What Land Disputes Tell Us About Land Rights

Lo que los conflictos nos enseñan sobre el derecho a la tierra

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RESUMEN:

This text describes the precariousness of land rights in colonial Latin America. Drawing attention to usage rights and possession, rather than property rights, it surveys debates in the colonial courts regarding who the land belongs to, how it is assigned and conserved by communities, families, and individuals, and what can these do to protect their entitlements. It re-examines what *composiciones de tierra* were, the rights of *caciques* to communal land, and demonstrates the tight connection between land rights and membership. The case study is the *audiencia* of Quito, and land conflict involving indigenous peoples, but the aim is to describe what land disputes can tell us about how contemporaries imagined, understood, and practiced, land rights.

Keywords: Land rights, indigenous communities, use, possession, family

ABSTRACT:

Este texto describe la precariedad de los derechos sobre la tierra en la América Latina colonial. Prestando atención a los derechos de uso y posesión, más que a los derechos de propiedad, examina los debates que tuvieron lugar en los tribunales coloniales sobre a quién pertenecía la tierra, cómo la asignaban y conservaban las comunidades, las familias y los individuos, y qué podían hacer éstos para proteger sus derechos. Reexamina lo que eran las composiciones de tierra, cómo se entendían los derechos de los caciques a las tierras comunales, y demuestra la estrecha relación entre los derechos a la tierra y la pertenencia a una comunidad. El estudio de caso es la audiencia de Quito y los conflictos en los que estaban involucradas comunidades indígenas, pero la meta es describir lo que estas disputas pueden decirnos sobre cómo los contemporáneos imaginaban, entendían y practicaban los derechos sobre la tierra.

Palabras clave: Derecho a la tierra, comunidades indígenas, uso, posesión, familia

Historians of colonial Spanish America have often discussed land rights by employing common sense assumptions. They assimilated early modern rights to present day practices and suggested that lands could be sold or bought. Though most were aware of the prevalence of usage rights and most knew of the existence and importance of communal lands, most nonetheless affirmed the pervasiveness of private property. Or alternatively, they argued for the importance of private property among Spaniards, and of communal property among indigenous peoples.[1] The importance of indigenous communal property, most historians asserted, was often dismissed by Spaniards, precisely because Spaniards did not ascribe to collective rights the same significance as they did to private property, or at least when dealing with the indigenous population.

These assertions mostly reproduced a common trope among historians of Europe's colonial endeavor. According to it, while, until the late eighteenth and the early nineteenth centuries, common land tenure was the norm in most European jurisdictions, where most lands were burdened with a great variety of rights that belonged to a host of different legal persons, from as early as the 16th century, the commons were seriously challenged in the colonies, and private property, which combined a multiplicity of rights into a single, absolute entitlement, became the predominant model.[2] Indeed, it was in the colonies that private property first found ample acceptance and was universally adopted.

Historians have explained these colonial developments by mentioning a combination of factors, mainly, the availability of land, the confrontation with the indigenous populations whose rights colonists wished to dismiss, and the absence of strong local communal ties or a nobility, which in Europe were said to successfully counter attempts at privatization.[3] Together, these elements conspired to allow the emergence of the "acquisitive colonialist" who accumulated land as an absolute owner and who presented this pursuit as reflecting a natural

law that obeyed the mandate of filling in a vacuum, which nature abhorred (Gentili, 1933 [1589], p. 81). The land, this acquisitive individual argued, had to be used and used correctly, its misuse being both morally unjustified and economically disastrous. According to this vision, this has always been the case. Rather than an innovation (as it truly was), private property had always existed and could indeed be traced back to Classical Roman law, where single absolute owners who pursued their 'greatest happiness' were already in existence.

Historical records nonetheless present a radically different portrait. In what follows, I use the information contained in several sections (*Tierras, Cacicazgo, Indígenas, Fondo General*, and *Casas*) of the national archives of Ecuador (*Archivo Histórico Nacional del Ecuador*) to ask how colonists competed with indigenous communities and persons over access to land and how these communities and persons responded. In that colonial past, which land rights were pursued and how did individuals and communities imagine, defend, and question them?

I begin by observing the precariousness of land regimes, where security regarding who had what was lacking for a variety of reasons, which I explain. I continue by asking whose land it was, and by analyzing the role of families and communities in these debates, among other things, to show that the right to land always hinged also on questions of membership and belonging. I end with provisionary conclusions regarding the need to de-naturalize the past and avoid the urgency to domesticate all that appears unfamiliar.

The First Observation: A General Precariousness

Litigants, both Spanish and indigenous, who sought to defend their land rights, generally performed assurance. They described their long-standing relations with the land and pretended that these had existed since time immemorial and were known and accepted by all. Litigants also insisted that it was impossible to doubt their entitlements, and that those who did, did so in bad faith and without fearing god and royal justice (*con poco temor de dios nuestro señor y menosprecio de vuestra real justicia*).[4] They presented challenges to their rights as a world upside down, and as the end of the pacific and legitimate exercise of rights and the beginning of chaos. The natural order of things supported their vision, and challenges were the exception rather than the rule.

These visions were often reinforced by narratives regarding the long, almost intimate, persisting ties between people and their land. In these narratives, the land was not an abstract commodity with a certain extension or even a precise location. Instead, it was an entity, that is, a unit that had a name and an identity.[5] It was a whole that could not or should not be dismembered, and with whom the interested parties were said to have personal relations.[6]

Yet, despite these claims, historical records show that relations with the land were highly volatile. Several were the reasons. First and foremost, in that legal universe, property rights the way we imagine them today were utterly lacking. Instead, land rights were profoundly contingent and communal.[7] According to contemporary thought, initially, the land was given to all humans, though sometime in a mythical past, parts of it had been assigned for the exclusive

use of individuals and communities. Assignation, however, was conditional. The land could be held only as long as these individuals and communities used it. If they did not, then it could be taken away and reassigned to others.

The contingent status of all land rights and their dependence on use was clear in contemporary records. Though mostly spelled out with regards to indigenous land, where it was commonly argued that the holders only had "precarious use, without action of property" because these lands were "subjected to the right of reversion",[8] this rule applied to everyone, Spanish individuals and communities included. It reproduced the idea that the land was essentially common and that it was granted in privative use only as long as members not only enjoyed rights but also complied with duties, here the duty to cultivate the land.

The assignment of land rights -never property rights only usage rights- and the duty to use the land, explain many of the developments that historians of Spanish America have observed, for example, processes of *composición.*[9] These processes were comprehended in the past as instances that allowed the king to sell land for profit, yet, in reality, *composiciones* were administrative procedures that sought to discover whether individuals pretending to have usage rights were indeed entitled to them. *Composiciones* expressed royal duty to administer communal property by granting, refusing to grant, or revoking the grant, of rights. The lands the king administered and that he could assign for individual or communal use were identified in archival records as *realengas*. Despite references to them as "royal," *realengas* were not royal land. Instead, they were lands under royal jurisdiction.[10] They were distinguished from other lands administered by municipal bodies or *encomenderos.* This distinction hinged not on the question of who their proprietor was (they belonged to the community), but of who would administer them. While *realengas* would be administered by the king, other lands would be administered by the authorities of the community, or by those in a position of power, such as nobles in Europe, and sometimes *encomenderos* in Spanish America. And, while we might intuitively believe that royal jurisdiction guaranteed order -after all, the king was by definition just- the multiple meanings assigned to *realengo* in common parlance demonstrate the contrary. Rather than orderly, *realengo* was often associated in contemporary thought with the lack of a proper owner, and designated something which was idle, unattached, free, abandoned, or in a state of disorder.[11] In other words, at least with respect to assigning land rights, the king was not a great administrator.

Royal officials who conducted *composiciones* thus verified if the usage of the land was authorized by the king, and levied penalties when royal permission was lacking. Yet, both recognition of rights and penalties did not grant ownership to those in possession of the land. Instead, they sanctioned the right to use the land, a right that was still conditioned by continuous exploitation, the grants automatically ceasing (at least in theory), if such was not the case.[12]

Campaigns to verify usage rights (*composiciones*) could be initiated by the royal or local authorities, who considered them a source of revenue -the king had to be paid for the license to use the land to be issued- but they could also be initiated or desired by those holding the land,

who generally hoped that obtaining a royal license would protect them against potential dispossession.[13] Yet, because usage rights were always contingent rather than permanent, most *composiciones* failed to produce the certainty that the interested parties hoped to obtain. As the situation on the ground constantly mutated, so did usage rights and, as a result, even those who received a license in the past could be deprived of it later. One *composición* could easily follow the other, often producing -what historians have identified as- contradictory results.

When those administering land rights, or the interested parties, reached the conclusion that those pretending to have rights did not sufficiently use the land, it could be declared "vacant." Returning to the pool of plots that the king could administer, this land was again identified as *realenga* and could be redistributed.[14] As a result of these structures, most conflicts regarding land rights involved the question whether the land was free, or whether rights over it were already granted to a person or a community who used it continuously.[15] To answer these questions, those suggesting that the land was free either because undistributed or because abandoned, usually found it easiest to argue that the state of the land itself demonstrated that such was the case. To do so, petitioners mentioned the visible lack of care, or the presence of wild or ferocious animals, which was comprehended as a sign for abandonment.[16] Indirect circumstantial evidence was also proposed, for example, the observation that the land was remote and therefore necessarily abandoned. Questions were also asked regarding its possible users. Were they young or old, female or male, capable of agricultural labor or perhaps occupied in other offices?[17] Equally debated was the question of what happened when the person having rights was old and/or poor and therefore could no longer use the land?[18] Did these conditions automatically imply abandonment, or were his rights left untouched because the lack of use was involuntary, and was not accompanied by the intention to renounce rights? Lands could also be classified as vacant because their previous users were said to have perished without having known heirs or without leaving a valid testament.[19] As "things that belong to no one", they could (and had to) be reassigned by the king (Cerutti, 2007).

In their portrayal of abandonment, interested parties also used several key terms that were supposed to be telling. It was as if, once these terms were invoked, nothing else needed saying. A land identified as mountainous (*montañosa*) or *monte*, or classified as *yerma* or *erisa,* was one such case.[20] Similarly, unused lands were titled wasteland (*baldías*) or even abandoned lands (*desamparadas*) and as such were considered vacant.[21] Looming at the background was the conviction that, even in the absence of proof, it was possible to assume that these lands had never been distributed because most would have considered them useless and would show no interest in exploiting them. As powerful was also the idea that, even in the late 18th century, it was still possible to discover "new lands" that had never been inhabited or used. Paradoxically, these assertions could easily be accompanied by the indication that the "recently discovered" land nevertheless bordered with existing farms or had immediate neighbors or could be located next to an indigenous community.[22]

Those claiming rights over not-yet-distributed or abandoned land tended to justify their requests by invoking both private and communal interest. They pretended to need the land for

their survival, and the survival of their families, or for tax payment, but they also mentioned the protection of royal interests and the common good. After all, the reassignment of rights allowed the royal treasury to receive certain fees, but it also assured economic improvement, as it converted abandoned land into useful land. By the 18th century, the struggle against uncultivated land would also be described in moral terms as a struggle to impose civilization on barbarism and chaos. Alongside came the argument that petitioners were the correct persons to remedy this state of affairs, as they were both able and committed.

Yet even after they were assigned, re-assigned or appropriated, land rights continued to be extremely precarious. Conflicts regarding who could use the land were often both ancient and repetitious and could easily happen with almost a certain regularity every several years, with a favorable decision not necessarily ensuring that there would be no additional challenges in the future, sometimes by the same party, sometimes by others, sometimes in the same generation, sometimes in later periods. On occasions, both conflict and the lack of clarity could be explained by precarious or infrequent use, which led to doubts or even oblivion.[23] On others, clarity seemed to have lacked from the beginning as, often, parties to land conflicts could not agree on whether certain lands had been received in inheritance, or were included in a certain land grant, which were their boundaries or even where they were located.[24] The lack of clarity could be such that, called to resolved such conflicts, magistrates could be reduced to implementing decisions based not on the particular circumstances of the case but on the "customary extension" or the "customary belonging" of land plots.[25]

These continuous challenges required that litigants certify not only how they obtained the use of the land but also how did those who preceded them. This often implied remembering previous transactions, in theory, all the way back to the first possessor as, to produce a just title (*justo título*), all these past transfers had to have been done correctly. As a result, if the land was first assigned by a *cacique* who sold land (usage) rights to a plot that was not under his jurisdiction, or that he could not assign, then everything that had transpired since was invalid, and nothing could be pretended.[26] For precisely this reason, when meeting a challenge, purchasers often demanded that previous users personify in the courts and defend their entitlements.[27]

Because going back in time to the first assignment was difficult, not to say impossible, parties to land disputes often argued that their rights were based on immemorial possession. It is possible that most were ignorant of how and why immemoriality operated, yet they were all aware that its invocation was a powerful tool. Jurists understood immemoriality to be a legal presumption, that is, a juridical mechanism allowing to claim certain things without having to prove them first.[28] Presumptions were usually adopted in hard cases, where the need to solve a certain situation was important, but relaying on actual proof was impossible. Not only was immemoriality a presumption, that is a rule that solved cases in which knowledge was utterly lacking and evidence did not exist, but it was also a special presumption that did not admit proof to the contrary (such a presumption was called in Latin *praesumptio juris et de jure*). That is, regardless of what was known or ignored, and even regardless of evidence that contradicted the presumption, the facts that were allegedly immemorial could not be juridically questioned.

To establish that the possession of rights was immemorial, all that the parties had to do was to argue that such was the case. Claims for immemoriality were often accompanied by the allegation that those holding the land suffered no opposition and that this silence demonstrated the justness of their cause.[29] These allegations referenced yet another juridical presumption, based on a commonsense observation according to which those suffering challenges to their rights usually protested. As a result, if they did not, the conclusion jurists adopted by way of presumption, was that either no one was hurt by what had transpired, or these suffering challenges implicitly agreed to abandon their rights (Herzog, 2024a). Silence, in other words, constituted juridically a proof for consent.

Together, these juridical mechanisms could easily transform those who could not prove their rights into legitimate possessors of the land. They allowed them to argue that the situation at the present time should continue simply because no one knew or remembered a previous time, when other claimants existed.[30] Adopted by jurists in order to solve cases that would otherwise be impossible to determine, the combined operation of these presumptions also helped conserve the *status quo*, another mission that late medieval and early modern jurists sought as their own. Perhaps unaware of how well they were defended by these presumptions, petitioners often sought to excuse their inability to supply evidence. They explained that it was normal not to have proof of their entitlements given the passage of time. They suggested that, as was well known, records were consumed over the years, and actors often did not take sufficient care to guard them. Interested parties could also mention fires that consumed their houses, or the seizure of town records during rebellions, or wars.[31]

On occasions, lacking the correct documentation, the parties attempted to replace it by supplying alternative records, such as the land being included in a testament, or it being auctioned for debts. Some litigants requested authorized copies of existing documentation so that their rights would not be questioned in the future.[32] Others petitioned to receive a *mandamiento de amparo*, which was a judicial decision that included an injunction (an *amparo*). Rather than acknowledging their rights, the injunction mandated, theoretically as a temporary measure, not to change the *status quo*.[33] As precarious and as partial as it was, *amparo* often served as a powerful tool if not for recognizing rights, at least for bestowing the right not to suffer immediate challenges.[34]

The end result of all this, as the Corregidor of Chimbo argued in 1784, was the presence of "infinite conflicts" regarding land rights that were very difficult to resolve.[35] The Corregidor explained that the frequent inability to decide who had a better right resulted in arbitrary decisions. This, he argued, justified his order that prohibited the sale and purchase of land rights in the future, and that threatened local judges who had authorized them with punishments, venders with the loss of the payment they had received, and purchasers with the loss of possession.

A Second Observation: Family and Community

Many litigants argued their case by mentioning the rights of their forefathers, near or remote. They pretended to succeed their parents or, often, grandparents and great grandparents.[36] Or, they suggested that "since very ancient times this land passed from fathers to sons in continuous succession".[37] This implied that litigants involved in land conflicts were required not only to show their land use but also to prove legitimate filiation or, alternatively, to show that family relations were recognized in a testament, which in the absence of other proof, could act to legitimize both the possession, and family belonging.[38] To sustain such claims, on occasions, litigants expressed their vision of both what a family was, and who had the right to inherit. For example, in 1780 Tomás de Cepeda argued that the person currently using the land had no right to it because he was the grandson of Bernardo Guerrero, but the lands belonged to Guerrero's wife, who was not his grandmother.[39] As a result, once the wife died without ascendents nor descendants, nor known heirs, nor had written a will, the land use belonged to no one and the pretended heir, who was not part of the family, had no rights at all.

Though family relations were clearly important to explaining land rights, even more common were references to membership in the community. These references centered on three issues: what was a community, which were communal rights, and who were communal members. Discussions regarding communities demonstrate that, while we tend to imagine that communities had commons, contemporaries often established these relations on the inverse, believing that commons made communities rather than communities made commons. For example, it was generally argued that settlements that lacked commons or their commons were useless, could not be considered a "proper" community. According to this vision, the possession of communal land enabled communal life, including the participation in social, religious, and political activities.[40] Without commons, this would be impossible. The lack of commons also disabled communal life in other ways as, without commons, members would be scattered geographically and would be constantly on the move, begging for their livelihood.[41] The use of commons, in other words, both enabled community life, as well as allowed individuals to settle in the community permanently, participate in communal life, and be employed in agriculture pursuits.[42]

Archival documentation thus testifies that the use of commons during various generations was often understood as a manifestation for the existence and continuity of the community. Among other things, this use enabled both economic survival and the formation of identities, including the cultivation of communal memory and an ongoing relation with ancestors.[43] Often considered as an inheritance received from the past, the commons were an important asset that had to be kept intact for the benefit of future generations.[44]

The existence of proper communities thus hinged on having communal land. Yet, the question of how to identify communal lands haunted contemporaries. The default answer was often that the land was communal rather than individual. To attest that such was the case, no proof was needed. It was sufficient to observe the law.[45] Afterall, the right to have commons was absolute, either because royal instructions so mandated, or because in practice all communities

did receive common land.[46] As a result, no other rights, including individual rights, could exist where the commons were located. Those who disagreed with such statements argued on the contrary that, unless there was concrete proof for entitlement, the land must be considered free.[47] Concrete proof could be demanded because it was logical to assume that communities guarded their titles and would be able to produce them when required. The lack of proof could therefore be construed as evidence that the community had no rights.[48]

While many litigants focused on the question of whether the community had received communal lands, others engaged with another aspect, namely, whether the lands received should be conserved if and when they were no longer needed, or if and when they were no longer used. Insisting that the assignation of land was always reversible, interested parties affirmed that lands granted as commons could be taken away and returned to the king who could reassign them if they were no longer necessary or they were no longer used.[49] While usage could be attested by observing the terrain or in other ways described above, deciding on necessity required observing the community. For example, if communal membership has dwindled, the number of members smaller than it had been, there were good reasons to revise the allocation and relinquish the part that could be viewed as superfluous (*sobras*).[50] While for some litigants at stake was the number of persons living in the community, for others, need depended on whom they were.[51] Were they able to work the land? Were they present or mostly absent? Were they prone to work, or only pursued their leisure?

When land granted to indigenous communities for their use was considered unnecessary, litigants argued that those who continued to hold to it committed usurpation (*usurpación*), which harmed the royal treasury and the community at large.[52] They pretended to have denounced (*denunciar)* this usurpation because it was both illegal and harmful.[53] While many such denunciations came from individuals who wanted the land and requested it be reassigned to them instead, on occasions, the Spanish authorities pretended to have noticed usurpations and acted upon them because of considerations of common good. Such was the case, for example, in 1783 when the *corregidor* of Guayaquil argued that the village of Baba had no more than 200 members but that, besides the legal one league of commons, it had plenty of additionally "precious" land (*tierras preciosas*) for cultivation and pasture. According to the *corregidor*, even the one league mandated by royal orders was in reality too much because of the 200 inhabitants, only 33 paid tribute, which in theory indicated that only they were able to work (*eran hábiles para el trabajo*).[54] If this was not enough, next to their village was another one that also had a league of commons. It would be advisable, the *corregidor* concluded, to combine both villages and assign them both a single league. The present situation, he argued, not only left the land unattended and unused, but it also enabled locals to live a life of leisure (*ocio*) rather than work. The *corregidor* also complained that similar observations could be made regarding many other villages of the jurisdiction, a situation that clarified why the province was poor and depopulated. While it was important to grant indigenous communities and individuals sufficient land to survive, there was no reason to give them a large territory that they could and would not want to work and that others could profit.[55] Nor should they be able to sell what they did not need because all the law allocated to them was the right to occupy the land by using it (*ocupar útilmente*) not pretend to be its proprietors (*dueños*).

In many of these discussions, the burden of proof was not on the party that claimed abandonment, but on those who wished to conserve their possession.[56] On occasions, the indigenous inhabitants were asked to agree to the loss of their land. In one such case, transpiring in 1675, the president of the *audiencia* of Quito ordered to gather the members of an indigenous community during religious instruction (*doctrina*) and inform them of the request to reassign parts of their territory.[57] A minister then visited the village and, having concluded that it indeed had superfluous extension, requested (and received) the consent of the local indigenous leaders (*principales*) to the reassignment. Though we have no way of knowing whether this consent was free or coerced, we do know that indigenous communities often contested such conclusions arguing that the redistribution of the land was in fact a violent dispossession (*violento despojo*).

While deciding which communities existed and whether they had commons which they used and needed was essential, identifying communal members was equally important, as only they could benefit from the commons, which non-members could not. The members were said to hold the land jointly by agreement (in *mancomún*). They could use it together (for example, by all of them letting their animals pasture on the same territory), or the authorities could distribute the commons into plots of privative usage assigned for individual members who would cultivate these plots and have exclusive rights to them during a certain period.[58]

Perhaps because they were charged with administrating communal land, *caciques* were frequently accused of treating communal lands as their own, by giving them in inheritance to their offspring or selling them to outsiders.[59] Various *caciques* writing in 1792 complained against such practices by their predecessors in previous centuries. The ancient (*antiguos*) *caciques*, they argued, were "absolutist men who considered the members of their community a hindrance."[60] Acting capriciously, they sold communal land, sales that the present *caciques* asked to reverse because they were illegal.

Though presenting such behavior as clearly abusive, distinguishing lands held by *caciques* from those that were communal, was not a simple affair. Colonial documentation employed a variety of legal formulations to refer to communal lands. During the early colonial period, it was possible to imagine that, like the king, *caciques* had as their own (*tenía por suya y como suya*) both the land and the people, of whom they could dispose of as they wished.[61] Or, alternatively, that, also like the king or the nobility and sometimes *encomenderos, caciques* had jurisdiction over the land, and could assign its use to individual members.[62] Or, it could be assumed that *caciques* held the land and passed it to their heirs with the intention that it remained communal and that the heirs would defend it, as they did.[63] According to some contemporaries, usage rights granted by *caciques* to community members could be given permanently and be inherited; according to others, they were temporary and personal and persisted only as long as the *cacique* was still in place and the person to whom these lands had been assigned was still alive.[64] After both had died, the land automatically returned to the common lot and could be reassigned. Also asked was the question of which was the correct procedure for land sales by *caciques*. Could *caciques* sell communal land rights without the agreement of all community members, or must all members consent (and perhaps participate in the revenue)? Sometime, lands were classified as belonging to "the *cacique* and his subjects."

On other occasions, they were identified as part of an entailed estate belonging to him in person.[65]

While the sale of commons could lead to protests, sometimes at stake was not the sale itself but the identity of the seller or purchaser. Was the seller indeed the *cacique* and could he legitimately take decisions for the community?[66] Could, for example, someone who was native of the village, but whose father was a *mulato,* be a legitimate *cacique*, or did he impose himself as such without having the right to do so, and could therefore not take decisions that would bind the community, among other things, by selling its land usage rights?

The identity of purchasers was just as important. Was the land sold to communal members or outsiders, including individuals classified in the records as *mestizos, negros* and *mulatos* who were not only foreign to the community but also persons who should not reside there, nor enjoy usage rights in the commons?[67] And how should one verify whether purchasers were indigenous (as they pretended) or *mestizos* (as community members attested)?[68] What would happen when an indigenous woman, member of the community, married an outside, classified as a *mestizo*? Could he inherit her rights or were her usage rights limited to her lifetime or, at least, to successors who were also indigenous and members of the community?[69] Particularly troublesome, according to the records, were cases in which communal lands were rented or sold to "whites" (sic) who resided in the village (when they should not have been allowed to do so). Some litigants also insisted that the privative use of communal land should be limited to the lifetime of the grantee or could pass in inheritance only as long as heirs were also members of the community.

Indigenous individuals who protested these sales often argued that because they were not favored by the *caciques*, they were left without usage rights. They demanded to be given their fair share of the use of communal land and insisted that this was what the law instructed. Any other solution would be absurd because it would allow, gradually, the elimination of communal land, which would gradually accumulate at the hands of nonmembers.[70]

If, on the one hand, only legitimate *caciques* could sell or divide communal land, and if only communal members could inherit or be assigned its use, on the other hand, ties between rights and membership also operated on the inverse. On multiple occasions, exercising the right to use the commons allowed individuals to claim status as members, while those who lacked access to the commons could easily be classified as outsiders (*forasteros*).[71] The relations between usage right and membership was also evident in other ways. To substantiate their rights, those who wished to make use of the land often built a house.[72] Or, alternatively, they argued that their possession of the land was clear because they already had a house, where they had resided for many years.[73] Yet, while the building or the residence in a house could easily be comprehended as an act of possession taking, it was also an act of establishing membership in the community (*avecindamiento*). Such was the case because, to become a member, it was necessary to reside in the community with the intention to remain there, and building and inhabiting a house, most particularly, an "open house," or "populated house" (*casa abierta* or *casa poblada*), where the family also resided, was generally understood to be an excellent proof for such an intention.[74] In

order to take possession of the land, as well as in order to become a member, the house had to be fit for habitation (*casa de vivienda*), and be clearly distinguishable from other structures instead meant for animal keeping or for momentary refuge. The house having a corridor and a proper thatched roof could be proof of the intention to reside. So would having a vegetable garden, or a wall demarcating the property (*cercado*).

If conditions for taking possession or land rights and becoming a citizen were in fact identical, contemporary terminology further proved the close association between possession taking and membership. They identified the act of possession as an "entry" (*entrada*), a term often used to denote conquest, and challenging it as de-population (*despoblado*), a term that usually affirmed that the place was not only uninhabited but also lacking a proper community.[75] Because conditions for possession taking and *avecindamiento* were similar and could be accomplished by the very same act, those who wished to deny the possession or membership of others often moved to destroy or burn the houses they built, or where they resided, making them unhabitable.[76] Alternatively, those whose house had been abandoned after fire feared that the lack of temporary habitation, however justifiable it might be, would be understood as abandonment of both land and membership.[77]

The fear that the construction of houses would indeed prove both land rights and membership and the wish to curb such pretensions was often clear in orders that prohibited Spaniards, for example, from building houses on lands located in indigenous communities, where they were not supposed to reside, nor become members. This explained why in 1698 Captain Juan Cerezos needed a special permission to construct a house in Daule, an indigenous community in the jurisdiction of Guayaquil.[78] According to his version, he resided in Guayaquil, but had land usage rights in the village. Because the village was distanced from where he resided, to ensure that he and his family could hear mass and receive sacraments in Daule, which they habitually did, it was vital that they had a house there. This was particularly important in the winter when the roads from Daule to Guayaquil were dangerous, especially for his wife and children. His aim, he argued, was no other. The authorities allowed the construction of the house yet under the condition that it would be outside the village, that he would reside there only when he was present in Daule to hear mass, and that he did so without disturbing the indigenous inhabitants, warning him that if the indigenous inhabitants would complain against him, his family, or his servants (*criados*), the house would be immediately demolished.

Thus, while on many occasions the presence on the land, even its use, could be tolerated, what could not be tolerated was the construction of a house.[79] A house was dangerous because of what it could come to symbolize and what it could allow to acquire: not only land rights but also membership. The fears that such would be the case were not farfetched: the documentation shows that, on occasions, allowing someone to temporarily build a house on the land was indeed risky as, thereafter, the heirs could claim that the land was theirs and/or that they were members of the community.[80]

Given the close ties between land use and membership, it is not surprising that, on occasions, those who represented indigenous communities complained against members who collaborated

with rivals, when it was expected that they would be loyal to the community.[81] Membership in the community, of course, could also protect locals by allowing them to recruit witnesses who would be favorable to their cause and could attest to what "usually happened," or to a long communal memory regarding the possession of rights.[82] The tying of land rights to membership was such that, on occasions, litigants had to justify how they came to use land in a community to which they did not belong.[83]

Conclusions

Although historians have placed private property at the center of the colonial enterprise and most focused on investigating how it operated and on stressing the differences between Spanish and indigenous practices, contemporary documentation testifies that both Spaniards and indigenous peoples related to land in ways that were not radically dissimilar. Rather than private property, they debated the right to use the land; rather than concentrating on the rights of individuals, they centered on the rights of families and, most importantly, of communities and their members. Here and there, commons were the norm, and privative use of the land was considered by definition conditional. Conflict over land thus mostly involved situations, in which individuals used the land, with or without contestation, with or without rights, for a short or a long period, until others wished to do the same and confrontations took place. Contestation often confronted individuals, but they were mostly anchored in allegations that some protected communal land, while others abused it.

In colonial Spanish America, land rights were extremely precarious and depended on constantly showing who used the land and on demonstrating that this use was both necessary and sufficient. The civil regime of property that was instituted did not entail the presence of private property. Instead, as was often the case in Europe, it upheld the pervasive persistence of lands that individuals could use, exclusively or with others, permanently or temporarily, because they were members of the community.

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Notas

1 De la Puente (2011) has recently criticized these procedures, calling us to re-examine whether the stereotypical rendering of indigenous understanding of land rights, at least in Peru, was accurate. On these issues also see Bastias (2020).

2 These trends, although also present in the scholarship on Spanish America, are particularly clear in the historical analysis British North America. See, for example, Mensch (1982), Bethell (1998, pp. 34-45), and Ely (2008, pp. 10-25).

3 On the nineteenth-century reimagining of property rights in Europe see, for example, Grossi (1981). On how this transpired in England, see Brace (2001), and Brace (1998). There is endless literature on what transpired in Europe. I found the following most useful: Grossi (1995), Thompson (1993), Neeson (1993), Peset and Hernando (2002), Moreno, J.R. (s/f), De moor, Shaw-Taylor, and Warde (2002), and Rey (1997). On how commons were managed in Europe see, for example, Ingold (2018). On the struggle to prohibit their appropriation see, for example, Sánchez (2002) and Sánchez (2000).

4 Archivo Nacional del Ecuador/Quito [ANQ], Fondo especial [FE], caja 4, v.9 no. 280, fols. 8r-12r, petition dated Quito, 7.5.1675 on fol.8r.

5 For example, a "land called uzupata" or "lands named Sobotubon, Tempala, Tansugta": ANQ, Casas 9, exp. 7 de 21.10.1752, autos de don Laurensio Redrován contra doña Tomasa Noroña, petition of the procurador of Redrován, Clemente González, dated 21.10.1752, fol. 1r and ANQ, Indígenas 16, exp. 2 de 2.9.1686, petition of the protector de los naturales del partido por Isidro y Pascual Paguay y otros, naturales de Calpi, on fol.22r.

6 ANQ, FE 9, v. 22 no.696, fols. 26r-29v, petition of Gertrudis Anrraquilango, cacica principal, who referred to the invasion of part of her land as "un pedazo del cuerpo de estas tierras".

7 On these questions also see Herzog (2021a) and Herzog (2024b).

8 The original version reads: "solo tienen en dichas tierras un uso precario sin acción de propiedad por estar como se ha dicho sujetas al derecho de reversión:" ANQ, Cacicazgo 3, exp. 3 de 9.11.1791, autos de los caciques y común del pueblo del Puntal con los caciques del pueblo de Tusa, sobre tierras, petition of the procurador general de indios on fol. 3r.

9 On the prevalence of usage rights see, for example, Graubart (2017).

10 See the definitions of *realengas* in the dictionary of the royal academy, where it is defined as "something directly subjected to royal authority" as differentiated from that which is subjected to lords or the military orders. Somewhat paradoxically, the clearest statement about the distinction between jurisdictional matters and property comes from the definition of *realengo* in WIKIPEDIA (19 November 2022). *Realengo*. https://es.wikipedia.org/wiki/Realengo. Similar is DE CHILE (29 August 2024). *Etimología de Realengo*. http://etimologias.dechile.net/?realengo. Also see ENCICLOPEDIA JURÍDICA (2020). *Bien de realengo*. http://www.enciclopedia-juridica.com/d/bien-de-realengo/bien-de-realengo.htm

11 See, for example, THE FREE DICTIONARY. (19 November 2022). *Realengo*. Farlex. https://es.thefreedictionary.com/realengo and DICIONÁRIO ONLINE DE PORTUGUES. (19 November 2022). *Realengo*. DICIO. https://www.dicio.com.br/realengo/

12 ANQ, Tierras 124, exp. 2.6.1797, don Gabriel Arrediles, vecino pueblo de Naranjal (Guayaquil), his petition dated Quito, 2.6.1797.

13 ANQ, Tierras 90, exp. 12.10.1775, petition of Miguel García de Cáceres Colazay to the juez privativo de tierras of Jaén de Bracamoros Serafín de Vellán y Mola, dated 2.11.1774.

14 ANQ, Tierras 9, exp. 18.8.1678, petition of the protector general de los naturales for Francisco Tenemasa, cacique principal and governor of Sevadas.

15 ANQ, Tierras 106, exp. 1.8.1786, don Francisco Cabeza de Vaca y Jacinta Jarrín sobre el denuncio de tierras realengas nombradas Santita y conocidas genéricamente por Raste, Cuenca 1795-1798.

16 ANQ, Tierras 124, exp. 2.6.1797, petition of don Gabriel Ardiles, vecino of Naranjal (Guayaquil), dated 2.6.1797, ANQ, Tierras 126, exp. 24.9.1798, petition of Francisco Javier Barbosa procurador por José Camacho, natural de la ciudad y residente en Lima, dated Quito 26.9.1798. In ANQ, Tierras 130, exp. 23.9.1800, petition of Francisco Javier Barbosa procurador for Santiago Carvajal, cura de la doctrina de Montecristi (Guayaquil), dated Quito 29.8.1801, the parties argued that the land was "todo de monte áspero, inculto, en el cual solo cruzan animales feroces de tigres y se hallan infinidad de culebras."

17 ANQ, Tierras 124, exp. 2.6.1797, petition of don Gabriel Ardiles, vecino of Naranjal (Guayaquil), dated 2.6.1797. Also see ANQ, Tierras 129, exp. 27.3.1800, autos sorbe la denuncia de una legua de tierras citas en el pueblo de Ojiba en la provincia de Guayaquil hecha por don Jose de Ortega, Quito 27.3.1800.

18 ANQ, Tierras 70, exp. 9.7.1757, petition of Juan Manuel Mosquera, procurador de causas por Domingo Gómez Toscazo, vecino de Guayaquil, dated Quito, 9.7.1757.

19 ANQ, FE 60, v.161, no. 4686, fols. 188r-193v, petition of Tomás de Cepeda, vecino del asiento de Latacunga, dated Latacunga 16.10.1780 on fol. 189r and ANQ, Tierras 102, exp. 18.8.1783, petition of Don Eustaquio de Orosco, dated Riobamba, 16.8.1783.

20 ANQ, Indígenas 19, exp. 10 de 3.11.1691, Margarita Calderón, vecina de la ciudad quiere componer con S.M. un pedazo de tierra que según el fiscal protector es de posesión y propiedad del común de estos indios, her petition on fols.22r-v and ANQ, Tierras 119, exp. 18.5.1795, Ramón Jaramillo por Jacinto Gorostiza y Morán, vecino del pueblo de Baba (Guayaquil), his petition dated 9.6.1795. On these terms and their meaning also see Herzog (2018).

21 The original version reads: "que no ha habido dueño ni propietario de ellas": ANQ, Tierras17, exp. 26.11.1691, petition of alférez Juan del Salto, vecino de Riobamba, for land in Chimbo, his petition, on fol.1r, ANQ, Tierras 14, exp. 4.2.1689, alférez Eugenio de Sotomayor teniente de corregidor de la ciudad parece y dice..., ANQ, Tierras 16, exp. 19.12.1690, Bernardo Núñez de Rojas, vecino de Ibarra por él y por fray José Núñez de Rojas su hermano. The term *desamparado* clarifies the personal relations that individuals and communities had with the land, which they had the duty to care for. I would like to thank Caroline Cunill for drawing my attention to this point.

22 ANQ, Tierras 109, exp. 24.5.1788, relativos a la denuncia que hace don Ignacio Ochoa y Astudillo de unos sitios montuosos en la jurisdicción del pueblo de Cañar nombrados san judas y Ocaña and ANQ, Tierras 126, exp. 21.8.1798, Ramon Jaramillo por Manuel López Hidalgo, vecino de Guayaquil, his petition dated Quito, 22.8.1798.

23 ANQ, Tierras 86, exp.10.7.1772, petition of Ramón Jaramillo, procurador por Rosalia de Ortega y Catalina Morillo, viudas vecinas de Cuenca, viewed by the judge on 10.7.1762.

24 ANQ, Cacicazgo 2, exp. 4 de 20.7.1735, autos de doña Juana Hati, cacique principal del pueblo de Guaranda (Chimbo) con doña Isabel Cando, por unas casas y tierras en la plaza del pueblo, see the position of the corregidor dated 22.8.1735 on fols. 13r-14r and the response of Juana Hati on fol. 43v, ANQ, Tierras 49, exp. 7.8.1738, Clemente González por Francisco de Estanillo y Osejo en autos con Pascual Antonio de Cicnesos, vecinos de Otavalo y en su nombre Antonio Fernández Canieles sobre el derecho a las tierras de la Herradura inclusas en el hato del hospital términos del dicho asiento and ANQ, Tierras 107, exp. 14.11.1787, autos seguidos por don Pedro Cobo Valdivieso vecino de Riobamba sobre un despojo de un hato nombrado Jun en la jurisdicción de Cuenca con los indios del Juncal por haberse introducido éstos en dichos sitios, Cuenca, 1787.

25 The original version reads: "conforme a la cantidad de tierras que se suele y acostumbra dar para semejantes estancias:" ANQ, Tierras 1, exp.1 de 14.8.1565, Don Juan Zumba cacique de Uyumbicho y sus indios contra Hernando de la Parra sobre tierras en dicho pueblo, decision of the audiencia dated 13.8.1566 on fol. 30r.

26 ANQ, Indígenas 22, exp. 16 de 26.2.1697, Nicolas Plaza de Cepeda por Diego Briceño vecino Loja, fols. 3r-v.

27 ANQ, Cacicazgo 44, vol. 99, exp. 23.2.2732, Juan Valeriano de Lara contra Antonio Anaguano cacique del pueblo de Nayón y el común de indios del mismo por la propiedad de tierras en sitio llamado Pelileo que están en términos de Nayón, fol.45r.

28 On immemoriality see Herzog (2021b) and Herzog (2023). Claims for immemoriality were therefore a juridical strategy and should not be confused with a continuity with the past, nor do they necessarily indicated the importance of customs as some historians have assumed: see, for example, Villella (2016). On how customary law operated in Spanish America vis-à-vis the indigenous population, most particularly, with respect to land rights, see Herzog (2013).

29 ANQ, Cacicazgo 2, exp. 4 de 20.7.1735, autos de doña Juana Hati, cacique principal del pueblo de Guaranda (Chimbo) con doña Isabel Cando, por unas casas y tierras en la plaza del pueblo her petition on fols. 1r-4r.

30 This was the way immemoriality was often described: having nothing in human memory to contradict it, but also having nothing in human memory to support it. On these questions see, for example, Herzog (2021b).

31 ANQ, Tierras 1, exp.1 de 14.8.1565, don Juan Zumba cacique de Uyumbicho y sus indios contra Hernando de la Parra sobre tierras en dicho pueblo, interrogatorio of Hernando de la Parra, fol. 19v.

32 ANQ, Tierras 57, exp. 19.11.1746, Cuenca, 31.8.1624 ante el capitán don Jospeh Márquez de Mancilla corregidor se leyó dicha petición. ANQ, Tierras 63, exp. 3.11.1752, petition of Tomás de Agama vecino del pueblo de San Antonio de Alaguez, jurisdicción de Latacunga, and ANQ, Tierras 97, exp. 26.6.1779, petition of the gobernador don Nicolás de Andagoya y Otalora escribano de cámara y gobierno de la audiencia, dated Quito 12.5.1692, on fol. 34r.

33 The original versión reads: "para que sus hijos que a muchos las hubiesen de gozar y parar y sus descendientes tuviesen memoria de ellas": ANQ, Tierras 6, exp. 14.1.1669, mandamiento del capitán Martín de Ocampo corregidor de cuenca por petición de don Francisco Sánchez cacique y gobernador on fols. 1v-2v.

34 ANQ, Tierras 34, exp. 15.3.1712, petition of don Juan Guaytara cacique principal y gobernador antecedente del pueblo de Cotocollao términos de Quito por si y en nombre de la parcialidad dated Quito, 15.3.1712.

35 ANQ, Gobierno 39, exp. 11 de 19.5.1786, Fernando Antonio de Echeandía, corregidor, dated Chimbo, 5.6.1784 on fol. 9r.

36 ANQ, FE 9, v. 22, no.696, fols. 26r-29v, petition of Gertrudis Anrraquilango, cacica principal, who invoked the rights of her mother.

37 The original versión reads: "desde tiempos muy antiguos derivándose de los padres a los hijos por continua sucesión": ANQ, Cacicazgo 3, expediente 3 de 9.11.1791, autos de los caciques y común del pueblo del Puntal con los caciques del pueblo de Tusa, sobre tierras, fol. 22v. Also see ANQ, Indígenas 16, exp. 2 de 2.9.1686, memorial del protector general de naturales por Ventura Elbay and Francisco Elbay, hermanos, indios naturales del pueblo de Calpi, jurisdicción de Riomabba, dated 16.8.1649, on fol. 2r.

38 ANQ, Tierras 65, exp. 29.7.1754, petition of Manuel Romero residente en la ciudad vecino del asiento de Latacunga and ANQ, Cacicazgo 8, exp. 13 de 14.5.1770, autos de doña Paula Titusunta Llamota, cacica de Saquisilí (Latacunga) para que no se vendan las propiedades pertenecientes a su cacicazgo, petition of the fiscal protector in her name, date Quito 14.5.1770, on fol. 5r.

39 ANQ, FE 60, v.161 no. 4686, fols. 188r-93v, petition of Tomás de Cepeda vecino del asiento de Latacunga, dated Latacunga 16.10.1780 on fol. 189r.

40 ANQ, Tierras 55, exp. 22.6.1745, Bernardo Reyna y otros indios regidores y naturales del pueblo de Laguna en jurisdicción de Guayaquil y por el común de indios del puerto. Also see ANQ, Indígenas 60, exp. 7.2.1749, protector general por Baltasar Tujango cacique principal de la parcialidad de indios de Misalalangui, his petition dated Quito 7.2.1749 on fols. 1r-2r and information given by Clemente Sánchez, cura del pueblo de Cumbinama dated Quito 14.8.1749 on fols. 9r-10r.

41 ANQ, Tierras 104, exp. 18.11.1784, petition of the protector de indios Josef Mexia for the indians of Yaguachi dated Guayaquil, 31.11.1784 on fols 1r-2v. The audiencia agreed and mandated as requested on 27.5.1785.

42 All these arguments were present in ANQ, Tierras 38, exp. 13.5.1722, petition of Joseph Sánchez de Miranda tesorero general de la Santa Cruzada on fols. 3r-4v.

43 ANQ, Indígenas 19, exp. 10 de 3.11.1691, Margarita Calderón, vecina de la ciudad quiere componer con S.M. un pedazo de tierra que según el fiscal protector es de posesión y propiedad del común de estos indios, cláusula del testamento on fol.26r.

44 ANQ, Indígenas 16, exp. 23 de 1.10.1687, el indio Agustín Lucero y los demás naturales del asiento de Otavalo contra el remate y posesión de unas tierras que dicen ser suyas.

45 The original version reads: "no necesitan más título que el mismo que les confiere la ley que manda que se les de todas las tierras que necesiten de labor y pasto para su comodidad y subsistencia:" ANQ, Tierras 76, exp. 2.8.1763, autos seguidos por la protecturía general por la protección del común de indios del pueblo de Jipijapa en la Gobernación de Guayaquil año de 1797, see for example, petitions of the fiscal dated Quito 18.4.1796 on fol. 41r and 29.5.1797 on fol. 67r and the nomination of experts by Fernando Cuadrado y Baldenegro oidor y juez de ventas e indultos on 2.5.1796.

46 ANQ, Cacicazgo 44, vol. 99, exp. 23.2.2732, Juan Valeriano de Lara contra Antonio Anaguano cacique del pueblo de Nayón y el común de indios del mismo por la propiedad de tierras en sitio llamado Pelileo que están en términos de Nayón, Real provision a petición del protector general dated 3.3.1732 on fol. 3r and alegations on fol.43r and ANQ, Indígenas 16, exp. 2 de 2.9.1686, petition of el protector de los naturales del partido por la protección de Isidro y Pascual Paguay, Pedro Morocho y demás consortes, fols.22r-v.

47 ANQ, Cacicazgo 3, expediente 3 de 9.11.1791, autos de los caciques y común del pueblo del Puntal con los caciques del pueblo de Tusa, sobre tierras. This expediente continues in Cacicazgo 3, exp. 4 de 1792.

48 The original version read: "los indios lo cuidan mucho en sus pueblos y es difícil que se confunda o pierda porque regularmente esta multiplicado en muchas copias que no permiten se confunda o pierda su memoria, aunque el original estuviera consumido," fol. 38v.

49 ANQ, FE 5, v.13, no. 414, fols. 62r-112v, decree of Pedro de Salcedo y Fuenmayor dated Pasto, 24.12.1692 on fols. 74r-v.

50 The original version reads: "excede el número de los indios y a la fuerza que estos tienen para cultivarla:" ANQ, Tierras 98, exp. 11.6.1780, petition of Francisco Javier Barbosa por doctor don Manuel Ventimilla Presbitero vecino de Cuenca dated 19.4.1780.

51 ANQ, Tierras 38, exp. 13.5.1722, petition of Joseph Sánchez de Miranda tesorero general de la Santa Cruzada on fol. 1r and response of the fiscal protector dated 5.6.1722 on fols. 5r-v, ANQ, Indígenas 111, exp. no. 20 de 30.12.1783, letter of the corregidor of Guayaquil Ramón León y Pizarro dated 30.12.1783 on fols. 1r-v and response of the protector general de indios, Rivadeneyra, dated Quito, 4.2.1784 and ANQ, Tierras 125, exp. 23.9.1797, the declaration of witnesses presented by don Joseph Alduñes, hacendado en paraje de Cuyuje on fols. 11v-12v. Following was the claim that he could do better dated Guayaquil 12.11.1798 on fols. 13r-14v.

52 ANQ, Tierras 38, exp. 13.5.1722, petition of Joseph Sánchez de Miranda tesorero general de la Santa Cruzada. Also see ANQ, Tierras 66, exp. 29.4.1755, auto de Fernando Santiago Tenoco, juez subdelegado y justicia mayor de Jaén de Bracamoros.

53 ANQ, FE 60, v.161, no. 4686, fols. 188r-193v, petition of Tomás de Cepeda, vecino del asiento de Latacunga, dated Latacunga 16.10.1780 on fol. 189r.

54 ANQ, Indígenas 111, exp. no. 20 de 30.12.1783, letter of the corregidor of Guayaquil Ramón León y Pizarro dated 30.12.1783 on fols. 1r-v and response of the protector general de indios, Rivadeneyra, dated Quito, 4.2.1784.

55 ANQ, Tierras 18, exp. 15.12.1692, petition of don Salvador Ango Pilainla de Salazar cacique principal de Otavalo y pueblos de su provincia por él y demás caciques y común de indios de la provincia and ANQ, Tierras 76, exp. 2.8.1763, autos seguidos por la protecturía general por la protección del común de indios del pueblo de Jipijapa en la Gobernación de Guayaquil año

de 1797, petition of the abogado agente que hace de fiscal dated Quito 30.6.1797 on fols. 7ov-71r.

56 ANQ, Tierras 47, exp. de 1735, Diego Núñez de Montesdoca cacique principal y gobernador de San Cristóbal de Patate y el común, petition of the protector general on fol.2r.

57 ANQ, Tierras 97, exp. 26.6.1779, el gobernador don Nicolás de Andagoya y Otalora escribano de cámara y gobierno de la audiencia, citación de los indios del Calacalí dated 25.5.1692, on fols. 35v. and 40r-v.

58 ANQ, Tierras 36, exp. 29.7.1719, don Junato Titufunta Llamoca cacique principal y gobernador de la provincia de Angamarca y pueblo de Saquisilí, petition of Gregorio Pilamunga gobernador del pueblo de Angamarca and Francisco Chimborazo, cacique principal dated 31.3.1700 on fol. 9r.

59 ANQ, Cacicazgo 44, vol. 99, exp. 23.2.2732, Juan Valeriano de Lara contra Antonio Anaguano cacique del pueblo de Nayón y el común de indios del mismo por la propiedad de tierras en sitio llamado Pelileo que están en términos de Nayón, Real provisión a petición del protector general dated 3.3.1732 on fol. 3r. Also see ANQ, Tierras 111, exp. 16.2.1791, petition of Valentín Antonio y sus dos sobrinos Manuel y Mariano, indios naturales del pueblo de Atuntaqui jurisdicción de Otavalo dated Quito 16.2.1791.

60 The original version reads: these caciques "eran hombres absolutos y de mucho respecto que miraban a sus indios como a estropajos:" ANQ, Cacicazgo 3, expediente 3 de 9.11.1791, autos de los caciques y común del pueblo del Puntal con los caciques del pueblo de Tusa, sobre tierras, petition of the procurador general de indios on fol. 17r. The term *capricho* appears on fol. 34v.

61 ANQ, Tierras 1, exp.1 de 14.8.1565, don Juan Zumba cacique de Uyumbicho y sus indios contra Hernando de la Parra sobre tierras en dicho pueblo, interrogatorio del cacique on fol. 12r and the declarations of witnesses, for example, of Francisco Condi, principal, on fol. 15r.

62 ANQ, Tierras 38, exp. 13.5.1722, the fiscal protector general de naturales Esteban Olaís y Echevarría dated Quito 20.5.1722 on fol. 1v.

63 ANQ, Cacicazgo 44, vol. 99, exp. 23.2.2732, Juan Valeriano de Lara contra Antonio Anaguano cacique del pueblo de Nayón y el común de indios del mismo por la propiedad de tierras en sitio llamado Pelileo que están en términos de Nayón, petition of Enrique de Ibarra Collaguazo, cacique principal de la parcialidad de Tanda y Pelileo y Cumbayá dated 19.10.1732 on fols. 45r-46r.

64 The original version reads: "vialiciamente se les permite el uso, sin que se entienda propiedad en ella por ser de reversión:" ANQ, Tierras 106, exp. 21.2.1786, el fiscal protector de naturales por Gabriel Cambisaca gobernador del pueblo de Gualaceo y el común de indios dated Quito 21.2.1786. The audiencia backed this petition on 21.2.1786. Also see ANQ, Tierras

111, exp. 16.2.1791, petition of Valentín Antonio y sus dos sobrinos Manuel y Mariano, indios naturales del pueblo de Atuntaqui jurisdicción de Otavalo dated Quito 16.2.1791.

65 The original version reads: [these properties were] "inajenable, respecto a tocar y pertenecer al fundo del cacicazgo que sigue la misma forma de los fundos de mayorazgos:" ANQ, Cacicazgo 8, exp. 13 de 14.5.1770, autos de doña Paula Titusunta Llamota, cacica de Saquisilí (Latacunga) para que no se vendan las propiedades pertenecientes a su cacicazgo, petition of the fiscal protector in her name, date Quito 14.5.1770 on fol. 16r.

66 ANQ, Indígenas 37, exp. 12 de 20.11.1722, los indios del pueblo de Gualaceo y San Juan de Cid corregimiento de Cuenca.

67 ANQ, Tierras 36, exp. 29.7.1719, don Junato Titufunta Llamoca cacique principal y gobernador de la provincia de Angamarca y pueblo de Saquisilí, Royal provision at the request of the fiscal protector general for Diego Cando cacique principal del pueblo de Angamarca dated 3.5.1700 on fol 4r. Also see petition on fol. 11r.

68 ANQ, Tierras 36, exp. 29.7.1719, don Junato Titufunta Llamoca cacique principal y gobernador de la provincia de Angamarca y pueblo de Saquisilí, petition of Gregorio Pilamunga gobernador del pueblo de Angamarca and Francisco Chimborazo, cacique principal dated 31.3.1700 on fol. 9r, as well as petition of Titufunta Llamoca on fol. 13r.

69 ANQ, Tierras 106, exp. 21.2.1786, el fiscal protector de naturales por Gabriel Cambisaca gobernador del pueblo de Gualaceo y el común de indios dated Quito 21.2.1786.

70 ANQ, Tierras 111, exp. 16.2.1791, petition of Valentín Antonio y sus dos sobrinos Manuel y Mariano, indios naturales del pueblo de Atuntaqui jurisdicción de Otavalo dated Quito 16.2.1791 and ANQ, Indígenas 16, exp. 2 de 2.9.1686, petition of el protector de los naturales del partido por la protección de Isidro y Pascual Paguay, Pedro Morocho y demás consortes, fols.22v.

71 ANQ, Tierras 55, exp. 22.6.1745, Bernardo Reyna y otros indios regidores y naturales del pueblo de Laguna en jurisdicción de Guayaquil y por el común de indios del puerto.

72 ANQ, Casas 9, expediente 7 de 21.10.1752, autos de don Laurensio Redrován contra doña Tomasa Noroña, petition of the procurador of Redrován, Clemente González, dated 21.10.1752, fol, 2r, for example, describes the building of a house in lands that the petitioner considered to be in his possession as a *despojo*. In this case, it seems that, while using the land for pasture was tolerable, constructing a house was not. Somewhat similar was the case in ANQ, Cacicazgo 44, vol. 99, exp. 23.2.2732, Juan Valeriano de Lara contra Antonio Anaguano cacique del pueblo de Nayón y el común de indios del mismo por la propiedad de tierras en sitio llamado Pelileo que están en términos de Nayón, Real provisión a petición del protector general, dated 3.3.1732 on fol. 3r and ANQ, Indígenas 19, exp. 10 de 3.11.1691, Margarita Calderón, vecina de la ciudad quiere componer con S.M. un pedazo de tierra que según el fiscal protector es de posesión y propiedad del común de estos indios, fol.114r.

73 ANQ, Tierra 33, exp. 21.6.1710, petition of Francisco Plaza vecino "para componer la casa en la que vive más de 18 años que está construida en tierras realengas y anegadizas" and favorable decision by the judge Sierra Osorio dated 5.7.1710. Similarly, ANQ, Tierra 33, exp. 24.7.1710, Andrés, maestro carpintero explained that "desde hace 20 años hizo su casa en el manglar de la banda del estero que llaman de Villamar adentro para la sábana y a la parte de esta ciudad."

74 ANQ, FE 4, v.9 no. 280, fols 8r-12r, declaration in 1675 of Alonso de la Vega Crespillo and Sargento Bernardo de la Parra on fol. 9v. On *avecindamiento* more generally, see Herzog (2003).

75 ANQ, FE 4, v.9, no. 280, fols 8r-12r, fol. 8r. Also see Herzog (2018).

76 ANQ, FE 9, v.23, no. 730, fols. 55r-62v, petition of Esteban Olaís y Echavarría, protector general de indios for the indians of Tisaleo (Ambato) dated 27.1.118 on fol. 61r, ANQ, Indígenas 16, exp. 2 de 2.9.1686, petition of the protector de los naturales del partido por Isidro y Pascual Paguay y otros, naturales de Calpi, and ANQ, Tierras 23, exp. 21.4.1697, petition of the protector de naturales del corregimiento en defensa de don Sebastián Arauca principal de la parcialidad de los Ingas Chichansuyos on fol. 1r

77 ANQ, Tierras 81, exp. 6.10.1766, petition of Pedro de Contreras vecino de la ciudad ciudad y hacendado to Jospeh de Borda Villa, dated Guayaquil 6.10.1766 and the response dated 24.6.1769 on fol. 16v.

78 ANQ, Casas 2, exp. 10 de 18.2.1698, autos del capitán Juan Cerezos para construir una casa de vivienda en el pueblo de Daule, jurisdicción de Guayaquil, his petiton on fol 1r.

79 ANQ, Tierras 17, exp.19.6.1692, the protector de naturales de cuenca y su jurisdicción por Antonio Saques Gana, Pedro Mispalba y Sebastián Inga y otros del común, his petition dated 19.4.1692 on fol. 3r.

80 ANQ, Tierras 110, exp. 16.7.1790, petition of the fiscal protector general de naturales por Antonio Muso y sus hijos indios naturales del pueblo de San Felipe de la jurisdicción de Latacunga dated Quito 31.7.1790.

81 ANQ, Tierras 23, exp. 21.4.1697, petition of the protector de naturales del corregimiento en defensa de don Sebastián Arauca principal de la parcialidad de los Ingas Chichansuyos.

82 The original versión reads: "y siendo esto así y público que la ha poseído muchos antes en la misma forma como lo dicen los vecinos del valle:" declaration in 1675 of Sargento Bernardo de la Parra, in ANQ, FE, Caja 4, v.9 no. 280 fols 8r-12r, on fol. 9v.

83 ANQ, Cacicazgo 3, expediente 3 de 9.11.1791, autos de los caciques y común del pueblo del Puntal con los caciques del pueblo de Tusa, sobre tierras, answer of Tomás García y Sierra, procurador de los indios del pueblo de Puntal on fol. 23r.