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The Cartographic Factor in Indian Land Tenure: Some Examples from Southern California

IMRE SUTTON

Maps may be treated as scientific tools; they may also serve as historic documents.¹ In Indian affairs there is no dearth of maps; in fact, the cartographic record, however rendered and preserved, began almost as early as the European encounter with native Americans. Such maps have taken various forms: field sketches as by missionaries, military personnel or others; exploratory maps and surveyors' plats; and maps rendered as part of, or subsequent to, treaties of land cession. The bulk of relevant maps of Indian distributions and occupancy, however, seem to belong to those that are reconstructions based, in part, on archaeological investigations, knowledge of native informants, field observations, the scanning of firsthand observations of others through letters, diaries and reports, and the interpretative abilities of map makers.²

While the majority of maps relate to ethnogeography, they also reflect the role of the Bureau of Indian Affairs (BIA) in the administration of tribal lands for a period spanning more than one hundred and fifty years.³ Maps of Indian affairs focus on land and resources, and they represent a wealth of data awaiting the interested researcher. Although such maps may incorporate some aboriginal knowledge, rarely has Indian cartography⁴ contributed to this official record, which has been compiled, surveyed and authenticated by non-Indians.⁵ Thus our current cartographic depiction of Indian tribes, their migrations and culture traits, as well as territoriality and contemporary trust lands,

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reflect the multiple origins of the data and the mixed purposes for which the maps have been prepared.

How has this cartographic achievement advanced our knowledge of the Indian? What can we learn from these maps about changing native culture and distributions under the influence of Euroamerican culture and demographic advance across the continent? Just how accurate are these maps in light of new knowledge? Moreover, subsequent to litigation, especially rulings by the U.S. Court of Claims and the Indian Claims Commission (1946–78), how do we reconcile ethnohistoric reconstructions with legal decisions—that is, whose truth, ethnohistorical or legal, is scientific truth?⁶ Maps, of course, do report changes in demography, material culture, territory, and land use and technology. These empirically observed changes mirror changes in policy, attitudes and our general comprehension of the Indian. As documented evidence, they even serve to reprehend our self-assuredness that we have done well by the Indian.

Through a selection of five maps relating to the Mission Indian area of Southern California, I hope to demonstrate the utility of this map record to academic research and land administration. While I cannot elaborate surely on all the questions posed, some response to each appears in the discussion. My primary objective focuses on the role that maps have played in delimiting, clarifying and evaluating Indian land tenure. Much of the literature on this aspect of native America, including the century and a half of federal administration of trust lands, undervaluates the cartographic record or ignores it as an intrinsic facet of research.⁷ My choice of maps, however, attempts to cut across the subject matter topically and methodologically. For example, if we characterize the maps of Indians as archaeological, ethnographic, historic/documentary, and environmental, then elements of all four categories do appear in these samples. If we classify such maps according to methods of preparation, then we could recognize field reconnaissance, geodetic survey, and ethnohistoric reconstruction; my samples include these approaches.

By limiting the selection of maps to one geographic area, it is possible to make appropriate comparisons and thus interrelate place, time and event in terms of changing Indian land tenure. Each sample map seeks to represent a different type useful in this pursuit. Yet I do not suggest that these maps cover a universe of the cartographic record. The surveyor's plat of 1857

in a sense, begins the American period in California, providing the geodetic controls for the identification of land tenure and occupancy as well as natural features. Official surveys normally preceded the private acquisition of the public domain under applicable public land laws.⁸ Luiseño territoriality⁹ results from ethnographic reconstruction that has relied heavily on Indian informants. Unlike surveyed maps, ethnographic reconstructions have depended on empirical observations and, because they may lack sufficient geodetic controls, authorities differ as to their credibility. The map of land cessions of 1851-52 primarily derives from the wording of treaties. This map emphasizes the role of "recognized title" in contradistinction to that of "Indian," or aboriginal, title as the Luiseño reconstruction suggests.¹⁰ Maps of land cessions have relied alternatively on the use of surveyed base maps or on local empirical field observations. The vague language of many treaties of cession often precluded more accurate delimitation on paper.¹¹ The land assignment map of the Cahuilla Indians is a product of field agency operations. Characterized as an "in-house" resource, such maps combine earlier data based on surveys with later information compiled by officials, who have sought the cooperation of resident Indians in an effort to confirm boundaries often in conflict. Finally, the working map of *Pechanga v. Kacor* results from a research synthesis that includes historic, ethnographic and other information delimited on a U.S. Geological Survey topographic quadrangle. The original map accompanied a report that was to serve as expert testimony in a land claims litigation. As a genre of map, this example is perhaps the most complex and varied, since it derives from countless sources, each of which, for legal reasons, must be verified.

Maps of California Indians have served academic and applied research for more than a century. Probably no band or tribe of Indians indigenous to the state has been overlooked, although the scope and quality of many maps may be suspect or, at least, disappointingly incomplete. These maps generally have served to give us a comprehensive picture of native California. Robert F. Heizer, an anthropologist who specialized in California Indians, noted in his introduction to a map collection prepared for a California land claims exhibit¹² that "a careful study of the various maps will illustrate that the entire state has been allocated by scholars to Indian use and occupancy." His collection focuses

on the ethnographic reconstruction of native lifeways, yet his emphasis relates mostly to the utility of these maps in litigation. He further stressed that "these maps are very significant and reliable, because they were prepared prior to the litigation and for objective scientific purposes."¹³ His observations suggest how maps as scientific tools serve to link history—in this case, *ethnohistory*—and law.

Maps depicted here, as well as others which form the basic raw materials for other maps, may be found in the national and regional archives,¹⁴ in field offices of the Bureau of Indian Affairs as well as other federal agencies, in numerous libraries, in manuscripts and previously published works, and as exhibits in litigation, many of which also appear in print.¹⁵

Surveyor's Plat—1857

Cartographers have mapped Indian country in various ways. Prior to surveys, field cartography was representational, often descriptive and lacking sufficient environmental controls. Yet, remarkably, field maps have held up, providing information not otherwise available. Not until the establishment of a mapping agency (General Land Office) and official surveying of Indian country could the federal government delimit firmly on paper and then demarcate on the ground the sites and lands of Indian occupancy. Official surveys adhered to the standard requirements of the land rectangular survey system (congressional townships),¹⁶ which relied upon the establishment of two surveyed coordinates—a principal meridian (longitude) and a base line (latitude). A series of tiers running north and south and of ranges running east and west created a grid of townships, each containing thirty-six sections (1 sq. mi. or 640 a.). Almost all subsequent maps rely on these official surveys.

For southern California, the Mount San Bernardino survey was inaugurated in 1854, and a first series of plats was prepared during the latter 1850s.¹⁷ Nonetheless, as early as 1851, Indian agents and special commissioners already had sought to ascertain the distribution of Indian communities. In fact, despite firm knowledge of native land tenure and territoriality, officials negotiated eighteen treaties that ceded the bulk of the state to the U.S. Government (see Figure I.1).¹⁸ Such events signaled the direction land policy toward Indians would take.

Some urgency existed for the establishment of the land rectangular survey throughout California. As of 1851, by act of Congress,¹⁹ all claimants to land title within the state—including Indians—had to file claims within a two-year period. Proper surveys would make it possible to lessen boundary and title conflicts that accompanied major changes in land tenure systems.²⁰ Squatters had swarmed over Indian country prior to surveys and, under the Preemption Act of 1841 (extended to California in 1853²¹), settlers could occupy unsurveyed tracts, to which Indian title had been extinguished. A decade later, homesteading would be permitted only on surveyed lands. Unfortunately, even as plats were being surveyed, Indians were being ejected.

The 1857 plat of a portion of northern San Diego County within the San Luis Rey River drainage depicts a part of Luiseño territory (Figure 3.1). It is representative of countless plats that first mapped the public domain. To make this map more useful I have superimposed the boundaries of the Cuca Rancho, first granted to an Indian, Maria Juana de los Angeles, in 1845.²² Rarely did field surveys delimit rancho lands or seek to determine actual boundaries of Indian occupancy. Apparently at least four villages survived to be surveyed. In 1855, according to field notes, the surveyor numbered 500 inhabitants for Potrero (Kuka), La Picha (Yapitcha) and La Joya (Jolla or Huyulkum). He noted that the first two villages lay within the bounds of the rancho.²³ Two years later, another surveyor identified the village of Ahuya (unnamed on the map, near top in unmarked section 9), but apparently its Indian occupants abandoned the site thereafter owing to drought in the region.²⁴ Keep in mind that the surveyor made no effort to locate precisely (to scale) either the rancherías or the cultivated parcels (note the holdover of the tepee as symbolic of Indian).

In later editions of these plats one might not find Indian communities identified even if they still existed. Writing to this author in 1963, the Chief of the Cadastral Engineering Section, Bureau of Land Management (Washington, D.C.) stated: “. . . for remains of an Indian village to have been represented on the plat, it would have to have been of considerable size and importance.”²⁵ But if it lay inside a land grant or a public land entry, it is likely to have vanished from the scene or, at least, from the record.²⁶ Despite these potential weaknesses in the cartographic record, Herbert Harvey, who prepared expert testimony on Luiseño land tenure, was able to say: “With regard to Luiseno

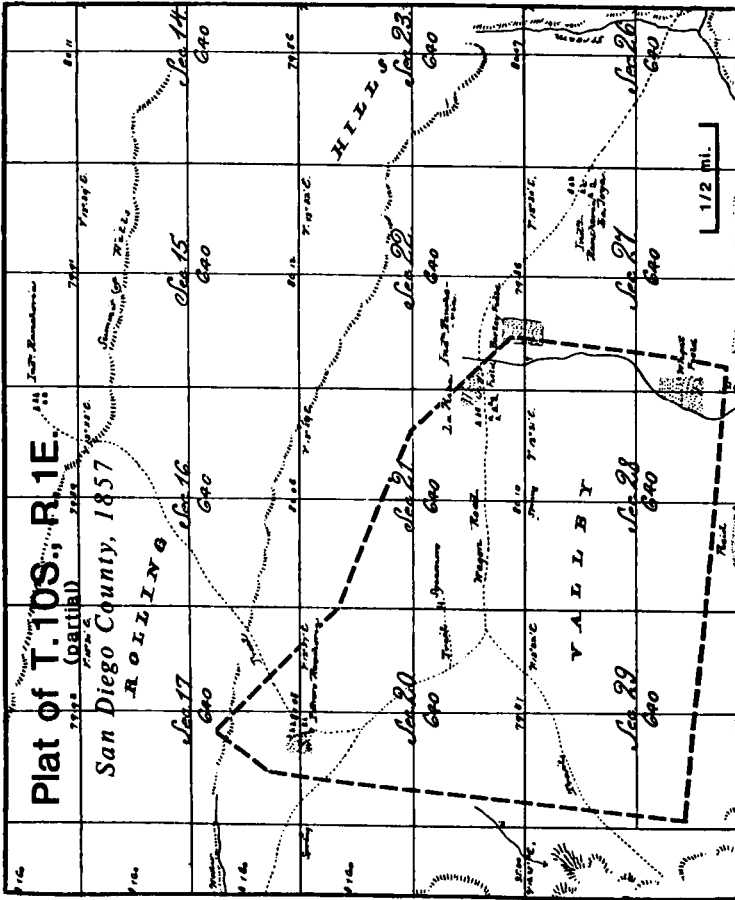


FIGURE 3.1 Plat of T. 10S, R. 1E. Located in northern San Diego County, the plat embraces a contemporary area that includes the La Jolla Indian Reservation; compare Fig. 3. Copy of 1857 plat modified by Harold C. Fox.

(sic) settlements, it should by now be most apparent that there is extraordinary agreement between the documentary sources of each period and the ethnographic sources of the present century.²⁷ Yet, inevitably, knowledge and cartographic renderings of Potrero and La Picha (the former still reported to have 177 inhabitants in 1865²⁸) did not sustain them as part of the La Jolla Indian Reservation as established in 1875.²⁹ Here, as elsewhere in California, the ejection of Indians from rancho lands accounts for the loss of village sites. In fact, a number of Luiseño families continue to live west of Potrero, just beyond the Cuca boundary. Ironically, Potrero, La Picha and La Joya participated at the signing of the Treaty with the San Louis (sic) Rey, Etc., in 1852.³⁰ Ultimately, they had "consented" to relocate to a designated reserve to the east (Royce area 307).

If all of Indian country had been surveyed similarly and Indian communities consistently identified on maps, one could better reconstruct aboriginal occupancy for an earlier period. I noted that by 1891, when the government made a final effort to secure trust lands for surviving Indian communities on the public domain,³¹ officials still overlooked or disregarded numerous villages that had been mapped conscientiously years before. In the 1930s, for example, Jamul, a surviving Indian community hitherto not granted a reservation, was identified in San Diego County (see Figure 3.3), but official acknowledgement came to these Indians only in 1975. They received a small reservation three years later.³² The cartographic record notwithstanding, other motivations had denied these and other Indians their inherent land rights. Known or alleged fraud, questionable motives of surveyors and public officials and, of course, dispossession of Indians by private individuals all played some role in disregarding the earlier cartographic record.

Luiseño Territory

Ethnographic reconstruction of Indian territory has probably generated the largest volume of maps. At times, such maps appear as vague generalizations; they may also represent fairly accurate delimitations of Indian occupancy. If borders emerge as rough approximations, this is because scholars are wont to firm up what no longer can be demonstrated conclusively. Yet Indians have had fairly sophisticated concepts of boundaries despite what

observers will or will not acknowledge. Indians would point to specific natural phenomena lying at the edge of their territory as recognized boundaries; institutionalized warfare was often a response to trespass.³³ However, it is also characteristic of aboriginal territoriality in California, as Ralph Beals, an anthropologist and chief defense expert witness in *Indians of California v. U.S.*,³⁴ noted in that "the use of the English term 'boundaries' by an Indian is by no means conclusive evidence that the word is employed in the sense of 'limits of land ownership.'"³⁵ Such boundaries more often referred to zones of exploitation of plants, animals or minerals.

The Luiseño map in its original form interests us because it demonstrates the degree of disagreement over time and provenience that will occur in an effort to identify and locate villages, as well as to bound a territory long after the original pattern has ceased to exist. Inasmuch as these Indians were not organized as tribes, but rather as bands living in villages (or rancherías), their territorial sense was ecologically related to the needs of a community of some 200–250 persons.³⁶ Their territories would not describe the realm of reconstruction by Strong or others. Yet, because of ethnic and lingual affinity, they were aware of their cousins and the extent of "their" people. Where tribes flourished elsewhere in North America such reconstructions would more correctly identify political (or sovereign) space, rather than just ethnic distributions.

Because of its reference to Sparkman, an early ethnographer who had lived within Luiseño territory for many years before his own publication,³⁷ William D. Strong's map (Figure 3.2) should be treated as the earliest rendition of Luiseño territory.³⁸ Strong, a student of Alfred Kroeber at the University of California, Berkeley, was an early researcher of native territoriality and later participated as an expert witness in *Indians of California*.³⁹ This map, however, does not completely reflect Sparkman's list of rancherías, many of which could not be located with any accuracy even at the time Sparkman wrote. We do find, for example, Pechanga (Pichaang according to Sparkman⁴⁰), yet absent from Kroeber's map, but its location has proven to be wrong.⁴¹ The additional information added to the Sparkman/Strong map has been derived from the Kroeber map, "Native Sites in Part of Southern California," which probably owes much to Sparkman. Other data come from reconstruction of Luiseño territory by later

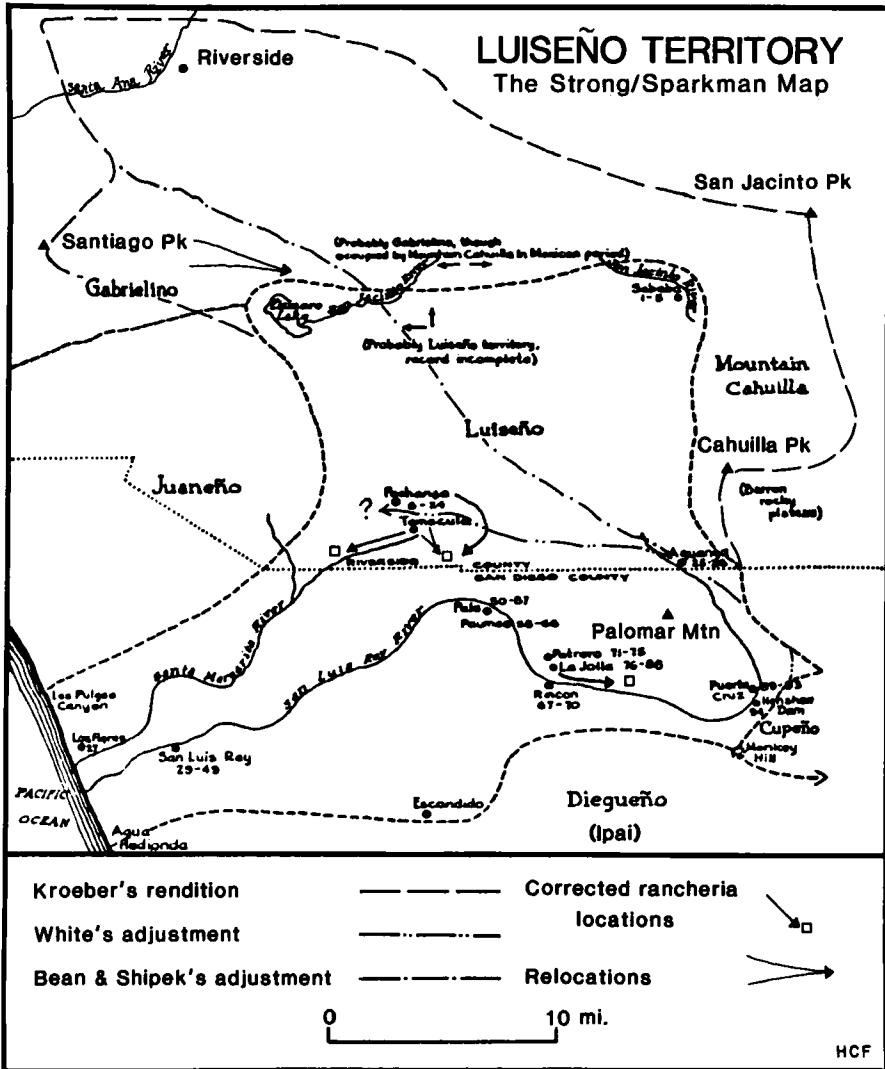


FIGURE 3.2 Luiseno Territory—The Strong/Sparkman Map. The core map was published in 1929 and suffers from duplication; other data added for 1925, 1963, and 1978. Map prepared by Harold C. Fox.

ethnographers, Raymond White⁴² and Lowell J. Bean and Florence Shippek, who modified White's interpretation.⁴³ Kroeber's more generous definition of boundaries expanded Luiseño territory north of Lake Elsinore to include the Temescal Canyon and area north of the Santa Ana River near Riverside. His boundaries also brought the Luiseño into the San Jacinto Mountains, territory ultimately defined as Serrano or Cahuilla.

White's map, depicting only part of the total territory, supports an argument for a smaller geographic area. Relying on fresh informant data, he concluded that the country around Saboba (Soboba) and Aquanga (Aguanga or Awi) belonged to the Cahuilla and Serrano Indians. His informants said that Luiseño lived in the Temescal Canyon but were driven from there after 1800, and they came to occupy part of the territory of their neighbors. White reconstructed a territory of some 1500 square miles as based on ecological synthesis of subsistence patterns, which emphasized oak groves, acorn yields and the like. His reconstruction determined that there had been some fifty villages, each with an average subsistence area of thirty square miles.⁴⁴ He tended to exclude the northern strip that includes Lake Elsinore from his map.

Bean and Shippek relied on White but did expand the native territory north of Lake Elsinore to Santiago Peak.⁴⁵ Strong/Sparkman, Kroeber, White, and Bean and Shippek generally concur on the southern boundary of Luiseño territory, and they agree on distinguishing Juaneño territory, unlike other observers who perceived the Juaneño and Luiseño as one people.⁴⁶

All of these renditions of Luiseño territory attempt to reconstruct Indian, or original, title lands. *Indians of California*,⁴⁷ which litigated the statewide claims of the California Indians to 91,764,600 acres of land ceded by the eighteen unratified treaties,⁴⁸ utilized most of the maps that herein reveal differences in the reconstruction of Luiseño territory. Yet final adjudication and the monetary award to the Indians were not based on the reconstruction of Indian title. The Indian Claims Commission based the award on the documentary evidence of recognized title derived from those treaties (see Figure I.1).⁴⁹

Across the nation, however, reconstruction of original title lands through the able assistance of scholars formed the foundation for cartographic exhibits that influenced the decisions and the monetary awards to several hundred tribes.⁵⁰ Generally, if

the courts acknowledged a tribe as an identifiable group for purposes of litigation, reconstruction of original title lands added to the acreage already recognized in treaties and delimited on maps.

Land Cessions, 1851–52

Two kinds of land title characterize the legal relationship between the tribes and the federal government. When Indian tribes entered into treaties, normally land was both ceded and reserved. Lands that the government acknowledged constituted 'recognized' title. The later extinguishment of reserved lands, as by acts of Congress, also constituted recognized title.⁵¹ On the other hand, lands later identified as in Indian possession, by dint of their use and occupancy for a long time, but not derived from treaties or statutes, came to be designated Indian, or "original," title. Both titles derived from the powers of the sovereign; recognized title would normally be a matter of record, as in the compendious compilation of land cessions by C. C. Royce.⁵² Original title often required reconstruction through expert testimony of ethnographers and the utilization of other historic or documentary evidence.⁵³ Recognized title is the subject of Figure 3.3.

Unlike Indians in much of the nation, those in California did not enter into consummated treaties. The eighteen unratified treaties with California Indians, about which much criticism has been written,⁵⁴ led to the unconscionable taking of native lands. Yet, by dint of treaty negotiations, the delimitation of lands both ceded and reserved did establish recognized title. The sample map (Figure 3.3) depicts reserved and ceded parcels pursuant to two of the treaties, one signed at Temecula mainly by Luiseño Indians, the other at Santa Ysabel mostly by Diegueño (Ipai-Tipai) Indians.⁵⁵ I have superimposed the historic rancho pattern that prevailed at the time of the negotiations, as well as the reservation pattern that became firm after 1891.⁵⁶ In the one instance, we see how the lack of cartographic data in 1851–1852 led to the enclosure of Mexican grant lands within reserved tracts (307 and 309); in the other, at a glance we recognize how little land ultimately was set aside for Mission Indians. Considering the dateline of the treaties and the lack of experience special commissioners had with the Mexican land system, it is not wholly inexplicable that rancho lands were unaccounted for. Diseños, or map sketches of rancho lands, were not readily obtainable and many

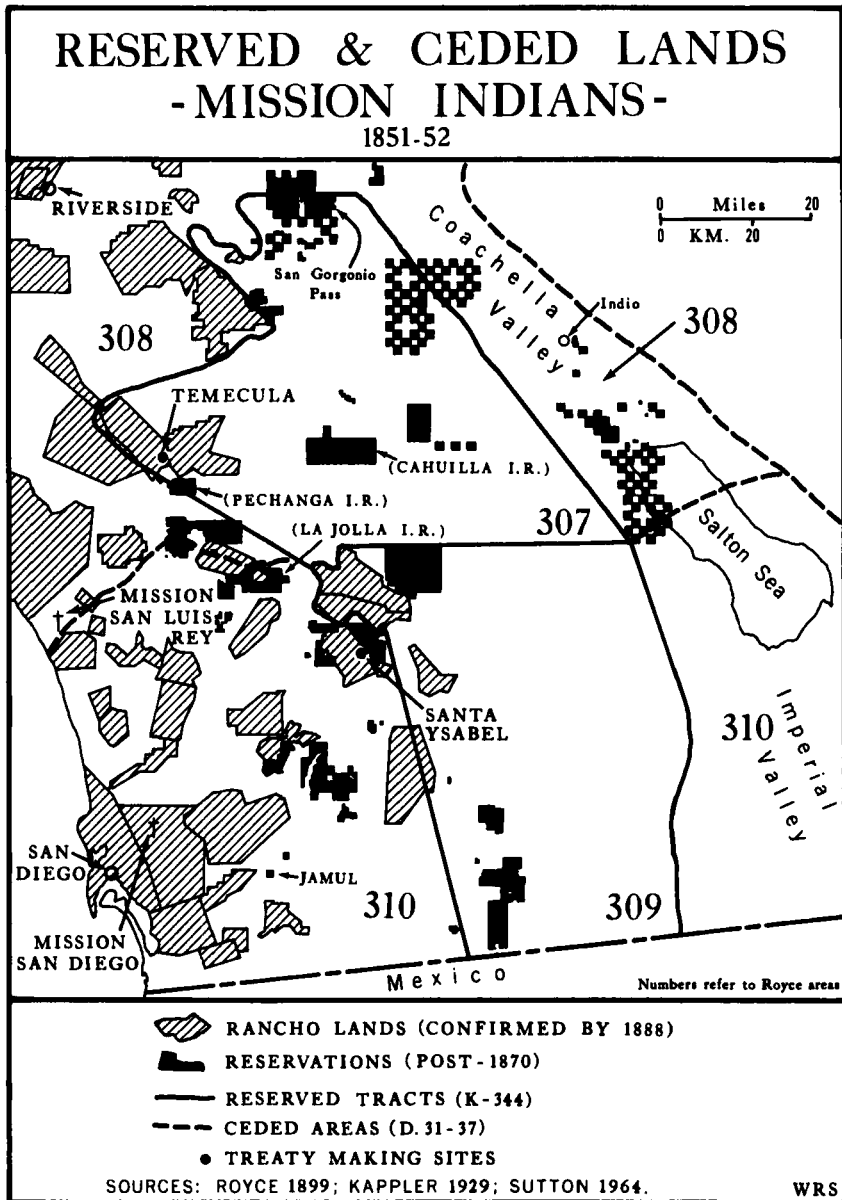


FIGURE 3.3 Reserved & Ceded Lands—Mission Indians, 1851-52. Modified from Fig. 5.1 (*Irredeemable America*, ed. I. Sutton; Univ. of New Mexico Press, 1985); used with permission of the press. Map prepared by William R. Scharf.

were highly inaccurate. It is important to note that, in so establishing the reserved tracts well into the interior, the commissioners contracted the relocation of most Luiseño and perhaps one-third of Diegueños from the more habitable coastal and riverine areas of San Diego County.⁵⁷ Of course, such did not take place. Indeed, had the government honored the treaties, these ranchos would have necessitated further adjustment of the boundaries of the reserved tracts.

As documents go, California land cession maps are considerably flawed (cf. Figure I.1). Not only did commissioners negotiate in the field in the absence of surveyed maps, but Royce and his staff at the Bureau of American Ethnography merely rendered the descriptive language of the treaties upon the survey grid.⁵⁸ I am unaware if Royce or his staff had other interpretive materials at hand. But, in light of later criticisms of Royce's volume, further research might reveal any biases, accidental or deliberate, that led to erroneous interpretation of treaties of cession in California or elsewhere in the nation. Heizer, an expert witness in the land claims case, *Indians of California* (Dockets 31-37), and an associate of Kroeber, noted that the treaties did not specify any of the ceded lands; apparently the commissioners neither knew nor sought to find out what lands were held by the various Indian communities.⁵⁹ Furthermore, according to Heizer,

There seems to be no basis whatsoever for this map [Royce's Pl. 7; see fig. in introduction to symposium] beyond the vague impression . . . that the California Indians were agreeable to ceding . . . the lands. . . . Royce's map is, therefore, his own artifact deriving from the same assumption. . . .⁶⁰

However, the treaties did articulate better the reserved tracts. Yet I corrected marginal errors in Royce's rendition of the northwestern corner of area 309. Estimated statistics for acreage reserved and for ranchos, relative to present reservations, suggest that 5 to 6 percent of the total area has survived in Indian hands to date.

The sample map also relates to the two land claims cases brought by the plaintiff "Indians of California." The earlier case, K-344, resolved in 1944, sought remuneration for the loss of reserved tracts (some 8,619,000 acres); the later case, consolidated

dockets 31-37, heard by the Indian Claims Commission (ICC), sought payment for the loss of the rest of California except for a marginal area east of the Sierras and into the desert country. In both instances rancho lands were excluded from the total acreage upon which the ICC based monetary awards because the government acknowledged Spanish and Mexican laws that had authorized the grants.⁶¹ Royce's data, especially the number designations, became standard in almost all claims litigation, and throughout California they attested to the fact that the government "recognized" Indian title to these lands.

Map of Land Assignment

Field contact with native informants as well as use of agency files have led to countless cartographic syntheses of Indian land tenure. Many masters' theses and a few doctoral dissertations, for example, have relied upon such sources for contemporary interpretations of land use and occupancy of trust lands.⁶² Generally, if a reservation underwent allotment,⁶³ that is, individual Indians received trust patents to parcels of land, official maps delimit property lines that correspond to markers on the land. Air photo coverage since the 1930s has made it possible to update earlier field observations and to determine the changing character of Indian occupancy. Where reservations have not undergone the allotment process, occupancy by tribal members, even if readily mappable as well as interpretable from air photos, may defy explanation in terms of tenure. Since Indians hold a tenancy-in-common on their reservations, customary or traditional tenure practices may remain obscure because, lacking official survey, only Indians know the nature of what the BIA calls "assignment." If the BIA field office has participated in the development of assignments, maps are usually available. Such customary tenure, however, blending indigenous and introduced values, often stands in marked contrast to the allotment system, for an allotment is analogous to a homestead even if the acreage of the former only represents a fraction of the size of the latter.

It might be useful to make further comparisons of allotment and assignment. The government for over half a century established the bounds of allotments and determined that portion of each reservation that would undergo allotment. Development of Indian agriculture provided the impetus for the distribution of

tribal land among individual Indian members. Officials selected the most arable lands, subject to irrigation, and parcels were issued on a pro rata basis. Indians held trust patents but could ultimately secure patents in fee; that is, they could become owners not unlike other landholders in our society. Whether Indians organize an assignment pattern to meet the needs of resident families or seek the aid of the government for the same ends, the division of the land resources may remain unequal, reflecting disparate patterns of tenancy-in-common of long standing. One reason why few maps of assignment exist is because Indians do not wish to divulge traditional practices to the government. Many assignment maps merely reveal minor parcelization of new lands adjacent to nuclear settlements, providing home sites for new generations of Indians; these are often surveyed lots. Thus a credible assignment map, especially one based on traditional tenure behavior, is a research asset.

One study has compared the two forms of tenure on reservations in Southern California.⁶⁴ Only ten of the thirty reservations in the area underwent allotment; occupancy on the others has continually depended upon some customary arrangement. To be sure, much occupancy subsequent to allotment on those ten has relied also on tradition. Uncharacteristic of assigned reservations, the acreage distributed among resident Indian families on the Cahuilla (Figure 3.4) has exceeded the average for all the others by ten times or more.⁶⁵ Resident families usually occupy 5–10 acre assignments, on which they construct homes, perhaps maintain a small garden, keep a cow or horse, but they find employment off-reservation. The Cahuilla Indian Reservation differs in this respect, for parcels are very large, limiting the number of families that can live on the land.

Located in the uplands of the San Jacinto Mountains, part of the peninsular ranges which are generally quite rugged, the reservation occupies a broad sweep of tableland suited to grazing. Elevation (above 4000'), rather than soil capabilities, limits most forms of farming. The reservation was established in 1875 and contains 17,632 acres.⁶⁶ The Surveyor General reported only one village after 1854, but as late as 1891 three other villages continued to be occupied, as reported by the Mission Indian Commission. At that time there were 250 resident Indians.⁶⁷ Field study in 1961–62 determined that, of some 94 members of the band, only 32 lived on the land,⁶⁸ and in 1986 the BIA reported

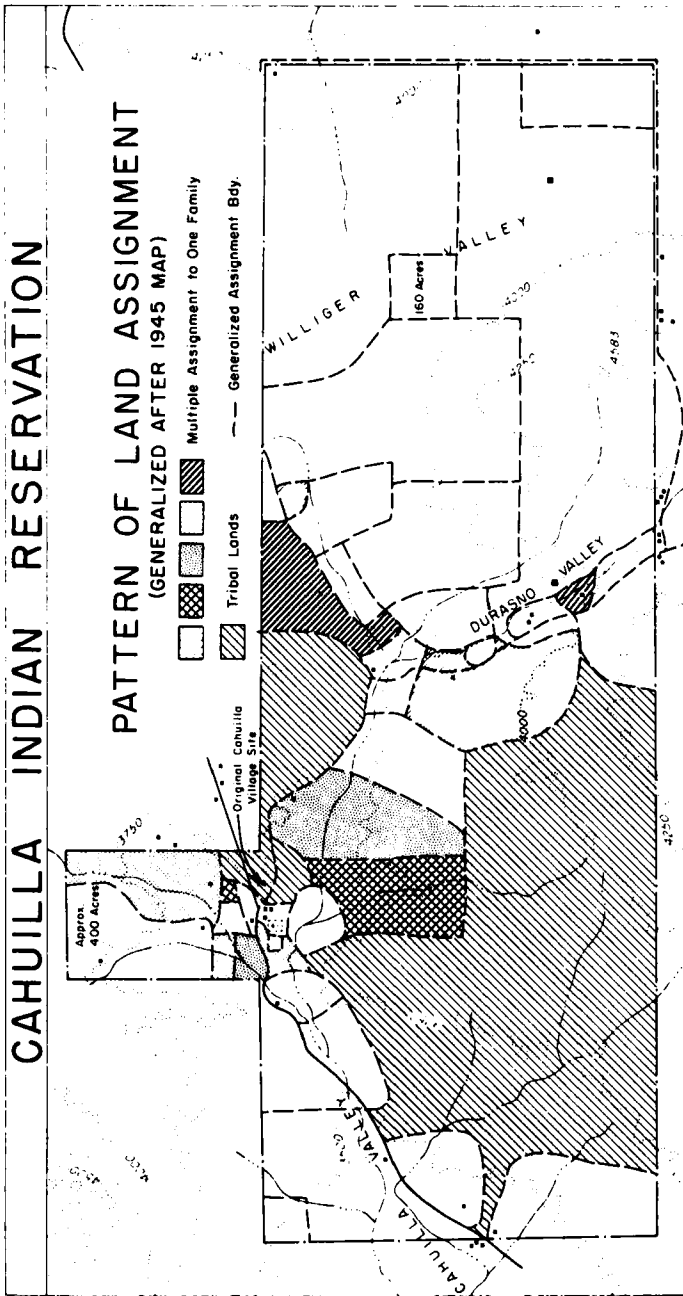


FIGURE 3.4 Cahuilla Indian Reservation—Pattern of Land Assignment (1945). Located in Riverside County, the reservation is approximately 125 miles from Los Angeles. Map prepared by Donald Severson.

31 residents and another 117 said to live "adjacent to" the reservation.⁶⁹ In terms of economic utility, the reservation has never proven capable of supporting more than a few families.

As a rule, allotted parcels are equalized; assigned lands may or may not be distributed in equal sizes. For the Cahuilla the assigned acreage has ranged from 40 to 640 acres per family.⁷⁰ Historically, allotment may have been introduced as a land reform measure to break up the hold a few families had on particular reservations. A reconstruction of traditional or assigned tenure may well reveal a hold-out of this earlier dominance of a few families. Ethnographic and geographic field observations reinforce this fact.⁷¹ At Cahuilla, disproportionate acreage existed at the time of white contact, and by 1945, one family was utilizing virtually half of the reservation in multiple assignments. Generally, the BIA has restrained from interfering in assignment practices and, when asked, may be unable to explain the customary practice. During the allotment period in Southern California, circa 1920–28, influential families violently opposed land allotment and virtually prevented completion of an equal distribution of land on many reservations. Records show that opposing members of bands frustrated the surveying of parcels and pulled up markers time and time again.⁷² Because of its hold on traditional approaches to tenure, assignment or its equivalent apparently has been preferred to allotment. Perhaps this has been true because members cannot alienate a parcel, for it belongs, in effect, to the entire band.⁷³

The sample map has more meaning if one realizes the magnitude of the failure of the allotment process. After a half-century of such land distribution and the Indians' ability to secure patents in fee, allotment led to the loss of 27,000,000 acres; additional millions of acres of so-called "surplus" unallotted lands were sold to non-Indians.⁷⁴ Despite the fact that the Indian Reorganization Act (1934)⁷⁵ abrogated the policy of land allotment because of these abuses of the tribal land base, from time to time younger generations of Indians seek either firmer tenure through allotment or more formalized assignments in land. This has occurred, for example, at Pala, Rincon and La Jolla, all reservations within Luiseño country.⁷⁶

Finally, this early assignment map suggests a parallel growth of the individualization of land that yet adheres, in part, to na-

tive tradition, subject to the rules of the band. To date, ethnographers have virtually neglected this aspect of Indian land tenure, which continues to reveal mixed sentiments toward private property as it flourishes in this country.

Pechanga v. Kacor

The working map of *Pechanga v. Kacor* belongs to a genre different from the others, for it focuses on litigation (Figure 3.5). I prepared this map as an unofficial consultant to the defendants' attorneys in a land claims case brought by the Pechanga Indians. The map suggests the nature of compiled data useful in the reconstruction of ethnographic, historic and documentary evidence relative to Indian land tenure. In the absence of specific instructions, I proceeded to develop a report with this accompanying map that synthesized as much legal history of land as seemed essential.⁷⁷ I also turned to archaeological and ethnographic supportive evidence, and relied in part on the resources of the plaintiffs' expert witness, Florence C. Shipek, an anthropologist.⁷⁸

Pechanga v. Kacor argued an interest in two parcels of land adjacent to the Indian reservation on the west that, according to the Indians, were included in the original executive order (1882) establishing the reserve.⁷⁹ By 1893, however, the trust patent issued to the band excluded the two parcels which aggregate approximately 400 acres. As it happens, one Peter Mouren had entered both parcels and received patents to them in 1882. Either the transmission of detailed survey data (township and section) from the field area to Washington, D.C., failed to show that these parcels transferred to Mouren prior to the executive order or no one had transmitted the information. It was not uncommon in the nineteenth century that the two field agencies—BIA and General Land Office (GLO)—would not keep each other amply apprised and, one must remember, the GLO by the 1870s had become responsible for nearly a billion acres in the West.⁸⁰ Not only were errors and oversights commonplace, but the President then possessed the authority to modify the boundaries of executive order reservations, with impunity, until Congress withdrew that power in 1911. Nevertheless, the Pechanga Band continued to argue that both parcels lay inside the borders of the original reservation. Furthermore, they alleged that the parcels were patented under

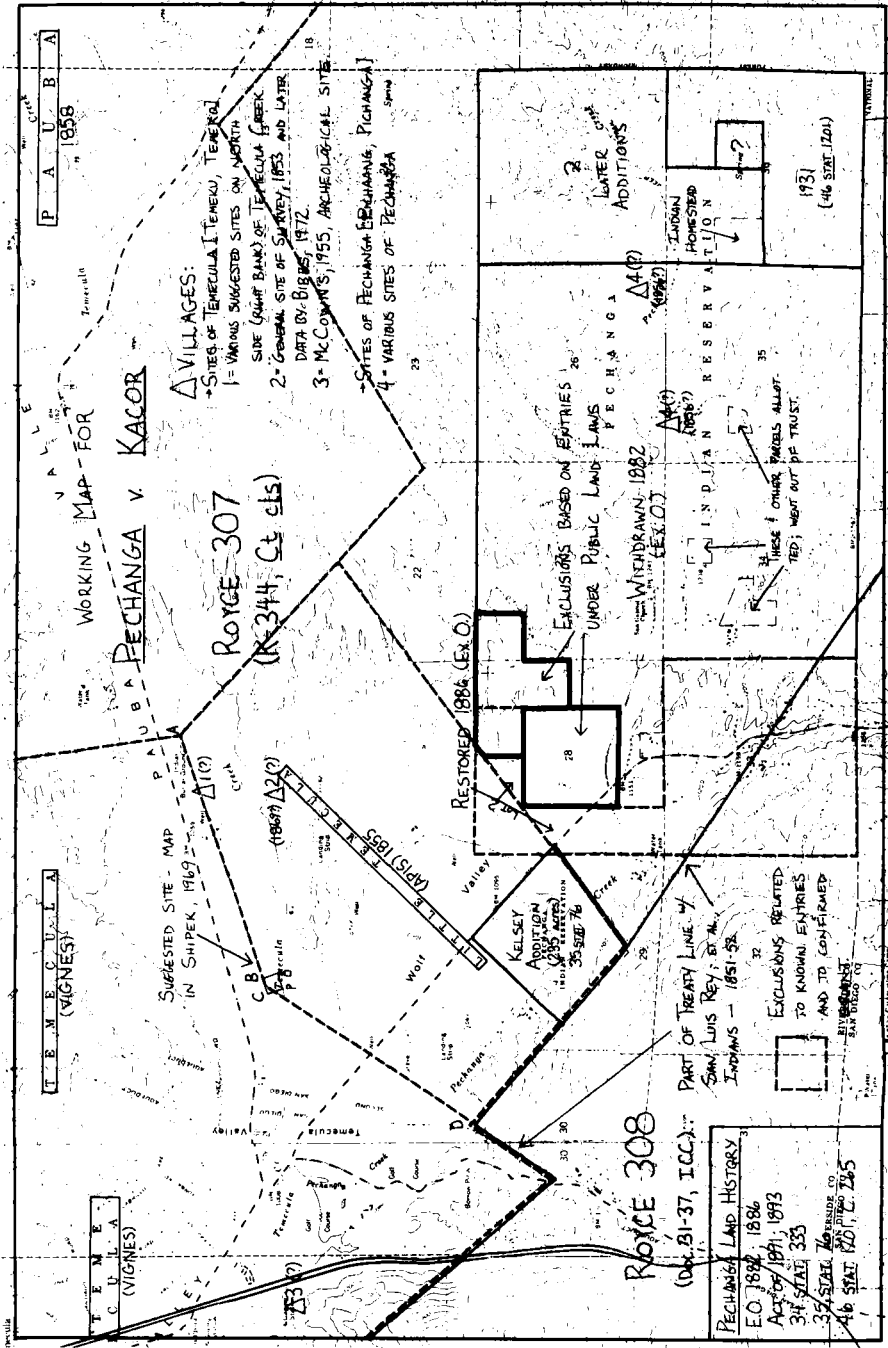


FIGURE 3.5 Pechanga v. Kacor. The Pechanga Indian Reservation is located more than 80 miles from Los Angeles. Compare fig. 3. Redrafted by Harold C. Fox.

fraudulent circumstances; they sought relief by means of quieting title in their favor.

After an intensive review of the title chain and litigation through the appeals level, *Pechanga Band of Mission Indians v. Kacor Realty, et al.* reached the Ninth Circuit Court of Appeals (San Francisco), which ruled that "the Mission Indian Relief Act of 1891 worked to extinguish whatever interest the Band had in the land pursuant to the executive order."⁸¹ The defendants had demonstrated in court that the original entryman had established a bona fide interest and that the current defendants were bona fide purchasers based on review of the executive order and the chain of title, now a century old.⁸² Additionally, the trust patent issued in 1893 did exclude these parcels in contention.

What necessitated the services of expert witnesses—one anthropologist and one geographer? The issue of fraud and its resolution called for legal interpretations of the title record. Ordinarily, however, federal statutes and dicta (in cases) do not bar Indian tribes from litigation, despite statutes of limitations and laches. As a rule, the courts deny defendants who have sought to estop tribes under such statutes.⁸³ When first approached to serve as an expert witness, I was asked to ascertain whether the Pechanga band indeed constituted the immediate descendants of the Indians for whom the executive order reservation was created in 1882. If facts would support the interpretation that they were not, statutes of limitations would have barred them from bringing suit. Thus I felt compelled to reach out into the surrounding lands to deploy information that related ethnographic facts to the legal history of the environs. At first, an element of confusion did seem to exist. Early references to Indians in the general area were to the Temecula, raising the inference that the Pechanga represented a different band altogether. However, this proved otherwise. My probe brought me closer and closer to conclusions drawn by the plaintiffs' data.

As early as 1883 Helen Hunt Jackson, the noted author who wrote impassionedly of the plight of the Mission Indians and who served as a special Indian commissioner, identified the Temeculas as having sought refuge at Pechanga, "a little valley set aside" as a reservation.⁸⁴ Subsequently, the BIA had identified the reservation ambiguously as Pechanga or Temecula and at least one relevant law, which added land to the reservation, states "Temecula (or Pechanga)" reservation.⁸⁵ Shippek refers to

Temecula v. Holman and Seasman (1859), which led to the ejection of Temecula Indians from their ancestral home within the Temecula (Vignes) land grant, whence they moved to the Pechanga area.⁸⁶ Other ethnographic data continued to support the premise that the Temecula and Pechanga were, or had become, one and the same people and long prior to the establishment of the reservation in 1882.

Writing in 1917, anthropologist E.W. Gifford referred to Pichanga (sic) where Temecula Indians were residing, and Bean and Shipek exhibit an 1895 photo that shows the village of Pichanga in full view of Mount Palomar, with houses of the Temecula.⁸⁷ These peoples were clearly near-neighbors, close kin, intermixing in pre-contact times; most of their villages were identified together, in close proximity, in early surveys and field reports and on maps reconstructed by ethnologists. According to synonymy established by Kroeber,⁸⁸ Temecula and Pechanga were treated as one. Only Harvey's testimony failed to include Pechanga among villages identified circa 1853; yet it did include Temecula.⁸⁹ However, unlike the more open terrain of the former Temecula area, Pechanga lies within the foothills of the Agua Tibia Mountains, and that it was overlooked does not seem improbable. The final working map includes data for various suggested sites for Pechanga (Pichanga or Pichaang), as well as sites of Temecula villages as based on archaeological, historical and ethnographic information. To complete the picture I superimposed boundaries of land grants (actually printed on the topographic base) and cession areas (cf. Figure 3.3).

One can comprehend the position taken by the Pechanga band, perhaps, when one considers that the two parcels excluded from the 1893 patent represent the best cultivable land close to the reservation. The Wolf Valley is a tract of gently sloping alluvial bottomland, which characteristic accounts for the later purchase of land (Kelsey addition) for this band.⁹⁰ Ultimately, the juxtaposition of the ranchos and the treaty line associated with Royce areas 307 and 308 had no bearing on the disposition of the case, except to reinforce the plaintiffs' contention that the Temecula had become part of the Pechanga owing to ejection of the former from the rancho of the same name. I suspect that my corroborative evidence convinced the defendants' attorneys to accept this ethnographic reality and proceed to deal with the issue of fraud.⁹¹

This cartographic example draws attention to the fact that litigation over land has indeed pitted tribes (or bands) against private parties, although the land claims cases prosecuted against the U.S. Government have received more notoriety. Also, such cases often oblige researchers to reexamine the documentation and decisions in the litigation decided by the U.S. Claims Court and the Indian Claims Commission. Often characterized as "third party" cases, litigation between Indians and private parties not only generates legal confusion, but raises ethical and political questions. Contemporary holders of title to lands claimed to be part of a reservation are too often the most removed from any historic injustice to the Indians. It is suggested that Congress, not the courts, must resolve these claims.

A Perspective

It is patent that maps have played a useful, at times even pivotal, role in Indian affairs, and that they constitute an archival tool for the reconstruction of Indian distributions, occupancy and territoriality. Researchers have, of course, questioned the accuracy of many older maps, and on occasion scholars have corrected or reinterpreted earlier map efforts;⁹² they have also given credence to native interpretation of boundaries that hitherto were dismissed or taken lightly.⁹³ The heavy and persistent employment of maps in the study of the American Indian may, in part, owe its origins to the ethnographic approach of the noted anthropologist Alfred L. Kroeber, his colleagues and his students. Kroeber not only contributed enormously to the volume of ethnographic data on California Indians, but he enhanced the utility of maps in local and national ethnographic studies.⁹⁴ He was the plaintiffs' chief expert witness for *Indians of California*, and he and his colleague Robert Heizer made considerable use of maps in expert testimony.⁹⁵ Omer C. Stewart, a student of Kroeber and himself a leading exponent of Great Basin ethnography, brought the use of maps in ethnographic reconstruction, especially of original or Indian title, to an art form in more than one study dealing with the Shoshone Indians.⁹⁶

As for Southern California and the samples discussed, there is little question that the record remains incomplete and, to a degree, inaccurate. But of maps that have been uncovered, reevaluated, and newly compiled, reconstruction of Indian oc-

cupancy in Southern California is perhaps about as good as it can ever become. Long ago (writing in 1918), Kroeber observed

Over much of Southern California . . . the opportunity to prepare an exact aboriginal village map passed away fifty years ago. The numerous little reservations of today do in the rough conserve the ancient ethnic and local distribution; but not under the old circumstances.⁹⁷

These observations by Kroeber advise us that, even when surveys precede ethnographic field study, reconstruction of mappable events and occupancy a century old becomes more art than science. Implicit in his observation are the sundry events that led to the displacement of Indians and the subsequent loss of territory. Here, and elsewhere, Indian occupancy based on surveys indeed provides certain geodetic controls that may later correlate with other environmental facts (e.g., human densities based on subsistence ecology). But these same controls may not be accurate insofar as they form the base for treaty boundaries and land cessions. That is to say, the Luiseño territorial map may come closer to ethnohistoric accuracy than the map of land cessions.

Generally there is a greater tendency to accept historic or documentary map than to accept one based on ethnogeographical information. Lest I overstate the case for one over the other, keep in mind that maps prepared in synthesis, utilizing ethnographic data as well as historic and/or documentary information, and perhaps field-checked, represent a halfway house by becoming more *ethnohistoric*. My reconstruction for *Pechanga v. Kacor* is one product of that synthesis. Yet it, as with many other such maps, may remain somewhat limited because non-Indian scholars, who may not possess the perspective to identify fundamental flaws or outright errors, have rendered them. Perhaps the best maps have resulted from an effort to combine the means—ethnographic, historic, and environmental—keeping the people, the time and events, as well as the place always in careful context. Limitations suggested here hold true for any interpretations that I have made of the cartographic record under review.

NOTES

*I wish to thank my referees, who helped in clarifying several legal points and caught my repeated abuses of the passive voice.

1. See, for example, Norman J. W. Thrower, *Maps and Man: An Examination of Cartography in Relation to Culture and Civilization* (Englewood Cliffs, N.J.: Prentice-Hall, 1972), Chap. 6, 61-83; and Louis De Vorsey, "Historic Maps Before the United States Supreme Court," *Map Collector* 19(June 1982): 24-31.

2. For California Indians, Robert F. Heizer brought together a succinct volume of commentary, ethnographic maps and, for example, a list of published detailed maps of tribal territories—*Languages, Territories and Names of California Indian Tribes* (Berkeley and Los Angeles: University of California Press, 1966).

3. See, for example, Laura E. Kelsay, comp. *List of Cartographic Records of the Bureau of Indian Affairs*, Special Lists, 13 (Washington, D.C.: The National Archives, 1954).

4. Note, particularly, G. Malcolm Lewis, "Indian Maps: Their Place in the History of Plains Cartography," *Great Plains Quarterly* 4(Spring 1984): 91-108.

5. The definitive volume based on treaties was prepared by Charles C. Royce, comp., *Indian Land Cessions in the United States. 18th Annual Report, Bureau of American Ethnography, 1896-97* (Washington, D.C.: Government Printing Office, 1899), pt. 2, 521-997.

6. See Imre Sutton, "Configurations of Land Claims: Toward a Model," in Idem., ed., *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: University of New Mexico Press, 1985), 111-132.

7. Imre Sutton, *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (New York: Clearwater Publishing Co., 1975), 218-19.

8. Paul W. Gates, *History of Public Land Law Development* (Washington, D.C.: Superintendent of Documents, 1968).

9. Textually, we will faithfully render the Spanish tilde for Luiseño and other names, although these words of Hispanic origin also appear in print lacking the tilde.

10. On the difference between the two forms of title, see Richard W. Yarbrough, "Introduction" [to the Index to the Map, "Indian Land Areas Judicially Established"], in Indian Claims Commission, *Final Report* (Washington, D.C.: Government Printing Office, 1978), 127-30.

11. Sutton, *Indian Land Tenure*, 51-55; compare Gustavas E. Lindquist, "Indian Treaty Making," *Chronicles of Oklahoma*, 26 (1948-49), 416-48.

12. Robert F. Heizer, "Indians of California: A Collection of Maps on Tribal Distributions," *California Indians II* (New York: Garland Publishing, Inc., 1974), 7-95; ref. to 3-4.

13. *Ibid.*, 4.

14. One source on California archival materials is Jack Allen and Dennis Moristo, "An Introduction to the Bureau of Indian Affairs—Agency Records and Bureau of Indian Affairs—Archival Records Housed in the San Francisco and Bell Federal Record Centers," *Native American Series*, 1 (Los Angeles: American Indian Culture Center, University of California, 1971). The Bell collection was relocated to Laguna Niguel in Orange County.

15. For discussions of the deployment of maps related to land claims, see Imre Sutton, ed., *Irredeemable America*, *passim* and "Bibliographical Note," 399-401.

16. William D. Pattison, *Beginnings of the American Rectangular Land Survey System, 1784-1800*, University of Chicago, Department of Geography Research Paper 50 (Chicago: University of Chicago Press, 1957).

17. Gertrude L. Brown, "Initial Monuments for California's Base and Meridian Lines," *California Historical Society Quarterly*, 34 (March 1955): 1-18.

18. Charles C. Kappler, comp., *Indian Affairs, Laws and Treaties*, 5 vols. (Washington, D.C.: Government Printing Office, 1903-38), 4 (1929) 1124-26; Robert F. Heizer, "Treaties," in *Handbook of North American Indians*, W. C. Sturtevant, gen. ed., vol. 8, *California*, R. F. Heizer, ed. (Washington, D.C.: Smithsonian Institution), 701-704.

19. *U.S. Statutes at Large*, 9 (Washington, D.C.: Government Printing Office, 1851), 631; Donald G. Shanahan, "Compensation for the Loss of the Aboriginal Lands of the California Indians," *Southern California Quarterly* 57 (Fall 1975): 297-320.

20. David Hornbeck, "Mexican-American Land Tenure Conflict in California," *Journal of Geography* 75 (April 1976): 209-221.

21. *U.S. Statutes at Large*, 10 (Washington, D.C.: Government Printing Office, 1853), 244.

22. Herbert R. Harvey, "The Luiseño: An Analysis of Change in Patterns of Tenure and Social Structure," in *California Indians II* (New York: Garland Publishing, Inc., 1974), 97-206; ref. 22-23.

23. *Ibid.*, 22-24; based on California Field Notes of Surveys, 1855-57.

24. *Ibid.*, 25.

25. Letter from L. P. Lewis to author, May 23, 1963; see Imre Sutton, "Land Tenure and Changing Occupance on Indian Reservations in Southern California," Ph.D. diss. (Los Angeles: University of California, 1964), 64, fn. 42.

26. Because of platting it was possible to determine the existence of an Indian village on a section granted to the Southern Pacific Railroad in Coachella Valley (see fig. 3) and thus evict them; see *ibid.*, Chap. 2.

27. Harvey, "The Luiseño," 36.

28. *Ibid.*, 117-118.

29. Royce, *Indian Land Cessions*, 884-85.

30. Kappler, *Indian Affairs*, 4 (1929), 1124-26.

31. Sutton, *Land Tenure*, Chap. 2, 72-96; "Report of the Mission Indian Commission," (Washington, D.C., 1891); a portion of the report is published in U.S. Congress, House, *House Executive Documents* 96, 52nd Cong., 1st Sess. (Washington, D.C., Government Printing Office, 1892).

32. Florence C. Shipek, "History of Southern California Mission Indians," in *Handbook of North American Indians*, vol. 8, *California*, ed. R. F. Heizer (Washington, D.C.: Smithsonian Institution, 1978), 610-618; letter to author from Southern California Agency, BIA, October 28, 1986.

33. See, generally, Ralph L. Beals, "The Anthropologist as Expert Witness: Illustrations from the California Indian Land Claims Case," in Sutton, *Irredeemable America*, 139-155.

34. *13 Indian Claims Commission*, 514 (1964).

35. Ralph L. Beals and James Hester, "Indian Land Use and Occupancy in California," in *California Indians I* (New York: Garland Publishing Co., 1974), vol. 1., 70.

36. P. S. Sparkman, "Culture of the Luiseño Indians," *University of California Publications in American Archaeology and Ethnology*, vol. 8 no. 4 (1908), 187-234, ref. 190; Raymond C. White, "Luiseño Social Organization," *ibid.*, vol. 48, no. 2(1963): 91-194, ref 116-117.

37. Sparkman, "Luiseño Indians," 189.

38. William D. Strong, "Aboriginal Society in Southern California," *University of California Publications in American Archaeology and Ethnology*, 26(1929): 1-358; map 275; cf. Sparkman, ". . . Luiseño Indians," 191-92.
39. Beals, "The Anthropologist as Expert Witness," 142, 150-51.
40. Sparkman, "Luiseño Indians," 191.
41. Alfred L. Kroeber, *Handbook of the Indians of California* (1925; reprint, Berkeley: California Book Co., 1953), Plate 57.
42. White, "Luiseño Social Organization," fig. 1.
43. Lowell J. Bean and Florence C. Shipek, "Luiseño," in *Handbook of North American Indians*, vol. 8., *California*, ed. R. F. Heizer (Washington, D.C.: Smithsonian Institution, 1978), 550-563; ref. 551.
44. White, "Luiseño Social Organization," 117.
45. Bean and Shipek, "Luiseño," 551.
46. White, "Luiseño Social Organization," 104.
47. Heizer, "Treaties"; 13 *Indian Claims Commission*, 514(1964).
48. Omer C. Stewart, "Litigation and Its Effects," in *Handbook of North American Indians*, vol. 8, *California*, ed. R. F. Heizer (Washington, D.C.: Smithsonian Institution, 1978), 706-07.
49. 8 *Indian Claims Commission*, 1 (1959); Stewart, "Litigation and Its Effects," 707.
50. See, generally, Sutton, *Irredeemable America*.
51. Yarborough, "Introduction," 128-30.
52. Royce, *Indian Land Cessions*.
53. Sutton, "Configurations of Land Claims."
54. Heizer, "Treaties"; see also Stewart, "Litigation and Its Effects," 705-12.
55. The treaties appear in Kappler, *Indian Affairs*, (4), 1081 *et seq.*
56. Sutton, *Land Tenure*, ch. 2.
57. *Ibid.*, Table 3.
58. Royce, *Indian Land Cessions*, Plate VII.
59. Heizer, "Treaties," 703.
60. *Ibid.*, 703.
61. Stewart, "Litigation and Its Effects"; Sutton, "Configurations of Land Claims," 114-117; 102 *Court of Claims*, 837 (1944) and 13 *Indian Claims Commission*, 369 (1964).
62. Sutton, *Indian Land Tenure* (1975), *passim*.
63. 24 *Stat.*, 388 (1887); Sutton, *Indian Land Tenure*, 125-32.
64. Imre Sutton, "Private Property in Land Among Reservation Indians in Southern California," *Yearbook*, Association of Pacific Coast Geographers 29(1967): 69-89.
65. Sutton, "Land Tenure" (1964), Table 5, 323.
66. *Ibid.*, Table 1, 318-19; Royce, *Indian Land Cessions*, 884-85.
67. Mission Indian Commission, "Report"; Sutton, "Land Tenure," Fig. 14, 91; Table 3, 321.
68. *Ibid.*, Table 2, 320.
69. Bureau of Indian Affairs, *Tribal Information and Directory* (Sacramento: Sacramento Area Office, 1986), 23.
70. Sutton, "Land Tenure," Table 5, 323.
71. *Ibid.*, ch. 3, 114 ff.; cf. Harvey, "The Luiseño," and White, "Luiseño Social Organization."
72. In addition to references cited earlier, much of the archival record at

Laguna Niguel contains correspondence reflecting on the problems of establishing allotments in Southern California.

73. There are really no publications that fully discuss land assignment. For an overview of the law involved in Indian land holdings, see William C. Canby, Jr., *American Indian Law in a Nutshell* (St. Paul: West Publishing Co., 1981), 231-35; locally, see Sutton, "Private Property." On the historic significance of the actual process of allotting land, see Francis P. Prucha, "New Approaches to the Study of the Administration of Indian Policy," *Prologue*, 3(Spring 1971): 15-19.

74. Wilcomb E. Washburn, *Red Man's Land/White Man's Law: A Study of the Past and Present Status of the American Indian* (New York: Charles Scribner's Sons, 1971), 145. Two major studies that critically evaluate the allotment programs are Leonard A. Carlson, *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming* (Westport, CT: Greenwood Press, 1981) and Wilcomb E. Washburn, *The Assault on Indian Tribalism: The General Allotment Law (Dawes Act) of 1887* (Philadelphia: J. B. Lippincott Co., 1975).

75. 48, *Stat.*, 984 (1934).

76. Sutton, "Land Tenure," Table 5, 323.

77. Imre Sutton, "Pechanga Indian Land Tenure: A Report in Response to Questions Regarding *Pechanga v. Kacor et al.*" (Typescript, with two maps, submitted to Rutan & Tucker, Attorneys at Law, Santa Ana, California) (Fullerton, 1979).

78. Professor Shipek had worked with many bands of Indians in Southern California and had published numerous studies of the Luiseño Indians.

79. Royce, *Indian Land Cessions*, 906-07; John C. Christie, Jr., "Indian Land Claims Involving Private Owners of Land: A Lawyer's Perspective," in Sutton, *Irredeemable America*, 233-46.

80. Cf. Harold H. Dunham, "Some Crucial Years of the General Land Office, 1875-1890," *Agriculture History*, 11(1937): 117-41.

81. 680 F. 2nd 71 (9th Cir. 1982); 103 *Sup. Ct.*, 817 (1983).

82. Christie, "Indian Land Claims," 240-41.

83. *Ibid.*, 234-35.

84. Helen Hunt Jackson, *Glimpses of California and the Missions* (Boston, 1883; 1902), 122, and Idem and Abbot Kinney, "Report on the Condition and Need of the Mission Indians," *House Report* 3282, 50th Cong., 1st Sess. (Washington, D.C.: Government Printing Office, 1888).

85. 46 *Stat.*, 1201 (1931).

86. Florence C. Shipek, "A Unique Case: *Temecula Indians vs. Holman and Seaman*," *Journal of San Diego History* 5, no. 2(1969): 26-32.

87. E. W. Gifford, "Clans and Moeities in Southern California," *University of California Publications in Archeology and Ethnology* 14(1918): 155-219; Bean and Shipek, "Luiseño," 550.

88. Kroeber, *Handbook*, 667.

89. Harvey, "The Luiseño," Table 1, 35.

90. 35 *Stat.*, 76 (1906-08).

91. Christie, "Indian Land Claims."

92. Harold Hickerson, in "Ethnohistory of Chippewa in Central Minnesota," *Chippewa Indians IV* (New York: Garland), 116, and Robert P. Swierenga, in *Pioneers and Profits: Land Speculation on the Iowa Frontier* (Ames: Iowa State University Press, 1968), 18, found errors in Royce, *Indian Land Cessions*.

93. Louis De Vorse, *The Indian Boundary in the Southern Colonies, 1763-1775* (Chapel Hill: University of North Carolina Press, 1966).

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

95. Heizer, "Indians of California"; Omer C. Stewart, "Kroeber and the Indian Claims Commission Cases," *Kroeber Anthropological Society Papers* 25(1961): 181-90.

96. Omer C. Stewart, "The Question of Bannock Territory," in *Languages and Cultures of Western North America: Essays in Honor of Sven S. Liljeblad* (Pocatello: Idaho State University Press, 1970), 201-31; and idem., "The Shoshone Claims Case," in Sutton, *Irredeemable America*, 187-206.

97. Kroeber, *Handbook* (1953 ed.), 616.