"Indian title," Regime Change, and the Origins of the Cotton Kingdom: Land Tenure in the Lower Mississippi Valley, 1790-1830

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Research Project Overview

The 1803 Louisiana Purchase spurred the transformation of the Lower Mississippi Valley from a struggling, sparsely populated French and Spanish colony to the wildly profitable U.S. cotton kingdom. Yet a closer examination of the on-the-ground work of imperial transition reframes the Purchase as a much messier and more extended project—one of transforming diffuse and approximate French and Spanish land grants into U.S. approved private property. This private land claims process, which stretched until the end of the nineteenth century, forced officials to translate and adapt French and Spanish land policies into United States idioms, attempting to satisfy a local population whose loyalty was hardly assured.

Nowhere was the struggle over land titles more intense, and more unpredictable, than over Native American land. The Purchase Treaty had specified nothing about the status of Indian land, despite the presence of many small Native nations—called the *petites nations* by the French—in the Lower Mississippi Valley.[1] However, the treaty's protection of Spanish- era settler property nevertheless made Native land a key site of contestation.

In particular, the transition from Spanish jurisdiction, where private purchases of Native land had been fully legal, too a U.S. legal context in which they were illegal, generated a period of intense negotiation over the meanings and uses of Native American land held as property. My research, undertaken this winter at numerous archives in Louisiana, including the Historic New Orleans Collection, the Louisiana Research Collection at Tulane University, the Louisiana State Archives, the Lower Mississippi Valley Collection at Louisiana State University, and numerous local parish Clerk of Court archives, explores the surprising

[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).

contexts and unexpected consequences of Native American property ownership during this transitional period.

The Uses of Native Property Ownership for Settlers

In the 1780s and 1790s, white settlers, in particular Anglo-Americans from the United States, moved into Spanish Louisiana seeking land. My analysis of local property records reveals that many Americans from Kentucky, Pennsylvania, Virginia, and other states relocated to Spanish Louisiana during this era, where they received grants of land after swearing their allegiance to the Crown and becoming Spanish subjects. Less humble yeoman farmers than speculators with planter ambitions, many of these newly minted subjects sought multiple grants, and attempted to buy up multiple properties around these grants.[2]

These settlers clearly took advantage of the Spanish policy permitting Indian land purchases, buying tracts from several of the *petites nations*, including the Attakapas, Opelousas, Tunicas, Chetimachas, and others. These purchases must be placed on a spectrum from outright frauds to legitimate transactions. For example, an 1803 settler purchase of land from Biloxis, Pascagoulas, and Chatots on Bayou Boeuf in Rapides Parish was supposedly based on trade debts that these nations insisted they had no prior knowledge of, and which they protested to multiple authorities.[3] By contrast, a cluster of purchases made in southwestern Louisiana from several Attakapas chiefs appears—at least on paper—to be made with tribal knowledge, consent, and authority.

After 1803, settlers applied to the U.S. Private Land Claims Commission to have their Spanish-era properties approved. The records of these commissions reveal the painstaking efforts undertaken by commissioners—most of them local land office registers and receivers—to determine which claims were fraudulent and which legitimate. U.S. settlers pushed the limits of the Spanish legal context into 1804 and even 1805, making purchases from Native Americans after they were technically illegal under U.S. jurisdiction, and often aided by local officials who continued to allow and approve such purchases.[4]

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[2] St. Mary's Parish Clerk of Court Records; St. Martin's Parish Clerk of Court Records; Louisiana State Archives.
[3] Historic New Orleans Collection; Louisiana Research Collection at Tulane University.
[4] *American State Papers*, Public Lands, Volumes I-IV; Louisiana State Archives.

A surprising research finding has been the extent to which these records are dominated by nuanced and at times ironic discussions of the legality of Native American property ownership. Confronted with dozens of property claims based on originating "Indian titles," commissioners struggled to develop a workable, consistent policy on Native American land, while higher-level U.S. directives—largely silent on the issue beyond the new prohibition on Indian purchases—offered them little guidance. At the same time, American settlers, even those with little respect for Native Americans, as evidenced by their fraudulent and coercive "purchases," found themselves emphasizing the robustness of Native property ownership when it bolstered the legitimacy of their own claims.[5]

The Uses of Native Property Ownership for Native Americans

This discourse of Native American property ownership was not controlled and defined solely by settlers. Many of the *petites nations* also participated extensively in land transactions, land claims, and defenses of their territory during this transitional period. My research into their actions has revealed several key insights. First, it is clear that Native Americans were creative, adept, and opportunistic in their use of settler property processes. Private property ownership was, if foreign, not an incomprehensible concept without utility.

Some long-term inhabitants of Louisiana, like the Chetimachas, responded to growing settler encroachment by ordering land surveys, delineating their territories, and gaining recognition from local officials. The Pascagoula, Biloxi, and other immigrant tribes from east of the Mississippi petitioned Spanish authorities for land grants west of the Mississippi, and engaged local officials in conducting and approving their land transactions. Especially for these refugee tribes who had already relocated several times, property ownership may have already been a part of how they articulated their present territorial claims.

Native participation in settler property transactions could have both key benefits and dangerous disadvantages. For some, the legal ability of settlers to make purchases in the Spanish era resulted in coercion and even catastrophe. For example, the cluster of purchases from the Attakapas resulted, apparently, in their dispossession; they disappear from local

[5] *American State Papers*, Public Lands, Volumes I-IV.

property records immediately afterwards.[6] Yet for other nations, participation in property transactions resulted in protection of territory and assertions of authority. Some tribes leased sections of their land rather than selling, and others used land sales to affirm tribal sovereignty and engage settler officials in the local recognition, delineation, and thus protection of indigenous territory. Such efforts could be crucial to tribal survival in a context in which federal authorities remained uninvolved and treaty negotiations were not forthcoming. After the Purchase, several native nations also used the private land claims process to gain U.S. title to their territory. Within a context of settler claims based on Indian title, in which settlers themselves emphasized the robust ability of Native Americans to hold property, some of these claims met with a measured degree of success.

Conclusion

My archival research into property records during this transitional period has yielded various insights. First, it sheds light on the small-scale histories of Louisiana's *petites nations*, whose stories are often overshadowed by the large and well-known Southeastern nations like the Choctaws and Chickasaws. Property records have proved to be fruitful sources in tracking their migration routes, trade relationships, and interactions with settler officials. Moreover, they enable me to further investigate the crucial, multivalent roles that settler property processes played in their economic and political fortunes after the U.S. excluded them from federal treaty processes.

Second, this research adds complexity to Early Republic settler views of Native American property. The extended discourse on Indian land transactions in the private land claims process emerged before the Supreme Court's key pronouncement on Native property, *Johnson v. M'Intosh* (1823).[7] Its study allows for a less top-down story to emerge, one that emphasizes flexibility and opportunism, rather than hardening attitudes toward Indian capacities to hold property.[8]

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[6] St Mary and St Martin Parish Clerk of Court Records; Louisiana State Archives: Opelousas and Attakapas Post Records.

[7] Lindsay Gordon Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford; New York: Oxford University Press, 2005).

[8] Stuart Banner, *How the Indians Lost Their Land : Law and Power on the Frontier* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2005).

Finally, this research reveals, on the concrete, micro-level, the intimate involvement of Native American territory in the making of settler private property. While scholars have long known this to be true on the macro-scale of removal treaties and advancing frontiers, these records reveal the dual processes of Native dispossession and property creation as intertwined within the on-the-ground work of surveying, claiming, and commoditizing land.[9]

[9] Alan Taylor, *The Divided Ground: Indians, Settlers and the Northern Borderland of the American Revolution* (New York: Alfred A. Knopf, 2006); 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.