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Small Victories:

Indigenous Proprietors Across Empires in North America, 1763-1891

by

Julia M. Lewandoski

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

History

and the Designated Emphasis

in

Science and Technology Studies

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Brian DeLay, Chair
Professor Elena Schneider
Professor Massimo Mazzotti
Professor Christopher Tomlins

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Abstract

Small Victories: Indigenous Proprietors Across Empires in North America, 1763-1891

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Julia M. Lewandoski

Doctor of Philosophy in History

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University of California, Berkeley

Professor Brian DeLay, Chair

Across North America, small Indigenous nations seized the unique legal conditions created by imperial transitions to defend territory as state-sanctioned property. The 1763 Treaty of Paris, the 1803 Louisiana Purchase, and the 1848 Treaty of Guadalupe Hidalgo transferred sovereignty from French, Spanish, and Mexican regimes that incorporated forms of indigenous landholding to British and U.S. regimes that sought to exclude them. Yet these treaties also required new administrations to uphold pre-existing property in newly acquired territories. Through three case studies—Abenakis and Sokokis in British Quebec after 1763, Tunicas and Chitimachas in American Louisiana after 1803, and Tongva and Tataviam peoples in U.S. California after 1848—this dissertation demonstrates how small Native polities used settler property processes not only to protect portions of their territories, but to insist on their on-going existence as political communities. Chapter One explores the contested and flexible bureaucratic processes of land tenure transition after imperial cessions. Chapters Two, Three and Four present case studies detailing the efforts of Native peoples in Quebec, Louisiana, and California to exploit these transitional legal structures. Chapter Five explores how Indigenous proprietors inscribed their territories onto official state maps in surprisingly complex and ambivalent ways.

This dissertation makes three major interventions. First, by focusing on small polities, rather than the large Native nations that dominate eighteenth and nineteenth-century historiography, it offers an alternative to familiar narratives of military conquest, land cession treaties, and reservation confinement. Small polities often faced erasure and benign neglect instead of targeted colonialism. They transformed settler legal processes into the diplomatic channels they lacked to defend land and articulate political authority. Second, it reconceptualizes the development of territorial state sovereignty in North America as a process of accommodation and negotiation, in which multiple imperial legal regimes continued to play unpredictable roles long after geographic borderlands disappeared. Third and finally, it casts property ownership itself as a malleable and diffuse set of practices across the eighteenth and nineteenth centuries. Rather than a self-evident and stable legal entity, property was a highly local and deeply social set of negotiations. During imperial transitions, it was contested, exploited, and ultimately transformed by Indigenous peoples.

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ARCHIVAL ABBREVIATIONS

BANQ-QC	Bibliothèque et Archives nationales du Québec, Québec, Canada
BANQ-TR	Bibliothèque et Archives nationales du Québec, Trois-Rivières, Canada
BANQ-VM	Bibliothèque et Archives nationales du Québec, Vieux-Montréal, Canada
GLOR	United States Department of the Interior, Bureau of Land Management, General Land Office Records, https://glorecords.blm.gov/
CSU-MBDC	Hornbeck Collection, Archives and Special Collections, California State University Monterey Bay Digital Commons, https://digitalcommons.csumb.edu/hornbeck
DPAPLC	Documents Pertaining to the Adjudication of Private Land Claims in California, circa 1852-1892, BANC MSS Land Case Files 1852-1892; BANC MSS C-A 300 FILM, The Bancroft Library, University of California, Berkeley, Berkeley, California
DRHMC	David Rumsey Historical Map Collection, San Francisco, California, https://www.davidrumsey.com
LAC	Library and Archives Canada, Ottawa, Canada
LSLO	Historical Records, Louisiana State Land Office, Baton Rouge, Louisiana, https://wwwslodms.doa.la.gov/

INTRODUCTION

In 1852, a Tongva family filed a federal property claim for a tract of land at the former mission of San Gabriel Arcangel, about ten miles northeast of Los Angeles. The tract was small, just a little more than fifteen acres. But they explained in their petition that this land was central to their survival. Since the 1848 death of Felipe, the family's patriarch, his widow Pascuala and his son José Domingo had been "occupying and cultivating the [land] for support," living in the "Indian house or shanti" Felipe had built, and tending to the orchard of fruit trees that he had planted.

Felipe had put years of legal effort into obtaining and protecting this land. In the early 1840s, he had petitioned the priest for formal emancipation from the mission. After several years of planting and cultivating, he petitioned Mexican Alta California governor Pio Pico for a formal title to it in 1845. Before his death in 1848, he had made a will, in which he passed down his "planting field" to his son. Now that California was a U.S. state and no longer a Mexican territory, José Domingo and Pascuala sought to have that title confirmed by the U.S. Board of Land Commissioners, the federal body tasked with approving property ownership from California's Mexican era. In 1854, their claim was approved.[1]

This property claim contains the story of one family's success in nimbly and persistently navigating the legal bureaucracies of two states. It is also part of a larger story of land reclamation and survival for Tongva people. The mission of San Gabriel Arcangel had been planted within Tongva territories by Spanish Franciscan missionaries in 1771. Tongva people were pushed into the missions by epidemic and ecological destruction. Once there, they were baptized, assigned Spanish names, and forced to labor.[2] When Mexico dismantled the mission system in the 1830s and 1840s, Tongva families faced the prospect of landlessness in their own ancestral territories. They demanded land from the mission's holdings for themselves, first from local administrators, and then as formal titles from the Mexican provincial government. Some lucky few, like Felipe's widow and son, got it.

Near Pascuala and José Domingo's claim at San Gabriel, "the Indian Simeon" claimed a tract for his family "in recompense for his good services" to the mission. Prospero and his wife Rafaela sought title to the land where they had built a house, raised a vineyard, and pastured stock. Francisco Sales claimed a tract in "full property" for "his personal benefit and that of his family," and Roman Valencia and his sons, Valencio and Pablo, claimed the land where they had "cleared off the timber and built a house," and "set out vines and fruit trees."[3] Tongva families used the Mexican land granting system to reconstitute a community at the former mission. They

[1] Land Case 58 Southern District (SD), Documents Pertaining to the Adjudication of Private Land Claims in California, circa 1852-1892, BANC MSS Land Case Files 1852-1892; BANC MSS C-A 300 FILM, The Bancroft Library, University of California, Berkeley.
[2] Steven W Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769-1850* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2005).
[3] Land Cases 95 SD, 135 SD, 94 SD, 134 SD, DPAPLC.

established a cluster of interlinked family smallholds, where they grew food for their own families, not for the mission, and lived in Tongva houses, not mission dormitories.

After the 1848 U.S. conquest of Mexican California, Tongva families had to claim their tracts again. Article IX of the Treaty of Guadalupe Hidalgo held that the U.S. would respect the landed property of Mexican citizens. Under Mexican law, Indigenous men who had lived at the missions had become citizens. Tongva proprietors at San Gabriel joined settlers in demanding that the U.S. uphold the land titles they had held under Mexican sovereignty. They did so in collapsing legal conditions. In 1849, California state officials acted quickly to end male indigenous citizenship, dramatically restrict native legal standing, and make indigenous property rights contingent on the desires of white neighbors. This state-level regime was coupled with a confusing and duplicitous federal policy that negotiated eighteen major treaties but failed to ratify any of them. By the end of the 1850s, these legal exclusions had become the basis for a violent genocide in California, enacted by settler militias and encouraged by state authorities.[4]

Despite these exceptionally harsh legal conditions, the vast majority of their property claims were approved. As this dissertation will argue, the contradictory legal conditions generated by inter-imperial sovereignty transitions created the conditions for such unlikely successes. The U.S. land commissioners who approved Tongva claims had little sympathy for Indigenous peoples. But they did have sympathy for the institution of property. Mandated by the Treaty of Guadalupe Hidalgo to approve Mexican-era claims, they were willing, even eager, to extend property rights across imperial and temporal boundaries. Native proprietors had so successfully formalized their landholdings under Mexican rule that it was easy for land commissioners to recognize their property despite their clearly Indigenous status. In doing so, they created a new legal category—Indigenous proprietors—that stood in stark contrast to a legal regime and a settler culture in 1850s California that framed Native peoples as landless and without legal standing.

The small tracts that the Tongva reclaimed around Mission San Gabriel were only tiny portions of their ancestral territories lost to Spanish, Mexican, and U.S. colonization. Many Tongva proprietors would lose what hard-won lands they had held onto during the next few decades as drought, property taxes, and land developers converged on the San Gabriel Valley. But these small victories—the modest legal successes that give this dissertation its name—had major consequences. They enabled Tongva families to survive the perilous transitions between two colonizing regimes, raising food and families on portions of their ancestral territories. And while they were technically individual claims, they enabled Tongva peoples to act collectively and politically. By living in proximity to one another, and by insisting upon the inextricability of their indigenous identities and their connections to their land, they used settler property law to sustain their peoplehood.

The Tongva weren't the only indigenous people to exploit the complexity of imperial transitions to hold on to land. At all of California's former missions, Native people made property claims to

[4] Lisbeth Haas, *Saints and Citizens: Indigenous Histories of Colonial Missions and Mexican California* (Berkeley, California: University of California Press, 2014); Brendan C Lindsay, *Murder State California's Native American Genocide, 1846-1873* (Lincoln: University of Nebraska Press, 2012); Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (New Haven: Yale University Press, 2016).

Mexican officials to portions of their ancestral territories, often the same lands that the Franciscans had forced them to work. After 1848, many of them successfully pursued these claims in front of the U.S. Land Commission. Similar stories also played out in places far removed from California, as Native peoples across North America used imperial sovereignty transitions to secure property rights. After the 1763 Treaty of Paris, which ceded French Canada to the British Empire, Abenakis and Sokokis in Quebec's St. Lawrence River Valley utilized the British extension of French property to defend territories and bolster political authority. And after the 1803 Louisiana Purchase, Chitimachas and Tunicas in Louisiana used federal property claims to transform Spanish diplomatic documents into collectively-held U.S. land titles. In the vast regions that the United States and Canada inherited from French, Spanish, and Mexican empires—from Nova Scotia to Manitoba, Florida to New Mexico—inter-imperial treaties created legal conditions under which Native property ownership could prevail.

This dissertation explores Indigenous successes in holding property in Quebec, Louisiana, and California after these three major territorial transfers: the 1763 Treaty of Paris, the 1803 Louisiana Purchase, and the 1848 Treaty of Guadalupe Hidalgo. By working comparatively across a continent and over than a century, it uses small Indigenous victories in these three places to make three interlocking claims. First, it demonstrates that a diversity of small indigenous polities across North America repurposed a powerful settler implement of dispossession—property ownership—to support land reclamation, survival, and sovereignty. Second, it reveals how imperial sovereignty transitions created unique legal conditions for these indigenous actions to succeed. And finally, it casts the development of modern property regimes in the United States and Canada as chaotic, improvisatory, and inter-imperial, and property itself as a malleable set of social practices contested, exploited, and ultimately changed by Indigenous peoples.

These three imperial sovereignty transitions marked the ascent of Anglophone empires across North America with respect to the French, Spanish, and Mexican empires. Anglophone legal regimes posed new and distinctive threats to Native sovereignty and territory in general. And in particular, it pushed small Native polities toward settler property practices. French and Spanish imperial projects had never been particularly invested in drawing boundaries between indigenous and settler territories on land or on paper. Spanish regimes tended to carve out spaces within their legal regimes to incorporate indigenous peoples, folding them into a hierarchy that focused on the exploitation of indigenous labor. Because their own forms of landholding were multi-layered and their colonial populations small and struggling, the French seldom made clear distinctions between settler and indigenous lands. Now, Anglophone legal regimes sought to draw clean lines between indigenous and settler territories. They also sought to draw conceptual boundaries between indigenous peoples and settlers in legal categories of property ownership.[5]

As Britain took control of French Canada, it began the work of drawing these boundaries. The 1763 Royal Proclamation forbade land transactions between indigenous peoples and private settlers, restricting negotiations over indigenous lands to treaty processes with authorities. The United States established similar provisions in the Trade and Intercourse Acts of the 1790s. These legal policies bolstered British and U.S. territorial sovereignty by positioning states as the sovereign intermediaries between settlers and indigenous peoples. States alone could appropriate

[5] Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, (Cambridge ; New York, NY: Cambridge University Press, 2017).

indigenous territories through land cession treaties, then sell or grant that land to settlers.[6] For many Native polities, eighteenth- and early nineteenth-century British Canadian and United States expansion precipitated the negotiation of land cession treaties and the creation of reserves and reservations.[7] Treaty-created reservations were the results of conquest, coercion, and violence, and resulted in drastic hardships and deaths. They also created a legal relationship between settler empires and Native nations, first as mutual sovereigns, and then as "domestic dependent nations" under federal plenary power. Treaties tied the collective political identity of a Native nation or group of nations to a particular land base.[8] Those land bases remained distinct not only through the treaty boundaries that defined them, but through the legal category of their land: collectively held in trust for the tribe by the U.S. and Canadian federal governments. They stood in contrast to the individually-held settler property that surrounded them.

But not all Native polities participated in the treaty-reservation process. At the centers of long-colonized regions acquired from French and Spanish regimes, Anglophone administrators found it more difficult to draw clear boundaries between settler property and indigenous territory. Small Native polities in places like the St. Lawrence River Valley, the Lower Mississippi River Valley, and the Los Angeles Basin had been intertwined with French and Spanish economies, populations, and religious practices for decades. Rather than attempting to parse the complexities of indigenous title in these contexts, British and U.S. authorities assumed a convenient fiction: that the French and Spanish empires had long ago extinguished the sovereignty and territorial claims of the nations that they lived among. Instead of negotiating treaties with them, they assumed that under conditions of benign neglect, those nations might simply cease to exist. These small Native polities now faced a legal-political context in which settler states recognized neither the land base nor the political identity that treaty processes established, however fraught and incomplete. Thus, many turned to the legal domain of property in this context of marginalization. But they did not do so to become like settlers. Instead, they transformed property claims into the diplomatic channels they lacked to defend territory and articulate political authority.

Native polities turned to settler property law at the very moment that Anglophone empires sought to restrict them from it. Yet in regions of prior imperial settlement—the places where Anglophone administrators felt they could ignore Native polities and their territorial claims—inter-imperial treaties cast property law itself as dramatically in flux. This disorder created opportunities for Native polities to not only participate in land ownership, but even to change it. Imperial treaties required new regimes to uphold property from prior empires. But they specified very little about how the varied property regimes of imperial provinces were to be translated into

[6] Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005); Brian Slattery, "The Hidden Constitution: Aboriginal Rights in Canada," *American Journal of Comparative Law* 32 (1984): 361; Allan Greer, "Dispossession in a Commercial Idiom: From Indian Deeds to Land Cession Treaties," in *Contested Spaces of Early America* (Philadelphia: University of Pennsylvania Press, 2014).
[7] Vine Deloria Jr. and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999); Saliha Belmessous, *Empire by Treaty: Negotiating European Expansion, 1600-1900* (Oxford, England; New York: Oxford University Press, 2015); Robert Lee, "Accounting for Conquest: The Price of the Louisiana Purchase of Indian Country.," *Journal of American History* 103, no. 4 (2017), 921-942.
[8] Joanne Barker, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005), 2–17.

Anglophone forms of landholding. In places like Quebec, Louisiana, and California, land had been held under varying legal conditions. Most importantly, significant property was already in the hands of settlers determined to keep it. Those settlers demanded that their claims be considered in the context of the imperial legal regimes under which their property had been created.

Native peoples joined settlers in demanding that the U.S. and Canada recognize their land. They used the legal language of Anglophone property ownership to do so, emphasizing their improvement of land through labor. But they also invoked their long-term relationships with Spanish and French empires, and the treaty obligations of the U.S. and British Canada to uphold property from those regimes. French and Spanish property regimes in Quebec, Louisiana, and California had never explicitly formalized indigenous property rights, but neither had they categorically outlawed them. Instead, they had allowed ambiguity to amass and persist. Now, Anglophone regimes sought to define and confine Indigenous land as treaty-created reservations. But they had not specifically forbidden Indigenous participation in property processes. The Royal Proclamation never explicitly prohibited indigenous peoples from buying or claiming land. It only outlawed settler purchases. It failed to imagine indigenous land transactions that could go in any other direction than dispossession.

Indigenous peoples stepped into the gap created by this failure of imagination, and they exploited it to claim land. But they were not clinging to formerly robust and clearly articulated land rights, newly threatened by Anglophone regimes. They were fashioning new forms of landholding out of imperial legal ambiguities. They transformed a French Jesuit priest's permission to settle on a part of a mission's grounds, or a Spanish commandant's letter of office recognizing their presence on a river, into evidence of landholding recognizable to U.S. and Canadian officials as property.

They did so through processes in which U.S. and British Canadian officials were already struggling to translate the complexities of Spanish and French land titles. Land had not only been held under different legal conditions under previous empires. It had been measured and delineated through a diversity of techniques. Official land records like surveys and grants might be missing or had never been created in the first place. Rather than appropriating indigenous land and then laying it out in tidy townships, in parts of Quebec, Louisiana, and California, British Canadian and U.S. officials found themselves negotiating with former imperial populations over everything from the boundaries of individual tracts to the broad legal conditions under which land could be held. In response, they relaxed and adjusted their own property systems. In British Quebec, authorities extended French-style feudal property throughout the province for more than a century. In Louisiana and California, federal land commissioners solicited property claims from inhabitants for U.S. approval, in disorganized and improvised processes that stretched on for decades.

This administrative disorder made creative indigenous property claims possible. And proprietorship enabled indigenous peoples to survive the unpredictable and tumultuous transitions to Anglophone rule. Native title-holders had more robust means of community defense. They were better positioned to combat settler encroachment in court. At the very least, they could expect to receive some form of compensation for land they were coerced into selling.

Many people also pointedly made land claims for significant places. They petitioned for title to the home villages of their parents and grandparents displaced by the mission system, and to the fertile planting fields at a particular bend in a river where they had grown crops for centuries. Sometimes states approved collectively-owned properties. But even those held under the names of individuals sustained large families and communities, sometimes for decades. Indigenous peoples hunted, fished, planted crops and raised orchards and families on their properties. They used property ownership to maintain their control over and access to places that kept communities together as their larger territories were increasingly occupied by settlers.

They also used property processes to make political claims. They employed surveyors to clearly mark the boundaries of their property, making it unequivocally clear to local settler communities what was indigenous land. They made claims in ways that clearly marked them as indigenous in legal documents, tying Native identity to ownership of certain places. And they used this record of participation in property processes to make federal claims for recognition, transforming private land titles into collectively held and federally recognized reservations. Property processes became diplomatic levers to compel attention from states inclined to ignore them. In courts, before notaries, with surveyors, on maps, and in federal claims, they articulated enduring collective political identities, and their connections to and forms of authority over their territories as Native peoples. And they did so in the official legal archives of colonizing states.

This dissertation narrates the property successes of just six interlinked indigenous polities in three places: Abenakis and Sokokis in Quebec, Tunicas and Chitimachas in Louisiana, and Tongva and Tataviam peoples in southern California. All of these nations used settler property processes to secure their access to and authority over portions of their territories, and to defend their existence as political entities to settler neighbors and federal authorities alike. Their stories reveal a common pattern across North America, and over the eighteenth and nineteenth centuries. And they likely join the stories of many other small Native nations, beyond these nations and these places, who used the central implement of settler colonial dispossession—property—in order to survive.

Small Nations, Native Power, and Narrative Possibilities

In the 1970s and 1980s, practitioners of the "New Indian History" called for scholars to place indigenous peoples at the center rather than the margins of North American history.[9] Since then, indigenous history has flourished, particularly in the study of early North America. Scholars have successfully repositioned indigenous peoples as pivotal actors in the co-creation of modern North American societies.[10] Increasingly, they have also demonstrated that well into the nineteenth century, many parts of early North America were meaningfully under Native control,

[9] Robert F Berkhofer, *The White Man's Indian: Images of the American Indian, from Columbus to the Present* (New York: Vintage Books, 1979); James Axtell, "Ethnohistory: An Historian's Viewpoint," *Ethnohistory* 26, no. 1 (1979): 1–13.

[10] Richard White, *The Middle Ground Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (New York: Cambridge University Press, 2011); William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill and Wang, 1983); Daniel K Richter, *Facing East from Indian Country: A Native History of Early America*, (Cambridge: Harvard University Press, 2001).

rather than co-constituted "middle grounds."[11] These works challenge outdated assumptions of imperial dominance during the first centuries of European occupation. Yet they still tend to end in tragedy with their nineteenth-century conquest by U.S. and Canadian nation-states. A complex world of competing alliances and fuzzy borders gives way to systematic projects of settler-colonial state building.[12]

Many histories examine these processes of conquest. They largely focus on the common themes and signature techniques of the era's settler colonialism: treaty negotiations, military conquests, landmark laws and policies, and confinement on reservations. In British Canada, First Nations histories focus on treaties, dispossession, reserve creation and coerced assimilation.[13] In the American South, the nineteenth century is framed primarily around the experience of removal.[14] In the American West, military conquest and settler violence remain dominant themes.[15] The modern historiographies of these regions emphasize indigenous agency and resistance under exceptionally difficult conditions, and reveal how conquest occurred differently for different peoples.[16]

But vast majority of these works, both pre- and post-conquest, focus on large Native polities. They chart the experiences of indigenous nations who could command the military and diplomatic attentions of early European empires, those with territories and populations so large that Anglo states saw them as necessitating treaties, removal, and forced assimilation. The large nations deserve the scholarly attention they've received, but the historiography has neglected the hundreds of small nations across North America who experienced the eighteenth and nineteenth centuries very differently from the Haudenosaunee, Lakota, or Comanche. These small nations

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[11] Kathleen DuVal, *The Native Ground: Indians and Colonists in the Heart of the Continent* (Philadelphia: University of Pennsylvania Press, 2006); Michael J Witgen, *An Infinity of Nations: How the Native New World Shaped Early North America* (Philadelphia: University of Pennsylvania Press, 2012); Pekka Hamalainen, *The Comanche Empire* (New Haven: Yale University Press, 2008); Brian DeLay and William P. Clements Center for Southwest Studies, *War of a Thousand Deserts Indian Raids and the U.S.-Mexican War* (New Haven [Conn.]: Yale University Press, 2008).

[12] Jeremy Adelman and Stephen Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in between in North American History," *American Historical Review* 104 (1999): 814–41; Pekka Hamalainen and Samuel Truett, "On Borderlands," *Journal of American History* 98, no. 2 (2011): 338–61.

[13] Alain Beaulieu, "'An Equitable Right to Be Compensated': The Dispossession of the Aboriginal Peoples of Quebec and the Emergence of a New Legal Rationale (1760–1860)," *The Canadian Historical Review* 94, no. 1 (2013): 1–27; Alain Beaulieu, "La Création des Réserves Indiennes au Québec," in *Les Autochtones et Le Québec: Des Premiers Contacts Au Plan Nord* (Montréal, Que.: Les Presses de l'Université de Montréal, 2013); J. R Miller, *Sweet Promises: A Reader on Indian-White Relations in Canada* (Toronto; Buffalo: University of Toronto Press, 1991).

[14] Robbie Ethridge, "Reflections on the Long Nineteenth Century and Indian Removal," *American Nineteenth Century History* 17, no. 2 (May 3, 2016): 241–45; Katherine M. B Osburn, *Choctaw Resurgence in Mississippi: Race, Class, and Nation Building in the Jim Crow South, 1830-1977*, (Lincoln: University of Nebraska Press, 2014).

[15] Elliott West, *The Contested Plains: Indians, Goldseekers, & the Rush to Colorado* (Lawrence, Kan.: University Press of Kansas, 1998); Ned Blackhawk, *Violence over the Land: Indians and Empires in the Early American West* (Cambridge, Mass.: Harvard University Press, 2006).

[16] Blake A Watson, *Buying America from the Indians: Johnson v. McIntosh and the History of Native Land Rights* (Norman: University of Oklahoma Press, 2012); C. Joseph Genetin-Pilawa, *Crooked Paths to Allotment the Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina Press, 2012); Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788-1836* (Cambridge, Mass.: Harvard University Press, 2010); Emily Greenwald, *Reconfiguring the Reservation: The Nez Perces, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002).

lacked the numbers or the power to preoccupy nation states and their armies, which meant that their nineteenth century seldom featured treaty negotiations, removal, or reservation confinement. Instead, it inaugurated a different series of challenges: erasure, benign neglect, and the settler-state denial that they had any lands left to lose.

This dissertation charts the creative adaptations to these distinctive challenges among six Indigenous peoples: Abenaki and Sokoki peoples in Quebec, Chitimachas and Tunicas in the Lower Mississippi Valley, and Tataviam and Tongva peoples in southern California.[17] In doing so, it contributes to a growing body of excellent scholarship on all of these nations. Historians have charted how Abenakis and Sokokis, part of the larger Wabanaki peoples of the northeast, survived centuries of warfare in a French-British borderlands.[18] More recently, scholars have turned to their nineteenth-century resurgence.[19] In the Lower Mississippi Valley, Elizabeth Ellis has demonstrated how the many petites nations, among them the Tunica and Chitimacha, maintained their autonomy as small polities throughout the eighteenth century, while Daniel Usner, Brian Klopotek and Mark Miller have charted their modern struggles for recognition.[20] There is abundant scholarship on the experience of southern California indigenous peoples from pre-contact worlds to the experience of Spanish missionization to post-mission survival and modern resurgence.[21]

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[17] Many of these groups were also closely interlinked with, and included members of other small polities, both historically, and as a response to colonialism. I use these names as shorthand identifiers. They should not be interpreted as fixed identity boundaries among any of the communities in this study.

[18] Colin G. Calloway, *The Western Abenakis of Vermont, 1600-1800 : War, Migration, and the Survival of an Indian People* (Norman: University of Oklahoma Press, 1990); Alice N. Nash, "The Abiding Frontier : Family, Gender and Religion in Wabanaki History, 1600-1763" (PhD Diss., Columbia University, 1997); Kenneth M. Morrison, *The Embattled Northeast : The Elusive Ideal of Alliance in Abenaki-Euramerican Relations* (Berkeley: University of California Press, 1984).

[19] Isabelle Bouchard, "Des systèmes politiques en quête de légitimité: 'terres seigneuriales', pouvoirs et enjeux locaux dans les communautés autochtones de la vallée du Saint-Laurent," (PhD Diss., Université du Québec à Montréal, 2017); Jean Barman, *Abenaki Daring: The Life and Writings of Noel Annance, 1792-1869* (Montreal and Kingston: McGill-Queens University Press, 2016); Lisa Tanya Brooks, *The Common Pot: The Recovery of Native Space in the Northeast* (Minneapolis: University of Minnesota Press, 2008); Tristan Rhéaume-Jones, "The Implementation of the Abenaki Band Council in Odanak, 1812-1914,"(Master's Thesis, Université du Québec à Montréal, 2013).

[20] Elizabeth Ellis, "The Many Ties of the Petites Nations: Relationships, Power, and Diplomacy in the Lower Mississippi Valley, 1685-1785" (PhD Diss, University of North Carolina at Chapel Hill, 2015); Daniel H. Usner, *Weaving Alliances with Other Women: Chitimacha Indian Work in the New South* (University of Georgia Press, 2015).; Brian Klopotek, *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Indian Communities* (Durham [N.C.]: Duke University Press, 2011); Mark Edwin Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln: University of Nebraska Press, 2004).

[21] George Harwood Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California* (Berkeley: University of California Press, 1975); William McCawley, *The First Angelinos: The Gabrielino Indians of Los Angeles* (Banning, Calif. : Novato, Calif: Malki Museum Press ; Ballena Press, 1996); Claudia K. Jurmain and William McCawley, *O, My Ancestor: Recognition and Renewal for the Gabrielino-Tongva People of the Los Angeles Area* (Berkeley, Calif. : Long Beach, Calif: Heyday Books ; Rancho Los Alamitos Foundation, 2009); Joel R Hyer, *We Are Not Savages: Native Americans in Southern California and the Pala Reservation, 1840-1920* (East Lansing: Michigan State University Press, 2001); Florence Connolly Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986* (Lincoln: University of Nebraska Press, 1988).

Yet all of these excellent studies are individual or regional. This dissertation works comparatively to draw out broader patterns among one subset of small Native polities: those who lived and survived for decades or centuries amid European settlement. These small nations had endured long histories of European colonization before they fell under Anglo rule. By considering their histories comparatively, we can begin to see how some small nations managed to turn their colonized pasts into a shelter that would help see them through the trauma and transformation of the nineteenth century.

This comparative approach also draws together North American regions that are treated discreetly. Like many small polities, places like Quebec, Louisiana, and California are usually framed as distinctive, even incomparable. This is in part because of the distinctiveness of their indigenous peoples, in particular the huge number and broad diversity of small nations in the Lower Mississippi Valley and California.[22] Yet it also stems from the potent imperial legacies that continued to shape these places well into the nineteenth century. In this study, their very distinctiveness as formerly imperial places is what makes them ripe for comparison. The inter-imperial complexities of property transition are the common threads that make it possible to weave together these stories of indigenous survival into a larger fabric.

Ultimately, neither small polities nor imperial inheritances are particularly unique to these peoples and places. Small Native nations exist across the continent. They include both those who have lived for centuries in decentralized and cellular family bands, and formerly larger nations decimated by epidemics, enslavement, and warfare. In some regions, including New England, the Lower Mississippi Valley, California, the coastal Pacific Northwest, southern British Columbia, and parts of the American southwest, they have been the predominant form of indigenous political organization. Imperial legacies, too, proliferate across North America. In places like Manitoba and New Brunswick, New Mexico, Texas, or Missouri, French and Spanish legal regimes left their marks on property regimes and diplomatic relationships long after they transferred away their sovereignty. Discerning a fuller picture of North American history requires that we better understand these histories.

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[22] Colin G Calloway, *Dawnland Encounters: Indians and Europeans in Northern New England* (Hanover: University Press of New England, 1990); Jean-Pierre Sawaya, *La fédération des Sept Feux de la vallée du Saint-Laurent: XVIIe au XIXe siècle* (Sillery, Québec: Septentrion, 1998); Alain Beaulieu, Martin Papillon, and Stéphan Gervais, *Les autochtones et le Québec: des premiers contacts au Plan Nord* (Montréal: Presses de l'Université de Montréal, 2013); Daniel Usner, *American Indians in the Lower Mississippi Valley : Social and Economic Histories*, Indians of the Southeast (Lincoln, Neb.: University of Nebraska Press, 1998); Daniel H. Usner, History Institute of Early American, and Culture, *Indians, Settlers & Slaves in a Frontier Exchange Economy : The Lower Mississippi Valley before 1783* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1992); Peter H. Wood, Gregory A. Waselkov, and M. Thomas Hatley, eds., *Powhatan's Mantle: Indians in the Colonial Southeast*, Indians of the Southeast (Lincoln, Neb.: University of Nebraska Press, 1989); Hackel, *Children of Coyote, Missionaries of Saint Francis*; Robert H Jackson and Edward D Castillo, *Indians, Franciscans, and Spanish Colonization the Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1997); Lisbeth Haas, *Conquests and Historical Identities in California, 1769-1936* (Berkeley, Calif.: University of California Press, 1996); Haas, *Saints and Citizens*; Vanessa Ann Gunther, *Ambiguous Justice: Native Americans and the Law in Southern California, 1848-1890* (East Lansing, MI: Michigan State University Press, 2006); Madley, *An American Genocide*.

Adding these stories to larger currents in Native North American history offers liberating narrative potentials. The dominant declension narrative in North American history, in which most indigenous polities saw a dramatic decline in sovereignty from the eighteenth century to the nineteenth, risks positioning Native power in a distant, even irretrievable past that ends with settler colonial conquest. The stories of these small nations offer a countercurrent, one in which colonization has been much longer but much less decisive, and one in which multiple empires continued to play unpredictable roles long after geographic borderlands disappeared.

These stories also encourage us to think about the nature of Native political organization and power in more capacious ways. Early American scholarship has powerfully repositioned Native nations as drivers and determiners of major historical events. Yet it hazards a framing lens in which Native power is defined primarily in terms of its impact on or comparison to settler empires. This dissertation attempts to explore the political and territorial claims of small nations on their own terms. How did small polities reconstitute themselves after the end of mission colonization? How could tribal authority be articulated outside of formal diplomatic channels or treaties? What did it mean to survive as a nation that settler empires refused to see as a nation? Instead of attempting to locate a decisive moment of conquest in which once formidable power was lost, I join a growing group of scholars interested in exploring the nineteenth century as part of a long continuum of creativity and autonomy among small nations, and as the beginnings of a twentieth- and twenty-first century resurgence.[23]

Property, Empire, and Settler Colonialism

There is no shortage of scholarship on settler property law and Indigenous peoples in the eighteenth and nineteenth centuries. Yet much of it focuses on white settler attitudes, landmark court cases, and destructive state policies. While a few scholars have worked carefully to situate the 1763 Royal Proclamation within a larger process of indigenous negotiations, the most cited work on the Proclamation focuses primarily on how it changed white perceptions of indigenous land rights.[24] The historical event most often referenced with respect to Native property in the United States is 1823's *Johnson v. M'Intosh*. In this landmark Supreme Court case, Chief Justice John Marshall ruled that Native nations held only occupancy rights, not complete title, to their ancestral territories. The case referenced on a historic land transaction between settlers and the Piankeshaw nation, but no Native peoples were involved in the case itself, now a contest between competing settler claims.[25] Native land ownership arises again in the 1880s, when the

[23] As numerous innovative works have made clear, such a project requires conceptualizing Native power and territoriality in creative, capacious, and nationally-specific ways. Joshua L Reid et al., *The Sea Is My Country: The Maritime World of the Makahs, an Indigenous Borderlands People*, (New Haven: Yale University Press, 2015); David A Chang, *The World and All the Things upon It: Native Hawaiian Geographies of Exploration* (Minneapolis: University of Minnesota Press, 2016); Osburn, *Choctaw Resurgence in Mississippi*; Brooks, *The Common Pot : The Recovery of Native Space in the Northeast*.

[24] Banner, *How the Indians Lost Their Land : Law and Power on the Frontier*; John Borrows, "Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government," in *Aboriginal and Treaty Rights in Canada : Essays on Law, Equity, and Respect for Difference,* ed. Michael Asch (Vancouver, B.C.: University of British Columbia Press, 1997).

[25] Eric Kades, "The Dark Side of Efficiency: Johnson v. M'Intosh and the Expropriation of American Indian Lands," *University of Pennsylvania Law Review* 148, no. 4 (April 1, 2000): 1065–1190; Watson, *Buying America from the Indians*; Lindsay Gordon Robertson, *Conquest by Law: How the Discovery of America Dispossessed*

Dawes Act parceled communal reservation land into individual ownership as a land grab and a means of coerced assimilation.[26] Property is framed as a right that is taken away from Indigenous peoples, only later to be forcibly imposed upon them. Native peoples are positioned as the objects of settler laws and attitudes, who can only react, resist, or acquiesce.

This dissertation takes a different approach. It explores how Native nations used property processes in ways that reach far beyond the binary of resistance or acquiescence. It collapses such a duality. Using settler property was not a mark of assimilation, and it did not mean an abandonment of indigenous land tenure practices. It could result in just the opposite. The authority over and access to land secured through titles enabled Native nations to practice indigenous forms of governance, authority, and subsistence on their land. But it is more than a familiar story of "selective appropriation" critiqued by Raymond Craib, in which colonial practices are "rearticulated" by colonized peoples and put "toward various and unexpected ends."[27] Indigenous proprietors selectively appropriated property techniques and used them in the service of survival and sovereignty. Yet characterizing property as a tool to be appropriated casts it as an inert and stable entity, to be grasped like a hammer or a wrench. Property was not a self-evident legal institution. It was a malleable, negotiated, and diffuse set of legal practices across eighteenth- and nineteenth-century North America. Looking closely at indigenous legal actions enables a much more nuanced picture of property to emerge, one that had three primary characteristics. First, it was highly local and attached to specific places, not general land rights. Second, property claims and practices were simultaneous with other types of political claims and land tenure practices. And third, land ownership was an on-going negotiation, one that required claiming and re-claiming over time.

Scholars often frame nineteenth-century discussions of indigenous peoples and property within the liberal framework of "rights." In doing so, they echo *Johnson v. M'Intosh*, which established a blanket doctrine of indigenous occupancy rights (or lack thereof). Yet Native engagements with settler property processes did not take the form of demanding generalized land rights as generalized "Indian" subjects. Native property claims articulated sustained relationships with particular places. They narrated particular histories of authority over and connection to their lands. Native nations made property claims because of the encroachment of local settlers, and their claims were adjudicated locally. Historiography has focused on major decrees and Supreme Court cases, but property claims were a highly dispersed legal domain of administrative law. While higher level imperial administrators like governors, Congress, or commissioners involved themselves, they were always forced to rely on the information, testimony, and legal actions of local officials—post commandants, justices of the peace, settler neighbors, notaries—in making any legal decision about indigenous property. It was these local authorities, rather than distant state administrators, that often threatened or grudgingly acknowledged Native land.

Indigenous Peoples of Their Lands (Oxford; New York: Oxford University Press, 2005); Sidney L Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto; Buffalo: Osgoode Society for Canadian Legal History by University of Toronto Press, 1998). Harring discusses the impact of the case on the development of nineteenth-century Canadian law.

[26] Frederick E Hoxie, *A Final Promise the Campaign to Assimilate the Indians, 1880-1920* (Lincoln, Neb.: University of Nebraska Press, 2001); Greenwald, *Reconfiguring the Reservation*.

[27] Raymond B Craib, "Relocating Cartography," *Postcolonial Studies* 12, no. 4 (December 2009): 485.

Property claims were not categorically separate from other types of claims that small Native polities made: from claims for protection from imperial governments, to articulations of sovereignty, to petitions for collectively held federal trust land. Nor did clear boundaries always exist between settler and indigenous land tenure practices. As Raymond Craib argues for cartography, relying on the paradigm of "selective appropriation" presumes that clear distinctions can be made between "what is indigenous and what is foreign in the first place, and who makes such a determination."[28] As Allan Greer has demonstrated, European empires did not arrive in North America with fully articulated property regimes, and they shared many meaningful areas of overlap with Native land tenures.[29] When Anglophone administrators sought to separate them in the nineteenth century, Indigenous nations mobilized the flexibility of French and Spanish property law to hold land in ways that reflected both their traditional practices and their adaptations to colonialism.

Most of all, successfully obtaining and keeping property, for Native peoples, was never achieved through a discreet legal action that definitively established ownership. It required multiple claims, across multiple empires, and it demanded other sets of practices, including surveying, marking boundaries, building structures, cultivating fields, leasing and selling tracts, and simply living on the land. Property ownership was never constituted or maintained through a single document or decision. It was a collection of social practices. This made it an unstable source of long-term protection, one that required nearly constant legal actions to maintain. But it was also a source of possibility. The types of property written out in formal statutes, or more frequently, never clearly written out at all, could be re-interpreted, adapted, and ultimately transformed into new kinds of landholding that bolstered Indigenous authority and challenged the imagined consistency of Anglo rule.

Seeing property clearly in this way can sharpen our understandings of the basic and intertwined colonial processes that property lies at the heart of: the development of territorial sovereignty, the work of modern state governance, and the structures of settler colonialism. First, this study reconceptualizes the development of territorial state sovereignty in North America as a process of accommodation and negotiation, not a unilateral imposition. Property regimes bind a territory's inhabitants and the territory itself to a state through the legal sanction and bureaucratic organization of privately-held land. This makes them essential to any new regime's assumption of sovereignty over a new territory and subjects.[30] Yet among the millions of acres acquired through territorial cessions from prior empires, Canadian and U.S. administrations repeatedly accommodated, translated, and incorporated alien property formations, rather than imposing a centralized, uniform regime. Property regimes played a powerful role in the assumption of centralized state power. Yet such power was not always mobilized through the enforcement of a singular, consistent regime, but rather by incorporating and adapting the land tenure and the populations of earlier empires.

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[28] Craib, "Relocating Cartography," 485.
[29] Greer, *Property and Dispossession*, 19.
[30] James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998); Alan Taylor, *The Divided Ground: Indians, Settlers and the Northern Borderland of the American Revolution* (New York: Alfred A. Knopf, 2006); Raymond B Craib, *Cartographic Mexico: A History of State Fixations and Fugitive Landscapes* (Durham, N.C.: Duke University Press, 2004).

Second, it reveals the on-going entanglements of empires well into the nineteenth and even the twentieth centuries. Many scholars of the Atlantic World have emphasized shared practices and entanglements of European empires in North America.[31] Yet the ascendancy of Anglophone settler states in the nineteenth century tends to mark the end of these involvements, with the advent of robust and coherent territorial states. The protracted processes of property transitions—of grappling with the relationship between land, settler, and state that make up territorial sovereignty—cast a much longer shadow of imperial influence into settler state governance. It also repositions the locations of the influence, from metropolitan centers of decision-making to the dispersed properties of former subjects who sought protection for their lands.

Third and finally, this project both supports and qualifies some basic tenets of settler colonial theory. Settler colonialism is a distinctive variety of colonialism most often associated with Anglophone regimes. These settler empires came not to extract resources for a metropole, but to permanently occupy indigenous territories. As Patrick Wolfe has argued, settler colonialism should not be understood as a discreet historical injustice perpetrated by bad actors in a less humane past, but an on-going reality of occupation under which indigenous peoples continue to live.[32] Property ownership lies at the heart of this continuing occupation, as the legal means through which settlers have come to physically occupy indigenous territories. By shifting focus from decisive historic events like *Johnson v. M'Intosh* to quotidian property practices, this study calls attention to this fundamental reality. But at the same time, it also demonstrates that one of the pillars of settler colonial edifices—property—has been something less than sturdy post in many parts of North America. In regions of imperial transition, it has been messy and manipulatable, and Indigenous peoples have not only resisted it, but transformed it.

Imperial transitions were not the final chapter in a tragic declension narrative about the end of indigenous sovereignty. Nor did they mark the straightforward intensification of settler colonial processes. Indigenous successes cast transitions from empires to nation states as highly complex, even paradoxical processes. Much as legal scholar Lauren Benton argues for the inherent geographic unevenness of imperial legal regimes, this dissertation contends that there are meaningful and unexpected temporal anomalies across the *longue durée* of North American colonialism.[33] Just as indigenous peoples manipulated spatial boundaries between empires in the early modern era, indigenous claimants straddled temporal borderlands in their property claims. They invoked their own histories of imperial colonization in order to obtain the settler-state proprietorship that could secure indigenous futures.

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[31] Anthony Pagden, *Lords of All the World Ideologies of Empire in Spain, Britain and France c.1500-c.1800* (New Haven, Conn.: Yale University Press, 1995); Eliga H Gould, "Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery," *The American Historical Review* 112 (2007): 764–86.

[32] Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (Houndmills, Basingstoke; New York: Palgrave Macmillan, 2010); Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (December 1, 2006): 387–409.

[33] Lauren A Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400--1900* (Cambridge; New York: Cambridge University Press, 2010).

Sources and Structure

The major source base for these arguments are hundreds of property documents, including claims, petitions, maps, deeds, leases, *proces-verbal*, survey notes, court proceedings, and probates. Some of these sources are clearly mediated, in that they were written for indigenous legal actors by their lawyers, priests, local post commandants, or notaries. A few are written in Indigenous languages, and many were signed by Indigenous participants in the presence of other Indigenous witnesses. I take the interpretive position that while the documents themselves do not always speak clearly in the voices of Indigenous claimants, they are the products and the records of Indigenous legal actions. These underutilized sources offer a rich picture of their sustained participation in property processes.

I draw on Native American and Indigenous Studies (NAIS) methodologies to read these sources in conversation with indigenous sources including language dictionaries, stories, and contemporary tribal legal documents such as recognition petitions and claims.[34] My goal is to anchor eighteenth- and nineteenth-century property claims in indigenous territorialities and in indigenous motivations. However, I am also proceeding with caution. My research has not been ethnographic, and my goal is not to provide a fine-grained or holistic portrait of any one of the several indigenous communities included in this study. Such an endeavor is beyond the scope of this comparative project and beyond the scope of my knowledge as a non-indigenous outsider. Moreover, I have not attempted to comprehensively describe or define indigenous land tenure practices before, during, or after their participation in settler property practices.[35] Instead, I hope that my research can be complimentary to the work of those who have the expertise and authority to do so.

Chapter One provides foundational context for the atmosphere in which indigenous proprietors made claims. It explores the contested bureaucratic processes of land tenure transition after imperial cessions in Quebec after 1763, Louisiana after 1803, and southern California after 1848. Each treaty mandated that new regimes would uphold the property rights of prior inhabitants. Yet the administrators tasked with effecting these transitions were confronted with the challenges of translating property from one imperial idiom to the next. Not only did administrators grapple with divergent and locally variable units of measurement and boundary marking conventions, but they confronted incommensurable land rights. In Quebec, French seigneurial land tenure was so different from English fee-simple or freehold tenure that British administrators elected to keep the entire seigneurial system intact for more than a century. In Louisiana and California, the United States effected a transition into U.S. freehold tenure through property claims processes, through similarly lengthy and laborious processes. In all cases, British Canadian and U.S. administrators flexibly accommodated alien forms of land tenure and generous interpretations of French and Spanish land rights. Successful transitions—in which every claim was transformed into the new state's land tenure system—were not a matter of finally forcing claimants to accept rule, but of the state's adaptation of its legal standards and territorial processes.

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[34] Alyssa Mt Pleasant, Caroline Wigginton, and Kelly Wisecup, "Materials and Methods in Native American and Indigenous Studies: Completing the Turn," *The William and Mary Quarterly* 75, no. 2 (May 3, 2018): 207–36.
[35] For a discussion of the nationally-specific and potentially unknowable "property" of indigenous peoples, see Bradley Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership," *The Canadian Journal of Law and Jurisprudence The Canadian Journal of Law and Jurisprudence* 13, no. 1 (2000): 3–31.

Chapters Two, Three, and Four form the analytical heart of the dissertation. They are case studies of indigenous proprietorship in Quebec, Louisiana, and California. Chapter Two describes how Abenakis and Sokokis at Odanak, a long-settled village on the Saint-François river, survived British encroachments by utilizing French legal forms and leveraging their former status as a French Jesuit mission. Rather than a single decisive legal victory, maintaining authority over their lands at Odanak required on-going practices of property management. Odanak Abenakis and Sokokis employed several notaries and leased portions of their land to settler tenants as a seigneury. They were so successful in maintaining their lands through French legal idioms that they were able to expand their seigneurial authority to second location: Kwanahomoik, or the British township of Durham. After petitioning British authorities for a land grant in this British township, Abenaki families leased their land to settler tenants there too, effectively transforming it into a second seigneury.

Chapter Three examines land sales and claims made by Pascagoulas, Choctaws, Chitimachas, Tunicas, Biloxis, Houmas, and Attakapas peoples, just a few of the many small nations in Louisiana known as the petites nations. Many of these nations sold portions of their territories to settlers during the population explosion in the 1790s, when such practices were legal under Spanish rule. After the U.S. purchase of Louisiana, many settlers submitted property claims on the basis of indigenous purchases – effectively compelling the state to acknowledge the solidity of indigenous title. Within this context of general federal recognition of indigenous proprietorship, Chitimachas and Tunicas also made federal property claims and pursued legal suits to retain small portions of their territories.

In Chapter Four, I turn to the successful land claims of Tongva, Tataviam, and Ventureño Chumash peoples near Los Angeles. After decades of confinement and forced labor in Spanish Franciscan missions, Mexican mission secularization in the 1830s created conditions within which formerly missionized people could petition for land grants. Many indigenous inhabitants petitioned individually and collectively for land grants from the Mexican state and secured formal titles. Some obtained small plots of land surrounding former missions, and others secured larger pieces of agricultural and ranching lands that were also particularly meaningful spiritual locations. After the 1848 U.S. conquest of California, many of these grantees successfully petitioned yet again for U.S. land titles to their holdings, transforming Mexican recognition into grudging United States acknowledgment.

Chapter Five explores the long-term consequences of the small victories described in chapters two, three, and four. Indigenous property claims not only provided material protection for small nations, but inscribed their presence and their territorial claims into official state property archives and onto cadastral maps. These representations challenge how historians have characterized property mapping and nineteenth-century land tenure organization as a rational, modern, simplifying project that occludes indigenous places and presences.

This dissertation offers an account of indigenous creativity and resilience, efforts that resulted in successful property claims. Of course, these small victories are dwarfed by the millions of acres appropriated from indigenous peoples across North America. They hardly encompass even tiny fractions of the traditional territories once controlled by the subjects of this study. Yet historic legal victories continue to find uses in contemporary indigenous land and sovereignty claims.[36] While the pages that follow work to make sense of indigenous resilience and settler colonial disorder in the past, they were written with an eye to informing the present and the future. My hope is that an understanding of how Native nations have successfully mobilized property ownership in the past can be of use to contemporary struggles for recognition, territory, and sovereignty.

Private property ownership continues to play a highly complex and significant role in indigenous communities in the United States and Canada. In recent years, many nations have sought to bolster their land bases and reclaim historic territories through purchase. Yet U.S. and Canadian administrations have generally thwarted their attempts to add those lands to reservations or insisted on complex federal transfers. Policing the boundaries between tribal lands and private property ownership continues to be a key way in which settler states exercise sovereignty over indigenous nations. This dissertation demonstrates that the line between private settler property and communal indigenous territory has long been more porous than contemporary states wish to acknowledge.

Examining this history of indigenous property practices prompts us to conceive of indigenous sovereignty and political organization in more capacious ways. Historians usually associate indigenous sovereignty with diplomatic recognition, military power, territorial defense, and jurisdictional control. Yet contemporary Native nations and scholars continue to practice and articulate forms of sovereignty that do not rely on settler-state recognition, or on Western definitions of military or political power. Such practices are varied: from crossing international borders on Mohawk passports to physically obstructing pipelines to growing, cooking, and eating indigenous foods. Many simply include living on and in relation to their lands.[37] Property ownership continues to be a part of such projects. This dissertation examines earlier iterations of these contemporary struggles, revealing the long and complex history of property ownership in the survival and reconstitution of indigenous communities across multiple colonial regimes. Much as indigenous actors have done in the past, the flexibility and incoherence of settler colonial legalities can be mobilized in the present to establish just and sovereign legal futures for indigenous peoples across North America.

[36] Klopotek, *Recognition Odysseys*.
[37] Audra Simpson describes how Mohawks at Kahnawà:ke, itself a Quebec reserve based on a French seigneurial land grant, undertake the on-going labor of sovereignty, in part, through "a care for and defense of territory." Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham: Duke University Press, 2014), 13; Gerald Robert Vizenor, *Survivance: Narratives of Native Presence* (Lincoln: University of Nebraska Press, 2008).

CHAPTER ONE

Land Tenure Translation and Territorial Sovereignty in North America

Land tenure is a system for managing human relationships to land. If such a definition seems vague, it is because land tenures are complex and variable sets of practices that vary across communities, cultures, and continents. To be more concrete, consider the most common iteration of land tenure in contemporary North America: fee simple property titles. If an individual holds land under fee simple, or freehold tenure, as most landowners in North America do, they can do nearly whatever they want on and with the chunk of land that they own. They can sell, divide, and pass down lands to their heirs, and they can exclude others from it. Perhaps because fee simple titles are understood to be the maximum ownership in land legally possible under common law, they are often described as "private" property. Yet all forms of land tenure, fee simple included, are anything but private. Land tenure regimes, by definition, are systems that organize social relationships: to other humans, and to the larger ecological communities that live and die on land.[1]

Land tenure also facilitates participation in political communities. Despite the efforts of natural rights theorists to articulate property ownership as a natural condition existing outside of states, even fee simple tenures in the United States and Canada exist in intimate relationship to municipal, county, state, and federal governments.[2] Governments constrain individual property rights, but they also act as the protectors of those rights. They do this through the courts, where property disputes are settled and rights are protected. But they also do so through the organization and management of information about land tenure. Public officials catalog and file the information that associates a particular piece of land with a particular owner, locating each piece of private property within what they consider to be the state's sovereign territory. In this way, land tenure binds states and their inhabitants together in reciprocal relationships.

While the links between land tenure and territorial sovereignty are long and deep, fee simple tenure is only one particular form of the hundreds that have been practiced in North America. For millennia, indigenous peoples have maintained forms of land tenure that defined human relationships to land, to water, and to linked animal and plant communities in hundreds of diverse formations.[3] Unlike modern-day settler conceptions of property ownership that emphasize maximum individual human freedoms to rule over land, such tenure regimes tended to rest on, rather than deny, the reciprocal relationships between human and non-human communities. They also bound humans into political communities. In North America, such land tenures have ranged from the hierarchical city-state units, or *altepetls*, in Nahua society in central Mexico, to the cellular, interlinked watershed clan hunting territories of Wabanaki peoples in northern New England and Quebec.[4]

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[1] Carol M Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Boulder, Colo.: Westview Press, 1994), 272.
[2] John G Sprankling, *The International Law of Property* (New York, NY: Oxford University Press, 2014), 5–8.
[3] Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, Studies in North American Indian History (Cambridge ; New York, NY: Cambridge University Press, 2017), 28.
[4] Greer, 30; Lisa Tanya Brooks, *The Common Pot : The Recovery of Native Space in the Northeast* (Minneapolis: University of Minnesota Press, 2008).

The transformation of North America from a continent of thousands of indigenous political communities, practicing hundreds of forms of land tenure, into settler colonial nation states composed predominantly of fee simple tenure property, has been a complex and contested process taking place over five centuries. Yet in describing this transition, many scholars have pointed to one particular development: the imposition of regularized cadastral grids in the late eighteenth and nineteenth centuries.[5] The United States Public Land Survey System (PLSS), created in 1785, mandated the division of land into square township sections, each divided into units of private ownership, and affixed to regular baselines and meridians.[6] In Canada, township systems were introduced in the late eighteenth century in Upper Canada (Ontario) and Quebec, and in the mid-nineteenth century, Canada adopted a survey model based on the PLSS for the prairies.[7] These systems established regularized matrices of township squares, each subdivided into squares of individual fee simple property.

Grids have been essential to the consolidation of modern state sovereignty. They have also been instrumental in the settler colonial occupation of indigenous territories. Regularized systems like the PLSS invited officials to imagine a form of continental expansion that could fill in large and vague geopolitical claims with a hypothetical grid, subdividing it into known and controlled subsections.[8] They also offered a concrete pathway toward achieving continental dominance, because they promised the rapid subdivision and sale of land without time-consuming local surveys.[9] As Denis Byrne describes the colonial mapping of Australia in the late eighteenth and early nineteenth centuries, a grid "could be applied with impartiality to previously unknown terrain, which is to say that it would take a landscape just as it found it, rolling over it as if it knew it in advance."[10]

The grid is a powerful metaphor for settler colonialism and modern state-building. Yet treating it metaphorically risks representing it as singular, coherent, or complete.[11] The imposition of cadastral grids in North America has never been as consistent or comprehensive as evoked by its image. Instead, grids have been thwarted by both environmental and human actors. Across North America, U.S. and Canadian surveyors confronted major geographical and topographical

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[5] Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*, (Cambridge, MA: Harvard University Press, 2013), 36–37; Andro Linklater, *The Fabric of America: How Our Borders and Boundaries Shaped the Country and Forged Our National Identity* (New York: Bloomsbury Publishing USA, 2009), 207; James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 23–49.

[6] William Hubbard, *American Boundaries: The Nation, the States, the Rectangular Survey* (Chicago: University of Chicago Press, 2009).

[7] Don W. Thomson, *Men and Meridians: The History of Surveying and Mapping Canada*, Vol. I (Ottawa, Canada: Queen's Printer, 1966), 219.

[8] David Turnbull, "Cartography and Science in Early Modern Europe: Mapping the Construction of Knowledge Spaces," *Imago Mundi* 48 (1996), 5–24.

[9] R. J. P. Kain and Elizabeth Baigent, *The Cadastral Map in the Service of the State : A History of Property Mapping* (Chicago: University of Chicago Press, 1992), 4.

[10] Denis Byrne, "Nervous Landscapes: Race and Space in Australia," *Journal of Social Archaeology* 3, no. 2 (2003), 172.

[11] Paul Carter, *The Road to Botany Bay : An Exploration of Landscape and History* (New York: Knopf, 1988); Turnbull, "Cartography and Science in Early Modern Europe"; Nicholas Blomley, "Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers* 93, no. 1 (2003): 121–41.

problems that stymied any totalizing ambitions of regularity.[12] Indigenous resistance to the imposition of cadastral grids has also been noted by numerous scholars. Native communities pulled up survey posts, and retreated to places that were not easily surveyed. Many simply continued to live on their lands in ways that challenged the existence of settler property lines as a form of resistance. Still, most scholarly works on this topic frame the failure to achieve a comprehensive cadastral system as the outcome of a battle between indigenous particularity and settler colonial abstraction, in which indigenous peoples inevitably lost, but bravely continue to resist.[13] And such a framing masks a more complex and negotiated history of land tenure in North America.

Cadastral grids were not simply rolled over indigenous landscapes in the late eighteenth and early nineteenth centuries, leaving Native resistance in gaps or on margins. The Anglophone regimes that came into power over what became the United States and Canada recognized that the continent was already patterned with existing land tenures, indigenous and European. Moreover, they understood that such tenures could not be wholly ignored or obliterated. To most Native territories outside of areas of European settlement, they assigned weak occupancy rights to be extinguished through treaty, purchase, or seizure. As imaginatively and legally limited as their conceptions of indigenous land tenures were, they nonetheless expended significant time and, as Robert Lee has calculated, money in extinguishing what they saw as Native title to much of North America.[14]

An even more significant challenge to the establishment of consistent cadastral systems across the United States and Canada came from other European land tenures. By the late eighteenth century, a variety of other European land tenures had already existed alongside and on top of foundational indigenous land tenures in North America for centuries. Most of them shared little in common—legally, geographically, or bureaucratically—with the grids that the United States and Canada hoped to impose. Yet the administrators of Anglophone empires were increasingly influenced by an absolutist vision of property that framed it as a natural right, one that existed outside of and across imperial boundaries. They were invested in upholding these properties, not extinguishing them.

They set out these ambitions clearly and consequentially in the inter-imperial treaties through which they gained much of North America. After the British conquered French Canada in 1759, the 1763 Treaty of Paris guaranteed that French subjects would have their property protected.[15] Forty years later, the Louisiana Purchase specified that "the inhabitants of the ceded territory" transferred from Spain to France to the United States would be "maintained and protected in the

[12] John C Weaver, *The Great Land Rush and the Making of the Modern World, 1650-1900* (Montreal, Kingston: McGill-Queen's University Press, 2003), 114–15.
[13] Walter Johnson gestures to "an alternative geography of the South" where "the landscape of forage and that of resistance overlapped in the woods and swamps." Denis Byrne notes how Aboriginal peoples resisted the Australian grid by manipulating its "gaps or openings," undertaking a "constant prodding and testing" of the cadastral system's "legitimacy." Johnson, *River of Dark Dreams*, 229–31; Denis Byrne, "Nervous Landscapes," 173, 178, 181. See also Scott, *Seeing like a State*, 49.
[14] Robert Lee, "Accounting for Conquest: The Price of the Louisiana Purchase of Indian Country.," *Journal of American History* 103, no. 4 (2017): 924.
[15] "Treaty of Paris, 1763," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/18th_century/paris763.asp.

free enjoyment of their liberty, property, and the Religion which they profess."[16] Finally, the 1848 Treaty of Guadalupe Hidalgo, which ceded California and much of the southwest from Mexico to the United States, likewise stated that "property of every kind" would be "inviolably respected."[17] Yet the treaty-mandated upholding of property inherited from prior empires under which it was held by different people, in different forms, was much more complicated than converting *arpents* and *varas* into acres. It was a torturously bureaucratic process that would stretch on for decades, even centuries. It involved thousands of landowners, who write petitions, gave testimony, drew maps, made court filings, and simply continued to live on land in ways that argued for particular types of land tenure. And for the United States and Canada, accomplishing the complex process of land tenure transition would require significant financial sacrifices, legal concessions, and significant alternations to cadastral grid systems.

This chapter examines the labor-intensive and extensive land tenure transition processes in three North American regions after three imperial sovereignty transitions: the St. Lawrence River Valley after the 1763 Treaty of Paris, the western Lower Mississippi Valley after the 1803 Louisiana Purchase, and southern California after the 1848 Treaty of Guadalupe Hidalgo. It resurrects these understudied, technical histories in order to complicate macro-narratives of settler colonial property-making, replacing the story of the unrolling grid with a much messier and complex process. Rather than imposed from above, the contemporary cadastral systems that now make up the United States and Canada were negotiated on the ground.

Land Tenure Transition as Translation

By the mid-eighteenth century, treaty property protections had become relatively standard clauses in major peace treaties between European belligerents throughout the Atlantic World. As modern territorial states emerged in early modern Europe, peace treaties evolved from compacts between princes to extensive agreements between states, and this meant including more comprehensive treatment of their subjects, their territories, and how land tenure bound the two together.[18] Property protections also stemmed from a new concept of legal war (*bellum legale)*, which understood war as not just a limited recourse against a specific wrong (*jus bellum iustum)*, but a more comprehensive and complete alteration of relations between the parties at war. In this context, returning to a state of peace often meant the restitution of enemy property.[19]

[16] "Louisiana Purchase Treaty; April 30, 1803," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/louis1.asp.
[17] "Treaty of Guadalupe Hidalgo; February 2, 1848," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/guadhida.asp.
[18] Randall Lesaffer, "Peace Treaties and the Formation of International Law," in *The Oxford Handbook of the History of International Law* (Oxford, New York: Oxford University Press, 2012), 90.
[19] R.C.H Lesaffer and E.J.M.F.C Broers, "Private Property in the Dutch-Spanish Peace Treaty of Münster (30 January 1648)," *Zeitschrift Für Historische Forschung. Beihefte* 45, no. 1 (2011), 167.; Lesaffer, "Peace Treaties and the Formation of International Law," 89; Hans Van Houtte and Hans Das, *Post-War Restoration of Property Rights under International Law* (Cambridge: Cambridge Univ. Press, 2008), 10. See also Lauren A. Benton and Lisa Ford, *Rage for Order : The British Empire and the Origins of International Law, 1800-1850* (Cambridge, Massachusetts : Harvard University Press, 2016., 2016), 4–7.

Property protections of enemy subjects became a regular part of amnesty and restitution clauses. As legal boilerplate, these clauses were vague. None contained specific directions as to how such transitions in property ownership would be effected, though some contained temporal specifications on how long inhabitants might have to claim or sell estates.[20] Nor did any of the treaties specify the *nature* of that property. What, exactly, was being sustained when private property survived transitions in sovereignty? Was it a claim to a particular piece of delineated territory, or a financial claim over a calculated value of that land? Was it the preservation of certain rights and responsibilities to the state and to other citizens, expressed through land relationships?

For early modern positivists, such specificities were better left to the purview of conquering states. In a Westphalian system, land tenure was a strictly domestic matter and its specificities had no place in international treaties.[21] Yet in the minds of the largely Anglophone proponents of natural law, property ownership was more than domestic. As taken up by the early modern jurist Hugo Grotius, and in the eighteenth century by John Locke and William Blackstone, property was a right constituted through the combination of human labor and natural resources, not the actions of any state. The state's only role was to protect the property that existed outside of it.[22] Yet this logic led to the same conclusion. If property was a natural right, then no instructions for inter-imperial transfer were needed: such rights would be recognizable, even self-evident.

The officials tasked with effecting treaty-mandated property protections on the ground soon found that property was anything but self-evident. By 1763, a diverse array of European land tenures existed on top and alongside hundreds of indigenous tenures. As Allan Greer details in *Property and Dispossession,* European colonizers did not arrive from Europe with fully articulated land tenure systems that they imposed out without regard for indigenous territorialities. In fact, early patterns reveal the opposite: French, Spanish, and British colonizing projects began as enclaves established on or near important indigenous places, sometimes explicitly to trade or colonize indigenous populations, and other times simply because the places indigenous peoples had used for millennia—fertile planting field, strategic or easily navigable trade junctures on rivers, easily protected defensive locations—were desirable.[23]

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[20] These treaties contained almost overwhelming specificity as to other types of rights. Article IV of the Treaty of Paris allowed French subjects "the liberty of fishing in the gulph of St. Lawrence," but only "at the distance of three leagues from all the coasts belonging to Great Britain," and in Article XIII, assured that "provision shall be made at the same time for the wholesomeness of the air, and for the health of the inhabitants" at Dunkirk. The Louisiana Purchase, in Article II, specifically ceded "all public lots and Squares, vacant lands and all public buildings, fortifications, barracks and other edifices which are not private property." The Treaty of Guadalupe Hidalgo not only carefully specified that the "Boundary line between the two Republics," was to begin in the Gulf of Mexico, "three leagues from land," in Article V, but established a process of boundary surveying and in Article VI, even anticipated the potential joint construction of a future "road, canal or railway" at the Gila River. "Treaty of Paris, 1763"; "Louisiana Purchase Treaty, April 30, 1803"; "Treaty of Guadalupe Hidalgo; February 2, 1848."

[21] John G. Sprankling, "The Emergence of International Property Law," *N.C.L. Rev.* 90 (2012): 463; Sprankling, *The International Law of Property*, 5. Despite 20th century developments in human rights law, there still remains no coherent body of international property law.

[22] Sprankling, *The International Law of Property*, 8, 6. Blackstone held that property was an absolute individual right, the "sole and despotic dominion," of one person, "in total exclusion of the right of any other individual in the universe," Christopher Serkin, *The Law of Property*, (St. Paul, MN: Foundation Press, 2016), 9, 6.

[23] Greer, *Property and Dispossession*, 4.

Despite their common replication of indigenous tenure patterns, imperial land tenures differed greatly. Some of these differences were at the basic level of what, exactly, was being owned. In French Quebec, seigneurialism bound estate proprietors, or seigneurs into reciprocal feudal relationships with their peasant tenants, or censitaires. Neither lords nor their tenants "owned" their land in the way that fee simple proprietors understood it: seigneurs were obligated to grant tenancies to censitaires or give back their land to the King, and censitaires had an array of relatively robust rights to their tenancies that reach beyond common law definitions of renting.[24]

Other imperial domains, including Spanish Louisiana and Mexican California, generally granted land in fee simple tenure. Yet other incommensurabilities existed. Even if *how* land was owned was similar, different regimes held different attitudes toward *who* could own land. For example, in Spanish and French civil law jurisdictions, women owned land to a degree unavailable to those in Anglophone common law territories. And as Chapters Two, Three, and Four detail, general French and Spanish inclusion and accommodation of indigenous peoples and indigenous property proved to be the thorniest difficulty that Anglo empires would come to negotiate. Finally, there were troubling discrepancies as to the *what* and *where* of land ownership. In French and Spanish Louisiana, but grantees could locate and delineate their own land grants with little to no relationship to any other property in the territory. Spanish Alta California's Franciscan mission territories were so vast, and the colonial property-holding population so small, that some boundaries were never located at all.

Comparing the differences between land tenure regimes in such a way implies that such systems, while different, were coherent entities.[25] Yet, as Greer is careful to point out, describing any of these early modern tenures as a "system" would be to overstate its nature. Land tenure "regimes" were developed as sets of practices and casual conventions among diverse actors.[26] Even as they came to dominate more of North America over three centuries, they remained improvisatory and diffuse. Even units of measurement were locally variable: an *arpent* in Paris, Montreal, or New Orleans was never reliably the same length.[27]

The task of the diverse bureaucrats assigned to land tenure transition—military officers, hastily commissioned surveyors, local land registers, judges who struggled to read French or Spanish—was to locate, identify, and transform these dispersed properties held under a variety of tenures into fee simple properties. Each property needed to be delineated, attached to a discreet owner, verified, and integrated into the United States and Canada's larger cadastral systems. Yet the land records that recorded and organized property ownership were just as dispersed and disorganized as land tenure regimes themselves.

There was no centralized repository to consult and compare new surveys against old titles. In French Canada, seigneurs, rather than colonial officials, were responsible for keeping land records as to their tenants. Many managed such records with extreme casualness. In Louisiana,

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[24] Cole Harris, *The Seigneurial System in Early Canada; a Geographical Study* (Madison: University of Wisconsin Press, 1966).
[25] Micol Seigel, "Beyond Compare: Comparative Method after the Transnational Turn.," *Radical History Review* 2005, no. 91 (2005): 62-90.
[26] Greer, *Property and Dispossession*, 2.
[27] Jack D. L. Holmes, "The Value of the Arpent in Spanish Louisiana and West Florida," *Louisiana History* 24 (1983): 314–20.

fires in 1788 and 1794 destroyed all the land records held in the office of the surveyor general.[28] In early American California, federal land officials had a relatively complete set of Mexican-era land records, but they consisted of impressionistic maps hand-drawn by claimants themselves that paid little to no attention to surveying conventions. Instead, the facilitators of land tenure transitions had to rely instead on the thousands of humans who had held, or claimed to have held property under prior imperial administrations, and planned to keep it. Every property was a social document, invested with human intentions and interpretations of inter-imperial land law, treaty provisions, and histories of possession, occupation, and improvement.

These three transitions differed in important ways. Only British Quebec maintained an entire land tenure system relatively intact. In Louisiana, U.S. Congress struggled to legislate the process of translating land titles, and in California, the court system was delegated to deal with the problem of approving foreign titles. Their accomplishment took decades, even centuries. British authorities formally abolished the last French seigneurial properties in 1970. In Louisiana, claims initiated by the 1803 Louisiana Purchase were resolved by 1897. Only in California was the process achieved relatively quickly, in forty to fifty years.

Several characteristics are consistent across all three cases. First, it is clear than each ruling administration realized that private property transition was not a peripheral issue, but one of fundamental concern to the achievement of sovereignty over newly acquired territories. Second, the resolution of these claims was a profoundly negotiated process, one that actively engaged diverse subjects who sought to shape both the process and its outcomes. And third, successful transitions—in which every claim was transformed into the new state's land tenure system—were not a matter of finally forcing claimants to accept rule, but of the state's adaptation of its legal standards and territorial processes. Examining these long and contested processes guides us to rethink imperial sovereignty transitions, the role of land tenure in state-building and governance, and the nature of legal translation.

Accounting for property transitions during regime change provokes a reframing of imperial transitions themselves. Francis Parkman famously described the 1763 Treaty of Paris as a "scratch of a pen," and his characterization of transitions as moments that suddenly and decisively redrew continental maps still lingers, qualified, in contemporary historiography.[29] Colin Calloway mobilizes Parkman's description, but argues that the Peace of Paris "did more than shift cartographic boundaries;" it "set people and events in motion." Such framings imagine shifts in imperial power as dominoes, prompting intellectual and cultural shifts, human migrations, economic upheavals, and colonial and metropolitan policy changes. Yet they mask not only the immense labor and technical-bureaucratic apparatus by which such transitions were enacted, but the staggeringly slow process of the transition itself.[30]

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[28] Edward F. Haas, "Odyssey of a Manuscript Collection: Records of the Surveyor General of Antebellum Louisiana," *Louisiana History* 27 (1986): 7.
[29] Colin G. Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America* (Oxford, England; New York: Oxford University Press, 2006), 15.
[30] Maya Jasanoff, *Liberty's Exiles : American Loyalists in the Revolutionary World* (New York: Alfred A. Knopf, 2011); Calloway, *The Scratch of a Pen: 1763 and the Transformation of North America*, 15; Peter J. Kastor and François Weil, *Empires of the Imagination: Transatlantic Histories of the Louisiana Purchase* (Charlottesville: University of Virginia Press, 2009).

Transitions in land tenure were not discreet processes set in motion by a "scratch of a pen," but essential parts of the transition in sovereignty itself. As state officials in all three places were well aware, they could change the color on a map or declare inhabitants faithful to a new state, but without resolving property claims, they could hardly compel their loyalty. Moreover, locating private property was essential to constituting the new territory itself. Without locating the extent of private claims, administrators could hardly determine the extent of "public" land outside of those claims.

As they well knew, land tenure is a powerful tool of statecraft, in that it can both reflect and cultivate particular subjecthoods, economic practices, and configurations of human settlement. Perhaps for this reason, property regimes are often assumed to be culturally specific, potentially even culturally self-evident: British officials would impose freehold tenure in order to create British settler colonies, while the Catholic empires would pursue their own goals through hierarchical regimes of mutual obligation. States and empires of all kinds would, at the very least, require a single land tenure regime to be consistently applied across their jurisdictions.

Yet the property protections of imperial treaties limited the abilities of these empires and their successors to wield land tenure like a cudgel. Simply wiping away past property and starting again was legally and logistically impossible. Nor is it necessarily evident that conquering states desired, above all, to do so. In Quebec, British authorities chose to adapt themselves to the existing land tenure regime for ninety-one years, rather than forcing it to conform to an ideal of British settlement patterns. In early American Louisiana and California, changes in land tenure were marked by good faith efforts to fundamentally understand, interpret, and in some cases, prolong land rights derived from earlier regimes. Land tenure was a powerful tool of modern statecraft, used by states to organize subjects and cultivate vigorous territorial sovereignty. Yet such power was not always mobilized through the enforcement of a singular, consistent regime, but by incorporating and adapting the land tenure and the populations of the empires they followed.

Approving transitional property claims was an act of translation. Yet translation meant much more than the conversion of *varas* into acres, or the replacement of a Spanish crest with the sign of the U.S. Land Office. It was a negotiated social endeavor, one that incorporated humans, land, and scientific techniques of mapping and measurement together in a project to produce land titles. To characterize this process, I deploy a definition of translation used in Science and Technology Studies. The sociologist Michel Callon describes translation as a process through which "certain actors" enlist others, "whether they be human beings, institutions or natural entities – to comply with them."[31] Callon is describing the work of ecologists studying scallops in a French bay, but his characterization applies to the work of land tenure translation: bureaucrats had to enlist participants as diverse as land claimants, legal concepts, and even the natural features that often served as landmarks in early modern property delineations in their creation of state-sanctioned land titles.

[31] Michel Callon, "Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay," *The Sociological Review* 32, no. 1_suppl (1984): 201.

Claimants played highly active roles in articulating the nature of their land rights and demanding the approval of particular tracts in particular legal formats. In the many activities involved in transforming territory from the bureaucratic idiom of one empire to another, dispersed and diverse actors—including land surveyors, land registers, county clerks, notaries, post commandants, property owners, and the landless who hoped to gain land—gathered and organized geographic knowledge, took decisive actions, and generated the information that those higher up used to make policy decisions. Through the prism of land tenure, imperial transitions appear not as pivotal moments negotiated among a few elites, but as protracted and diffuse negotiations with both the subjects and the legal apparatus of the previous empire.

Callon's central point is that translation is never a dispassionate, scientific process through which commensurable entities are equivalently converted. Instead, it is a process that always involves social power. He argues that "to translate is also to express in one's own language what others say and want"…"to establish oneself as a spokesman." Whether coercive or collaborative, Callon measures the success of translation as a social process after which "only voices speaking in unison will be heard."[32] The goal of land tenure translation was the creation of a singular cadastral system, expressed in one measurement language, legally consistent, and held under the sovereignty of a single power. Yet while North American states did eventually accomplish these legal translations, a polyphony of voices, both human and non-, continue to challenge and complicate modern land tenure.

Transforming Seigneurialism in Quebec, 1763-1970

When the British took control of Quebec in 1763, they set about gathering information about their new territory. The Board of Trade instructed newly appointed Governor James Murray to identify "the Nature and Quality of the Soil and Climate, the River, Bays and Harbours, and every other Circumstance attending the natural State of it." Yet such a knowledge-making project could never be purely geographical. Gathering territorial information about the province required engagement with provincial property-holders. Murray was first to ascertain "the particular Quantity of Land" already held in Quebec. Determining the "true State" of the land was an essential preparation to "the advantageous and effectual Settlement" of the province.[33] Only by determining what was private property could they identify what they perceived to be Crown land available for subdivision and settlement.

Determining the "particular Quantity of Land" already held in Quebec would prove exceptionally difficult. French exploration of the Haudenosaunee, Algonquin, Innu, Wendat, and Wabanaki lands in the St. Lawrence River had begun in the sixteenth century, but yet early

[32] Callon, 223–24.

[33] "Instructions to Governor Murray," 1764, in Arthur G. Sir Doughty and Adam Shortt, *Documents Relating to the Constitutional History of Canada, 1759-1791*, (Ottawa : S.E. Dawson, printer to the King, 1907), 141. French inhabitants, too, were expected to participate in this knowledge-making project, by registering their grants and titles in the Secretary's Office, reporting not only the "Site and Extent" of each holding, but "the Conditions upon which it [was] granted." For a larger discussion of the post-1763 mapping of British territory, see S. Max Edelson, *The New Map of Empire: How Britain Imagined America before Independence* (Cambridge ; London: Harvard University Press, 2017).

French efforts were less focused on establishing a settlement colony.[34] The establishment of land tenure patterns began formally in 1627, with the founding of the proprietary Compagnie de la Nouvelle France (Compagnie des Cent-Associés). The Compagnie held a mandate to transform New France into a settlement colony through the establishment of seigneurial property, or French-style feudal estate tenure. Under seigneurial tenure, the Compagnie could pass along much of the responsibility for populating a settlement colony to the seigneurs themselves, who would subdivided and populate their seigneuries with tenants, or censitaires. Over the next thirty years, the Compagnie granted more than seventy seigneuries along the St. Lawrence River, and after their charter was revoked in the 1660s, royal intendants granted seigneuries directly instead. By 1760, there were close to two hundred and fifty seigneuries in Quebec, upon which lived a population of about 75,000 settlers.[35]

Moreover, many of these seigneuries had indefinite boundaries. Some, especially those granted early on, had never had their boundaries fully defined. There was little incentive to delineate indigenous forest land that remained unsettled by censitaires. For seigneury sections that had been conceded to tenants, delineating boundaries relied on the *rhumb de vent*, a surveying convention introduced in the 1630s, which measured boundaries as lines extending perpendicular from the riverbank. The *rhumb de vent* system delineated boundaries at the edge of river passably, but often the outer boundaries were never defined. Seigneurial conventions authorized the survey of lands after, rather than before settlement, so that surveys, when they were conducted, often failed to match the boundaries described on property documents.[36]

In the eighteenth century, many seigneurs deviated from initial patterns, for example, establishing a sawmill monopoly that was not explicitly legal in the *Coutume de Paris*, but reflected a particularly Canadian economic reality that couldn't be captured by laws made in Paris. The province also had no centralized land registry. Instead, seigneurs were responsible for keeping their own land records and mediating land disputes. Many fell behind in surveying concessions, granting deeds to censitaires, or keeping track of sales and leases.[37] By 1760, Quebec's seigneuries had undergone a century and a half of experimentation, local variation, and accumulation of errors and ambiguities in record-keeping.

Even if seigneurial possessions could be clarified, protecting them was hardly a straightforward matter of converting tracts of land held under seigneurial title into freehold. The French had granted seigneurs not the land itself, but a bundle of rights and responsibilities to it.[38] What seigneurs and censitaires possessed was not land—that was vested in the King—but a collection

[34] Allan Greer, *The People of New France* (Toronto; Buffalo: University of Toronto Press, 1997), 3.
[35] Harris, *The Seigneurial System in Early Canada; a Geographical Study*, 21–23, 32, 38. Calloway, *The Scratch of a Pen*, 114.
[36] Françoise Noël, "Seigneurial Survey and Land Granting Policies," in Donald H. Akenson, *Canadian Papers in Rural History* (Gananoque, Ont.: Langdale Press, 1978), 158–64. Harris, *The Seigneurial System in Early Canada; a Geographical Study*, 23, 38.
[37] Harris, *The Seigneurial System in Early Canada*, 21.; Greer, *Peasant, Lord, and Merchant: Rural Society in Three Quebec Parishes, 1740-1840* (Toronto; Buffalo: University of Toronto Press, 1985), 132.; Greer, *The Patriots and the People: The Rebellion of 1837 in Rural Lower Canada* (Toronto; Buffalo: University of Toronto Press, 1993), 91.
[38] Greer, *The People of New France*, 39–42.

of social relationships connected to particular pieces of territory.[39] Protecting property meant not only respecting the attachment of certain proprietors to certain places, but of this entire constellation of social rights and legal processes embedded in the seigneurial system. As Quebec Advocate-General James Marriott put it in 1774, "it is not only the thing which we hold, but the manner in which we hold"…"that constitutes our property."[40]

Daunted by these challenges, Governor Murray moved not towards converting seigneurial tenure into freehold, but in extending it. Foremost in his mind was the peaceful assimilation of Canada's Francophone population into the British empire. He issued an ordinance in November 1764 designed "quiet the Minds of the People, in Regard to their Possession," by ensuring seigneurial tenure's continuation.[41] Murray's decision is more understandable within the context that in the 1760s, British North America was not yet the "fee simple empire" that it would become in the nineteenth century, and the prospect of French seigneurialism was not entirely unfamiliar. Moreover, a number of British officials and army officers had bought seigneuries after 1760 from departing French seigneurs.[42]

British officials also recognized that seigneurialism did not dominate the entirety of the colony. Beyond a concentrated cluster of seigneuries along the St. Lawrence River, much of "Canada" was still indigenous territory unpatterned by settler tenures, which the British saw as theirs to colonize. While leaving the seigneurial system intact, for now, Murray could still facilitate the granting of tracts of land, key to "the speedy settling" of the colony. Such tracts would be laid out in British-style townships, "sufficient to contain such a Number of Families," as well as leaving spaces in which distinctively British institutions would flourish: "a particular Spot" would be "set apart for the building a Church, and four Hundred Acres adjacent thereto allotted for the Maintenance of a Minister, and two Hundred for a Schoolmaster."[43] British townships would populate the province with Anglophone settlers, and nourish Anglophone institutions.

If the mandate to create townships satisfied imperial urges to encourage British religious and legal forms in the province, the continued acquisition of knowledge about seigneurial property only demonstrated the impracticability of changing it. In 1768, Murray's successor Guy Carleton revealed the results of the investigation into the province's lands: changing the tenure would be

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[39] Colin MacMillan Coates, *The Metamorphoses of Landscape and Community in Early Quebec* (Montreal [Que.]: McGill-Queen's University Press, 2000), 18; Greer, *The People of New France*, 38–40; Greer, *Peasant, Lord, and Merchant*, 132–33.

[40] James Marriott, "Plan of a Code of Laws for the Province of Quebec," 1774, Doughty and Shortt, *Documents Relating to the Constitutional History of Canada, 1759-1791*, 329.

[41] Alain Laberge and Benoît Grenier, *Le régime seigneurial au Québec 150 ans après: bilans et perspectives de recherches à l'occasion de la commémoration du 150e anniversaire de l'abolition du régime seigneurial* (Quebec: Centre interuniversitaire d'études québécoises, 2009), 24; Murray, "Ordinance of November 6, 1764," Doughty and Shortt, 166.

[42] John McLaren, A. R Buck, and Nancy E Wright, *Despotic Dominion: Property Rights in British Settler Societies* (Vancouver: University of British Columbia Press, 2005), 121–22.; Greer, *Peasant, Lord, and Merchant*, xii; Françoise Noël, *The Christie Seigneuries Estate Management and Settlement in the Upper Richelieu Valley, 1760-1854* (Montréal, Que.: McGill-Queen's University Press, 1992), 135-136; Thomas J. Humphrey, "Conflicting Independence: Land Tenancy and the American Revolution," *Journal of the Early Republic*, no. 2 (2008): 163, 165, 181. Estate proprietorship was a significant element of landholding in other North American colonies, including New York, northern New England, and Virginia.

[43] "Instructions to Governor Murray," 142–45.; Edelson, *The New Map of Empire*, 112.

impossible "without entirely oversetting the Properties of the People." Meanwhile, the diplomatic benefits of continuing seigneurialism would be considerable, in that it might "Secure a proper Subordination" from Francophone subjects. Carleton even suggested that new grants of land "in the Interior Parts of the Province" be made under the seigneurial system.[44]

Such recommendations for continuation only strengthened into the 1770s. Advocate-General James Marriott's plan for a provincial legal code, published in 1774, argued that extending the land tenure system "would tend perfectly to quiet the minds of your Majesty's Canadian subjects."[45] Even opponents of the extension of French civil law in general in Quebec—primarily the British merchant community—conceded that French land tenure should continue. Maintaining the tenure, they suggested, would please French inhabitants so much that they would "acquiesce very cheerfully in the general establishment of the laws of England." Yet self-interest was also involved: "sixteen of the seigniories," including some of "the most valuable ones in the country," were "in the hands of the said Old British subjects."[46] The decision to extend seigneurialism was formalized in the 1774 Quebec Act, which specified that property rights would remain the same in both Article III and Article VIII.[47] In his notes during the drafting of the Act, Lord Hillsborough objected even to granting "any Lands in the Province in free & common Soccage." Seigneurial tenure, he understood, offered "the Crown great power over the Seigneur," power that would be lost if the tenure would be converted.[48]

British officials developed and ultimately formalized their post-1763 land tenure policy in the St. Lawrence River Valley because of their concern about the colony's Francophone population. Yet in the 1780s, another settler population—British Loyalists—began to voice objections to it. A 1785 petition from Sir John Johnson and his Loyalist troops and Indian Department officers expressed their displeasure with seigneurial tenure, as "so different from the mild Tenures to which they had ever been accustomed." In the new townships that Johnson proposed, he asked that settlers be "exempted from the [Burdens] of French Tenures, which, however congenial they may be to Men born and bred under them, would be in the highest Degree exceptionable to Englishmen." Johnson even suggested that the "Establishment of a liberal System of Tenure, Law, and Government" would be crucial to keeping Loyalists in British Canada and maintaining the loyalty and "Friendship of the Indians," just as seigneurial tenure supposedly secured the loyalty of Francophones.[49] His petition was followed by several more from Loyalist merchants, pointing to the inequality between Quebec and other Loyalist settlements, like those in New Brunswick and Nova Scotia, where lands were granted in freehold tenure.

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[44] Carleton to Shelburne, 1768, Doughty and Shortt, 209.
[45] "Plan of a Code of Laws for the Province of Quebec; Reported by the Advocate-General James Marriott," 1774, Doughty and Shortt, 329–30.
[46] "Case of the British Merchants Trading to Quebec," 1774, Doughty and Shortt, 363. For a study of British seigneurial management, see Noël, *The Christie Seigneuries Estate Management and Settlement in the Upper Richelieu Valley, 1760-1854*.
[47] "An Act for Making More Effectual Provision for the Government of the Province of Quebec in North America, October 7, 1774," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/18th_century/quebec_act_1774.asp.
[48] Noël, *The Christie Seigneuries*, 136.
[49] "Petition of Sir John Johnson and Loyalists," 1785, Doughty and Shortt, 525–26.

British accommodation to Loyalist pressure resulted in the 1791 Constitutional Act, which bisected Quebec into the provinces of Upper and Lower Canada and explicitly formalized plural land tenure. In Article XLIII, the act directed that new lands granted in Upper Canada (Ontario) would be in fee simple, and lands already held there could be converted to the same. The Act spurred the development of Upper Canada as a model British settlement colony, achieved through the appropriation of indigenous lands as townships full of Loyalists, with Crown and clergy reserves scattered throughout each township to support civil government and Protestant worship.[50]

Yet in Lower Canada (Quebec), seigneurialism continued. The Act mandated that fee simple lands would only be granted "where the Grantee thereof shall desire," while other holdings could remain in their existing tenure. British tenure would join, but not replace, seigneurialism in the province. Along the margins of seigneuries, officials began to lay out fee simple townships with Crown and Protestant Clergy reserves in southeastern Quebec.[51] In practice, the establishment of what would be known at the Eastern Townships did not necessarily mark a stark departure from seigneurial tenure. Many townships were granted to large-scale speculators and land companies, and many settlers found themselves paying rent to proprietors or living as squatters.[52] From the perspective of British elites, owning land as a seigneury or in a fee simple township could be profitable, and tenants could be exploited under either tenure.[53]

Despite early nineteenth-century rumblings towards gradual changes to seigneurialism, major change would not happen until after major social upheaval.[54] The rebellions of 1837 and 1838, in which Francophone nationalists in Lower Canada, and Anglophone radicals in Upper Canada both revolted against British Crown rule, prompted a major consolidation and re-evaluation of imperial governance in both provinces. As Allan Greer notes, seigneurialism writ large had not been an explicit target of Francophone rebels in Lower Canada. Rather than abolishing the

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[50] Lillian F. Gates, *Land Policies of Upper Canada* (Toronto: University of Toronto Press, 1968); John Clarke, *Land, Power, and Economics on the Frontier of Upper Canada* (Montreal: McGill-Queen's University Press, 2000).
[51] Parliament of Great Britain, "The Constitutional Act of 1791," 31 George III., c. 31, (U.K)., The Solon Law Archive, 2011,https://www.solon.org/Constitutions/Canada/English/PreConfederation/ca_1791.html; Fernand Ouellet, *Lower Canada, 1791-1840 : Social Change and Nationalism*, trans. Patricia Claxton (Toronto: McClelland and Stewart, 1980), 25.; Serge Courville, *Quebec : A Historical Geography* (Vancouver: UBC Press, 2008), 109.
[52] Ouellet, *Lower Canada, 1791-1840 : Social Change and Nationalism*, 22. These townships were initially granted under the American leader and associates system, in which wealthy British "leaders" received massive grants. J. I. Little, *Loyalties in Conflict : A Canadian Borderland War and Rebellion, 1812-1840*, Canadian Social History Series (Toronto : University of Toronto Press, c2008., 2008), 5.; J. I Little, "Contested Land: Squatters and Agents in the Eastern Townships of Lower Canada.," *Canadian Historical Review* 80, no. 3 (1999): 388.
[53] Joseph Bouchette and W. J. Bennett, *A Topographical Description of the Province of Lower Canada : With Remarks upon Upper Canada, and on the Relative Connexion of Both Provinces with the United States of America* (London : Printed for the author and published by W. Faden, 1831), 13.
[54] In an 1801 report, Attorney General Jonathan Sewell argued that the seigneurial system continued in Lower Canada "to the injury both of Government and it subjects." Abolishing the system in total "would be folly in the extreme," but a progressive abolition, not the maintenance of plural tenure, would ultimately "unite the English and Canadian character." "Report of the Attorney General," 1801, Arthur G. Sir Doughty and Shortt, Adam, *Documents Relating to the Constitutional History of Canada, 1791-1818,* (Ottawa : Printed by C.H. Parmelee, Printer to the King's Most Excellent Majesty, 1914), 264–65. The 1825 Canada Tenures Act made it possible for seigneurial property to be converted into free and common soccage, but very few seigneurs actually attempted a complex and costly commutation of tenure. Doughty, Arthur G., *Documents Relating to the Constitutional History of Canada, 1819-1828* (Ottawa: J.O. Patenaude, 1935), 291–92.

system, they sought to reform it by checking the power of seigneurs.[55] Yet in the aftermath of the rebellions, ending seigneurialism became a priority for British administrators in Lower Canada. In 1840, the British re-unified Upper and Lower Canada and established a single parliament as part of a process of an attempted Anglicization of Francophone inhabitants. The next year, the Legislature established a commission to investigate seigneurial tenure, and to develop "the most proper and equitable means of effecting, by Law, a commutation" of seigneurial tenure as a whole.[56] As Brian Young notes, ending seigneurialism was part of a major effort to seize centralized control over Lower Canada, effected through an increase in "the formal regulation of local public affairs."[57]

In their 1843 report, the commissioners framed seigneurial tenure not as a flexible system that could be reformed, but an inherently "vicious" system under which the "exorbitant pretensions of the seigniors, at the present day, are just and founded in law." They concluded that "a change or modification of the law in respect of the tenure of land can no longer with safety be withheld," and moreover, that such a change would be in the best interests of censitaires, whether or not they advocated for such an outcome: "the necessary result would be the emancipation of a people, and their advancement in all the arts of civilized life."[58] Shaken by the spectre of Francophone rebellion, British officials saw land tenure in a new light. Incorporating Francophone residents and making them "British" could no longer be done through land tenure pluralism and the continuation of seigneurialism. Now, British-style land tenure was necessary to assimilate this foreign population.

Ending seigneurial tenure was still a dauntingly complicated process, even for the newly centralized administrative government who now possessed the political will to do so. Eleven years later, in 1854, the Legislative Assembly passed an Act that laid out a plan for replacing it with "a free tenure," but not before determining "fair compensation" both to the censitaire, and to the seigneur, "for every lucrative right which is now legally his, and which he will lose by such abolition."[59] The first step of this process was valuation: the Act appointed yet more commissioners, and charged them with the considerable administrative task of locating, measuring, and determining a discreet monetary value for every one of the land rights attached to seigneurial tenure, from the privilege of grinding grain at a seigneur's mill to the annual rents paid to the seigneur for each concession. After every concession was assigned a number, and every land right as monetary value seigneurs and censitaires could convert their tracts into freehold tenure.

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[55] Greer, *The Patriots and the People,* 263–68, 271–93, 357.
[56] Canada, *Journals of the Legislative Assembly of the Province of Canada from the 14th Day of June to the 18th Day of September, in the Year of Our Lord 1841 and in the 4th & 5th Years of the Reign of … Queen Victoria : Being the First Session of the First Provincial Parliament of Canada*, (Kingston: Desbarats & Cary, 1842), 513–14.
[57] J.I. Little, *State and Society in Transition: The Politics of Institutional Reform in the Eastern Townships, 1838-1852* (Montreal, Kingston: McGill-Queen's Press, 1997), 3; Brian J Young, *The Politics of Codification: The Lower Canadian Civil Code of 1866* (Montreal: McGill-Queen's University Press for the Osgoode Society for Canadian Legal History, 1994), 56."
[58] William Bennett Munro, *Documents Relating to the Seigniorial Tenure in Canada, 1598-1854* (Toronto : The Champlain Society, 1908), 326, 352–55, 348; Tom Johnson, "In a Manner of Speaking: Towards a Reconstitution of Property in Mid-Nineteenth Century Quebec," *McGill Law Journal* 32 (1987 1986): 636–72.
[59] Canada, *An Act for the Abolition of Feudal Rights and Duties in Lower Canada. 18 Vict. Cap. 3* (Quebec : printed by Stewart Derbishire & George Desbarats, 1854), 10.

But there could be no straightforward translation of reciprocal social obligations into financial language. As Benoit Grenier argues, commutation was a transformation that awarded seigneurs far more compensation than they had ever been entitled to under seigneuralism. In particular, commutation transformed the parts of the seigneury still unconceded to tenants into land owned by the seigneur in freehold tenure. Yet unconceded domain was in no way the seigneur's property: he was obligated to concede it to tenants. The seigneur was also to be compensated by the government for the other seigneurial rights he lost, with the exception of the value of the land rights conceded to censitaires.[60] This was a huge gift to seigneurs: both of land now held in fee simple tenure, and in compensation for land "lost."

The staggering difficulty and expense of the process reveals the determination of state officials, by the 1850s, to effect this transition. Yet the transformation remained incomplete. Despite the comprehensive valuation of all seigneurial rights, the lives and land tenures of many censitaires changed very little. As for the censitaires, they were compensated much less generously, through a process that essentially made seigneurial commutation voluntary, not compulsory. Censitaires could purchase the rights to their lands in fee simple tenure by paying the capital of their rents. Or, they could continue to pay an annual royalty payment, or *rente constituée,* on that capital to the seigneur, in perpetuity. Lacking the funds to pay a capital roughly equivalent to seventeen years of rent, the vast majority of censitaires chose to continue paying rent to their seigneurs, long past the 1850s valuations of their seigneuries.

In fact, they continued to pay rent well into the twentieth century, and they did so on November 11, or St. Martin's Day, performing a feudal custom that reached back centuries. In the 1930s, the provincial government attempted commutation a second time. But this time, they eased the financial burden, and made the process compulsory. The government secured a loan to pay off all final *rentes constituées*, and required censitaires to pay off their royalties to their municipalities through a forty-year property tax. Tenants last paid rent directly to a seigneur in the winter of 1940, and completed their payments to municipalities in 1970, only then finally bringing seigneurialism to an end, one hundred and sixteen years after commutation began in earnest.[61]

The persistence of seigneurial land tenure in British Quebec for more than two centuries dramatically reveals the drawn-out complexities of land tenure transition. Imperial sovereignty transition was no "scratch of a pen" but a protracted process of balancing multiple populations. In the minds of officials, land tenure was a key element of the management of those populations. However, it was not a straightforward matter of assimilating Francophone subjects through enforcing their participation in Anglophone institutions like fee simple tenure. Maintaining and even formalizing plural land tenure was a crucial element of successfully ruling Francophone subjects. The replacement of that perspective with a strong desire for consistently fee-simple British tenure emerged nearly a century after the British assumed rule, and only after changes in governing structure made it seem possible and the cataclysm of rebellion gave it an immediacy.

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[60] Benoit Grenier, "Les persistances de la propriété seigneuriale au Québec," *Histoire & Sociétés Rurales* 40, no. 2 (2013): 66–69.

[61] Grenier, "Les persistances de la propriété seigneuriale au Québec," 78. Benoit Grenier notes more than 60,000 censitaires paying rent in 1928. Noël, *The Christie Seigneuries*, 92, 132.

British administrators sought centralized mastery over a Francophone territory through surveying, mapping, and administrating the tenures of the province, first as plural, and then, in attempting to achieve a singular form of land tenure. Yet acquiring knowledge about the territory did not result in gaining control. The major surveys of the 1760s brought a humbling hesitancy to British intentions to effect change over the complex land tenures that the majority of the province's population continued to practice. Then, at the demands of other settlers, they created plural tenure alongside it. Even the valuation of the seigneurial system of the 1850s, while comprehensive, was not enough to alter seigneurial practices. Thus, provincial authorities found themselves repeating the laborious process of valuation seigneurial tenure *again* in the 1930s. Though approached on each occasion as a final and definitive accounting, acquiring knowledge about landholding was an on-going process in colonial rule repeated at great cost and effort.

Most of all, the process reveals how land tenure transition was an on-going process of negotiation among multiple groups. Such negotiations not only took the form of petitions, protests, and even rebellion, advocating for particular forms of land tenure to be legally created, continued, or reformed in the province, but through practices. Many Francophone residents simply continued to live as censitaires—paying rent on St. Martin's Day, dividing their thin strips of land into even thinner strips to be passed down to their children—and by practicing seigneurialism, they continued it for centuries.

Adapting the Grid in Louisiana, 1803-1897

A little more than a decade after the British formalized Quebec's plural seigneurial and fee simple land tenure in the Constitutional Act, the United States took possession of the vast and ill-defined territory of Louisiana. The 1803 Purchase Treaty specified both that "the inhabitants of the ceded territory shall be incorporated in the Union," and that they "shall be maintained and protected in the free enjoyment of their liberty, property, and the Religion which they profess."[62] British officials in Quebec had confronted a foreign set of land tenure practices, but most land in the former Spanish province of *Luisiana* was already held in fee simple. But while British administrators in Lower Canada found ways to incorporate seigneurial tenure into a fairly flexible township system, the U.S. had a much more coherent and ambitious land tenure system—the Public Land Survey System—that they wished to impose. Yet their achievement of that goal would require nearly a century of negotiation with inhabitants, and significant adjustments to the U.S. system.

As British officials had in Quebec, U.S. federal administrators immediately set about obtaining geographic knowledge about province after the purchase. In the summer of 1803, President Jefferson sent long questionnaires to William C.C. Claiborne, who supervised the transition and became the first territorial governor, and to Daniel Clark, a U.S. consul, requesting information about its boundaries, population, and laws. Both Claiborne and Clarke reported back that the province's geography—physical, political, and legal—was poorly understood. Claiborne found no maps "than can be depended upon," and Clark explained that as a Spanish possession, the province "had scarce any bounds to the NW & were ill defined every where." The status of land

[62] "Louisiana Purchase Treaty; April 30, 1803."

tenure in province was slightly better delineated, in that both titles held "under old French Patents" or "derived from Spanish Grants" were "all held in fee Simple."[63]

The fee simple status of land titles was commensurable to the system that the U.S. hoped to impose, but the particular boundaries of individual landholdings were just as fuzzy as the territorial boundaries. Early French grants, while typically made in fee simple rather than seigneurial tenure, were similarly laid out along rivers in long-lots. Yet the Lower Mississippi Valleys exceedingly alluvial landscape, in which rivers regularly flooded, meandered, and oxbowed until they changed course, posed special challenges for the French long lot system, which imagined that the boundaries of land grants could be drawn perpendicular to the bank of a straight river. In eighteenth-century Louisiana, another French colony struggling to build a settler population, many back boundaries of grants were simply never defined on the ground, relying on a stated convention of a distance of forty arpents.[64]

After Louisiana became a Spanish possession in the 1760s, the Spanish continued the long-lot system, but also authorized the granting of "floating grants," in which claimants were authorized to locate and orient their own grants of land, without reference to a larger cadastral pattern, connection to a baseline or meridian, or even to natural landmarks. Yet describing French and Spanish tenure patterns and policies in Louisiana as "systems" would be overstating the case. Land tenure was casual, and many claims were based on written or even verbal permission from a local commandant. Most landowners held incomplete titles, in that their titles had not received proper imperial sanction, and had not been listed in an official register.[65]

As Clark explained, because of "the Registers being incomplete, & the Maps made by the different Surveyors General having been lost in the fires of 1788 & 1794," obtaining the extent of private land in Louisiana could not be achieved "without calling on each owner to give in an account." This would not only make the process of approving land claims harder, but complicate the process of imposing the PLSS on "public" land. Without knowing where private land was, how could they know where public land was? As Jefferson's eye was already turned toward the development of a slave labor staple crop economy for the territory—inquiring as to "the quantity and general limits of the Lands fit for the culture of Sugar"—quickly knowing what land could be surveyed, subdivided, and sold to planters was paramount.[66]

The U.S. quickly set up a process to have titles translated into U.S. forms. While Secretary of State James Madison instructed Consul Clark to "give the most ample assurances" to Louisiana residents that their rights "will be faithfully maintained," an 1803 Act established a board of three appointed land commissioners. Commissioners were to establish a local office and ask for claimants to bring forth their claims. Then, they would evaluate evidence, take testimony, and

[63] Clarence E. Carter (Ed.), *The Territorial Papers of the United States, IX, Orleans Territory, 1803-1812.* (Washington, D.C.: United States Government Print. Office, 1940), 3-34.
[64] James W. Taylor, "Louisiana Land Survey Systems," *The Southwestern Social Science Quarterly* 31, no. 4 (1951): 275–82.
[65] Harry L. Coles, "Applicability of the Public Land System to Louisiana," *The Mississippi Valley Historical Review* 43, no. 1 (1956): 41.
[66] Carter, *Territorial Papers* Vol IX, 34, 19.

submit recommendations for confirmation and denial to Congress for final approval.[67] As Clark had suggested would be the case, determining the status and extent of land titles would essentially require calling on every inhabitant to report on and describe their claim.

Rather than welcoming this swift opportunity to secure titles from the new administration, local reactions to this process were almost immediately indignant. In November of 1805, the brand-new Territory of Orleans House of Representatives petitioned Congress for adjustment to this policy, which they described as flawed due to a "want of local information." As they correctly noted, the official registers and copies of plats and grants that hadn't been lost in the fires had been taken to Pensacola with the Spanish when they withdrew.[68] Their critique stretched beyond the lack of official records. Petitioners argued for leniency in the Land Office's interpretation of their claims. Many French and Spanish titles that claimants might bring before the commissioners, they suggested, might appear incomplete: many claims were lacking finalized plats, official approval, or even the original grants. This, they argued, was inherent to the land tenure customs in the French and Spanish eras. "The former Governments," they explained, "did not consider the vacant lands as a source from which revenue was to be derived, but as a means of increasing the population of the country," thus they had been much less invested in creating complete and clearly official titles that easily commoditized land. Incomplete titles were virtuously rooted in their holders' lack of "a disposition to speculate in lands."[69]

They also argued for the continuation of aspects of the earlier land tenure system, beyond the confirmation of specific grants in fee simple tenure. In particular, they described a Spanish practice of reserving cypress swamps "as a common for the use of the inhabitants," rather than "grant[ing] them to individuals." Now that the United States was in possession of the swamps, the petitioners asked for "a continuance of the indulgent permission to use the timber on these swamps." Yet such a permission was to be more than casual; they sought that "legal provision may be made, securing them in the right of common in such lands." Above all, they argued that land titles should be confirmed based on the spirit of the land tenure regime during which they were granted. Given "the injustice of changing the tenure by which their lands have heretofore been held," the U.S. should not also "make the titles of the citizens of this Territory depend upon conditions not known to them at the time of acquiring their property."[70]

The memorialists spoke from the position of faithful, long-suffering subjects petitioning another empire for local favors, rather than newly enfranchised Americans eager to participate in a democratic political process.[71] Their petition set a tone that would continue remarkably

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[67] Carter, *Territorial Papers* Vol IX, 6; Malcolm J Rohrbough, *The Land Office Business; the Settlement and Administration of American Public Lands, 1789-1837* (New York: Oxford University Press, 1968), 33.; "An Act Erecting Louisiana into Two Territories, and Providing for the Temporary Government Thereof, March 26, 1804," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/2us283.asp.
[68] United States, *American State Papers. Documents, Legislative and Executive, of the Congress of the United States* (Washington: Gales and Seaton, 1858) Public Lands, Volume I, 232-233.; Haas, "Odyssey of a Manuscript Collection: Records of the Surveyor General of Antebellum Louisiana," 18.
[69] United States, *American State Papers,* Public Lands, Volume I, 232-233.
[70] United States, *American State Papers,* Public Lands, Volume III, 101, Volume I, 232-233. Something like a commons in cypress swamps was actually confirmed in Opelousas Parish in 1816.
[71] Peter J. Kastor, "'Motives of Peculiar Urgency': Local Diplomacy in Louisiana, 1803-1821," *The William and Mary Quarterly* 58 (2001): 823.

consistently as the land claims process dragged on for nearly a century. In 1806, the adoption of a supplemental act loosened the 1804 restrictions.[72] Age of claimant, size of claim, and other qualifications were further liberalized in 1807, in 1812, and by a "long series of measures further relaxing and liberalizing the requirements originally set forth," during which, as Paul Gates points out, "the phrase, 'an act for the final adjustment of claims,' was adopted over and over again."[73]

From the beginning of the process, the federal officials who managed this process had been warned about land fraud. Claiborne had written to James Madison in September 1803 that he had "reason to believe that much of the vacant Land in Louisiana, will be covered by fraudulent grants," and Clark concurred, describing how certain Spanish post commandants not only remained in their posts, but were continuing to grant "large tracts of land to their friends and associates, despite lacking the authority to do so."[74] As Coles notes, of the 6,500 or so claims submitted by 1812, commissioners rejected about one quarter of them "because of lack of evidence or suspicion of fraud."[75]

Yet land commissioners also seemed unwilling to take a hard line in general against claims that lacked complete titles. James O. Cosby, commissioner of Land Claims for the territory west of Pearl River, opined that incomplete titles never fully certified by Spanish officials should be confirmed in general, because, had the Louisiana Purchase not happened, such titles "would have been completed." Thousands of claims were confirmed without any Spanish or French titles at all, but merely evidence that "the claimant did actually inhabit and cultivate the land now claimed, on the 20th December, 1803," a statement which commissioners began to insert as rote language in their decisions.[76] The land commissioners who approved claims, the Congresses who gave those claims final confirmation, and the Treasury and Land Office officials who managed the process all approached the petitions of claimants by repeatedly relaxing their own standards and accommodating the demands of claimants. Secretary of the Treasury William Crawford, in a message to Congress in 1818, emphasized that the "long series of acts" devoted to modifying the land claims process showed "an uninterrupted and uniform course of relaxation in favor of land claimants of every description."[77]

The next few decades brought no resolution to the problem. A petition from the Louisiana General Assembly in March of 1820 argued that the Commissioners, having "made their final reports on that subject," left "unconfirmed a considerable mass of private titles," which should have been "fairly entitled to confirmation." The petitioners, who undoubtedly included many land speculators who had purchased private claims, took the liberty of presenting "some leading principles relative to the subject," intending to demonstrate "in a very forcible manner, how few claims would have been really entitled to rejection had they been fairly tested by the liberal spirit of the ancient system." The confirmation process stretched on and on, with District Land Office registers and receivers taking on the roles of the former Land Commissioners. Most claims were

[72] Paul W. Gates, *History of Public Land Law Development.* (Washington: U.S. Government Print Office, 1968), 94.
[73] Gates, 95.
[74] Carter, *Territorial Papers,* Volume IX, 26, 34.
[75] Coles, "Applicability of the Public Land System to Louisiana," 53.
[76] United States, *American State Papers,* Public Lands, Vol III, 62, Vol II, 250-362.
[77] United States, *American State Papers,* Public Lands, Vol III, 348.

settled by 1837, but some, including several large ones held by prominent citizens, remained. In 1844, these claims were given to the U.S. District Courts, and given five years to be resolved. Yet in 1849, "applications for special legislation again began to pour in on Congress" for the confirmation and reevaluation of claims, and the land offices were reopened for more adjudication.[78] The Civil War closed the land offices temporarily, but when they reopened, nearly three hundred claims still remained.

Some of these lingering claims were the consequence of exceptionally persistent claimants and their heirs. But they were also the product of early U.S. efforts to integrate Louisiana in the larger cadastral landscape of the Public Land Survey System. As early as 1805, Secretary of the Treasury Albert Gallatin had ordered Mississippi Territory Surveyor General Isaac Briggs to begin surveying Louisiana. Like approving land claims, Gallatin conceded that surveying would also call for "many deviations from the usual method." In particular, the riverine landscape of the Lower Mississippi Valley rendered the PLSS survey style inefficient and ineffective. The typical process of creating township sections on a grid would, in Gallatin's view, saddle surveyors with "the useless expense of dividing an unsaleable swamp into sections." Instead, Gallatin suggested that Briggs and his deputies focus on "such lands within the alluvial country as may be now inhabited," and survey them "into tracts not exceeding a certain number of acres, but without restrictions of shape, or obligation of surveying the adjacent lands."[79]

After abandoning the principle of a township grid and replacing it with randomly shaped tracts, Gallatin further modified instructions as to how to identify those tracts. Rather than following a meridian south or west, Briggs was directed to "meander the principal streams," applying a hybrid of the American and French systems by "surveying, at the same time," American-style "tracts of one hundred and sixty acres," yet by placing them "on each margin," of the river, and "having as much front, in proportion to their depth, as has been usual in Lower Louisiana." Such adaptations to the survey system—suggested by Gallatin as a response to the geography of Louisiana—mirrored the already extant land tenure patterns in Louisiana.[80]

The problem with directing surveyors to identify only saleable, accessible land—the fertile lands along Louisiana's many rivers and bayous—was that these were also the lands most likely to be already claimed and inhabited. Gallatin instructed Briggs to "inform both the white inhabitants and several small tribes of Indians"… "that the running of such lines will not in the least affect their rightful claims, and that the object is only to ascertain the vacant land, and to connect the whole together."[81] At the same time, administrators realized that surveying public lands couldn't be undertaken correctly until the Land Board finished its approval of private land claims. As U.S. Treasury Secretary George Graham put the problem of Louisiana land titles to Congress in the 1820s, the surveys of public lands "cannot be completed"…"until *all* the private claims are located and surveyed," because the "only salable lands" were "interspersed among" private claims.[82]

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[78] United States, 378-381; Coles, "Applicability of the Public Land System to Louisiana," 53-54.
[79] United States, *American State Papers,* Public Lands, Vol I, 536-537.
[80] United States, 536-537.
[81] United States, 536-537.
[82] United States, *American State Papers,* Public Lands, Vol IV, 32.

Yet as the claims approval process dragged on and on, federal surveyors continued to lay out public land, laying out square townships around the edges of private claims whose boundaries and legal validity remained in dispute. By the 1870s, this created an unusual category of lingering land claims, two hundred and eighty-eight of which were described as "located but unconfirmed." As Louisiana land officials well knew, these claims remained unconfirmed because they were fraudulent, and lacked enough proof to be confirmed. Yet they had essentially been incorporated into official cadastral maps as surveyors tracked public lands around them. In 1874, the Louisiana Surveyor General recommended their confirmation, despite widespread consensus that they were invalid. Finally, in 1897, confirmed them, finally bringing the private land claims process in Louisiana to a close nearly a century after it began.[83]

The confirmation of these fraudulent claims was a measure of the desperation that Louisiana land officials felt to conclude the process. In theory, the process should have been relatively simple, since titles were being converted from French and Spanish fee simple into U.S. fee simple. Yet it had come at the cost of almost a century of wrangling, and only through significant alterations to their own system. Some alterations were geographic. Instead of transforming French littoral patterns into a numbered grid, surveyors adapted their own system by simply adding more sections to each township, with some including as many as one hundred twenty-five sections, rather than the regular thirty-six. Others were legal, as commissioners and even Congress relaxed their standards for claims to the point of knowingly confirming nearly three hundred openly fraudulent claims. The project of acquiring knowledge about Louisiana's land—its boundaries, and what was public and private within it—could not be disentangled from the human relationships created by a century of prior colonization. Completing the translation process was not a matter of forcing claimants to conform, but of adapting their U.S. systems to a local human geography.

Adjudicating Social Boundaries in U.S. California, 1848-1891

After the United States took possession of Mexican California through the 1848 Treaty of Guadalupe Hidalgo, the lessons of Louisiana were on the minds of state and federal officials. When delegates convened in 1849 to author the state's constitution, military governor Bennett Riley advised them to seek guidance from the example of Louisiana in strategizing the incorporation of territory formerly governed by Spanish law. "The situation of California" he wrote, "is almost identical with that of Louisiana." In particular, paying attention to the legacy of Spanish law would be key to safeguarding private property in the new state. Citizens, if they were mindful of their legal legacy, would not "endanger their property and involve themselves in useless and expensive litigation."[84] At the State Constitutional Convention, delegates drew repeatedly on the example of Louisiana in such matters as establishing the size of the new state, deciding whether or not to outlaw slavery, and plotting the transition from a Civil to a Common Law jurisdiction. Importantly, they resolved that property in the new state would be in fee simple

[83] Gates, *History of Public Land Law Development.*, 111; Coles, "Applicability of the Public Land System to Louisiana," 55.
[84] John Ross Browne, *Report of the Debates in the Convention of California, on the Formation of the State Constitution, in September and October, 1849* (Washington, D.C.: J.T. Towers, 1850).

tenure. The constitution was ratified in November 1849, and in September 1850, California was granted statehood by Congress.[85]

Because the treaty had also established terms of peace which allowed "Mexicans now established in territories previously belonging to Mexico" to "continue where they now reside," and to keep "the property which they possess," federal officials sought to construct a process for converting land titles.[86] First, they sought to gather information of the new territory. A "confidential agent," William Carey Jones, was dispatched from Washington via Panama in 1849, with instructions from both the Secretary of the Interior and the Commissioner of the Land Office to report on the nature and status of land titles in California.

After visiting and collecting records in Monterey, San Francisco, Los Angeles, San Diego, Veracruz, and Mexico City, among other places, Jones reported back in 1850. The "minute and exact information" desired by the U.S. as to the nature and limits of all land grants in California, he explained, was "not attainable at all." The central problem, he explained, in determining "what is public domain and what is private property," was "the loose designation of their limits and extent." Neither Spain nor Mexico had employed a "public or authorized surveyor," and "there were never any *surveys* made in the country, during its occupation by either of the former governments." U.S. federal land officials, much like their predecessors in Louisiana, would not be able to rely on public land records as a source for confirming titles. Instead, Jones recommended that "the only way" of settling the grants would be through a commission, which would have to rely on "verbal testimony of occupation and of commonly reputed boundaries" in order to translate titles.[87]

Nevertheless, Jones was optimistic that the process could be achieved "with little difficulty." Undergirding this belief was his sense that Spanish and Mexican grants would be legally commensurable. "The grants in California," he declared, "are mostly *perfect titles;* that is, the holders possess their property by titles, that, under the law which created them, were equivalent to patents from our Government." Even incomplete titles, Jones wrote, "have the same *equity*, as those which are perfect, and were and would have been equally respected under the government which has passed away."[88]

Jones was correct in that Spanish and Mexican titles had been in fee simple. Yet this had also been the case in Louisiana, where it had hardly been able to ward off decades of negotiation.

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[85] Most of the debate about property concerned not the matter of translating Mexican property into U.S. forms in general, but about the expanded ability of women to hold property under Mexican Civil Law. Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California, 1770s to 1880s* (Tucson: University of Arizona Press, 2004), 54, 126; Browne, *Report of the Debates in the Convention of California,* 518.; Lisbeth Haas, *Saints and Citizens: Indigenous Histories of Colonial Missions and Mexican California* (University of California Press, 2014), 181–82.

[86] "Treaty of Guadalupe Hidalgo; February 2, 1848." Article X, which discussed continuation of land tenure more specifically, was drafted and then struck from the final treaty. Proponents of Article X compensated with a "Document of Protocol," which assured Mexico that land titles would be protected. Francois D. Uzes, *Chaining the Land: A History of Surveying in California* (Sacramento, Calif.: Landmark Enterprises, 1977), 147–48.

[87] William Carey Jones, *Report on the Subject of Land Titles in California: Made in Pursuance of Instruction from the Secretary of State and the Secretary of the Interior* (Gideon & Company, printers, 1850), 6, 25-27; Uzes, *Chaining the Land*, 152.

[88] Jones, *Report on the Subject of Land Titles in California*, 38.

Congress took Jones's advice, and established a commission to evaluate land claims in 1851.As in Louisiana, the Act appointed a board of three commissioners, and gave them the power to hold sessions, administer oaths, and examine witnesses. Yet it also designed a process that hoped to avoid prior pitfalls. First, the act dramatically limited the window of time during which claimants could present their cases to two years, rather than the ever-expanding decades of Louisiana claims. And second, the act delegated appeals of the commissioners' decisions not to Congress, but to District Courts. If appealed from there, cases might eventually go to the U.S. Supreme Court. Delegating appeals to the courts, rather than back to Congress, would, in theory, free up Congress from the passing of endless acts adapting the approval process.[89]

The mass of California land titles that the commission evaluated through some eight hundred claims were based on ninety years of Spanish and then Mexican colonization. The first non-indigenous property boundaries were established in California between 1769 and 1823 through the development of twenty-one Spanish Franciscan missions. Alongside military *presidios* and a few *pueblos*, missions were the major thrust of Spanish colonial efforts, focused on converting and mobilizing the forced labor of indigenous Californians. Many of the missions were found on or near existing indigenous villages, imposing a Spanish presence onto long-term indigenous land tenure patterns.

Missions were never intended to be permanent—their designers imagined, eventually, the creation of self-sufficient indigenous *pueblos* at their sites—and their grants reflected this sensibility. Franciscans were essentially granted occupancy and use rights to certain lands, but not full ownership. Nevertheless, the missions came to develop much stronger claims on California land as their economies, based on the forced labor of indigenous neophytes (as mission residents were called). Still, their boundaries tended to be imprecise, having expanded so much that they ended only where another mission claim began.[90] Beginning in 1784, conditional grants of ranchland, called ranchos, were made to Spanish army officers to pasture their stock. Like the mission grants, these too were somewhat limited, consisting of "provisional concessions, cattle-grazing permits" rather than complete titles. They were also limited in number; around only thirty were granted during the Spanish era.[91]

The majority of non-indigenous property made in Alta California came after Mexico's independence from Spain in 1821. In the 1820s, the Mexican government set up a process to further land settlement in Alta California, and in 1828, gave provincial governors the authority to grant lands to both Mexicans and foreigners in their territories. In the 1830s, the secularization of California's missions dramatically increased the number of rancho grants that would eventually

[89] Paul Gates, "The California Land Act of 1851," *California Historical Quarterly* 50, no. 4 (1971): 395, 398, 410–13, 419. As Gates argues, the Land Act was framed by Congressmen "who were familiar with the errors of the past in the adjudication of land claims in Missouri, Illinois, Louisiana, and Florida," motivating them to curtail the temporal and legal avenues through which claims could be disputed.

[90] Robert H Jackson and Edward D Castillo, *Indians, Franciscans, and Spanish Colonization the Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1997), 11–12; W. W Robinson, *Land in California: The Story of Mission Lands, Ranchos, Squatters, Mining Claims, Railroad Grants, Land Scrip, Homesteads* (Berkeley: Univ. of California Press, 1948), 25.

[91] Robinson, *Land in California*, 52–55.

be claimed under U.S. titles, as vast mission tracts were hived off into more than five hundred ranchos mostly distributed to well-connected soldiers and ranchers.[92]

The land patenting system in Mexican California—the process that U.S. commissioners would seek to understand when they confirmed claims—was highly social, local, and allowed grantees a great deal of flexibility in locating and defining their land. Those who sought land in Mexican California had to petition for it. First, a petition was to be sent to the governor, explaining why the land was needed and describing the tract. Frequently, though not always, the petition even included a homemade sketch map, or *diseño*. The governor would forward the petition to a local official who would verify the petitioner's upstanding status in his local community. After this, the governor would issue a formal concession. Next, a local official would place the grantee in "juridical possession" of the grant, by running the lines of the grant's boundaries in the presence of neighboring property owners, who had the opportunity to dispute or approve the grant's boundaries. Finally, all of these documents would be submitted to the territorial legislature for final approval. While this was the process at its most formal, most grants proceeded less rigidly, open to interpretation by frequently changing governors, and often skipping or performing steps out of order.[93]

The ritual of juridical possession—undertaken after the government had received local information on the worthiness of the grantee and the availability of the grant—typifies this locally oriented and communally sanctioned system of property.[94] A juridical possession was essentially a community endeavor of witnessing an individual's taking possession. Juridical possessions not only engaged neighbors as legal witnesses, but as neighboring proprietors. Because they entailed running the boundaries of the land and establishing that no boundary conflicts existed, neighbors had to agree to the tract's location. Such tracts were located by metes and bounds, and thus properties were locatable in terms of their relationship to other properties. Property was not only created through a process of local knowledge—both knowing and being known—and the testimony of local authorities, but created as a type of state record that located individual land ownership in the terms of its community placement.

When these claimants brought their titles before the U.S. Land Commissioners, they were appealing to a legal body that had no local familiarity with the status of their land or their community standing, and government that hoped to transform this social boundary system into a regularized grid anchored to geographic baselines and meridians. Yet U.S. Land Commissioners nevertheless found it relatively easy to confirm Spanish and Mexican era grants. Of more than eight hundred total claims filed, more than six hundred were confirmed.[95] In a fine-grained analysis of claims made by men and women in Los Angeles county, Chávez-Garcia notes that

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[92] Robinson, 67.
[93] David Hornbeck, "Land Tenure and Rancho Expansion in Alta California, 1784-1846," *Journal of Historical Geography* 4, no. 4 (1978): 379–80.
[94] David Hornbeck, "The Patenting of California's Private Land Claims, 1851-1885," *Geographical Review* 69, no. 4 (1979): 438.
[95] Robinson, *Land in California*, 106; Ogden Hoffman, *Reports of Land Cases Determined in the United States District Court for the Northern District of California: June Term, 1853 to June Term, 1858, Inclusive* (N. Hubert, 1862); J. N. Bowman, "Weights and Measures of Provincial California," *California Historical Society Quarterly* 30, no. 4 (1951): 315–38. Robinson cites Judge Ogden Hoffman's 1862 report, which states 848 total claims, while Hoffman lists 813 cases, and J.N. Bowman counts 809 cases before the board.

the board and courts were sympathetic to men and women from various backgrounds. Moreover, they often "ruled favorably even when boundaries remained unclear, title papers had been lost, and grants had been made only days prior to the July 7, 1846 deadline."[96] This leniency echoed the success of earlier Louisiana grants in some ways, but it was not at the behest of almost constant petitions from claimants to Congress. Instead, it stemmed from the structure of the process and the evidence available to commissioners.

Mexican grants were held in fee simple, and those that had been made in more conditional forms in the Spanish era had mostly been formalized as Mexican fee simple titles by the 1840s. Moreover, Mexican land regulations had emphasized occupation, cultivation, and improvement of land as evidence of ownership, values that U.S. officials found easy to understand. Thus, the evidence proffered in land grants often emphasized these factors. They did so in a context in which there were no official land surveys to compare claimants' statements of their boundaries against. Indeed, the thorniest element of confirming land claims—determining exact physical boundaries as determined by surveys—was removed almost entirely from the process, since surveys in the formal U.S. style were almost universally missing. Thus, there were no examinations of surveys and their discrepancies for commissioners to examine.[97]

Diseños, instead, tended to reveal the social relationships of claimants with their neighbors, and their grasp of the natural resources of their claims, buttressing their claims of occupation and improvement. Without an official record to compare claims to, Land Commissioners instead turned to the testimony of local witnesses, who attested to the industriousness and good character of claimants. This structure, which echoed the Mexican land granting process, was already inherent in originating Mexican-era titles, and not necessarily difficult for claimants to reproduce in front of U.S officials. Claimants were, in some cases, able to produce witnesses in U.S. court who had acted as witnesses in their original taking possession in the 1840s.

The Land Board heard its first claims in January 1852 in San Francisco, and completed its work in March 1856. This was a dramatically reduced window of claims from that of Louisiana's. Congress still made minor adjustments; in particular it expanded the original three-year term to five years.[98] Yet while the Commission completed its work quickly, the process still stretched on for decades. Congress had designated the court system, rather than themselves, as the site of appeals, hoping to curtail a lengthy process. But the U.S. Attorney decided to appeal almost every case that Commissioners confirmed in District Court. This dragged even easily confirmed cases into several more decades of litigation.[99]

Most of the claims that were appealed to District Court, and even the few that migrated up the chain to the Supreme Court, were reconfirmed. Yet the years of litigation required to confirm a title imposed significant lags in actually obtaining a U.S. patent to the land claimed. Robinson estimates a seventeen-year average delay in obtaining a patent.[100] This imposed a significant

[96] Chávez-García, *Negotiating Conquest*, 127.; Robinson, *Land in California*, 105.
[97] Crisostomo N Perez, *Land Grants in Alta California* (Rancho Cordova, CA: Landmark Enterprises, 1996), 13; Bowman, "Weights and Measures of Provincial California."
[98] Gates, "The California Land Act of 1851," 420–21; Robinson, *Land in California*, 103.
[99] Hornbeck, "The Patenting of California's Private Land Claims, 1851-1885," 440.
[100] Robinson, *Land in California*, 106.

financial and administrative burden on claimants. Though they were not technically required to, most claimants hired lawyers to present their claims, evidenced by the growth of San Francisco law firms in the 1850s which advertised their specialization in Spanish and Mexican titles. Some claimants mortgaged their lands or sold interests in them to lawyers in order to support their claims.[101] Chávez-Garcia notes that "nearly half (46%) of the original owners in the Los Angeles area went bankrupt in the process."[102]

The cost of litigation a heavy burden for many claimants. Yet the delay in obtaining a confirmed patent also contributed to bankruptcy and land loss, because the value of California land was dramatically changing. State actions played a role in this transition, as new property taxes imposed unworkable burdens on landowners who possessed thousands of acres but had little cash on hand. Meanwhile, as California's economy shifted from cattle ranching to other forms of agriculture and resource extraction, the primary use of most Mexican land grants—grazing—was no longer an economically viable use of so much land. Most of all, the dramatic influx of people into California, whose population jumped from 14,000 in 1848 to over 100,000 by 1850, changed the demand for and value of land as a commodity.[103] Many rancho owners found themselves still waiting for complete titles, but drowning under property taxes and legal costs as the cattle market collapsed. Many sold their land, often at rates well below market values due to their lack of complete titles, to American settlers and increasingly, land developers, who had the financial resources to pursue land claims through multiple appeals. Others lost theirs at sheriff's sales.[104]

The loss of claimants' land during the relatively short claims approval process—especially when compared to processes in Quebec and Louisiana— suggests a different conclusion about the challenges and consequences of altering a system of land tenure. In California, commensurability wasn't the most pressing issue in approving Mexican land claims; the land board and the courts found it relatively easy to translate and approve these titles into U.S. fee simple, replicating the social sanction of the Mexican property system with the social structure of court testimony and witnesses. Yet the meaning of property changed dramatically, spurred by California's conquest and population explosion. Claimants held the same legal rights and the same geographically communicable boundaries under U.S. law. But holding onto that land while it swiftly transformed into a wildly valuable commodity proved unattainable for many. In California, U.S. officials incorporated the land tenure patterns created by Spanish and Mexican land grants into the U.S. cadastral grid, but they did not successfully incorporate much of that population as property owners.

[101] Robinson, 218, 103.
[102] Chávez-García, *Negotiating Conquest*, 125.
[103] Hornbeck, "The Patenting of California's Private Land Claims, 1851-1885," 437–38.
[104] Hornbeck, 440; Chávez-García, *Negotiating Conquest*, 123.

Conclusion

The relationship between state governance and land tenure has been articulated, most famously, by the anthropologist James C. Scott. In *Seeing Like a State*, his paradigmatic work on cadastral mapping, Scott argues that the "administrative goal toward which all modern states aspire is to measure, codify, and simplify land tenure." The achievement of such a system, Scott argues, "required a large, costly, long-term campaign against determined resistance," but was one in which the state's adoption of a coherent, centralized system "ultimately prevailed." The achievement of such uniformity came at the expense of "local practices of measurement and landholding" and the destruction of "local power and autonomy," instead codifying a "static and myopic view of land tenure" in which official maps claimed a coherence and control that deviated from the messy reality of conditions on the ground.[105]

These three linked case studies of land tenure transition can do much to qualify and refine Scott's influential account as it applies to a North American context. The case of British Quebec's acceptance and formalization of plural land tenure provides a counter-example to the premise that singular land tenure was the preeminent desire of ruling states. British rulers in Quebec, and also U.S. regimes in Louisiana and California, balanced their desire for coherent land tenure with other concerns, namely those of incorporating foreign populations and following the directives of international treaties. Scott describes the imposition of land tenure as a struggle against local resistance, but in these parts of North America, it was a regional negotiation over the legal legacies of previous empires, not an opposition between the messy local and a centralizing state.

The land tenure flexibility employed by the British in 1763 had diminished by the mid nineteenth century, when all three locations—Quebec, Louisiana, and California—were attempting to impose a single form of land tenure on their territories. By the end of the nineteenth century, North American states did desire, above other considerations, to resolve private land claims and establish coherent land tenure in a way that their eighteenth-century imperial predecessors clearly had not. What explains this change? Surely, more than an abstract desire to become modern, or an authoritarian desire to consolidate and centralize power. In the cases presented here, the achievement of coherent land tenure came through a protracted and consuming process of social negotiation with former imperial subjects. Such processes originated not with the states that desired coherence, but with the treaty-mandated premise of protecting imperial property. It was only through decades of administrative pain and bureaucratic effort of these negotiations that states began to prioritize the conclusion of these processes over other considerations.

Across the continent, these lingering imperial land tenure irregularities join the other major deviation from regularized "modern" cadastral landscapes: the reservations and reserves of indigenous land created by federal treaties. These reservations are less prevalent in areas incorporated through imperial cessions, because the U.S. and Canada largely neglected to make treaties and create reservations in these places. Do imperial cadastral irregularities—as much as they mirror the pre-existing indigenous land tenures they were imposed upon—mask the deeper history indigenous contestation and persistence? Perhaps from a bird's-eye view. But even a cursory glance over the records generated by the struggle of imperial transition reveals that indigenous land continued to be a major location of contention in transitional claims processes.

[105] Scott, *Seeing like a State*, 23–48.

Indigenous territorial claims not only persisted beyond French and Spanish imperial conquest and into Anglophone acquisition of those places. They were profoundly entangled with imperial land tenures in ways that Anglophone administrators could not easily extricate.

The negotiations over indigenous property claims within regions of imperial transition make up the rest of this dissertation. The next three chapters nestle as stories within the story of contested and adaptive translation in general laid out thus far. But the following accounts of indigenous legal creativity and persistence do more than explore one aspect of the larger story of imperial transition. Together, they serve as an ideal limiting case, revealing the outer limits of U.S. and Canadian property flexibility. Anglophone administrators loved property so much that they were willing, even eager, to approve the foreign property formations held under other empires. At the same time, they increasingly framed indigenous peoples as incapable of owning property. These hardening racial conceptions were central to settler state justifications for their increasing appropriations of indigenous land. And yet, as this dissertation will demonstrate, indigenous peoples were able to defend territory as property through imperial transitional processes. They fully illuminate the paradoxes of imperial property transition in general.

CHAPTER TWO:

Abenaki Proprietorship in the St. Lawrence River Valley, 1763-1860

Among all the indigenous communities in this study, the Abenaki peoples who lived at Odanak used the complexities of imperial property transition most successfully. Odanak, a village on the Saint-François river in Quebec's St. Lawrence River Valley, had been the site of a French Jesuit mission since 1700. After 1760, Abenakis exploited the continuation of seigneurial tenure in order to maintain control of their lands at Odanak. But they did not simply rely on a French legal status that they possessed before 1760. During the French era, their lands had technically been part of the larger seigneurial system. But also true to French property practices, which were casual and multi-layered, the exact status and function of Abenaki property had never been clarified. It was only after British conquest that Abenakis explicitly solidified their status as the collective proprietors of Odanak.

This chapter charts Abenaki efforts to transform their Jesuit mission village into a seigneury in the century after British conquest. They were exceedingly successful in doing so. Abenakis granted leaseholds and collected rents from settler and indigenous tenants for decades. They used collective revenue to support community projects, and they managed their properties in ways that bolstered chiefly authority and protected their territorial boundaries. The general extension of seigneurialism in British Quebec created the conditions under which Abenakis could begin to articulate their status as proprietors. But it was the quotidian daily practices of property management—appointing attorneys to manage their land, making leases, ordering surveys, collecting rents, and pursuing back rents in courts—that cumulatively transformed Abenakis into seigneurs and enabled them to maintain that status for nearly a century. In fact, Abenakis even expanded their seigneurial holdings beyond the lands they held at Odanak, which had long been integrated into the French land tenure system. After they were granted a portion of land in a British township in 1805, they managed to convert those freehold lots into a *de facto* seigneury by granting them to settler tenants. Through the legal practices of seigneurial property, Abenakis effectively transformed a British township into a French-style seigneury.

Abenakis pursued these French property practices in response to new challenges brought on by British conquest. Increasing encroachment onto their territories by loyalist settlers, coupled with ineffective Indian policies, pushed them towards property practices to defend their lands. This chapter positions property management within this larger context of British Indian policy and diplomacy. It illuminates the constrained circumstances under which Abenakis pursued proprietorship, as part of a larger array of strategies for defending both territory and authority. It also grapples with the contradictions of British Indian and property policies in Lower Canada. British administrators began their rule over Lower Canada by attempting to segregate indigenous territory and settler property as discreet administrative categories. But at the same time, their repeated failures to decisively clarify the status of Abenaki territories in Lower Canada nearly guaranteed that the legal boundaries they created would be transgressed.

British Land Policies and Indigenous Nations in Lower Canada

The British clearly attempted to separate settler and indigenous land as discreet administrative categories throughout their territories. The Articles of Capitulation signed at the Camp of Montreal in September 1760 guaranteed property protections to the French settler inhabitants of the indigenous territories of the St. Lawrence River Valley, colonized by the French since the early seventeenth century. Colonists would be "preserved in the possession of their houses, goods, effects, and privileges."[1] Separately, the Articles also decreed that the indigenous allies who had fought alongside the French, "shall be maintained in the Lands they inhabit," reflecting the treaty made just a week earlier at Oswegatchie with the allied *Sept Feux* nations of the St. Lawrence River Valley, in which the British agreed to this protection.[2] Both French settlers and indigenous allies of France were to have their land respected, but the Articles signaled that these two categories of landholding—property and territory—were to be managed separately.

In 1763, these protections were further bifurcated into different documents. The Treaty of Paris, signed in France in February, specified in Article IV that "French inhabitants" or other "subjects of the Most Christian King in Canada" could "retire with all safety and freedom wherever they shall think proper, and may sell their estates, provided it be to the subjects of his Brittanick Majesty."[3] Despite the key military roles that indigenous allies played on both sides of the conflict, whether as allies in victories or pacified enemies in defeat, their territories were not mentioned at all.[4]

The Royal Proclamation, published in October of the same year, addressed the question of indigenous land. The Proclamation established a line, located roughly at the Appalachian mountains, and designated the territory west of that line as indigenous. But at the same time, the Proclamation also specified the process through which indigenous land could become settler property: only through transactions with the Crown itself. The Proclamation restricted the ability of any "private Person" to purchase "any Lands reserved to the said Indians" not yet "ceded to or purchased" by the Crown.[5] The prohibition on private settler purchases of indigenous land applied to all British territories, not just areas west of the line itself.[6] In places like Lower

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[1] Arthur G. Sir Doughty and Adam Shortt, *Documents Relating to the Constitutional History of Canada, 1759-1791*, (Ottawa : S.E. Dawson, printer to the King, 1907), 6, 27.
[2] Doughty and Shortt, 6, 27; Alain Beaulieu, *La Question Des Terres Autochtones Au Québec, 1760-1860*, 58; Jean-Pierre Sawaya, *La fédération des Sept Feux de la vallée du Saint-Laurent: XVIIe au XIXe siècle* (Sillery, Québec: Septentrion, 1998); Denys Delâge and Jean-Pierre Sawaya, *Les traités des sept-feux avec les Britanniques: droits et pièges d'un héritage colonial au Québec* (Montréal: Septentrion, 2001), 49–50.
[3] "Treaty of Paris, 1763," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/18th_century/paris763.asp.
[4] French allies included, in the St. Lawrence Valley, Haudenosaunee, Abenakis, Wendats, Nipissings, and Algonquins, in the *pays d'en haut*, Ottawa, Ojibwas, Missisaugas, Menominees, Potawatomis, Winnebagos, Sauks ad Foxes, and in the Ohio Country, western Delawares, Shawnees, and others. Christian Ayne Crouch, *Nobility Lost: French and Canadian Martial Cultures, Indians, and the End of New France*, (Ithaca, NY: Cornell University Press, 2014), 2; Colin G. Calloway, *The Scratch of a Pen : 1763 and the Transformation of North America* (Oxford, England; New York: Oxford University Press, 2006), 49.
[5] "The Royal Proclamation, October 7, 1763," The Avalon Project at the Yale Law School, 2008, http://Avalon.law.yale.edu/18th_century/proc1763.asp.
[6] Brian Slattery, "The Hidden Constitution: Aboriginal Rights in Canada," *American Journal of Comparative Law* 32 (1984): 370; Alain Beaulieu, "'An Equitable Right to Be Compensated': The Dispossession of the Aboriginal

Canada, settlers were prohibited from directly purchasing indigenous land. Yet at the same time that it issued this blanket proclamation, the British Crown did not make clear what lands, exactly, it considered indigenous territories in Lower Canada. Nor did they take additional steps to clarify those boundaries through land cession treaties. In what is now the province of Quebec, the British and their Canadian successors did not pursue any treaties with indigenous peoples between 1763 and 1975. In the St. Lawrence River Valley, they have yet to make any.[7]

The British declined to conduct land cession treaties because of their understanding of French colonial history. The *Sept Feux* nations of the St. Lawrence Valley who had their land protected in the 1760 Treaty of Oswegatchie were those that the French had referred to as *reductions* or as "*sauvages domiciliés."*[8] These nations largely lived in Catholic mission communities near the French colonial center, including, by the 1760s, the Hurons/Wendats at Wendake (Jeune Lorette), Abenakis and Sokokis at Odanak (Saint-François) and Wolinak (Becancour), Pointe-du-Lac Algonquins, Mohawks at Kahnawake (Sault-Saint-Louis), Haudenosaunee, Algonquins and Nipissings at Kanehsatake (Lac-des-Deux-Montagnes), Haudenosauee at Akwesasne (Saint-Régis), and Haudenosaunee at Oswegatchie (La Présentation).[9]

Most of these peoples had begun to move in the St. Lawrence River Valley in the second half of the seventeenth century, fleeing British colonial warfare in New England or inter-tribal conflict to the west, and seeking trade opportunities. Through Jesuit missionization, they were integrated into the province's nascent property regime, when French authorities bestowed land grants to these mission villages. As Alain Beaulieu argues, British authorities assumed that their involvement with the French had resulted in the extinguishment of their territorial claims, and that "their rights were limited to land granted to them by the French."[10] Making treaties would not be necessary, because questions of indigenous land had already been long settled.

The *Sept Feux* nations did not share this view. The overlay of French property over their own land tenure systems, and their involvement in French missions, trade, and military activity, had not meant the extinguishment of their own territorial claims. After more than a century of colonial disruption and war, many were now settled on what had formerly been their hunting territories or borderland peripheries. They made it clear that they understood the lands to be their own, to be used, managed, and distributed among their populations as they saw fit. Moreover, they clearly understood their territorial rights as much larger than the areas of French mission

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Peoples of Quebec and the Emergence of a New Legal Rationale (1760–1860)," *The Canadian Historical Review* 94, no. 1 (2013): 2. Both Slattery and Beaulieu see the Proclamation as applying to Lower Canada.

[7] Indigenous and Northern Affairs Canada, "Pre-1975 Treaties Map in Quebec," June 21, 2013, http://www.aadnc-aandc.gc.ca/eng/1371839059738/1371839094711. The exceptions are Peace and Friendship treaties made with Micmac, Mi'gmaq, and Malecite from 1725 to 1779, and the 1905 treaty made with the Abitibiwinni signatories of Treaty #9 in 1905.; Slattery, "Hidden Constitution," 372.

[8] Marc Jetten, *Enclaves Amérindiennes: Les "Réductions" Du Canada, 1637-1701*, (Sillery, Québec: Septentrion, 1994); Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, (Cambridge ; New York, NY: Cambridge University Press, 2017), 182.

[9] Gilles Havard, "'Protection' and 'Unequal Alliance' The French Conception of Sovereignty over Indians in New France," in Robert Englebert and Guillaume Teasdale, *French and Indians in the Heart of North America, 1630-1815* (Michigan State University Press, 2013), 114.

[10] Beaulieu, "'An Equitable Right to Be Compensated,'" 8.

grants where they had villages. They continued to move across, hunt, fish, cultivate, and forage on and beyond French seigneurial property in the St. Lawrence Valley.[11]

French law and land tenure supported their perspective. French land grants to indigenous mission villages typically did not specify whether the land itself was granted to the missionaries, to the nation, or to a combination of the two. This lack of clarity reflected a more generally casual attitude toward French and indigenous land tenure. Unlike the British, French administrators and proprietors in New France felt no particular compulsion to extinguish indigenous tenure in order to create property. As Greer argues, the French seigneurial system was already "a regime of overlapping claims to land," where "property rights were fragmented and variable" in general. In fact, some may have even seen an indigenous presence within their seigneury as a potential trade benefit rather than a legal problem.[12]

French attitudes toward indigenous land tenure produced decades of legal ambiguity. After 1760, British officials chose not to clarify them. Instead, they relied on a selectively narrow interpretation of the French past, one that allowed them to assume that indigenous territories had been extinguished, and land rights were narrowly confined to mission villages held in trust by Jesuit missionaries. Their attitude toward French settler property after 1760 was equally passive. As discussed in Chapter One, British officials chose to continue French seigneurial tenure in general. This would offer a powerful set of legal tools to indigenous nations in the St. Lawrence Valley as they sought to protect their land from British encroachment.

The British were not the only ones to mobilize particular interpretations of the French past. After 1763, *Sept Feux* nations evoked French legacies and practices as they negotiated their diplomatic relationship with British officials. At the behest of indigenous leaders, French customs and patterns would continue to shape the nature of military alliances and the structure of diplomatic interactions well into nineteenth century.[13] Yet indigenous peoples also manipulated French legacies in the realm of land tenure. A number of indigenous communities used their former status as Jesuit mission villages to gain legal control of these seigneuries as their property.

At Kahnawake, on the south shore of the St. Lawrence River across from Montreal, Mohawks wrested control of the entire seigneury and former Jesuit mission of Sault-Saint Louis. As Dan Rueck and Isabelle Bouchard have demonstrated, they maintained their proprietorship well through the nineteenth century.[14] As Michel Lavoie details, Wendats near Quebec City struggled to maintain proprietorship, and then compensation for the losses of their seigneuries of Sillery

[11] Sawaya, *La fédération des Sept Feux de la vallée du Saint-Laurent*, 23; Greer, *Property and Dispossession*, 152, 179–82.; David Gilles, "La Souplesse et les limites du regime juridique seigneurial colonial: les concessions aux Abenaquis durant le regime français," in Benoît Grenier et al., *Nouveaux regards en histoire seigneuriale au Québec* (Quebec: Septentrion, 2016), 47.
[12] Greer, *Property and Dispossession*, 178, 180."
[13] Crouch, *Nobility Lost*; Colin G. Calloway, *Crown and Calumet : British-Indian Relations, 1783-1815* (Norman: University of Oklahoma Press, 1987).
[14] Daniel Rueck, "Enclosing the Mohawk Commons: A History of Use-Rights, Land-Ownership, and Boundary-Making in Kahnawá:Ke," (PhD Dissertation, McGill University, 2013), 43; Isabelle Bouchard, "Des systèmes politiques en quête de légitimité: terres "seigneuriales", pouvoirs et enjeux locaux dans les communautés autochtones de la vallée du Saint-Laurent (1760-1860)," (PhD Dissertation, Université du Québec à Montréal, 2018).

and Saint-Gabriel with far less success.[15] But among these *Sept Feux* nations, those who were most successful at transforming French property forms were the Abenakis and Sokokis at the long-settled village of Odanak, also the former mission of Saint-François.

Odanak: Abenaki Refugee Village and Jesuit Mission, 1680-1760

Located on the Saint-François river, which flows north into the St. Lawrence near Trois-Rivières, Odanak exists on the margins of a much larger Wabanaki world. Wabanaki peoples are a large group of people who share cultural and linguistic similarities, and often intermarried and traded among one another. Their territories, Wabanakia, stretches from the Atlantic Ocean on the East, and to Lake Champlain at its western border, from St Lawrence River to the north, and the Merrimac River to the South. Despite many periods of confederation and alliance with other First Nations and with European groups, Wabanaki peoples did and do not normally operate as a centralized polity with a hierarchical leadership structure. Political and social organization focused at the level of smaller family bands and villages.[16] This political system, one that worked well to preserve the independence of small groups and allow for alliances to shift over time, would prove to be exceptionally frustrating to French and British colonists who wanted to meet and treat with an equivalent King.

But a decentralized political system did not mean that these inter-related bands did not have a clear sense of where their lands were and who they belonged to. The Abenakis and Sokokis who lived at Odanak in 1760 were Western Abenaki bands who had moved to the northern reaches of their ancestral territories. Their historic lands lie south of the St. Lawrence River to the Vermont-Massachusetts border to the south, and Lake Champlain to the west and the White Mountains to the east.[17] Within this territory, smaller bands inhabited particularly important places, often fertile, flood plains, called intervales, at the junctions of rivers or rivers and lakes. They lived in family groups of fifteen to thirty people, raised crops, and made maple syrup. Hunting territories were also divided by family groups, and families made seasonal movements between planting fields and winter hunting grounds.

Scholars estimate a population of around ten to twelve thousand Western Abenaki people in 1600.[18] After the arrival of French and English colonists, their territories increasingly became a contested borderland between imagined French and English claims. Abenakis were early allies of the French. To the south, they traded, but increasingly fought with the English, and the pressures of colonialism increasingly moved Abenaki families north. In particular, the catastrophic

[15] Michel Lavoie, *C'est ma seigneurie que je réclame: la lutte des Hurons de Lorette pour la seigneurie de Sillery, 1650-1900* (Montréal: Boréal, 2010).
[16] Ian Saxine, *Properties of Empire: Indians, Colonists, and Land Speculators on the New England Frontier* (New York: NYU Press, 2019).
[17] Alice N. Nash, "The Abiding Frontier : Family, Gender and Religion in Wabanaki History, 1600-1763" (PhD Diss., Columbia University, 1997); Colin G. Calloway, *The Western Abenakis of Vermont, 1600-1800 : War, Migration, and the Survival of an Indian People* (Norman: University of Oklahoma Press, 1990); Lisa Tanya Brooks, *The Common Pot : The Recovery of Native Space in the Northeast* (Minneapolis: University of Minnesota Press, 2008).
[18] Calloway, *The Western Abenakis of Vermont, 1600-1800 : War, Migration, and the Survival of an Indian People*, 32–33.

disruptions of King Philip's War, fought in southern New England in the 1670s, pushed many southern Abenaki communities towards places like Odanak. The Sokokis, who lived along the upper Connecticut River from Squakheag (now Northfield, Massachusetts) to Cowasuck, (now Newbury, Vermont), moved northward to Abenaki places like Mississquoi on Lake Champlain and Lake Memphremagog to the east.

By 1700, Odanak was a growing refugee community, taking in hundreds of Western Abenaki families from southern New England.[19] Around the same time, French Jesuit missionaries formalized their establishment of a mission at Odanak, through a series of land grants from neighboring seigneurs. In 1700, the seigneurs of Saint-François conceded "a half league of frontage land" to the mission.[20] The next year, the seigneur of Pierreville made a similar concession of a half league.[21] In the next decade, another few small grants were made, bringing Odanak's landholdings, at least in the eyes of the French authorities, to more than 20,000 acres.[22] These grants hived off portions of two seigneuries to the mission. Yet they did not exactly clarify to whom. The 1700 grant from the seigneurs of Saint-François was given to the "Abenaki and Sokoki Indians and the Reverend Father Jacques Bigot, Missionary of the Company of Jesus," and the Pierreville grant made in 1701 was similarly ambiguous.[23] Were they a gift to the priests, to the Abenaki residents of the mission, or to a combination of both?

Nor did they make clear how land was to be divided within the grants. Were the Abenakis to be the tenants or lords of these lands? The grants did not require Abenakis to pay seigneurial rents. Nor did they require anyone to divide the concession into individual parcels. The only clear requirements were that Abenakis would remain there. The 1700 donation from Saint-François clearly specified that if Abenakis left the place permanently, the grant would revert to its original owners. Moreover, the seigneurs sought to maintain a few rights over the lands they had granted. They reserved the right to build a house near the mission, and to cut firewood and hay on the lands they had donated.[24] In the next few decades, these arrangements seemed to work reasonably well. By mid-century, Odanak's Native population had grown to around one thousand

[19] Calloway, 87–91.
[20] "Acte de concessions de Marguerite Hertel, veuve de Jean Crevier, seigneur de Saint-François, aux Sauvages Abénaquis et Sokokis," 23 August 1700, Greffe Antoine Adhéman, Bobine 4639, CN601, S2, BANQ-VM; Maxime Boily, "Les terres amérindiennes dans le régime seigneurial: les modèles fonciers des missions sédentaires de la Nouvelle-France" (MA Thesis, Université Laval, 2006), 193; Bouchard, "Des systèmes politiques en quête de légitimité," 153; David Gilles, "La souplesse et les limites du regime juridique seigneurial colonial," in Grenier et al., *Nouveaux regards en histoire seigneuriale au Québec*, 51.
[21] "Transaction entre le reverend père Bigot et M. Plagnol, 10 May 1701," Dossier 227, TL20,S2,SS1, BANQ-TR; Bouchard, "Des systèmes politiques en quête de légitimité," 154.
[22] "Acte de transport et abandon par Jacques Bigot à Jacques Raudot," 4 March 1709, CN301,S114, BANQ-VM. A 1709 grant was made for "l'ile Ronde," and a 1712 grant gave them a piece of land known as "le Chenal Tardif." "Acte de concession de Jean-Baptiste-René-Crevier-Descheneaux aux Abénaquis," 29 February 1712, Doc. 207, CN301,S87, BANQ-QC, my translation. All translated archival sources are my translations.
[23] "Acte de concessions de Marguerite Hertel," BANQ-VM; "Transaction entre le reverend père Bigot et M. Plagnol," BANQ-TR.
[24] Gilles, Grenier et al., *Nouveaux regards en histoire seigneuriale au Québec*, 51, 58; Greer, *Property and Dispossession*, 180. Gilles frames these grants in a military context. He argues that rather than paying rents, Abenakis were given land in exchange for military service, in a very traditional feudal mode in which they were seen as vassals to a lord. Greer interprets the 1700 grant as willingly given because of the incentive to develop the fur trade with the Abenakis.

people.[25] Neither the Jesuit missionaries nor Abenakis treated these land grants as if they were seigneurs. The Jesuits did not subdivide the lands and grant concessions to tenants, either Abenaki or settler. Nor did Abenakis seek to assume control of the lands in this way.

Defending Odanak under British "Protection," 1760-1800

During the Seven Years War, Odanak was attacked by British forces and much of the village was burnt. Many Abenaki families dispersed during the war, but in the 1760s, they began to regroup at Odanak. They rebuilt the wooden church that had been burnt in the 1759 raid, and after the death of an important chief in 1762, they appointed two new chiefs in 1768 "according to ancient Custom."[26] They did so as British settlers flooded into northern New England onto Abenaki lands, and Odanak's neighbors also began to put pressure on the nation's holdings.

Yet Odanak's leaders did not immediately turn to the practices and documents of property ownership to seek protection for their lands. Instead, they pursued diplomatic avenues, petitioning British officials, and invoking treaty rights in their defense. In 1764, Odanak chief Joseph-Louis Gill wrote to Governor Haldimand, complaining that Francophone settlers were hunting extensively on their territories. In the petition, he invoked the Royal Proclamation's protection of indigenous lands.[27]

Gill pursued the same diplomatic strategy a few years later, when the seigneur of Saint-François, Joseph Crevier, attempted to re-appropriate the original 1700 grant to the mission. The Jesuits had largely departed from Odanak during and after the war. Crevier seized on this fact in his own series of petitions to the Crown. He argued that because Odanak Abenakis no longer had a priest, they could no longer be considered a mission, and thus could no longer retain possession of their lands. Abenakis again appealed to the provincial government for protection. In response, a priest was dispatched to serve at Odanak.[28] Yet Crevier continued to divide and grant land to settler tenants in portions of his seigneury that came close to or spilled over in the Abenaki portion.

In 1769, governor Guy Carleton issued a proclamation, commanding a long list of individuals to stop disturbing "the Indian nation known as Abenakis," or pay a penalty of a thousand pounds sterling. These people, many of them likely Crevier's tenants, were to stop occupying, cultivating, cutting firewood, or performing other "acts of proprietorship" on the Abenaki lands over which they held "no legitimate authority." Carleton made it clear that settlers had no claim to these lands. But he did not acknowledge Abenaki authority over them either. He described them as the "quiet and peaceable possessors" of the lands, but made clear that they were "living under [British] Protection."[29] Carleton's language signaled the development of a particularly

[25] Barman, *Abenaki Daring*, 21.
[26] Calloway, *The Western Abenakis of Vermont, 1600-1800 : War, Migration, and the Survival of an Indian People*, 183–89.
[27] Isabelle Bouchard, "Des systèmes politiques en quête de légitimité," 78.; Beaulieu, *La Question Des Terres Autochtones Au Québec, 1760-1860,* 58.
[28] Bouchard, 166–67; Thomas-Marie Charland, *Histoire des Abènakis d'Odanak : (1675-1937)* (Pierreville: Societe historique de la region de Pierreville, 1964), 136–38.
[29] Department of Indian Affairs and Northern Development, "Papers relating to Indian Affairs in the Province of Quebec and Lower Canada, 1717-1837," Fonds R216-225-2-E, General operational records from Quebec and Lower

British relations with indigenous nations, one of subservient protection. French relationships had used the language of alliance between nations, but the British sought to impose a new paradigm of guardianship that bolstered British sovereignty over both settlers and indigenous peoples by controlling how they related to one another.[30]

These assertions of British sovereignty through guardianship were not completely unidirectional. Odanak Abenakis had repeatedly petitioned the Crown for assistance.[31] But appealing for protection was not the only strategy that they pursued. In the 1790s, they began to take a series of legal actions to protect their lands, using courts and notarial procedures rather than diplomatic channels to articulate their control over their lands. In the 1790s, the seigneur of Pierreville, the heir of the original grantee who had given land to the mission in 1701, began to contest the boundary between his portion and the Abenaki portion of Pierreville. In 1796, Abenakis entered a process of arbitration with this unfriendly neighbor, hoping to determine a mutually agreed-upon boundary. Before a notary, the two parties agreed to mutually appoint "experts and arbiters" who would determine the exact boundaries based on the original 1701 concession.[32]

The next year, Abenakis appeared in court, again to protect their lands from Pierreville. The seigneur of Pierreville had fallen into insolvency, and portions of his seigneury were being sold off to repay his creditors. Abenakis appeared to defend their portion of Pierreville from becoming a part of those sales. In court, they referenced the arbitration process they had just engaged in, arguing that the land beyond the newly confirmed boundary belonged to them and not to Pierreville's creditors. They also carefully cast themselves as a nation, not a group of individual proprietors. As they explained in court, three chiefs of Odanak as well as several "grand captains," acting "in the name of the nation," had "assembled in council" before undertaking the arbitration process.[33] It had been as a nation that they had authorized this new delineation of their boundary line.

Abenakis prevailed in court in 1797, and their portion of Pierreville delineated in 1796 was exempted from sales to creditors. This legal approach to challenges to their land proved more successful than earlier diplomatic appeals to the Crown for protection. Yet provincial governor Robert Prescott nevertheless decided to involve the Crown in the matter anyway. In 1797, Prescott ordered a Crown surveyor to re-survey the boundary line with Pierreville. The surveyor reported back that he suspected the 1796 arbitration agreement had been made under coercion. Pierreville's seigneur, a man "known in all the courts of this province for his spirit of trickery," had furnished the Abenakis with a barrel of rum and forced a few men to sign, rather than

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Canada, Indian Records, Province of Quebec and Lower Canada, 1717-1842, RG10-A, Volume/box number 1833, Reel C-1223, 39-41, LAC.

[30] Alain Beaulieu, "'Under His Majesty's Protection': The Meaning of the Conquest for the Aboriginal Peoples of Canada," in *The Culture of the Seven Years' War: Empire, Identity, and the Arts in the Eighteenth-Century Atlantic World* (Toronto, Canada: University of Toronto Press, 2014), 99, 103.

[31] Maxime Gohier, "La pratique pétitionnaire des Amérindiens de la vallée du Saint-Laurent sous le Régime britannique: pouvoir, représentation et légitimité (1760-1860)," (Master's Thesis, Université du Québec à Montréal, 2014).

[32] "Copie d'une transaction entrez Srs. F Lemaitre Duaime et les Sauvages Abenaquis & Sokokis" 30 August 1796, "Rapport d'Arbitres nommés par les sauvages de St. Francois" 31 August 1796, P108, Lemaitre dit Duhaime, François Fonds, BAnQ-TR.

[33] "Judgement, John Antill v. Francois Joseph Lemaitre Duhaime," 30 March 1797, P108, Lemaitre dit Duhaime, François Fonds, BAnQ-TR.

gaining the "consent of the Abenaki and Sokokis nations in assembled council." The resulting agreement had deprived them of a "large area" of land. Yet these observations did not lead to clear actions in defense of the Abenakis. The boundaries were re-surveyed, and a map produced with the goal of "render[ing] stable and permanent the possessions of the Indians" in relation to their neighbors.[34] Provincial authorities continued to position themselves as protectors of the Abenakis, people who could only be taken advantage of when they attempted to engage in property negotiations without Crown involvement. Yet beyond the production of a new map, they took no actions to restore the Abenaki lands they claimed had been lost.[35]

For Odanak Abenakis, the 1796 arbitration agreement may have resulted in a land loss. But it also formally delineated their portion of the seigneury as clearly separate from the rest of Pierreville, and in their possession as a nation. And when they successfully represented that process in court in 1797, their collective authority over their lands as a nation was officially recognized and recorded in British legal archives. In 1799, they began to formalize their possession of their portion of Saint-François in the eyes of British authorities. In December 1799, they wrote to the Lieutenant Governor, informing him that they had recently entered into a legal agreement with Joseph Crevier, the seigneur of Saint-Francois. Abenaki leaders reported that Crevier, the "actual seigneur of the land that we occupy," had decided to "cede to them in perpetuity the said land." As they had in court, they emphasized that this transaction had been conducted between Crevier and Abenakis as a nation. It had been made by the "old chiefs, capitains [sic] of the village," as well as their "young people" and their "women."[36]

It is not clear that any actual cession from Crevier—the same seigneur who had been repeatedly encroaching on their territories—ever took place. Nor it is clear that the originating 1700 title to the mission had cast the seigneur of Saint-Francois as the "actual owner" of the lands that Abenakis only "occup[ied]." The original deed had been much more ambiguous. Yet in their letter, Odanak's leaders framed an ambiguous history of contestation over lands as a clearly identified chain of title. Their land had fully belonged to Crevier, and thus he had full authority to cede it to them "in perpetuity." Moreover, he had ceded it to them *as a nation.*

Odanak's leaders sought more than simply the clarification of boundary lines. This new cession from Crevier, they explained, would give them the legal "power to concede" portions of their land to settler tenants. This, too, was a statement in the service of the legal narrative they were constructing. The original 1700 grant had never explicitly prohibited them from granting concessions to settler tenants. Abenakis and their missionaries had simply not chosen to act as seigneurs for nearly a century. But now, they intended to become seigneurs. Moreover, they hoped to do so with Crown-recognized legal authority. They closed their letter by reminding the Lieutenant Governor that they remained "faithful subjects" who lived "entirely under" British

[34] "De Pincier to Major James Green," 7 March 1802, Correspondence of the Military Secretary of the Commander of the Forces Fonds, RG8M 80103/12, "Indians," Volume 254, Reel C-2851, 11-16, LAC.
[35] See Julia Lewandoski, "'The Same Force, Authority, and Effect': Formalizing Native Property and British Plurality in Lower Canada," *Quebec Studies Quebec Studies* Supplemental_Is (2016): 149–70., for a discussion of De Pincier's map and the display of ambiguity.
[36] "Abenakis and Sokokis," December 9, 1799, Correspondence of the Military Secretary of the Commander of the Forces Fonds, RG8M 80103/12, "Indians," Volume 252, Reel C-2850, 361-363, LAC.

"protection."[37] But even as they invoked the guardianship relationship that the British hoped to impose, they clearly articulated their authority over their lands, which they planned to exercise with or without British permission.

British authorities were stymied by this letter. The Lieutenant Governor's secretary, explaining that the Lieutenant Governor was not "vested with any power or control over the affairs of those people," passed the letter on to John Johnson, Superintendent of Indian Affairs.[38] Johnson was skeptical. Much as Prescott had suspected that the 1796 arbitration had been coerced, Johnson similarly speculated that Abenakis had been influenced to do so by "other interested persons as well as the seigneur."[39] Johnson suspected that Abenakis seigneurial aspirations may have been influenced by the actions of other indigenous nations. In particular, he suspected that Abenakis were following the leader of the Mohawk leader Thayendanegea, or Joseph Brant, who had leased and sold land to settlers in Upper Canada after Grand River Mohawks were promised a land deed from the British in 1784.

Of course, Abenakis also had models of seigneurial proprietorship much closer to home. Mohawks at Kahnawá:ke, close to Montreal, had been holding the Seigneury of Sault-Saint-Louis, also a former Jesuit mission, for decades.[40] But Thayendaneagea's legal actions at Grand River had been particularly humiliating for British authorities. By leasing and selling hunting grounds to American land speculators, Thayendaneagea had attempted to create a robust tribal annuity, a source of capital that would bolster Haudenosaunee economic means and authority.[41] British authorities rightly perceived them as a significant threat to their sovereignty over Upper Canada. Allowing Native nations to assume economic control over their lands could provide them with dangerous amounts of power and authority. British leaders justified Crown guardianship by casting Abenakis as vulnerable to legal manipulation, but beneath that belief was the more alarming potential of Native power through legal land control.

Abenaki Seigneurs at Odanak, 1800-1854

Odanak's leaders never received clear permission from Johnson to grant lands to settler tenants. But in January 1800, they took the next steps to becoming seigneurs. The first action they took was to appoint a *procureur* to manage their land and grant concessions to tenants.[42] In Quebec Civil Law, a *procureur* is a legal occupation between an attorney and a delegated agent acting on a person's behalf. Odanak Abenakis appointed Louis Joseph Gamelin Chateauvieux as their "*procureur-géneral et special,*" and charged him with the responsibility of managing the nation's

[37] "Abenakis and Sokokis," December 9, 1799, Correspondence of the Military Secretary of the Commander of the Forces Fonds, RG8M 80103/12, "Indians," Volume 252, Reel C-2850, 361-363, LAC.
[38] "Ryland to James Green," 21 December 1799, Correspondence of the Military Secretary of the Commander of the Forces Fonds, RG8M 80103/12, "Indians," Volume 252, Reel C-2850, 382, LAC.
[39] "Johnson to James Green," 30 December 1799, Correspondence of the Military Secretary of the Commander of the Forces Fonds, RG8M 80103/12, "Indians," Volume 252, Reel C-2850, 390-391, LAC.
[40] Rueck, "Enclosing the Mohawk Commons"; Isabelle Bouchard, "Des systèmes politiques en quête de légitimité."
[41] Alan Taylor, *The Divided Ground: Indians, Settlers and the Northern Borderland of the American Revolution* (New York: Alfred A. Knopf, 2006), 331–65.
[42] Odanak Abenakis and Sokokis had appointed Jean Baptiste D'Estimauville as *procureur* in 1795, but his appointment did not include explicit instructions to make concessions and collect rents.

affairs "in general." Yet the bulk of Gamelin's job was "especially" to "concede the lands" that "belong to the said nation" in "proper form." He was given the power to make concessions, to collect seigneurial rents and dues, and, if necessary, to defend Abenakis in court against their tenants.[43]

Much of the text of this legal appointment was standard boilerplate. In New France, seigneurs had regularly employed *procureurs* to manage the overwhelming bureaucratic work of managing hundreds of tenancies, and this practice continued alongside French Civil Law into the British era. Yet the Abenaki procuration had a few distinctive varieties. They continued to make explicitly clear, as they had in previous legal actions, that they had authorized Gamelin's procuration after having "gathered in Council" together.[44] In that council, they had "consulted with those who have in all of their dish a quantity of land which they cannot cultivate," as well as those who "wanted to make a profit from land"… "for the support of their village and their subsistence." Ultimately, they had come to a "fine agreement" to concede some of their lands to tenants, and authorized Gamelin to do so in their name. The description of council consultations not only reflected a collective decision-making process, but specifically signaled to Abenaki ways of understanding their land. In particular, they described Abenaki landholdings as what members of the community "have in their dish." This invoked a way of referring to territories among peoples in the Northeast as a common dish from which many communities might eat.[45]

Soon after he was appointed, Gamelin began granting concessions of land to tenants.[46] Abenaki concessions were laid out by a local surveyor in traditional French style, in tracts of approximately three arpents along the river, by twenty-eight arpents in depth.[47] Seigneurial rents and dues were standard, as were the privileges reserved for Abenaki seigneurs, such as cutting firewood on tenant lands.[48] Concessions were made before a local notary, and their records were entered into notarial indices. Within these indices, Abenaki concessions appear wholly ordinary

[43] "Procuration par les Abenaquis à Joseph Gamelin, "17 January 1800, Fonds Antoine Robin, C603,S88, microfilm no. 10426, BAnQ-VM.
[44] Françoise Noël, *The Christie Seigneuries Estate Management and Settlement in the Upper Richelieu Valley, 1760-1854* (Montréal, Que.: McGill-Queen's University Press, 1992). For an example of a non-indigenous procuration, see "Procuration par le Sieur John Oakes au Sieur Henry Rousseau," October 7, 1805, Fonds Dumoulin, François-Louis, CN401,S31, Reel 813, No. 661, 1284-85, BAnQ-TR.
[45] "Procuration par les Abenaquis a Joseph Gamelin," BAnQ-VM; Brooks, *The Common Pot : The Recovery of Native Space in the Northeast*, 124. In the original French, the phrase is "au tous de leur Plat."
[46] "Concession par Joseph Gamelin à Simon Guille," February 5, 1801, Fonds Antoine Robin, Avril 1800 à Mars 1801, C603,S88, microfilm no. 10426, BAnQ-VM; Another concession, made in August 1801, granted a neighbouring tract to Francois Louis Gill for an identical rent of nine *livres* and twenty *sols*, "Concession par Joseph Gamelin à Francois Louis Guil," August 18, 1801, Fonds Antoine Robin, Avril 1800 à Mars 1801, C603,S88, microfilm no. 10426, BAnQ-VM.
[47] "Concession par Joseph Gamelin à Jean Baptiste Cartier," January 25, 1806, Fonds Antoine Robin, C603,S88, Reel 10427, #2377, BAnQ-VM.
[48] Isabelle Bouchard, "Des systèmes politiques en quête de légitimité," 170, 171, 306.; "Concession par Augustin Guille, agent, à Jean Marie Joyal, January 15, 1813," doc. 826, Reel 13002, CN603,225, BAnQ-VM; In some cases, Abenakis may have charged more than other seigneurs. A settler concession made in the seigneury of Saint-Francois in 1824 charged only four livres and ten sols for a tract of three arpents and four and a half feet in frontage by thirty arpents in depth, "Concession par Louis Panet à [illegible] Niquette," CN603,S74, Reel 14002, 561-563, BAnQ-VM.

among those made by settlers, with the exception that Gamelin is consistently and clearly identified as acting "in the name of" the "Abenaki and Sokoki Indians."[49]

Gamelin was only the first in a long series of *procureurs* in the nineteenth century, who would grant dozens of concessions to settler tenants.[50] In her study of seigneurialism as Odanak, Isabelle Bouchard has counted fifty-four tenant concessions between 1800 and 1820, and another twenty-five between 1820 and 1854.[51] *Procureurs* were consistently and explicitly appointed to represent an Abenaki nation, not an individual chief. In 1810, when Henry Rousseau replaced Gamelin, the legal action was undertaken in the presence of the "first chief," "second chief," peace chief," two "grand captains," and "a grand chief and war captain," acting on behalf of "all Indians of the nation of Abenakis and Sokokis of the village of Saint-François" to appoint a new *procureur*. The agent was to keep an account book to keep track of concessions, to verify the current status of the conceded "lands of the nation," and, when necessary, to demand the receipt of rents and enforce "other seigneurial rights."[52] As Bouchard notes, in 1834 a *procureur* successful forced a tenant to pay court costs as well as the seigneurial rents he owed to his Odanak seigneurs.[53]

Most *procureurs* had at least peripheral ties to the communities. Gamelin was a local merchant married to Abenaki community member Catherine Annance, as well as a tenant of the Abenakis in a portion of their Saint-François section.[54] Augustin Gill, another long-term *procureur*, was descended from a family of English captives who had been adopted by the Abenaki community in the late seventeenth century, as was his son Louis, who became *procureur* in 1832.[55] Augustin Gill was compensated for his work with land within Odanak's seigneurial boundaries.[56]

Many of Odanak's tenants were also community members. Many Abenaki families held concessions within the larger seigneurial holdings of Odanak. Some concessions suggest that community members may have enjoyed lower rents than outsiders did. For example, an 1810 concession to Cesar Annance specified that "while the title stays in the possession of an Indian of

[49] "Concession par Joseph Gamelin à Francois Louis Guil," August 18, 1801, C603,S88, Fonds Antoine Robin, Avril 1800 à Mars 1801, microfilm no. 10426, BAnQ-VM.
[50] "Procuration par les Sauvages Abenaquis de St. Francois à Augustin Guille," October 28, 1811, Fonds Dumoulin, CN401,S31, Reel 814, pp. 807-811, BAnQ-TR. Bouchard, "Des systèmes politiques en quête de légitimité," 306, 363. The 1810 *procureur,* Henry Rousseau, was replaced by Augustin Guille in 1811. Guille retained his procuration until 1829. After a few short-term procureurs, Louis Gill served as procureur from 1832 to 1855, followed by Joseph Laurent and Charles Cesar Obomsawin into the 1860s.
[51] Bouchard, "Des systèmes politiques en quête de légitimité."
[52] "Procuration par les sauvages abenaquis de St Francois de Henry Rousseau," February 10, 1810, Fonds Dumoulin, François-Louis, CN401, S31, Reel 814, No. 1097, pp. 48-52, BAnQ-TR.
[53] "Sommation par Louis Gill à Louis Boisvert," May 27 1834, CN603,S78, doc. 6493, BAnQ-VM; Bouchard, "Des systèmes politiques en quête de légitimité," 308.
[54] "Concession par le Sieur Joseph Gamelin au nom qu'il agit à Joachim Wawanolet"; "Vente par Joachim Wawanolet au Sieur Joseph Gamelin," 19 October 1805, #663, Fonds Dumoulin, François-Louis, CN401,S31, Reel # 813, pp 1288-1292, BAnQ-TR. Gamelin made a concession to chief Joachim Wawanolet on October 19, 1805, for seigneurial rents of nine *livres* and twenty *sols* in seigneurial rents. Later the same day, Wawanolet sold the concession to Gamelin.
[55] "Procuration par les Sauvages Abenaquis de St. Francois à Augustin Guille," October 28, 1811, Fonds Dumoulin, CN401,S31, Reel 814, pp. 807-811, BAnQ-TR.
[56] "Depot de divers billets," November 16, 1824, Fonds Joseph Badeau(x), CN401,S6, Reel 682, pp. 1144-1145, BAnQ-TR.

the said nation" the rent would be nine livres and twenty sols, but if it "enter[ed] into the hands of any other" the possessors would pay twelve livres instead.[57] At the same time, property documents make clear that seigneurial land was not completely subdivided into individual sections. Notarial acts continued to refer to the *domaine* of the seigneury, using the French term for the portions of a seigneury not conceded to settler tenants. Yet Abenakis also continued to refer to the *domaine* as a *plat*, invoking the "dish with one spoon" to describe the land they continued to share.[58]

Managing Odanak as a seigneury had clear benefits to the community. The seigneurial revenues that both settler and indigenous tenants provided were used collectively. Procurations directed that rents would be put first towards the maintenance and repair of church buildings in the village of Odanak, and then to be used to pay off the community's debts.[59] Sources of revenue were much needed, especially as settlers increasingly occupied Abenaki hunting territories and depleted animal populations, leading to a drop in hunting earnings by the end of the eighteenth century.[60] According to the calculations of the Indian Department in the 1820s, Abenaki seigneurs collected an "average revenue" of "about fifty pounds per annum."[61]

Establishing legal proprietorship became a way for Abenakis to seek other forms of economic development. In 1836, they petitioned for an exclusive license to operate a ferry across the St. Francis River, as "seigniors and proprietors" of the land along the river. Their license was being challenged by a competing settler's ferry, but as they wrote to the governor, they "consider[ed] themselves entitled to hold the ferry on their side of the river to the exclusion of the stranger to their nation" explicitly because they were "proprietors of the land."[62]

Just as importantly, granting leases to tenants helped Abenakis defend their territories from unauthorized settler encroachment. Collecting rents was obviously preferable to allowing squatters to slowly overrun the boundaries of neighboring seigneuries and occupy their lands. Managing tenants was a physical means of defense: they visually established Abenaki boundaries on the landscape with their own fields and fences.[63] But it was also a legal one. Evidence of Abenaki proprietorship, and the precise locations of their tenants, were recorded

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[57] "Concession par Henry Rousseau à Cesar Annance," March 4, 1810, Fonds Dumoulin, François-Louis, CN401, S31, Reel 814, No. 1105, 73-75, BAnQ-TR; "Concession par Joseph Gamelin à Jean Baptiste Cartier," January 25, 1806, C603,S88, Fonds Antoine Robin, Microfilm no. 10427, BAnQ-VM. An 1806 concession to Jean Baptiste Cartier, a "*habitant* of the said Saint Francois," charged twelve livres for a similar tract of three arpents frontage by twenty-eight arpents dept on the river.

[58] "Concession par Augustin Guille procureur," July 2, 1816, Fonds Dumoulin, François-Louis, CN401,S31, Reel 814, pp 2060-2061, BAnQ-TR.

[59] "Procuration par les Sauvages Abenaquis de St. Francois à Augustin Guille," October 28, 1811, Fonds Dumoulin, CN401,S31, Reel 814, 807-811, BAnQ-TR,; "Procuration par les sauvages abénaquis de Saint-François à François Lemaître Duaime," October 10, 1810, CN401,S31,doc. 1166, BAnQ-TR; Bouchard, "Des systèmes politiques en quête de légitimité," 193.

[60] Colin G. Calloway, *The American Revolution in Indian Country : Crisis and Diversity in Native American Communities* (Cambridge; New York: Cambridge University Press, 1995), 79–80; Bouchard, 166.

[61] John Johnson to Colonel Darling, 14 May, 1823, Correspondence of the Military Secretary of the Commander of the Forces, RG8M 80103/12, "Indians," C Volume 269, Reel C-2857, 128, LAC.

[62] "Requête des Abénquis et Socoquis (Socoki), residents dans le village…." November 14, 1836, Fonds Gouverneurs, regime Anglais, Correspondance, R2,S2,P48, BAnQ-QC.

[63] Bouchard, 169.

over and over again in Lower Canada's notarial and court archives, creating an extensive record of Abenaki management of their land.

Over the course of the nineteenth century, property patterns suggest that such encroachment became more intense. Fewer concessions were held by community members, and more were granted to outsiders. By the late 1850s, almost no identifiably Abenaki or Sokoki family names existed among the more than three hundred tenants.[64] And since the 1840s, Abenaki families increasingly began to lease land in neighboring seigneuries.[65] If seigneurial concessions had been granted in order to stave off encroachments, it may have also potentially decreased the amount of land available at Odanak to Abenaki families.

Abenaki Seigneurialism, Diplomacy, and Sources of Authority in Lower Canada

At Odanak, seigneurial proprietorship was an effective way to maintain territorial control, generate community revenue, and bolster local authority. But participating in legal property practices did not cause Abenakis to abandon their longstanding practice of petitioning British authorities for protection and defense. They sent a stream of petitions to a variety of British officials, most protesting settler predations to their territories. One 1815 petition to the Lower Canada's Attorney General requested the appointment of a lawyer to represent Abenakis in a series of "suits against the persons encroaching upon their lands."[66] An 1826 petition asked the Military Secretary to act to stay a sheriff's sale of a lot in the village of Odanak, which an "Indian family has been in the peaceable possession" for "upwards of thirty years."[67]

Abenaki land petitions, variously directed to the Superintendent of Indian Affairs, to governors and lieutenant governors, to the Attorney General, and to military officers, were part of a larger set of relationships with British authorities that involved regular councils and annual presents. Abenakis had been meeting regularly with British officials in councils that followed indigenous diplomatic protocols since the 1760s as part of the *Sept Feux* alliance. Some who had fought with the British in both the American Revolutionary War and the War of 1812, continued to draw military pensions for their service.[68] Annual presents, which continued well into the 1840s,

[64] Henry Judah, "Cadastre des deux parties de la seigneurie de Pierreville, Nos 62 & 63," March 12, 1857, Fonds Ministère des terres et forêts, E21,S105,SS1,SSS1,D48, BAnQ-TR; Henry Judah, "No. 70, cadastre de la partie de la seigneurie de St-François du Lac," March 12, 1858, Fonds Ministère des terres et forêts, E21,S105,SS1,SSS1,D55, BAnQ-TR.

[65] "À la requete de Jonathan Wurtele, pour Louis Degonzague," February 5, 1849, CA601,S17,SS1,D906, No. 2400, BAnQ-VM; "À la requete de Jonathan Wurtele, pour Ignace Portneuf," February 8, 1849, CA601,S17,SS1,D906, No. 2409, BAnQ-VM. A series of 1849 procès-verbals of concession surveys in the seigneury of Rivière David, owned by Jonathan Wurtele, revealed the concessions of Louis Gill, Louis Degonzague, Jean Pakikane, Daniel Annance, Francois DeSalles Obomsawin, David Gill, and Ignace Portneuf.

[66] Correspondence of the Military Secretary of the Commander of the Forces, RG8M 80103/12 "Indians," C-Series, Vol 258, Reel C-2852, 127-128, LAC.

[67] [Duchemay] to Darling, March 11, 1826, Correspondence of the Military Secretary, C-Series, Vol. 266, Reel C-2855, 58-59, LAC.

[68] Gordon M. Day, Michael K. Foster, and William Cowan, *In Search of New England's Native Past : Selected Essays* (Amherst: University of Massachusetts Press, 1998), 209.; Johnson to Darling, November 15, 1826, Correspondence of the Military Secretary, C-Series, Volume 265, Reel C-2855, 110, LAC. One "wounded chief of the Abenaquis Tribe" received "one hundred dollars per annum" until his death in 1826.

despite frequent British hand-wringing about ending the practice, typically included blankets, knives, flints, and most importantly, powder, ball, and shot.[69]

British military officers also visited Odanak regularly, and submitted reports to their superiors in the Indian Department. They were well aware of the community's seigneurial practices. By the 1820s, even Superintendent John Johnson, despite his deep reservations about indigenous proprietorship, conceded that their practices had become a useful means of support. Their seigneurial revenues, "though small," might be "sufficient to keep them from pecuniary want," and thus alleviate the financial burden on the Indian Department. Yet Johnson nevertheless attempted to gain more control over Abenaki proprietorship by appointing an Indian Agent "for the management of [Abenaki] goods and properties."[70] In 1825, Abenaki Chief Ignace Portneuf wrote to Johnson complaining about the agent dispatched to Odanak. According to the "opinion of the assembled council of the nation," the Abenakis had no need for an external agent. They had been appointing *procureurs* for decades. As Portneuf explained, they already had "an agent of our nation who is among us, who knows and manages them, and charges nothing for his work, and who will continuously work for the preservation of our interests."[71] Managing Odanak as a seigneury was never only about generating revenue. It was also an assertion of community, not Indian Department, control over Abenaki lands.

Abenakis also continued to move through their much larger historic territories, hunting game, spending seasons at northern New England intervales, and making it clear that despite French and British expectations, their territories were not confined to Odanak.[72] In fact, the negotiations over land that most preoccupied British officials during the first half of the nineteenth century were not over property at Odanak, but over hunting territories. Just as British settlement began to encroach on Odanak's landholdings, it also impacted their ability to move through and find game in their hunting territories, which historically lay to the south of the St. Lawrence River.

By the 1820s, Abenakis had begun to hunt north of the river. Algonquins, who considered those lands to be their own, complained to the Indian Department about Abenaki incursions. Abenakis responded with an 1829 petition, explaining that as "dutiful children" of the Crown, they had been given permission to "hunt at certain times of the year on the unconceded Crown lands" above the river. Without the income that hunting would provide, their church at Odanak would fall into disrepair.[73] In another petition sent the same year, Abenakis drew on the Royal Proclamation as justification for hunting on Algonquin territories. The petitioners explained: "we

[69] Duncan Napier, "General Report on the Indians," March 30, 1829, Correspondence of the Military Secretary, C-Series, Volume 269, Reel C-2857, 359-365, 405, LAC.
[70] John Johnson to Colonel Darling, 14 May, 1823, Correspondence of the Military Secretary, C-Series, Volume 269, Reel C-2857, 128, LAC.
[71] Portneuf to Johnson, July 22, 1825, Correspondence of the Military Secretary, C-Series, Volume 265, Reel C-2855, 44-46, LAC.
[72] An 1816 letter reported "twenty five Indians Eight men, Eleven women & six children of the Abenakis tribe" who came to Quebec City "from La Beauce to be inoculated." Salaberry to Addison, November 25, 1816, Correspondence of the Military Secretary, C-Series, Volume 260, Reel C-2853, 469, LAC.
[73] Abenaquis to James Kempt, circa 1829, Correspondence of the Military Secretary, C-Series, Volume 268, Reel C-2856, 383, LAC.

once had a proclamation, which authorized us to go to any part of Lower Canada, which is never surveyed into townships, nor ever granted to any particular nation or nations."[74]

Abenakis invoked their familiarity with settler law, drawing on a history of British protection and British law to justify their incursions north of the river. The Algonquins chose an entirely different defense of their lands, one that rested not on British authority, but on indigenous agreements made before European empires could claim any sort of authority. The Algonquins explained that they had "a belt coming from [their] ancestors, this belt saying that the Abenakis hold the south of the St. Lawrence and the Algonquins the north. The Abenakis have a counterpart belt."[75]

In an 1829 council at Trois-Rivières, British officers called together Abenaki, Algonquin, and Wendat chiefs to resolve the dispute. While Algonquins and Wendats again appealed to the agreements they had made with wampum belts, the Abenaki chief again referenced the "certain paper proclamation of 7th October 1763," giving *all* Indians "the right to hunt on his Majesty's ungranted lands."[76] British authorities were paralyzed by this dispute, in which the two sides invoked two distinct sources of authority. "The Algonquins are correct when they say it was arranged by their ancestors and the Abenaquis," reasoned a British officer after the Trois-Rivières council. On the other hand, the Abenakis held only "small tracts of ungranted land" on the south side of the river, and "the present rapid settlement leaves no hunting grounds" for them. But then again, "the Algonquins, not the author of this, have no other recourse than hunting while the Abenaquis have land and legitimate rents."

The British positioned themselves as arbiters of indigenous land in Lower Canada. But in this instance, even as multiple nations looked to them to settle the dispute, and Abenakis even referenced the Royal Proclamation, British officers decided to let the lands "be disposed of according to the Indian Custom (by a council of the Six Nations)."[77] Haudenosaunee leaders, not the Indian Department, should be the ones to resolve competing indigenous territorial claims, even those created by the disruptions of British colonization. This episode makes clear that as late as 1829, numerous sources of authority remained for managing land in Lower Canada. Both British and Haudenosaunee leaders might be called upon to settle disputes, and both wampum belts and Royal Proclamations might be cast as legitimate evidence for determining boundaries. Abenaki seigneurial proprietorship at Odanak must be understood within this broad context of legal pluralism.

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[74] Abenaquis to Napier, circa July 1892, Correspondence of the Military Secretary, C-Series, Volume 268, Reel C-2856, 463, LAC.
[75] Letter to Napier, 19 August 1829, Correspondence of the Military Secretary, C-Series, Volume 268, Reel C-2856, 551-553, LAC.
[76] "Account of a Council at Trois-Rivieres," October 20, 1869, Correspondence of the Military Secretary, C-Series, Volume 268, Reel C-2857, 724-739, LAC. The wampum belts, he conceded, were "a testimony that some certain arrangement has been made," he "only could understand them if [he] had been present when they were given and explained."
[77] Letter [names illegible], November 13, 1829, Correspondence of the Military Secretary, C-Series, Volume 268, Reel C-2857, 790-793, LAC.

Kwanahômoik: Making a Township into a Seigneury, 1800-1850

Around 1800, at the same time that they began to develop Odanak into a seigneury, Abenakis also petitioned British authorities for another grant of land. In the 1790s, Abenakis had sent repeated petitions protesting that "their hunting grounds had lately been granted to the white people." They demanded that these grants be stopped, and moreover, that they receive "support from Government" in the form of a "a grant of more land."[78] After 1800, their appeals continued, even as they attempted new rhetorical approaches. In an 1803 petition, chief Annance expressed their "ardent desire" to have a grant "of the King's waste lands to be members of agriculture," potentially implying that if the land was given to them, they would hunt less and cultivate more crops instead. Community members, Annance explained, "feel anxious that a day to come they and their posterity may not have sufficient land to afford a subsistence to them and their children."[79] Of course, Annance was requesting a grant of land not in the Crown's "waste lands," but in historic Abenaki territories, newly invaded by the establishment of Lower Canada's Eastern Townships below the St. Lawrence River.[80]

Annance requested not just land, but a particular place: the land "remaining ungranted in the Township of Durham at or about twelve leagues from their present villages."[81] Durham, one of the townships established on Abenaki territories, had only recently been laid out by surveyors, and remained largely empty of settlers. From the British perspective, Durham was just one of many townships laid out for Loyalist refugees. But Durham was a new name for a much older Abenaki place. With their grant, Abenakis were seeking to regain control over *Kwanahômoik*, or the place "where the turn of the river makes a long point."[82]

Kwanahômoik's Abenaki name described it as a fertile intervale, a place similar to the many other riverbends and rivermouths, like Mississquoi and Cowass in Vermont, where Abenakis lived and raised crops. *Kwanahômoik* connected Odanak to important places to the south and east along the network of rivers they travelled, in particular, Lakes Memphremagog and Megantic.[83] There is also evidence to suggest that Abenakis were already living at *Kwanahômoik* before they received their official British grant to it. British survey records show that Abenakis were present at the township's founding and knew intimately the crucial alluvial details of the landscape. In 1795, when Crown surveyor James Rankin produced his first survey of Durham, he was accompanied by several Abenaki men, who disabused him of his plans for a water-driven mill based on their superior knowledge of the river's seasonal behavior.[84]

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[78] Joseph Chew to Thomas Aston, Montreal, November 9, 1795, Correspondence of the Military Secretary, C-Series, Volume 248, Reel C-2848, 385, LAC; Joseph Chew to Thomas Aston, Montreal, June 1, 1796, Correspondence of the Military Secretary, C-Series, Volume 249, Reel C-2849, 145, LAC.
[79] Annance Petition, 23 June 1803, Lower Canada Land Petitions, RG 1 L3L, Vol 172, C-2559, 83673-74, LAC.
[80] J. I Little, "Contested Land: Squatters and Agents in the Eastern Townships of Lower Canada.," *Canadian Historical Review* 80, no. 3 (1999).
[81] Annance Petition, Lower Canada Land Petitions, 83673-74, LAC.
[82] Joseph Laurent, *New Familiar Abenakis and English Dialogues, the First Ever Published on the Grammatical System* (Quebec: Printed by L. Brousseau, 1884), 53, 210.
[83] Laurent, 52–53; Brooks, *The Common Pot*, 249. Lisa Brooks describes Laurent's dictionary of place names as "linguistic map" that "reads like a journey map through Wabanaki space."
[84] James Rankin, "Carnet D1, Canton de Durham," 1795, Fonds Ministère des Terres et Forêts, Bureau du l'arpenteur général du Québec, Carnets: suite alpha-numérique, BAnQ-QC. Rankin wrote in his notebook that "the Indians that I had with me said that most of these streams are dry in the summer."

In June 1805, Governor Robert Prescott issued a patent to the Abenakis for some 8,900 acres of land in Durham. However, Prescott took pains to restrict the power that Abenakis could derive from such a land grant. In particular, he restricted their ability to capitalize on the value of the land. The granted lands could not "in any wise be capable of being alienated, leased, transferred, conveyed or otherwise disposed of," and if Abenakis no longer occupied them, the grant would "thence forth become and be null and void," and the lands would revert back to Crown possession.[85] Moreover, while the patent was collectively made out to "the Abenaquis Indians of St. Francis," it required them to subdivide it into individual township lots, rather than hold it collectively, or subdivide it as they chose.[86]

The Durham grant reflected British ambivalence as to how to manage Abenaki landholding within a pluralist province. Because the grant was located in what they saw as the British township system, they required it to be subdivided and delineated like a township. At the same time, the patent itself clearly marked Abenakis as distinct from the loyalist settlers who would surround them. The collective grant, and the collective restriction on their ability lease or sell the lands sent a clear single that Abenakis could only occupy lands under British protection. As Abenakis continued to petition for more land in Durham around this initial grant, they indulged this British perspective and invoked the guardianship relationship.[87] Annance had invoked "his most gracious Majesty's paternal affection for his children in the disposal of the waste Crown lands" in his original petition.[88] Chiefs also justified their requests for land by referencing their military service. In an 1808 request for more land in Durham, Abenaki and Sokoki chiefs reminded Lieutenant Governor James Henry Craig that they "await[ed] the orders to march against the enemies of your majesty if they will trouble this province."[89]

Abenakis professed their willingness to accept British control over how and where they could hold their land at *Kwanahômoik*. But at the same time, they disobeyed the terms of the patent by managing their Durham lands how they chose. In the 1820s, Abenaki landholders began to lease portions of their tracts to settlers. These settler tenancies in Durham were much less formal than the seigneurial concessions they pursued at Odanak. No *procureur* was officially appointed to manage Durham leases on behalf of the nation. Instead, leases were signed before local notaries. Many were made by Chief Francis Joseph Annance, but other Abenaki individuals also leased land. The settler leases at Durham did not use the language of seigneurial concessions. There was no mention of *"cens et rentes"* or feudal dues.

Nevertheless, the obligations of settler tenants in Durham still resembled seigneurial leases in important ways. They were long term, rather than yearly, they allowed Abenakis to retain certain ongoing rights over the land, and they required portions of the crops grown on the land as

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[85] "Extract of the Patent Granting Lands," June 26, 1805, Lower Canada Land Petitions, 83702, LAC.
[86] Lower Canada Land Petitions, 83684, 83704, 83716-83717, LAC.
[87] Francois Annance had also made a separate request for an island in the St. Francois River "near the line which separates Durham from Wickham." In 1816, another petition was addressed to Governor Drummond, requesting, on behalf of "Ignace Portneuf, war chief and other Abenaquis Indians," for "two lots ungranted in the Township of Durham." Abenaki Chiefs to James Henry Craig, January 19, 1808, Indian Affairs, RG 10 Reel C-13395, Vol 625, 182363, LAC; Lower Canada Land Petitions, 83739, LAC.
[88] Lower Canada Land Petitions, 83676, LAC.
[89] Abenaki Chiefs to James Henry Craig, January 19, 1808, Indian Affairs, RG 10 Reel C-13395, Vol 625, 182363, LAC.

payment. For example, one lease made in 1823 allowed Joseph Atkinson, a "yeoman residing in the Township of Durham," to hold a two-hundred-acre lot for twenty years. Atkinson was allowed to make as many "improvements" to the land as he wished, and to "clear the lot as much as possible." However, Abenakis would be still be permitted access to the land for "cutting logs or doing sugar." As rent, Atkinson would pay Annance "one third of the crop every year."[90] An 1825 settler lease required the tenant to pay an annual rent of "ten bushels of good, sweet, clean wheat to be delivered on the said lot in the month of January."[91]

Negotiating leases was preferable to allowing settlers to simply squat on their lands. Yet by 1830, the settlers who had leased lands from Abenakis had already crossed the boundaries of their leaseholds onto Abenaki lands. Moreover, they were unsatisfied with their status as tenants, and hoped to fully take possession of the Durham lands. As a group of settlers explained in an 1829 petition to the Executive Council, the body appointed to advise the Governor, they had been "compelled reluctantly to comply with inducements held out in settling in Durham" through "taking Leases of Lands" from the "chiefs of the St. Francis Indians." Abenakis were now attempting to "drive Petitioners off the Lands," because "the improvements have become too extensive for their hunting purposes."

These settlers had most likely cleared fields and occupied lands beyond the boundaries of their leases. Yet, as they pointed out, "the Indians" had never "cleared or scarcely made any improvement" to those lands. Without improving them, could they really possess them? Moreover, they argued, "in Law they (the Indians would be considered only as minors, and therefore that any bargains they have made would be invalid." Perhaps, they suggested, the Crown could relocate the Abenakis to "a more eligible place for their hunting," and allow "the Petitioners to purchase said lands whole by a quit rent from the Crown."[92] Having entered into legal contracts with Abenakis, the petitioners now argued that the lands they had leased had never really been Abenaki lands to offer, because they had failed to improve them, and because, as Indians, they could not conduct legal transactions as adults.

The Executive Council passed the matter on to the Attorney General, who sought further information from the Indian Department. A local military secretary reported back that while the settlers petitioners had "obtained a few lots on lease," they had taken "forcible possession of many others, and went so far as to drive off the Indians from their fields by main force and to harrow up the seed which had been sown." Instead of suspecting the "remarkably quiet and inoffensive" Abenakis, he suggested an "inquiry into the character of the Petitioners" and their aspirations to land speculation in Durham.[93] Yet to the Executive Council, the illegal behavior of settlers was less important than whether or not there had "been a breach of the condition" of the original patent, which restricted Abenakis from leasing lands.[94] Clearly, Abenakis had not been allowed to lease lands, but they had done so anyway.

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[90] Lower Canada Land Petitions, 83756, 83758, 83773, LAC.
[91] Lower Canada Land Petitions, 83753, 83775-83776.
[92] Lower Canada Land Petitions, 83788-83789.
[93] Lower Canada Land Petitions, 83804.
[94] Lower Canada Land Petitions, 83827-83846, LAC. Another portion of the controversy involved Annance's authority to make leases on behalf of other Abenakis at Durham, which various parties disputed.

Even as it asserted its authority over the legal terms under which Abenakis could manage their lands, the Executive Council moved very slowly to take any decisive action to resolve the matter. In 1835, the Indian Department arranged a "conference" with Odanak's chiefs, at which it was "distinctly explained to them, that the grantees have no authority to lease, sell or otherwise dispose" of their Durham lands." When confronted with their disobedience, Abenaki chiefs conceded nothing less than a continuation of the leases. They would be "willing to confirm all the leases which have been granted in their behalf, if required to so do," and "would be perfectly satisfied on the payment of their rent being guaranteed to them."[95] After the conference, the Executive Council again failed to act. Settler leaseholders continued to send petitions complaining about their "predicament."[96] And Abenaki landholders continued to maintain existing leases and to make new ones for several decades.[97]

Abenaki lands at *Kwanahômoik* never became a seigneury in the way that Odanak did. Yet Abenakis clearly understood the utility of defending land by leasing it. As Durham settlers made clear in their own petitions, they had hardly any respect for Abenakis as landholders or legal actors, even as they entered into property transactions with them conducted under proper notarial procedures. But the rents they had collected from tenants at Odanak, and the legal battles they had won in British courts, signaled that conducting formal property transactions could at least compel squatters to pay rent for the lands they were taking. Leasing lands at Durham may have also made sense within larger Abenaki practices of hunting and planting. Many Abenaki families moved back and forth between Odanak and Durham, and settler tenants could cultivate land and provide crops to them without requiring them to occupy and cultivate those lands year-round.

Whatever the array of factors that caused Abenakis to lease their Durham lands, it is clear that their actions did not rest upon what the British did or did not allow them to do. Abenakis were skilled at speaking a language of dependence and protection that cast the British as authorities over their lands. But in practice, Abenakis managed their lands however they saw fit. They did so by using the legal procedures in force in the province: notarial procedures, court cases, surveys, and hundreds of property documents filed and archived in official British archives. Moreover, by leasing lands to settlers, they involved many non-indigenous British subjects in their legal processes. These quotidian actions created a legal edifice of Abenaki proprietorship. When confronted with it, provincial authorities repeatedly proved unable to simply declare these activities illegal and wipe the slate clean.

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[95] "Report by Napier," August 3, 1835, Department of Indian Affairs: Montreal Superintendency, RG 10, Volume 667a, Reel C-13402, 257, LAC.

[96] "Petition from settlers of Durham," December 12, 1835, Montreal Superintendency, Volume 667a, Reel C-13402, 259, LAC.

[97] Some sold their leases, as Laurent Wonlinas[sic] and Marie Cezar did to Ignace Gill in 1840, while others, like Louis de Gonzague and Marie Ominsasse, made a new lease to David Guilmit[sic], farmer from the Township of Wickham, for lands in Durham. Robert Obomsawin and his spouse Marie Louise Guille, represented by Louis Portneuf, transferred their lease from Newhall Whitney to Joseph Plamondon, while Lazare Wawanolet, in 1839, sold his land to John McGivany, a Durham farmer. Montreal Superintendency Volume 800, Pt 2, C-13625, 45, 67-71, 102, 425, LAC.

"Resolving" Property in British Québec, 1850-1860

In the 1850s, British authorities finally made a concerted effort to end the complex and pluralist array of land tenures that Abenakis had exploited and created in the province. Officials sought to permanently clarify the status of indigenous peoples and their lands by transforming a variety of indigenous landholdings into reserves. At the same time, they attempted to end seigneurial land tenure and convert it to freehold titles. And finally, they tried to clarify the ongoing contestation of Abenaki leases to settler tenants in Durham. These unilateral British actions changed Abenaki lives and brought them further under settler control. But, as they had with previous British decrees and systems, Abenakis attempted to change the terms and interpretations of these actions. And at the same time, they continued to practice property management in the forms they preferred.

Over the nineteenth century, British Indian policy in Lower Canada had slowly shifted from a focus on military alliance and protection to a nascent and contradictory civilization policy, which imagined the transformation of indigenous nations into self-sufficient and civilized agriculturalists through their confinement on reserves. As Alain Beaulieu cautions, especially in Lower Canada, British policy might be better understood as a "succession of tinkerings" rather than a coherent evolution or singular articulation of policy. As early as 1828, a formal government inquiry suggested that indigenous landholdings in Lower Canada be transformed into reserves.[98] But the reserve system was not formally created in the province until 1850, when Parliament created the office of a Commissioner of Indian Lands for Lower Canada. This appointed official would take over the management of indigenous land. All "lands or property" currently "set apart or appropriated to or for the use of any Tribe or Body of Indians" would now be "vested, in trust for such Tribe" by the Crown.[99]

The language of the Act attempted to elide the reality that many Native nations in Lower Canada were living on tiny remnants of their ancestral territories, not lands historically "set apart" for them by the French and British.[100] Yet at the same time, the Act recognized that indigenous peoples in Lower Canada continued to manage their own lands under their own authority, because the Act was clearly designed to remove that authority. The legal nature of indigenous lands would now change in the view of British law, to become explicitly held by the Crown and only occupied by indigenous peoples. But perhaps more importantly, the Commissioner would assume control over the management of those lands. He would also have "full power to concede

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[98] Beaulieu, "'An Equitable Right to Be Compensated,'" 4.; Leslie. John F. "Commissions of Inquiry into Indian Affairs in the Canadas, 1828-1858 : Evolving a Corporate Memory for the Indian Department," (Indian and Northern Affairs Canada, Treaties and Historical Research Centre, July 1, 2002), 3; Beaulieu, "La Création Des Réserves Indiennes Au Québec," in *Les Autochtones et Le Québec: Des Premiers Contacts Au Plan Nord* (Montréal, Que.: Les Presses de l'Université de Montréal, 2013), 143.

[99] Queen of England, "An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada. 10th August, 1850, 11 Victoria, Chapter 42," in *Laws of Her Majesty's Province of Upper Canada* (Toronto, Canada: Stewart Derbishire & George Desbarats, 1850). In 1851, they followed through on the goal of reserve creation by setting aside 230,000 acres "for the use of certain Indian Tribes resident in Lower Canada," to be vested in the Commissioner of Indian Lands, and designated a sum of 1000 pounds to be distributed among them each year.

[99] "An Act to Authorize the Setting Apart of Lands for the Use of Certain Indian Tribes in Lower Canada. 30th August, 1851, 14 & 15 Victoria, Chapter 106. British North American Legislative Database, 1758-1867, https://bnald.lib.unb.ca/node/5593.

[100] Beaulieu, "'An Equitable Right to Be Compensated,'" 24–27.

or lease or charge any such land or property," to "receive and recover the rents," and to pay them out to community members in annual presents.[101]

Odanak Abenakis attempted to shape the terms under which the British hoped to assume increasing control over not only their lands, but how they managed them. Even before the Act was passed, Abenaki leaders had already pushed British authorities to formalize indigenous laws and practices at Odanak into settler law. In 1849, they had demanded that Lord Elgin, Canada's Governor-General, clarify the status of their lands at Odanak so that they might be able to defend them in court more effectively.[102] As the 1850 Act was likely not the clarification that Odanak leaders hoped for, Abenakis continued to explore other legal options, including incorporating themselves as a tribal corporation to exempt themselves from it. Yet they ultimately decided to work within the terms of the British guardianship relationship. In 1856, Abenaki chiefs joined other *Sept Feux* leaders in a petition to Governor-General Edmund Walker Head, requesting that their laws, customs, and landholdings be formally approved by a Legislative Act. In particular, they requested that their lands be made inalienable.[103] If a commissioner was now allowed to manage their properties, they hoped to protect them from being sold off.

The 1850 Act undoubtedly reduced Abenaki autonomy. But neither did it mark the decisive moment of seizing control that British authorities hoped for. Abenakis continued to use property management as a way to maintain local control. Perhaps, a Crown-appointed land agent could simply assume the role of *procureur*, deputized to act in their interests in the management of their seigneury. The Crown appointed Pierre-Paul Osunkhirhine as land agent in 1856. Osunkhirhine was a community member, but his work as a Protestant missionary had opposed him to many other community members. In 1858, Osunkhirhine was accused of attempting to sell of seigneurial lands. Odanak's leaders deposed him, and elected a different community member, Charles-César Obomsawin, to serve as their land agent. Provincial officials refused to recognize Obomsawin with a government commission as land agent. Relying on a long-successful Abenaki strategy, Obomsawin decided to nevertheless act as one without Crown sanction. Obomsawin made leases and sales on behalf of the Odanak community well into the 1860s. On many of the property documents he facilitated, he identified himself as "Deputy Commissioner of Lands" or "Local Agent of the said Tribe."[104]

At the same time that Indian Department officials were creating the reserve system, notaries and surveyors were tasked with the daunting project of ending seigneurial land tenure. An 1854 Legislative Act developed a process to convert seigneurial lands into fee simple tenure, by measuring the exact extent of each seigneurial concession, and determining a specific monetary value for each seigneurial right. The Act was supposed to exclude "the wild and unconceded lands in Seigniories held by the Crown in trust for the Indians."[105] Yet the Abenaki portions of the seigneuries of both Saint-Francois and Pierreville contained not "wild and unconceded" trust lands, but notarized concessions to tenants who included both community members and settlers.

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[101] Queen of England, "An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada."
[102] Alain Beaulieu, "La Création Des Réserves Indiennes Au Québec," 144–45.
[103] Bouchard, "Des systèmes politiques en quête de légitimité," 342–52.
[104] Bouchard, 358–63.; "Quittance par la nation Abenakis de Srs. De Sales Obomsawin," June 30, 1865, Fonds Joseph Ubald Pitt, CN601,S491, No # 649, BAnQ-VM.
[105] Canada, *An Act for the Abolition of Feudal Rights and Duties in Lower Canada. 18 Vict. Cap. 3*. (Quebec : printed by Stewart Derbishire & George Desbarats, 1854), 10, 30.

The Crown surveyor tasked with the valuation of Saint-Francois and Pierreville included Abenaki possessions in his accounting. He created separate cadastres, or land books, for the portions of both seigneuries "possessed by" the "Indians of the Tribe of Abenakis," in which he listed their tenants, the size of each grant, and the seigneurial rents each tenant owed.[106] While general Acts of Parliament could attempt to deny the reality of indigenous seigneurs, those tasked with the actual work of state land management had to accommodate the reality of Abenaki proprietorship.

Surveyors cast Abenakis as seigneurs on maps and cadastres. But Abenakis never received the financial compensation that other seigneurs drew from the commutation process. In theory, seigneurs were supposed to be compensated for the "loss" of their unconceded seigneurial lands either by receiving that land as fee simple property, or in a calculated lump sum. Abenakis were exempted from this particular part of the process. Whatever lands they had not conceded, based on the 1850 Act, had been appropriated by the Crown and required no compensation. However, the conversion of seigneurial land into freehold tenure in the 1850s was largely unsuccessful. Most tenants, lacking the capital necessary to purchase their concessions, simply continued to pay rent well into the twentieth century.[107] This was the case at Odanak, where tenants continued to hold concessions long after 1854.

Neither the 1850 reserve creation Act nor seigneurial commutation satisfactorily addressed the thorny legal disputes over how land was held in Durham. In 1855, Parliament passed a special law, entitled "An Act to alter the Tenure of the Indian Lands in the Township of Durham." Despite acknowledging that Abenaki grantees had been explicitly prohibited from "selling, alienating, or even leasing the said Lands" when they received their 1805 patent, the Act decreed that all the "illegal" transactions Abenakis had made in Durham "be rendered legal." The Act was an acknowledgement not only of the reality of Abenaki property management at Durham, but that such management had echoed seigneurial practices. To "secure a just compensation" for Abenakis, and more importantly, to deliver "incontestable titles to the parties now in possession of the said lands," the Act devised a plan resembling seigneurial commutation. Leaseholders were given the option to convert their leases into freehold titles by paying the land's capital. Such payments would be made not to Odanak's chiefs, but to the Superintendent General of Indian Affairs, who would "pay the interest thereon annually to the Indians."[108] From a provincial perspective, Abenakis had essentially created a miniature seigneury in a British township. And like seigneurial commutation, the 1855 Act was ineffective in ending leasing and controversy in Durham.

The Act supposedly placed the Indian Department in control of Abenaki revenues in Durham. But it did not explicitly transform the Durham into a reserve. Instead, tenants continued to lease lands, Abenaki families continued to attempt to collect rents, and both sides continued to protest the conditions under which the lands were held.[109] For example, in 1865, Clemence Pinawans

[106] Henry Judah, "No. 63 concessions Nord-Est et Sud-Ouest de la Rivière, St-Jacques, les isles," 1857, Fonds Ministère des terres et forêts, E21,S105,SS1,SSS1,D48, BAnQ-TR.
[107] Benoit Grenier, "Les Persistances de La Propriété Seigneuriale Au Québec," *Histoire & Sociétés Rurales* 40, no. 2 (2013): 78.
[108] "An Act to Alter the Tenure of the Indian Lands in the Township of Durham." Assented to 30th May, 1855, 18 Victoria Chapter 167. British North American Legislative Database, 1758-1867, https://bnald.lib.unb.ca/node/6163.
[109] Letter, Montreal Superintendency, May 19, 1861, Vol. 800 Pt. 1(A), Reel C-13624, 1158, LAC.

appointed Amable Balbowomette, a "hunter" from Odanak, to act as her attorney in seeking her "rightful rents from her settler tenants in several lots."[110] An 1869 report noted that Abenaki proprietors still continued to make transactions on the "Indian lots" at Durham.[111]

Conclusion

Abenakis understood that control over their land would never be won or lost by a singular British action. They had learned this lesson in the 1760s, when neither the Articles of Capitulation, the Treaty of Oswegatchie, or the Royal Proclamation spurred British authorities to satisfactorily protect their territories, no matter how many times they invoked them in petitions. Instead, as they came to understand over the next century, maintaining control of their territories might be better achieved through property management practices. The extension of French land tenure throughout the province created auspicious conditions to undertake seigneurialism. But it was in the accumulation of property actions—making thousands of property transactions before notaries—that solidified Odanak's status as a seigneury, and transformed part of Durham into one as well. Acting as seigneurs, whether or not they gained British approval to do so or not, proved effective in defending land, controlling settler encroachment, generating revenue, and articulating sovereignty to British authorities and local settlers alike.

At the same time, Abenakis never saw proprietorship as a fundamental alteration of their political relationship with the British. They continued to petition for protection of their territories as an Indigenous polity on the basis of British treaties and proclamations. Unlike the British, Abenakis saw no clear distinction between property ownership and collective political status. By the 1850s, some leaders even clearly imagined a legal milieu in which internal community political management according to Abenaki custom might be formalized in British law, creating enclaves of Abenaki authority within a settler legal regime. If such a hope seems naïve from a contemporary perspective, 1850s Quebec was already a pluralist legal system, in which the accommodation of French law and land tenure already allowed for a variety of landholding possibilities and a spectrum of rights.

British administrators were supposedly invested in making clear distinctions between collective indigenous land and private settler property, set out in the Royal Proclamation. Yet their actions and inactions in Lower Canada hardly suggest that they had a protocol for situating Abenakis within a clearly delineated property regime. British failures to act as sufficient "guardians" of Abenaki lands encouraged Abenakis to so profoundly engage themselves in the province's settler land tenure system. In turn, Abenaki proprietorship practices, especially those than engaged settlers as tenants, forced British authorities to adopt policies that ultimately recognized the reality of Abenaki proprietorship and authority, if only by attempting to take it away.In the 1850s, provincial officials attempted to decisively take control of nearly every aspect of Abenaki land management. They sought to end seigneurialism, transform Odanak into a Crown-managed reserve, and sever the leases that Abenakis made to settler tenants in Durham Township. But passing Acts of Parliament with poorly designed implementation policies proved to be an

[110] "Procuration special par Clemance Pinawance à Amable Balbowamette," February 4, 1865, Fonds Joseph Ubald Pitt, CN601,S491, No # 581, BAnQ-VM.
[111] Letter, November, 20, 1869, Montreal Superintendency, Vol. 800, Pt 2, C-13625, 347-351, LAC.

ineffective approach. Abenaki proprietorship was based in practices, not permission. As they had done for more than a century, they continued to collect rent from tenants at Odanak and Durham for decades.

In fact, what is striking in Odanak's longer history is the consistency of the struggles over land and authority, which continue to enmesh property claims, appeals for government protection, and statements of indigenous authority and sovereignty. In the late nineteenth- and early twentieth-centuries, descendants of the seigneurs of Saint-Francois attempted to reclaim Odanak yet again, basing their arguments on the same appeal to the loss of mission status and a close-reading of the original French grants. In the 1980s, the Odanak Band Council purchased neighbouring land, which they had to sell to the government of Canada in order to have it added to their reserve.[112] Currently, Abenakis at Odanak are in pursuit of both comprehensive and specific land claims from the Government of Canada, seeking compensation for both the appropriation of their ancestral territories, and those that "originated" in French grants and were extended through French proprietorship practices.

[112] Canada, Natural Resources, Legal Surveys Division, Historical Review, "Odanak," https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/...surveys/ODANAK_ANG.pdf

CHAPTER THREE

Selling and Claiming Petites Nations Property in Louisiana, 1790-1853

In the 1790s, Abenakis in the St. Lawrence River Valley found themselves newly contending with an influx of Anglophone settlers. For petites nations peoples in Louisiana, the same decade brought similar problems. The Lower Mississippi Valley west of the river had been under Spanish jurisdiction since the 1760s, and would be until 1800. But Anglophone immigrants, who could obtain land there after swearing a cursory oath of allegiance to the Spanish, flooded into the territory, bringing the laborers they enslaved, and establishing plantations on the rich and fertile lands along Louisiana's many rivers and bayous. After the 1803 Louisiana Purchase, settler occupation of indigenous territories continued to surge.

Like the Abenakis, many of Louisiana's petites nations turned to settler property practices to defend their territories. They did so under different land tenure conditions. In Quebec, French seigneurialism's extension into the British era enabled Abenakis to set up leasing schemes with settler tenants. While they certainly lost lands to tenants who usurped them, they were also able to derive revenue and maintain control of the much of the lands that settlers encroached upon. But Louisiana, even when it had been French, had never had a meaningful seigneurial regime. Instead, under French, Spanish, and then U.S. tenure, Louisiana residents held property in fee simple titles. When Louisiana's petites nations began to participate in settler property practices in the 1790s, as a way to control settler encroachment from their lands, they largely sold, rather than leased, portions of their land. And when they sold land, they lost it.

Louisiana's petites nations were much less successful in holding onto territory than Abenakis were. Yet the distinction between leasing and selling, seigneurial and fee simple land tenure cultures should not be drawn too sharply. In some instances, Native nations were clearly defrauded from their lands by settlers who manufactured imagined debts and then packaged their negotiations over those debts as land cessions. But in other cases, nations sold and leased portions of their land as part of a strategy to gain formalized title for at least part of their remaining lands, to gain some measure of control or compensation from settler appropriation, or to navigate the steps of a migration they already had in view.

After 1803, settlers filed federal property claims for Louisiana lands that they held by virtue of Spanish grants and petites nations purchases. In a context where the validity of indigenous proprietorship was articulated again and again by settler claimants, a few indigenous nations were able to secure titles for their own lands. Two petites nations polities—the Chitimachas and the Tunicas—marshalled their participation in settler property processes into titles, and ultimately, into political recognition that they held their land as nations. To do so, they used many of the strategies that Abenakis had done. They invoked particular interpretations of their prior relationships with earlier empires, and used settler involvement in their land transactions to cast their own proprietorship as legitimate. While such claims could hardly recoup ancestral territories, they became the legal footing upon which longer, larger legal battles for land and federal recognition would be built in the nineteenth and twentieth centuries.

This chapter explores petites nations participation in settler property processes before and after the 1803 Louisiana Purchase. It sheds lights on how these peoples navigated the perilous transition from Spanish to U.S. sovereignty. Studies of Native American Louisiana emphasize the complexity and longevity of the imperial relationships forged by the petites nations with the French and Spanish.[1] Yet most of these histories end at the close of the eighteenth century, reflecting a larger trend in Early American history that marks the end of the imperial period as the close of an era of Indian power and complexity, and the beginning of a common Native American experience of subjugation.[2] While the nineteenth century undoubtedly ushered in a newly destructive era for Native Americans in Louisiana, the gap between eighteenth century diplomatic power and twentieth century tribal resurgence remains underexplored. Without a record of federal treaties to go by, a study of the private land claims process offers clues to the continuing histories of the petites nations.

It also reveals the heated on-the-ground negotiations over indigenous participation in property ownership. The 1763 Royal Proclamation had prohibited settlers from making private purchases from Native nations east or west of the moving proclamation line. In the 1790s, the U.S. had adopted similar clauses in the Trade and Intercourse Act. Three decades later, the U.S. Supreme Court would rule decisively on the question of "Indian title" in a landmark 1823 decision. *Johnson v. M'Intosh* cast Native Americans as mere tenants, who held only rights of occupancy to be extinguished by European empires under the discovery doctrine.[3] If the Royal Proclamation had prohibited settlers from buying Native land, *Johnson v. M'Intosh* established that Native settlers essentially had nothing to sell, anyway.

It is tempting to see *Johnson v. M'Intosh* as the logical outcome of policy put in the place in 1763. Stuart Banner argues that the Royal Proclamation's prohibition on settler purchases made it "easier for settlers to think of the Indians' rights to the land as something less than full ownership." While Banner acknowledges that many continued to ignore the ban, nevertheless, "the percentage of North America owned by people who traced their titles back to the Indians

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[1] Elizabeth Ellis, "The Many Ties of the Petites Nations: Relationships, Power, and Diplomacy in the Lower Mississippi Valley, 1685-1785," (PhD Diss, University of North Carolina at Chapel Hill, 2015); Daniel H. Usner, History Institute of Early American, and Culture, *Indians, Settlers & Slaves in a Frontier Exchange Economy : The Lower Mississippi Valley before 1783* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1992); Fred Bowerman Kniffen, Hiram F. Gregory, and George A. Stokes, *The Historic Indian Tribes of Louisiana : From 1542 to the Present* (Baton Rouge: Louisiana State University Press, 1987); Richard White, *The Roots of Dependency : Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (Lincoln: University of Nebraska Press, 1983).

[2] Louisiana Indian history picks back up in the late nineteenth and twentieth centuries, following the stories of small nations—both the original *petites nations* and many who immigrated west of the Mississippi River during the Spanish era—in their twentieth century sovereignty struggles and cultural resurgences. See Brian Klopotek, *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Indian Communities* (Durham [N.C.]: Duke University Press, 2011); Mark Edwin Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln: University of Nebraska Press, 2004).

[3] Lindsay Gordon Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford; New York: Oxford University Press, 2005); Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005); Eric Kades, "The Dark Side of Efficiency: Johnson v. M'Intosh and the Expropriation of American Indian Lands," *University of Pennsylvania Law Review* 148, no. 4 (April 1, 2000): 1065–1190.

could only shrink." From a general culture in which indigenous peoples did not participate in property transactions, decisions as devastating as *Johnson v. M'Intosh* could take emerge.[4]

If there had been an erosion of beliefs in indigenous land rights among settlers after the Royal Proclamation, it seems not to have reached Louisiana. When purchasing Indian land was legal under Spanish jurisdiction, settlers eagerly did so. After 1803, they sought U.S. federal approval for it. Some settler claims were specious, lacking any basis in an actual transaction of any kind with indigenous peoples. But many seem to have had substance. While some settlers shaped coercion and fraud into what looked like property transactions, others bought indigenous land because indigenous peoples sold it to them. Petites nations peoples, too, mobilized the possibilities of land transactions, shaping sales and permissions into claims for title and even sovereignty. The private land claims process itself was a legal location where indigenous peoples and settlers alike negotiated, defended, and debated the legality of indigenous land ownership in the Lower Mississippi Valley.

Indigenous and Imperial Land Tenures in the Lower Mississippi Valley, 1699-1803

Johnson v. M'Intosh applied the discovery doctrine to all European empires. Whatever empire arrived first had extinguished aboriginal title by the fact of their arrival. But French and Spanish regimes had not extinguished Indian title in Louisiana. They had not even tried. Neither France nor Spain had worried over delineating boundaries between European and indigenous lands in Louisiana, or over establishing the exact nature of the title held by indigenous peoples. Since planting their permanent colony in 1699, the French had struggled in Louisiana. French administrators never successfully occupied the territories they claimed with settlers whether under the framework of a proprietary colony or a royal possession.[5] Unlike in Quebec, Louisiana administrators opposed the implementation of seigneurialism as a system for establishing settlers. But without an alternative framework, land grants were established unevenly. Early settlers, called *engagés,* were given land grants after they had worked the land for a certain length of time, to hold in fee simple tenure.[6] Though they were not technically seigneuries, French land tenure patterns in Louisiana nevertheless mirrored seigneurialism geographically, in that lands were typically laid out in long lots on both sides of rivers and bayous. This orientation made a certain type of sense in the Lower Mississippi Valley. It was a landscape of rivers.

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[4] Banner, *How the Indians Lost Their Land : Law and Power on the Frontier*, 108.; By contrast, Greer disputes that an earlier English respect for indigenous proprietorship, one that saw Native peoples as transactional participations in real estate markets, had ever existed in the first place. Before and after the Royal Proclamation, Native land sales existed partially if not wholly "within the context of nation-to-nation relations." Allan Greer, "Dispossession in a Commercial Idiom," in Juliana Barr, Edward Countryman, and William P. Clements Center for Southwest Studies, *Contested spaces of early America* (Philadelphia: University of Pennsylvania Press, 2014), 80–86.

[5] Marcel Giraud, *A History of French Louisiana: The Reign of Louis XIV, 1698-1715* (LSU Press, 1974), 31; Peter H. Wood, Gregory A. Waselkov, and M. Thomas Hatley, eds., *Powhatan's Mantle: Indians in the Colonial Southeast*, Indians of the Southeast (Lincoln, Neb.: University of Nebraska Press, 1989), 139; Paul W Mapp and Omohundro Institute of Early American History & Culture, *The Elusive West and the Contest for Empire, 1713-1763* (Chapel Hill; Williamsburg, Va.: University of North Carolina Press ; Published for the Omohundro Institute of Early American History and Culture, 2011), 147.

[6] Giraud, *A History of French Louisiana*, 183–84.; William B. Knipmeyer, "Settlement Succession in Eastern French Louisiana," (PhD. Diss., Louisiana State University, 1956), 19.

In this alluvial world, indigenous land tenures continued to predominate during most of the eighteenth century. What is now the modern state of Louisiana are the ancestral homelands of a variety of Native nations, from the powerful Choctaw and Caddoan confederacies, to the Natchez, to the many small polities that the French referred to as the petites nations. In 1700, these independent polities lived in villages with populations that ranged from sixty residents to one thousand. They spoke a diversity of languages, drawing from six language groups, and their political configurations and social practices varied as widely as their languages and populations did.[7] Most indigenous peoples grew corn, beans, and squash in fields that they cleared through regular burning, gathered nuts and persimmons, and hunted bear and deer. In the brackish marshes that spread along the gulf coast, which move from saltwater to freshwater in a thirty-mile span from the coast, they harvested mollusks, crustaceans, fish, and birds. In the Red River floodplain, Caddoan peoples cultivated rich alluvial valleys, while the Natchez and Tunica inhabited the high bluffs on the banks of the upper Mississippi River. Attakapas hunted game and farmed on the grassy southwestern prairies, and Chitimachas and Opelousas farmed the natural levees of western bayous.[8]

The eighteenth century brought demographic change, as epidemics, warfare, white immigration and the importation of enslaved peoples turned an indigenous majority into a minority. The Delta/Natchez region's Native population dropped from roughly 27,000 in 1700 to 3,600 in 1760, while a white population as small as 100 in 1700 grew to 4000. The number of enslaved Africans forcibly brought to the region grew to 5300 by the same year.[9] During this era, petites nations peoples were increasingly integrated into what Daniel Usner has called a "frontier exchange economy," in which white colonists, enslaved black workers, and indigenous peoples engaged in cross-cultural trade for agricultural staples, deerskins, and wild plants.[10] Yet despite their integration into powerful networks of trade, enslavement, violence, and disease, petites nations peoples nevertheless maintained their autonomy as unconfederated polities. As Elizabeth Ellis details, decentralized alliance networks, skillful diplomacy, and in some cases, migration, allowed them to preserve their independence.[11]

Negotiations over land, always entangled with questions of sovereignty and power, were a part of their French-era diplomacy. French expectations that the Natchez would "grant them their finest farming lands" prompted the Natchez to violently expel them from their territories in 1729. At the same time, smaller nations who migrated due to complex conflicts and an economy based in slave raiding sometimes asked formal French permission to settle in a particular location. Yet small nations did not see this as an abrogation of their sovereignty, or their claims to other lands that they had temporarily abandoned in the midst of a conflict.[12] In this era of change, French settlement patterns were imprinted on Native land tenure patterns, often literally. As Usner points out, "abandoned native villages became prime sites for the location of concessions

[7] Elizabeth Ellis, "Petite Nation with Powerful Networks The Tunicas in the Eighteenth Century," *Louisiana History: The Journal of the Louisiana Historical Association* 58, no. 2 (2017): 135–36.
[8] Kniffen, Gregory, and Stokes, *The Historic Indian Tribes of Louisiana,* 18–20.; Knipmeyer, 16.
[9] Peter H. Wood, Gregory A. Waselkov, and M. Thomas Hatley, *Powhatan's Mantle*, 60.
[10] Usner, *Indians, Settlers & Slaves in a Frontier Exchange Economy*, 6–8.
[11] Ellis, "Petite Nation with Powerful Networks," 136.
[12] Ellis, 156, 167; Wood, *Powhatan's Mantle*, 142.

granted," whether they were fields cleared and then left fallow by agriculturalists, or deserted villages abandoned in the midst of war or epidemics.[13]

After Spain assumed nominal control over the territories west of the Mississippi River in 1762, many French officials—sometimes called "Spanish French" by the British—remained in their posts.[14] Spanish management of the colony was part of much larger geo-political calculations to protect Mexico as the center of imperial revenues, and Spanish ships in the Mexican gulf.[15] To do so, Spain worked to cultivate the loyalty of French inhabitants, and to encourage immigration and permanent settlement into this colonial buffer zone. A flexible land policy was one pillar of this approach: Spanish officials upheld the highly informal land titles held by many French inhabitants. At the same time, they set about making land grants to new immigrants under generous terms.[16] In 1770, Governor Alejandro O'Reilly established provincial regulations for land grants in the province that largely echoed French land tenure patterns. Each "newly-arrived family" would receive a long, narrow lot of land stretching back from river frontage to the "cypress wood" at the back of their holding. To receive grants, some applicants were required to demonstrate that they intended to sufficiently integrated into the region's economy: that they owned at least one hundred cattle, and "two slaves to look after them." In some cases, Spanish grants were even more casual than the French. While French administrators typically sent officials to lay out land grants, the Spanish issued "floating grants," which allowed grantees to locate their own holdings.[17]

As much as Spanish officials attempted to encourage Spanish immigration into the province, those who arrived to take advantage of these grants were a diverse group. They including nearly four thousand Acadians expelled from newly British Nova Scotia after 1755.[18] During and after the American Revolutionary War, the Spanish imported Canary Islanders, but most immigrants were French, German, British, and increasingly, American. Particularly distressing for Spanish administrators were the U.S. citizens who flooded into Spanish Louisiana from places like Kentucky and Pennsylvania. In the 1780s, Governor Esteban Miró adopted a practical policy that attempted to assimilate these immigrants by controlling where they settled, rather than trying and failing to keep them out. In a dramatic reversal, a 1788 policy established that immigrants could become Spanish subjects and receive land grants by swearing an oath of allegiance, but would not be required to convert to Catholicism. Louisiana's non-Native population ballooned from

[13] Usner, *Indians, Settlers & Slaves in a Frontier Exchange Economy*, 156.
[14] David E Narrett, *Adventurism and Empire: The Struggle for Mastery in the Louisiana-Florida Borderlands, 1762-1803* (Chapel Hill, N.C.: The University of North Carolina Press, 2015), 45.
[15] Sylvia Hilton, "Spanish Louisiana in Atlantic Contexts: Nexus of Imperial Transactions and International Relations," in Cécile Vidal, *Louisiana: Crossroads of the Atlantic World* (Philadelphia, United States: University of Pennsylvania Press, 2013), 69; Mapp, *The Elusive West and the Contest for Empire, 1713-1763*, 333–44; David J Weber, *The Spanish Frontier in North America* (New Haven: Yale University Press, 2009), 149.
[16] Hilton, in Vidal, *Louisiana*, 72.
[17] United States, *American State Papers. Documents, Legislative and Executive, of the Congress of the United States* (Washington: Gales and Seaton, 1858), Miscellaneous, I: 376-377; Edward T. Price, *Dividing the Land : Early American Beginnings of Our Private Property Mosaic* (Chicago: University of Chicago Press, 1995), 297, 301.
[18] John Mack Faragher, *A Great and Noble Scheme: The Tragic Story of the Expulsion of the French Acadians from Their American Homeland* (New York, N.Y.: W. W. Norton & Co., 2005).

perhaps 5,000 European and 5,000 enslaved people of African descent in 1760 to more than 45,000 by 1800.[19]

This massive flood of immigrants put new pressure on petites nations peoples in Louisiana. After 1760, these polities had entered an era of resurgence. Their populations made a small recovery from a century's low in 1760 at 3600 to closer to 4000 by 1790.[20] They also began to regroup politically. As Elizabeth Ellis has argued, the 1760s partition between the Spanish and British at the Mississippi River created a new borderlands for petites nations peoples, in which they could interact with both governments. Some petites nations, who had historically allied with the French against the British and Choctaw, moved west of the river, seeking and strengthening Spanish alliances. However, they also continued to move back east across the river to hunt, cultivate their fields, and treat with the British.[21] The Spanish negotiated with the petites nations as nations. They realized how important both large and small nations were to their ability to control the province over which they had only weak control. After Alejandro O'Reilly assumed control in the late 1760s, he met with delegations not only from large nations like the Choctaw and Osages, but with small nations like the Tunicas, Pascagoulas, Chitimachas, Ofos, and Tensas. O'Reilly bestowed presents, medals of alliance, and created formal diplomatic and trade agreements.[22]

Sometimes, these negotiations involved land, for example, when small nations requested permission to cross the Mississippi and live in Spanish territory. Yet most Spanish officials, and certainly petites nations leaders, understood these arrangements to be separate from the land grants given to new Spanish settler subjects, in that they gave these nations permission to live generally in Spanish territory, but did not obligate them to be fixed to a particular location in the same way settlers might be.[23] Even when some Spanish officials attempted to control exactly how and where petites nations would live, they made clear that they would continue to live according to their own land tenure patterns.

In 1789, Natchitoches post commandant Louis de Blanc wrote to governor Miró, describing how he had assembled "all the nations of Indians of that district" in order to settle "the matter of the demarcations of the boundaries." De Blanc sought to "make them acquainted with the place where they are assigned." In particular, he hoped to discourage the chiefs from "scatter[ing] their Indians along the shore with their habitations considerable distance apart." In his view, petites nations land tenure practices would "ruin the lands of this river" by "abandoning them and taking others after raising two or three crops." As white settlers continued to arrive, De Blanc found it unfair that they would "find the best land occupied or ruined by this sort of people."[24] Yet if

[19] Weber, *The Spanish Frontier in North America*, 201–8.; Wood, *Powhatan's Mantle*, 60; Light Townsend Cummins, *To the Vast and Beautiful Land: Anglo Migration into Spanish Louisiana and Texas, 1760s–1820s* (Texas A&M University Press, 2019).
[20] Wood, *Powhatan's Mantle*, 60.
[21] Ellis, "Petite Nation with Powerful Networks The Tunicas in the Eighteenth Century," 140, 167, 164.
[22] Ellis, "The Many Ties of the Petites Nations," 238.
[23] Grande Pré to Miró, 1788, in Lawrence Kinnaird, *Spain in the Mississippi Valley, 1765-1794, Annual Report Of The American Historical Association For The Year 1945* (Government Printing Office, 1949), Vol III, 250. In a 1788 letter to Governor Miró, Natchez post commandant Grand-Pré expressed his desire to "indicate accurately the line of demarkation [sic] which separates our territories from those of the Indians," all the way "from Yazoo as far as the old village of the Tunicas."
[24] De Blanc to Miró, August 11, 1789, in Kinnaird, *Spain in the Mississippi Valley*, Vol III, 279.

some local Spanish officials saw petites nations as under colonial purview as to where and how they would settle, the Nations themselves continued to conduct themselves as independent polities in alliance.

Property and Diplomacy: Petites Nations Land Sales, 1790-1807

For much of the eighteenth century, small imperial settler populations had enabled petites nations peoples to enjoy, and even exploit, fuzzy boundaries between Spanish and indigenous land and sovereignty. Though many had been pushed west of the river out of their ancestral territories, they could still largely choose where they might live in Spanish territory, and how to arrange their villages, houses, and fields. But in the 1790s, when Louisiana's non-Native population began to explode, petites nations peoples found those lands newly encroached upon by settlers. Some of those settlers simply occupied their lands without consent. But many sought more formal legal arrangements. Increasingly, Native nations sold portions of their lands to settlers.

Settler purchases of indigenous land had not been entirely uncommon in eighteenth-century Louisiana. One may have occurred as early as 1739, when an agent for the Eastern Shore of Maryland Louisiana Company purchased a tract from the Colapissas.[25] But the practice spiked in the 1790s. Settlers purchased land from Attakapas, Chitimachas, Colapissas, Pascagoulas, Caddos, Choctaws, Tunicas, Biloxis, Natchitoches, Tensaws, and Appalachies peoples, as well those generally labelled "Indians" on property documents.[26] The identities of the purchasers varied widely as well. Some were recent immigrants from the U.S. to Spanish Louisiana. Others were long-term residents of Francophone descent. Most were white, but a few were free people of color, and most were men, but a few were women, who could own property under French and Spanish Civil law. Settler Andrew Ramblin made a 1790 purchase from "an Indian called Cayacaillé and his wife" near Natchitoches. The "Widow Prue" purchased 12,000 acres on Bayou Crocodile from "an Indian named Chape Cancier, a Choctaw chief" and paid him in "mares" at fifteen dollars each.[27]

Under Spanish rule, settlers could obtain free land by requesting a grant from provincial authorities, and were often given the freedom to locate their tracts themselves. But Louisiana was not a province of empty, consistent, agricultural land. It was a variable mix of impassible and unworkable swamps, thick woodlands, and fertile, valuable planting lands that adjoined the rivers that served as the only practicable mode of transportation. Some of these alluvial lands had been settled by French colonists. But on many other bayous, especially to the west, they were where petites nations had their houses, villages, and fields. Rather than obtaining free Spanish land, settlers purchased Native land because it was the land they wanted.

Private land transactions between settlers and Native nations were legal in Spanish Louisiana. But these transactions still often involved government officials and multiple Native nations, blurring boundaries between diplomatic negotiations and economic exchanges. A cluster of

[25] United States, *American State Papers. Documents, Legislative and Executive, of the Congress of the United States*, Public Lands, Vol II, 257.
[26] U.S., *American State Papers*, Public Lands, Vol IV, 916.
[27] U.S., Vol III, 81-82, 91.

1790s land transactions on the Red River and its tributaries, northwest of Baton Rouge, exemplifies this pattern. A number of petites nations, including the Pascagoulas, Yowani Choctaw, Biloxi, Appalachie, and Tensaw, had moved into the Red River region progressively in the 1770s and 1780s, securing formal permission from Spanish officials to establish villages there. In 1787, for example, the Pascagoulas had received "permission" from a post commandant to "form a settlement" on the Red River "until it shall please the Governor General of this province to grant them the title of possession." In 1792, Carondelet directed local officials to protect them in their "peaceable possession of these lands, which are theirs by right." After being granted this general permission, the Pascagoulas established themselves in what was likely a customary pattern. As local post commandant Valentine Layssard described it, "the Indians settled themselves in different places, and cleared land and raised corn on the north and east sides of the Red river, and extended their settlements or villages with little intervals." The Pascagoulas had clearly chosen the fertile lands on the river, ignoring the south and west sides, which were "poor pine and swamp land."[28]

Their identification, occupation and cultivation of fertile lands made them an obstacle to white settlers. Rather than granting them "the title of possession" he had promised, Carondelet worked to remove the Pascagoulas from these lands. In 1795, he instructed Layssard to "assemble" the Pascagoulas, and "engage them to establish an only village on Catahoula," further to the northwest. Carondelet promised diplomatic inducements. He would grant as Pascagoula chief a medal and commission, and if they moved off the Red River and consolidated themselves into "an only village," he would bestow "annual presents more considerable than heretofore." But rather than conducting a diplomatic negotiation, Layssard presided over a land transaction. A month later, Layssard conducted the sale of the "settlement and lands of culture of the Indian village Pascagoula" on the Red River to settler Colin La Cour, for "two hundred and fifty dollars, sounding money, paid in hand." Soon after, Carondelet ratified the transaction in New Orleans.[29] Was La Cour's purchase part of an enticement for the Pascagoulas to move west? Or did the Pascagoulas negotiate the sale after Layssard informed them they would have to move? Either way, La Cour's purchase was part of a larger, political effort to displace the Pascagoulas from their Red River lands.

The Pascagoulas did not remove to where Carondelet directed them on the Catahoula. Instead, they made a diplomatic arrangement with the Yowani Choctaw, a small, historically French-allied Choctaw band. The Choctaw allowed them to settle on their lands on Bayou Boeuf, a tributary of the Red River, in 1795, alongside a number of other nations, including the Biloxi and Chatot. On Bayou Boeuf, the Choctaw not only held land, but maintained political control over who could live there. They granted permission to other petites nations to settle among them, but they also exercised control over non-Native settlement. One settler testified that two settlers had been allowed to settle "a small piece of land." This title was conditional: it was "lent them by the Choctaws on the express condition" that they would "repair and keep in order the guns of the said Choctaws." Other than these two, they "uniformly refused to admit any settlers within their boundaries."[30]

[28] U.S., *American State Papers*, Public Lands, Vol II, 648-650.
[29] U.S., Vol II, 648-650.
[30] U.S., Vol II, 655.

Yet even the powerful Choctaws soon began to sell off portions of their land under increasing settler pressure, and to acquiesce to Spanish authorities in mediating disputes with settlers. In 1797, they sold a tract to settler John McGuire. But after complaining of "not having received payment to their satisfaction," and of the on-going problem of "the cattle of the white people destroying their corn," the Choctaw "reclaimed that part of the land." Finally, they sought the mediation of the local post commandant to resolve the dispute. Under Layssard's supervision, McGuire "paid the said Indians to their satisfaction." They received money, but could not keep the land.[31]

In 1802, the Choctaws, as well as the Pascagoulas, Biloxis, and Chatots who settled under their protection, all sold their Bayou Boeuf lands to the American trading firm owned by William Miller and Alexander Fulton. Supposedly, the sale of the enormous tract was in order to discharge them from trade debts they owed to the firm.[32] According to John Sibley, the U.S. Indian Agent, the land transaction had been made under coercion. A Biloxi leader had reported that "neither himself nor any of his people had any knowledge of the debt," but that Miller and Fulton had been "very importune and troublesome to him for some time to settle the account," and he did "agree to give them land on bayou Boeuf." The deed itself was signed after Fulton arrived with Layssard, the same local official who had collaborated to displace the Pascagoulas from the Red River, and brought "thirty bottles of Taffia, and made many of his people drunk." In April 1805, they came "with a rope to measure the land they said he had sold them," and told them that "when the ducks came in the fall they must move off the land, and that when they left it they must leave their houses all in repair." Layssard, in particular, "told him they had better all move off into the Spanish country, for the Americans would soon drive them off and take their land from them."[33]

In the Red River region, settlers may have found that purchasing from petites nations peoples was a more direct route to obtain valuable riverine farmland than finding and clearing their own lands. Certainly, it was more effective than asking Spanish officials to consolidate and relocate them. For local Spanish officials like Layssard, negotiating settler land sales also seemed preferable to attempting diplomacy. Land sales were transacted along a spectrum from willing and fair transactions to coercion and trickery. But most often, for Native nations, engaging in settler land transactions—especially those made in collaboration with officials eager to consolidate and dispossess them—meant losing land.

The nations in the Red River region were immigrants from east of the Mississippi. They sold lands they had occupied for a few decades, and many moved further west into Spanish Texas. Land transactions form part of the record of this longer, larger migration. But some other petites nations peoples, namely those who still resided in portions of their ancestral territories west of the Mississippi, land sales were more clearly an attempt to maintain control of how settlers would encroach on their territories, and to retain some land for themselves. The nation that conducted the most land sales—at least forty—were the Attakapas. The Attakapas, or Ishak, inhabit what is now southwestern Louisiana, from upper Bayou Teche west to the Sabine river, and from the Gulf of Mexico up to what is now the city of Alexandria. Originally migrants from

[31] U.S., *American State Papers*, Public Lands, Vol II, 653-655.
[32] U.S., Vol II, 655-659.
[33] U.S., Vol II, 666.

the west, the Attakapas have lived in this part of Louisiana for hundreds if not thousands of years.[34] Attakapas land tenure was structured around water. Major Attakapas settlements were on various watercourses, including the Vermilion, Mermentau (or Nementou), Calcasieu, Sabine, Neches, Queue de Tortue, and Plaquemine Brule rivers and bayous. Their non-agricultural practices often meant that they settled in a concentrated area, and that their robust territorial use of their larger territories were less obvious to outsiders.[35]

During the eighteenth century, the Attakapas became engaged in multi-national trade, drawn into relationships with French traders from the post of Natchitoches, and provisioning them with Tonkawa and Apache deerskins and furs. Later in the eighteenth century, Attakapas took up ranching. Many worked as laborers on settler *vacheries*, but by 1760 they were also registering their own cattle brands at the Post of Attakapas. They also provisioned smoked fish, Spanish moss, and bitumen for trade markets.[36] Land transactions were likely an outgrowth of their involvement in French trade. As early as 1760, Kanimo, chief of the Attakapas nation" sold a large tract of more than 8,000 arpent to settler Fusilier de la Clair, in exchange for "certain articles of merchandise." The transaction had been made under French jurisdiction, presided over by the local post commandant. But geographically, it was located in Attakapas space. The deed described it as located "at the Attakapas, running from north to south from the actual settlement of the said Kanimo."[37]

A 1784 Attakapas sale on Bayou Plaquemine Brulee similarly anchored a settler tract within a larger Attakapas geography. Antoine Blanc purchased a square league of land on the bayou from "Nementou, chief of the Attakapas tribe," and the deed was "signed also by thirteen of his warriors, or inhabitants of the village" in front of the local Spanish commandant. Again, compensation was in "sundry articles of merchandize." As the Attakapas became increasingly engaged in ranching, they also exchanged land for cattle. A purchase on "the prairie Nespique" was transacted for "three cows and three calves, and one three year old beef."[38]

By 1800, tracts were increasingly exchanged for cash, and they were conducted with increasingly frequency. Settler purchases were arranged in concentrated clusters, each around a particular Attakapas village. They remained anchored in Attakapas, and in particular, their proximity to the lands which the Attakapas sought to preserve as their own. On the Nementou river, Attakapas chief Celestine Le Tortue made a number of purchases in 1803 and 1804. One such tract was bounded by "the land reserved by the Indians." Another tract was located "on the

[34] Lauren C Post, "Some Notes on the Attakapas Indians of Southwest Louisiana," *Louisiana History: The Journal of the Louisiana Historical Association* 3, no. 3 (1962): 228, 232. Attakapan peoples shared linguistic similarities with Chitimachas and Tunicas to the east, and cultural similarities to the Karankwa and Tonkawa to their west, in central and southern Texas. Attakapan society was less agricultural than many other nations to their east, likely because they lived on fertile swamplands full of fish, fowl, and shellfish. The early twentieth century anthropologist John Swanton estimated a population of 3500 in 1700, which fell to closer to 175 by 1805.
[35] Kniffen, Gregory, and Stokes, *The Historic Indian Tribes of Louisiana*, 109; Post, "Some Notes on the Attakapas Indians of Southwest Louisiana," 223.
[36] Helen Sophie Burton and F. Todd Smith, *Colonial Natchitoches: A Creole Community on the Louisiana-Texas Frontier* (Texas A&M University Press, 2008), 107, 151; Post, "Some Notes on the Attakapas Indians of Southwest Louisiana," 234.
[37] U.S., *American State Papers*, Public Lands, Vol III, 124.
[38] U.S., Vol III, 89, 88, 72, 91, 91-104. Tracts between thirty to fifty arpents in frontage on a bayou, with the typical forty arpents of depth, sold for between eighty and one hundred dollars, while smaller tracts sold for thirty or forty.

right bank" of the bayou, "above the village which was inhabited by the Indians." Still another was located about "thirty arpens from the village." One settler noted that he attempted to purchase the Attakapas village, but was refused, as the Attakapas "continued to inhabit the said village, and cultivate a part of the land within the limits of their claim."[39]

Land sales, at least for a time, may have been a useful strategy for negotiating, if not combatting, settler encroachment, especially when local officials were of little help. In 1800, "an Indian Attakapas" complained to the local post commandant that settler John Lyon had "taken his land, and made on it [his] cow-pen." But rather than expelling Lyon from the land, the commandant instructed him to take it legally, by "buy[ing] it from him in form." The next year, Lyon purchased the land in exchange for cattle.[40] An 1802 sale from "Ashnoya, considered of the Attakapas nation, authorized by Bernard, a medal chief" attempted to place conditions on what settlers could do. The tract on Bayou Vermillion was to be "of use only for the wintering of cattle." But after the purchaser overstepped his privileges, the "Indians made their complaint" to the post commandant, asking him to warn him off. Yet again, appeals to the commandant resulted in another, more extensive purchase.[41]

The Attakapas worked to preserve sections of their lands through selling other portions of them, but by 1800, they increasingly they sold their village sites as well. On Bayou Queue de Tortue, a tributary of the Mermentou, a cluster of sales had been made in 1801, followed by five in 1802, one in 1803, and one in 1804. Through one of these purchases, settlers obtained the "old village of the said Indians," a sale to which "the Indians were all consenting." Though if the village was old and abandoned, at the time the boundaries of the tract were established, "the posts of their huts were still standing."[42] By the early nineteenth century, the Attakapas had lost control of many of their prominent, and likely ancestral, village sites. Some moved further west into Texas, and others continued to live in the less accessible lands that settlers did not desire. Selling land to control settler encroachment had been a workable strategy for a time, but it clearly had limits.

Claiming "Indian Titles" in American Louisiana, 1803-1830

After 1803, private settler purchases of indigenous land were no longer legal. Yet many settlers treated this sovereignty transition casually. Indian land purchases spilled well over into the first decade of the nineteenth century, especially those transacted in front of local Spanish officials who expected to keep their posts under a new imperial jurisdiction. A number of the Attakapas sales made between 1804 and 1807 were transacted in front of Opelousas post commandant Honore de la Chaise, who, U.S. officials noted later, was "then styling himself 'Commandant for the United States of America of the post of Opelousas."[43]

[39] U.S., *American State Papers*, Public Lands, Vol III, 97, 90, 98.
[40] U.S., Vol III, 89-123.
[41] U.S., Vol III, 129.
[42] U.S., Vol III, 89-123.
[43] U.S., Vol III, 86.

Nearly as soon as they purchased them, these settlers sought to have their titles approved by the U.S. land commissioners. The land claims process in Louisiana was established by an 1803 Act. Three appointed commissioners were to open a local office, where they would evaluate claims, take testimony, and submit recommendations for confirmation and denial to Congress for final approval. Almost immediately, Louisiana inhabitants began to argue for leniency in the Land Office's interpretation of their claims, arguing that land titles should be confirmed based on the spirit of the land tenure regime during which they were granted. In general, U.S. officials responded to the calls of settler petitioners for leniency with patience and adaptation, eager to curry favor with a white population whose loyalty they could not yet depend on.[44]

Claims based on purchases from indigenous nations were a small proportion of the total property claims submitted: some sixty or so claims among several thousand in total.[45] But land commissioners struggled at length with these claims in particular. Indian purchases clearly had been legal under Spanish law, and were now treaty-bound to be upheld. But what, exactly, constituted a legal transaction with indigenous peoples under Spanish rule? Moreover specifically, how were they to interpret the intermingling of diplomatic negotiations with economic transactions clearly evident in many of these claims?

First, commissioners tackled the claims made by settlers who had bought land from the nations along the Red River. These claims they saw as largely worthy of confirmation. They confirmed a claim based on the purchase settlers had made from the Pascagoulas on the Red River in 1795, on the basis of clear evidence that the Pascagoula had "occupied" the lands that they sold, and most importantly, that Spanish authorities had fully approved the purchase. Yet the same evidence that clarified these factors also made it plain that the original title—the post commandant's permission to settle on the Red River—had never been a private land grant of a bounded and specified tract of land, but a diplomatic negotiation that permitted settlement in Spanish territory in general. They observed that the 1787 "concession" had had "no determinate boundaries." Yet this was merely a mathematical problem, not a legal one. Ultimately, they decided to resort to their interpretation of "the general usage of the Spanish Government," by confirming a tract that covered a "depth of forty arpents on each side of the river." The nine-thousand-acre claim was confirmed.[46]

Miller and Fulton's claim for the Bayou Boeuf lands purchased in 1802 was similarly confirmed. In their recommendation to Congress, Land Commissioners affirmed the legal validity of the claim, on the premise that they "[knew] of no laws in force in the province, at the date of these sales, inhibiting the Indians from holding and selling lands," and further noting that the claimants had obtained "the ratification of the sales by the Governor."[47] The only doubts that remained related to the claim's boundaries. The 1802 land sales from the Choctaws, Pascagoulas, and Biloxis, they observed, had been made "without specifying any quantity" of land to be sold, beyond that it was for "the portion of land which had been granted them by the Baron de

[44] Malcolm J Rohrbough, *The Land Office Business; the Settlement and Administration of American Public Lands, 1789-1837* (New York: Oxford University Press, 1968), 33.; U.S., *American State Papers*, Public Lands, Volume I, 232; Peter J. Kastor, "'Motives of Peculiar Urgency': Local Diplomacy in Louisiana, 1803-1821," *The William and Mary Quarterly* 58 (2001): 820, 828.
[45] U.S., *American State Papers*, Public Lands, Vol IV, 916.
[46] U.S., Vol II, 648-650.
[47] U.S., Vol II, 661.

Carondelet for their villages and fields of culture." Moreover, the Commissioners suspected, the "grant" from Carondelet not a formal land grant, but a "letter of office," merely approving "the conduct of the commandant in putting the Indians in possession of the lands which they occupied on the bayou Boeuf."[48] What Miller and Fulton held up as an originating source of land title, was more properly described as a recognition, by Spanish officials, that these nations were already living and farming on Bayou Boeuf, and that the land was clearly under Choctaw control.

In their recommendation to Congress, the Land Commissioners complained of how they could only "in vain look to written regulations for the establishment of any uniform usages under the Spanish Government of Louisiana."[49] They were correct in that Spanish land tenure practices in Louisiana had been lax, often issuing "floating grants" that specified a region for settlement but allowed grantees to locate their own tract and fix their own boundaries.[50] Miller and Fulton had essentially done this, directing their surveyor to draw an optimistically large rectangle around the four villages. The Commissioners constrained those boundaries to "forty arpents in depth on each side of the bayou," reasoning that such a layout would "comport with the general usages of the Spanish Government," in that it was based in the French system of land tenure that drew boundaries lines perpendicular from riverbanks. All parties knew there had been no such bounded land grant, but if there *had* been one, it might have taken such a form. Together, they created a U.S. title by applying an approximation of French land tenure to a record of diplomatic communications between indigenous nations and Spanish officials.[51]

By contrast, most of the purchases made by settlers from the Attakapas were denied. Some were dismissed because they had so clearly been transacted after the U.S. took possession, as late as 1807. But most were ruled invalid because of a lack of involvement from higher-up Spanish authorities. Unlike the Red River claims, officials in New Orleans had less investment in consolidating or removing the Attakapas from their villages. Despite their long-term involvement in French trade, their relative isolation across the perilously swampy Atchafalaya basin from New Orleans disconnected them from the center of Spanish power in the province. Though they had fought with the Spanish in the American Revolutionary War, the Attakapas had more limited diplomatic dealings with authorities. Because still they remained on many of their ancestral territories, they had not needed to petition the Spanish for permission to settle anywhere.[52]

Together, these claims reveal the paradoxical function of indigenous purchases underlying settler titles. Claims were approved because purchases from these nations had been approved by Spanish officials. Yet evidence of Spanish approvals also revealed the hybrid nature of these purchases as political transactions as well as economic ones, in which governments and Native nations negotiated, and property-specific questions such as size and value of particular tracts were either secondary considerations, or left undetermined. Successful "Indian title" claims did not rely of indigenous peoples demonstrating that they could hold property just like settlers. In

[48] U.S., *American State Papers*, Public Lands, Vol II, 660.
[49] U.S., Vol II, 661.
[50] Ory G. Poret, *History of Land Titles in the State of Louisiana* (Baton Rouge, La.: Louisiana Department of Natural Resources, 1973).
[51] U.S., Volume II, 617, Volume III, 261.
[52] Post, "Some Notes on the Attakapas Indians of Southwest Louisiana," 230.

fact, they could be more successful the less they resembled "private" land transactions in which the government had no larger diplomatic interest.

Land commissioners had been able to evaluate the few Rapides Parish claims on an individual basis. Yet the nearly forty Attakapas claims caused them to demand "a suitable indemnity, in this and other cases of a similar nature, for extinguishing the Indian title" from Congress. But when instructions were not forthcoming, Louisiana Land Commissioners William Garrard and Levin Wailes endeavored to develop their own in an 1816 treatise known as the "Opelousas Report," named for the Land Office at which they evaluated claims.[53] They developed a rubric for Indian title claims that cast Native land rights in as weak terms as possible, while still allowing for the successful confirmation of a number of settler claims. In Spanish Louisiana, they acknowledged, Native peoples had the right to "pass sales of their lands." However, such a sale "could only vest in a purchaser the kind of title which the Indians held." Whatever aboriginal title they once had, they reasoned, had been extinguished by prescription, because "the Indians seem to have permitted the European emigrants to usurp the sovereignty of the country without making any opposition to them." In particular, prescription was evident in "the Indians permitting themselves to be removed from place to place by Governmental authority; by their condescending, in some cases, to ask permission of the governors to sell their lands."[54]

This argument was based on a fundamental misunderstanding of petites nations history, migration, and diplomacy in the Lower Mississippi Valley. Some petites nations sellers, like the Choctaw and Pascagoulas, never pretended to hold "original property of the soil" for the tracts they sold on Bayou Boeuf, far from their ancestral territories east of the Mississippi.[55] At the same time, their original request to settle on the Red River reflected the cultivation of a diplomatic relationship, not the failure to resist conquest that the doctrine of prescription implied. The Attakapas, by contrast, were selling portions of their ancestral territories, and did not "ask permission of the governors" to make those sales. Yet settler land claims based on Attakapas sales were denied for that same reason.

Ultimately, Wailes and Garrard wrote the Opelousas Report to convince Congress, and perhaps to convince themselves, that there was some sort of logic to the confirmation of Indian title claims in an already contested and chaotic land claims process. They managed to articulate a narrow definition of Spanish-era Indian title—one based on visible occupancy and Spanish sovereign consent—that appeared to accommodate their treaty fealty to Spanish land law, and address the reality of the Indian title claims that came before them. But their rubric failed to imagine an on-going reality in which petites nations peoples still held land, and sought to claim that land under U.S. jurisdiction.

[53] U.S., *American State Papers*, Public Lands, Volume II, 655.
[54] U.S., Volume III, 86-88.
[55] Juliana Barr, "Geographies of Power: Mapping Indian Borders in the 'Borderlands' of the Early Southwest.," *William & Mary Quarterly* 68, no. 1 (2011).

Indigenous "Imperial Title" Claims, 1803-1826

Louisiana land commissioners developed their own rubric because they received no guidance from other U.S. authorities, especially those designated to deal explicitly with Indian affairs. While commissioners confronted dozens of "Indian title" claims, Indian Agents and governors expressed confidence that indigenous land would be the least of their problems in Louisiana. As one more empire in a succession of colonial powers, petites nations peoples may have expected the United States to treat diplomatically with them as the French and Spanish had done. At first, the U.S. seemed to maintain some continuity with prior imperial practices. Diplomacy, in particular, continued loosely along the lines of Spanish strategies.[56] U.S. Indian Agent John Sibley and William C.C. Claiborne, the first governor of Louisiana, made formal forays toward the petites nations. In 1804, Claiborne directed his post commandant at Ouachitas to "speak of the Friendly disposition of the President of the United States, to his *Red Children* and his great desire to see them happy. You will add that the Americans are now their Brothers," he specified, using the diplomatic language of kinship employed in Spanish-era interactions.[57]

While Claiborne took these steps, he privately expressed his confidence that Native nations could easily be controlled. In 1805, Claiborne wrote to Jefferson that he anticipated "very little difficulty with the Indians West of the Mississippi. The *Caddo Nation* has decided influence over most of the Tribes in Lower Louisiana, and *they* are easily managed." Claiborne overestimated the extent to which Louisiana's small nations were controlled by the Caddos, but his comment nonetheless included the petites nations within a sphere of diplomatic relationships in which United States sovereignty was assured and a hierarchy of (imagined) alliances was clear.[58] In 1811, Claiborne hosted a delegation from the Houmas in New Orleans, and gave their chief one hundred dollars, continuing a Spanish practice of bestowing gifts. In 1815, the governor began arranging an invitation for "the warriors of the Caddoes, and other Tribes," to be "mustered into the service of the United States" in the War of 1812.[59]

None of these diplomatic negotiations involved land cession treaties. While the U.S. had already been negotiating treaties that explicitly extinguishing indigenous title claims and establishing reservations elsewhere, they did not do so in Louisiana. U.S. officials largely perceived them as small and landless itinerants, not powerful military entities and landholders who required the negotiation of formal treaties. Claiborne made a few meager gestures toward setting aside land for some of these groups. In 1808, he arranged to grant a "donation" of land for the Alabama.

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[56] U.S., *American State Papers*, Indian Affairs, Vol. I, 725; Wood, *Powhatan's Mantle,* 172. Usner notes that while Native diplomatic visits to New Orleans dropped after the American Revolution, the U.S. territorial era saw a renewal of formal visits.; Joyce Purser, "The Administration of Indian Affairs in Louisiana, 1803-1820," *Louisiana History: The Journal of the Louisiana Historical Association* 5, no. 4 (1964): 401–19.

[57] William C. C Claiborne et al., *Official Letter Books of W.C.C. Claiborne, 1801-1816* (Jackson, Miss.: State Dept. of archives and history, 1917) Volume 2, 148; Kinnaird, *Spain in the Mississippi Valley,* Volume II, 231. A 1787 request from the Chitimachas appealed to the Spanish as "their father and protector."

[58] U.S., *American State Papers*, Public Lands, Volume I, 537. Albert Gallatin, Secretary of the Treasury, directed Surveyor General Isaac Briggs to survey Louisiana in 1805, he cautioned him to inform "both the white inhabitants and several small tribes of Indians, who are scattered through that territory, that the running of such lines will not in the least affect their rightful claims."

[59] Lawrence Kinnaird, Francisco Blache, and Navarro Blache, "Spanish Treaties with Indian Tribes," *The Western Historical Quarterly* 10, no. 1 (1979): 43; Ellis, "The Many Ties of the Petites Nations," 238; Claiborne, *Official Letter Books,* Vol 5, 323; Vol 3, 124.

Describing them as "poor wanderers," who were "exiles from the country of their ancestors," he hoped to "obtain for them, a Grant for two or three thousand Acres of land, which I presume, will be as much, as they would desire."[60] In 1809, Jefferson approved the survey of such a tract, which the Alabama could hold for fifty years under a restricted title of occupancy.[61] Such donations, Claiborne surmised, might be extended to other Louisiana Indians, who might also "receive from Congress a small grant of Lands to reside on."[62] Indian Agent John Sibley advocated for a similar tract for the Natchitoches Nation in 1810.[63] But beyond the donation to the Alabamas, these plans never came to fruition. Successive Indian Agents after Sibley, in particular Colonel John Jamison, who took office in 1816, also recommended that the petites nations be consolidated on reservations. He planned for the removal of Pascagoulas and Apalachees northwest to lands along Lakes Bistineau and Bodcau, deep in Caddo territory. This scheme was approved in Washington in 1818, but both nations rejected the plan.[64]

These plans conflated immigrant tribes like the Pascagoulas, who had petitioned the Spanish for permission to settle west of the Mississippi, with those who were still living on their ancestral territories, like the Attakapas and Chitimachas. No attempts to negotiate the extinguishment of ancestral Chitimacha or Attakapas titles were undertaken by U.S. officials. In 1826, U.S. General Land Office Commissioner George Graham reported to the Treasury Department that there were no "unceded land and reservations of land in the possession of the Indians" in the state of Louisiana.[65] There had been no reservation-creating treaties made with Native nations within the state of Louisiana, and there would be no need for any such treaties in the future.[66] Petites nations numbers were small and they remained unconfederated. Without posing as a military threat, it was easy for U.S. officials to believe the fiction that indigenous titles had been extinguished by prior empires.

This lack of coherent policy, based on the denial that petites nations peoples held any land by 1803, undoubtedly caused land commissioners to struggle in their confirmation of Indian title claims. But it also drove some petites nations peoples to turn to the private land claims process to seek title for their lands. In an absence of other diplomatic avenues to defend land or even negotiate their cessions, the private land claims process may have appeared as a promising legal avenue. Moreover, most of these nations had already been engaged in property processes for decades. As settlers around them made claims based on the lands they had purchased, three petites nations made claims for the lands they still held.

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[60] Claiborne's generosity was exercised in the context of being assured that the Alabama's recognized United States jurisdiction. In the same letter, he spoke approvingly of their conduct surrounding a murder, in which "the conduct of the little Tribe was exemplary; they, with promptitude delivered up the murderers." Claiborne, *Official Letter Books,* Vol 4, 236-239.

[61] "An Act for the Relief of Certain Alibama and Wyandot Indians," February 28, 1809, 10 Cong., 2 Sess., Ch 23, in *The Public Statutes at Large of the United States of America from the Organization of the Government in 1789, to March 3,1845 by Authority of Congress*, Boston: C.C. Little and J. Brown, 1845, 527.

[62] Claiborne, *Official Letter Books*, Vol 4, 377.

[63] Purser, "The Administration of Indian Affairs in Louisiana, 1803-1820," 410.

[64] Purser, 415.

[65] U.S., *American State Papers*, Public Lands, Vol IV, No. 579, 914-916. Of the western states, Graham reported, only Louisiana and Missouri (formerly Louisiana territory) lacked unceded Indian land and/or reservations. By contrast, Mississippi had 14,188,454 acres, Illinois 6,424,640, and Florida, 4,082,640.

[66] The lone exception is an 1835 Caddo land cession treaty. Kniffen, Gregory, and Stokes, *The Historic Indian Tribes of Louisiana,* 76.

The first of these three claims came from the Houmas. Originally from the Red River region, the Houmas had moved south into southern Louisiana during the eighteenth century. By the 1770s, they had been engaged in settler land transactions, selling tracts of land and disputing others with the Acadian settlers who increasingly surrounded them.[67] In an 1817 report to Congress on Louisiana land claims, Eastern District land commissioners reported on a claim made by "the Homas tribe of Indians" for "a tract of land lying on Bayou Boeuf, or Black bayou, containing twelve sections," which they slotted into the category of "claims not embraced by existing laws."[68]

In their claim, the Houmas did not demand recognition for the land they had held for centuries as a nation. Instead, they pursued a claim structure similar to those of settlers, who relied on prior Spanish authority to validate their titles. They requested U.S. recognition for a grant of land they had obtained from the Spanish in the 1780s, when they had migrated southward.[69] They also emphasized that they had participated in property processes with settlers. In the 1770s, they noted, they had sold a tract of land on "New Orleans Island." When the purchaser petitioned Governor Galvez to clarify the tract's boundaries, a land surveyor called on the Houma chief Calabe to specify the correct boundaries, which he did with authority.[70]

Land commissioners rejected this claim outright. The Houmas claim was similar to many settler claims that relied on the same types of evidence: a Spanish grant and a legal paper trail of property transactions and boundary delineation. But the Houmas clearly claimed their land as a nation, not as a group of individuals. The commissioners wrote that they "know of no law of the United States by which a tribe of Indians have a right to claim lands as a donation."[71] Because they claimed as a tribe, commissioners defined their Spanish grant as a "donation" rather than as a property grant, even though Spanish officials had never made such distinctions. Moreover, their interpretation ignored that fact that only a few years prior, Claiborne had granted a "donation" to the Alabamas.[72]

While the Houmas' claim was categorically rejected by one district's land commissioners, another indigenous claim was upheld in another district the same year. This claimant, identified as "Bosra, an Indian," claimed "301 superficial acres" on Avoyelles Prairie. As evidence, he included an 1808 survey plat displaying the claim's boundaries, and a certified copy of a 1786 letter from then-Governor Esteban Miró to the local post commandant, in which Miró instructed

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[67] James W. Coleman, *French, Cajun, Creole, Houma: A Primer on Francophone Louisiana* (Baton Rouge, La: Louisiana State University Press, 2006), 118–23.
[68] U.S., *American State Papers*, Public Lands, Vol III, 234, 232. This claim refers to a different "Bayou Boeuf" than that in Rapides Parish.
[69] Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgment Process*, 164, 161; Ellis, "The Many Ties of the Petites Nations," 180; Kniffen, Gregory, and Stokes, *The Historic Indian Tribes of Louisiana*, 90. While scholars have been unable to locate the original grant, Houmas have an oral tradition referencing a Spanish grant on Black Bayou, and three other Houma families had secured a cluster of Spanish land grants on nearby Bayou Terrebonne.
[70] United States, *Laws of the United States: Resolutions of Congress under the Confederation, Treaties, Proclamations, Spanish Regulations, and Other Documents Respecting the Public Lands.* (Washington [D.C.: Printed by Gales & Seaton, 1828) Vol I, 953-955.
[71] U.S., *American State Papers*, Public Lands, Vol III, 232.
[72] Claiborne, *Official Letter Books*, Vol 4, 377; Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgment Process*, 14.

the commandant to tell two settlers "to look out for some other part to place themselves, as the lands they demand belong to the Indians, and that they cannot have them but by a formal sale, as the Indians have known rights that ought to be respected every where."[73] The Indians that Miró referred to on Avoyelles Prairie, by 1786, included the Tunica, Biloxi, and Ofo, who had moved there in the 1780s, where they joined with the Avoyelles, the prairie's original inhabitants.[74] Bosra submitted his claim as an individual, not as the authoritative representative of a nation or group of nations. Yet he nevertheless identified himself as "an Indian."[75] Moreover, the evidence of his claim relied not on a history of transactions he had made alone. Instead, he referenced Miró's collective diplomatic approval of the larger Tunica, Biloxi, and Ofo landholdings on Avoyelles prairie.

Bosra's claim was evaluated by Levin Wailes and William Garrard, the authors of the Opelousas report. They ruled that he had "a valid title in the claim." Yet they hardly seemed even to draw on the rubric they had just created for coherent guidance. They required that the title be saddled "with the restriction imposed on other Indian titles within the limits of the United States," in that Bosra's rights would be limited to occupancy, and he would be unable to sell or lease the land.[76] This creation of an individual title, yet one essentially held in trust in the way that collective reservation lands were, was an improvisatory solution, rather than the consistent application of the rubric they themselves had created. Congress officially confirmed Bosra's claim on February 5, 1825.[77]

A few years later, a third indigenous property claim, this one made by the Chitimachas, was recommended by Louisiana land commissioners for confirmation. The Chitimachas claim, made in the 1820s, used individual claimants but sought a collective title for their nation. "John Louis and Gros Pierre, acting as the representatives and two principal men of the Chetimaches Indians," claimed "in behalf of the said nation," a tract of land on Bayou Teché in Attakapas County. The claim was for a tract of "about one league" on the bayou, which they had "occupied and cultivated for more than fifty years." As evidence, John Louis and Gros Pierre included a number of documents that emphasized Spanish recognition of both their national integrity and their lands: first, a 1767 Act signed by the French governor at the time "recognizing the Chetimaches nation," then a 1777 Act by then-governor Bernardo de Galvez, instructing "other

[73] U.S., *American State Papers,* Public Lands, Vol III, 212.
[74] United States Department of the Interior, Bureau of Indian Affairs, "Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgment of the Tunica-Biloxi Indian Tribe of Louisiana Pursuant to 25 CFR 54," December 4, 1980, 4. This petition reports that Bosra was "identified in Spanish records as a Biloxi Indian," but they identify Miró's 1786 letter quoted in Bosra's claim as describing Tunica land. This identification of Bosra as a Biloxi is based on a 1940s local history of the parish that should be considered a primary rather than a secondary source. Corinne L Saucier, *History of Avoyelles Parish, Louisiana,* (New Orleans: Pelican Pub. Co., 1943).
[75] U.S., *American State Papers,* Public Lands, Vol III, 212, 213. Bosra's evidence did not include an originating Spanish grant, and Miró's letter reads as a Spanish defense of Indian property ownership in general. At the same time, Miró noted that the Tunicas "have but one league of land; that, consequently, they have use for their land for their cattle." The specification of "one league" of land implies that they had settled on under a Spanish grant.
[76] U.S., *American State Papers,* Public Lands, Vol III, 213, 220.
[77] United States, *Annual Report of the Commissioner of the General Land Office for the Fiscal Year Ending June 30, 1879,* (Washington: Government Printing Office, 1879), 219.

subjects" to "respect the rights of the said Indians in the lands which they occupied, and to protect them in the possession thereof." [78]

They also included "testimonial proof" from settler neighbors, one of whom declared that "from his earliest recollection the Chetimache Indians have resided on the river Teché, at the place where they have claimed," and that "the rights of the Indians in that situation and on both sides of the river have always been respected by the Spanish government." They included evidence of several land sales they had made for parts of their original claim, emphasizing that these sales had "been made in good faith, and for full and valuable considerations." These pieces of evidence demonstrated French, Spanish, and ongoing local settler recognition of both their national identity and their land rights. Like the Houmas, the Chitimachas had long participated in settler land transactions, and they used such participation to strengthen their self-portrayal as robust and authoritative proprietors.

In an 1826 report to Congress, Valentine King, the successor of Levin Wailes as Opelousas Land Office Register, declared the claim to be "equal to the highest order of grants." He recommended its confirmation. King arrived at this enthusiastic and unconditional recommendation not just by reviewing the evidence, but by referencing his predecessor's Opelousas Report. Yet King quoted selectively from the report, emphasizing the language of a rhetorical counter-argument that Wailes and Garrard had painstakingly refuted as they crafted their doctrine. King concluded that "these Indians had, under the Spanish government, an absolute right to the soil," not a mere right of occupancy. In fact, he saw the Chitimachas claim as so strong that he overturned the previously rejected claim of one of the settlers that had purchased land from them. Indigenous proprietorship, to King, was so robust that it could alter a settler claim.[79]

Three claims are too small a number to intuit a discernible pattern of confirmation or denial. What is clear, however, is that land commissioners were both improvisatory and inconsistent when confronted with indigenous petitions. This reality is hardly surprising, given the context in which they operated. These lower-level land officials, acting on delegated federal authority, often had little experience with thorny questions of Indian land title, and seemingly did not communicate with one another. Just as the Eastern District officials didn't know about Claiborne's "donation" to the Alabamas, the Opelousas officials apparently didn't know about the Eastern District decision to reject the Houma claim. They received little to no guidance from other federal officials about how to deal with Indian titles, and what guidance they did have only pertained to settlers who had made purchases from Native nations, not Native nations themselves who sought to retain their lands.

[78] U.S., *American State Papers,* Public Lands, Vol IV, 489, 497.
[79] U.S., *American State Papers,* Public Lands, Vol IV, 518, 498.

Transforming Property into Tribal Land

The contingent decisions of low-level land officials could still have a major impact on the ability of the petites nations to retain land into the nineteenth century and beyond. The Chitimachas, in particular, were able to leverage their confirmed property claim into federal recognition of their landholdings. But to do so, they had to pursue a number of further legal actions, ultimately taking their claim all the way to the U.S. Supreme Court.

Despite the positive recommendations of Commissioners in the 1820s, the Chitimacha claim on Bayou Teché was never formally confirmed by Congress. For the next two decades, they maintained their land on the river by occupying and cultivating it, relying on the recognition of local settler neighbors that they owned their lands, even without a federal title. But in the 1840s, they sought a formal title to the lands. In 1846, Alexander Bertin, "acting as their chief," as well as numerous others "forming the said nation or tribe," filed a suit in District Court against the United States, suing for the title they had demanded in the 1820s.[80]

In their filings, the Chitimachas and their lawyers proffered the same evidence that they had before: Spanish-era recognitions and protections of their status as a nation and their landholdings. They also detailed a number of confirmed settler claims based on Chitimacha sales, and they included local settler testimony, describing how their tract had been "greatly improved by themselves and by others," including cultivated farm fields, "peach and plum trees," and "large and extensive buildings." Finally, they described in detail their 1820s federal claim, explaining that they had "accordingly deposited their titles in the office of the register of public lands at Opelousas," and that their claim "was favorably reported upon," and had been considered by the commissioners to be "equal to the highest order of grants." They demanded that the federal government recognize that their lands were "no part of the public domain, but belong[ed] exclusively to the claimants."[81]

In June 1848, their claim was upheld. In the District Court's opinion, the Chitimachas held "a valid title in full ownership by the law, customs, and ordinances of the French and Spanish Governments of Louisiana." Moreover, that title was clearly "protected by the treaty between the United States of America and the French Republic."[82] The U.S. Attorney appealed the decision, and in 1849, the case moved on to the Supreme Court, where the Chitimachas were again victorious. In 1852, their right to fully hold, sell, rent, or retain their lands—as a nation—was upheld.[83] Though nearly fifty years after the U.S. began to rule Louisiana, the Chitimachas marshalled local settler testimony, a history of petitioning, and a legacy of land transactions into a confirmed, collective title to their lands.

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[80] *U.S. v. The Chetimachas Indians, et al*., Transcript of Record. File Date: 10/9/1849. U.S. Supreme Court Records and Briefs, 1832-1978. Gale, Cengage Learning. University of California Berkeley Law. 10 May 2019, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3911225216.
[81] *U.S. v. The Chetimachas Indians, et al*., 5, 42. Settler neighbors noted that their improvements were Chitimacha-style homes: "the same kind of buildings in which the Indians reside."
[82] *U.S. v. The Chetimachas Indians, et al*., 55.
[83] Daniel H. Usner, *Weaving Alliances With Other Women: Chitimacha Indian Work in the New South* (University of Georgia Press, 2015), 33.

For the Tunica and Biloxi, the community from which Bosra had made a federal claim, a series of local legal battles also eventually yielded a confirmed title to one of the several villages they tried to maintain during the U.S. era. In 1826, when a settler attempted to purchase the lands of their village on Bayou Rouge from the U.S. as public domain, they hired a lawyer. Their lawyer wrote to the state land register, demanding that their title, recognized since "time out of mind" by the "Spanish government as a tribe and the proper owners of said land," be upheld by the U.S. government as well.[84] This protest, which relied on an articulation of inherent Tunica-Biloxi aboriginal title, and mere Spanish recognition of that fact, was dismissed.[85]

The Tunica-Biloxi had better luck in court in the 1840s after another attempt at local encroachment onto another of their villages. In 1812, a settler named Francois Bordelon had submitted a federal claim for a tract of land on Avoyelles Prairie, just across the river from Bosra's claim. Rather than excepting the land that the Tunicas lived on and cultivated along the river, Bordelon altered his survey map to encompass Tunica land within his claim. Bordelon's claim was confirmed by Congress, but the Tunicas remained on their village land for the next few decades. However, in 1841, the successor to Bordelon's title, Celestin Moreau, began to dispute the Tunica's claim to their land by installing fence posts. In a dispute over the boundaries to the tracts, Tunica chief Melancon was shot and killed.[86]

The next year, Moreau brought a suit in District Court against the Tunicas for what he perceived as his land, asking the court to evict them and quiet the title to him. The Tunicas engaged a local attorney, Ralph Cushman, who defended them pro bono. Cushman described how the Tunica had long occupied their village, and that "their right of occupancy was always recognized by said government of Spain, as well as their complete ownership." Cushman demanded a new survey and a quieting of the title in their favor, under the "laws, usages, and customs of the Spanish government and the Treaty between the United States government & France." Cushman also defended Tunica lands through prescription, pointing out that they had "actually occupied their respective cabins & fields for the last seventy years," as well as larger territories that they used for "grazing grounds, cutting wood, hunting and fishing." The Tunica, he argued, were entitled to a square league of land that encompassed their village, their fields, and their hunting and fishing grounds, because that had been the convention of Spanish land grants and Native diplomatic policy. Finally, Cushman was explicit that they claimed that land as a nation. The defendants were "joint owners, coproprietors, and in possession of a league of land."[87]

This case, in which Tunica defendants had marshalled a potentially strong case, never made it to court. In 1848, Moreau signed an "Arrangement" with a number of Tunica women, including "Madame Valentine, Madame Wiha, Widow Melancon, Jackson, Marie Bride Lebeu, Poupon Wiha and Heloise Whia," as representatives of the nation. This settlement was a compromise for the Tunica. They did not secure title to the entire league of land requested, and Moreau did successfully secure confirmation to a portion of the land he claimed. But it also clearly

[84] George Gorten to Valentine King, September 7, 1826, in Works Progress Administration, *Survey of Federal Archives in Louisiana*, Vol. 20 (Louisiana State University, 1941).
[85] Klopotek, *Recognition Odysseys*, 43.
[86] Klopotek, 44; Donald Juneau, "The Judicial Extinguishment of the Tunica Indian Tribe," *Southern University Law Review* 7 (1981 1980): 57.
[87] Klopotek, *Recognition Odysseys*, 44; Juneau, "The Judicial Extinguishment of the Tunica Indian Tribe," 57–65.

confirmed a one-hundred-thirty-two-acre section of the disputed land to the Tunica, in their name and held communally. This recognition was not quite as robust as the Supreme Court decision that the Chitimachas had secured. But it was a strong enough title to be recognized as indigenous land by local authorities. As Brian Klopotek has detailed, the land remained untaxed, becoming a de-facto reservation that was created without any involvement by the federal government.[88]

Conclusion

For the Chitimachas and Tunica-Biloxi, these nineteenth century legal actions enabled them to secure federal recognition in the twentieth-century. The Chitimachas secured formal federal recognition from the Department of the Interior as a tribe in 1916, after substantial advocacy and another series of court battles over land.[89] The Tunica-Biloxi managed to secure federal recognition in the 1981, and the land they secured from Moreau in 1848 was formally transformed into a reservation.[90] The 1816 denial of the Houma claim marked their temporary departure from settler legal records, as they likely moved into far southern swamplands that remained unsurveyed until the 1870s. While this continued existence beyond the reach of the Land Office was likely a good thing for tribal sustainability, it has proved challenging for the Houmas' contemporary attempts to gain federal recognition, which have been denied repeatedly.[91]

Petites nations survival in Louisiana has required the deployment of long-term and diverse legal and political strategies, undertaken in multiple registers and across empires. Settler property processes, from land transactions to federal claims to lawsuits, were a prominent part of those strategies. For many, their primary participation was selling land, and that was a strategy with limited utility. Some managed to preserve portions of land and bolster their authority through sales, but many others simply lost land by selling it. Yet even in the Spanish era, when petites nations participation in property transactions were fully legal, they never participated in a neutral and purely economic land market, separate from diplomatic considerations. Property transactions remained entangled with questions of sovereignty and diplomacy for settlers, Spanish officials, and petites nations themselves.

After 1803, some U.S. officials assumed that petites nations had no land left. But land office administrators could hardly ignore the question of "Indian title," because it surfaced so frequently in settler claims. However, they failed to imagine the involvement of petites nations peoples in property transactions as anything other than sellers. Thus, when petites nations made federal property claims, their responses were inconsistent, even incoherent. Settler attitudes toward indigenous property had hardly hardened in early American Louisiana, even in the era of *Johnson v. M'Intosh*.

[88] Juneau, "The Judicial Extinguishment of the Tunica Indian Tribe," 70–73; Klopotek, *Recognition Odysseys*, 44.
[89] Usner, *Weaving Alliances With Other Women*, 27–51.
[90] Klopotek, *Recognition Odysseys*, 42–60.
[91] Miller, *Forgotten Tribes*, 197–98.

The two petites nations who secured limited victories through federal property claims, the Chitimachas and Tunica-Biloxis, were able to manipulate these inconsistencies. As for Abenakis in Quebec, there was no singular legal action that U.S. officials could perform that would permanently secure their lands and their status as a nation. Instead, maintaining land and political recognition required repeated petitions, claims, and lawsuits. In these legal actions, these nations repeatedly invoked a Spanish legacy of recognition and the Louisiana Purchase Treaty's requirement that such recognition be upheld, pursuing the same strategy that hundreds of settlers around them did in confirming property claims. But they also used them to transform property into political recognition. The Chitimachas sued the federal government not only for a confirmed property claim, but for a collective title that held as a nation. The Tunica-Biloxi, in their local settlement, did the same. In Louisiana, the settlers who secured "Indian title" tracts benefitted most from the flexibility of the property claims process. But petites nations peoples seized the same flexibility to secure land and recognition, and ensure their on-going survival.

CHAPTER FOUR

Reclaiming Tongva and Tataviam Land in the Los Angeles Basin, 1834-1891

Native nations turned to property processes because Anglophone states refused to treat with them as nations. When Abenakis became seigneurial proprietors as Odanak, they were protecting territory and articulating authority to British administrators who sought to cast them as protected dependents, not independent allies. In Louisiana, Chitimachas compelled U.S. officials to recognize their land and nationhood by demonstrating how Spanish officials had done so. These communities did not have to reach terribly far back into their histories of colonization to do so. Chitimachas could reference their Spanish medals and letters of office. Abenakis were still considered a nation by the British, just one with no clear territorial status.

In nineteenth-century coastal California, small Indigenous polities had a much steeper climb to political legibility. When small Native polities began to make land claims to the Mexican government in the 1840s, it was after decades of Spanish colonization that sought to strip them of their lands, their sovereignty, their languages, and even their names. The Franciscan mission system established in the Spanish province of Alta California in 1769, was markedly different from the Jesuits projects in Quebec. While Jesuit priests lived and proselytized Abenakis at what they accepted would continue to be a very indigenous place, Franciscans imposed a regime of forced labor designed to transform indigenous mission residents, which they called neophytes, into subjugated converts.

After Mexican independence in 1821, when the mission system was dismantled, indigenous polities began the tremendous task of reconstituting their communities, their territories, and their political identities as nations. Petitioning for land grants was a key part of that project. Indigenous petitioners could not invoke an imperial past in which they had been seen as nations. Instead, they justified their petitions on the basis of their years of hard labor for the missions.

This chapter examines indigenous land claims made primarily by Tongva, Tataviam, and Ventureño Chumash peoples around two southern California missions: San Gabriel Arcangel and San Fernando Rey. While Abenakis and Chitimachas used property to sustain political identities, these peoples used property to rebuild them from the ground up. The vast majority of their petitions to Mexican authorities were successful. They gained formal titles to small properties around former missions, and larger tracts that contained important community places. Yet they quickly faced the additional challenge of claiming their property before another state. The United States gained jurisdiction over California in 1848 and initiated a private land claims process. Indigenous petitioners could not draw upon a recognized history of their nationhood, but they could reference the recent land titles they had obtained from Mexican authorities. The vast majority of these property claims were approved.

Successful indigenous U.S. claims may seem like a logical progression from successful Mexican claims, both made in fee simple property. But they appear extraordinary within the larger context of U.S. California. As quickly as 1850, state officials had begun an extraordinarily harsh and exclusive legal campaign against indigenous peoples. They ended male indigenous citizenship, restricted Native legal standing in court, and made indigenous property rights wholly contingent

on the whims of settler neighbors. Yet in the midst of this profoundly unfriendly legal context, indigenous property claims were exceptionally successful. This chapter illuminates the paradox of inter-imperial property, in which Anglophone states held property in such high esteem that they were even willing to grant it to the same peoples they simultaneously stripped of civil rights and legal standing.

It also explores how Native Americans who were displaced from ancestral territories by the Spanish mission system strove to remake their relationships to land and to each other in the Mexican and U.S. eras. While scholars have been careful to emphasize indigenous resistance and agency, much of the narrative of eighteenth and nineteenth-century indigenous California is predominantly framed a tragedy, one in which the Mexican era forms only a brief respite between the harsh mission system and the U.S. regime of exclusion that would legitimate settler violence and lead to genocide.[1] Telling these stories are vitally important, but it is equally important to augment this story with one of resilience and survival.[2] This chapter pays more attention to how property ownership could be a tool of such resilience more extensively than prior scholars.[3] Grasped by indigenous proprietors through a sustaining series of legal actions, property became a key part of the ways that indigenous people remade individual, family, and community lives in the aftermath of the mission system's catastrophic disruptions of indigenous worlds.

[1] On the mission era, see Steven W Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769-1850* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 2005); James A Sandos, *Converting California Indians and Franciscans in the Missions* (New Haven: Yale University Press, 2004); Robert H Jackson and Edward D Castillo, *Indians, Franciscans, and Spanish Colonization the Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1997). On the U.S. regime and genocide, see Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (New Haven: Yale University Press, 2016); Brendan C Lindsay, *Murder State California's Native American Genocide, 1846-1873* (Lincoln: University of Nebraska Press, 2012); Florence Connolly Shipek, *Pushed into the Rocks: Southern California Indian Land Tenure, 1769-1986* (Lincoln: University of Nebraska Press, 1988).

[2] Important works that emphasize indigenous resilience and survival in 19th century California include Albert L Hurtado, *Indian Survival on the California Frontier* (New Haven: Yale University Press, 1988); William J Bauer, *We Were All like Migrant Workers Here Work, Community, and Memory on California's Round Valley Reservation, 1850-1941* (Chapel Hill, N.C.: University of North Carolina Press, 2009); Douglas Monroy, *Thrown among Strangers: The Making of Mexican Culture in Frontier California* (Berkeley: University of California Press, 1990); Khal Schneider, "Making Indian Land in the Allotment Era: Northern California's Indian Rancherias," *Western Historical Quarterly* 41, no. 4 (2010): 429–50.

[3] Haas and Hackel pay some attention to indigenous land ownership during secularization, while Phillips frames the era as one of indigenous labor, but not land ownership. Hackel, *Children of Coyote*; Lisbeth Haas, *Saints and Citizens: Indigenous Histories of Colonial Missions and Mexican California* (University of California Press, 2014); George Harwood Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California* (Berkeley: University of California Press, 1975).

Missions and their Dissolution in Tongva and Tataviam Territories, 1771-1834

The Los Angeles Basin and the San Fernando Valley have been the sovereign territories of Tongva, Tataviam, and Chumash peoples for millennia.[4] Tongvas in the Los Angeles Basin, and Tataviams and Chumash in the San Fernando Valley share linguistic and cultural commonalities, but in the eighteenth century, they lived in dispersed communities (called *rancherias* by the Spanish), most of around fifty to one hundred inhabitants. Within this cellular governing structure, specific clans claimed large, delineated territories, but they commonly allowed others in to hunt game, gather water, forage, or establish seasonal camps.[5]

When Spanish Franciscan missionaries arrived in the 1770s, bent on colonizing Alta California through the forcible conversion and enslavement of indigenous people, they planted their missions within this political landscape. Mission San Gabriel Arcangel, founded in September 1771, was located some twenty miles north of Povuu'ngna, the ancient center of Tongva territories (today near the city of Long Beach), where Chinigchinich, the Tongva creator, originally formed humans from clay.[6] San Fernando Rey was founded in September 1797, northwest of Los Angeles in the San Fernando Valley, between the Tataviam villages of Achiocominga and Tujunga.[7]

The founding of these two missions fundamentally disrupted indigenous lives and land tenures, as they did throughout coastal California, through what historian Steven Hackel has called "dual revolutions" in demography and ecology.[8] Epidemic diseases and invasive Spanish plants and livestock weakened Native communities, and missions began to appear, superficially, as sources of food during famine and places of refuge. San Gabriel primarily drew in Tongvas from the Los Angeles Basin, as well as smaller numbers of Chumash, Tataviam, and Serrano peoples.[9] At San Fernando Rey, neophytes came from the valley near the mission, the Santa Monica and Malibu regions, and the Antelope Valley, at the base of the Tehachapi mountains.[10] They originated from more than one hundred thirty rancherias, and constituted a community that spoke several distinct languages.[11]

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[4] Chester King, "Overview of the History of American Indians in the Santa Monica Mountains" (Topanga Anthropological Consultants, Prepared for the National Park Service Pacific West Region, 2011), 1; William McCawley, *The First Angelinos: The Gabrielino Indians of Los Angeles* (Banning, Calif. : Novato, Calif: Malki Museum Press; Ballona Press, 1996).
[5] John R Johnson and David D Earle, "Tataviam Geography and Ethnohistory," *Journal of California and Great Basin Anthropology* 12, no. 2 (1990): 192; Claudia K. Jurmain and William McCawley, *O, My Ancestor: Recognition and Renewal for the Gabrielino-Tongva People of the Los Angeles Area* (Berkeley, Calif. : Long Beach, Calif: Heyday Books ; Rancho Los Alamitos Foundation, 2009), 7–10.
[6] Jurmain and McCawley, *O, My Ancestor*, 104.
[7] Johnson and Earle, "Tataviam Geography and Ethnohistory," 192.
[8] Hackel, *Children of Coyote,* 65.
[9] Steven W. Hackel, "Sources of Rebellion: Indian Testimony and the Mission San Gabriel Uprising of 1785," *Ethnohistory* 50, no. 4 (September 21, 2003): 648.
[10] John R Johnson, "The Indians of Mission San Fernando," *Southern California Quarterly* 79, no. 3 (1997): 249–90.
[11] Johnson, "The Indians of Mission San Fernando," 252–54.

Franciscan Missions were not places of refuge; they were spaces of death, sickness, rape, and punishment.[12] Indigenous people were expected to labor for the mission itself, literally constructing the buildings that contained them, as well as grow crops and herd cattle on the large agricultural land grants, or ranchos, granted to each mission by Spanish officials.[13] As missions were built by their indigenous residents, they also became deeply indigenous spaces, where Native Californians governed, danced, prayed, sang, made baskets, painted murals, and resisted Franciscan rule through quotidian passivity and organized revolts.[14] Tongva, Tataviam, and Chumash peoples at the missions also maintained relationships with relatives and clans outside them, periodically returning to home villages or escaping permanently. At the same time, they formed new, intercultural relationships at missions with people from other nations that they had previously only engaged peripherally.[15]

Mexico's independence from Spain in 1821, fifty-two years after the founding of the first mission, initiated a new relationship between the state and indigenous people; one that would lay the groundwork for indigenous land claims.[16] Guided by an egalitarian strain of nineteenth-century liberalism, Mexican officials ended the *casta* system of racial hierarchy, enfranchised Indigenous men over age twenty-one, abolished slavery, and began to emancipate some from their status as neophytes.[17] This grew into a decades-long campaign against the power of the Church, taking particular aim at its vast landholdings. Because Spain's colonization of Alta California had been essentially limited to a series of presidios alongside the twenty-one Franciscans missions, the Franciscans claimed nearly all of coastal California from San Diego to above San Francisco; one mission's boundary ended only where another mission's land began.

Secularization was not a project of returning mission lands to their original Native owners. The architects of secularization imagined the transformation of the missions into *pueblos de indios*, or self-governing Indian towns. These pueblos would hold a small amount of land around each mission, leaving the vast majority of mission territories available for distribution among well-connected Californios, as the soldiers and ranchers who had long inhabited Alta California were known, as well as newer colonists from central Mexico and elsewhere.[18]

The creation of *pueblos de indios* wasn't just a strategy for the division of land, but contained a contradictory set of ideas about how indigenous Californians would become part of the modern Mexican state. The creation of independent indigenous municipalities echoed much older Spanish ideas about the separate spheres of indigenous and settler populations within a larger

[12] Hackel, *Children of Coyote*; Haas, *Saints and Citizens*.
[13] On indigenous labor as fundamental to the construction of southern California, see Phillips, *Vineyards & Vaqueros*.
[14] Haas, *Saints and Citizens*, 158.
[15] Johnson, "The Indians of Mission San Fernando," 252.
[16] On mission secularization and indigenous peoples within the larger project of Mexican liberalism, see Haas, *Saints and Citizens*; Karen Deborah Caplan, *Indigenous Citizens: Local Liberalism in Early National Oaxaca and Yucatán* (Stanford, Calif.: Stanford University Press, 2009); Charles A Hale, *Mexican Liberalism in the Age of Mora, 1821-1853,* (New Haven: Yale University Press, 1968).
[17] Phillips, *Chiefs and Challengers*, 51; Haas, *Conquests and Historical Identities in California, 1769-1936*, (Berkeley, Calif.: University of California Press, 1996), 33.
[18] Phillips, *Vineyards & Vaqueros*, 159, 162.

polity.[19] Yet at the same time, administrators also imagined these pueblos would be sites of liberal modernization and civilization, where indigenous Californians would be transformed into Mexican citizens through holding and improving private property.[20]

This contradictory blend of governance was reflected in territorial governor José Figueroa's 1834 instructions, which emancipated indigenous mission residents and begin the division of vast mission landholdings. Figueroa's instructions granted chunks of land between one hundred and four hundred square *varas* from each mission to each Native head of a family. Yet at same time, he set aside lands to be held in common for grazing and watering cattle, and continued to tie emancipated Indians to the missions, obliging them to "join in such labors of the community as are indispensable," making them collectively responsible for mission debts, and prohibiting the sale or mortgage of their lands or cattle.[21] Even as it imagined enfranchised Native peoples farming private property, secularization policy also continued to bind indigenous Californians into a collective colonial system, marking them as something distinctively other than full and free Mexican citizens.

In practice, secularization never created *pueblos de indios*. Yet it did provide the legal conditions for opportunistic indigenous claimants to obtain land. Figueroa's 1834 instructions gave former neophytes the right to demand land and goods from the assets of the missions. Perhaps more importantly, it raised the expectation that secularization would result in the redistribution of mission lands to those who had worked them.[22] Rather than waiting for a distant government to bestow *pueblo* status on them, indigenous claimants initiated their own claims using the same process that settlers did: a series of petitions that required both local and distant administrative approval. And rather than securing the complex collective land rights that Figueroa imagined, many secured complete fee simple titles just as settlers did. Yet they did not frame themselves in their petitions as just like settlers. Instead, many invoked the injustices of the mission system and their desires to live on their own land as indigenous peoples.

Claiming Land for Mission Labor at San Gabriel and San Fernando, 1834-1848

At the former missions of San Gabriel Arcangel and San Fernando Rey, indigenous claimants successfully secured land grants in the 1840s. The highly social and fundamentally local system of property ownership in Mexican Alta California, inherited from Spanish practices, enabled indigenous proprietors to secure land. First, the claimant would send a petition to the governor, explaining why the land was needed, describing the tract, and frequently including a homemade sketch map, or *diseño*. The governor would send the petition back to a local official, who would verify the petitioner's good standing in the local community. Once satisfied of this, the governor would issue the grant. Next, a local official would place the grantee in "juridical possession" of the grant by running a land survey in the presence of neighboring property owners, all of whom

[19] Daniel Garr, "Planning, Politics and Plunder: The Missions and Indian Pueblos of Hispanic California," *Southern California Quarterly* 54, no. 4 (1972): 292.
[20] Haas, *Saints and Citizens*, 153.
[21] "The Missions of California," *Los Angeles Star,* Vol. 5, no. 36, January 19, 1856; Haas, *Saints and Citizens*, 152; Daniel Garr, "Planning, Politics and Plunder: The Missions and Indian Pueblos of Hispanic California," *Southern California Quarterly* 54, no. 4 (1972): 291–312.
[22] Haas, *Saints and Citizens*, 157.

had the opportunity to dispute the grant's boundaries. Finally, the petition and supporting documents would be submitted to the territorial legislature for final approval.[23] Fundamentally, the process had to be initiated by the claimant, who justified their own claim, often drew their own map, and secured the support and consent of local officials and neighbors as to the validity of both grantee and grant. Indigenous claimants, by the 1830s living intimately with mission administrators, priests, and settler neighbors, leveraged local settler support into formal land titles.

Nowhere was this process more successful than at Mission San Gabriel Arcangel. Of the twenty-three grants of land at Mission San Gabriel made by Mexican governors between 1835 and 1845, eight went to indigenous petitioners.[24] By the time these successful petitions reached the desks of Alta California governors Manuel Michetorena and Pico Pico for approval in Monterey, indigenous claimants had already taken many steps to establish their entitlement to and proprietorship of their land locally. One former San Gabriel neophyte, Ramon Valencia, petitioned to Monterey on behalf of himself and his sons Pablo and Ramon. He wrote that they had been informally granted a tract by the mission priest, and had made impressive improvements, building two houses and planting "1000 varas with a number of fruit trees." Yet local permission from the mission to improve the tract did not provide enough security; they sought a formal title from the government. Without one, Ramon Valencia worried, "others will attempt to deprive us of the fruits of our labor."[25]

Indigenous petitioners like Valencia emphasized not only their improvement of these small homesteads, a general marker of land ownership, but also their years of uncompensated labor for the missions, a specific justification for land distribution during secularization. Neophyte Emilio Joaquin wrote that "being weary of laboring in community, which I have been doing since childhood to the present," he hoped instead "to labor for the benefit of [his] family."[26] A land title, he hoped, would represent "a respite from [his] labors."[27]

Once petitions like these were received in Monterey, authorities promptly returned them to their local context, requesting the consultation of local authorities—at San Gabriel, primarily priest Tomas Esteñaga—who testified to the petitioners' good character and faithful service.[28] Esteñaga wrote effusively in support of various neophytes, most of whom he had provisionally granted land. Emilio Joaquin, he noted, had "served the [mission] since his infancy" and was thus "worthy to receive a grant." About another Tongva petitioner, José Ledesma, Esteñaga confirmed that had "planted a vineyard which is in a prosperous condition," as well as having "a good character." To yet another request he affirmed: "there is no objection to giving the

[23] David Hornbeck, "Land Tenure and Rancho Expansion in Alta California, 1784-1846," *Journal of Historical Geography* 4, no. 4 (1978): 379–80. While this described the process at its most formal, in practice, there was a great deal of local interpretation.
[24] Phillips, *Vineyards & Vaqueros*, 176.
[25] California Land Grant Documents, Reel 7: 209, BANC MSS C-I 87 FILM, The Bancroft Library, University of California, Berkeley.
[26] California Land Grant Documents, Reel 7: 14.
[27] California Land Grant Documents, Reel 7: 28, 14.
[28] Zephyrin Engelhardt, *San Gabriel Mission and the Beginnings of Los Angeles,* (San Gabriel, Cal.: Mission San Gabriel, 1927), 300–302.

neophyte Prospero the little which he asks."[29]

Indigenous claimants petitioned alongside Californios, as well as recent Anglophone immigrants from the eastern United States and Europe. Without a history of service to the mission to rely on, these settler petitioners wrote of their desires to pursue agriculture and support their families, as well as their status as loyal Mexican citizens. Their grants were also usually approved, but not without consideration of how they might affect the land rights of neophytes. Arno Maubé, an immigrant from France, hoped to "dedicate [him]self to the important pursuit of agriculture," and in 1843 requested 350 varas of unoccupied land near the mission "to cultivate the same for the support of [his] family." Yet Esteñaga's *informe* pointed out that "the greater part of the land petitioned for" was in fact "occupied by the neophyte Joaquin." Only the remaining two hundred varas were approved as a concession to Maubé. Similarly, settler Michael White offered to pay one hundred and fifty dollars "to the neophytes of the mission" in order to obtain a "tract of land suitable for cultivation and for planting a vineyard for the support of [his] family."[30] Settlers at San Gabriel seemed to accept the basic premise that Native holdings were legitimate.

Several settlers used their marriages to indigenous women as justification for their claims. Manuel D'olivera, an immigrant from Madeira, requested a tract for himself and his wife Rufina, "an Indian of the said place." D'olivera emphasized his improvements, having already built a house and planted four hundred vines and one hundred fruit trees, and secured the approval of Esteñaga. Yet Esteñaga recommended the grant's confirmation not because of D'olivera's improvements, but "in order to recompense in some measure" his wife Rufina's labor for the mission. Santiago Leiba, another settler, argued that he was "a poor man; and married with a neophyte of this mission." He received land on the basis of his wife's mother, who had "rendered services to the mission." Perfecto Hugo Reid got his land grant "in reward for the services rendered to this mission by his wife [Victoria] and by her late husband Pablo."[31] These settler petitioners, like their indigenous neighbors and now family members, deployed the legacy of collective indigenous labor at the mission to claim land.

At San Gabriel Arcangel, Tongva families received titles for small parcels of land near the former mission. While their petitions were grounded in indigenous identity and mission labor, the titles themselves were nearly identical to settler titles, in that they were individual and complete. At San Fernando Rey, some thirty miles northwest, Tataviam and Chumash claimants pursued larger, more collective grants. But some received titles with more limitations. In April 1843, the mission's indigenous overseer, or *alcalde,* Joaquin, submitted a petition "in the name of forty others," asking for "about a league of land" for those "who have gardens in this mission." Like the individual titles sought at San Gabriel, this land had already been conditionally granted to them by San Fernando Rey Priest Blas Ordas, but with the condition that "when the mission needs the same, it can cultivate the same." The demise of the mission eliminated that potential threat to their holding, but now the community wanted protection from encroaching settlers. They requested a title so that they "may hereafter have a right to said place, so that it may not be given to any individual, and that our right hereto may not be questioned." Father Ordas, a much less enthusiastic advocate than Esteñaga, wrote that "Joaquin and his

[29] California Land Grant Documents, Reel 7: 15, 249, 27.
[30] California Land Grant Documents, Reel 7: 46, 211.
[31] California Land Grant Documents, Reel 7: 48, 213.

companions" were "entitled to receive the land for which they petition for sowing purposes."[32]

Compared to the community of individual smallholders constituted at San Gabriel, the collective grant sought by the group of petitioners seems more in the spirit of Figueroa's initial vision of collective secularization. Rather than delineating each of the "small gardens" of ex-neophytes as privately held land, Governor Micheltorena approved the grant collectively in 1843. Yet he included a key restriction: grantees would be unable to alienate the tract. One other ex-neophyte received land near the mission. An indigenous man named Samuel received a title for the land where he had built a house, planted wheat, corn, and bean, and cultivated fruit trees. In his petition, Samuel expressed his willingness to continue to "assist [his] mission, giving a part of what I raise every year." Yet his title, like the collective grant nearby, was issued with restrictions of alienation.[33] Mission Indians could occupy mission land, but not own it.

Several others petitioners sought lands at a distance from the mission itself. They were more successful in obtaining unrestricted titles, but only through repeated and determined petitioning. In 1845, the "natives of San Fernando" Urbano, Odon and Manuel petitioned for a small rancho known as El Escorpion. Their petition built on previous requests they had made for emancipation from their status as legal minors in the mission.[34] Urbano framed his 1843 petition in the terms of liberation from forced labor: "for twenty-five years," he had "served said mission without having received any return from the Reverend Fathers, up to the present time." He requested to be emancipated from the community, blunting stating: "I do not desire to remain longer in my present condition, since I can hope for nothing from the Fathers but labor." The group petitioned for two leagues of land at El Escorpion, but were granted only one half of a league. However, their 1846 title was issued without any limitations on their ownership.[35]

A similar grant, for the rancho called El Encino, was issued to ex-San Fernando neophytes Tiburcio, Roman, and Francisco in 1845 after a series of persistent petitions.[36] In 1840, they had asked for a "lease from the government to occupy themselves in their legitimate callings," and to "occupy the place called El Encino." In May 1843, they petitioned again, this time for "title in ownership for one square league of the same lands which is called Encino where our families now reside," basing their claim on "having spent much of our lives in San Fernando in the service of that establishment." Father Ordas argued that the land "cannot be granted to them," but conceded they "can be permitted to keep their stock thence and cultivate the same without prejudice to the mission." The government issued them a title that only permitted them to graze stock on the land, and insisted that they must "obey the orders of the Father Minister."[37]

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[32] California Land Grant Documents, Reel 7: 633-634. John Johnson's analysis of this grant has proposed identifications for thirty-five of the forty or so petitioners. They included eleven Tongvas, eight Tataviams, five Ventureño Chumash, five Tongva-Chumash, two Serrano, one Kitanemuk, and several others of mixed background. They were from Tujunga, Taapu, Ypuc, Piiru, Chibuna, Momonga, and many other rancherías. Johnson, "The Indians of Mission San Fernando," 259.
[33] California Land Grant Documents, Reel 7: 633-634, 187-189.
[34] California Land Grant Documents, Reel 7: 320-323.
[35] California Land Grant Documents, Reel 7: 321-323.
[36] Phillips identifies them as "Tiburcio Cayo, Roman, and Francisco Papabubaba." Phillips, *Vineyards & Vaqueros*, 180.
[37] California Land Grant Documents, Reel 7: 308-313.

Two months later, they petitioned again, invoking their long "service of the establishment." They wished instead to tend to their stock on Rancho El Encino, which, they added, "we consider as belonging to us." Finally, in 1845, they obtained a complete and unrestricted title after a final petition in which they insisted that "the simple concession is not sufficient."[38] These petitioners well understood the inadequacy of conditional titles. Leases, permissions to raise stock, and continued obedience to the mission were unacceptable.

Reconstituting Indigenous Communities with Property

By the end of the 1840s, the ex-mission of San Gabriel Arcangel had been transformed into a titled and delineated constellation of small properties, owned by a mixture of neophytes, settlers, and neophyte-settler families. While tiny in comparison to the vast ranchos of the former mission now granted to settlers, these indigenous properties nevertheless formed an official part of the post-mission cadastral landscape. At the same time that their land titles were formally inscribed in state records, indigenous proprietors were also formally recognized as landowners at the local level.

The ritual of juridical possession—undertaken after the government had received local information on the worthiness of the grantee and the availability of the grant—typifies the locally-oriented and communally-sanctioned land tenure system of the Mexican era. Essentially, a juridical possession was a legal ritual in which local landowners witnessed the boundary delineation of a newly granted tract. At San Gabriel, most juridical possession were conducted by Hugo Reid, the local justice of the peace and spouse of the Tongva woman Victoria. Under Reid's direction, indigenous proprietors served as witnesses to their mutual taking possession. Prospero, along with Victoria's son Felipe, witnessed the juridical possession of Uaynasim and Ramon Valencia, while Prospero and Ramon Valencia, as well as another indigenous proprietor named Simeon, all witnessed the juridical possession of Serafino de Jesus's tract.[39]

Juridical possessions engaged neophyte neighbors as legal witnesses, but also as proprietors. The purpose of a juridical possession was to head off potential boundary conflicts through publicly running the lines of the property in question, and gaining the consent of neighboring owners. Moreover, because such tracts were located by metes and bounds, properties were literally located in the terms of their relationship to other proprietors. Uaynasim's tract was measured "from an oak towards the southeast, three hundred and fifty varas, to the corner of the lands of Francisco Sales," another indigenous proprietor. José Ledesma's land was described as "adjoining to the lands of Valencia and Manuel Sales," and Manuel Sales as "contiguous to that of the family of the Indian Valencia."[40]

[38] California Land Grant Documents, Reel 7: 320-323.
[39] California Land Grant Documents, Reel 7: 209, 13, 450.
[40] Land Case 63 Southern District (SD), Documents Pertaining to the Adjudication of Private Land Claims in California, BANC MSS Land Case Files, 1852-1892; BANC MSS C-A 300 FILM, The Bancroft Library, University of California Berkeley, 8. Hereafter referred to as DPAPLC.

This social system of boundary delineation extended to settler neighbors as well. The Frenchman Arno Maubé's tract was "bounded by the Indian called Joaquin," and José Ramirez, a soldier from the San Diego Presidio, had his land bounded by that of "the neophytes Ramon and Valencia."[41] Property was created through a social process dependent upon local knowledge—both knowing and being known—and then expressed and embodied through these social geographies.

While the majority of indigenous claimants who petitioned for land at San Gabriel obtained it, many more indigenous people at the former mission found themselves landless by the mid-1840s. A government report from 1844 estimated a population of "about three hundred souls" there.[42] Many neophytes who remained as squatters without titles of their own, while others moved to rancherias, went north, or into the Pueblo of Los Angeles. Most worked as servants and vaqueros on large nearby ranchos, which were overwhelmingly owned by Californios and naturalized Anglos.[43] An 1844 census located forty-nine ex-neophytes from San Gabriel living and working on just one neighboring ranch, not cultivating their own smallholds.[44]

The few indigenous petitioners who obtained property at San Gabriel must have seen it as a significant form of stability. Both grantees and grantors spoke of the issuance of titles in terms of "security."[45] Security was not only the notion of an official paper title in hand and in state record books, but the security of land to cultivate and the food it would produce. Most tracts at San Gabriel were very small, between 200 and 500 square varas. Yet on Felipe's grant of only 300 by 250 varas, he had planted a vineyard of six hundred vines as well as fruit trees. Francisco Sales, likewise, had planted six hundred vines and fruit trees.[46] Prospero's grant included "a house and garden and lands for cultivation," a bearing vineyard, and hundreds of trees. Most likely, the tracts held by those who could get land helped to provide some measure of support to those who did not.

At San Fernando Rey, the larger rancho grants of El Escorpion and El Encino supported many more people than the immediate families of grantees. Census data reveals large "households" ranging from twelve to more than fifty "Indian" residents on these lands.[47] Moreover, these particular places were not sought by their claimants at random. They were the ancestral villages of large numbers of those who had been confined at San Fernando Rey. El Escorpion was the site of the Chumash and Tataviam village of *Huwam.* El Encino contained the village of *Siutcabit*, and both the Spanish and indigenous words for the place reflected the presence of live oak trees,

[41] California Land Grant Documents, Reel 7: 264, 249, 46, 589.
[42] Engelhardt, *San Gabriel Mission and the Beginnings of Los Angeles,* 241; Phillips, *Vineyards & Vaqueros*, 170. Hartnell's report in 1839 reports 369 Indians at the mission.
[43] Manuel Casarin Jimeno et al., *Jimeno's and Hartnell's Indexes of Land Concessions, from 1830 to 1846; Also, Toma de Razon, Or, Registry of Titles, for 1844-'45; Approvals of Land Grants by the Territorial Deputation and Departmental Assembly of California, from 1835 to 1846. And a List of Unclaimed Grants.* (San Francisco: Kenny & Alexander, 1861).,
[44] Phillips, *Vineyards & Vaqueros*, 230.
[45] California Land Grant Documents, Reel 7: 14, 28.
[46] California Land Grant Documents, Reel 7: 265.
[47] U.S. Census Bureau, 1850 U.S. Census, California, Part of Los Angeles County, accessed July 18, 2019, Familysearch.org, https://familysearch.org/ark:/61903/3:1:S3HT-DC3S-6GG?wc=95R9-G5Q%3A1031314601%2C1031783401%2C1031788601&cc=1401638.

encino in Spanish and *syutka* in Tongva.[48] Mission registers reveal that more than forty neophytes from El Encino were baptized at the mission, and more than fifty from El Escorpion.[49] Historian John Johnson's genealogical work also suggests that particular grantees had family associations with the tracts they petitioned for.[50] The father of Odon Chihuya, one of the three grantees of the Rancho El Escorpion had been baptized from El Escorpion. Tiburcio Cayo, one of the El Encino grantees, was married to a woman from the village.

Land grants did more than keep communities together in place. They kept communities together in important places; places crucial to continuing spiritual and cultural practices. Just to the west of *Huwam* lies *Kas'elew*, now called Castle Peak, an ancient ceremonial site used by Chumash, Tongva, and Tataviam peoples for thousands of years. Indigenous claimants from San Fernando Rey had turned to the secularization land grant process to reclaim key indigenous territories. On those lands, they could begin the work of reconstituting political communities, too. Oral traditions recount that Odon Chihuya, one of the El Escorpion grantees, was considered "chief of the Indians there" until his death in the 1880s.[51]

At the close of the Mexican era in 1848, the Los Angeles region remained an indigenous landscape that had registered eighty years of profound changes. Secularization never fulfilled the promise of the creation of collective *pueblos de indios*. But for the minority who did petition successfully, they found themselves holding stronger titles than the Mexican administrators of secularization had ever imagined. While a few titles were granted with the restrictions on alienation specified in Figueroa's instructions, the vast majority were "granted in ownership," enabling title-holders to confidently improve, sell, or lease their holdings just as settlers could.[52]

Yet if secularization brought a unanticipated individualization to indigenous land-holding, the land tenure system assured that these "private" properties were nonetheless socially bound together by the socially-oriented cadastral logic of the Mexican legal system. Bolstered by the context of Mexican secularization, indigenous claimants persistently and creatively sought official and complete titles to their landholdings, enlisting their settler neighbors, priests, and family members in legitimizing and normalizing their status as indigenous proprietors. In turn, such local recognition facilitated federal recognition from Mexican authorities. In the next decade, these formal titles would be in turn recognized by the U.S. Land Commission, who found Mexican-era indigenous property legitimate even as they generally denied the ability of Native Americans to own land.

[48] Johnson, "The Indians of Mission San Fernando," 254.
[49] Early California Population Project Database, The Huntington Library, San Marino, California, accessed May 15, 2017, http://www.huntington.org/Information/ECPPmain.htm.
[50] Johnson, "The Indians of Mission San Fernando," 274–75.
[51] Johnson, "The Indians of Mission San Fernando," 267–85.
[52] While a few titles, including Simeon's, Prospero's, and Serafino's, included restrictions on alienation, Jose Ledesma, Ramon Valencia, Emilio Joaquin, Uaynasim, Francisco Sales, Manuel Sales, and Manuel Antonio all held titles "granted in ownership." California Land Grant Documents, Reel 7.

Indigenous Federal Property Claims in U.S. California, 1850-1870

The 1848 Treaty of Guadalupe Hidalgo marked the end of the U.S.-Mexican war and the cession of Alta California to the United States. The treaty stated explicitly that the property of Mexicans now in U.S. territory would be "inviolably respected." Mexican citizens (a designation that technically included Indigenous men over 21) would become U.S. citizens, and be "maintained and protected in the free enjoyment of their liberty and property."[53] In Article XI, the treaty separately addressed Native American land, explaining that "a great part of the territories, which, by the present treaty, are to be comprehended for the future within the limits of the United States" were currently "occupied by savage tribes," but would now "be under the exclusive control of the Government of the United States."[54] Now, the United States would enjoy "exclusive control" over Native nations, but should take "special care"… "not to place its Indian occupants under the necessity of seeking new homes" … "when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States."[55] The treaty imagined the removal of remaining "savage tribes" and their replacement by U.S. citizens, making it clear that white settlement would be inevitable, but should somehow be done with only minimal displacement.

The U.S. federal government began the process of extinguishing Indian title in the state immediately. Between 1850 and 1852, federal agents negotiated eighteen reservation-creating land cession treaties with a small minority of California's many Native polities. Yet in 1852, after resistance from the California Assembly and State Senate, the U.S. Senate denied to ratify any of them, and then classified the entire project as secret.[56] This duplicitous and confusing process left all of California's indigenous peoples without any protection for their territories or a formal diplomatic relationship with the U.S. government.

At the same time, the state of California acted quickly to suppress indigenous civil rights. The 1849 California State Constitution effectively extinguished the voting rights that indigenous men had enjoyed as Mexican citizens, specifying that only white men could vote. A year later, the perversely titled "Act for the Government and Protection of Indians" legalized the indenture of indigenous children and those charged with crimes, and made it impossible for any white person to be convicted on the basis of indigenous testimony. The Act also cast any indigenous property rights as wholly contingent on the whims of white proprietors. Settlers could apply to a Justice of the Peace "to set off to such Indians a certain amount of land" if they requested it. The Act specified that Native Americans should not "be forced to abandoned their homes or villages

[53] "Treaty of Guadalupe Hidalgo; February 2, 1848," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/guadhida.asp.
[54] Most of this article is concerned with Indian trading and raiding across the newly-created U.S.-Mexican border, forbidding the purchase of "any Mexican, or any foreigner" or "horses, mules, cattle, or property of any kind" stolen by Indians. Article XI, "Treaty of Guadalupe Hidalgo; February 2, 1848," The Avalon Project at the Yale Law School, 2008, http://avalon.law.yale.edu/19th_century/guadhida.asp.
[55] Article XI, "Treaty of Guadalupe Hidalgo, February 2, 1848."
[56] Haas, *Conquests and Historical Identities in California,* 59; Bruce S. Flushman and Joe Barbieri, "Aboriginal Title: The Special Case of California," *Pacific Law Journal* 17 (1986 1985): 405. Several ex-neophytes from San Fernando signed the Tejon Treaty of January 1851, which was intended to set aside more than 700,000 acres between Tejon Pass and the Kern River for Indian occupancy. Johnson, "The Indians of Mission San Fernando," 262.

where they have resided for a number of years," and stipulated they had a right to "appeal to the County Court from the decision of the Justice." But even a successful land petition would result not in a complete, fee simple land title, but only a "record" made in court granting them permission "to remain thereon until otherwise provided for."[57]

Without offering any pathway for defending or even ceding indigenous land in California, the U.S. nevertheless moved forward with the confirmation of Spanish and Mexican-era land claims through an 1851 Act of Congress and the establishment of a board of land commissioners. The Act signaled some awareness on the part of Congress to some Mexican titles were held by indigenous peoples. Land commissioners were to "report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians."[58] Indian Agents, not Land Office commissioners, would manage Indian landholdings.

Some of California's Indian Agents were aware of Indigenous proprietors at former missions. In an 1852 report, Benjamin Davis Wilson included a "Hasty Glance at the Land Proprietors," in which he noted that "some of the old Mission Indians" still had "tracts of land," held either by "license of the Fathers, or under written grants from the Mexican Government." But Wilson assumed that these proprietors would hardly be able to hold on to their titles. Barely more than fifty remained, and many had already sold their land "for trivial considerations" or been "elbowed off by white neighbors." Those who sought to keep their lands would surely fail: "what do they know or can they know of 'appeals and County Courts? Or, if they did know, who would plead their cause?"[59]

Wilson was wrong. At least eighteen indigenous claimants throughout California—most under their own names, a few with the help of white claimants—brought successful land claims before the U.S. Board of Land Commissioners. Out of these claims, which ranged from as small as nineteen acres to as large as nine thousand, eleven were fully confirmed, a proportion that roughly mirrors the percentage of total land claims confirmed in the entire process.[60] These successes may be striking in the context of California's harsh state legal regime and federal disregard for indigenous peoples. But from the perspective of the U.S. Land Commissioners who approved them, confirming such claims was relatively easy. They never seemed to struggle with existential questions of "Indian title" in the ways that land commissioners in Louisiana had done.

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[57] Haas, *Saints and Citizens,* 181; "An Act for the Government and Protection of Indians," April 22, 1850, in Kimberly Johnston-Dodds et al., *Early California Laws and Policies Related to California Indians* (Sacramento, CA: California State Library, California Research Bureau, 2002), 3.

[58] "An Act for the Government and Protection of Indians," 3; Paul W Gates, *Land and Law in California: Essays on Land Policies* (Ames: Iowa State University Press,1991); Lisbeth Haas, *Conquests and Historical Identities in California,* 59–61.

[59] Benjamin Davis Wilson and John Walton Caughey. *The Indians of Southern California in 1852: the B.D. Wilson Report and a Selection of Contemporary Comment* (Lincoln, Nebraska: University of Nebraska Press, 1996), 24, 43, 53–56.

[60] Crisostomo N Perez, *Land Grants in Alta California* (Rancho Cordova, CA: Landmark Enterprises, 1996). Of the 813 total claims brought before the board, 604 were confirmed, or roughly three-fourths. Alongside these indigenous claimants, more than eighteen settlers made claims based on land they had purchased from indigenous proprietors, and the majority of these claims were also approved, with only five rejected.

Already thoroughly formalized into fee simple land titles by Mexican authorities, indigenous titles were easy to recognize as property.

Mission San Gabriel Arcangel saw the highest concentration of indigenous claims, where ex-neophytes made eight out of a total of twenty-three claims around the mission. Of the eight indigenous claims, all but two were confirmed.[61] The foundation of these claims lay in the display of Mexican-era documents that showed emancipations, original grants in their entirety, juridical possessions, and if necessary, probates. Successful claims also relied on the testimony of local whites who could attest to the identities and occupations of ex-neophytes. In place of mission priests and administrators, now local ranchers and justices of the peace, many of them intermarried into Tongva families, were called to testify to the veracity of the local legal processes followed and improvements made. While earlier claims had also emphasized indigenous labor in the service of the missions, claims now emphasized indigenous labor in the improvement and cultivation of their plots.[62]

Indigenous claimants made robust claims and mobilized white allies. But commissioners also showed a surprising degree of leniency and attention to Mexican legal practices. In one opinion, which ran to four pages, they grappled with the gender differences between U.S. and Mexican law. Why had the original claimant's son received the property after his death instead of his wife? "Under the Mexican law," reasoned the board, "property acquired by husband and wife during the marriage is held by them in common." Ultimately, they confirmed the tract, with the caveat that it be "without prejudice to the legal rights of the widow."[63] Another Tongva claimant, identified as "Simeon," had his claim confirmed even though he had clearly failed to fully follow Mexican property protocols. No formal survey plat had been filed, and juridical possession had not been fully conducted. Yet after a settler neighbor testified that juridical possession had been interrupted by war and regime change, commissioners conceded that there "could be little difficulty in identifying and running the lines of the land" and confirmed the claim.[64]

Why show such careful attention to the rights of a Tongva widow, and confirm another indigenous claim even though legal processes had not been followed? One explanation is the distance of land commissioners—cultural, financial, juridical—from California. Land commissioners all lacked concrete ties to the West Coast, and most likely spoke little to no Spanish. While most had legal training, certainly none had practiced in Mexico.[65] As outsiders, land commissioners were most likely relying on translated treatises on Spanish and Mexican law, and attempting to follow protocols to the letter.

They also encountered indigenous property claims in a context in which it was repeatedly verified and normalized by local Anglophone settlers. A number of San Gabriel Tongva claimants were represented by Elisha O. Crosby, a New York lawyer who had purchased

[61] Land Cases 58 SD, 95 SD, 135 SD, 171 SD, 63 SD, 94 SD, DPAPLC.
[62] Land Cases 58 SD, 5; 95 SD, 7-8, DPAPLC.
[63] Miroslava Chávez-García, *Negotiating Conquest: Gender and Power in California, 1770s to 1880s* (Tucson: University of Arizona Press, 2004).; Land Case 58 SD, 19-21, DPAPLC.
[64] Land Case 95 SD, 7-11, DPAPLC.
[65] Henry Davis Hall, *Memoir of Hon. Hiland Hall, LL.D.* (Boston : Press of David Clapp & Son, 1887).

portions of the former mission's land.[66] Moreover, as in Louisiana, many settler claimants who had purchased land from Tongva proprietors emphasized the robust titles that indigenous proprietors had "full power to convey" to them, often for a "valuable consideration."[67] It may even be possible to argue that indigenous claims may have been more persuasive than settler claims at San Gabriel. While settlers claimed Mexican land grants simply by virtue of requesting them, indigenous claims were anchored in a larger narrative process of mission secularization and land distribution, one that was enshrined much more formally in Mexican statutes than it was ever practiced. The chain of entitlement expressed in their grants recounted a history of mission service, an articulation of post-mission entitlement to grants, and an account of proper legal protocols followed. Especially at San Gabriel, where a cluster of similar grants were filed close to one another on the docket, they cohered together into a logical, uniform process.

At San Fernando Rey, indigenous claims were similarly successful. The Tataviam and Chumash proprietors of the El Escorpion and El Encino grants, since their 1840s approvals, had sold portions of their relatively large holdings to settlers. Indigenous and settler petitioners together submitted collective claims for the ranchos. Commissioners upheld them, but mandated their division into fractions of individual holdings for each individual claimant.[68] While these claims were collective, they had been formalized as complete titles by Mexican officials.

But not every Mexican-era title could be transformed into a U.S. idiom. The collective secularization grant to forty ex-neophytes at Mission San Fernando never became a U.S. title. By 1848, that holding had already metamorphized from a distinct title to a clause in a settler title to the entirety of the former mission property. When the mission lands were sold in 1846 to Eulogio de Celis, the deed included a provision that the new owner was "to maintain on their own land the old Indians on the premises during their lifetime."[69] When De Celis brought his claim before the U.S. land board, he did not include the ex-neophytes as claimants, or even mention them in his petition. As part of the claim, a neighboring rancher testified that "it is understood that they have a right to live there having been born there and being children of Mission," and that he himself had been obligated to witness the juridical possession in which the land "was assigned them." Yet when commissioners issued the title to De Celis in 1855, they did not mention the ex-neophyte claim, even as a clause permitting rights of occupancy.[70] This collective grant had been the closest thing to what the Mexican architects of secularization had envisioned. Yet the claimants who followed the letter of Mexican law found themselves without a U.S. sanctioned title.

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[66] Land Cases 345 SD, 47 SD, 171 SD, DPAPLC. Elisha Oscar Crosby, *Memoirs of Elisha Oscar Crosby, Reminiscences of California and Guatemala from 1849 to 1864,* (San Marino, Calif.: Huntington Library, 1945), 9. In his memoirs, Crosby discussed at length his prosecution of land claims in the 1850s, stating that he filed "something over a hundred out of the 812 claims filed." Yet he never once remarked on the existence of indigenous claimants.

[67] Land Cases 139 SD, 4, 13, 15; 243 SD, 50, DPAPLC.

[68] Land Cases 129 SD, 44, 392 SD, 4, 6, 34, DPAPLC; California Land Grant Documents, Reel 7: 308–320.

[69] Kenneth E Pauley and Carol M Pauley, *San Fernando, Rey de España: An Illustrated History* (Spokane: Arthur H. Clark Co., 2005); Land Case 343 SD, 7-9, 19, DPAPLC.

[70] Land Case 343 SD, DPAPLC.

None of the successful indigenous claims were based in claims to ancestral possession. Indigenous peoples were not demanding that the U.S. recognize their aboriginal title to the lands they had held for millennia.[71] Nor, as in Quebec or Louisiana, did they describe how former empires had clearly recognized them as nations and their territories as their own. Commissioners were able to rule much more narrowly, on the ability of indigenous peoples to *hold* Mexican land titles that clearly originated under Mexican sovereignty. Yet at the same time, many of their claims clearly emphasized that they were indigenous.

A few claimants attempted to craft Anglicized identities in their legal papers. José Ledesma's Mexican grant papers had identified him as "a neophyte of the Mission of San Gabriel." In his U.S. claim, the word "neophyte" is no longer there; Ledesma is simply "de la Mission de San Gabriel," a term that could denote anyone who lived around the Mission during the same era.[72] The Tongva man Francisco Sales had also transformed his original mission first name, Francisco de Sales, into an Anglicized one.[73] If these claimants, or their lawyer Crosby, were minimizing their indigenous status, they certainly had many reasons to do so. The political atmosphere in the early 1850s in California, and in particular, the constraints on indigenous people as legal actors, might make minimizing one's indigenous status a very pragmatic strategy in court.

Yet many other claims do nothing to minimize indigenous identity. One Tongva man is repeatedly identified as "Simeon, an Indian" in his U.S. claim papers. In Rafaela Valenzuela's claim for her late husband Prospero's land, he is consistently referred to as "the Indian Prospero," "an Indian named Prospero," and "*el Indigena de la Mission de San Gabriel llamado Prospero*."[74] In José Domingo's claim, a neighbor testified not only that he had improved his land, but that he had specifically built "an Indian house."[75] The approval of these claims and others like them, much as they formalized Mexican grants as U.S. land title, also formalized claimants as both "Indian" and "proprietor," creating a legal identity that, in the view of many 1850s Californians, did not exist.

Afterlives of Alienation and Litigation, 1854-1891

For some indigenous claimants, petitioning the U.S. Land Board may have been just one more step in a long process of claiming their families had initiated a decade ago. Certainly, the U.S. property claim process mirrored the steps through which Mexican titles had been secured. But U.S. Land Board confirmation of indigenous property was not the triumphant end of a story that began with missionization and ended with self-sufficiency. Instead, most successful claimants held onto their titles for only a few years, before selling them or losing them to taxes. Those who sought to hang onto their hard-won claims would spend decades fighting legal battles over them.

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[71] One notable exception to this pattern is the petition for the "placed named Tenicasia" sought by Timothy Murphy "on behalf of the San Rafael Tribe of Indians," in northern California. In Murphy's petition, he justified the claim on the basis that "from time immemorial said tribe has occupied and cultivated the region adjoining the mission of San Rafael." Land Case 210 ND, 3, DPAPLC.
[72] California Land Grant Documents," Reel 7, 249.
[73] Early California Population Project Database.
[74] Land Case 135 SD, DPAPLC.
[75] Land Cases 58 SD, 5; 95 SD, 7-8, DPAPLC.

At San Gabriel, many indigenous claimants sold their tracts in the 1850s. Most sold to their settler neighbors, the same men who had appeared as witnesses in the confirmation of their claims. In 1850s California, owning property could be expensive. An 1850 property tax law exempted minerals, and instead placed much of the tax burden on ranchers and farmers like the Tongva families at San Gabriel.[76] Many proprietors who could not pay their taxes had their property confiscated and sold at sheriffs' sales. Some unlucky settler proprietors who failed to pay their taxes had their property confiscated and sold at sheriffs' sales.[77] Tax sales were a worst-case scenario—losing land without any compensation. Indigenous proprietors may have avoided that prospect by selling their lands instead.

At the same time, Native proprietors seemingly had no lack of willing settler buyers, buyers who offered them much more.[78] The tract of "Simeon, an Indian" sold by his wife Dorotea in 1854 for two hundred dollars.[79] The same year, Francisco Sales and his wife sold their "house, vineyard and farming lands," for eight hundred dollars.[80] Rafaela Valenzuela sold her late husband Prospero's tract in 1857 for five hundred and fifty dollars.[81] By the 1860s, none of the indigenous tracts confirmed at San Gabriel remained in the hands of their original claimants.

Compared to the other local sources of revenue for indigenous peoples around San Gabriel, namely working as laborers on settler ranchers, land sales could provide substantial money. On nearby Rancho Azusa, the indigenous overseer made approximately fifty cents per day. A full year of work at this wage would net a vaquero only $182. Most indigenous employees fell into debt instead after buying staples and room and board from their employers.[82] The prospect of significant cash in hand from a property may have been desirable, even transformative, to those who wished to release a relative from indenture, get out of debt, support a family, or leave San Gabriel for Los Angeles or a family rancheria. But on the other hand, losing a land title could mean entering a life of squatting or indentured labor.

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[76] Emily L Rader, "'So We Only Took 120 Acres': Land, Labor and White Supremacy in the Settlement of Southern California, 1800-1925," PhD Dissertation, University of Southern California, 1998, 117; Leonard Pitt, *The Decline of the Californios: A Social History of the Spanish-Speaking Californians, 1846-1890.* (Berkeley: University of California Press, 1966).

[77] "Certificates of Sale because of Taxes," Box 1, Folder 2, 46, 65, Los Angeles Land Papers, Huntington Library, San Marino, California. At one such 1852 sale, a purchaser bought nine acres of land in L.A. County for $7.55, the amount of taxes owed on the property in 1851. Another 1852 sale for $52.44 vested the purchaser in two acres of "huerta" and two city lots in Los Angeles.

[78] Simeon's 1854 sale was at approximately $11.50 per acre, while Francisco Sales sale was at $41 per acre. Rafaela Valenzuela sold Prospero's land in 1857 for $28 per acre. By contrast, an 1853 settler conveyance near the mission based on a Mexican grant, Daniel Sexton's sale to Thomas S. Hereford, brought $3400 for 1000 square varas, or approximately $19.50 per acre. Sexton to Hereford, Box 14, Folder 7, Shorb (James De Barth) Addenda, Huntington Library, San Marino, California.

[79] "Simeon and Wife to Stockton," January 7, 1854, Book 1, Deeds, Los Angeles County Registrar and Recorder, Norwalk, California.

[80] "Sales and wife Sale," July, 1854, Book 2, Deeds, Los Angeles County Registrar and Recorder.

[81] Valenzuela to J.B. Merritt, Box 14, Folder 36, Shorb Addenda, Huntington Library.

[82] "Indian Books," DL 1158, Henry Dalton Papers, Huntington Library. Dalton sold his employees staples like sugar and calico, as well as brandy, sales he recorded against their wages. He also kept accounts of "Indians in Debt," cataloging their names, ages, and amounts owed.

Quickly losing confirmed tracts made indigenous proprietors typical of most claimants who sought U.S. titles. Many Californios also sold their lands to Anglo settlers in the first few decades after U.S. conquest, and many others lost them to tax sales. Also typical of most Mexican-era claims, these sales were conducted long before claimants had actual land patents in hand. Initial confirmations by the Land Board did not constitute a title in hand. Legal delays provoked by automatic appeals of every confirmed case delayed the actual patenting of confirmed claims for decades.

For example, the patent to Prospero's tract was issued in 1875, and Simeon's in 1876.[83] The delay in patenting has often been held up—by both participants in the process and historians—as evidence of the grossly unfair nature of the claims process. Elisha Crosby, lawyer to a number of the Tongva claimants at San Gabriel, described the process as "most unjust" due to the "enormously expensive and dilatory mode of settling their titles." In particular, the delay in receiving patents meant that claimants "could not sell their lands because the titles were not confirmed.[84] Scholars have largely echoed Crosby's interpretation, noting that claimants were forced to sell unpatented land at prices well below their true "market value because of disputed titles."[85]

Yet indigenous proprietors at San Gabriel had no problem selling their tracts long before they were patented, or, in some cases, even before they were confirmed by the board. Most such titles were eventually confirmed, and it is clear that some of the settlers who purchased their lands profited from buying and selling those lands later. For example, after buying Simeon's land for two hundred dollars in 1854, William Stockton sold it in 1861 for six hundred.[86] Local settler buyers seemed confident enough in the legitimacy of indigenous titles to buy and sell them with success long before they were patented.

These claims, even after they passed into the hands of settlers, still relied on a history of indigenous proprietorship. More specifically, they depended upon the presumption that indigenous people were competent legal actors able to make deeds. While some settlers bought land from Tongva claimants, others used state-level laws that cast indigenous peoples as legal minors in need of guardianship to contest those sales. These competing legal frameworks are best illuminated by the case of Victoria Reid. In mission records, she appears first as Bartolomea, the son of Tongva parents named Chabot and Escariguinar from the village of Comicrabit, during her 1819 marriage to Pablo, who came from the village of Jutucubit. In 1837, after

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[83] Paul W Gates, *Land and Law in California: Essays on Land Policies* (Ames: Iowa State University Press, 1991), 402–3.; David Hornbeck, "The Patenting of California's Private Land Claims, 1851-1885," *Geographical Review* 69, no. 4 (1979): 440; James T. Stratton, "Report of Spanish or Mexican Grants in California," in "Report of the Surveyor-General of the State of California from August 1, 1879 to August 1, 1880," California State Lands Commission, https://www.slc.ca.gov/publications-2/reports-of-the-surveyors-general/, accessed July 18, 2019.
[84] Crosby, *Memoirs,* 67–71.
[85] Pitt, *The Decline of the Californios*, 110.; Hornbeck, "The Patenting of California's Private Land Claims, 1851-1885," 440.; Gates, *Land and Law in California*, 1991, 17. Paul Gates pushes back against this assertion, writing that while "the cost of pressing suits for title to their ranchos was doubtless a factor in bringing distress to the old Californians," it can't be sole reason for the loss of their estates.
[86] Folders 30, 31, 35, Box 14, Shorb Addenda, Huntington Library. In 1861, the tract of 200 x 500 varas, went for only $100 less than another 1861 settler sale, a $700 purchase of a 500 x 500 varas tract in San Gabriel sold at approximately $16 per acre.

Pablo's death, she married local settler Hugo Reid.[87] In the 1840s, Hugo Reid secured title to a large rancho adjacent to the mission's land, through evoking the mission service of both Victoria and Pablo. After her husband's death in 1852, Victoria submitted a claim to the U.S. Land Board for a separate tract, called "Huerta de Cuati," on the basis of it formerly belonging to her first husband, Pablo, who was Tongva. Her claim was denied in 1854 because its boundaries were supposedly unclear.[88] By the time of that decision, she had already sold the tract to two settler neighbors, one portion for a thousand dollars, and the other for eight thousand.[89]

A year later, another local landowner, Augustin Olivera, filed a petition in District Court to become the legal guardian of her estate. Though she remained very much alive, Olivera explained that as an "Indian person," she was "mentally incompetent to manage her property." In the case, one of his witnesses testified again that she was "an Indian woman," and thus "incompetent to manage her affairs for want of desernment [sic]." Olivera's case was successful, and he was appointed guardian of both her person and her estate.[90] The goal of Olivera's guardianship swiftly became clear, when he filed an appeal of Victoria's denied claim to Huerta de Cuati. Representing himself as her advocate, Olivera assembled a cadre of witnesses, notably including one of the settlers who had purchased a portion of her land and were especially invested in its confirmation.

Much of the appeal was focused on efforts to locate the original documents of juridical possession, which could clarify the tract's boundaries. To this point, Victoria Reid herself was called to testify, identifying herself as "claimant in this cause."[91] The appeal was successful, and Olivera's claim to Huerta de Cuati was confirmed. Olivera had used existing California law to easily establish his guardianship over her property, drawing on racialized ideas that Indians (and women) were unable to manage their own legal affairs. Yet at the same time, obtaining Reid's property required Olivera to simultaneously insist that she had been a competent legal actor. He had to demonstrate her competency not only in the past, when she had received the grant from Mexican authorities, but even in the present, by calling her to testify in the same case in which he declared her unable to represent herself.

[87] Early California Population Project Database.
[88] Land Cases 47 SD, 4; 171 SD, 3, 8, 11; DPAPLC.
[89] Reid to Stockton, March 13, 1853, Book 1, Deeds, Los Angeles County Registrar and Recorder; "Deed of Victoria Reid to Benjamin D. Wilson filed at his request," 1528, Box 8, Benjamin Davis Wilson Papers, Huntington Library; Chávez-García, *Negotiating Conquest*, 77.
[90] *Guardianship Estate of Victoria Reid*, 1855, Case Number 102012, Los Angeles Area Court Records, Huntington Library; "Minutes of Proceedings, Estate of Hugo Reid," December 5, 1855, Documents Related to Hastings Ranch and Rancho Santa Anita, mssHM 76514-76517, Hastings Ranch (Chapman Tract), 61, Huntington Library. Her marital rights to her husband's estate were also denied to her. The same year, Reid was also denied serving as executor of her deceased husband's estate. On December 5, 1855, Matthew Keller, County public administrator, decreed that because Reid was "of Indian blood," she was "disqualified by law from acting as adminsitratrix of the estate."
[91] Land Case 171 SD, 66-85, DPAPLC.

For the larger tracts granted to Tataviam familes near Mission San Fernando, similar legal issues were at play. El Escorpion remained in indigenous hands for the longest, in part by incorporating neighbors and immigrants into their family landholdings through marriage and land purchases.[92] By the time the tract was approved in 1854, Joaquin Romero had bought a several hundred acre share of the land for a nominal price of twenty dollars. In 1861, Romero sold a portion of El Escorpion to Miguel Leonis, a French Basque immigrant who had arrived in 1859, and entered into a common law marriage with Espiritu, one of the daughters of original grantee Odon Chihuya. The 1861 deed to Leonis was specific, and conveyed only "part of the lands."[93]

Yet Leonis apparently understood his discreet purchase as an entitlement to claim more of the rancho. In 1868, he sued his sister-in-law, Maria Dolores Chihuya, another of Chihuya's daughters, and accused her of letting her horned cattle "run and pasture" on "his" lands. Identified variously in the suit as "Maria Chihua," "Maria Odon," and "Maria, an Indian woman whose true name is unknown," Maria Dolores challenged his claim, stating that she was a "tenant in common with Urbano and Emmanuel in the Rancho El Escorpion; and that she and her co-tenants are the sole owners thereof, and entitled to the possession of the same." Leonis, she made clear, "is not the owner or entitled to the possession of said rancho." In this suit, Maria Chihuya prevailed, but in another suit a few years later, Leonis managed to extract damages from her.[94]

Over the next few decades, Leonis and his in-laws engaged in even more litigation over both boundaries lines and proprietorship, long after after El Escorpion was formally patented in 1873. In 1881, Odon Chihuya sued Leonis, claiming that an 1871 sale of more land to Leonis had been made "with intent to defraud." Chihuya's attorneys argued that he had never been properly informed "of the contests or effect" of the deed. Chihuya, they explained, was "an Indian of full blood," and thus "unacquainted with the forms and effects of instruments" like the one he was "induced to sign by the wiles and falsehoods and wicked machinations" of Leonis. He spoke "no language but the Spanish," and that "imperfectly," and at over eighty years old, "what little intellect he ever possessed has mostly oozed away."[95] Similar to contestation of Victoria Reid's land at San Gabriel, lawyers mobilized racialized Indian incompetence as a defense.

Yet they did so in the service of an indigenous claimant whose originating claim over the land rested on literally decades of successful participation in the settler property system. Leonis's attorney countered that while Chihuya was indeed "an Indian of full blood," he had never been "unacquainted with the form and effect" of the deed, that he spoke excellent Spanish, and that his intellect was never "in any manner impaired." In this case, the court found for Leonis and against

[92] "Rita, an Indian woman of the mission of San Fernando to Visente de la Osa," September 1855, #202, Book 3, Deeds, Los Angeles County Registrar and Recorder; "Rita de la Osa, conveyance to James Thompson,"1865, #405, Book 8, Deeds, Los Angeles County Registrar and Recorder.
[93] Land Case 129 SD, 33, DPAPLC; Jurmain and McCawley, *O, My Ancestor*, 25-30. McCawley suggests that Romero may be Tongva, he is listed as Indian in the 1860 census.
[94] *Leonis v. Maria an Indian,* 1868, Case Number 62, Los Angeles Area Court Records, Huntington Library. In 1873, Leonis filed another suit against Maria Dolores, again attempting to recoup damages from her cattle, and in this one, obtained a judgement for $150 as well as court costs. *Leonis v. Domec et al,* 1873, Case Number 527, Los Angeles Area Court Records, Huntington Library.
[95] *Odon (an Indian) v. Leonis*, 1881, Case Number 1776, Los Angeles Area Court Records, Huntington Library.

Chihuya. Finally, after Leonis died, his wife Espiritu, Odon Chihuya's daughter, established herself as heir of Leonis' estate, keeping El Escorpion in the hands of its original grantees.[96]

Miguel Leonis obtained indigenous land through his intimacy with an indigenous family. In doing so, he echoed the acquisition strategies of earlier settlers, who had used partnerships with ex-neophyte women to obtain land at San Gabriel in the 1840s. Local knowledge of indigenous proprietors was clearly a way for settlers to take control of indigenous land. But local recognition of indigenous proprietors could also be a means of protection. The social system of Mexican proprietorship had relied on neighborly recognition of proprietorship to establish titles.

That system of local social recognition lingered for decades after 1848, because the approval of private land claims required similar processes of social approval to be verified. At San Fernando, the ex-neophytes who had obtained only conditional rights to grow crops near the former mission were able to benefit from tacit local recognition. They never obtained, or even filed for, a U.S. patent for their conditional Mexican claim. But there is some evidence to suggest that many were allowed to live on at the former mission, growing crops and raising families on the gigantic 115,000 acre ex-mission rancho relatively undisturbed. It was not until the 1870s, when a new type of proprietor took possession of the rancho, that their occupation was challenged.

In 1869, land developers Charles Maclay and George Porter purchased half of the immense rancho property.[97] The boundaries of their new property were confusing. Squares of land, like El Encino and El Escorpion, had been carved out of the property through the private land claims process. Elsewhere, settlers and immigrants had attempted to patent small homesteads with varying degrees of success. And many ex-neophytes continued to live on the lands that were their ancestral territories and those that they had worked for the mission without any sort of formal title in hand. Immediately after they took possession, Maclay and Porter filed a series of ejectment suits, clearing their property of "trespassers," requesting damages, and demanding rent. Throughout a series of these suits filed in the 1870s and 1880s, Maclay and Porter made no distinctions between the many defendants, who had heterogeneous justifications for inhabiting the land. They cast homesteading squatters and indigenous title-holders alike as trespassers.[98]

Porter and Maclay included both the El Escorpion and El Encino grantees in these ejectment suits. At El Escorpion, indigenous claimants pushed back collectively, discriminating themselves from settler squatters. A response from "Odon [Chihuya], Maria Eusebia, Bernabé, Marcelina and Maria Dolores" explained that they were "the actual old Indians named in a certain deed of sale of and to said lands and premises executed by Pio Pico a Constitutional Governor of the department of the Californias." Based on that Mexican permission, they had "held, occupied and

[96] Johnson, "The Indians of Mission San Fernando," 270. Espiritu's son, Juan Menéndez, and his wife, Juana Valenzuela Menéndez, served briefly as ethnographic consultants for John and Carobeth Harrington about 1916.
[97] "Eulogio de Celis and Josefa Arguella (his wife) and Andres Pico," November 22, 1854, #192, Book 2, Deeds, Los Angeles County Registrar and Recorder.
[98] *Maclay v. M Lelong*, 1877, Case Number 3674; *Porter et al v. Hilton Brown et al,* 1878, Case Number 4277; *Maclay v. Domec et al,* 1877, Case Number 3672; *Porter et al vs. John Doe Palo et al,* 1878, Case Number 4280, Los Angeles Area Court Records, Huntington Library; W. W Robinson, *Land in California: The Story of Mission Lands, Ranchos, Squatters, Mining Claims, Railroad Grants, Land Scrip [and] Homesteads* (Berkeley: Univ. of California Press, 1979), 71.

enjoyed" El Escorpion "long prior to the execution of said deed" to Porter and Maclay in 1869.[99] In court, the El Escorpion grantees prevailed against Porter and Maclay, and retained title to their land. The El Encino claimants were less successful. An 1878 ejectment suit that included the heirs of one of the original El Encino grantees, Francisco Papbubaba, was unsuccessfully challenged. Porter and Maclay won possession, and defendents were required to pay damages and court costs.[100]

Indigenous landholders who could not resort to a history of Mexican title fared even worse. In 1883, Maclay and Porter brought a suit against Rogerio Rocha, a former neophyte at San Fernando who had most likely been among the forty claimants who obtained only conditional occupancy rights at the mission. After Rocha failed to appear in court to contest the suit, the L.A. County Sheriff was sent in 1885 to serve him an eviction notice. Rocha managed to marshall a lawyer, who sent a last-minute petition to delay the eviction. The lawyer argued that while Rocha had had no complete Mexican-era title, he had registered a twenty-acre tract called Patskunga with the U.S. Land Office in 1871, and had paid property taxes on it. Nevertheless, the stay was ineffective, and Rocha was evicted.[101]

In their impersonal and litigious approach to proprietorship, Porter and Maclay represented a very different brand of settler. Most settlers used intimacy with and knowledge of local indigenous landscapes to acquire indigenous property. Porter and Maclay relied on their single 1869 deed to the entire mission rancho, their money, and their legal resources to dispossess settler squatters and indigenous proprietors alike. They were developers, and their goals were to profit from the homesteading and development of the San Fernando Valley.

In 1874, Maclay platted the town of San Fernando, and began to sell town lots and small ranchland parcels to immigrants. The centerpiece of the new town was the Southern Pacific railroad station, which would import settlers and export wheat, the primary crop that Maclay and Porter planned to cultivate on the vast rancho.[102] Yet indigenous claimants nevertheless responded to these generalized and anonymous suits with specific legal narratives of their histories and proprietorship, insisting on their continued right to defend their lands under U.S. law.

[99] *Maclay v. Domec et al,* 1877, Case Number 3672, Los Angeles Area Court Records, Huntington Library.
[100] *Porter et al vs. John Doe Palo et al,* 1878, Case Number 4280, Los Angeles Area Court Records, Huntington Library; United States Department of the Interior, Bureau of Indian Affairs. "Petition #158: Fernandeno Tataviam Band of Mission Indians, CA," accessed July 16, 2019, https://www.bia.gov/as-ia/ofa/158-ferntv-ca.
[101] Bureau of Indian Affairs, "Petition #158: Fernandeno Tataviam Band of Mission Indians, CA"; Phillips, *Vineyards & Vaqueros*, 181; Heizer, *A Collection of Ethnographical Articles on the California Indians*, 63-64.
[102] Phillips, *Chiefs and Challengers*, 237–45.

Conclusion

The story of Rogerio Rocha's eviction received local media attention. In particular, it caught the eye of white reformers attuned to the "plight" of landless mission Indians. A newspaper account described how Rocha, after refusing to willingly leave his land on a rainy winter day, was physically removed by sheriff's deputies, and his family was forced to take refuge in an abandoned building at the mission. Rocha was framed as a helpless, landless, but noble holdout to an unjust but inevitable settler onslaught.[103] By the 1890s, white reformers had begun to work for what they understood to be relief, largely through compulsory education at boarding schools.[104]

In 1891, U.S. Congress passed the "Act for the Relief of the Mission Indians in the State of California." The Act was framed as an attempt to restore "landless" mission Indians like Rogerio Rocha with their land. But in reality, it was a continuation of the 1887 Dawes Act, which plotted Native American assimilation through the compulsory division of reservations into small tracts of individually-owned property. For indigenous peoples in California who did live on reservations, the Act compelled them to subdivide and dissolve communally held tribal land.

But the vast majority of southern California Indians did not live on federal reservations. For those, like the Tongva, Tataviam, and Chumash peoples who had lived at San Gabriel and San Fernando, reservations could be created in the future, but then allotted individually as soon as those who lived on them were perceived, "in the opinion of the Secretary of the Interior, [to] be so advanced in civilization as to be capable of owning and managing land in severalty."[105] During the next few decades, some southern Californian peoples established small reservations as federally recognized tribes. However, Tongva, Tataviam, and Ventureño Chumash peoples remain unrecognized to the present.

Throughout the United States, allotment is well known as both a land grab and an attempt to destroy tribal governance and authority, with pernicious long-term effects. But in California, the 1891 Act elided the reality that California Indians had already been "owning and managing land in severalty" for decades. They had done so under multiple jurisdictions and in response to repeated legal challenges from settlers to their lands. At San Gabriel and San Fernando, indigenous people claimed land from their former missions, justifying their entitlement through their history of labor to the missions as indigenous people. They created a new community of interlinked small proprietorships at San Gabriel. At San Fernando, they fought for guarantees of their collective habitation of land near the mission, and sought possession of sacred and ancestral rancherias. After the U.S. conquest of Alta California, indigenous proprietors claimed again. While a few presented themselves as Mexican citizens, many made their indigenous identity the center of their claims. These proprietorships enabled forms of land ownership, and in other cases,

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[103] "Rogerio Rocha's History," *Los Angeles Herald*, Vol. 45, Number 110, 29 January 1896, 1; Heizer, *A Collection of Ethnographical Articles on the California Indians*, 63; Phillips, *Vineyards & Vaqueros*, 181.
[104] Shipek, *Pushed into the Rocks*, 35–37.
[105] "An Act for the relief of the Mission Indians in the State of California," January 12, 1891, Fifty-First Congress, Session II, Chs. 64, 65, U.S. Statutes at Larger, 712; Joel R Hyer, *We Are Not Savages: Native Americans in Southern California and the Pala Reservation, 1840-1920* (East Lansing: Michigan State University Press, 2001), 98.; Phillips, *Vineyards & Vaqueros*, 320; Shipek, *Pushed into the Rocks*, 35–37.

sales for not-insignificant amounts of money, that assisted the survival of indigenous families during the especially harsh first decades on American rule.

Much as the designers of Mexican secularization had in the 1830s, the architects of U.S. allotment in the 1880s hoped that private land ownership would transform Native peoples into assimilated settlers. But in California, it did the opposite. Private land ownership, initiated by indigenous claimants, sustained tribal communities. Importantly, it continues to do so. Even though many claimants lost their lands, their persistent legal actions assured that their properties would appear in state register books and on maps, insisting on the continued existence of an indigenous landscape among the growing settler geography of the Los Angeles Basin, and linking their communities and indigenous identities to particular places. The records they created have become useful evidence for their contemporary descendants, as they pursue land and recognition claims for the territories they have fought to inhabit and protect over centuries of colonization.[106]

[106] Bureau of Indian Affairs, "Petition #158: Fernandeno Tataviam Band of Mission Indians, CA."

CHAPTER FIVE

Mapping Indigenous Property

When Abenakis made concessions to settler tenants at Odanak, when Chitimachas sold a tract of land on Bayou Teche, or when Tataviam leaders filed a federal claim for Rancho El Escorpion, they participated in legal processes primarily used to secure the settler colonial occupation of indigenous territories. Deploying settler techniques of representing and delineating land did not mark an end to indigenous ways of governing, understanding, or practicing their relationships to their lands. But what it did do was inscribe Indigenous places and Indigenous peoples into settler archives and onto settler maps. This chapter explores how settler cartography has represented Indigenous polities and their territories, from large-scale geopolitical depictions of the continent, to the fine-grained property maps that show Abenaki, Tunica, and Tongva land.

It hardly seems surprising that Native proprietors would appear as such on maps of their own land. But Native properties were not like the settler tracts that increasingly surrounded them in the nineteenth century. They blurred lines between private ownership and collective political territory. They relied on complex histories of imperial property delineated and represented through divergent mapmaking practices. And they remained contested through decades of legal battles. Correspondingly, many maps of Native property reflect these many factors. Some are ambiguous, even ambivalent about boundary lines and ownership. They are complex and negotiated representations of Native land, ones that reflect complex negotiations over Native property. Yet their attention to these messy realities makes these maps stand out. In their human detail, their ambiguity, and especially their inclusion of Indigenous property, they deviate from how most historians have characterized European and Euro-North American cartography in the nineteenth century.

From the first maps of North America, European maps have been linked with aspirational claims of imperial mastery and the undermining of indigenous territorial claims. Matthew Edney has argued that maps not only advanced imperial claims over known geographic entities, but brought imperial territories into being as entities on paper, creating them as known and located objects that could then be colonized and ruled.[1] In North America, British, Spanish, and French empires all used cartography to make imperial claims manifest on paper, if not on land.[2] Yet fictions on paper had concrete impacts on the ground. Colonial claims made rhetorically on maps

[1] Matthew H Edney, *Mapping an Empire: The Geographical Construction of British India, 1765-1843* (Chicago: University of Chicago Press, 1997).

[2] Barbara E Mundy, *The Mapping of New Spain: Indigenous Cartography and the Maps of the Relaciones Geográficas* (Chicago: University of Chicago Press, 1996); S. Max Edelson, *The New Map of Empire: How Britain Imagined America before Independence* (Cambridge ; London: Harvard University Press, 2017); Raymond B. Craib, "Cartography and Power in the Conquest and Creation of New Spain," *Latin American Research Review* 35, no. 1 (2000): 7–36; Josef W Konvitz, *Cartography in France, 1660-1848: Science, Engineering, and Statecraft* (Chicago: University of Chicago Press, 1987); Martin Brückner and Omohundro Institute of Early American History & Culture, *Early American Cartographies*, 2011; Santa Arias and Mariselle Melèndez, *Mapping Colonial Spanish America : Places and Commonplaces of Identity, Culture, and Experience* (Lewisburg [Pa.]; London: Bucknell University Press ; Associated University Presses, 2002); James R. Akerman, *The Imperial Map: Cartography and the Mastery of Empire*, (Chicago: University of Chicago Press, 2009).

strengthened colonial actions to displace indigenous peoples and appropriate their territories, which in turn made it easier for mapmakers to represent those territories as European. Still, many sixteenth- and seventeenth-century European maps still tended to represent indigenous peoples and indigenous places as part of the social and ethnographic information they sought to convey.

By the beginning of the nineteenth centuries, ethnographic landscapes became much less common. They were replaced with maps that erased indigenous peoples and their territories and instead displayed Euro-American geopolitical boundaries and natural resources. This shift reflected centuries of colonization that devastated indigenous populations, appropriated natural resources, and destroyed ecosystems. But it also reflected a seismic shift in Western cartography: from social-geographic depictions of human landscapes to disaggregated representations of particular geographic or political characteristics, such as topography or national boundary lines.[3] This depersonalized cartographic information was increasingly affixed to global meridians that established a web of longitude and latitude, creating a matrix that constrained the types of information likely to be displayed within it.[4]

Such numerical and de-socialized mapmaking techniques were applied not only to large-scale geopolitical maps, but to property, or cadastral, mapping in particular. The United States Public Land Survey System (PLSS) and the Canadian township system promised to de-socialize the information contained in cadastral maps. Former property delineation practices relied on natural landmarks and social boundaries with other proprietors. Now, regularized sections of land incorporated into a grid determined by meridians and baselines meant that numbers, not the names of property owners and the trees that grew on their boundary lines, would be the key to identifying property.[5] As many scholars have noted, these types of regularized cadastral maps were essential to the consolidation of modern state sovereignty.[6] They also did much to facilitate

[3] Norman J. W. Thrower, *Maps and Civilization: Cartography in Culture and Society, Third Edition* (Chicago, IL, United States: University of Chicago Press, 2008), 93–161; Neil Safier, "The Confines of the colony: Boundaries, Ethnographic Landscapes, and Imperial Cartography in Iberoamerica," in James R. Akerman, *The Imperial Map*, 177.

[4] David Turnbull, "Cartography and Science in Early Modern Europe: Mapping the Construction of Knowledge Spaces," *Imago Mundi* 48 (January 1, 1996): 7.

[5] Maureen E. Brady, "The Forgotten History of Metes and Bounds," *The Yale Law Journal* 128, no. 4 (2019): 872–1173.

[6] Turnbull, "Cartography and Science in Early Modern Europe"; Konvitz, *Cartography in France, 1660-1848*; Jeremy Black, "Government, State, and Cartography: Mapping, Power, and Politics in Europe, 1650-1800," *Cartographica.* 43 (2008): 95; Jordan Branch, *The Cartographic State: Maps, Territory, and the Origins of Sovereignty* (Cambridge University Press, 2013).; Raymond B. Craib, *Cartographic Mexico: A History of State Fixations and Fugitive Landscapes* (Durham, N.C.: Duke University Press, 2004), 9; Thongchai Winichakul, *Siam Mapped: A History of the Geo-Body of a Nation* (Honolulu: University of Hawaii Press, 1994); Bill Hubbard, *American Boundaries : The Nation, the States, the Rectangular Survey* (Chicago: University of Chicago Press, 2009); James R Akerman, *Decolonizing the Map: Cartography from Colony to Nation*, (Chicago: University of Chicago Press, 2017); R. J. P. Kain and Elizabeth Baigent, *The Cadastral Map in the Service of the State : A History of Property Mapping* (Chicago: University of Chicago Press, 1992), 342; James C Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), 35; Giselle Byrnes, *Boundary Markers: Land Surveying and the Colonisation of New Zealand* (Wellington, N.Z.: Bridget Williams Books, 2001).

settler colonialism, transforming the fictions of imperial control projected on geo-political maps into a reality of settler occupation.[7]

But this project of rational de-socialization was never easily or fully completed. The maps of Native property examined in this chapter offer a very different account of nineteenth-century cadastral cartography, one in which maps were as messy as the land claims they attempted to depict. Scholars are quick to acknowledge that official cadastral representations only masked, in the words of James C. Scott, a "shadow land-tenure system lurking beside and beneath the official account in the land-records office" that showed a much less orderly, and much more human picture.[8] But these cadastral maps reveal, rather than conceal, the gritty complexities of Indigenous property as it was negotiated on the ground.

They show the many places where grids were thwarted by natural features: rivers, mountain ranges, swamps. And they also reflect long legacies of social negotiation. In the regions of Anglophone North America where prior empires had created property, they show how on-going practices of social and natural boundary marking practices that extended far into the nineteenth century, existing alongside gridded, numbered, and depersonalized township plats. Some of these maps are even less determinate; highly ambiguous and ambivalent documents that raise rather than answer questions about boundaries and forms of ownership. As land surveyors struggled to capture the complexity of negotiated realities on the ground, they stretched the genre of cadastral mapping into a flexible, improvisational and narrative form.

For land surveyors, indigenous property was a particularly complicated domain. Land surveyors were not given specific instructions as to how to delineate or label indigenous claims, and many likely never expected to encounter indigenous property as they surveyed. Moreover, the origins of many "Indian title" tracts now held by settlers, or by Native nations, had never originated in a clearly delineated grant. Property maps representing such claims tended to rely instead on narrative strategies or invented boundaries. They serve as the best example of the socially engaged, improvisatory cadastral maps made after imperial transitions.

Settler maps advanced visions of continental supremacy, but they did not simply erase indigenous peoples and their lands. Instead, many expressed a much more complex and negotiated representation of Native land, one that reflected changing techniques of land representation, contingent social dynamics, and attention to local realities. Moreover, these maps were influenced not only by settler cartographers' perceptions of indigenous territoriality, but by the actions indigenous peoples took in order to appear on maps of particular places, and in particular ways. Indigenous peoples were more than passive subjects of Euro-American

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[7] Yet settler colonialism, and its links to property mapping, are troublingly lacking in much of the history of cartography. In two major University of Chicago collections edited by James Akerman, 2009's *The Imperial Map: Cartography and the Mastery of Empire*, and 2017's *Decolonizing the Map: Cartography from Colony to Nation,* it is absent. In *Decolonizing the Map,* Akerman discusses "internal colonialism," which he describes as the "disproportionate distribution of power among elites, indigenes, regions, and ethnic groups within decolonizing states." This assimilation of "indigenes" alongside other ethnic groups in modern nation states masks the on-going reality of the occupation and appropriation of indigenous land. Akerman, *The Imperial Map*; Akerman, *Decolonizing the Map*, 3.

[8] Scott, *Seeing like a State*, 49.; Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*, 2013, 36–37.

cartographic efforts, to be included or excluded solely based on the ability or interest of mapmakers to see them.[9] In some parts of North America, Native peoples threatened surveyors and pulled out markers, correctly understanding surveyors as threats to their territorial sovereignty. But in other places, they enlisted land surveyors and mapmakers in the construction of legal documents and collaborated with them in the proper delineation of important boundary lines. Though drawn by settlers, these maps were the products of Indigenous legal actions.

Mapping Abenaki and Sokoki Space

Abenakis and their territories have been represented on European maps since the early seventeenth century. Samuel de Champlain's 1612 map of New France exemplifies the combination of geopolitical, ethnographic, and even botanical information found on early modern maps. Reflecting his heavy reliance on indigenous territorial knowledge, Champlain's map anchored a few French places within a geography that, while fanciful and clearly speculative, was populated by indigenous peoples and marked by indigenous places. That this landscape was populated is further reinforced by the images of indigenous peoples at the lower left, who were labelled as Montagnais (Innu) and Abenaki.[10] Champlain did not mark or label the boundaries of indigenous territories, but neither did he mark clear boundaries of general French claims over land.

[9] For Indigenous participation in Western map-making endeavors, see: Mundy, *The Mapping of New Spain*; Magali Carrera, "Entangled Spaces: mapping multiple identities in eighteenth-century New Spain," in Akerman, *Decolonizing the Map*; Barbara Belyea, "Inland Journeys, Native Maps," *Cartographica: The International Journal for Geographic Information and Geovisualization* 33, no. 2 (September 29, 2006): 1–16.

[10] Raymonde Litalien, Käthe Roth, and Denis Vaugeois, *Champlain: The Birth of French America* (Montréal, Que.: McGill-Queen's University Press, 2004), 314–15.

Samuel de Champlain. *Carte geographique de la Nouvelle France faitte par le sieur de Champlain Saint Tongois cappitaine ordinaire pour le Roy en la Marine* [map]. Paris: Jean Berjon, 1612. LAC, http://data2.archives.ca/e/e431/e010764733.pdf

The convention of registering indigenous peoples and places on maps of New France continued throughout the seventeenth century. Nicolas Sanson's 1656 map of Canada, while it did not include indigenous figures, showed a landscape in which indigenous toponyms and peoples predominated. Sanson located "Socoquiois" (Sokokis) in northern Massachusetts, Ouabouquiquois (an unknown Abenaki polity) in what is now Vermont, and "Abnaquiois" in coastal Maine. These placements suggest that he possessed a fairly accurate knowledge of where Abenaki communities were located in the mid-seventeenth century.[11] This effort to locate and delineate different indigenous places and peoples is reflected throughout much of the map, which is dominated by indigenous place-names, or toponyms. Only along the St. Lawrence River Valley and coastal New England do European toponyms displace indigenous claims and locations.

[11] Colin G. Calloway, *The Western Abenakis of Vermont, 1600-1800 : War, Migration, and the Survival of an Indian People* (Norman: University of Oklahoma Press, 1990); Gordon M. Day, Michael K. Foster, and William Cowan, *In Search of New England's Native Past : Selected Essays* (Amherst: University of Massachusetts Press, 1998); Alice N. Nash, "The Abiding Frontier : Family, Gender and Religion in Wabanaki History, 1600-1763," (PhD Diss., Columbia University, 1997).

Detail from: Nicolas Sanson. *Canada* [map]. Paris: Cloistre de S. Nicolas du Louvre, 1656. DRHMC, https://www.davidrumsey.com/luna/servlet/s/lw9d03

Yet Sanson also chose to mark indigenous and settler places differently. French and English toponyms are represented in a different font than indigenous places. But even more significant is Sanson's choice to represent a boundary between New France and New England, one marked by dashes and colored outlines in green and yellow demarcating the imagined line between the two empires. Sanson chose not to mark similar indigenous territorial boundaries, such as the clear line between Wabanaki and Haudenosaunee territories along Lake Champlain. While indigenous peoples inhabit particular places on Sanson's map, only the French and the English have broad territorial claims that can be delineated with lines. The labels "Nouvelle France" and "Nouvelle Angleterre" and "Nouveau Pays Bas" (New Netherlands), which are in capital letters and stretch across the landscape of indigenous toponyms, further reinforce this sense of European territorial claims as of a distinct kind to indigenous places.

In the eighteenth century, geopolitical maps of New France began to record a proliferation of non-indigenous places. Guillaume de L'Isle's 1708 *Canada, Nouvelle France* marked even more settler places in the landscape. At the same time, De L'Isle also recorded indigenous peoples and potentially even some indigenous territories. He positioned the "Abnakis" above Lake Champlain, perhaps reflecting their migration northward after King Phillip's War, and he delineated Haudenosaunee territories with the label "Iroquois" in a font nearly as large as that of "New France."

Detail from Guillaume de L'Isle. *Canada, Nouvelle France* [map]. Paris: Guillaume De L'Isle, Quai de l'Horloge a l'Aigle d'Or, 1708. DRHMC, https://www.davidrumsey.com/luna/servlet/s/1647x7

As late as the 1790s, large-scale representations of the St. Lawrence River Valley continued to register the presence of indigenous nations in general, and Abenakis in particular. In their 1794 map of British North America, Laurie and Whittle marked boundaries between U.S. states and British provinces with definitive lines that cut straight through Native territories. But they also labelled their map with a proliferation of indigenous nations. The territories of these nations are not clearly delineated in the way that imperial provinces and U.S. states are, but neither are they contained by settler space. Instead, they spill across clearly imposed provincial and national boundaries. Laurie and Whittle also marked the region south of the St. Lawrence River, alongside the Saint Francois river, as Abenaki space.

Detail from: Robert Laurie & James Whittle. *British colonies North America, New England* [map]. London: Laurie & Whittle, 1794. DRHMC, https://www.davidrumsey.com/luna/servlet/s/6jnu81

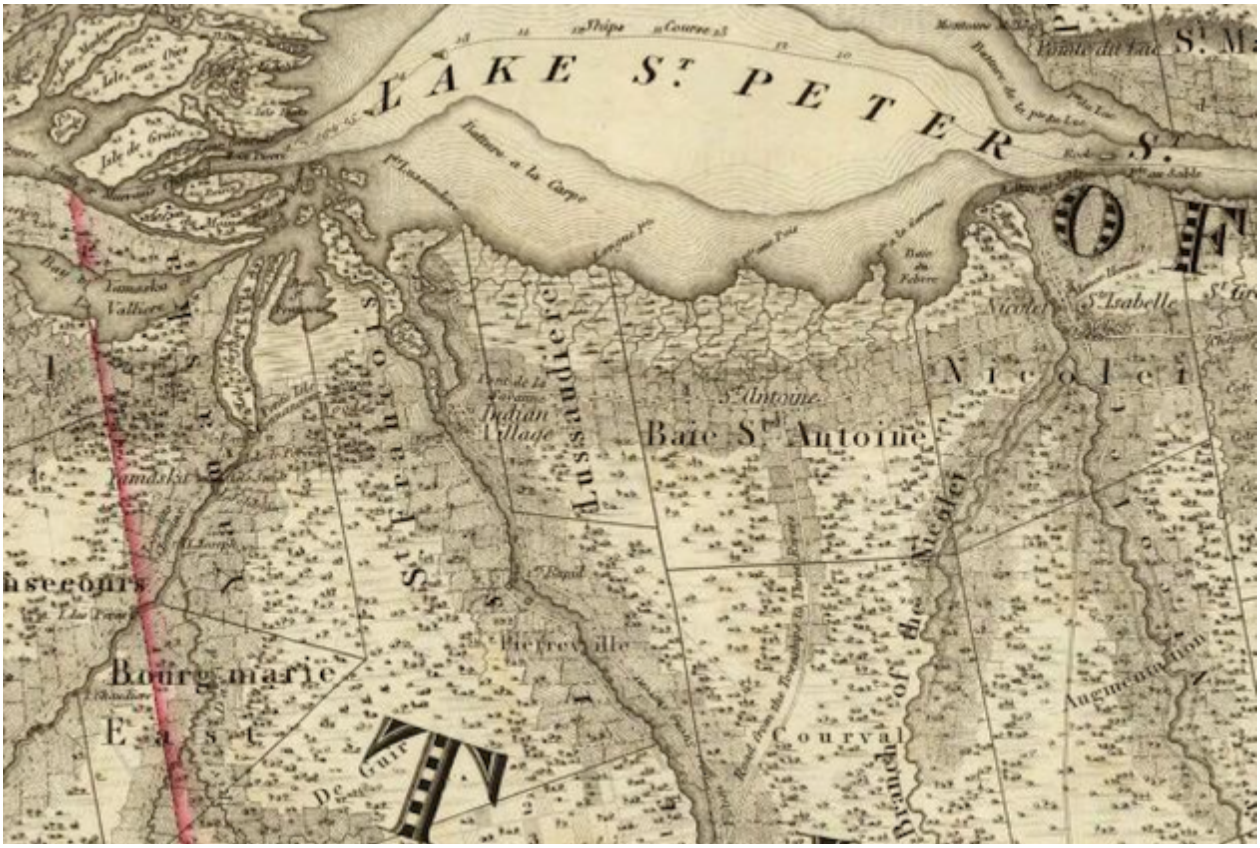
While Laurie and Whittle labelled Abenaki territory below the St. Lawrence, British officials in Lower Canada were in the process of surveying, dividing, and delineating that land into what would become the Eastern Townships. Soon, maps would begin to display this new municipal political landscape of loyalist settlement in ways that would constrain and minimize indigenous territorial claims. Whittle and Purdy's 1814 map of "Cabotia" displays the recently established Eastern Townships, as well as recording the outlines of French seigneuries along the river. The region depicted primarily as Abenaki territory in the 1790s now appeared as a delineated, occupied, and thoroughly English network of townships within British counties. While the map labels the village of St. Francois, there is no visible record of any Abenaki presence there.

Detail from: John Purdy, J. Whittle. *A Map of Cabotia* [map]. London: Jas. Whittle and Richd. Holmes Laurie, 1814. DRHMC, https://www.davidrumsey.com/luna/servlet/s/sqi018

Purdy and Whittle's total effacement of indigenous places and peoples from their map is common on nineteenth century maps of Lower Canada. Sidney Hall's 1829 map of British North America, Charles Morse's 1856 map of Canada East, and G.W. Colton's 1880 map of the Dominion of Canada all omitted Odanak and Abenakis.[12]

[12] Sidney Hall. *British North America* [map]. London: Longman, Rees, Orme, Brown & Green, Paternoster Row, 1829. David Rumsey Historical Map Collection.; Charles W. Morse. *Canada East* [map]. New York: D. Appleton & Company, 1856. David Rumsey Historical Map Collection.; G.W. Colton. *Dominion of Canada No. 1. The Provinces of Quebec, New Brunswick, and Manitoba.* New York: G.W. 7 C.B. Colton, 1880.

The nineteenth-century maps that did register an Abenaki presence in Lower Canada did so much differently than maps made in the prior century. In 1815, Lower Canada's Surveyor General, Joseph Bouchette, produced a map of the province widely considered to be highly authoritative.[13] Bouchette himself had laid out many of the Eastern Townships, and his map reflected that work in its delineation of square townships below the seigneuries that lined both sides of the St. Lawrence River. His map also included extensive hydrographic and topographic detail alongside municipal and private land boundaries. Like Purdy and Whittle, Bouchette represented Abenaki territories as a settled and demarcated British jurisdiction.



Detail from: Joseph Bouchette, William Faden. *Composite: Lower Canada* [map]. London: William Faden, 1815. DRHMC, https://www.davidrumsey.com/luna/servlet/s/rg2280

But he did not leave Abenakis off the map completely. He marked Odanak with the label "Indian Village." The location of the village, straddling the border of the seigneuries of St. François and Lussaudiere, belied the reality of larger Abenaki authority over portions of seigneurial lands beyond their village. Instead, the map frames Odanak as potentially equivalent to other villages located within seigneuries such as Pierreville or St. Antoine. Yet while Odanak/Saint-François had a name that Bouchette very likely knew well, he chose to denote it as a generalized "Indian" place rather than a specific Abenaki place, or even as Saint-François, the name that linked the village with its history as a French mission and the seigneury of Saint-Francois.

[13] Claude Boudreau and Pierre Lépine, "Bouchette, Joseph," in *Dictionary of Canadian Biography* (University of Toronto/Université Laval, 2003), http://www.biographi.ca/en/bio/bouchette_joseph_7E.html.

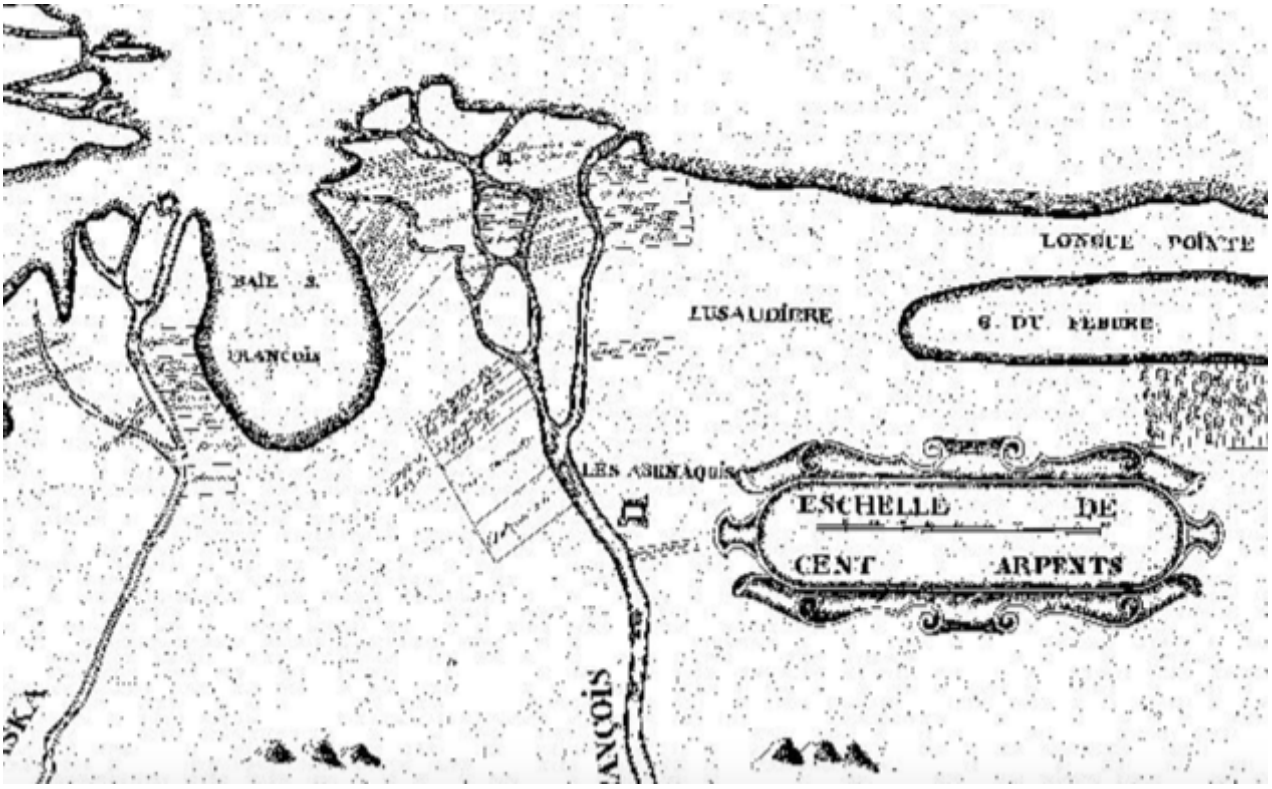
A few other nineteenth century maps followed Bouchette's lead. James Wyld's 1838 map of the province similarly marking Odanak as "Indian Vill." These cartographers sought to depersonalize Odanak as an Abenaki settlement. But they still sought to mark its racial difference as an "Indian place."

Detail from: James Wyld. *Map of the Province of Lower Canada* [map]. London: James Wyld, 1838. DRHMC, https://www.davidrumsey.com/luna/servlet/s/v51c26

These new maps reflected a reality of colonization. Loyalist settlers were moving into Abenaki space. But the government's establishment of the jurisdictional architecture of municipalities, counties, and districts made it possible for mapmakers to represent the transformation of indigenous territories into settler space without marking the homestead of every discreet settler.

But cadastral maps, which did seek to map every settler's tract, followed a different trajectory. They clearly and consistently showed not only Abenaki habitation, but Abenaki proprietorship. Odanak Abenakis had only been ambiguously integrated into the French cadastral landscape. The Jesuit mission of Saint-Francois had received portions of two seigneuries—Saint-Francois and Pierreville—but never explicitly clarified the status of that land. Moreover, neither Jesuits nor Abenakis had subdivided the land to grant to settler tenants.

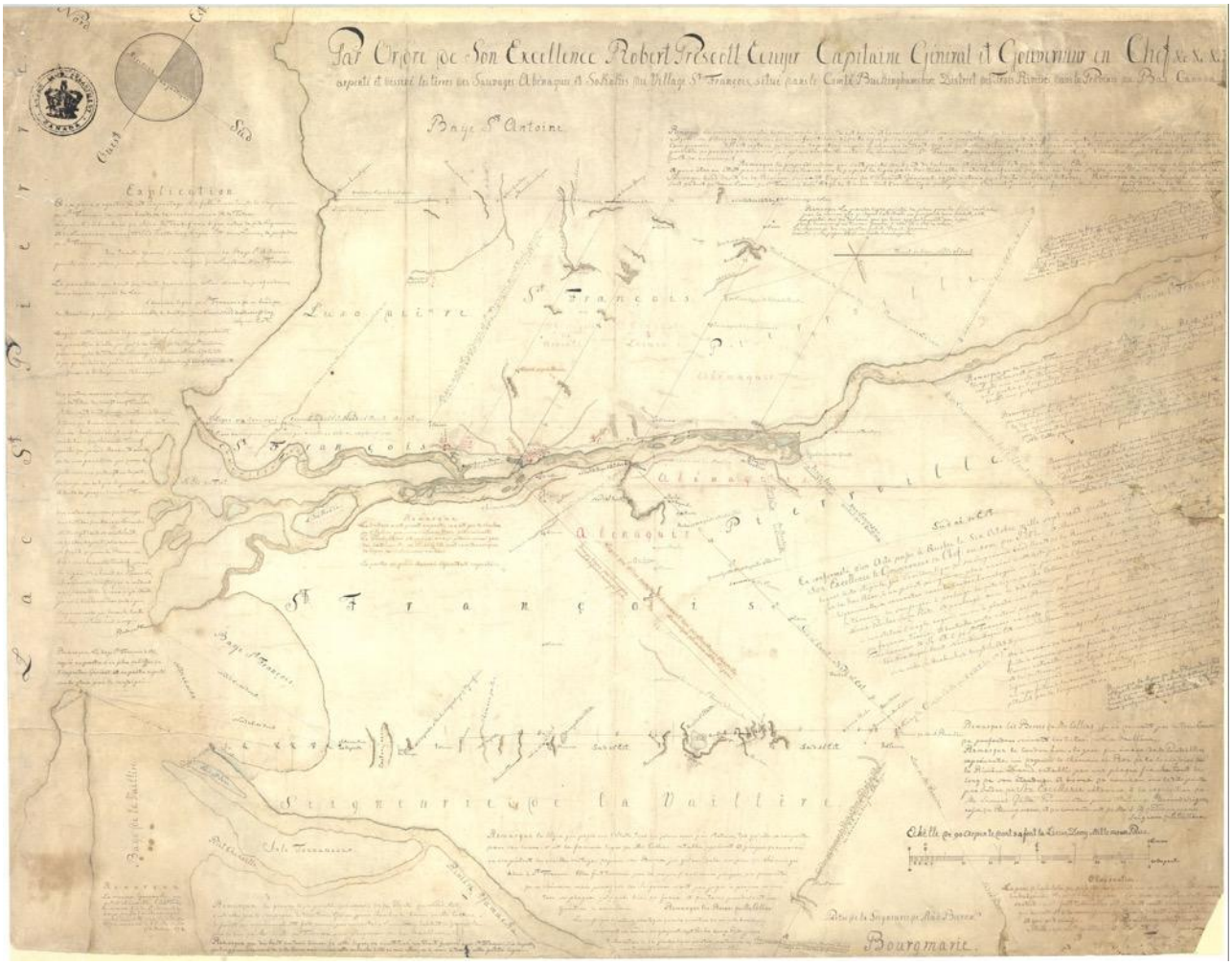
Gédéon de Catalogne's 1709 map of the region showed how Odanak remained somewhat separate from the seigneurial cadastral landscape. His map shows seigneurial concessions to tenants in a number of seigneuries, represented as narrow subdivided strips of land extending along the river. "Les Abenaquis" are delineated as separate, rather than integrated, into that cadastral pattern. In fact, Odanak is not even represented primarily as a Jesuit mission in 1709, but as an Abenaki place. Rather than a portion of agricultural land, Odanak is represented by the symbol of a castle, or military fortress.



Detail from: Gédéon de Catalogne. *Suite du Gouvernement des Trois Rivieres qui comprent en descendant le fleuve St. Laurent depuis les isles de Richelieu jusqu'à la sortie du Lac St-Pierre*…1709, Collection initiale, Cartes et plans, Cartes du XVIe au XXe siècle, P600,S4,SS2,D197, BAnQ-QC

State cadastral mapping was less frequent under French rule, as seigneurs were tasked with much of the administrative responsibilities regarding their tenant concessions. After British conquest, and especially after the beginnings of loyalist settlement in the 1780s and 1790s, cadastral mapping in Abenaki territories increased as townships were laid out and lands granted. After Abenakis began to take legal actions to secure their proprietorship in the 1790s, they also began to appear as legal proprietors on maps.

One of the first maps to clearly shows Abenakis as proprietors was made in 1798, just a few years before they granted their first concessions to settler tenants. Drawn by Crown surveyor Theodore de Pincier, this map was the result of an attempt by the Crown to intervene in a boundary dispute between Odanak Abenakis and the neighboring seigneur of Pierreville.[14] Yet De Pincier's map did little to clarify, visually or in legal reality, Abenaki lands at Odanak.



Théodore De Pincier. *Plan des terres des sauvages Abénaquis et Sokokis du village St-François, arpentées et dessinées, situées dans le comté de Buckinghamshire, district des Trois-Rivières dans la Province du Bas Canada*...1798, Fonds Ministère des Terres et Forêts, Documents cartographiques, Documents cartographiques liés à l'arpentage selon divers regroupements, Arpentage: reserves indiennes, E21,S555,SS1,SSS17,P9, BAnQ-QC. http://pistard.banq.qc.ca/unite_chercheurs/description_fonds?p_anqsid=20190226173032605 2&p_centre=03Q&p_classe=E&p_fonds=21&p_numunide=1008640

The map's title locates indigenous land at Odanak as an enclave within a larger British jurisdiction: "the County of Buckinghamshire, District of Trois-Rivières, in the Province of Lower Canada." But little else suggests that it could be easily incorporated into a larger cadastral landscape. Instead, the "lands of the Abenaki and Sokoki Indians" are anchored within a

[14] "Judgement, John Antill v. Francois Joseph Lemaitre Duhaime," 30 Mars 1797, Province du Bas-Canada, District du Trois-Rivieres, Cour du Banc du Roi, Cote P108, Lemaitre dit Duhaime, François Fonds, BAnQ-TR, [my translation]; Thomas-Marie Charland, *Histoire des Abènakis d'Odanak : (1675-1937)* (Pierreville: Societe historique de la region de Pierreville, 1964), 140.

landscape of "explanations" and "remarks," most of which refer to previous surveys. Rather than a definitive account of property at Odanak, De Pincier's map is an archive of the many attempts to define it.

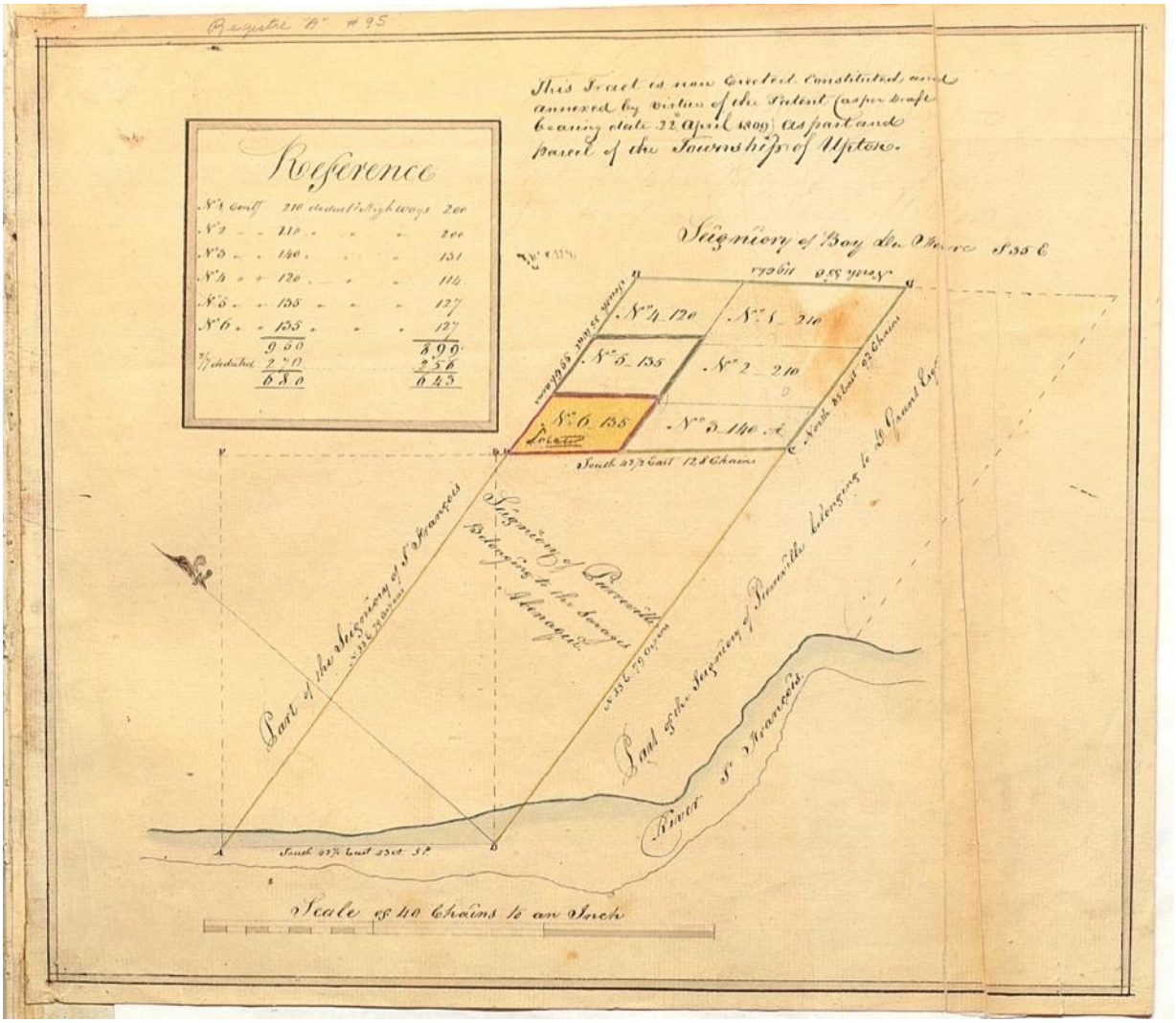
Like annotations, boundary lines also proliferate. De Pincier located the line drawn by a surveyor hired in a recent boundary arbitration, but drew another to its right, which he labelled as "the true line of the Indians," based on a survey done in 1713. He also raised questions about the boundaries of the Abenaki portion of another seigneury, even though its bounds were not currently under dispute. He labelled one line as the "true line of the Indians, following the opinion of witnesses," and another, the "line by order of October 17, 1788." On yet another border of the Abenaki possessions, he marked a "line of the undersigned" and an alternate "line of compromise." Rather than definitively determining the "stable and permanent" boundaries of Abenaki possessions, De Pincier chose to mark multiple lines of contestation.

Detail from Théodore De Pincier. *Plan des terres des sauvages Abénaquis et Sokokis du village St-François,* BAnQ-QC.

De Pincier's map was an effort to intervene in a boundary dispute and contribute definitive, Crown-directed clarity to the status of indigenous lands at Odanak. While it did much to display the complexity of proprietorship there, it did very little to resolve it. The court judgement had delineated the Abenaki portion of Pierreville as separate from Duhaime's, but it did not specify the particular tenure under which Abenakis held that land. No amount of line drawing could clarify this legal status, and De Pincier's map simply labels portions of land "Abenaquis," this lettering overlapping with the names of both seigneuries. Moreover, beyond the creation of this ambiguous map, De Pincier and his superior, Governor Prescott, did nothing to restore the land

they suspected was lost in the 1796 arbitration, or to determine the legal status of these indigenous holdings.[15]

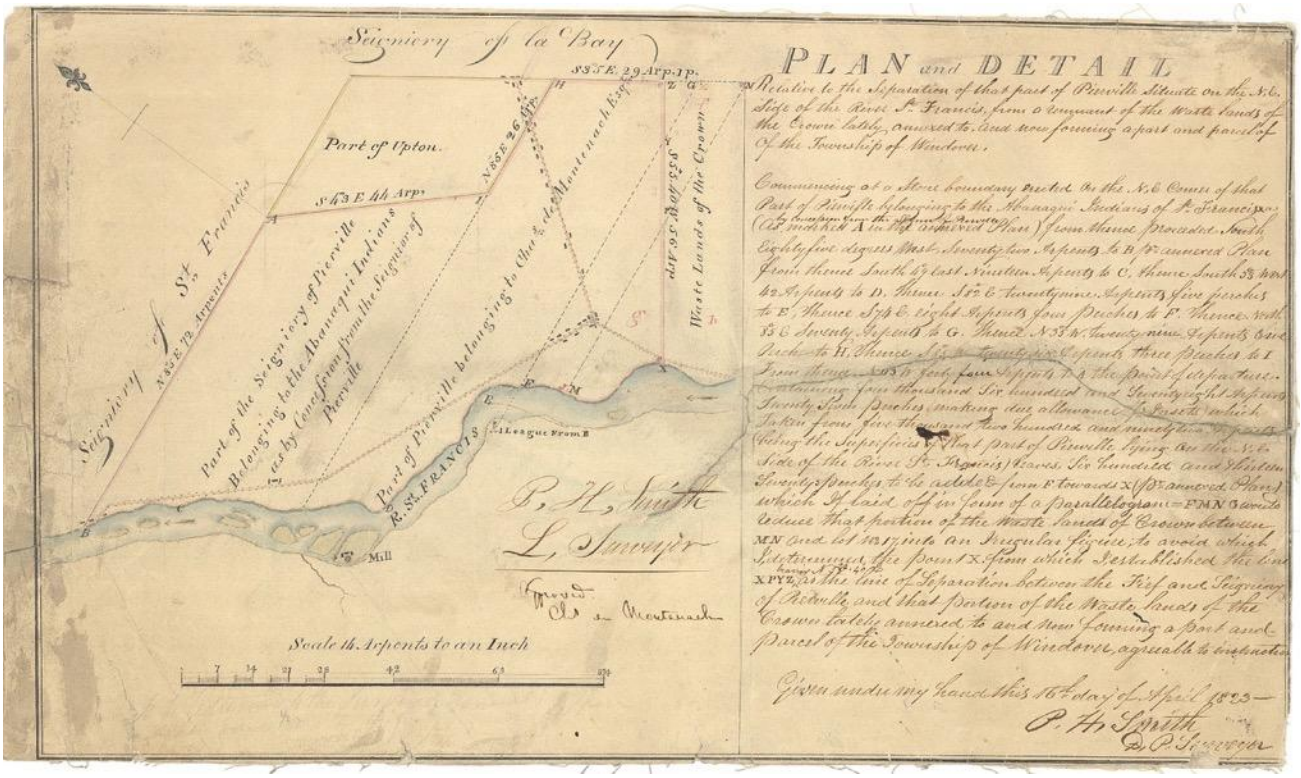
De Pincier's map raised questions about boundaries at Odanak. But subsequent cadastral maps of the area represented Abenaki land as definitively bounded, and Abenakis as clearly its proprietors. Surveyor Jeremiah McCarthy made a number of maps that included Abenaki lands. McCarthy had not been tasked with surveying Odanak. He was simply laying out a tract for a settler nearby. On this 1813 map, he expressed confidence about both boundaries and proprietorship at Odanak. He clearly labelled a portion of Pierreville as "belonging to the Savages Abenaqui," and showed definitive, rather than contested, lines enclosing it.



Jeremiah McCarthy. *Plan de la seigneurie de Pierreville montrant les terres appartenants à la Mission Abénaki.* 18(??), E21,S80,SS1,SSS1, BAnQ-QC, http://numerique.banq.qc.ca/patrimoine/archives/52327/3472902

[15] For an extended discussion of De Pincier's survey, see Julia Lewandoski, "'The Same Force, Authority, and Effect': Formalizing Native Property and British Plurality in Lower Canada," *Quebec Studies* Supplemental_Is (2016): 149–70.

An 1823 map by Patrick Smith similarly established Abenaki proprietorship clearly and authoritatively. It labelled their portion as "part of the Seigniory of Pierville Belonging to the Abanaqui Indians as by Concession from the Seignior of Pierville." This description referenced the early eighteenth-century grant to the mission that Abenakis and Sokokis had fought to establish as their own property after the departure of the Jesuits. In doing so, it further anchored Abenaki proprietorship within a property system of colonial sovereignty, first French and then British. This enclosure was echoed in McCarthy and Smith's visual representations of Abenakis as proprietors. Both referenced the "waste lands of the Crown" in their descriptions, signalling that land not occupied by settlers or by Abenaki seigneurs was Crown land, not Abenaki territory. Unlike earlier genres of mapping that expressed indigenous territories across large, unbounded territories, Abenaki authority had clear limits on cadastral maps. If boundaries were defined, they could also confine Abenaki and clearly locate it under British jurisdiction.



Patrick H. Smith. *Plan and detail relative to the separation of that part of Pierreville seigniory situate on the n.e. side of the River St. Francis,* 1823, E21,S555,SS1,SSS20,PP.5B, BAnQ-QC. http://numerique.banq.qc.ca/patrimoine/archives/52327/3142303

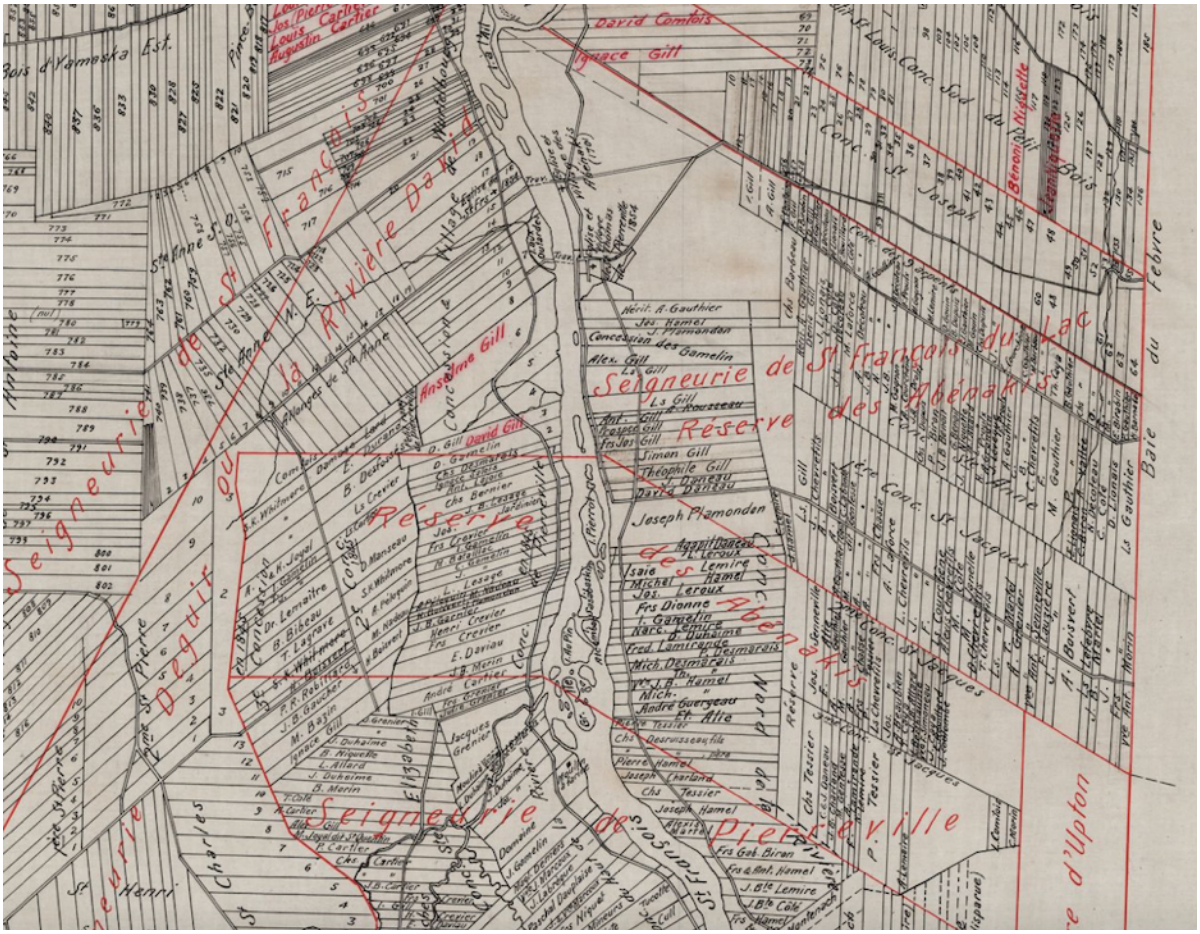
Establishing a record of Abenaki proprietorship on a succession of cadastral maps was something that Odanak's leaders had established through their own property actions, not through any Crown directive. De Pincier's map was the only one explicitly made to establish Abenaki boundaries: McCarthy and Smith had simply been in the neighborhood, laying out nearby properties. The fact of Abenaki proprietorship was clearly well-known locally to find its way onto the maps made by otherwise uninvolved surveyors, who described the reality of Abenaki property management as they encountered.[16]

Local cadastral maps represented Abenaki proprietorship consistently for the first half of the nineteenth-century. It was not until the 1850s that representations of Abenaki land at Odanak began to change. In 1850, Abenaki possessions were unilaterally transformed into a federal reserve managed by the Indian Department.[17] Abenakis attempted to control this transition by treating the Commissioner as their land agent, and continuing to act as proprietors anyway. Cadastral maps did not instantly register their 1850 change in status.

A few years later, when the Crown initiated the process of seigneurial commutation, land surveyors measured, mapped, and valuated all seigneurial land. In the maps and legers created through this process, Abenaki land was not clearly separated out as "reserve" land. As its lands remained in the hands of settler tenants, it remained part of the cadastral landscape. This detailed property map, compiled in 1857 from earlier surveys, was part of that large-scale effort. The red overlay that labels the "Réserve des Abenakis" was added in the 1920s when the map was copied. On the original 1857 map, Abenaki concessions in parts of both Saint-Francois and Pierreville remain integrated into a larger seigneurial landscape, rather than marked as separate, newly reserved Crown trust land.

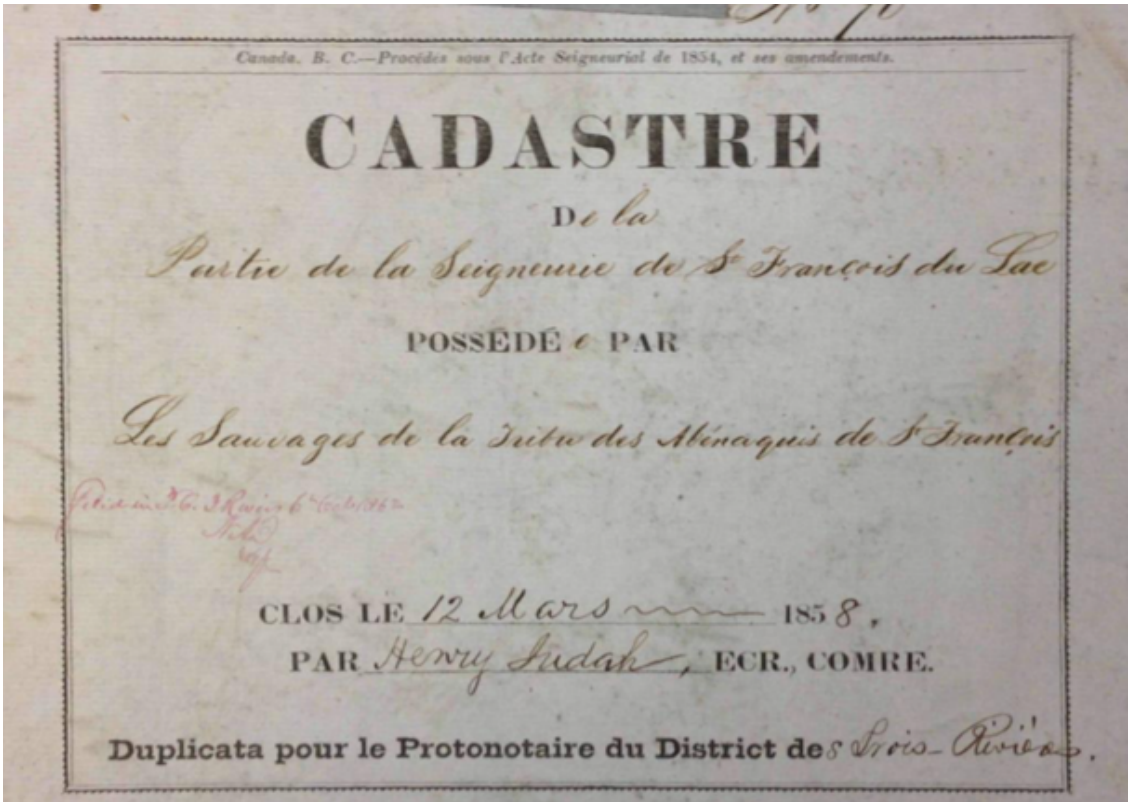
[16] In 1834, another cadastral map, this one made by a Francophone surveyor, marked the "part of Pierreville belonging to the Abenaki Indians." Olivier Arcand. *Plan de la partie de la seignerie Pierreville appurtenant à Madame de Montenach, du côté de l'est de la rivière Saint-François…suivant M.P. Smith arp,* 1834, E21,S555,SS1,SSS20,PP.5E, BAnQ-QC, http://numerique.banq.qc.ca/patrimoine/archives/52327/3142304

[17] Queen of England, "An Act for the Better Protection of the Lands and Property of the Indians in Lower Canada. 10th August, 1850, 11 Victoria, Chapter 42," in *Laws of Her Majesty's Province of Upper Canada* (Toronto, Canada: Stewart Derbishire & George Desbarats, 1850).



Detail from J.O. Arcand et A.E.B. Courchesne. *Plan des compilations des seigneuries Yamaska ou La Vallière, 1856; Saint-François du Lac, 1857; Lussaudière, 1857*...1857, E21,S555,SS3,SSS4,P29, BAnQ-QC, http://numerique.banq.qc.ca/patrimoine/archives/52327/3143107

This incorporation of Abenaki proprietorship into the seigneurial landscape was reinforced by the cadastres created in 1858 of Pierreville and Saint-Francois. Cadastres listed every tenant in a particular seigneury, the amount and location of the land they rented, and calculated their total seigneurial rents and dues, as part of the comprehensive valuation of seigneurial property throughout the province. Abenakis had a separate cadastre created for their portion of Saint-Francois, labelled on its cover as the portion of the seigneury "belonging to the [Indians] of the tribe of Abenakis of Saint-Francois." Even if, by 1858, this land was now held in trust for them by a commissioner, cadastral documents still represented Abenakis as proprietors, not occupants of a reserve.



Canada. B. C.—Procédés sous l'Acte Seigneuriel de 1854, et ses amendements.

CADASTRE

De la

Partie de la Seigneurie de St François du Lac

POSSÉDÉ e PAR

Les Sauvages de la Tribu des Abénaquis de St François

CLOS LE 12 Mars 1858,

PAR Henry Judah, ECR., COMRE.

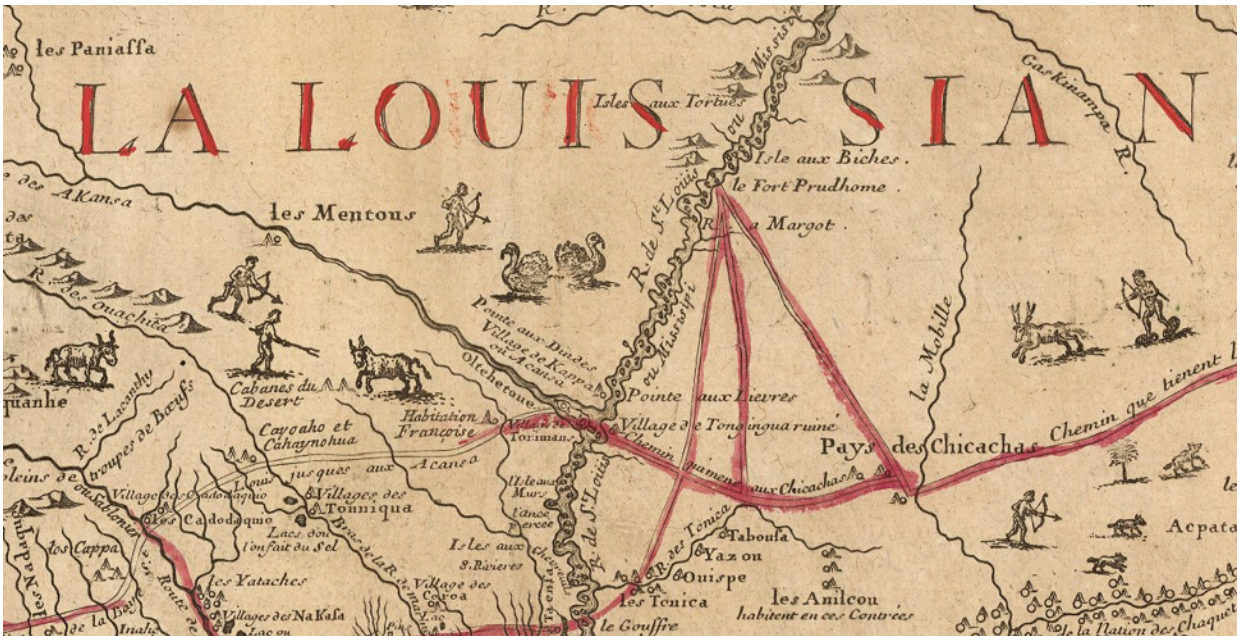
Duplicata pour le Protonotaire du District de Trois-Rivières.

Detail from: Henry Judah, "Cadastre de la Partie de la Seigneurie de St François du Lac possédée par Les Sauvages de la Tribu des Abénaquis de St François," 1858. E21,S105,SS1,SSS1,D48, BAnQ-TR.

Abenakis and their territories disappeared from geo-political maps in the nineteenth century, with only the generic remnant "Indian village" remaining. But cadastral maps came to authoritatively and definitively register Abenaki proprietorship during the same era. While one of their first representations as proprietors, on De Pincier's 1798 map, was at the behest of the Crown, their reflection on official cadastral maps, much like their appearance in notarial documents, was a result of their own legal actions and not because of Crown intervention or decree. Still, their incorporation into the British cadastral landscape nonetheless continued to mark their difference. They were clearly and consistently marked as proprietors as a collective nation. Surveyors could have chosen to label their seigneury as the proprietorship of a single individual. Odanak's chiefs were well-known and recognized by local settlers and community members. The surveyors that depicted Abenaki proprietorship did so because they represented a local legal reality.

Cartography and Petites Nations Peoples in Louisiana

As they had in the St. Lawrence Valley, eighteenth-century cartographers depicted the Lower Mississippi Valley as a complex and richly populated indigenous place. Nicolas de Fer's 1718 map of the Mississippi river was made some twenty years after the permanent founding of the French colony of Louisiana. De Fer labelled the *pays* (countries) and the villages of indigenous nations, including not only larger polities like the "Chicachas" [Chickasaws], but many of the petites nations as well. In typical early modern ethnographic style, he also included figurative images of petites nations hunters and the game they sought.

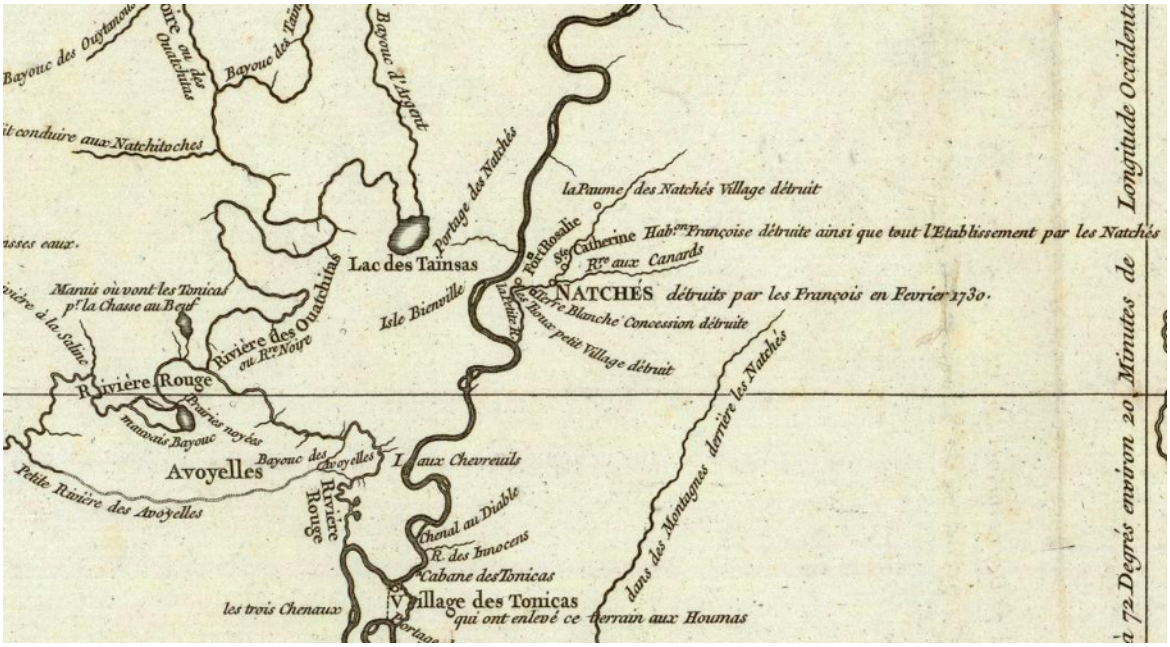


Detail from: Nicolas de Fer. *Composite: Le cours de Missisipi, ou de St. Louis (with) Partie meridionale de la Riviere de Missisipi* [map]. Paris: N. De Fer, 1718. DRHMC, https://www.davidrumsey.com/luna/servlet/s/rc45lf

Matthaeus Seutter's 1720 map of Louisiana similarly depicted it as a populated landscape of rivers and petites nations towns. On his map, settler places like "Fort Orléans" are almost overwhelmed by indigenous toponyms. Like De Fer, Seutter marked both villages and lands of many petites nations.

Matthaeus Seutter and Gottfried Rogg, *Accurata delineation celeberrimae Regionis Ludovicianae vel Gallice Louisiane* [map]. Augsburg, Germany, 1720. DRHMC, https://www.davidrumsey.com/luna/servlet/s/e0784g

Jean Baptiste Bourguignon D'Anville's 1752 map of Louisiana showed a somewhat less populated landscape, one with more "empty" spaces and less detailed information about petites nations in the region. But along the rivers where he incorporated more details, he recorded not only the presence of indigenous nations, but narrated their histories and displacements. For example, D'Anville labelled a Tunica village on the Mississippi, but noted that its population had removed to the lands of the Houmas. To the west, he noted the "swamp where the Tunicas go to hunt," and to the southeast, near a current Chitimacha village, the old village of the Bayagoulas and Mongoulachas.



Detail from: Jean Baptiste Bourguignon d'Anville. *Carte de la Louisiane* [map]. Paris: J.B.B. D'Anville, 1752. DRHMC, https://www.davidrumsey.com/luna/servlet/s/zi4c75

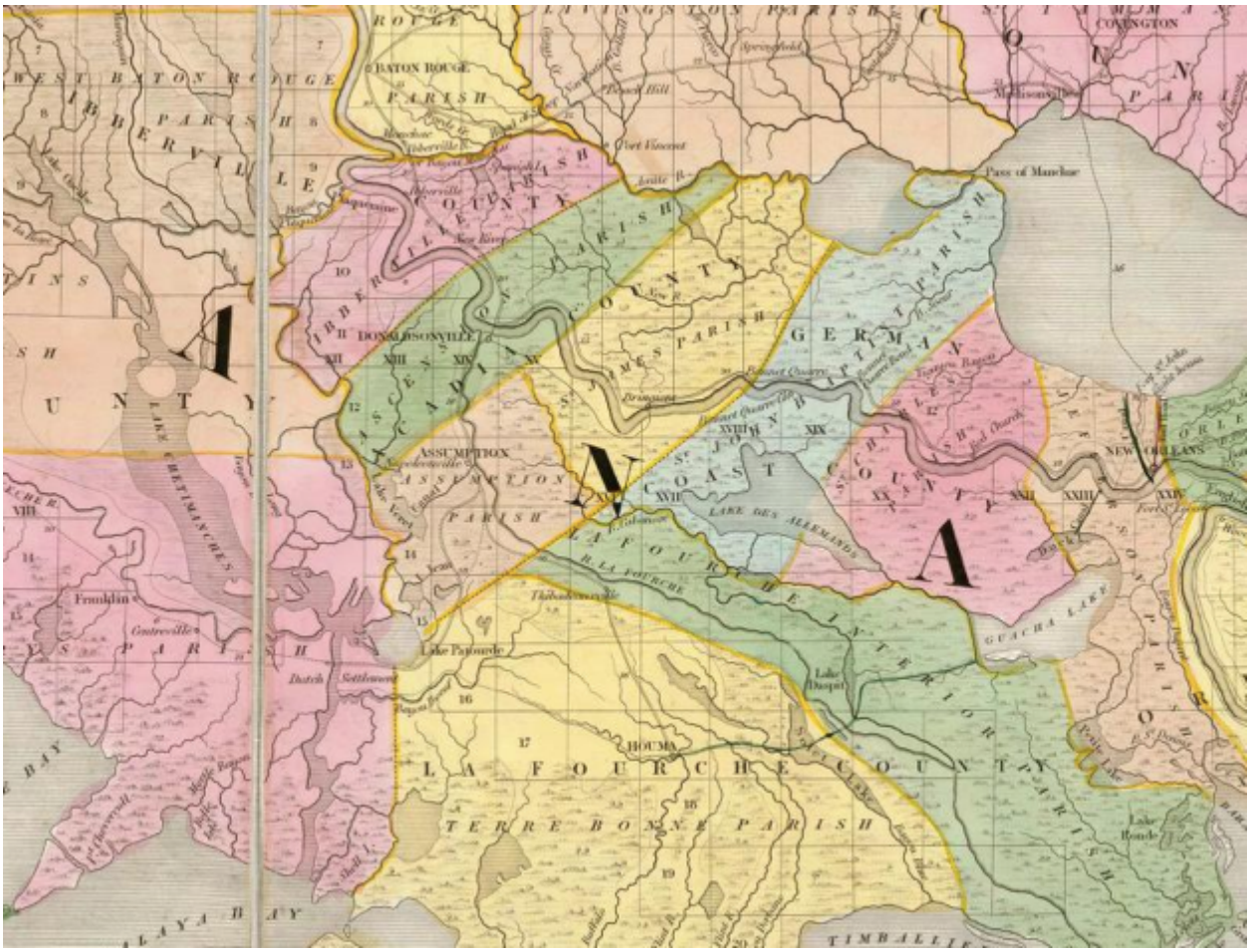
Even as late as 1803, French maps continued to show the presence of the petites nations. De Halle's 1803 map of the Mississippi increasingly emphasized settler boundaries and settler places. The larger Native polities of the southeast such as the Creeks and Choctaws are prominent, in nearly the same size and type of font as that of West Florida. Important small polities like the Tunicas are less visible. Yet De Halle still marked some other nations, such as the Attakapas. While he labelled them as "wandering Indians," he nonetheless located them in across the span of their southwestern territories.

Detail from: Etienne de Herbin de Halle. *Cours du Mississippi comprenant la Louisiane*. Paris: F. Buisson, 1803. DRHMC, https://www.davidrumsey.com/luna/servlet/s/797qao

But as soon as 1814, that landscape would be replaced by settler places, settler boundaries, and "empty" spaces that no longer appeared as indigenous territories. After Louisiana became a U.S. territory and then a state, most U.S. representations stopped depicting petites nations peoples at all. Matthew Carey's 1814 map depicted Louisiana as a bounded state jurisdiction, pretending that its western boundary with Spanish territories was clear and uncontested at the Sabine river. Carey carefully showed rivers and settler towns, but he showed the state as empty of indigenous inhabitants. While earlier cartographers who had only speculative knowledge of what lay to the west gestured to the territories of the Caddos or Attakapas, Carey left such spaces empty and unlabelled.

Matthew Carey. *Louisiana* [map]. Philadelphia: Matthew Carey, 1814. DRHMC, https://www.davidrumsey.com/luna/servlet/s/ks902i

David Burr's 1839 map of Louisiana likewise completely left petites nations peoples off the map. Burr's map also masked a number of other realities in Louisiana's geography. He attempted to place the challenging alluvial landscape of the Lower Mississippi Valley into the gridded landscape of townships. Yet his imposition of a grid is clearly superficial. A closer look at even parish boundaries show how even municipal boundaries in Louisiana did not conform to the PLSS township system.



Detail from David H. Burr. *Map of Mississippi, Louisiana & Arkansas*. London: John Arrowsmith, 1839. DRHMC, https://www.davidrumsey.com/luna/servlet/s/khn5g4

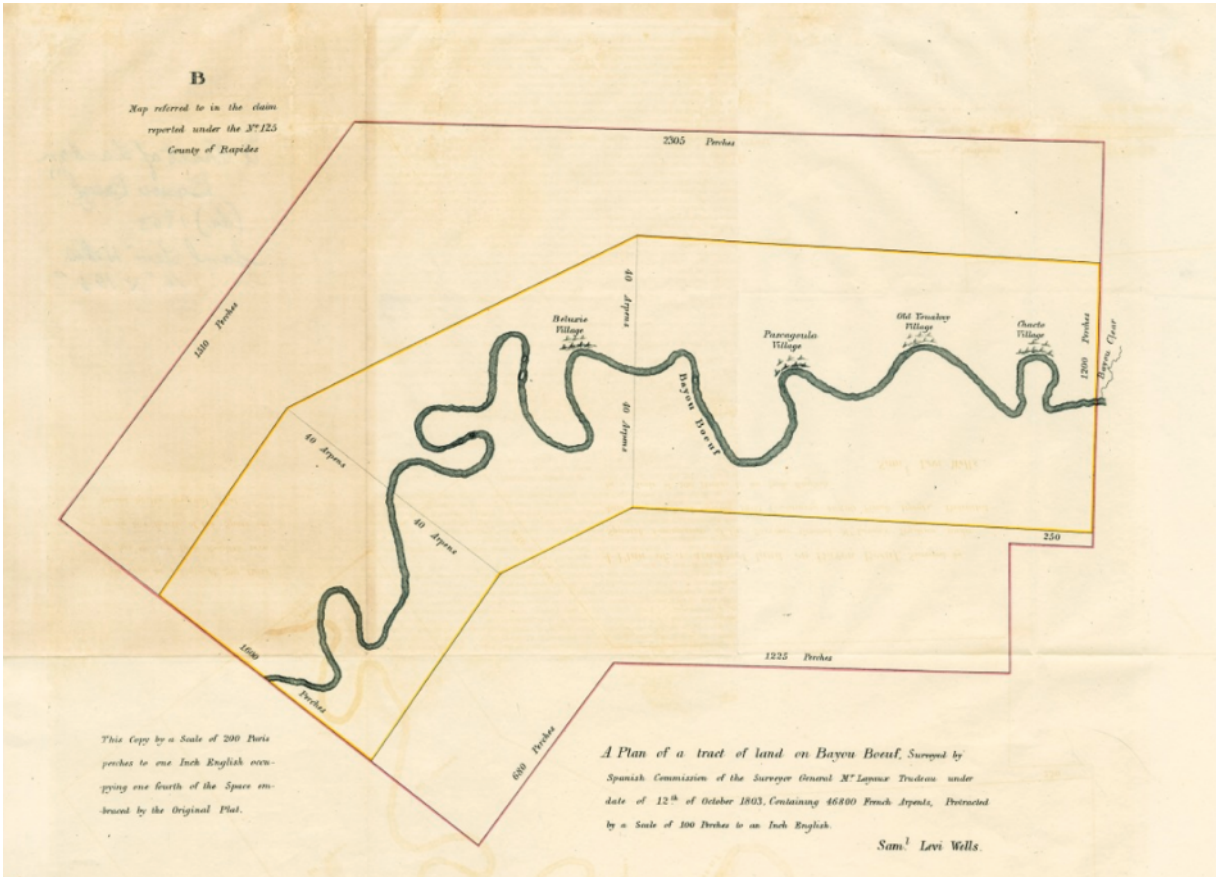
Some other cartographers were slightly more attentive to the complexities of property in the Lower Mississippi Valley. John La Tourette's 1848 map of Louisiana attempted to show French and Spanish properties as the PLSS grid was laid out around them. Yet while La Tourette aspired to a level of cadastral detail less often seen on state-level maps, he nevertheless left off petites nations villages, territories, or even property claims.

John La Tourette. *La Tourette's reference map of the state of Louisiana: from the original surveys of the United States*...[map]. New Orleans: John La Tourette, 1848. Library of Congress, https://www.loc.gov/item/2006629760/

The transformation of an indigenous geography into a settler state landscape was more dramatic in Louisiana than in Quebec. On geo-political maps, including those that depicted histories of French and Spanish land tenure, even generic markers like "Indian village" were nonexistent. However, at the granular cadastral level, petites nations peoples do appear on settler maps. Yet their representations are far less consistent than that of Odanak's Abenaki proprietors. Some appear on cadastral maps at the very moments they lost control of their lands.

The villages of the Biloxi, Pascagoula, Yowani Choctaw, and Chatot who sold their lands on Bayou Boeuf to American merchants are clearly visible on the map that Miller and Fulton submitted with the federal claims to that land. The survey plat showed (in red) the outlines of the tract on either side of Bayou Bouef. But it also included the names and locations of the "villages" of the indigenous sellers. Such a depiction is unusual. Most survey plats made to accompany federal claims in Louisiana depict only boundary lines and natural features, not buildings or locations of human habitation.

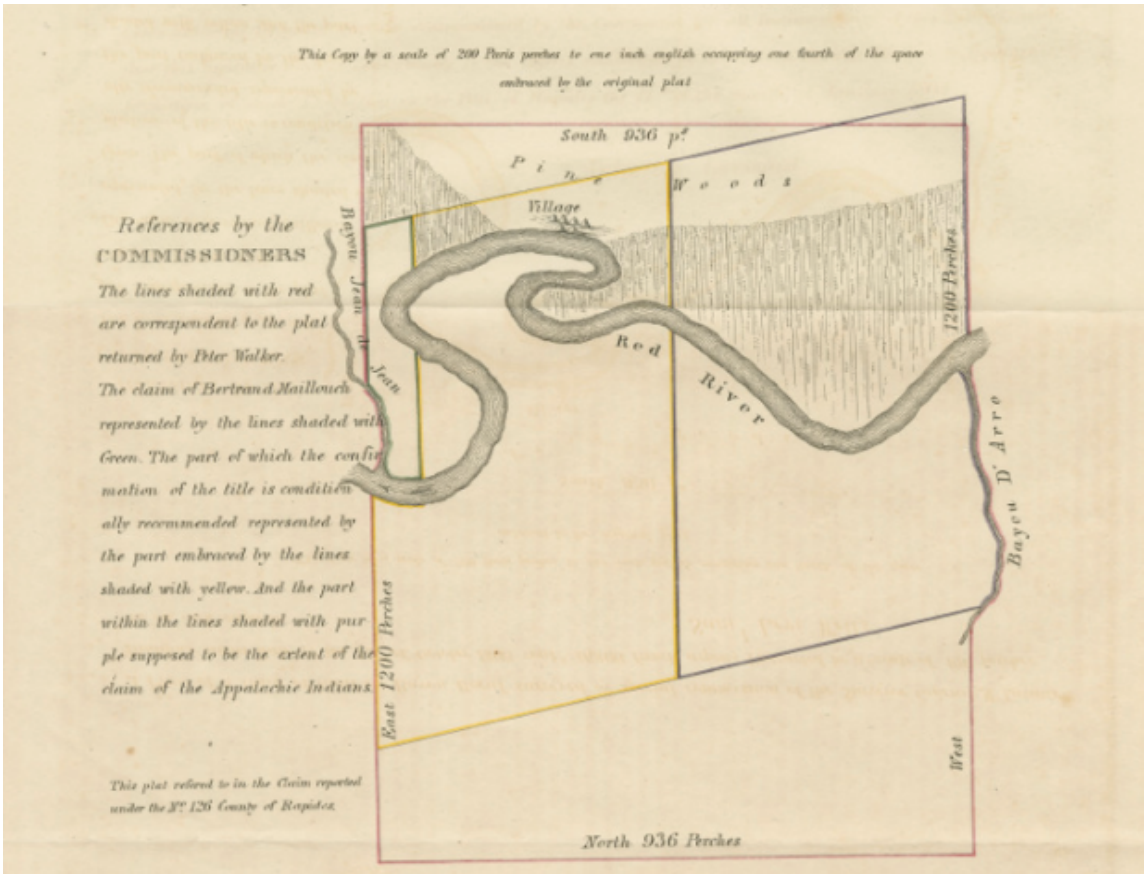
Yet the indigenous villages served a persuasive purpose on this map, made by Fulton's father-in-law, Samuel Levi Wells. Including the names and locations of the indigenous nations was part of their larger effort to demonstrate that the sales had been made publicly, formally, and legitimately. But even more importantly, these villages anchored Miller and Fulton's claim in a geographic space. On the map itself, this portion of Bayou Boeuf is only locatable by its dramatic oxbows, and by its intersection at the left with Bayou Clear. No meridians, baselines, or even cardinal directions anchor it in a larger geography. Nor are there the names or boundaries or neighboring properties to anchor it in a social space. The map is anchored to the location of indigenous villages.



Samuel Levi Wells. *A Plan of a Tract of Land on Bayou Boeuf* [map], 180?, Permanent Collection, The Historic New Orleans Collection, New Orleans, Louisiana, http://hnoc.minisisinc.com/thnoc/catalog/1/65215

As land commissioners noted in their confirmation, the original purchases had been transacted "without specifying any quantity" of land to be sold. The property exchanged was for "the portion of land" that these nations had already "occupied on the bayou Boeuf."[1] What Miller and Fulton had bought, in other words, was not a delineated tract but merely a location of indigenous occupation. The map reflects this reality. Wells had drawn an optimistically large rectangle around the four villages and submitted the claim. Land commissioners countered this with a revised map, drawing a more limited tract in yellow designed to represent the Spanish and French conventions of "forty arpents in depth on each side of the bayou."[2] Yet the map's marked villages still testify to its origin in an indigenous transaction, not a French or Spanish grant.

Miller and Fulton also included a similar map with their claim on Red River, this one based on a purchase from the Tensaw. It includes a neighboring settler claim, at the top left, and several geographic landmarks, including two bayous, swamp land, and pine woods. But it also clearly marks the location of the Tensaw village.[3]



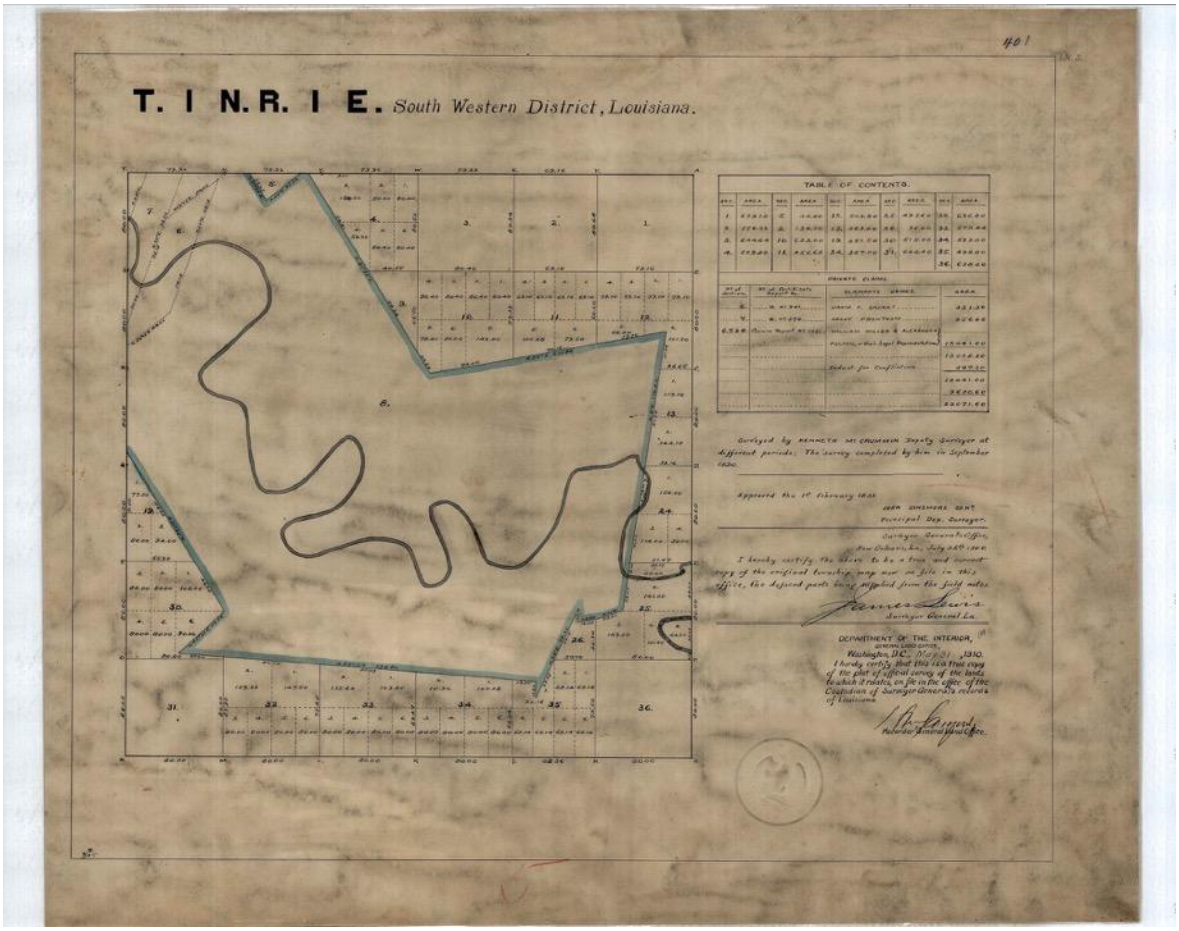
Detail from: Samuel Levi Wells. *A Plan of a tract of land in Bayou Boeuf surveyed by special commission of the Surveyor General Mr. Layaux Trudeau…*[map], 1804. Permanent Collection, The Historic New Orleans Collection, New Orleans, Louisiana, http://hnoc.minisisinc.com/thnoc/catalog/1/119710

[1] United States, *American State Papers. Documents, Legislative and Executive, of the Congress of the United States* (Washington: Gales and Seaton, 1858), Public Lands, Volume II, 660.

[2] U.S., *American State Papers*, Public Lands, Vol II, 661. Miller and Fulton's claimed boundaries are in red, and the confirmed boundaries are drawn in yellow.

[3] U.S., *American State Papers,* Public Lands, Vol II, 661-662.

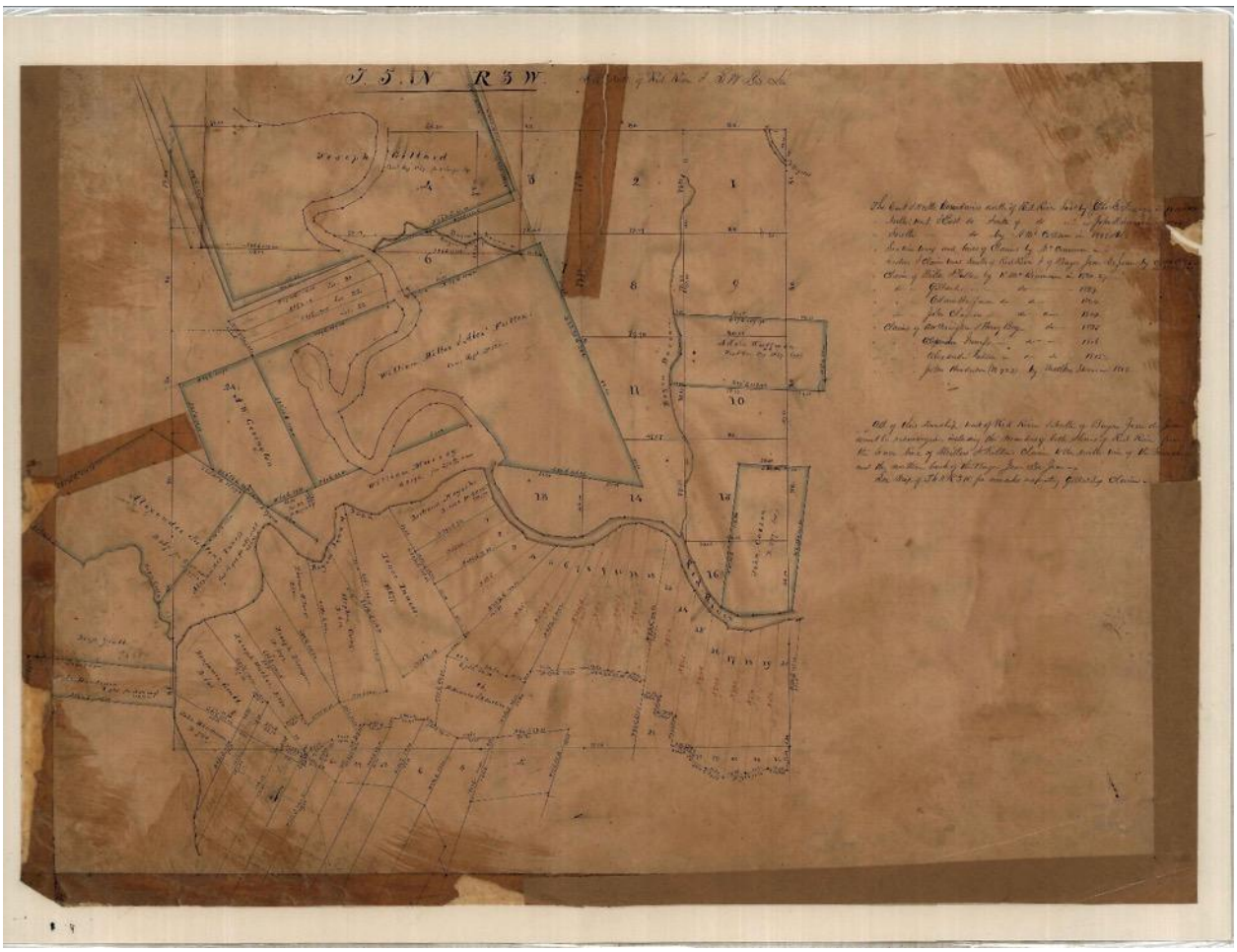
In the 1830s and 1840s, as land claims were still slowly being approved in Louisiana, General Land Office surveyors began to incorporate individual claims into larger township plat maps. These maps would delineate private claims from public land that could be subdivided and sold. Township plats like this 1830 map of Bayou Boeuf dramatize the slow transition from social information to numerical regularity in General Land Office efforts in Louisiana. They juxtapose the regular numbered sections and subsections on the PLSS system with the irregular and often still contested private claims. The private claims are still identified by the names of the claimants, listed in a table at the side of the map. But the locations of petites nations villages, and their originating title, are no longer listed anywhere on these maps. They have been replaced by the names of U.S. era claimants.



Old Plat Map for District Southwestern, T1N R1E, 523.00672, LSLO, Baton Rouge, Louisiana, https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=523.00672&category=H#1

By the time these township plats were created, these nations likely no longer inhabited these places. But the origins of these tracts as indigenous places continue to endure in the cadastral patterns themselves. This township plat shows clearly how the square subsections of the U.S. grid were established around, not on top of, the Bayou Boeuf claim.

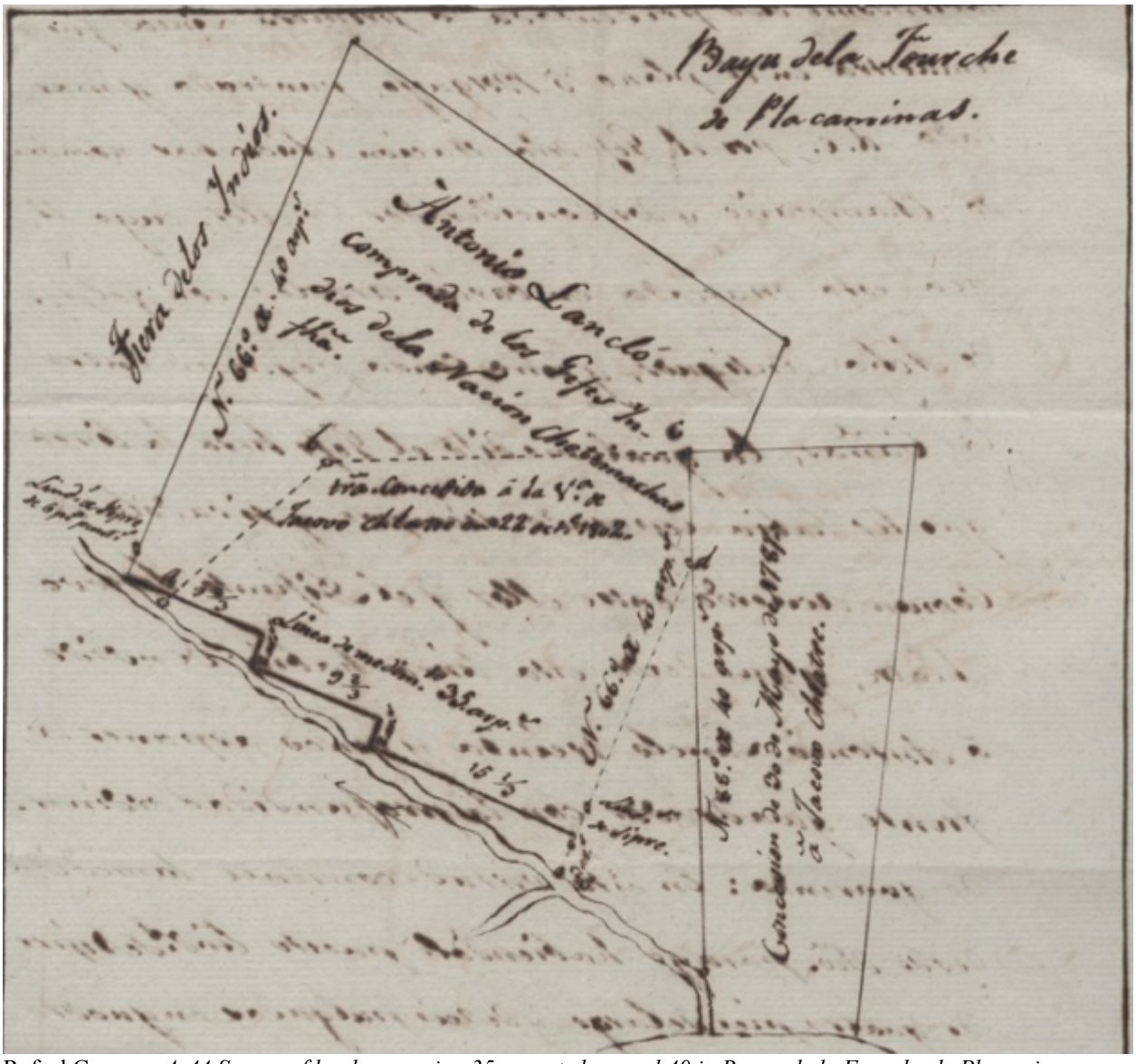
A similar dynamic is visible on a township plat of Miller and Fulton's Red River purchase from the Tensaw. The Tensaw village is no longer visible on the map, now replaced by Miller and Fulton's name.



Old Plat Map for District North of Red River, T5N R3W, 523.01113, LSLO, https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=523.01113&category=H#1

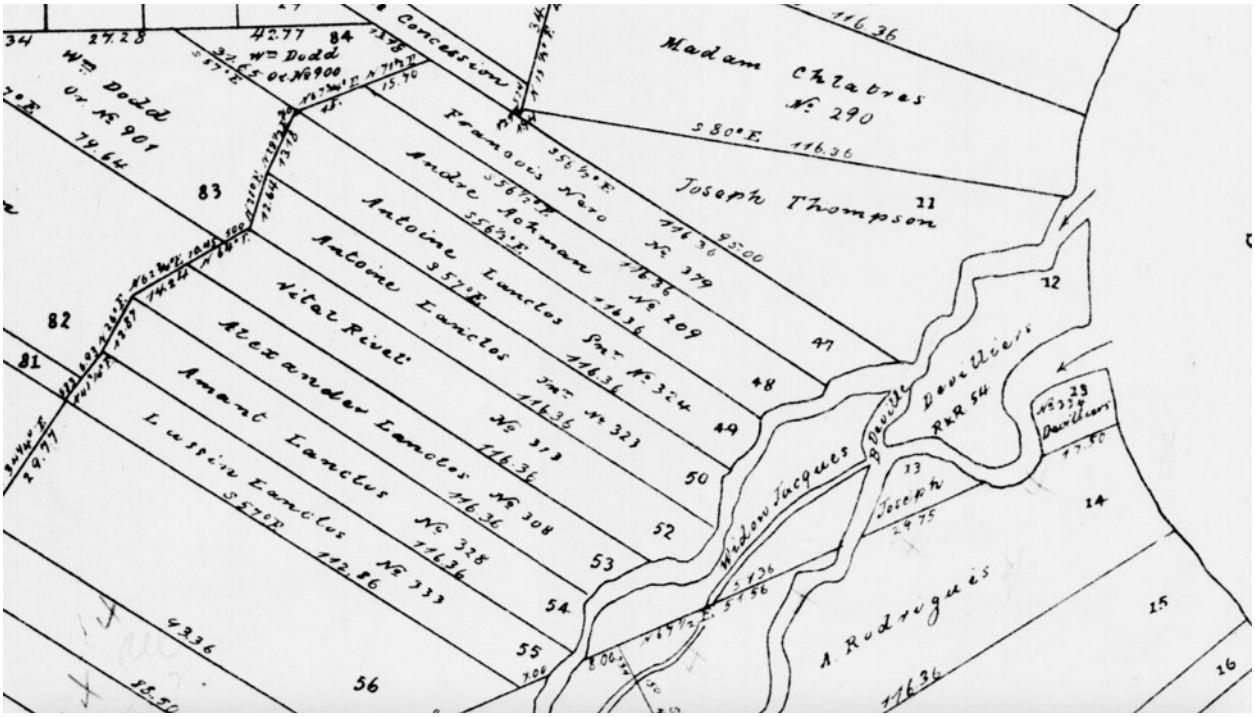
These nations appeared on these maps at the moment of their dispossession, producing a form of visibility on cadastral maps that hardly furthered their retention of territory. However, when these township plats are read for cadastral patterns, they remain a record of indigenous presence. Alongside the distinctively skinny French long-lot patterns and the equally distinctive squares of township grids, these irregular chunks of land, both incorporating the rich and fertile oxbows of bayous, are records of indigenous presence. The patterns of the land resulting from these negotiated transactions made their way into Louisiana's cadastral grid, even as the Nations themselves were excluded from it.

Petites nations did not appear on cadastral maps only in moments of dispossession. The Chitimachas appear on a number of property maps spurred by the legal actions they took to defend and reclaim their lands. When settlers began to encroach profoundly on their territories in the 1790s, selling portions of their land was a part of their strategy to control settler encroachment. This 1803 map documented one such sale, made by "the Indian chiefs of the Chetimachas nation" to Antonio Lanclos along a fork of Bayou Plaquemines. On the map, the land sold to Lanclos is bounded and enclosed. But to the top left, the "land of the Indians" is marked but unbounded, suggesting that Chitimachas territory, at least on this map, remained unbounded by settler claims.



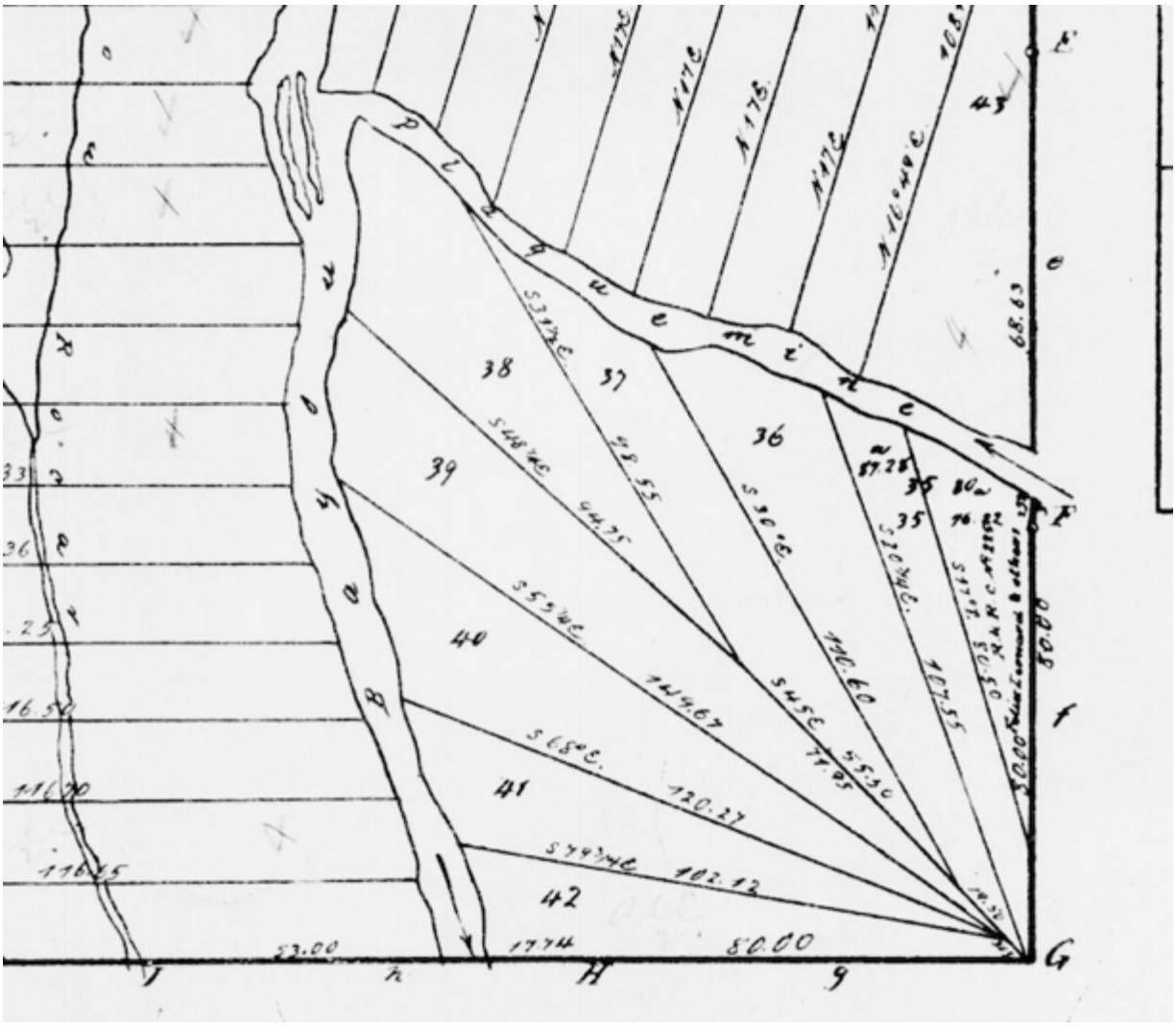
Rafael Croquer, *A-44 Survey of land measuring 35 arpents by usual 40 in Bayou de la Fourche de Placaminas* [map], 1803. Cartography Documents & Correspondence, SC 1.1.6, Historic New Orleans Collection, http://hnoc.minisisinc.com/thnoc/catalog/3/6856

In the next few years, Chitimachas sold more tracts of land along this section of Bayou Plaquemines to settlers, and those settlers submitted federal land claims. Because they had been conducted after the 1803 purchase, the vast majority of them were rejected. However, an 1845 township plat map suggests that many settlers and their families nevertheless successfully remained on those Chitimacha lands, while the Chitimachas did not. The Chitimachas are nowhere visible on this map. However, the lands they sold to settlers appear to still be in the hands of many of the same families. In particular, Antoine Lanclos's 1803 purchase from the Chitimachas is still visible on the map. It has been subdivided into French-style longlot subsections, numbered 47 through 55, as he divided it between his heirs. Of course, this land had never been a French or even a Spanish grant. It had been a purchase from the Chitimacha.



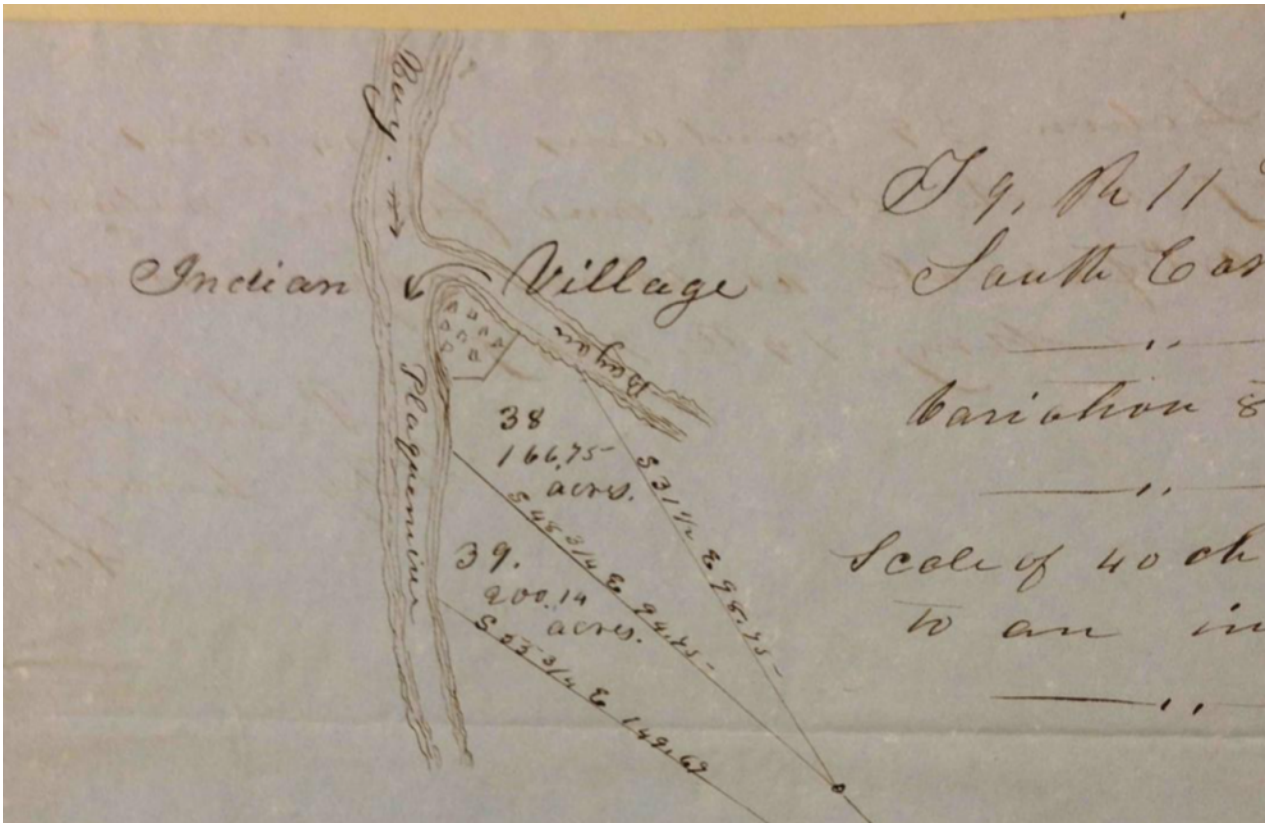
Detail from: *Official Plat Map,* T9S, R12E, SED-W, 522.00472, LSLC, https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=522.00472&category=H#1

In the next few decades, Chitimachas tried to hold onto other lands along Bayou Plaquemines. Yet without formal titles, even villages they still inhabited tended not to appear as theirs on township plat maps. This 1832 plat map conceals a Chitimacha village at the tip of a sharp curve on Bayou Plaquemines, instead labelling numbered sections 38 and 39.



Detail from: *Official Plat*, 522.00469: T9S R11E, SED, 1832. LSLO, https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=522.00469&cat%20egory=H#1.

However, the Chitimachas soon began to take legal actions to regain title to their village. In 1838, they made an agreement with local merchants Bissell and Schlatre as to the boundaries of their lands there. But in 1849, they filed a suit in District court against the two.[4] As part of this dispute, a land survey was ordered of sections 38 and 39, in order to "ascertain the quantity of the said land and more especially the quantity of the land now occupied by and in possession of the plaintiffs who style themselves the Chitimacha Indians." The surveyor reported that much of the survey could not be completed "in consequence of high water," but noted that he did survey a "portion of ground in section 38 called the 'Indian Village' on which a small remnant of the Chitimachas now reside situated on the left bank of Bayou Placquemine."[5] Even though the surveyor clearly knew that this was Chitimacha land—the Chitimachas were the plaintiffs in the suit that initiated the survey—he kept the generic label "Indian Village." He marked it as an "Indian" place, but still did not attach the Chitimachas to the map as proprietors.



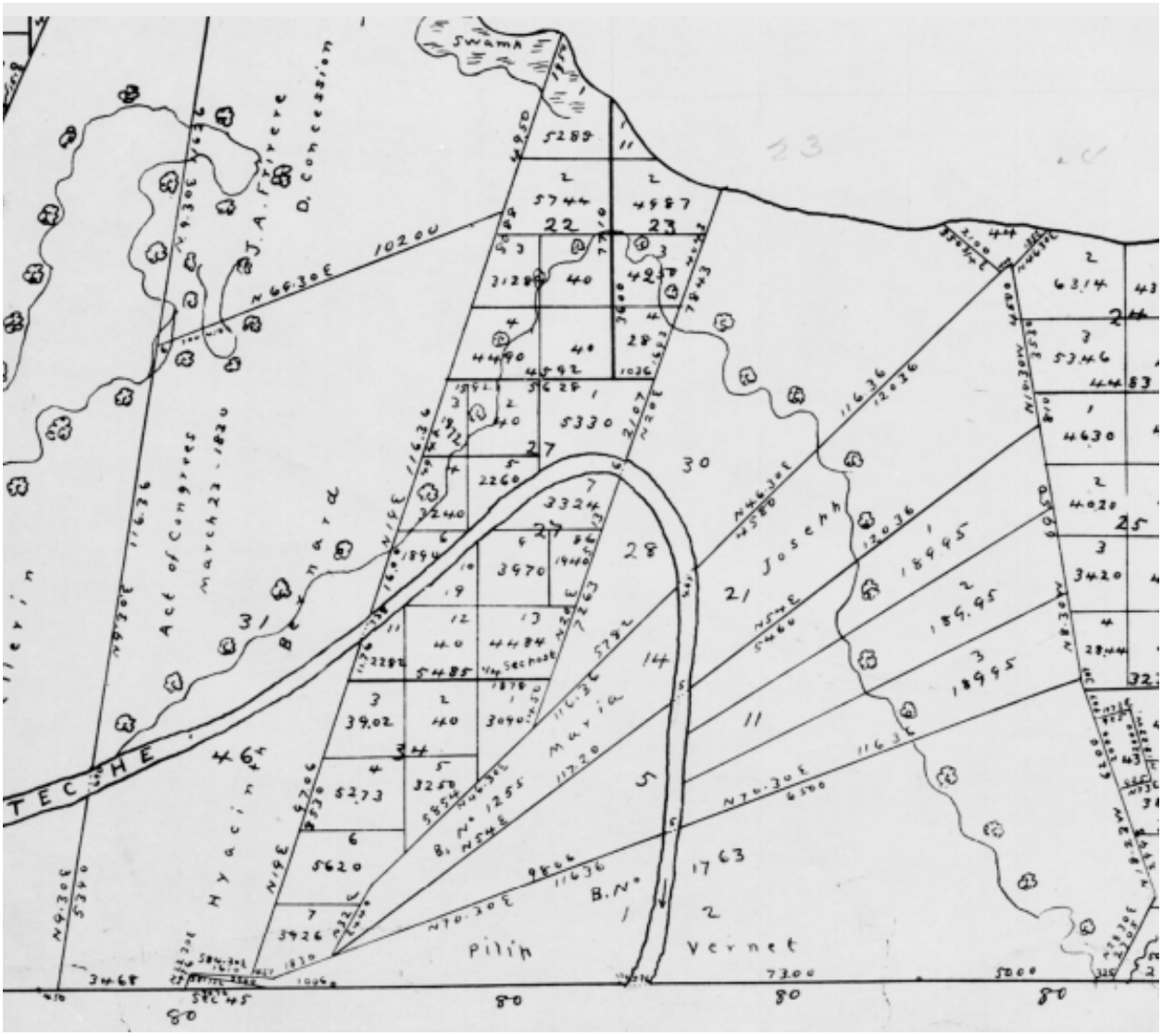
"Chitimacha Indians Land Survey: 1849," Accession Number P1993-096, Drawer 34, Louisiana State Archives.

The Chitimachas were unsuccessful in gaining a formal title to "Indian Village" on Bayou Plaquemines. They had more luck retaining title to their lands on Bayou Teche, which is the site of their contemporary reservation in Charenton, Louisiana. In 1824, they had filed a federal claim for their village land on a bend in the Teche. Despite being recommended to Congress for confirmation, it was never officially confirmed. In 1841, when the official township plat map that contained their claim was surveyed, their claim was excluded.

[4] *St. Landry Parish Clerk of Court Index to Civil Suits, 1805-1885*, 76-77, Louisiana State Archives, Baton Rouge, Louisiana.

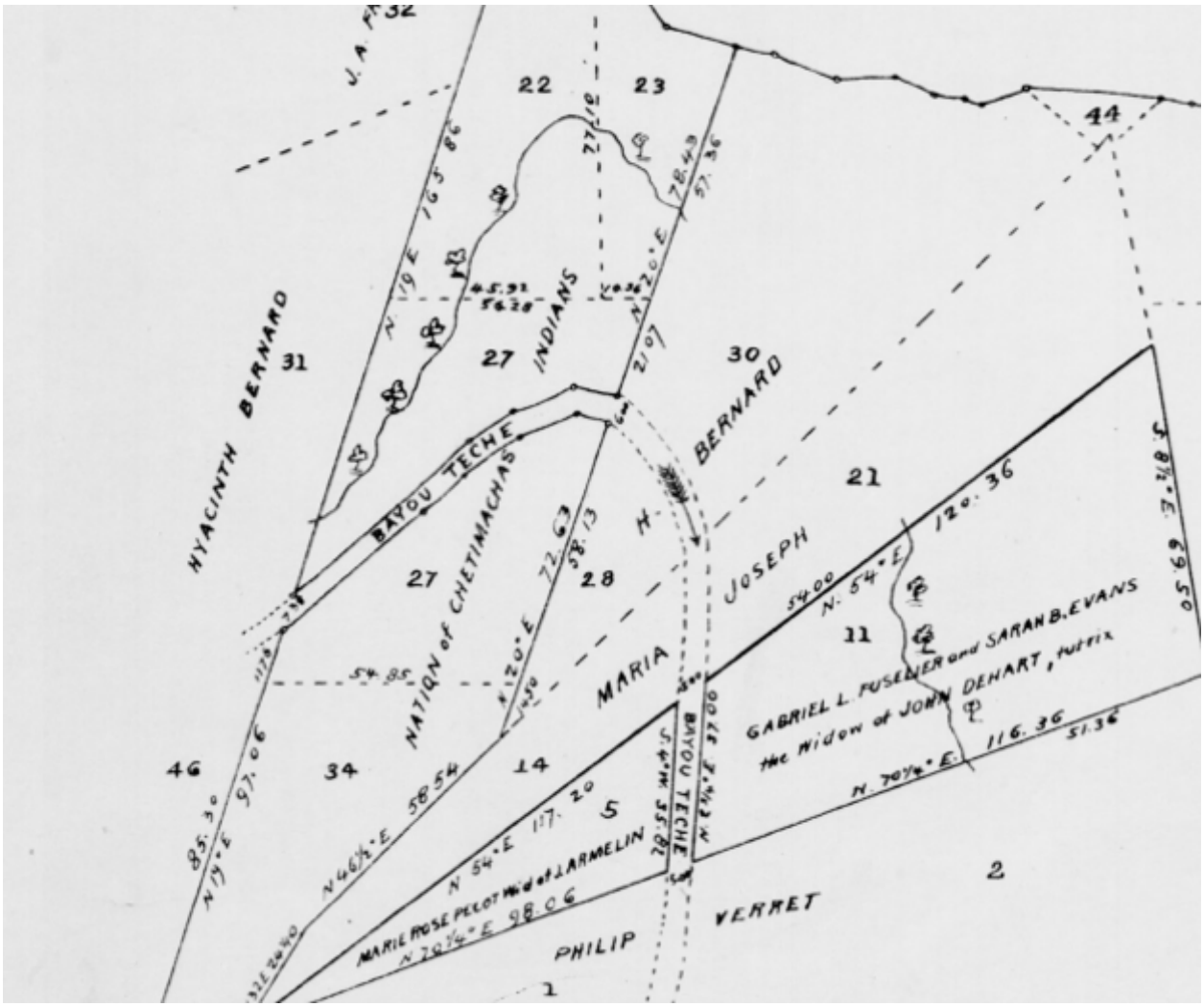
[5] "Chitimacha Indians Land Survey: 1849," Accession Number P1993-096, Drawer 34, Louisiana State Archives.

On this township plat, the surveyor listed a number of French and Spanish-era claims that had been confirmed and incorporated into the larger PLSS landscape. Those claims included settler purchases from the Chitimachas, now successfully approved. But the tract that the Chitimachas has not only claimed, but still occupied, was left off the map. Instead, the surveyor subdivided their property into numbered townships sub-sections, as if they could be portioned off and sold to settlers. These sections form a conspicuous variation in the long-lot pattern of private claims surrounding them, one that denied an on-going reality of Chitimacha proprietorship.



Detail from *Official Plat,* 522.00344, T13S, R 9E, SWD, 1844. LSLO, https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=522.00344&category=H#1

It was only after they pursued their title all the way to the U.S. Supreme Court that property maps were altered to reflect their possession. Their victory prompted a new survey, and an amended township plat was filed in 1853. On this map, the subdivided sections to be sold disappeared, and the tract was correctly relabelled: "Nation of Chitimachas Indians."



Detail from: *Supplemental Plat*, 522.00345, T13S, R 9E, SWD, 1853, LSLO.
https://wwwslodms.doa.la.gov/WebForms/DocumentViewer.aspx?docId=522.00345&category=H#1

Petites nations peoples disappeared from geo-political maps of Louisiana in the early nineteenth century, transforming what had been a relatively well-known indigenous landscape into an empty grid prepared for settlement. Nineteenth-century cadastral maps certainly showed more indigenous peoples and places than geo-political maps did, but their representations of Indigenous land were still uneven. Some petites nations peoples appeared on cadastral maps only at the moment their lands were lost, leaving only cadastral patterns in the shapes of originating settler purchases. Others continued to inhabit their lands but were left off of maps anyway. Those who did manage to appear on cadastral maps did so only after they took specific legal actions. They had to force surveyors to recognize not only their occupation of land, but their possession and authority.

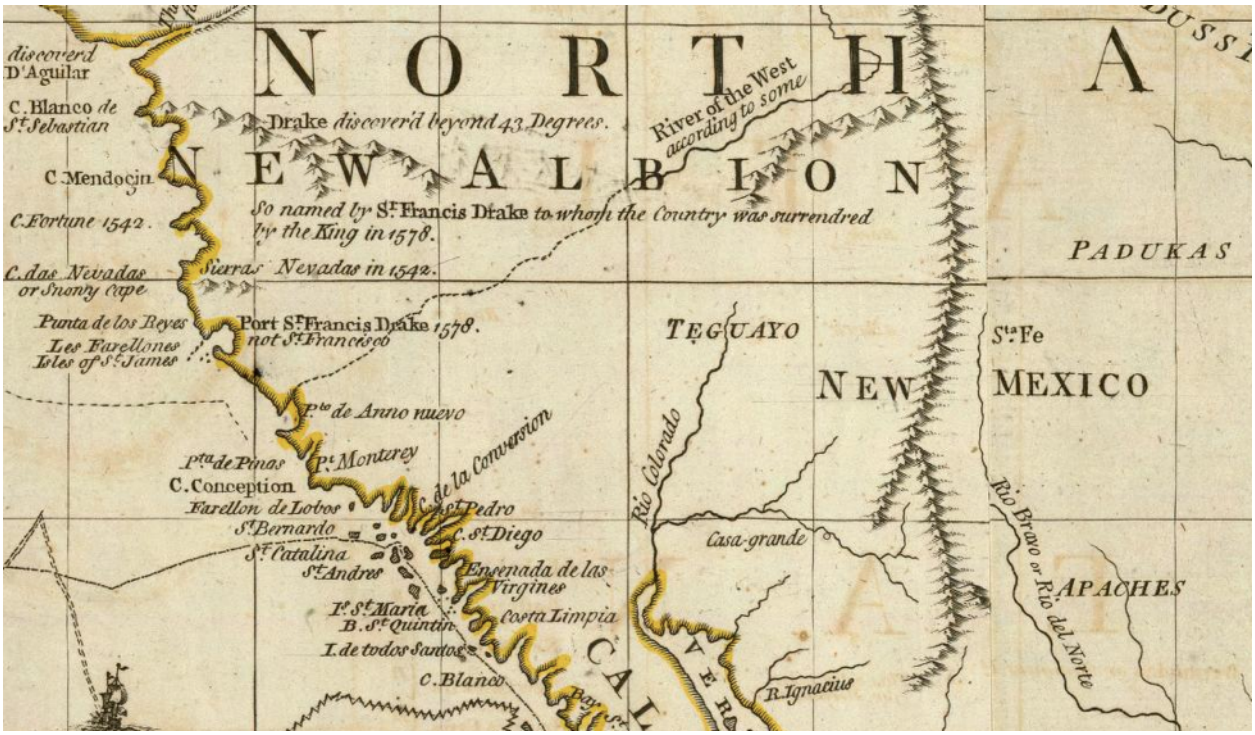
Mapping Indigenous Land in California

The numerous and diverse Indigenous polities who have lived for millennia on California's coasts have never been comprehensively or accurately mapped by Europeans. Many European cartographers were famously confused about California's basic geography. From as early as 1510 to as late as the mid-eighteenth century, California was represented on European maps as an island.[1] On many of these maps, such as De Fer's 1705 effort, it was depicted as nearly empty, reflecting profound limitations in European knowledge of the West Coast geography. Topography is limited to a few mountains, and ethnography to Pacific coastal places with European toponyms. De Fer's ignorance about California is especially pronounced in comparison to the more detailed information available for the "mainland" of New Spain and Apacheria. For this portion of the land, the map lists over three hundred toponyms, many of which are indigenous.

Nicolas de Fer. *Cette Carte de Californie et du Nouveau Mexique* [map]. Paris: Nicolas de Fer, 1705. DRHMC, https://www.davidrumsey.com/luna/servlet/s/4s03c1

[1] Glen McLaughlin et al., *California as an Island: Maps from the Library* (Berkeley: The Bancroft Library, University of California, 2009).

Even after the island had been corrected to a peninsula, knowledge of Indigenous polities in what is now the state of California remained limited. Coastal charts like Thomas Jefferys' 1776 effort labelled well-known Native nations like the Apache in interior North America. Yet California was marked only with a series of European coastal landmarks.



Detail from Thomas Jefferys, *Chart containing the coasts of California, New Albion, and Russian Discoveries to the North* [map]. London: Sayer and Bennett, 1776. DRHMC, https://www.davidrumsey.com/luna/servlet/s/86ps19

Spanish maps of their far northern province also lacked detailed information regarding Indigenous peoples. A map drawn by Father José de Alzate y Ramírez in 1767 acknowledged their "ignorance" of the "nations" of Alta California on the map itself.

Detail from: *Plano Geográfico de la mayor parte de la America Septentrional Española* [map]. Madrid, Spain: Archivo del Museo Naval, Organo De Historia y Cultura Naval, 1772. CSU-MBDC, https://digitalcommons.csumb.edu/hornbeck_spa_1_a/19/

Similarly, a 1795 map, made after several decades of Spanish exploration and colonization, still showed little detail beyond coastal details, missions, presidios, and a few expedition routes.

Mapa de la Nueva California al exmo Señor Principe De La Paz [map]. Madrid, Spain: Archivo General Militar de Madrid, 1795. CSU-MBDC, https://digitalcommons.csumb.edu/hornbeck_spa_1_a/47/

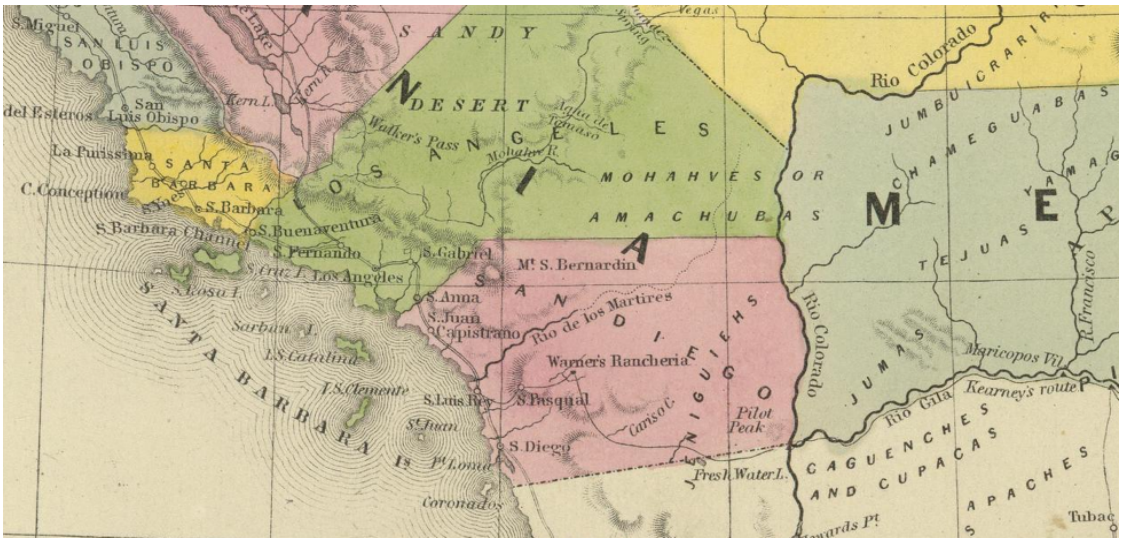
Some Mexican efforts to map Alta California provided somewhat more detail. José María Narváez completed a detailed map of northwestern Mexican territories in 1823. His map included some indigenous nations in the interior, but also acknowledged, as prior Spanish maps had done, that most of internal Alta California remained "Tierras Incognitas." Along the coast, he delineated administrative districts and the pueblos, missions, and presidios they contained. Narváez did not denote any Indigenous territories in coastal California. But he did acknowledge the presence of Indigenous peoples. A chart at the bottom left of the map listed each mission and the number of neophytes at each of them.

Detail from: José María Narváez, *Carta Esferica de los Territorios de la Alta y baja Californias y Estado de Sonora*, [map]. Madrid, Spain: Cartographic and Study Archive, Geographic Center of the Army, 1823. CSU-MBDC, https://digitalcommons.csumb.edu/hornbeck_spa_1_a/20/

U.S. conquest and subsequent statehood ushered in a number of new mapping efforts. C.D. Gibbes's 1852 pocket map of the new state showed it divided into counties and the toponyms of a Spanish and American landscape. Gibbes listed the Spanish missions along the coast, as well as the many new Anglophone settlements established through frantic Gold Rush activity. Gibbes did not locate any Indigenous communities along the coast, and only sparingly in the interior. Moreover, he followed the nineteenth century trend of generalizing information about indigenous peoples. For example, he marked a Yokut place in Tolumne County as a generic "Indian Location."

Detail from C.D. Gibbes, *New Map of California*. Stockton, California: C.D. Gibbes, 1852. DRHMC, https://www.davidrumsey.com/luna/servlet/s/24oc56

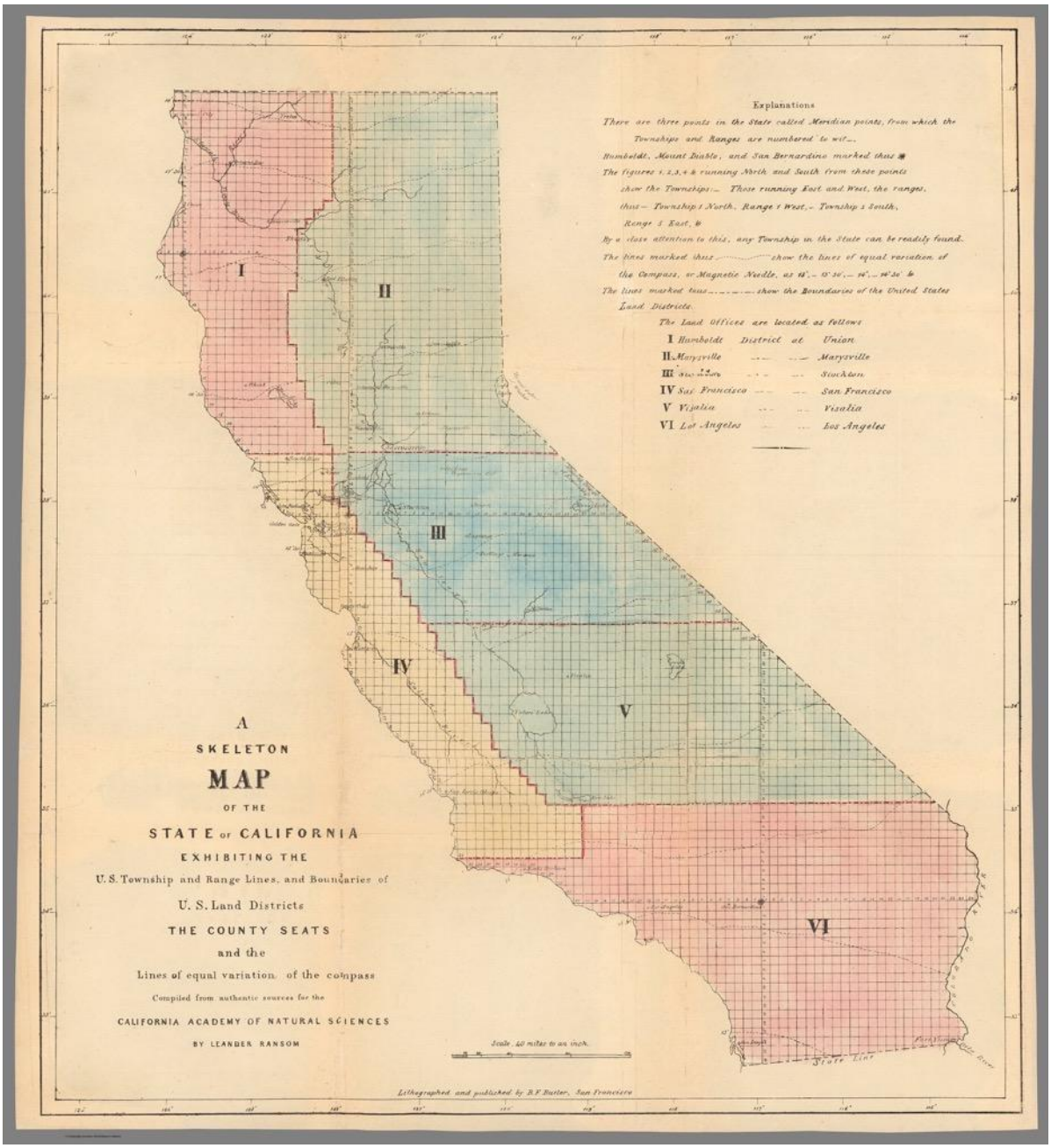
Samuel Mitchell's 1852 Atlas map showed only slightly more indigenous information. In interior southern California, northern Mexico, and New Mexico, Mitchell's map depicts a number of Native nations. Closer to the coast, he marks Warner's Rancheria in Cupeño territories, site of the 1851 Garra revolt, when Cahuilla and Cupeño men attacked and burnt the ranch of settler J.J. Warner.[2] But Mitchell's map, like those of his contemporaries, proceeded from the assumption that no Native territories along the coast remained to be delineated.



Detail from: Samuel Augustus Mitchell, *California, Oregon, Utah, New Mexico* [map]. Philadelphia: Thomas, Cowperthwait & Co., 1852. DRHMC, https://www.davidrumsey.com/luna/servlet/s/yk248i

[2] George Harwood Phillips, *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California* (Berkeley: University of California Press, 1975), 104–11.

U.S. maps of California were also quick to imagine the entire state's incorporation into the P.L.S.S. grid. Leander Ransom's "skeleton map" of California, lithographed in San Francisco during the 1850s, imagined the entire state gridded and divided into township squares affixed to the meridians and baselines he had located as Deputy Surveyor General in 1851.



Leander Ransom, *A Skeleton map of the State of California* [map]. San Francisco: B.F. Butler, 185-. DRHMC, https://www.davidrumsey.com/luna/servlet/s/or81tl

But Ransom's vision of a complete grid would have to accommodate the private land claims process, disrupting this plan through the accommodation of irregular properties created during the Spanish and Mexican periods. While Mexican and U.S. geo-political maps had shown coastal Native peoples only at missions if at all, cadastral maps beginning in the Mexican era depicted

both indigenous proprietors and their land. The social and local Mexican land granting process not only enabled claimants to petition for particular places, but even to draw their own maps, or *diseños*. Within this impressionistic, local, and highly social mapping genre, there was much more space for indigenous land and indigenous peoples to be visible. After U.S. conquest, the slow transition from social to mathematical cadastral mapping meant that indigenous places and peoples would linger on U.S. cadastral maps for decades.

Not all claimants submitted *diseños* for their land claims. But at the former missions of San Gabriel and San Fernando, at least one indigenous claimant submitted a *diseño* that survives. Manuel Antonio, the indigenous mayordomo of Mission San Gabriel, was granted the Rancho Potrero Grande in 1845 by governor Pio Pico.[3] This map may have been made by Manuel Antonio himself, or possibly by Jasper O'Farrell, who surveyed a number of nearby places in the 1840s.[4] The borders of Rancho Potrero Grande are partially determined by the boundaries of the mission's lands, a neighboring property, and natural features including a ravine, a swamp, and a wooded mountain. Notably, nothing about Manuel Antonio's *diseño* explicitly identifies him as indigenous.

Diseño del Potrero Grande vic. Misión Vieja [map]. Land Case 243 SD, Maps of private land grant cases of California, 184-?, Bancroft Library, University of California, Berkeley, http://content.cdlib.org/ark:/13030/hb967nb58f/?order=1

[3] Land Case 243 SD, DPAPLC.

[4] Francois D Uzes, *Chaining the Land: A History of Surveying in California* (Sacramento, Calif.: Landmark Enterprises, 1977), 43.

Most Indigenous claimants at San Gabriel petitioned for much smaller tracts of land close to the mission. If they made *diseños*, they are no longer extant. Yet maps of neighboring settler claims mark the presence of indigenous proprietors, using their names to delineate where one property ended and others began. This *diseño* shows the Rancho Santa Anita, which settler Henry Dalton purchased in 1847 from Hugo Reid and his Tongva wife Victoria Reid. The map locates the rancho's boundaries in terms of its neighboring proprietors, which included numerous indigenous proprietors. "Valencia y hijos," referred to the tract claimed by the Tongva man Ramon Valencia and his two sons. Yet like the map of Manuel Antonio's Rancho Potrero Grande, Valencia is not explicitly identified as Tongva, or even as a "Native of the mission." These social maps linked land to specific peoples, not racial categories of land ownership.

Detail from: *Diseño de Santa Anita,* Land Case Map B-1054, Maps of private land grant cases of California, 184-?. Bancroft Library, University of California, Berkeley, https://oac.cdlib.org/ark:/13030/hb196nb01k/?brand=oac4

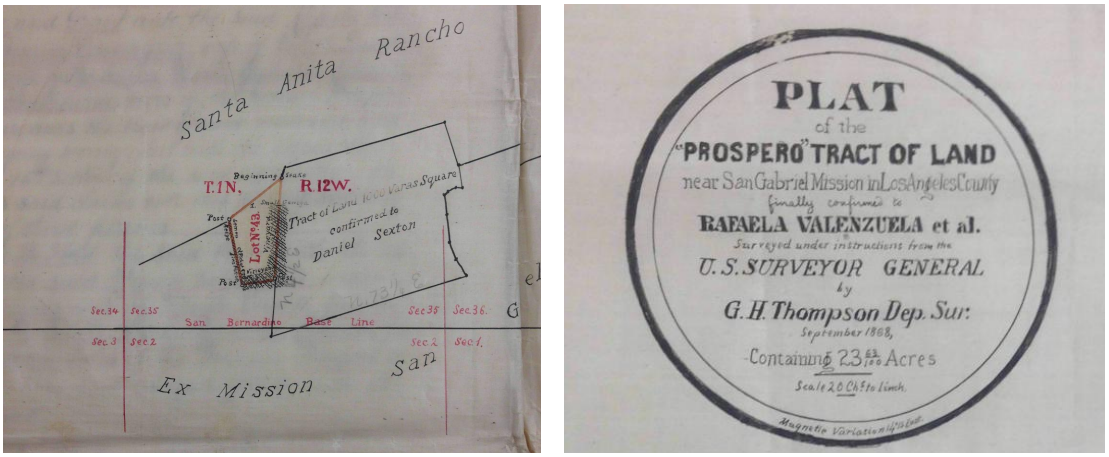
After the U.S. conquest, the San Gabriel Valley was quickly surveyed for incorporation into the PLSS grid. The process of establishing new land tenure patterns, which would take decades in Quebec and Louisiana, was set in a motion almost immediately. Surveyors located the north boundary of the township in 1852, and by July 1853, the section of numbered township containing the former mission was complete.[5] Mexican-era private land grants, when they were approved and patented, would have to be integrated into this larger pattern.

Now, cadastral maps, including those submitted with federal property claims, would be made by professional surveyors, not claimants. Yet these surveyors still included social information on their numbered township maps. Henry Hancock, the same surveyor who had laid out the township in 1853, made a map of the former mission lands in 1857 for a settler claim. Though integrated into the U.S. grid, this map still followed Mexican conventions. It included natural features, neighboring ranchos, and of the small tracts carved out of the mission's lands, each labelled not with a number, but with the name of its owner. Among those names were Indigenous proprietors.

Detail from: Henry Hancock, *Map of the lands of the Mission San Gabriel: situated in Los Angeles County, California, originally sold to Messrs. Workman & Reed, now owned by Messrs. Workman, Howard, Brannan & others* [map]. Land Case Map E-1394, Maps of private land grant cases of California, 1857. Bancroft Library, University of California, Berkeley, https://oac.cdlib.org/ark:/13030/hb1199n649/?order=2&brand=oac4

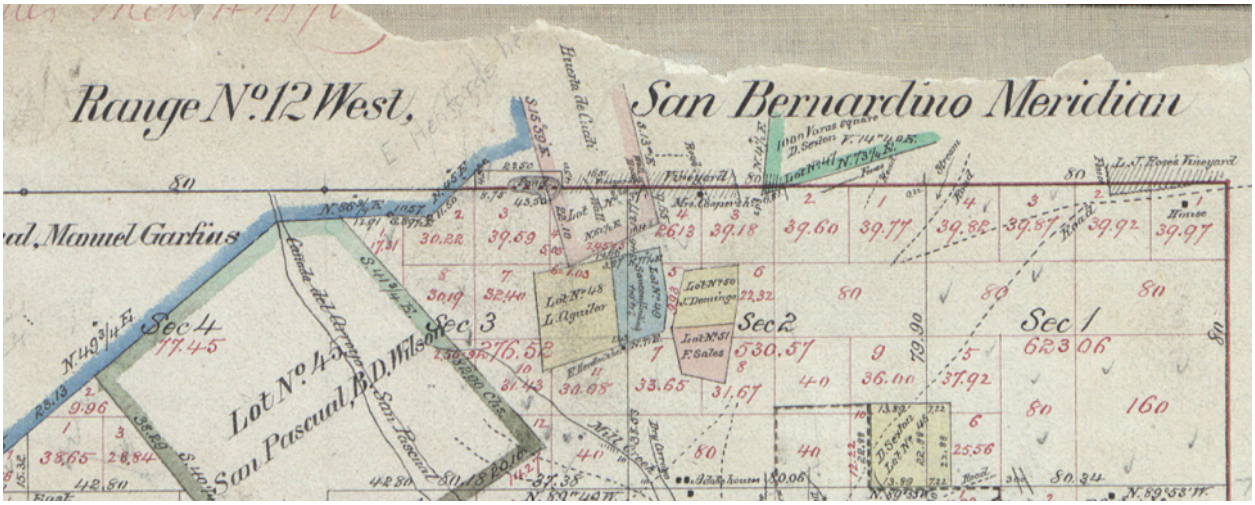
[5] Original Survey, Township 01S 12W, San Bernardino Meridian, approved 1870, U.S. Department of the Interior, Bureau of Land Management, General Land Office Records (GLOR), DM ID: 291072

Still, by as early as 1857, many Tongva proprietors at San Gabriel had already lost or sold their tracts to settlers, whose names now appeared instead of theirs. But some tracts retained the names of their original claimants even after ownership had passed into the hands of others. For example, the tract owned by a Tongva man named Prospero remained linked to his name decades after his death. Prospero died in 1852, but his widow, Rafaela Valenzuela, continued to pursue the title to his land. In 1870, when the claim was finally patented to her and her heirs, it was identified on the official cadastral map by its number, "Lot No. 43." But the map's cartouche still identified it as "the 'Prospero' Tract of Land."



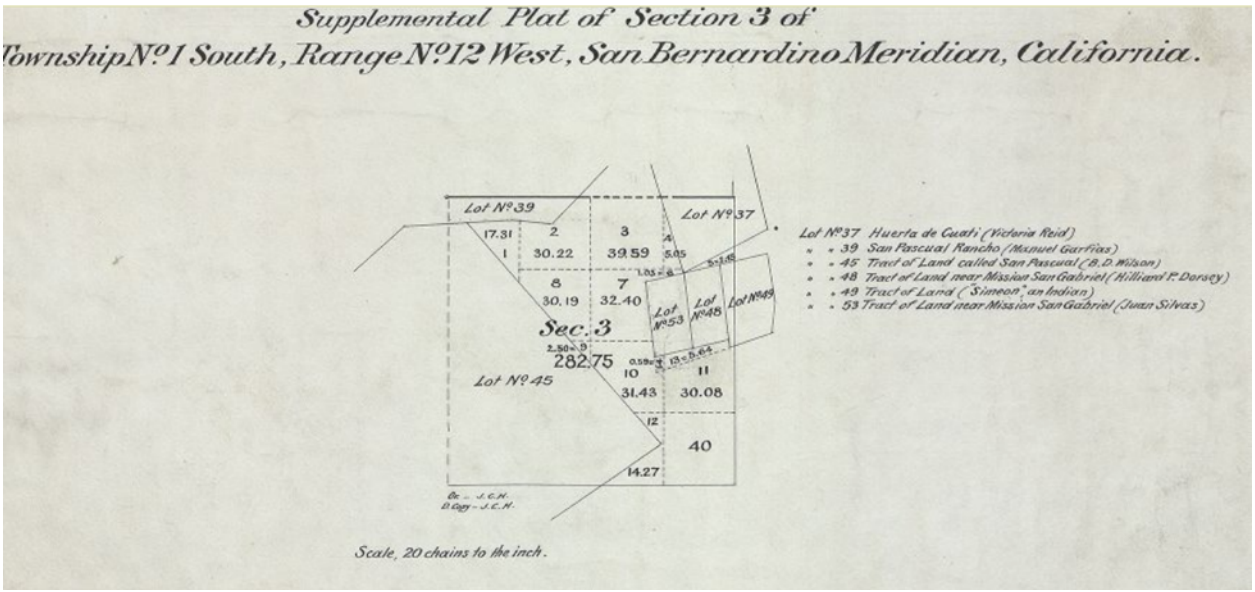
Details from: *Plat of the "Prospero Tract of Land" near San Gabriel Mission in Los Angeles County, finally confirmed to Rafaela Valenzuela et al.*, 1870. James de Barth Shorb Papers, Addenda, Oversize Folder 4, Huntington Library, San Marino, California.

The names of original claimants persisted on specific property maps because they were linked to the narratives of ownership being described in property claims. Those names lingered for decades, coexisting with the introduction of numbered systems. They persisted not only on individual property maps of specific claims, but on larger township plats. An 1870 township plat of San Gabriel assigned a number to every tract based on a private land claim. But it also continued to label those tracts with the names of claimants. The names of Tongva proprietors, include Francisco Sales, Jose Domingo, and "Simeon (Indian)" remain, even though all of those claimants had long lost possession of those particular tracts.



Original Survey, Township 01S 12W, San Bernardino Meridian, approved 1870, GLOR, DM ID: 291072

Even as late as 1904, when a section of the township was resurveyed, the names of original claimants still appeared on the map. Though now moved to a table at the right of the plat itself, Lot No 49 is still labelled with the designation "Simeon, an Indian." Yet other than Simeon, who was identified on maps explicitly as "an Indian," other San Gabriel claims do not clearly identify the claims and their claimants as Tongva, as "of the Mission," or "Indian." Tracts on maps remained attached to their individual grantees, but most had no racial designation as "Indian" land, even as the claims themselves clearly showed the "Indian" identities of claimants.

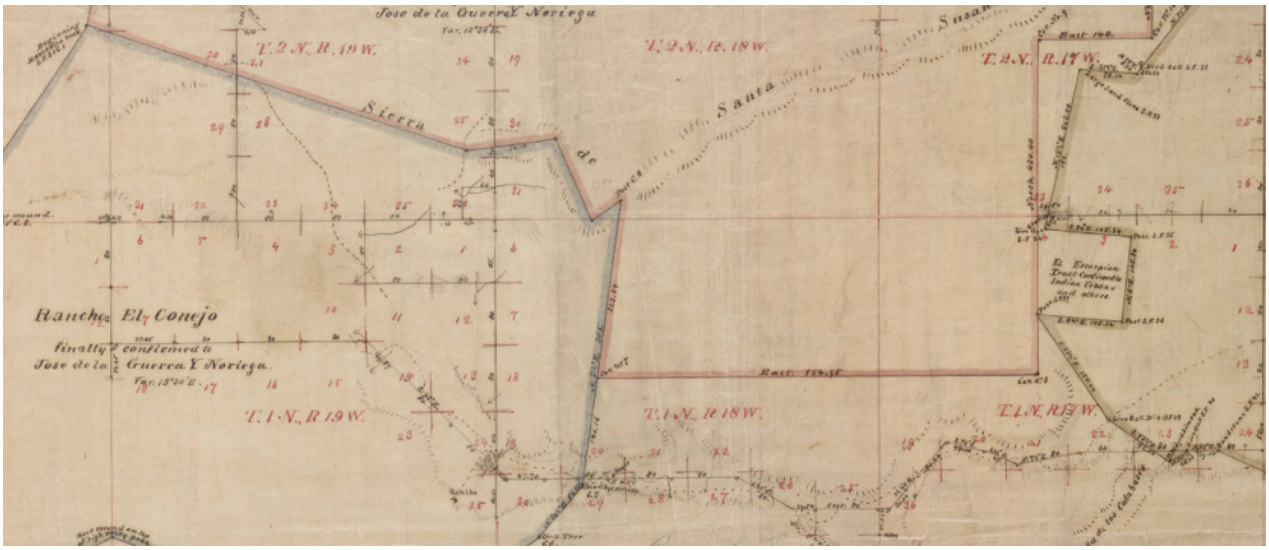


Supplemental Plat of Section 3, Township 01S 12W, San Bernardino Meridian, 1904, GLOR, DM ID: 291075

At the former mission of San Fernando, Tataviam and Chumash claims followed a similar pattern, with the names of individuals lingering on increasingly numbered township maps. No *diseños* for the original indigenous grants around San Fernando exist. But as early as the 1850s, Rancho El Escorpion appears on maps as an "Indian" claim. On an 1858 map of the former mission, now a huge rancho owned by settler Eulogio de Celis, the El Escorpion tract was carefully located. Surveyor Henry Hancock assigned it a number, Lot No 37. But he also identified it by its name, "El Escorpion." Further, he labelled it as Indigenous and collective. The tract was "confirmed to Indian Urbano and others."

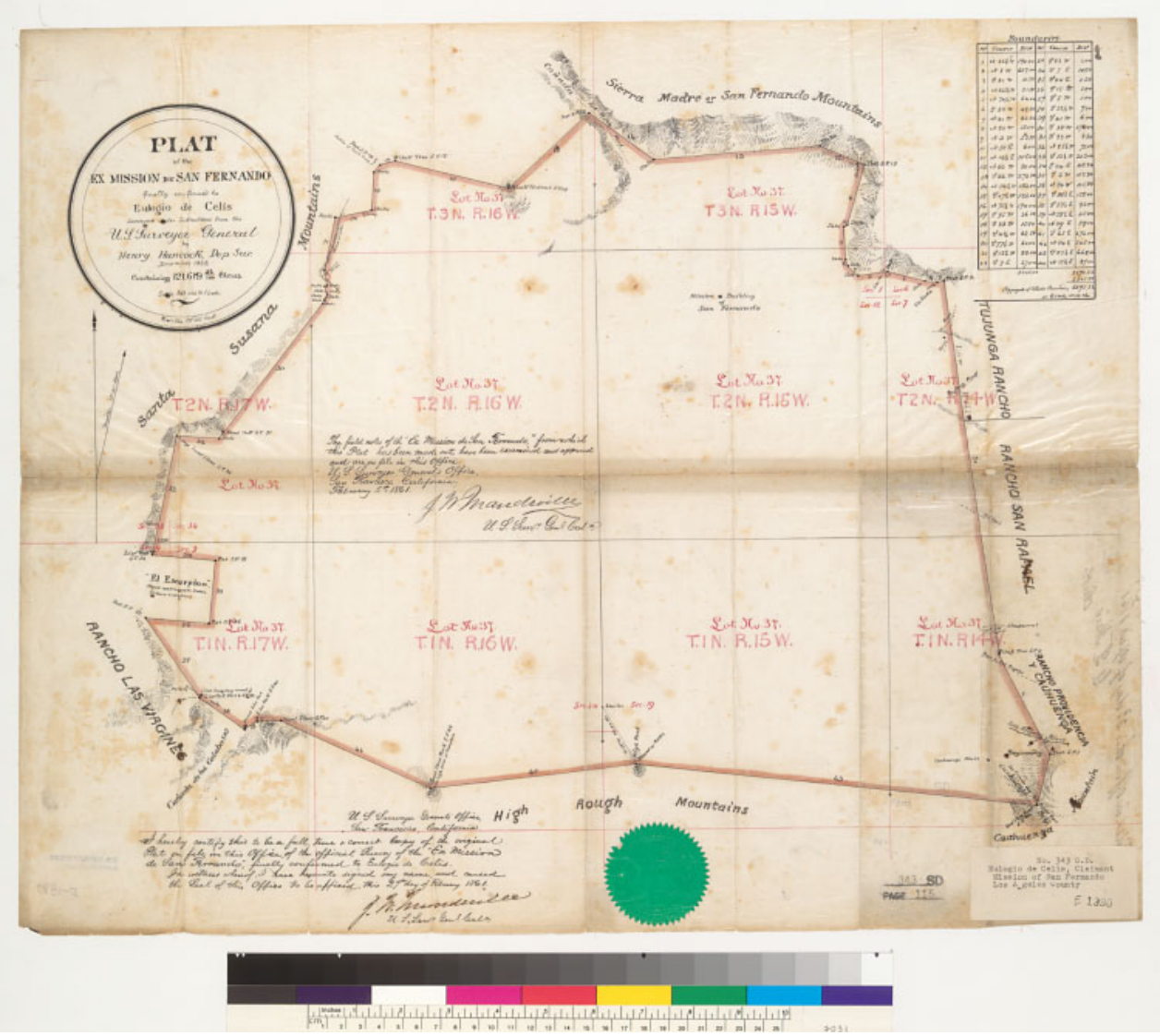
Plat of the Ex Mission de San Fernando : finally confirmed to Eulogio de Celis / compiled in the office of the U.S. Surveyor General from the examined and approved field notes of official surveys on record therein. Land Case Map E-1389, Maps of private land grant cases of California, 1869. Bancroft Library, University of California, Berkeley, https://oac.cdlib.org/ark:/13030/hb5t1nb2xh/?order=2&brand=oac4

El Escorpion and its indigenous proprietors not only appeared on maps of the former mission rancho which contained it, but of neighboring ranchos as well. A pre-1857 map of nearby Rancho El Conejo similarly labelled it as "El Escorpion Tract confirmed to Indian Urbano and others."



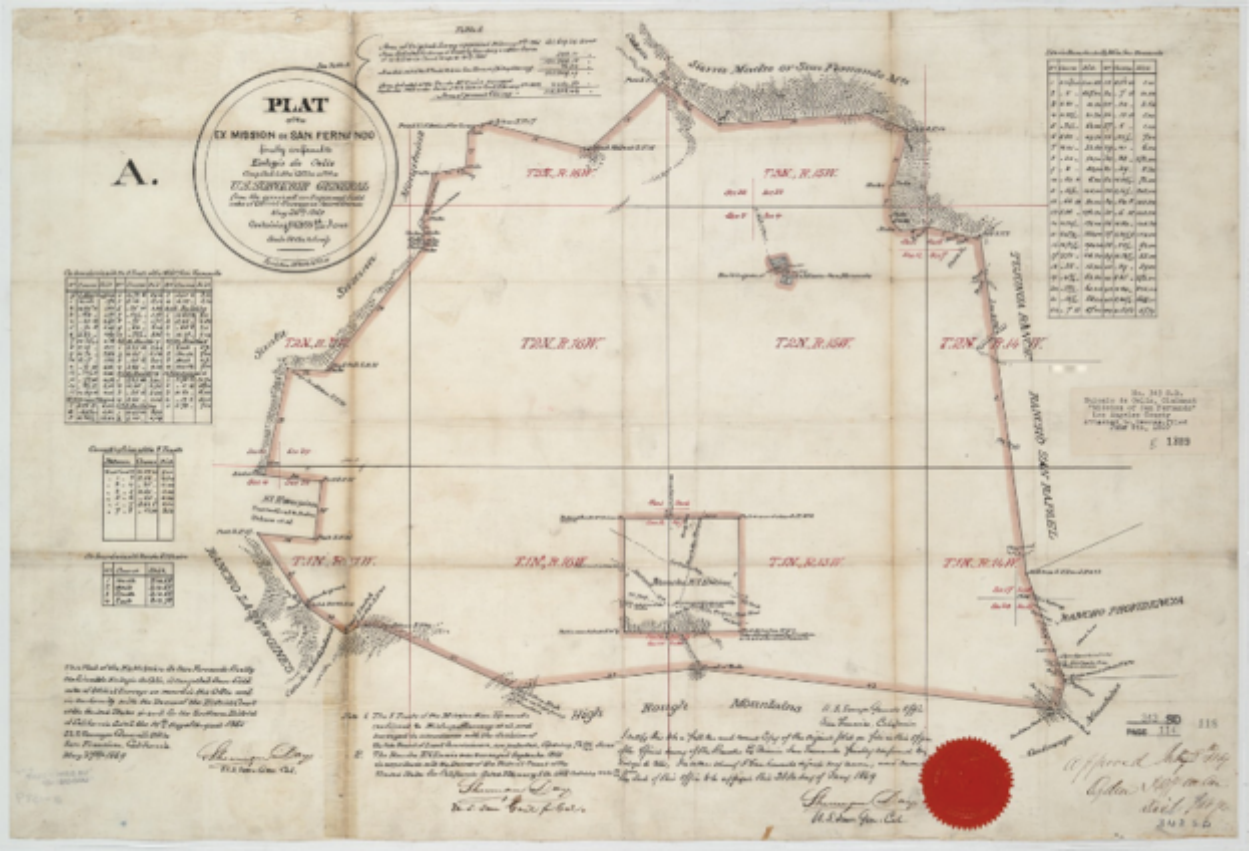
Detail from: *Rancho El Conejo,* 185-?. Solano Reeves Collection, Huntington Library, San Marino, California, https://hdl.huntington.org/digital/iiifinfo/p15150coll4/11370

1850s maps of the former mission and neighboring ranchos did not mark the provisional Mexican-era grant to nearly forty Tataviam people to keep gardens near the mission, even though most of those former neophytes were likely still living on those lands in the 1850s. This is hardly surprising, since they had never formally claimed those lands to U.S. federal officials. But these maps also neglected to represent the other rancho that was formally claimed, Rancho El Encino. Henry Hancock's 1858 map of the former mission rancho that marked out El Escorpion did not show El Encino at all.



Henry Hancock, *Plat of the Ex Mission de San Fernando : finally confirmed to Eulogio de Celis / surveyed under instructions from the U.S. Surveyor General by Henry Hancock, Deputy Surveyor, December 1858.* Land Case Map E-1390, Maps of private land grant cases of California, 1858, Bancroft Library, University of California, Berkeley, https://oac.cdlib.org/ark:/13030/hb3h4nb16k/?order=2&brand=oac4

El Encino only began to show up on cadastral maps a decade later, after the claim was formally patented in 1868. An 1869 map of the Ex Mission showed both El Escorpion and El Encino ranchos. Yet unlike the El Escorpion tract, El Encino lacked a label that referenced its indigenous claimants.



Plat of the Ex Mission de San Fernando : finally confirmed to Eulogio de Celis / compiled in the office of the U.S. Surveyor General from the examined and approved field notes of official surveys on record therein. Land Case Map E-1389, Maps of private land grant cases of California, 1869. Bancroft Library, University of California, Berkeley, https://oac.cdlib.org/ark:/13030/hb5t1nb2xh/?order=2&brand=oac4

In the next few decades, El Escorpion would retain its name, but lose its explicit identification with an "Indian" proprietor. An 1896 township map showed El Escorpion, deviating from the township grid in its orientation, but no longer the names of its claimants.

Original Survey, Township 01N, 17W, San Bernardino Meridian, 1896. GLOR, DM ID: 286728

By the early twentieth century, the San Fernando Valley had dramatically transformed. A 1910 map of the Van Nuys-Lankershim 47000 acres suburban subdivision shows the application of private companies to the regularized subdivisions created by PLSS grids. Yet even suburban subdivision was thwarted in by geographic and social factors. The mountain range to the south of the map proved, at least for a time, undevelopable. El Escorpion, marked with its name, and El Encino, labelled "not a part of this subdivision," remained in different hands. Only El Escorpion remained primarily in the hands of the Tataviam and Chumash families who had originally reclaimed it. But the legal efforts of indigenous claimants to claim, defend, and mark apart their ranchos set these places apart in cadastral patterns for decades.

V.J. Rowan, *Van Nuys-Lankershim 47000-Acre Subdivision Suburban Los Angeles Homes…Rancho Ex Mission de San Fernando Los Angeles County California* [map]. Los Angeles: Rowan and Whitsett, 1910. Barry Lawrence Ruderman Antique Maps Inc., https://www.raremaps.com/gallery/detail/33871/van-nuys-lankershim-47000-acre-subdivision-at-upper-right-rowan-whitsett

California's indigenous peoples have never been fully represented on European maps, geopolitical or cadastral. Most eighteenth-century maps barely registered any information about them at all. The mission system's disruption of their lives and territories made it even easier for Spanish, Mexican, and then U.S. officials to perpetuate the fiction that they had abandoned their territories and even disappeared. The cadastral maps of the mid-nineteenth century, made as they reclaimed portions of their territories, only partially re-inscribed their presence onto maps. Individual claims remained associated with the names of original claimants, often long after those claimants had lost the land itself. But the markers of indigenous identity—the "Indian" status that claimants took pains to emphasize in their claims and suits—did not remain robustly attached to their land on maps.

lands, and narratives of Indigenous authority and proprietorship undertaken and sustained as property was transformed.

CONCLUSION

Property, Recognition, and Sovereignty in Native North America

The tracts of land that small nations secured through transitional property processes were modest; tiny in comparison to the territories lost by these nations and dwarfed by the millions of acres lost by Native nations across North America. Moreover, the participation of indigenous polities in settler legal processes had no major impact on larger currents in Canadian or U.S. Indian policy, land tenure, or law. This is not a story about disempowered small communities making a major difference for a vast number of people across a large territory. What this dissertation has tried to do is explain how small indigenous nations used property ownership to survive.

At the same time, I have worked comparatively in order to discern larger patterns and draw larger conclusions. This dissertation recovers a common history of small nations understudied by historians. Across the continent and over more than a century, small indigenous polities used property claims to defend and reclaim portions of their territories. They did so in the face of common challenges. Because of their small populations, they presented no military threat to colonizing states. Their long histories of engagement with and colonization by prior empires encouraged settler states to embrace the convenient fiction that small nations' territories and sovereignty had been extinguished long before. Ignored by the United States and British Canada and denied treaties, they turned instead to property processes to defend their territories. The chaotic periods of imperial transition, in which inter-imperial property were negotiated between state administrators and settlers, proved particularly auspicious moments to do so. Yet imperial transitions merely created the legal conditions of possibility. To claim and retain territory required vision, persistence, and creativity. Indigenous proprietors shaped their own histories of colonization by prior empires into legal narratives that were recognized by settler states as property.

Their stories lead us to other narratives of indigenous survival, beyond the dominant paradigms of military conquests and treaty processes. They offer accounts of indigenous creativity and innovation beyond binary frameworks of resistance or assimilation. Most importantly, their stories reach further than the paradigm of selective appropriation and into the realm of creative transformation. Abenakis became seigneurs under British rule in a way that they had never been during the French era. Chitimachas transformed a Spanish diplomatic recognition of their nationhood into a land title, and then into a federally recognized reservation. And Tongva, Tataviam, and Chumash claimants created a new category of landholding—indigenous proprietorship—that shouldn't have existed under U.S. California's harsh legal regime. To grasp property as an indigenous claimant was to change it.

Indigenous claimants not only fashioned imperial pasts into indigenous futures. They sought access to and authority over places with deep indigenous histories. Abenakis and Sokokis at Odanak used a British township land grant to regain their access over *Kwanahomoik*, the place where *Alsigontegw*, the St. Francis River, oxbows into a point along fertile planting fields.[1]

[1] Joseph Laurent, *New Familiar Abenakis and English Dialogues, the First Ever Published on the Grammatical System* (Quebec: Printed by L. Brousseau, 1884).

Chitimachas secured territories on Bayou Teche, the river that was created when Chitimacha warriors wrestled a great snake into the bayou's curves.[2] And the Tataviam and Ventureño Chumash claimants who defended their possession of Rancho El Escorpion were reclaiming their families' village, *Huwam* in Chumash and *Jucjuaynga* in Tongva, and a place proximal to the ancient spiritual site *Kas'ele'wung*.[3] This was not assimilated acquiescence into settler ways of delineating and living on land. This was a determined effort to retain and recover landscapes of meaning, places where indigenous communities could not only survive but flourish. Thus, when small nations made property claims they were also making political claims. Claimants articulated their demands for land as indigenous peoples, recording their connections to the places they claimed and articulating their enduring identities as political communities in the official legal archives of colonizing states.

Of course, property has always been political for colonizing states, too. Property regimes are central to the settler colonial occupation of indigenous territories. They are the institutions through which states and settlers collude most intimately in this occupation.[4] The Anglophone idea of property is itself inherently political. The influential conception of property developed by natural rights theorists insists that land can become an exchangeable commodity, exclusively possessed by rational actors and subject to no social relationships beyond dispassionate contracts. Such a framing of human relationships to land is antithetical to how most Indigenous nations govern themselves. Its spread as an idea has massively harmed Indigenous communities and continues to threaten their futures.[5]

Yet scholars who look more closely at property in practice note that it has always been a much more "complex and commodious concept" than natural rights theories propose.[6] This dissertation has endeavored to excavate some of property's complexity. It has demonstrated how inter-imperial treaties caused British Canadian and U.S. regimes to relax and modify their own property systems across vast swaths of North America. It has shown how in places inherited from other empires, modern property ownership has been highly local and negotiated for decades if not centuries. And most importantly, it has established that indigenous peoples could and did

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[2] The Chitimacha Tribe of Louisiana, "The Legend of Bayou Teche," Chitimacha.gov, http://www.chitimacha.gov/stories/legend-bayou-teche, (accessed June 3, 2019).
[3] Steven Craig et al., *El Escorpion Traditional Cultural Area: Los Angeles and Ventura Counties, California : Nomination Information, California Sacred Lands Inventory* (Sapawish Valley, Calif.: Ventana Conservation and Land Trust, 2001).
[4] Cole Harris, "How Did Colonialism Dispossess? Comments from an Edge of Empire," *Annals of the Association of American Geographers* 94, no. 1 (March 1, 2004): 165–82.
[5] Bradley Bryan, "Property as Ontology: On Aboriginal and English Understandings of Ownership," *The Canadian Journal of Law and Jurisprudence The Canadian Journal of Law and Jurisprudence* 13, no. 1 (2000): 3–31.
[6] Brian Egan and Jessica Place, "Minding the Gaps: Property, Geography, and Indigenous Peoples in Canada," *Geoforum*, Global Production Networks, Labour and Development, 44 (January 1, 2013): 130; Carol M Rose, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Boulder, Colo.: Westview Press, 1994); Allan Greer, *Property and Dispossession: Natives, Empires and Land in Early Modern North America*, (Cambridge ; New York, NY: Cambridge University Press, 2017); Emily Greenwald, *Reconfiguring the Reservation: The Nez Perces, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002); Dylan C Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2003); Gregory S Alexander, *Commodity & Propriety Competing Visions of Property in American Legal Thought, 1776-1970* (Chicago: University of Chicago Press, 1999).

seize property processes to secure their survival, their territory, and their on-going existence as political communities.

But this is only one example of property's contradictions and complexities, especially with regard to indigenous peoples. Throughout my research, I struggled to understand the traditional history of U.S. and Canadian Indian property policy. I hoped that the history of Indian land policy would provide a structuring framework from which the experience of the small nations would deviate. Yet I came to realize that there is no coherent narrative structure from which to diverge. The 1763 Royal Proclamation and the Trade and Intercourse Acts of the 1790s prohibited private settler purchases of indigenous land, but did not clarify the status of indigenous property rights in general. And the failure of the U.S. and Canada to make treaties with many nations guaranteed that ambiguities would persist. In the 1820s, the doctrine of discovery articulated in *Johnson v. M'Intosh* cast indigenous title as nothing more than a right of occupancy and decreed that title was vested only in discovering empires. Yet, as Joanne Barker points out, the U.S. and Canada continued to negotiate treaties with indigenous peoples after *Johnson v. M'Intosh* as if they did hold aboriginal titles in need of extinguishment.[7]

In the late nineteenth century, both states reversed their restriction on Indigenous property by attempting to assimilate Native peoples through compulsory property ownership. In Canada, the 1876 Indian Act attempted to end communal land use on reserves by granting individual parcels and refusing to recognize other forms of landholding.[8] In the United States, the 1887 Dawes Act attempted to extinguish reservations themselves, similarly through individual proprietorship.[9] The underlying premise was the same: that indigeneity was incompatible with proprietorship. But now colonizing states hoped to control and to extinguish Native communities through enforcing proprietorship, rather than withholding it.

The twentieth century brought several more such reversals. In the United States, the 1934 Indian Reorganization Act reversed portions of the Dawes Act by restoring some allotted land to reservation trust status. Yet by the 1950s, termination policies focused on ending treaty relationships with Native nations, selling reservation land, and compelling those who lived on reservations to become individual proprietors.[10] Since the 1970s, the United States has pursued contradictory goals: extinguishing federal trust land status for some, but restoring it for others. The 1971 Alaska Native Claims Settlement Act bypassed the treaty-reservation paradigm completely, transforming aboriginal title in Alaska into fee simple vested in for-profit corporations owned by Alaska Natives.[11] In 1978, the Bureau of Indian Affairs created a federal

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[7] Joanne Barker, *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska Press, 2005), 9.
[8] Egan and Place, "Minding the Gaps: Property, Geography, and Indigenous Peoples in Canada," 134; Jack Woodward, *Native Law* (Toronto: Carswell, 1989).
[9] C. Joseph Genetin-Pilawa, *Crooked Paths to Allotment the Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina Press, 2012); Greenwald, *Reconfiguring the Reservation*.
[10] Roberta Ulrich, *American Indian Nations from Termination to Restoration, 1953-2006* (Lincoln: University of Nebraska Press, 2010).
[11] Roy M. Huhndorf and Shari M. Huhndorf, "Alaska Native Politics since the Alaska Native Claims Settlement Act," *South Atlantic Quarterly* 110, no. 2 (n.d.): 385–401.

acknowledgement process for Native nations to obtain federal status, through which private property could be transformed into federal trust reservation land.[12]

In Canada, much of the twentieth century saw the intensification of allotment policies through Indian Act amendments. These trends culminated in 1969, with a government White Paper that proposed eliminating Indian status altogether. After sustained activism against that goal, Canada's 1982 Constitution affirmed existing Aboriginal title and treaty rights to keep land in federal trust status. Since then, a number of landmark Supreme Court cases have advanced the ability of First Nations peoples to make land claims in Canadian courts on the basis of Aboriginal title, or land rights existing before the Crown bestowed or recognized particular land rights to Native nations.[13] Yet at the same time, Canada continues to pursue the termination of treaty relationships and the transformation of federal trust lands into fee simple property. In both states, contemporary policies include both simultaneous recognition and termination. Private property becomes federal trust land, and federal trust land becomes private property.

Both states established plenary power over Native nations by the late nineteenth century, declaring their ability to enforce whatever law or policy they desired on indigenous peoples simply because they had the power to do so. Yet why then have they refused to decisively extinguish indigenous land rights once and for all? Undoubtedly, indigenous resistance and activism has been a major part of this. But is there also be something about the accumulated historical record of treaties and property transactions—a respect for their own historic practices of law, if not for Native sovereignty—that make these states reluctant to wipe the legal slate clean?

For contemporary Native nations, this history of reversals and contradictions makes clear that there has been no definitive moment when their lands are finally protected and assured, and their political status fully recognized or permanently secured by settler colonial states. It also makes finding a sensible moment to end this dissertation difficult. It has been tempting to use federal recognition as an ending to each of these three stories, because it marks a moment when Native property is converted into federal trust land and nations are afforded the political status of those who negotiated treaties.

But federal recognition is not a satisfying endpoint. For Abenakis and Sokokis, this type of recognition came in the 1850s with the conversion of Odanak from a seigneury into a reserve. Yet this change was as much imposed by British officials as it was sought by Abenakis. Moreover, tribal members continued to lease lands and participate in property well after the reserve conversion. Today, Odanak Abenakis are in pursuit of both comprehensive and specific land claims, the two types of claims available under Canadian law. Their comprehensive claims are based on Aboriginal title claims that pre-date European colonization, but their specific claims concern land lost during their intensive era of proprietorship.

[12] Mark Edwin Miller, *Forgotten Tribes Unrecognized Indians and the Federal Acknowledgment Process* (Lincoln: University of Nebraska Press, 2004).
[13] Michael Asch, *On Being Here to Stay: Treaties and Aboriginal Rights in Canada* (Toronto, Canada: University of Toronto Press, 2014).

In Louisiana, the early nineteenth century federal property claims made by the Chitimachas were the beginning of a sustained series of legal battles over land. In 1916, they were federally recognized as a nation by the United States government. The Tunica-Biloxi successfully secured federal recognition in 1981, joining the Chitimachas as two of only four federally recognized Native nations in the state of Louisiana. Yet both the Chitimacha and the Tunica-Biloxi have continued to own land in fee simple, outside of and around their federal trust lands. Tongva and Tataviam peoples in present-day California remain unrecognized by the federal government. The Fernandeno Tataviam Band of Mission Indians is currently in the process of seeking federal recognition, while several Tongva bands have pursued federal recognition through both the BIA petitioning process and through federal legislation.

Decisions to seek federal recognition can be fraught in indigenous communities. The process is capricious, expensive, and time-consuming. As Brian Klopotek has noted, "federal recognition has been as much a means of domination and subjugation as a means of protection for tribal sovereignty."[14] When a reservation is created, it is a formal recognition by a state of a nation's status as a political entity, but as one subordinated to a settler state. One of the deep ironies of the modern recognition process is that it often relies heavily on historic property documents. Today's states find their own legal archives more credible than those of indigenous nations. For this reason, inscriptions of indigenous proprietorship into settler archives do powerful work in contemporary courts and Bureau of Indian Affairs petitions. They were created during the nineteenth century, an era in which most settlers believed that to own land as property was to be non-Indigenous. Yet today, they show clear and persuasive evidence of Indigenous political integrity, long-term community continuity, and attachment to land bases that BIA recognition requirements demand.

Federal recognition has been materially and culturally transformative for many nations, who have applied the financial resources they have built toward considerable community and cultural development. For the Tunica-Biloxi, federal recognition in 1981 allowed the establishment of a gaming facility in Marksville in 1995. With the capital the tribe has built, they have purchased land, which they hope to add to their reservation. This process is being thwarted by *Carciere v. Salazar* (2009), which held that tribes recognized after 1934 could not transform property into federal trust land.[15] These legal limitations make plain that no amount of money can purchase autonomy from a federal government that continues to police a boundary between indigenous identity and private property. Property remains political. It continues to be used by Native communities, both recognized and un-recognized, for political ends.

The small nations who sought property claims found themselves on a historical path that diverged from the dominant narrative of land cession treaties and reservation creation. Yet in the future, these paths may converge. Federal recognition will never be "enough" sovereignty for Native nations. Moreover, active political pushes for termination in both countries reveal it to be

[14] Brian Klopotek, *Recognition Odysseys: Indigeneity, Race, and Federal Tribal Recognition Policy in Three Louisiana Indian Communities* (Durham [N.C.]: Duke University Press, 2011), 3.
[15] Marshall Pierite, "Testimony before the United States Senate Committee on Indian Affairs," Hearing before the Committee on Indian Affairs, United States Senate, One Hundred Thirteenth Congress, First Session, November 20, 2013. Washington: U.S. Government Printing Office, 2014.

a fragile status even for long-treatied nations. The contemporary demands and actions of Native nations to establish and articulate sovereignty beyond federal recognition, and the efforts of settler states to constrain and even eliminate the terms of political recognition, together guarantee that Indigenous survival and sovereignty will be negotiated outside of these narrow frameworks. This dissertation has traced a history of this type of Native survival, in which community and sovereignty have been sustained through connections to important places, and property provided a workable means of doing so.

The legal theorist Carol Rose argues that property pretends to "act as if the passage of time did not matter." Property documents make "brave claims of control and permanence," placing objects in an individual's possession forever, and framing each legal act as "the *end* of the story, a set of static results that carry on into eternity." But in reality, property is a story without an end. It is better understood as an "ongoing persuasive activity." Any claim requires claiming and reclaiming over time.[16] The indigenous claimants in this study have been among property's most persistent claimants. They sought titles and practiced forms of possession across empires and over centuries. As they did so, they changed the nature of what property could and would be in their communities. As they continue to do so today, the possibilities may be transformative.

[16] Rose, *Property and Persuasion*, 272–96.

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