

Preface

Research Interest in Indian Lands and Territoriality

From a current point of view, scholarly interest in tribal lands, past or present, reflects the almost uninterrupted litigation that has persisted between various governments or citizens and the tribes. Thus, just from the legal viewpoint research questions are always arising. Of course, there are the ethnographic and historic interests of scholars, whether or not they have participated or will do so as expert witnesses in litigation. Scholars in other fields have made important contributions to this body of literature or to government reports and studies. Scholars, public officials, legalists, and tribes all have a vested interest in continuing research. For many individuals and groups, this guide may prove too elementary; for others, it may serve as a frequent reference. Research into the status and circumstances of tribal lands, territoriality and political geography will go on, and other reference works will prove instructive. At times, I have tried to suggest these sources. It is important, in the last analysis, to remember that today researchers may need to approach the tribes for assistance in researching the rights, status, conditions, etc. of Indian lands. Also, because public land agencies have been charged to work cooperatively with tribes, these agencies – e. g., the National Park Service – may need to be contacted.

Some Current Research Questions

Tribes continue to seek confirmation of their claims to former territory, raising questions about the official cartographic record as based on historic official sources, the exhibits and decisions before the Indian Claims Commission, and even by ethnographers and other field observers past and present. Tribes also seek to demonstrate their identity with given places that represent traditional sacred places, burial grounds and the like, and in this regard approach the government in order to establish partnership relations with public land agencies. (See Wm. J. Clinton, Exec. Order 13007, 1996; and Lesko & Thakali, 2001, in sec. 5) Because tribes today have invested in gaming on trust lands, they continue to pursue better relations with states, local governments, and citizenry in their vicinity in order to dispel objections and criticisms of their operations which may or may not impact adjacent areas. Tribes are also investing casino revenues in land purchases that restore some traditional and sacred acreage to trust status. Within existing trust lands tribes also hold expectations that land consolidation efforts under current legislation will permit them to deal more effectively with the tribal environment as a whole. To implement any of these concerns, tribes seek enhanced management technology such as GIS and related methodology so that they can, under self-determination, pursue their own resource management goals. These are only a few of tribal concerns that continue to need research and analysis.

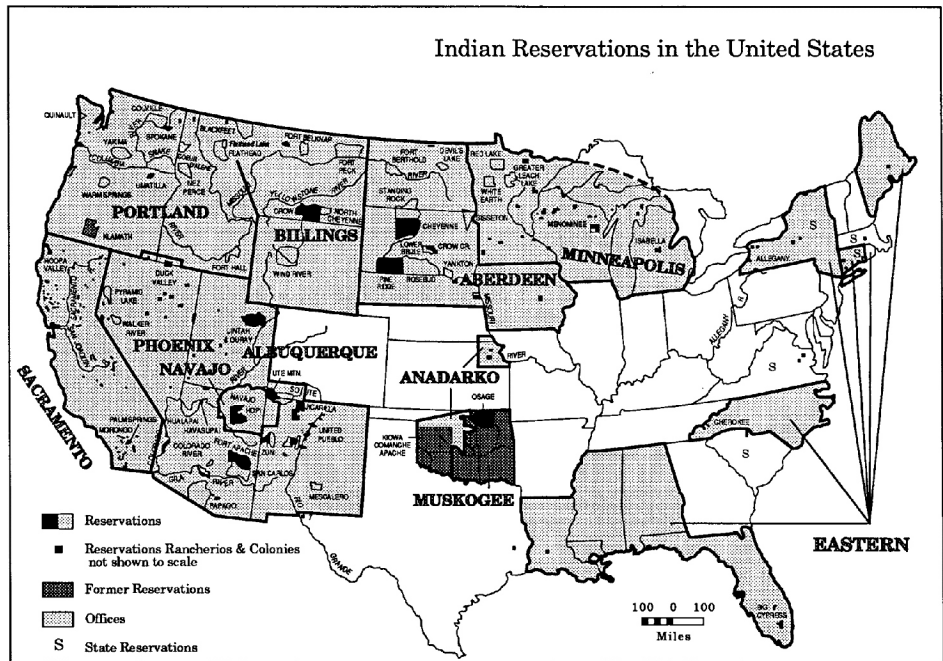


FIG. P. 1. Indian Reservations in the United States. Most reservations and other trust lands are located in western U. S. Smaller, isolated trust lands exist in several eastern, southern and lake states. There are a few reservations under state supervision, mostly in the East. (For a very recent official map of trust lands, see “Indian Lands in the United States,” prepared by the BIA, Geographical Map Service Center and published by the US Geological Survey, Denver (2000): #ISBN 0-607-90852-1. See Sutton 2002: 85-86. The named gray areas are the regional field offices of the BIA. In 2002 the administration of Indian affairs underwent change that includes reduction of BIA functions and the creation of an interim Office of Tribal Trust Transition.

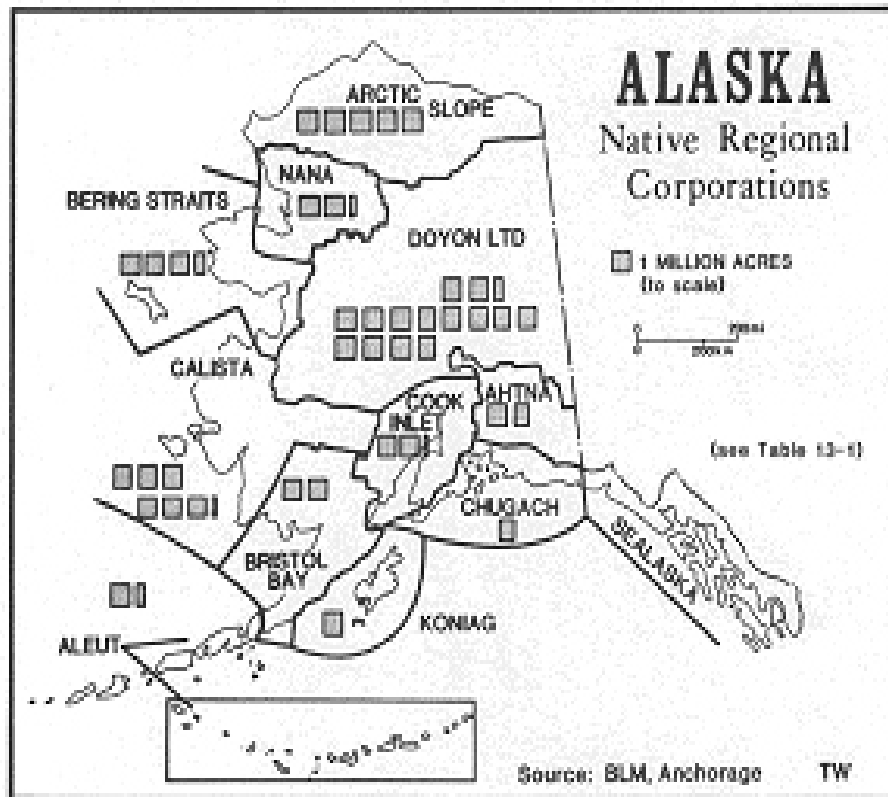


FIG. P. 2. Native Regional Corporations in Alaska. There are only a few reservations as such in Alaska, and they are in the panhandle. However, the state is divided into native regional corporations, pursuant to the Alaska Native Claims Settlement Act (1971). Native lands chosen under the act are scattered, making it difficult to map at large scale, as above. It is possible that as of 2003 not all lands have been selected and mapped. *See* Getches, 1985, in section 6. Map used by permission of the University of New Mexico Press.

Analyzing the Elements of Indian Land Tenure

Indian land tenure is a unique genre in American land experience. It is largely generated by Euro-American concepts and practices, but still exhibits here and there indigenous customs. It is founded in treaties, statutes, and case law and sustained via the trusteeship established for tribes, as based on constitutional provisions that mandate Indian administration to the federal government. Issues pertaining to land, territoriality, etc., derive from interpretations of treaties and other legal instruments and conflicts arise because of differing interpretations of these legal means. States, civil divisions and citizens often contest federal Indian law (e. g., protests today over federal law that permits tribes to engage in gaming so long as states consent if tribes abide

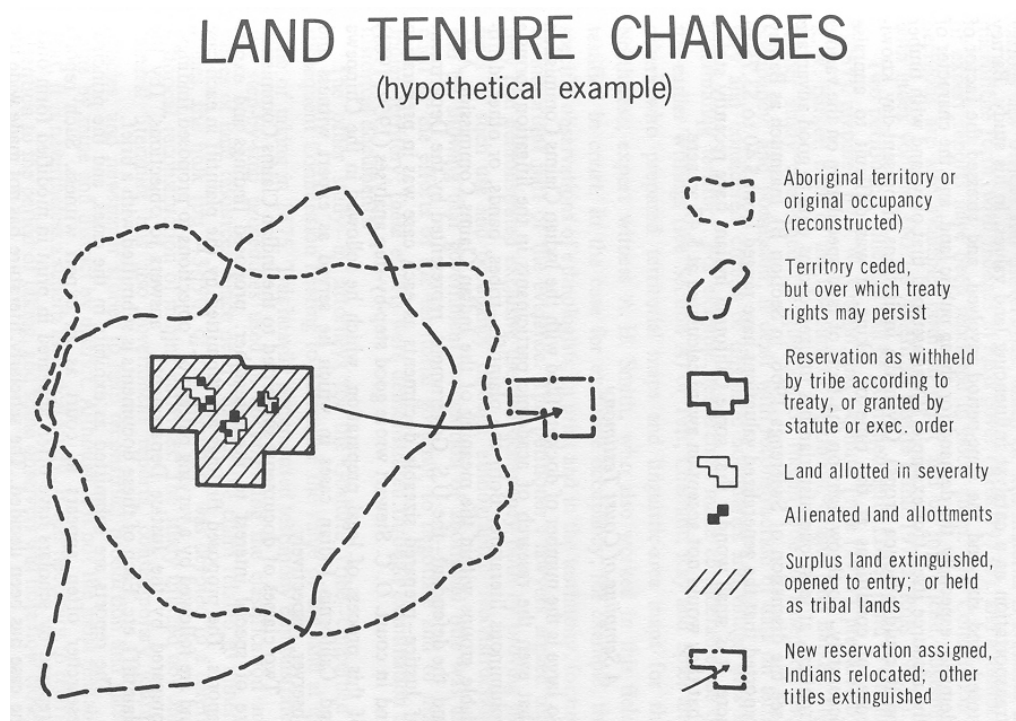


FIG. P. 3. Land Tenure Changes (hypothetical example). This diagram attempts to display the universe of tenure modifications, beginning with aboriginal territoriality. One of the only tenorial situations not displayed is *termination*, which would mean the non-existence of trust land, hence only a map of the former existence of Indian land. Source: Sutton, (1975) *Indian Land Tenure*, discussion on pp. 103-04. Diagram copyrighted by Imre Sutton.

by state gaming laws). In Indian Country, states and citizens also contest tribal claims for the protection of sacred places that lie within the public domain, on other public lands, or within private land holdings. Many of the conflicts relate to former native territory. However, tribal and individual Indian utilization of lands within reservations also come under challenge (e. g., tribal development of hazardous waste disposal sites). Case law plays an important role in any research effort.

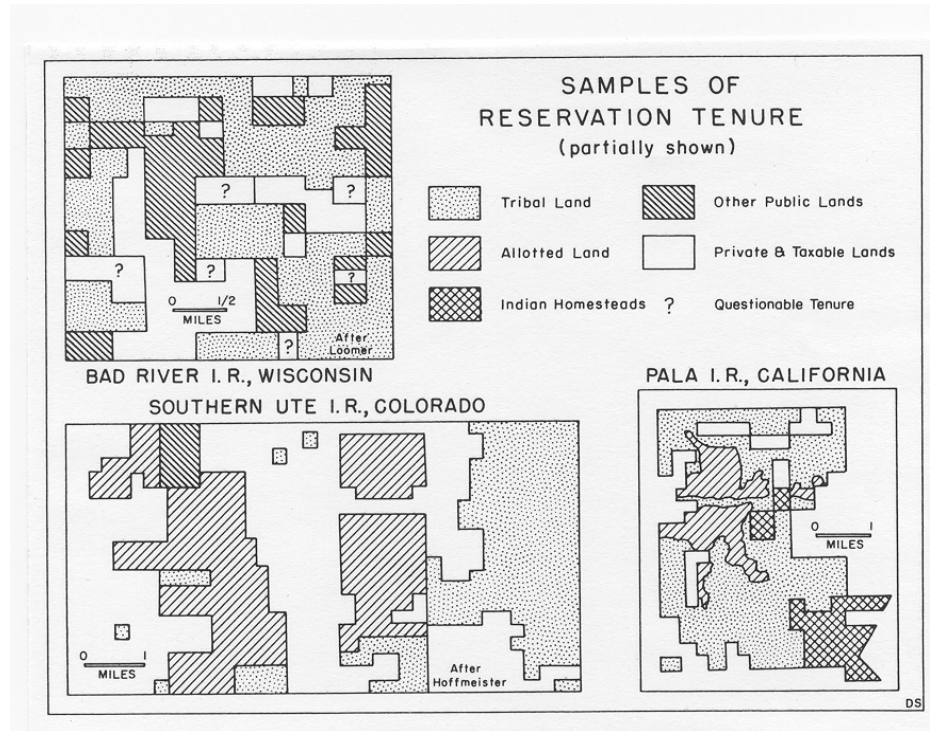


FIG. P. 4. Sample Tenures on Reservations, circa 1960s. It is patent that many of the tenures identified on these sample maps would have changed after more than forty years, but they do exemplify the tenurial situation on trust lands. For many reservations, because of allotment, a high percentage of holdings are in non-Indian hands. *Source of map:* I. Sutton, (1975), *Indian Land Tenure*, 1975, map p. 85; see also Francis P. Prucha, (1990), *Atlas of American Indian Affairs* (Lincoln: University of Nebraska Press).. Another map of tenure patterns, for the Rosebud Sioux I. R., is figure 4.4. Map copyrighted by Imre Sutton.

Elements of Indian land tenure properly begin with native or original *territory*; however, the notion that all Indian communities held territory as political entities is incorrect. Small groups or bands, that hunted and/or gathered in small nuclear areas could be identified with ecological units that, at a later date under U. S. administration, came to be acknowledged as territories. Once the land system was superimposed upon Indian communities, the *reservation* became the dominant land institution, even if at times called reserve, colony, rancheria or some other designation. Reservation conferred federal trustee responsibilities over the land either reserved by tribes or set aside for them out of the public domain. Reservations represent the survival, in most but not all cases, a part of original territory; the bulk of that land area became land *cessions* based usually on treaties. Two kinds of land title now generally prevail owing to the foregoing events: *original* and *recognized*. Original title acknowledges tribal territoriality prior to and at contact, and is the more

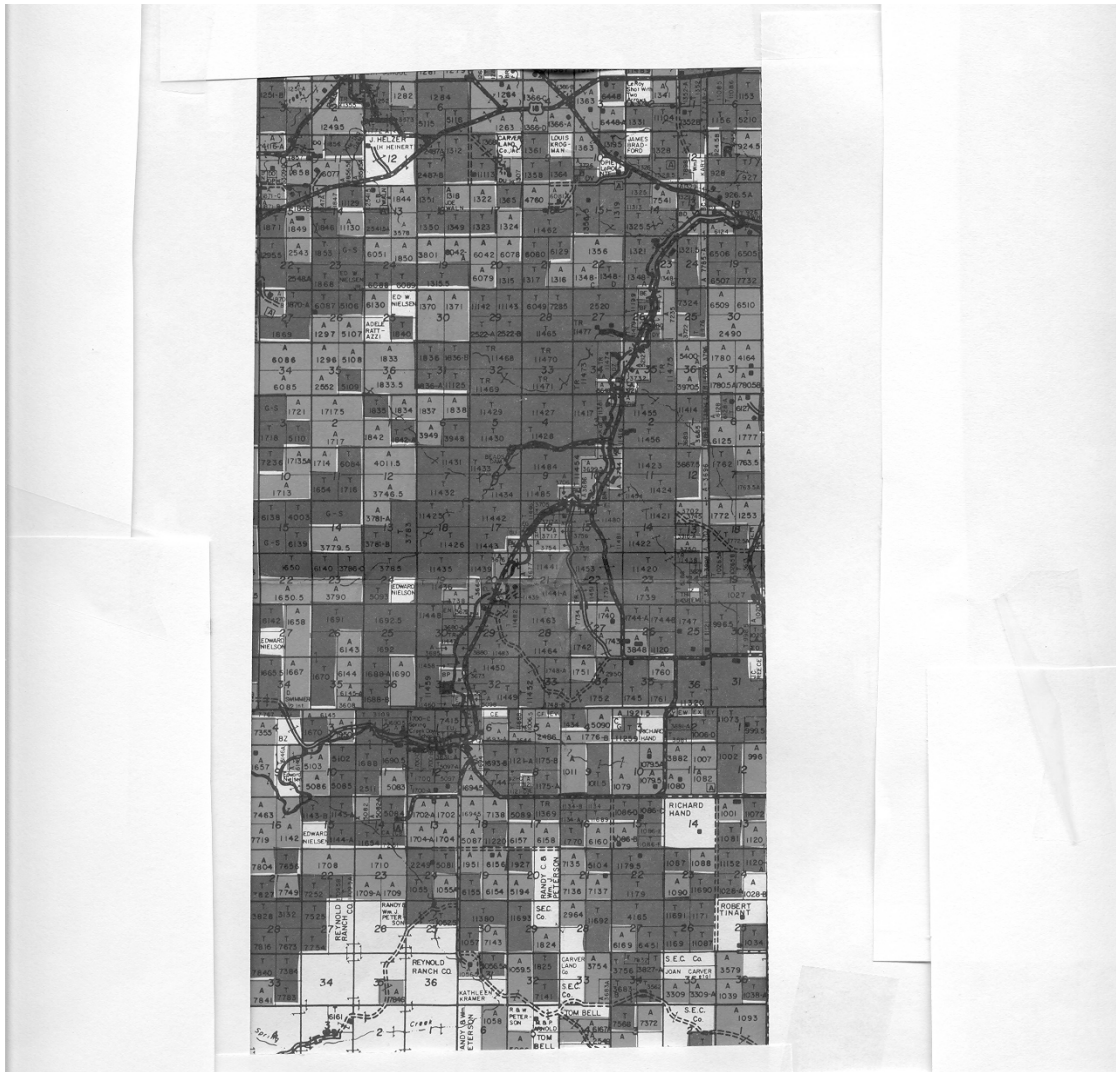


FIG. P.5 A portion of the Rosebud Indian Reservation, Todd County, South Dakota. Darkest areas are tribal; lighter areas are allotments; and the white areas are private lands (fee simple). This map was prepared by the Rosebud Sioux Tribe, Natural Resources Department. No date given, but the map was acquired by me in summer 1994. As a given rule, even as maps of reservation tenure are being researched, edited and printed, they are subject to change. Not many tribes have prepared maps of this sort.

difficult (as later discussionso of land claims will demonstrate) to establish, for it requires reconstruction often by ethnologists and others, who turn to Indian informants, diaries, field journals of military and others such as religious personnel, etc. The recognized title can be readily sustained, even if some controversy prevails over the specifics of mapping native territory. Recognized title literally grows out of recognition through treaties of land cession, statutes and other forms of negotiation between tribes and the US government. That is, it is part of the legal record.

Within reservations, land configuration can be profoundly complex for numerous reasons. In the latter decades of the 19th Century (mainly after 1870), the Indian Office undertook the *allotment* in severalty parcels (homesteads) to individual Indians, the acreage varying from 40 to 320 acres. Almost universally, the 'remaining' tribal acreage, deemed surplus to Indian needs, was opened to non-Indian homesteaders seeking lands out of the public domain. Even if altruistic in its time and place, the allotment process proved disastrous by dynamically reducing total tribal acreage between the 1880s and 1930s. But before the process could be halted and possibly reversed, heirship of these allotments, when intestate, fell under the prevailing law of descent in each state in which Indian lands may be found. Before long, many allotments had hundreds of *undivided shares* and fragments did reach ridiculous figures (e. g., 1/2000). Under the New Deal, after 1934, the government established the Indian Reorganization Act, which reined in on the allotment process, but did not effectively roll back the encumbered heirship problem. From that time on, varying efforts at *land consolidation* have been attempted with modest successes on some reservations. These consolidations have had in mind tribal buy-outs with the intent of incorporating such lands into a larger environmental plan for the reservation. It is probably safe to day that no allotted reservations lack allotments that are encumbered to some degree, not that all of them demand tenurial change.

Because of this emphasis on allotted lands within a reservation, I postponed further discussion of *tribal* lands, which may be held in a corporate sense or in tenancy-in-common. As a corporate entity, tribal lands are administered by tribal councils and their varying departments and committees. A great many tribes today have planning or environmental branches, perhaps even those that specialize in geography and water, in forestry, but also having to do with tourism and development. Tribes create and manage resorts and casinos, and negotiate business arrangements that permit leased utilization of tribal resources. (For a contemporary overall of selective examples, see Clow and Sutton 2001.) Tribal members as tenants-in-common may share the utilization of some lands and resources (e. g., homestead-like parcels for a home; marginal acreage for grazing a cow or horse or two; etc.) At times, such lands are termed *assignments*, but the tenurial structure is internal to a tribe. These potential patterns exist on allotted and non-allotted reservations. They often occur on the former because since the 1930s, a younger generation of Indians can not secure a

legal allotment, yet they may desire to occupy a tribal parcel on their reservation with certain property protections. Tribes administer these lands. Assignment may enter into the occupation of a home as part of a tribal housing authority, but the land is tribal even though its occupation is by tenancy-in-common.

Other elements of the land system focus attention on litigation toward the recovery of land and/or its monetary value. In 1946, Congress enacted the Indian Claims Commission Act, which established a tribunal for reviewing tribal claims to lost lands by various means. A *land claim* normally would include the *aboriginal claim area*, which, in turn, normally embraced the entirety of *recognized title* lands acquired via treaties of land cession, etc. Other claimable areas have identified *sacred sites* or *sacred places*. The ICC was never granted authority to restore land to the tribes. But under a number of special circumstances, Congress has passed legislation that did create some *land restorations*. Such lands may or may not be adjacent to existing reservations, yet they became part of the tribal territory in trust. Another form of land restoration has involved the acknowledgement of an Indian community and the establishment of a reservation either by Congressional grant of a portion of the public lands (e. g., within a national park or forest) or through a settlement act that awarded a tribe monies in order to buy land (often out of original territory). In all cases, the lands would be placed in trust and function under the same laws that govern all of Indian land tenure.

Reservations may contain inholdings based on historic claims (e. g., mining locations), and a number of allotments may have passed to non-Indian members of families and thus the land may be perceived as out of trust. Of course, allotments specifically alienated (sold) out of Indian ownership also sever from trust protections. Other parcels within reservations may include lands tribes at one time granted to certain church groups, but, in effect, ownership may have remained with the federal government and thus constitutes either a federal parcel or a tribal one. There are government parcels, often occupying administrative and other structures, within most reservations. Another so-called inholding would be one or more sections of land (each approx 640 acres) that were set aside as grants to the states at statehood, mainly for educational purposes. By number, the traditional one is section 16, but other sections may be included in the more arid states. I would remind readers that railroad and highway rights of way cut through many reservations and it can happen that one or more sections of a railroad land grant could be surrounded by tribal lands.

Over the course of decades of occupation and change, some reservations have evolved into areas demographically much divided by Indian and non-Indian occupancy. As allotments have been sold, non-Indians have come to permanently occupy lands that are farmed or grazed, etc., and even lands that are leased often include non-Indian residents. These non-Indians do not form part of the tribal body politic and may or may not be subject to tribal

environmental management. Historically, as in South Dakota, some counties that embraced reservations such as the Rosebud and Pine Ridge came to be mostly non-Indian and eventually the courts ruled that the external boundaries of the reservations no longer enclosed those political units. Yet official federal maps may still show the larger reservation.

It would be nice to think that all possible land situations have been reviewed above. But there is always one or more tenurial possibilities that comes to light in a unique circumstance. For example, thanks to the effectiveness of NAGPRA, tribes have mitigated, if not ownership, at least exclusive occupation and use of sacred sites off-reservation, on lands today part of the public domain or even part of private holdings. Other examples can be explored.

Thus far, the emphasis has been on the configurations making up the land system based upon the reservation, beginning with and departing from trust status of tribal lands. It is also important to recognize that these trust lands – i. e., the reservation – not only represent property, but also polity. Tribes are governments and the reservation is a political entity, which is the locus of territoriality and inherent sovereignty. Later discussions will explore in greater measure how the reservation as political, legal and jural place is one of the governmental entities in Indian Country; the other two are federal and state or its civil divisions.

[*Note: Native or part-Hawaiians do not fall under the jurisdiction of the Bureau of Indian Affairs, nor are they governed by laws enacted for Indian tribes, Aleuts, or Eskimos (Inuit). Limited Hawaiian lands are administered by the Hawaiian Home Commission. See Getches, "Alternative Approaches to Land Claims," op. cit. (1985). Also, see more recent discussion in I. Sutton, "Not All Aboriginal Territory is Truly Irredeemable," American Indian Culture & Research Journal, 24:1 (2000): 150-53.*]

Some Bibliographical Sources:

Stephen C. Jett, comp., (1994) *A Bibliography of North American Geographers' Works on Native Americans North of Mexico, 1971-1991*, Haskell Indian Nations University Studies in the Geography of the American Indian, 1 (Lawrence, KS: Haskell Indian Nations University).

Francis Paul Prucha, (1977) *A Bibliographical Guide to the History of Indian-White Relations in the United States* (Chicago: University of Chicago Press), and later supplement.

William Sturdevant, general ed., *Handbook of North American Indians* (Wash., D. C.: Smithsonian Institution, various years), extensive bibliographies in each volume.

Imre Sutton, (1975) *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (NY: Clearwater).

_____, (1988) "A Selective Bibliography of the California Indian, with Emphasis on the Past Decade," *American Indian Culture & Research Journal*, 12:2: 81-113.

W. R. Swagerty, ed., (1984) *Scholars and the Indian Experience: Critical Reviews of Recent Writing in the Social Sciences*, pub. For the D'arcy McNickle Center for the History of the American Indian, Newberry Library (Chicago: University of Chicago Press).

Selective Periodicals

(note that applicable articles appear in a wide range of journals in numerous fields; there are very few specifically Indian journals):

Akwesasne Notes (infrequent; from St. Regis I. R., NY)
American Indian Culture and Research Journal
American Indian Law Review
American Indian Quarterly
Wicazo Sa Review

Selective Websites:

www.falsepromises.com (Wenatchi land claim)
www.ilwg.net (Indian Land WorkingGroup)
www.kstrom.net/isk/maps/US.html (Maps: GIS windows on Native Lands, Current Places, History, etc.)
www.congogroup.com (an international sustainable environment website, but also with some focus on indigenous peoples, land, etc.)
www.sixnations.org/Great_Law-of-Peace (Iroquois)
www.kstrom.net/isk/maps/ca/california.html (not updated since 6/97)
www.Indianz.com
www.narf.org