



LEGAL ENCOUNTERS ON THE MEDIEVAL GLOBE

Edited by
ELIZABETH LAMBOURN

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THE MEDIEVAL GLOBE

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Volume 2

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ARC_{HUMANITIES PRESS}

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Page design and typesetting
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Library of Congress Cataloging in Publication Data

A catalog record for this book is available from the Library of Congress

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ISBN 9781942401094
eISBN 9781942401117

mip-archumanities.org

LAND AND TENURE IN EARLY COLONIAL PERU: INDIVIDUALIZING THE SAPCI, “THAT WHICH IS COMMON TO ALL”

SUSAN ELIZABETH RAMÍREZ

By taking away said [native] lands and giving them to Spaniards and forcing the very same Indians to work the same lands that they lost[,] so that they [the Spaniards or Spanish authorities] say that they confiscate the lands because they [the natives] cannot cultivate them; and then they force the same individuals to till them[;] then what can an Indian feel when they take away his land and they deprive him of his freedom to have it worked for him and they force him to work it for the person who confiscated it[?]¹

THIS ARTICLE OUTLINES the transition from indigenous customs regarding land possession and use to European property law as gradually imposed and implemented by the Spanish colonial state in the Viceroyalty of Peru in the sixteenth century. The iconic confrontation between Francisco Pizarro and the Inca ruler Atahualpa on the plaza of Cajamarca in 1532, and its aftermath, has been examined from many different angles over the years. The military advantages of that face-off quickly took center stage.² The quest for gold and silver focused many.³ The attendant evangelization efforts interested multiple researchers.⁴ General studies of the negotiation that marked the permanent establishment of Spanish administration in the Andes have yielded insightful perspectives on the process of settlement and reorganization.⁵ But one of the least studied aspects of

1 Carta de Fray Diego de Angulo al Rey Phelipe, AGI/AL 316, 25-IV-1584; reprinted in Barriga, *Los mercedarios en el Perú*, 178: “en quitarles las dichas tierras y darles a españoles [. . .] se las hacen labrar a los propios indios a que se las quitaron de manera que dicen se las quitan por que no las pueden labrar y despues se las hacen labrar a los mismos, pues que puede sentir un pobre indio que le quitaron su tierra y le quitan la libertad para hacerla labrar a el para si y se le hacen labrar para quien se la quitó.”

2 Hassig, *Aztec Warfare*; Guilmartin, “Cutting Edge”; Chaliand, *Mirrors of a Disaster*.

3 Lockhart, *Men of Cajamarca*; Loredó, *Los repartos*; De la Puente Brunke, *Encomienda y encomenderos*.

4 Ricard, *Spiritual Conquest*; Griffiths, *Cross and the Serpent*; Duviols, *Cultural Andina y represión and Procesos y visitas*; Espinoza Soriano, *Juan Pérez de Guevara*; Early, *Maya and Catholicism*; Lippy, Choquette, and Poole, *Christianity Comes to the Americas*.

5 Lockhart, *Spanish Peru*; Ramírez, *World Upside Down*; Ramírez, “Chérrepe en 1572”;

this story is the history of land and tenure in this mostly agrarian, peasant society. The anthropologist John V. Murra pioneered studies of native tenure by combing the Spanish chronicles for and listing different categories of native holdings.⁶ The ethnohistorian María Rostworowski found, commented on, and published several sixteenth-century manuscripts dealing with land holdings, without questioning the European filters inherent in these recorded proceedings.⁷ Silences in the sources led me to wonder about the native perspective on land holding, which I eventually began to investigate in the mid-1990s.

This essay builds and elaborates on this research, incorporating data from further investigations in the archives of Spain (Madrid and Seville), Bolivia (Sucre and La Paz), and Peru (Cuzco, Puno, and Lima), giving it a wider Andean perspective. It argues that the many different ethnic groups under Inca sway regarded the earth as sacred, so sacred that it could not be possessed in perpetuity by anyone. It was considered *sapci* or “that which is common to all.”⁸ It then focuses on the encounter of radically different conceptions of land and rights of possession and use precipitated by the Spanish conquest of the Andeans in 1532. In so doing, I outline the conflict over rights to use and to appropriate agricultural resources as defined by the unwritten native customs and the imported Iberian laws in the sixteenth century. The sources, summarized here, show that native customary rights remained important in the quotidian lives of peasants despite an overlay of colonial legalities that often, overtime, displaced native peoples and fixed them in place on lands different than those occupied before 1532.⁹

Some of the reasons why this story is so complicated and remains to be delineated are that Spanish descriptions of the colonial process and impositions obscured native practices. Garcilaso de la Vega, a bi-lingual (Quechua-Spanish) and well-educated mestizo¹⁰ born in southern Peru to a rich, upper-class father and a

Mumford, *Vertical Empire*; Wernke, *Negotiated Settlements*; Murra, “Derechos a las tierras.”

6 Murra, “Vida, tierra y agua.”

7 Rostworowski de Diez Canseco, “Nuevos datos;” “Dos manuscritos inéditos;” and “Las tierras reales.”

8 Also spelled: *sacassi*, *sapsi*, and *sapcis*. See De la Puente Luna, “That Which Belongs to All”; Ramírez, “Social Frontiers”; Ramírez, *World Upside Down*, ch. 3; Ramírez, “Rich Man, Poor Man.”

9 I use the terms “custom(s)” or “customary” to refer to the unwritten, orally-transmitted tenure norms and practices of the natives, as opposed to the “laws,” here defined as the written decrees and judicial sentences of the Spaniards. The Crown published a compilation of these in the four-volume *Recopilación de las leyes de los Reynos de las Indias* (hereinafter RLI) in 1681.

10 That is, the offspring of a native and a Spaniard.

native woman, notes in very unambiguous language that contemporary sixteenth-century Spanish chroniclers did not understand what they observed and could not communicate easily with natives because most Andeans did not understand or speak Spanish and the great majority of the Spanish¹¹ did not speak or understand even one of the Andean languages and dialects.¹² Thus, many of the eyewitness chronicles and later accounts and the information they contain are filtered through prisms of European understandings. Native societies were pre-literate at the time of contact, so they left no written records behind.¹³ Most commoners continued to speak their native languages even into modern times. Often, therefore, even after native leaders learned Castilian under colonial rule, the testimonies of most commoners passed through Spanish and mestizo translators, scribes, notaries, lawyers, administrators, and adjudicators onto the page.

Another barrier to understanding is the difference between the late medieval Spanish language and our modern translations of it. The word *tierra*, today, usually equated with land, soil, or ground, was, in the sixteenth century, synonymous with people. The word *pueblo* nowadays means a town; whereas, in indigenous minds it represented a “people,” “lineage,” or ethnic group.¹⁴ The word “province” (*provincia*) that is ubiquitous in early Spanish sources is never specifically defined there. In sixteenth-century Spain, users of the word understood it to mean “villages ... organized into federations.”¹⁵ If the phrase “ethnic groups” is substituted for villages, this meaning accords well with its use in the Andean manuscript sources. Instead of a bounded territory, a “province” in the sixteenth and seventeenth centuries referred to jurisdictions delimited in population and ethnic terms. Viceroy Francisco de Toledo (1569–81), for example, defined a parish as 400 families, enough to support a priest, without regard as to where the families resided. A provincial governor, *corregidor*,¹⁶ had responsibility over an

11 I use the term Spaniard or Spanish to refer to peninsular-born individuals and those born in America of Spanish parents; the latter are also known as creoles.

12 Vega, *Royal Commentaries*, 50–51.

13 To record information, the natives used *quipus* (*khipus*), knotted and colored strings, as well as drawings, pottery, and textiles. Unfortunately, scholars have not been able to decipher more than the numbers recorded in the knots of the quipus. See Urton, *Signs of the Inka Khipu*, 20; Urton and Quilter, *Narrative Threads*; Salomon, *Cord Keepers*.

14 Ramírez, “From People to Place.”

15 Weeks, “European Antecedents,” 63–64.

16 There were two types of *corregidores*: municipal and *de indios* (of natives). Both are discussed below.

urban population and/or specific native ethnic groups regardless of where they built their homes.¹⁷

My discussion begins with a brief overview of the Inca empire, a loose mosaic of ethnic groups, united (at least in theory) by the worship of the sun and its human descendants (the Incas), kinship ties, and mutual obligations. In this empire, rights to agrarian resources were flexible, changing, and all-encompassing. But these customs were gradually replaced by Spanish property rights that proved more inflexible, permanent, and limiting. Attention to colonial institutions and major legal initiatives and their effects on tenure rights and peoples' lives organize the remarks. Examples come from two of the three main Andean geographical regions: the irrigated coastal plains and the mountain sierras. (I have not included the largely hunting, gathering, and gardening populations of the eastern lowland jungles that remained largely unaffected by Spanish colonialism before the nineteenth century.)

Kin-Based Communities, ca. 1532

Spanish chroniclers agree, and later native testimonies support, that Andean populations under the uncertain, unstable hegemony of the Incas on the eve of the Spanish invasions in 1532 lived scattered over the landscape in family compounds and small hamlets, from sea-level on the beaches of the Pacific Ocean to the eastern slopes of the snow-capped Andean mountains. The Incas, the hegemonic ethnic group in the Andes at the time, had been actively incorporating other distinct ethnic groups into their fold during at least the previous century, either by taking captives in "good wars" (by conquest) or inviting these groups to ally with them. Ritual gifts of fine tunics, distinguishing helmets and headdresses, and litters demonstrated the expected generosity of the Inca ruler to compliant ethnic lords. The exchange of women between leaders guaranteed the establishment of blood ties in the next generation and the promise of union and cooperation into the future. Regardless of how they were subjugated, populations had to accept the Inca gods, primarily the Sun (the Inca emperor's father) and the Moon (the emperor's mother); to learn to speak the Inca language of Quechua (if they did not already speak it); and to provide tribute labor when requested, be it for building a ceremonial center, terracing a mountainside, maintaining the roads, constructing storage or burial towers, carrying messages, fighting a war, or running fresh fish from the beaches to wherever the Inca happened to be resting. The Inca ruler and

17 Sahllins, *Boundaries*; Ramírez, "From People to Place"; Vega, *Royal Commentaries*, 50–51; Elden, *Birth of Territory*; Osborne and Van Valkenburgh, "Home Turf"; Mantha, "Shifting Territorialities."

his court often traveled across the landscape maintaining contact and reinforcing the alliance with these distinct groups. Ceremonial centers (at Huánuco Pampa, Quito, Tumipampa, Hatunqolla, Charcas, Vilcasguman, Incawasi and Cajamarca, for example) with the hallmark features of Inca architecture (trapezoidally-shaped windows and doors, finely-shaped stone construction, storage silos, raised daises (*ushnus*),¹⁸ and monumental structures show the importance and range of this movement to reinforce the personal ties that motivated sometimes distant populations to undertake long pilgrimages to attend ceremonies to venerate the ancestors, enjoy the hospitality of the emperor, and cooperate in imperial goals.¹⁹

The status of similarly itinerant ethnic leaders, likewise, reflected the number of subjects that would respond to a call for action. A noteworthy chieftain (*curaca*) whose followers numbered 5,000 families, outranked a native lord who held sway over a thousand (*guaranga*) or a hundred (*pachaca*). Kinship ties united hundreds of these family groupings into lineages and these into ethnic groups who each believed that they all descended from one apical-ancestor or couple. Early colonial testimonies from native witnesses on the north coast attest to the fact that leaders at different levels of the administrative hierarchy were joined by exchanging brides.²⁰ Authority and society itself were relational, based on kinship, not territory.²¹ Kin of one ethnic group often lived and cultivated next to members of other ethnic groups, a pattern dubbed *ocupación salpicada* (scattered occupation). Members of each lineage occasionally traveled to their respective ceremonial centers to worship their ancestors and their generosity on significant dates, much as Muslim, Christian, and Jewish neighbors might each attend religious ceremonies in different locations on different days.²² A hierarchy of hereditary authorities led these events, orchestrating the planning, agenda, and supply of each event. Activities included singing and dancing, sacrifices, storytelling, and feasting—all of which helped to reinforce lineage and ethnic group unity. Individual and group gifts thanked the ancestors for the blessings of health and fertility for themselves, their animals, and their seeds. The population was careful to make appropriate offerings, for to ignore or madden the ancestors by neglect would negatively affect their lives. Drought, disease, earthquakes and other problems could be sent by the ancestors should they become disaffected.

18 Ramírez, “The Link.”

19 Niles, *Shape of Inca History*. This section is based, in part, on Ramírez, *World Upside Down*; and Ramírez, *To Feed and Be Fed*.

20 Ramírez, “De pescadores y agricultores.”

21 Ramírez, “Social Frontiers.”

22 With the significant difference that different groups might worship the same gods

Although the term *sapci* is applied to resources (in general) used to benefit a population, early sources clearly show that Andeans regarded land as well as mineral outcrops and *guano* deposits (fertilizer) from offshore islands as open and common for use by all.²³ It was, as the leader of the Guamanes (who lived in the Chimú Valley) stated, in 1566, “a common thing and open to all and which no one could have nor acquire [permanent] possession of,”²⁴ Individuals freely used as much as they could use for as long as it remained fruitful.²⁵ Thus, farmers could take possession of any vacant, unused land by working it—clearing it, plowing it, sowing it, watering it (if needed), weeding it, and harvesting it. Rights to a piece of land continued until it was abandoned, due to infertility, prolonged drought, the death of the possessor and his/her descendants, or another cause. In this situation, the land reverted to its natural, wild state, at which point another family could start the process again. Native testimonies recorded by ecclesiastical inspectors to the north-central highlands²⁶ and the remnants of a native register from the coastal community of Lambayeque dating from the 1580s show that, if anyone remembered a previous possessor, a new user made appropriate sacrifices to his/her memory before beginning to plow the untilled fields anew. One entry from the Lambayeque register records the memories of Pedro Ulcum, Graviel Xecllon, Andres [here the page is torn], Pedro Cupllon, and Miguel Chanan, all born in that town. The lands called Zallan had been planted by their forefathers. Minepoata possessed [*los tuvo*] them first. Then Tequen planted them. They continued to name in chronological order at least eight more tillers of that one piece of land to December of 1611, in order to register their possession.²⁷ Some fields on the coast and in the highlands had stones (*guancas, huancas, or wank'as*) in their centers that represented preceding cultivators, at which current farmers placed offerings periodically.²⁸

23 Salomon, *The Cord Keepers*; 2004b, 140–47, 270; Gonzalez Holguín, *Vocabulario*; Sherbondy, “Organización hidráulica,” 142; Pease and Robinson, *Collaguas*; De la Puente Luna, “That Which Belongs to All”; Ramírez, *To Feed and Be Fed*, ch. 3; Guaman Poma de Ayala, *Nueva corónica*, 162 [186], 308 [336], 325 [353], 474 [515], 589 [621], 780 [816], 810 [864].

24 AGI/J458, 1871: “cosa general y como para todos y de que nayde [nadie] podra tener ny adquirir posesion.”

25 For an intriguing parallel from Africa, see Elias, *Nigerian Land Law and Custom*, especially ch. 5; and Dike, “Land Tenure System in Igboland.”

26 Duviols, *Cultural Andina y represión* and *Procesos y visitas de idolatrías*, 237, 507, 715.

27 ANCR/1586–1611, 14–14v.

28 Dean, *Culture of Stone*, 44–46.

Ideally, peasants cultivated many separate pieces of land in widely dispersed ecological niches. These societies measured plots in *topos*, representing the area needed to provide support for a couple. But the size of each *topo* was relative. It varied in size, depending on fertility and expected yields.²⁹ Thus, a smaller piece of maize land under irrigation was needed to support a peasant couple than one, perhaps at a higher elevation, needed to feed the same people. Farmers with large families cultivated many more pieces of land than those with small families. Ideally, these would have been located at various altitudes up and down the Andean slopes in separate fields. Such geographical diversity allowed farmers to match potato varieties³⁰ with the best field locations to improve productivity and guarantee subsistence. If the crops of one plot became blighted, froze or dried out for lack of rain or irrigation, others would survive to be harvested. Members of the same lineage or ethnic group farmed plots at days' walks away for this reason. At each site, a hut or house provided temporary shelter. Thus, agricultural populations, like their leaders, were mobile, often traveling hours or days from one field to another.³¹

Populations that relied on irrigation may have been somewhat less mobile as the available lands were concentrated along the banks of the river and water canals. Ongoing research suggests that lineages built irrigation ditches and retained rights to the water and the land it irrigated.³² All members of a group had rights to land and had to participate in communal, periodic canal cleanings to maintain their access. Yet, the same rules prevailed as to the rights to use the ground. Failure to use land to the point that it appeared abandoned signaled that it was open to others. Even outsiders (*forasteros*) could use such land as long as they participated actively in lineage or ethnic activities (*ayni*), be they ceremonies, sacrifices, or irrigation canal cleanings.³³ Indeed, it was advantageous for lords to accept outsiders into their groups and there was keen competition among authorities for the loyalty and labor of peasants, regardless of lineage identity, because as mentioned earlier their status depended on the number of people who they could mobilize for different reasons.³⁴ The commoners also traveled personally to take advantage of various resources. Thus, farmers might travel to the seashore to burn

29 Rostworowski de Diez Canseco, *Pesos y medidas*.

30 Families had over 600 varieties of potatoes to choose from, for example.

31 Murra, "El control vertical."

32 AGNP/Donaciones D4-8-12, 1722. See also Salomon and Urioste, *Huarochiri Manuscript*.

33 This is evident in the thinking of Felipe Guaman Poma de Ayala. See Adorno, "Court and Chronicle," especially 75.

34 Ramírez, *World Upside Down*, especially 35-36; AGI/J458, 2039-40, 2044-44v.

seashells for lime (needed for releasing the active ingredient in coca leaves), collect salt and seaweed, or hunt sea mammals (sea lions). Others no doubt left their fields to take birds that inhabited back-beach lagoons and lakes. A few walked to mineral outcrops to extract copper, silver, and gold.³⁵

Custom obliged each family to also work fertile land for the support of the religio-political authorities and the veneration of ancestral gods. Lords directed native labor. Planting was a celebrated occasion marked with feasting and rituals acknowledging communal efforts and ancestral blessings, which reinforced lineage identity and solidarity. Communal tribute labor (*ayni*: mutual help, reciprocity) embodied a duty and responsibility for the welfare of them all. Evidence from Chíncha on the south-central coast shows that these lands, dubbed by the Spaniards the “lands of the Inca” or the “lands of the Sun,” were plots designated to be worked by ethnic populations with the produce being designated to be delivered to the Inca storehouses or used to stage ceremonials in honor of one of their many gods. The primary documents on lineage religious practices that span the entirety of the colonial era (published by Pierre Duviols for the north-central highlands, Ana Sánchez on the Lima hinterland, Mario Polia Meconi for the Andes as a whole) show that each bloodline also worked lands to support the veneration of their ancestors. Harvests produced maize that was ground, cooked, and made into cakes and beer to serve as offerings on ritual occasions. These “lands” did not remain in the same place year after year, but were rotated based on fertility and other considerations. This was a point that the Spanish failed to grasp; they assumed that the lands of the Inca and the Sun were fixed in place and immutable over time.³⁶ Yet, it is apparent that these lands could be any that would serve the purpose and needs of the lineage or ethnic groups at a given season for a particular crop.³⁷

Tenuous Tenure

Landholding was not an immediate primary concern for the men who accompanied Francisco Pizarro on their trek south from their landfall in what is now Ecuador in 1531–32. Leaders and men were more focused on the imagined quick wealth that seemed feasible given the gold and silver acquired on a previous expedition. The actions of Pizarro, himself, suggest that, in addition to seeking treasure, he planned on establishing a base from which to initiate contact with the Andean ruler. Thus, in the valley subsequently called after an ethnic chief, Lachira, Pizarro

35 Ramírez, “Ethnohistorical Dimensions.”

36 *ACT*, 1:88; ART/CoO l. 148, exp. 46, 13-VII-1565.

37 Castro and Ortega Morejón, “Relación de Chíncha.”

founded the first Spanish city in the Andes, known as San Miguel de Tangará (today known as San Miguel de Piura). He chose householders and citizens (*vecinos*) and from their ranks appointed members of a town council (*cabildo*). The city, as was the tradition in Spain, held *propios* (common ground), which could be rented or sold to provide the council with revenue. Each householder received grants (*mercedes*) of a house lot (*solar*) and a suburban garden plot (*huerta*).³⁸ Pizarro also, most importantly, entrusted to his meritorious followers groups of the indigenous population. He made Hernando de Soto³⁹ guardian of the population loyal to the native lord of the Tumbes, for example.⁴⁰ Juan Roldán became the trustee of the peoples of Túcume on 3 of February 1536 by these words:⁴¹

Because you Juan Roldan, citizen of this town of Trujillo, have served his majesty in these kingdoms, [and] are one of the first settlers of them, [and] have married with the intention of remaining in them and have your wife and house like an honorable person; I, Don Francisco Pizarro, precursor, captain general and governor for his majesty ... by this present act in the name of his majesty ... deposit in you the people of Tucome with the person of the cacique principal Conocique [lord of a thousand adult men], ... and with the [subservient] lord named Ponopo with all their Indians and principal persons [...].

These grants, called *encomiendas*, made the Spaniards masters of the population, able to approximate the Spanish ideal of a gentleman who could not be ordered about (able to say: *a mi no me manda nadie*).⁴² In return for protecting their native

38 Ots Capdequi, *España en América*, chs. 1–2.

39 Carlin Arce, *Historia general*, 38, and *Reseña histórica*, 78.

40 For lists of encomendero grants by Pizarro, La Gasca, and others, see De la Puente Brunke, *Encomienda y encomenderos*, 395–497; León Gómez, *Paños e hidalguía*, 73–74; Varallanos, *Historia de Huánuco*, 227–28; Loredo, *Los repartos*, 141–361; Espinoza Soriano, *Juan Pérez de Guevara*, 24, 54–60.

41 AGI/Escribanía 502A, 7: “Don Fran[cis]co piçarro adelantado capp[it]an general e g[overnad]or Por su mag[esta]d en estos rreinos De la nueba castilla. Eta. Considerando que bos Juo[n] rroldan v[e]z[in]o desta billa de truxillo a veis seruido a su mag[es]t[ad] en estos dichos rreinos e que sois de los primeros pobladores della e que os abeis casado con yntençion de permanecer en ella e tener v[uest]ra mujer e casa como pers[on]a de honrra por e[l] presente en nombre de su mag[esta]d [. . .] os deposito el pueblo tucome con la pers[on]a del cacique preñcipal conoçique [. . .] e otro.”

42 Pizarro’s actions mirrored the Spanish monarchy’s practices during the Reconquista of founding municipalities and often granting them privileges, including lands on which families could settle and farm, see Weeks, “European Antecedents.” Earlier tenure arrangements and farming practices in Islamic Spain are summarized by Imāmuddin, “Al-Filāhah (Farming).”

charges and teaching them the rudiments of the Christian faith and promising to maintain a horse and arms ready to serve the king, these men and trustees (or *encomenderos*) were to receive the products of native labor as tribute. The *encomiendas* became a basis for the wealth and position of this initial group of Spaniards on the scene and those who were with Pizarro as he made contact with Atahualpa and pushed further afield into and across the Andes. It was an effective institution in a situation where the invaders did not know the geographical extent of Inca hegemony or the population of the realm. The *encomienda* specifically entrusted the subjects under various indigenous lords to Spaniards who then asked or demanded that they produce goods for his own use and that of his family. Land was not mentioned and was not part of the grant. Natives, declared by the Crown to be free, remained in their homesteads to use common resources to produce the food, fiber, and the other products demanded by their *encomendero* and *amo* (lord, master). However, because *encomendero* demands were unregulated until the late 1540s, the institution quickly became a tool of exploitation of the native population and enrichment for the approximately 500 persons who were eventually entrusted with the Andean peoples.⁴³

Once Pizarro and his men had captured Atahualpa in mid-November 1532 and had received his gold and silver ransom over the next months, many *conquistadores* requested permission to return to Spain. Still facing thousands of hostile native troops, Pizarro astutely acquiesced to only a handful of these requests. These men departed, loaded down with their shares of treasure. As they traveled overland to Piura and Paita (the fishing village that became Piura's major port) and by sea to Panama and then to Santo Domingo and Seville, news of their fabulous wealth spread, initiating a "gold rush" as merchants and adventurers retraced their paths into the Andes.

Many of these who arrived too late to receive an *encomienda* faced limited options. They could return from whence they came; they could join an out-going expedition to explore new areas for treasure and subject populations; they could seek employment in the house of an *encomendero*; or they could start a business. The last two options proved the most viable for many. Native peoples provided

The parallels between tenure arrangements in Spain and the Americas will be discussed below.

43 Lockhart, *Men of Cajamarca*, 12. Data from 1548 shows that *encomienda* incomes (based on the value of the products sold on the open market) varied from 991 to 7206 pesos with the average being slightly over 2000 pesos in one district in the north. Subsequently, *encomienda* labor would enable *encomenderos* to launch complementary business enterprises that vastly multiplied their wealth. See Ramírez, *Provincial Patriarchs*, 20–24, 37; and Angulo, "Cartulario," 191–206.

their *encomenderos* with fish, maize, potatoes, and animal flesh from ducks, turkeys, camelids, and guinea pigs as tribute; but they had no experience raising European livestock or cereals. So, *encomenderos* hired or established partnerships with these latecomers to raise livestock on the pastures (defined as any vegetation that was not deliberately cultivated [such as crops], including weeds between cultivated plants and stubble left after the harvest in native fields and grasses growing between the rows), which the Crown declared common in the 1530s.⁴⁴ A notarial register from 1539 contains an agreement for the establishment of a partnership to raise livestock on the coast near the city of Trujillo (founded in late 1534).⁴⁵ No document suggests that the natives were consulted on the locations for these activities. Such latecomers who became some of the first Spanish settlers of rural areas chose sites at which they constructed a shelter for themselves and corrals for the livestock. Horses were the most valuable animal; but, though less valuable per head, the numbers of imported swine, beef cattle, goats, and sheep grew more quickly.⁴⁶ As herds and flocks multiplied, shepherds built additional corrals at varying distances from this hub, which later was called an *estancia*, from the verb *estar*, to be or to be located or centered at a place. Some of these Spaniards who served as *mayordomos* (overseers) and custodians of *encomendero* herds, subsequently went into business for themselves. In less than three decades, some had herds numbering in the thousands of head.⁴⁷

Given that royal officials rarely ventured into the countryside, the historical record is mostly silent about early native views on Spanish occupation. Imperial appointees remained concentrated in such cities as Lima and Cuzco. Thus, the most usual interactions between the native population and Spaniards were with their *encomendero* or his agent, a priest, and a growing number of Spanish travelers and vagabonds. What documents exist attest to native discontents, usually in indirect references written by sympathetic Spaniards, especially priests who had frequent contact with native parishioners. Thus, the Bishop of Cuzco, Fray Vicente Valverde, wrote an important letter to His Majesty Carlos I (Emperor Charles V) in 1539, stating that natives came to him asking that he support and defend them because “some Christians take their lands [...] [and] I am no judge with compe-

44 Ramírez, *Provincial Patriarchs*, 45; *RLI*, v. 2, leyes 5–7, tit. 17, lib. 4, 112v–113r.

45 Ramírez, *Patriarchs Provinciales*, 64.

46 In 1539, the will of Juan de Barbarán, a member of Pizarro’s original company and an *encomendero*, already listed 393 pigs and 586 sheep as patrimony (not counting personal mounts: horses and a mule). Ramírez, *Provincial Patriarchs*, 24; Angulo, “Cartulario,” 197–98.

47 Ramírez, *Provincial Patriarchs*, 78–80.

tence to deal with the matter [...] [but this is] an abuse of the Indians."⁴⁸ Similar accusations arrived in Spain from another religious who noted, in 1541, that the *encomenderos* kept their charges so busy that they had no time to plant and (in the long run) lost their fields;⁴⁹ and that Spaniards took the lands of dead natives (to the chagrin and suffering of their families).⁵⁰ The same account related that the Spanish robbed and abused natives to the extent that to defend their families, persons, and possessions the natives killed some of their abusers.⁵¹ Despite the fact that the Crown was concerned and had sent royal orders to appoint "protectors" of the natives,⁵² local municipal councils (dominated as they were by *encomenderos*) resisted such nominations. Because these actions would infringe on their prerogatives, the councils invoked bureaucratic delaying tactics to postpone the protectors' involvement with "their" natives. Tragically, also, most natives did not know how to find justice

[b]ecause the Indians of the land of Peru and their Lords receive many abuses and fatigues and other oppression from their masters [the *encomenderos*] and other Spaniards, which are not known nor can be known, because the Indians have no understanding [*abilidad*, capacity or knowledge], nor know to whom to complain nor who can remedy and favor them [...]⁵³

The writer recommended that a "protector" visit the countryside annually to bring justice to these peoples,⁵⁴ although this was a practical improbability. Likewise, a

48 Lissón y Chávez, *La iglesia de España*, vol. 1, no. 2, especially 115: "Le[s] toman sus tierras algunos christianos [. . .] [y] no soi juez para entender en ello [. . .] [era] agrauio de indios [. . .]" Another accusation about Christians taking their lands is on page 69 of the same source.

49 Lissón y Chávez, *La iglesia de España*, vol. 1, no. 3, 62.

50 *Ibid.*, vol. 1, no. 3, 84.

51 *Ibid.*, vol. 1, no. 3, 57.

52 See, for example, the Royal Decree of 1542, published in Lissón y Chávez, *La iglesia de España*, vol. 1, no. 3, 120–22; and the instructions for the protection of the natives sent in another Royal Decree of 1546 to Fray Juan Solano, published in Lissón y Chávez, *La iglesia de España*, vol. 1, no. 4, 148–50.

53 Lissón y Chávez, *La iglesia de España*, vol. 1, no. 3, 72: "Por quanto los dichos yndios naturales de la tierra del peru e los Señores della reciben muchos agravios e fatigas e otras opresiones de sus amos y de otros españoles, las cuales no se saben ni se pueden saber, por no tener abilidad los yndios ni saber a quien se quejar ni, quien les ha de remediar e favorecer [. . .]"

54 *Ibid.*, vol. 1, no. 3, 74.

Spaniard (Licenciado Martel de Santoyo) wrote a long treatise in 1542, on how to remedy some of Peru's problems in which he suggested that lands that had been appropriated by Spaniards be returned.⁵⁵

Natives were not the only ones vying for land. Herding activities also provoked conflict among the Spanish population. Disputes date to 1541, when some persons occupied an area and tried to keep others from building corrals or grazing their animals nearby. Carlos V and his advisors became worried that if this practice spread all the good pastures would be partitioned within a few years and settlement of Peru retarded. Therefore, the king reiterated that, as was the custom in Spain, pastures were to be held in common.⁵⁶

Simultaneously, disease, overwork, and flight decimated the Andean peoples.⁵⁷ The populations of both coast and highlands had already plummeted by 1532, due to disease that spread faster than Spanish exploration. Chroniclers relate that Guayna Capac, the last Inca ruler before the civil war between Atahualpa and his brother Huascar, died from an unknown illness near Quito a few years before Pizarro's invasion. Some scholars estimate that up to 50 percent of the native population had already died by 1532. Historical data from the sixteenth century show that many native lineages suffered declines of up to 90 percent before the end of the sixteenth century.⁵⁸ This depopulation left abundant vacant lands that could be and were occupied without title by Spanish immigrants, the *encomenderos*, and their herds.

The Introduction of European Ideas of Property-Holding

Interaction between the Iberian-born population (and the second and subsequent generations) and the natives intensified markedly at mid-century and friction escalated. In response to the combination of the native demographic crisis, high demand for European foodstuffs and wine (which was being supplied by sea from Central America, the Caribbean, and Spain at suitably high prices), and past challenges to royal authority,⁵⁹ the central government authorized reform measures

⁵⁵ Ibid., vol. 1, no. 3, 110.

⁵⁶ BAH/ML, t. 21, 191–92; see also AGNP/RA, l. 27, c. 95, 1610.

⁵⁷ Cook, "Indian Population of Peru"; Powers, *Andean Journeys*.

⁵⁸ Ramírez, *World Upside Down*, especially 26–29; Cook, "Indian Population of Peru."

⁵⁹ The first Viceroy, Blasco Núñez Vela, intent on introducing legislation that would undercut encomendero power, was defeated in battle by *encomendero* forces and beheaded. This was followed by civil war, which only ended in the late 1540s with the pacification efforts of the King's representative, Licenciado Pedro de la Gasca.

that impacted, directly or indirectly, tenure arrangements. These included founding Spanish towns, beginning officially to grant individuals property with clear title (*mercedes*) for agricultural purposes, appointing new officials (the *corregidor de indios*, an administrator with jurisdiction over natives) who distanced the natives from their *encomenderos* and brought a measure of opportunity for the redress of grievances, concentrating the native population in Spanish-style towns, called *reducciones* (reductions), and commissioning inspectors to take justice into the hinterlands.

The Spanish monarch's authority to make *mercedes* emanated from the "discovery" and "conquest" of the population and his succession to the presumed titles and rights of the Incas. In theory, the Spanish king's claim to eminent domain was based on Pope Alexander VI's bull *Inter caetera divinae magestatis*, issued 4 May 1493, which thus exported an ancient "Old World" doctrine that all land won by conquest could be distributed by the conqueror. It granted the "Most Catholic" monarchs Ferdinand and Isabella and their heirs and successors the lands, cities, forts, places, rights, and jurisdictions to all the islands and continents discovered up to 100 leagues west of the Cape Verde islands. The bull's only restriction was the prohibition against the usurpation of lands belonging to a Christian prince. The Treaty of Tordesillas (4 June 1494) subsequently moved Spanish jurisdiction 270 leagues further to the west.⁶⁰

Using this authority, the Spanish monarchs and their representatives confirmed the natives' communal use and possession of land (*dominio útil*), thus legitimizing their previous tenuous rights, based as they were solely on oral testimonies⁶¹ and occupation and use.⁶² According to the climate of opinion, the Crown considered indigenous peoples as minors and dependents to be provided for and

60 AGI/AL 101, 1642; Valdez de la Torre, *Evolución*, 50–51.

61 Recorded oral testimonies of provincial peoples, specifically regarding their land use and tenure, start as early as 1565 with references sometimes extending back to pre-Hispanic times. See, for example, Ramírez, "De pescadores y agricultores"; Rostworowski de Diez Canseco, "Etnohistoria," 35–41; AGI/J458, 2125–25v, 2131; ANCR/1586–1611. On native agency in general, see Ramírez, "Chérrepe en 1572"; Ramírez, *Provincial Patriarchs*; Ramírez *World Upside Down*, especially ch. 5; De la Puente Luna, "Into the Heart of Empire"; Noack, "Caciques" (on natives manipulating the written word to secure a desired outcome regarding chiefly succession); and the essays in Drinot and Garofalo, *Más Allá de la dominación*. On Spanish laws (as early as the Laws of Burgos of 1512) confirming native usufruct rights, see Guevara Gil, *Propiedad agraria*, xvii, 129.

62 Oral testimonies are recorded in the 1565 inquiry published in Ramírez, "De pescadores y agricultores"; the testimonies published by Rostworowski de Diez Canseco ("Mercaderes del Valle de Chíncha"); and the unpublished records of the review of an Audiencia judge's activities in 1566–67 (AGI/J458).

protected.⁶³ Therefore, the monarchs never gave them absolute, fee-simple property rights to the land.

Land grants to Spaniards, in contrast, implied both direct dominion (*dominio directo*) and usufruct rights (*dominio útil*), provided certain provisions were met. Land grants became valid titles, for example, only after the grantee had cultivated the land for a specified number of years. The grantee was also enjoined from selling the land to another individual for a definite period and prohibited indefinitely from selling or donating the land to the Roman Catholic Church.⁶⁴ Moreover, land grants were subject to royal confirmation, although few grantees bothered to seek confirmation at this time. Finally, *mercedes* were issued with the condition that they cause no harm to third parties (for example, the natives).⁶⁵ The king repeatedly cautioned his representatives not to disturb the possession of lands held communally by the lineages.⁶⁶

The Spanish monarchs delegated their authority to make land grants to governors, viceroys, and certain town councils. Pizarro distributed both urban and suburban real estate around the cities he founded.⁶⁷ Town councils later assumed this power, making liberal grants of house sites to encomenderos and non-encomenderos alike. Viceroy Don Antonio de Mendoza (1551–52) made the first known grant of about fifty *fanegas de sembradura* to a non-encomendero of Trujillo for agricultural purposes in 1550,⁶⁸ while traveling overland to Lima. In the following years, more *cabildos* partitioned abandoned tracts of land among recent arrivals, sometimes identified as “poor farmers” (*labradores pobres*), on which to grow wheat and other foodstuffs.⁶⁹

63 Ots Capdequi, *España en América*, 19, 28, 157.

64 The prohibition against donating lands to the church was unevenly observed in later years. See Guevara Gil, *Propiedad agraria*, 90.

65 For that reason, many early land acquisition records contained an almost requisite clause stating that the lands had belonged to the Inca, sun or moon: Honores, “La asistencia jurídica privada,” 6 and 8; Guevara Gil, *Propiedad agraria*, 13, 23 (recording that lands had been of Viracocha Inca and were dedicated to the sun), 172 (recording that these were empty lands of the Inca).

66 *RLI*, v. 2, ley 5, tit. 12, lib. 6, fol. 242; Ugarte, “Los antecedentes históricos,” 368–74; BAH/ML, t. 97, 1535, 133–35; Lissón y Chávez, *La iglesia de España*, vol. 1, no. 2, 76; Ots Capdequi, *El estado español*, 39, 135; Guevara Gil, *Propiedad agraria*, 13, 28, 90, 192.

67 Guevara Gil, *Propiedad agraria*, 7; Honores, “La asistencia jurídica privada,” 7.

68 A *fanegada* (*de sembradura*) was the land that could be planted with a *fanega* (approximately 1.5 bushels) of seed. This was not an absolute measure, because the amount of land that could be sown with a fanega of seed was a function of the type of seed (e.g., corn, cotton, chilis) and the soil fertility, climate, water availability, and other factors.

69 ART/LC, 1564; *ACT*, 1:11, 177, and 202–3; Ramírez, *Provincial Patriarchs*, 25, 51, 66;

The municipal council of Trujillo, for example, had been making grants since Pizarro's departure without the official sanction of the king or any other authority. In 1558, the Viceroy Marqués de Cañete (1556–61), in an effort to formulate the first coherent land distribution policy, questioned the legality of the council's actions and apparently moved to annul the grants. Pedro Gonzales, with power of attorney from the council, hastily departed for Lima to persuade the viceroy to confirm its previous actions. Under pressure, the Marqués allowed these unauthorized grants to stand in a royal decree issued in Lima on 21 February 1558. The minutes show that the council continued to make grants near the city until at least the end of the 1560s, but rarely outside the immediate vicinity of the city.⁷⁰

One reason for these unauthorized actions was the lack of royal officials in the area. This was effectively remedied in the 1540s, when a *corregidor municipal* (municipal governor with executive, judicial, and administrative jurisdiction over specific populations) was named. His control was weak at best in the early years, given *encomendero* opposition. Most *corregidores* made no pretense of being able to impose their will on all. The multiplicity of his duties forced him to routinely delegate authority to lieutenants when he left town to visit distant settlements to implement royal decrees.⁷¹ Over time, however, his administrative and judicial impartiality was thwarted as, by the mid-1550s, a feeling of common interests between the *corregidor* and Spaniards replaced the initial resistance and distrust of this authority. This was especially true of the *encomenderos* who began to serve as the *corregidor's* guarantors, that is, an *encomendero* guaranteed that the *corregidor* would appear at his *residencia*, a judicial review at the end of his term of office at which he answered any charges of incompetence or misuse of power. Such arrangements made him a less zealous representative and advocate of the crown's interests.⁷²

Another reform measure resulting from the mounting intercultural friction between the Spanish and the natives and the fact that there were few authorities outside the cities to whom the natives could appeal to for help, moved Governor García de Castro (1564–69) to appoint a second type of *corregidor*, the *corregidor de indios*, with specific jurisdiction over the natives in 1566. Whereas a *corregidor municipal* exercised jurisdiction over the Spanish and mixed population of the Span-

Keith, "Origins of the Hacienda System," 153; Guevara Gil, *Propiedad agraria*, 7–8, 13, 15, 23 (for Cuzco).

70 *ACT*, 1:11, 37, 67, 77, 82, 95, 98, 186–87, 202–3, 264, and 298–99; ART/CoO l. 147, exp. 21, 11-IX-1562. See also Ots Capdequi, *España en América*, 41 (on the *cabildo's* loss of the right to grant land).

71 Cabero, "El Capitán Juan Delgadillo"; *ACT*, 1:48–50, 59, 371.

72 *ACT*, 1:353, 358, 359; ART/Vega, 1567.

ish cities and towns, the *corregidor de indios* supervised the natives and dealt with the problems of intercultural contact, but at a salary equal to less than half that of the *corregidor municipal* of Trujillo.⁷³ As a cultural broker and ombudsman in rural areas, the *corregidor de indios* had an ambiguous role. Theoretically, the natives' welfare was one of his primary responsibilities. He was to be an impartial authority who would listen to appeals for justice. His duties included enforcing labor laws, which prohibited natives from working as porters or mill hands; making sure that native laborers were promptly paid; and monitoring the collection of tribute.⁷⁴

But the *corregidor de indios* did not solve all the natives' problems with the Spaniards. Spokesmen for the populations of Chérrepe and Pacasmayo appealed to him for payment of damages to their corn and cotton fields and irrigation network caused by the livestock of Pedro de Morales and Gaspar de Soria. Cabildo officials had ignored their complaints. When they approached the *corregidor*, Don Diego de Valverde, he stalled. To make matters worse, at the insistence of Morales, Valverde ordered the native spokesmen whipped and shaved. To native men, cutting of the hair was second only in severity of punishment to exile. Then, to reassert his authority, Valverde sent them to work as laborers for Morales.⁷⁵

In each of these cases the attitude of both officials and *corregidor* is explained by conflicts of interest. Council magistrates were farmers and livestock raisers, whose own animals damaged the natives' fields and irrigation networks just as the animals of other settlers did. The *corregidor's* inaction can be explained by his clear identification with such agrarian interests. The *corregidor*, theoretically an outside, impartial representative of the crown and protector of the natives, was by the 1570s and 1580s participating in the agricultural bonanza. Father Toribio de Mogrovejo, the Archbishop of Lima, wrote to King Philip II from the northern valleys in February of 1590 to report that the *corregidores* commonly forced lineages to plant fields for them and grind wheat into flour. Moreover, the *corregidores*, emulating the *encomenderos*, used the natives to generate revenue to supplement their salaries by requiring them to produce commodities on previously unfarmed land or spinning and weaving textiles for sale in the southern markets. Moreover, the lineages constituted a captive market for horses, mules, wine, and other goods, which the *corregidor* could force the natives to buy, sometimes at exorbitant prices.⁷⁶

73 ACT, 1:249 and 2:147; Eisen, "Indians in Colonial Spanish America," 108; AAT/Causas, 1570; AGNP/R l. 3, c. 7, 1582, 133; ART/Vega, 1587; AGI/AL 464, 1583.

74 Valdez de la Torre, *Evolución*, 63; ACT, 1:353; ACT, 3:11; ART/O 1591, 144v-45, and 1609; Keith, "Encomienda."

75 ART/Mata 1580; CoO 27-VII-1580; AGNP/R l. 3, c. 7, 1582, 101-3.

76 ASFL/Reg. 9, No. 2, Ms. 11, 1590; and Ms. 2; Lissón y Chávez, *La iglesia de España*, vol.

Furthermore, like the case of the *corregidor municipal*, some of the leading citizens of the towns and largest agrarian interests posted bond so that the *corregidor de indios* could assume office.⁷⁷ Being the sponsor of a *corregidor* sometimes gave a guarantor the opportunity to resolve conflicts directly. The *corregidor* often named a guarantor as a lieutenant, thus giving him official jurisdiction over his own interests.⁷⁸ Bribes and threats also influenced the *corregidores'* action.⁷⁹ It is not surprising, then, that the natives rarely got results when they appealed to the *corregidor* or local officials for help. Long distances and the infrequency of visits by outside authorities regularly allowed *corregidores* and city officials to act, in many cases, with impunity.

Worse, and defying pre-Hispanic traditions, even top native officials were frequently closely allied with local Spanish interests. *Encomenderos*, for example, served as godfathers to native lords' children. Consequently, these children sometimes took the *encomendero's* name. Thus, Captain Diego de Mora, the first *encomendero* of the Chicamas and Chimús, became the godfather to Don Juan de Mora, the son of Don Alonso Caxahuaman, cacique at the time that Pizarro invaded. According to Jorge Zevallos Quiñones, a prominent local archaeologist and historian, he became the chief and ruled until late in the sixteenth century.⁸⁰ In other cases, lords, like Don Antonio of the Chimús, entered into a partnership with Spaniards of the city of Trujillo.⁸¹ Likewise, *encomenderos* and even the viceroy sometimes intervened in the native succession process to impose their choices, which left the newly installed lord subject to his patron's whims.⁸² Documentary and secondary sources show that as a result of their inability to find remedies for abuses locally, the natives supported individual leaders' and delegations' trips to the capital (and later to Spain) to present their petitions for justice at court.⁸³

At about the same time as the appointment of *corregidores de indios*, a second type of official, a *visitador* or inspector, made tours of rural areas. Visiting

3 no. 15 (16-II-1590), 538; ART/CoAG 24-XII-1582; CoR 30-VI-1576; AGNP/R l. 3, c. 7, 1582, 99v-107; AGI/J457 1151-51v; J460, 365v; and J461, 1430v.

77 ACT, 2:146; ACT, 3:15; AGNP/R l. 2, c. 5, 1582, 27v-28; ART/Vega, 1587.

78 ACT, 2:266.

79 ART/MT 1578; ACT, 3:11-13; AGNP/R l. 3, c. 7, 1582, 135.

80 Zevallos Quiñones, *Los cacicazgos*, 13-15.

81 Ramírez, "De pescadores y agricultores;" Ramírez, *Provincial Patriarchs*, ch. 5, esp. 132.

82 Ramírez, *Provincial Patriarchs*, 28; Zevallos Quiñones, *Los cacicazgos*, 135.

83 De la Puente Luna, "Into the Heart of Empire"; AGI/J458, 1546-47, 1888v. On the litigiousness of natives in the sixteenth and seventeenth centuries, see Honores, "La asistencia jurídica privada" and "Colonial Legal Polyphony"; Herzog, "Colonial Law."

officials and authorities of the capital were much more sympathetic to natives' complaints than were local authorities who became beholden to local interests. Hundreds of native petitions presented to an Audiencia judge, Dr. Gregorio Gonzales de Cuenca, who spent two years traveling the back trails of the north between Trujillo, Chachapoyas, Piura, and Guánuco, exhibit the level of frustration and conflict experienced by the natives he encountered. These unpublished documents indicate that the natives contested European occupation as early as the 1550s.⁸⁴ They complained about harsh treatment, overwork, and occasional water shortages, but rarely because the Spanish usurped unexploited crop land (which was still unusual as long as tribute fed the Spanish and casta population).⁸⁵ Instead, they protested most bitterly about the damage caused by imported livestock that destroyed vegetation and infrastructure. Their petitions explained how European animals hurt their fields (*chacras*), pastures, and irrigation canals. Native plots were usually unfenced, because women and children shepherds supervised the camelids, which were their only grazing animals. Furthermore, the animals ate a straw-like *ichu* grass that grew at altitudes that were above most maize and some potato lands. So, they did not threaten most harvests.

European animals, in contrast, roamed in large groups, often with less supervision. They did not distinguish between a weed, a maize stalk, or a potato plant as they wandered, often entering and consuming the crops in native fields. Pigs grazed more rapidly and consumed more than goats, causing the peasants to complain.⁸⁶ They also uprooted forage. Sheep nibbled, gnawed, and cropped vegetation close to the ground, causing friction. On the open range, such overgrazing and the loss of plant cover, contributed to erosion and, subsequently, floods. The animals also stumbled and fell as they crossed irrigation canals, breaking down their edges and sending dirt, sand, and vegetation into the bottoms to obstruct the water flow.⁸⁷ To prevent damage to the city water supply, the town council of one

84 I found one court case with references back to the late 1550s, recording a dispute over land between Alonso Carrasco and the natives Don Francisco Chuminamo and Xobal Supian (ART/CoPedimento, 22-III-1564).

85 There were, however, conflicts over land between native lineages. See Adorno, "Court and Chronicle," especially 68–69; Rostworowski de Diez Canseco, "Etnohistoria"; ART/CoPedimento 31-VIII-1563 and CoR 3-VI-1564.

86 AGNP/RA, l. 27, c. 95, 1610.

87 The history of the impact of the importation of European livestock has received much recent attention. Most scholars, to date, have focused on Mexico. See, for example, Melville, *A Plague of Sheep* (still the best for central Mexico in early colonial times); and Sluyter, "Landscape Change"; Sluyter, "From Archive to Map." For Spanish Peru, see Wernke, *Negotiated Settlements*.

coastal city ruled that no one could corral animals near irrigation canals above the urban zone; but, in more remote areas, the damage to the irrigation infrastructure continued as the animals multiplied exponentially. The chieftain of the Ferreñafes voiced his despair in September of 1566:

[L.] Don Fran[cis]co palarriffe lord of this encomienda of ferriñafe declare that the pigs cows and other cattle belonging to Juan Roldan and Lorenço de Camudio encomenderos of Tucume and Illimo and their brothers and servants greatly damage my fields and those of my Indians and the rest of the Indians of this encomienda because the lands of this encomienda are adjacent to the lands of Tucume and Illimo and besides this they [the cattle] break [down the walls of] our irrigation ditches and they damage us in other ways in great detriment to us and of the said fields.⁸⁸

He asked that a local authority place markers on the fields so that boundaries could be recognized and that they order that the said cattle not enter their fields nor damage their irrigation canals nor harm them in any way.⁸⁹ To put a stop to such practices, Dr. Cuenca ordered several estancias moved, noting that because of the vast areas of vacant land with abundant grasses this should cause no major hardships to the breeders.⁹⁰ He also imposed distance limits between estancias and areas of native cultivation. Subsequent similar complaints show that the 1566 orders to move estancias away from native fields were either not enforced or distance proved a poor deterrent.⁹¹

These petitions, although written by paid Spanish and mestizo scribes with the help of translators who put words in natives' mouths, show, too, that some of the petitioners had grasped the rudiments of Spanish concepts of proprietorship.⁹²

88 AGI/J458, 2068: "don fran[cis]co palarriffe prinçipal deste reparti[m]en[te] de ferriñafe digo que los puercos bacas y demas ganados que Juan Roldan y lorenço de çamudio encomenderos de tucome e Yllimo y sus hermanos y criados tienen hazen muchos daños en mys sementeras e de mys in[di]os y de los demas yn[di]os deste reparti[m]iento por estar juntas las tierras deste reparti[m]en[te] con las delos d[ic]hos tucome e yllimo y demas desto nos qyebran y rompen las açequias y nos hazen otros muchos danos y en gran perjuyzio y de las d[ic]has sementeras."

89 AGI/J461, 1554.

90 *ACT*, 1:21–22 and 2: 3–4; AGI/J458, 1840v.

91 Guaman Poma de Ayala, *Nueva corónica*, 944. For other personal complaints, see: ASFL/Reg. 9, no. 2, Ms. 26, 1647; AGI/AL 270, 481 and 589; J461 1443v and 1580v; *ACT*, 2:3; ART/Rios 1582 and Mata 1580; CoO 30-IX-1582; l. 154, exp. 222, 22-II-1585; and 1597.

92 Note that the most widely spoken native language, Quechua, has no words for owner, ownership, or property. Possession and "ownership" of land became issues in the seventeenth

The practice of working for the lineage lord and bringing him gifts of produce began to be called *terrazgo*, which the Spanish translated as rent. One lord asked for title of communal lands that until the visit of Dr. Cuenca had been used “for the corn fields that are worked communally”.⁹³ Furthermore, a few of the native lords’ petitions requested titles (*mandamiento de amparo*, *real amparo* or *amparar en posesion*, orders supporting their possession) to the lands that they, and their fathers and grandfathers used, lest someone in the future try to take their fields from them.⁹⁴

The final reform measure was the decision to concentrate the remaining, very dispersed native population in villages called *reducciones*, modeled on Spanish towns with central plazas and perpendicularly intersecting streets in the 1560s-70s.⁹⁵ The imperial legislation on which this effort was based made kin-related lineages, living dispersed over large areas and occasionally gathered at ceremonial centers to venerate their ancestors, into concentrated populations living in towns, communities in a physical sense, with Spanish-allotted territories made up of one or more pieces of lands that in later years they had to defend. Kinship and lands thus were melded (at least theoretically) into one institution. Yet, for the natives, the traditional conceptualization of the ground and related customs still governed its use.⁹⁶

The first Crown-mandated, organized efforts in this regard occurred in the 1560s under the direction of Dr. Cuenca, mentioned above. In July of 1566, he ordered that the scattered settlements of Chérrepe be reduced to two.⁹⁷ In the next decade, Viceroy Francisco de Toledo extended the program to his entire jurisdiction. Uprooting and re-grouping the natives in a few large settlements, the officials reasoned, would facilitate religious indoctrination and acculturation and help maintain the segregation of natives from Spanish mistreatment and corrupting influences. A less publicized but nonetheless significant reason was

century, especially as native populations began to recover. Wightman, *Indigenous Migration and Social Change*, 54; Adorno, “Court and Chronicle”, 68.

93 AGI/J458, 2063v-65: “para las sementeras de maiz que se an de hazer de comunidad.”

94 AGI/J458, 2038-29; 2125-25v, 2131; Guevara Gil, *Propiedad agraria*, xxiii, 186-87; Honores, “La asistencia jurídica privada,” 8.

95 For the royal decrees governing this institution, see *RLI*, v. 2, tit. 3, lib. 6, f. 198-201.

96 Martínez, “Evolución de la propiedad territorial,” 443. Although I disagree with Martínez’s characterization of Peruvian land as “territory” and “property” before the *reducciones*, I do agree that the officials in charge of *reducciones* assigned property to native lineages which they subsequently held and defended as corporate holdings.

97 Remy Simatovic, “Los curacas,” Appendix 1 (AGI/J459, fols. 3061v-3063r).

administrative expediency—facilitating tribute collection and control.⁹⁸ Official statements regarding the *reducción* program stressed its positive features—saving the infidels and protecting them from direct Spanish exploitation through segregation. Laws governing the program promised added safeguards. Lineages were not to lose their lands; and an *ejido*, or reserve, with a diameter of one league for common grazing and future urban expansion, was to be designated around all villages. Other lands were designated for shared cultivation. If the new settlements were far from their traditional fields, making daily access difficult, natives were to receive new ones near the *reducción*. The lineages on whose land the new town was built were to be recompensed with other land. The few Indian lords with hereditary rights to cultivated land were to be allowed to sell them if they wished. Abandoned land was to be held in common,⁹⁹ although Philip II changed his mind on this issue, releasing a royal order in 1568, declaring that vacant lands automatically became the crown's property. He reserved the right to distribute them for himself and his successors.

But there was a great gap between legal theory and actual practice. It did not always produce the expected outcomes. In one case in 1572, Toledo sent Juan de Hoses to resettle the dispersed members of the lineage of Ñoquique (one of three that made up the ethnicity of Chérrepe). He justified his actions stating that the people of Ñoquique lived in unhealthy sites, so isolated that the priest rarely visited, a condition which allowed the natives to meet to practice their pagan rights unmolested. He stressed that the move was for the natives' own physical and spiritual welfare. He ordered the farmers of Ñoquique to rebuild their dwellings around the monastery of Nuestra Señora de Guadalupe and the fishermen in their ranks to reestablish themselves in the town of Chérrepe on the coast.

In this instance, the natives protested. The inhabitants petitioned the viceroy and royal Audiencia almost ten months before the actual order for them to leave their homes was given. They asked that they not be resettled, fearing that a transfer to a different climate would cause them to sicken and die. In fact, the native chronicler Felipe Guaman Poma de Ayala condemns Toledo for the *reducción* policy, writing:¹⁰⁰

98 AGI/P185, r. 24, 1541; J456, 419; J459, 2842 and 3062; J461, 928v; Arroyo, *Los franciscanos*, 34; Ramírez, "Chérrepe en 1572"; Cabero, "El Capitán Juan Delgadillo," 94; Mumford, *Vertical Empire*; Jackson, "Elites indígenas"; Martínez, "Evolución de la propiedad."

99 Valdez de la Torre, *Evolución*, 67, 76 (citing a decree of Philip II, dated 1573); *RLI*, v. 2, tit. 3, lib. 6, leyes 8–9 and 14; fols. 199r–199v; BAH/ML, t. 97, n.d. [1568], 52 and 334).

100 Guaman Poma de Ayala, 1613/1936, 951[965]: "Don Francisco de Toledo, bizzorrey, mandó despoblar y reducir de los pueblos desde rreyno. Desde entonses se a muerto y se ua acauando los yndios deste rreyno por las causas ciguientes: El primero, porque se apartaron

Viceroy Don Francisco de Toledo ordered the abandonment and resettlement of the people. Since then the Indians of this kingdom have died and are disappearing for the following reasons: the first, because they removed the Indians from some towns, places, and corners that their most important native wise men, doctors and philosophers had selected and were approved by the Incas for their climate, lands and water to [best ensure the] growth of the population. Since then, the Indians in their new towns have died and are disappearing. Where there were ten thousand persons—soldiers of war, without [counting] the women, old men and children—now there are not ten tribute-paying Indians [...] said places are humid and disease prone. And there enter illnesses that the wind brings; in parts stinking, pestilential winds blow in from the sea,[...]in other parts, it is caused by the sun or the moon or the planets [...]

As a result, natives, in some cases, did lose their best lands. Those on the coast, for example, were re-situated closer to the beach, where the low-lying fields were subject to a heavy mist in the winter and fog cover that hindered germination of seeds and fostered such problems as the growth of harmful fungi and insects. Furthermore, these and others lost access to irrigation water, having been moved to the end of the channels, where flows decreased to a trickle in dry years. While natives in many cases did move and rebuild their homes in these new towns, many abandoned them and returned to their traditional homesteads as soon as the Spanish left and they deemed it to be safe to travel.¹⁰¹

Where successful, this planned concentration opened up large swaths of fertile lands and shared pastures to Spanish colonization. *Estancias*, like those informally founded in the immediate aftermath of the invasion, were easy to establish with little capital investment after the initial purchase of a breeding pair and little labor. One shepherd could oversee up to one thousand sheep at a time and earned less than the value of ten head a year. Partnerships, as mentioned above, could ini-

los yndios de unos pueblos que tenían escogidos citios, rincones por sus principales sauos y doctores, leenciados, filósofos y aprouado de los primeros Yngas los temples y tierras y agua para multiplicar la gente. Adonde auía dies mil personas, soldados de guerra cin las mugeres y biejos y niños, agora no ay dies yndios de tributo ... los quaales [sic] citios causa en partes tierra úmida y pistilenciales y pasa por ella. Y ací entran enfermedades que trae aquella ayre; en partes biene aquella ayre de la mar que es pistilencial y hedor. ... en otras partes, lo causa del sol o de la luna o de las planetas que apunta y da la fuerza en los citios y lugares. Todos los quales es causa, como tengo dicho." Guaman Poma de Ayala, *Nueva corónica y buen gobierno*, 951 [965].

101 Abercrombie, *Pathways of Memory*, 283; Espinoza Soriano, *Juan Pérez de Guevara*, 122–25; Glave, *El virreinato peruano*, 4–5; Duviols, *Cultural Andina y represión*, 403–6; AGI/J458, 942v–43.

tiate breeding on the vast areas of open range which had been abandoned, the so-called *tierras baldías* or *vacas* (wasteland; untilled, uncultivated or empty lands).¹⁰² More open ranges were a great windfall to Spanish cattlemen, but natives benefited less. With the exception of the southern highlands where natives pastured abundant camelids, most natives had fewer livestock.¹⁰³ Any advantage to these few did not compensate for the damage done to the majority. Herds of imported animals continued to be a major source of conflict between the natives and the Spanish when the latter allowed their animals to roam freely into the unfenced native fields. Spaniards paid little heed to royal decrees mandating native protection that were against their interests, especially where there was little effective law enforcement by officials representing the king. In fact, Spaniards sometimes purposely allowed their animals to graze in native fields, defending this practice to the bewildered natives by citing the definition of pasture.¹⁰⁴ Breeders knew that if natives could not subsist and produce tribute goods on their traditional lands, they would be forced into the growing labor market.

Crops generally required greater investment than *estancias*. Spaniards reacted to local grain shortages and growing markets in Tierra Firme and Lima by planting wheat on some of their plots on the edge of town. Continued expansion near the city proved impossible when the decrees that limited the distance which native labor could travel to work began to be implemented. Mixed farms called *labores de pan sembrar* (or *de pan llevar*: the forerunners of the *hacienda*) included land planted in grain and land left as natural pasture for grazing work animals. It required a significant sum to purchase hand tools, plows, oxen, and carts. Wage costs were also greater, because as a labor-intensive activity farming required constant and specific administration to synchronize and coordinate plowing, planting, weeding, and irrigating various fields at once by large numbers of workers. On the coast, as the native labor supply dwindled, those few who could began to spend large sums to purchase slaves to maintain and expand production.

But most farmers still had no title to the lands they used. Similarly, stock-raising did not imply exclusive rights to any, unless the breeder had a *merced*. Most others only acknowledged *de facto* rights to those occupied by the corrals that were built to enclose the animals at night. The question of the ownership of land and pastures was not a predominant preoccupation much of the time.

102 Guevara Gil, *Propiedad agraria*, 13, 23.

103 See the analysis of three wills of native lords in Ramírez, "Rich Man, Poor Man," and Diez de San Miguel, *Visita hecha*.

104 AGI/AL 121, 1566, 5; P 185, r. 24, 1541, 75; *RLI*, v. 2, lib. 6, tit. 9, ley 19, f. 231v; and BAH/ML, t. 97, 1541, 181; and t. 21, 191–92.

The First *Visita de la Tierra*, or the Opportunity to Purchase Title

By the last decade of the sixteenth century, a select few Spaniards had acquired titles by gaining *mercedes* from a traveling viceroy or inspector, or their local municipal council. But many more Spanish settlers occupied lands without specific titles. This situation discouraged producers from investing and enlarging their farms. To secure their investments, they began seeking ways to establish their rights to the lands they occupied. At first, Spaniards planted on recently abandoned land that was easy to clear and required relatively little work to restore the irrigation networks, where they existed. Given the native demographic collapse, vacant land was relatively abundant and easy to occupy; there was little need for them to encroach on land still being actively used by natives. They also took advantage of the creation of a forced, rotating labor system (the *mita*) to acquire land. They simply remained in possession of land worked by the natives when temporary workers rotated every few weeks. The land eventually became identified with the Spaniard who occupied it continuously and quietly assumed its control and disposition. The result was a *de facto* transmittal of possession over the years.¹⁰⁵ Some also used an ostensible rental arrangement as another ploy to acquire land. Spaniards leased native lands and later asserted that the rental was a sale, claiming that possession throughout the intervening years constituted proof of ownership.¹⁰⁶

Gradually, however, the legal uncertainties associated with these stratagems led the Spaniards to prefer formal sales. Some purchased land from native lords for token payments, often paid in kind, despite royal disapproval and at least one decree prohibiting such transactions.¹⁰⁷ In 1566, Dr. Cuenca specifically prohibited the sale of land by native lords and other commoners, unless absolutely necessary.

Item, because the *curacas*, without having power to do so, sell on their own authority the lands of their communities as their own, thus causing their subjects great harm [...] and because, if the Indian population ever increases in numbers there will be a scarcity of land, it is ordered and mandated that no *curaca* or native official can sell community lands to Spaniards or any other individual, unless the sale is of urgent necessity or of evident utility to the community [...].¹⁰⁸

105 ART/Rios 1979; Mata 1565; Vega, 1567; MT 1578; LC 1559, 10-X-1561 and 16-V-1564; BNP/B871, 1627; and AAT/Causas 1570.

106 ANCR/1586–1611; AGI/J461, 1443–43v.

107 Guevara Gil, *Propiedad agraria*, 19, 21, 23, 103, 126–27, 130, 135–36.

108 ACT, 2:16–17: “Yten, porque los caçiques, sin tener poder para ello, venden por su autoridad las tierras de los rrepartimy[ent]os por suyas, siendo de la comunydad, de lo qual

Cuenca realized that if such sales were not banned the native population would lack sufficient land to provide for its own needs if the peoples ever increased to previous levels. But, in later years, natives and Spaniards alike took advantage of the provision's loophole to continue these transactions.¹⁰⁹

But tenure insecurity and mounting evidence of usurpation of native lands turned viceregal benign neglect and intermittent interventions in the machinations of distant Spanish officials and citizens into affairs of concern.¹¹⁰ Actions followed. The most noteworthy occasions of direct intervention were the *visitas de la tierra* by viceregal officials sent to the rural areas to review and legalize land titles. These *visitas* were not designed to check on the conditions or the efficiency of rural administration, to alter the local balance of power, or to report on the situation of the native population as much as to simply generate additional revenues for the king, while responding to Spanish demands for secure tenure and native cries for protection against usurpation. These *visitas*, however, often led to abuses as landowners and officials colluded to benefit themselves.

A general review and legalization of landholdings occurred in the 1590s, the first of several more in the decades of the 1640s, 1710s, and 1780s.¹¹¹ Only the first is of interest here. The excessive cost of Spain's continental warfare with England, France, and Holland; the destruction in 1588 of the great Armada; the resulting depletion of the royal treasury; and the reports of widespread illegal possession of crown lands in America prompted King Philip II to order the first thorough review of land titles, the *visita de la tierra*, in 1589.¹¹² Imperial decrees and the accompanying instructions for the *visitas* were designed to generate income for

los yndios a ellos sujetos son danyficados [...] y viniendo los y[ndi]os en avmento avra falta dellas [tierras], se hordena y manda que ningun caçique ny principal pueda bender tierras del rrepartimy[ent]o a españoles ny a otra persona, sino fuere con Urgente nesçesidad de la comunydad o en Evidente utilidad della [....].

109 ART/Mata 1586; 24-X-1563; 1565; 30-IX-1562; CoAG 30-IX-1567; *ACT*, 2:16-17; AGI/P108 r. 7, 1562, 48v; AL 28B; J460, 429v; Guevara Gil, *Propiedad agraria*, 130; and Angulo, "Cartulario," 296.

110 On usurpation, see, for example, Guevara Gil, *Propiedad agraria*, 13, 19, 23, 126; Honores, "La asistencia jurídica privada," 6; Honores, "Colonial Legal Polyphony," 11, especially on the *visita* and *composición*.

111 I am not counting the occasional inspections by special agents sent to remedy the abuses of one of these reviews, like the one conducted in the mid-1650s by a priest Maestro Fray Francisco de Huerta, who came to restore inappropriately expropriated native lands and soothe feelings, and so to restore the legitimacy of the king as father and protector to the native population.

112 Ots Capdequi, *España en América*, 40; Guevara Gil, *Propiedad agraria*, 28, 169, 174; Abercrombie, *Pathways of Memory*, 284-85.

the king's treasury and bring order to the land tenure panorama. Philip II gave the viceroy, in consultation with the Audiencia, the responsibility for appointing visitors to tour the kingdom to conduct the review.¹¹³ The law required all persons, except natives, to exhibit to the visitor for confirmation the titles to the land they occupied. If the titles proved defective¹¹⁴ or illegal,¹¹⁵ or if a landholder had no titles, the law provided that proprietary rights to the land in question either revert to the crown or be legalized (or *compuestos*, literally "repaired") by a payment of a "just" and "moderate" sum to the royal treasury. Thus, some had to pay if the visitor found more land than that in the original *merced*. Persons without titles had to pay a fee to legalize possession to all the lands they occupied.

The instructions further stipulated that vacant land—including land which had been assigned to the *reducciones* that was now in excess of that actually needed and used—belonged to the Crown, that is, it was *baldía* (waste, untilled, uncultivated) and *realenga* (royal patrimony: though in practice it appeared ownerless, idle, or unattached). To raise additional funds, Philip II empowered and encouraged the visitor to sell as much of the vacant land as possible, taking care only to reserve the necessary area for the future urban expansion of Spanish towns and cities and for the agricultural needs of the native peoples. The only condition for purchase was that buyers have the means and intent to cultivate it. The law clearly outlined the procedure for such sales. Prospective buyers submitted bids to the visitor for possession of the vacant land of their choosing. After verifying that the land was indeed idle and waste the visitor notified the owners of adjacent property to discover any objections to the sale. The town crier then announced the sale publicly on thirty separate occasions. On the day of the last such advertisement, a candle was lighted and additional bids were accepted as long as it burned. The highest bidder received the right to acquire title to the land. This elaborate procedure was not always followed in practice. There are a few cases when the town crier made fewer announcements than the mandated thirty. But regularly, these were made in Spanish, thus denying news of the sale to non-Spanish-speakers (i.e., the vast majority of the natives).¹¹⁶

113 A royal decree of 1593 empowered García Hurtado de Mendoza (the first Marqués de Cañete) to review land titles. His commissioners took over and finished the reviews that in some districts had been started on an informal basis by the corregidores. See Bronner, "Tramitación legislativa bajo Olivares," 418–22.

114 For example, they were granted by a town council that did not have the authority to do so or were for less land than the amount presently held.

115 For example, they were bills of sale from natives.

116 BAH/ML t. 97, 1589, 660; BAH/ML 1591, 66; BAH/ML 1592, 49–52; BAH/ML 1598, 768; and BAH/ML 1679–86; AGI/AL 132, [1593–95]; Valdez de la Torre, *Evolución*, 88;

News of these decrees and the impending *visita* unnerved landholders. Many realized that according to the law, the only sufficient titles to land were *títulos originarios*, or titles for concessions, which emanated directly from the king or some person or institution with his explicit authority; for example, the governor, a viceroy, and certain town councils at particular times. Landlords with grants from the town councils worried that their titles might be considered illegal, because the grants had been made without official sanction. Spaniards whose only titles were bills of sale or donations from the natives realized that these titles could be declared defective, since Spanish law regarded the natives as minors. The king had never granted them direct dominion or absolute ownership of the land; natives had purely usufructuary rights (*dominio útil*). Curacas had been allowed to sell property, but this practice had been prohibited after the widespread and unauthorized sale of communal lands earlier in the sixteenth century. Consequently, only *mercedes* and bills of sale or donations, dated during the 1560s and accompanied by the sworn statements of the *corregidor* and various informants that the lands were not needed by the natives, would not be challenged as illegal. Finally, cattle raisers worried about their status and continued access to pastures and forests, because by royal decree grazing lands were communal and open to all. Many stockmen had no titles whatsoever, and hence only squatters' rights to the land on which they had built stock pens and huts.¹¹⁷

The settlers' fears were intensified by the circulation of exaggerated, near hysterical rumors that the *visita* was a scheme to return all the land to the lineages and that the land of many Spaniards would be confiscated; in fact, however, the king was willing to sell off large areas of the royal domain to raise cash. Viceroy Cañete's reaction to the order for the *visita* reflects the landholders' anxieties. He wrote Philip II a strongly worded letter, dated 27 May 1592, outlining the possible disruptive effects of his decrees and suggesting their slow and cautious implementation:

The landowners are the richest and earliest discoverers and conquerors of the Kingdom, their children and descendants, and other persons to whom they have sold property. All these persons have plowed, cultivated, planted and improved the lands with buildings [...] at first everyone received land without contradiction; the viceroys and governors encouraged and aided those who dedicated themselves to exploiting and plant-

Guevara Gil, *Propiedad agraria*, 90–93, 132.

117 AGI/AL 32, 25-IV-1588. In 1592, a royal decree provided that titles issued by *cabildos* were valid, until the council was specifically prohibited from making land grants. See BAH/ML t. 97, 49.

ing them [...] Now nothing could cause more scandal and uneasiness in all the Kingdom among the most prestigious, valuable and able citizens [...] than to try to take the land away from them which they possess in perpetuity.¹¹⁸

The only lands that should be affected, he argued, were those no longer needed and used by Indian peoples.¹¹⁹

The landholders' anxiety was unfounded: none of the *visita*'s predicted dire consequences came to pass. In one case, the visitor, Don Rodrigo de Ampuero, while outwardly maintaining a solemn and disinterested air, probably over-stated the consequences of not regularizing land titles to encourage anxious landholders to come forward and thus accomplish his true and overriding purpose of raising as much money as possible for the royal treasury. Ampuero confirmed as legitimate and sufficient titles the original grants made at the time Spanish cities were founded and their subsequent sale and donations. For a fee, Ampuero issued titles to excess lands and corrected and legalized defective titles. A modest sum also made landholders without titles legal landowners. A few Spaniards took advantage of the opportunity to purchase vacant land at auction. Juan Frago, for example, paid 45 pesos for three *fanegadas* of lands and the legalization of the bill of sale for nine others he had previously purchased from the *curaca* of Chuspo-Callanca.¹²⁰

Judging from the *visita*'s extant records, livestock raisers were the group of Spaniards most affected. Ampuero issued clear title to *estancias* and corrals in one area for sums ranging from 42 to 190 pesos per *fanegada*. These titles gave the ranchers ownership of enough land for their center of operations and stock pens, but they excluded exclusive rights to pastures and woodlands. Titles contained the clause that pastures and forests were to remain common. The titles of one *estancia*, for instance, included land for an administrative center and sites for corrals one-and-one-half to two leagues away. The need to move animals periodically

118 AGI/AL 32, 27-V-1592: " Los que poseen estas tierras son los mas ricos y antiguos descubridores y conquistadores del Reyno y sus hijos y descendientes y otras personas aque en estos las han vendido y todas las tienen rompidas, labradas plantadas y mejoradas con edificios ... a principio entraron todos en ellas sin ninguna contradicion dando los virreyes y gouernadores muchas gracias y ayuda a los que se aplicauan a beneficiarlas y sembrarlas y tratar ora de quitarse las siendo todo su caudal ninguna cosa se podrá ofreçer de tanto escandalo y desasosiego en todo el Reino entre los mas principales y que algo valen y pueden [...] como lo harian quitando les todas las tierras que gozan y tienen por cosa fija y perpetua."

119 AGI/AL 32, 27-V-1592; Mellafe, "Frontera agraria," 39; BAH/ML t. 97, 1589, 654; and 1591, 66.

120 AGNP/TP I. 23, c. 613, 1787, 94.

to fresh pastures made corrals at these sites necessary to minimize the distance the herds had to travel each evening for protection from the prowling mountain lions that populated the rural areas. Subsequent legislation prohibited the establishment of the center of a new sheep and goat operation within one league or that of a new swine enterprise half that distance from an existing center of operations. Because of the recognized distinction between pastures (vegetation) and the lands (soil) on which the plants grew, this regulation did not affect the tenure of the farmers with fields between corrals. But, grazing stock did not differentiate between weeds and stubble and crops, resulting in continuing disputes on this account. Eventually laws were issued specifying that no new estancias could be established within a league of cultivated land and that fields be fenced.¹²¹

The records show that for, the Spanish, the *visita* merely legalized a *de facto* situation and did not change the pattern of landholding significantly. It made landowners of landholders. For the natives, the *visita* meant yet another lesson in the idea of exclusive property and a loss of “unused” land. The visitor, following his instructions, left the native lineages with enough ground for their current needs, but without sufficient reserves for future population growth. All excess land was publicly declared the domain of the king.¹²² The only evidence of change in customs within the communal areas of the *reducciones* comes from the remains of a notarial register, where short entries record oral testimonies of who had occupied a given parcel of land back as far as ten cultivators.¹²³ In other words, oral testimonies of usage rights were now being supplemented by writing them down. Or, as Guevara Gil has written, “The papers started to talk and, in general, the written word proved superior in truth and authenticity to the spoken word,” at least in the minds of the Spanish.¹²⁴

Thus, despite initial misgivings and apprehension, such mandated reviews encouraged investment by regularizing titles and holdings. Landowners borrowed church funds accumulated from charitable works by religious brotherhoods (*cofradías*), monasteries, and convents to intensify production on the cattle-rais-

121 ART/Mata 1596; ANCR/[1645]; ASFL/Reg. 9, No. 2, Ms. 26, 1647; AGNP/TH l. 21, c. 131, 1805, 501; Valdez de la Torre, *Evolución*, 86–87; Chevalier, *Land and Society*, 88–90. See Guevara Gil (*Propiedad agraria*, 28, 169) for a discussion of the *visita* to the Cuzco area.

122 AGI/AL 132, [1593–95].

123 ANCR[1586–1611].

124 “Los papeles comenzaron a hablar y, en general, la palabra escrita sobrepasó en veracidad y autenticidad a la palabra oral.” Guevara Gil also noted that, in Spanish law, a written instrument held more proof value than two oral testimonies: *Propiedad agraria*, xxiv.

ing estancias and the crop-producing haciendas. Of special interest was the investment by some in sugar cane and the wheat mills needed to make sugar and flour.

Land, Custom, and Law in the Andes

The history of Spanish colonialism as it affected land and tenure in the “New World” displays strong parallels with the institutions of the *Reconquista* and earlier eras of medieval Iberian history. The carving out of royal domain as patrimony of the Crown, with rights to alienate parts of it; the granting of communal properties to some municipalities; the drive toward private ownership of land; and the guarantee (at least in theory) of freedom to peasants were all elements brought to the Americas.¹²⁵ Over time, migrant settlers gradually gained possession and, later, ownership of parts of the royal patrimony. Meanwhile, grasslands remained common and open to all until the eighteenth century. These institutions accompanied the arrival and gradual settlement of the Spanish in such far-flung locations as Piura, Trujillo, Lima, Cuzco, and Sucre. With them came exotic animals that sometimes feasted in native fields and damaged the agricultural infrastructure. Protests against usurpation mounted as natives complained to Spanish priests and local officials, or traveled to the capital to present petitions before royal authorities. But the Spanish predilection for wine, wheat bread, sugar, and olives made agricultural land very valuable, and the crown delegated powers to town councils and royal officials to award land to private individuals. Such grants began as few, relatively small, and sporadic; but the pace of alienation accelerated in the 1560s and at the end of the sixteenth century. Continued loss of traditional lands and conflicts over their use with Spaniards and their descendants further entrenched medieval European notions of property. Indeed, Andean demands for redress of grievances provide evidence that these peoples had grasped the European concepts of usurpation, property, and rent. Though their agency served to negotiate the terms of their colonial existence in the short run, a constant demand for cheap labor further increased the numbers of usurpations and sales, abetted by legal chicanery. Once unable to farm, indigenous peoples survived by joining the labor force, sometimes working lands for a new owner: lands that had formerly been “common to all.”

125 Weeks, “European Antecedents,” 62.

Archival Sources and Abbreviations

- ACT* *Actas del cabildo de Trujillo*. Transcribed by Jorge Zevallos Quiñones. 3 vols. Lima: Concejo Provincial, 1969–70.
- AAT Archivo Arzobispal de Trujillo
Causas
- AGI Archivo General de las Indias (Sevilla, Spain)
Audiencia de Lima (AL)
Escribanía (E)
Indiferente General (IG)
Justicia (J)
Patronato (P)
- AGNP Archivo General de la Nación (Lima, Perú)
Donaciones
Residencia (R)
- ANCR Archivo Notarial de Carlos Rivadeneira, Lambayeque
- ART Archivo Regional de Trujillo
(now Archivo Regional de La Libertad, Trujillo, Perú)
Corregimiento, Asuntos de Gobierno (CoAG)
Corregimiento, Ordinario (CoO)
Corregimiento, Pedimento (CoPedimento)
Corregimiento, Residencia (CoR)
López de Córdova (LC)
Mata
Muñoz Ternerero (MT)
Obregón (O)
Ríos
Vega
- ASFL Archivo de San Francisco (Lima, Perú)
- BAH Biblioteca de la Academia de Historia, Madrid
Mata Linares (ML)
- BNP Biblioteca Nacional del Perú (Lima)
- RLI* Spain, Consejo de indias. *Recopilación de las leyes de los Reynos de las Indias*. 4 vols. Madrid, 1681
Legajo (l.), expediente (exp.), manuscrito (ms.), número (no.), folio(s) (f(f).)

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Abstract This article compares and contrasts pre-Columbian indigenous customary law regarding land possession and use with the legal norms and concepts gradually imposed and implemented by the Spanish colonial state in the Viceroyalty of Peru in the sixteenth and early seventeenth centuries. Natives accepted oral histories of possession going back as many as ten generations as proof of a claim to land. Indigenous custom also provided that a family could claim as much land as it could use for as long as it could use it: labor established rights of possession and use. The Spanish introduced the concept of private property with the founding of the first colonial city in 1532, but agricultural land did not become immediately important because Europeans were supplied with foodstuffs from the tribute of native communities, produced on native communally worked land. After mid-century, however, royal officials began to grant land to Spanish settlers, and there was also an increase in the usurpation of native lands. Once unable to farm, indigenous peoples were forced into the labor market, sometimes working lands that had formerly been theirs.

Keywords land, tenure, usufruct, usurpation, custom, law, Peru, Andean, native, Spanish, titles, colonialism.

