

Transcending Societal Issues for Space Exploration (12)
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WILL ELON MUSK END UP LIKE GRIMES? THE LEGAL FATE OF PRIVATE COLONIES ON
EARTH: THE CASE OF GENERAL JOHN SUTTER'S NEW HELVETIA

Abstract

Recently, Elon Musk unveiled his company's reusable Interplanetary Transport System to help humanity establish a permanent colony on the Red Planet within the next 50 to 100 years. SpaceX made then the news when extracts of Clause 9 of its Starlink Terms and Conditions stating that "the parties recognize Mars as a free planet and that no Earth-based government has authority or sovereignty over Martian activities" was made public. This clause is void both under international space law as a direct violation of several provisions of the Outer Space Treaty, but also under U.S. law. Mars is a not a free planet capable of appropriation where emancipation from Earth-based legal systems is possible.

One can still wonder what would be the legal fate of such a private colony on a celestial body. We will base our analysis on examining the fate of private colonies created on public land on Earth.

As a matter of fact, Musk's plan is not dissimilar to European settlements that were founded in the Americas by private settlers in the 17th century. This system whereby individuals or companies were granted commercial charters by the British Crown to establish colonies was known as proprietary colonies. Pioneers continued establishing private settlements in North America later on, especially in the context of the Western Movement in the U.S.

History remembers Swiss pioneer John Sutter who established its private colony 'New Helvetia' on a piece of land in California known today as Sacramento. At the time, the land Sutter acquired was received as grants by the Mexican government. After the cession of California, the majority of the territories upon which New Helvetia had been built was declared public land formally owned by the U.S. government. Courts denied title to his Mexican grants and as a result, Sutter and his assignees, including a certain Mr. Hiram Grimes, were legally expropriated. Sutter then tried to obtain an indemnity from the U.S. Congress for his expenses incurred in the construction of New Helvetia, some parts of its had become Sacramento, never to avail.

Could this happen to Musk's private colony on the red planet as well? This article will analyze the similitudes between Musk's project and Sutter's New Helvetia and the legal consequences a private colony on Mars could have.