

Aftermath of the politics of recognition: community exclusion and essentialism in an urban setting

Jorge Hernández-Díaz¹

Introduction

The Mexican national policy, known as *indigenismo* or *política indigenista*, oriented towards homogenizing the population was, for quite some time, very successful. In particular the State implemented public policies to transform the cultures of indigenous groups through efforts intended to integrate, acculturate or assimilate the indigenous population. Until well into the 1970's *indigenismo* was not openly questioned. Indigenous organizations that opposed the, until then, predominant State policy, sprung up in the 1980's and 1990's. These indigenous organizations put forward the proposals that would later constitute what are now known as the politics of recognition, or of the right to cultural difference and demands of acknowledgement of juridical pluralism, that is, economic, political, cultural and social claims that are sustained on collective affiliations, whether ethnic or national.

This article relates two processes: on the one hand the growth of the metropolitan area of the city of Oaxaca and on the other the coexistence of two different electoral systems in the state of Oaxaca. I center my focus on the way that the coexistence of different systems is expressed in the municipalities that now constitute the metropolitan area of Oaxaca City. Oaxaca was the first state of the Mexican republic to acknowledge local norms as legal procedures of electing municipal authorities. The state has 570 municipalities, of which 418 elect authorities through a system of common law popularly known as *usos y costumbres*². A great majority of the municipalities with high proportions of indigenous population are included in this category, but many other with low proportions of an indigenous speaking population have likewise adopted this system for electing their local authorities. This is the case in 14 of the 208 municipalities near or adjacent to the state capital, which constitute the metropolitan area. To implement politics of recognition in Oaxaca a set of norms were decreed within which common law forms of electing authorities were made legal. This acknowledgement generated many expectations for local governability; however, today there is still political disagreement in several municipalities that are governed by the electoral system of

¹ The author is professor and researcher at the Instituto de Investigaciones Sociológicas of the Universidad Autónoma "Benito Juárez" de Oaxaca.

² The term *usos y costumbres* can be translated as "practices and customs".

usos y costumbres; this friction illustrates the difficulties of the complexity of intercultural relations and the dilemmas that the implementation of politics of recognition faces.

In the case of the municipalities of the metropolitan area of Oaxaca, the disputes that acquire special relevance are those that involve native residents or *originarios* and the population that has settled there in the last two or three decades. The former usually refer to “recently” arrived settlers as “*avecindados*”, a term that stems from the word for neighbor in Spanish: *vecino*. Local authorities inhibit the political participation of their new neighbors with the argument that the newly arrived are unfamiliar with community tradition or that they refuse to partake in the obligations that such participation requires. The *avecindados* generally counter argue demanding the rights that the federal constitution awards them. This discrepancy has political and social implications; but at the same time the differences are between two forms of organization that have the legal recognition of the State, though in different spheres of competence, that is, between two different models of the exercise of citizenship.

This is an argument between those who have the right to elect local authorities following *usos y costumbres*, a practice associated to the logic of community membership, and those who demand their inclusion as part of the rights that a broader juridical structure, that is the federal constitution, grants them. The paradox of the case rests in that the formation of the politics of recognition, which could be thought of as an advance in the strengthening of community citizenship, legitimates actions that threaten the citizenship rights of the municipalities’ new residents.

We undoubtedly face a dilemma here, a phenomenon that illustrates the risks that involve applying politics of recognition. The critics of multicultural policies have expressed their caveats regarding a differentiated citizenship that can create politics of recognition with undesirable consequences from a liberal point of view (Young, 1998: 258). What takes place in the municipalities that I will discuss in this text, the dispute between *originarios* and *avecindados*, is an example of the exclusions that can be generated by the adoption of essentialist proposals in the defense of the politics of recognition.

The main argument for the politics of recognition in Mexico

Within Mexico, like in many other contemporary States, politics of recognition have been implemented in varying degrees and geographical contexts. The increase in the mobilizations of indigenous groups around claims for respect of cultural difference has evidenced that in a rigid liberal model there is no future for diversity. Although it is a theoretical possibility to propose the

separation of certain collectivities with sufficient cohesion so as to give way to the formation of new nation-states, this solution has no substantial foundation for Mexico.

The traditional view of the liberal model in Mexico began to lose credence by the end of the 20th century. Since the 1970s, but especially during the beginning of the 1980s, the view on cultural diversity began to change due to the claims made by organizations of indigenous population. These groups began to explicitly demand respect to cultural diversity, backed by a new trend within *indigenismo* known as *indianismo* whose main proponents began to question the homogenizing paradigm and to propose a revision of the relations between the State and indigenous groups. This development steadily brought to light and strengthened the demands of the indigenous population in Mexico. As a consequence, this political mobilization and collective action created new social movements with demands that today are part of the body of claims that constitute what are now known as politics of recognition (Hernández-Díaz, 2007: 37).

The emergence or, better yet, visibility of ethnic identities has manifested around the world. In recent Latin American history these identities have found their most complete expression in the indigenous movement³. Very important constitutional reforms took place during the 1990's in South American countries like Colombia, 1990-1991; Peru, 1993; Ecuador, 1998; Argentina, 1994, and Bolivia, 1994-1995, precisely due to the mobilization of indigenous organizations (Van Cott, 2000; 2005: 190-192; Postero, 2007: 124-125). Although Mexico did not join in this trend, oddly enough, on September 4, 1991, it was the first Latin-American country to ratify Convention 169 of the International Labor Organization (ILO). By doing this the country technically accepted a juridical platform that, according to Article 133 of the Mexican Constitution, must be upheld as "supreme law of the Union". The ratification of this Convention compelled States to accept "internal juridical pluralism" under their constitutional ceilings, and to respect forms of juridical control and production emitted by social instances (indigenous peoples among others) other than the institutions of the State.

This piece of international legislation was part of the legal tools that were utilized by Mexican legislators to introduce the framework for the politics of recognition. This was done first, by reforming Article 4th in 1992 and later by expanding its content and relocating it to Article 2nd of the Political Constitution of the United States of Mexico, which on August 14, 2001 had its first paragraph read:

³ I understand indigenous movement as the collective of indigenous organizations that manifest with claims of diverse nature but justify these claims as a right of their cultural, ethnic or national specificity.

Article 2nd.- The Mexican nation is one and indivisible. The nation has a pluricultural composition originally sustained on its indigenous peoples who are those that descend from the populations that inhabited the current territory of the country at the onset of colonization and that retain their own social, economic, cultural and political institutions, or part of them (reformed by the decree published in the *Diario Oficial de la Federación* on August 14, 2001, my translation⁴).

Later it adds:

The right of indigenous peoples to self determination will be exercised in a constitutional framework of autonomy that insures national unity. The acknowledgement of indigenous peoples and communities will be made in the constitutions and laws of the federal entities, which must take into account, in addition to the general principals established in the preceding paragraphs of this article, ethnolinguistic and physical settlement criteria (reformed by the decree published in the *Diario Oficial de la Federación* on August 14, 2001, my translation⁵).

The importance of this amendment cannot be emphasized enough; comparing the new legislation with respect to what had been admitted hitherto regarding the acknowledgement of the rights of indigenous peoples, the changes in the Constitution are of great magnitude. Above all because the policies of the Mexican State had until then been geared towards assimilating the indigenous population into a predominant *mestizo* society in which it seemed they had no place as they were. For this reason it is opportune to insist that the rewriting of the articles in the Constitution reflect progress in: 1) the acknowledgement of the pluricultural character of the Mexican State; 2) the acknowledgement of indigenous peoples and the expansion of their rights (as

⁴ Artículo 2°.- La nación mexicana es única e indivisible. La nación tiene una composición pluricultural sustentada originalmente en sus pueblos indígenas que son aquellos que descienden de poblaciones que habitaban en el territorio actual del país al iniciarse la colonización y que conservan sus propias instituciones sociales, económicas, culturales y políticas, o parte de ellas (reformado mediante decreto publicado en el diario oficial de la federación el 14 de agosto del 2001).

⁵ El derecho de los pueblos indígenas a la libre determinación se ejercerá en un marco constitucional de autonomía que asegure la unidad nacional. El reconocimiento de los pueblos y comunidades indígenas se hará en las constituciones y leyes de las entidades federativas, las que deberán tomar en cuenta, además de los principios generales establecidos en los párrafos anteriores de este artículo, criterios etnolingüísticos y de asentamiento físico. (Reformado mediante decreto publicado en el diario oficial de la federación el 14 de agosto del 2001).

exemplified by making their languages official, implementing bilingual education and promoting environment protection); and 3) the acknowledgement of common law or indigenous law. This supposes very important transformations in the traditional juridical doctrine that was based on juridical homogeneity and the State-Law identity (Anaya Muñoz, 2006). The reforms likewise question the classical notion of the Nation-State, given that “nation” was understood as composed of one single people with one culture, one language and one religion. Both the ratification of Convention 169 of the ILO and the aforementioned constitutional reforms paved the road for the construction of a new law structure, within the frame of a new model of a Pluricultural State.

However, there is also a need to point out the limitations of this new situation. Although the content of Article 2nd recognizes the pluricultural character of the Mexican nation, until now it has relegated and delegated the formulation of laws that protect and promote the “development of indigenous language, culture, practices and customs, resources and specific forms of social organization” to the different federal entities. With this hand over, the set of indigenous rights are weakened, for it would require direct recognition from the Constitution to make them truly effective. Hence the laws on this matter that have been implemented since then throughout the different states of the federation are of great importance.

While the revision of Article 2nd indicated an advance regarding recognition, it only broadly states rights and omits referring to autonomy, specific political rights and the internal system of conflict resolution. Also missing is a federal law that allows the specific implementation of Article 2nd, and such absence permits multiple interpretations of this article’s content. Almost all members and sympathizers of the indigenous movement hold that the referenced article can only be implemented if autonomy is conceded to the municipalities, communities or regions of indigenous populations so as to give them freedom to manage their own public matters according to internal norms and traditions, that is, their *usos y costumbres*.

The politics of recognition in Oaxaca

Oaxaca is widely known for being the state with the largest number of indigenous groups and greatest cultural diversity in the country. The sixteen different ethnolinguistic groups that inhabit the territory contain a greater number of variants or dialects. The 570 municipalities and more than 10,000 settlements give way to multiple forms of social and political organizations. The indigenous peoples and the communities which constitute them have a long history and tradition of struggle in defense of their rights. This tradition is upheld in relation to the State and the rest of society, a strategy which has allowed the indigenous population to maintain a collective identity, which in one way or the other is linked to linguistic, ethnic or cultural aspects of the Mesoamerican

tradition as is reflected in the laws and Constitutions that have governed the political life of this territory since before the existence of a Mexican State and later as an integral part of this Federation.

As in the federal realm, at the state level several legal modifications regarding politics of recognition were carried out during the 1990's. In Oaxaca three constitutional amendments and eleven new laws constituted the body of legal dispositions on the matter of indigenous rights. In addition, a specific law, complementing the aforementioned framework, made of Oaxaca the state with the most advanced body of laws regarding politics of recognition in all of Mexico. A new set of legal dispositions put in place in the state of San Luis Potosí is another example of the manner this process has taken place in several federal entities.

However, the debate on indigenous rights in Oaxaca has a long history and cannot be reduced to its immediate history. The *Ley Orgánica para el Gobierno del Estado de Oaxaca (1824)*, predecessor to the first Constitution of the State of Oaxaca, already recognized in its first article that the state was constituted “by all the peoples and parties that formerly composed the province of that name”. This disposition was retained on January 10, 1825, when the first Political Constitution of the State was proclaimed. This Constitution of 1825 established in its Article 5th that for administration purposes the state would be divided into departments, parties and towns, the latter would be administered by *ayuntamientos*⁶ composed of mayors, *regidores*⁷ and *síndicos*⁸ as long as they were inhabited by at least three thousand “souls” or otherwise have sufficient “enlightenment”, industry and other particular circumstances that would make the town deserving of this type of authority (*Constitución del Estado de Oaxaca, 1825; Mendoza García, 2004: 89-90*).

Referring specifically to the indigenous peoples and their communities, Article 161 of the *Código Fundamental del Estado* decreed: “In all other towns in which the establishment of an *ayuntamiento* will not take place, there will be a municipality that will bear the name of republic, which will have at least one mayor and one *regidor*. The law will determine the number of mayors and *regidores* in accordance to the proportions of the town”. In this manner the state of Oaxaca recognized the organization adopted by indigenous peoples since the colonial period to resist Spanish oppression.

⁶ Today the *ayuntamiento* is the institution which governs a municipality, that is, it's the unit of government that, along with state level government and federal level government, completes the three level structure of government in place within the Mexican federation.

⁷ Today *regidores* or regents are authorities in charge of a specific matter within a community, such as can be health, education, finances, etc. The number or regents, as well as the nature of the matters they tend to vary from community to community.

⁸ Today *síndicos* or prosecutor is the local agent of the judicial system in charge of intervening in the case of a serious crime such as a homicide.

The second Political Constitution of the State (decreed on September 15 1857), determined that the administrative division of Oaxaca would consider districts and municipalities. Towns and republics disappeared in this new legal structure, but the prerogative of *ayuntamientos* “to administer communal possessions and the houses of charity of primary instruction (elementary schools)” was recognized. The importance of this disposition goes unnoticed if one does not consider that the same year the Federal Constitution prohibited through its Article 27th the administration of rustic possessions by all civil corporations, including communities.

Almost 100 years later, in 1986, the state of Oaxaca began to incorporate in its laws some dispositions concerning the indigenous population. Although these laws were still not addressing individual or collective rights of peoples as such, they did for the first time attend the preoccupation of rights violations of individuals pertaining to an indigenous group during the dealing of justice. On September 26, 1986 the *Ley Orgánica de la Procuraduría para la Defensa del Indígena* (Law of the Attorney’s Office for the Defense of Indigenous Peoples) was decreed, with which an office was established to seek the social development of indigenous peoples, as expressed in the correct exercise of their civil and political rights and in the exaltation of their language and culture (Instituto Estatal Electoral, 1998).

However, it is until 1990 that dispositions that point toward a legal body of politics of recognition began to be included in the legislation. The reforms of 1990 were a result of four fundamental factors, two of them coming from outside of Oaxaca, and the rest stemming from specific situations within the state. First we have Convention 169 of the ILO, which had already been signed by the Mexican State, an international document in which some rights of indigenous peoples were taken into account. Likewise, on February 28, 1992, the Congress of the Union, by initiative from the President, added a paragraph to Article 4th of the Federal Constitution. On this paragraph the Constitution recognizes the pluricultural composition of the Mexican nation sustained on the presence of indigenous peoples, and establishes that secondary norms would protect and promote the development of their languages, cultures, practices, costumes and resources.

The remaining factors involved in the 1990 reforms developed within the state of Oaxaca. One of these factors is proposed, as a hypothesis, by Anaya Muñoz (2006) who considers that politics of recognition were designed and implemented by the local elite of the *Partido Revolucionario Institucional* (PRI), the predominant political party, to contain the loss of legitimacy suffered by their party and maintain governability. Anaya Muñoz argues that “the last three governors of the state adopted a discourse and legislative and political practice that was favorable to the acknowledgement of cultural diversity, not because they believed in the virtues of multiculturalism or in the validity of indigenous demands, but because they considered that it was in

their best interest: specifically the preservation both of the PRI's political-electoral supremacy and of the social-political stability of Oaxaca" (2006; 2003: 269).

This line of reasoning is complemented by another less hypothetical thesis as is the fact that the reforms were pushed to avoid the radicalization of the existent organizations in Oaxaca due to the nearness of the Zapatista movement in Chiapas. Anaya Muñoz, however, argues there neither was substantial evidence for the expansion of the Zapatista movement nor for an armed approach by the movement of indigenous groups in Oaxaca; and rejects that the reforms were based on the true claims posed by indigenous organizations, thus considering the reforms as paternalistic and as having the hidden agenda of the defense of political-electoral interest of the ruling elite to maintain hegemony and political control. Anaya uses statistical data that exhibits electoral trends where the PRI is steadily displaced by opposition parties in the voting preferences of the indigenous population. However, the incumbent governor of Oaxaca at the time of the reforms has publicly recognized that the presence of armed groups in the state that at some point could have established contact with the EZLN was indeed a factor involved in the decision to push through the approval of the *Ley Indígena in Oaxaca* (Carrasco Altamirano, 2008).

The presence of armed groups in the state is a factor also acknowledged by Jaime Bailón (2009), who contends that "at the onset of the Chiapas rising, and because of the danger of its dissemination due to the proximity, similar poverty and marginalization conditions, the presence of strong social movements and survival of one urban guerrilla group (*Unión del Pueblo*) that never completely disappeared since its emergence in the 1960's, the government of Diódoro Carrasco was forced to launch a new government strategy." Bailón (2009) also joins Anaya (2006) and Recondo (2007) in arguing that the presence of a group of intellectuals in governor Carrasco's team and a segment of his party favorable to the reforms allowed the approval of the body of laws regarding the right of indigenous peoples and communities in Oaxaca.

Thus, the implementation of actions in favor of politics of recognition has been a result of a combination of circumstances. Both the political strategy of the ruling elite and that of indigenous organizations have combined effectively to implement reforms that contributed to the prevention of radicalism and consequently the preservation of governability throughout the state. The legalization of the so called electoral *usos y costumbres* has modified the existing institutional arrangement; other reforms, however, remain merely declarative for they have not materialized into an effective multiculturalization of the institutions (Anaya Muñoz, 2003). A quick review of the most important reforms will allow the understanding of the relevance of this ensemble of norms in Oaxaca, of this wide constitutional-legal-institutional structure that is also a part of the official rhetoric favorable

regarding the acknowledgement of cultural diversity and the rights of indigenous peoples (Anaya Muñoz, 2003: 269; 2006).

On May 13, 1995, as a result of the pressure from the indigenous movement and the need of the government to legitimize itself before the indigenous peoples, a set of dispositions were reformed to acknowledge the right of indigenous communities to elect their local authorities according to tradition and native practices. This right was conferred on February 1997 through the modification of the Code of Political Institutions and Electoral Procedures of Oaxaca (CIPPEO)⁹. Other reforms ensued on June 6, 1998 as did the approval of the Indigenous Communities and Peoples Rights Act¹⁰. As a result of these reforms, the current text of the State Constitution contains several precepts regarding indigenous rights. I will systemize these guidelines below, grouping them into subjects of collective rights and rights bestowed upon them as individuals¹¹.

At the beginning of Article 16 one finds a declaration that establishes that “the State of Oaxaca has a plural ethnic composition, sustained on the presence and diversity of the indigenous peoples and communities that integrate it”; later it adds that the States “acknowledges the indigenous communities that comprise it as well as their ethnic, linguistic or cultural groupings”. At the end of the same paragraph it is declared that “the law will protect Afro-Mexican and indigenous communities belonging to any other people originating from other States of the Republic and that for whatever circumstances currently reside within the territory of the state of Oaxaca”.

Immediately after this declaration of collective subjects of rights, Article 16 contemplates a series of rights to be acknowledged; among them “their forms of social, political and government organization, their internal normative systems, the jurisdiction they will have in their territories, the access to the natural resources of their lands and territories, their participation in the tasks of education and development plans and programs, their forms of religious and artistic expressions, the protection of these and of their cultural stock and in general of all the elements that configure their identity”. Some of these rights are specified in other articles of the Constitution. Immediately after the declaration of the ethnic pluriculturalism of the state and before the enunciation of the subjects of rights acknowledged, there is a paragraph that states that “the right to self determination of indigenous peoples and communities is expressed through autonomy, as comprising parts of the State of Oaxaca, in the frame of current juridical order; as such, these peoples and communities

⁹ *Código de Instituciones Políticas y Procedimientos Electorales (CIPPEO)*.

¹⁰ *Ley de Derechos de los Pueblos y Comunidades Indígenas*.

¹¹ Besides the Compendiums cited in the bibliography one can resort to the webpage of the 15th *Legislatura Constitucional del H. Congreso del estado de Oaxaca* that holds an excellent source of information on the history of the legislation of Oaxaca. A record of the current legislation can be found at: http://www.congresoaxaca.gob.mx/lx/l_estatal.html.

have a juridical personality of public law and enjoy social rights; the law will establish the measures and procedures that allow the exercise and respect of the social rights of indigenous peoples and communities.”

A collective right established as a guarantee, on the eighth paragraph of the Constitution, refers to normative systems, and establishes that “internal normative systems of indigenous peoples and communities are recognized, as is the jurisdiction of the community authorities”; but in this case, it adds that the law will establish the cases and formalities in which the aforementioned jurisdiction will proceed as well as the forms of homologation and validation of procedures, judgments, decisions and resolutions of community authorities; by virtue of this disposition “the body of oral juridical norms of common law character that the indigenous peoples and communities recognize as valid and employ to regulate their public acts and their authorities employ for conflict resolution” can be validly applied. The restriction to the application of this body of norms is that it can only be employed within what the secondary law determines and does not always coincide with the competencies recognized within the normative system itself.

Article 138bis of the Constitution of Oaxaca expresses that “indigenous jurisdiction will be exercised by community authorities according to the *usos y costumbres* of indigenous peoples and communities, within the frame of the current juridical order and in the terms determined in the law of article 16 of this Constitution”. On this regard it is declared that “The State, in its competence, acknowledges indigenous peoples’ and communities’ social right to the use of their land and territories, in the terms of the law; likewise, in accordance to budget programs, the State will order measures tending to the economic, social and cultural development of indigenous peoples and communities”.

Another right acknowledged to the indigenous peoples and communities is that regarding their cultures. A first disposition of the State Constitution which makes reference to this is contained in Article 80, 29th fraction, which establishes the obligation of the head of the Executive Power of the State to foster and strengthen community traditions and the respect for the cultures of the ethnic groups of the state. Finally, on the same matter, Article 152 of the Constitution of the State formulates that “the authorities will especially foster the touristic activities that take advantage of all type of attractions that the State of Oaxaca possesses and will safeguard that these activities preserve the cultural heritage of indigenous peoples and communities and that they not deteriorate the environment and the touristic richness as a consequence.”

Among the Constitutions of the different federal entities of the country, the one from the state of Oaxaca more broadly regulates the rights of indigenous peoples regarding education. The

precepts can be found in the State Education Law¹², specifically in the content of Article 150 which states that: “education will be guided by the norms established in the General Constitution and will strive that systems, plans and methods of instruction be adapted so as to respond to the needs of development of the State.” On the second paragraph of this same article it is stated that education, to be complete, will in addition comprise the instruction of History, Geography, Ecology and the traditional values of each ethnic region and of the State in general, and will foster the dissemination of applicable knowledge for political, social and economic transformation in benefit of all *oaxaqueños*. On the third paragraph of Article 150 the rights of indigenous peoples and communities are specifically referenced, prescribing that “in bilingual communities instruction will tend to preserve the Spanish language and the indigenous languages of the region.” The last paragraph also mentions the education aimed at indigenous communities and peoples, stipulating that in communities that do not speak Spanish, the instruction of this language will be mandatory; this instruction will preferably be imparted by the municipalities and parents may intervene in planning, adapting to the guidelines of the Secretary of Public Education. With these grounds and dispositions the State Education Law regulates in an ample manner the rights of indigenous peoples regarding education.

The constitution of Oaxaca recognizes the procedures of election of authorities of the indigenous peoples and communities of the state. This electoral system is termed *consuetudinario* or common law. The right to apply this electoral system is regulated by several dispositions and laws of the state on the matter. First it can be found in Articles 16, 25, 29 and 98; Article 16 in its second paragraph contains a general declaration on the matter stating that “the law will establish norms, measures and procedures that protect and preserve the cultural stock of ethnic groups and will promote the development of the specific forms of the social organization of indigenous communities”.

On the matter of political organization several norms can be found; the first of them on the second to last paragraph of Article 25 which expresses that the law will protect the traditions and democratic practices of indigenous communities that have until now been employed in the election of their *ayuntamientos*; this is a guarantee that is complemented by what is established by Article 29 which prescribes that “the election of *Ayuntamientos* will take place through universal, free, secret and direct suffrage, and in the municipalities that are governed by the system of *usos y costumbres* what will be observed is what is established in the second to last paragraph of Article 25 of this Constitution and the normative legislation.” By virtues of this disposition two different forms of

¹² *Ley Estatal de Educación.*

electing coexist in the State of Oaxaca: one by a political parties system and another by the common law electoral system for indigenous peoples and communities.

Finally, article 98 determines that the “authorities elected by the system of *usos y costumbres* will also take possession on the date referred to in the preceding paragraph and will carry out their positions during the time determined by their traditions and democratic practices which must not exceed three years.”

In addition to the common law electoral system, we find the right of indigenous peoples and communities to free association; Article 94, in its sixth paragraph determines that “the Municipalities and the indigenous communities of the State can associate freely, taking into account their ethnic and historic affiliation to form associations of indigenous peoples and communities that have as goals the study of local problems, the completion of common development programs, the establishment of bodies of technical support, the training of civil servants and employees, the operation of urbanism programs and all other that strive toward promoting well being and progress in their respective communities and towns.”

Paragraph second of Article 16 of the state Constitution does not make reference to any specific political organization given that it refers to any type of organization stating that the law “will promote the development of the specific forms of social organization of indigenous communities”. This last statement holds a strong relationship with the content of Article 12, third paragraph, which refers to the institution of *tequio*¹³, a cultural practice specific to many indigenous peoples.

This norm establishes that “the authorities of the municipalities and communities preserve *tequio* as an expression of solidarity according to the practices of each indigenous people and community; the *tequios* implemented for the achievement of works of common benefit, derived from the agreements reached at assemblies by municipal and community authorities of each indigenous people and community, will be considered by law as payment of municipal contributions; the law will determine the authorities and procedures inclined to resolve controversies that arise from the implementation of *tequio*.”

Paragraphs fourth and fifth of Article 16 are important on the subject of justice; said paragraphs mention that “the law will establish procedures that assure that indigenous peoples have an effective access to the juridical protection that the State grants all its inhabitants.” Paragraph fifth determines that in “the judgments where an *indígena* is involved, authorities will guarantee that attorneys and judges preferably be speakers of the native language or, alternatively, rely on a

¹³ *Tequio* is a term employed to identify the practice of using unpaid communal labor for public works or projects relevant to the interest of an entire community.

bilingual translator, and will take into account their conditions, practices and customs during the process and at the moment of sentencing, within the frame of current law.”

The Constitution also contains a reference to the right of indigenous individuals, not their peoples or communities, to access the service of public registry, determining that “the normative law will establish norms and procedures that allow the effective offering of the services of the Civil Registry and of other institutions linked with said services to the indigenous peoples and communities, as well as the sanctions that ensue in case of inobservance.”

A last disposition of the state Constitution in the matter of indigenous rights refers to the punishment that will be applied to those whose conduct endangers them and their culture; on this matter the law determines that it will “punish the different forms of ethnic discrimination and ethnocidal conducts; as well as the cultural looting in the State. Likewise, the law will protect indigenous peoples and communities against displacements, determining the rights and obligations that derive from exceptional cases that could arise, as well as the sanctions that ensue as consequence of inobservance.” These reforms are without a doubt a progress for the politics of recognition and for human rights, considering that the *Ley de Derechos de los Pueblos y Comunidades Indígenas* of the State of Oaxaca specifically determines the crimes of ethnocide y discrimination.

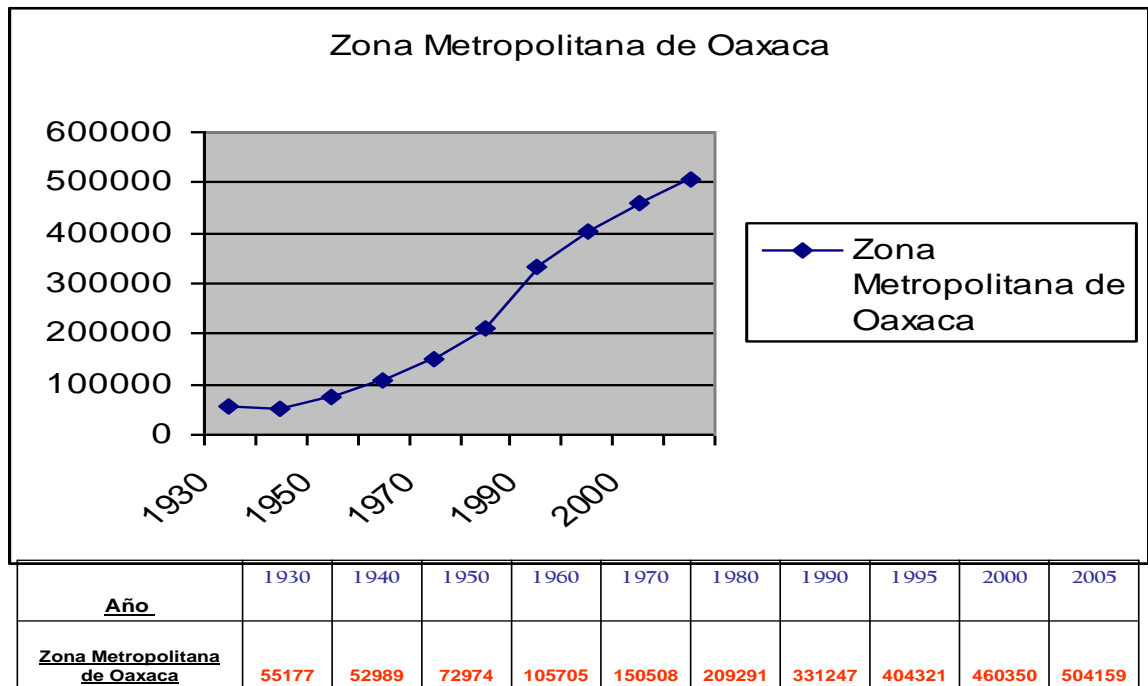
Oaxaca: The formation of the metropolitan area

The city of Oaxaca is located 550 kilometers to the southeast of Mexico City. A recent study determined that between 1970 and 2000 there was a process of metropolitization of Oaxaca City due to an accelerated demographic growth (Segura, 2002). As part of this transformation the city has overflowed its traditional limits that used to be circumscribed within the municipality of Oaxaca de Juárez. In the last three decades the city has expanded to other municipalities at the expense of communal and *ejido*¹⁴ lands that have become urban plots. The causes of this growth cannot be attributed solely to a natural increase but migration processes must also be taken into account.

¹⁴ *Ejido* lands are owned by the federal government and are the result of the land redistribution process occurred after the Mexican Revolution. A program to certify said lands and give them juridical certainty regarding land ownership was put in place in 1993 (with the acronym PROCEDE in Spanish). Parcel certificates and/or common use rights of lands were given out to individuals that comprised agrarian nucleuses. Titulación de Solares Urbanos (PROCEDE) was launched in 1993 as the instrument that would provide legal certainty to the tenure of the land, regularize agrarian rights from the delivery of certificates parcelarios and/or certified rights in common use, as well as titles of lots for individuals with rights comprising the agrarian unities.

The metropolitan area of Oaxaca City is comprised by the municipalities of Oaxaca de Juárez, San Sebastián Tutla, Santa Lucia del Camino, Santa Cruz Xoxocotlán, Santa Cruz Amilpas, San Agustín de las Juntas, San Agustín Yatareni, San Andrés Huayapan, San Antonio de la Cal, San Bartolo Coyotepec, Santa Maria Coyotepec, Santa Maria del Tule, Tlaxiactac de Cabrera, Santo Domingo Tomaltepec, San Jacinto Amilpas, Santa Maria Atzompa, Animas Trujano y San Pablo Etila, Villa de Zaachila y San Lorenzo Cacaotepec.

To give the reader an idea of the magnitude of the growth it is pertinent to mention that four decades ago, in 1970, the population of the city of Oaxaca was 116,338 and when adding the inhabitants of the municipalities now within the metropolitan area the number reached 150,448 individuals. During the 1970's a massive migration process begins from rural areas to the state capital which in the 1980's reaches its capacity and begins to extend to adjacent municipalities (Murphy et al, 2002: 57). According to a 2005 census, the municipality of Oaxaca de Juárez is home to 265,033 inhabitants and the population of the metropolitan area reaches 504,159, which represents 13.38% of the total population of the state.



The activities of the city have diversified notably since 1970. Aside from commerce, always an important activity in the economy of the city and the state in general, several other activities grew, including tourism and public administration. The industrial activity of the city was incipient during the 1970's, and largely related to the basic needs of the city itself and the surrounding regions. Of particular importance has been the development of the activities of construction, soda

bottling, craftwork manufacturing and some agricultural production, all of which have occurred under the changes undergone by the Mexican economy Nolasco terms “modernization of the dependent national capitalism” which has triggered the shift in the base of the economic dynamic of the city (Nolasco, 1981: 192, Garza Zepeda, 2001) The systems of markets and the relationship of interethnic dominations through the accumulation of commodities originated in indigenous production at the hands of *mestizos* gave way to modernized commercial relations and the accumulation sustained on the benefits obtained from tourism, services and the sale of products in the city. In addition, new forms of commerce have been established that have modernized the market system, turning it into a more open system, characteristic of mercantile capitalism. In the city of Oaxaca, as in the state in general, commerce and service activities absorb a high percentage of economically active population: in 1970, 28% of these were engaged in commerce, and 30.4% in services, in contrast to 17% in industry and 9% in agriculture (Nolasco, 1981: 184; Garza Zepeda, 2001).

Additionally the settlement of federal delegations and offices in Oaxaca have transformed the city into an important center of government and public administration, offering practically the entire state education and health services (Montes, 1979: 46; Nolasco, 1981: 193). However, on December 1st, 2004, the powers of Oaxaca were relocated to three metropolitan municipalities. The executive was moved to Santa María Coyotepec and the Congress was relocated in Santa Cruz Xoxocotlán, a decision which will surely accentuate the process of metropolitization.

A process of population growth that has expanded to the adjacent municipalities is observable since 1970 (Segura, 1999: 57-61). The intensity of rural to urban migration increases since the 1970's which motivates the emergence of new suburbs in areas previously dedicated to agriculture or even considered inadequate for residential use. The motives behind this unplanned settlement reside in the nature of those immigrating: mainly young people with little or no levels of education to which the city, because of a limited industry, has nothing to offer but unskilled jobs like messengers, helpers, loaders, construction workers, etc. The wages earned through these jobs left little possibilities to buy a house or even rent a room, so this wave of immigrants had no alternative but to get a hold of plots of land far from the city's downtown, through several mechanism that go from land invasion of spaces with no apparent owner or unoccupied by the owner, to the purchase of plots in illegal markets. According to data from the *Instituto Nacional para el Desarrollo de la Comunidad y la Vivienda Popular*,¹⁵ in the mid 1970's there were 87 *colonias populares* or low-income suburbs in the city, with a population of 139,859 individuals 75% of which had a wage categorized as low or very low (Montes 1979: 50).

¹⁵ National Institute for the Development of Community and Low-Income Housing

As a result of these settlements around the city, the poverty and social inequalities have made themselves more visible, expressed through new problems of urban growth like the irregularities in land ownership, the lack of basic services, deterioration of health conditions, overpopulation, etc. In relation to the social inequalities, according to Nolasco (1981: 227), two thirds of families live in conditions of poverty or on subsistence levels, and only one fourth has basic needs covered.

Differentiated citizenships: natives and “neighbors”

What the legislation of Oaxaca terms common law or *usos y costumbres* for the election of authorities conceptually evokes what is known within anthropological literature as the *cargo* system: an organic structure that anthropologists had considered was the distinctive form of political organization within indigenous communities. The classic definition describes a system resulting from the mixture of prehispanic modes of political organization that survived the conquest and the Spanish *ayuntamiento* institution imposed on the indigenous population during the colonial period. From this arrangement was born a new pattern of organizations that includes hierarchical order of authority positions in which an individual must cover a certain number of previous positions to be eligible to be appointed in high positions within the hierarchy (Aguirre Beltrán, 1953; Wolf, 1959: 214; Carrasco, 1961; Greenberg, 1987: 195).

In this model the community is a social and political organization which combines the exercise of civil and religious services to maintain a hierarchical social structure. Although there are as many variations of this system as there are communities, that is, the local government practices are not always determined by static rules, it is important to note that the *cargo* system has been considered a kind of mandatory democracy given that it is expected that everyone participates, or at least all males (Carrasco, 1961).

To sum up, the elements that comprise the *cargo* system are associated with the idea that a local community is the basic social and political unit of indigenous peoples established during the colonial period when indigenous peoples were constrained to operate politically within the local level. The local organizations known as the “Republics of Indians” of the colonial period would later be consolidated during the Independence period and institutionalized after the Revolution when in 1917 the municipalities of the Federation acquired an autonomous existence with the establishment of a constitutional *ayuntamiento*. Taking into account the numeric relevance of the Republics of Indians that existed in Oaxaca, one can infer the quantitative and qualitative importance of the presence of indigenous forms of organizations currently present in the municipalities of the state.

In the municipalities of Oaxaca there are different variants of the norms associated with the *cargo* system. These variations include the differences in norms employed to elect and appoint authorities, to perform *tequio*, to finance religious ceremonies (as in the case of *mayordomías*¹⁶); each community has a particular way of exercising these practices, including almost every municipality that comprises the metropolitan area of the city of Oaxaca (even those that elect authorities through a political parties system).

The main settlement of the municipality of Santa María Atzompa is a small town located to the west of Oaxaca City. Historically most of the population has been dedicated to agriculture and pottery production. This latter activity has made Atzompa renowned for its *loza vidriada* (the name given to them because of color of the vessels they make). Clay is the main raw material families from Atzompa have used for generations in the craft of domestic utensils and handicrafts. The sale of ceramics has been for decades the main economic support of the families settled in Atzompa. Ceramics from Atzompa not only supplies the region, but also goes out to most of Mexico. Since the mid 20th century Malinowsky and De La Fuente (1957) have pointed out that the utensils elaborated by the inhabitants of Atzompa are very common in the homes of the Valley of Oaxaca and preferred in other parts of the Republic owing to the assumption that to cook with these utensils meant a lower consumption of coal or firewood due to their inherent thinness and durability.

The political organization of the municipality of Santa María Atzompa is comprised of, first of all, the municipal *cabecera* or leading settlement of the same name and of the subordinate localities, called *agencias*, of San José Yahuique, San José Hidalgo, La Cabada and Santa Catarina Montaña. Also part of this municipality, though without any administrative admission are nine *colonias*: Ampliación Guamuches, La Niños Héroes, Samaritana, Guelaguetza, Forestal, Odisea, Oaxaca, Santa María and Ejidal.

In the municipality of Santa María Atzompa local authorities (president, *síndicos* or trustees, *regidores* or regents, as well as their alternates) are elected through a general community assembly, comprised by the inhabitants of the leading settlement (*casco municipal*)¹⁷, men and women between the ages of 18 and 70 which sum up to around 500 individuals.

There is a very active and decisive involvement of women in Atzompa. Many women are organized through community groups, as is the case of the Progres-a-Oportunidades women's group. Many times these organizations, in days prior to the election process, have already decided their vote in favor of a given person which they will then cast on the day of the community assembly¹⁸.

¹⁶ A *mayordomía* is generally an annual festivity organized in honor of a patron saint.

¹⁷ By this process the thousands of individuals that inhabit the different *agencias* and *colonias* are excluded. This exclusion is one of the most severe deficiencies of the common law election system.

¹⁸ The same practices are carried out by *ejidatarios* and other groups.

This participation has garnered results for women, illustrated by the case of the previous municipal administration, which had two female regents. One of these regents was in charge of education and health, the other in charge of marketplaces.

The election of authorities in Atzompa is public, direct and reached by consensus, as opposed to the secret vote/winner-takes-all procedure of the election by the political party system. On the day of the election an assembly gathers at the *cabecera municipal* between four and five in the afternoon. Any person in the assembly can name a candidate for president; whoever has the most votes is appointed president. The same procedure is then followed to elect a *síndico* and regents. The person appointed as president is selected taking into account the individual's past services to the community and previous positions. In this manner the designation is a recognition that the community bestows upon the *cargo* holder or *carguero* for previous work carried out in benefit to the community¹⁹. At the end of the community assembly the record is written up and signed by everybody present. *Cargos* or offices are held during three years, there is no reelection and the one individual may not hold the same position twice.

The top political structure of the municipality of Santa María Atzompa comprises the following positions: municipal president and a substitute; *síndico* and substitute; three regents with their respective substitutes: Income Regent, Education and Health Regent, and Police Regent. These essential posts are all appointed by the community in an assembly. Nowadays whoever occupies one of these positions receives a wage. The secretary and municipal treasurer are appointed by the president. The mayor and the secretary must know how to read and write so only those who possess such skills are considered to occupy these upper lever cargos.

There are two positions within the political structure of Santa María Atzompa which are linked to the religious realm: the Church Mayor and the *mayordomo* (big, medium and small)²⁰. The importance of the *mayordomo* is established according to the importance of the Saint. Thus, the "big" *mayordomo* or *mayordomo grande* is in charge of the festivities in honor of the Santa María de Asunción Virgin, the Patron Saint of the community.

In addition there are other positions in the structure such as Police Chief, Police or *Topil* and Servent. To occupy these positions it is required that a person be originally from the municipality, eighteen years of age and married. The municipal president grants these appointments

¹⁹ This, like many other norms within the cargo system, is not static. To illustrate this we can consider the example of the previous municipal president who was elected without having served in any previous positions. In this case several other factors came into play like the agreements reached by groups or organizations within the community.

²⁰ *Mayordomo* is the term used to identify the individual within the community which is annually appointed to organize the *mayordomía*.

as well. There are also positions in different committees such as the Civic Festivities Committee, School Committee, etc.

Unwanted neighbors

The Guelagueta suburb is part of the urban spread that the city of Oaxaca has undergone in the last twenty years. This suburb is located to the northeast of the city; its borders appear diffuse given that it shares a landscape with other similar settlements making it seem like one big suburb instead of several separate ones. To the north it borders with *colonia* Forestal, to the south with Niños Héroes, to the east with *colonias* Samaritana and Oaxaca and to the west with Asunción²¹. The entire area rests at the foot of a hill that the federal government considers an archeological reserve; above the suburb one can spot the fence that encloses and protects this site²² that, according to the neighbors, has been looted²³.

The streets of the suburb carry the names that identify the different socio-cultural regions into which Oaxaca is commonly divided, the districts of the state and the different traditional dances that are exhibited during the Guelagueta festival. Thus, we find street names like “*la Mixteca*”, “*la Costa*”, or “*Torito Serrano*”. The suburb extends about 62 hectares and has a very dry soil with few plants and abundant dust. Some streets run up and down hills, especially around the block of Mixteca Street and the surrounding roads which were where the first inhabitants settled. The streets were not outlined symmetrically, making it complex for the outsider to navigate through them. One finds an endless number of dead ends. There is a street that runs through the entire suburb from west to east; it is one of the entrances to the settlement: the “Siete Regiones” Street. Although other streets have the same orientation, Siete Regiones is the most complete. The other important street, which also serves as an entryway to the suburb is “Pochutla”. The main streets cross the suburb from north to south are: “Villa Alta” and “Yalalag”. Due to the irregular configuration of most of the streets, it is sometimes difficult to locate houses. During the day the settlement is nearly deserted, it is only during the afternoons that one can find children playing on the streets.

²¹ The suburb of Asunción has a peculiar history; it is comprised of plots that a municipal president of Santa María Atzompa sold to citizens of the *casco* to raise funds for the restoration of the town church. These plots are on the limit that the government had established as a federal area to protect the nearby archeological area located on the summit of a hill.

²² The archeological site referred to is known as Mote Albán and comprises 2,028 hectares. The most important structures within the great network of edifices on this site are “*El Juego de la Pelota*”, “*El Edificio de los Danzantes*”, “*El Adoratorio*” and “*La Plaza Mayor*”. The site encompasses the hills of Atzompa, El Gallo, and Monte Albán, located within the municipalities of Santa María Atzompa, San Pedro Ixtlahuaca, Santa Cruz Xoxocotlán and Oaxaca de Juárez.

²³ Some neighbors claim they have frequently seen small aircrafts land on the site.

To get to the Guelaguetza suburb by car it takes around a fifteen minute ride from downtown Oaxaca on the road that leads to Atzompa. The suburb is only 8 kilometers from Oaxaca City and 4.5 kilometers from Atzompa. There are two ways to get to this settlement by public transportation, one by way of two collective taxis that have a route from the suburb to their base on a side street near the second class bus station (*Central de Abastos*) in Oaxaca City. The other public transportation available is a bus line with the same route and ten buses. Due to the limited public transportation specifically aimed at the suburb, the inhabitants use the public transportation provided by the collective taxis that originate in Atzompa, which leaves them at the entrance of their town, meaning that those living at the center of the suburb must walk close to a kilometer.

The lands of this suburb were previously used for agriculture; they comprised what was once called “Rancho Mayoral”. When the owners of this ranch died, the land was left without an owner, so the municipal authorities granted the property to workers of the hacienda, who later sold the land. Unlike the other *colonias*, which are made up of *ejido* lands, Guelaguetza is comprised of small private properties.

Some of the sales of land were made directly to those who today populate the *colonia*, others made sales through intermediaries known as *lotificadores* who resold the land in smaller plots. At the onset of the sale of land only 10 families lived in Guelaguetza. Currently there are approximately 800 families. The 2000 census registered 635 households which accommodate a population of 2,918: 1,399 men and 1519 women.

According to the reconstruction of the way the *colonia* was populated, one can point to three dynamic moments in the process: the first during 1988, the second in 1992 and a final moment, which exhibits the highest number of bought plots and constructed houses, in 1995.

The sale of properties and the establishment of housing were made without considering the lack of services. The first inhabitants illuminated their houses at night with candles for there was no electrical service. Only until 1988 was the electric network installed. At the time of the first settlements, the few existing houses were surrounded by maize for much of the land was still used for agriculture. The only public transportation available at the time of the first inhabitants was the buses that ran from Oaxaca to Atzompa; if for any reason they missed the last bus, they would have had to walk the 8 kilometers from downtown Oaxaca to the *colonia*. Even with the transportation many people have had to walk from the main road that leads to Atzompa, where the bus drops them off, to the interior of the suburb.

The families that live in *colonia* Guelaguetza come from different municipalities, many of them are indigenous. There are Zapotecs from the municipalities of Pochutla, Sola de Vega and Ozolotepec in the district of Miahuatán; Mixtecs from the predominantly indigenous municipalities

of San Miguel Huautla and San Mateo Sindiui in the district of Nochixtlán and from the coastal settlement of Jicayan; there are also families from Tlaxiaco and Silacayoapan to mention a few. Some of these individuals are founding members of the *colonia* and have been living there around 18 years. These people inhabited Guelaguetza when this suburb was only a few scattered house and mostly empty land.

The first families that settled found the need to petition the establishment of a school for their children's education, giving way to the foundation of the Elementary School which in its initial years had generations of six to eight students. The neighbors recall that the school teacher, in coordination with the parents of the first attending students, would go out to visit newly arrived families to invite them to send their children to the school. At first the school was an improvised space where students took classes under a tent. Later on a tin roof was placed on wooden walls for a classroom and so on to accommodate the growing population of students in the *colonia*. We can infer that education was one of the first public services that the families in the *colonia* Guelaguetza organized to receive. As recounted by Antonia Viguera, member of one of the families with seniority in the *colonia*, originally from Sumpango, Mexico State, and with a husband from Santa María Peñoles in the district of Etna:

When we moved to live here, there was nothing. There was neither a school, nor gas trucks, nothing. I remember a *señor* worked with his donkeys and we would pay for him to bring us gas tanks from all the way downtown Oaxaca. We lived four years without electricity until around three hundred and fifty people got together to get the electricity network in here, because that was the number the Federal Commission of Electricity required.

The *colonia* Guelaguetza began to populate with increasing celerity in 1990 when the high section of the suburb was parceled.

For the residents of the *cabecera* at Santa María Atzompa, including the municipal authorities, it is uncomfortable to have the *colonia* Guelaguetza as their neighbors for several reasons. From their point of view the *colonia* makes them look bad in the eyes of other municipalities and of the city of Oaxaca because Guelaguetza is accused of harboring groups of delinquents, *cholos* and thieves. A member of the *ayuntamiento* even warns that “one cannot go in there [*colonia* Guelaguetza] at night because you don't know how you're going to fare”. The inhabitants of Atzompa complaint that the media always picks up on robberies and other types of felonies that goes on in the *colonia*, but never specify and make it seem as if the entire municipality is unsafe: “they always make all of us look bad, when it's in the *colonia* where the delinquents

live.” The members of municipal authority do not manifest any sympathy towards the population of *Guelaguetza*; even though the national census institute (INEGI) categorizes the *colonias* as part of the *cabecera*, they consider that there is a difference between those living in the original settlement of Atzompa and those populating the *colonias*.

The inhabitants of Guelaguetza have withstood this rejection from the *cabecera* in different moments and forms. Individuals from the *colonia* complain that they have never received any support on behalf of municipal authorities, that they are treated with contempt; even when trying to access health services: “they calls us ‘the freeloaders’”; “the nurses treat us like animals”. People from the *colonia* acknowledge there are criminals in their neighborhood, and that even they live in constant insecurity, but claim that the individuals that commit crime are not from there but come from other places; so they blame the municipal authorities for not offering any protection. An ex-president of the directive board of the *colonia* complains that during his term the only thing he received from the municipal president was a couple of signatures so that he could solicit services from state agencies. The perception is that the only thing the municipal authorities have aided them in is with the potable water wells that are in the process of construction.

In addition part of the investment for the Project for the Introduction of the Potable Water System is financed with the municipality, but the inhabitants of Guelaguetza claim they are unaware of the cost of this public work; likewise neither the municipal president nor any other municipal authority wanted to inform on the amount gathered to finance the work. The authorities claimed that the information on the cost of the work is directly handled by the municipal treasurer, but at no point would concede the information, and would only state that the *colonia* was being aided with a percentage of the cost. After insisting we were told that in the fiscal year 2002 the water project of the *colonia* was assigned a budget of 2.5 million pesos. In an interview, the president of the *Unión of Colonias* stated that in the fiscal period 1999-2002 the municipality of Atzompa had handed over a total of 7 million pesos.

The neighbors of *colonia* Guelaguetza do not make use of the health institutions nor of the education services of the *cabecera*, arguing they feel rejected, and thus maintaining a closer relationship with downtown Oaxaca than with their own municipality. To tend to a health problem they go to downtown Oaxaca’s institutions and send their children to schools outside their municipality where they consider they will receive better attention.

The relationship between *colonia* Guelaguetza and the *cabecera* Santa María Atzompa is limited to the petitions put forward by different committees of the *colonia* to municipal authorities and their participation within the Municipal Development Council.

Like many other suburbs formed in the metropolitan area, Guelaguetza is comprised by families that have migrated from other towns. According to the accounts of the inhabitants of this suburb there are several motives for their migration. The most common reason for leaving their original towns is that economic situation of the harvest fields is worsening every day, firstly because families have grown and new couples do not have means of production any more, nor a house. Thus, this young population has opted for moving to the city seeking new horizons, or at least a daily sustenance. People insist that the fields do not produce enough anymore. Another expressed motive for migration is people seeking a better education for their children outside of their original communities.

In *colonia* Guelaguetza the heads of families are employed in different trades: construction, taxi drivers, truck drivers, stevedores, some are self employed selling clothes, vegetables or knick-knacks in the locales on the markets in downtown Oaxaca. Others have established their own businesses within the *colonia*: carpentry, electronic workshops, pottery, ironwork, potable water distribution with tank-trucks, *tortilla* making, school supplies stores, grocery stores, etc.

Women employ multiple strategies to secure the resources needed for providing for their families. For example, women sell tortillas made in common wood stoves; others improvise a locale at their doorstep of regional foods or sell treats and candies to school children. Many women also make tamales daily for sale or have a taco stand in the markets of downtown Oaxaca. Some women employ themselves washing and ironing for families in downtown and other *colonias*, while others have learned how to make decorations for feasts and parties and can sell these items on scattered occasions.

Another motive for moving into the Guelaguetza suburb is being tired of paying rent and wanting a place to own. Some inhabitants of this *colonia* use to pay between 300 and 500 pesos monthly for the rent of small, cramped houses, when their weekly earnings were around 400 to 750 pesos. Most families are made up of five members, so many of them acquired their plot of land in small payments.

The municipal authorities do not know a lot about the *colonia*: they are unaware of the number of hectares that it stretches and the number of people that live there, despite that the inhabitants of Guelaguetza pay their land tax at the *cabecera*. The authorities describe the *colonia* as a crime zone. One authority described the following in an interview:

If we go there right now we won't come back, it is unsafe. Maybe during the day it's not that bad, but if you've already been around there you probably noticed what the people are like there. You knock on a door and they'll open just to see who it is but then will shut the

door right back and will not care. They also have their walls filled with graffiti, something you'll never see here [at the *cabecera* of Atzompa]. We don't want to judge them ourselves but it is unknown where some of the people that live there came from, what they did in their communities of origin and why they came to live here. We also don't know how many live in the *colonia* because more are constantly arriving.

Despite these comments, however, the authorities claim to have a cordial relationship with the *colonia* because they are part of the municipality and that this relationship is maintained by the current projects in development (Potable Water Project) through the committee of the *colonia* and the committee of the *Unión de Colonias*.

A similar situation is observed in the appointments of municipal authorities in Santa María del Tule. In this case the general assembly besides designating municipal authorities is also in charge of naming the persons in charge of all the existing committees within the municipality that carry out functions in the public interest such as schools, marketplaces, and the committee that looks after the "tule" tree²⁴. The only appointments made by the *ayuntamiento* are those of the municipal treasurer and the *Alcalde Único Constitucional*,²⁵ which carries out an influential role in the political organization of this municipality. In the opinion of the municipal president of Santa María del Tule:

Here in the community all appointments, with exception to the municipal police, are derived from appointments made in the ordinary general assemblies, so it is the population that elects us, be it authorities or committees. In fact, to participate as a candidate for the presidency there is a previous selection, three individuals are proposed by the assembly and their names written down on a blackboard. So the people can opt to discard a name by arguing, for example, "we don't want him because when he was a member of the committee he made a mess, diverted money, did not conclude what was planned, performed poorly, spent unnecessary, with irregularities, etc." At that point the name is discarded and someone else is named and so on until all three candidates are ideal contenders, then the election process can begin. The same thing is done for the election of the trustee. The rest of the appointments are made directly, that

²⁴ The tule tree is millennial tree described as "the thickest and oldest tree in the world" by the plaque at its base. The tree is a *taxodium mucronatum*, commonly referred to in Spanish as a *sabino*. The locals name the tree "el tule", which is also comprises the name of the town where the tree is located: Santa María del Tule. The tree is visited daily by dozens of tourists.

²⁵ This figure, as well as that of *topil* among others, have been inherited from the colonial period and subsist in the structure of the *ayuntamiento*.

is the regents and other authorities are appointed by the population. The *cabildo*²⁶ has the faculty to name the municipal treasurer and the constitutional mayor, who must be an elderly person with a record of distinction and respect in the town and with good precedents, because the constitutional mayor is above in the *ayuntamiento*, but at a constitutional level the mayor is the judge's auxiliary. But in accordance to our customs the community structure has its base in the constitutional mayor.

In Santa Lucía del Camino, one of the largest municipalities in the metropolitan area, with a population of approximately fifty thousand inhabitants, twenty-eight *colonias*, four *fraccionamientos*, a municipal agency and two police agencies, the election of municipal authorities is carried out by the political party system (a practice that originates in 1976, although at the time there was only one party: the PRI. Later on other parties would join the political competition: the Partido de la Revolución Democrática [PRD], Partido Acción Nacional [PAN] and finally Convergencia por la Democracia).

Although formally the election system of this municipality is of political parties, there is a peculiar situation in place. In this case, the PRI candidate is elected in a type of common law system; in said process the participation is especially of the population of the *cabecera/casco*, that is, the natives of Santa Lucía del Camino. Once the political ticket is formed, which in Santa Lucía is called of *usos y costumbres*, or of the *casco*, it is submitted as the ticket of the PRI and competes under this party's flag in the elections. According to an account of a regent of Santa Lucía, this is a means to preserve the *usos y costumbres* system:

This form subsists because in the middle of modernity and constitutional election all election that is dubbed the *casco* ticket is basically formed by natives of Santa Lucía, who are elected by taking into consideration who already served in community *cargos* like, for example, auxiliary, constitutional mayor, trustee; whoever has served in past positions and has the profile to head the ticket to contend in the constitutional election. So it's a mix, of a certain rescue of *usos y costumbres* and community *cargos* with the authentication of a constitutional election. So this *sui generis* process subsists only in the area of the *casco*. Other *colonias* and surrounding settlements have wanted to participate in the process, but it has been really restricted. This ticket practically carries 50% of the votes because those who cast votes are primarily concentrated in the *casco* of Santa Lucía.

In the municipality of San Sebastián Tutla the inhabitants of the *fraccionamiento* el Rosario

²⁶ *Cabildo* is constituted by the municipal president, *regidores* and *síndico*.

can participate in the process of election of authorities depositing their votes in favor of any candidate proposed by the citizens of the *cabecera* municipal. However, individuals from Rosario cannot themselves participate as candidates. The argument made to limit their participation, as manifested by the municipal president, is that they have not fulfilled any community *cargo*. This is, of course, a contradiction since the only individuals eligible to serve community cargos are the natives from the *cabecera*. The situation has provoked serious political conflicts within the population of this municipality.

In Santa María del Tule the proscription is rigid. The inhabitants of new settlements like that of *fraccionamiento* Retiro, with approximately twenty years of having been established, have no right to participate in the appointment of municipal authorities. Current authorities argue that these settlements have their own forms of representation and that their participation is realized through other means. The communication with them is given through the different committees of the *fraccionamiento*, recognized by municipal authority, that function as intermediaries for all administrative matters brought to the attention of authorities.

The demands of the new residents usually involve the improvement of social infrastructure: enlargement of classrooms, construction of annexes, recreational school fields, paving of roads, maintenance of the sewer system, works on the potable water network, extension of public lighting and garbage recollection among others. To tend to these demands municipal authorities summon the committees of the *fraccionamientos* or settlements that are recognized by their inhabitants to participate in the Municipal Social Development Council where together they prioritize the different needs according to the budget assigned to them by the state and federal governments. In the opinion of the municipal president of San Sebastián:

Of course the budget is always looked at with jealous eyes. We [authorities] have to share the budget with the *fraccionamiento*, and if we give the *fraccionamiento* a little more money, then our own people resent it, because we have to tend to our *cabecera*, and they're right. So we always have to mediate things, otherwise we would be talking of serious repercussions. They [the inhabitants of the *fraccionamiento*] always claim they have a population of close to eleven thousand, and that they contribute more than 90% [of the total tax contribution], they feel they own the community of San Sebastián Tutla. As you must know, the government transfers money to us, but the municipality also has independent income through taxes. The percentage of the taxes they claim they contribute is false because they have a debt in overdue taxes of over three million [pesos], from land tax. Some of those debtors have never even come to ask if there is such tax for having their home here. There are people that have home seizure or

property transfer problems because the sale they went into was not done according to law. So many of them get their land tax receipt and never come to settle their account.

In the matter of the rights and obligations of the inhabitants of the *fraccionamientos*, one of the main problems aside from the political ones, is the irregularity in the fulfillment of their obligations. A concrete case is the debt incurred in by the inobservance of the payment of the land tax. In the municipality of San Sebastián Tutla this debt is calculated at over three million pesos, and in Santa María del Tule the problem is graver still, given that the inhabitants of the *fraccionamiento* Retiro have not covered the tax in the last ten or more years, a situation of which the municipal authorities obviously complain. Similar problems exist in Santa Lucía del Camino with its *fraccionamientos*. On this regard, one of the leaders in Rosario justifies their behavior:

We have been paying the land tax, although there is a phenomenon that has arisen from the organization of several sectors into a unified front. We've been talking to people to get them to not pay, that is why the municipality is complaining. The current president, Mr. Abraham Benito Santiago Navarro complains of a delay, he says that the land tax is not being paid in its entirety. People don't want to pay if they don't receive services in exchange. If you take a trip around the *fraccionamiento*, you'll see we have no less than 100 out of order street lamps in the sector. Right now the streets look like the ones in Mexico City, dirty. When it rains the sewer overflows and the water comes out of the gutter. The municipality does not tend to this. We have to organize ourselves to draw out water, to sweep, when we're supposedly paying for this to get done. The municipality collects land tax and street sweeping and garbage recollection fees, but there is no sweeping. Fortunately they do recollect the garbage, there are two trucks for that for the entire *fraccionamiento*, but there is no sweeping. The streets are very dirty, if we don't sweep ourselves, no one will do it. (Andrés Ismael Rodríguez López, leader of the *fraccionamiento* Infonavit-Rosario).

The complexity of the political system of the municipalities in the metropolitan area is accentuated when we take into account the diverse conceptions of political action. In an interview with the municipal president of San Sebastián Tutla, it was made clear that the municipal authorities have problems with the non-native residents because they do not understand the natives' local forms of political organization. This was openly confirmed by one of the leaders of the Rosario who commented:

The logic of those families [at the *cabecera* of San Sebastián Tutla] goes to extremes. In 1996 they quarreled among themselves, with their own *paisanos*. What I know is that some families were exiled from the town or were cut off from all services. Some say that they would cut the pipes [through which potable water runs] and everything; they would even deny them access to the schools and cemetery, let alone the church. That's the kind of people they are; they're terrible these *paisanos* from San Sebastián Tutla. It's unbelievable that so close to the city [of Oaxaca] something like this can still happen; but anyway, that's how they think.

In San Sebastián Tutla, although it is not a municipality that officially employs the *usos y costumbres* system, the authorities shield themselves with the norms of common law to preserve some of the characteristics that keep San Sebastián similar to those municipalities that do officially govern through *usos y costumbres*. The age to serve in the municipality begins at 15 (if the individual is not a student) and ends at 60. Elderly people who have fulfilled all the services required of them are exempt of all responsibility and are not called to cover any special function.

The political structure of the municipality includes the following *cargos* in order of importance: municipal president and alternate, regents and respective alternates, municipal treasurer, constitutional mayor, *mayordomos*, *ejido* property commissar, communal property commissar, prosecutor, public works committee, *parroquial* committee, potable water committee, kindergarten committee, civic committee, elementary school committee, municipal garden committee, mayor's *topil* and church bell *topil*. The cargo invested with the most respect is that of municipal president. The religious realm is also considered within the structure of *cargos* (Mijangos Rodríguez, 2008).

Men have the obligation to serve in the *cargo* structure; women only participate in the preparation of foods for community feasts. In this case, *avencindados* fulfill lesser *cargos*: municipal police, mail *topil* or gardener. The arguments by which *avencindados* are not assigned to more important *cargos* are: the unfamiliarity with the costumes, indiscipline, rebelliousness and the lack of mobility. If someone refuses to participate in *tequio*, the authorities hand out a fine, sends the individual to jail and/or assigns them to other community labor. Likewise, a person cannot refuse to accept a *cargo*, less they be equally penalized. The criteria employed for the designation of *cargos* of relevance is having served in lower *cargos*, the responsibility with which previous *cargos* were fulfilled, the origin and residence; that is, only natives are eligible for these upper level *cargos*. A clear expression of this criterion is the requirements established by community members for the election of municipal authorities in September of 2004. Only those who were natives were eligible to occupy a position within the municipal political structure. The requirements were:

1. To be a native and originally from the community.

2. To have responsibly fulfilled prior services, both municipal and religious:
 - a. Regarding municipal services: to have accepted and satisfactorily fulfilled the appointments that the community assembly and municipal authorities bestowed, such as municipal police, potable water committee, public lighting committee, *ejido* commissar, among others.
 - b. Regarding religious services: to have accepted and satisfactorily fulfilled the appointments that the community assembly, constitutional mayor and municipal authorities bestowed, such as church bell *topil*, constitutional mayor's *topil*, parroquial committee, Santísimo Rosario guild, and religious associations.
3. To make an honest living.
4. Not having a criminal record, in which a sentence was dealt for a crime or administrative penalty considered grave or immoral.
5. Having been *mayordomo* of the different religious images of the catholic temple.
6. Not having any debts in the land tax, in case of property ownership, nor in potable water, garbage recollection, sewer system, public lighting, among other fees.
7. Having covered both the municipal and religious contributions.
8. Having fulfilled the *tequio* duty solicited by the municipal authority, such as the cleaning of the municipal graveyard, cleaning of the “bull road” ditch, among others.
9. Not be currently fulfilling some municipal, religious or education *cargo* within the community, and
10. No having fulfilled the same *cargo* in previous periods.

In this case, those excluded from the assemblies were: the *avecindados*, (even if they lived within the municipal *cabecera*), the residents of the *fraccionamiento* Rosario, and the population of the Police Agency “ExHacienda El Rosario”. Thus, even if they resided within the municipality, they were not considered eligible to fulfill a municipal cargo.

This situation gave rise to a prolonged conflict between the residents of the municipal *cabecera* of San Sebastián Tutla and the population of the *fraccionamiento* El Rosario. This political quarrel began at the inception of the electoral reform itself. While the natives of the municipal *cabecera* solicited be recognized as a municipality where authorities are elected through a regime of common law, the population of the *fraccionamiento* pushed for the municipality to be included among those who elected authorities through the political parties system.

One of the main reasons that the natives inclined towards the *usos y costumbres* regime was “the evident presence of a municipal *cacique* group sustained on the political power of dominant families”

(Mijangos, 2008: 60) which influenced the opinion of the population of the *cabecera*. The strategy of the *caciques* of San Sebastián Tutla was to summon an assembly where they laid down the criteria for the procedure of electing municipal authorities. Although officially the municipality is governed by a political party competition system, the argument for excluding the *avecindados* in 1995 was that, in San Sebastián Tutla common law was in force.

The exclusion led to a confrontation where the natives' rhetoric centered on a "common past" with strong "cultural roots"; while the *avecindados* derisively referred to the *cabecera* municipal as "that little town". The quarrel led the inhabitants of El Rosario to organize through Neighborhood Committees which leaders, elected in assembly, would be in charge of petitioning to different government branches for the enforcement of the political party system, their inclusion in the election of authorities or at least the political-administrative recognition as a municipal agency, to resolve the demands of basic services. As the years past, their organization grew; the committees were reproduced in the different sectors of the *fraccionamiento* and the *Frente Vecinal del Fraccionamiento El Rosario* (Neighborhood Front of the Rosario *Fraccionamiento*) was created.

In the municipal elections for the period 1998-2001, the residents of the *fraccionamiento* officially stated their political situation and founded their petitions on the argument that as Mexican citizens they were being denied their constitutional right to participate in the election of their authorities (Mijangos, 2008: 80-85). Their demands were echoed by the representatives of the PAN and of the PRD before the General Council of the State Electoral Institute (IEE). These parties saw the opportunity to confront, expose and discredit the PRI. The PAN and PRD sustained the recognition of the political rights of the citizens of the *fraccionamiento* arguing that an indigenous language was no longer spoken at the *cabecera* and that this community had a constant presence of political parties, thus validating the petition of the *avecindados*. The General Council ruled to include San Sebastián Tutla in the list of municipalities governed by the political parties system, but an appeal put forward by the PRI before the State Electoral Tribunal overruled the decision of the General Council; the argument was that there were enough elements within the *usos y costumbres* system of San Sebastián to authenticate it and preserve it as it was (Mijangos, 2008: 85-86).

In a third attempt (on the election process for municipal authorities, 2002-2004) the inhabitants of El Rosario again petitioned the General Council of the IEE to install a political party system; this time under the argument of counting with 72% of registered voters (Mijangos, 2007: 87). As a solution to the conflict the IEE proposed comprising the municipal *cabildo* with a *síndico* and three regents elected by the *avecindados*. The population of the *cabecera* firmly rejected the instruction in an assembly. Other options where both sides would benefit were sought, but nobody compromised, the conflict continued until negotiations were severed. The *fraccionamiento* group decided to go ahead with the IEE's first proposal

and summoned an election in the central plaza to elect the authorities that would serve in the *cabildo* of San Sebastián. When they arrived at the plaza it was closed down with the trucks and cars of the *ayuntamiento*, and people with stones and sticks were blocking the way. The General Council of the IEE again intervened to dislodge the conflict. The concession made by the natives of San Sebastián was to accept the integration of the citizens of El Rosario into the *cabildo* with the condition that they would observe *tequio* and respect the norms established by *usos y costumbres*; the *avecindados* refused the conditions. The electoral conflict settled down, but there was no satisfying solution for the *avecindados* of El Rosario in any of the three periods. The dispute is clear; between those that claim a right to be municipal authorities due to a logic based on origin and belonging, and those that are excluded from this right for being considered “outsiders”. In this case, the disagreement on the recognition of political rights is based on different understandings of citizenship.

The examples I have proposed illustrate that, when put to practice, the politics of recognition can be a double-edged sword. In the case of Oaxaca, on the one hand the inhabitants of the different municipalities acquire the faculty of appointing their authorities in accordance with their traditional norms, which is a form of acknowledging the right to self-determination. On the other hand, some of these traditional practices exclude certain groups within local jurisdiction, which in some cases may result to be a numeric majority. Thus, two forms of exercising citizenship are reproduced giving rise to what can be called differentiated citizenships. In the case of community citizenship the extension of its content is not merely political; the privilege of citizenship has a social dimension as well. Community citizens have rights within the community: to possess land, to build houses, to collectively exploit the natural resources of the land, etc. Sometimes they are able to exercise these rights in their positions as *ejidatarios* or as *comuneros*,²⁷ or as both. Citizenship is, in this case, a position and a privilege. In community citizenship men are formed as citizens of public virtues, which means, above all, placing public interests ahead of private interests. What defines the integrity of a community citizen is the fact of behaving as a man from, for example, Santa María Atzompa, or from San Sebastián Tutla or from Santa María del Tule, which means defending the community and contributing to its preservation. The latter includes the payment of contributions, a crucial ingredient in community citizenship, which allows the continuity of the community. One of the important contributions due to the community is that of *tequio*, an element that sustains community identity. But, at the same time that community citizenship means privilege, it also implies political exclusion. Community citizenship emphasizes the collective dimension of belonging: the citizen is not an understandable concept in and of itself; the citizen is a member of a collective entity, therefore the individual is eclipsed.

²⁷ Communal lands are a colonial product. “Through the royal certificates of 1546, 1551 and 1568, the king decreed that the indígenas be gathered in European style urban settlements and that the terms of the towns be declared. The king ordered to demarcate lands for hills, ejidos and farming, which since then were all inscribed within a communal regime” (Florescano, 1996:186).

This understanding of citizenship clashes with the liberal sense applied to the concept, given that, as has been discussed in other examples (Hernández-Díaz, 2007), the politics of recognition concede legal privileges to groups, not individuals. In turn these privileges can be used to uphold forms of exclusion that, theoretically, were sought to be eliminated through a liberal conceptualization of citizenship where the public dimension is overcome by the affirmation of individual rights.

Conclusions

The processes in place in the metropolitan area of Oaxaca City are the result of the convergence of a series of events such as the combination of urban growth with the legal stipulations that acknowledge cultural difference and consequently the right of peoples to preserve differentiated citizenships, which, although already in practice, now have a legal presence. Both the proponents of these norms and several academics have defended the idea that special representation rights and cultural rights would not threaten social cohesion because they are affirmations of inclusion (Kymlicka and Norman, 1997; Taylor, 1993, 1997). However, the cases of the municipalities within the metropolitan area of Oaxaca City, like in other cases (Hernández-Díaz 2004; 2007), seem to be indicating to the contrary. In this case the politics of recognition promote discriminatory practices, or produce new forms of exclusion given that the recognition of cultural rights is used as a tool to preserve privileges that marginalize segments of the population that do not share the same affiliations or characteristics of those considered citizens. To some scholars these types of acknowledgement signify a growth in the citizenship realm (Kymlicka, 1996; Taylor, 1993, 1997). But an alternate liberal argument can indicate that these recognitions entail all the risks that social egalitarianism poses on citizenship, and adds the ruin of equality, essential to a liberal citizenship founded on the fact that everyone, without exceptions, has the same rights and obligations (Sartori 2001: 103). Liberals insist in the idea of a citizenship based on a justice principle summed up in two points: first, equality in face of the law, and secondly, equality of opportunities. Equality in face of the law is determined by the justice principle of impartiality. Impartiality is based on the idea that no one knows what conditions an individual is in within the social structure, thus the institutions of the state must act “blindly” in the face of cultural, religious, ethnic or racial differences, which makes these institutions impartial. In this sense, individuals’ rationality will be sustained on the reflexive exercise that seeks the common good. This search for the common good is also sustained on two other secondary criteria that support the effective allocation of justice; these criteria are efficiency and difference, thus the preservation of the norms and social stability can be generated on the basis of the non-detriment of the rights of an individual, and of not augmenting the rights of others (Mouffe, 1999: 128).

The communities of Oaxaca have begun a process of organization in which they are emphasizing the reaffirmation of local power, the reinforcement of their autonomy, the demand for juridical recognition of this autonomy and a will for territorial control. In this context there are agreements and discrepancies between those who defend common law and those who support a political party regime. In Oaxaca, the procedures employed to designate authorities constitute an example of the coexistence and competition within a geographic confine of different forms of political organization which in some cases correspond to practices sustained on divergent philosophical principles. These forms partly illustrate the problems that arise from the relationships between culturally heterogeneous groups in contemporary Mexico. The case is also related to the discussion between those who promote a liberal route towards reaching full representation, in which individuals and their rights are central elements, and those that endorse considering individuals as members of groups or communities and, therefore, establishing collective rights to reach full representation.

As can be garnered from the situation, principles have been violated; the reforms were produced precisely to overcome disadvantages, but new problems arose, new exclusions, or new mechanisms to legitimize preexisting exclusions. At the same time, the reforms are strengthening the autonomy, in this case, of the municipalities governed by *usos y costumbres*, that one way or another try to elude centralized control and attempt to impose their own rules, divergent from those that govern the state and federal realm. This process takes place in an environment of contradictions. That is, rules are construed within the local political community; it is not the State, through its juridical structure, but the community itself which through political practice defines its limits. The dilemma is that, simultaneously, ample segments of the population are excluded, creating situations of conflict with the norms of the state and federal ambit. Conversely, observations can be made to the liberal proposal, whose inconsistencies rest in pursuing a citizenship with solely political and legal content, which, though important, is not enough to encourage equality and achieve inclusion.

We are witnessing a political and cultural process which regulates difference as a condition to inclusion, and in some cases manifests itself in a territorial manner as well, like in some municipalities where it is prohibited to sale land to “outsiders”. There are groups of inhabitants within municipalities that have systematically been denied their right to local, community citizenship (meaning an equal treatment in the face of law and public institutions) and have had obstacles placed in their access to local public services. The coexistence within the community is not possible due to the social-political severance, which manifests itself in the competition of two institutional structures within one same political-administrative unit: one local, the community structure, which demands acknowledgement to its particularities and in that context hinders the exercise of the second structure which is comprised of a set of citizenship rights granted by the federal constitution. The situation basically reflects the result

of two opposing ways of conceiving citizenship, and illustrates that it is not enough to implement politics of recognition to overcome the injustices of the past and fully observe human rights. The case presented exemplifies how the execution of politics of recognition can lead to new forms of exclusion. The past and present circumstances of Oaxaca are a lesson that must not be overlooked if we are to avoid new exclusions in the future.

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