

Neoliberalization, Municipal Governance, and Mining Resistance: Case Studies from Oaxaca, Mexico

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Mexico's distinct process of political decentralization, beginning in the 1980s, has coincided with a new moment of neoliberalization and a massive influx of foreign direct investment that has greatly influenced the restructuring of mining industry-state relations. For several indigenous municipalities in rural Oaxaca, these changes have resulted in local development priorities coming face-to-face with the interests of domestic and international mining capital. This tension illuminates a central paradox in Mexico's political decentralization: while article 27 of the Constitution decrees that all territory is the property of the state, including clauses guaranteeing protection of common lands (ejidos and comunidades agrarias), several Constitutional amendments and alterations to Mexico's mining law have allowed the state to auction off swaths of common lands, in the form of long-term concessions, to private entities. This change was enacted, in part, to create favourable investment conditions and is one component of a wider strategy of neoliberalization of Mexico's once corporatist, state-led economy. However, along with economic change and the breakdown of centralized governance has been a unique opportunity for rural and indigenous municipalities to seize more autonomy over local governance. This article explores the possibility of whether autonomous municipalities are able to fulfil their public policy objectives while also confronting mineral extraction. With a comparative lens, this paper examines successes and setbacks among municipalities in Oaxaca and explores local particularities that have enhanced or impeded specific mining resistance strategies. While imperfect, I conclude that there are cases warranting further attention where indigenous municipalities in Oaxaca have embedded autonomous forms of governance within civic politics in a way that have strengthened modes of collective accumulation and bolstered opposition to mineral extraction projects.

Decentralization

Oaxaca is a strong case study from which to examine the debate surrounding decentralization as potentially opportunistic for anti-neoliberal governance at the subnational level. In the most basic sense, political decentralization is the process of transferring power from the national level to state and municipal governments (O'Toole, 2011). In the case of natural resource governance, it entails the passing of industrial licensing, environmental regulatory design, and planning concerning water and land use to local government (Bartley et al., 2008). The rearrangement of state interventions in the public policy sphere, from the national to the subnational level, is a topic of great debate in terms of new political opportunities for mobilizing popular sectors of society. For example, Thomas Perreault (2012) understands decentralization to provide the possibilities of “new forms of transcendent coalition politics.” In the case of federal states in Latin America such as Mexico, it has also been argued that decentralization is linked to greater accountability at the municipal level, via increased participation of pre-existing organizations such as ejido committees, peasant union locals, and village councils (Faguet, 2012). Proponents consider decentralization to be a process that will ultimately encourage democratic participation, make public services more efficiently delivered to the citizenry, and “reduce the scale of policy implementation, which can also help tailor a closer fit between citizens’ preferences and a government’s actions” (Selee 2011, p. 7). This is a common line of argumentation in Mexican decentralization, as much of the process was contemporaneous to what has been generally framed as the democratization period.

Others have pointed out that decentralization has occurred under the logic of creating new regulatory regimes for the purposes of gradual neoliberal policy implementation. In this process, the state will maintain a key role in constraining subnational challenges to national policy frameworks and enforcing market-based mechanisms of capital accumulation. Sharzer (2011), for example, argues that: “Localism fails to understand how capitalism works as a system governed by tendencies to centralization and crisis...local development schemes are themselves embedded in and thus severely limited by the global economy” (p. 241). Understanding decentralization as a tool of neoliberal policy implementation by domestic elites is a key perspective in this debate, which Peck, Theodore, and Brenner (2010) theorize as a dynamic and adroit process, stating, “neoliberalization should be conceived as a hegemonic restructuring ethos, as a dominant pattern of (incomplete and contradictory) regulatory transformation” (p. 103-104).

Neoliberalization as an incomplete process is readily seen in the ways in which Mexico, historically a highly centralized state, has incorporated past governing structures that might appear antithetical to neoliberal policies, with key processes of privatization. Tetreault (2016) discusses this in regard to Mexico's mineral sector, specifically critiquing some anti-mining activists and critical empiricists that he argues have overstated the privatization of state-run Mexican mining companies. Tetreault points out that state-run mining enterprises and domestic monopolies, in fact, remain highly involved in mineral extraction and have selectively opened the market to foreign mining capital, which affirms the idea of neoliberalization as a gradual process that can mobilize and co-opt preexisting power structures.

Oaxacan Municipal Governance

Before examining specific case studies, I will begin by briefly summarizing the structural changes made to Mexican federalism that created the political opportunity in which autonomous municipalities could proliferate in rural Oaxaca. In 1995, the state government of Oaxaca administered a decree allowing all municipalities to vote on how to structure municipal governance. Municipalities could remain tied into the civic and national political party system, or, with full legal recognition, change to non-partisan, customary laws of the *usos y costumbres* (uses and customs) system of participatory democracy (Díaz-Cayeros, Magaloni, and Ruiz-Euler, 2013). Broadly stated, the *usos y costumbres* system is a highly variant communalist approach to indigenous governance among the Mixe, Zapotec, and other groups. While divergent in terms of structure, these non-partisan municipalities are typically reliant on citizen assemblies and public voting. Two social institutions embody the community service realm of *usos y costumbres*: *cargos*, which are community administrative positions--judicial, policing, and leadership; and *tequios*, which are unpaid community service-based work quotas--infrastructural improvements, conservation of resources, and shared agriculture (Díaz-Cayeros et al., 2013; Robson and Weist, 2014). Decentralization, combined with the state-led reform of 1995 allowed *usos y costumbres* to interweave with municipal governance in a way that harmonized the objectives of civil and community organizations and streamlined consultation processes in regard to public development (Díaz-Cayeros et al., 2014; Robson & Weist, 2014). If centralized political power represented the idea of scaling down economic and social development policy from the federal to the local level, then under decentralization, indigenous

municipalities were handed an opportunity to “scale up” participatory democracy, by placing collective identity within formalized civic municipal associations (Fox, 2007).

González Rivas (2014), examining the case of management of water access, argues that it is important to consider case-by-case particularities of local participation and shared capacity to improve projects of collective importance. For highland communities reliant on agriculture and ranching, a major concern is access to uncontaminated streams and rivers. Just like other public utilities and public infrastructure, water management has been handed down to state and municipal authorities. González (2014) finds that the rural community of San Bartolomé, within an *usos y costumbres* municipality, has had success in improving their water services. He argues that “the main distinguishing characteristic of the community is its history of collective action...the results suggest that the community’s progress in the decentralized process is due to this advantage” (p. 3). In another study, Díaz-Cayeros et al. (2013) find that communities under *usos y costumbres* are more successful at expanding electricity coverage in terms of absolute numbers of household access. Therefore, the ways in which communities organize themselves into public assemblies to discuss projects that are needed is an important dimension in understanding whether autonomous governance aids social development. Of the 73 percent of Oaxacan municipalities that voted to govern based on the *usos y costumbres* system, the use of *tequios* to carry out public infrastructure projects means that there is no competition for contracts and therefore less risk of local elites choking off access to contracts to fulfill public services (Fox, 2007). In the party municipalities, governing elites are more prone to provide this enumerated work to patronage networks (Díaz-Cayeros et al., 2013). In this way, the hybridization of *tequios* within municipal frameworks showcases a unique form of embeddedness wherein informal practices and formal political frameworks converge as a highly novel practice of fulfilling public infrastructure projects.

Municipalities now directly oversee where public spending is to be used. However, the transfer of revenues from property taxes, sales of patrimonial goods, subsidies, citizens donations, federal revenue allocation, and debt contracted from commercial and development banks remain under the administrative discretion of the federal government (Assetto, Hajba, and Mumme, 2011; González, 2014). In short, funds specifically designed for social development projects flow directly from federal development agencies to the municipality (Díaz-Cayeros et al., 2013). In this arrangement, an important paradox in Mexican politics is illuminated, whereby the

distribution of public revenues remains federally controlled, albeit in a context of decentralization, which assumes greater powers of the municipal and state governments. This means many non-partisan and autonomous municipalities remain beholden to the priorities of federal development initiatives (González, 2014). This paradox present in the regulatory framework of Mexican public spending elucidates what is understood to be the “incomplete and contradictory regulatory transformation” of neoliberalism (Peck et al., 2011). Rather than creating a full transformative, ideal, and utopian form of governance, neoliberalization reconstitutes pre-existing regimes of regulation and social life for the purposes of tightening control over land, labour, and resources. Those long-standing social asymmetries at the local scale then become mechanisms of social discipline. Such mechanisms might include long-embedded but informal patronage networks (Selee, 2011), technocratic enclaves in municipalities that are more developed than others (González, 2014), or party municipalities that are simply willing to fulfill the immediate policies of wider federal interests.

Certain cases show that social development programmes like Procampo (an income cash subsidy program for farmers) and Oportunidades (the federal cash payment program for families) are mobilized by federal development agencies to gain favour with local populations that are sympathetic to specific industrial projects (Díaz-Cayeros et al., 2013; Justice for San José del Progreso, 2013). As will be explored in the following section’s examination of mineral extraction, conflicts arise around economic activities that are prioritized by the Mexican federal government but opposed by municipalities. Transferring funds for social development and infrastructural upgrades might be a case where the state withholds or disseminates funds based on compliance with extractive industries (González Rivas, 2014). Procampo also shows that the federal government sends mixed policy messages by subsidizing certain farmers to make agriculture more tenable in a context of liberalized agricultural markets and low commodity prices, while also encroaching upon the same areas and depleting water sources for mining operations (Justice for San José del Progreso, 2013). Due to the given political opportunity of decentralization, many municipalities have reacted to the paradoxical nature of Mexico’s role by organizing within and across municipal assemblies and civil society groups to confront encroachments of extractive industries.

Mining

Mining is a catalyst in several conflicts between a number of Oaxacan municipalities and the federal government. Mexico attracts the most FDI in mineral exploration of any nation in Latin America and also maintains large domestic mining operations (Tetreault, 2015; 2016). Due to high global demands for minerals, investment rose 550 percent between 2004 and 2007 (Bebbington and Bury, 2013). The Mexican federal government owns all subsurface rights in the nation, which is enshrined under article 27 of the Mexican Constitution of 1917 (Estrada Ochoa 2006). Singh and Bourgouin (2013) point out that state ownership can lead to rent seeking: “the new discovery of minerals and petroleum in a developing country requires simultaneous state reforms to manage the sudden influx of revenues and to use resource rents strategically for economic growth” (p. 7). Bebbington and Bury (2013) recognize a similar trend in land management:

the dominance of the concession also reveals how deeply extractivism is embedded in these countries; constitutions claim the subsoil for the nation... to gain access to this subsoil, concession holders still have to negotiate with owners of subsurface rights...though in most instances concession holders have been supported by national authorities in this process, [knowing] they have privileged rights to convert any resource discoveries into a project for extraction (p. 246).

Under early neoliberalization of the 1980s, mining was a major sector targeted for privatization, and three of the most significant state mining companies were sold off at “fire sale prices” (Tetreault, 2015). To make this politically legitimate, legislative amendments were necessary. The Mining Law of 1992 introduced federal legislative changes to make Mexico more attractive to foreign investors and mining prospectors (Estrada Ochoa, 2006; MICLA; Sánchez Salazar, 2010). Section 4 from the secretary of the economy’s Investor Manual on the Mexican Mining Sector states the following: “institutions and the regulatory framework guarantee the property rights, protect the operation of the productive activities and ensure transparency on obligations and procedures” (Government of Mexico, 2016, p. 12). Further, the manual states:

article 27 of the national constitution establishes the Nation’s domain over each and every natural resource found within its territory, including minerals.

It also establishes that the exploitation of such resources from particular beings or societies constituted according to Mexican laws can be done through concessions granted by the Federal government, in accordance with the rules and conditions established by the law (Government of Mexico, 2016, p. 11).

Most pervasively, article 19 of the investor's guide rules a mining concession holder to expropriate or temporarily occupy lands if it fails to reach an agreement with landowners. Essentially, the mining law of 1992 ensures that land titles and concessions cannot be easily rescinded from mining operations, extends the duration of titles, and guarantees the rights of the mining sector over the rights of common agricultural lands, ejidos, and the land claims of rural municipalities.

The federal government is tasked with navigating environmental concerns and constraints placed on them via their participation in global trade networks. For example, chapter 11 of the North American Free Trade Agreement (NAFTA), the Investor-State trade dispute mechanism allows companies to sue governments for potential loss of profits if the government rescinds exploratory permits (Caulfield, 2010; Estrada Ochoa, 2006). The state would rather allow encroachment onto common lands and send in the police when communities resist the arrival of mining operations (Paley, 2014; Treat, 2012), than be sued and settle in the hundreds of millions of dollars against foreign mining companies for a loss of profit (Caulfield, 2010). Thus, the Mexican state is most beholden to the interests of capital. In this way, state control over minerals is a huge liability to rural populations and represents a contradictory regulatory framework that is indicative of neoliberalization as a gradual transformative process (Peck et al., 2011). Further, it creates tensions in local level politics, especially in autonomous municipalities rich in mineral resources.

Due to the capital-intensive nature of mining, which uses skilled labour from beyond the reach of local communities, and the immediate depletion of water sources that mining operations cause, there is little popular will for mining operations in the highlands of Oaxaca (Cruz Martínez, 2007; Paley, 2014; Treat, 2012). Svampa (2015) points to the fact that large scale mining operations only generate between 0.5 and 2 jobs for every \$1 million invested (p. 66). The state is well aware of the damage that industrial mining creates and has taken care in recent years to expand public relations campaigns to maintain global investment in Mexican mineral deposits (Estrada Ochoa, 2006). According to the General Agency of Mining Development (DGDM [Spanish

acronym], under the Secretary of the Economy), stated goals of the mining sector aim to “create positive conditions to root populations intending to migrate [and] foster co-existence and agreements among the residents of the communities and populations to work jointly and/or to make them participants and the to benefit from the activity” (Government of Mexico, 2017). The DGDM makes use of four case studies in their public relations campaigns, two of which are in regions of Oaxaca that are actually ensnared in violent disputes over the presence of the mines: Ejutla de Crespo, where over 90 percent of ejido land has been given as concessions to mining exploration (Desinforménos, 2016) and Mina Tres Océtes.

Resistance

This final section approaches the question of whether decentralization has engendered collective resistance to mineral extraction in the Oaxacan highlands. Empirical investigations below show conflicting results (Díaz-Cayeros et al., 2013; Treat, 2012). On one hand, decentralization has passed along local planning to municipalities and provides the political space for culturally localized pre-extractive worldviews (Fox, 2007). On the other, control over public funds by the federal state creates a channel for continuations of patronage within both *usos y costumbres* and party municipalities (Díaz-Cayeros et al., 2013). The complex interconnections across scales of governance create contradictions and tensions within the case of Oaxaca that yields unclear results in terms of resistance.

There are cases where municipalities have joined together in regional coalitions to bargain with state and federal governments, as well as to employ direct action against the incursions of mining concession holders (Fox, 2007; NSS Oaxaca, 2017). The Coordinadora de los Pueblos Unidos del Valle de Ocotlán (COPUVO), and the solidarity between municipalities within the highland regions of Ejutla and Ocotlán are both examples of regionally specific cross-municipal organizations that have used both informal and formal nodes of community organizing to resist the encroachment of mining operations (NSS Oaxaca, 2017). There are two flagship mining conflicts that triggered the formation of COPUVO: the first is in San José Del Progreso at the Cuzcatlán mine, which is co-owned by Canadian firms Fortuna Silver Mines and Continuum Resources Ltd., and the second is in Calpulalpam de Méndez, also owned by Continuum (Cruz Martínez, 2007; Desinforménos, 2016; Treat, 2012). A key grievance in both cases is the depletion of water supplies. In the latter case, it took only seven years for 65 percent of water sources to dry up due to mineral extraction

(Cruz Martínez, 2007). Based on collective resistance by area farmers, Calpulalpam's usos y costumbres municipal council, and public mobilizations in Oaxaca's capital city (NSS Oaxaca, 2017), the federal government rescinded the mining licence on environmental grounds after making a retroactive environmental risk and impact assessment (Cruz Martínez, 2007). In the case of San José del Progreso, town residents are divided along pro-mining and anti-mining lines, and the mayor at the height of repression against opponents was a supporter of the mine (Treat, 2012). According to "Justice for San José del Progreso," (2013) a Civilian Observation Mission Report, there is documented evidence of clientelism in the form of capture of government programs and initiatives, namely Procampo and Oportunidades, for redistribution to families that support the mine. The municipal government seeks to discredit COPUVO and community members adversely affected by the mining operations, showing that in this case, local government has bent to the will of extractive companies. The two cases thus show divergences in how mining resistances can turn out based on the embeddedness of traditional governance within the municipal civic framework.

Conclusion

The emphasis on open council meetings and direct participation by citizens in policy decision making across usos y costumbres municipalities represent a unique political structure that can aid in the defense of common lands tenure and secure the embeddedness of indigenous governance in civic municipal politics. The endurance of direct participation in usos y costumbres is not generally mirrored in party municipalities, which now constitute a minority of rural municipalities and where political action at the municipal level remains instilled in closed-balloting and political party competition. While imperfect due to the enduring control of public funds by the federal government, decentralization has opened up political participation in ways that did not exist prior to 1995. More than three-quarters of municipalities in Oaxaca now govern based on the usos y costumbres model of participatory democracy and pool resources based on modes of accumulation rooted in communal land tenure. However, as was seen in the regional cases surrounding the defense of land and water systems as well as strategies of mining resistance, there is tremendous variation in the successes and pitfalls of applying the usos y costumbres model. Activism rooted in regional civil society groups such as COPUVO, combined with unified responses from both inter-municipal and intra-municipal assemblies have challenged mining operations

and compelled the government to rescind concessions in areas with particularly severe human and ecological degradation, such as Calpulalpam de Méndez. As evident in the case of San José del Progreso, there are a multitude of factors that converge to make community-led resistance against the federal state and the mining industry succeed or fail. The incursion of heavy industrial activities in Oaxaca will continue well into the 21st century. There has been mineral extraction taking place there since the Spanish conquest of the Americas and the granting of mining concessions does not show any indication of slowing down.

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