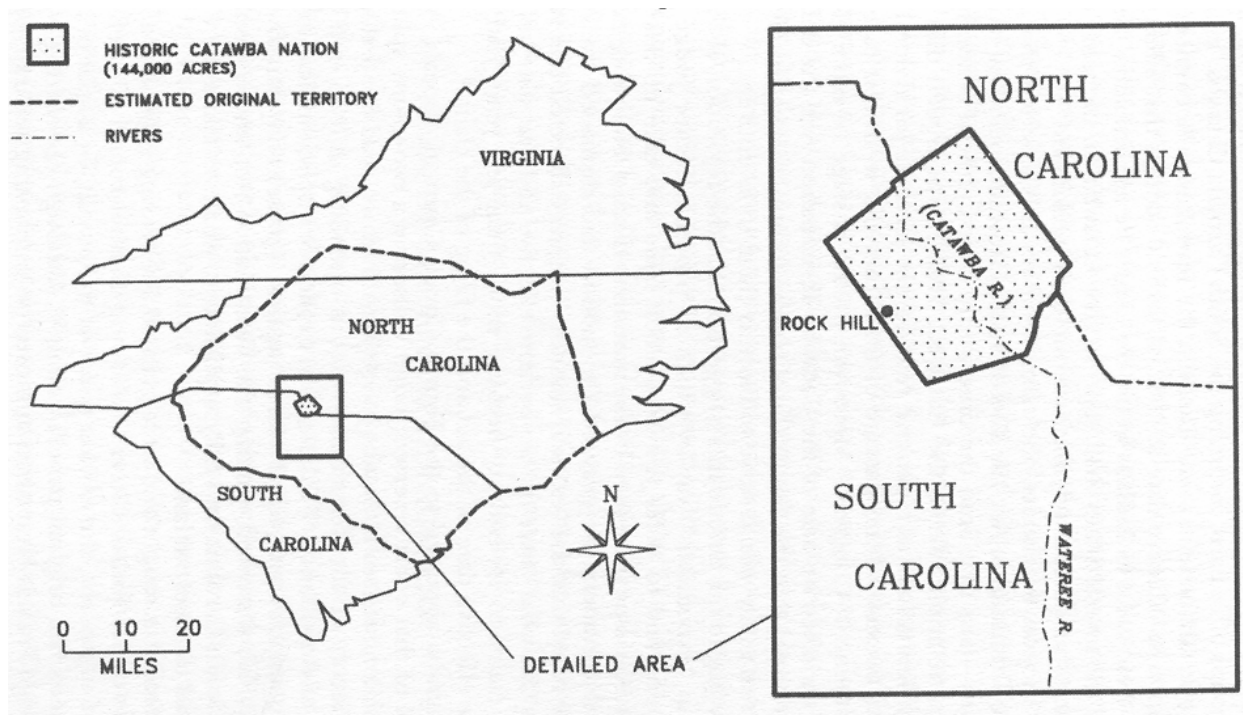


AMERICAN INDIAN TERRITORIALITY

An Online Research Guide

[Edition of *Oct. 17, '03*]



[See Christie (2000) in section 6; map used by permission of the Regents of the University of California and the American Indian Studies Center, UCLA.]

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*Foreword**

To date, no one has prepared a research guide that would assist scholars, students and other in their desire and efforts to ascertain major issues dealing with Indian territoriality and land tenure or find data, maps, bibliographical sources, glossaries of terms, and related matters that pertain to Indian lands, past or present. In a brief bibliographical section, a few important sources that focus on specific aspects of Indian land history are identified. This guide hopefully will serve a broad audience, for which reason it has been put online as a public service.

Source materials dealing with American Indian (Native American) lands, territory and related concerns may originate among any number of groups or individuals: tribes, academic scholars, independent writers, and officials at various levels of government. A large body of resources in print (as well as in manuscript) is housed with the *federal government* in various departments, bureaus, authorities, archives, and their regional or field offices. In addition, both houses of Congress generate reports and hearings. Many government documents, federal and otherwise, include maps, photos, documents, and bibliographies pertinent to Indian land matters. Scholarly literature also contains a vast amount of factual as well as theoretical information and maps, photos, bibliographies and other materials. This guide does not attempt to be inclusive, but hopefully does include a wide enough range of source materials to enable researchers to find just about anything. One caution: today countless land-related documents, maps and other materials are housed with the tribes. Much of this material may still be un-catalogued; in any event, researchers must contact tribes themselves. Included in this guide are selective websites that might help scholars locate tribes and hence request their assistance. The guide includes books, articles, documents, maps, and miscellaneous materials, some merely cited or listed, others included in discussions. User response to this guide will help in making editorial amendments not only to the content but to the structure of this guide.

*A brief note about the author: He is a specialist in American Indian land matters, having authored *Indian Land Tenure* (1975), edited *Irredeemable America* (1985), and co-edited *Trusteeship in Change* (2001) as well as edited several journal symposia for the *American Indian Culture & Research Journal* (1988, 1991, 2000). He has served as a consultant, and as a member of editorial boards of journals, including the former. He can be reached at: ids1959@yahoo.com.

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General Acknowledgements & Credits

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Publishers and Individuals:

The University of New Mexico Press for permission to reprint several maps from *Irredeemable America: the Indians' Estate and Land Claims* (1985/86); The University Press of Colorado, cartographer Michelle Mestrovich and author Diane Krahe for similar use of maps from *Trusteeship in Change: Toward Tribal Autonomy in Resource Management* (2001); The American Indian Studies Center, UCLA, the Regents of the University of California, and Pamela Grieson, managing editor, and authors Steven Haberfeld and David Wishart, for use of maps from various articles in the *American Indian Culture & Research Journal*, 1988, 1991, 2000, 2002; etc. The American Geographical Society and *The Geographical Review* for use of map materials from vol. 66:3 (July 1976); Norman Ross, original publisher, Clearwater Publishing Co., CIS (Congressional Information Service) and successor publishers for use of maps in *Indian Land Tenure* (1975); Cognizant Communication Corporation, Elmsford, NY, and A. A. Lew and G. A. Van Otten, eds., *Tourism and Gaming on American Indian Lands* (1998); National Geographic Society, Washington, D. C. and David Wishart for use of a map in *National Geographic Research*; editor, *Great Plains Quarterly* and Brad A. Bays, for map of Indian Nation Gaming; and Malcolm Comeaux and the editors, *Journal of Historical Geography*.

Individual cartographers and sources of maps utilized in this guide:

Don Severson, "Land Tenure and Occupance Change on Indian Reservations in Southern California," 1964.
 Sue Lirette Hannes; Floyd Hickok; Beth Tufft; James Huning;
 Don Severson; Mike Stannard; *Indian Land Tenure*, 1975.
 Francis Barkoczy, *The Geographical Review*, 1976;
 William Scharf and Thomas Wikle, *Irredeemable America*, 1985;
 Harold C. Fox; William Scharf; Don Severson; *AICRJ*, 1988;
 Kwan Ihn, Charles Sternberg, *AICRJ*, 1991;
 Michelle Mestrovich; *AICRJ*, 2000; *Trusteeship in Change*, 2001
 James A. Woods, *AICRJ*, 2002.

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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.

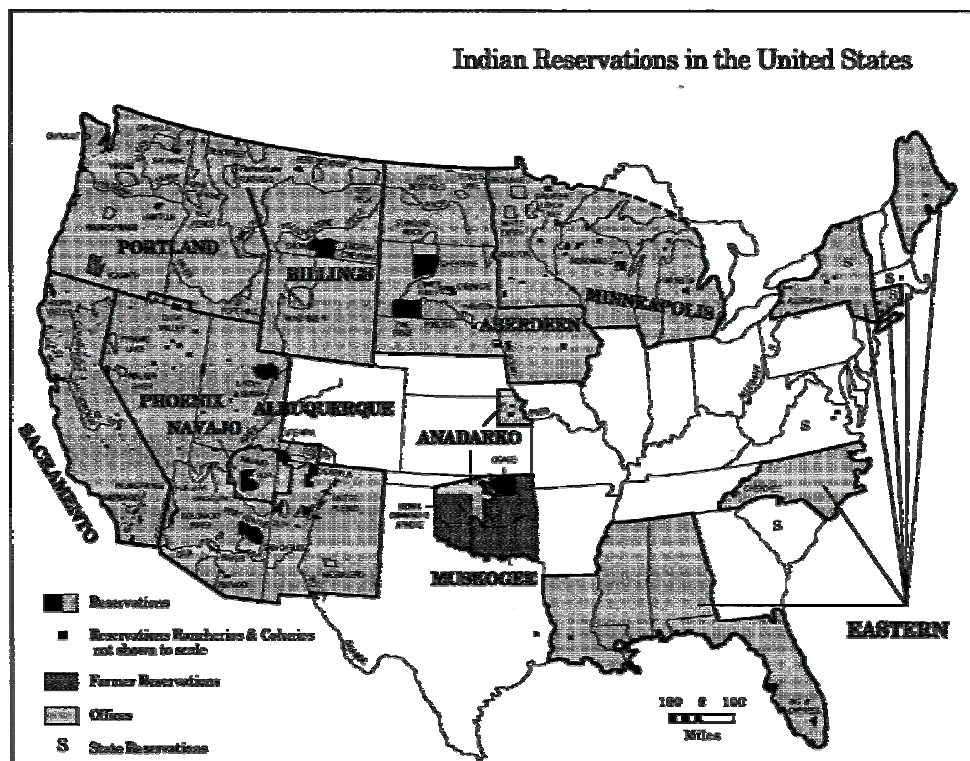


FIG. P. 1. Indian Reservations in the United States. Most reservations and other trust lands are located in western U. S. Smaller, isolated trust lands exist in several eastern, southern and lake states. There are a few reservations under state supervision, mostly in the East. (For a very recent official 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

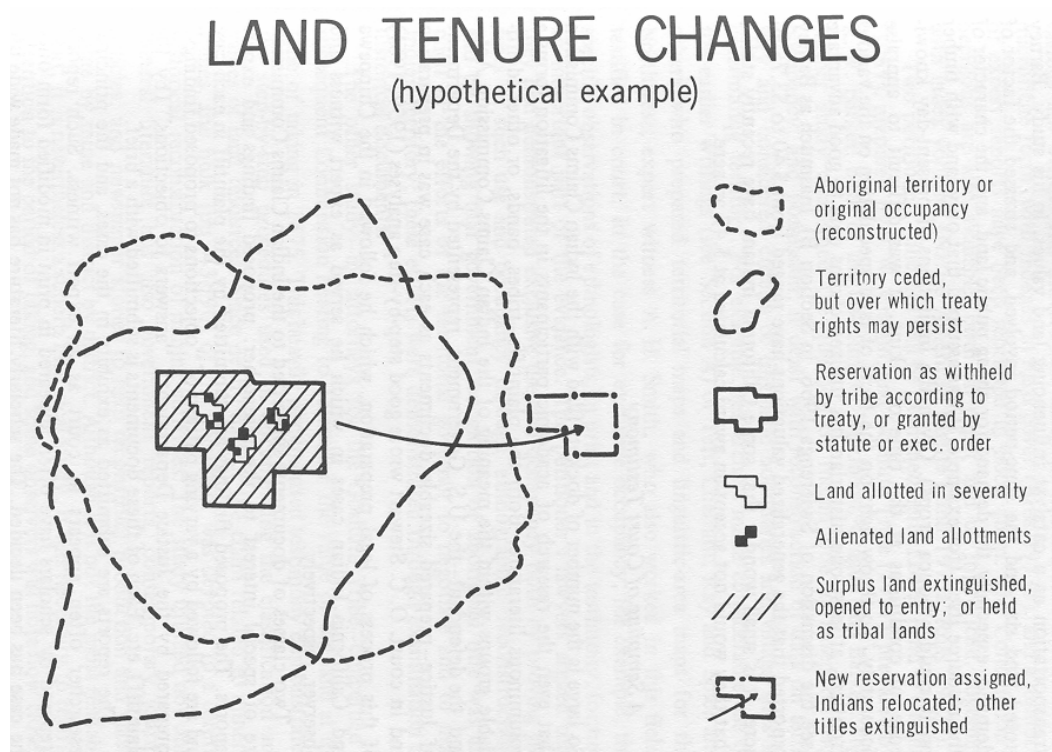


FIG. P. 3. Land Tenure Changes (hypothetical example). This diagram attempts to display the universe of tenure modifications, beginning with aboriginal territoriality. One of the only tenurial situations not displayed is *termination*, which would mean the non-existence of trust land, hence only a map 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.

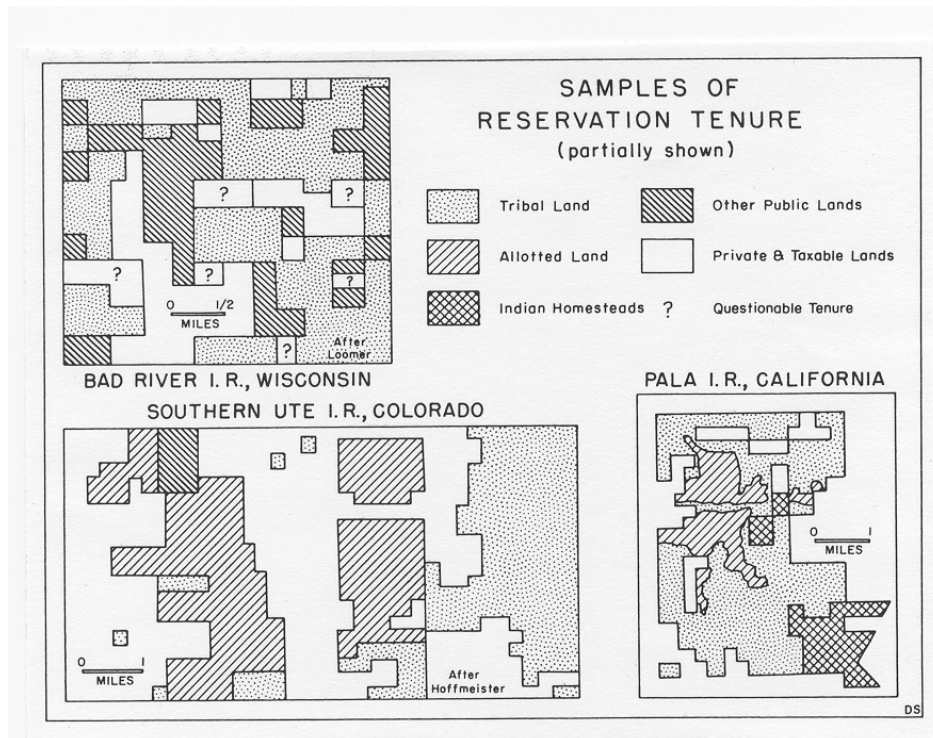


FIG. P. 4. Sample Tenures on Reservations, circa 1960s. It is patent that many of the tenures identified on these sample maps would have changed after more than forty years, but they do exemplify the tenurial situation on trust lands. For many reservations, because of allotment, a high percentage of 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

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difficult (as later discussions 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 say 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

1.

Native geography: aboriginal territory, environmental perception

Efforts at ascertaining indigenous knowledge of home environments, their perception and utility – e. g., full geographic awareness of surroundings -- abound. A sample of the literature is included here. Concern for the protection of tribal cultural resources has vigorous supporters and that protection forms an important part of current legislation and management that involves the participation of tribes. Some of the literature below deals with the general themes; a few studies were selected as examples of specific cases. Keep in mind that some of the subject matter here overlaps with discussion and sources in 3 (land cessions, etc.) and 6 (land claims).

Indians, Ecology and Environment:

Thomas C. Blackburn and Kate Anderson, eds., (1993) *Beyond the Wilderness: Environmentl Management by Native Californians*, Anthropological Papers, 40 (Mento Park, CA: Ballena).

Shepard Krech III, (1999) *The Ecological Indian: Myth and History* (NY: W. W. Norton).

Christopher Vecsey and Robert W. Venables, eds, (1980) *American Indian Environments: Ecological Issues in Native American History* (Syracuse: Syracuse University Press).

Native Cartography and Interpretations:

There is an increasing body of literature evaluating Native American maps, and researchers interested in their utility in terms of native territoriality and land tenure should review the maps and their analyses in order to understand the limitations these maps represent. I list a limited number of sources for such purposes. Most native maps portray drainages, regions and areas of hunting, fishing, etc., and rarely reveal territoriality as understood by Euro-American peoples. Native maps did not, for example, play any significant or pivotal role in the reconstruction of aboriginal territory in the claims cases (*see* section 6).

James Ronda (1984) reproduced a Nez Perce map of the Middle Columbia River (May 1806). This and other maps were prepared by Indians for Lewis and Clark, in the field, during their expedition to and from the Pacific Northwest. It provides “a sketch of the principal water courses West of the Rocky Mountains...” Such maps drawn by Native Americans, despite degrees of accuracy, suggest the limitations in their use for determining aboriginal territoriality.

G. Malcolm Lewis, ed., (1998) *Cartographic Encounters: Perspectives on Native American Mapmaking and Map Use* (Chicago: Univ. of Chicago Press).

_____, *1984) "Indian Maps: Their Place in the History of Plains Cartography," *Great Plains Quarterly*, 4 (Spg): 91-108.

_____, (1993) "Metrics, Geometries, Signs and Language: Sources of Cartographic Miscommunication Between Native and Euro-American Cultures in North America," *Cartographica*, 30:1: 98-106.

_____, (1987) "Misinterpretation of Amerindian Information as a Source of Error on Euro-American Maps," *Annals, Assn of American Geographers*, 77:4: 542-563.

James Ronda, (1984) "A Chart in His Way: Indian Cartography and the Lewis and Clark Expedition," *Great Plains Quarterly*, 4 (Winter): 43-53. The Nez Perce map appears on p. 49 (it is in the Beinecke Rare Book and Manuscript Library at Yale University).

Robert Rundstrom, (1990) "A Cultural Interpretation of Inuit Map Accuracy," *Geographical Review*, 80: 155-168.

_____, (1995) "GIS, Indigenous Peoples, and Epistemological Diversity," *Cartography and Geographic Information Systems*, 22:1: 45-57.

_____, "The Role of Ethics, Mapping, and the Meaning of Place in Relations Between Indians and Whites in the United States," *Cartographica*, 30:1 (1993): 21-28.

Mark Warhus, (1997) *Another America: Native American Maps and the History of Our Land* (NY: St. Martin's Press).

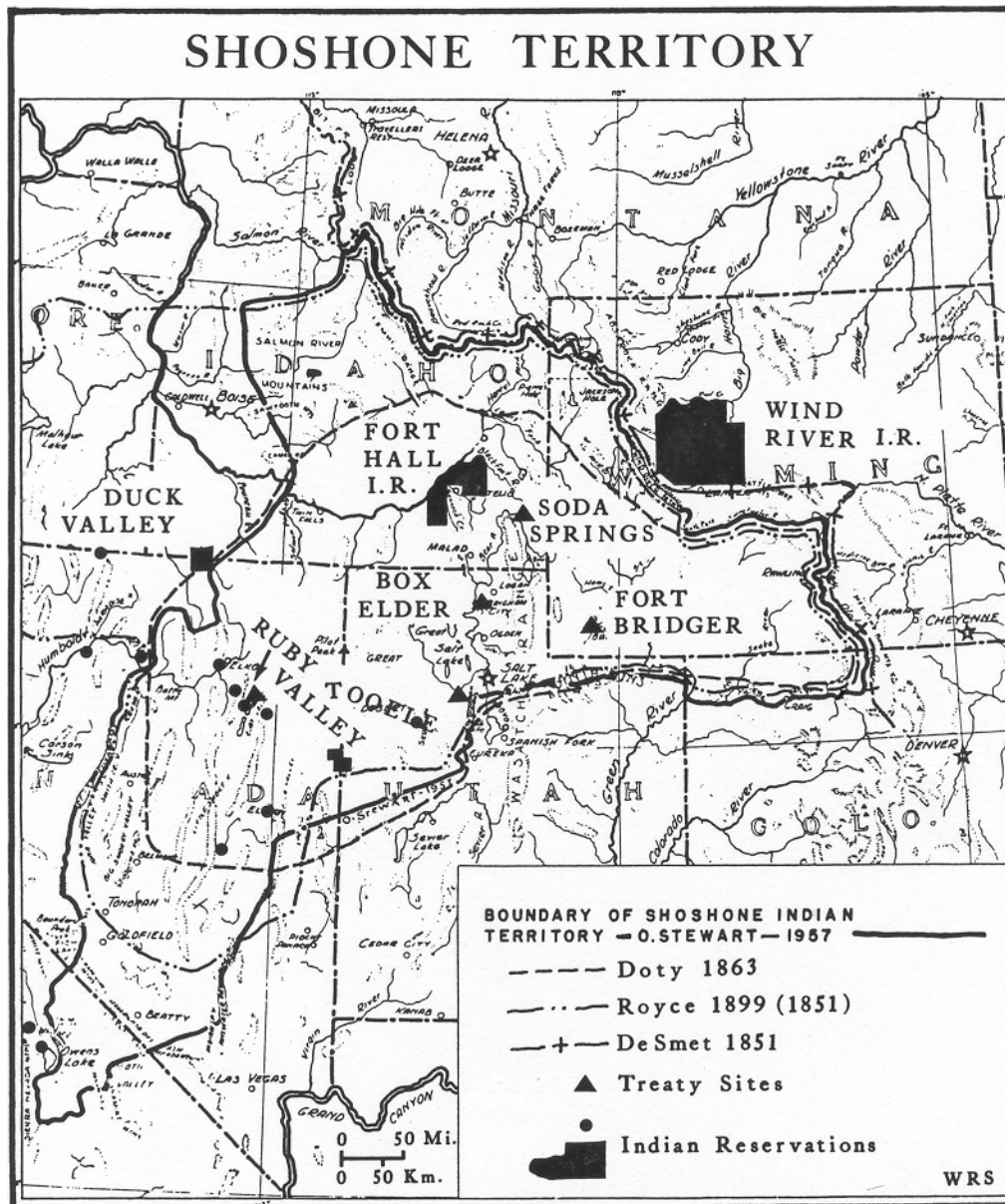


Fig. 1.1 Aboriginal Territory. Researchers can arrive at original tribal territory by various means, although no one way necessarily produces a definitive area acceptable to the tribe, various governments, local citizens, or scholarly research. For example, original title lands submitted as part of land claims may now be adjudicated for countless tribes and thus appear to be the *correct* aboriginal territory. However, numerous tribes reject the bounds of these judicially established areas by the Indian Claims Commission. Tribal informants from contact times to the present may also help render an aboriginal area that is contested by adjacent tribes, governments, local citizens, etc. Ethnographic reconstruction has often been considered definitive; however, even Alfred

Kroeber, an anthropologist at the University of California, Berkeley and a leading interpreter of tribal territoriality, contended that the bounds on his own maps really reflected broad culture areas, linguistic zones, and the like, not political territory. The Shoshone sample reflects the thorough research of Omer Stewart, who utilized nearly a hundred sources, for which the sample only represents a fragment of the research sources. *Source:* Omer Stewart (1985). (See section 6 on land claims.) Map used by permission of the University of New Mexico Press.

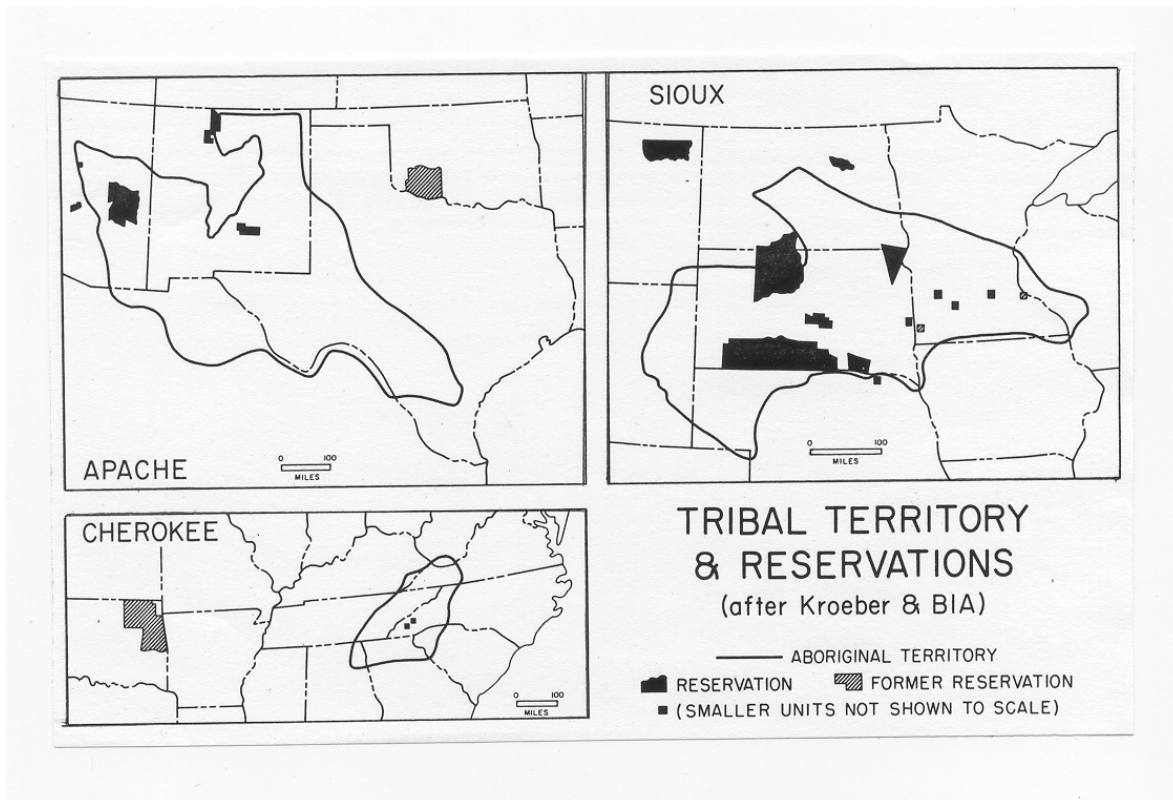


FIG.1.2 Some maps reflect the differences in interpretation of original territory and the greater reliance on ethnographic or cultural data, mainly languages, culture elements, etc., rather than political territoriality. These examples are based upon Kroeber's *Culture Area* map (1939) *Source:* Sutton, *Indian Land Tenure* (1975). The composite idea is borrowed from U. S. Congress, House, 1953. (See section 4). Keep in mind that Kroeber did not perceive his culture area boundaries as equivalent to political territoriality. See my discussion in Sutton (2002). Also note that the Kroeberian areas, even if they appear to correspond at times to adjudicated claims areas, were not perceived as legal entities when first designed in the 1930s. Map copyrighted by Imre Sutton.

Alfred L. Kroeber, (1939) *Cultural and Natural Areas of Native North America*, University of California Publications in American Archaeology and Ethnology, 38 (reprint 1963).

Omer Stewart, (1985) "The Shoshone Claims Cases," in *Irredeemable America: the Indians' Estate and Land Claims*, ed. Imre Sutton (Albuquerque: University of New Mexico Press): 187-206; map p. 199.

Imre Sutton, (1975) *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (N.Y. Clearwater), map. p. 33, as based on U. S. Congress, House 1953.

_____, (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 House Resolution...to Conduct an Investigation of the Bureau of Indian Affairs. H. R. 2503* (Wash., D. C., Gov't Print. Off.).

2.

*Federal law, case books, land tenure, territoriality, & sovereignty;
selective documentary studies*

Law and Administration:

Federal Indian law establishes and sustains a unique relationship between the federal government and American Indians – recognized as well as unrecognized tribes, individual Indians and families, --but includes legal relationships between tribes and states or their local civil divisions, and between the federal and state governments. It consists of treaties, statutes, case laws, and executive orders.

William C. Canby, Jr., (1981) *American Indian Law in a nutshell* (St. Paul: West). Felix S. Cohen, *Handbook of Federal Indian Law* (Wash., D. C., 1941). The first treatise on federal Indian law by its leading exponent. Various reprinted editions exist.

David H. Getches, Charles F. Wilkinson, and Robert A. Williams, (1998), *Cases and Materials on Federal Indian Law*, 4th ed. (St. Paul: West). This edition includes a section on law relating to indigenous peoples elsewhere.

Stephen L. Pevar, (1992) *The Rights of Indians and Tribes: the Basic ACLU Guide to Indian and Tribal Rights*, 2nd ed. (Carbondale: So. Illinois Univ. Press). A 3rd ed. (2002) is much expanded.

Monroe E. Price, (1973) *Law and the American Indian: Readings, Notes and Cases* (Indianapolis: Bobbs-Merrill). A first case book on Indian law since the publication of Cohen, 1941 and later editions.

Treaties:

The vast number of treaties between the U. S. government and the tribes (historically also identified as nations) focus on territory and thus deal with the cession of tribal lands. Lands ceded by this means (or by statute and agreements of various kinds) constitute *recognized* title.

Vine Deloria, Jr. and David E. Wilkins, (1999) *Tribes, Treaties & Constitutional Tribulations* (Austin: Univ. of Texas Press).

Francis Paul Prucha, (1994) *American Indian Treaties: the History of a Political Anomaly* (Berkeley and Los Angeles: University of California Press).

Legal Discussions:

Russel Lawrence Barsh and James Youngblood Henderson, (1980) *The Road: Indian Tribes and Political Liberty* (Berkeley and Los Angeles: Univ. of California Press).

Vine Deloria, Jr. and Clifford M. Lytle, (1983) *American Indians, American Justice* (Austin: Univ. of Texas Press).

Allison M. Dussais, (1993) "Geographically-Based and Member-Based Views of Indian Tribal Sovereignty: the Supreme Court's Changing Vision," *University of Pittsburgh Law Review*, 55: 1-97.

N. Bruce Duthu, ed., (1996) "Symposium: Stewards of the Land: Indian Tribes, the Environment, and the Law," *Vermont Law Review*, 21:1.

National Lawyers Guild, (1982) *Rethinking Indian Law* (NY: NLG, Comm. On Native America Struggles).

Charles F. Wilkinson, (1987) *American Indians, Time and the Law* (New Haven: Yale Univ. Press).

John R. Wunder, (1994) *'Retained by the People': A History of American Indians and the Bill of Rights* (NY/Oxford: Oxford Univ. Press).

Land Tenure, general:

Studies of Indian land tenure have been undertaken by members of all of the social sciences and others, as in government service. The literature is vast, and only key studies are included here. Researchers should keep in mind Indian land tenure is an amalgam of traditional systems and Euro-American imposed land institutions.

J. P. Kinney, (1937) *A Continent Lost, a Civilization Won: Indian Land Tenure in America* (Baltimore: John Hopkins Univ. Press).

Imre Sutton, (1975) *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (N.Y: Clearwater Publ.). (Contains approximately 1000 citations most of which appear in various discussion.)

Selective Documentary Studies:

Government and government-sponsored studies offer useful data and interpretations for researchers. Most studies include some discussion of land tenure, resource management, and related matters pertaining to reservations and tribal lifeways. Of these, the so-called Meriam Report (1928) recommended sweeping changes, many of which were embodied in the *Indian Reorganization Act, 1934* as part of the New Deal.

William Brophy and Sophie Aberle, (1966) *The Indian: America's Unfinished Business* (Norman: University of Oklahoma Press).

Lewis Meriam et al, (1928) *The Problem of Indian Administration: Studies in Administration* 17 (Baltimore: Brookings Institution for Government Research).

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.: GPO).

Other tenurial correlations to tribal sovereignty

In this section as well as the last, there are discussions of sovereignty as related to the meaning of Indian Country, the presence of non-Indians living on fee lands within the external boundaries of reservations, and such matters as easements (for roads, rails, power lines, etc.). Miller (2002) provides a current legal interpretation of easements and the diminishment of tribal sovereignty, indicating that the courts interpret easements as fee simple lands not subject to tribal jurisdiction in terms of taxation, etc. Other questions relate to the extent of tribal sovereignty over some lands no longer or never held in trust (See chapter 7). There are many other studies that explore easements and rights-of-way, though they may not deal with issues of tenure or territoriality.

Todd Miller, (2002) "Easements on Tribal Sovereignty," (comment), *American Indian Law Review*, 26:1: 105-131.

Maps, atlases, and cartographic sources; studies about, etc, books

Maps of Indian lands, territories, culture areas, and the like abound as individual maps, as parts of documents, in atlases, and various published studies. To date, the only definitive review is by Sutton (2002). However, there are a number of studies that explore native cartography (*see* section 1). Other map sources will be cited under specific subjects, such as cessions and land claims, etc. The largest number of maps in historic volumes are derivative; some are reproductions of earlier, more empirical maps. One needs to identify original sources for such maps.

For an extensive listing of relevant geographic studies, many of which contain maps, see:

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).

Documentary Sources:

Laura E. Kelsay, comp.,(1971) *Cartographic Records in the National Archives Relating to Indians in the United States*, National Archives and Research in Historical Geography (Wash., D.C.: National Archives).

_____, (1954) *List of Cartographic Records of the Bureau of Indian Affairs*, Special List 13 (Washington, D.C.: National Archives).

Francis P. Prucha, (1977) *A Bibliographical Guide to the History of Indian-White Relations in the United States* (Chicago: University of Chicago Press): p. 20, entries 191-197.

Imre Sutton, (1975) *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (New York Clearwater Publ.): passim & Cartographic Sources, pp. 218-219.

Maps, atlases, and discussions:

Daniel G. Cole, (1993) "One Cartographic View of American Indian Land Areas," *Cartographica*, 30:1: 47-54.

Samuel W. Crompton, ed., (1987) *The Cartography of North America, 1500-1800* (Edison, NJ: Chartwell Books).

T. J. Ferguson and E. Richard Hart, (1985) *A Zuni Atlas* (Norman: Univ. of Oklahoma Press).

James Goodman, (1982) *The Navajo Atlas: Environments, Resources, People and History of the Dine Bikeyah* (Norman: Univ. of Okla Press).

Francis P. Prucha, (1990) *Atlas of American Indian Affairs* (Lincoln: Univ. of Nebraska Press).

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

_____, (1988) "The Cartographic Factor in Indian Land Tenure: Some Examples from Southern California," *American Indian Culture & Research Journal*, 12:2: 53-80.

Helen Hornbeck Tanner, ed. (1987), *Atlas of Great Lakes Indian History* (Norman: for the Newberry Library by the University of Oklahoma Press).

Jeff Zaucker, Kay Hummel, and Bob Høgfoss, (1983) *Oregon Indians: Culture, History & Current Affairs* (Portland (?): Western Imprints, The Press of the Oregon Historical Society).

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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 devisement 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.

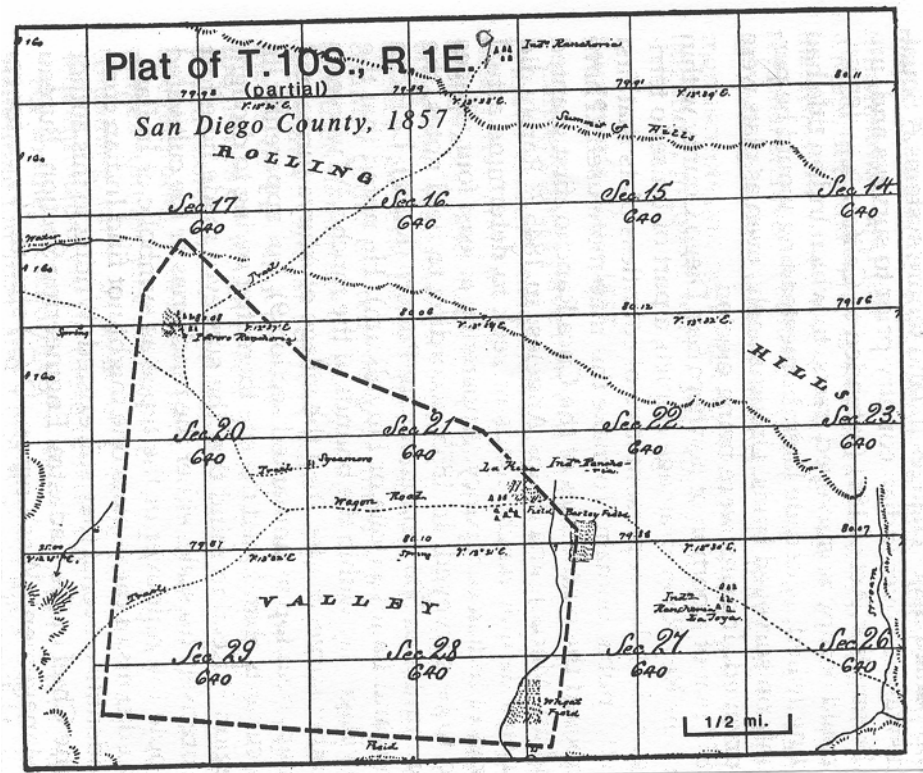


Fig. 4.1. For most of the western U. S. land area has been surveyed according to the Land Rectangular Survey; field surveys attempted to include, not always very accurately, the presence of Indian communities. This sample from Southern California, which embraces the La Jolla I. R., reveals the existence 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)

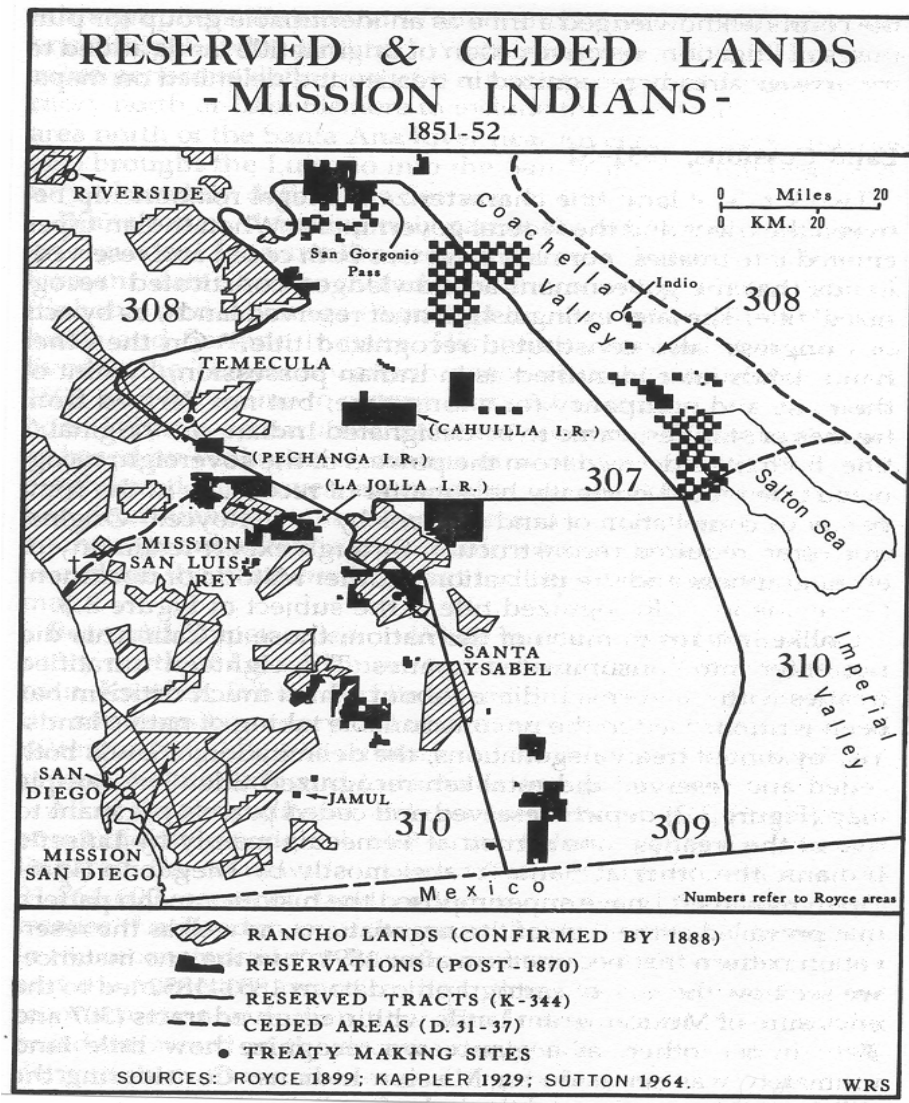


FIG 4.2. Land Cessions. This California example shows two of eighteen unratified treaty areas- 307 and 309. The treaties were negotiated in 1851, but the U. S. Senate refused to ratify them. The boundaries of the two treaty areas, which enclosed lands that were to be retained by Southern California Indian 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.

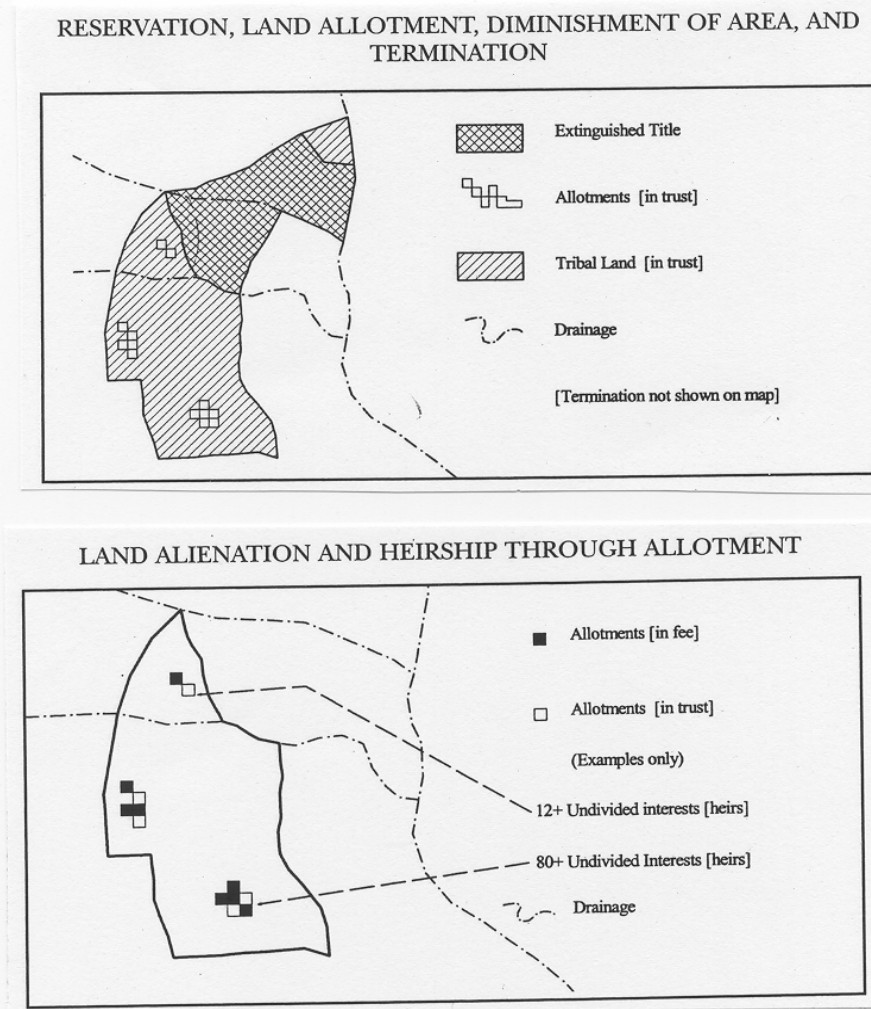


FIG. 4.3 Allotment and Heirship on Reservations. More than half of all reservations have been allotted; most of these trust lands are in western states. For nearly a half-century the allotment process encumbered trust lands to the extent that so many allotments were left intestate, and under federal 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;)

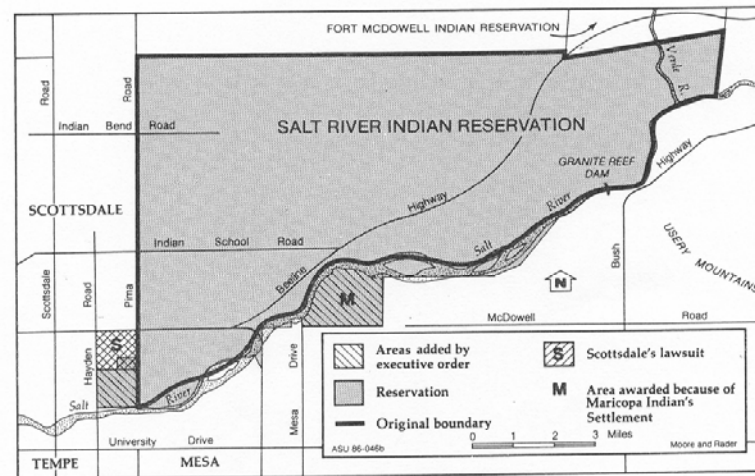


FIG. 4.4 The Salt River Indian Reservation, AZ, established in 1879. No two reservations evolved in the same way, but treaties, executive orders, agreements, and congressional acts have all figured in reservation configurations. See Comeaux 1991 for the historical geography of the Salt River I. R..

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. Haupman, (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.

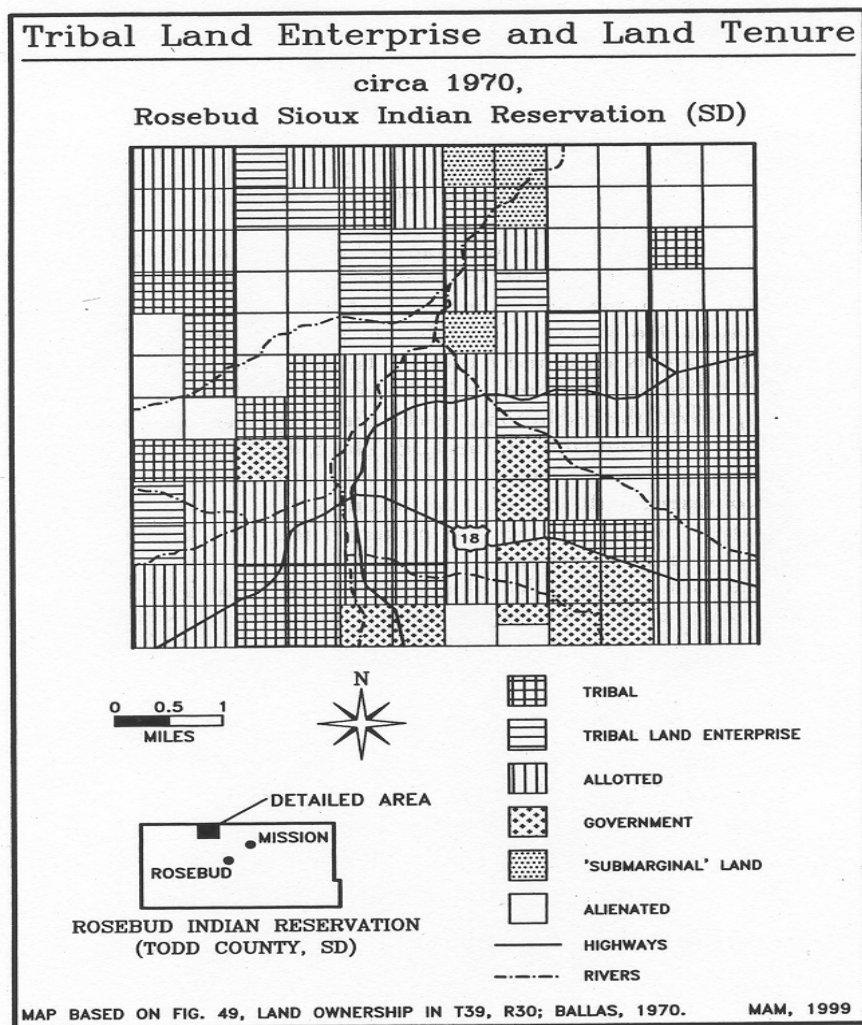


FIG. 4.5. The Tribal Land Enterprise of the Rosebud I. R. See Clow (2001). The land scheme hoped to give some Indians a greater opportunity to use larger blocks of acres under a lease arrangement and given owners of undivided shares a small income. In practice, it allowed the tribe to administer allotments 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).

Resource management / development, Indian and non-Indian utilization.

Since 1975, when the Indian Self-Determination and Education Act was passed, more tribes have moved toward greater autonomy in the management of reservation resources. They have selectively been assisted by various means; the Indian Bureau itself has enabled some developments; other agencies, such as ANA (Administration for Native Americans) have provided financial support for tribal programs; tribes have contracted non-Indian planning and development organizations; and public land agencies have entered into partnerships in the management of tribal cultural resources off-reservation. One example of the latter is the role played by the Kaibab National Forest in conjunction with Hopi cultural heritage programs in former tribal territory. Some forms of tribal economic development run counter to public opinion and produce anxiety in neighbors. For example, casino growth, as in California and elsewhere, brings in considerable money. But casinos draw traffic, noise, congestion, etc., and neighboring communities are unhappy although, no doubt, many people within such communities enjoy employment by the tribes. A more serious environmental concern relates to those few tribes that are willing to develop waste disposal sites on reservations. Again, they may prove lucrative but are strongly rejected by neighbors. Many tribes, with some advice, as by the National Park Service, are developing plans to sustain wilderness and wildlife within their borders. Tribes are also taking advantage of the land consolidation legislation that makes possible the purchase of undivided shares in allotments encumbered by heirship. (Researchers should relate this section to 7, which deals with environmental jurisdiction.)

Americans for Indian Opportunity, (1986) *Survey of American Indian Environmental Protection Needs on Reservation Lands, 1986* (Wash., D. C.: Environmental Protection Agency).

Terry L. Anderson, (1995) *Sovereign Nations or Reservations? An Economic History of American Indians* (SF: Pacific Research Institute for Public Policy).

Richmond L. Clow and Imre Sutton, eds., (2001) *Trusteeship in Change: Toward Tribal Autonomy in Resource Management* (Boulder: University Press of Colorado).

Stephen Cornell and Joseph P. Kalt, eds., (1992) *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, American Indian Manual and Handbook Series, 4 (Los Angeles: American Indian Studies Center, UCLA).

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

Donald A. Grinde and Bruce E. Johansen, (1995) *Ecocide of Native America: Environmental Destruction of Indian Lands and Peoples* (Santa Fe: Clear Light).

Kirke Kickingbird and Karen Ducheneaux, (1973) *One Hundred Million Acres* (NY: Macmillan).

Fishing, Hunting, and Wildlife Resources:

Fay G. Cohen, (1986) *Treaties on Trial: the Continuing Controversy Over Northwest Indian Fishing Rights* (Seattle: University of Washington Press).

Robert Doherty, (1990) *Disputed Waters: Native Americans and Great Lakes Fishery* (Lexington: University Press of Kentucky).

Roberta Ulrich, (1999) *Empty Nets: Indians, Dams, and the Columbia River* (Corvallis: Oregon State University Press).

Forest Resources

Alan S. Newell, Richmond L. Clow and Richard N. Ellis, (1986) *A Forest in Trust: Three-Quarters of a Century of Indian Forestry, 1910-1986*, for Bureau of Indian Affairs, Litigation Support Services (Missoula: Historical Research Associates).

Land Resources

Rebekah C. Beatty Davis, (1997) *Conservation and Culture: the Soil Conservation Service, Social Science, and Conservation on Tribal Lands in the Southwest*, Historical Notes 6 (Wash., D. C.: Natural Resource Conservation Service).

Water Resources

John A. Folk-Williams, (1982) *What Indian Water Means to the West: A Sourcebook* (Santa Fe: Western Network).

Michael Lawson, (1982) *Dammed Indians: the Pick-Sloan Plan and the Missouri River Sioux, 1944-1980* (Norman: University of Oklahoma Press).

Daniel McCool, (1987) *Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water* (Berkeley and Los Angeles: University of California Press).

_____, (2002) *Native Waters* (Tucson: University of Arizona Press).

Thomas R. McGuire, (1991) "Indian Water Rights Settlements: A Case Study in the Rhetoric of Implementation," *American Indian Culture & Research Journal*, 15:2: 139-169.

_____, William B. Lord and Mary G. Wallace, eds., (1993) *Indian Water in the West* (Tucson: University of Arizona Press).

Katherine Weist, (2001) "For the Public Good: Native Americans, Hydroelectric Dams, and the Iron Triangle," in Clow & Sutton, *Trusteeship in Change...op. cit.*, pp. 55-72.

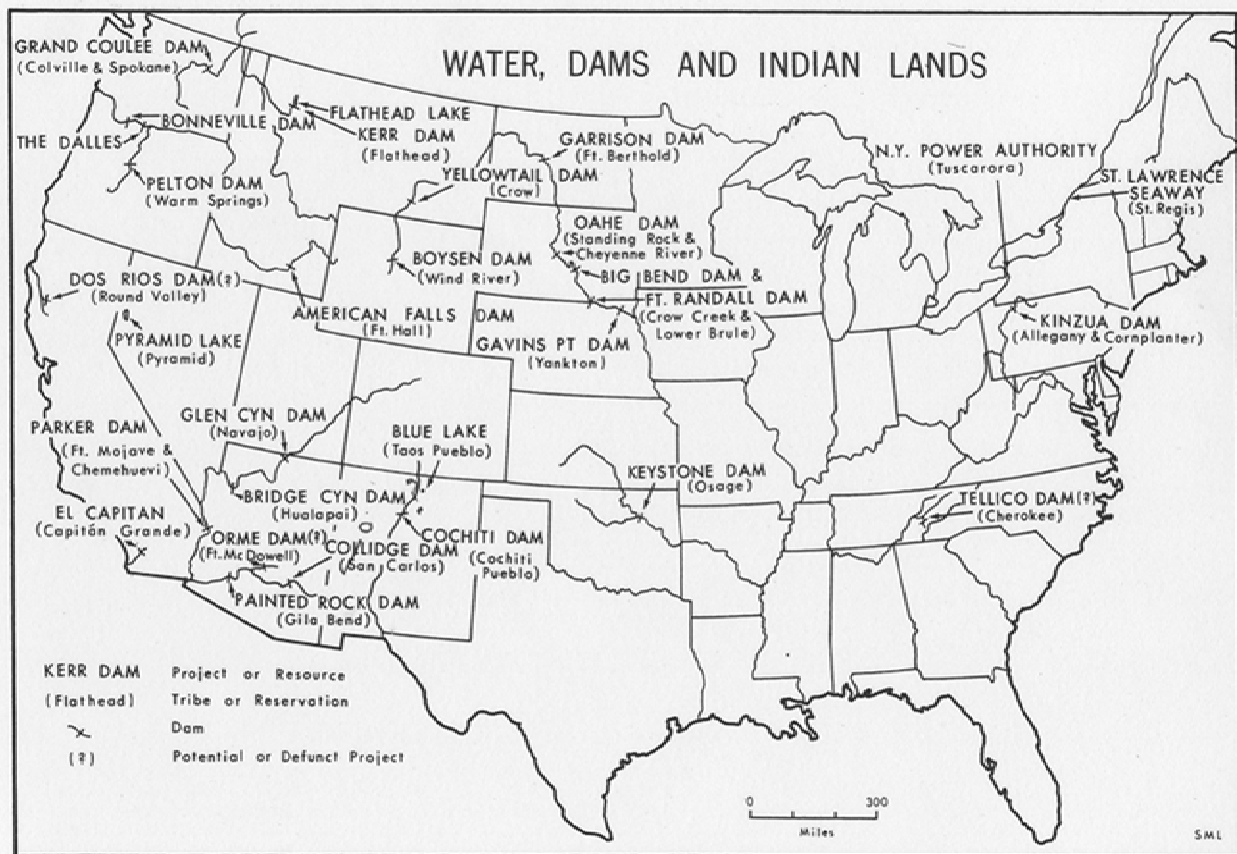


Fig. 5.1 Resource Management: Water and Dams. : Dams have been constructed on or adjacent to tribal lands with or without the consent of tribes. In some cases, inundation of tribal lands has disrupted Indian lives, economies, and ways of life. They have also caused the drowning of sacred places including burial grounds, although some efforts have been made to disinter remains. Note that Orme Dam in Arizona was never constructed. See discussions in Sutton (1975), Lawson, 1982 and Weist (2001). Map from Sutton (1975), p. 167. Map copyrighted by Imre Sutton.

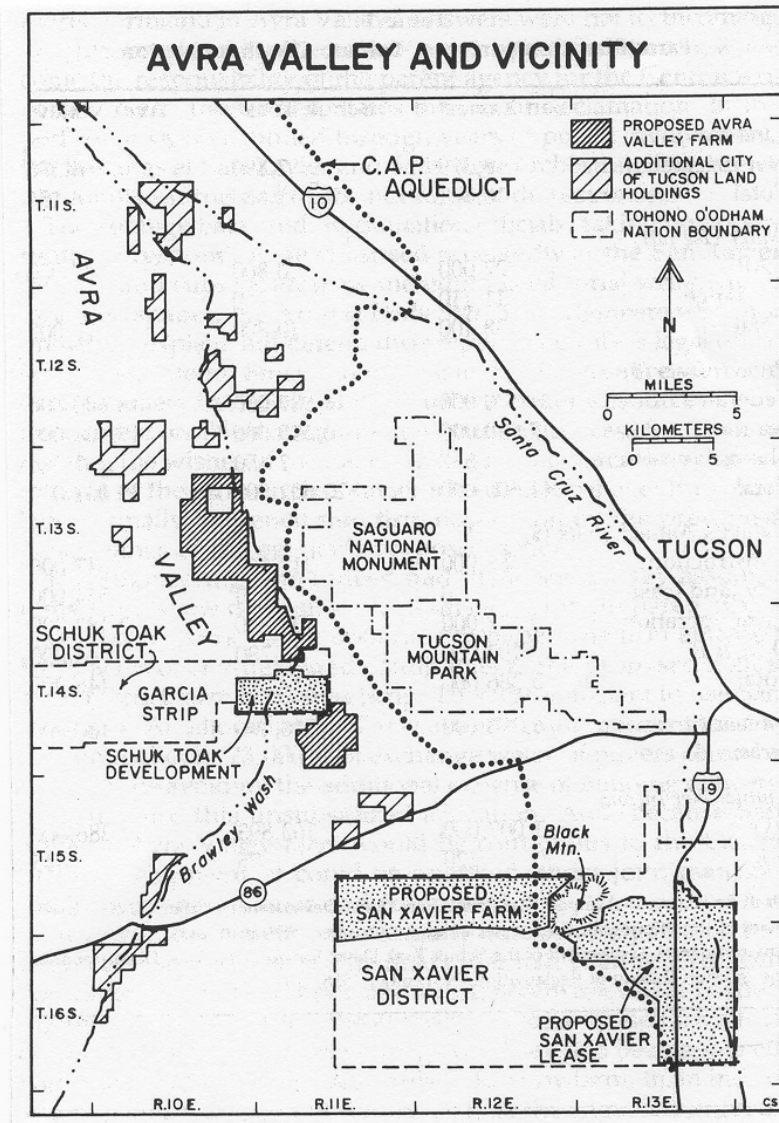


Fig. 5.2 A Water Example for the Tohono O'odam I. R., AZ and the Central Arizona Project. Map shows the route of the Central Arizona Project (CAP), which diverts Arizona's share of water from the Colorado River at Lake Havasu. The aqueduct cuts through a portion of the San Xavier unit of the Tohono O'odam I. R. and the tribe will benefit from leasing land and water to non-Indians. Similarly, the Colorado River I. R. also leases tribal lands for agriculture and by this means, lessees can secure the use of tribal water allotments from the Colorado River. Source: McGuire, (1991). Map used by permission of RUC and AISC.

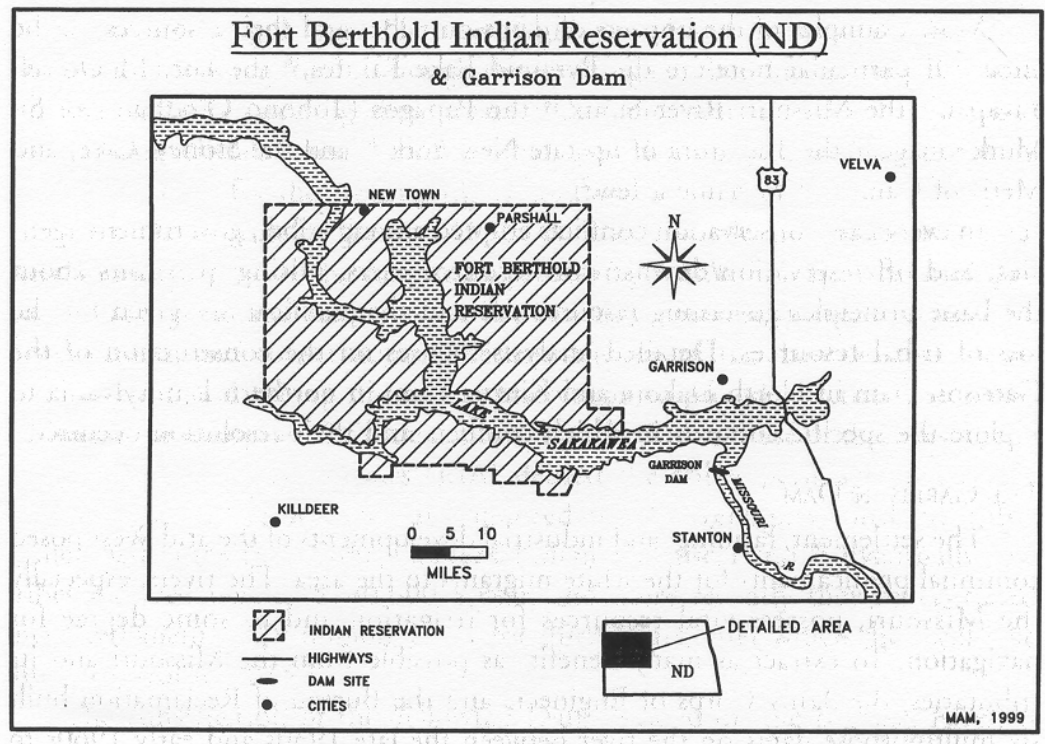


FIG. 5.3 The Garrison Dam on the Missouri River flooded a significant portion of the Fort Berthold I. R. in ND. It is not uncommon that Indian lands have been sacrificed in the name of flood control and power development. The Garrison project was part of the larger Pick-Sloan Plan for the Missouri River. For general background, *see* Lawson, 1982; for an update discussion of the impact of the project, *see* Weist (2001). Map used by permission of UPC.

Tribal Preservation Efforts and Programs

Many tribes today are planning and/or developing projects for the preservation of various natural resources. Wilderness is only category as in the case of the Yakama's Mt. Adams or efforts of the Flathead (See Krahe 2001) and the Wind River Indian Reservation. The Navajo are managing Monument Valley as a tribal park. More than one tribe will establish a museum. For example, the Mashantucket Pequot who operate the Foxwoods casino in Connecticut also have constructed a museum for which they hired Dr. Jack Campisi, an anthropologist, to guide its development. The Timbisha Shoshone, in seeking the restoration of some tribal lands within Death Valley National Park, intend developing a tribal museum. (See Haberfeld 2000). I would point that restoration of land places an important role in tribal preservation programs but the issue over restoration is much larger, more complex and far more political than legal.

Thomas Catton, (1997) *Inhabited Wilderness: Indians, Eskimos, and National Parks in Alaska* (Albuquerque: University of New Mexico Press).

Steven Crum, (1998), "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994" *American Indian Culture & Research Journal*, 22:1: 117-136.

Steven Haberfeld, (2000) "Government-to-Government Negotiations: How the Timbisha Shoshone Got Its Land Back," *American Indian Culture & Research Journal*, 24:4: 127-165

Robert H. Keller and Michael F. Turek, (1998) *American Indians and National Parks* (Tucson, University of Arizona Press).

Diane L. Krahe, (2001) "A Sovereign Prescription for Preservation: the Mission Mountains Tribal Wilderness," in *Trusteeship in Change: Toward Tribal Autonomy in Resource Management* (Boulder: Univ. Press of Colorado): 195-221.

Lawrence M. Lesko and Renee G. Thakali, (2001) "Traditional Knowledge and Tribal Partnership on the Kaibab National Forest with an Emphasis on the Hopi Interagency Management," in *Trusteeship in Change, op. cit.*, pp. 281-301.

Mark D. Spence, (1999) *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks* (NY: Oxford University Press).

Imre Sutton, (2001), "Indian Cultural, Historical, and Sacred Resources: How Tribes, Trustees, and the Citizenry Have Invoked Conservation," in *Trusteeship in Change, op. cit.*, pp. 165-193.

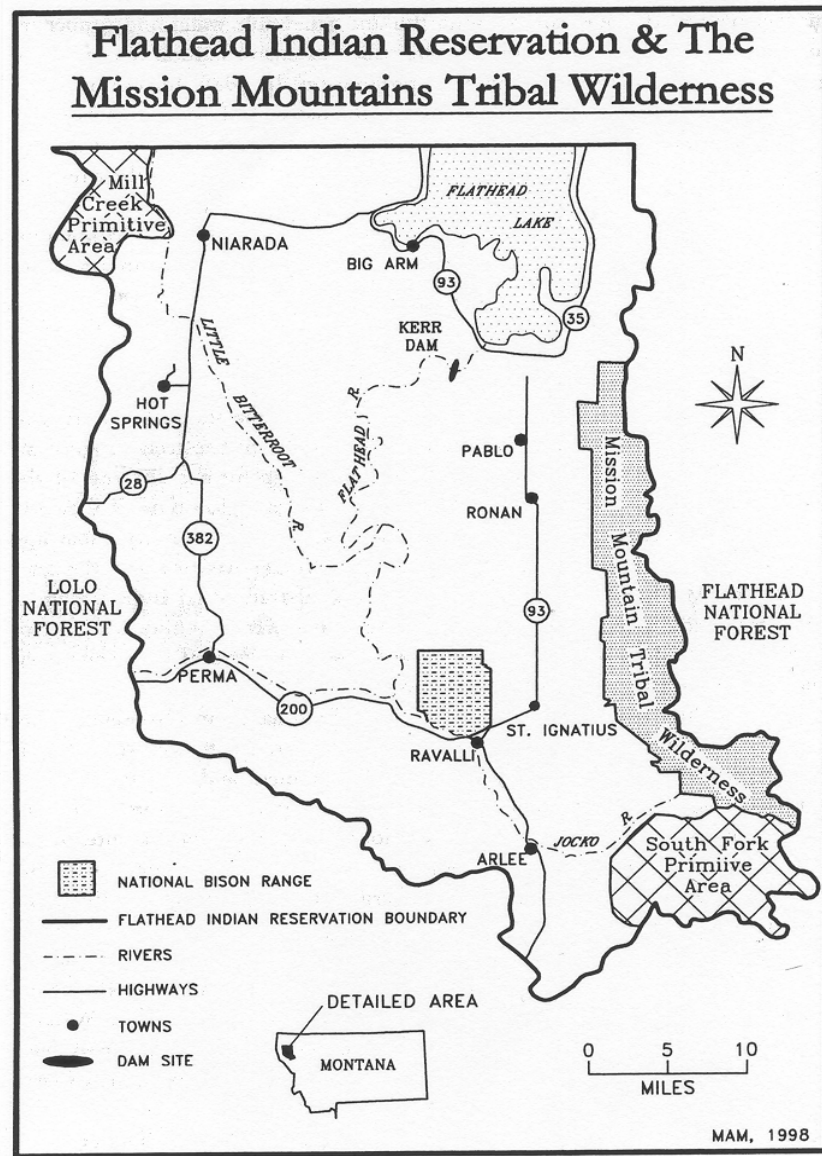


Fig. 5.4 Resource Management: a wilderness example. The tribes of the Flathead I. R., Montana, have established a preservation program for the Mission Mtns Tribal Wilderness. See Krahe (2001). The Yakama secured the transfer of a portion of the Mt. Adams Wilderness in Washington. See Sutton 1985. Many tribes have been developing their own preservation and management programs for scenic and other resources within their reservations. See Clow and Sutton, eds.(2001). Map used by permission of UPC and Diane Krahe, who designed the map.

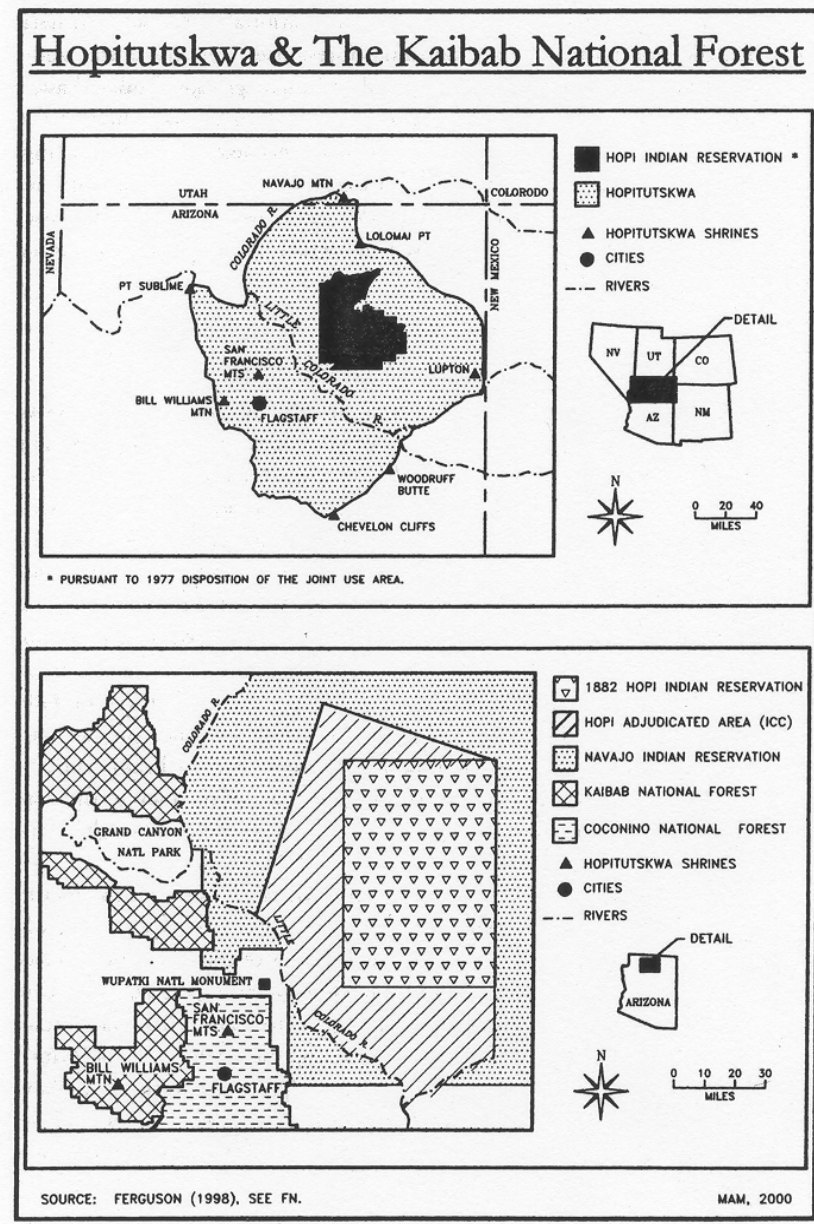


FIG. 5.5 Tribal Partnership with Land Agencies. The example is the Hopi participation in the management and protection of historic sacred places no longer part of tribal lands. In this case, the lands are administered by the Kaibab National Forest in Arizona. *Source:* Lesko and Thakali (2001). Map used by permission of UPC.

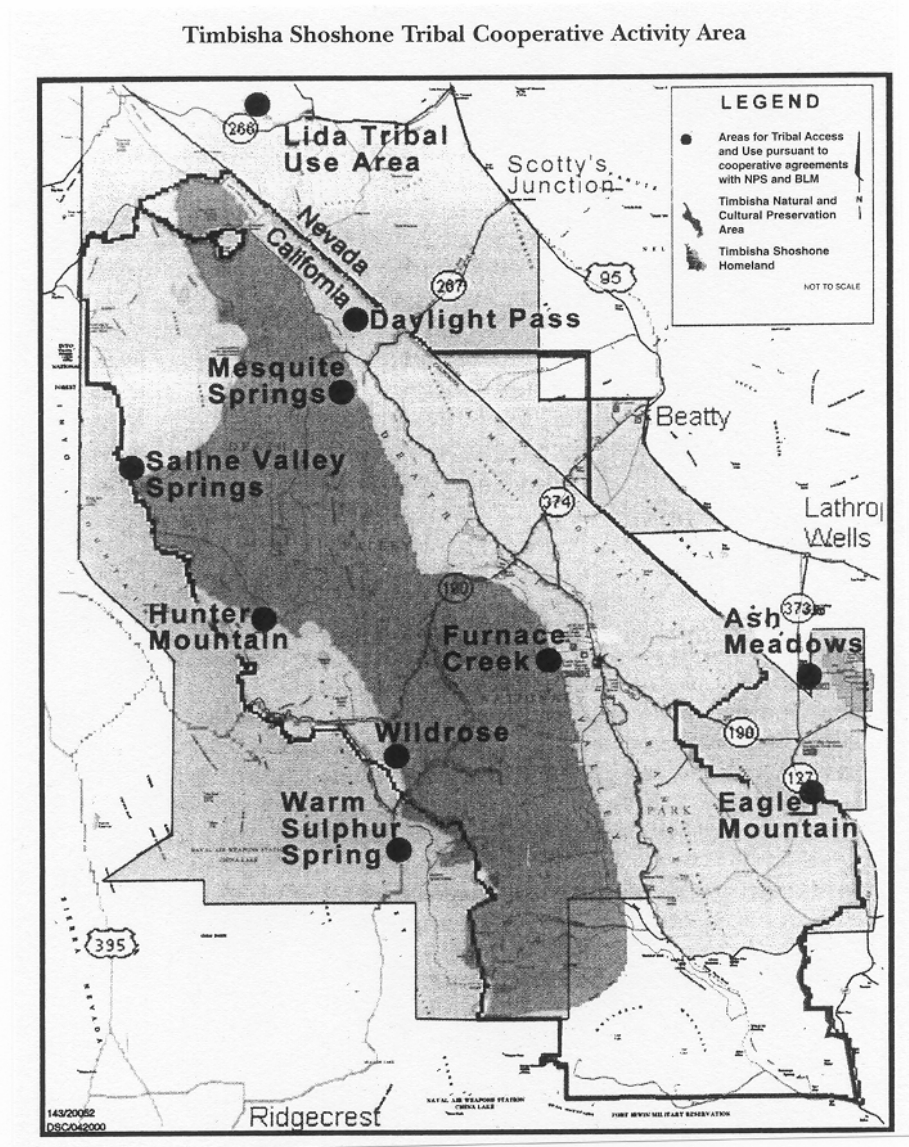


FIG 5.6 The Timbisha Example. The Timbisha Shoshone were not party to claims litigation either as a member of the Western Shoshone or California cases, and didn't benefit from any monetary awards. They continued to pursue a claim to lands within Death Valley National Monument (later Park). A partnership was finally agreed upon. See Haberfeld, (2000). Map used by permission of RUC and AISC.

6.

Land claims adjudication; land restoration, sacred places & repatriation

Tribal claims to lands taken without appropriate negotiations through treaty or statute, taken by unconscionable means, or by conquest, among other bases, forms a large body of documentation as well as literature. Researchers need to begin an exploration of the subject perhaps by examining a 'closing' document (see U. S. Indian Claims Commission 1979). (Researchers should also examine Royce 1899 under #2 on maps.) In addition to Royce's maps, see Hilliard (1972) and the map in ICC (1979). The claims process involved tribes, attorneys on both sides (U. S. being the defendant) and various expert witnesses such as anthropologists, economists, geographers, historians, and others. For a general review of the process and its selective cases, see Sutton, ed. (1985).

General Literature & Documents:

Russel L. Barsh, (1982) "Indian Land Claims Policy in the United States," *North Dakota Law Review*, 58: 1-82.

Ward Churchill, (1992) "The Earth is Our Mother: Struggles for American Indian Land and Liberation in the Contemporary United States," in *The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes (Boston: South End): 139-188.

Sam B. Hilliard, (1973) "Indian Land Cessions," [Map supplement to *Annals, Assn of American Geographers*, 62:3. (See my review: *Pacific Historical Review*, 42:1: 108.

_____, (1971) "Indian Land Cessions West of the Mississippi," *Journal of the West*, 10: 493-510.

Indian Claims Commission (ICC), (1979) *Final Report* (Washington, D. C.: Gov't Printing Office), including map, "Indian Land Areas Judicially Established," (in pocket).

Harvey D. Rosenthal, (1990) *Their Day in Court* (NY: Garland).

Norman A. Ross, ed., (1973) *Index to the Expert Testimony before the Indian Claims Commission: the Written Reports* (NY: Clearwater Pub.).

_____, (1973) *Index to the Decisions of the Indian Claims Commission* (NY: Clearwater Publ.)

Imre Sutton, ed., (2000) "The Continuing Saga of Indian Land Claims," *American Indian Culture and Research Journal*, 24:1: 129-198.

_____, ed., (1985) *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: University of New Mexico Press).

Richard H. Weil, (1987) *A Bibliography of American Indian Land Claims*, Public Administration Series: Bibliography, P2145 (Monticello, IL: Vance Bibliographies).

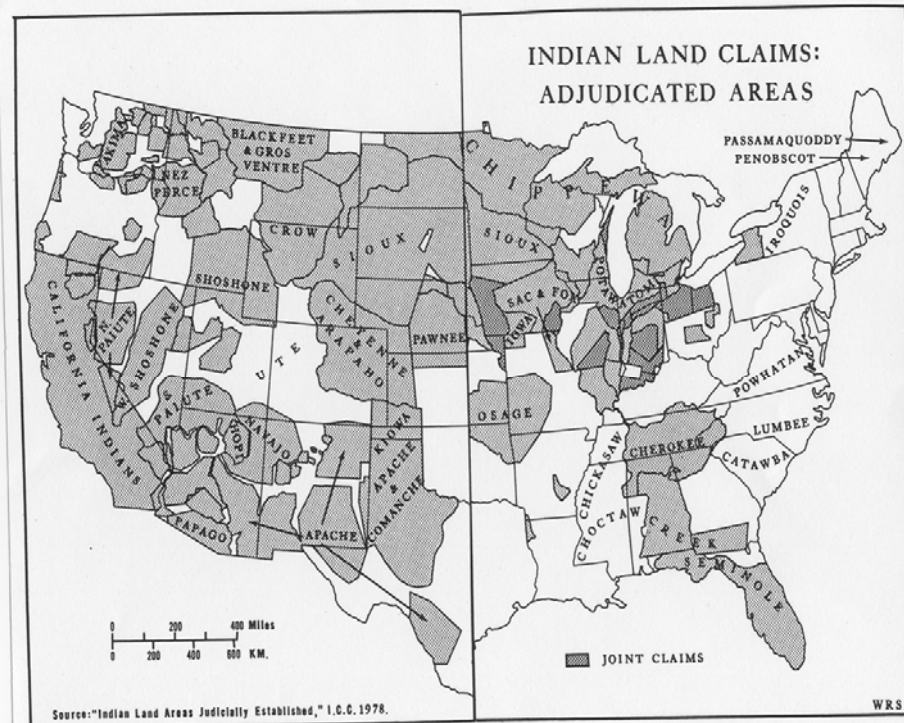


FIG. 6.1 Land Claims Judicially Established by the Indian Claims Commission. Source: ICC *Final Report* (1979); as modified in Sutton, *Irredeemable America* (1985). Few cases emanated from southern or eastern tribes, in part, because some Indian communities are unrecognized and otherwise can no longer ascertain their lands in terms of a claim. However, several New England claims were litigated. See Jack Campisi, (1985) "The Trade and Intercourse Acts: Land Claims on the Eastern Seaboard," in *Irredeemable America*, pp. 337-362. Several claims were supported by congressional legislation; e. g., see Christie (2000). Map used by permission of UNMPress.

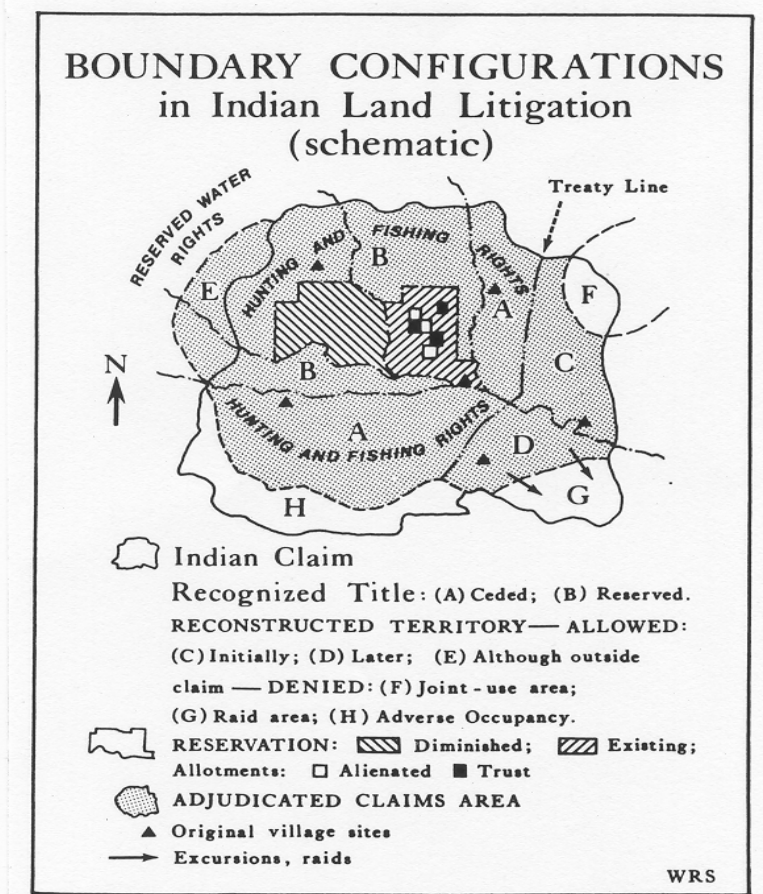


FIG. 6.2 Claims model . Not all of the elements of this schematic diagram refer to all litigated claims, but as a composite the scheme reports the scope of litigation in terms of land entities. Nearly all tribes could present data of recognized title because of the availability of the Royce atlas and text. More difficult was the recreation of original territory since such depended upon native informants, historic sources as by clergy, military, explorers and later by field officers of the Office (later Bureau) of Indian Affairs. Generally all existing trust land acreage was subtracted from the adjudicated claim area and other offsets involved expended monies in behalf of the tribes. *Source:* Sutton, (1985) "Configurations of Land Claims: Toward a Model," in *Irredeemable America*, map p. 127. Diagram used by permission of UNMPress.

Specific Cases:

Jack Campisi, (1991) *The Mashpee Indians* (Syracuse: Syracuse University Press).

John C. Christie, Jr., (1985) "Indian Land Claims Involving Private Owners of Land: A Lawyer's Perspective," in Sutton, *Irredeemable America*, *op. cit.*, pp. 233-246. [This is *Pechanga v. Kacor*]

_____, (2000) "The Catawba Indian Land claim: A Giant Among Indian Land Claims," *American Indian Culture & Research Journal*, 24:1:173-182.

David H. Getches, (1985) "Alternative Approaches to Land Claims: Alaska and Hawaii," in *Irredeemable America*, *op. cit.*, pp. 301-335.

E. Richard Hart, ed., (1995) *Zuni and the Courts: A Struggle for Sovereign Land Rights* (Lawrence, Ks: University Press of Kansas).

Gail H. Landsman, (1988) *Sovereignty and Symbol: Indian-White Conflict at Ganienkeh* (Albuquerque: University of New Mexico Press). [This deals with Mohawk]

Michael Lieder and Jake Rage, (1997) *Wild Justice: the People of Geronimo v. The United States* (N. Y.: Random House).

George C. Shattuck, (1991) *The Oneida Land Claims: A Legal History* (Syracuse: S. University Press).

Imre Sutton, (1988) "The Cartographic Factor in Indian Land Tenure: Some Examples from Southern California," *American Indian Culture & Research Journal*, 12:2: 53-80.

Christopher Vecsey and William A. Starna, eds., (1988) *Iroquois Land Claims* (Syracuse: S. University Press).

[Wenatchi], *see* falsepromises.com (text, maps, other data).

Findings as to Land Value and Payment for Tribal Lands:

As David Wishart notes, until his study (1990) no detailed analyses had been prepared for the total payments paid to tribes for lost lands. His study sought to arrive at specific payments for tribal territory as based on ICC requirements that land values had to reflect the time of taking. His pair of maps reflects payment to Indians and fair market value.

David J. Wishart, (1990) "Compensation for Dispossession: Payments to the Indians for Their Lands on the Central and Northern Great Plains in the 19th Century," *National Geographic Research*, 6:1: 94-109.

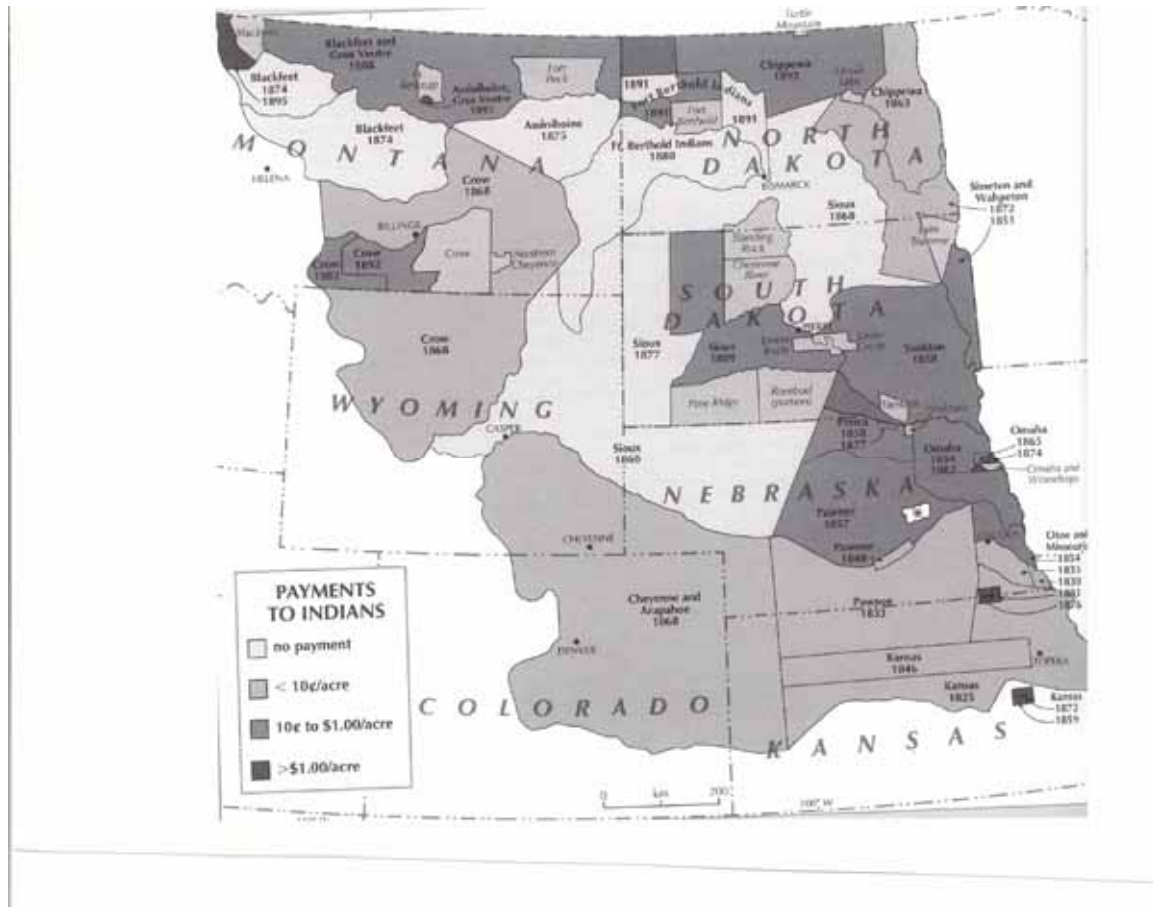


FIG. 6.3 Payments to Indians. Cession data are based upon Royce (1899) but with some modifications. Some smaller cessions were omitted. To be best appreciated, one needs to see the companion map, "Fair Market Value." See Wishart (1990): map pp. 100-101. Wishart notes that "...the overall geography of compensation can be largely explained by two main factors: the U. S. government's buying policy, and the developing dependency of the Indians on federal support." (ref. p. 100). The lightest tint represents 'no payment', the grey areas 10¢/acre, the dark grey 10¢ to \$1.00/acre and the black areas \$1.00/acre. Map used by permission of National Geographic Society and David Wishart.

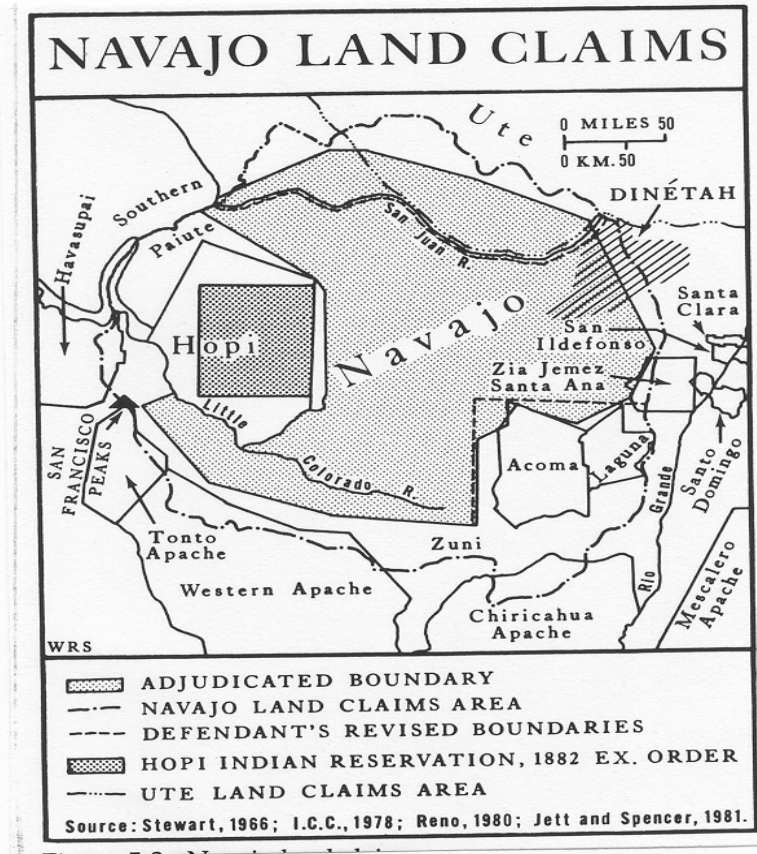


Fig. 6.4 Navajo Land Claims. The claims area reflects tribal identification of sacred sites such as mountains (e. g., San Francisco Peaks). The rectangular bounds on the southeast reflect competing claims by adjacent Pueblo peoples. At the time of the adjudication of the Navajo claim, the Zuni had yet to file a claim. See Sutton, ed. (1985); Reno (1980). Reno's study includes a map of aboriginal territory based mostly on sacred places and other data. Map used by permission of UNM Press.

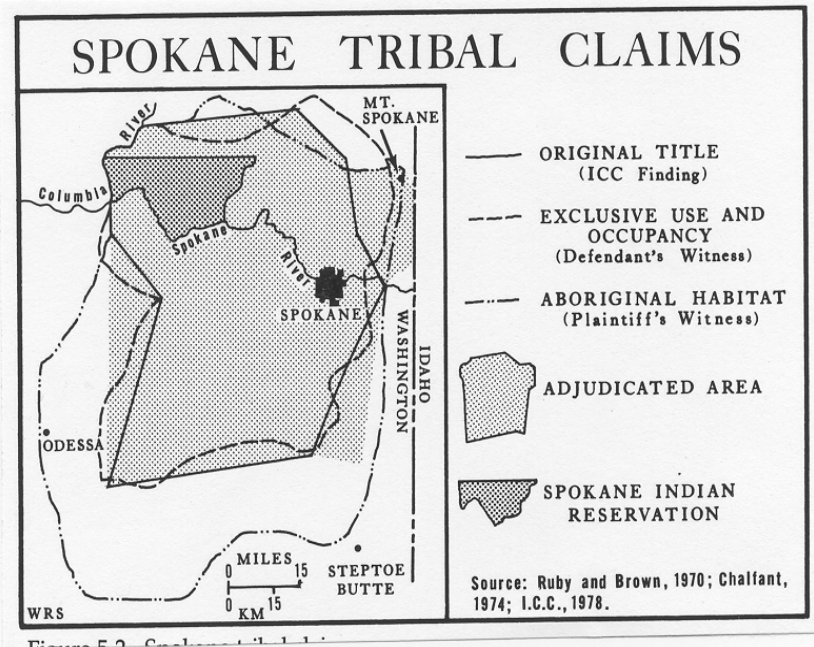


Fig. 6.5 Spokane Land Claims. This example provides cartographic data from both the plaintiff tribe and the U. S. defendant. Note the narrower definition provided by the federal governments expert witness. Similar differences appear in numerous land claims cases. Arriving at an adjudicated area relied upon not only older data but courtroom interpretations by expert witnesses. The ICC in this instance tended to concur more closely with the government's position. See Sutton, ed.(1985); Ruby and Brown (1970). Map used by permission of UNM Press.

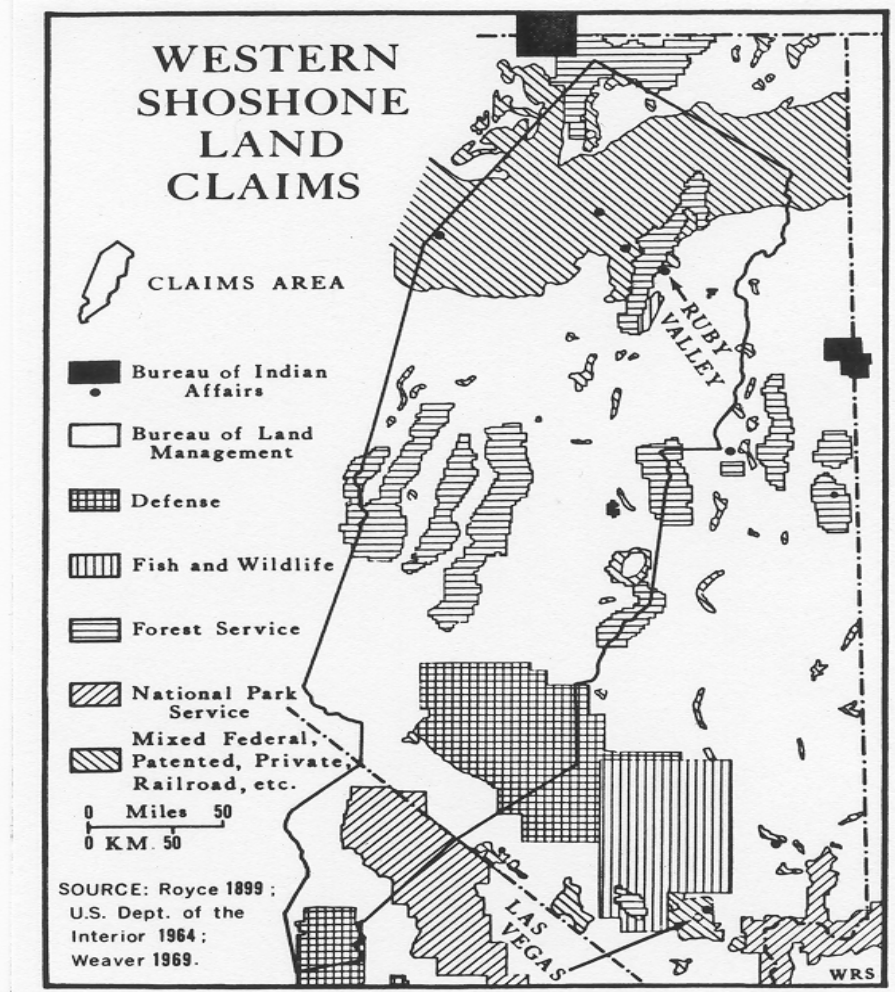


Fig.. 6.6 Western Shoshone Claims in Nevada and adjacent. This tribe, much divided among its membership, has to date refused to accept its monetary award. It still seeks a land restoration. Note that, despite the claim area extending into Death Valley National Park, the Timbisha Shoshone were not party to this litigation. Many tribal reconstructions reveal vast public land acreage such as national forests or parks or lands administered by the Bureau of Land Management. Some of these lands form parts of grazing allotments under the Taylor Grazing Act (1934). See Sutton, ed.(1985). Map used by permission of UNM Press.

Place/Identity, Sacred Sites and Indian Religious Freedom:

Editors, (1992) "The Native American Graves Protection and Repatriation Act [NAGPRA]," symposium, *Arizona Law Journal*, 24:1.

Andrew Gulliford, (2000) *Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Boulder: University Press of Colorado).

E. Richard Hart, ed., (1995) *Zuni and the Courts: A Struggle for Sovereign Land Rights* (Lawrence, KS: University Press of Kansas): chapters 19 and 20 on *Kolhu/wala:wa* (Zuni Heaven), pp. 199-219.

Klara Bonsack Kelley and Harris Francis, (1994) *Navajo Sacred Places* (Bloomington: Indiana University Press).

John F. Martin, (1985) "From Judgment to Land Restoration: The Havasupai Land Claims Case," in *Irredeemable America, op. cit.*, pp. 271-300.

Devon A. Mihesuah, ed., (1996) "Repatriation: An Interdisciplinary Dialogue," *American Indian Quarterly*, 20:2: 153-307.

_____, ed., (2000) *Repatriation Reader: Who Owns American Indian Remains* ((Lincoln: University of Nebraska Press).

Dean B. Saugee, (1996) "Tribal Voices in Historic Preservation: Sacred Landscapes, Cross-Cultural Bridges, and Common Ground," *Vermont Law Review*, 21: 145-224.

Jennifer Sokolove, Sally K. Fairfax, and Breena Holland, (2002) "Managing Place and Identity: The Marin Coast Miwok Experience," *Geographical Review*, 92:1: 23-44..

Imre Sutton, (1985), "Incident or Event? Land Restoration in the Claims Process," in *Irredeemable America, op. cit.*, pp. 211-232.

Christopher Vecsey, ed., (1991) *Handbook of American Indian Religious Freedom* (NY: Crossroad).

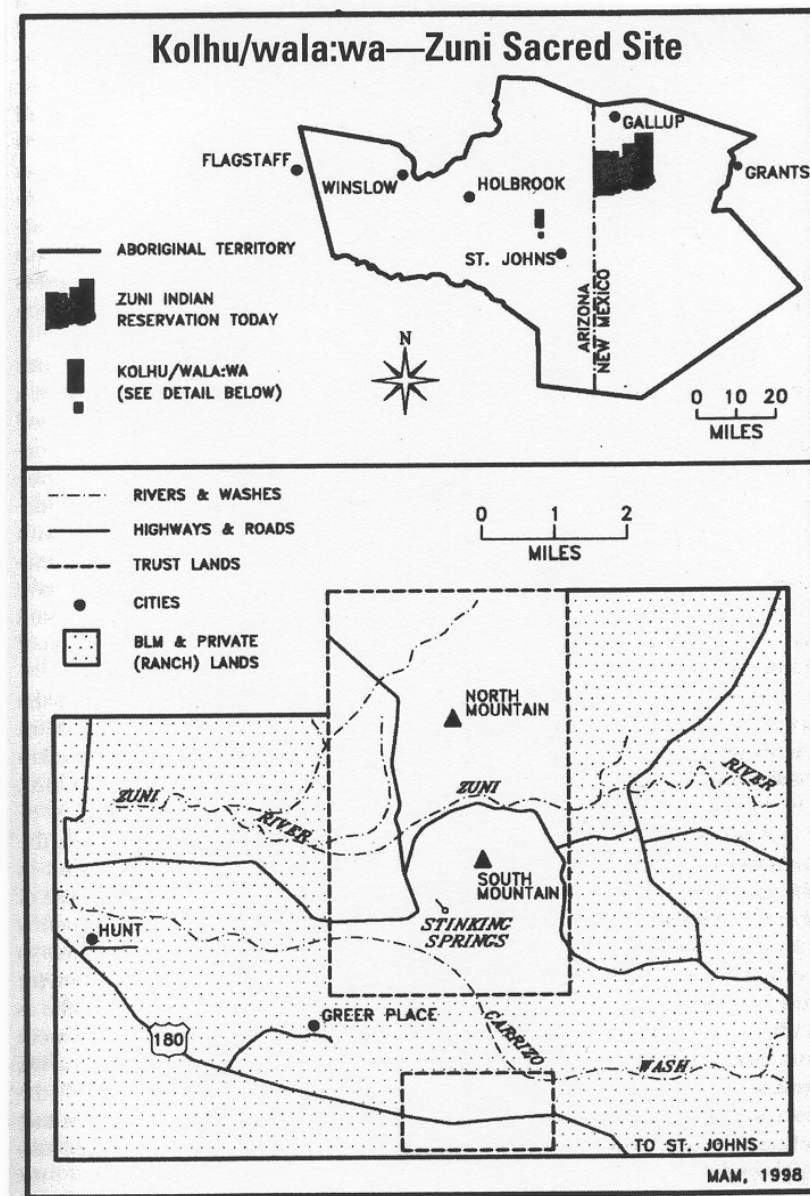


FIG. 6.7. Zuni Heaven, a land restoration subsequent to land claims litigation by the Zuni Indians. This new parcel exists across the state line in Arizona from the main body of tribal lands in New Mexico. See Hart (1995 & 2000). Only a few land restorations have taken place. Another in Arizona is the enlargement of the Havasupai I. R. See Martin (1985). The Indian Claims Commission Act of 1946 specifically excluded the restoration of land and focused on monetary awards. Map used by permission of RUC and AISC.

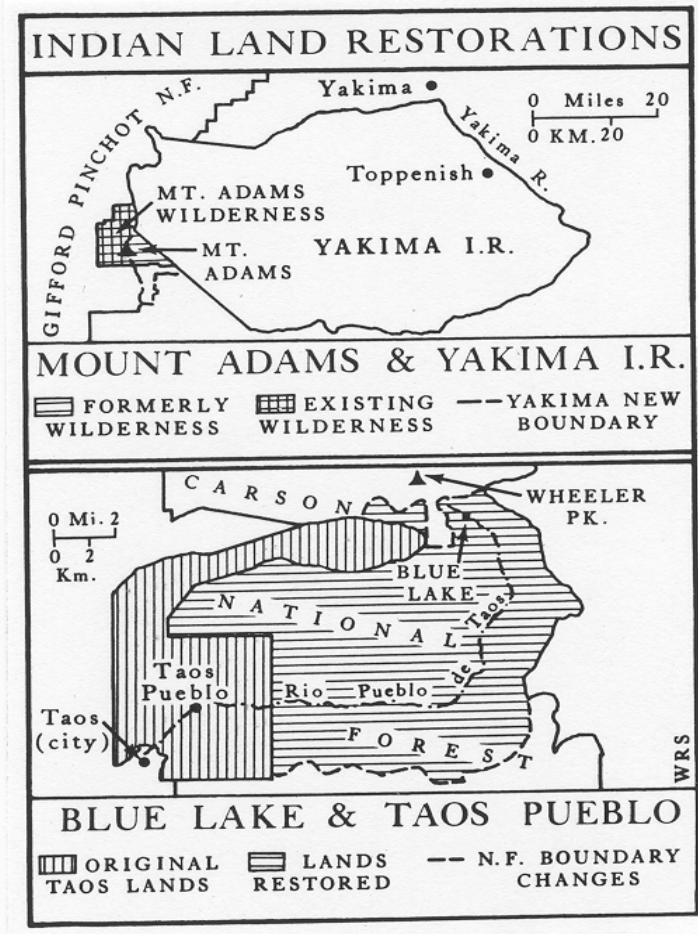


FIG. 6.8 Other examples of land restoration: Mt. Adams, WA and Blue Lake, NM. The Mt. Adams Wilderness as enacted separated part of the mountain from tribal territory and was later restored to the Yakama. Blue Lake was restored to the Taos Pueblo but only after nearly forty years of tribal efforts to secure this restoration, which includes part of the Kit Carson National Forest. See Sutton 1985. Map used by permission of the University of New Mexico Press.

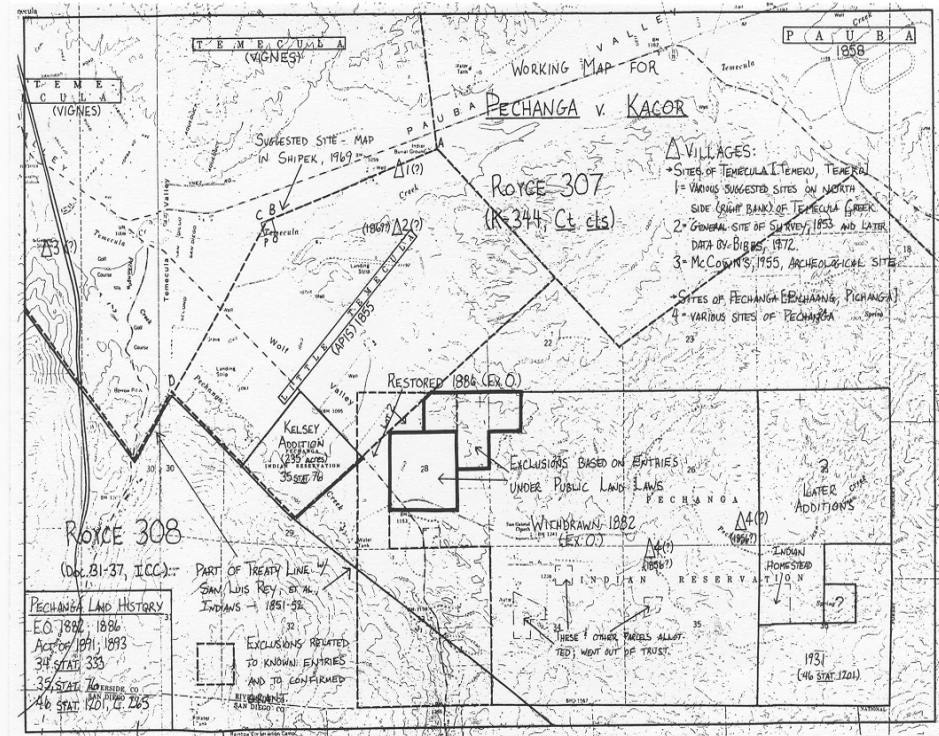


FIG. 6.9 Pechanga v. Kacor. A good example of the judicial resolution of a small land claim that involved a difference in the interpretation of homestead rights and law governing the private acquisition of land that the Pechanga Indians laid claim to. In fact, originally the parcels were identified in an executive order creating the reservation. However, bona fide entries had been made but the two offices involved in land matters did not confirm: the BIA and the GLO (the parent to the Bureau of Land Management). The Pechanga lost the case. See Christie (1985); map in Sutton (1988): p. 71. Today, the Pechanga operate a very successful casino and resort adjacent to a major interstate route linking the Los Angeles Metropolitan Area and San Diego. Map used by permission of RUC and AISC.

7.

*Indian Country: political territory; tripartite government,
& environmental jurisdiction*

Indian Country has legal meaning that limits its definition to include all forms of trust lands – reservations, allotments, other lands lying outside the boundaries of reservations. But one may assign a broader meaning that embraces the geographical reality of the civil divisions within which one finds trust lands. In this context, Indian Country constitutes a geographic area of tripartite government: federal, state (or its civil divisions such as counties and cities) and tribal. For its legal definition and discussion, *see* Getches et al 1998 and Deloria & Lytle 1983; for its broader interpretation, *see* Sutton 1991. The legal definition plays an important role in understanding the conflicting posture of states and their civil divisions, as well as the citizenry at large, in environmental issues relating to tribal lands.

Marjane Ambler, (1990) *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence, Ks: University Press of Kansas).

Brad A. Bays and Erin H. Fouberg, eds., (2002) *The Tribes and the States: Geographies of Intergovernmental Interaction* (Lanham, Md: Rowman & Littlefield).

Ward Churchill, (1999) "A Breach of Trust: The Radioactive Colonization of Native North America," *American Indian Culture & Research Journal*, 23:4: 23-70.

Vine Deloria, Jr., and Clifford M. Lytle, (1983) *American Indians, American Justice*: Ch. 3, pp. 58-79.

Allison M. Dussias, (1993) "Geographically Based and Membership-Based Views of Tribal Sovereignty: The Supreme Court's Changing Vision," *University of Pittsburgh Law Review*, 55:1: 1-97.

Bruce Duthu, ed., (1996) "Symposium: Stewards of the Land: Indian Tribes, the Environment, and the Law," *Vermont Law Review*, 21:1: 353-403.

Donald L. Fixico, (1998) *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (Niwot: University Press of Colorado).

David H. Getches et al, (1998) *Cases and Materials on Federal Indian Law*, pp. 21-22, 160-63, 438-69.

Carol Goldberg-Ambrose, (1999) *Planting Tail Feathers: Tribal Survival and Public Law 280* (Los Angeles: UCLA-American Indian Studies Center).

Donald A. Grinde and Bruce E. Johansen, (1995) *Ecocide of Native America: Environmental Destruction of Indian Lands and Peoples* (Santa Fe: Clear Light).

John S. Harbison, (1995) "The Downstream People: Treating Indian Tribes as States Under the Clean Water Act," *North Dakota Law Review*, 71: 473-495.

James W. Kuntz, (1997) "Nuclear Incidents on Indian Reservations: Who Has Jurisdiction? Tribal Court Exhaustion Versus the Price-Anderson Act," *American Indian Law Review*, 21:1: 103-129.

David R. Lewis, (1995) "Native Americans and the Environment: A Survey of Twentieth-Century Issues," *American Indian Quarterly*, 19: 423-450.

Stephen E. Silvern, (2002) "State Centrism, the Equal-Footing Doctrine, and the Historical-Legal Geographies of American Indian Treaty Rights," *Historical Geography*, 30: 33-58.

Dean B. Suagee and Patrick A. Parenteau, (1997) "Fashioning A Comprehensive Environmental Review Code for Tribal Governments: Institutions and Processes," *American Indian Law Review*, 21:2: 297-328.

Imre Sutton, (1991) "Preface to Indian Country: Geography and Law," in "The Political Geography of Indian Country," (symposium), *American Indian Culture & Research Journal*, 15:2: 3-36.

_____, (1976) "Sovereign States and the Changing Definition of the Indian Reservation," *Geographical Review*, 66:3: 281-95.

_____, (2001) "Tribes and States: A Political Geography of Indian Environmental Jurisdiction," in *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*, eds. Richmond L. Clow and Imre Sutton (Boulder: University Press of Colorado): 239-263.

David J. Wishart and Oliver Froehling, (1996) "Land Ownership, Population, and Jurisdiction: The Case of the Devils Lake Sioux Tribe v. North Dakota Public Service Commission," *American Indian Culture & Research Journal*, 20:2: 33-58.

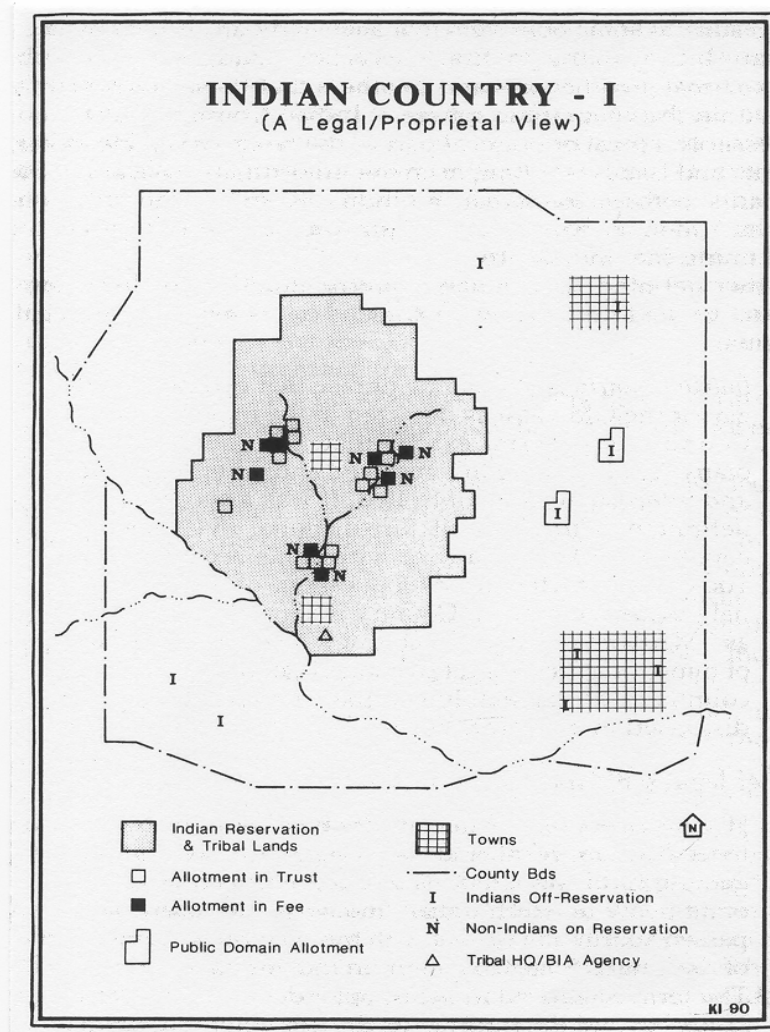


Fig. 7.1 This series of three maps depicts the traditional legal definition of Indian Country and then ultimately the larger geographical Indian Country which is the political geographical reality affecting virtually all daily relations between tribes, individual Indians and families, and non-Indian communities on and off the reservation as well as government personnel at the federal, state and local levels. Map from Sutton (1991). Map used by permission of RUC and AISC.

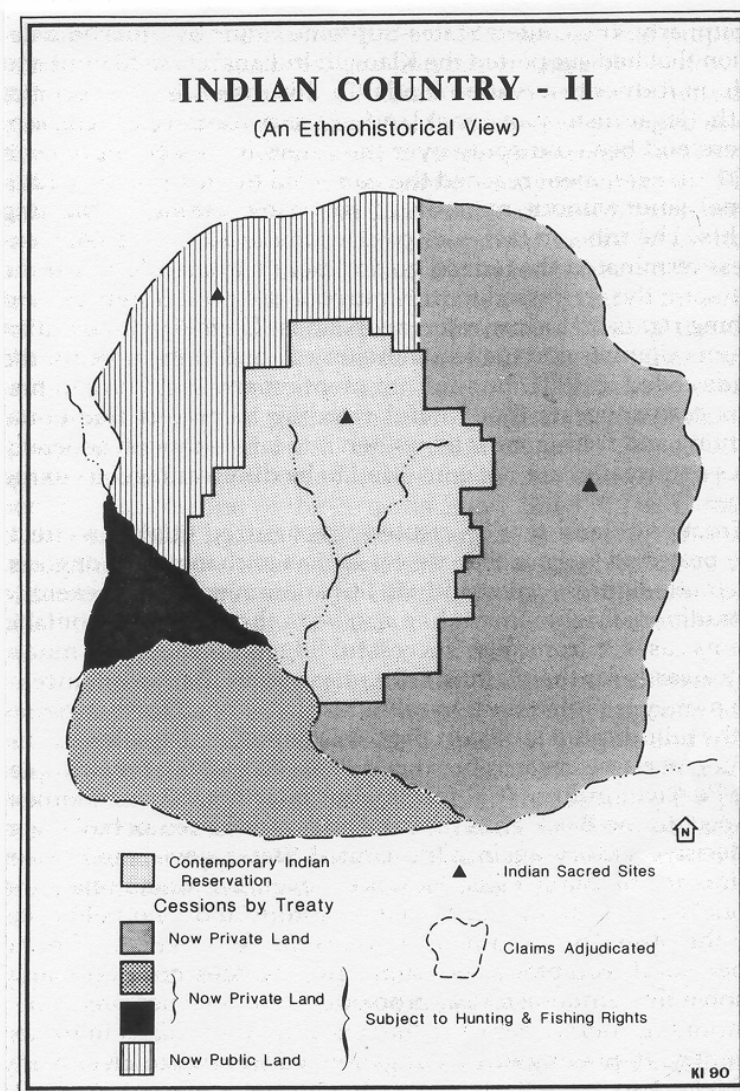


Fig. 7.2. A post-contact view of Indian Country, when lands were ceded and became part of the public domain, then opened to homesteaders, miners, and others. Many of the current conflicts leading to litigation between tribes and states relate to former tribal territories now part of various public lands held by states or the federal government. See Silvern (2002); map from Sutton (1991). Map used by permission of RUC and AISC.

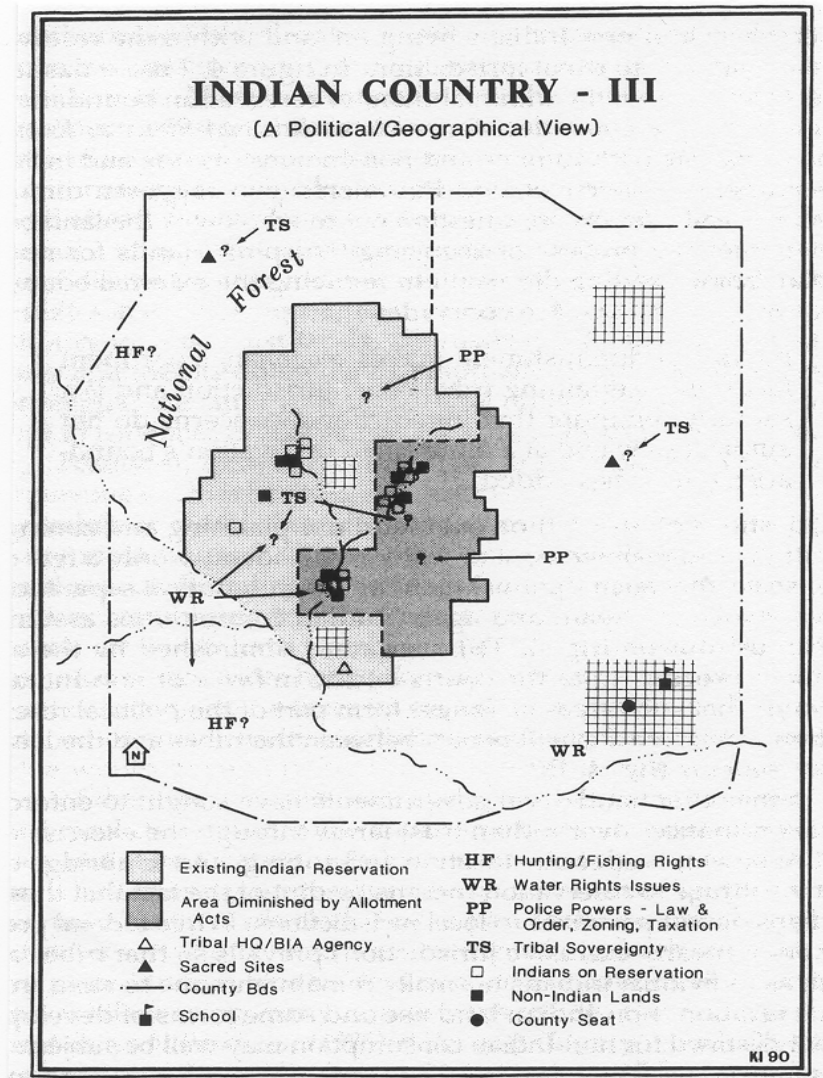


Fig. 7.3. A modern-day view of Indian Country, involving nearby communities, and the county and state in which trust lands are located. Not all observers agree on defining Indian Country in this way, preferring its more limited legal definition. Cf. Deloria and Lytle (1983). Map from Sutton (1991). Map used by permission of RUC and AISC.

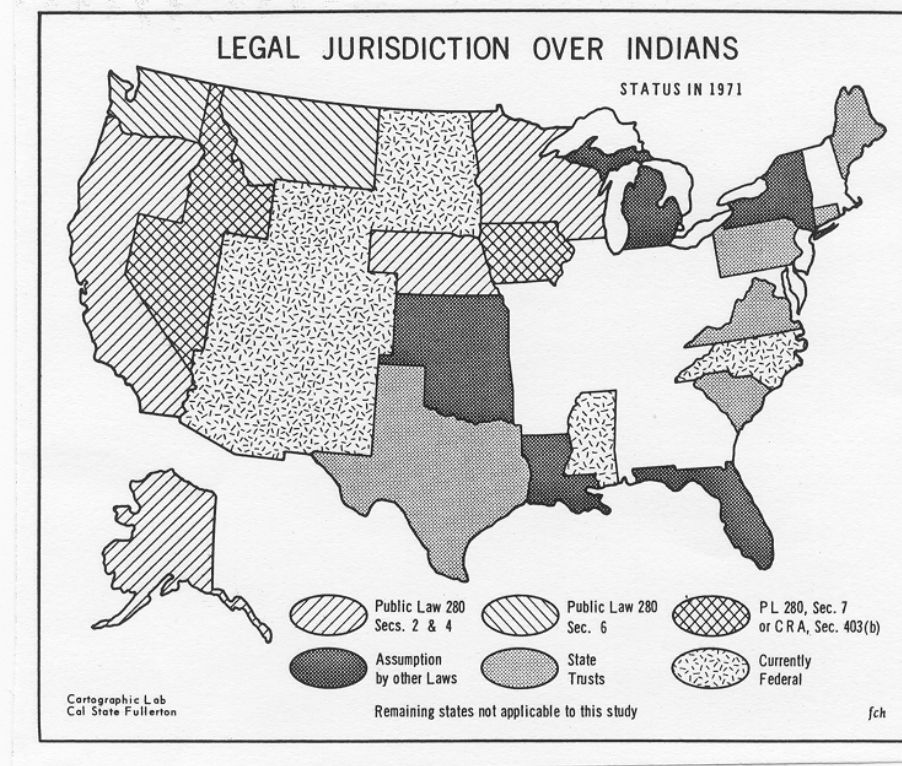


FIG. 7.4 Jurisdiction – A historic example of the application of P. L. 280 (1953), which assigned certain civil and criminal jurisdiction to various states, but later was overturned by provisions of the Indian Civil Rights Act (1968). Some states had sought jurisdiction over taxation, planning, zoning and environmental authority on reservations. See Goldberg-Ambrose (1999); map from Sutton (1975). In limited ways, and not without controversy, aspects of P. L. 280 survive in a number of reservation states. Map copyrighted by Imre Sutton.

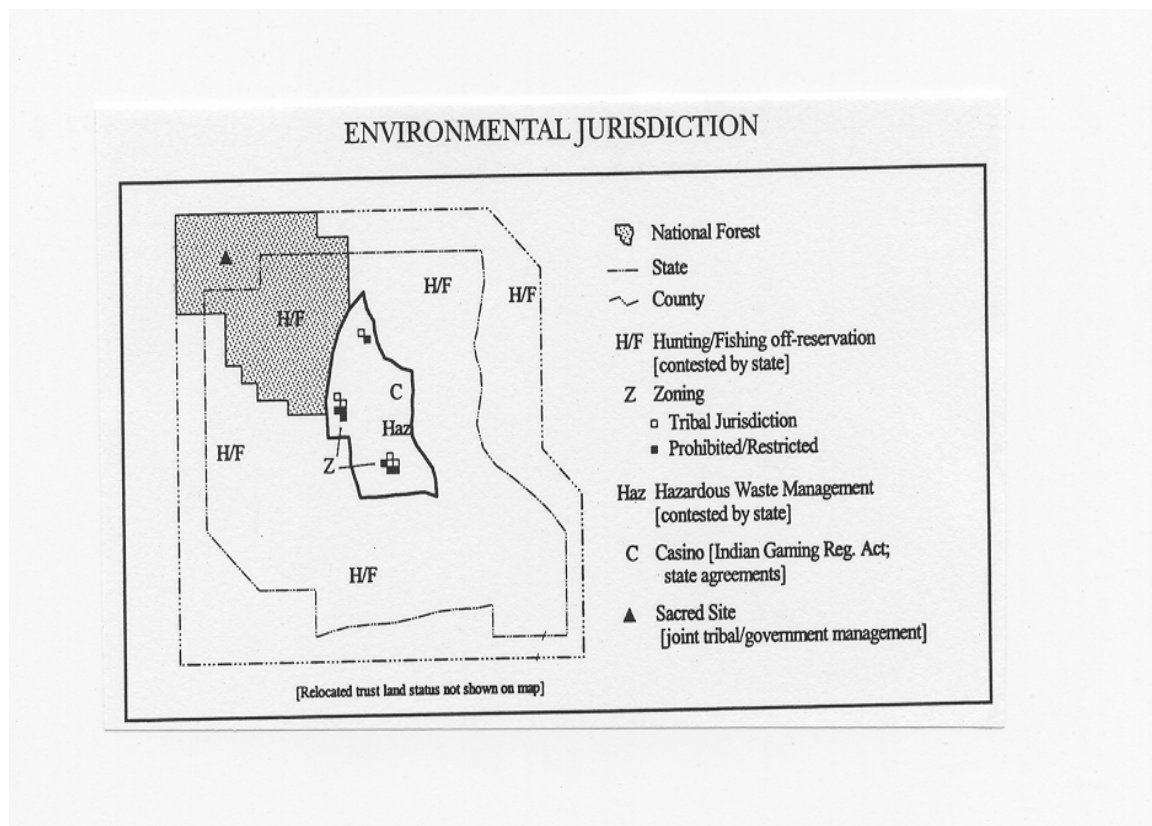


FIG. 7.5 A generalized portrayal of jurisdictional issues, normally pitting Indian tribes against states and/or local civil divisions within Indian Country. Many states that include tribal trust lands assume jurisdictions that are contested in litigation but are often not readily resolved. Map from Sutton (2000). Map used by permission of RUC and AISC.

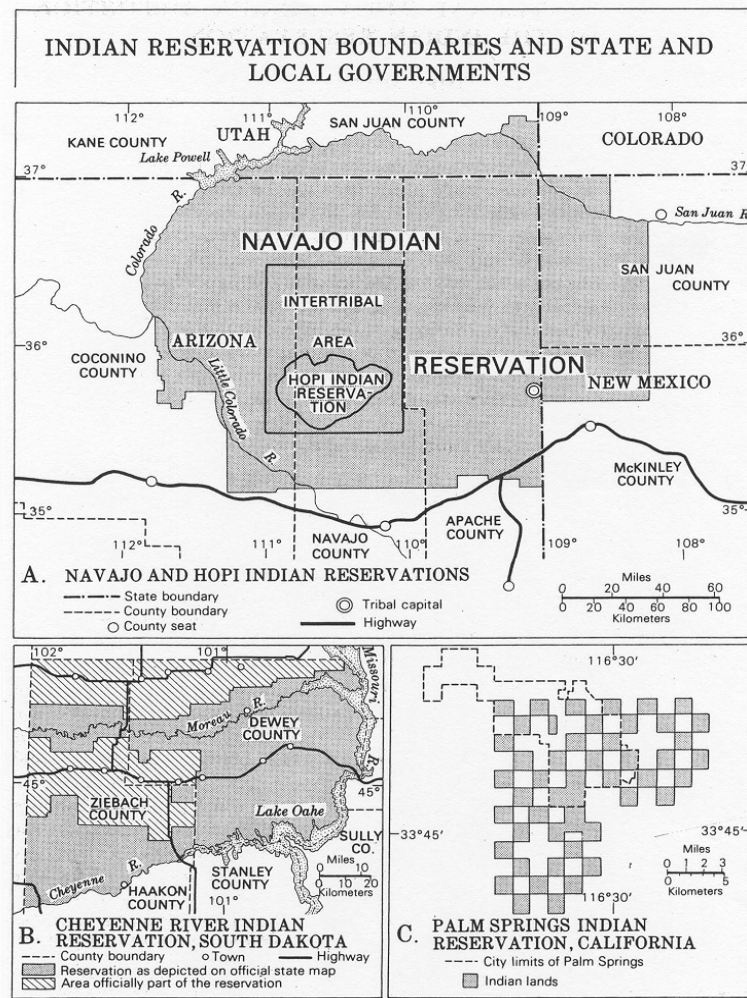


FIG. 7.6 State and Tribal Land Boundaries and Conflicts. *See Sutton (1976).* In each example, reservation boundaries overlap political units. For the Navajo, the distinctions have been mostly within Arizona, where the state in the past has attempted to isolate the reservation as a unique county from the three counties that run north-south through the reservation. *See Phelps (1991).* For the Cheyenne River I. S., as with all reservations in SD, the state gained the advantage in not acknowledging counties overwhelmingly non-Indian in population. *See Sutton (1991).* A more critical relationship has existed between the Agua Caliente Indians and the city of Palm Springs, where at one time the city sought to zone Indian land use. *See Sutton (1967).* Map from Sutton (1976). Map used by permission of the American Geographical Society, N. Y.

The tribes continue to deal with controversies emanating from local civil division and citizens, but also from states. In some cases, public and private enterprises seek resolution in court of jurisdictional issues involving the authority of tribes—e. g., the functions of utilities and rights-of-way on reservations. Demographics may enter into the conflict and in the Fort Totten case. Here the distribution of lands held by Indians and non-Indians dominated the court's decision to deny tribal jurisdiction over non-Indians and their lands, despite the fact that more Indians than non-Indians reside on the reservation.

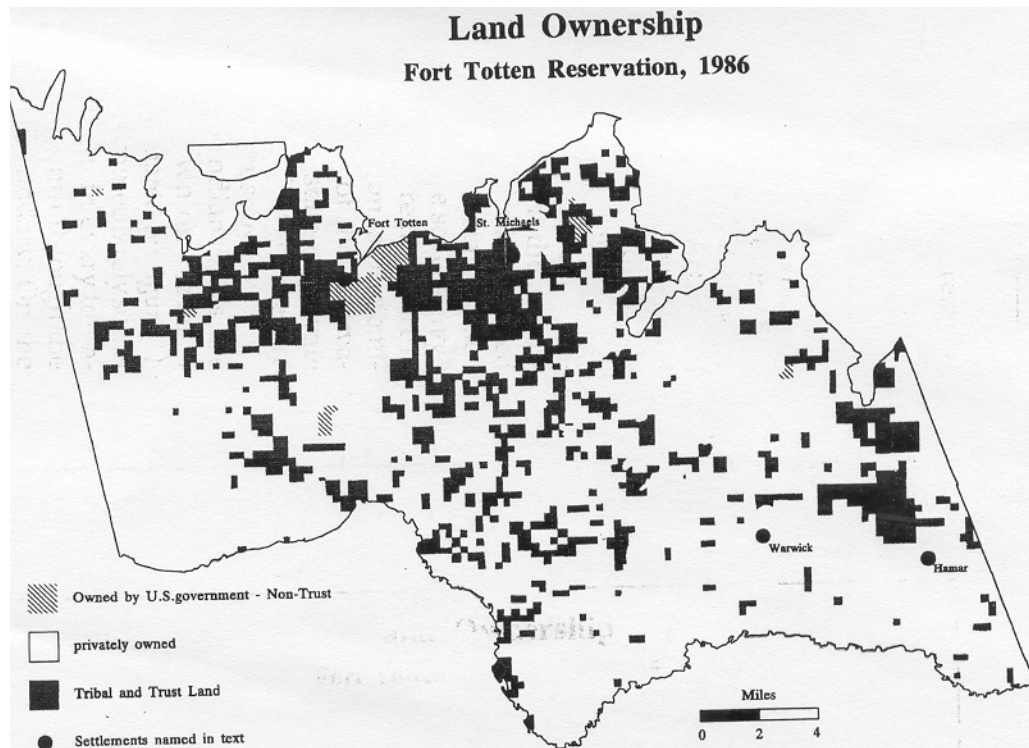


FIG. 7.7: Land Ownership, Fort Totten I. R., ND, 1986. Original data from the Bureau of Indian Affairs, map source: Wishart & Froehling (1996). Map used by permission of RUC, AISC and David Wishart.

Casinos and Gaming:

These studies include articles about Indian casinos and various maps, as of the Foxwoods casino/resort in Connecticut. There are also maps for North and South Dakota, and Oklahoma. Other studies include evaluations of Indian gaming. Trust land status predicates tribal capacity to develop casinos on reservations. Under the National Indian Gaming Act, 1988 Congress mandated that tribes and states are to negotiate and tribes must meet state gaming regulations. States are asked to enter into agreements in good faith with tribes. In a number of states, joint agreements between state officials and tribal leaders have negotiated favorable agreements that benefit both sides. (E. g., Foxwoods, in CT, returns a portion of certain revenues to the state as well as pays to support a larger security force in and around the casino-resort.) In many western states, one governor signed on, a subsequent one has refused to endorse native gaming and litigation has ensued. In California, the former governor (Gray Davis) supported tribal gaming; he benefited from tribal financial support in election campaigns. Many states seek revenue in some form other than tax.

An intriguing aspect of IGRA is § 2719 which provides a wide range of options for the establishment of casinos on lands not then part of reservations at the time the law was enacted. (*See* Mason 2000: 217 and the act, 25 USCS). Some tribes and bands have sought to acquire parcels of land at some distance from their reservations; other Indian communities that are seeking recognition also pursue the idea of acquiring land for casinos. Some land choices have not been within aboriginal territory, raising serious questions about their validity. Local Chumash Indians in Ventura County, California, protested the potential acquisition of land within the city of Oxnard by a group of Miwok Indians from upstate, far from their home territory. But the law does not spell out any limiting conditions related to aboriginal territory. In my mind, these proprietorial questions suggest the potentiality for litigation and legislative changes.

Few maps depict the current efforts of some gaming tribes to acquire adjacent lands for the expansion of resort development. Moreover, unless one approaches tribes, it may be some time before there are accurate maps showing newly acquired aboriginal acreage that tribes are purchasing with gaming revenue. Carmichael and Peppard (1998) report the efforts of the Foxwoods Casino in Connecticut to expand onto adjacent lands. Because such events are still on-going, often the local newspapers offer better coverage. For example, the *Los Angeles Times* (Oct. 20, 2003, A1,A13) recently reported "Tribes Buying Back Ancestral Lands." The discussion focused mostly on tribes (bands) in California. A significant example is the Pechanga Tribe's acquisition of a parcel between the main reservation and an outlier; today that parcel contains a hotel resort.

Brad A. Bays, (1998) "Tribal-State Cooperation or Contention? The IGRA and Indian Gaming in Oklahoma," in *Casino Gambling in America: Origins, Trends*

and Impacts, K. J. Meyer-Arendt and R. Hartmann, eds. NY: Cognizant Communication Corporation):

Carl A. Boger, Jr., Daniel Spears, Karen Wolfe and Li-chun Lin, (1999) "Economic Impacts of Native American Casino Gaming," in *Legalized Casino Gambling in the United States: The Economic and Social Impact*, Cathy H. C. Hsu, ed., (N.Y.: The Haworth Press): 135-54. Unfortunately neither

Barbara A. Carmichael and Donald M. Peppard, Jr., (1998) "The Impacts of Foxwoods Resort Casino on Its Dual Host Community: Southeastern Connecticut and the Mashantucket Pequot Tribe," in *Tourism and Gaming*, pp. 133-136. [This chapter contains an older map showing potential lands that the Foxwoods Casino has been seeking to purchase. This map was prepared by Milton Moore on staff with the *New London Day*, CT.]

Anne-Marie d'Hauteserre, (1998) "Foxwoods Casino Resort: An Unusual Experiment in Economic Development," *Economic Geography*, extra issue, pp. 112-121.

Alan A. Lew and George A. Van Otten, eds., (1998) *Tourism and Gaming on American Indian Lands* (NY: Cognizant Communication Corporation).

Klaus J. Meyer-Arendt and Rudi Hartmann, eds., (1998) *Casino Gambling in America: Origins, Trends and Impacts* (NY: Cognizant Communication Corporation).

W. Dale Mason, (2000) *Indian Gaming: Tribal Sovereignty and American Politics* (Norman: University of Oklahoma Press).

Angela Mullis and David Kamper, eds., (2000) *Indian Gaming: Who Wins?* (Los Angeles: UCLA American Indian Studies Center).

Lura Hansen Smith, (2002) "The Struggle over the Geographic Expansion of Indian Gaming," in *The Tribes and the States: Geographies of Intergovernmental Interaction* (Lanham, MD: Rowman & Littlefield): 101-117.

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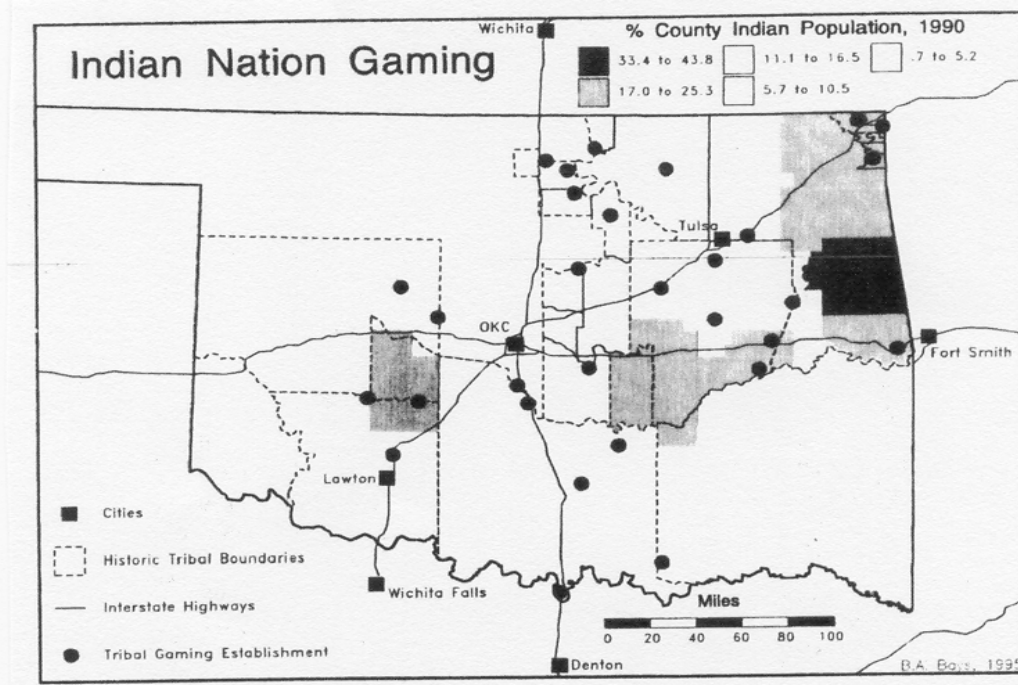


Fig. 7.8: Indian Nation Gaming, circa 1995. Source: Bays (1998). There are various maps of Indian casinos in publications and online. This distribution does not suggest the classic role of location. Some casinos, of course, thrive more so than others by location, but gamblers tend to seek out casinos even if in rural backcountry. Few tribes have the advantage of urban/suburban locations. Mason, 2000 (p. 217), reported that the Eastern Shawnee Tribe was operating a bingo hall in Seneca, MO, just across the border. What is not revealed here is that two other Oklahoma tribes were seeking options to establish casinos in aboriginal territory – The Delaware of Western Oklahoma in New Jersey, and the Miami Tribe of Oklahoma in Ohio. His map (p. 178) updates to 1998. Map used by permission of Cognizant Communication Corporation.

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Glossary

[Note: This glossary has been adapted, with the permission of the publisher, from Richmond L. Clow and Imre Sutton, eds (2001) *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*, (Boulder: University Press of Colorado)].

Aboriginal title

Also called original title. Refers to Indian land not identified with land cessions that were documented in treaties and agreements. Generally, a title to territory of considerable square miles reconstructed from Indian informants, ethnographic and historic research and other sources.¹

Acknowledgment

A contemporary process by which an Indian community is recognized by the federal government; Indians must prove that their tribal affiliation and association has persisted to present; sometimes called recognition. When secured, usually grants a tribe and its members eligibility for federal funds and services; may also make possible the acquisition of trust land.²

Agreements

A legal instrument defining specific relations between a state (or local government) and a tribe that is normally recognized and holding trust land or reservation. Currently these agreements involve the operation of casinos subject to the National Indian Gaming Act (1989). Such agreements require the signature of the state governor and tribal chair, and may even require vote of the state legislature or be based on enactment of a general law granting the governor the power to negotiate with tribes. Sometimes called compacts.

Alienation

Alienation is the more legal term for sale, and refers to "the voluntary and absolute transfer of title and possession" of property. In non-legal context as applied to Indian affairs, alienation often connotes less than satisfactory alternative because it leads to the loss of trust lands.³

Allotment

A parcel of land inside or outside of reservations, authorized usually by Congressional legislation and distributed in severalty to individual Indians. When it is beyond reservation borders and located on the public domain, they are often referred to as Indian homesteads. The allotment is held in trust by the United States, but can be alienated through sale. Allotments cover at least 50% of all reservations, mainly in western United States. On average, they are 80 to 160 acres in size, but may be as small as 5 acres or as large as 640 acres. Although established selectively prior to 1887, the General Allotment Act provided the mechanism for most allotments. Allotments are subject to the devise or inheritance laws of the state in which they are found. Complex heirship problems have resulted from allotments left when an owner dies intestate, which thus encumbers long-term use of such lands. See also land consolidation.

Boundaries

Sometimes called borders, delimited and delineated on paper and demarcated on the ground, representing the limits of tribal territory and individual Indian allotments. In Indian affairs, there are many kinds of boundaries, those that were diminished by Congressional legislation that opened so-called surplus lands for non-Indian purchase. Such boundaries are fluid with respect to non-Indian landowners and operators within reservations. See also closed and open areas.

Burial grounds; see repatriation

Closed areas.

Pursuant to *Brendale v. Confederated Tribes of the Yakima Nation* [109 S. Ct. 2994 (1989)], the U. S. Supreme Court determined that those areas of the reservation mostly held in trust for the tribe and occupied by most tribal members was closed area in terms of tribal authority to zone. While specific to this tribe, it has potential application elsewhere in Indian Country for it bears on tribal authority over non-Indian ownership and/or lease utilization of lands within the borders of a reservation. See also *Devils Lake Sioux Tribe v. North Dakota Public Services Commission* [U. S. District Court, Dist. of N. D. -- Southwestern Div.,# A1-90-179., 3 February 1993;]. See also open areas.

Extraterritorial

In the 19th century, extraterritorial meant "being beyond or without the limits of a territory or particular jurisdiction." Then, tribes occupied areas extraterritorial to the newly formed territories or states; even Indian Territory was,

at first, extraterritorial and later became part of Oklahoma. The inference is that the tribes originally were independent and treated as sovereigns. Today, extraterritorial has a modified meaning in international law and applies to an embassy. It does not apply to reservations or other trust lands; they are fully within state boundaries even though they are semi-autonomous units mostly responsible to federal authority.⁴

Federal Indian Law

Countless laws, treaties, agreements, and court decisions that involve tribes and individual Indians. Much of it may be located in Title 25, U. S. Code, but it also applies to other federal agencies, states and local governments. It is not a separate body of law ordained by the Constitution or by Congress.⁵ Federal Indian law is not tribal law, which is unique to each tribal nation.

GIS

Geographical Information Systems is a relatively new, sophisticated technology focusing on gathering and analyzing environmental data. It utilizes a number of methods, including satellite and ground technology, traditional maps, computer graphics.⁶

Indian Country

The legal meaning of Indian country (lower case 'c') embraces all Indian communities, reservations, allotments, and public domain trust lands for Indians. A broader meaning, based on political geography, embraces the state and local governments within which trust lands are found. While not having specific legal force except in criminal law (Title 18, U. S. Code), it recognizes that tribes interact with non-Indian citizens and governments in the hinterland and many legal interactions result from agreements over casinos and jurisdictions over civil and criminal matters.⁷

Indigenous planning

A planning process involving the full participation of indigenous peoples or tribes such as American Indians, Native Hawaiians, Eskimos. It focuses often on traditional environmental interpretations and culture ways. Today, it is closely linked to self-determination.

Land cessions

Land cessions resulted from treaty provisions in negotiations between tribes and the federal government. Some tribal lands were ceded by formal treaties and others without formal agreement, but most resulted from written agreements, even if the tribes were at a disadvantage to oppose conditions. Such cessions were mapped based on the treaties.⁸

Land claims

Tribes have laid claim to lands acquired by treaties, agreements and by conquest and dispossession, for which they were not properly compensated. Early claims were argued before the U. S. Court of Claims, but after 1946, when the Indian Claims Commission Act was passed, tribes brought their claims to this commission (acting as a tribunal). A large percentage of the claims were adjudicated in favor of the tribes, but the commission rejected any restoration of land and awarded a net number of dollars based on adjudicated acreage. Claims embraced major categories of tribal territory: original title (reconstructed with tribal informants and the work of anthropologists, geographers and historians) and recognized title based upon the C. C. Royce compilation (see land cessions).⁹

Land consolidation

Consolidation refers to grouping several Indian allotments that are encumbered by complex inheritance patterns into a larger single unit to prevent the land from sitting idle. Tribes have been encouraged to link separate allotments in an effort to meet the needs of an economy-of-scale in which larger acreage holdings facilitate production from the land. The Land Consolidation Act of 1987 [P. L. 97-459, 96 Stat 2517] opened the way to such tribal efforts as part of tribal planning, but in recent years the Supreme Court ruled that tribes could not take by escheat allotments under given concerns.

Land tenure

Land tenure refers to the nature of land holding whether tribal, communal, fee simple or private ownership. It also embraces arrangements for utilization of the land such as agreements where all members of a group may use a commons or that land may be used by informal agreement or lease, or that land may be sold or alienated. Indian land tenure is complex and involves more than just tribal and individual ownership, for it does embrace the issue of trusteeship and heirship. It also includes the leasing of trust land and the sale of such land to non-Indians, who tend either to operate the land and/or also live on former trust lands within the borders of a reservation. On non-allotted reservations, individual Indians and

families may occupy areas by long-term consent (understood) and by what is called tenancy-in-common or by a tribal assignment.¹⁰

National sacrifice areas

Defined as tribal lands that have been or are today subjected to kinds of environmental abuse such as the dumpage and disposal of hazardous waste materials, mining and other environmentally degradating activities for the good of the nation as a whole.¹¹

Open areas

The counterpart to closed areas as applied to the Yakama Indian Reservation in Washinton State, pursuant to *Brendale v. Confederated Tribes of the Yakima Nation* [109 S. Ct. 2994 (1989)]. Such areas are defined mostly as non-Indian fee simple. Such areas would be outside the planning jurisdiction of the Yakama, and by extension, other tribes). Cf. closed areas.

Public Law 280

This law, enacted in 1953, transferred civil and criminal jurisdiction from the tribes and federal government to select states. Ultimately, all states that enclose trust lands gained some jurisdictional authority over activities on reservations, but not over the land itself. Controversy arose when states and local governments sought to tax, to zone or to plan for the utilization of trust lands. The Indian Civil Rights Act, 1968 [82 Stat. 77 (1968)] permitted tribes to retrocede from PL 280 and required a tribal vote before states could assume jurisdiction over reservations.¹²

Repatriation

In the context of Indian affairs, this is the process where tribal burial remains and other artifacts are returned to a tribe or an individual Indian. Tribes today have been invoking the Native American Graves Protection and Repatriation Act (NAGPRA) to secure the return of such remains from public lands and certain private lands. Several tribes have established museum to house repatriated artifacts.¹³

Reservation

Defined as a tract of land, from a few acres to hundreds of thousands of acres, the reservation has two definitions. It is correctly land which tribes did not

cede by treaty or other agreements, and it is also land the federal government established for tribes from the public domain that became federal pursuant to treaties or conquest. Other terms that carry the meaning of reservation include colonias in New Mexico and rancherias in California. Allotments are reserved parcels, held in trust, but smaller than a reservation -- they are found within a reservation or as public domain allotments elsewhere on federal lands.

Restoration

The term applies to the return in status of tribes formerly terminated such as the Menominee of Wisconsin and rancherias in California as well as to the return of certain lands, such as sacred sites back to tribes. This includes the sacred site of Kolhu/wala:wa of the Zuni and the much larger acreage restored to the Havasupai. See land claims for further discussion.

Sacred places and sites

Whether on existing trust lands, public lands or other former tribal territory, including private holdings, sacred places and sites include culturally significant resources identified by Indian literature and culture history. Such sites include Bear Lodge, which is known as Devil's Tower.¹⁴

Self-determination

For most of the history of Indian affairs, tribes have been treated as dependent wards and the government has been both trustee and guardian. While some tribes assumed or were granted greater autonomy to run their own affairs, today's freedom to function in an autonomous way came with the Indian Self-Determination and Education Assistance Act of 1975. As a result, many tribes negotiate grants and contracts nearly free of interference by the BIA and often seek funding from other agencies such as ANA and EPA. Self-determination makes possible tribal planning of conservation projects. The law specifically calls for "an orderly transition from federal domination of programs for and services to effective and meaningful participation by the Indian people." [88 Stat. 2203-04 (1975)]

Sovereignty

American Indian sovereignty is characterized as inherent, but is less than that of other nations such as the United States and Canada. Tribes have some autonomy within their borders and this suggests the limited meaning of sovereignty. Tribes have no meaningful foreign affairs even if they address the United Nations and other international tribunals. Existing tribal sovereignty is being challenged by

cases who seek to diminish tribal authority or jurisdiction over areas within tribal borders that are dominantly non-Indian in ownership and occupation.

Surplus lands

A phrase identifying tribal lands that remained inside reservation boundaries following the allotment of land to individual Indians. So-called surplus lands were made available to homesteaders, which was the beginning of creating mixed Indian Country, itself part of a policy of bringing Indians into closer contact with the majority culture. See discussions of allotment.

Termination

Pursuant to laws passed after the end of World War II and essentially abrogated or not enforced after 1961, termination sought legislatively to end the political status of tribes and to remove the trust status over reservation lands. Many Indian communities were terminated and some were later restored by laws, but only after several tribes suffered the loss of land and a decline in living.

Territoriality

A loose term identifying the perceptive and/or legal basis for occupation and utilization of a given area. Hunting and gathering communities functioned within a broader lingually related territory but occupied smaller areas to which they laid claim. More settled communities could identify with larger territory measured in hundreds of square miles. Expressions of territoriality may imply the existence of a tribe in the political sense of knowingly occupying and claiming given area and defending it.

Trusteeship

By treaty, statute and interpretation of the Constitution, the United States is the trustee for all federally recognized tribes and their trust lands. Today, as in the past, several states also assume such a role as on the eastern seaboard. The designated trustee's agency is the Bureau of Indian Affairs, formerly the Office of Indian Affairs. In fact, any federal agency that is involved in providing funds and services to the tribes acts on behalf of the trustee.

Watershed

The gathering ground of a single river system, that is, many streams flowing to a common dominant river. Size of a watershed will vary -- the entire Mississippi-

Missouri drainage is the largest watershed in the nation, but each of its components constitutes a watershed in its own rights such as the Yellowstone River.

Winters doctrine

Established in 1908, pursuant to *Winters v. United States*, it is a U. S. Supreme Court ruling that recognizes inherent water rights to tribes. The court determined that the United States pursued a policy of encouraging agriculture on allotted and tribal lands within a reservation and that necessitated the protection of water rights to guarantee that public policy will flourish. The doctrine in recent years has called for quantification of water rights, measured in acre feet, the equivalent of about 325,000 gallons of water, and the determination whether tribes and individual Indians must use the water for agriculture or permit non-Indians to lease the water or even transport the water off-reservation.¹⁵

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9. Imre Sutton, ed., *Irredeemable America*, *op. cit.*

10..Sutton, *Indian Land Tenure*, *op. cit.*

11. For a discussion with maps, see Ward Churchill and Winona LaDuke, (1992) "Native North America: The Political Economy of Radioactive Colonialism," in *The State of Native America: Genocide, Colonization and Resistance*, ed. M. Annette Jaimes (Boston: South End Press): 250-255; see also Churchill, (1999) "A Breach of Trust: The Radioactive Colonization of Native North America," *American Indian Culture & Research JI*, 23:4: 23-69.

12. Carol Goldberg-Ambrose, (1999) *Planting Tail Feathers: Tribal Survival and Public Law 280* (Los Angeles: UCLA-American Indian Studies Center).

13.. See Editors (1992) "The Native American Graves Protection and Repatriation Act" [symposium], *Arizona Law Journal*, 24:1.

14.. See for ex., Andrew Gulliford, (2000)*Sacred Objects and Sacred Places: Preserving Tribal Traditions* (Boulder: University Press of Colorado); Thomas F. King,(1998) *Cultural Resource, Law and Practice: An Introductory Guide* (Walnut Creek, CA: Altamira Press).

15. See McCool, *Command of the Waters*, *op. cit.*

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