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Die Abbildung auf dem Umschlag zeigt eine Karte der Plantagenbesitzer von Surinam im Jahr 1758 von Alexander Lavaux. JCBL

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Editorial

Mark Häberlein

In welchem Verhältnis stehen globalgeschichtliche Ansätze zu etablierten Konzepten der außereuropäischen Geschichte und der *area studies*? Welchen Mehrwert erbringen sie etwa für Forschungen zur Kolonialgeschichte Lateinamerikas, die sich mit den Dynamiken indigener Gemeinschaften befassen, oder für Historiker des postkolonialen Afrika, die sich primär für politische und soziale Entwicklungen auf regionaler und nationaler Ebene interessieren? Mit diesen grundsätzlichen Fragen beschäftigen sich Guillermo Wilde und Alexander Keese in den Beiträgen, die das vorliegende Heft eröffnen und beschließen. Dabei zeigen die beiden Autoren sowohl Grenzen als auch Perspektiven und Potenziale globalgeschichtlicher Ansätze für Forschungsfelder auf, in denen scheinbar kleinräumige Strukturen und Prozesse im Mittelpunkt stehen.

Die weiteren hier publizierten Aufsätze exemplifizieren die thematische und methodische Vielfalt aktueller globalgeschichtlicher Arbeiten. Manuel Bastias Saavedra und Camilla de Freitas Macedo stellen ein großes Forschungsprojekt vor, welches das etablierte Narrativ, dem zufolge die iberischen Kolonialmächte europäische Vorstellungen von Privateigentum in die außereuropäische Welt exportiert hätten, einer kritischen Revision unterzieht. Landbesitz in Europa, so argumentieren sie, unterlag vielfachen rechtlichen Beschränkungen und sozialen Konventionen; ein beträchtlicher Teil des Landes war vor dem 19. Jahrhundert in Gemeinbesitz; und die Rechtsverhältnisse in den von Spanien und Portugal beherrschten außereuropäischen Regionen waren alles andere als einheitlich. Landbesitz und Landnutzung in spanischen und portugiesischen Kolonien waren ihren Ausführungen zufolge grundsätzlich eng in soziale Beziehungen eingebettet und stellen sich als Ergebnis komplexer Anpassungs- und Aushandlungsprozesse dar.

Abgerundet wird das vorliegende Heft durch vier Beiträge zu globalen Verflechtungen Mitteleuropas im 18. und 19. Jahrhundert. Marius Müller untersucht die von konkreten Erfahrungen wie auch von antijüdischen Stereotypen geprägte Wahrnehmung jüdischer Diasporagemeinden in China, im Nahen Osten und in der Karibik im *Neuen Welt-Bott*, einer Sammlung jesuitischer Missionsberichte. Markus Berger zeigt, dass lutherische Pastoren, die im 18. Jahrhundert von den Glauchaschen Anstalten in Halle nach Pennsylvania entsandt wurden, intensive Kontakte zu Familienmitgliedern, Freunden und Patronen in ihren Herkunftsregionen pflegten. Constanze Weiske arbeitet die

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starke Präsenz deutscher Plantagenbesitzer und -aufseher in der niederländischen Kolonie Surinam heraus und demonstriert, dass zahlreiche wohlhabende Deutsche dort Kapital investierten. Rebekka von Mallinckrodt schließlich verortet einen lokalen Konflikt, in dessen Mittelpunkt ein afrikanischstämmiger Bediensteter eines norddeutschen Fürstenhofs stand und in dem auch Fragen der Herkunft und Hautfarbe thematisiert wurden, in seinen globalen Bezügen. Damit unterstreichen die Beiträge dieses Hefts einmal mehr, wie vielschichtig die Beziehungen und Verflechtungen zwischen dem deutschsprachigen Raum und der außereuropäischen Welt bereits vor der Akquisition von Kolonien durch das deutsche Kaiserreich in den 1880er Jahren waren.

Bamberg, im August 2024
Mark Häberlein

Beyond Property: Law and Land in the Iberian World (1510–1850). A Research Agenda[1]

Manuel Bastias Saavedra / Camilla de Freitas Macedo

ABSTRACT

The article introduces the IberLAND project, which seeks to provide a new, non-Eurocentric history of the development of land tenure from a global perspective. The idea that property was invented in Europe and transferred to the non-European world through colonialism, more than reflecting a historical process, is the product of a colonial image of the world based on the assumption that the European experience was inherently more advanced than those of other world regions. Recent research, however, has shown that this assumption needs to be revised. Until the late eighteenth century, land tenure in Europe was not characterized by private property. Instead, land was organized through different forms of reciprocal obligations between kings and subjects and lords and tenants, but also tied to cities and towns, kinship and marriage, as well as various forms of communal usage or ownership. If the traditional narrative of property does not provide an accurate account of land tenure arrangements across the early modern Iberian world, then we must look back and ask certain basic questions: How did people live on the land? How did they distribute it? How did they organize the relations to the land both inside and outside the group? How did contemporaries describe their relationship to the land? Which norms governed these relationships? How were these norms affected by the imperial experience? How did these relations change over time? IberLAND aims to provide a shared analytical framework that allows scholars from all territories influenced by the Iberian crowns to explore the experiences that shaped land relations in each of them. This framework takes into account both the local nuances of these relations and the broader dimensions of colonization. We believe it has the potential to avoid binary comparisons with other colonial experiences and to understand its parallels more accurately.

1 This article has been written as part of the IberLAND project. The project has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No. 101000991). For more information, visit https://iberland.eu/.

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Introduction

The IberLAND project conducts basic research on land tenure in the early modern period from a global perspective to push back against deeply held assumptions and narratives. The main narrative concerns property and, though it has been told in different ways, follows the same basic structure: Europeans invented and had a specific notion of private, individual property (which is sometimes traced back to Roman law) and through the process of colonialism imposed this form of landholding onto the rest of the world. The gist of this narrative was that European culture had developed a legal form of landholding that was distinct from the forms of collective ownership characteristic of traditional societies. This story was, however, a convenient fiction invented by early modern jurists and political thinkers to justify the dispossession of land and affirm the superiority of European civilization in the colonial context. Moreover, this story is readily repeated by historians and other scholars, and it has seeped into everyday discourse, making it a quite commonsense description of how this process unfolded.

Research on land tenure in regional historiographies of Europe, America, Asia, and Africa has been slowly but steadily dispelling these notions. On the one hand, there was nothing like a single, all-encompassing system, nor was there anything resembling individual, private property in Europe well into the late eighteenth century. Instead, land tenure arrangements on the continent were highly local, varying often from one province to the next, and were based on diverse forms of collective landholding. On the other hand, local norms and traditions organized land tenure practices in Africa, Asia, and America well into the nineteenth century – and may even persist until today. The IberLAND project intends to bring these regional historiographies together to provide a new, non-Eurocentric history of the development of land tenure from a global perspective. Undoing the traditional narratives is important not only because it is more historically accurate, but also because it will allow us to recover the experiences of countless local communities that lived under the rule of the Spanish and Portuguese Crowns. By deconstructing Eurocentric narratives and highlighting the agency of vernacular systems, this research project contributes to a more inclusive and accurate understanding of the global history of land tenure.

This article intends to unfold these arguments and intends to provide an overview of the methodology, analytical framework, and the case studies that compose this research agenda. First, we begin with a characterization of the Iberian world as the regional framework of the project, which covers many regions of the globe from the sixteenth to the nineteenth century. Second, we discuss the different historiographical traditions on land tenure in both Europe and the colonial context to show the incongruencies of their different theoretical points of departure. By reading these historiographies in connection with one another, it becomes evident that the history of land tenure from a global perspective requires a new analytical framework. The following sections discuss the question of how to understand law in early modern Europe and how this affects research of the colonial context. Instead of being produced centrally by the metropolis, norm production was decentered and produced by different kinds of collective bodies. These characteristics of law

both on the Iberian Peninsula and in the Iberian empires show that historical research has to look more closely into how law developed locally. The final sections build on these insights to point the direction for future research to construct a decentered history of land and law from a global perspective.

The Iberian World: The Tenuous Influence of the Spanish and Portuguese Crowns

The arrival of the Portuguese in Calicut in 1498 and the Castilians in Cebu in 1521 transformed the Iberian age of explorations into a decidedly global enterprise. In little more than a century, between 1415 and 1529, what had begun as a struggle between Portugal and Castile to control the islands and positions gained in West Africa and the Atlantic turned into a transoceanic competition to reach the Indies and secure control of the Spice Islands of Ternate and Tidore, on the other side of the globe. While the Portuguese quickly set about laying the foundations of their *Estado da Índia*, as the Portuguese empire in Asia came to be known, Castilians would only begin to establish a secure footing in the region once Andrés de Urdaneta finally discovered the return route between the Philippines and New Spain, across the Pacific, in 1565. This era of long-distance voyages would inaugurate the centuries-long presence of the Iberian empires in Africa, Asia, and the Americas characterized by tenuous, disparate, and fragmented jurisdictions with many centers that connected settlements, goods, persons, and institutions across the Atlantic, Pacific, and Indian oceans.

Though in some regions the Iberian empires negotiated their access to certain ports and trade routes with local powerholders, on other occasions incursions were carried out through force. The submission of Tenochtitlan and Cuzco are arguably the most salient examples of the conquest of the Americas. By the 1580s, during the union of the crowns under the reign of Philip II, the expansion of the Iberian empires had reached the zenith of its global scope: it had become a "world-encircling empire."[2] Between 1580 and 1640, a single European dynasty ruled over Portugal, Spain, parts of present-day Italy and the Netherlands, enclaves on the coasts of the Atlantic, Pacific, and Indian oceans, ports on the East and South China seas, lands in the central and northern islands of the Philippines, and vast regions of the Americas.

The Iberian world thus views all the regions that came under the influence of the crowns of Portugal and Spain as asymmetrically connected parts of a broad network of communication that cannot be restricted to *ad hoc* regional divisions. While the histories of Portugal and Spain, and those of their overseas territories, have tended to be studied separately, recent scholarship has begun to partially reverse this trend by overcoming these regional divisions.[3] But some divisions have remained. Spanish-Asian and Spanish-American territories only have limited dialogue in historical scholarship, much of it focused on the galleons that crossed the Pacific between Acapulco and Manila. And the interesting focus on oceanic systems – e.g. the Iberian Atlantic – does not easily allow the

2 Subrahmanyam 2007, 1360.
3 Hamnett 2017.

inclusion of hinterlands and other regions that are not considered to participate in that system.[4] The Iberian world thus represents a connected world of quasi-global proportions tied, however loosely, through commerce, religion, and authority.

Two Temporalities in the Historiography of Land Tenure: A Historiographical Problem

From a global perspective, the history of private property in land has predominantly been written according to two irreconcilable temporalities. The first is tied to the French *Déclaration des droits de l'homme et du citoyen* of 1789, when the broad conception of ownership that had characterized the *ancien régime* began to be gradually replaced by the narrower modern concept of property. Until then, ownership had been linked to the category of *dominium*, characteristic of the *ius commune* tradition, which established different types of subordinate relations: the king over his country; the lord over his dependents; and the owner and user over his or her things. Within this conceptual and normative framework, *proprietas* was also a relationship that could be established between an officeholder and his office. The gradual movement towards private property rights after 1789 was thus not merely a shift in technical legal nuances, but implied an anthropological shift that changed the relations between man, nature, and things. The possibility of imagining the appropriation and disposition of things by individual men was the precondition for narrowing property rights understood as the reflection of the subjective will of the individual.[5] Even though this process took different paths in different parts of Europe[6], it is quite clear that the late eighteenth and early nineteenth centuries were a pivotal turning point in the history of the formation of private property.

A second temporality in the history of private property in land is that of the territories affected by the Iberian overseas expansion that began in the mid-fifteenth century. In this context, the advent of the paradigm of private property does not begin with the revolutionary events of 1789 and their aftermath, but rather starts with the arrival of Europeans. Within this temporality, historians have seen the activities of the Spanish and Portuguese empires in the sixteenth century as pivotal. Here the piecemeal process of colonization and the expansion of the agrarian frontier supposedly confronted two proprietary epistemologies: that of the natives, guided by notions of common ownership, and that of the Iberian conquerors that came with and imposed their notions of individual, private ownership. John Locke's and David Hume's characterization of the asymmetry between native and European forms of land tenure have had an enduring influence in shaping this narrative, often used to describe not only certain manners in which colonialism was justified, but also taken to represent the state of affairs on the ground. The most striking aspect of this representation of property relations is its longevity in por-

4 Adelman 2006. Some recent "Atlantic" perspectives on land relations can be found in Morales 2024; Soriano 2024; Hylton 2016.

5 Grossi 2013, 24.

6 Congost 2007.

traying the differences between indigenous and European conceptions of land tenure. For example, when describing the nineteenth-century land grabs, Jürgen Osterhammel sticks to the admittedly simplistic "formula that European concepts are individualist and exchange related whereas Indian ones are collectivist and use related."[7] In the 2018 United Nations Permanent Forum on Indigenous Issues, it was said that indigenous peoples have special connections to their lands, territories, and resources: "Their tradition of collective rights to lands and resources [...] contrast with dominant models of individual ownership, privatization and development."[8]

Evidently, these representations of the historical development of private property in land are irreconcilable. The men that crossed the Atlantic, Pacific, and Indian oceans seeking land and resources in the Indies could not have anticipated the development of modern private property by more than three centuries. Rather, this temporal gap is both the product of regional historiographies and of historians of Europe and empire working in isolation from each other and reproducing certain tropes about the asymmetries of European and non-European representations of land tenure. While these narratives have been mobilized to criticize the pernicious effects of colonialism, the consequence of sustaining these stereotypes has led to a lack of specialized research into the multiplicity of institutions, sources of law, and normative expectations that defined land relations in Africa, Asia, Europe, and the Americas as a result of the expansion of the Portuguese and Spanish empires.

Land Tenure in Early Modern Europe

Although scholars are often drawn to some early modern authors considered to be central to the modern discourse on property rights – Francisco de Vitoria and Locke perhaps the most important of them – the manner in which land was understood in everyday life across early modern Europe was shaped more profoundly by tradition and by categories of overlapping dependency that seem alien to our contemporary worldview. In the early modern worldview, the relation to land was not imbued by the ideas of "possessive individualism;"[9] instead, it was rooted in a juridical mentality in which nature and things – not individuals – were at its center.[10] Individuals did not have an organizing role in this structure. Rather, priority was assigned to social groups and the nature of things. Land was tied to the community, either to the family or to collective entities beyond the family, and was usually bound by tradition.[11]

Land was therefore always bound to different forms of dependent and subordinate social relations. Blaufarb, for example, has argued that the early modern French property

7 Osterhammel 2014, 345–346.
8 UN Department of Public Information 2018.
9 Macpherson 2011.
10 Agüero 2007; Grossi 1995.
11 Grossi 1995, 91.

regime in land is better characterized as a "tenurial system" in which land was held rather than owned.

> "Under [this system] the actual occupiers of land held their parcels from superiors who retained distinct rights over the properties they had conceded. The relations that arose formed a complex hierarchy of tenure. At its base was the mass of modest urban and rural tenants who were purely dependent and had no tenants below them. Above these were multiple strata of lords who were simultaneously the proprietary superiors of those tenants [...] and the dependents of even higher lords from whom they held their own lands. At the summit of the pyramid was the Crown, which asserted that its sovereignty gave it a general right of proprietary superiority, a kind of universal lordship, over the land of the entire kingdom".[12]

The operative category that described this kind of relation between person and land, which could not be separated from the personal relations of authority, duty, and obligation, was that of *dominium*. This notion could be applied variably to different types of hierarchical relationships which could refer either to persons, to capacities, or to spaces. It could thus refer to the relation between king and subject; to the relation between lord and dependent; to a particular jurisdiction; or to the relation of the tenant with the land. This combination of ownership and authority in the category of *dominium* was an outgrowth of medieval practice and precluded the possibility of distinguishing between public and private law.[13] That the organizing structure was linked to the category of *dominium* meant that the "tenurial system" was tied to the diversity and hierarchies of *status* that organized early modern European society. "Not in vain did the word *dominium* cover [...] an extensive range of meanings between political power and proprietary use, crossing through and ultimately reproducing [the structure] of social domination."[14] *Dominium* thus allowed the construction of overlapping interests over the same lands, which was not limited to occupation and use, but also applied to long-term dues and tithes. Superior forms of *dominium* did not extinguish or disqualify lower forms.[15] The way land tenure was organized in the *ancien régime* was ultimately tied to this form of *dominium*, which allowed the distribution of resources, the satisfaction of interests, and the fulfillment of needs within a process of extraction and correlative services.[16]

The dominant notion was therefore not that of a system of individual private property but one of reciprocal obligations that was not restricted to the lord-tenant relation, but was also determined by the institutions of kinship and marriage. Land was not merely a commodity or a resource that could simply be acquired. It organized relationships within a community, insofar as access to certain resources, the apportionment of claims

12 Blaufarb 2016, 4.
13 Brunner 1992, 204; Grossi 2017.
14 Clavero 1999, 253.
15 Clavero 1999.
16 Neto 2018; Sabean 1984.

and rights, and obligations and duties were all forms in which the participants of a community organized their social affairs.[17] While circulation of land remained within family groups by tying sales of land to relations of kinship,[18] marriage was another relationship that limited the free disposition of the estate.[19] Rights to land were thus multiple, depended on a variety of relations – including rights *and* obligations – and were thus profoundly conditional.

Alongside these tenurial relations were the *commons*, which were use rights that occupiers of land, residents, and landless commoners had in the village pastures, in the uncultivated lands of large landowners, or in fields that had already been harvested. The commons were thus structured in various manners: the term could mean the collective ownership of land, the common use of land held by an estate, or the seasonal use of otherwise arable fields. Commons were often used as grazing grounds for animals, for the collection of fertilizer, for the gathering of wood for heating and building, for the removal of trees, for cutting stone, for hunting, for fishing, and for the collection of salt.[20] The rights that were understood to be common could vary from town to town or from one region to the next, and they were rooted in the customary practices and the memory of specific communities.[21] Commons also implied rights based on reciprocal ties. During the fraught process of enclosure in England, it was understood that common rights could not be altered without the consent of all parties concerned. The failure to reach such an agreement was mainly what drove the parliamentary enclosures between 1760 and 1820.[22] While successive attempts to reform the structure of the commons in Europe began in the mid-eighteenth century (earlier in some cases), it was still possible to find these common use arrangements well into the late nineteenth century.[23]

Eighteenth- and nineteenth-century reformers made the tenurial regime and the commons two of their main targets. Paolo Grossi has noted that "if there is a repellent structure for the clear and monadic nineteenth-century culture, this is precisely collective property in its various forms."[24] Rosa Congost has argued that the paths taken by France and England can be considered paradigmatic for the creation of perfect property and individual private property, respectively. While the movement towards perfect property was the removal of all sorts of feudal rights and obligations, the movement towards individual private property consisted in the enclosure of the commons. In one case, regimes of common usage survived; in the other, bounded tenure persisted.[25] Since property, in the manner it was being constructed in the nineteenth century, was not entirely consistent with the ownership logic of *dominium*, property rights were on occasion considered to

17 Sabean 1984, 28.
18 Robisheaux 1989, 82–83.
19 Sabean 1990, 208.
20 Antoine 2013; Neeson 1993; Neto 1984; Servais 2013; Thompson 1993; Vassberg 1984.
21 Thompson 1993, 102; also see Pottage 1994.
22 Thompson 1993, 108–110.
23 Brakensiek 1994; Moreno Fernández 2002; Peset / Hernando 2002; Demélas / Vivier 2003.
24 Grossi 2017, 11.
25 Congost 2007, 24.

rest with the holder of *dominium directum* and on occasion with the holder of *dominium utile*. In Catalonia, for example, property rights were consistently granted to the former, thus extinguishing the rights of those who had lived and worked on the land.[26] In different parts of the German confederation, the transformation of collective pastures into arable land led to ownership regimes that could range from full privatization to individual possession of public lands.[27] It thus seems correct to argue, as Brewer and Staves have, that throughout the nineteenth century each of the European states formulated different systems of property rights designed to fit its own interests.[28]

The objective of this synopsis has been to reveal that the organization of land tenure in early modern Europe, though diverse, was still largely based on a worldview of a very different nature than that which underpinned the modern regime of private property rights. The manner of organizing the relation to the land still functioned within the traditional normative underpinnings of the *ancien régime*, which did not allow for a clear-cut distinction between public and private law, while usage and ownership were not clearly distinguishable in practice.[29] The persistence of regimes of divided ownership, of obligations tied to the land through systems of kinship, marriage, and inheritance, and the widespread existence of fields and pastures used or owned in common, all suggest the long-term persistence of holistic and patrimonial structures that organized the relations between persons and land well into the nineteenth century. The transformation of that century was a momentous one, and it was the transformation of the fundamental principles that organized the polities of the contemporary world which Blaufarb has called the *Great Demarcation*: "the separation in idea and practice between the sphere of private property, on the one hand, and public power, on the other."[30]

Land Tenure in the Iberian Overseas Territories

In the course of the sixteenth century, the overseas incursions of agents acting in the name of the crowns of Spain and Portugal generated new sets of long-distance networks sustained through commerce, Catholic proselytism, and communication. Between 1580 and 1640, a single European dynasty ruled over Portugal, Spain, parts of present-day Italy and the Netherlands, enclaves on the coasts of the Atlantic, Pacific, and Indian oceans, ports on the East and South China seas, lands in the central and northern islands of the Philippines, and vast regions of the Americas.[31] The overall process of land occupation and colonization was multifaceted and uneven, sometimes achieving stable territorial control and sometimes simply establishing outposts that dealt with local communities.

26 Ibid., 173.
27 Grüne 2013, 159.
28 Brewer / Staves 1995.
29 Antoine 2009, 83.
30 Blaufarb 2016, 10.
31 Burbank / Cooper 2011, 127–128.

In this process of global expansion, the history of land tenure in Spanish America has been a classic topic of research since the 1930s, especially within the tradition of the so-called *derecho indiano*. This historiography reconstructed a basic framework of institutions that organized the colonization of Spanish America from the *adelantados*, individuals who were given extensive powers in the early phases of colonization, to the *mercedes*, land grants that were given to colonists by the Crown or town councils.[32] The institution of the *encomienda*, designed to extract land revenues from indigenous labor, has been thoroughly studied since Zavala's seminal work in the 1940s.[33] But perhaps the most lasting, and as we shall see the most problematic, contribution of the *derecho indiano* was the construction of the basic framework through which the nature of property rights in Spanish America has been characterized. This reconstruction was done by asking two fundamental questions: Was the land owned by the Crown or was it privately owned? Under what title did indigenous populations hold their lands?

The answers to these questions varied over time. José María Ots Capdequí, who wrote profusely on land throughout the 1940s, concluded that lands belonged to the Crown and that individual ownership was possible through grants, thus making property subject to certain conditions and tied to the fulfillment of a "social function."[34] Mario Góngora presented a slightly different argument. He suggested that all lands not belonging to indigenous populations were held by the Crown, and thus individual Spaniards could only access land through royal grants. Indigenous land, on the other hand, since it did not derive from royal privilege, was considered to be pre-existent and inalienable private property.[35] The argument shifted once again in the 1970s when José María Mariluz Urquijo took Góngora's argument as proof of the existence of private property, but he went on to argue that the lands held by the Crown should be subsumed under the category of sovereignty instead of property. According to Mariluz Urquijo's reading of the situation, this meant that private property was the only regime that organized land tenure in Spanish America, regardless of whether the owner was Spanish or native.[36]

As can be seen from this discussion, historians have used the notion of private property to understand the structure of land regimes in Spanish America since the arrival of the Spaniards in the late fifteenth century. Since the 1970s, the premises of the *derecho indiano* have also pervaded much of the recent research on land tenure in Spanish America.[37] Brian Owensby, for example, argued that Spaniards in Mexico "appear to have been moving toward a more individualized, Roman conception of ownership."[38] Karen Graubart has claimed that this process was delayed until the 1570s in colonial Peru, where authorities reorganized indigenous towns by "forcing them to define certain individual and

32 An overview in Góngora 1951; Garriga 2017; Parise 2017.
33 Hidalgo Nuchera / Muradás García 2001; Zavala 1940.
34 Ots Capdequí 1946, 1959.
35 Góngora 1951.
36 Mariluz Urquijo 1968, 1970.
37 See Bastias Saavedra 2020.
38 Owensby 2008, 94.

collective property through measurement and titling."[39] Susan Kellogg, similarly, argues that Mexica "concepts of property and ownership" underwent profound transformations as they sought to use Spanish law, because they began to "conceive of forms of ownership and transmission in new ways – ways that reflected strong Spanish influence."[40] José de la Puente Luna contends that the "ideas of private property and continuous territoriality" had a profound effect on Andean communities' representation of land and territory in sixteenth-century Peru.[41] Rodrigo Míguez Nuñez likewise argues that private property became a reality in the Andean cultural experience after conquest, consisting in one of many "conceptual contaminations" that affected the indigenous representations of tenure based on common possession centred on the community.[42]

This tension between private and common property, attributed to the arrival of the Spaniards, has been one of the main concerns of scholarship on the Philippines since John L. Phelan's seminal work on the *Hispanization of the Philippines*.[43] Nicholas Cushner, in his study of landed estates in Tondo, accordingly argues that "[u]nder the Spaniards the institution of private ownership of land was introduced with the accompanying institutions of deed, title, land, tax, and private sale of land."[44] Owen Lynch likewise notes that "[t]he primary innovation introduced by the Spaniards concerning legal rights to natural resources was the concept that land could be exclusively owned by individuals."[45] Renato Constantino's *History of the Philippines* points out that "[m]any communal lands were transformed into private property as Spanish Colonialism manipulated the indigenous form of social organization to make it part of the exploitative apparatus."[46] Marshall McLennan, though providing a nuanced depiction of tenancy in central Luzon, cannot avoid the trope of private and common ownership: "Once the institution of private ownership of lands previously held in usufruct was introduced by the Spanish government, the *cacique* soon began to encroach upon the communal lands of those who became indebted to them."[47] Perhaps the only leading historian of the Philippines who has avoided this characterization of Spanish colonialism is John Larkin, who instead argues for a continuity of the pre-Spanish patterns of native Pampanga society between 1571 and 1765: "This gradual adjustment of the Pampangans to the new regime over the course of nearly two centuries was possible because, the Spanish [...] brought no social or economic revolution and were more than content to allow native political power to remain with the old ruling class."[48]

39 Graubart 2017, 64.
40 Kellogg 1995, 121.
41 de la Puente Luna 2008, 127.
42 Míguez Núñez 2013, 26. See also Merino Acuña 2014.
43 Phelan 1959, 117. For a critical perspective on this work, see May 2004.
44 Cushner 1976, 1.
45 Lynch 1988, 82.
46 Constantino 1969, 38.
47 McLennan 1969, 656.
48 Larkin 1972, 16.

Scholarship on the Portuguese empire has only recently begun to focus on issues of land tenure. This may be due to the fact that in the 1500s, rather than aiming to exploit landed resources as the Spanish were doing in the Caribbean, the Portuguese empire sought to profit from controlling the networks of oceanic trade between Asia and Portugal. Territorial control, however, was an important element in the Portuguese transoceanic empire since at least the 1530s, as attested to by the introduction of the *capitanías* in Brazil and Angola, as well as the introduction of the institutions of the *aforamentos* and the *prazos* in East Africa, the *Estado da India*, and Sri Lanka. The *capitanías* were territorial and hereditary royal grants to a subject, providing him with jurisdictional power tying, in this sense, this institution to late medieval and early modern notions of lordship.[49] The *donatários* were given the territories to be administered as provinces and acquired, among other privileges, the power to dispense justice, create towns, collect rents, and distribute land to colonists. The *aforamentos* and *prazos* consisted in the hierarchical redistribution of land revenue between landlords, tenants, and the Crown.[50] While in the Northern Province of India these institutions were superimposed on the pre-existing institution of the *iqta* common to the Islamic world,[51] in Sri Lanka they were introduced anew through the so-called *fronteiros*.[52] The *aforamento* was an institution that combined the lord-tenant mode of privilege and obligation: *foreiros* (holders of *aforamentos*) could collect land revenues through taxes and fees, but in return had to reside in the place of the grant, pay rent to the Crown, and provide military service in case of war.[53]

The scholarship on the narrower conception of land ownership, as opposed to the extraction of land revenue, has focused on the Portuguese royal land grants that were encompassed under the institution of the *sesmaria*, which dates back to 1375 and was used as an instrument of colonization within Portugal throughout the fourteenth and fifteenth centuries.[54] The institution was used in the Azores, Madeira, Mozambique, and Brazil, where it has generated abundant historical research.[55] *Sesmarias* could be obtained through a petition to the Crown asking for land and justifying its use. They required cultivation and the payment of a tithe to the Church; failure to cultivate the land caused it to revert to the Crown. These conditions have been discussed as a way of tying the colonists to the land,[56] but they have also been understood as reflecting the importance of facticity for sustaining rights during the *ancien régime*.[57] Stressing the importance of local facticity, Maria Sarita Mota argues that the institution of the *sesmaria* was detached from its royal origins and was interpreted by Brazilian colonists as a warranty of *dominium* over both lands and enslaved people, functioning therefore as a political grant of lands that

49 Cabral 2016.
50 Barreto Xavier 2013.
51 Miranda 2014.
52 Subrahmanyam 2007, 1379.
53 Miranda 2014, 172.
54 Motta 2014, 16.
55 Alveal 2022; Beck Varela 2005; 2014; Porto 1977.
56 Pinto 2011.
57 Beck Varela 2005.

could entail private jurisdiction.[58] Access to land also occurred through the possession of uncultivated lands either within a *sesmaria* or on lands that had not been distributed.[59] Historians of Brazil have thus focused on the *sesmaria* and possession as diverging forms of accessing rights to land, often distinguishing them as legal and illegal forms, respectively. Recent studies, however, have shown that possession was also a legal form of acquiring rights to land.[60]

Among the more recent scholarship, there has also been a push towards understanding land regimes in Brazil under the idea of *propriedade partida* (divided property), which was taken from the early modern distinction between *dominium directum* and *dominium utile*. This idea indicates that land could have more than one owner, though the rights were not of the same kind.[61] José Vicente Serrão, who surveyed the vast scholarship on land in the Portuguese empire, argued that "[t]he only possible conclusion that we can deduct from all of this is that the transfer of property rights and other institutions from Europe to colonial contexts could take many forms and generate different outcomes."[62] Though the land tenure regimes in the Iberian overseas territories were evidently characterized by their diversity, the historiography has tended to reduce this diversity by tying it to the notion of property rights.

What Law? Reassessing Early Modern European Law

Under the influence of legal anthropology, legal historians have been insisting on the specific aspects of the exercise of power during the *ancien régime*, and many of those factors have to do with social relations. From this point of view, rather than a state of affairs, law expresses a correlation of forces, a social relation.[63] This historiography has shown that during medieval times, with the consolidation of the Catholic Church in Europe and the rediscovery of legal texts from the Roman Empire, a common methodology for determining the law came to be shared by European jurists. Through the manipulation and interpretation of two written bodies of law (*corpus iuris canonici* and *corpus iuris civilis*), and through the lenses of local practices, a shared legal culture for Europe could be defined as Christian, corporative, pluralistic, and traditional.[64] It consisted in a shared comprehension of the world and society as part of God's will that could not be modified. A core of norms inspired by religion was considered to be 'natural' and applicable to all subjects. While respecting this core represented by natural and divine laws, jurists would dispose of a wide range of norms that were considered valid.[65]

58 Mota 2012, 32.
59 Metcalf 1992, 51.
60 Dias Paes 2021.
61 Pedroza 2016; Freitas Macedo 2017.
62 Serrão 2014, 10.
63 Garriga 2020; Montesinos Llinares 2015, 64.
64 Duve / Herzog 2024.
65 Cabral 2019; Vallejo 2009.

Conflicts among different valid norms would be solved case by case, and depending on the circumstances, by holders of jurisdiction, following dialectical reasoning. The main result was that legal rules addressed specific cases and could not be arbitrarily separated from the circumstances of the case.[66] Since neither local corporations nor the king were vested with the power to modify fundamental norms by general statements, law was defined through a casuistic process.[67] Every conflict would be analysed according to its particular circumstances, including different levels of acts, amendments, acquired rights, particular privileges, and customs. The result was a permanent kaleidoscope of norms, defined according to the local dimension rather than by the higher instances of power. This is what some historians have characterized as the *localization* of law.[68]

In this context, jurisdiction should not only be understood as the power of judges and magistrates, but rather reflects a more general vision of political power. Jurisdiction was the name that designated the power of the king, but also the power of the representatives of even the smallest corporation – e.g. a municipal council or a guild – and the relation among them was not conceived as hierarchical but concurrent.[69] The holder of jurisdiction, as the head of the social body, was understood to exercise the aptitude of self-government that was inherent to every human community.[70] And insofar as the legitimacy of the exercise of jurisdictional power within each corporation arose from within itself, each sphere of jurisdiction was considered to have an autonomous – not delegated – origin.[71] Political power thus consisted in the power to ascertain the valid norm in each case and within the scope of each jurisdiction.

Law was thus pluralistic insofar as it related to the plurality of sources of normativity mentioned above, but also regarding the concurrent relations among jurisdictions. This concurrence was based on the conception of society as an aggregate of corporations vested with jurisdiction. The monarchies and their jurists would constantly argue that the king was entitled to create and remove jurisdictions, but corporations would frequently claim that their power to rule did not derive from the king but from natural law, understanding themselves as natural forms of human association. The tension between the two competing claims was never totally solved during the *ancien régime*, and the prevalence of one over the other in local conflicts would depend on pragmatic forces in each case. The conception of justice in this context, in any case, did not consist in making one position prevail over the other, but to 'give to each one his own'. This formula, known as *aequitas*, meant that a fair decision would be one that caused the least possible disturbance to the status quo – understood to reflect the divine order.[72] In this conception, law was predominantly a local affair: "The concept of law did not work yet as an exclusionary concept with

66 Masferrer et al. 2023, 224.
67 Tau Anzoátegui 1999.
68 Agüero 2016.
69 Vallejo 1991.
70 Grossi 2013, 11.
71 Vallejo 1991, 11.
72 Cortese 1964, 169–238; Vallejo 1992; Bastias Saavedra / Rodríguez Sánchez 2023.

regard to norms of different range and hierarchy that were a byproduct of an irreducible diversity of localized normative powers."[73]

The law-making capacities of political powers were thus subordinated to a transcendent order on the one hand, and to the jurisdictional structure of traditional society on the other, both acting as ontological premises that served as structural limitations to the 'centralization' of power.[74] The monarch could not dispose of the law at will, but could only act to sustain the natural order through justice or perfect it by grace.[75] Yet the power of the Crown was also limited by the jurisdictional structure of government which, although organized through relations of super- and subordination, precluded a unitary and hierarchical integration of political power.[76] This premise has been used to show how the increasing importance of monarchical power after the fifteenth century, rather than expanding the executive functions of the prince, produced a progressive specialization in the exercise of jurisdiction.[77] The consolidation of the early modern monarchies thus occurred through the development of a dual jurisdictional order: that of the king and his judge-administrators and that of the traditional corporative social structure.[78] As such, "the corporative society grows and develops alongside the modern monarchy, in a tight bond that will only be dissolved with the advent of the liberal State."[79] These features of the relation between law and political power in the Iberian monarchies were shared with other early modern monarchies and empires.[80]

Law and Empire as Normative Overload

This basic model of law and government accompanied the Portuguese and Castilian monarchies as they extended their rule to other parts of the Iberian Peninsula, as well as to Africa, Asia, and the Americas. The system of *Audiencias* and *Chancillerías*, developed in the fourteenth and fifteenth centuries to represent the person of the king and guarantee the juridical order of the kingdom, was consolidated and perfected in America and the Philippines from the sixteenth century onwards. Insofar as they stood in for the king – speaking with his voice and occupying his place in the definition of justice –, the *Audiencias* were fundamental in defining the configuration of the political space of the Crown. They were also the way in which the military power of the conquistadors was tempered through the civil power of the king's magistrates. However, neither the *Audiencias* nor the other offices established for the government of the Indies should be understood as executive or administrative arms of the metropolis, but rather as jurisdictional bodies: i.e. performing, at once and without clear distinctions between them, the functions of gov-

73 Agüero 2016, 108.
74 Garriga 2004, 8.
75 Hespanha 1993.
76 Vallejo 2009, 8.
77 Mannori 2007, 132.
78 Hespanha 1986, 55.
79 Agüero 2008, 36–37.
80 Härter 2015, 345–346.

ernment and justice. These magistrates and officers of the Crown, insofar as they enjoyed jurisdiction, were authorized by, and even protected against, royal orders, and thus acted at the same time as instruments of and obstacles to royal policy. The royal institutions of the Portuguese monarchy essentially functioned according to the same logic.[81]

The jurisdictional logic, however, was not only deployed by royal institutions, but was also replicated through the corporate structure of society, tied to the corporations that accompanied the expansion of the Iberian empires – the Church, the Inquisition, confraternities, religious orders, *cabildos* and *câmaras*, guilds, cities, provinces, etc. – and to the corporations that organized local rule. These corporations sometimes acquired explicit privileges granted by the monarch, such as the *forais*, but also developed their own local, unwritten norms based on longstanding practices and conventions. The principle underlying this was that every community was endowed with an inherent capacity for self-government. Importantly, neither the laws of the king nor those of other instances of general law-making – e.g. the Church – could supersede or contravene the law and the law-making capacities of these corporations. In this conception, the "centrality of law was translated, in fact, to the centrality of local normative powers, both formal or informal, of the uses of the land, of 'rooted' situations (*iura radicata*), in the attention to the particularities of the case."[82] Outside of the king's jurisdiction, relations with foreigners and foreign rulers, with potentates allied through *amistad* (friendship), and with enemies were also regulated by the *ius gentium*, creating different sets of norms that, though beyond the power of the monarch, were not foreign to the unitary framework of the juridical order of the *ancien régime*.

The law of empire, therefore, rather than creating the conditions for voluntary, central rule, supported and reinforced the dispersion of and limitations to law and political power. The localism and contextualization of law thus endowed the countless local situations of the empire with a political and juridical autonomy that precluded pervasive rule and determination from the metropolitan centre.

Therefore, in the case of the Iberian empires, if one can speak of the transfer of a metropolitan model to the colonies at all, the *ancien régime* logic of law and government of the peninsula was replicated under new conditions. The outcome of this process was not the transposition of European law to the non-European world, but a 'normative overload', as the needs of imperial government required the creation of new norms through adjustment to local forms of social and political reproduction. This normative overload was a consequence of the logic of norm production in the early modern world, in which new norms did not derogate older ones, thus leading to an ever-growing accumulation of normative information. And this information grew exponentially as the Iberian empires extended their rule. In each new place, kings enacted decrees and bestowed privileges; officials handed down rules; jurists, clerics, and theologians – not only in Salamanca and Rome, but also in Goa, Mexico City, Lima and Manila – drew on bodies of law, authorities, and classics to produce normative solutions for new situations; magistrates had to

81 Cabral et al. 2021.
82 Hespanha 2007, 57.

reach judgements; and cities, villages, and other territorial communities created or sustained their own norms and customs. Both before and after the fifteenth century, the existence of contradictory norms was the rule. The solution to navigating this normative complexity was simple: learning the facts inductively, respecting the particularities of the case, and aiming to sustain the interests of each party as they were understood to be – justice could only ever be local and particular, regardless of its place within the political structure of the empire.[83]

If we look at the *Estado da Índia*, the Portuguese empire in Asia, for example, we find that the Portuguese Crown rewarded its vassals through what was known as the *prazos*, which gave the holder fiscal and administrative rights over a village or a group of villages. The *prazo* was used where lands were already held, occupied, and cultivated by native villages, and was not intended to change who had the rights to live on and cultivate the land. In this sense, the *prazo* defined a relation between the Crown and a Portuguese vassal who was given rights to collect tributes, but not between the Crown and the holders of the land. Crucially, the decisions about who could live on and cultivate the land was left to the villages themselves, according to their own traditions and customs.[84] Since the *prazo* was used in northern India, Ceylon, and Mozambique, one can expect that these local arrangements varied widely from one region to the next. However, while scholarship has dedicated much attention to the institution of the *prazo* as such, we know very little about how exactly these villages organized the land and how these definitions were transformed by their interaction with the Portuguese empire.

We do, however, know a bit more about the Goan villages, the *ganvkarias*, which had other privileges and were not submitted to the *prazo*. All native lands in Goa were included within the village, and they consisted in a diverse arrangement of community and family lands that were organized by the *ganvpan*, a council of heads of families, and ruled by long-standing tradition. This tradition was not only based on village custom, but was also informed by Brahmanical treatises and Islamic law – as remnants of previous imperial rule –, especially in questions relevant to inheritance and land sales. Importantly, the *ganvpan* – the council – not only decided how lands were distributed, apportioned, and used within the village, but decided who could participate in village life by denying leases and sales of lands within the village to outsiders.[85]

In Spanish America and the Philippines, indigenous populations were organized into *pueblos*, which could be either the result of preexisting settlements or resettlements carried out by the Crown. The notion of *pueblo* provided an image of equivalent collective bodies that organized the affairs of the Indios integrated into the Spanish empire. However, what the notion of *pueblo* concealed were regionally and ethnically distinct forms of social organization with roots in the pre-Hispanic period. In New Spain, for example, the term *pueblo* was superimposed on different forms of social organization depending on the region, such as the *altepetl* in the Valley of Mexico or the *batabil* on the Yucatan Peninsula.

83 Bastias Saavedra 2022.
84 Rodrigues 2013; Newitt 1973.
85 Souza 1999, 2009.

These in turn were composed, respectively, of the *calpolli* and the *cahob*, extended families or kinship groups that determined the distribution of common and family lands among its members.[86] Access to land was reserved to heads of family through their membership in the broader kinship group.[87] These same characteristics were replicated from place to place, making the Spanish notion of *pueblo* a kind of receptacle which could be filled with a wide variety of ethnically and culturally diverse institutions.

Drawing on these examples, we see that the experience of law and empire was neither unilateral nor monolithic. The process of conquest and colonization implied different modalities of accessing the land and its resources, and the model of colonialism often implied leaving local communities to continue operating under their own traditions and institutions. The idea of normative overload is meant to convey this multiplicity of options and redirect historians' attention towards the institutional silences that appear when one focuses on the limited knowledge that we have about the ways in which these different lands were held.

Decentering the History of Property: Law and Land in the Iberian World

Deconstructing the Primacy of European Law

The IberLAND project seeks to re-synchronize the temporality of the history of private property in land from a global perspective. If the transformations in the relation between land and persons in the late eighteenth century and the gradual separation between public and private were tied to broader shifts in the relations between persons, nature, and things, then the diffusionist perspective (from Europe to the world) that has dominated the narrative of colonialism since the sixteenth century needs to be critically analyzed. This requires understanding that different land tenure arrangements across different parts of the world were part of a simultaneous and interconnected process of co-production of normative information, moving towards a truly non-Eurocentric history of normative production from a global perspective.

IberLAND thus takes a decidedly antagonistic stance to the methodological Eurocentrism that has often pervaded the study of law and colonialism. It also moves beyond legal pluralism,[88] postcolonial theories of law,[89] and decolonial thinking.[90] While this literature has provided a necessary critique of methodological Eurocentrism and pointed out alternative ways for reading law and legal change in our contemporary world, it tends to build its critique on overly fetishized versions of European law. Recent legal-historical research,[91] by contrast, has emphasized the persistence of European law's medieval roots

86 Lockhart 1993; Okoshi Harada 2018; Quezada 1993; Terraciano 2013.
87 Menegus 2015; Menegus / Aguirre Salvador 2005; Quezada 1993.
88 Benton / Ross 2013; Merry 1988; Tamanaha 2008.
89 Chakrabarty 2008; Randeria 2007.
90 Mignolo 2002; Quijano 2000.
91 Garriga 2004; Grossi 2010; Hespanha 2002; Vallejo 2009.

well into the eighteenth century, giving law (*ius*) a quasi-ontological quality capable of organizing not only human life, but also nature and the spiritual realm. Provincializing European law thus does not simply consist in acknowledging the importance of other experiences of law, but also means emphatically recognizing European law's pre-modern quality. By taking legal-historical research seriously, it may be possible to show how law, as we now think of it, was simultaneously and globally co-constructed in the process of generating normative statements in practical situations across the world.[92]

At the same time, IberLAND also moves beyond perspectives that try to understand the adaptation of European law to new contexts by highlighting the different normative traditions that played a role in the configuration of land relations. On the one hand, this means looking at the institutions and norms found in the vernacular law of the place, written or unwritten, that predate the arrival of the Iberian empires and are the result of previous colonial or migratory entanglements. These act as broader systems of normative reference that transcend the local communities. These vernacular systems will vary from region to region and, particularly in Asian cases, include the varying influence of Chinese, Islamic, and Hindu law[93], among others. On the other hand, it draws on the "silent institutions,"[94] i.e. local institutions characterized by rituals, reliance on elders and other local authorities, or references to non-human agencies, all of which are important for organizing relations inside and outside local communities. These are often 'silent' since they are not found in either doctrine or local ordinances, but recurrently appear in primary sources. Their importance lies in the fact that no legal interaction can be completed or have efficacy without them. These institutions are properly local, and they must be reconstructed inductively from primary sources and must be read alongside the categories of the *ius commune*, Castilian and Portuguese law, and other normative sources particular to the region.

In this sense, IberLAND seeks to provide a new, non-Eurocentric history of the development of land tenure from a global perspective by inductively reconstructing the categories that organized the relations between people and land in the Iberian world. If the narrative of property does not provide an accurate account of land tenure arrangements across the early modern Iberian world, then we must take a step back and ask certain basic questions: How did people live on the land? How did they distribute it? How did they organize the relations to the land both inside and outside the group? How did contemporaries describe their relationship to the land? Which norms governed these relationships? How were these norms affected by the imperial experience? How did these relations change over time?

92 See Duve 2016, 2017; Clavero 2005.

93 Understanding these as shorthand for internally complex systems and not as a unitary and systematic corpus of law.

94 Bastias Saavedra 2018b, 15.

Property and Land Relations

IberLAND seeks to avoid the anachronism generated by the understanding of property as either common or private. As we have discussed above, rather than the protagonists of imperial expansion, it has been historians who have reduced the multiplicity of landholding experiences in the Iberian world to a basic dichotomy between private and common property.[95] On the one hand, this has served as a useful narrative device to signal the cultural differences between European and native populations and highlight the transformation of native forms of land tenure through interactions with the colonizers. On the other hand, however, it has concealed the actual way land was used and appropriated by both Europeans and natives. Consequently, *both* Iberian *and* native forms of land tenure have become a black box. In all likelihood, all land relations in the early modern period were structured by forms of authority, kinship, and community relations that make the common/private divide unhelpful and difficult to maintain.

IberLAND focuses instead on the idea of land relations. This means looking for the sets of social relations between people and land as well as asking how people lived on the land, how it was used, and how relationships within groups and with other groups were organized. This approach removes the thorny conceptual problem of defining "property"[96] and the anachronistic bias it generates,[97] and has the potential to recapture the polysemic character of the relations between communities and land, integrating the broader social and normative meanings of land with narrower conceptions of ownership and tenure. The focus on land relations, however, does not preclude taking law seriously. On the contrary, land relations in the early modern period were structured through the interaction of different forms of normative regulation, be it a textual tradition (e.g. Islamic law, the *ius commune*) or consolidated social practices rooted in long-standing conventions.

To speak of law in the early modern Iberian world, it is necessary to understand how scholarly law interacted with local law. As we have seen, the jurists of the early modern period were involved in an ongoing effort to harmonize, in a rational and elegant fashion, the ever-growing normative information that was being produced across the world.[98] The use of categories of Roman law served this purpose, because it provided a flexible grammar that could be used to organize ever-changing real-life situations. While it may have appeared that local practices had been adjusted to the categories of the *ius commune*, what was happening was in fact quite different. The doctrinal categories superimposed onto certain local normative constellations actually served to conceal the differences and innovations that were taking place on the ground. But this, to some extent, was the function of doctrine: it had to create the appearance of order, harmony, and stability within a world that was riddled with variation and innovation.[99]

95 For a similar critique, see Candido 2022.
96 See e.g. Hann 1998.
97 Greer 2018; Grossi 1992; Bastias Saavedra 2024.
98 Hespanha 2013.
99 Bastias Saavedra 2018a, 329.

Legal historians have learned this through the "anthropological" study of the jurisdictional culture of early modern Europe developed since the 1970s in Italy, Spain, and Portugal,[100] and by moving towards studying "legal history in a global perspective."[101] The lesson that this historiography provides is that primary sources cannot be adequately interpreted if one works from *assumptions* of how law was structured in the early modern world. Without such presuppositions, primary sources acquire new dimensions, providing a way of studying local law as the central locus of normative production in the early modern Iberian world.[102] Approaching the documents in such a manner will provide IberLAND researchers with a point of entry into the normative structuring of land relations – looking beyond the veil of doctrinal categories to observe the vernacular institutions and practices on the ground. This project thus aligns with a new historiography that views local actors as participants in the production of normative claims.[103] But the project also seeks to reconstruct certain normative patterns that could better describe the relations between persons and land within the studied context and timeframe. Moving away from the concept of property will therefore not leave a conceptual void; instead, the focus on land relations provides a chance to reconstruct the categories that organized the relations between people, their land, and third parties.

A New Analytical Framework: Words, Bodies, and Spirits

IberLAND proposes a different analytical framework that allows us to rephrase the question of land and colonialism. The framework draws on different regions from the Iberian world and is intended to spur more nuanced ways of addressing basic research. The idea is to think of land relations by considering three dimensions: words, bodies, and spirits.[104] Research on land tenure in the Iberian world has traditionally focused on the different institutions that structured land relations during the process of overseas expansion. These are usually categories taken from the tradition of the *ius commune* (dominion, possession, emphyteusis, etc.) or from royal legislation that organized different kinds of relations to land.

The analytical framework of the project proposes, instead, moving beyond these categories to center on the **words** that were used to designate different relations between people and land. How were land relations named? What did these names designate? Were there uses in vernacular tongues? By way of example, these may include the words used to designate lands with different purposes, which in the Spanish context included *solares*, *chácaras*, *montes*, *ejidos*, *dehesas*, *potreros* etc. The Portuguese *câmaras* also had such lands, dedicated to the common usufruct of its members, consisting in *baldios*, *maninhos*, *matos*, *pastos comuns* etc. But these words also appear in vernacular languages, such as the

100 Clavero 1986; 1991; Grossi 2017; Hespanha 1989, 2002, 2015. An overview is provided in Garriga 2020.
101 Duve 2022; Duve / Herzog 2024.
102 Bastias Saavedra 2022.
103 Baber 2012; Herzog 2015; Candido 2022.
104 See Bastias Saavedra 2024.

Nahuatl *teopantlalli* (temple lands), *tlatocatlalli* (ruler's land), *tecpantlalli* (palace land), *pillalli* (noble's land), *teuctlalli* (lord's land), *calpollalli* (calpolli lands), and *callalli* (house land). The Mixtecs also used diverse classifications for lands destined for different uses, among others, the *ñuhu aniñe* (palace land), *ñuhu huahi* (house land), and *ñuhu chiyo* (patrimonial land).

We can think of these words as having not only a nominal, but also a normative character, since they did not simply designate how the lands were actually used, but also indicated what could and could not be done on and with those lands. On the one hand, one could tie this normative dimension to the idea of status, as reflecting the social role that linked the land to different entities, such as communal and other lands. In early modern juridical culture, this could be linked to the idea of utility (*utilitas*) as the way in which inanimate objects, in this case lands, served God by fulfilling their purpose in the order of Creation.[105] As such, rights and obligations could be connected to specific types of lands and, through them, bind their holders.

The words used to describe these different kinds of arrangements are condensations of normative information that operate with a certain degree of abstraction. However, since these categories were superimposed onto the social institutions that gave them their specific characteristics and regulated their functioning, the specific content of the relations between persons and land cannot be found in their conceptual content, but in the corporate **bodies**: the local social structures, hierarchies, and social positions that determined access to land. Seen from this vantage point, the norms that regulated access to land were not restricted to those of the Crown, but included a variety of normative sources that ranged from the domestic *oeconomia*, which regulated the life and economy of households and families, via the customs of towns and cities to the canon law, which regulated ecclesiastical lands.

The entails of the Iberian world – *mayorazgos* and *morgadios*, as well as *capellanías* and *capelas* – may serve as an example to highlight the dual regulation that operated between general regulations found in the laws of the kingdom and in doctrine, and the particular rules of the household.[106] On the one hand, entails were precisely defined institutions that generally determined the indivisibility and inalienability of the patrimony, thus subjecting patrimonial lands to a specific regime. On the other hand, these entails were intergenerational acts of regulating a specific family patrimony and transmitting rules of conduct that upheld the name and reputation of the household. At this second level, we find a wealth of normative information that is both regulated within and destined for the specific family group. The institutors of the entails had ample discretion in determining the rules binding the patrimony, by naming the goods that would belong to the entail and determining the lines of succession. In this way, all entails followed specific rules. While it was common that they were transmitted along male lines of primogeniture, female succession was accounted for under certain conditions. Institutors could introduce condi-

105 Bastias Saavedra and Rodríguez 2023.

106 Seminal studies on the *mayorazgo* in Spain and the *morgadio* in Portugal are Clavero 1989; Rosa 1995.

tions for succession, such as bearing the family name[107], or establishing the condition of marrying a "white man" for the succession of a daughter in the case of a *capela* instituted in 1562 in Cape Verde.[108] *Capellanías* and *capelas* often contained clauses that regulated the numbers of Holy Masses and amounts of charitable donations that had to be paid from the rents derived from the patrimony before the benefactors could receive any rents for their own households.[109] These rules and conditions were established in the wills or deeds that set up the entail; in this way they exerted a regulatory function that arose from the head of the household and founder of the entail. Understanding the distribution of lands by the Crown from this vantage point shows that the empire was built on a multilayered system of collective bodies that connected households, communities, and kingdom through a variety of relationships that were built up according to various normative orders and tied the organization of land to different degrees of regulation.

Finally, to words and bodies we can add a third dimension which ordered the relations between persons and land: that of the **spirits**. This dimension deals with the norms that purportedly originate in either supernatural or non-human entities and regulate what can and cannot be done on and with certain lands. This often relates to the qualities attributed to certain lands with important ritual or social functions. On the ritual side, these are lands that often have a 'sacred' quality and are the sites of temples, cemeteries, and all kinds of ceremonies. On the social side, this refers to the ways in which families and communities connect ancestors, lineages, and future generations to the same lands. The idea that people belong to the land – and not the other way around – can be understood as part of this conception. Additionally, one can speak of how 'rights' attributed to supernatural or non-human entities affected the ways in which persons related to land. While this dimension is often ascribed to indigenous populations, it is possible to find these ways of regulation in Europe as well as in Africa, Asia, and the Americas.

Examples of the extension of 'land rights' to animals can be found in early modern Europe if we recall the case of Windsor Forest in E. P. Thompson's *Whigs and Hunters*.[110] Thompson describes how a complex system of laws and rules organized the forest dwellers' economy and subordinated what they could do on their lands to the needs of the deer's habits and movements for feeding and fawning. Cows, sheep, and horses could not be kept there since they competed with the deer for the grass and arable lands could not be fenced to impede the deer from passing to their feeding-grounds. This case, for our purposes, illustrates that the hierarchies of rights to the land could be constructed, within limits, in favor of non-humans. In this way, the forest dwellers' use of and access to their land and other resources were limited with regard to the needs of the deer. The

107 In an example of the constitution of a *mayorazgo* in Jaén, Spain, one condition "established that the successors should carry the coat of arms and last names of Benavides or Valencia, or lose the *mayorazgo*." Given in Porres Arboleda 1989, 68.

108 Arquivo Nacional de Cabo Verde, Tombeamento da Capela do Tanque da Nora, Vinculos do Concelho da Praia. We thank Edson Brito for sharing this document.

109 Luque Alcaide 2022.

110 Thompson 2013, 29.

rights attached to things (lands, houses), animals, and souls – as non-human entities – in the early modern European tradition align with the ways in which a spiritual realm had normative consequences for the human realm in other world regions – even if these appealed to other cosmological hierarchies. Among the Nahua of Mexico, for example, each *calpolli* viewed their patron saints – as successors to their gods – as residual owners of the land.[111] In the lower Gambia region, certain spaces were considered to belong to and be occupied by spirits, who inhabited large trees, rocks, swamps, or bodies of water, and were thus not available for human use.[112] Settling on lands owned by the spirits carried risks, and humans who sought to occupy these lands required spiritual powers to claim them.

In sum, this analytical framework strives to remove the impulse of stowing the multiplicity of normative experiences involved in land relations into the fixed categories of public/private or individual/common. Instead, it seeks to make the historian aware of these nuances when analysing primary sources and make sense of the different loci of normative regulation.

Case Studies

Since institutions can only be observed in practice, this conceptual and analytical program can only be applied by looking at specific cases and sources. IberLAND focuses on six case studies – Goa, Mexico, Cape Verde, Spain, Brazil, and the Philippines – between 1510 and 1850.[113] Whereas the former is the date when lands acquired relevance after the Portuguese conquest of Goa, the latter proposes a tentative terminal point at which most regions abandoned the system of local tenurial practice and adopted systems of private property, either through codification or otherwise.

The cases are intended to provide archival samples where the analytical framework can be applied in order to understand the multiplicity of institutions, the sources of law, and the normative expectations that defined land relations in different places of the Iberian world across the temporal frame of the project. Accordingly, the cases are not intended to provide comprehensive histories of land tenure in the respective regions, nor are they purported to be representative cases for broader developments in land law. The analysis of case studies is complemented by a comprehensive bibliographical survey as well as general and specific reviews of the literature on land tenure in the Iberian world. Taken together, this comprehensive review of the literature and the case studies should provide a better picture of how land relations were affected by the experience of empire and how and when private property began to gain meaning in the Iberian world.

The cases have been selected by mainly taking into consideration the accessibility of sources, and they are organized in three comparative units. The specific case studies and

111 Lockhart 1993.

112 Sarr 2016, 93.

113 Overviews of the case studies and contact information can be found at: https://iberland.eu/case-studies/

their orientation are decided by each researcher, considering the primary sources they have access to.

The first comparative unit consists of case studies on Goa and Mexico between 1510 and 1650. The unit will look at how conquest and colonization produced new land tenure regimes and should provide insights into how different forms of regulation arose between and within the Portuguese and Spanish empires. Both cases also permit some comparison between the pre-Iberian and the colonial period. The Goan case, for example, studies the pre-Portuguese system of *ganvkarias* and its persistence under Portuguese rule using village records (*Livros de Comunidade*), which were produced by the native communities and their scribes. The Mexican case focuses on the Mixtecs and the competing claims to the usage of commons (*montes, pastos*, and *aguas*) and their resources by indigenous *pueblos*, the Church, and the royal authorities. Using judicial records, the case study analyzes the ways in which indigenous authorities understood the scope and limits of their land rights.

The second unit consists of case studies on Cape Verde and Spain between 1600 and 1750. The unit will study how land relations shifted across this period in two regions that were entirely regulated by Iberian laws. Since Cape Verde was uninhabited prior to Portuguese colonization, it is a clear institutional transplant from Portugal, but offers an interesting window on how the institutions acquired new meanings and uses. The case study focuses on the development of entails (*morgadios* and *capelas*) during the seventeenth and eighteenth centuries, and it investigates how they were transformed from an institution of the nobility to a widespread institutional arrangement. The case study on Cape Verde also deals with the relations of slavery within the entails and examines how slaves themselves used these institutions to secure their landholdings. The Spanish case study deals with the border regions of Navarre and the Basque Country and analyzes the role which jurisdiction played in securing access to common lands (*montes*). It focuses on the relationships between cities and villages and explores how their rights to common hills and pasture lands were negotiated and regulated throughout the seventeenth century.[114]

Finally, the third unit consists of case studies on Brazil and the Philippines between 1750 and 1850. The unit focuses on the critical period that marks the rise of private law and the consolidation of the regime of private property. The suggested regions did not undergo republican revolutions in the period of study; therefore they provide instructive cases for exploring if and how notions of private property began to gain ascendancy even in places where a revolutionary political background was lacking. The Brazilian case focuses on how servitudes (*servidumbres*), i.e. the various encumbrances and obligations that lands and their owners had with respect to others, were created through customs and practices surrounding the cultivation of sugar cane in the Northern Captaincies. The case of the Philippines looks at different kinds of institutions that served to rearrange access to land in local contexts and explores their underlying norms and principles. By investigating the pawning of land as an alternative to sales, the occupation of wilderness

114 Freitas Macedo 2023.

as a means to create claims to land ownership, as well as the creation of *pueblos* and their corresponding lands during the eighteenth and nineteenth century, the case study aims to show that local native practices persisted even after two centuries of colonial rule and proved resilient after the colonial policies of the nineteenth century.

Conclusions

Despite their incommensurable particularities, the regions that came under the influence of the crowns of Portugal and Spain were asymmetrically connected parts of a broad network of communication that cannot be restricted to *ad hoc* regional divisions. If the transformations of the relation between land and people in the late eighteenth century and the gradual separation between public and private were tied to broader shifts in the relations between persons, nature, and things, then the diffusionist perspective – from Europe to the world – that has dominated the narrative of colonialism since the sixteenth century needs to be critically analysed and revised.

There are good reasons for pursuing this critical inquiry by studying the Iberian world. First, the Iberian imperial expansions initiated and drove the process of European expansion until at least the mid-seventeenth century, thus setting the course for the rise of other global empires.[115] Second, the scope and general characteristics of Iberian imperial expansion make it a good test case for observing how highly disparate world regions and populations reorganized and adapted their landholding arrangements under the influence of colonialism, especially considering the need for native knowledge, structures, and workforce. Finally, while land has been the subject of abundant supra-regional analyses within the context of British imperial expansion,[116] similar studies for the Iberian world are mostly lacking, though interest in shared and interconnected perspectives has recently been growing among historians of Latin-America.[117] While there have been attempts to develop such perspectives for the Portuguese empire,[118] the Spanish context has only received limited attention for the nineteenth and twentieth centuries.[119] Generally speaking, interest in an overarching framework, which is an emerging topic of Latin American history, is less pronounced in the case of African and Indian territories colonized by Portugal and Spain. The problem with these research gaps is that the histories of vast areas of the world, which were once under the influence of the Iberian empires, are often seen through the lenses of British imperialism.

Overall, the IberLAND project seeks to highlight the complexity of land tenure arrangements in the Iberian world. By examining the interplay between European legal concepts, local customs, and indigenous practices, the research agenda provides a com-

115 Burbank / Cooper 2011, 120.
116 Banner 2007; Chaudry 2018; Fitzmaurice 2014; Ford 2010; Hickford 2011; MacMillan 2009; Weaver 2003.
117 Luna 2021; Mota / Secreto / Christillino 2023.
118 Motta / Serrão / Machado 2013; Serrão et al. 2014.
119 Barcos/ Lanteri / Marino 2017; Garavaglia / Gautreau 2011.

prehensive understanding of how land and law were negotiated in colonial contexts. This multifaceted approach challenges simplistic notions of colonial imposition and reveals a rich tapestry of legal and social interactions that defined land tenure in the early modern Iberian empires. Through this lens, we may be able to gain a deeper appreciation of the pluralistic and dynamic nature of historical landholding and normative systems, thus contributing to a more nuanced understanding of the ways in which our contemporary world was historically constructed.

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