

4.

*Land: cessions and dispossession, reservations and allotment;
heirship, land consolidation*

Tribal territories were reduced in size via treaties of land cession, by agreements and by conquest (in some cases, even after treaty negotiations, many of which were not confirmed by the U. S. Senate (e. g., California, Nevada). Reservations may be said to have originally taken two forms, today not distinguished in law, yet holding historic significance. When tribes consented to treaties of land cession, they usually *reserved* some of the acknowledged territory; in other instances, subsequent to cession, the government established a reservation. In a few instances, the configuration of a reservation included both circumstances. Many reservations were established, however, by executive order rather than statute, but by the 1870s, such orders carried the equivalent weight as statutory law. However, until 1871, when this presidential power to establish reservations was rescinded, executive orders could be eliminated or modified, as whenever *bona fide* land entries had been previously made on public domain lands. This weakness in the use of executive orders caused the loss of some or all acreage of many reservations and has led to litigation even a century later.

After the mid-19th century and later, tribal lands were being broken up into the equivalent of homesteads (although not all were of equivalent acreages). This practice of land in severalty came to identify the allotment process, the motive for which being to ‘emancipate’ individual Indians and families from the tribe, who held effective tenurial control over reservations up to that time. Allotment, indeed, separated individuals and families in the context of property rights, but they retained membership in tribes. The government in so many instances ‘threw open’ remaining tribal lands to homesteads by declaring such lands part of the public domain. This is the beginning of the increasing encroachment of non-Indians on former tribal lands lying within the external boundaries of reservations. Unfortunately, the story does not end here. Allotments by law have always been subject to the devise laws of the state in which the land is found. If Indians did not leave a will, allotments ended up intestate and a vast array of potential heirs became owners of undivided shares. These shares often became infinitesimal fragments of an allotment and led to the encumbrance of allotted lands throughout Indian Country. Efforts at land consolidation have occurred again and again and recent legislation is part of a continuum of efforts to transfer encumbered land allotments to the tribes.

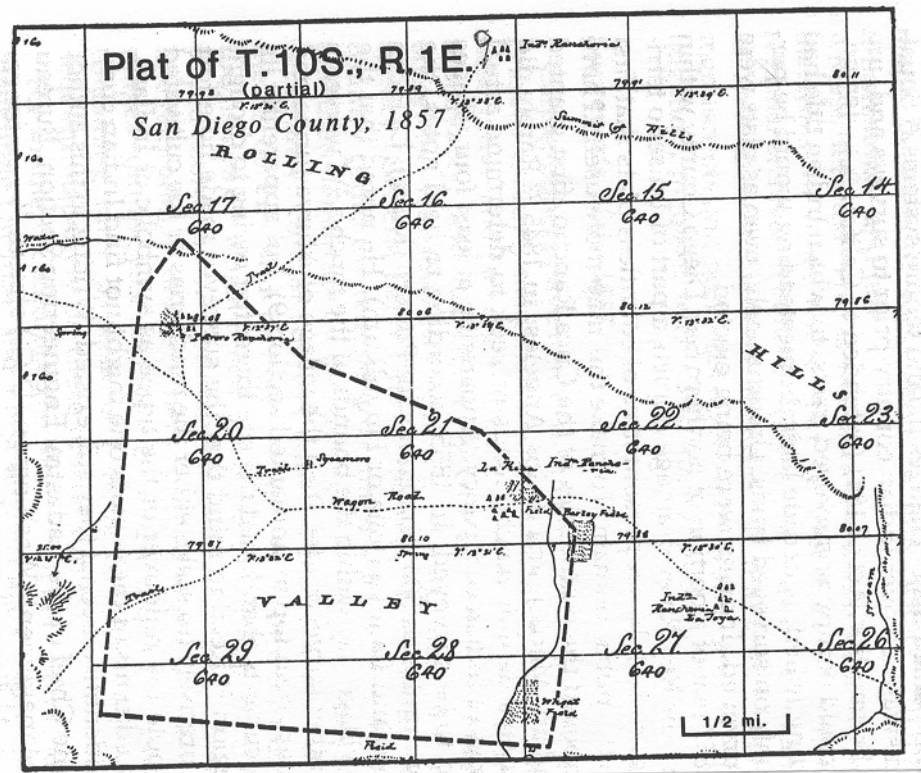


Fig. 4.1. For most of the western U. S. land area has been surveyed according to the Land Rectangular Survey; field surveys attempted to include, not always very accurately, the presence of Indian communities. This sample from Southern California, which embraces the La Jolla I. R., reveals the existence of villages and fields for a specific plat map as identified. Sections comprise 640 acres approximately and their numbers are centered in the section. On this map, I superimposed the Cuca Rancho, whose boundaries survive today although the parcel is no longer held in a single piece. See Sutton, 1988. In many instances in several states, but particularly in the West, executive orders established reservations and subsequent orders withdrew part or all of the acreage. Legalists generally agree that executive order reservations held the same legality as those created by Congress. A great number of plats excluded Indian communities, thus denying them land at a later date. Map used by permission of the Regents of the University of California (RUC) and the American Indian Studies Center, UCLA (AISC)

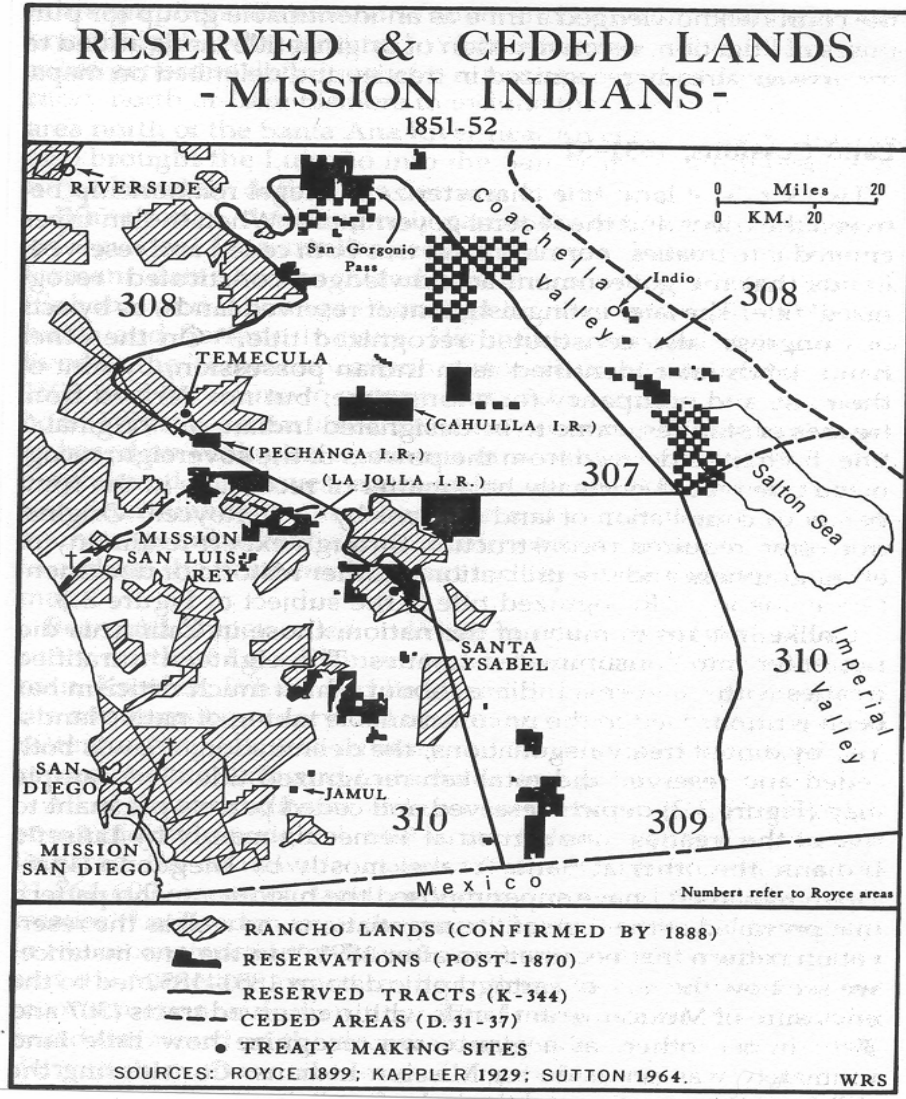


FIG 4.2. Land Cessions. This California example shows two of eighteen unratified treaty areas- 307 and 309. The treaties were negotiated in 1851, but the U. S. Senate refused to ratify them. The boundaries of the two treaty areas, which enclosed lands that were to be retained by Southern California Indian bands, also included mission and rancho lands, and the reservation pattern that evolved after 1875-91 shows how little acreage was retained by these Indians. Source: Sutton, "Cartographic," 1988, and based on maps from Sutton, 1964. See also Charles Kappler, comp., *Indian Affairs, Law and Treaties*, 5 vols (Wash., D. C.: Gov't Print. Off., 1903-38; reprint by Interland Pub. Co., 1972 and by AMS Press, 1972. The numbers – 307-310 – refer to numbered areas on Royce maps; they assumed quasi-legal meaning in the claims litigation. Map used by permission of RUC and AISC.

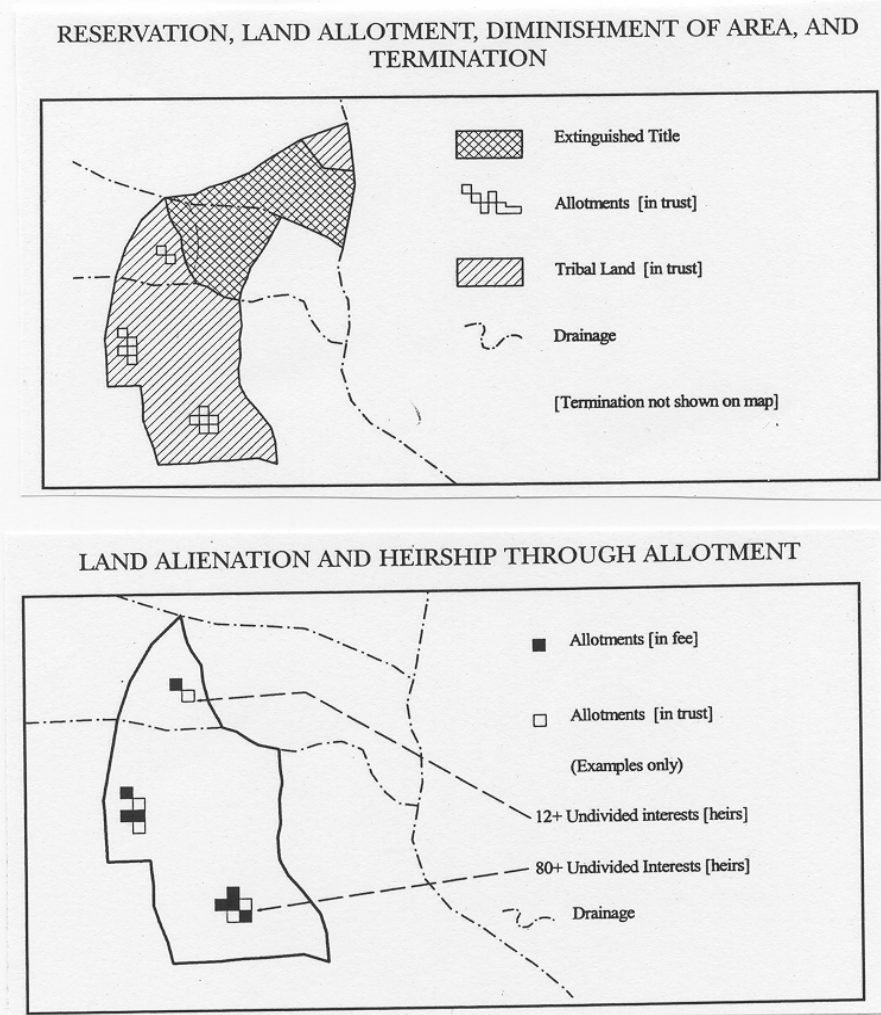


FIG. 4.3 Allotment and Heirship on Reservations. More than half of all reservations have been allotted; most of these trust lands are in western states. For nearly a half-century the allotment process encumbered trust lands to the extent that so many allotments were left intestate, and under federal policies, state devise ment law took effect. Thus heirship became a critical issue, which has remained today, and for which the federal government has been pursuing a land consolidation program in favor of the tribes. The alienation of allotted lands has led to an increase of non-Indian owners and residents within reservation borders. Tribes are quite divided on the role of non-Indian land owners and land users. In some instances, they participate in resource management insofar as sharing in water supply, but generally tribes do not include them in overall planning. See later discussions. Maps from Sutton, 2002. Diagrams used by permission of RUC and AISC.

Creation of a Reservation

The configurations of Indian reservations reflect specific tribal interaction with the government at given times. While prevailing federal policy may have dictated some of the configuration, each reservation has its own distinct legal history and geography. The vast majority reflect the Land Rectangular Survey (the township and range system), which all too often chopped up traditional areas and ecological units. (See discussion in section 5). Klaus Frantz (1999:61-64) demonstrates the spatiotemporal phases in the territorial development of an Indian reservation. He includes the impact of the allotment policy, termination, and rights of use outside a reservation. Comeaux (1991) also provides a sequential map showing the evolution of the Salt River Indian Reservation in Arizona. Changes in reservation boundaries resulting from litigation and/or congressional action have also been mapped. Goodman (1975) demonstrates "The 1977 Disposition of the Joint Use Area" of the Navajo and Hopi in Arizona (Map 46).

In the land claims process (see section 6), many maps reconstructed the evolution of reservations, often showing configurations based on specific treaties, agreements, congressional acts, or executive orders. And, of course, Royce maps (1899) reveal such changing configurations throughout Indian Country.

Malcolm L. Comeaux, (1991) "Creating Indian Lands: The Boundary of the Salt River Indian Community," *Journal of Historical Geography*, 17:3: 241-56.

James Goodman and Gary L. Thompson, (1975) "The Hopi-Navaho Land Dispute," *American Indian Law Review*, 3:2: 397-417.

Klaus Frantz, (1999) *Indian Reservations in the United States: Territory, Sovereignty, and Socioeconomic Change*, Geography Research Paper 242 (Chicago: University of Chicago Press).

C. C. Royce, comp., (1899)*Indian Land Cessions in the United States*, 18th Annual Report, 1896-97, pt 2 (Wash., D. C.: Bureau of American Ethnography): 521-997. (This is the definitive document containing laws and statutes and maps of land cessions by number. Royce numbers became the documentary source data for land claims;)

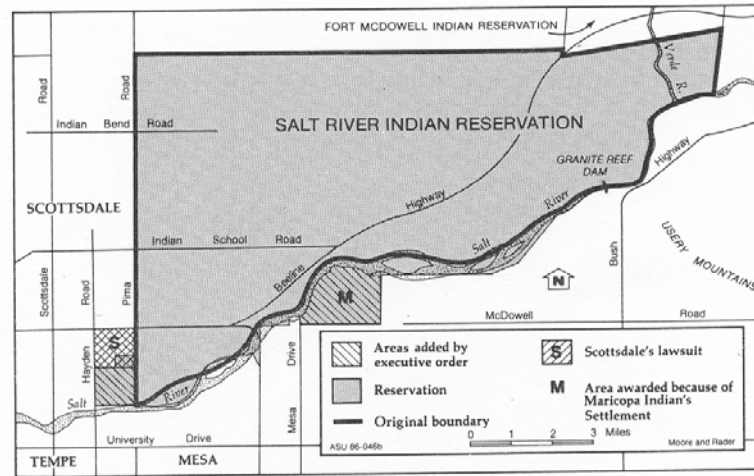


FIG. 4.4 The Salt River Indian Reservation, AZ, established in 1879. No two reservations evolved in the same way, but treaties, executive orders, agreements, and congressional acts have all figured in reservation configurations. See Comeaux 1991 for the historical geography of the Salt River I. R..

The following list attempts to cut across this subject matter and hopefully these sources lead researchers to other studies, especially of specific tribes.

Land History: Antecedents, States and Regions (Selective Studies):

Donald Ballas, (1970 "A Cultural Geography of Todd County, South Dakota, and the Rosebud Sioux Indian Reservation," Ph. D. diss., University of Nebraska, Lincoln.

Laurence M. Hauptman, (1999) *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse: S. University Press).

Kathleen M. Kane, (1997) "To Hell or Pine Ridge: Legislation, Literature, and the Trans-Atlantic Development of the Reservation." Ph. D. diss., University of Texas, Austin. (see OCLC FirstSearch, diss. Abs, DAI, 59, no. 01A (1997) 0158.)

Donald Craig Mitchell, (1997) *Sold American: the Story of Alaska Natives and Their Land, 1867-19659 – The Army to Statehood* (Hanover: University Press of New England).

Florence Connolly Shipek, (1988) *Pushed into the Rocks: Southern California Indian Land Tenure, 17869-1986* (Lincoln: University of Nebraska Press).

Imre Sutton, (1964) "Land Tenure and Occupance Change on Indian Reservations in Southern California," Ph. D. diss., University of California, Los Angeles.

David J. Wishart, (1994) *An Unspeakable Sadness: The Dispossession of the Nebraska Indians* (Lincoln: University of Nebraska Press).

General Land Tenure Changes:

Leonard A. Carlson, (1981) *Indians, Bureaucrats, and the Land: The Dawes Act and the Decline of Indian Farming* (Westport, CT: Greenwood).

Janet A. McDonnell, (1991) *The Dispossession of the American Indian, 1887-1934* Bloomington: Indiana University Press).

Imre Sutton, (2002) "Cartographic Review of Indian Land Tenure and Territoriality: A Schematic Approach," *American Indian Culture & Research Journal*, 26:2: 63-113.

U. S. Congress, House, (1953) *Report with Respect to the House Resolution ... to Conduct an Investigation of the Bureau of Indian Affairs, H. R. 2503* (Wash., D. C.: Gov't Print. Off.).

Wilcomb E. Washburn, (1975) *The Assault on Indian Tribalism: The General Allotment Law (Dawes Act) of 1887* (Philadelphia.: Lippincott).

_____, (1971) *Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian* (NY: Charles Scribner's Sons).

Land Consolidation and Related Efforts

Efforts to consolidation encumbered allotments go back a half-century, but more recently the government and the tribes have tried to work together toward the favorable transfer of undivided shares in inheritable allotments from individual heirs to the tribes. Alternatively, some different means have been sought, albeit without much real success; one example is the Tribal Land Enterprise of the Rosebud Sioux in SD. Note, in this example revealing only one township (36 sections X 640 acres) TLE lands represent about 2560 acres or just over 11% of the township – not a very good effort at making encumbered allotments available for tribal land programs.

Currently, the BIA is exploring a limited program of acquisition in the Lake States. The intent is financially assist tribes in the acquisition of undivided shares in allotments that are encumbered by multiple heirship. However, there are no published maps of consolidation appearing in the scholarly literature, and it is my understanding that researchers must seek advice directly from the tribes. On litigation, *see* Thompson (1997). ,

Richmond Clow, (2001) “The Rosebud Tribe and the Creation of TLE, 1943-1955: A Case of Tribal Heirship Land Management, in *Trusteeship in Change*, pp. 145-164.

Michael I. Lawson, (1991) “The Fractionated Estate: The Problem of American Indian Heirship,” *South Dakota History*, 21 (Spring) : 1-42.

Imre Sutton, (2002) “Cartographic Review of Indian Land Tenure and Territoriality: A Schematic Approach,” *American Indian Culture and Research Journal*, 26:2: 63-114; discussion of land consolidation, pp.73-74.

Elizabeth Thompson, (1997) “*Babbitt v. Youpee*: Allotment and the Continuing Loss of Native American Property and Rights to Devise,” *Univ. of Hawaii Law Review*, 19:1: 265-310.

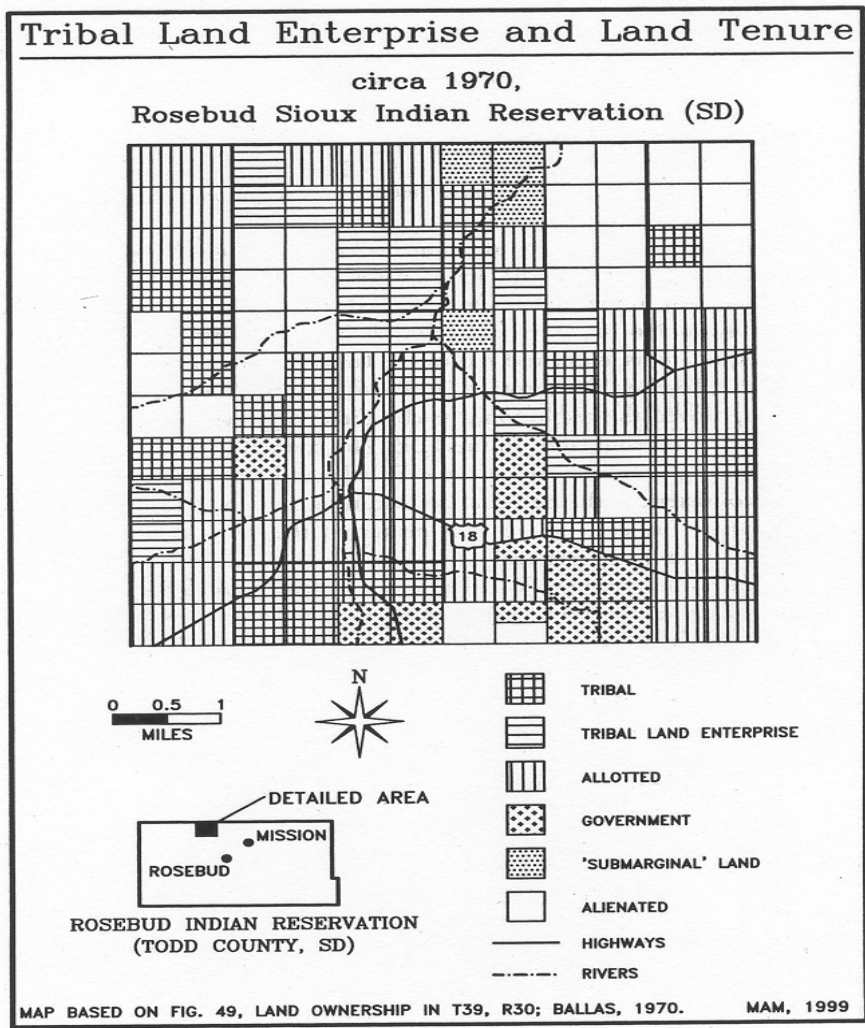


FIG. 4.5. The Tribal Land Enterprise of the Rosebud I. R. See Clow (2001). The land scheme hoped to give some Indians a greater opportunity to use larger blocks of acres under a lease arrangement and given owners of undivided shares a small income. In practice, it allowed the tribe to administer allotments by agreement and generate some income to various holders to some undivided shares. Unfortunately, TLE never really flourished as the small amount of land in the project demonstrates. Efforts at land consolidation continue in the present. To date, no other tribe has attempted a similar scheme. Map used by permission of the University of Press of Colorado (UPC).