

USOS Y COSTUMBRES AND
POSTELECTORAL CONFLICTS IN
OAXACA, MEXICO, 1995–2004
An Empirical and Normative Assessment

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Abstract: This article evaluates postelectoral conflicts in Mexico's Oaxaca state before and after the state government legally recognized usos y costumbres—local leader selection via traditional practices (rather than parties and secret ballots). Assessing usos y costumbres within the normative debate between multiculturalists and pluralists on incorporation of ethnic minorities, the article compares the level of postelectoral conflict in usos y costumbres and non-usos y costumbres municipalities. It argues that since such conflicts have increased in Oaxaca over the last decade while simultaneously diminishing dramatically in Mexico's other 31 states, the cause is probably unique to Oaxaca. Conflict may be at least partially attributed to perverse implementation incentives created by the law's provocation of conflicts requiring mediation (rather than judicial verdicts). While further research is needed to test normative claims that usos y costumbres increase governing institutions' credibility and foster positive group identities, the article concludes that while the customary practices "experiment" has failed at least by one criterion, it may warrant reconsideration if customary elections can be viewed as a set of evolving, instrumental processes, rather than as fixed, static, and essentialist conditions.

Indigenous rights movements have drawn great attention over the last decade in Bolivia, Ecuador, and Mexico, as they have ousted presidents in the two Andean nations, and Mexico's Ejército Zapatista de Liberación Nacional (EZLN) has—through internal insurgency, political negotiations, and public writings—raised the issue high on Mexico's public policy agenda. The movements have precipitated more drastic change in Bolivia and Ecuador, but in Mexico, discrete legal changes to

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provide for recognition of indigenous customary law may offer a more controlled setting from which to systematically study their effects. This article evaluates new evidence on the limitations of *usos y costumbres* recognition—the selection of local leaders via traditional election practices (rather than through parties and ballots)—and places it within the broader normative debate between multiculturalism and pluralism.

Given the possibility of studying the frequency and severity of post-electoral conflicts in the state of Oaxaca where *usos y costumbres* were legalized versus those where *usos y costumbres* were not, I argue that studying the selective “legalization” of long-standing customary electoral practices in 1995 adds important information to the debate. This discrete legal change allows for direct comparison of Oaxaca’s 152 municipalities with party-driven, secret ballot elections, and the 418 municipalities that decided to formally adopt *usos y costumbres*, a custom in which leaders are selected through a range of processes ranging from inclusionary community assemblies to exclusionary council of elders meetings, across four electoral cycles (the 1995, 1998, 2001, and 2004 local elections).

Evidence confirms that recognition of *usos y costumbres* has not diminished postelectoral conflicts, but cannot as of yet fully answer normative questions about identity, self-determination, and legal system legitimacy raised by defenders of customary practices. I conclude that despite evidence against the efficacy of *usos y costumbres* for resolving postelection disputes, current research cannot determine the effect that a revised form of recognizing customary law, within limits prescribed by international human rights norms, might have on the frequency or severity of postelectoral conflicts in Oaxaca. A modified form of *usos y costumbres*, adhering more consistently to universal human rights norms (such as allowing women electoral enfranchisement) but still allowing latitude in local leader selection—might remove discriminatory elements of the existing system but retain the identity promotion and self-determination elements supporters praise.

THE BROADER DEBATE OVER INDIGENOUS AUTONOMY IN MEXICO

A normative debate rages over whether to legally recognize existing cultural differences, empowering group identities and ensuring the survival of heterogeneity even in the face of homogenizing globalization, or to emphasize the malleability of culture in order to better incorporate individual rights, diminishing differences between groups to emphasize individual potential. The multiculturalist position, advocating the recognition of group rights, has been famously championed by Will Kymlicka (1995) and refuted by the pluralist Brian Barry (2001), although both positions have perhaps been most aptly summarized by Charles Taylor (1994). Taylor asserts that:

For one [politics of universal potential], the principle of equal respect requires that we treat people in a difference-blind fashion. The fundamental intuition that humans command this respect focuses on what is the same in all. For the other, we have to recognize and even foster particularity. The reproach the first makes to the second is just that it violates the principle of nondiscrimination. The reproach the second makes to the first is that it negates identity by forcing people into a homogenous mold that is untrue to them. This would be bad enough if the mold were itself neutral. . . . But . . . the claim is that the supposedly neutral set of difference-blind principles of the politics of equal dignity is in fact a reflection of one hegemonic culture. (Taylor 1994, 43)

Strong liberal individualist guarantees were written into the Mexican constitution but mostly observed in the breach until at least the 1990s, when individual rights came to be taken more seriously as part of Mexico's political opening. An abstract and unimplemented multiculturalist discourse also predates the Zapatista rebellion of 1994 (Mattiace 2003, 64–73), but without recognition of indigenous peoples' collective rights. After the Zapatista uprising shifted its earlier class-based argument to a more pro-indigenous rights discourse, it drew extensive public attention to the multicultural or "pro-autonomy" position advocating recognition of indigenous rights in the 1996 San Andrés Accords and the 2001 constitutional reforms. According to Taylor's classifications, the multiculturalist Zapatistas have been pro-cultural rights, antiglobalization, and distrusting of the government, which they argue—often with extensive justification—is inherently biased against them.

Contrary to Chiapas, which was victimized by widespread environmental degradation, class and ethnic conflict instigated by oppressive elites, and belligerent human rights abuses by authorities (see for example De Vos 2002; Rus, Hernández Castillo, and Mattiace, eds. 2003; Collier and Lowery Quaratiello 1999), many of Oaxaca's violent conflicts have been internal.² The permeation of traditional communities by state corporatism³ differed in Oaxaca and in Chiapas, as the Oaxacan indigenous population was decimated by the Spanish conquest but then allowed to reorganize

2. Anthropologists like Dennis (1987) and Greenberg (1989) classify this violence as being caused by inter-generational "blood feuds" and intra- and inter-village disputes over land. Human rights authorities (Fernández and Acosta-Ortiz 1997; Minnesota Advocates for Human Rights 1996) argue that the state's authoritarian governments have allowed and on occasion even committed violence against social movements (such as the teachers' movement and some based on indigenous issues) since the 1970s and 1980s. According to the Minnesota Advocates for Human Rights (1996, 3), "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."

3. In the Mexican countryside, corporatism means compulsory participation in local branches of the official peasants' union and state government co-optation of rural squatters by offers of land, but only if negotiations are conducted through the official peasants' union.

into small, closed communities that still exist. 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, large landowners and the state co-opted weak communities of indigenous citizens and peasant laborers in the mid-twentieth century, assimilating these displaced and repressed laborers through *indigenista* policies in which communities were encouraged to channel contact with the state through local, long-ruling PRI (Institutional Revolutionary Party) operatives such as bilingual teachers (Rus 1994; Pineda 2002). In Oaxaca, this cooptation occurred much earlier and less abruptly. While land distribution in Chiapas was markedly unequal, with a few rich and often absentee landowners holding much of the state’s best land and instigating constant conflict between organized peasant groups and the state, Oaxaca’s land conflicts never reached such epic proportions. The two states possess the lowest human development indices among Mexico’s thirty-two states, although Chiapas’ is lower.

True to Taylor’s rendering, advocates welcomed recognition of *usos y costumbres* as an admission of the virtues of multiculturalism in indigenous Mexico. However, more instrumental analysts argued that *usos y costumbres* were legalized in Oaxaca in response to the Zapatistas’ calls for indigenous autonomy, or as a means of perpetuating the PRI’s hold over Oaxaca’s rural areas despite the party’s electoral decline after the late 1980s. Anaya-Muñoz (2002) and Recondo (2006) have constructed cogent arguments that, while there was a consensus that “something had to be done” after the Zapatista rebellion, the more immediate cause of the Oaxaca state legislature’s *usos y costumbres* electoral reform was that in August 1995 the PRI majority of legislators-elect witnessed the most precipitous decline ever in their vote percentage.⁴ Passing a law to keep indigenous municipal elections “free” from party involvement—at least by other parties—minimized opposition incursions under the guise of promoting indigenous representational “purity” (Anaya-Muñoz 2002, 192–202; Recondo 2006, 8–18).

Whatever the cause of recognition, the uniform and documented legalization of *usos y costumbres* offers the opportunity to compare those municipalities that adopted local customs and those that did not. This article compares the postelectoral conflict of *usos y costumbres* versus non-*usos y costumbres* municipalities, finding that while *usos y costumbres*

4. PRI votes declined from a 94 percent share 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 (Anaya-Muñoz 2002, 170).

municipalities are much more conflictive, the conflicts are *not markedly more severe* than those in non-usos y costumbres municipalities. Although municipal residents have widely credited the adoption with providing less tangible but important benefits, such as granting government institutions greater credibility and fostering ethnic pride and purpose, I show that usos y costumbres disenfranchise women and residents living in hamlets or communities beyond the municipal “seat.” Upon presenting these empirical findings, I draw the normative conclusion that customary practices must be brought into line with international human rights norms. While these findings support claims that the practice of usos y costumbres has failed to mitigate postelectoral conflicts, I conclude that further research is needed to assess whether a nondiscriminatory form of usos y costumbres might convey the societal benefits cited by customary law supporters. I present a concrete case of how usos y costumbres works in practice, in Asunción Tlacolulita, followed by brief sections explaining arguments for and against legal recognition.

ASUNCIÓN TLACOLULITA AS ILLUSTRATIVE OF THE PARADOXES OF USOS Y COSTUMBRES

While no single case can exemplify the benefits and liabilities of two separate electoral systems (usos y costumbres and non-usos y costumbres), the practice of usos y costumbres in the small town of Asunción Tlacolulita is illustrative of both the benefits and liabilities of institutionalizing these practices. As the precedent for a crucial 2000 federal court ruling that federal law supersedes usos y costumbres, the case is arguably the country’s most important to date. But beyond that, a description of the case underscores dynamic nature of cultural norms, as acted out by some of the town’s women in opposition to longstanding political families, and may confirm moderate positions between the more extreme ones of both the multiculturalists and the “individual rights” liberals.

When a score of women stormed the traditionally all-male community assembly in the rural hamlet of Asunción Tlacolulita in 1998, they underscored the discrimination inherent in usos y costumbres. Voting for a left-leaning opponent of the local *cacique* (political boss) associated with the PRI, several of the women said they wanted to promote representation of new groups, such as women from families other than those favored by the PRI for more than seven decades. One of the group’s leaders 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 us we have the same rights as men.”

While only some 10 percent of Asunción Tlacolulita's residents are considered indigenous (speaking the Chontal of Oaxaca language),⁵ 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 PRI-majority legislative and executive branches, argued that it was high time to "legalize" and legitimize leadership selection practices that had been in effect since colonial times. They claimed that legalizing *usos y costumbres* merely restored indigenous customs the dignity they deserved and that even before these processes 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 PRI candidate 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 PRI bastions in indigenous Mexico against recent opposition party incursions and that the custom varied according to the convenience of its advocates, the women argued that the procedures were put in place to deny their right to participate 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. According to residents, political conflicts in Asunción Tlacolulita derived from family-based monopolies, bolstered by the PRI monopoly, rather than on broader clashes between linguistic groups or cultures, as elsewhere.

Cipriano Flores Cruz, director of Oaxaca's State Electoral Institute (IEE) during the 1998 Tlacolulita postelectoral conflict, recalled a struggle between the PRI and PRD (leftist Party of the Democratic Revolution) over power, rather than a struggle for women's rights (2004 interview). While *usos y costumbres* conflicts are submitted to a special mediator in the IEE rather than to the state electoral court (where party-based election conflicts are resolved), no strict laws governing this mediation process exist, only the norms established in a "catalogue" of *usos y costumbres* traditions described for each municipality. In a landmark case, the Electoral Tribunal of the Judicial Power of the Federation (TEPJF), Mexico's highest court for adjudicating postelectoral disputes, confirmed in 2000 federal jurisdiction over *usos y costumbres* by invalidating the 1998 local election in Asunción

5. Overall, slightly over one-third of Oaxaca's citizens speak indigenous languages, and one-quarter of these do not speak Spanish (Instituto Nacional para el Federalismo y el Desarrollo Municipal 2003).

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 claiming some 196 lives nationwide since 1989.⁶

THE LONGSTANDING CASE FOR USOS Y COSTUMBRES

Specific to Oaxaca, *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 people's will, as decisions and commitments are made publicly; voters and candidates have nowhere to hide from words spoken or positions taken (Martínez Luna interview). Public service is an obligation to the community undertaken by all. Everyone undertakes the obligation to the community, scaling the ladder of public positions and assuming a post every several years. Consequently, 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. Signed in 1996, the San Andrés Accords between the Mexican government and Chiapas Zapatista rebels laid out constitutional changes that specified the collective rights of indigenous groups within prescribed territorial boundaries according to international standards established by the International Labor Organization Treaty 169 (ILO 169). In principle, at least, the Zedillo administration offered concessions to the Zapatistas, 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 allowed indigenous peoples to have collective rights over resources and public policy decisions within territorially defined areas.”

6. 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. Data collected by author and Viridiana Ríos Canteras via method given in Eisenstadt 2004 (293–294). Oaxaca database constructed with information from Servicios para una Educación Alternativa, as well as from the *Voz e Imagen de Oaxaca*, and national newspapers, *La Jornada* and *Reforma*.

Peace talks stalled when President Ernesto Zedillo's government signed an agreement with the Zapatistas but did not submit it for congressional ratification, and violence escalated by paramilitary groups in Chiapas (vigilantes with ties to local landowners—and often to the PRI) who removed peasant squatters from lands with multiple ownership claims. In late 1997, these agrarian conflicts, mixed with religious tensions and the struggle between Zapatistas and pro-government vigilantes, boiled over in Acteal, Chiapas, where forty-five people were massacred by paramilitaries with ties to the PRI and state police. Vicente Fox of the opposition National Action Party (PAN), campaigning for the presidency prior to Mexico's watershed 2000 election, claimed that he could resolve the Chiapas conflict in 15 minutes. Claiming a "new day was dawning" on Chiapas policy, Fox did submit a bill based on the San Andrés Accords for congressional approval after he was elected. The watered-down version, approved as a constitutional amendment and ratified by the majority of Mexico's state legislatures, was signed into law in 2001, although states with large indigenous populations—including Chiapas and Oaxaca—did not ratify it.⁷

The truncated San Andrés peace process coincided with efforts by policymakers in Oaxaca, led by then-PRI Governor Diodoro Carrasco, to legalize *usos y costumbres* there. Whether the political objective of the legislation passed in 1995 and revised in 1997 was to promote indigenous culture, protect PRI strongholds, or prevent an imagined Zapatista "contagion" of indigenous uprisings,⁸ indigenous leaders praised the new law as legitimizing cultural practices and histories of Mexico's first peoples, and as a step towards their collective authority over resources and land they had stewarded for centuries. The state seemed to be conceding differential and enhanced rights for native peoples, and recognition that earlier government efforts had failed to protect indigenous minorities' rights, and ensure their access to state resources.

In Oaxaca (and Chiapas), under the old system where authorities selected leaders via *usos y costumbres* and then legitimized selections by registering "winners" as unchallenged PRI candidates (Recondo 2001, 94; Velásquez 2000, 96–98), political representation had been particularly

7. Bailón Córres (2006) shows that the approval of this reform, while symbolically affirming multicultural rights, did not have any practical effects; that is, there has been no real commitment since 2001 to dedicating more federal resources to indigenous citizen welfare or other programming.

8. 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 important to the federal and state governments in Oaxaca, an internal insurgency claiming indigenous identity (among other claims), the Popular Revolutionary Army (EPR), emerged in 1996. However, this armed movement's ideological justification has not been clearly articulated nor published in Oaxaca.

*Table 1 Oaxaca's and Mexico's Postelectoral Conflicts 1989–2004
by Local Election Cycle*

Category of Elections	1989–1991		1992–1994		1995–1997	
	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths	Number (%)	Intensity 0=none 3=deaths
	Oaxaca Parties	47 (8%)	1.7	76 (13%)	1.9	50 (33%)
Oaxaca Usos y Costumbres	N/D	N/D	N/D	N/D	22 (5%)	1.8
Oaxaca Total	47 (8%)	1.7	76 (13%)	1.9	72 (13%)	1.8
Mexico-wide Total	369 (15%)	1.8	389 (16%)	1.6	257 (11%)	1.6

Source: 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 2,389 for 1989 to 1991; 2,395 for 1992–1994; 2,418 for 1995–1997; 2,427 for 1998–2000; and 2,435 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

skewed, as the unicameral state legislature routinely dismissed duly-elected mayors and replaced them with gubernatorial appointee “interim” mayors, or with plural municipal councils, featuring the winning party and politically “acceptable” delegates from the runners-up. Starting in the 1970s and 1980s, opposition party candidates, frustrated by PRI rigging of the electoral system and corrupt vote tallying, protested losses to provoke creation of these municipal councils, where they would at least be assured of some position. By the early 1990s, conflicts occurred in well over 10 percent of local elections (see table 1).

Usos y costumbres sought to diminish the frequency and intensity of these conflicts. The naming of interim governments and municipal councils came to occupy 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

Category of Elections	1998–2000		2001–2003		2004–2006	
	Number (%)	Intensity 0=none 3=deaths	Number* (%)	Intensity 0=none 3=deaths	Number* (%)	Intensity 0=none 3=deaths
Oaxaca Parties	29 (19%)	1.7	21 (14%)	1.8	25 (16%)	2.0
Oaxaca Usos y Costumbres	32 (8%)	1.7	42 (10%)	2.2	44 (11%)	2.0
Oaxaca Total	61 (11%)	1.7	63 (11%)	2.1	69 (12%)	2.0
Mexico-wide Total	180 (7%)	1.6	239 (10%)	1.8	Data Incomplete	Data Incomplete

Notes (continued)

the runner-up parties was credited with the conflict, as that party was considered to be the main postelectoral contender (and usually there was a large margin between second and third-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), postelectoral 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.

* Elections were not held in 2004 in Santiago Laollaga, Magdalena Tlacotepec, Constanca del Rosario, San Juan Numi, San Pedro Ixtlahuaca, San Pedro Jocotipac, Santa Cruz Acatepec, Santiago Yaveo, or Tanetze de Zaragoza.

(Oaxaca State Legislature 1993). Usos y costumbres sought to diminish partisan postelectoral conflicts and reduce the state’s recourse to naming interim local governments.

Another often-cited reason for supporting usos y costumbres was to break the clientelist strangleholds of political parties, especially in rural Mexico, where votes were routinely traded for a few sheets of roof laminate or cans of food. While the PRI started facing extensive electoral competition in local races in the 1990s, Oaxaca was known as a prominent bastion of the PRI’s “strategic reserve” of votes, also called the “green vote” in honor of the ease with which votes could be mobilized (and perhaps even falsified) in Mexico’s rural hinterlands as late as the 1980s. For example, turnout in Oaxaca was dubiously high in the heavily contested 1988 election, which may have really been won by PRD-founder Cuauhtémoc Cárdenas, despite certification as a victory by the PRI’s Carlos Salinas. Some 87 Oaxaca electoral precincts suspiciously granted 100 percent of their 40,664 votes to

the PRI (Aziz and Molinar 1990, 166). This was particularly suspect 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. And if savvy and organized opponents, particularly the PAN's lawyers, dubbed "parachutists" for jettisoning into contested urban areas all over the country in the early 1990s to oppose PRI fraud in critical races (Castillo Peraza interview), 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 the 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, as the local PRI held a parasitic relationship with many indigenous municipality "hosts,"⁹ and the national PRI could readily channel resources needed to co-opt votes and repress dissent during especially tight races. 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. Nationally, the PRI's 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 that permeated Oaxaca's peasant associations and reciprocal clientelist relations 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* appeared to offer determined communities a chance to rebuild local political systems free from these pressures.¹⁰

9. The PRI had, over decades, infiltrated dozens of *usos y costumbres* municipalities. Three municipalities openly accepted that the means of selecting new leaders was designed by the PRI, and over forty acknowledged that the PRI openly participated in certifying the winner (see Table 2). Over 160 admitted the open secret that even before *usos y costumbres* was legalized, they were routinely practiced as a sort of definitive primary. The leader was selected by assembly, a council of elders, or via another customary method. The winner registered with the PRI (and/or other parties starting in the 1990s) to be formally "elected" via the party ticket, even though he or she was the sole candidate and election was a foregone conclusion (Velásquez et al. 1997).

10. The National Peasant Confederation (CNC), headed by Heladio Ramírez López, a former PRI Oaxaca governor, is still more powerful in Oaxaca than elsewhere. As one Oaxaca PRI leader said matter-of-factly, "Whenever an uncontrolled mobilization happens, I call the head of the peasant confederation" (Cortés López interview).

Lastly, *usos y costumbres* reinforces other Oaxaca indigenous traditions such as the system of *cargos* and the *tequio*. Although these traditions 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 public positions all citizens—or in many communities, all men—are expected to fill.¹¹ 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 every several years and with increasing responsibilities for individuals 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 has the most votes on a given Sunday. *Tequio* is short-term volunteer work toward some specific end, such as paving roads and building schools, which has been essential for provision of social services in poor communities where local governments can contribute cement and basketball hoops, for example, but not the labor to build courts. Political parties can undermine the communal provision of services, which fosters community unity and social capital, through clientelist 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.”

NEW EVIDENCE AGAINST USOS Y COSTUMBRES

While the process may promote the rights of a group victimized by discrimination nationwide, evidence exists that many *usos y costumbres* traditions also discriminate against other minorities. A codification of traditional leader selection practices in the initial 412 *usos y costumbres* municipalities (Ríos Contreras 2006, 36), reveals that 81 percent violate the secret ballot, 18 percent allow no participation by women whatsoever, and 21 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 2).¹²

11. Some *usos y costumbres* advocates like Cipriano Flores Cruz argue that women play an important role by running family finances and social/political relations while their husbands are away giving cargo service in the town *cabecera* (Méndez interview).

12. The reference is to those living outside the municipal center, or *cabecera*. Dwellers living in the hamlet *agencias* often do not receive fair public expenditure shares. But in Oaxaca's indigenous communities, they often do not even get a say in who represents them.

Table 2 *Usos y Costumbres Institutional Discrimination Against Individuals*

<i>Category of Individual Rights</i>	<i>Individual Rights Enforced</i>	<i>Individual Rights Not Enforced</i>
Secret Ballot	11.2%	80.6%
Vote of <i>Agencias</i> (rural hamlets)	74.4%	21.1%
Vote of Women	74.2%	17.9%
Process Free from Party Intervention	67.9%	20.8%

Source: Coding of Velásquez et al. 1997 by author and Viridiana Ríos Contreras. Information is for 411 of the 412 of Oaxaca's 570 municipalities originally designated as *usos y costumbres*. Percentages do not add up to 100 because of missing information (between 5 and 15 percent missing per row).

By favoring the rights of minority groups, which are in fact majorities in their own districts, the legal system allows them to discriminate against others with impunity. And at least in some cases of discrimination, strategic motivations are known to guide how *usos y costumbres* "play out" as much as traditional practices. Furthermore, the secret ballot exists in only 11 percent of Oaxaca's current 418 *usos y costumbres* municipalities, so tensions over leader selection readily spill over into other existing public feuds or conflicts (Ríos Contreras 2006).¹³ Chi-square tests confirm strong, positive relationships between the following: post-electoral conflicts and *usos y costumbres* and postelectoral conflicts and electoral disenfranchisement.¹⁴

Electoral authorities are unlikely to question these individual rights violations routinized within *usos y costumbres*. Since the federal state is the final arbiter, local decisions are nonbinding anyway, as in the Asunción Tlacolulita case, where the federal electoral court (TEPJF) overturned the state legislature's routine annulment of the controversial election. On an

13. The vote is not secret in 81 percent of the 418 municipalities, and information was not available for 8 percent of them.

14. Disenfranchisement was computed as a 0-to-3 scale with one point given for each of the following: if women were not allowed to vote, if the election process revealed each individual's vote to others, and whether citizens from *agencias* ("hamlets" outside the municipal "seat" or central community) were allowed to vote. Chi-square and Cramer's V tests relating the postelectoral conflict scale (0-to-3 with one point per conflict each in the 1998, 2001, and 2004 local elections) to disenfranchisement, and postelectoral conflicts to *usos y costumbres* were statistically significant at the .05 level. As expected, a very strong and statistically significant relationship was found to exist between *usos y costumbres* and disenfranchisement, and these two variables possess a correlation of 0.693. These calculations were based on disenfranchisement data for 522 of Oaxaca's 570 municipalities (8.4 percent of cases were missing).

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" (Electoral Tribunal 2001, xix) to hold a special election to solve the governability crisis. The special election was never held, but subsequent *usos y costumbres* elections were more peaceful, although they excluded "women, some young people, neighbors from the agencia of San Juan Alotepec and local citizens who lived outside the community" (Servicios para una Educación Alternativa and Comisión Diocesana de Pastoral Social 2002, 20 and Servicios para una Educación Alternativa 2004, 14–20). The federal electoral court, and even the Supreme Court have shown, since the 1998 Asunción Tlacolulita precedent, that they will override *usos y costumbres*—favoring citizens' constitutional right to vote over loyalty to local traditions—even if Oaxaca state authorities are unable, thereby limiting indigenous autonomy by making traditional communities accountable to the federal government (Morales Canales 2003).

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 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 semiliterate 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.¹⁵

Another accepted justification for preserving the practice, that *usos y costumbres* has diminished postelectoral conflicts, is also not borne out. The number of postelectoral conflicts (those in which electoral losers contest the results through protests and mobilizations in addition

15. Remittances from migrants to the United States served by 2005 as the primary income source for over 1.6 million households (Sarabia and Galán). The 2000 census estimated that 2.6 percent of Oaxaca's men over 18 had migrated to the United States, but this estimate may underreport the true number.

to any legal appeals they may file) in Oaxaca's *usos y costumbres* elections has actually increased since 1995 (see table 2). While postelectoral conflicts occurred nationwide in 16 percent of Mexico's local elections in the 1992–1994 period, that percentage diminished in subsequent cycles. In Oaxaca, the frequency of postelectoral 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 doubled to 11 percent by 2004. Oaxaca's postelectoral conflicts, while not as numerous as those in Chiapas, were more severe (Eisenstadt 2004). By comparison, Chiapas logged a 24 percent overall rate of postelectoral conflicts over the five local electoral cycles, and where 56 percent of the municipalities registered conflicts during its most conflictive, 1995 local elections.

In Oaxaca, thirty-nine people died in postelectoral conflicts between 1989 and 2003, while there were eighteen postelectoral conflict fatalities in Chiapas over those fifteen years and 196 nationwide. The overall intensity of conflicts in *usos y costumbres* municipalities was 2.0, about the same as in Oaxaca's party-based electoral systems (for coding, see table 1 notes). However, over 11 percent of Oaxaca's conflicts (counting *usos y costumbres* and party-based) reached severity level 3 (for conflicts yielding fatalities), while nationwide, fewer than 8 percent of the conflicts over the fifteen-year period caused fatalities.

Finally, as argued by opponents of the PRI, especially those in the 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 "nonpartisan" leader selection processes (see for example Recondo 2006). And while parties persist and need to continue to operate if *usos y costumbres* municipalities are to influence state-wide and national races where customary law does not apply, *usos y costumbres* may be "dampening" indigenous participation in these non-*usos y costumbres* elections. Recent studies by Benton (2006) and Goodman and Hiskey (2006) show that national election turnout is dropping in *usos y costumbres* municipalities.

Perhaps even more important is the lack of state authority to intercede judicially in *usos y costumbres* controversies, something that political authorities may exploit. The unicameral state legislature, for example, has dissolved dozens of Oaxaca's 570 municipal governments over the last five years, on grounds of "ungovernability." And unlike the days of PRI hegemony when the legislature at least allowed some opposition participation on legislature-constructed city councils, the increasingly beleaguered ruling party is using the "dissolution of local powers" capability of the PRI-majority state legislature to dissolve local governments and substitute elected officials with unelected 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 power vacuum *usos y costumbres* may create for political party and special interest exploitation is the PRI’s tradition of intervening directly in customary elections. In over one-third of these allegedly “pure” municipalities, the PRI participated directly in deciding how customary elections would take place, candidate selection and registration, and/or election organization and certification, according to the 1997 catalogue, codifying the conduct of elections in Oaxaca’s 418 *usos y costumbres* (up from 412 in 1995) municipalities to establish baseline practices against which to judge allegations of improprieties in postelectoral mediations (Velásquez et al. 1997).

EXPLAINING OAXACA’S INCREASE IN POSTELECTORAL CONFLICTS UNDER USOS Y COSTUMBRES

Do *usos y costumbres* reduce postelectoral conflicts? Considered in terms of frequency, the answer clearly is no. As the number of postelectoral conflicts has diminished drastically throughout the rest of Mexico, in Oaxaca the total number conflicts has been nearly constant before and after *usos y costumbres* were officially recognized a decade ago, but they have increased markedly in *usos y costumbres* municipalities, while dropping in those staging party-based elections (see table 3). However, if answered in terms of severity, which officials have argued is the most important measure, ambiguous conclusions emerge.¹⁶

The total number of conflicts during the three local election cycles before *usos y costumbres* consolidation (195 in 1989, 1992, and 1995, when the law was first implemented but not reformed, as it was in 1997) is barely lower than the total number for the three elections under *usos y costumbres* consolidation (193 conflicts total in 1998, 2001, and 2004 combined). However, this aggregation masks two distinct patterns evidenced in table 3: the number of conflicts nearly doubles in customary law municipalities while it halves in municipalities with party-based elections. The *usos y costumbres* towns were also much smaller and poorer than those choosing to conduct local elections via political parties.

The increase in postelectoral conflicts under *usos y costumbres* may be due to a selection bias. That is, *usos y costumbres* were recognized

16. According to former governor José Murat, “postelectoral conflicts in Oaxaca are measured by the number of cadavers they produce” (Flores Cruz interview).

Table 3 Comparison of Usos y Costumbres Municipalities With Those Conducting Party-based Elections

Municipality Characteristics	Municipalities with Usos y Costumbres Elections N=418		Municipalities with Party-based Elections N=152		All Oaxaca Average (per every three electoral cycles)
	Before 1989–1995	After 1998–2004	Before 1989–1995	After 1998–2004	
Conflicts	83	177	146	75	241
Population	3,900	4,500	21,600	23,700	15,200
Poverty	0.763	0.947	0.109	0.055	0.346
Severity	1.0	1.3	1.8	1.8	1.5

Sources: Postelectoral conflicts and their severities are from author data base (see table 1 notes for coding of severity) and 1995 census data is from Instituto Nacional para el Federalismo y el Desarrollo Municipal (2003). *Sistema Nacional de Información Municipal, versión 7* available at www.inafed.gob.mx. Poverty levels (ranging from about -2.5 to 2.5 in which higher positive numbers imply higher margination and negative values imply lower margination) were also taken from 1995 “level of marginality” estimates of the Consejo Nacional de de Población (CONAPO).

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]). Hence, these municipalities may have been the most conflictive before they were separated into usos y costumbres, and their level of conflict may have only increased with the rise of electoral competition and the increasing “stakes” of local governance as municipalities were given the authority to allocate more of their own local budgets during the 1980s and 1990s. Indeed, political expediency—rather than ethnic identity—may at least partially explain the existence of what one scholar (Ríos Contreras 2006) has referred to as “false usos y costumbres” municipalities; the 46 percent of usos y costumbres municipalities that are non-indigenous by linguistic criteria (less than 30 percent of the population in 191 usos y costumbres municipalities speak indigenous languages according to 2000 census data).¹⁷ The lack of one-to-one correspondence between linguistic indigenous majorities and usos y costumbres raises questions about whether political imperatives may have superseded ethnic identities, at least in some cases.

Consistent with interpretations like that by Anaya-Muñoz (2002) and Recondo (2006), this “impure” designation of usos y costumbres municipalities may have obeyed a partisan logic. The PRI played a role in fully

17. Conversely, in 13 percent (20 out of 152) non-usos y costumbres municipalities, 80–100 percent of the populations speak indigenous languages.

21 percent of usos y costumbres selection processes at the time when these were codified into the “baseline” catalogue of usos y costumbres norms in 1995 (Velásquez, et al. 1997). “Keeping other parties out” may have been the political imperative of the PRI-majority legislature that approved the law and the state electoral institute council that granted usos y costumbres status if political pressure—particularly from the state’s powerful and ever-*PRIísta* governor—played a part in these decisions.

The increasing stakes in local governance, brought by decentralizing spending discretion from the state to local levels in the mid-1990s (Fox 2002, 108) may also have increased municipal postelectoral conflicts, although this change was national, and postelectoral conflicts diminished markedly in Mexico’s thirty-one other states over the same time period. Former state electoral institute director Flores Cruz argued that many of Oaxaca’s worst conflicts since 1995 have really been about resource distribution between municipal “seats,” which receive state funds and decide how to distribute them, and outlying “hamlets” or communities, which have little say in distribution of resources and, often, in the selection of municipal leaders (interview 2004).¹⁸ The results may also be attributable to the fact that the municipalities holding party-based elections were able to reap the gains of increased electoral institution transparency, while those using customary law have not experienced commensurate gains.

While partisan wrangling and increases in municipal-level spending and budgetary discretion may have helped catalyze postelectoral conflicts in Oaxaca, such conflicts diminished dramatically everywhere else in Mexico. So while this preliminary analysis cannot distinguish co-varying causes of Oaxaca’s postelectoral conflicts, it can reasonably reduce the probable set of causes to those unique to Oaxaca. One such cause might be the repression and lack of transparency still existing in that state.¹⁹ But another probable partial cause is that the increase in usos y costumbres conflicts

18. Municipal reforms in the 1980s started decentralizing Mexico’s budget authority, giving municipal governments (or at least cabeceras or “municipal seats”) unprecedented authority over spending (see Fox 2002). Local governments still have little taxation authority, so federal and state disbursements are the major source of local funds.

19. Oaxaca, among the last of Mexico’s states in 2005 to have *not* elected any governor from a party besides the PRI since before World War II, is the very last of Mexico’s thirty-two states to still allow state legislators elect to ratify their own elections via an electoral college. Furthermore, the legislature publishes no regular *Diario de Debates* proceedings. In other words, no public record exists of legislative activity, and finding out who supported which of the dozens of “dissolutions” of victorious municipal governments in the postelectoral horse-trading and why requires connections with the often-absent *oficialia mayor* and his assistant, who de facto controls all access to state legislature pronouncements, initiatives, and decrees (author participant observation, 2004). Oaxaca in 2005 was also one of only nine Mexican states with no legal guarantee of access to information (Federal Institute for Information Access 2005). In September 2006, the electoral college was finally abolished under pressures generated by the five-month teachers’ movement and related mobilizations.

may be due to the fact that this is now the accepted forum where Oaxaca's civil society forces a response by the state. The major political actors all know that electoral courts possess jurisdiction over party-based elections, but not those under *usos y costumbres*, where conflicts are mediated on an ad hoc basis. Opposition party activists (Moreno Alcantara and Cruz López interviews) and electoral authorities (Jiménez Pacheco interview) alike acknowledged that the fluidity of postelectoral negotiations under current *usos y costumbres* legislation, emphasizing that shows of relative strength based on mobilization, rather than on formal legal procedures, have stimulated plebiscite or assembly losers to make their case in the streets, knowing that—short of an appeal reaching the federal courts such as in the Asunción Tlacolulita case—justice does not matter; movement strength and political finesse generate bargaining table “victories.” In the words of one former Oaxaca government mediator, “Winning and losing elections used to be absolute; now it's relative” (López interview). Extending this logic, legalization of *usos y costumbres* offered disgruntled groups opportunities to mobilize, negotiate, and force contestation from the state, without the formalism and time constraints posed by vote tallies and electoral courts. The lack of clear mechanisms for resolving postelectoral disputes, short of getting them heard by the federal electoral court, favors postelectoral mobilizers. Legal ambiguities foster perverse incentives for losers to mobilize.

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 communities that have developed community assemblies or other collective forms of local leader selection, or that “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) and may in fact be evidenced in the creation of “false” *usos y costumbres* municipalities. The option of creating an indigenous party, or some other party more representative of local interests, and then petitioning to change from customary law to party-based elections, was also an option.²⁰ More realistically, and consistent with works emphasizing the importance of cultural dynamism and adaptation like those of Hernandez Castillo (2003) and Burguete (2004) in the Chiapas case, Kearney and Besserer (2004, 449–466) in Fox and Rivera-Salgado (2004), and Aquino Moreschi (2002), in the Oaxaca literature, and Benhabib's synthesis of the broader normative debate, the

20. Unlike the Andean nations with indigenous movements (see Madrid 2003 and Van Cott 2003), Mexico's indigenous rights movement has not produced viable indigenous political parties. In Oaxaca, the Partido Unión Popular (PUP), claiming to be the state's “indigenous party,” ran a candidate in the 2004 governor's race, but has not publicly mentioned fielding candidates in local races.

flexibility of leaders to submit and extract their municipalities from the *usos y costumbres* list is a recognition that cultural practices change.

The “invention” of *usos y costumbres* has occurred in Oaxaca and elsewhere in indigenous Mexico.²¹ For example, in Villa Hidalgo Yalalag, a poor *usos y costumbres* town in mountainous northeastern Oaxaca where 82 percent of the population speaks Zapoteco or Mixe and 23 percent do not speak Spanish, enthusiasts seek to “reclaim” indigenous culture by constituting a band to play town music, a radio station to broadcast Zapoteco content, and a Zapoteco computer keyboard. However, according to critics (including some of the Zapotecos, most of the Mixes, and many nonindigenous residents of the municipal “seat” and nearby communities), the effort—led by Zapoteco intellectual Joel Aquino Maldonado—is reconstituting and reinterpreting the past, rather than just recording it. Furthermore, they argue, Aquino’s labors are selectively benefiting only member families in the Uken ke Uken Cultural Center, and he is utilizing valuable externally derived resources like international grants to “rediscover” Zapoteco culture, despite more pressing community needs (Aquino; Emilio; Bautista; and Martínez interviews). Should communities be allowed to update and even reinvent *usos y costumbres*, or should their observance be limited to forms they are known to have taken in the past?

CONCLUSION: SPLITTING NORMATIVE DIFFERENCES, BUT WITH STRONG CAVEATS ON IMPLEMENTATION

In her essay both celebrating cultural differences and decrying discrimination against women as entrenched in many cultural practices, Seyla Benhabib concludes that democratic civil society may be better served by “modifying our understandings of culture; rejecting cultural holism, and by having more faith in the capacity of ordinary political actors to renegotiate their own narratives of identity and difference through multicultural encounters” (Benhabib 2002, 104). Discrimination against women and other minorities, such as citizens who live outside the policy-deciding municipal “seat,” is acknowledged, even by a strong advocate of customary law (Aguilar interview) as the “Achilles heel” of *usos y costumbres*. However, absent any political boss manipulating local customs, oppressed minorities may also strategically contest local leader selection.

For example, Zenón Flores acknowledged that her group of PRD-supporting women insisted on voting at the 1998 assembly, but without

21. In Chiapas, Araceli Burguete (2004) has documented the “updating” of traditional municipal configurations in 16 indigenous municipalities of the highlands region of central Chiapas.

including PRI-supporting women in their group. She said that local governance and women's 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." Her position of withdrawal by choice is a powerful one, as it gives her the credible threat of returning to political activism. While universal participation should be institutionalized to give choices to women and other victims with positions weaker than that of Zenón Flores, and to guard against manipulation by political bosses, perhaps citizens should be allowed to preserve autonomy in determining their affairs. Activists like Aguilar, Aquino, and Flores Cruz (interviews) argue that indigenous political institutions, possessing greater credibility, are more readily heeded than those imposed from outside. While the lack of a customary judicial authority to adjudicate disputes in a consistent and enforceable manner warrants attention, a regime of more inclusionary *usos y costumbres*, combined with a nondiscretionary authority to resolve disputes—through customary law, in some combination with Western positive law, or in a new institutional syncretism—may yield results more acceptable to both multiculturalists and pluralists. More importantly, it may be a more explicit recognition of the dynamic nature of cultural practices and allow citizens to sidestep existing limitations, such as on women's rights to formal participation (see Velásquez 2004 and Hernández Castillo 2002, for example).

Monetization of Mexico's rural economy and other manifestations of globalization, more generally, seem to mitigate the perpetuation of static *usos y costumbres* in the long term. As migration claims majorities of the adult male population in many of Oaxaca's rural municipalities (the set of citizens eligible, according to many *usos y costumbres*, to hold posts), immigrants are being allowed to "hire" locals to fill their cargos in many cases, and in others, this expression of customary law is eroding (Kearney and Besserer 2004, 449–466; Ibarra Templos 2003; Pichardo Peña 2001; and VanWey, Tucker, and McConnell 2005). 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.

More research is needed before definitive judgments can be made about whether *usos y costumbres* have failed. However, the blurring of distinctions between their absolute "success" and "failure" in diminishing postelectoral conflicts (as under *usos y costumbres*, the number of conflicts did not decrease, but their severity did), and in whether *usos y costumbres* practices were even legalized in the most indigenous municipalities, implies that assessments may be in order regarding

implementation, as well as their abstract virtues, as per the normative debate. Perhaps most importantly, the ambiguity about success and flexible classification of municipalities argues for consideration of *usos y costumbres* as the changing and relative constructions of indigenous communities, but also of *caciques*, outsiders, and other interested parties, subject to political discretion, and even manipulation. *Usos y costumbres* are not static, absolute, and pure, as they are often portrayed. Recognition of updated and dynamic versions of these group rights may be imperative to their survival and prosperity. Further research is needed for members of these groups and broader civil society in Oaxaca and beyond to disentangle the causes of Oaxaca's rash of postelectoral conflicts, even as these have diminished dramatically throughout all of Mexico's other thirty-one states. Research must be designed to ascertain how strongly individual citizens (including those victimized by *usos y costumbres* discrimination) want *usos y costumbres*, whether more transparent institutions could help Oaxacans move dispute resolution from town plazas to courtrooms, and whether improved education and other training of discerning Oaxacans could empower them to better decide their fates as peoples and as people.

REFERENCES

- Anaya-Muñoz, Alejandro
2002 "Governability and Legitimacy in Mexico: The Legalisation of Indigenous Electoral Institutions in Oaxaca." Department of Government, University of Essex, Ph.D. thesis.
- Aquino Moreschi, Alejandra
2002 "Acción colectiva, autonomía y conflicto: La reinención de la identidad entre los Zapotecas de la Sierra Juárez." Department of Sociology, Instituto de Investigaciones Dr. José María Luís Mora, M.A. thesis.
- Aziz Nassif, Alberto and Juan Molinar Horcasitas
1990 "Los resultados electorales." In Pablo González Casanova, ed. *Segundo informe sobre la democracia: México el 6 de Julio de 1988*. Mexico City: Siglo Veintiuno Editores. 138–171.
- Bailón Córres, Moisés Jaime
2006 "Las reformas constitucionales indígenas de 2001 en México: Avances nacionales y regionales a cinco años de su apropiación." Paper presented at the 2006 meeting of the Latin American Studies Association, March 15–18 (San Juan, PR).
- Barry, Brian
2001 *Culture and Equality: An Egalitarian Critique of Multiculturalism*. Cambridge: Harvard University Press. 293–328.
- Benhabib, Seyla
2002 *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton: Princeton University Press.
- Benítez Manaus, Raúl, Andrew Selee, and Cynthia J. Arnson
2005 "Frozen Negotiations: The Peace Process in Chiapas." *Mexican Studies/Estudios Mexicanos* 22 (1): 131–51.
- Benton, Allyson Lucinda
2006 "The Effects of Electoral Rules on Indigenous Voting Behavior in Mexico." Paper presented at the 2006 meeting of the Midwest Political Science Association, April 19–23 (Chicago).

- Burguete Cal y Mayor, Araceli
2004 "Ayuntamientos indígenas de facto en el Chiapas postzapatista (1994–2004): Una tipología." Paper presented at the XXI meeting of the Latin American Studies Association, October 9. (Las Vegas, NV).
- Chance, John K.
1986 "Colonial Ethnohistory of Oaxaca." In *Ethnohistory: Supplement to the Handbook of Middle American Indians*. Volume 4, edited by Ronald Spores, 165–89. Austin: University of Texas Press.
- Collier, George A., with Elizabeth Lowery Quaratiello
1999 *Basta! Land and the Zapatista Rebellion in Chiapas*. Oakland: Food First Books.
- Consejo Nacional de Población
2005 *Indicadores demográficos básicos*. At <http://www.conapo.gob.mx> (accessed June 27, 2005).
- De Vos, Jan
2002 *Una tierra para sembrar sueños: Historia reciente de la Selva Lacandona, 1950–2000*. Mexico City: Centro de Investigaciones y Estudios Superiores en Antropología Social/Fonda de Cultura Económica.
- Dennis, Philip A.
1987 *Intervillage Conflict in Oaxaca*. New Brunswick: Rutgers University Press.
- Díaz Montes, Fausto
1992 *Los municipios: La lucha por el poder local en Oaxaca*. Oaxaca City: Instituto de Investigaciones Sociales-UABJO/Gobierno del Estado de Oaxaca.
- Eisenstadt, Todd A.
2004 *Courting Democracy in Mexico: Party Strategies and Electoral Institutions*. New York: Cambridge University Press.
- Electoral Tribunal of the Judicial Power of the Federation
2001 *Elección de Concejales al Ayuntamiento del Municipio de Asunción Tlacolulita, Estado de Oaxaca, por Usos y Costumbres*. Mexico City: Tribunal Electoral del Poder Judicial de la Federación.
- Federal Institute for Information Access (IFAI)
2005 *Legislación estatal en materia de transparencia*. Available at <http://www.ifai.org.mx/test/eym/estatales.htm> (accessed August 2006).
- Fox, Jonathan
2002 "La relación recíproca entre la participación ciudadana y la rendición de cuentas: La experiencia de los fondos municipales en el México rural." *Política y Gobierno* 9 (1): 95–133.
- Fox, Jonathan, and Gaspar Rivera-Salgado
2004 *Indigenous Mexican Migrants in the United States*, edited by Jonathan Fox and Gaspar Rivera-Salgado. La Jolla: Center for U.S.-Mexican Studies, University of California, San Diego.
- González Compeán, Miguel, and Leonardo Lomeli
2000 *El Partido de la Revolución: Institución y conflicto (1928–1999)*. Mexico City: Fondo de Cultura Económica.
- Goodman, Gary L., and Jonathan T. Hiskey
2006 "The Participation Paradox of Local Autonomy: Voter Turnout in Usos Municipalities in Oaxaca, Mexico." Paper presented at the 2006 Meeting of the Latin American Studies Association, March 15–18 (San Juan, PR).
- Greenberg, James B.
1989 *Blood Ties: Life and Violence in Rural Mexico*. Tucson: University of Arizona Press.
- Guerra Pulido, Maira Melisa
2000 "Usos y costumbres o partidos políticos: Una decisión de los municipios oaxaqueños." Undergraduate thesis in political science, Centro de Investigación y Docencia Económicas (CIDE), Mexico City.
- Hernández Castillo, Aida
2002 "National Law and Indigenous Customary Law: The Struggle for Justice of Indigenous Women of Chiapas." In *Gender, Justice Development, and Rights*, edited by Maxine Molyneux and Shahra Razavi, 384–413. Oxford: Oxford University Press.

- Ibarra Templos, Yuribi Mayek
 2003 "Espacios alternativos de poder: Participación de las mujeres en una comunidad transnacional." Undergraduate thesis in social anthropology, Universidad Autónoma Metropolitana—Unidad Iztapalapa, Mexico City.
- Instituto Nacional para el Federalismo y el Desarrollo Municipal
 2003 *Sistema Nacional de Información Municipal, versión 7*. Mexico City: Instituto Nacional para el Federalismo y el Desarrollo Municipal. CD-ROM and also available at www.inafed.gob.mx (access August 2006).
- Kearney, Michael, and Francisco Besserer
 2004 "Oaxacan Municipal Governance in Transnational Context," in *Indigenous Mexican Migrants in the United States*, edited by Jonathan Fox and Gaspar Rivera-Salgado, 449–466. La Jolla: Center for U.S.-Mexican Studies, University of California, San Diego.
- Kymlicka, Will
 1995 *Multicultural Citizenship*. New York: Oxford University Press.
- Madrid, Raúl
 2003 "Indigenous Voters and Party System Fragmentation in Latin America." Paper presented at the Latin American Studies Association meeting in Dallas, Texas.
- Martínez, Víctor Leonel Juan
 2000 "Yalalag: Historia de una violenta lucha indígena." In *En Marcha—Realidad Municipal de Oaxaca* 3 (16): (April) 5–9.
- Mattiace, Shannan L.
 2003 *To See with Two Eyes: Peasant Activism and Indian Autonomy in Chiapas, Mexico*. Albuquerque: University of New Mexico Press.
- Minnesota Advocates for Human Rights and the Heartland Alliance for Human Needs and Human Rights
 1996 *The Rule of Lawlessness in Mexico: Human Rights Violations in the State of Oaxaca*. Minneapolis: Minnesota Advocates for Human Rights and the Heartland Alliance for Human Needs and Human Rights.
- Morales Canales, Lourdes
 2003 "Conflicto electoral y cambio social: El caso de San Miguel Quetzaltepec, Mixes." Unpublished manuscript.
- Oaxaca State Legislature
 1993 "Registry of Legislative Decrees," vol. 13, 1992–1995.
- Osorio Zago, Francisco Javier
 2004 "Protesta Poselectoral en municipios de usos y costumbres en Oaxaca, 1992–1998." Undergraduate thesis in political science, Centro de Investigación y Docencia Económicas (CIDE), Mexico City.
- Pichardo Peña, David
 2001 "Migración y cambio sociocultural en la zapoteca sur, Oaxaca." Undergraduate thesis in social anthropology, Universidad Autónoma Metropolitana—Unidad Iztapalapa, Mexico City. Typescript.
- Pineda, Luz Olivia
 2002 "Maestros Bilingües, Burocracia y Poder Político en los Altos de Chiapas," in *Chiapas: Los Rumbos de Otra Historia*, edited by Juan Pedro Viqueira and Mario Humberto Ruz, 279–300. Mexico City: Universidad Nacional Autónoma de México.
- Recondo, David
 2001 "Usos y costumbres, procesos electorales y autonomía indígena en Oaxaca," in *Costumbres, leyes y movimiento indio en Oaxaca y Chiapas*, edited by Lourdes de León Pasquel, 91–113. Mexico City: Centro de Investigaciones y Estudios Superiores en Antropología Social and Miguel Ángel Porrúa.
- 2006 "Las costumbres de la democracias: Multiculturalismo y democratización en Oaxaca." Paper presented at the 2006 Meeting of the Latin American Studies Association, March 15–18 (San Juan, Puerto Rico).
- Ríos Contreras, Viridiana
 2006 "Conflictividad postelectoral en los usos y costumbres de Oaxaca." Undergraduate thesis in political science, Instituto Tecnológico Autónomo de México (ITAM).

- Rus, Jan
1994 "The 'Comunidad Revolucionaria Institucional': The Subversion of Native Government in Highland Chiapas, 1936–168," in *Everyday Forms of State Formation: Revolution and the Negotiation of Rule in Modern Mexico*, edited by Gilbert M. Joseph and Daniel Nugent, 265–300. Durham, N.C.: Duke University Press.
- Rus, Jan, Aída Hernández Castillo, and Shannon L. Mattiace, eds.
2003 *Mayan Lives, Mayan Utopias: The Indigenous Peoples of Chiapas and the Zapatista Revolution*. Lanham, MD: Rowman and Littlefield Publishers, Inc.
- Sarabia, Ernesto, and Verónica Galán
2005 "Vive país de remesas y gobierno del crudo." *Reforma*, May 11, A-1.
- Servicios para una Educación Alternativa, A.C.
2004 *Informe — Observación Electoral en Municipios Indígenas que se Rigen por Sistemas Normativos Internos, Oaxaca 2004*. Oaxaca City: Servicios para una Educación Alternativa, A.C.
- Servicios para una Educación Alternativa, A.C. and Comisión Diocesana de Pastoral Social
2002 *Informe de Observación Electoral en Municipios de Usos y Costumbres, Oaxaca 2001*. Oaxaca City: Servicios para una Educación Alternativa, A.C. and Comisión Diocesana de Pastoral Social.
- Taylor, Charles, Kwame Anthony Appiah, Jürgen Habermas, Stephen C. Rockefeller, Michael Walzer, and Susan Wolf
1994 *Multiculturalism: Examining the Politics of Recognition*. Edited by Amy Gutmann. Princeton: Princeton University Press.
- Tribunal Electoral del Poder Judicial de la Federación
2001 *Colección Sentencias Relevantes No. 4: Elección de Concejales al Ayuntamiento del Municipio de Asunción Tlacolulita, Estado de Oaxaca, por Usos y Costumbres (Caso Oaxaca)*. Mexico City: Tribunal Electoral del Poder Judicial de la Federación.
- Van Cott, Donna Lee
2003 "Institutional Change and Ethnic Parties in South America." *Latin American Politics and Society* 45 (2): (summer) 1–39.
- VanWey, Leah K., Catherine M. Tucker, and Eileen Diaz McConnell
2005 "Community Organization, Migration, and Remittances in Oaxaca." *Latin American Research Review* 40 (1): 83–107.
- Velásquez, María Cristina
2000 *El nombramiento — Las elecciones por usos y costumbres en Oaxaca*. Oaxaca City: Instituto Estatal Electoral de Oaxaca.
2004 "Migrant Communities, Gender, and Political Power in Oaxaca," in *Indigenous Mexican Migrants in the United States*, edited by Jonathan Fox and Gaspar Rivera-Salgado. La Jolla: Center for U.S.-Mexican Studies, University of California, San Diego.
- Velásquez, María Cristina, et al.
1997 *Usos y costumbres para la renovación de los ayuntamientos de Oaxaca*. Oaxaca City: Centro de Investigaciones y Estudios Superiores de Antropología Social/Instituto Estatal Electoral de Oaxaca

INTERVIEWS

- Aguilar, Hugo
2005 Lawyer for Servicios al Pueblo Míxe legal advocacy group. May 12. Oaxaca City, Oaxaca.
- Alcántara Guzmán, Armando, Oaxaca delegate of the Commission of Indigenous Rights (CDI). July 17. Oaxaca City, Oaxaca.

- Aquino Maldonado, Joel
 2004 Leader of Zapoteco indigenous rights movement. July 24. Villa Hidalgo Yalalag, Oaxaca.
- Bautista, Emilio
 2004 Zapoteco critic of *usos y costumbres*, Villa Hidalgo Yalalag, Oaxaca.
- Castillo Peraza, Carlos
 1996 Former national PAN president. August 16. Mexico City, D.F.
- Cortés López, Elías
 1998 Oaxaca PRI sub-secretary of elections. November 26. Oaxaca City, Oaxaca.
- Cruz López, Oscar
 1998 PRD state legislator. July 20. Oaxaca City, Oaxaca.
- Flores Cruz, Cipriano
 2004, 2005 Advisor to the PRI and ex-director of the Oaxaca State Electoral Institute. July 22 and May 17. Oaxaca City, Oaxaca.
- Gómez Hernandez, Caralampios
 2004 Director of Emiliano Zapata Proletariat Organization (OPEZ). July 28. Tuxtla Gutierrez, Chiapas.
- Jiménez Pacheco, Juan José
 1998 Director of *usos y costumbres* section of Oaxaca Electoral Institute. November 24. Oaxaca City, Oaxaca.
- López, Eric
 1998 Advisor to the Secretary of Government, Oaxaca State Government. November 24. Oaxaca City, Oaxaca.
- López López, Leovijildo
 2005 Secretary for Doctrine and Policy, Oaxaca state chapter of the National Action Party (PAN). May 12. Oaxaca City, Oaxaca.
- Martínez Luna, Jaime
 2005 Anthropologist. May 14. Gelatao, Oaxaca.
- Méndez, Sara
 2005 Human rights activist at Centro Derechos Humanos Tierra del Sol in Tlaxiaco. May 15. Oaxaca City, Oaxaca.
- Moreno Alcántara, Carlos
 1998 PAN representative to the Oaxaca Electoral Institute. November 24. Oaxaca City, Oaxaca.
- Zenon Flores, Anastasia
 2004 Tortilla factory owner and womens' rights advocate. July 24. Asunción Tlacolulita, Oaxaca.