CHAPTER 1

Beyond Private and Common

Ownership Regimes in the Iberian World (*1500–1800*)

Manuel Bastias Saavedra

1 Introduction

Land has been at the centre of a global and centuries-old struggle between habitation and resource extraction. Arguably since the beginning of the Spanish and Portuguese imperial expansions in the mid-15th century, defining how land could be used and who could use it has involved and connected diverse peoples and communities across Africa, Asia, Europe and the Americas. The enduring importance of this issue has been brought back into focus by contemporary land grabs, which have seen almost 227 million hectares of land change hands between 2001 and 2011.[1] Most of these land transfers have involved the dispossession and displacement of countless local communities in favour of international corporations dedicated to large-scale farming, forestry, and mining. These conflicts have not only highlighted the importance of competing rights to land, but also the normative value tied to the uses and meanings given to land by different groups. Thus, questions about who has rights to land and how competing interests to land have been reconciled have a long and globally interconnected history, informed by the legacy of empires, nation-state building, and the more recent development of a transnational order.

Though the legacy of empire has connected the regulation of land across different world regions through complex networks of communication since at least as early as the mid-16th century, historical research has tended to view this problem through exclusively national or regional lenses. This has led to the existence of two contradictory narratives for the historical development of private property in land. On the one hand, scholarship has shown that the paradigm of private property in Europe only began to gain ascendancy after the French revolution in the late 18th century.[2] On the other hand, the scholar-

1 Oxfam, "Land and Power".

2 Among others, Beck Varela, *Das sesmarias à propriedade moderna*; Blaufarb, *The great demarcation*; Congost, *Tierras, Leyes, Historia*; Clavero, "Propiedades y propiedad, 1789"; Grossi, *Il Dominio e le Cose*; Grossi and López y López, *Propiedad*.

ship on the Iberian territories in Asia, Africa, and the Americas has argued that the paradigm of private property was introduced by European colonisers in the 16th century.[3] More than just reflecting developments in land law, this discrepancy of almost 300 years is the result of a shortcut taken by historians eager to emphasise the cultural distance between colonisers and colonised. Since colonisation was a violent process that involved dispossession of land, the heart of the problem is presented as an issue of fundamentally different conceptions of property: common and private. However well intended, this narrative fails to consider that until the late 18th century land tenure in Europe was not characterised by private property. Moreover, this narrative has not been able to provide a historically accurate account of the different land tenure regimes that resulted from colonisation in the early modern world. Consequences of this still exist today, ultimately shaping the way legal, economic, and political conflicts between habitation and resource extraction are regulated.[4]

At the root of these narratives is a colonial image of the world based on the assumption of a temporal asymmetry that distinguished Europe's experience from those of other world regions: i.e., the idea that all other world regions were developmentally behind Europe. The main contours of this idea can be traced at least as far back as John Locke, who, in his *Second Treatise of Government*, equated the situation in America with the remote past of the world: while England was occupied during the 17th century with the higher problems of civil society and government, American peoples still lived in a state of nature in which "'God had given the earth to the children of men', given to mankind in common".[5] According to Locke, the difference between one and the other could be reduced to the difference between how much land was appropriated and how much had remained in the common. For him, only the English cultivation, enclosure, and improvement of the land could generate property rights.

3 We see this idea represented in different regional historiographies. See, among others, Cushner, *Landed Estates in the Colonial Philippines*; Góngora, *El Estado en el Derecho Indiano*; Graubart, "Shifting landscapes"; Kellogg, *Law and the Transformation of Aztec Culture*; Lynch Jr., "Land Rights, Land Laws, and Land Usurpation"; Mariluz Urquijo, *El Regimen de la Tierra en el Derecho Indiano*; Mariluz Urquijo, "La propiedad en el derecho indiano"; Míguez Núñez, *Terra Di Scontri*; Ots Capdequí, *El régimen de la tierra en hispanoamérica*; Owensby, *Empire of Law and Indian Justice in Colonial Mexico*; Parise, *Ownership Paradigms in American Civil Law Jurisdictions*; Phelan, *The Hispanization of the Philippines*. For a critical overview of the historiography of Spanish America, see: Bastias Saavedra, "The Normativity of Possession".

4 This narrative has not only pervaded the study of Iberian colonialism but has also gained ascendancy in the history of international law. For example, see Koskenniemi, *To the Uttermost Parts of the Earth*.

5 Locke, *Two treatises of government*, 129.

He argued that since Amerindians did not appropriate the common through industriousness and improvement, and rather let the land lay to waste, they could not claim exclusive rights and hence lived as the descendants of Adam had in a distant past: "Thus, in the beginning, all the world was America".[6]

Of course, the fact that this was a theoretical point has not reduced the impact of this idea. In the early 20th century, Caetano Gonçalves, member of the Portuguese Conselho Colonial, in a 1926 article on lands in the Portuguese overseas territories, argued that: "It is well known that among primitive peoples there is no idea of the individual appropriation of land. The way in which such peoples characterise the possession of land is that of agrarian collectivism."[7] Perhaps through sheer repetition, this temporalisation of European and colonial experience has become a pervasive common-sense notion that has even found credence among contemporary historians. Jürgen Osterhammel, for example, when speaking of the expansion towards the American West in his book *The Transformation of the World*, though recognising its simplistic quality, nevertheless believes it useful to stick to the formula: "that European concepts are individualist and exchange related whereas Indian ones are collectivist and use related."[8] And even more recent historical and anthropological research, that argues that indigenous peoples in Africa, Asia, and the Americas did, in fact, possess notions of private property *before* the arrival of the Europeans,[9] remains nonetheless tied to the Lockean premise that access to land in the early modern period could be reduced to a basic dichotomy of private and common property.

This narrative device has, thus, been used by both proponents and detractors of the colonial enterprise to emphasise the cultural distance between Europeans and non-Europeans, presenting the problem, as mentioned, as one of fundamentally different conceptions of property. The problem with this narrative, however, is not that private property is an inadequate category for describing how communities in Africa, Asia and America organised their relations to land during the early modern period; the problem is that, until the 19th century, the category of private property was a fundamentally inadequate way of describing *European* means of organising land relations. Until the late 18th

6 Locke, *Two treatises of government*, 129.

7 Gonçalves, "O regime das terras e as reservas indígenas na colonização portuguesa", 26. All translations in this Chapter are mine.

8 Osterhammel, *The Transformation of the World*, 145.

9 Alan Barnard and James Woodburn, for example, have stated, "Property rights, arguably, are at the foundation of hunter-gatherer society." Emphasis in the original. Quoted in Greer, *Property and dispossession*, p. 64. See also, Greer's discussion on the "anthropology of the hunting grounds", 55–64.

century, land tenure in Europe was organised through different forms of reciprocal obligations between kings and subjects and lords and tenants, as well as being tied to cities and towns, kinship and marriage and various forms of communal usage or ownership. There was, in short, no distinctly *European* manner of organising the relation to the land other than that which functioned within the normative models of traditional society, which did not allow for a clear-cut distinction between public and private law, while usage and ownership were not clearly distinguishable in practice.[10]

This Chapter proposes an analytical framework that goes beyond a narrow focus on 'property' and the private/common dichotomy, to better reflect on the ways in which early modern society organised the relations between people and land. The analytical framework is intended to provide 'lenses' that help historians and legal historians to read the sources in a different light. Instead of focusing on our contemporary conceptions of property and trying to fit early modern notions into distinctions that make sense to us as contemporary observers, the approach suggested here organises the distinctions of the time, as reflected in the sources, into three levels of analysis: the words, the bodies and the spirits. This means focusing on how different institutions or lands are *named* in the sources and highlighting both their place in the imperial framework and the local specificity, as well as the social meanings of these arrangements; highlighting the corporate structure, hierarchies and social positions that determined access to land; and, finally, taking seriously the different spiritual and non-human agencies that were considered relevant to the ways in which different populations could inhabit or use the land.

Such a framework shifts from a culturalist to a functional approach and, therefore, is not based on presumed cultural differences but is rather inductively reconstructed by looking at different institutional practices across a wide range of cases from the Iberian world. In this sense, both European and non-European ways of organising access to land fit into this framework. This kind of approach allows comparison across regions, by looking into the ways in which the question of division and distribution of land was solved through different kinds of institutional mechanisms. This means that the European experience

10 Among others, see, Antoine, "Common land use in the Coutume de Bretagne from the fifteenth to the eighteenth centuries"; Casey, *Family and Community in Early Modern Spain*; Congost, *Tierras, Leyes, Historia*; Dios *et. al.*, *Historia de la propiedad en España*; Goody, Thirsk and Thompson, *Family and Inheritance*; Grossi, *Il Dominio e le Cose*; Grossi, *Un altro modo di possedere*; Neeson, *Commoners*; Neto, *Terra e Conflito*; Robisheaux, *Rural society and the search for order in early modern Germany*; Sabean, *Property, production, and family in Neckarhausen*; Thompson, *Customs in Common*.

should be *provincialised* both by explicitly acknowledging the importance of local African, American, and Asian tenurial systems in the imperial order and by emphatically recognising the pre-modern quality of European modes of tenure.[11] This approach has the potential to push against the temporalisation and the colonial image of the world that have long pervaded the study of land tenure in non-European contexts. Therefore, rather than taking the Lockean myth of property formation and its prescribed categories as a point of departure, this analytical framework strives to recapture the *unfamiliarity* of the relations between people and land in the early modern period—regardless of whether looking at Europe or elsewhere.

2 Which Law? Reassessing the Idea of Law

The implicit or explicit concept of law held by the historian plays a fundamental role in how historical developments are described. The 'narratives of property' discussed in the previous section are a good reflection of this phenomenon. Behind these narratives is a formalistic and legalistic concept in which law is understood as a fixed entity that arises from the legislator's will and can be imposed on, or 'applied' to, different social circumstances. 'Property', within this notion, has atemporal, clearly defined and recognisable contours—often accompanied by the adjectives absolute, individual, private and, even, perfect—and a clearly defined origin—Europe—and, more precisely, a long conceptual tradition dating back to classic Roman law. The opposite side of this notion is the also atemporal notion of 'common property' which encompasses all kinds of (imperfect) experiences that do not fit in with the supposed Roman tradition. The idea of property as well as the notions of private and common are charged with assumptions about law that, as stated above, reflect neither the European nor the colonial experience and, essentially, construct a *black box* that impedes studying the actual institutions as they existed in their local contexts.

Recent legal-historical research has provided a stark re-evaluation of the concept of law; one that helps us move away from atemporal and formalistic conceptions. This reassessment is based on a research approach that does not begin with a predetermined concept of law, instead viewing it as socially rooted and therefore understanding it as subject to both local circumstances and historical change. Carlos Garriga has synthesised the essence of this approach:

11 Bastias Saavedra, "The Normativity of Possession".

"the critical historiography [of law] has always taken seriously the need to define law through its history, without any kind of conceptual apriorism."[12] Defining law through its history signals a predisposition with which the historian approaches his sources, centred on "careful observation, a focus on descriptions, interpretative humility, [and] keeping our own assumptions in check."[13] Law, in this conception, is thus *always* and *only* what is understood as law by the historical actors themselves, and thus cannot be presumed by the historian while also requiring historical reconstruction.[14] This 'emic' perspective pushes against overly relying on essentialist and universalistic concepts of law that focus on its coerciveness, its official quality, its focus on 'justice', and considers it a specific kind of normativity that can be distinguished, a priori, from moral, religious and other kinds of normativity. The socially rooted conception of law ultimately abandons the idea of a radical separation of legal and other forms of regulation. Thomas Duve has sought to give this conception a clearer conceptual and methodological focus through the idea of multi-normativity which should, at once, de-essentialise the category of law and signal an openness to studying law as a complex repository of norms, including their underlying principles and assumptions as well as the norms that are involved in the production of norms.[15]

Following this approach, the idea of law of the European *ancien régime* has been reconstructed in the past four decades by historians who have tried to move away from legalist and statist conceptions of contemporary law to rediscover the alterity and peculiar anthropology of early modern European law.[16] Drawing on the ways in which law was described by early modern jurists, this historiography—inaugurated in the 1970s and 1980s by Spanish, Portuguese, and Italian legal historians—has revealed that law had a deeply religious foundation, giving it a transcendent and ontological role in medieval and early modern European society.[17] Law was perceived as a pervasive presence that preceded human existence: the biblical God created order from chaos and gave a place to everything that was in the world, and thus humans, animals, and things, and the relations between and among them, were governed in sub-

12 Garriga, "¿De qué hablamos los historiadores del derecho cuando hablamos de derecho?", 9.

13 Hespanha, "Histórias do direito".

14 Garriga, "¿De qué hablamos los historiadores del derecho cuando hablamos de derecho?", 16.

15 Duve, "Was ist ›Multinormativität‹?—Einführende Bemerkungen", 93.

16 Clavero, *Antidora*; Hespanha, *La Gracia del Derecho*; Hespanha, "Early Modern Law and the Anthropological Imagination of Old European Culture".

17 Grossi, *El orden jurídico medieval*.

stance by the same rules. Human law was considered part of natural law, and both were thought to derive from divine law, which is why much of human life was understood as participating and fulfilling specific functions in a natural order of things. The notion of status (*estado*) was central to this society and alluded to the place that both humans and things occupied within the order of Creation and the mutual relations and dependencies thereby established.[18] In this sense, because the holder of rights was not the human individual but the status (*estados*), humans, things, and supernatural entities all enjoyed (unequal) rights and obligations according to their position within the larger totality.[19]

Since law was considered to precede human intervention, the generation of norms was not restricted to political rulers, and explicitly formulated laws were not the only norms that composed the corpus of law. Human law was understood to be spontaneously produced through social life; longstanding traditions, conventions, habits and other social norms were understood to derive their validity from the mere fact that they were followed. Practices, social mores and the status quo—as a prevailing factual and, therefore, normative order—were, in and of themselves, considered to have a deep juridical meaning undergirded by their quality of having ultimately derived from divine creation. Explicitly formulated norms were thus not imposed on social reality but derived from it. Jesús Vallejo has elegantly shown how this relation was constructed in early modern doctrine through the distinction between *rudis aequitas* and *aequitas constituta*:

> It was understood that whoever had the power to make laws intervened as an actor in a process of transformation. *Aequitas*, a pre-existent and objective reality available to the legislator, was the raw material from which laws were made. The process of transformation consisted in converting this pre-existent and objective reality, which the legislator could not freely dispose of, into concrete precepts. In this process of transformation, from a *rudis aequitas*—undefined but not for this reason non-existent—we obtain an *aequitas constituta*—a juridical norm, defined and ready to be applied to produce certain outcomes. This *aequitas constituta* reflects the *rudis aequitas* and, as such, cannot contradict it. What the former does with respect to the latter is no more than express it in concrete terms, delimit it, declare it, make it visible.[20]

18 Clavero, *Tantas Personas como Estados*.

19 Hespanha, *Imbecillitas*.

20 Vallejo, "El cáliz de plata", 8.

The distinction between defined and undefined norms did not necessarily mean that there was a substantive difference between them: both kinds of norms had equal expression as law, regardless of whether they were written and explicitly stated or not. Vallejo further indicates that the difference between customs and laws was also one of form, not substance, since even laws were considered to derive from a collective will and hence have a customary origin.[21] Early modern European law was thus a complex repository of both particular and general norms that not only included written laws, edicts, statutes, and ordinances, but also encompassed a wide range of habits, conventions, customs, values, and moral instructions. Due to these features, the *ancien régime* representation of law was essentially pluralistic.

Interpretation (*interpretatio*) was the basic way of transforming the undefined order into explicit norms and juridical and theological opinions. Since all these norms were always concurrently valid—and there were no strict hierarchies between the different orders of norms—rulers, magistrates, officeholders, theologians, and jurists relied on this interpretative capacity for enacting new norms, adjudicating conflicts and finding solutions to juridical and moral problems. Though the hermeneutical capacity of political authorities and scholars was not substantively different, the binding force of the opinions of scholars was only authoritative and persuasive, while rulers, magistrates and officeholders were vested with *iurisdictio*, giving them the power to pass judgement and enact binding norms, and sanction their transgression. *Iurisdictio* endowed its holder with judicial and legislative powers and, since it was bestowed upon the head of the community or holders of public office, it was the basis of and inseparable from political power.

The jurisdictional capacity to enact norms introduces an additional layer of complexity for the historian because law-making capacities in early modern Europe were not restricted to the monarch and his functionaries but were widely distributed across all kinds of communities and corporations. This was tied to the *ancien régime's* corporative image of society. Unlike our contemporary representation of society centred on the individual, early modern society was centred on the idea of the 'body' (*corpora*), as a collective entity, endowed with its own specific ends and functions, and self-organised to achieve the fulfilment of those aims. Society was thus seen as composed of an irreducible multiplicity of collective bodies, each endowed with autonomy and the capacity for self-government, and internally structured by hierarchies and inequalities. Autonomy and self-government meant that each of these *corpora* was naturally

21 Vallejo, "El cáliz de plata".

endowed with *iurisdictio*. In the metaphor of the body, jurisdiction occupied the place of the soul: "just as living beings are governed by a soul, the community has its jurisdiction".[22]

These features of early modern European law, however, does not mean that the sovereign lacked power. Instead, it signals that power was exerted through mechanisms that differ from the contemporary image of an executive state, armed with an administrative apparatus and executing specific policies. The monarch's power, instead, was linked to the notion of *grace*—a concept that is especially relevant to our subsequent discussion. As we have seen, law had an essentially conservative function, seeking to restore peace and harmony, and was not meant to produce transformations in existing states of affairs. The correspondence of the order of things to a divine origin made law and the legislative function look backwards to sustain, and not forwards to modify, existing situations. The monarch, however, was endowed with an extraordinary prerogative—exclusive to popes and kings as God's vicars on earth—of altering the established order through a temporal grace that imitated the heavenly Grace of God. António Manuel Hespanha enumerates the interventions kings could enact through grace as: the capacity to create new norms and revoke existing ones; the capacity to render laws ineffective in specific cases; the capacity to modify the nature of human things ("e.g., emancipating minors, legitimating bastard children, conceding nobility to plebeians, pardoning convictions");[23] and the capacity to modify the 'own' of each through privileges and rewards (*mercedes*).[24] Grace was thus a manner of ordering that—through its capacity to alter the existing order—was essentially distinct from justice.

The socially rooted conception of law of this historiography, of course, has had consequences for writing the history of empires and colonialism, especially in the context of Spanish and Portuguese imperialism from the late 15th century onward, and has generated a fruitful historiographical discussion about how to reinterpret the legal experience in colonial contexts.[25] This reappraisal has questioned the centrality of the empire and royal legislation and high

22 Agüero, "Las categorías básicas de la cultura jurisdiccional", 35.

23 Hespanha, "Porque é que existe e em que é que consiste um direito colonial brasileiro", 71.

24 Hespanha, "Porque é que existe e em que é que consiste um direito colonial brasileiro", 71.

25 Among others, see Duve and Danwerth, *Knowledge of the pragmatici*; Duve, Egío and Birr, *The School of Salamanca*; Hespanha, "Depois do Leviathan"; Hespanha, "Uncommon laws"; Garriga, "¿Cómo escribir una historia "descolonizada" del derecho en América Latina?" For a historiographical discussion see, Bastias Saavedra, "Decentering Law and Empire".

lighted the many ways in which law could operate according to the jurisdictional logic of the *ancien régime*. Power and law-making capacities were thus not only deployed by royal institutions, but were also distributed through the corporate structure of society, tied to the corporations that accompanied the expansion of the Iberian empires—the Church, the Inquisition, brotherhoods, religious orders, *cabildos* and *câmaras*, guilds, cities, provinces, etc.—and to the Native and indigenous corporations that organised local rule—at family, community, or city level, respectively.[26]

Therefore, instead of the transference of a metropolitan model to the colonies, the *ancien régime* logic of law and government of the Peninsula was replicated under new conditions. There was thus not a transposition of European law to the non-European world but rather a 'normative overload', because of the logic of norm-production in the early modern world—in which new norms were created at different levels and did not derogate old ones—which led to an ever-growing accumulation of normative information. Norms accumulated 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 reach judgements; and cities, villages and other territorial communities created or sustained their own norms and customs. The critical historiography of law has thus shown that the extension of empire, rather than creating the conditions for voluntary, central rule by the metropolis, supported and reinforced the dispersion of and limitations on law and political power. The localism and contextualisation of the (imperial) conception of law endowed the countless local situations of the empire with a political and juridical autonomy that precluded a pervasive rule and determination from the metropolitan centre. 'Law' was therefore not understood as a stable and objective entity or a concise body of norms that moved across space and superseded other normativities—it was not a 'European conception' that replaced a non-European one. Law was something that happened locally and was shaped not only in the process of conflict resolution, but also in the everyday arrangements of different classes of communities. The consequences of this shift of perspective for ownership and land tenure is that it requires focusing on local cases, revisiting our primary

26 For examples, see de la Puente Luna (Chapter 4), Martín Gabaldón (Chapter 5), Jurado (Chapter 6) in this volume. For how this worked in the European context, see Ena Sanjuán (Chapter 7) in this volume.

sources, changing our analytical frameworks and decentring history by drawing more consciously on the normative representations of different communities and actors.[27]

3 The Lenses: Ownership Regimes

Moving away from traditional narratives towards more complex, local, and decentred representations can certainly entail the possibility of getting lost in endless case studies, where eventually the conclusion is 'everything, everywhere was different'. The proponents of the private/common dichotomy argue that sustaining such distinctions is important due to the supposed comparability that it provides. However, the premises that sustain this dichotomy do not really provide units of comparison but merely allow the classification of 'perfect' and 'imperfect' modes of tenure according to certain abstract standards provided by the theory or categories of property at hand. As we have discussed, in one way or another, all forms of landholding in the early modern world had a collective quality with no clear way of separating overlapping interests and rights claimed over the same lands. Thus, to classify these landholdings as common or private does not really say much one way or another. Comparison, however, remains central to avoiding the inevitable particularisation of each local experience.

The notion of the ownership regime serves this comparative purpose by proposing a way of observing how the relation between people and land was normatively organised. It proposes *the observation of the arrangements of practices, rules, norms and principles and the contingent conditions that were relevant to the construction, mediation and enforcement of expectations that defined the relations between persons and land in specific social and cultural contexts*.[28] Therefore, unlike the notion of property and other similar categories, the idea of the ownership regime is more an observational perspective for historical research than a concept that implies the existence of a specific arrangement. It thus helps study the relation between people and land by taking into account a broader array of norms than merely the legal ones and focusing not only on texts or ideas, but also on practices and tacit or implicit expectations. Moving from a focus on law to a focus on historical regimes of normativity implies

27 For further examples on Iberian Asia, see Bastias Saavedra, *Norms beyond Empire*.

28 Regime Theory Working Group, "Historical Regimes of Normativity", Part 1–4. Available at: https://legalhistoryinsights.com/historical-regimes-of-normativity-part-1/. Last seen on 8.7.2024.

understanding law and juridical normativity as one component of a complex and dynamic ensemble of practices, institutions, and social, religious, and cultural norms that produced historically efficient and consolidated normative arrangements.[29]

This Chapter proposes taking this highly abstract notion and operationalising it for the study of ownership regimes in the early modern (Iberian) world. Through a survey of the literature from disparate places in Africa, America, Asia, and Europe, the Chapter highlights three orders of norms that affected the relations between people and land: the words, the bodies, and the spirits. These refer to (4) the names given to specific institutions, and both the relations they created and the practices they involved; (5) the collective bodies that, as social institutions, determined different levels of access to lands; and (6) the supernatural and non-human agencies, and the ways in which they shaped and regulated access to lands and resources. The Chapter, however, does not explicitly address the 'deep grammars' and underlying principles that structured and gave meaning to these different orders of norms, but they are implied and should be carefully scrutinised.[30] Taking the above points together, the ownership regimes perspective goes far beyond the strictly proprietary point of view precisely by pointing to the fact that land relations were polysemic and built upon a broad range of overlapping normative structures that were not exclusively interested in the relationship between individual and thing. Not only that, land relations were built upon rules that regulated interpersonal interactions, relations of dependency, relations with nature and relations with supernatural entities. Ultimately, such a perspective demands that historians and legal historians interested in studying ownership and land tenure in the early modern period focus more carefully on how the combination of these normative representations produced specific arrangements in the ways in which land was held, owned, divided, and regulated, and how conflicts were adjudicated.

4 The Words: Land Tenure in the Iberian World

Research on land tenure in the Iberian world has more traditionally focused on the different institutions that structured land relations during the overseas expansion. Traditionally, these are categories taken from the tradition of the *ius commune* (dominion, possession, emphyteusis, etc.) or from royal legislation

29 Duve, "Legal History as a History of the Translation of Knowledge of Normativity".

30 Conveniently, this is addressed by Buono (Chapter 2) in this volume.

that organised different kinds of relations to land. In this section, I focus on the words that were used to designate different relations between people and land. The objective of the following survey is twofold. First, I seek to dispel the notion that the Portuguese and the Spanish empires imposed homogeneous institutions and land tenure arrangements on their overseas territories. This survey reveals that, even though the Crown could assert its superiority over the holding of land through grace, the categories that organised land tenure across the Iberian world were multilayered and diverse and were adjusted to specific situations and conditions. Second, this survey seeks to draw attention to the possibility of moving beyond the strictly European categories and more systematically drawing on vernacular terms used to describe different kinds of land relations.

The land tenure arrangements that resulted from the global expansion of the Iberian empires were varied and multifaceted. In general terms, however, lands in the Iberian world can be understood to derive from a distinction used by the Crown: granted and not yet granted. The lands that had not yet been granted were considered part of the royal heritage as Crown lands and were understood to be absent of occupants and users.[31] According to the *Ordenações Filipinas*, for example, "all vacant goods for which no rightful lord is found"[32] were considered part of the *património régio* (the royal heritage). Within the Spanish empire these were the *tierras realengas* (royal lands) and *baldíos* (wastelands):

> [...] beyond the lands, meadows, pastures, mountains and waters, which by his [the King's] special grace and favour, *have been granted* to the cities, towns or places of the Indies or to other communities, or to particular persons of them, *everything else* of this genre, and especially what is still unbroken and uncultivated, is and must be from his Royal Crown, and domain.[33]

The main function of these royal lands was to be granted by the Crown for either the founding of towns, villages, and cities or for cultivation.[34] It was thus

31 For the purpose of this discussion, it is irrelevant whether this was the case or not, since the distinction is a fiction that was used by the Crown as an assertion of its superiority. Of course, the question of what 'occupation' means and if lands were effectively occupied, even if not recognised by the Crown, is relevant on a case-by-case basis. But this factual basis does not disprove that the Crown operated using this fiction to both affirm its superiority and secure vassalage.

32 *Ordenações Filipinas*, liv. II, tit. 26, par. 17.

33 Solórzano Pereira, *Politica Indiana*, lib. VI, cap. XII, 991. Emphasis added.

34 A Real Cédula of 1591 stated that all lands that were free of inhabitants and other interests

royal prerogative to have the capacity, through grace, to transform established situations, thus transforming unoccupied lands into occupied lands, taking lands from some to give to others, and shifting the status of land and patrimony. Grace occupied a high order within the arrangement of land relations since, as the above quote shows, even lands already occupied by different groups and communities were thought to be derived from some prior "*particular gracia i merced*" (special grace and favour), which included the possibility of having been granted by previous kings or rulers.[35] Thus, in principle, all occupied lands in the Iberian world were considered to have their origin in a form of grace.

This image of landholding in the Iberian empires was a fiction that was necessary for generating the relations of gift and obligation that were at the basis of political rule in the early modern world. This is what has been called the 'economy of grace' and consists in the ways in which alliances and loyalty were built up between asymmetrical parties through their participation in relationships of exchange of donations and gratitude, which guaranteed that the superior party's benevolence was repaid by the inferior party's services and loyalty. These relations, which were continuously reproduced and renewed, secured power and influence and were the basis of political relations, whether it was at the level of the household or the monarchy. The different obligations tied to the securing of land grants and tributary grants, as well as the tributes and tithes that had to be paid by households, communities, and corporations, reflected these relations of grace and obligation, and placed the Crown at the apex of a series of overlapping interests tied to the land.[36]

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should be left to the Crown "para hacer merced, y disponer de ella á nuestra voluntad" (to be granted and to dispose of them as we please). *Recopilación de Leyes de los Reynos de las Indias*, tomo II, lib. IV, tit. XII, ley 14, 42.

35 The complete text of the *Politica Indiana*, quoted above, refers to this pre-Hispanic past, which notes the supremacy of previous rulers: "I recogiendome Yo à lo que toca à la de las Indias, hallo que esta mesma Regalia tienen nuestros gloriosos Reyes en ellas, en tal forma, que fuera de las tierras, prados, pastos, montes, i aguas, que por particular gracia, i merced suya, se hallaren concedidas à las ciudades, villas, ò lugares de las mesmas Indias, o à otras comunidades, ò personas particulares dellas, todo lo demas de este genero, i especialmente lo que estuviere por romper, i cultivar, es i debe ser de su Real Corona, i dominio, como antiguamente sabemos que lo era del despotico, i absoluto, que usaban en la Nueva España los Motezumas, i en el Perù los Incas, i à este modo en otras provincias otros Caciques, que de ellas se señorearon, como lo refieren los Padres Ioseph de Acosta, i Fray Iuan de Torquemada, i con mas particularidad Antonio de Herrera, que junta varias consultas, que sobre este punto se hizieron en varios tiempos." Solórzano Pereira, *Politica Indiana*, lib. VI, cap. XII, 991. Italics added.

36 Clavero, *Antidora*; Hespanha, *La Gracia del Derecho*.

Grace was important for how the Portuguese and the Spanish Crowns allocated access to land in their imperial domains. Specific institutions, such as the *sesmaria* and the *merced*, were used to attract Iberian colonists by distributing vacant lands to be used for agriculture or ranching. These grants usually entailed the obligations of raising a family, having residence at the location of the grant, and cultivation and improvement. The *sesmaria* was a common institution in the Atlantic archipelagos, Brazil, and Angola, while the *mercedes de tierra* were ubiquitous across the Spanish empire.[37] The *prazos* and the *encomienda*, on the other hand, were grants or concessions that gave the holders the right to collect payments or tributes from villages or groups of villages encompassed within the concession.[38] These concessions were given where lands were already occupied, and they had the double function of rewarding the grantees for services to the Crown and acculturating the Native inhabitants. While the *encomienda* had an explicit provision requiring the *encomendero* (the *encomienda*-holder) to provide for the indoctrination of the 'Indians', the *prazos* were intended to accommodate the local population to Portuguese rule.

The *prazos* were common in the *Estado da Índia*, the Portuguese empire in Asia, outside of Goa, and were often superposed onto existing institutions, such as the *iqta* in the Northern Province or the *pathu* in Ceylon.[39] The *prazo* system was also the predominant form of access to land in the Zambesi region of Mozambique. The *encomienda* was used across the Spanish empire but was predominantly an institution of the 16th century, after which it was gradually phased out.[40] The *prazos* and the *encomienda*, despite their similarities, were distinct institutions. While the *prazos* sometimes conferred jurisdiction, the *encomienda* was an institution that never entailed jurisdiction. However, since *encomenderos* often held offices with jurisdictional capacity, they sometimes held jurisdiction over the population of their *encomiendas*, as was the case in the early development of the Spanish government in the Philippines.[41] Additionally, unlike the *encomienda*, the *prazos* did not regulate the type of work nor

37 Beck Varela, *Das sesmarias à propriedade moderna*; Alveal, *Senhorios coloniais*; Freitas Macedo, "Sesmarias indígenas na São Paulo colonial"; Mota, "Sesmarias e propriedade titulada da terra".

38 Seminal on the *prazo* system in Mozambique, but also in the broader context of the Estado da Índia, see: Rodrigues, *Portugueses e Africanos nos Rios de Sena*. Also, Newitt, *Portuguese Settlement on the Zambesi*.

39 Rodrigues, *Portugueses e Africanos nos Rios de Sena*, 559–560.

40 On the encomienda, the following seminal text is still relevant: Zavala, *De encomiendas y propiedad territorial en algunas regiones de la América española*.

41 Pérez Zamarripa, "The Principales of Philip II", 85–86.

the relations of the population of the *aldeias* with the Crown. The *prazos* were generally conceded for three generations, while the question of succession of the *encomiendas* was a highly contentious issue, which led to its eventual discontinuation.

The Crown was also considered to be the source of all kinds of corporate lands. Since the process of conquest and colonisation was guided by the principle of grace and favour, reward and punishment were important in determining which of the lands that had been occupied before conquest would remain in the hands of their holders and which would be granted anew. Lands and tribute rights that had been dedicated to Native temples were, for example, generally granted to the Church.[42] Lands held by previous rulers were considered Crown lands, while lands held by conquered elites were generally granted to the incoming elites. In this manner, occupied lands were stripped from their previous holders and granted anew for the benefit of the incoming powerholders.[43] However, this was not the fate of all occupied lands, since it was not uncommon that they were left in the hands of their Native holders under the condition that they become vassals of the Portuguese or Spanish Crown.[44] The *prazo* and the *encomiendas*, for example, were built on the recognition of such preexisting landholdings.[45]

These kinds of Native-held lands, alongside the lands granted to Spanish and Portuguese towns, built up what can be called community lands. When founding a new town, city, or village, the corporation was granted lands that were to be administered by the *cabildo* or the *câmara*. Access to lands in the city,

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42 We can see this happening both in Mexico and in Goa during the 16th century. See Lockhart, *The Nahuas after the conquest*, 206, and Xavier, *Religion and empire in Portuguese India*, 70–71.

43 We see this occurring during the foundation of new settlements after conquest: "Standing in open territory and in the presence of notaries when these were available, expedition commanders announced, that under the authority received from the king, viceroy, or governor, they were founding a settlement. They then set the territorial jurisdiction of the community, nominating the local authorities and dividing the land by plots […]. Similar procedures were carried out where Indian enclaves were already in existence. In all of them—for example, Mexico City, Quito, and Cuzco—the community was reinvented as a Spanish enclave, as though the previous settlement had ceased to exist." Herzog, *Defining Nations*, 43.

44 The literature on this is vast, but the following recent publication is worth mentioning: Candido, *Wealth, land and property in Angola*.

45 On the *encomienda*, for example: "Everything the Spaniards recognized outside their own settlements in the sixteenth century—the encomienda, the rural parishes, Indian municipalities, the initial administrative jurisdictions—was built solidly upon individual, already existing altepetl." Lockhart, *The Nahuas after the conquest*, 14.

town or village was usually conditional on membership—being considered a resident or neighbour—and entitled the member to a series of privileges. In Castile and in Spanish America, neighbours enjoyed "the privilege of using communal property, and in most communities, of voting and being elected to office."[46] The use of common pastures and the granting of urban land plots were some of the central aspects that were regulated by local councils, and this was usually recognised if one was considered *vecino*.[47] *Câmaras* also administered these kinds of lands, which could be distributed to particular families and heads of households, and also administered all kinds of city properties, common pastures and wastelands. Even though they were distributed, these lands ultimately remained as lands of the corporation and its members.

Native-held lands were also considered to be granted by the Crown but were not regulated in the same manner. In Goa, for example, all Native lands were included within the village, composed of an aggregate of family holdings and ruled by a council of the heads of the families of the original settlers of the village, known as gavnkars. The ways in which lands were distributed, apportioned and used within the villages was decided by the gavnkars.[48] In other parts of the Portuguese empire in Asia, the organisation of the villages submitted to the *prazos* is less well known but, whether in the Northern Province, in Ceylon, or in Mozambique, it is commonly assumed that they ruled themselves according to their own traditions. In Angola, the local rulers, known as *sobas*, held lands as was custom, granting it to members of their chiefdoms for cultivation and grazing, and granting settlement rights to whomever they wished.[49] In the Spanish empire, the indigenous populations were organised into *pueblos de indios*, which could either be the result of pre-existing settlements or resettlements carried out by the Crown.[50] *Pueblos* were led by local authorities, both in Spanish America and in the Philippines, and had lands at their disposal that were of the corporation to be divided among family groups, used in common or rented out to generate income.[51] In New Spain, the *cacicazgo*, the estates of the local indigenous elite, became a central institution that had its particular

46 Herzog, *Defining Nations*, 18.

47 Herzog, *Defining Nations*, 18.

48 Souza, "Rural Economy and Life"; Souza, *Medieval Goa*; Xavier, *Terra e Território na Goa de Época Moderna*.

49 See Alfagali (Chapter 9) in this volume; and Candido, *Wealth, land and property in Angola*.

50 See de la Puente Luna (Chapter 4) and Dueñas (Chapter 8) in this volume.

51 Güereca, "La tenencia de la tierra en los márgenes de Mesoamérica"; Okoshi Harada, "De lo ajeno impuesto a lo nuestro fundado"; Pérez Collados, "Las tierras comunales en los pueblos de Indios y su trayectoria en el México independiente"; Scott, *Barangay*.

form of land tenure with its lands exempt from tribute, and is often compared to the Spanish *mayorazgo*.[52]

In this kind of analysis, in addition to the particular institutions that were used during the process of colonisation, one could also include the names given to lands. We have just seen how the *cabildos* and *câmaras* had designated lands with specific purposes. These lands included *solares* that were to be distributed to the neighbours; the chacaras destined for agriculture, granted to every neighbour who had *casa poblada* (a household); *ejidos*, *dehesas*, and *potreros* destined for pasture and other common uses; and *propios* and *tierras y montes* reserved for the administration of the *cabildo*, rented or administered to generate income for the community.[53] The Portuguese *câmaras* also had such lands, dedicated to the common usufruct of its members, consisting in *baldios*, *maninhos*, *matos*, *pastos comuns*, etc.[54] The Nahua had different words that reflected the differentiated status of lands, such as the *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).[55] The Mixtec 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).[56] The Foral de Goa of 1526 also reveals a differentiated set of landholdings, such as *ortas palmares* (palm groves), *arozaes* (rice fields), *chãos desaproveitados o perdidos* (unused and waste lands) and *arequaes* (areca palm groves).[57] Also in Goa, *namos* or *namoxin* were the names given to the lands under the control of the temple.[58]

We can think of these words as not only having 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

52 Horn, *Postconquest Coyoacan*; Lockhart, *The Nahuas after the conquest*; Menegus and Aguirre Salvador, *El cacicazgo en Nueva España y Filipinas*. See, also, Martín Gabaldón (Chapter 5) in this volume.

53 Góngora, *El Estado en el Derecho Indiano*, 141–151.

54 Bastião, "O regime dos prazos na Ilha de Moçambique, 1763–1800".

55 Lockhart, *The Nahuas after the conquest*, 156 ff.

56 Terraciano, *Los mixtecos de la Oaxaca colonial*, 320. See, also, Martín Gabaldón (Chapter 5) in this volume. On the *sapçi chacaras* as a specific type of communal lands in the Andes, see de la Puente Luna (Chapter 4) in this volume.

57 Arquivo Nacional da Torre do Tombo, Foral de Goa, 1526, Gavetas, Gav. 20, mç. 9, n. 13. I thank Roger Lee de Jesus for sharing this document with me.

58 Axelrod and Fuerch, "Portuguese Orientalism and the Making of the Village Communities of Goa", 446.

status, as reflecting the social role that linked the land to different entities, such as the community and other lands. In early modern juridical culture, this could be tied 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.[59] As such, rights and obligations could be tied to specific types of lands and, through them, bind their holders. José Miguel Lana-Berasain, for example, has shown how sales of specific plots of land conveyed not only rights in the land, but also neighbourhood rights,[60] while certain lands of the *cacicazgo* were exempt from paying tribute. On the other hand, the normative dimension associated with the names given to specific lands requires one to ascertain the precise rules and prescriptions associated with them. This means that not all kinds of lands follow the same rules regarding cultivation, payment of tributes, inheritance, disposition, division, and so on. Once granted to a household, *solares*, for example, could be sold, whereas *ejidos*, *dehesas*, and *potreros* could be used but never disposed of. Each designation is thus not merely nominal but signals the different types of uses and users that certain lands have, and points to implicit rules that are followed—or broken—by the actors interacting with these lands. However, the normative dimension associated with these names cannot be derived from general rules or doctrines but is a question of empirical analysis and careful reading of primary sources.[61]

Finally, the royal origin of land occupation tied all lands to the interest of the Crown, but this did not mean that access to land was limited to royal grants or to distribution within the community. The rights to hold and use land often changed hands through different legal instruments—sales, donations, succession, possession, etc.—which over time modified the original distribution of land. These procedures had a longstanding tradition in the *ius commune* culture and, in the Iberian world, were regulated by Spanish and Portuguese scribal practices.[62] The rights to hold occupied lands could be transmitted

59 Hespanha, *Como os juristas viam o mundo. 1550–1750*, 312.

60 Lana-Berasain, "Forgotten Commons", 147 This is also shown for England by E.P. Thompson, who writes: "The eighteenth century sees this strange period of mixed law in which usages and rights were attached to office or to place and then were regarded as if they were things which commanded human rights in their turn." Thompson, *Customs in Common*, 135–136.

61 For an excellent example, see Jurado's analysis of the application of the term *menester* in the distribution of lands for domestic units in 16th-century Charcas (Chapter 6, in this volume).

62 Beck Varela, *Das sesmarias à propriedade moderna*; Dias Paes, *Esclavos y tierras entre posesión y títulos*; Herzog, "Colonial Law and "Native Customs": Indigenous Land Rights in Colonial Spanish America"; Herzog, *Frontiers of possession*.

through instruments of sale, donation, succession, pawn, and others. Unoccupied lands could be acquired through possession, which usually involved transforming pastures, woodlands, or forests into arable fields, or taking hold of lands that had been forsaken by their owners.[63] While vacant lands were considered to belong to the Crown, occupation and possession were considered legitimate forms of land appropriation and, if the occupation did not infringe on third parties, was usually upheld by courts.[64] These kinds of occupations could be granted after the fact as *mercedes* or *sesmarias*. In the Spanish empire, the conflicting titles between possessors and the Crown could also be regularised through the *composición*, a mechanism that was used variably across the empire.[65]

5 The Bodies: The Institutional Underpinnings of Ownership

The legal categories—the words—used to describe these different kinds of arrangements are condensations of normative information that operate with a certain degree of abstraction. They regulate relations between persons and land, in general, but, at the same time, they regulate relations between persons. Almost all the categories discussed above describe relations established between the Crown and their vassals, reflected in the obligations that were built into these categories. Other categories, such as those of corporate lands, of the Church or belonging to communities, establish relations between members and non-members; others, such as the common use lands, signal who can do what, where, and who cannot. Tributary grants, such as the *prazo* and

63 The principle of first occupation has a long tradition in different regions of the Iberian world, beyond the influence of the *ius commune*. The *ganvkars*, for example, premised their rule over the Goan villages on the fact that they had in an "ancient time […] taken the island and other wastelands and uncultivated lands which they made useful and fortified". Arquivo Nacional da Torre do Tombo, Foral de Goa, 1526, Gavetas, Gav. 20, mç. 9, n. 13. We also find this idea in Mexico as the founding myths of the *altepetl*. In the primordial title of Cuacuauzentlalpan, claimants argued that their ancestors had gained their lands before the conquest by taking them from the mountain and the lagoon, expelling supernatural forces and defending them against other occupants. López Caballero, *Los títulos primordiales del centro de México*, 229. Also, the *sobas* of Angola justified their landholding as first occupiers. Candido, *Wealth, land and property in Angola*, 39. First occupation was also central to the claims of local lords in Greater Senegambia, as Mota (Chapter 3) shows in this volume.

64 Bastias Saavedra, "The Lived Space"; Bastias Saavedra, "The Normativity of Possession".

65 Among others, see Jurado, "La composición como concierto"; Carrera Quezada, *Sementeras de papel*. Also, see Jurado (Chapter 6) in this volume.

the *encomienda*, however, are restricted to relations between persons: the relation between the grant holder and the Crown and the relations between the grant holder and the populations subjected to the grant. However, since these categories were superposed 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, nor in the ways in which they were defined in royal decrees, ordinances or legal doctrine.

In early modern Europe, as we have mentioned, law and legal categories functioned within a society and a worldview centred around collective bodies (*corpora*), not individuals. This worldview presupposed a natural and divine order, gave family units and other collective bodies a central role, was based on a hierarchical image of society and was organised around a combination of moral, affective, and juridical norms. Power—both within and outside the family—was based on these assumptions. Thus, behind the words were bodies, not in the sense of physical or biological bodies, but in the sense of corporate bodies that gave individuals their place in the world, placed them in personal and political relations with others, and defined their roles within the household, the community, and the kingdom. These bodies were not merely the backdrop for individual action. Rather, they were, more importantly, what determined the ways in which individuals could participate in political and legal interactions, and they provided them with the rights, privileges, and obligations that opened or constricted their range of possible actions. In this dimension, the emphasis is placed on the local social structures, hierarchies, and social positions that determined access to land.

Families were considered *corpora* and thus had the capacity for self-government and the capacity to uphold internal order. Authority was vested in the *pater familias*, who governed through domestic discipline and sought the 'common good' of the family group. This family order also provided the key organising principle for the distinction between the private and the public sphere. Outside the family, corporative relations were governed by justice and *iurisdictio*. Here, power was understood as being naturally distributed between different *corpora* and each of these possessed different degrees of self-government. Political power was thus not centralised but polycentric and pluralistic. Finally, this political pluralism was complemented by normative pluralism, and social interaction was regulated by a variety of normative orders, in which royal laws, decrees, and ordinances coexisted and interacted with other sources of normativity, such as custom, morals, and domestic discipline. Each corporation, such as the Church, cities and towns, guilds and others, could have their own particular norms that governed and regulated the collective life of their members.

Seen from this vantage point, the norms that granted access to land were not restricted to those of the Crown but included a variety of normative sources ranging from the domestic *oeconomia*, which regulated the life and economy of the household, to the customs of towns and cities, which meant going through the canon law that regulated ecclesiastical lands. The ways in which peasant and indigenous communities organised land also depended on a further level of norms of kinship groups, lineages, and status, with deep cultural roots and particular ways of regulating division and succession of family and community lands. Some of these norms found expression in the juridical literature and in doctrine, but much of it was neglected, considered as belonging to the natural regulation of the *rustici*. Legal doctrine would generally deal with questions of wealth and patrimony of the high and low nobility and merchants, while 'rustics' were left to do what they wanted ("los rústicos que hagan lo que deseen"),[66] i.e., follow their own customs and uses. Thus, an understanding of how access to land was regulated within these corporate bodies cannot easily be drawn from written law or doctrine but requires shifting the attention towards archival documents and interdisciplinary research to reconstruct how these relations were organised in practice.[67]

The ways in which family lands were accessed, administered and inherited were regulated at the level of the household. In the European tradition, the family was a unity whose members were considered to follow common interests guided by the authority of the father (*pater familias*). This definition extended the idea of the family beyond the spouses and children to include everyone who was subject to the authority of the father. This included extended kinship, servants, slaves, and the public offices and privileges granted by the king, as well as the lands and estates of the household. The family, understood in this broad sense, was ruled by the father through domestic discipline (*oeconomia*). This gave the head of the household ample discretion in regulating the family patrimony, signalling who could have access to the family lands and under which conditions. Lands could be given to members of the kinship group or dependents for their particular use, and lands could be rented out under different kinds of arrangements. As discussed below, we find this regulation at the level of the

66 Dios, *Seis estudios sobre historia de la propiedad*, 53, fn. 126. The phrase is attributed to Saint Bernard, and it was often used by jurists when speaking of the benefits of the *mayorazgo*. The quote used here is from Antonio Padilla y Meneses: "entre los nobles mejor es la dispersión de los hijos que la de los bienes, los rústicos que hagan lo que deseen y es preferible que los mercaderes distribuyan con igualdad sus bienes."

67 For an excellent example of the how the regulatory intentions of the Crown did not supersede the corporative regulation of indigenous communities, see Martín Gabaldón (Chapter 5) and Jurado (Chapter 6) in this volume.

family and household, albeit with other underlying principles, in different parts of the Iberian world. The entails of the Iberian world—*mayorazgos* and *morgadios*, and *capellanías* and *capelas*—highlight the dual regulation that operated between general regulations and those of the household.[68] On the one hand, entails were precisely defined institutions that determined, in general terms, 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 family group. The founders of the entails had ample discretion in determining the rules binding the patrimony, by determining the goods that would belong to the entail and determining the lines of succession. While it was common that they were succeeded along male primogeniture, female succession was accounted for under certain conditions. Founders could introduce conditions for succession, such as holding the family name[69] 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.[70] *Capellanías* and *capelas* often contained clauses that regulated the amount of masses and charitable donations that had to be secured from the rents derived from the patrimony before the benefactors could receive any rents for the household.[71] These rules and conditions were established in the wills or deeds that instituted the entail, and thus exerted a regulatory function that arose from the head of the household and founder of the entail.

The lands within cities and towns were a diverse arrangement of community and household lands administered by the *cabildos* and *câmaras*, the municipal bodies that represented the neighbours. In the case of the *cabildos*,

> [p]art of this land was used as a municipal commons (*ejido*), from which householders might take firewood, or were in enclosed pastures (*dehesas*) where they might turn their cattle to graze; part was distributed as

68 Seminal studies on the *mayorazgo* in Spain and the *morgadio* in Portugal are: Clavero, *Mayorazgo*; Rosa, *O Morgadio em Portugal, sécs. XIV–XV*.

69 In an example of the constitution of a *mayorazgo* in Jaen, Spain, one condition "established that the successors should carry the coat of arms and last names of Benavides or Valencia, or lose the *mayorazgo*". Porras Arboleda, "Aportación al estudio del mayorazgo", 68.

70 Arquivo Nacional de Cabo Verde, Tombeamento da Capela do Tanque da Nora, Vinculos do Concelho da Praia. I thank Edson Brito for sharing this document with me.

71 Luque Alcaide, "Capellanías (DCH)".

> arable fields to the townsmen; and part, the *propios del consejo*, was rented in plots for gardens and country houses, and became thereby a source of income to the municipality.[72]

The *câmaras* were also endowed with lands which were administered in a somewhat similar fashion. According to the *Ordenações Filipinas*, the aldermen were "to have charge of all the governance of the land and the works of the *concelho* [municipality] [...] so the land and its inhabitants can prosper".[73] One of the main differences between the *cabildo* and the *câmaras* was that residents and neighbours of Portuguese America were subjected to the payment of a *foro* to the municipal body, although some founders requested and received, as a privilege, exemption from this obligation.[74] Anthony John R. Russell-Wood has illustrated how the municipality of Vila Rica was granted a *sesmaria*, from which residents received their plots through the payment of a *foro*, thus generating income for the public offices and other expenditures of the corporation.[75]

Lands held by Native and indigenous inhabitants reflected this order particularly well since, as long as they paid their contributions dutifully, both the Portuguese and the Spanish empire generally let the villages and *pueblos* function according to their own traditions. In the villages of Goa, for example, lands were destined for different uses and their production was meant to sustain different functions of relevance for the community. Cultivated and fertile plains in the river valleys were reserved for the maintenance of the temple, the maintenance of village servants (carpenter, blacksmith, potter, barber, basket-weaver, cobbler, etc.), and for the sustenance of the gavnkars. These lands were considered common and were worked in common and their revenue was also used to pay the tributes to the Crown. The village residences and the family lands of the gavnkars were in the elevated areas of the village, where each family had a plot for the house and orchards. Terraced fields, called *molloi* or *morod*, for the cultivation of cereals were granted by the gavnkari (village council) on temporary (*vanty*) or permanent lease (*kutban*). If an outsider wished to bid on these leases within the village, a *ganvkar* had to bid and vouch for him. The gavnkari could additionally pre-empt sales of land within the village, thus being able to decide who could live, inhabit, and cultivate within the village. Lands could also

72 Haring, "The Cabildo", 12.

73 *Ordenações Filipinas*, I, 66.

74 Damasceno, *Território e propriedade em perspectiva comparada nas Américas Coloniais*.

75 Russell-Wood, "Local government in Portuguese America", 88.

be given as permanent rent-free grants in exchange for services rendered to the village. Finally, every village had common pasture lands.[76]

These communal arrangements can also be observed in the indigenous *pueblos* of the Spanish empire, both in America and in the Philippines.[77] The notion of *pueblo* provided an image of equivalent collective bodies that organised the affairs of the *indios* integrated into the Spanish empire but concealed what were in fact distinct forms of social organisation that had roots in the pre-Hispanic period. In New Spain, for example, the term *pueblo* was superposed on different forms of social organisation depending on the region, such as the *altepetl* in the Valley of Mexico, the *ñuu* among the Mixtec and the *batabil* in the Yucatan Peninsula. These in turn were composed, respectively, of the *calpolli*, the *siqui*/*siña*/*dzini* (which varied depending on the Mixtec region) and the cah, extended families or kinship groups that determined the distribution of common and family lands among its members.[78] Access to land was reserved for heads of family through their membership in the broader kinship group.[79] The indigenous *cabildo* administered the distribution of *tierras de común repartimiento* (lands allocated to particular households), the regulation of *pastos y montes* destined for collective uses and the administration of the *propios*, lands that could be cultivated in common, used for animal husbandry, or rented out for the generation of income.[80] The renting of land was regulated in different manners, according to local rules, being only accessible to outsiders under specific conditions, requiring the unanimous consent of the council and by drafting and requiring the rental documents in Nahuatl.[81] In the Philippines, the term *pueblo* was used to designate the pre-Hispanic *bayan*, which grouped several extended families or kinship groups known as *barangay*. Access to land was secured, by family members, slaves, and dependents, through the *barangay*, and rights of succession were also managed at

76 Souza, *Medieval Goa*; Souza, "Rural Economy and Life".

77 A good example can be found in de la Puente Luna's contribution (Chapter 4) to this volume.

78 Lockhart, *The Nahuas after the conquest*; Terraciano, *Los mixtecos de la Oaxaca colonial*; Quezada, *Pueblos y caciques Yucatecos, 1550–1580*; Okoshi Harada, "De lo ajeno impuesto a lo nuestro fundado". A good example of this superposition, and how it 'masked' the underlying relationships, is Martín Gabaldón's contribution (Chapter 5) to this volume. In Peru, they were superposed onto the *ayllu*. See the discussion by de la Puente Luna (Chapter 4), Jurado (Chapter 6), and Dueñas (Chapter 8) in this volume.

79 Menegus, "Cacicazgos y repúblicas de indios en el siglo XVI"; Menegus and Aguirre Salvador, *El cacicazgo en Nueva España y Filipinas*; Quezada, *Pueblos y caciques Yucatecos*.

80 Menegus, *Los pueblos de indios en la Nueva España, siglo XVIII*, 44.

81 Haskett, "Indian Town Government in Colonial Cuernavaca", 557–558.

this level. Father Juan de Plasencia, who wrote on the customs of the Pampangos, described the lands of the *barangay* as being divided among its members, where "each knows his own, especially what is irrigated."[82] Even if the norms of the community were not evident to external observers, its rules were evident to its members.

Of course, conversion and membership of the Christian commonwealth was also an important condition for accessing and retaining lands. The abovementioned local arrangements were sustained—in most, if not all, cases—insofar as the local communities had converted to the Christian faith. In cases, such as Goa, the granting and reinstating of land to converts was a mechanism devised to encourage conversion. Lands that had been abandoned by Muslims after the arrival of the Portuguese were given to converts, and lands that had been given to the Portuguese "could go back to the earlier (or other) local owners if the locals had meanwhile been converted."[83] The Church was also an important landholder, holding not as a monolithic entity, but through different kinds of corporations associated with it, such as religious orders, brotherhoods, convents, hospitals, and *misericordias*, among others. These lands were often distributed through different kinds of arrangements, such as emphyteutic contracts or *aforamentos*. In Portuguese and Spanish America, ecclesiastical institutions were some of the most important landholders.[84]

Reviewing land relations from this vantage point, thus, shows that the construction of land tenure by the royal economy of grace was built upon a broad array of collective bodies and built up a kaleidoscope of different rules. While the grants made to towns, the Church, and communities are obvious cases in point, the *prazos* and *encomiendas* also, in a certain sense, presupposed the existence of these communities and the self-organisation of their lands. Further, the grants of *sesmarias* and *mercedes*, which have heretofore been considered 'individual' land grants or constituting 'private' property, were actually concessions made to heads of family and were thus linked to households, as shown by the requirement of "tener casa poblada" common to the *mercedes*. 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 kingdoms through a variety of

82 Scott, *Barangay*, 229.

83 Xavier, *Religion and empire in Portuguese India*, 85.

84 Damasceno, "Território e propriedade em perspectiva comparada nas Américas Coloniais".

relationships that were built up according to various normative orders and tied the organisation of land to different degrees of regulation.[85]

6 The Spirits: Supernatural and Non-Human Dimensions of Land Tenure

To the words and the bodies we can add a third dimension which ordered the relations between persons and land: that of supernatural and non-human entities. This dimension deals with norms that are believed to 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 for temples, cemeteries, and all kinds of ceremonies; on the social side, it 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 the 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.

The most obvious point of departure are those lands with ritual functions or those that are considered 'sacred' and, by these very qualities, impose restrictions on how and who can use and appropriate them. The *Siete Partidas*, for example, state that since sacred and religious things are established for the service of God, there can be no dominion over them. The clergy may have them under their power and use them, but they act as custodians and servants: "because they are to keep these things and serve God with them."[86] These things can also not be disposed of and churches and their lands remain sacred—and thus face these restrictions—even if they are razed: "even if some sacred church was demolished, the place where it was founded will always remain sacred".[87] Churches and sacred lands only lose this quality if they fall into the hands of

85 Other arrangements were also possible, such as the relations between main and subordinated towns, or the regulation of the mountain lands by different towns within the valleys. On this see, respectively, Martín Gabaldón (Chapter 5) and Ena Sanjuán (Chapter 7) in this volume.

86 *Las Siete Partidas*, Tercera Partida, Título 28, Ley 12.

87 *Las Siete Partidas*, Tercera Partida, Título 28, Ley 13.

'enemies of the faith', but regain their sacred condition if retaken by Christians. Further, Emanuele Conte has shown how these lands were not only not considered to be disposable but, more importantly, were considered *themselves* to be vested with ownership:

> The centres of late-antique and medieval ecclesiastical organization were often identified by buildings located on burial sites of saints. Because the burial of corpses was considered 'sacred' by Roman law, those locations could not be subject to private ownership. And as Christians believed that the souls of the saints had eternal life, they recurred to Roman law to use those holy places as the true subjects of properties. These non-human, holy subjects attracted vast amounts of donations for centuries, creating economic environments in which profitable goods were permanently tied with places, usually buildings themselves or the altars hosting the saintly relics. Humans entered this permanent relationship by being invested with ecclesiastical authority or as part of the ecclesiastical estate.[88]

Beyond the tradition of the *ius commune*, norms regulating the use and disposition of ritual and sacred lands can be found in different social and cultural contexts. The lands of the Mapuche of southern Chile, for example, were conceived as spaces that were inhabited by communities along with spirits and ancestors, which manifested in different parts of the landscape. Each community was linked to protective hills and mountains, known as *Trentren*, named after the mythical serpent that saved the first peoples from a great flood. Mountains and hills were thus not common places for habitation, but had an important spiritual meaning, acting as safe havens in times of war, sacred burial places for caciques, and places used by healers to collect medicinal plants. The burial grounds of important caciques were also the ritual spaces of the community, essential for organising their relations to the ancestors. The importance of these spaces is that their use was restricted to certain activities and to members of the community—no one outside of the group could make use of these lands.[89]

Insofar as the lands connected communities to their ancestors—as well as to future generations—one could argue that the land belonged to the community as much as the community belonged to the land. In the corporate worldview of the *ancien régime*, the *patrimonium* was essential to the condition of the fam-

88 Conte, "The many legal faces of the Commons", 635.

89 Rojas Bahamonde, Mellado and Blanco-Wells, "Sobrenaturaleza Mapuche".

ily, ensuring its stability beyond the passing of the generations.[90] This notion tied land to blood and structured the ways in which certain families would deal with sales, partitions, and inheritance of land. Richard M. Smith has shown how these patterns were present in medieval and early modern England, where "there was a strong distaste for the selling off of family land or land that descended through blood [...] to the eldest son". The mechanism of keeping land within the family or among closely related kin reflected the idea that land "ought to descend to the blood who held it of old."[91] This notion, also found in the Spanish *mayorazgo* and the Portuguese *morgadio*, sought to secure the intact transmission of the principal holdings of the family from one generation to the next. Within this kind of institutional structure, the holding and disposition of the land was not entirely determined by the head of the family but was rather oriented toward the sustenance of the family group and future generations, as well as sustaining the continuity of an ancestral bloodline.[92]

One can also find this conception in the invocations of immemorial possession that were common to the indigenous populations of Spanish America. While it has often been argued that this was an effective judicial strategy to secure their tenure before colonial magistrates, one must also take the claim seriously as a way of signalling the ancestral bond of the community to the land. In this sense, the claim is not merely that 'the land is ours', but it includes the claim that 'we and our forefathers belong to the land'. One can see this clearly in a 1575 petition by Cacique Don Juan of Suta in Nueva Granada reacting to community lands being taken for the founding of a new town, Villa de Leyva. He argued that "it should not be allowed that our lands and settlements we have of old and were held by our ancestors for more than one hundred years until today be taken" (*no se deve primitir que se no tomen nuestras tierras y açientos que antiguamente tenemos y tuvieron nuestras antepasados de mas de çien años a esta parte*), because great harm would come to his community due to them being "forced to move to strange lands and abandon their nature" (*forçados yrnos a tierras estrañas y dexar nuestra naturaleza*).[93] Other caciques who participated in the proceeding argued that they could not be "dispossessed and

90 See Buono (Chapter 2) in this volume.

91 Smith, "Some issues concerning families and their property in rural England", 14.

92 For all these reasons, it is revealing that the Portuguese in Angola referred to the form of landholding of the *sobas* as "a kind of African morgado". See Alfagali (Chapter 9) in this volume.

93 "Fundación de la Villa de Leiva, disposiciones del resguardo", Fondo: Poblaciones-Boy: SC.46,2, D.10, Archivo General de la Nacíon—Colombia, 380r. I thank Katherine Godfrey for sharing the sources on Villa de Leiva with me.

deprived of our nature and homeland" (*despojar y privarnos de nuestro natural y patria*).[94] The normative quality is given here not by a focus on a narrow conception of property but rather by a relationship with the land that has been consolidated over generations, both granting it familiarity and making it essential to the group's identity. Here we can see how, in some cases, belonging can be closely intertwined with ownership.

Finally, a more widely distributed notion was that rights could be held by all kinds of inanimate objects (houses, buildings, lands), spirits and souls, and even animals. Rights granted to non-humans were perfectly compatible with the legal imagination of the early modern period. We spoke above about how certain lands were themselves endowed with rights and obligations. To add to those examples, easements or servitudes (*servidumbres*) were rights given to specific plots of land in relation to other lands or to persons.[95] When the easement is between two plots of land, such as a right of way, it designates "a limited right permanently attached to the two parcels of land it affects".[96] Rights of citizenship or rights to the use of pastures and other common lands could also be tied to specific houses or lands within a city, parish or village, and these rights remained with the lands and houses and were transferred to the new owners when they were inherited or sold.[97] Buono's chapter in this volume highlights how rights to land could be left to things, and how things "could claim 'the right to be used' and not to be abandoned or destroyed".[98] This conception of tying rights to lands was anathema to the thinkers of the Enlightenment, as reflected in Thomas Paine's protests: "The custom of attaching Rights to *place*, or in other words to inanimate matter, instead of the *person*, independently of place, is too absurd to make any part of a rational argument".[99]

Examples of the extension of 'land rights' to animals can also be found in early modern Europe if we recall the case of Windsor Forest in E.P. Thompson's *Whigs and Hunters*, where the deer were not only " 'the principal beauty and ornament of the forest', but the needs of their economy overrode every other need".[100] Thompson describes how a complex system of laws and rules organised the forest dwellers' economy and subordinated what they could do on their

94 Archivo Histórico de Tunja, Legajo 8, Archivo Histórico Regional de Boyacá, 180r.
95 Hespanha, *Como os juristas viam o mundo*, 206.
96 Conte, "The many legal faces of the Commons", 632.
97 Examples can be found in Conte, "The many legal faces of the Commons"; Lana-Berasain, "Forgotten Commons"; Freitas Macedo, "Posesión y propiedad en las disputas por jurisdicción"; Thompson, *Customs in Common*.
98 See Buono (Chapter 2) in this volume.
99 Quoted in Thompson, *Customs in Common*, 136.
100 Thompson, *Whigs and Hunters*, 29.

lands to the needs of the deer's habits and movements for feeding and fawning. Cows, sheep, and horses could not be kept since they competed with the deer for the grass; arable lands could not be fenced so as to impede the deer from passing to their feeding grounds; "[w]hether the land was privately owned or not, no timber could be felled without license from the forest officers"; and, regardless of their owners, "[p]eat and turf could not be cut in preserved grounds".[101] This case, for our purposes, illustrates that the hierarchies of rights to the land could be constructed, within limits, in favour of non-humans. In this way, the use and access of forest dwellers to *their* land and other resources were limited according to the needs of the deer.

Entails (*vínculos*) also raised questions of granting rights to non-humans that did not align with the framework of the Enlightenment. Adam Smith raised his objections to the institution in his infamous *The Wealth of Nations*:

> The earth and the fullness of it belongs to every generation, and the preceding one can have no right to bind it up from posterity; such extension of property is quite unnatural. The insensible progress of entails was owing to their not knowing how far *the right of the dead* might extend, if they had any at all. The utmost extent of entails should be to those who are alive at the person's death, for he can have no affection to those who are unborn.[102]

Smith's critique was primarily directed at the fact that these institutions, by binding the will of present generations to the will of their founders, lacked an economic purpose. The *mayorazgos* and *morgadios* were in effect not merely destined for generating wealth but were rather institutions designed for securing the transgenerational prosperity and reputation of a lineage. As such, they tied the estate to the will of the founder in perpetuity, thus binding the estate and its administration for an indeterminate number of future generations. The *capellanías* and *capelas* were generally created to secure the salvation of the founder's soul, binding the estate's lands and rents to several pious works. In both cases, the will of the founders, once deceased, was carried forth across generations of administrators, possessors and beneficiaries, who could not freely dispose of the estates or change their functions. These institutional constraints were a way of securing the intergenerational rights of those bound by the entail (the 'dead', the lineage, and the yet-to-be-born). Maria Lurdes Rosa

101 Thompson, *Whigs and Hunters*, 29.
102 Smith, *The Wealth of Nations*, 384. Emphasis added.

has explored the ways in which the foundation of *capelas* was conceived not as able to grant rights to the dead—as Smith described—but rather to grant inheritance rights to the founder's soul within a belief system that exalted the "supernatural lives"[103] that existed after the natural death of the body, in recognition of a spiritual world that coexisted with the temporal one.

The rights attached to things (lands, houses), animals, and souls—as non-human entities—in the early modern European tradition aligns with the ways in which a spiritual realm had normative consequences for the human realm in other world regions—even if these appeal to other cosmological hierarchies.[104] Among the Nahua, for example, each *calpolli* viewed their patron saints—as successors to their gods—as residual owners of the land: "Calpollalli [the lands of the *calpolli*] could hence have been primarily and originally land of the gods, and only by extension the land of the corporation."[105] In the lower Gambia, 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. "Spirits owned the lands they occupied, and if anyone unwittingly built his house across the pathway of a spirit, he ran the risk of deaths, and illnesses, houses falling down, fires or other disasters."[106] Settling on lands owned by the spirits carried risks, and humans who sought to occupy these lands required spiritual powers to claim them. Within Mapuche cosmology, the figure of the *ngen* serves as a further example. The *ngen* are spirits considered the "owners of the wilderness", which means that any time a person goes into the wilderness, they are required to follow a strict repertoire of actions that includes not raising one's voice, not proffering insults, not causing any unnecessary damage and, if something is used or taken, making an offering in return.[107]

7 Conclusions

This Chapter provides a framework for addressing the question of land tenure in the early modern Iberian world that moves beyond diffusionist narratives that rely on a temporal asymmetry between Europe and other world regions.

103 Rosa, *As Almas Herdeiras*, 12.
104 E.g., see: Castro, *Cannibal metaphysics*.
105 Lockhart, *The Nahuas after the conquest*, p. 152.
106 Sarr, *Islam, power, and dependency in the Gambia River basin*, p. 93. See also the examples provided by Mota (Chapter 3) and Alfagali (Chapter 9) in this volume.
107 Grebe, "El subsistema de los ngen en la religiosidad mapuche".

Instead of dividing the world into peoples who knew of the private division of land and those who, archaically, did not—as depicted in the Lockean and colonial images of the world—the objective has been to show that there is a more fundamental division between the early modern and our own, contemporary, conceptions. We have seen how the division between private and common was inadequate for grasping the many forms in which land was held in the early modern (Iberian) world, where lands were subjected to overlapping rights and interests, were regulated in different collective instances and could be assigned to and regulated by different kinds of non-human entities. Moving away from the narrow focus on 'property' and the dichotomy of private and common helps us better understand these diverse arrangements and the polysemic relationships established between people and land. It also allows for the possibility of reintroducing comparison in a way that avoids *stealing history by imposing our categories and sequences on the past of the world*—to paraphrase Jack Goody[108]—and, instead, offers a way of sensitising the historian to observing the different ways in which the relations between communities and land were normatively constructed.

The issue of time and historical change is also central here. The narrative I have pursued in the preceding pages has a comparative purpose, suggesting ways of comparing different ownership regimes regardless of their regional location—focusing instead on key categories, institutions and social structures, and the belief systems, all of which provide important normative structures for the relationships established between people and land. By creating an analytical framework that spans many world regions for more than three centuries, the temporal dimension has fallen very far into the background, to not overly complexify an already complex undertaking. Leaving the question of time and change in the background was, however, also intentional because it implicitly signals that the main rupture in the conceptions of ownership was not regional or cultural—between Europe and other world regions—but temporal—before and after the 19th century. The casuistic and locally-sensitive conception of law in the early modern Iberian world meant that normative change was ubiquitous—new norms arose from each new case, and innovation, in a way, was a matter of course. The shift away from this model, towards

108 "To affect a valid comparison would involve using not predetermined categories of the kind Antiquity, feudalism, capitalism, but abandoning these concepts to construct a sociological grid laying out the possible variations of what is being compared. That is notably lacking from most historical discourse in the West. Instead, historians have simply claimed desirable and 'progressive' features for themselves. They have stolen history by imposing their categories and sequences on the rest of the world". Goody, *The theft of history*, 304.

the positivistic application of law and the development of jurisprudential reasoning, would signal a major transformation that would require its own analytical framework.

Finally, the narrow focus on property and its dichotomies is not merely problematic in the way it imposes Eurocentric, anachronistic, and anthropocentric perspectives on historical research, but also in the way it places methodological and analytical constraints on the historian. The most important of these is that it constrains the research questions and leads to what we may call *negative* histories: histories that, by taking a strong normative ideal, tend to highlight how social events or realities fall short of these ideals. By departing from an atemporal, clearly defined, and conceptually precise conception of property, it becomes inevitable that the historical accounts end up weighing themselves against these concepts. The accounts are thus *negative* because, when the ways in which land was held in different places and at different times do not fit into the definition, the historical accounts tend to emphasise what these histories and these peoples were *not*: they did *not* have private property and they were *not* modern. This makes the plurality of forms of landholding in the early modern world an impenetrable *black box* because its complexity cannot be addressed through the private/common dichotomy. The approach proposed here takes a different route by not pre-defining the rules surrounding land tenure but instead highlighting different levels of norms that can be explored through the analysis of primary sources and encouraging the exploration of this complexity. The tripartite analytical framework suggested here is intended to draw attention to the ways in which social structures (bodies) and cosmological representations (spirits) were intertwined with the categories (words) that are usually the focus of research on ownership and highlights how all these dimensions played a role in the normative structuring of land relations.

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