

New France – Possession & Dispossession of Indigenous

Land – the Role of *terra nullius*

***Terra nullius*, what is that? How did it work?**

- *Terra nullius* derives its name and meaning from the roman concept *Res nullius* (things without owners)
- *Terra nullius* (sometimes referred to as the Doctrine of [Christian] Discovery) was a practice/doctrine used by Christian European nations in their expansion into Asia, Africa, and the Americas to take land in the “New World”
- Under the practice/doctrine of *terra nullius* indigenous peoples were considered devoid of property rights, their lands could be taken without the need for purchase or conquest, Euro-Christian nations could install their regime granting that and surrounding land to settlers without the need to acknowledge the natural claim of native peoples

What is the source of *terra nullius*?

- ❖ The Treaty of Tordesillas of 1494 and the associated Papal Bulls of Pope Alexander VI which divided the world in half into Spanish and Portuguese spheres of influence in the late 15th century can be drawn as the early source of *terra nullius*

The practice of *terra nullius* in New France

New France was a 16th - 17th century French colony that stretched over a vast area from the Gulf of St. Lawrence to Louisiana

In New France, there was no coherent application of the *terra nullius* doctrine, this resulted in a messy collection of different practices of the doctrine in the colony, the main two being where either:

1. Land rights were created out of thin air for settlers without purchase, cessions, or conquest of the territory by French companies or the French Crown

Or

2. Indigenous people's titles to land were disregarded and New France cried foul to other European nations within the region to acknowledge their claim to the land (this was a key to ownership of several 17th-century settlements later where the land title had been muddied between nations)

Examples of *terra nullius* in New France

The Founding of Tadoussac: In 1603 French explorer Samuel Champlain met with Montagnais (Innu) chief Anadabijou in Tadoussac for a “tabagie” (feast). The meeting ended with an agreement being permitted by the Montagnais chief for Champlain to populate the area of Tadoussac with settlers in exchange for support against the Montagnais’ enemies (at the time that was the Iroquois people).

- Despite no official document or signed record of the agreement existing apart from Champlain’s recollection of the event, historians take this incident seriously and consider it the first treaty/alliance brokered between the French and Indigenous peoples
- Champlain himself did not mention this agreement to be a cession of land and yet it was taken as such by the French Crown and other company-states in the area
- If this agreement is to be taken seriously it lacks the witness, signatures, and demarcation that are involved with a land title transfer

The founding of Montreal: It occurred on a stretch of land in the middle of the St. Lawrence without purchase or treaties and was a land grant from the French company the Compagnie de la Nouvelle-France to French missionaries.

- Historians of New France often justify the illegal construction of Montreal on Indigenous land with two arguments
 - The St. Lawrence Iroquois who primarily frequented the St. Lawrence and the land on which Montreal sits had “disappeared” (historians disappeared the Iroquois in their storytelling of disease, warfare and absorption); therefore, there was no need to seize it through conquest or to obtain title by purchase because the St. Lawrence area was “vacant” (*terra nullius*)
 - The founding of Montreal and colonization of New France did not jeopardize “territorial occupancy” or extinguish Indigenous land rights; there were no victims of this dispossession because both communities lived amicably with indigenous access to ancestral lands minimally restricted and there existed ample room surrounding the St. Lawrence for Indigenous people to use/claim
- Both arguments are problematic for a couple of reasons
 - Canadian and New France historians all acknowledge that first contact explorers who had ventured to the St. Lawrence had met Algonquian and Iroquoian Indigenous communities and cataloged them, confirming that they existed
 - Seasonal migration, demographic fluctuations, and intertribal hostility were not accounted for when the St. Lawrence was assessed to be “vacant”
 - To propose that Indigenous communities were not “displaced”, or that “territorial occupancy” was not jeopardized poses a colonial ideological barrier that separates the property rights of settlers from the “territorial rights” of Indigenous peoples

Bibliography

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