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DISSERTATION PROPOSAL

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Electoral protest in municipalities ruled by usos y costumbres:

Political and institutional challenges of multicultural reform

The great number of peasant (indigenous) mobilizations in contemporary Southeast Mexico and their attempts to establish “rebel territories” has renewed interest in analyzing how the rights of autonomy and self-government can be accommodated within the Mexican constitutional framework. Claims for the recognition of autonomy made by groups and indigenous activist to the Mexican State challenge prevailing notions of representation, grounded in the liberal notions of citizenship and democracy. These demands question liberal notions of authority, domination and power –based on majority rule—in favor of collective rights and communitarian institutions –based on consensus.

In contemporary Mexico, several state Legislatures have amended their local constitutions, recognizing the existence of customary law. However, only the State Legislature of Oaxaca approved an electoral bill, reforming the 1995 Electoral Law. The consequence of the bill was that customary law was included within the State legal system.¹ The difficulties posed by the ambiguities contained in the 1995 electoral reform made necessary for the State Legislature to amend this rule again in 1997.

The ‘*usos y costumbres*’ legislation granted full powers to indigenous groups to elect their local authorities through their own traditional procedures. By virtue of the legislation, indigenous’ demands to judicial authorities can be formulated in their native languages (*derecho de petición*); they have the right to count with bilingual translators in any judicial process and to be protected by two State agencies: the Indigenous

¹ Van Cott (2001). Processes of constitutional reform recognizing cultural and ethnic diversity have occurred in several Latin American countries such as Argentina (1994); Bolivia (1991 and 1992); Costa Rica (1977); Ecuador (1983 and 1988); Guatemala (1985); Nicaragua (1986); Panama (1972 and 1983); Paraguay (1992); Peru (1993); Mexico (1992) and Colombia (1992). [Assies, Willem *et al.* (eds.), *El reto de la diversidad: pueblos indígenas y reforma del Estado en America Latina*, Zamora, El Colegio de Michoacán, 1999, p. 21].

Peoples' Defense Attorney and the Federal Attorney's Office. The intention of this legal reform, at least in its judicial elements, seems to be "creating a set of measures by which indigenous culture does not represent an obstacle for these groups to have access to the State's justice".² In other words, the *usos y costumbres* legislation seems to be a way of 'translating' one subordinated culture --which has just been legally recognized-- to the official judicial culture which has always been valid and legitimate.

Symbolically speaking, the legal recognition of *usos y costumbres* in the 1995/1997 reform has been considered as a major accomplishment by indigenous groups.³ However, some tensions and episodes of violence have appeared in various Oaxacan municipalities, as the particular logic structuring communitarian life seems to follow authoritarian patterns of domination, comparable or even more pervasive to the control of local bosses (*caciques*). In these circumstances, multicultural legal reform needs to provide sound and reliable ways of protecting the most fundamental rights of individuals (in the electoral, civil and criminal realms), so any member of a community ruled by customary law cannot be unfairly threatened in his/her person, property or family.

The high number of violent episodes registered in local elections after 1995, nevertheless, call into question the benefits of the reform. Why have several Oaxacan municipalities experienced demonstrations, street blockages, occupation of governmental offices, replacement of local authorities, and other acts of violence? Why have elections in some municipalities lead to communitarian conflicts? Is the type of electoral regime installed in such municipalities (*usos y costumbres* or political parties) relevant to explain acts of electoral protest?

² Juan C. Martínez, *Derechos Indígenas en los Juzgados. Un análisis del campo judicial oaxaqueño en la región Mixe*, Oaxaca, Fondo Editorial IEEPO, 2004, pp. 17-18.

³ In this thesis, I will use the category of indian (or indigenous) people as it is defined in international law, in which the broad criteria remain threefold: self-definition as a question of belonging to an indigenous community, subordination to the dominant society, and historical continuity with precolonial societies. "The United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities defines indigenous peoples in the following terms: 'Indigenous communities, peoples and nations are those that having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, considered themselves distinct from other sectors of the societies now prevailing in other territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations with ancestral territories, and their ethnic identity, as their basis of their continued existence as people, in accordance with their own cultural patterns, social institutions and legal systems [See Rachel Sieder (ed.), *Multiculturalism in Latin America. Indigenous Rights, Diversity and Democracy*, Basingstoke, Palgrave MacMillan, 2002, p. 2].

The **hypothesis** of this dissertation is that the electoral reform recognizing *usos y costumbres* (in both the 1995 and 1997 versions) had the effect of increasing the levels of electoral conflicts in the municipalities ruled by this set of rules, since it did not provide any means for conflict-resolution. At the same time, as many municipalities ruled by *usos y costumbres* require that certain groups be denied full political rights of citizenship—preventing them for voting and holding political office—the excluded sectors become mobilized by political actors, sometimes with the use of violence.

In general, the sectors of the population excluded for their citizenship rights within the municipalities ruled by *usos y costumbres* are women, newcomers (*avecindados*), municipal agencies, and *radicados* (individuals born in the municipality who do not live there). Women do not vote in 18 % of the municipalities in which municipal elections are ruled by *usos y costumbres*.⁴ New-comers are disenfranchised in around 30 % of these municipalities.⁵ In the same way, in 26 % of them the population living outside the municipal head's towns (*cabeceras municipales*) is excluded from the elective assembly.⁶ Therefore, although these exclusions to political participation do not occur elsewhere (and in the same degree), in the most exclusionary of these municipalities there is a real threat to the principle of equality of rights.

It is worth mentioning that in some towns where the structure of the *cargo-system* has maintained without any change, political exclusions do not constitute a recent phenomenon. However, the politization of those exclusions might well be regarded as a recent occurrence, possibly traced back to the mid-1980s' increasing competition among political parties --especially between the official Institutional Revolutionary Party (PRI) and the leftist Party of the Democratic Revolution (PRD), given that the presence of the rightist National Action Party (PAN) is very limited, especially in Oaxacan rural areas).⁷ To a certain extent, the politization of excluded

⁴ Data taken from María C. Velásquez and Salvador Aquino (1997), *Fronteras de Gobernabilidad Municipal en Oaxaca: ¿Qué son los "Usos y Costumbres" para la renovación de los Ayuntamientos?*, Vols. 1-5, Oaxaca: CIESAS-Istmo and Electoral State Institute of Oaxaca (IEEO), pp. 228-229.

⁵ *Loc. cit.*

⁶ *Loc. cit.*

⁷ In strict sense, many of these local opposition leaders are just partisan followers (with sympathies for a political parties), rather than local representatives of the parties' delegations, as the structure of opposition parties in most rural towns of the state of Oaxaca is still weak. It is important pointing out that there are other local political parties with some presence in the state, such as the *Labor Party* (PT), the *Mexican Ecologist Party* (PVEM) and a local political coalition called *Convergencia*.

sectors in the municipalities ruled by *usos y costumbres* is a product of Mexican democratization. However, it has also been the result of an increasing presence of indigenous leaders in the region, after the Zapatista uprising the neighboring state of Chiapas –indeed, many of the leaders who participated in the forums leading to the 1995 Oaxacan legislative reform which recognized *usos y costumbres* served also as politician advisors of the Zapatistas.

Given the absence of legal provisions to solve electoral conflicts within the *usos y costumbres* regime, several communitarian conflicts have occurred when actors from outside the community (political parties, the state government, the federal judiciary or the IEE) intervene to solve electoral disputes. Population of municipalities in which *usos y costumbres* are very entrenched, often refuse the interference of political parties in communitarian political life. Under these circumstances, the intervention of parties often produces episodes of political violence.

The **dependent variable** of this dissertation research is the conflict or electoral protest in the municipalities of the state (which can be ruled either by political parties or by *usos y costumbres*). Among the independent variables or explanatory elements of electoral protest are:

- 1) the absence of a means for solving electoral disputes, which creates incentives for any political actor to dismiss non-favorable electoral results, expecting to obtain additional seats in the municipal council in a post-electoral bargaining process. Given that the *usos y costumbres* system does not provide legal means for solving electoral disputes, post-electoral conflicts would have to be settled by the State Electoral Court, the State Electoral Institute or the Local Legislature, following a partisan logic.⁸
- 2) the presence of barriers to political participation in the municipality, as some sectors of the population face exclusions to their citizenship rights.
- 3) the mobilizing power of excluded sectors, which is dependant upon resources, organization, political leaders, and networks with the electoral institutions of the State.
- 4) the adoption of a ‘neutral’ or ‘partisan’ position by relevant external actors, such as the Electoral State Institution, the judicial federal power, etc.

⁸ Indeed, many of the electoral officials of both the State Electoral Institute and the Electoral Court are not very acknowledgable on the principles and logic underlying the *usos y costumbres* regime.

Prior to the 1995 electoral reform, municipalities ruled by *usos y costumbres* were classified in the Electoral State Institution's records as municipalities ruled by political parties, as there was only one electoral system legally recognized by the State. In this respect, what the electoral reform did was legalizing political and governmental practices which until then were regarded as 'clandestine' forms of self-ruling. One of the assumptions of my analysis is that the border dividing the two types of electoral (and governmental) regimes is quite fuzzy, which allows a great instability in the electoral rules of the state. This fact also leads me to include within the analysis at least one of the municipalities 'in transition' (see Methodology below), that is, a municipality in which the electoral rules have been contested. Since these rules are subject to constant contestation, they do not become part of the electoral structure of the state. Indeed, there are approximately 50 municipalities which first adopted one system and, subsequently, switched to the other type (sometimes more than once), which demonstrates the ambiguous character of electoral institutions.

My argument is that the emergence and persistence of electoral protest in the municipalities ruled by *usos y costumbres* results from the combination of the exclusion of certain groups from full membership in their communities (particularly as regards the political rights of citizenship), and the mobilization of these actors (women, newcomers, municipal agencies, etc.) against their exclusion, sometimes with the participation of other actors (social organizations, political leaders, state or/and federal officials, etc.). As voting rights are continually contested within the municipalities ruled by *usos y costumbres*, constructing political majorities in communitarian assemblies constitutes a very unstable process.

Furthermore, given that the electoral framework of *usos y costumbres* does not provide any mechanism to resolve disputes, this regime incentivizes the occurrence of electoral protest (and sometimes violence). In other words, as the current Electoral Code of Oaxaca does not state the forms, authorities and procedures that must prevail in case of a post-electoral conflict in a municipality ruled by *usos y costumbres*, the solution to these type of disputes in the last years have been resolved with the intervention of external actors, such as the State Electoral Institute, the State Legislature and, even the Federal Electoral Court. This means that an electoral system that is structured according

to its own logic and principles –and which privileges the community over the rights of the individual-- ends up leaving in the hands of the electoral institutions of the State, the solution to its post-electoral disputes. The problem with this situation is not only that in solving these disputes, the electoral institutions of the State very often follow a partisan logic, or the fact that they are quite exposed to the influence of political parties, but also that the different political forces in a community ruled by *usos y costumbres* are not willing to allow the intervention of external actors that do not understand the electoral and governmental communitarian principles. In these circumstances, in the case of an electoral disagreement, the actors might just decide to take over Municipal Halls using the force, rather than deferring to the institutions of electoral justice the solution of the dispute.

Some of the most common conflicts in the municipalities ruled by *usos y costumbres* occur when members of the community question the political exclusion of members of the community (exclusions from voting rights), the inexistence of open channels to escalate within the *cargo system*; the association to a non-Catholic church (particularly Protestant churches) as a threat to the unity of the community; or simply over disagreements regarding the electoral rules and governmental system of the community. When the essence of the ethnic identity of the group is not seen by the dissidents as dependent upon their religious or political adscription, plurality and diversity of views challenge prevailing notions of homogeneity in the local community.

Indeed, the losers of an electoral process obtain benefits from rejecting the results from the contest, in as much as the experience of the last decade shows that a post-electoral bargain among the contenders often replace the electoral results.⁹

⁹ Einsenstadt has explored both the strategies of the National Action Party (PAN) and the Party of the Democratic Revolution between post-electoral conflict resolution through electoral courts and other routes, such as mobilization and bargaining with the official Party of the Institutional Revolution (PRI) [See Einsenstadt, “Thinking Outside the Ballot (Box), Informal Electoral Institutions and Mexico’s Political Opening”, Paper presented at the 2001 Annual Meeting, APSA, San Francisco, September 2001. This first analysis was further developed in Todd A. Einsenstadt, *Courting Democracy in Mexico, Party Strategies and Electoral Institutions*, Cambridge, Cambridge University Press, October, 2003, 354 pp].

1. Defining *usos y costumbres* and the *cargo system*

'*Usos y costumbres*' –or what has also been called the 'alternative institutional model'-- is exercised in hundreds of Oaxaca's municipalities inhabited by an indigenous population, or by a population with some indigenous legacy. The basis of this indigenous model is the *cargo-system*¹⁰ (or system of public posts), "a rotational and hierarchical system of public authority traditionally composed of a mixture of religious, civic, and political-administrative posts included within one single, comprehensive structure of communal public authority".¹¹ According to Anaya, the other fundamental element of the indigenous model of public authority is the electoral system, known as electoral '*usos y costumbres*', through which the hierarchy of the *cargo system* is filled.¹² Therefore, electoral *usos y costumbres* and the *cargo-system* are two inter-related (institutional) threads that constitute one single indigenous model of public authority.¹³

In most of the municipalities in the state of Oaxaca, indigenous people rule themselves by customary law institutions, which means that the "municipal institution is structured along a hierarchical system of communitarian service (the civic-religious *cargo system*) and the collective forms of governance" (*tequio*, the elders council, the communitarian assemblies, etc.).¹⁴ Federico Nieburg describes in detail the importance that the *ancianos* (elders) have, both as individuals and as a collective institutionalized body (the Council of Elders), in the political life of a municipality of the Mazateco Sierra, in Oaxaca.

Their authority emerges from the symbolic power they accumulate after having occupied all the posts in the hierarchical structure of the system of *cargos*, and from the cultural resources they possess –language (not everybody speaks Mazateco in the same

¹⁰ Members of the *cargo system* do not receive any salary or financial retribution for the service to the community. This is a major difference between this system and political careers advanced by in the public administration and other political instances.

¹¹ Alejandro Anaya-Muñoz (2002), *Governability and Legitimacy in Mexico: The Legalisation of Indigenous Electoral Institutions in Oaxaca*, Thesis submitted for the degree of Ph.D. in Government, Department of Government, University of Essex, p. 11.

¹² *Loc. cit.*

¹³ *Loc. cit.*

¹⁴ Recondo, David, "Usos y Costumbres, Procesos Electorales y Autonomía Indígena en Oaxaca", en Lourdes de Leon Pasquel (coord.), (2001), *Costumbres, leyes y movimiento indio en Oaxaca y Chiapas*, Mexico, CIESAS y Miguel Angel Porrúa.

way than an elder does), and knowledge of communal history and traditions.¹⁵ The authority of traditional figures (traditional-civic, religious and medical-spiritual figures of authority) comes from their knowledge and use of important elements of the indigenous culture. They have served in the different positions of the *cargo* system, conduct the religious festivities, and have inherited the rituals for spiritual-physical healing.

The principles underlying the electoral *usos y costumbres* regime privilege ancient traditions of local authority, where the person filling a position within the *cargo system* is supposed to serve the community and not his/her individual interest. Within the *usos y costumbres* discourse, the main virtues for a citizen to occupy a position in the hierarchy of the *cargo system* are honesty, good behavior, willingness to serve the community's goals and an extensive knowledge of the structure of authority –whose acquisition depends on having occupied other minor positions within the hierarchy.

For an individual to be eligible to the highest positions in the *cargo system* (municipal president, mayor, member of the Elders Council, etc.), he has to start serving in the lowest position (*topiles*) of the hierarchy at an early age, and ascending in the system according to the rules of the community. Citizens serving in the *cargo system* do not receive any financial retribution for the services provided to the community. Because of this restriction, they have to secure some financial resources (family savings, possession of lands or other sources of income), which allow them to dedicate a substantial share of their time performing un-paid activities for the community.

The imbrication of the civic and the religious positions within the *cargo system* is a major difference between the indigenous model of authority and the liberal constitutional order of the State. In the indigenous model, to occupy the position of Mayor, for example, an individual needs to have served in other minor positions within the civic hierarchy: he probably started at the bottom of the ladder (as *topil*), then became

¹⁵ [A. Anaya, *Op. cit.*, pp. 52-53]. Historically, this civic-religious structure resulted from the combination of the Mesoamerican pre-hispanic institution of *cabildo* (local assembly) and some forms of Catholic organization imposed by Spain during the colonial era. *Alcaldes, regidores, topiles, fiscales* and *mayordomos*, they all constituted local authorities whose powers were transformed during the XVIII century. In this respect, "Mesoamerican governmental forms were characterized by the political-religious unity, a hierarchical and stratified character of the society, familiar relationships, organizational forms linked to the agricultural work, defense and control of the territory, a well as a symbolic unifying capital, capable of creating an identity (See John K. Chance, *Razas y clases en la Oaxaca colonial* (1993), México, CONACULTA, 281 pp.).

secretary of the local attorney (*síndico*), secretary of the local councillor (*regidor*) or secretary of the treasurer. Afterwards he might become municipal secretary; then, *mayor de vara* (in charge of organizing the religious festivities); then treasurer and/or vocal; local councillor (*regidor*); local attorney (*síndico*); and finally, municipal president.¹⁶ Once he finishes his administration as Mayor, he becomes a ‘principal’ (or *caracterizado*), a formal advisor to the community, who is also supposed to perform the religious role of ‘mediating between the community and the saints’.¹⁷

In this respect, it is important to clarify that political parties are allowed to register candidates for state and federal offices (President, governor, local and federal deputies) in the municipalities ruled by *usos y costumbres*. However, as a result of the 1997 electoral reform in Oaxaca (which modified the incomplete 1995 reform), they cannot register candidates for local elections (for Mayor, members of the local assembly (*regidores*) and other posts within the *Ayuntamiento*).

The existence of this system of public authority in most of the municipalities of Oaxaca –the 1995 official estimation was that 412 out of the 570 municipalities of the state were ruled by this system—, however, does not mean that, in reality, parties have not intervened in the political life of the communities. Indeed, in the past, the Institutional Revolutionary Party (PRI) actually benefited a great deal from the existence of a special clause within its internal rules which allow the party to register candidates by *usos y costumbres*. The implication of this fact, therefore, is that even if the election of local authorities followed the principles and procedures of customary institutions, these elections were not legally recognized by the Mexican State (and the state of Oaxaca) as valid –in a way, they were ‘clandestine’ forms of election, not sponsored by the State, which is the current setting in all those municipalities actually ruled by customary law in which their state Legislatures have not amended their constitutional and electoral codes.

¹⁶ Juan C. Martínez, *Op. cit.*, pp. 109-110.

¹⁷ *Loc. Cit.*

2. The current debate on multicultural reform and electoral protest

Until quite recently the study of *usos y costumbres* –or what is also known as the civic-religious *cargo system*¹⁸—was a field of study reserved for anthropologists and sociologists, and the dominant approach was ethnographic work. However, subsequent to the zapatista uprising in the state of Chiapas, political scientists became increasingly interested in the field of indigenous rights. Analysis of the processes of multicultural constitutional reform focused generally on the ‘macro’ contexts in which these changes were produced, comparing different sets of factors accounting for the reforms.

There is, however, very little micro-level analysis of the relationship between electoral reform, *usos y costumbres* and electoral violence. One exception is the work of Fausto Díaz (1992),¹⁹ who analyzes the 1986 local electoral process in the 570 municipalities of Oaxaca, with the purpose of explaining the strategies used by the local PRI to manipulate the election in its different stages. Díaz emphasizes the socio-economic elements as the main factors accounting for the occurrence of electoral conflicts. His argument is that with the process of socioeconomic modernization, new political forces emerge at the local level and these new actors challenge the prevailing traditional mechanisms of political control. In the absence of stable political institutions to channel socio-economic rapid changes, the result of this process is potentially conflictive. An assumption on which his account relies is that the forms of domination of the Mexican political system circa 1986 have not changed substantially since then.

The distinction between the two current electoral regimes in the state of Oaxaca, therefore, does not appear in his account as a relevant explanatory element in the

¹⁸ Historically, this civic-religious structure resulted from the combination of the Mesoamerican pre-hispanic institution of *cabildo* (local assembly) and some forms of Catholic organization imposed by Spain during the colonial era. *Alcaldes, regidores, topiles, fiscales* and *mayordomos*, they all constituted local authorities whose powers were transformed during the XVIII century. In this respect, “Mesoamerican governmental forms were characterized by the political-religious unity, a hierarchical and stratified character of the society, familiar relationships, organizational forms linked to the agricultural work, defense and control of the territory, a well as a symbolic unifying capital, capable of creating an identity (See John K. Chance, *Razas y clases en la Oaxaca colonial* (1993), México, CONACULTA, 281 pp.). The *cargo system* has gone through several transformations along Mexican history: during the Revolutions, many civil positions were added to its structure to include both children literacy schools and local boards whose tasks were the organization of major local festivities and the provision of local services [María C. Velázquez (2000), *El Nombramiento. Las elecciones por usos y costumbres en Oaxaca*, Oaxaca, Instituto Estatal Electoral de Oaxaca, p. 79. For a detailed analysis of the cargo system, also see James Greenberg (1981), *Religión y Economía de los Chatinos*, INI, México].

¹⁹ Díaz Montes (1992), Fausto, *Los Municipios: La disputa por el poder local en Oaxaca*, Oaxaca, Instituto de Investigaciones Sociológicas de la Universidad Autónoma Benito Juárez de Oaxaca.

occurrence of electoral conflicts, and institutional elements --such as the Oaxacan 1995 Electoral Code (*CIPPEO*), Electoral Courts or voting rules of Communitarian General Assemblies-- are not included either among the independent variables in the analysis. Furthermore, his study only focuses on the 1986 elections, so it does not cover the period subsequent to the 1995 and 1997 electoral reforms.

The *Usos y Costumbres* Municipal Catalog elaborated by the Electoral State Institute of Oaxaca and CIESAS in 1995 compiled all the relevant information on the specific institutions of the municipalities ruled by this system. Given the quite remarkable diversity of customary law institutions of these communities, the minimum criteria for classifying a municipality as belonging to this regime consists of the presence of: 1) a cargo-system as the privileged mechanism to select local authorities, 2) a Communitarian General Assembly (CGA), as the most important decision-making institution in the community, and 3) an elders' council, which usually recommend certain candidacies to the Communitarian General Assembly.

The seminal study on the process of recognition of electoral *usos y costumbres* in Oaxaca is María Cristina Velázquez' book *El Nombramiento* (2000).²⁰ Regarding the reasons behind the recognition policy, Velásquez considers that it reveals a 'strategy of the ruling party' "founded on the belief by the state government that the recognition of 'usos y costumbres' would not affect the traditionally strong ties between the PRI regime and most of the rural municipalities of Oaxaca".²¹ At the, at the same time, "[this strategy] would "minimize the political expectations of the local opposition minorities".²²

In Luis Navarro's account, the policy of recognition is explained by the persistence of 'indigenous social and political institutions', by the efforts of the Oaxacan communities to have their practices and institutions recognized and by the impact of the

²⁰ *El Nombramiento* was published three years after María Cristina Velázquez and Salvador Aquino's work (1997) titled *Fronteras de Gobernabilidad Municipal en Oaxaca: ¿ Qué son los "Usos y Costumbres" para la renovación de los Ayuntamientos?*, which was the first detailed study on usos y costumbres in Oaxaca. *Fronteras de Gobernabilidad* consists on five volumen and it was elaborated by the Electoral State Institute of Oaxaca (IEEO) and CIESAS-Istmo.

²¹ María C. Velásquez, *El Nombramiento*, p. 135.

²² Velásquez expands her considerations around the reasons behind the recognition policy, mentioning a 'growing demand from the indigenous movement', a demand that became particularly salient after the Zapatista rebellion in Chiapas" (*Loc. cit.*). According to Alejandro Anaya, Velásquez also points out "to a more 'neutral' 'juridical' reason: 'it was just and necessary to integrate into Oaxaca's electoral law the customary practices [of the indigenous communities], for the simple reason that [their existence is] the rule, not the exception [See A. Anaya, *Op. cit.*, p. 9].

Zapatista uprising, within a context of decomposition of the ‘regional system of domination’.²³ However, while Navarro overemphasizes indigenous agency, he also acknowledges that the PRI preferred to recognize “usos y costumbres” than continue loosing electoral ground in indigenous municipalities”.²⁴

The study of the process of electoral reform which legally recognized the existence of *usos y costumbres* in Oaxaca, has attracted some attention quite recently and, in the last two years, there have been some accounts on the specific conditions under which municipalities chose either the political parties electoral regime or the customary law system,²⁵ about the effects of the reform on the PRI voting levels in the state,²⁶ and about the influence of this multicultural reform on the levels of electoral conflict in the municipalities of the state.²⁷

From an institutional perspective, Todd Eisenstadt’s (2001)²⁸ analysis focuses on the compliance of political actors with informal bargaining tables established after the elections to mitigate post-electoral disputes and formal electoral commissions and courts created to adjudicate these disputes. Eisenstadt’s study on informal bargaining tables covers about 15 percent of Mexico local elections in the period 1989-2000. Although Oaxaca is one of the states included in this study, the author does not make a distinction between the two prevailing electoral regimes in this region.

However, by documenting parties’ legal and extralegal strategies to resolve post-electoral disputes in local elections, this study departs from widespread views in Comparative Politics regarding institutions as the main determinants of electoral results, emphasizing that behind any reform of electoral institutions there is a power struggle

²³ Luis Hernández Navarro, “Reaffirming Ethnic Identity and Reconstituting Politics in Oaxaca”, in Wayne A. Cornelius, Todd A. Eisenstadt and Jane Hindley (eds.), (1999), *Subnational Politics and Democratization in Mexico*, La Jolla, California: Center for U.S.-Mexican Studies, University of California, San Diego, pp. 157-158, 162-164.

²⁴ A. Anaya, *op. cit.*, p. 9

²⁵ Guerra, Maira (2000), *Usos y Costumbres o Partidos Políticos: Una decisión de los Municipios Oaxaqueños*. Thesis submitted for the B.A. in Political Science and International Relations, Centro de Investigación y Docencia Económica (CIDE).

²⁶ Elizarrarás, Rodrigo (2002), *Gobernabilidad y Autonomía: Los Municipios de Usos y Costumbres en Oaxaca*, Thesis submitted to obtain the B.A. in Political Science, Instituto Tecnológico Autónomo de México (ITAM).

²⁷ Osorio, Francisco J. (2004), *Protesta Postelectoral en Municipios de Usos y Costumbres en Oaxaca, 1992-1998*, Thesis submitted for the B.A. in Political Science and International Relations, Centro de Investigación y Docencia Económicas (CIDE).

²⁸ Eisenstadt, Todd A., “Thinking Outside the Ballot (Box), Informal Electoral Institutions and Mexico’s Political Opening”, Paper presented at the 2001 Annual Meeting, APSA, San Francisco, September 2001.

worth exploring. In this respect, formal institutions do not automatically replace the use of informal ones, as long as the actors (political parties) benefit from subverting the legal rules.

However, most of the specific literature on *usos y costumbres* consists on ethnographical case studies, in which political elements are not the main focus. Two notable exceptions are David Recondo's (1999)²⁹ and Alejandro Anaya's accounts. Recondo's analysis focuses on the electoral institutions used in indigenous communities, in particular, in three municipalities in the *mixe* region of the state (North Sierra). After a broad ethnographic analysis, Recondo's thesis is that each of these indigenous municipalities has established a very particular type of connection with political parties, and therefore, of participating in state and federal contests. This finding questions seriously the quite widespread idea that 'cultural identities' are fixed somehow. Instead, his conclusion that indigenous groups develop both communitarian and partisan pluralist (liberal) forms of political participation, emphasizing the *multidimensional* character of identities.

Anaya's thesis focuses on the role of the state-level PRI elite, "with the intention of determining the extent to which the legalization on indigenous electoral practices can be explained solely (or mainly) as a government response to indigenous pressures".³⁰ Although his analysis includes indigenous demands and political mobilization around them as relevant explanatory elements for the recognition policy, it also explores the reasons leading the state-level PRI elite to engage in a novel process of reform recognizing indigenous rights. According to Anaya, this reform should be understood within the whole process of political reform undertaken by the state PRI, seeking to restore the regime's legitimacy.³¹ In sum, Anaya's thesis has contributed to a better understanding of processes of restoration of legitimacy and maintenance of governability in multicultural societies "in which ethnicity forms the basis for the construction of

²⁹ Recondo, David, "Usos y Costumbres' y elecciones en Oaxaca. Los dilemas de la democracia representativa en una sociedad multicultural", *Trace*, 36 (1999), pp. 85-101.

³⁰ A. Anaya-Muñoz (2002), *op. cit.*, p. 19.

³¹ The author is specially interested in discerning the relationship between the legalization of electoral *usos y costumbres* and broader political processes in Oaxaca, "in particular the continuation of PRI rule, the maintenance of political stability, the prospects for the indigenous autonomy agenda and the development of the democratization process in the state" (*Ibid.*, p. 10).

autonomous political actors that articulate demands for recognition and challenge the terms of their inclusion/exclusion”.³²

The problem of an increasing heterogeneous society in ethnically-differentiated communities, from the perspective of an anthropology of the law, has been recently studied by Juan Carlos Martínez (2004) in the Oaxacan *Mixe* region. In his analysis, he demonstrates that indeed the indigenous justice system has many of the characteristics which are usually admired by defenders of indigenous rights. In most of the cases, the administration of justice indigenous system is certainly closer to the people than the State judicial system is, and it is also quite predictable in the sense of fitting the “common-sense” of the traditional members of the community.

In his analysis, Martínez, acknowledges that the indigenous judicial system also works to perpetuate the existing local power relations. That is, despite all the benefits that the indigenous judicial system presents compared to the judicial system of the State, it is still not an open system, offering equal access to all the citizens, but one that privileges certain social groups.³³ The conclusion, therefore, is that “indigenous institutions can serve the values of the community, but in general, they present great discretionality (lack of impartiality) and unequal citizen access to justice.³⁴ The paradox, therefore, sustains the author, is that a system which was supposed to represent an alternative to the justice provided by the State, sometimes becomes an even more harmful form of domination for local groups than its counterpart.³⁵

My dissertation work will contribute to understand the consequences of the 1995/1997 electoral (multicultural) reform on the levels of electoral conflict and protest³⁶ in the state of Oaxaca. The research is an instance of Comparative Politics in that it intends to compare the levels of electoral protest in the municipalities of the state before

³² *Loc. cit.*

³³ Juan C. Martínez, *Op. cit.*, p. 13.

³⁴ A good example to illustrate the abuses of this discretionary power occurred in 1994 in the municipality of Tlahuitoltepec, a mixe town in the North Sierra of Oaxaca, when its local authorities decided to expel some members of the community who turned to Protestantism. In a predominantly Catholic town, and furthermore, one in which the religious and civic structures of authority are closely interconnected, this situation became quite serious for the maintenance of social stability. Towards the end of the conflict, the local authorities accepted the re-entrance of the expelled members, even allowing them to practice their own religion, although they also demanded these members to continue offering services and *tequio* to the community (*Ibid.*, p. 65).

³⁵ *Loc. Cit.*

³⁶ In this respect, my analysis would be similar to that undertaken by J. Osorio (2004), *op. cit.*

and after the reform, so the comparison is across time. However, within the analysis of the electoral aspects of *usos y costumbres*, this dissertation will also help compensate for the gap in the literature on the relation between the two electoral systems in the state. Furthermore, it will also analyze the specific circumstances in which exclusions to political participation become relevant factors in the occurrence of episodes of protest and violence. Therefore, some additional inquiries center on the conditions in which an electoral conflict can lead to situations of violence and lack of governance as opposed to other scenarios where (despite the existing tensions) an agreement among the political actors prevails.

3. Methodology

An examination of the *Usos y Costumbres* Municipal Catalog of 1997 reveals that the institutions in the municipalities included under this umbrella were actually quite diverse. There are many variations on the constitution and powers of the main decision-making bodies of these towns: the General Communitarian Assemblies, the Elders Councils and other institutions. Due to this enormous institutional variety, the very construction of the Municipal Catalog was a very challenging and arduous effort.

With respect to the analysis of electoral protest in municipalities ruled by *usos y costumbres*, a *large-N statistical analysis* has entailed surveying all the acts of electoral protests in the 418 municipalities ruled by *usos y costumbres* in 1998 (after the two electoral reforms), a task undertaken in a first stage of the research. In order to document all of the cases of electoral protest registered in the period of 1992-2001 I selected the years in which local elections were held in both types of municipalities.³⁷

The starting point was an electoral year prior to the first electoral reform and the ending point was 2001, the year of the most recent municipal elections reported by the press. Acts of protest quite often extend for many months, sometimes even up to the month of January of the year following to the election, when the elected candidate is supposed to get into office. Therefore, in order to observe the cycles of electoral protest

³⁷ In this respect, it is important to clarify that most of the municipalities ruled by *usos y costumbres* hold local elections every year (and some others every three years). However, as the municipalities ruled by political parties only have local elections every three years, this was the criteria which prevailed in the selection of years of study. Therefore, survey local press releases for the years of 1992, 1995, 1998 and 2001.

in the state, I will examine the period from August of each year included in the data base (1992, 1995, 1998 and 2001) to January of the following year (1993, 1996 1999 and 2002, respectively).³⁸

The empirical sources to gather the data on the dependent variable (electoral protest) consists of press notes from the local press *El Imparcial*, the oldest newspaper in the state. The purpose of constructing this data-base on electoral protest comes from the necessity of producing some systematic information on electoral protest, which will be used as the main source to compare the cycles of protest in the municipalities ruled by *usos y costumbres* with those of the municipalities ruled by political parties. Once identified the main points of electoral protest in the state, and some general trends in the cycles of protest, the second stage of my research will entail a comparative analysis of three municipalities ruled by *usos y costumbres*, a point I will explain further below.

4. Selection criteria and the cases of study

I selected municipalities ruled by *usos y costumbres* where the results of incidents of postelectoral protest (and even violence) have been resolved in a different way:³⁹ 1) In Mazatlán Villa de Flores, the recognition of customary law institutions has been a very complicated process, facing a strong opposition of paramilitary forces, the state government and the caciques; 2) Santa Catarina Minas, is a municipality where voting rights were contested in the 2001 local election: while one group defended the exclusion of important sectors of the population from voting, other group supported a more participatory process. The intervention of an external actor, in this case the State Electoral Institute of Oaxaca, served to validate the electoral results, despite the fact that these were contested by hard-core defenders of *usos y costumbres* rules; and 3) Asunción Tlacolulita, a municipality where political rights are very restrictive for women, inhabitants of a municipal agency, some youths and citizens born in the community but living outside it. Asunción is also a *transition* municipality switching back and forth

³⁸ A weakness of this particular data base design is that acts of protest that occurred during local elections in municipalities ruled by *usos y costumbres* (in 1993, 1994, 1996, 1997, 1999 and 2000) will be under-reported.

³⁹ The information I gathered to document these cases is still very incomplete, as I need to conduct many more interviews to 'complete the story' in each case, so to speak. I just present the description of the cases as a preliminary research that would be continued soon.

between electoral systems, where the rules have not consolidated. In this case, despite the exclusionary character of individual political rights, and the constant contestation of electoral rules by different groups, negotiation efforts prevented the occurrence of episodes of violence.

a) Mazatlán Villa de Flores: widespread violence and disappearance of powers

The territory of this municipality consists of 46 communities, each of them having electoral and governmental autonomous institutions. Acquisition of autonomy rights constitutes a very long and protracted struggle, with elevated levels of organization towards the end of the struggle. It has been calculated that from 1950 to 1997, as a result of the struggle for autonomy, about 60 people have died.⁴⁰ In 1991 people representing these communities regained control of the Municipal Palace from caciques and state governmental forces.

Mazatlan's 1995 local elections were invalidated (nullified) by the Chamber of Deputies of the state, due to the episodes of violence registered during the contest –that was, prior to the 1995 electoral reform. On July 6, 1996, extraordinary elections were held under *usos y costumbres*.⁴¹ Two years later, PRI local officials petitioned to have for Mazatlan alter its electoral regime, intending the municipality switched to the political parties electoral regime. This claim was contested by municipal authorities, who defended the permanence of customary law. However, the 1996 extraordinary elections substantially increased political participation, and the electoral process was peaceful, so there were not further arguments by *PRistas* to modify Mazatlan's electoral regime.

Mazatlan was included in the *Usos y Costumbres* Municipal Catalog on March, 28, 2001, the same year in which local elections were further opened up to participation, by including all of the political actors with a significant presence in municipal life. Municipal traditional authorities argued, however, that their members had been excluded from the assemblies directed to define the electoral procedures. Therefore, they expressed their disagreement with the way the process was implemented, questioning the legitimacy of the election.

⁴⁰ EDUCA. Servicios para una Educación Alternativa (2002), *Memoria sobre Justicia Electoral en los Municipios de Usos y Costumbres*, (this source can be consulted in the website www.usosycostumbres.org).

⁴¹ *Ibid.*, p. 7

Since then, this municipality has experienced several episodes of violence: there have been four interventions by the Mexican Army, the longest of which lasted about seven months,⁴² along with interference of judicial state and federal police forces (and the preventive state police) with the purpose of controlling the upsurge of violence. The decision of the General Council of the State Electoral Institute to recognize traditional (customary) electoral forms in the municipality seem to have produced opposition and violence between paramilitary forces, caciques and the state government.

b) Santa Catarina Minas: legality imposed by the intervention of an external actor into the community.

The participation of women in the Communitarian General Assembly (CGA) held on September, 2001 –an assembly held with the purpose of defining Santa Catarina’s local election procedures—suddenly became quite controversial. Municipal authorities (incumbents) seem to have supported a group in the community, interested in excluding women from voting. In the end, a majority of citizens in the assembly prevented the occurrence of such exclusion. On October, 7, 2001 a group of people opposed to the electoral results, initiated acts of violence against their political opponents. Despite the victory of one candidate by a majority of votes, some municipal authorities (members of the *Ayuntamiento*) contested these results on two grounds:

1. Women participation in the local election, and
2. The elected candidate had not filled up all the required positions within the *cargo-system* established by the Communitarian Assembly to become municipal President.

Apparently, members of the municipal authorities supported the candidacy of a PRI member, someone belonging to a family whose members had traditionally occupied several positions in the municipality, a fact that arose the opposition of many Assembly members. In the end, a group of citizens asked the State Electoral Institute of Oaxaca (IEEO) to validate the electoral results, intending to stop municipal authorities from subverting the outcome and imposing the PRI candidate. The elected candidate proved

⁴² *Loc. cit.*

he had occupied all of the necessary positions established by the CGA to become municipal President, a fact that enhanced the legitimacy of the electoral process.

c) Asunción Tlacolulita: institutional exclusions to political participation.

Asunción is regarded as a municipality ‘in transition’ given previous attempts by political parties of changing its electoral regime in 1998. The decision to maintain *usos y costumbres* was preceded by a lengthy electoral dispute. In the Communitarian General Assembly (CGA) of November, 2001, in which the election procedures were set up, the final decision was to maintain *usos y costumbres* as an electoral regime, thus preventing some groups from participating in the municipal election: women, individuals residing in the municipal agency of San Juan Alotepec, some young citizens and natives of the community who live in another municipality (state or country).

Participation in the municipal election, therefore, was restricted to married men (family heads) living in the community who had served different positions within the *cargo-system*.⁴³ On December, 2001, several members of the community contested the legality of the municipal election, on the grounds that their names had been excluded from the voting list.⁴⁴ The main cargos were won by a group closely linked to the Elders Council (who also maintain strong links with the Democratic Revolutionary Party, PRD).

The group close to the PRD seemed to have supported the maintenance of certain exclusions to political rights. The disfranchisement of some community members cause some acts of protest at the Communitarian General Assembly meeting, where the local election was held.⁴⁵ In the end, the main disputes were solved and an agreement among the contending groups was reached. The State Electoral Institute validated the results of this election on December, 2001 and they were also certified by the Chamber of Deputies.

⁴³ *Ibid.*, p. 9

⁴⁴ The election mechanism consisted in each group in the community proposing candidates fill out the positions in the cargo hierarchy, then voting directly upon each candidate, writing down the results on a blackboard, in a public manner.

⁴⁵ Up to now, the information to document this case is still incomplete, but I expect to obtain additional data on the ways in which this conflict on voting rights was finally solved by conducting additional interviews with local authorities, organized groups and community members.

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