptation into the broader state occurred much earlier and less abruptly. While land distribution in Chiapas has been characterized as more unequal, with a few rich and often absentee landowners holding much of the state’s best land and creating a source of constant conflict between organized peasant groups and the state, Oaxaca’s land conflicts have not often reached such epic proportions. The two states possess the lowest human development indices among Mexico’s 32 states, although Chiapas’ is the lowest of all. If the northern Mexican state of Nuevo León (and its wealthiest cities and suburbs such as San Nicolas, featured on Table I) possess a development index analogous to South Korea, Portugal, and the Czech Republic, Oaxaca and Chiapas are more comparable to Albania, China, and Turkmenistan (Lustig and López-Calva, 66-68).<sup>vii</sup>

Were *usos y costumbres* legalized in Oaxaca as a local response to the 1994 Zapatista calls for indigenous autonomy in neighboring Chiapas after launching an internal insurgency there, or to perpetuate the PRI’s monopoly of control over Oaxaca’s rural areas, despite the party’s minor but notable electoral decline after the late 1980s? Anaya-Muñoz has constructed a cogent argument that, while a consensus existed that “something had to be done” after the Zapatista Rebellion destabilized Chiapas in 1994, the more immediate cause of the electoral reform’s passage by the Oaxaca state legislature was that in August 1995 the PRI majority of legislators-elect witnessed their most precipitous decline ever in vote percentage, after slippage since 1989 in municipal races.<sup>viii</sup> Passing a law to keep indigenous municipal elections “free” of party involvement was a means of minimizing opposition damage as well as of promoting indigenous representational “purity” (Anaya-Muñoz 2002, 192-202). Whatever the cause of recognition, *usos y costumbres* has strong advocates and detractors.

## The Case for *Usos y Costumbres*

How can anyone object to the central claim of *usos y costumbres*, that it recognizes the dignity of groups of people and their collective histories and practices? In this age of cultural homogenization, is it not refreshing that groups are striving to maintain that which is distinctive and unique? Does the act of “officially” recognizing peoples’ *usos y costumbres* not in itself elevate them and give them cultural and social resources which may be leveraged also to improve their socio-economic positions? Does not the celebration of multiculturalism also empower societies to learn more about others and thus also learn more about themselves?

Furthermore, *usos y costumbres* advocates like Jaime Martínez Luna claim that governance through community assemblies, the rule in *usos y costumbres – comunalicracia* as he calls it – is actually more accountable to the peoples’ will, as decisions and commitments are made publicly; voters and candidates have nowhere to hide from words spoken or positions taken (interview). Public service is an obligation to the community undertaken by all. Everyone scales the ladder of public positions, assuming a post every several years (depending on the municipality) and scaling the ladder of positions, from *topil* through errand runner through Church caretaker through *mayordomo* through mayor (with some variations by municipality). Candidates for mayor are known intimately to all through their past labors and reputations, and have served responsibly in the public interest for a good part of their lives, and – in many cases – without any salary beyond *per diem* reimbursements for travel to Oaxaca City or to neighboring communities on official business.

In the Mexican context, recognition of *usos y costumbres* was also viewed as a means of diminishing social conflict. The San Andrés Accords between the Mexican government and Chiapas’ Zapatista rebels, signed in 1996, laid out constitutional changes which specified the collective rights of indigenous groups within defined territorial boundaries, as per international standards established by the International Labor Organization Treaty 169 (ILO 169). The government ceded, in most regards, to the Zapatistas’ position, although differences existed, as summarized by Benítez Manaut, Selee, and Arnson

(2005, 19): “The government saw the concept of indigenous rights as a means to incorporate indigenous individuals more fully into the political and economic process, within the existing legal framework. The Zapatistas and their allies, on the other hand, sought an agreement that would recognize customary authority within indigenous communities, as long as this was consistent with national human rights practices, and allow indigenous peoples to have collective rights over resources and public policy decisions within territorially defined areas.”

After the group negotiating on behalf of President Ernesto Zedillo signed an accord with the Zapatistas, peace talks stalled when the government refused to submit the agreement for congressional approval, and an escalation in violence by paramilitary groups in Chiapas (vigilantes with ties to local landowner elites – and often to the PRI - who took justice into their own hands by forcibly removing landless peasant squatters from lands with multiple ownership claims, culminating in late 1997 with the massacre of 45 people by a paramilitary group with ties to the PRI and to the state police. Presidential candidate Vicente Fox of the opposition National Action Party (PAN), campaigning prior to Mexico’s watershed 2000 election, claimed that he could resolve the Chiapas conflict in 15 minutes of negotiations, and after his election, Fox did submit a variant of the San Andrés Accords for congressional approval, and the law, as a constitutional amendment, was also ratified by the necessary 2/3 of Mexico’s state legislatures (although most of those with large indigenous populations – such as Chiapas and Oaxaca – did not ratify it).

The truncated San Andrés peace process coincided with efforts by policymakers in Oaxaca, led by then-PRI Governor Diodoro Carrasco, to approve the practice of *usos y costumbres* there. Whether the political objective of the legislation, passed in 1995 and then revised in 1998, was sincerely to promote indigenous culture, or to prevent a Zapatista “contagion” of indigenous uprisings from breaking out there,<sup>ix</sup> many indigenous leaders praised the new law as legitimizing the cultural practices and histories of Mexico’s first peoples, and as a step towards granting them collective authority over resources and policymaking within defined territories. It seemed to be a concession from the state to fostering differential and enhanced rights for native peoples, and a recognition that earlier government efforts to

protect indigenous minorities' rights, and ensure equitable access by remote indigenous citizens to state resources, had failed.

At the first Inter-American Indigenist Congress at the idyllic lakeside indigenous community of Patzcuaro, Mexico in 1940, President Lazaro Cárdenas declared the assimilationist intent of Mexico's increased attention to indigenous demands: "Our indigenismo does not Indianize Mexico, but Mexicanizes the Indian (Burt and Mauceri 2004, 21)." Indeed, despite the existence of a National Indigenous Institute (INI) during the later half of the 20<sup>th</sup> Century, to attend to special needs of indigenous peoples (and, by the tenets of *indigenismo*, to integrate them into the state), Mexico's indigenous population remains by far the most destitute and politically under-represented (see Table I).

**Table I – Quality of Life Indicators for Selected Territorial Units, 2000 Census**

Territorial Entity	Pct Illiterate (population over 15 years old)	Pct With Dirt Floor Where They Live	Pct Without Drainage or Toilet Where They Live	Pct Without Electricity Where They Live
All of Mexico	18	32	20	10
Indigenous Localities <sup>x</sup>	31	54	73	21
All Chiapas	23	41	19	12
All Oaxaca	21	42	18	13
Asunción Tlacolulta, Oax	16	30	13	7
Villa Hidalgo Yalalag, Oax	34	55	11	16
Santiago Ixtayutla, Oax <sup>xi</sup>	55	82	18	57
San Nicolas, Nuevo León <sup>xii</sup>	2	0	0	0

Sources Serrano Carreto, ed. (2002), Instituto Nacional para el Federalismo y el Desarrollo Municipal. (2003).

The quality of life in Asunción Tlacolulítla is high compared to overall conditions in Mexico's indigenous municipalities (see Table I), and some of the more destitute indigenous municipalities in Oaxaca, like Santiago Ixtayutla.

In Oaxaca (and Chiapas), under the old system where authorities tended to select their leaders via *usos y costumbres* and then legitimize the selection vis-à-vis the state by registering their "winner" unchallenged as PRI candidate (Recondo 2001, 94, Velásquez 2000, 96-98), political representation had

been particularly unrepresentative, as the unicameral state legislature, apparently to suit political ends, routinely dismissed duly-elected mayors and replaced them with “interim” mayors appointed by the governor, or, in the case of intractable conflicts, with plural municipal councils, composed of representatives representing the winning party and the runner-up. A pattern emerged in the 1970s and 1980s in which opposition party candidates, frustrated by the PRI’s rigging of the electoral system and corrupt vote tallying, protested after losing in order to try to provoke the creation of one of these municipal councils. These conflicts grew sufficiently prevalent by the early 1990s that they occurred in well over 10 percent of local elections (Table II).

**Table II: Oaxaca's and Mexico's Post-Electoral Conflicts 1989-2004  
By Local Election Cycle**

Category of Elections	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths	Number <sup>1</sup> (%)	Intensity 0=none 3=deaths
	<b>1989-1991</b>		<b>1992-1994</b>		<b>1995-1997</b>		<b>1998-2000</b>		<b>2001-2003</b>		<b>2004-2006</b>	
Oaxaca Parties	47 (8 %)	1.7	76 (13 %)	1.9	50 (33 %)	1.8	29 (19 %)	1.7	21 (14 %)	1.8	25 (16 %)	2.0
Oaxaca <i>usos y costumbres</i>	N/D	N/D	N/D	N/D	22 (5 %)	1.8	32 (8 %)	1.7	42 (10 %)	2.2	44 (11 %)	2.0
Oaxaca Total	47 (8 %)	1.7	76 (13 %)	1.9	72 (13 %)	1.8	61 (11 %)	1.7	63 (11 %)	2.1	69 (12 %)	2.0
<b>Mexico-wide Total</b>	369 (15 %)	1.8	389 (16 %)	1.6	257 (11 %)	1.6	180 (7 %)	1.6	239 (10 %)	1.8	Data Incomplete	Data Incomplete

Source: Eisenstadt (2007 forthcoming). Data base assembled by the author and Viridiana Ríos Contreras, coded from Oaxaca Electoral Institute data and from continuous coding of national (*La Jornada, Reforma*) and local (*Noticias – Voz e Imagen de Oaxaca*) press accounts between 1989-2004. Other sources for Mexico-wide sample are given in Eisenstadt (2004, 296).

Notes: The total number of municipalities from which percentages were extracted has changed because of constant addition and redistricting of municipalities. The total number of municipalities nationwide was 2389 for 1989 to 1991; 2395 for 1992-1994; 2418 for 1995-1997; 2427 for 1998-2000; and 2435 for 2001-2003. Similarly, the total number of *usos y costumbres* municipalities in Oaxaca 1995 was 412, while in 1998, 2001, and 2004, this number increased to 418. Since the number of municipalities in Oaxaca has remained constant at 570, the increase in *usos y costumbres* municipalities diminished the number of municipalities holding standard party-based elections from 158 in 1995 to 152 for 1998-2004. Percentages rounded to the nearest whole number; intensities are rounded to the nearest tenth. Multiple opposition party mobilizations in one municipality were rare, but when they occurred, I in every case entered only the mobilization by the higher vote-getter among the runner-up parties was credited with the conflict, as that party was considered to be the main post-electoral contender (and usually there was a large margin between 2<sup>nd</sup> and 3<sup>rd</sup> place finishers). Just as electoral contention was either PRI-PAN or PRI-PRD but almost never PAN-PRI-PRD (at least not until the late 1990s), post-electoral contention also followed this pattern during the period under study. As per Eisenstadt 2004 (135-140) but with conflation of the four categories into three, post-electoral conflict intensity was coded as follows: 3 for conflicts resulting in deaths, 2 for conflicts producing serious injuries and/or building occupations (or other manifestations) lasting longer than one event, and 1 for single-iteration (one-day) mobilizations.

<sup>1</sup> Elections were not held in 2004 in Santiago Laollaga, Magdalena Tlacotepec, Constanca del Rosario, San Juan Ñumi, San Pedro Ixtlahuaca, San Pedro Jocotipac, Santa Cruz Acatepec, Santiago Yaveo, or Tanetze de Zaragoza.

*Usos y costumbres* sought to diminish the frequency of these conflicts, and also their intensity. While state legislators may not have been the busiest in authoritarian Mexico, where the president and his/her local representative – the governor – dictated policy decisions, the naming of interim governments and municipal councils occupied inordinate roles in the state legislative agenda. For example, in 1992, 48 percent of the 116 decrees issued by the Oaxaca state legislature addressed the composition of new municipal governments (Eisenstadt 2004, 4 fn 2). *Usos y costumbres* sought to diminish partisan post-electoral conflicts and reduce the state's recourse to naming interim local governments.

Another often-cited reason for supporting *usos y costumbres* is to break the stranglehold of political parties and their clientalistic relationship with citizens, especially rural Mexico's remote and destitute citizens, who are known to have traded votes for a few sheets of roof laminate or cans of food (Eisenstadt 2004, 240). While the PRI started facing extensive electoral competition in local races in the 1990s, as late as the 1980s, Oaxaca was known as one of the prominent bastions of the PRI's "strategic reserve" of votes, also called the *voto verde* or "green vote" because votes were easy to mobilize (and even falsify, through "patriotic fraud"<sup>xiii</sup>) in Mexico's rural hinterlands. In Oaxaca, for example, in the most heavily contested election ever – the 1988 presidential race which may have been won by Cuauhtémoc Cárdenas who went on to found the PRD, but was certified in favor of the PRI's Carlos Salinas – 87 electoral precincts (containing 40,664 votes) suspiciously granted 100 percent of their votes to the PRI (Aziz and Molinar 1990, 166). This was in an extremely close, three-way election in which official returns granted Salinas a 20-point margin of victory (51 percent Salinas to 31 percent Cárdenas), although credible allegations of fraud were widespread (Eisenstadt 2004, 44-46). And if savvy and organized opponents, particularly the lawyers of the PAN, dubbed the "parachutists" for their mobilization in urban areas all over the country in the early 1990s to oppose subsequent fraud efforts in critical races (Eisenstadt 2004, 178-183), Mexico's small, rural, and isolated communities were largely on their own. In indigenous communities, the PRI was even more hegemonic than elsewhere, often receiving all municipal votes cast as residents sought to legalize *usos y costumbres* processes via balloting.

Before legalization of *usos y costumbres*, votes were harvested by local *caciques* or chieftains, invariably affiliated with the PRI and acting as the community's interlocutor with the party and the state government (which were fused together as one). Direct recognition of *usos y costumbres* in 1995 seemingly cut partisan intermediaries out of the process, allowing communities to make decisions without political parties. Entrenched patterns did remain, at least as long as the national PRI possessed the national resources needed to coopt or repress dissenters. Prior to the national economic crisis of the mid- and late 1980s, the party had actually established a network to supply patronage requests from thousands of local affiliate groups. The PRI's nationwide patronage supply network included 778 union stores, 155 butcher shops, 35 consumer cooperatives, 15 bakeries, 15 supply depots, and 1 pharmacy (González Compeán and Lomeli 2000, 533). Breaking with strong corporatist ties which permeated most of rural Mexico's peasant associations and pervasive clientalist networks between individuals seeking fertilizers, school supplies for their children, or canned food, and local *caciques'* PRI operatives seemed highly unlikely; but at least *usos y costumbres* seemingly gave determined communities a chance to rebuild local political systems.

Lastly, *usos y costumbres* reinforces other Oaxaca indigenous traditions such as the system of *cargos* and the *tequio*. Although the precise forms these traditions take vary within Oaxaca's major indigenous linguistic groups (and even from community to community), they were – and still are – communal mutual assistance arrangements to which all citizens are expected to “pitch in.” *Cargos* are a set of public positions all citizens (or in many communities, all men) are expected to fulfill.<sup>xiv</sup> They range from *topils*, or town security agents, to the *mayordomo*, who is the chief fundraiser and sponsor of the annual town party honoring the patron saint, to the mayor. All families must offer service on a rotating basis,<sup>xv</sup> every several years, and with increasing responsibilities as they get older. *Usos y costumbres*, in municipalities where they are practiced as part of a broader and longstanding cultural context, reinforce *cargos* because they recognize the experience of people (again, usually men), who have accumulated a lifetime of public service, rather than just who gets the most votes on a given Sunday. *Tequio* is communal work, such as the paving of roads and the building of schools, which is how many social services get provided in poor

communities where perhaps the local government can contribute some cement and a basketball hoop, but not the labor to build the court. Parties can undermine the communal provision of services, which fosters community unity and social capital, through clientalist offerings, and promises of particularistic and public goods from the PRI governor (who assigns nearly all discretionary funding, as local taxation authority is still minimal). As stated by one of Guerra’s (2000, 78) interviewees: “If a person never offered *tequio* and becomes mayor, how do they expect us to obey them? This breaks the ties of legitimacy which are based on reciprocity and respect for authority.”

### **The Case Against *Usos y Costumbres***

While compelling arguments favor the continuation of *usos y costumbres*, evidence also exists that while the process may promote the rights of a group victimized by discrimination nationwide, many *usos y costumbres* traditions also discriminate against other minorities. A codification of traditional leader selection practices in the initial 413 *usos y costumbres* municipalities (González Oropeza and Martínez Sánchez 2002, 479-808), reveals that some 22 percent allow no participation by women whatsoever, and 24 percent are known to systematically forbid the participation of citizens living outside of the *cabecera*, or municipal “seat,” where decisions tend to be made (see Table III).<sup>xvi</sup>

**Table III: *Usos y Costumbres* Institutional Discrimination Against Women and Citizens Outside Municipal Seats or *Cabeceras***

Conditions of Discrimination	Women		Residents Outside of <i>Cabecera</i>	
	Number	(%)	Number	(%)
Allow at Least Some Participation	300	71.8	153	36.6
Allow No Participation	94	22.5	102	24.4
Unknown or Missing Data	24	5.7	163	39.0

Source: Author coding of González Oropeza and Martínez Sánchez 2002, 479-808.

By favoring the rights of minority groups which are in fact majorities in their own districts, the legal system grants them the discretion to discriminate against other groups with impunity. And at least in some cases of discrimination, instrumental motivations are known to guide how *usos y costumbres* “play out” as much as traditional practices. Furthermore, the secret ballot exists in only 12 percent of Oaxaca’s current 418 *usos y costumbres* municipalities (Ríos Contreras 2005).<sup>xvii</sup>

Demonstrating that federal law still overruled the state, the federal electoral court (TEPJF) overturned the state legislature’s routine annulment of the Asunción Tlacolulita case. On an argument by two individuals that their citizens’ rights had been violated by the *usos y costumbres* invalidation, the TEPJF ordered the Oaxaca Electoral Institute to reconcile factions in the political dispute, and do “whatever was necessary (TEPJF 2000, xix)” to hold a special election to solve the ingovernability crisis. The special election was never held, but the 2001 *usos y costumbres* elections were more peaceful, although they excluded “women, some young people, neighbors from the suburban *agencia* of San Juan Alotepec and local citizens who lived outside the community (EDUCA 2002, 20).” The federal electoral court, and even the Supreme Court (see Morales Canales 2003) have shown, since the 1998 Asunción Tlacolulita precedent, that they will override *usos y costumbres* – favoring the constitutional right of citizens to vote over loyalty to local traditions - even if Oaxaca state authorities are unable to, thereby limiting indigenous autonomy by making traditional communities accountable to the federal government.

The role of *usos y costumbres* in promoting harmonious local governance (argued by the *comunalicracia* advocates) may be overly romanticized. Those seeking to end legal recognition of *usos y costumbres* argue that – beyond the obvious issue of discriminating against minorities – the system fills its positions by emphasizing hierarchy at the expense of meritocracy. Young people with university educations rarely return to their *usos y costumbres* villages, argue detractors like López López (interview), because they will have to spend up to one third of their personal lives serving in generalist *cargos* rather than utilizing professional training, and in extreme cases, young accountants and lawyers may have to serve as errand-runner *topils* for semi-literate and illiterate mayors who are unable to fill out municipal expenditure spreadsheets or interpret local ordinances, but who patiently spent decades scaling the hierarchy of *cargos*.

This idealized view of community service – especially without pay – may be impractical as municipality by municipality, authorities are beginning to charge money for their services, or migrate to seasonal fruit-picking jobs in Sinaloa and Baja California Norte, or to agriculture, construction, or the service sector in the United States, where they can support their families on a much better scale as undocumented immigrants than they can through subsistence and free labor exchanges in Oaxaca’s villages and towns.<sup>xviii</sup>

Another accepted justification for preserving the practice, that *usos y costumbres* has diminished post-electoral conflicts, is also not entirely borne out by facts. The number of post-electoral conflicts (those in which electoral losers contest the results through protests and mobilizations in addition to any legal appeals they may file) in Oaxaca’s *usos y costumbres* elections has actually increased since 1995 (Table II). While post-electoral conflicts occurred nationwide in 17 percent of Mexico’s local elections in the 1992-1994 period, that percentage had dwindled to 4 percent by the 2001-2003 electoral cycle. In Oaxaca, the frequency of post-electoral conflicts in municipalities with party-based elections fell from a rate of 30 percent in 1995 to 16 percent in 2004, but in *usos y costumbres*, first implemented with a 5 percent conflict rate in 1995, the percent of contentious elections nearly doubled, to 11 percent by 2004 (see Table II). Oaxaca’s post-electoral conflicts, while not as numerous as those in Chiapas (which logged a 24 percent overall rate of post-electoral conflicts over the five local electoral cycles, and where 56 percent of the municipalities registered conflicts during its most conflictive, 1995 local elections), were more severe.

In Oaxaca, 39 people died in post-electoral conflicts between 1989 and 2003, while there were 18 post-electoral conflict fatalities in Chiapas over those 15 years, and 196 nationwide. The overall intensity of conflicts in *usos y costumbres* municipalities was 2.3, about the same as in Oaxaca’s party-based electoral systems.<sup>xix</sup> Over 11 percent of Oaxaca’s conflicts (counting *usos y costumbres* and party-based) reached severity level 4 (for conflicts yielding fatalities), while nationwide, less than 8 percent of the conflicts over the 15-year period caused fatalities.

Finally, as argued by opponents of the PRI, especially those in the National Action Party (PAN) – political parties, which are allowed to recruit voters for statewide and national elections in *usos y costumbres* municipalities, are present in local elections too. Stories abound of local partisans

appropriating party ticket colors for their “non-partisan” leader selection processes. Second, and perhaps more importantly, the lack of state authority to intercede judicially in *usos y costumbres* controversies may be exploited by political authorities, such as the unicameral state legislature, which has dissolved dozens of Oaxaca’s 570 municipal governments over the last five years, on grounds of “ingovernability.” And unlike the days of PRI hegemony, when the legislature (often at the governor’s bequest) at least afforded solutions that allowed for some opposition participation on city councils (albeit in secondary roles), the increasingly beleaguered ruling party, which narrowly defeated a left-right coalition of the PRD and PAN in the 2004 governor’s race, is using the “dissolution of local powers” capability of the PRI-majority state legislature to dissolve local governments, and to substitute elected officials with town administrators responsible directly to the governor. In manipulating “disorder which favors the government” and sending in an “army of administrators” in dozens of municipalities – overwhelmingly in *usos y costumbres* areas - between 2001 and 2004 (Cruz López interview), the PRI was able to consolidate support in conflictive areas prior to the closely contested gubernatorial race.

Perhaps even more damning than the fact that *usos y costumbres* may create a power vacuum political parties and interests exploit, is the tradition of intervention by the PRI directly in *usos y costumbres* elections. In over one third of these allegedly “pure” municipalities, untainted by partisanship, the PRI participated directly in the selection of candidates, according to the 1997 catalogue, “inventorying” the conduct of elections in Oaxaca’s 418 *usos y costumbres* municipalities to discern baseline practices against which to measure allegations of impropriety when post-electoral conflicts were brought to state electoral authorities for mediation (Aquino Centeno and Velasquez, *passim*).

### **Whither *Usos y Costumbres*?**

Does *usos y costumbres* reduce post-electoral conflicts? The evidence is far from clear, as the actual number of conflicts seems to have increased in the three rounds of local elections since *usos y costumbres* were officially recognized a decade ago, but the conflicts are much less severe than in prior decades. The

increase in post-electoral conflicts under *usos y costumbres* may be due to selection bias. Since *usos y costumbres* were recognized ostensibly to depoliticize conflicts in Oaxaca's indigenous communities – which also tend to be some of Oaxaca's more remote, rural, and conflictive communities (according to scholars such as Dennis (1987) and Díaz Montes (1992)) – these municipalities may have been the most conflictive before they were separated into *usos y costumbres*.

Questions have also been raised about how municipalities get classified both as *usos y costumbres* municipalities, and as those where elections are conducted by parties. The relevant passage of Article IV of the electoral law is vague, stating that *usos y costumbres* are applicable in those communities which have developed community assemblies or other collective forms of selecting local authorities, or which, “by their own decision” decide to opt for such a system. In other words, “the possibility of ‘inventing’ *usos y costumbres*’ fits within the realm of choices (Guerra 2000, 37).” Evidence does exist that selection of municipalities for *usos y costumbres* was not entirely based on the existence of long-standing traditions. It was also used as a means for controlling parties (mainly the PRI), to keep other parties out. Since any municipality could select *usos y costumbres*, municipalities with no indigenous language speakers opted for *usos y costumbres*, while communities with large majorities of indigenous language speakers decided not to formally change their electoral system to *usos y costumbres* (Guerra 2000, 55-56).<sup>xx</sup>

The “invention” of *usos y costumbres* has been occurring in Oaxaca and elsewhere in indigenous Mexico.<sup>xxi</sup> For example, in Villa Hidalgo Yalalag, a poor *usos y costumbres* town of 2,132 in the mountainous area of northeastern Oaxaca where 82 percent of the population speaks Zapotec or Mixe (and 23 percent do not speak Spanish), an effort has been underway for decades to “reclaim” the indigenous culture by constituting a band to play town music, a radio station to broadcast Zapotec cultural content, and computers have been adapted in an effort to create a Zapotec keyboard. The problem is, according to critics (who seem to include some of the Zapotecos, most of the Mixes, and many of the non-indigenous residents of the municipal “seat” and even more in the suburbs), the effort – led by Zapotec intellectual Joel Aquino Maldonado – is improvising as well as reconstituting the past, is

offering these benefits only to member familias in the Uken ke Uken Cultural Center, and is utilizing valuable externally-derived resources (such as internacional foundation grants) to rediscover and preserve Zapoteco culture, while more urgent uses exist for those resources.<sup>xxii</sup> Should communities be allowed to decide whether they observe *usos y costumbres*, or should observance of such proceses be limited to those who have used them in the past? On the other hand, traditions must begin sometime, they do not always have the legitimation of history venid them, but if they help groups of people forge their identities, are they not legitimate?

Monetarization of Mexico's rural economy and globalization – more generally – seem to mitigate against the perpetuation of *usos y costumbres* in the long term. As migration claims majorities of the adult male population in many of Oaxaca's rural hamlets (the very set of citizens who are eligible, according to many *usos y costumbres*, to hold posts), immigrants are being allowed to “hire” locals to fulfill their *cargos* in many cases, and in others, these systems are falling apart. But advocates argue that these pressures against maintaining their cultural homogeneity and uniqueness offer a compelling reason to strive all the more diligently to preserve their histories and traditions, even if in adapted forms.

*Usos y costumbres* clearly discriminates against women and suburb dwellers, but these groups may also be somewhat strategic in their decisions about whether to contest local leader selection. Zenón Flores acknowledged that her group of PRD-supporting women insisted on voting at the 1998 assembly, but without including PRI-supporting women in their group. She said that local governance and womens' rights were at stake in 1998 and that these issues could not be separated. Having won their battle, the PRD women withdrew from public participation in the 2001 and 2004 local elections. “We have decided not to go to the assembly now because things have quieted down,” Zenón Flores explained. “But if things get difficult again, we will be back.”

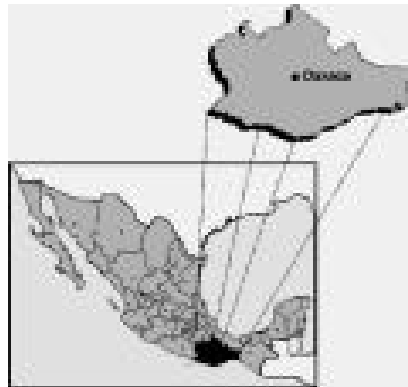
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## Map Locating Oaxaca, Mexico



<sup>i</sup>The author acknowledges research funding from the United States Agency for International Development Cooperative Agreement 523-A-00-00-00030-00 with the University of New Hampshire and American University and thanks Viridiana Ríos Contreras for research assistance. He also thanks the graduate students in American University's spring 2005 GOVT 635 class for "piloting" this case study, and the Center for US-Mexican Studies of the University of California, San Diego, where he revised it in 2006.

<sup>ii</sup> Living conditions in Asunción Tlacolulita are better than those in 75 percent of Oaxaca's municipalities, and about half of all of Mexico's municipalities (CONAPO 2002, 118).

<sup>iii</sup> Overall, 33 percent of Oaxaca's citizens speak indigenous languages, and 24 percent of these are monolingual speakers of their primary indigenous language only. Oaxaca and Yucatán (also 33 percent), have the highest density of linguistically linguistic citizens, followed by Chiapas, which is 21 percent indigenous by linguistic criteria (Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003).

<sup>iv</sup> Well-organized indigenous movements have been credited with toppling presidents in Ecuador (2001) and Bolivia (2003 and 2005).

<sup>v</sup> Human rights reports confirm characterizations by anthropologists like Dennis (1987) and Greenberg (1989) that violence over inter-generational "blood feuds" has been a source of tensions, as has intra- and inter-village disputes over land. However, human rights authorities (Fernández and Acosta-Ortíz 1997, Minnesota Advocates for Human Rights 1996) also stress that the state's authoritarian governments have failed to intercede, and indeed, have on occasion perpetrated violence to repress social movements (such as the teachers' movement and also some based on indigenous identities and issues) since these began to emerge in the 1970s and 1980s. According to the Minnesota Advocates for Human Rights (1996, 3): "In addition to perpetrating acts that transgress human rights norms, Oaxacan state officials also violate basic human rights through their significant omissions. The chronic failure of Oaxaca's law enforcement apparatus to perform its duty to carry out the law is perhaps the principal method by which human rights guarantees are offended in the state." For example the National Human Rights Commission actually found municipal police guilty of the 1989 slaying of the PRD mayoral candidate in Tezoátlan, but no charges were ever filed (Eisenstadt 2004, 266).

<sup>vi</sup> Corporatism, as applied to the Mexican case by Reyna and Wienert (1977, 161) is a means of political control emphasizing mobilization of unions requiring government-sanctioned membership. In Mexico, official mobilization was utilized by the ruling party to replace class conflicts based on redistributive demands. In the countryside, this meant compulsory participation in local branches of the official peasants' union and cooptation by state governments of rural squatters by offers of land if the deals could be sealed quietly.

<sup>vii</sup> When the authors compared Mexico's 32 states with 123 countries, Nuevo León, at 31, placed second among Mexico's geographic entities to the Mexico City Federal District (tied with Spain for number 21 right behind New Zealand at 20), while Oaxaca ranked 94 and Chiapas, the lowest of Mexico's entities, ranked 101. These two states rated comparably to the poor nations of Asia and Central America, but still above those with the lowest human development indices, such as Sudan (143), Haiti (150), Zambia (153), and Senegal, which placed last at 155.

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<sup>viii</sup> Anaya-Muñoz documents a pattern of PRI decline from a vote share of 94 percent in 1980 local elections, to 91 percent in 1983, 92 percent in 1986, and then – the precipitous dip – to 74 percent in 1992. The PRI’s vote share continued to drop dramatically, into the 40-50 percent range in the mid- and late 1990s, but as of 1995, these statistics were only gathered in the 152 non-usos y costumbres municipalities, which tended to be larger, more urban, and propitious to political competition from the PRD and the PAN. The number of contested elections (in which the PRD, the PAN, or other tiny opposition parties fielded candidates) also increased dramatically from 1980, when only 35 of 570 local races were contested, to 1995, when the PRI was opposed in 70 of the 152 “party-based” elections (Anaya-Muñoz 2002, 170).

<sup>ix</sup> Several indigenous movements had emerged in the years immediately prior to the Zapatista rebellion, and Oaxacan indigenous leaders participated prominently in the San Andrés Accord negotiations. Perhaps more importantly to the federal and state governments in Oaxaca, an internal insurgency claiming indigenous identity (among other claims), the Popular Revolutionary Army (EPR), emerged in 1998. This armed movement’s ideological justification has not been clearly articulated, nor published in Oaxaca (leading many to believe it is externally-based) and its violence has been sporadic. However, counterinsurgency reprisals by the Mexican military have been extensive, as over a hundred men from the isolated and destitute Los Lochis Zapotec municipalities in southern Oaxaca were jailed, launching a protest lasting several years by women from Los Lochis in front of the Oaxaca governor’s office.

<sup>x</sup> This is defined as localities (equivalent to US localities, as Mexican “municipalities” often encompass several or many population clusters, and are analogous to US counties) where more than 40 percent of the population speaks indigenous languages. This group represents nearly 8 million people (some 8 percent of Mexico’s total population).

<sup>xi</sup> In this, the 18<sup>th</sup> poorest of Mexico’s 2,440 municipalities, 65 percent of the residents were linguistically indigenous, and 85 percent of these indigenous language speakers are monolingual (most speak Mixteco).

<sup>xii</sup> A suburb of Monterrey, Mexico’s northern industrial center, this is perhaps the most affluent municipality in Mexico (indigenous population is negligible).

<sup>xiii</sup> Former national PRI leader José Francisco Ruiz Maseieu acknowledged in 1994 that “In most states we are living in the Stone Age. Patriotic Fraud is seen as an honorable practice (Oppenheimer 1996, 193).” The reference is to a famous quote by a famous PRI operative to the effect that committing “patriotic fraud” was the duty of every loyal PRI activist, as even in a one-party system (or perhaps, especially in a one party system) wide victory margins had to be assured in order to fully re-establish the party’s legitimacy.

<sup>xiv</sup> Some usos y costumbres advocates (such as Flóres Cruz, interview) argue that women play an important role by running family finances and social/political relations while their husbands are giving cargo service, often at a distance from the household, in the town *cabecera*.

<sup>xv</sup> In some communities, migrants tapped by the municipal religious and/or civil authorities (often called the Council of the Eldery) must return to offer the service or be banished from the community. Increasingly, however, migrants to the U.S. and elsewhere are being allowed to “buy” the services of someone local to fulfill their *cargo*. This trend is prompting a losing of longstanding custom, and increasingly allowing women “acting” heads of household, while their husbands are working in El Norte (“the North,” or the most frequent reference to the U.S.) to offer *cargos*.

<sup>xvi</sup> The reference is to those living outside the municipal center, or *cabecera*. Dwellers living in the suburban *agencias* often do not receive their fair share of public expenditures. But in Oaxaca’s indigenous communities, they often do not even get a say in who represents them.

<sup>xvii</sup> The vote is not secret in 83 percent of the 418 municipalities, and information was not available for 5 percent of them.

<sup>xviii</sup> Remittances from migrants to the United States are reportedly Mexico’s most important sources of dollar-denominated foreign reserves. For the first quarter of 2005, Mexico’s census agency (INEGI) estimated that remittances from the U.S. had increased 190 percent over the last five years, serving as the principle source of income for over 1.6 million households (Sarabia and Galán). Well over one million men are thought to migrate to the U.S. in any given year, comprising some 2.5 percent of the national population (although census estimates are that only 17 percent of the men who migrated to the United States were represented in the 2000 census, so the actual migration rate may be several times higher than the 2.5 percent overall estimate). Additionally, while the 2000 census estimated that 2.6 percent of Oaxaca’s men over 18 had migrated to the U.S., this estimate may dramatically underreport the true number, and citizens in rural *usos y costumbres* communities report (and author observation confirmed) that all or nearly all the men in their prime earning years had migrated to the U.S., to the tomato fields of northern Mexico, or – at the very least – to Oaxaca City.

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<sup>xix</sup> These averages fall between severity level 2 (multiple-event mobilizations lasting less than one month), and 3 (conflicts producing serious injuries and/or building occupations or other manifestations lasting longer than one month). For full coding, see notes accompanying Table II.

<sup>xx</sup> Guerra's explanation (2000, 55) is that several municipalities were so isolated from the outside that they refused to allow state electoral institute officials "in" to validate any plebiscite over whether to adopt *usos y costumbres*.

<sup>xxi</sup> In Chiapas, Araceli Burguete (2004) has documented the "updating" of traditional municipal configurations in 16 indigenous municipalities of the highlands region of central Chiapas.

<sup>xxii</sup> Interviews with Aquino and Emilio Bautista, and Martínez (2000).