

Glossary

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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

References

1. See discussion in I. Sutton, ed., (1985) *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: University of New Mexico).
2. Stephen L. Pevar, (1992) *The Rights of Indians and Tribes*, 2nd Ed. ((Carbondale: Southern Illinois University Press): 261-263.
3. Steven H. Gifis, (1975) *Law Dictionary* (Woodbury, NY: Barron's Educational Series): 10.
- 4.. Cf. Imre Sutton, (1976) "Sovereign States and the Changing Definition of the Indian Reservation," *Geographical Review*, 66:3: 281-295, ref p. 286.
5. See David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr., (1998) *Cases and Materials on Federal Indian Law*, 4th ed. (St. Paul: West Publ. Co.). The original compilation and analysis of federal Indian law was published by Felix Cohen, *Handbook of Federal Indian Law* (Wash., D. C.: GPO, 1941; reprinted by Univ. of New Mexico Press, 1971).
6. Bryan Marozas, (1991) "The Role of Geographic Information Systems in American Indian Land and Water Rights Litigation," *American Indian Culture & Research Journal*, 15:3: 77-93.
7. See Vine Deloria, Jr. and Clifford M. Lytle, (1983) *American Indians, American Justice* (Austin: University of Texas Press), ch. 3; see also I. Sutton, (1991) "Preface to Indian Country: Geography and Law," *American Indian Culture & Research Journal*, 15:2: 3-36.

8.. C. C. Royce, comp.,(1899) *Indian Land Cessions in the United States*,18th Annual Report, 1896-97, Bureau of American Ethnography (Wash., D. C., GPO): pt 2, pp. 521-997.

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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