

## Community Discourse: A Family Conflict in Eighteenth-Century Coyotepec, Oaxaca

LOTTE DE JONG\*

*University of Amsterdam*

### INTRODUCTION: THE MORAL ECONOMY

The lack of original source material makes the study of illiterate groups in previous societies difficult. Nevertheless, some archival information about conflict situations such as riots survived. These have been studied and interpreted as being the simple response to economic stimuli, while the possibility that they were selfconscious or self-activating was long denied. In opposition to this view the English historian E. P. Thompson has stated that almost every action of the crowd in eighteenth century England had some legitimizing notion.<sup>1</sup> According to Thompson the crowd believed that it was defending traditional rights or customs, and that it was supported by the wider consensus of the community to which it belonged. An attack on the moral assumptions was as much a cause of direct action as actual physical deprivation. This moral economy held notions of the common weal, which indeed found support from the paternalistic tradition of the authorities:<sup>2</sup>

*"It is of course true that riots were triggered off by soaring prices, by malpractices among dealers, or by hunger. But these grievances operated within a popular consensus as to what were legitimate and what were illegitimate practices in marketing, milling, baking, etc. This in turn was grounded upon a consistent*

---

\* This research has been made possible by subsidy from the Stichting W.S.O.. I am very grateful to Arij Ouweel from the CEDLA, Amsterdam, for his advice and supervision. Nevertheless I remain responsible for the final draft. In Mexico a great many people offered their help, but I would especially like to thank in Mexico City María Cristina Torales and Julia Emilia Palacios Franco from the Universidad Iberoamericana, whose help and kindness were immense. In Oaxaca City I received a great deal of help and stimulus from María de los Angeles Romero Frizzi, Manuel Esparza and Rosalba Montiel. In Amsterdam I would like to thank Tjitske van der Werff who typed the endless stream of corrections from the entire research, gave me valuable suggestions and constant moral support.

*traditional view of social norms and obligations, of the proper economic functions of several parties within the community, which, taken together, can be said to constitute the moral economy of the poor."*

A riot is only one of the several ways of asserting the traditional moral economy against the newer political economy of the market place; the moral economy itself was always there, just under the surface, and it impinged very generally upon eighteenth century government and thought and not only during times of disturbance.<sup>3</sup>

Stimulated by Thompson's moral economy hypothesis, a debate was launched in the historical journal *Past and Present*. In opposition, Dale Edward Williams declared that many areas in England in the eighteenth century were free from riots, and consequently the populace in those districts were not thinking in terms of a moral economy. Andrew Charlesworth and Adrian J. Randall defended Thompson's hypothesis by disputing Williams' arguments.<sup>4</sup> It is interesting to note, that Williams related the moral economy exclusively with riots, which is not at all, as can be seen above, what Thompson meant. It is the "*consistent traditional view on social norms and obligations*" that must be analyzed. Thompson's hypothesis was based on a study of one particular period in British history: the eighteenth century. Several historians have approached other periods, or areas of England in a similar manner. Alan Booth defends this method and states that such initial thematic explorations provide a conceptual framework which must first be examined on a regional basis in order to test and elaborate national generalizations.<sup>5</sup>

But the problem remains that there are no surviving direct testimonies of the daily experiences of the poor and often illiterate classes. There is source material but, as Carlo Ginzburg has said, this tends to be secondhand and twice removed, because it was written down mostly by people who belonged to the ruling classes, making it inevitable that the descriptions of culture and religious beliefs nearly always reach us through the distorting filter of an intermediary. According to Ginzburg, however, it is possible to allow for this distortion and to make careful use of the source material.<sup>6</sup>

In addition to Ginzburg's well known work, David Sabeau confirmed that many of the problems of studying peasant cultures of the past is caused precisely by the indirectness of the testimonies. Whatever original material is referred to, it always relates to those groups of people who dominated the peasant classes. Nevertheless, Sabeau as well believes that positive use can be made of this, since it provides information about the relationship of domination. More explicitly, James C. Scott, a well known student of peasant politics, works with the moral economy hypothesis as an operational method; analyzing among other things, the use of words as an indication of underlying feelings. This echoes Thompson's hypothesis that popular action like food riots were '*threats of class war*'. Peter Burke suggests possibilities of overcoming the problems and one of these is using a compara-

tive method: making a comparison with other periods in history and other cultures, including the modern.<sup>7</sup>

The material most often used in an analysis of peasant culture consists of written legal documents. The importance of judicial documents in the Mexican colonial period cannot be overestimated, since the Spanish rulers were very legalistminded and put a lot of time and effort into the handling of court cases. They always made a great deal of use of personal testimonies. Although the documents were generally not written by the Indians themselves, they do serve as a direct transcript of what they said. In most cases these documents provide a minibiography of the people involved. The evidence of witnesses is written down *verbatim*, and they provide much insight into the social aspects of life. These are manifestations of common importance, and in situations of unrest or protest they indicate the *mores* of the people, and reveal aspects of the norms and the general expectations. The witnesses not only mention factual data but also their own unsolicited comments on the character of the inhabitants. In sum, they can be analysed along the lines suggested by Ginzburg, Sabeau, Burke and Scott.

Inheritance provides an important means of studying the moral economy of a community, the "*consistent traditional view on social norms and obligations*," because it can be related to the social system in the same way. An inheritance is made up of the material possessions necessary to life. With the transfer of goods and property both the social structure and the individual needs of the people can be seen. It deals with close family and distant relatives. It demonstrates the rights and the duties to each other, and thus it is an emotional affair. An inheritance demonstrates not only the material expectations, but also the structuring of mutual aid, assistance and care.<sup>8</sup> One case that can be discussed in this way contains information on a conflict over the inheritance of Pasquala del Spiritu Santo, an eighteenth-century woman who lived in Coyotepec near the city of Oaxaca, between her son and her husband (who was the son's stepfather).<sup>9</sup> The court actions took place between January 1766 and August 1767, but at the end of that time the case was still unresolved. Both parties had occasions when they seemed to be the stronger. Because of the great number of witnesses one gets a vivid picture of the funeral and the relationships between the various members of the family and the community.

My aim has been to make a study of the lives of Mexican peasants during the period at the end of colonial rule. For my regional inquiry the Thompson hypothesis is a good one to work with. A regional study provides a concentration of source material which gives good insight into the moral economy of the people. Drawing on information resulting from research on the community of Coyotepec in Oaxaca, this chapter will discuss some characteristics of such a moral economy in a colonial Mexican village.<sup>10</sup>

RECONSTRUCTION OF THE PROBLEMS CAUSED  
BY PASQUALA DEL ESPIRITU SANTO'S INHERITANCE

In this section I would like to introduce the main characters and describe the legal proceedings involved. I use the names as they appear in the documents, although these were often nicknames. The heroine is called Pasquala del Spiritu Santo, a woman who had been married three times. She had one child from her second marriage, Lucas López Pajarito. Her third husband, Felíz Antonio, was the only living husband at the time of her death. She had born him two girls. Both girls were minors at the death of their mother.<sup>11</sup>

The trial opened on 10 March 1766 when the *corregidor* of Oaxaca received a petition of Lucas, the son of Pasquala.<sup>12</sup> Lucas explained to him that since his mother's death an inventory had been made of her possessions by the taxcollector and judge of Zaachila, Don Juan Antonio Ximenes. Lucas stated that he had told Ximenes that his stepfather Felíz had concealed many of the goods that should have been included in the inventory. Ximenes had not listened to him. Later on it appeared that Ximenes's *escribano* (clerk) had lost the inventory. So there was now a good reason for Lucas to request the *corregidor* to have Ximenes draft a new inventory mentioning all the goods and charge it to whoever he saw fit. Lucas also asked the *corregidor* to order Felíz, his stepfather, to answer a questionnaire with three items, which Lucas -and that is important- had drafted himself.

The first question was whether Ignacio Sánchez, an inhabitant of Coyotepec, possessed a chest containing clothes and money. The case was, that Lucas declared on forehand that if Felíz would deny, he was lying and that he still had to tell what he took out of the chest. Lucas declared that his deceased mother had put this chest into the keeping of Ignacio and was demanding that Felíz reveal whether he had removed this chest from Ignacio's house or not. Felíz was also asked to say how much money he had dug up from the *nopalera* (a small plot with nopal cactus for breeding cochineal-lice) on the day of the funeral. This money, according to Lucas, should have been included in the inventory. The third question was: how long had Felíz been married to Pasquala and how rich was he when he married her, and if he then owned the same goods as later on. Lucas requested the *corregidor* that Felíz should show all his goods to the court after having answered all the three questions. The *corregidor* complied with the petition and indeed ordered Felíz to answer the questions, after the *escribano* was heard.

A curious role was played by the *escribano*. He explained in his statement what had happened on the 4th of March, when the first inventory was made. It appeared on this occasion that Felíz had withheld goods and as a result he was sent to prison in Coyotepec. On the orders of Ximenes, the *escribano*'s superior, the goods were seized and placed in deposit by Bartholomé López, a *cacique* and *indio principal* of Coyotepec.<sup>13</sup> This transaction was written by the *escribano* and

witnessed by, among others, the *gobernador* (Indian mayor) of the village, a process that took two days. The *escribano* had the papers in his possession and on the eights of March he took them with him to Oaxaca. On the tenth he returned to Coyotepec to finish the work. At ten o'clock in the morning, he arrived with a case containing a linen wrapper with the notes written during the previous days, and the will. He asked whether Ximenes had yet arrived from Zaachila. This was so, but he was pointed to the fact that he was losing papers from the wrapper. When he had a closer look, he came to the conclusion that the most important papers which had been in the wrapper, including the will, had disappeared. He then went with a servant to look for them on the road, but -as witnesses later certified- they did not find anything. The *escribano* remembered that in those papers there was a statement from Felíz in which he declared that he knew nothing of the chest in the *nopalera* and that this had to have been open before the funeral. With regard to the chest in Ignacio Sánchez's house, Felíz had declared that he did not remember having opened it, but if he had opened it, it must have been to take out some clothes to dress Pasquala for the funeral.

On March 11 Ximenes called Felíz to answer Lucas' questionnaire. After taking an oath, Felíz declared this time that he indeed had taken clothes out of the chest at Ignacio Sánchez house. He did not know why his wife had not mentioned this chest in her will. With regard to the open chest in the *nopalera* he continued to say that he had realised that it was open just after his wife's burial. In answer of the third question Felíz declared that he had been married to Pasquala for approximately fifteen years, and that he had had his own possessions when he married her. Those possessions included *grana* (cochineal) and *nopales*, which he still owned.

The *corregidor* proceeded by hearing Ignacio Sánchez, who appeared to be a stepson of Pasquala. He could explain why Pasquala had left the chest in his house: she had been afraid of theft. He did not know what had been in the chest nor what Felíz had taken out of it. Although he had been present at the burial, he declared that he knew nothing about money being dug up in the *nopalera*. As this information did not bring any further help, the *corregidor* ordered Ximenes to have a look at the open chest and the *nopalera*. But as Ximenes could not find any more clues he was ordered to proceed by hearing more witnesses:

- one villager stated that on the 7th of March, Felíz had asked her to look after a mourning cloth and a blanket;
- Pasquala's servant declared that he had gone with Felíz on 27 February to the house of an other villager, where Felíz had left a bundle of papers and some beeswax; he also had noted Felíz' dismay, when, after the death of Pasquala, he saw the open chest in the *nopalera*;
- a villager declared that on 27 of February, Felíz and the servant had asked him to look after six candles, two large beeswax

candles, a bundle of papers, a blue shawl, other clothes and twelve *pesos* in *reales*; he handed those goods to Bartholomé; - a certain Prado, one of the guests at the funeral meal, declared that Feliz and Ignacio Sánchez had gone into the *nopalera*, when the tables had already been prepared. They had reappeared when the meal was over. He had not seen if they had taken something out of the *nopalera*, but Feliz had told him at another occasion that the will was bad because it did not mention money for the funeral. Therefore he believed that there was money for the funeral hidden in the *nopalera* and that Feliz had stolen it during the funeral meal.

The next step taken was the making of a new inventory. The same witnesses were called and the goods continued to be kept in custody by Bartholomé. The *escribano* made notes of the inventory and sent it to the *corregidor*, along with an apology for the delay. Here the first stage of the trial ended.

The second stage started on the 23th of August with Lucas complaining to the *corregidor*.<sup>14</sup> The delay was damaging to him, and he did not want to extend matters any longer. The *corregidor* sent him the proceedings on the matter and on 13 September Lucas gave his reaction, asking for twenty *pesos* (the value of the *grana*, which was in the possession of Ximenes). Since the other goods were in the possession of Don Bartholomé López, the *corregidor* asked him to pay these costs. The *escribano* handed seven *pesos* over to Lucas, without explaining why the remainder was not paid. On 30 September it was Feliz's turn to explain his position to the *corregidor*. He stated that his wife, Pasquala, had made a will before she died. His stepson, Lucas, would have a grudge against him and had therefore been lying to Ximenes when he said that Pasquala had died intestate. Ximenes had therefore made no difference between the goods that were his own and the goods that had belonged to his wife. As a result Lucas had been blaming him for keeping back certain goods and that was probably the reason that he was put into prison. He had been in prison for seven months, without officially hearing the reason for it. Furthermore he complained that he had not been summoned, not even for the smallest legal aspects of the case, which in fact should be the most crucial for a legal proceeding. Feliz pleaded to be temporary released from prison to prove his innocence and to get the money to defend himself. This request was granted and the *corregidor* sent him the papers concerning this matter.

In the meanwhile the *corregidor* received another two petitions from Lucas. He had made a list of the goods Feliz was supposed to keep back. This included wheat, cochineal and the money which Feliz would have stolen from the *nopalera*. Furthermore Feliz would have told him that Pasquala had sold twelve *agueyes* to pay the funeral. Those *agueyes* were planted behind Lucas' house and his wife indeed had noted that these were sold to María Rosa, an inhabitant of Coyotepec, after Pasquala's death. The money from the sale was mis-

sing now, since according to Lucas the money to pay for the funeral came from an other source out of the inheritance. According to Lucas the *magueyes* which Felíz sold was his part of the inheritance. To make things worse he had heard that María Rosa had been allowed by the court of Coyotepec to grate twelve pieces of the *magueyes* to make *pulque* (a beverage). Lucas blamed the court for not being heard in this matter. He stated therefore that the sale should be annulled, and that María Rosa had to be notified to give him back the *magueyes* and pay for the part that had been used. To conclude, Lucas suggested that the goods in possession of Bartholomé be handed over to him and to his two younger sisters who were living with him. He stated that they were Pasquala's rightful heirs, and at the moment they were unjustly deprived of the use of the goods.

On 9 December the *corregidor* took the testimony of María Rosa. Her version of this matter was that Pasquala would have made a clause in her will in which she gave Felíz the right to sell 24 *magueyes* to pay for the funeral. According to this clause Felíz had sold the *magueyes* and she had already grated twelve of them without hearing any protest. It was with the grating of the next twelve that Lucas had come in without authority and had taken away the produced *aguamiel* (honeywater, the *maguey*-juice out of which the *pulque* was made). María Rosa insisted that the sale was justified and pointing at the inventory of Pasquala's goods, she stated that the 24 *magueyes* were not included because they had already been sold. She concluded by saying that Lucas was trying to insult her. This brought, she thought, the bad feelings of Lucas to light; it showed that he had been hiding information and that he had been making expensive journeys to the city to tell his lies instead of looking after his ground at home.

Three days later Felíz's reaction of the proceedings was received by the *corregidor*, who was angry that legal steps had been taken without him being summoned. His opinion is notable: clear action had to be taken because this was a case amongst Indians. He stated his suggestion for action as follows:

- all legal steps should be examined;
- the goods should be handed over to the heirs;
- Lucas should pay for the courts costs, the costs of the goods he had been holding back, and also for the costs of the goods in deposit, which had been damaged as a result of the delay for which Lucas was responsible.

In the second part of his reaction Felíz stated that Lucas' deceitfulness was as clear as daylight and that he should not be given more time to decide which of Pasquala's goods he could take away. He also accused the *escribano* and quoted the law:

*"The escribano was the central pivot in the whole dealings and he lost the will by accident or by purpose. The fact is that I have given him the will, but he pretends to have lost it because he wishes to damage me even more. Even if my wife had died in-*

*testate, the inventory and the legal actions would be worthless. Our Catholic Monarch has made special stipulations for such cases in his royal laws. If someone dies intestate then according to the laws of succession, all his goods go to the family. The goods are not itemized, nor are they held in custody. In conclusion, the goods had to be handed over, especially since Bartholomé is himself seeking to benefit from the goods which he is holding in his care. He is suggesting giving them all to my stepson. It suits his purpose if the proceedings are delayed still further. And even if the deposit of the goods is not stopped, then I want them to go to someone else."*

Along with his reaction Feliz sent a copy of the will. He declared that the copy was legal as it was drawn up in presence of witnesses on the same day as the original.

At this moment in the case, the *corregidor* decided to get some legal advice from a *asesor letrado*, an official with legal schooling. This proved to be difficult. The first person contacted answered that he was too busy. The second also refused and the third contacted declared that he was ill. It was the fourth *asesor* invited to do the job who eventually accepted. Immediately Feliz reacted by declaring that Bartholomé, as guardian of the goods, had to pay for the costs. He also should pay the community of Coyotepec, according to the manner and custom of the people. The *corregidor* indeed ordered the collection of the money from Bartholomé. But the *corregidor* was notified that Bartholomé's mother had informed him that Bartholomé had gone away for a month. On advice from Feliz, the *corregidor* tried then to have Lucas pay for the fee of the *asesor*, because he had taken the twelve *magueyes*. No surprise to learn that in this instance Lucas had also gone into hiding and his wife stated that he had not received interest to pay for the costs.

On 1 April, the *corregidor* received another response from Feliz, It became clear that the situation was changing. Lucas, who initiated the whole court procedure was losing confidence since Feliz's release from prison. He failed to answer Feliz's charges within the allotted time. Feliz declared that this delay was a further damage to him, on top of that caused by his time in prison. He blamed Lucas for *rebel-día* (legal obstruction), an important step in the procedure, and the *corregidor* ordered on his advice that Lucas answer within two days, without granting him a second or third term. As Lucas still failed to answer, Feliz blamed him again for *rebeldía*.

The case was reaching the top. One month later, still nothing was heard from Lucas and Feliz, in the meanwhile, continued to influence the *corregidor* and also the *asesor letrado*. He stated that even if Lucas did not acknowledge the validity of the will, there were sufficient witnesses who would swear to its legitimacy and that the *corregidor* should rely on the strength of the *holy oath*. The *asesor letrado* decided to hear four witnesses who were all signatories of the original will and the copy. They all declared that the copy was the same as

the original for which they were signatories. In the same week the *corregidor* was contacted by Bartholomé, who asked him to be released from his duty as guardian of the goods. The reason was that Lucas was making things difficult for him. Bartholomé said that Lucas was dissatisfied with the inheritance and therefore made use of the goods on his own authority. He had already sold pigs and oxen and had leased animals to a *hacienda* and refused to work. And finally, on 13 July, the *corregidor* received the verdict of the *asesor letrado*, who believed that the authenticity of Pasquala's will had been sufficiently proved. So it followed that the deceased died testate, and had named her husband Felíz as her executor. The seized goods were to be given to him and to the two girls. This was with the exception of the child's portion that Lucas was to inherit. There should be redress for the goods that had been stolen. The legal costs were to be deducted from the accounts for the execution of the will. Immediately after passing this verdict, the *escribano* gave the *asesor* his fee.

Ten days later the goods were distributed. The *escribano* checked the inventory with the goods that Bartholomé handed over and marked the missing items with a cross. It is interesting to see, that while the articles which were produced were mostly small household effects, the more valuable items such as land, houses, *nopales* and *magueyes* were marked with a cross. It was decided that Bartholomé was going to produce them or make an account of it before the following Tuesday. But apparently he did not do this, because on 31 August the *corregidor* received a complaint of this matter from Felíz. He stated that Bartholomé had still not complied with the order to give a complete account of the goods marked with a cross. He advised the *corregidor* to accompany the order with a serious warning because of Bartholomé's obstinacy and lack of respect. Moreover, he should also pay all the extra costs. For that reason, the *corregidor* ordered the *escribano* to search for Bartholomé. From him he learned that Bartholomé had still not returned nor had he produced the required explanation for the, valuable, missing goods. The *asesor letrado* had in the meantime ordered Bartholomé to pay for the legal costs. He had also not complied with that order. Felíz had been given some livestock from the inheritance to pay his fee as the executor of the will, but it appeared that he also had not paid either. The *corregidor* ordered him to pay or face to go to prison for the second time.

The case did not reach a conclusion with these orders. In the last section that has been preserved in the archives at Oaxaca, it can be seen that Bartholomé had still not sent in the required accounts.<sup>15</sup> Of this section only one petition from Felíz survived, but without an accompanying answer, and unfortunately the document is not dated. The petition dealt with events from the previous autumn of 1766, so it must have been written in 1767. In this petition Felíz gave a complete summary of all the events from the *escribano* losing the papers up to Bartholomé's refusal to give an account of the missing goods. The innovation is that Felíz mentioned that he had turned to the *juez*

*de la residencia* (the judge for a temporary investigation). This did not produce any result because Bartholomé had been hiding in the church till the *residencia* was over. Feliz even mentioned in this petition that Bartholomé was threatening him and had stolen some maize from him.

### OBSERVATIONS

From these documents one gains an insight into the relations between various members of one family, as well as their relationships with other members of the local community, exemplified by events which took place around a funeral. This case raises the following points to discuss in more detail:

- the community discourse, the moral economy within the community,
- the authorities in relation to the moral economy: a search for a consensus,
- the oath, the villagers and the law,
- the religion,
- the traditions of inheritance.

It can be seen that there were tensions within the family circle with everybody blaming each other, and also that other members of the village community were drawn in as well. When the *escribano* arrived at Coyotepec he asked a villager whether Ximenés had already arrived. The arrival of a judge in a village is an event that everyone would know about at once. There were also villagers present at the funeral. That is nothing extraordinary in itself, but they were drawn into the suspicious events which took place at the time of the burial. Feliz asked for mourning clothes, clothes of the deceased and candles to be looked after for him. These objects became part of the conflict when Lucas said that they were part of the inheritance. At that moment everybody involved along with Feliz' servant were asked to testify. During the funeral meal money was taken from the *nopalera* and one of the guests gave evidence about this.

The accusations among the members of the family and the villagers were emotional attacks on each other's character, and also they reveal obligations that have not been kept. Lucas said that Feliz denied the existence of a will because he had a grudge against him. Doña María Rosa even mentioned Lucas' wicked intentions. Feliz said that Lucas' deceit was as clear as daylight. The parties concerned accused each other of failing in their duty and on a personal level they said that they were insincere and motivated by self-interest. A failure to comply with duty, or with custom was considered very bad indeed and they often made reference to 'as is the manner and custom'. Failure in duties was also explained as being a character fault. So Feliz uttered that Bartholomé was on Lucas' side while Bartholomé asked to

be relieved of his duties because Lucas was obstructing him. The mutual demands for doing one's duty are made more important than the defence of the individual's right of ownership.

In these events we can recognise what Sabeán has called the distinguishing marks of a community. Community is a matter of mediations and reciprocities. What makes a community possible is the fact that it involves a series of mediated relationships. One central aspect of mediation is of course provided by property, access to resources, the apportionment of rights and claims, and the acceptance of obligations and duties. Other forms of mediation can be found within the sphere of production and exchange, or in the sphere of social value, the way for example honour is allocated. By emphasizing relationships it can be seen that the community includes both negative and positive elements, *sharing* as well as *conflict*.<sup>16</sup> In this mediation and reciprocity the moral economy of the villagers is expressed. The way in which people formulate their thoughts, the discourse within which alternative strategies, misunderstandings, aims and values are battled for, all this forms part of the moral economy of the peasants and was the basis of their community. This is what Sabeán calls the *Rede* or *raisonnement*.<sup>17</sup> The discourse as a whole is important and within that the emphasis is on the exchange of ideas.

The community with its moral economy is related to the authorities within the society. The relationship between the villagers and the authorities can be seen in this court case. What is most striking, is the length of time that the proceedings went on. One can presume that the case lasted for years. The fact that Felíz gave in this last petition such a complete summary of all the events could be because so much time had elapsed between the last petition from the second section of documents, so that he felt it necessary to refresh the minds of the authorities. But it could also be because Felíz had applied to a higher court, such as the *Audiencia*, where the case was still unknown. However the tone of the petition and Felíz's resort to higher authorities suggests that the case was not going to reach a speedy conclusion. With the other court cases in Coyotepec of this period that I consulted, this interminable quality can also be seen. For today's modern world such lengthy litigation would be unthinkable, since we are used to courts where the defendant and the accuser, the witnesses and the specialists give their evidence and then the judge's verdict is quickly reached and final. It is possible to go to a higher court, but not many times over. The aim of the courts of those early modern times was very different: the authorities were looking for a consensus of opinion within the community to avoid *rebeldía* or riot. Felíz accused Lucas of *rebeldía*, and the authorities tried to mediate and force Lucas to formulate his opinion and thus to participate in community discourse. That is the reason why the persons concerned, drafted their own questions to those being prosecuted. The court itself was relatively passive and waiting.

A couple of people refused to the role of *asesor letrado*, perhaps because they felt unsure of finding a consensus. It is only when such a consensus was reached that the case could be speedily concluded. In very important cases, when the authorities were afraid of a division within the village community, there was an attempt to reach a conclusion quickly, and only then the authorities themselves grew active and willing to take drastic measures. Sabeán argues that such passivity was indeed expected from the state. The power of authority of the state was only legitimate when balanced by the just conduct of the state towards the populace.<sup>18</sup> Anthony McFarlane shows for the case of New Granada that what people mean by just conduct is when the authority is handled in accordance with local interests, and the villagers' own view of what is right and just is respected.<sup>19</sup> It has been seen that Felíz, Lucas and others all mentioned in their petitions what they felt in their opinion the *corregidor* should do. Of course, a search for a consensus often took a form of compromise verdict. The *asesor letrado* who accepted the case gave Lucas the child's part of the inheritance even though this was not specified in the will.

It was important in the whole proceedings and in the search for a consensus that the suspects and the witnesses took an oath before God and before his earthly representative, the judge. The oath was part of the discourse and a sanction against lying and discord. The implications of taking an oath were very great at this time. Someone who took an oath was risking his soul, the eternal peace in Heaven. This consequence reduced the chance of deceit. In several documents I came across information in which the defendant or witness wished to escape at the moment when he was asked to take an oath, because this was the moment when lying was going to have far-reaching metaphysical consequences. Taking an oath was a serious matter in which the person concerned was sure he could bring everlasting disaster onto himself. Therefore it had more effect than any kind of physical or other mental pressure. There have been a couple of examples of this in the Pasquala case. The witness Prado ends his testimony with the remark that he came once in conflict with the law, but still remained faithful to his oath. By taking an oath he was proving that he would tell the truth. Felíz based himself on the power of the oath. He claimed that the copy of the will was genuine because the witnesses had said it was under oath. He said that the *corregidor* had to trust the "*holy religion of the oath*," and this he did.

One thing that was most striking in the colonial period was the frequency with which the Indians appeared in court. A legal process cost a lot of money but was a means of securing justice. A case could go on for years and often there were more legal costs than the amount of money being fought for. In spite of the financial sacrifices of the Indians, a lawsuit was a way of keeping the Indian morale high.<sup>20</sup> The duration of a law case and the costs it entailed was a recurrent element in all documents. There were various kinds of costs. In the Pas-

quala case Lucas and Felíz were accusing each other of delaying the process of justice while the goods were deteriorating. There was also mention of the costs of the case itself and their payments became indeed part of the conflict. At certain moments both Lucas and Felíz demanded that the other one pay for these costs, since they were responsible for the delay. Also the *asesor letrado* had to be paid and first Bartholomé was asked to do so and then Lucas, although both were hiding at that moment. The emphasis put upon the costs, the reason why they were a crucial part of the conflict, was because they were obstructing a consensus. In spite of the costs it was important for the Indians to continue with the case. Taylor mentions the very eccentric history of an Indian in the eighteenth century who pawned all his goods and sailed to Spain to give a direct reply to the King.<sup>21</sup> On October 19th, 1799 the Viceroy complained about the endless stream of Indians coming to the courts in Mexico City. He wanted to bring this to an end. In the case of the inheritance of Pasquala, we have seen the stubbornness with which the parties proceeded in spite of the increasing costs. Felíz requested that he be let out of prison in order to get the money needed to pay his council and the legal costs. Doña Rosa said in her testimony that Lucas incurred a lot of costs by travelling to the city and staying away from home. So there were the legal costs, travelling costs, inability to take care of the land, and the deterioration of the value of the goods in custody.

It is clear that the costs were greater in higher courts which were further away and based in the provincial capital of Oaxaca or even in Mexico City. The Indians trusted the higher courts more than the local ones. This suspicion of the lower courts was particularly marked because they knew the persons involved and could accuse them of bias. The *Audiencia* was further away, but, as we have seen, was above all closer to the King, who governed with Divine Right. In the Pasquala case the will had to be first dealt with by the local judge Ximenes. Later he also dealt with the matter, but he had to explain himself to the *corregidor*. Eventually the *corregidor* even took on an *asesor letrado* and from Felíz' last petition we know that he turned to the *juez de la residencia*. He said that Ximenes probably lost the will intentionally, and refused to listen to his testimony which legally he was bound to do, and put him in prison without giving a reason. This was why he approached a higher court. In the archives of Oaxaca I came across the account of another trial in which Ximenes was involved. In this document, dated 1765, he was accused by the inhabitants of Coyotepec of *ojariza*, namely demanding unauthorised payments and benefits when he visited Coyotepec.<sup>22</sup>

Another important point that can be seen from the testimonies and in the petitions was the Indians' knowledge of legal matters. Lucas gave a well structured argument as to why the sale of the *magueyes* to María Rosa not only should be annulled, but from a judicial viewpoint the sale had never happened. Felíz stated that juridical faults had been committed. He never had been interrogated even on the

smallest issues, and the right to explain one's position is the most fundamental legal right. Felíz also cited the laws of inheritance. He stated that Our Catholic Monarch had made laws in which was declared that if there is no will then the goods should not be impounded but be given to the family. I came across this type of reasoning in several of the documents: one party declared that even if the other party is in the right, which he doubts, then nevertheless there are other reasons why his arguments had not been relied upon. In this instance Felíz declared that there was a will, but even if there was not a will Lucas would still be in the wrong. Although this was a valid legal argument, I came across other examples which were not so strongly based. In one case Felíz swore that he did not open the chest at Ignacio Sánchez's, but even if he had, it was only to take out clothes in which to dress the deceased, according to the instructions of the will.

The law could be interpreted in various ways, but with these examples I want to demonstrate how the villagers made use of its flexibility.<sup>23</sup> The different interpretations of the law can be found in many of the testimonies, and the fact of there being so many testimonies points to an attempt by the authorities to maintain tranquility within the community by finding a consensus. If everyone was involved in a case, then there was an increased possibility that those with a deviant opinion would keep quiet. The witnesses not only gave a description of the events which took place but also provided an opinion and a judgment on the characters of the people involved. Witnesses were found for every detail. After the *escribano* had realised that he had lost the papers, he searched the road in the presence of a witness. He stated that the people who saw him looking, could certify that he found nothing. Witnesses were called in connection with the events which took place at the burial, the finding of the open chest, and the placing of certain goods in custody. An example of how an interpretation of these events was made, came from Prado who was present at the burial meal. He saw Felíz and Ignacio enter the *nopalera* and remain there for some time, and in his opinion Felíz took money out of it. This was not because he saw the theft but because Felíz had argued that the will was not good since it provided no money for the burial, so it had seem reasonable to assume, according to Prado, that the money was hidden in the *nopalera*.

The documents show that the Indians were described as *miserables* and *menores*. In the colonial period the Indians were seen as children, and therefore "*gente sin razon*." Children have no power of reasoning and need to be educated. This education or legal protection, or *tutela* was the task of *El Rey Padre* -the King-, and the Church and it is reflected in the laws and juridical processes. The concept of *miserables* appeared in 1680 in the *Recopilacion de Leyes de los Reynos de las Indias*, and in this text the implication of being *miserables* was defined.<sup>24</sup>

- reduction or elimination of legal costs and fees for functionaries,

- increased access to legal and administrative help,
- a drastic simplification of the legal process,
- means of keeping the Indians in their villages, instead of hearing a lawsuit in a distant town.

The aim was to bring the Indians to a level of reasoning whereby they could appreciate the good sense and justice of European laws and legal procedures. The classification of Indians as *menores* or *gente sin razon*, was originally supposed to indicate their separateness from Spanish culture, and not their lack of intellectual potential. As has been seen, the Indians themselves appealed to this state protection. Many times they pointed out that they were only poor Indians and they had nothing more to lose. In one of the petitions Feliz asked that it should be dealt with openly and clearly since it was an affair between Indians. Later on the *corregidor* used the same words when he instructed the *asesor letrado*: he had to give a clear verdict because it was a case between Indians.

Obviously the importance of religion has been seen in this case. Studies on the syncretism between the preconquest religions and Catholicism point to the similarities between them, making the adaptation to Catholicism easier. Some attention has also paid to the *cofradías* (lay-brotherhoods) and the prominent role they played within the Indian community.<sup>25</sup> The interweaving of religion and daily life can be clearly seen in the Pasquala case. The burial was followed by a ritual meal. In her will Pasquala stated that her shroud should be bought from the Franciscans. The will opened with Pasquala's declaration of faith, an opening which I came across several times, and which was standard. It shows the practical presentation of religious faith: "*Protesto vivir y morir como fiel y catholico christiano y desseando poner mi alma en carera de salvacion y poniendo por mi intesedora y abogada ala siempre Virgen María nuestra Señora consebida sin pecado original (...)*." In many documents I came across the importance given to the Virgin Mary. Adriaan C. van Oss, writing about Catholicism in colonial Guatemala, argued that the cult of humility and forgiveness embodied in the Virgin Mary, took on such importance that many neophytes would use her name in all matters connected with the church.<sup>26</sup>

An example of the syncretism is the way that Pasquala in her will offered her soul to God and her body to the ground from which it was made. In the preconquest religion it was believed that the body came out of the maize plant, and here it was linked with the Catholic idea of being buried under the ground: "*ofresco mi alma a Dios nuestro Señor que la Crio y Redimio por su preciosissima sangre y el cuerpo Mando a la tierra de que fue formado el qual sea sepultado (...)*." For the peace of her soul Pasquala had reserved two *reales* for the saints of Jerusalem, and another two *reales* for Our Lady of Guadalupe.<sup>27</sup> More of Pasquala's estate was given to religious groups. Each of the five *cofradías* who were venerated in the parochial church re-

ceived two *reales*. Each altar in the church received two *reales*, and two *reales* were for Jesus of Nazareth in the church in the *barrio* of Santa María, and two *reales* for our Lady the Holy Isabel. In the main section of the will in which the division of the goods was mentioned there was another bequest to a *cofradía*. The *cofradía* Santa Isabel received some land with maize in a place called *Quiequee*. Furthermore the *mayordomo* and *diputados* (officials of the *cofradía*) of the same *cofradía* received 30 *magueyes* to pay for the celebration of masses and for their holy feasts. Both the will and the burial indicated the importance of both religion and the *cofradías*.

According to Van Oss, religious syncretism can be seen as a logical and necessary consequence of the manner in which conversion had taken place.<sup>28</sup> The clerics looked sceptically at the Indians' form of Catholicism because it included so many pagan observances. But nevertheless according to Van Oss the Indians also took an active part in the official cults. Innumerable examples show that their communities spared neither effort nor expense in filling their churches with altars, retables, and sculpted images. Devotions to the saints overflowed from the church and into the homes, where individual families erected domestic shrines.<sup>29</sup> Pasquala owned eight religious paintings, three crucifixes, and a figure of La Señora de la Soledad, and this was in spite of the fact that she owned few household effects. The Spaniards' complaints about idolatry never went so far as to doubt the importance of Catholicism to the Indians. This faith was of course connected to the oath in which the *asesor letrado* trusted so implicitly.

The will itself provides an opportunity to look at Pasquala's possessions. The land she owned was scattered. She had three different pieces of land with maize, and seven different places with *magueyes*. In the Valley of Oaxaca this pattern of ownership is still prevalent. The land was originally divided in this scattered way because of its fertility. Pasquala needed little ground for the cultivation of food crops. Most land was used for *maguey*, a commercial crop which was in the eighteenth century along with cochineal one of the most remunerative products for selling in the Valley of Oaxaca. There was no mention of cochineal or *nopales* in the will itself, but in the documents of the case it became apparent that Pasquala owned them as well;<sup>30</sup> the chest with money which Felíz stole was hidden in a *nopalería* and Lucas made claim to *grana*. Hamnett has put forward that these commercial crops were cultivated at the expense of such basic products as maize.<sup>31</sup> If this was the case then it is important to note that Pasquala left one third of her maize land to the *cofradía*. In years of dearth the *cofradía* would take care of the division of maize to the community. Furthermore Pasquala owned a house and the land around it, one big cow, a team of oxen and two horses. After the Spanish conquest the Indians came to use a team of oxen for ploughing the maize ground. From the remaining household effects and clothes, there was just one table, two side tables, and two storage

chests for food and clothes, one bench, two cotton blankets, one *huipil* and one *rebozo*. These garments were the typical clothes of the Indian women after the conquest, and in Coyotepec and other Indian villages they are still worn today. As has been already mentioned religious paintings and crucifixes were the only ornaments in the house.

Although during the preceding, seventeenth, century there had been a marked decrease in the Indian population, their land had not fallen into the hands of Spaniards or of state officials. During the colonial period the Indians in the Valley of Oaxaca divided their possessions, including the ownership of land, between near and distant family relations, the church, and even individuals who were not family members.<sup>32</sup> As a rule the equal division of land between members of a family, or others, was a threat for landowning peasants, since the land would be divided into smaller plots until it ceased to be workable.<sup>33</sup> During the eighteenth century in the Valley of Oaxaca, it was still the usual pattern to divide land up in this way, but the result was not the typical *minifundio* since families already had scattered plots of land. From earlier times the land had been divided according to its fertility, and this had resulted in scattered land ownership and with the transfer of an inheritance the plots were divided between the heirs who joined them with whatever land they already owned.

The Indians always left a will and the few people who made no will, nevertheless, had families who would claim the right to inherit. In the eighteenth century it was still usual to leave a will and the Indians still had great freedom in how they allocated their possessions. In the documents that have been under consideration it has been seen that Lucas claimed that according to the law, he and the two young girls were the legitimate heirs. Feliz countered that according to the will he was the legitimate heir, and this was why Lucas was trying to deny the existence of the will in the first place. So it can be seen that the rules for inheritance could be altered by a will. This again fits in with the aims of the authorities to reach a consensus in case of any conflict. It was more important to maintain and redress order than to stick by the letter of the law. In the Pasquala case it is seen that the *asesor letrado* tried to come to a compromise, and decided that in any case Lucas should receive the child's portion, which was probably what would have happened if there had been no will and no conflict.

In Coyotepec during the eighteenth century there was no question of only the sons inheriting: daughters and even non-family members had also a right. Such a free pattern could cause problems as has been seen in the Pasquala case. In the archives of Oaxaca, I came across another interesting case from Coyotepec in the eighteenth century which was a complaint by a mother against her daughter, regarding the education of her two children.<sup>34</sup> The father of the children had died, and the mother declared that her daughter was giving the children a bad example. As the lawsuit evolved it appeared that it was really concerned with problems of inheritance. The daughter inherited both from her deceased husband and from her father, and her mother

argued that she was squandering the possessions she had acquired from these inheritances by going out with a man with whom she was not married, and having to pay fines for this transgression of the law. The mother did not only want custody of the children but also the right to manage the inherited goods, which she would look after on behalf of the two minors. So it would seem that such tricks as losing a will, or pointing a finger at immoral behaviour, were quite according themes. In Pasquala's case it was seen that she had inherited from her deceased husband, the father of Lucas. In those days, the partners married under separate estate arrangement. The partners owned whatever they had possessed before the marriage, and only what they had acquired together was held as common property. This is why Felíz had to make a testimony in which he stated that some of the goods belonged to him before the marriage. The house and the land round it had apparently belonged to Pasquala and that was why she could leave it to Lucas and the two minor daughters, making it necessary for Felíz to find somewhere else to live.

As has been shown, the moral economy in Coyotepec was in certain matters identifiable. The discourse within the village, and the discourse with the authorities searching for a consensus, is clearly visible. Especially revealing are the testimonies. We saw that the witnesses not only gave factual data but also their own unsolicited comments on the characters of the inhabitants. Those comments structured the pattern of discourse and formed the main source for information about aspects of the moral economy of Coyotepec. As has already been mentioned Thompson approached his study of the moral economy with a study of the phenomena of food riots. I believe that the case-history I have presented here shows that the treatment of inheritance and legal proceedings can also provide useful source material in an attempt to understand the workings of the moral economy within a community.

#### ENDNOTES

---

1. E. P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," in *Past and Present*, 50 (1971), 76-136.

2. Quote from Thompson, "Moral Economy," 78-79.

3. Thompson, "Moral Economy," 79.

4. Dale Edward Williams, "Morals, Markets and the English Crowd in 1766," in *Past and Present*, 104 (1984), 56-73, esp. 66. Andrew Charlesworth and Adrian J. Randall, "Comment: Morals, Markets and the English Crowd in 1766," in *Past and Present*, 114 (1987), 200-213.

5. Alan Booth, "Food Riots in the North-West of England 1790-1801," in *Past and Present*, 77 (1977), 84-107, esp. 84.

6. Carlo Ginzburg, *Il Formaggio e i Vermì: Il Cosmo di un Mugnaio del '500* (1976); I used the Dutch translation from Pietha de Voogd: *De kaas en de wormen. Het wereldbeeld van een zestiende-eeuwse molenaar* (Amsterdam, 1982), 13 and 17.

7. David W. Sabeau, *Power in the Blood* (Cambridge, 1984), 2-3; Peter Burke, *Popular Culture in Early Modern Europe* (New York, 1978), 65-87; James C. Scott, "Exploitation in Rural Class Relations. A Victim's Perspective," in *Comparative Politics*, (1975), 489-532, esp. 526. On the interpretation of the "moral economy," see Harvey J. Kaye, *The British Marxist Historians. An Introductory Analysis* (Cambridge, 1984), 194.

8. See Jack Goody, "Introduction," and David Sabeau, "Aspects of Kinship Behaviour and Property in Rural Western Europe Before 1800," both in *Family and Inheritance. Rural Society in Western Europe, 1200-1800*, Jack Goody, Joan Thirsk and E. P. Thompson, eds. (Cambridge, London and New York, 1976), 1-9 and 86-111.

9. Archivo General del Estado de Oaxaca (AEO), Alcaldías Mayores, leg. 1, exp. 17; leg. 2, exp. 1, and leg. 27, exp. 2.

10. Lotte de Jong, "Coyotepec in de achttiende eeuw. Aspecten van het leven in een Indiaans dorp in Oaxaca, Mexico aan het einde van de koloniale tijd" (Doctoraalscriptie, Universiteit van Amsterdam, 1988). In the colonial period Coyotepec was officially called San Bartholo Coyotepec. Today it is known as San Bartholomé Coyotepec, but, as in the past, it is mostly referred to simply as Coyotepec.

11. For more details, see De Jong, "Coyotepec," 16-46.

12. AEO, Alcaldías Mayores, leg. 1, exp. 17.

13. On these higher Indian officials see the chapter by Hoekstra in this volume. Usually the *indios principales* were not identical to the *caciques*; however, in the eighteenth century, due to confusion, all *indios principales* were called *caciques*.

14. AEO, Alcaldías Mayores, leg. 2, exp. 1.

15. AEO, Alcaldías Mayores, leg. 27, exp. 2.

16. Sabeau, *Power in the Blood*, 28-29.

17. Sabeau, *Power in the Blood*, 29-30.

18. Sabeau, *Power in the Blood*, 23, 203-204.

19. Anthony McFarlane, "Civil Disorders and Popular Protest in Late Colonial New Granada," in *Hispanic American Historical Review*, 64 (1984), 17-54, esp. 41-44.

20. See the remarks of Steve Stern in his "Latin America's Colonial History. Invitation to an Agenda," in *Latin American Perspectives*, 12 (1985/44), 3-16, quote from p. 14: "But today, as in the distant colonial past, the laboring and poor classes do not accede quietly to the role of marginalized victim. This refusal and the struggles it entails impose a logic of their own in Latin America's historical trajectory."

21. William B. Taylor, *Landlord and Peasant in Colonial Oaxaca* (Stanford, 1972), 83.

22. AEO, Alcaldías Mayores, leg. 1, exp. 10.

23. See Frans J. Schryer, "Peasants and the Law: A History of Land Tenure and Conflict in the Huasteca," in *Journal of Latin American Studies* (hereafter *JLAS*), 18 (1986), 283-311, esp. 309-311.

24. See Woodrow Borah, *Justice by Insurance. The General Indian Court of Colonial Mexico and the Legal Aides of the Half Real* (Berkeley, Los Angeles and London, 1983), 82-83.

25. See the chapters by Brading, Lavrín and Gruzinski in this volume.

26. Adriaan C. van Oss, *Catholic Colonialism. A Parish History of Guatemala 1524-1821* (Cambridge, 1986), 19.

27. Brading argues that an important aspect of the cult of Our Lady of Guadalupe was the fact that it united the Creole clergy and the Indian masses in a common devotion, see David Brading, "Tridentine Catholicism and Enlightened Despotism in Bourbon Mexico," in *JLAS*, 15 (1983), 1-22, esp. 3.

28. Van Oss, *Catholic Colonialism*, 22.

29. Van Oss, *Catholic Colonialism*, 151; and Gruzinski's essay in this volume.

30. Compare: Edith B. Couturier, "Micaela Angela Carrillo: Widow and Pulque Dealer," in *Struggle and Survival in Colonial America*, D. G. Sweet and G. B. Nash, eds. (Berkeley, 1981), 362-375.

31. Brian Hamnett, *Politics and Trade in Southern Mexico 1750-1821* (Cambridge, 1971), 14.

---

32. Taylor, *Landlord and Peasant*, 73-75.

33. For a discussion of this problem, see Martine Segalen, "'Avoir sa part': Sibling Relations in Partible Inheritance Brittany," in *Interest and Emotion Essays on the Study of Family and Kinship*, Hans Medick and David Sabeau, eds. (Cambridge, 1984), 129-144, esp. 129.

34. AEO, Alcaldías Mayores, leg. 17, exps. 13 and 16.