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# The Lived Space: Possession, Ownership, and Land Sales on the Chilean Frontier (Valdivia, 1790-1830)<sup>✉</sup>

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**Abstract:** By looking into sales of indigenous land in the territory of Valdivia between 1790 and 1830, this article discusses how legal interactions were tied to the local spaces of rural habitation. Since ownership was linked with possession and use in Spanish colonial law, local social relations and shared local knowledge were crucial for determining legal ownership and ensuring the validity of land transfers. This article provides insights into how law operated in newly integrated colonial spaces, and reveals that land transfers did not yet constitute purely contractual relations but were instead socially negotiated transactions involving different levels of authority and dependency.

**Keywords:** *Thesaurus: Chile; colonialism; customary law; indigenous peoples; land tenure; local knowledge.*

## El espacio vivido: posesión, dominio y ventas de tierra en la frontera chilena (Valdivia, 1790-1830)

**Resumen:** A partir de compra-ventas de tierra indígena en el territorio de Valdivia entre 1790 y 1830, este artículo discute cómo interacciones legales estaban atadas a los espacios locales y a la habitación rural. Dado que en el derecho colonial español el dominio estaba vinculado con la posesión y el uso, relaciones locales y conocimiento local compartido eran recursos importantes para determinar el dominio legítimo y asegurar la validez de las transferencias de tierra. Este artículo ilustra las formas en que el derecho operaba en espacios recientemente integrados a la jurisdicción colonial y revela que las transferencias de tierra aún no constituían relaciones puramente contractuales, sino que eran más bien transacciones socialmente pactadas que involucraban diferentes niveles de autoridad y dependencia.

**Palabras clave:** *Thesaurus: Chile; colonialismo; derecho consuetudinario; población indígena; saberes locales; tenencia de la tierra.*

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## O espaço habitado: posse, domínio e venda de terras na fronteira chilena (Valdivia, 1790-1830)

**Resumo:** A partir da compra e venda de terras indígenas no território de Valdivia, entre 1790 e 1830, este artigo discute como interações legais estavam atadas aos espaços locais e à moradia rural. Visto que, no direito colonial espanhol, o domínio estava vinculado à posse e ao uso, relações locais e conhecimento local compartilhado eram recursos importantes para determinar o domínio legítimo e assegurar a validade das transferências de terra. O presente artigo ilustra de que forma o direito operava nos espaços recentemente integrados à jurisdição colonial e revela que as transferências de terra ainda não constituíam relações puramente contratuais, senão que eram mais transações socialmente pactados que envolviam diferentes níveis de autoridade e dependência.

**Palavras-chave:** *Thesaurus: Chile; colonialismo. Palavras-chave do autor: direito consuetudinário; população indígena; saberes locais; posse de terra.*

## Introduction

On 20 April 1792 Antonio Solís was given possession of lands he bought from *don* Juan Queipul, the *Cacique principal* of Río Bueno, through an agent commissioned by the governor of Valdivia. The act of possession was a routinized legal procedure that took place on the tract and involved buyers, sellers, government agents, witnesses, and other participants. On the land, the agent verified the price and that payment was given, recognized the boundaries with interested parties and neighbors, and confirmed that every one of those gathered consented to the completion of the sale. Once this was established, “and not having anything to contradict on the part of Antonio Solís nor of the casique,” the colonial agent gave Antonio Solís “integral possession of the mentioned lands of Lligco throwing stones as well as pulling weeds, in sign of possession and true tradition and saying three verses in loud and clear voices possession, possession, possession, in which he was left absolute owner.”<sup>1</sup>

In Castilian law, possession was an essential condition for acquiring and maintaining ownership. According to the *Siete Partidas*, possession was the *ponimiento de pies* (the act of placing the feet), but referred more generally to the “just” or “rightful” holding of things with the help of body and mind.<sup>2</sup> In cases of land sales, such as the one described above, the acts of possession — common throughout Spanish America<sup>3</sup> — not only legalized the transfer of ownership from seller to buyer, but the fact of the sale and the change of owner were made public as well. Possession,

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1 “Land sale from Cacique Queipul to Antonio Solís,” 1792, in Archivo Nacional de la Administración (ARNAD), Santiago-Chile. Fondo *Notarios de Valdivia* vol. 2, f. 23v. Italics added by the author.

2 “Possession is the lawful occupancy which man has of corporeal property [cosas corporales] by the aid of the body or [and] the mind.” English translations have been taken from Robert I. Burns, ed., *Las Siete Partidas* (Philadelphia: University of Pennsylvania Press, 2001), vol.3, 850. Where necessary for a more correct understanding, I have added the Spanish phrasing. In Spanish: “Posesión es tenencia derechoyera que home ha en las cosas corporales con ayuda del cuerpo et del entendimiento,” in *Las Siete Partidas del rey Don Alfonso el Sabio: Partida Segunda y Tercera* (Madrid: Imprenta Real, 1807), 748.

3 Silvio Zavala, *De encomiendas y propiedad territorial en algunas regiones de la América española* (México: Antigua Librería Robredo, de José Porrúa e Hijos, 1940); Brian Owensby, *Empire of Law and Indian Justice in Colonial Mexico* (Stanford: Stanford University Press, 2008).

however, was also important for sustaining ownership. Since all lands were considered to ultimately belong to the Crown, distribution, redistribution, and occupation of land considered to be vacant or unoccupied —despite having titled owners— was a common practice throughout the colonial period. The underlying principle that based ownership on the condition of possession was that one could not own what one did not use.

This article focuses on the frontier space of Valdivia in order to understand the relations between possession and ownership in newly integrated colonial territories. The documents analyzed reveal that between 1790 and 1830 possession and ownership were closely intertwined. Legal procedures involving indigenous land tied local colonial institutions to the farms, tracts, and paddocks that were sold or disputed. The physical character of these legal procedures suggests that property relations, rather than being defined by formal titles and private transactions, were publicly and socially negotiated affairs involving not only colonial authorities and interested parties, but also local authorities and the local community. Possessing or taking possession of the land was thus intrinsic to the public, social, and, ultimately, legal recognition of ownership.

This representation questions the idea that land sales were primarily contractual affairs centered on the exchange of land as a commodity. The normative and institutional framework that structured land transfers suggests that beyond their economic function, they were fundamentally acts of government. I will present this argument in three sections. First, I will provide a brief overview of the expansion of the jurisdiction of Valdivia into indigenous territory in order to present the historical context in which indigenous land sales will be discussed. The subsequent sections discuss land sales from two interrelated perspectives. In Section 2, I argue that land sales can be thought of as sites of encounter where we can observe the norms, institutions, and actors that mediated the interactions between Spanish and indigenous populations. Theological, moral, and legal principles intertwined dominion and possession thus tying land sales to the territory and to the community. In Section 3, through a detailed reading of the records of conveyance, I argue that, in accordance with the prevailing normative order, land sales should not be primarily considered commodity transfers but should rather be thought of as a manner for rearranging local social relations. The normative logic of the customary gatherings that served to establish consent, proof of identity, and ownership ultimately reveals that representations of ownership were tied to local and social representations of the distribution of the space. Understanding this function of land sales reveals much about how law functioned in frontier territories, as well as how European expansion also occurred as a discrete process of negotiating local social relations.

## 1. Territory and Jurisdiction in Valdivia

Located roughly 800 kilometers to the south of Santiago, the city of Valdivia was founded during the first decade of Spanish conquest in 1551. After a series of uprisings by the native *Che*<sup>4</sup> population,

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4 *Che* is the self-identification of the people that inhabited southern Chile until the 19<sup>th</sup> century and were the forebearers of today's *Mapuche*. Mónica Contreras has argued that this term represents an ethnocentric and historically more adequate characterization of the diverse indigenous groups that inhabited southern Chile in the period studied. The self-identification of the *Mapuche* as a homogenous ethnic unit was the outcome of a process of ethno-genesis during the consolidation of the State in the course of the 19<sup>th</sup> century. See: Mónica Contreras Saiz, *En nombre de la seguridad: procesos de securización en el Gulumapu y la Frontera de Chile. 1760-1885* (Stuttgart: Verlag Hans-Dieter Heinz/Akademischer Verlag Stuttgart, 2016), 44.

which expelled most of the Spanish conquistadors from southern Chile, Valdivia was abandoned in 1599. Due to its strategic position for securing the Pacific possessions of the Spanish Crown and as a first docking port for the ships that had crossed the Magellan strait, Valdivia was re-established by the Viceroyalty of Peru in 1633. After the Treaty of Quilín of 1641, the colonial administration recognized the existence of two distinct spaces: the Kingdom of Chile, where the Crown and its agents had jurisdiction, and a space identified as “the possessions of the Indians” inhabited by diverse “nations of Indians.”<sup>5</sup> Both spaces were divided by Spanish fortifications and garrisons along the Biobío River that created a military border between Spanish and *Che* territory. Valdivia thus became the sole Spanish enclave within the indigenous territories, located between the Biobío River and the island of Chiloé.

Between 1630 and 1750 the jurisdiction of Valdivia consisted of four forts (*castillos*) that guarded the port on the Pacific coast; a sprawling vicinity located on the outskirts of the *plaza fuerte* (stronghold) on the Valdivia River; and the fort of Cruces, which was located seven leagues north of the city and established the frontier with the indigenous territories. This scarce territorial control posed various problems for supplying basic goods to the population of Valdivia, and the need to import food and other products imposed high costs on colonial administrators. By the mid-eighteenth century, preceding the Bourbon reforms, colonial authorities adopted measures that sought to reduce Valdivia’s dependency on imported supplies by increasing Spanish productivity in the surrounding area. With the objective of increasing the population and productivity, the 1741 *Ordenanzas políticas y económicas de la Plaza de Valdivia* gave the governor of Valdivia discretion to sanction *mercedes* (land grants) within the province and promoted the establishment of trade relations with the surrounding indigenous population.<sup>6</sup> The seventh ordinance of the *Reglamento para la guarnición de Valdivia* of 1753 reinforced this idea by instructing the governor to encourage “the working of the land, the breeding of livestock, so that [the population] may produce the necessary goods for their more comfortable subsistence.”<sup>7</sup> This led to the proliferation of livestock ranches on the valley of the Valdivia River (today *Calle Calle*), facilitated by the incursions of Jesuit missionaries among the Huilliche groups between the rivers Valdivia and Bueno after 1742.<sup>8</sup>

The expansion of livestock ranches was accompanied by efforts to secure the “friendship” of the surrounding indigenous territorial groups. This territory was occupied by four different groups, which could be distinguished according to their place of habitation and their means of subsistence. To the north of Valdivia between the Toltén and the Cruces rivers lived the semi-sedentary Picuntos or Pichunches; the mostly sedentary Huilliches inhabited the central plains and valleys located between the Cruces and the Maipué rivers; the Huilliches-Serranos were semi-nomadic groups that occupied the lake regions near the Andes; and the Juncos or Cuncos lived in the mountains between the Bueno and Maullín rivers on the Pacific coast. More socially relevant, however, were the territo-

5 Contreras Saiz, *En nombre de la seguridad*, 25.

6 José Antonio Manso de Velasco, “Ordenanzas políticas y económicas de la plaza de Valdivia [1741].” *Revista Chilena de Historia y Geografía* n.º 56 (1928): 377-378.

7 José Antonio Manso de Velasco, *Reglamento para la guarnición de la plaza de Valdivia, y castillos de su jurisdicción: número de cabos, oficiales, soldados, artilleros, y demás individuos de que há de componerse: y sueldos que han de gozar para su subsistencia. Año 1753. De orden de Su Magestad* (Lima: Francisco Sobrino, 1753), 15.

8 Eugenio Alcámán, “Los Mapuche-Huilliche del Futahuillimapu Septentrional: expansión colonial, guerras internas y alianzas políticas (1750-1792).” *Revista de Historia Indígena* n.º 2 (1997): 42.

rial groups that constituted the multicephalous governance structure of the indigenous territories. According to Alcamán, who has described these relations for the Huilliches and Juncos, territorial groups were composed of various lineages (known as *parcialidades* in Spanish documents) which inhabited a common territory under the authority and jurisdiction of a *cacique principal*, interacted in a distinct manner with other such territorial groups, and sustained independent relations with the Spaniards. This social structure generated constant struggles among the territorial groups as a manner of sustaining their means of subsistence and reproduction, and created constantly shifting relations of alliance among territorial groups and “friendship” with the Spanish authorities.<sup>9</sup>

The expansion of the jurisdiction of Valdivia was facilitated by the deteriorating economic conditions produced by recurrent *malocas* (raids) by which the territorial groups took livestock and/or women from one another. Alcamán argues that by the mid-eighteenth century, after livestock began to decrease due to increasing trade with the Spaniards and the closing off of sources of trade from the Araucanía and beyond the Andes, *malocas* acquired a routine economic function which helped sustain normal levels of subsistence without requiring reciprocity.<sup>10</sup> Beginning in 1758, requests for Spanish presence in the indigenous territories to provide protection against *malocas* from neighbouring groups became increasingly common. Spanish authorities used this as a way to increase their influence in the region. In the 1770s Governor Joaquín de Espinosa y Dávalos sought to secure and expand the jurisdictional gains made since the late 1750s by promoting the establishment of missions and sending *capitanes de amigos* to live among different territorial groups.<sup>11</sup> In 1778 Governor Espinosa successfully negotiated the construction of a fort and a mission in Río Bueno within the jurisdiction of *Cacique* Queipul. After suppressing an uprising in 1792, the Spanish administration finally achieved the submission of the Huilliche and Junco groups that lived on the coveted plains south of the Bueno River, thus recovering control of the plains of Osorno, a city destroyed during the uprisings of the sixteenth century. The Parliament of 1793 completed the jurisdictional expansion of Valdivia for the period covered in this article.<sup>12</sup>

The capitulation of the local *caciques* to the Spanish administration in 1793 set the territory of Valdivia on a different historical path from the rest of the indigenous territories. The restoration of the city of Osorno, a long-held geopolitical objective of the colonial administration as a way of connecting and supplying the enclaves of Valdivia and Chiloé, effectively put an end to the independence of the *Che* populations in the region. By contrast, the territory north of the Cruces River sustained its independence throughout the colonial period and after the beginning of the republic in 1820. As of 1852, Chilean legislation legalized this distinction, distinguishing between “frontier territories” which were those of the independent *Ches* of the Araucanía,

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9 Alcamán, “Los Mapuche-Huilliche,” 33; Mónica Contreras Saiz, “Die Eroberung der Freundschaft: Indios Amigos, Fuertes und lokale Regierungsweisen am Río Bueno, 1759-1796,” in *Regieren an der Peripherie: Amerika zwischen Kolonien und unabhängigen Republiken*, edited by Stefan Rinke, Mónica Contreras Saiz and Lasse Hölck (Stuttgart: Verlag Hans-Dieter Heinz/Akademischer Verlag Stuttgart, 2011), 113-138.

10 Alcamán, “Los Mapuche-Huilliche,” 65-67.

11 Alcamán, “Los Mapuche-Huilliche,” 43. The institution of the *capitanes de amigos* is discussed in detail below.

12 Vergara argues convincingly that this Parliament was effectively the capitulation and submission of the Huilliche. Jorge I. Vergara, *La herencia colonial del Leviatán: el Estado y los mapuche-huilliches (1750-1881)* (Iquique: Ediciones Instituto de Estudios Andinos, 2005), 109-110.

located between the Bío-Bío and the Toltén rivers, and the “indigenous territories” which comprised the totality of the old frontier.<sup>13</sup>

These divergent paths are relevant for studying how legal institutions handled property relations in frontier contexts. Leonardo León has recently conducted research on transfers of indigenous land in Arauco between 1858 and 1864.<sup>14</sup> This context, however, reveals how land transfers were handled within the framework of the Chilean Civil Code that came into effect in 1857. In contrast, the legal interactions discussed in the remainder of this article were based on Castilian law and the *ius commune*,<sup>15</sup> and thus present a very different picture of how land transactions occurred within newly integrated territories. While León’s cases provide insights into how indigenous land was transferred in the context of codified private law, this article argues that though indigenous land was bought and sold within the territory of Valdivia between 1790 and 1830, unlike what other authors have suggested,<sup>16</sup> land sales were not yet solely private legal transactions. Rather, since ownership was still tightly bound to possession and use, the legal interactions discussed in this article suggest that property relations were publicly and socially negotiated affairs involving varying levels of authority and dependency.

## 2. Norms, Institutions, and Actors: Land Sales as Sites of Encounter

In her study on colonial governance in Río Bueno, Mónica Contreras has characterized the *plaza fuerte* as a site of encounter of institutions and actors that mediated the interactions between the Crown and indigenous populations.<sup>17</sup> Land sales in this period could be defined in a similar but perhaps broader manner. Being legally mediated interactions, land sales have an important normative dimension that has to be considered. This section thus explores the norms, institutions, and actors that intervened in the buying and selling of land in the jurisdiction of Valdivia between 1790 and 1830.

According to the *Ordenanzas de la Real Audiencia de Santo Domingo* of 1511, Castilian law acted as general law in the Indies, which meant that it had to be applied in every matter not considered by the

13 Ismael Errázuriz Ovalle, *Titulos de propiedad en el territorio indígena: Memoria de prueba para optar al grado de licenciado en la Facultad de Leyes y Ciencias Políticas de la Universidad de Chile* (Santiago: Imprenta Universitaria, 1914), 12–14.

14 Leonardo León, “La danza de los pesos y de las hectáreas: Lonkos y comerciantes en la venta de tierras Mapuches, 1858-1864.” *Revista Tiempo Histórico* 5, n.º 8 (2014): 17-47; Leonardo León, “Ventas, arriendos y donaciones de tierras Mapuches en Arauco: sujetos, terrenos y valores, 1858-1861.” *Historia* 49, n.º 1 (2016): 133-183.

15 The *Siete Partidas* were read as an expression of the broader doctrinal corpus of the *ius commune*. The *ius commune* consisted of rules for legal practice common for the whole of Europe, developed by legal scholars from doctrinal sources of Roman and canon law. It was, however, an adjustment of these doctrinal rules to the medieval and early-modern normative order. The *ius commune* made its way to other regions of the world through the process of European expansion and to Spanish America, in particular, during the course of the 16<sup>th</sup> century. See: Wim Decock, *Theologians and Contract Law. The Moral Transformation of the Ius Commune (ca. 1500-1650)* (Leiden: Nijhoff, 2013), 32-33.

16 María A. Illanes, “La cuarta frontera. El caso del territorio valdiviano (Chile, XVII-XIX).” *Atenea* 509, n.º 1 (2014): 236; Vergara, *La herencia colonial del Leviatán*, 191-192.

17 Contreras Saiz, “Die Eroberung der Freundschaft,” 122.



special laws of the Indies.<sup>18</sup> Since most matters of legal life were not considered in the *Leyes de Indias*, between the sixteenth and the nineteenth century, the *Siete Partidas* became the most frequently applied legal text in Spanish America, regulating issues of criminal and procedural law, and much of what today corresponds to private law, such as family relations, inheritances, and commerce.<sup>19</sup> Nevertheless, the *Siete Partidas* should not be confused with a legal code in the contemporary sense, since its structure does not present a systematic organization of rules but rather reproduces a holistic worldview in which God was placed at the top and center of all legal relations.<sup>20</sup> This legal worldview coincided with the broader doctrines of the *ius commune*, which was the common European doctrinal system inspired by Roman and canon law.<sup>21</sup> Issues of land, ownership, and possession were thus not located within the fifth *Partida*, which dealt with commerce and contracts, but are found in different parts of the second and third *Partidas* on temporal power and on justice between parties respectively.

In the second *Partida*, according to God's command, the population and tilling of the land was central to the obligations of both the king and the people. In Law 1, Title 11, the king must love his country by having it inhabited and cultivated so as to obtain its fruits in abundance. Even if the land is not fertile enough to yield "grain, wine, and other products useful for the sustenance of men, nevertheless the king should not desire it to remain desolate on account of not being tilled."<sup>22</sup> The people, on their part, had the obligation to populate the land, and increase and raise their families. In Law 4, Title 20, the people had the obligation to "exert themselves so that the land in which they dwell may be well tilled; and no one can lawfully avoid this, nor should he do so."<sup>23</sup> The working of the land was a moral obligation to provide for the welfare of the community based on the convenience of abundance. Likewise, leaving the land barren was a reflection of ill will and lack of love for the land on which one lived.<sup>24</sup> Laws 6 and 7 of Title 20 also stated the duty of the people to take hold of and become lords of the land by craft or force. While the former meant applying knowledge and skill to make the land more fruitful, the latter consisted of removing enemies, shaping the terrain, and slaying wild beasts so as to make the land inhabitable.

*Señorío* (dominion) and possession are discussed respectively in Titles 28 and 30 of the third *Partida*. While the concept of dominion can be understood more generally as ownership, it cannot be likened to the concept of property as is done in contemporary codes and law manuals.<sup>25</sup> On the one hand, it is a broader category including not only relations to things but also to persons, thus compounding both ownership and lordship.<sup>26</sup> On the other hand, contrary to doctrinal develop-

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18 Bernardino Bravo Lira, "Vigencia de las Partidas en Chile." *Revista de Estudios Histórico-Jurídicos* n.º 10 (1985): 45; Carlos Garriga, "Patrias criollas, plazas militares: sobre la América de Carlos IV." *Horizontes y Convergencias* (2009): 7.

19 Bernardino Bravo Lira, "El Derecho indiano después de la Independencia en América española: legislación y Doctrina Jurídica." *Historia* n.º 19 (1984): 12; Bravo Lira, "Vigencia de las Partidas en Chile," 46.

20 Bravo Lira, "Vigencia de las Partidas en Chile," 50.

21 António Manuel Hespanha, *La cultura jurídica europea* (Madrid: Tecnos, 2002), 73.

22 *Las Siete Partidas del rey Don Alfonso el Sabio*, 91-92; Burns, *Las Siete Partidas*, vol. 2, 335.

23 *Las Siete Partidas del rey Don Alfonso el Sabio*, 193; Burns, *Las Siete Partidas*, vol. 2, 413.

24 *Las Siete Partidas del rey Don Alfonso el Sabio*, 193.

25 For example, Art. 582 of the Chilean Civil Code maintains the Spanish tradition and uses *dominio* as a synonym for property.

26 *Las Siete Partidas del rey Don Alfonso el Sabio*, 710; António Manuel Hespanha, *Como os juristas viam o mundo. 1550-1750: direitos, estados, pessoas, coisas, contratos, ações, e crimes* (Lisboa: Create Space Independent Publishing Platform, 2015), 314.



ments that began in the eighteenth century within the normative framework of the *Partidas*, and of the *ius commune* more generally, there was no strict separation between persons and things. According to Antônio Manuel Hespanha, persons, animals, plants, and inanimate objects were all creatures of the same universal order, which had the function of serving God insofar as they fulfilled their utility. As such, the relation between persons and things was subordinated to a natural order of utility.<sup>27</sup> Dominion thus provided a legal recognition and protection to the use of things, and not a right to the thing itself.<sup>28</sup> In Spanish America this made dominion a kind of conditional ownership and, as the *composiciones* made clear, land that was not possessed and used could be reclaimed and redistributed by the Crown.<sup>29</sup>

Under the influence of canon law, use and possession acquired an importance for securing ownership in the normative order of the *ius commune* that they did not have in Roman law.<sup>30</sup> During the early modern period, and in colonial Spanish America, possession enjoyed privileged protection by law. For example, Law 27, Title 2, of the third *Partida*, indicates that in cases of dispute over the rights to a thing, the plaintiff should claim possession and not ownership “for the reason that it is more difficult to prove the ownership of a piece of property [*el señorío de la cosa*] than the mere holding of it.”<sup>31</sup> Law 28 reinforces this idea stating that if ownership cannot be proven “those in possession can always hold it [the thing], even though they cannot show any right to do so.”<sup>32</sup> Possession was understood as the public exercise of rights over a thing by inhabiting, working, or using it, and as such was legally protected as an existing state of affairs. The doctrinal reason for this was that the guarantee of possession was related to the guarantee of peace; sustaining the status quo was understood as a way of avoiding conflicts and protecting justice.<sup>33</sup>

The legal difference between ownership and possession was most relevant for land sales. While possessors enjoyed the same rights as owners in the enjoyment of the products of their land, only owners, as those who hold dominion over the thing, could legally transfer rights through donation, sales, and inheritance.<sup>34</sup> However, in all of these cases, ownership could not be transferred without possession. Land sales involved the legal act of tradition, which meant that legal ownership was

27 Hespanha, *Como os juristas viam o mundo*, 312. And here the relation was still between persons and *things*, which in the nineteenth century became a relation between persons and *goods*, defined as things that have a subjective utility. Paolo Grossi, “Los bienes: itinerarios entre la ‘modernidad’ y la ‘posmodernidad,’” in *Propiedad: otras perspectivas*, edited by Paolo Grossi and Ángel López y López (Madrid: Fundación Coloquio Jurídico Europeo, 2013), 13-68.

28 Hespanha, *Como os juristas viam o mundo*, 314.

29 Tamar Herzog, “Colonial Law and ‘Native Customs’: Indigenous Land Rights in Colonial Spanish America.” *The Americas* 69, n. ° 3 (2013): 303-321.

30 Hespanha, *La cultura jurídica europea*, 91.

31 *Las Siete Partidas del rey Don Alfonso el Sabio*, 370; Burns, *Las Siete Partidas*, vol. 3, 549.

32 *Las Siete Partidas del rey Don Alfonso el Sabio*, 371; Burns, *Las Siete Partidas*, vol. 3, 550.

33 Hespanha, *Como os juristas viam o mundo*, 355.

34 *Las Siete Partidas del rey Don Alfonso el Sabio*, 710. This is stated in Law 1, Title 28, *Partida* 3: “The second kind of ownership [*señorío*] is the power which a man has over his movable or immovable property in this world, during his lifetime, and which after his death passes to his heirs, or to whomsoever he may transfer it while he lives.” Burns, *Las Siete Partidas*, Vol. 3, 830. This was not a strict rule, however, since sales could be completed if the buyer bought in “good faith,” which meant that he thought he was buying something from its rightful owner, even if that was not in fact the case.

only transferred once the object of the sale had been handed over from seller to buyer.<sup>35</sup> This act could be natural, from hand to hand, or symbolic, through the creation or transfer of a deed of ownership before the public scribe. In this sense, taking possession of a tract of land, as discussed at the beginning of this article, completed the transfer of ownership since it fulfilled the legal requirement of tradition. The requirement of tradition was meant to provide legal security to commercial exchanges<sup>36</sup> and, as our cases will show, allowed for various instances of political and social control.

These general norms were *localized* in the jurisdiction of Valdivia through various local institutions that were tasked with regulating the transfer of land.<sup>37</sup> As we have seen, following the *Ordenanzas* of 1741, the governor had the power to sanction land grants. Thus, transfers of ownership in sales involving indigenous land could not be completed without the authorization of the governor. After sellers and buyers had agreed on the land to be sold, the buyer had to present a written supplication to the governor asking him to send an agent with the power to “verify the purchase”<sup>38</sup> and give the lands “in possession [...] in the customary terms.”<sup>39</sup> The governor then issued a decree instructing an agent to assess the transaction and, if all conditions were properly met, give possession to the buyer. This was the moment of the sale in which the local political authority directly intervened in the purchase of land. The governor’s decrees, for example, on occasions introduced additional criteria beyond the strictly legal conditions for the sale. In one case in 1798, the sale was conditioned to “the precise obligation to *poblar casa* (make home) in the village,”<sup>40</sup> thus introducing a condition that was common for *mercedes* throughout the colonial period.<sup>41</sup> Furthermore, in two cases from the nineteenth century, the governor’s decree stated that the sale could only be authorized if “enough land remains in possession of the sellers for their sustenance and of their families.”<sup>42</sup>

Alongside the governor, the *caciques principales* also played an important institutional role in authorizing land sales. As we discussed above, each territorial group was composed of several *parcialidades* (lineages) headed by a *gulmen*; these in turn were headed by a *cacique principal*, who,

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35 José M. Álvarez, *Instituciones del Derecho Real de Castilla y de Indias* (New Mexico: Jesus María Baca, 1842), 49.

36 Hespanha, *Como os juristas viam o mundo*, 367.

37 Alejandro Agüero, “Local Law and Localization of Law: Hispanic Legal Tradition and Colonial Culture (16th-18th Centuries),” in *Spatial and Temporal Dimensions for Legal History: Research Experiences and Itineraries*, edited by Massimo Meccarelli and María J. Solla Sastre (Frankfurt/Main: Max Planck Institute for European Legal History, 2016), 101-129; Bartolomé Clavero, “Gracia y Derecho: entre localización, recepción y globalización.” *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno* n.º 41 (2012): 675-763.

38 “Land sale from *Cacique* Calfuquir and other to Ventura Carvallo,” 1791, in ARNAD, *Notarios de Valdivia*, Vol. 2, f. 5r.

39 “Land sale from *Cacique* Queipul to Antonio Solis,” f. 23r.

40 “Land sale in Quelaco from Juan Queipul to Dionisio Delgado,” in 1826, ARNAD, *Notarios de Valdivia*, Vol. 2, f. 128r.

41 “Law 1, Title XII, Book IV,” in *Recopilacion de Leyes de los Reynos de las Indias*, t. 2 (Madrid: Antonio Perez de Soto, 1774), f. 102r.

42 “Possession. Pablo González against J. Cotrén,” 1816, in Archivo Nacional Histórico (ANH), Santiago de Chile, Fondo *Judicial de Valdivia*, sig. 05/01, f. 37v. The second case is a sale in 1827, conditioned to finding out if “said seller has other lands on which to live to sustain his family, because on the contrary he shall not be permitted to sell all of them.” “Land sale from Lebitun Antiguir to José Antonio Agüero,” 1827, ARNAD, *Notarios de Valdivia*, Vol. 2, f. 158v.

according to some documents, was also known as *gobernador* (governor).<sup>43</sup> The *cacique* was not only a social authority but also played an important role in organizing the production of his group, controlling access to land, and storing grain and seed. Through the centralization of authority, the territorial group could secure a surplus in production that was favorable to the renewal of the agricultural cycle. The authority of *gulmenes* and *principales* was thus tied to their capacity to increase their estate and, thus, the welfare of their lineages.<sup>44</sup> In the late 1780s, during the process of jurisdictional expansion, Governor Mariano Pusterla sought to formalize Spanish recognition of the authority of the *caciques principales*, granting them honors, such as treating them with the honorific title *don*, implementing protocols for their reception in Spanish cities, and giving them command staffs (*bastones de mando*) in the name of the King.<sup>45</sup> Their authority was also recognized insofar as no sale of indigenous land could be completed without the consent of the *cacique principal*.

Mediating between the authority of *caciques principales* and Spanish governors were a series of colonial agents, the *oficiales de indios*: *lengua general*, *capitanes de amigos*, and *comisario de naciones*.<sup>46</sup> While the latter is the most relevant for our discussion on land sales, it is necessary to provide a brief overview of these agents. The *oficiales de indios* were mostly Spaniards born on the frontier, or mestizos, who could speak both *Mapudungun* and Spanish fluently and had good first-hand knowledge of the frontier. These agents, though often soldiers, were not officially members of the army nor did they enjoy military immunity but followed the orders of the Military and Political Governor of either Concepción or Valdivia and, at least in Valdivia, were included in the payroll of the garrison. As Sergio Villalobos has argued, they were rather seen as being integrated with the indigenous population.<sup>47</sup> While the *lengua general* acted as general interpreter, the *capitanes de amigos* and the *comisarios de naciones* cultivated strong relations with the indigenous authorities. The latter institutions also enjoyed a great degree of autonomy and spent most of their time within the jurisdiction of the *caciques*.

Large part of the Spanish policy of expansion into the indigenous territories of the Araucanía and Valdivia was based not only on missions, but also on the *caciques* accepting *capitanes de amigos* to live within their jurisdictions. On occasions this would suffice for the colonial government to recognize an indigenous population as “friendly.”<sup>48</sup> Though they had some role in solving disputes within a jurisdiction and acted as witnesses in commercial dealings between Spaniards and the *caciques*, the main role of the *capitanes* was that of being informants for the Crown regarding the mood and movements of the territorial groups to which they were assigned. The *capitanes de amigos* were also instrumental for convincing *caciques* to accept missions within their jurisdictions and, once missions were installed, they also had the responsibility of protecting the priests and

43 Miguel de Acasubi, “Informe cronológico de las misiones del reino de Chile, hasta 1789,” in *Historia física y política de Chile: documentos sobre la historia, la estadística y la geografía*, edited by Claudio Gay, 2 vols. (Paris: Museum of Natural History, 1846), t. 1, 375.

44 Alcamán, “Los Mapuche-Huilliche,” 64-65.

45 Alcamán, “Los Mapuche-Huilliche,” 60.

46 Here I follow the emphasis on mediation which has been highlighted by Contreras, who regards them as ‘state intermediaries acting in self interest,’ and Vergara, who regards them as “mediating institutions.” See Contreras Saiz, *En nombre de la seguridad*; Vergara, *La herencia colonial del Leviatán*, 92.

47 Sergio Villalobos, “Tipos fronterizos en el Ejército de Arauco,” in *Relaciones fronterizas en la Araucanía*, edited by Sergio Villalobos (Santiago: Ediciones Universidad Católica de Chile, 1982), 186.

48 Alcamán, “Los Mapuche-Huilliche,” 43.

summoning the locals to mass.<sup>49</sup> Like the other *oficiales de indios*, the *capitanes de amigos* moved easily between the Spanish and indigenous territories and had great knowledge of their respective customs. As such they were an asset to both the Spaniards and the *caciques* with whom they lived, and the *capitanes de amigos* often used this to their personal advantage. On occasions, to the scorn of Spanish authorities, they became so interwoven into the indigenous community that they adopted indigenous customs and sometimes married into the family of the *caciques*.<sup>50</sup>

The *capitanes de amigos* responded to the *comisario de naciones*, which was a frontier institution that functioned within the territories of the Araucanía and Valdivia, and had a different role than the *protector de indios* that existed in the Kingdom of Chile and in most of Spanish America.<sup>51</sup> Their title came from the colonial government's need to deal with the diverse "nations of Indians" that inhabited the autonomous indigenous territories.<sup>52</sup> Unlike the *capitanes de amigos*, there were only two *comisarios de naciones*: one for the Araucanía and one for Valdivia. The role of the *comisario* was also different, having a much more important role as a mediating judge or peacekeeper, with the responsibility of observing the relations between Spanish authorities and the *caciques*, maintaining the peace among territorial groups, and guaranteeing the safety of *caciques* when they traveled within areas under Spanish jurisdiction. They were thus considered the responsible party in any deal between Spaniards and indigenous groups.<sup>53</sup> While most of the literature on the colonial period has emphasized the political and diplomatic role of the *comisario de naciones*, it is important to note that he was also the most important colonial agent in the handling of sales of indigenous land, being responsible for verifying the sale and giving possession of land tracts. On the occasions in which the *comisario* could not verify the sale and give possession, this function was delegated by the governor to either the commander of the fort or some other high-ranking military officer in company of the *lengua general*.

A final characteristic of the timeframe studied here is the continuity of norms and institutions into the republican period. After 1820, when Valdivia came under the jurisdiction of the independent Chilean state, land sales and the legal handling of conflicts involving indigenous actors continued to be managed through the same set of norms and institutions that have been described above. The only major change was that the role of the governor was assumed by the provincial intendant. This persistence into the republican period was apparently based on Intendant Ramón Picarte's decision to continue applying colonial custom—as the combination of localized norms and institutions—in dealings with indigenous populations, partly due to their unwillingness to recognize the new republican institutions. The first shift was institutional and occurred around the 1830s when legal proceedings were increasingly handled in courts and land sales were conducted solely before the public scribe. As a reflection of the development of private law, the intendant

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49 Vergara, *La herencia colonial del Leviatán*, 91.

50 María Ximena Urbina Carrasco, *La Frontera de Arriba en Chile Colonial: Interacción hispano-indígena en el territorio entre Valdivia y Chiloé e imaginario de sus bordes geográficos, 1600-1800* (Valparaíso: Ediciones Universitarias de Valparaíso, 2009), 207-209.

51 Vergara, *La herencia colonial del Leviatán*, 89; On the *Protectores de Indios* see Constantino Bayle, *El Protector de Indios* (Sevilla: Editorial Católica, 1945); Malcolm Ebricht, *Advocates for the Oppressed: Hispanos, Indians, Genízaros, and Their Land in New Mexico* (Albuquerque: University of New Mexico Press, 2014).

52 Villalobos, "Tipos fronterizos en el Ejército de Arauco," 187.

53 Urbina Carrasco, *La Frontera de Arriba en Chile Colonial*, 212.

and the *oficiales de indios* —though still active well into the late nineteenth century— no longer intervened in land sales. The second shift was normative and occurred in the 1850s through the enactment of the Chilean Civil Code that abolished the continuance of Castilian law.

Finally, there is the question of who participated in land sales. In this particular selection of documents, all of the sellers are indigenous while the buyers are mostly Spanish and Chilean, and occasionally Huilliche. However, sales were not restricted to sellers and buyers, since the acts of possession made land sales highly social affairs. Neighbors were required to participate in order to determine that the borders of the tract did not infringe upon their land, and therefore played a central role in land transactions during this period. Occasionally, adjacent family groups also took part in the sales as a way of safeguarding their own interests. Bystanders were also present in the acts of possession, though it is not clear from the sources what their specific role was. *Capitanes de amigos* also participated, usually acting as witnesses. Finally, the colonial agent charged with the proceedings established the legal requisites for the sale, directed the ceremony, and gave possession to the buyer, all of which was recorded either on the spot or retroactively by the scribe “for the record” (*para que conste*).

### 3. Community and Social Knowledge: Land Sales as Negotiation of Local Social Relations

The important economic and social functions of the *malocas* shaped the manner in which the Huilliches occupied and used their land, and accordingly the way in which they assigned its value. Their incipient agriculture was dedicated to cultivating wheat, maize, potatoes, and quinoa, and they bred cattle and horses, and raised sheep and pigs.<sup>54</sup> It seems that by the late eighteenth century, however, the breeding of horses and cattle had declined considerably, impacting the overall welfare of the Huilliche territorial groups.<sup>55</sup> Despite living on vast expanses of fertile plains, the state of constant warfare among groups led the multifamily lineages to live in close proximity to each other in specific places within the forests, “leaving vast expanses of land either ‘empty and without use,’ or destined to livestock herding, that were respectively denominated *pampas* and *potreros* (paddocks).”<sup>56</sup> These lands, which were valuable to the Spaniards, were often surplus to the Huilliche economy and therefore became precisely the kind of land that was sold mostly in kind, for cattle or small livestock.<sup>57</sup> And it was on these lands that the acts of possession and thus sales took place.

Land sales constituted a process of negotiating new states of affairs to the satisfaction of every one of the interested parties. Thus, in the paddocks and on the pampas, the colonial agent met with sellers, buyers, and *caciques*, along with “*capitanejos*, *Guilmenes*, and *mocetones*,”<sup>58</sup> *capitanes de amigos*, witnesses of both parties, and neighbors. On occasions, these gatherings would be

54 Alcamán, “Los Mapuche-Huilliche,” 36.

55 Alcamán, “Los Mapuche-Huilliche,” 65.

56 Alcamán, “Los Mapuche-Huilliche,” 70.

57 In 1795 Felipe Guenchumilla sold lands to Francisco Javier Carrasco for one hundred and ten *pagas* (payments), “composed of cows, silver, mules, sheep, calves, horses, indigo, [...], and mares.” “Francisco Javier Carrasco on purchase of tract from Felipe Guenchumilla in Rio Bueno,” 1795, ARNAD, *Notarios de Valdivia*, vol. 1, ff. 117r.-117v.

58 *Capitanejos* and *mocetones* were warriors subordinate to the *cacique*, known as *cona* in *Mapundungun*. See: Contreras Saiz, *En nombre de la seguridad*, 358.

larger, involving neighboring Huilliche families, or “several Spaniards.”<sup>59</sup> The gatherings, themselves a kind of customary institution, fulfilled two purposes: first, they were the instance in which the legal prerequisites of tradition were determined; second, they made the conveyance of ownership known to the inhabitants of the surrounding area, and were thus the instance in which the reordering of the status quo was ratified.

Insofar as they were essential for establishing the legal prerequisites, the gatherings constituted a sort of “silent” institution of tradition. According to legal doctrine, *traditio* was a manner of acquiring rights to a thing, involving a voluntary act from the conveyor, which distinguished this form of acquisition from occupation.<sup>60</sup> As such, a reason —title or *iusta causa traditionis*— was a fundamental requisite for the conveyance of the thing, which could be fulfilled through sale, donation, or exchange. In addition to the *iusta causa*, there were also prerequisites of *traditio*, the most important of which was that the conveyor was also the owner because, as we have seen, only owners —and not possessors— could dispose of the thing.<sup>61</sup> In the land sales analyzed for this article, the agreement of sale —*iusta causa*— and the acts of possession —*traditio*— are mediated by the acts of verification in which the legal prerequisites have to be determined. The governor’s decrees instructing the agent to travel to the tract are thus filled with exhortations to *verificar* (verify); *averiguar* (find out); *tener conocimiento* (have knowledge); *estando bien informado de la certidumbre* (be well informed of the certainty); *constando* (having proof); *todo con la mayor exactitud* (with the greatest precision). The positivist tone of the instructions is a representation of the normative factualism that pervaded the juridical culture of the *ius commune*.<sup>62</sup> During these verifications, *estando todos juntos* (everyone being gathered together),<sup>63</sup> the agent obtained the necessary information in order to satisfy the requirements of “proof” and “certainty” established in the governor’s decrees. In what follows, I will concentrate on three prerequisites: consent, identity, and ownership.

Consent was an important prerequisite for the authorization of a sale because it fulfilled the contractual condition for the transfer of ownership; no sale could be done without the explicit consent of both parties: willingness to sell and willingness to acquire. In the instructions it was often stated that the agent had to ask indigenous sellers “if it is their own free will to sell” the lands.<sup>64</sup> Most documents have rather formal statements that indicate that sellers sell “of their spontaneous wills not preceded by force or deception.”<sup>65</sup> However, these statements were probably obtained through an explicit question and answer. In 1795, for example, the *comisario de naciones* having gathered “casique Dn. Colin, his brothers Hilmenen, Redeyuqueo, Lancuqueo, Pocollafan, and Huayquipan, asked them if it was their will to sell those lands of ‘el Rozal’ [...] to which they said [...] that of their will they sell them

59 “Land sale from Agustín Pilun to Felipe Bastidas,” 1824, ARNAD, *Notarios de Valdivia*, vol. 2, ff. 97v.-98r.

60 Hespanha, *Como os juristas viam o mundo*, 367.

61 Alejandro Guzmán Brito, “La tradición como modo de adquirir el dominio en el derecho romano, en el común y en el iusnaturalismo y su destino en los derechos patrios de la América española.” *Revista Chilena de Derecho* 42, n.º 1 (2015): 331. In the *Siete Partidas*, *iusta causa* is translated from Latin as “derecha razón.”

62 Agüero, “Local Law and Localization of Law,” 112.

63 “Land sale from Manuel Lefian,” 1828, in ARNAD, *Notarios de Valdivia*, vol. 2, f.168r.

64 “Tract sale in Pichihue from Juan Llancamán to Antonio Leuvu,” 1808, ARNAD, *Notarios de Valdivia*, vol. 2, f. 74r. Italics added by the author.

65 “Land Sale in Rio Bueno from Felipe Guenchumilla,” ff. 117v.-118r.; “Dionisio Delgado claims possession of lands in Rio Bueno,” 1814, ANH, *Judicial de Valdivia*, sig. 02/06; “Severino Catalan against N. Antilef and others for right to lands,” 1826, in ANH, *Judicial de Valdivia*, sig. 09/04.



and guarantee them.”<sup>66</sup> In 1828, a local judge in company of the scribe, the *comisario de naciones*, and others asked two Huilliche sellers “in clear and intelligible voice if of their spontaneous will they wished to sell,” to which they answered that “*eran muy gustozos*” (they were very willing).<sup>67</sup> Occasionally sales did fail because sellers did not consent to the sale during the verification. In 1807 a Spanish buyer declared that he had agreed with four sellers to purchase lands “which were inherited from their fathers.” Asked by the local judge, with assistance of the *comisario de naciones*, “the first three said it was their will to give in Royal sale the lands called Nales [...]. The fourth heir, Ñancucho, said in presence of everyone that he for his part did not agree to such sale.”<sup>68</sup> In this case the sale fell through.

But this consent alone did not fulfill contractual conditions since the consent of the *cacique* was also required alongside that of the seller. One decree stressed this by stating that the agent had to establish the circumstances that “make the sale legitimate,” among which the consent of the *cacique* as well as that of the indigenous sellers had to be explicitly determined.<sup>69</sup> A decree from 1802 instructs the agent to give possession to a Spanish buyer after he had established the consent of the sellers and provided the *cacique* “is aware” of the sale.<sup>70</sup> In 1805 a decree instructed the agent to ask “the *cacique* if he consents” to the sale, and only after this step was completed could buyer and sellers proceed to discuss the value and payments.<sup>71</sup> In a verification carried out in 1803, the *comisario de naciones*, Francisco Aburto, stated that having summoned “casique [sic.] D Bernardo Calfuquir, and the Indians Epuyan, Luisuyan, Cafulipe, Calfupi, Colipi, and Cauyuhuir owners of the lands and also present the *capitanes de amigos* Lorenzo Sanches, Pedro Xaramillo, Eusebio Catalan, and the *miliciano* (soldier) Andres Perez, the mentioned Indian owners of the mentioned lands said that of their own free will and their casique [sic.] being fully aware, they sell to D Julian Pinuer [...] the mentioned lands of Chanchan.”<sup>72</sup> Sales were thus conditioned not only by contractual elements, but also by hierarchical dependency relations that should be considered before interpreting land sales solely as the expression of the free and autonomous will of the individual.

Alongside consent, identity was also a prerequisite for the successful completion of a sale. This meant basically confirming that the thing that was agreed upon corresponded to a physical reality on the ground. Here, proof of identity was established between the thing, as it was described in writing, and its physical correlate. In a decree in 1814 the governor instructed the *comisario de naciones*, Francisco Aburto, to “personally conduct the recognition of said lands.”<sup>73</sup> The *señalamiento* (recognition or indication) of the *lindes* (boundaries) of the tracts, farms, or paddocks required that “everyone together” walk through the land in order to settle the correct limits. Though most documents simply indicate the demarcations (“the limits of which are”), others are more explicit in showing that this in itself constituted a physical and public act. In one sale from 1824, we find the following: “The boundaries explained were *signalled materially* by the

66 “*Cacique* Colin and others sell land to Gregorio Ulloa,” 1795, ARNAD, *Notarios de Valdivia*, vol. 2, f. 10v.

67 “Land sale by Manuel Lefian, 1828,” ARNAD, *Notarios de Valdivia*, vol. 2, ff. 168r.-168v.

68 “Manuel Delgado against Manuel Queipul and others for the delivery of a tract (Rio Bueno),” 1807, in ANH, *Judicial de Valdivia*, sig. 01/06.

69 “Land sale from Cacique Calfuquir,” f. 5r.

70 “Possession by Julian Pinuer of paddock in Chanchan,” 1802, ARNAD, *Notarios de Valdivia*, vol. 2, f. 46r.

71 “Manuel Delgado against Manuel Queipul.”

72 “Possession of paddock in Chanchan by Julian Pinuer,” 1802, in ARNAD, *Notarios de Valdivia*, vol. 2, f. 49r.

73 “Land sale from Manuel Queipul to Pablo Gonzalez (Llaytul),” in 1814, ARNAD, *Notarios de Valdivia*, vol. 2, f. 154v.



very Indian sellers in my presence and that of my Lieutenant *comisario*, Captain of the *Reducción*, *Casiques*, *Guilmenes*, and *mozetones* [sic.] and several Spaniards *publicly* at three in the afternoon.”<sup>74</sup>

The indication of the boundaries could also be established by creating landmarks. In one case the boundary was indicated “in an old fence and by chopping a Pellín [tree] for firewood;”<sup>75</sup> in another “a dead tree was marked;” finally, on a vast plain “several trees were marked all along the plot of land, serving as *linderos* (boundaries) until they reach the stream.”<sup>76</sup> These kinds of landmarks could only make sense to those who had a good knowledge of the terrain and shared common understanding proper to the area. The importance of the gatherings for determining identity fundamentally reveals that land did not yet correspond to topographical, cartographic, or geometric representations, but that it was still predominantly a *lived* space tied to habitation and use. The limits of any given piece of property were not determined through paper titles or maps but depended on the local memory of the community and its shared understanding of the distribution of space.

This was also evident in the changes in ownership. Many accounts of the acts of verification simply state that the Huilliche sellers are “owners”<sup>77</sup> or that the lands *son propias de los dichos indios* (are owned by said Indians).<sup>78</sup> As with identity, ownership had to be ascertained through the shared knowledge of the local inhabitants gathered at the site of the sale; it had to be “found out.” It seems that discussions among those gathered were common, and Huilliches often resolved issues of ownership in “their own debates according to their customs and style.”<sup>79</sup> One case from 1800 is particularly illustrative of this:

“I, [the Commander of the Fort of Alcudia, accompanied by the *lengua general*] summoned to the site contained in this petition, the Indians, sellers, Cacique Calfunir, Llancal, and other neighbours of the Indians of the area of Chanchan with the others, their relatives being the head of the latter the *Cacique* Epuyan and having everyone gathered were told of the sale of this piece of land that the Indian Llancal was selling Dn. Julian Pinuer and *after several reasons that each presented in attention to the relations of kinship that connects them with each other, unanimously said: That the sale made by Llancal was legitimate as true owner with which they were satisfied stating that in the adjacent lands in the area of Pilmaiquen said Llancal could from now on not claim access nor right.*”<sup>80</sup>

Llancal’s claim to the land was thus valid only insofar as it corresponded with the shared knowledge of both family groups. The fact that the verification of ownership was only possible with recourse to local knowledge is well exemplified in a case in which a land sale failed when *Cacique* Josef Sunil claimed that the seller Pablo Caniu was not “owner to dispose of said lands.” Caniu claimed recourse from the governor arguing that he had inherited the lands from his father and that the *cacique* had only disputed his claim because he was not included to benefit from the sale. He claimed that the “ancient possession I have *is known* to many living old Indians.” The *comisario de*

74 “Land sale from Agustín Pilun to Felipe Bastidas,” 1824, in ARNAD, *Notarios de Valdivia*, vol. 2, f. 98r. Italics added by the author.

75 “Santiago Ancaguirre regarding possession in Cudico,” 1806, ANH, *Judicial de Valdivia*, sig. 01/02.

76 “Land sale in Quelaco from Juan Queipul to Dionisio Delgado,” 1826, ARNAD, *Notarios de Valdivia*, Vol. 2, f. 128v.

77 “Julian Pinuer’s possession of a paddock in Chanchan,” 1802, ARNAD, *Notarios de Valdivia*, vol.2, f. 47r.

78 “Land sale from *Cacique* Juan Queipul and others to Julian Pinuer,” 1792, ARNAD, *Notarios de Valdivia*, vol. 2, f. 25v.

79 “Manuel Delgado against Manuel Queipul.”

80 “Land sale from H. Llancal and others to Julián Pinuer,” 1800, ARNAD, *Notarios de Valdivia*, Vol. 2, ff. 36r.-36v. Italics added by the author.

*naciones*, with presence of the *lengua general* and *capitanes de amigos*, visited the locality in dispute and interviewed different witnesses. Tomás Huaytu, whom Caniu had cited as a witness, said that when he was a young boy those lands had in fact belonged to Caniu's father, but this was no longer the case, because Caniu had "sold all of the lands that were of his deceased father Chanacul." With Caniu not being able to produce another witness, the *comisario* summoned Dn. Lucas Aricales, "a man in his eighties or nineties," who "confirmed that Caniu did not have lands of his own to sell."<sup>81</sup>

This seemingly cumbersome procedure for establishing the legal prerequisites of land sales is an indication that ultimately the interest of authorities was not necessarily in securing transfers of land but rather in securing the status quo. This, as we have mentioned, was undergirded by a normative principle in which guaranteeing existing states of affairs was considered equivalent to guaranteeing the peace. Therefore, the acts of verification had to be handled "with the greatest precision"<sup>82</sup> and without "leaving any doubt"<sup>83</sup> in order to avoid "confusion,"<sup>84</sup> the "continuous complaints,"<sup>85</sup> and *pleytos* (quarrels)<sup>86</sup> that could arise from the sales. Verification thus ensured the "legality of the instrument"<sup>87</sup> and any disputes that could arise as a result of the sale or the demarcations were considered the responsibility of the agent instructed to verify the conveyance.<sup>88</sup> Complaints that arose after the completion of a sale were considered to be the result of negligence or malice on the part of the agent in charge of the creation of the instrument<sup>89</sup> and therefore required a repetition of the act of verification or the annulment of the transfer of ownership, thus returning the situation to the *status quo ante*.

To secure the rearrangement of local social relations through shifts in ownership, verification was concluded when those gathered had come to the point of "having nothing to contradict," of no one "placing obstruction or contradiction," or *quedando acordes y llanos* (having come to agreement).<sup>90</sup> This was the statement that concluded the verification and led to the act of possession by which the buyer became "absolute owner."<sup>91</sup> Taking possession of the tract through the rituals of pulling weeds, breaking branches, and throwing stones was a manner of signaling dominion and gave the new owner the power to possess and dispose of the lands.

## Conclusions

This article has suggested looking into sales of indigenous land in the territory of Valdivia as a way to discuss the operation of law in newly integrated colonial spaces. The legal interactions involved in

81 "Lands of Pablo Caniu, 1801," ANH, *Judicial de Valdivia*, sig. 19/01. Italics added by the author.

82 "Sale of tract in Pichihue from Juan Llancamán," f. 74r.

83 "Manuel Delgado against Manuel Queipul."

84 "Possession of Julian Pinuer," f. 46r.

85 "Santiago Ancaguirre on possession;" "Manuel Delgado against Manuel Queipul;" "Sale of tract in Pichihue from Juan Llancamán," f. 74r.

86 "Santiago Ancaguirre on possession."

87 "Bernardo Calfuquir against Lucas Molina concerning borders of tract," 1803, ANH, *Judicial de Valdivia*, sig. 01/04.

88 "Land sale from H. Llancal," f. 36r.; "Sale of tract in Pichihue by Juan Llancamán," f. 74r.; "Lands of Pablo Caniu.

89 "Bernardo Calfuquir against Lucas Molina."

90 "Land sale from *Cacique* Calfuquir," f. 6r.; "Land sale from *Cacique* Queipul to Antonio Solis," f. 23v.; "Land sale from Agustín Pilun to Felipe Bastidas," 1824, ARNAD, *Notarios de Valdivia*, vol. 2, f. 98r.

91 "Land sale from *Cacique* Calfuquir," f. 6r.

the buying and selling of land reveal that local spaces and rural habitation were central elements in establishing the legitimacy of land transfers. The normative underpinning of these interactions was provided by the way ownership was intertwined with possession and use in the *Siete Partidas* and the more general framework of the *ius commune*. The public and effective exercise of rights to things was a precondition for ownership and, therefore, owners were those who were socially recognized as owners by the local community. As such, local social relations and shared local knowledge were crucial for determining the legal prerequisites of tradition and ensuring the validity of land transfers. But land sales not only involved the transfer of rights to the use of things, but implied a rearrangement of local social relations as well. As such, the acts of verification were intended to make the conveyance of ownership known so as to secure the new status quo in local memory.

The cases of conveyance analyzed in this article probably say less about Spanish-Huilliche relations in particular, than what they reveal about the relationship between law and the rural experience. Alain Pottage has provided an account of how representations of land were extricated from their social rooting and from local knowledge through the process of registration in England during the course of the nineteenth century. Before that, land was tied to local memory because representations of ownership were still intertwined with possession and use. In this context, “Titles could be traded as commodities only because the purchasers persuaded themselves to trust in local knowledge. [...] What was presupposed was necessarily a local sense of where rights began and ended, a local sense of place and property.”<sup>92</sup> Our cases have, however, additionally revealed that conveyance not only involved contractual relations, but that trust could be established because of the role played by hierarchical institutions in land transfers. Rearranging the spaces of habitation was a concern of those who lived on the land, and organizing these relations was ultimately a practice of mediated coordination between different instances of authority. Ultimately, the integration of the territory of Valdivia into the jurisdiction of the Spanish Crown meant that spatial restructuring occurred as a discrete process of negotiating the reproduction of local social relations through the buying and selling of land.

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