

Possession and Dispossession in Corporate New France, 1600-1663: Debunking a 'Juridical History' and Revisiting Terra Nullius

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a legal historian's argument:

The colonial project was too expensive for the Crown, so they outsourced the financial risk to companies. These corporate entities gave land titles to settlers with vague endorsement from the Crown. Companies often did things "in the name of the king" but Cavanagh argues that it didn't matter what the Crown decrees, what the legal canon outlined, or what pieces of paper were drawn up, it was colonizers' actions on the ground that impacted Indigenous communities.

What about charters?

Royal instructions such as charters were guidelines for the subjects and companies of a given monarch, others had little obligation to adhere to them. Even subjects of the issuing crown disregarded them, given that they came from an ocean away in a time with slow communication. Commissions and charters did not carry that much sway in what they did say, let alone have the capacity to extinguish title.

Historians: retroactive real-estate agents

Previous historians have left out seasonal migrations, demographic fluctuations, and "intertribal" hostility during the period. If historians had acknowledged the implications of these things, it would have been hard to argue that the land was "unoccupied". Europeans' perception of the land as "untouched" is false, as the environment had been stewarded by Indigenous peoples to suit their needs. Historians are the ones who carried out "the emptying of the land", a kind of retroactive justification for colonialism. By conceiving of New France as a "**tabula rasa**" historians have sought to legitimize the colonizers' past actions, and current settlement on Turtle Island. "**Juridical historians**" meant well for their indigenous clients, however the sources they accessed colonial sources that often led them to make inaccurate claims.

Glossary

De facto: reality, or actual practice as opposed to "de jure" (from the law).

The Doctrine of Discovery: based on the Pope's announcement to settle grievances between European nations, which said that Christian explorers could not claim land occupied by Christians, thereby entitling Christians to claim the land of non-Christians.

Juridical history: "a body of historical scholarship designed to connect with the concerns of lawyers and the aboriginal claimants they represented".

Seigneurie: the estate of a seigneur (lord).

Tabula rasa: clean slate.

Terra nullius: Cavanagh defines as a practice "whereby settlers acquire title, improve, and alienate, in a colonized region where no purchases, cessions, or conquests take place".

Usufruct: the right to enjoy the use and advantages of property.

Gaslighting through the ages:

- "Actual possession", rather than being in the hands of the Crown, was in the hands of company-loyal merchants, missionaries and settlers "for whom Bibles were about as important as charters" as their justification for land and life.

A timeline of slow commercial success and pre-emption:

1600	Tonnetuit tried to plant fifty settlers at Tadoussac. He only planted 15 and the 5 that survived the winter went back to France.
1603	Champlain recalls that he met with Montagnais chief Anadabijou, and said that the king “wanted to people the land”. Cavanagh points out that this was a “pact of friendship” between a merchant-mapmaker and an Indigenous leader which did not involve land title, and where there was an absence of witnesses, signatures, and demarcations of the land.
1615	First monastery established by the Récollets near Quebec.
1624	First serious stock farming experiments are supported by the Compagnie de Caën in Cape Torment.
1627	Compagnie de la Nouvelle-France founded.
1640	La Compagnie gives the Société de Notre-Dame de Montréal pour la Conversion des Sauvages the seigneurie of St. Sulpice and the island of Montreal.
1651	Sillery, a Jesuit monastery, was established. A unidirectional agreement in which la Compagnie bequeathed (despite no previous land transfer having taken place) the land to the Indigenous peoples. This document said that the Indigenous community could not give, sell, or allow hunting or fishing on the lands without the permission of the Jesuits. The community’s rights were conditional on their relations with the Jesuits.
1663	la Compagnie had overseen a population rise from 50 - 3500 by this time, and had granted more than 70 seigneuries, without purchasing land from the Huron.
1663	French Crown took over New France from la Compagnie.

The gaslighting continues...

- Through colonial powers quarrelling amongst each other, the idea of “actual possession” and the military strength to keep it had become the criteria for exclusive territorial rights.
- Previous historians have claimed that the French “had no interest in the land itself”, just what it produced. If we think of property as a “bundle of rights”, having interest in what the land produces implies an interest in the land itself.
- Settler histories show a double standard where “territorial occupancy” or **usufructuary rights** get applied to Indigenous peoples, whereas “possession” and “title” are reserved for Europeans.
- As immovable objects such as the headquarters of the Compagnie de la Nouvelle-France (a.k.a. la Compagnie), were built on the land, ownership of it became **de facto**. In this way, land was seized by pre-emption: your building was on it, therefore it must be yours. One cannot simply build a shed in someone's backyard and then claim that the backyard is now theirs, that’s faulty logic.

Shaping New France

- Tadoussac, Quebec and Port Royal, acquired their “corporate title” through being acknowledged by the British Crown as French possessions. This shows how “title” only came into existence when another European power corroborated it, often after having “cried foul”, essentially fabricating title for each other out of thin air.
- New France was treated as **terra nullius** in that rights to land were created for settlers and the Indigenous peoples’ rights to that land were disregarded.
- The practice of ignoring Indigenous land ownership continued through regime changes: both after the French Crown took over New France from la Compagnie, and through 1759 when the British took over from the French.
- The Royal Proclamation of 1763, the best symbol of the recognition of Indigenous rights to the land, left room for interpretation, and therefore exploitation. This document opened the door for dispossession.

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