

“Great Frauds and Grievous Wrongs”: Mapping the Loss of Kickapoo Allotment Lands

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Abstract

Like many of the Tribes in Kansas, the Kickapoos were pushed from their original homelands farther to the north and east. In the 1832 Treaty of Castor Hill, they received a reservation of 768,000 acres in northeast Kansas, but under pressure from encroaching settlers, they agreed in 1854 to a reduced reservation of 150,000 acres. Just eight years later, in 1862, a fraudulent treaty was put into place by an unscrupulous Indian agent, a conspiring US Senator, and railroad interests that resulted in division of part of the land to Tribal members under a process known as allotment. Under terms of the treaty, the sale of the remainder of the reservation (the “surplus”) was made exclusively to the Atchison and Pike’s Peak Railroad. Individual members of the Kickapoo Tribe were assigned either allotments in severalty or allotments in common, according to their preference, and the remaining reservation, comprising the lands of those who took allotments in common, was reduced to less than 20,000 acres. Those who had taken allotment in severalty were subjected to unrelenting efforts to defraud them of their land and many fell victim. Through examination of archival records and GIS-based mapping and analysis, we illustrate and discuss the spatial patterns and impacts of allotment on the Kickapoos and the subsequent loss of lands that had been allotted in severalty.

Background: Assimilation and Allotment

In the late 1800s and early 1900s, American policymakers and philanthropists settled on a policy of assimilation to solve what they characterized as the “Indian Problem.” The underlying philosophy behind assimilation was to integrate Native peoples into American society and culture (Fritz 1963; Hoxie, 1984). Its key goals included settling nuclear families on farmsteads, forcing them to give up nomadism and the hunt, eliminating tribal identity and “uncivilized practices,” and encouraging the adoption of white culture, especially language and religion (Washburn 1975). One of the key cornerstones of assimilation was land allotment, where individuals would be allotted individual parcels of land to farm in the hope that they would become sedentary farmers like their non-Native neighbors (McDonnell 1991; Kickingbird and Ducheneaux 1973). “Surplus” lands, i.e. those not allotted to tribal members, would be sold with the proceeds going to benefit the tribe. The general allotment act of 1887, also known as the Dawes Act, made allotment general, but a number of treaties and agreements prior to the Dawes Act included provisions for allotment.

Unfortunately, allotment policies created an unholy alliance of well-meaning reformers, such as the “Friends of the Indian,” and avaricious land speculators, land hungry settlers, railroad barons, and politicians. The result was the loss of vast tracts of land and a fractured spatial legacy

that includes checkerboarding and fractionation. In the case of the Kickapoo Tribe in Kansas, it meant “a long and sordid chronicle of sharp deals and swindles” (Gibson 1963, p.124), the results of which reverberate to the present day (Gates 1954; Miner and Unrau 1990).

Kickapoo Lands in Kansas – A Story of Diminishing Lands

As with many Native Tribes that ended up living in Kansas, the Kickapoos originated in ancestral homelands farther to the north and east, and by the early 1800s were living in Missouri on the Osage river. In the Treaty of Castor Hill in 1832, the Kickapoos ceded their lands in Missouri and received a new reservation in what is now northeast Kansas (Kappler 1904, pp.365-7: Treaty with the Kickapoo, 1832). It constituted approximately 768,000 acres and was to be “a permanent place of residence as long as they remain a tribe.” As Kansas approach territorial status, which it attained in 1854, squatters began to settle on Kickapoo lands, building cabins and fencing fields, and refusing to leave. Under this onslaught, leaders of the Kickapoo Tribe went to Washington DC in 1854 and agreed to a new treaty under which they would sell 618,000 acres, with the proceeds going to the Tribe, leaving a new reservation of 150,000 acres (Figure 1). Although this new “Diminished Reserve” was designated as “future and permanent home” for the

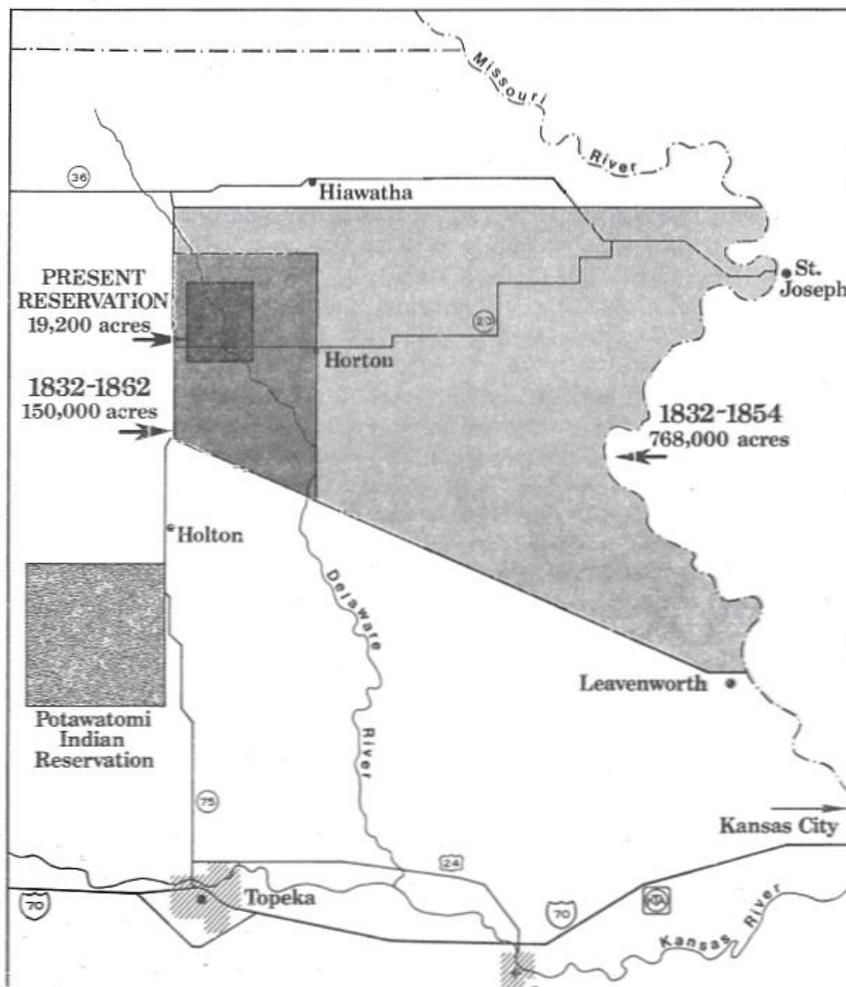


Figure 1. Map of diminishing Kickapoo lands in northeast Kansas. Based on Stull (1984), p. 72. Original cartography by Laura Poracsky.

Kickapoo Tribe, there was a provision in the treaty for future allotment (Kappler 1904, pp.634-6: Treaty with the Kickapoo, 1854).

Settlers poured into the new Kansas territory, creating increased pressure to acquire what remained of Kickapoo territory. Local settlers and passing wagon trains squatted on Kickapoo land, stole timber, and used their land for grazing, often damaging their gardens and pastures. Then, in 1862 a new treaty was signed that provided for individual allotment of land to members of the Kickapoo tribe with the “surplus” lands to be sold to railroad interests (Kappler 1904, pp.835-9: Treaty with the Kickapoo, 1862). Unfortunately, the Treaty of 1862 was a fraud from beginning to end, the result of a conspiracy between the local Indian agent, a sitting US Senator, the Atchison and Pike’s Peak Railroad, and a handful of compliant members of the Kickapoo tribe. Charles B. Keith was the Indian agent who brokered the 1862 treaty. It was Keith who gathered the signatures of “chiefs” and other leaders and supposedly got the approval of the tribe. Samuel C Pomeroy was one of the first senators from Kansas, who served simultaneously as the president of the Atchison and Pike’s Peak Railroad. It was said that he kept two sets of stationery in his senatorial office, using whichever one suited his purpose at the time. Although the treaty was exposed as a fraud at the time by the Kansas Secretary of State, no action was taken in the Senate to nullify it, and the Kickapoo Tribe in Kansas still contests its legality. (For a full account of the fraud and efforts to unmask it, see Gibson 1963, Chapter 10.)

The terms of land allotment in the 1862 treaty were somewhat unique because they provided for both allotments in common and allotments in severalty. (Allotment in severalty refers to dividing the land into separate parcels for those eligible, for the purpose of making them individual land owners.) For those who desired allotment in severalty, 320 acres were to be allotted to “chiefs” or “headman,” 160 acres to other heads of household, and 40 acres each to children, single adults, and adult married women (Kappler 1904, p.835: Treaty with the Kickapoo, 1862). The provision for allotment to married women is noteworthy in that the Dawes Act (or General Allotment Act) of 1887 provided for no allotment to married women, presumably under the assumption that the husband and wife would share in the fruits of the allotment.

Although some members of the tribe opted to take individual allotments, the majority rejected allotment in severalty and requested that their lands be allotted in common. In their view, their spiritual values forbade them from taking individual ownership of land, regarding it as an affront to their Creator (Gibson 1963, pp.129-130). As to the surplus lands, whereas most allotment agreements called for “surplus” lands to be purchased by the federal government and then sold on the open market, the Kickapoo Treaty of 1862 called for these lands to be sold exclusively to the Atchison and Pike’s Peak Railroad under terms highly favorable to the railroad, thereby profiting Senator Pomeroy and his political and familial cronies.

In his 1869 annual report, the local Indian agent reported the results of allotment under the 1862 treaty (Table 1). As the table shows, approximately one third of eligible tribal members took allotments in severalty, while two thirds took allotments in common. Perhaps most striking is that only 18% of the Diminished Reservation’s land area of 150,000 acres was allotted to tribal members altogether, while 82%, or 122,549 acres, was sold as surplus to the Atchison and Pike’s Peak Railroad.

Table 1. Summary of allotments under the Treaty of 1862. “% Al. = percent of all allotted lands (i.e., 27,451 acres). “% Tot.” = percent of all lands on the Diminished Reserve (i.e., 150,000 acres) (Report of the Commissioner of Indian Affairs for 1869, p.365).

Allotment Type	Persons	%	Acres	% Al.	% Tot.
Severalty allotments	93	35%	8,313	30%	6%
Common allotments	172	65%	19,138	70%	12%
Total allotted	265	100%	27,451	100%	18%
Surplus (to railroad)	---		122,549	N/A	82%

Research Goals and Methods

Our purpose in this study was to examine the impacts of Kickapoo land allotments through the geographic lens of pattern and process. Our primary focus was on the allotments in severalty. We wanted to learn, first of all, what patterns on the landscape resulted from allotment, in both the short and long terms. We also wanted to learn what the patterns themselves would reveal – for example, about Native land preferences and about the allotment process itself. To accomplish this, we used original allotment records from the National Archives and geographic information systems (GIS) to map and explore the patterns of land allotment among the members of the Kickapoo tribe in Kansas.

The first step in creating an interactive GIS database of Kickapoo land allotments was to obtain copies of the original allotment records at the Kansas City Branch of the National Archives (National Archives, Kickapoo Allotment Rolls 1865-1921). Using a high-resolution digital camera and a copy stand provided by the Archives we created digital photographs of all pages of the original allotment register (Figure 2). The register page entries for each allottee included the allotment number; the name of the allottee; whether the allottee was a man, woman, boy, or girl (i.e., age 18 and over, or under 18); age; the aliquot description of the allotted parcel according to the U.S. public land survey system (PLSS); and the number of acres in the parcel. An example of an aliquot parcel description in the allotment register would be “SW SE 4 6 17,” which indicates the southwest quarter of the southeast quarter of section 4 of township 6 range 17 (the directions of the township and range designations were implied).

List of Allotments of Lands made to the
Kickapoo Indians; January 1.- 1865.
By Edward Wolcott.
Comr.

Order	No. Person	Names of Allottees	Man	Woman	Boy	Girl	Age	Subdivision	Sec	Town	Range	Acres
1	1	Captain Hamilton, Chief	1				53	N $\frac{1}{2}$	9	6	17	320
2	2	Pe to pe		1			45	SE. SE.	4	6	17	40
3	3	O. Ketch Kah		1			25	SE. SE.	4	6	17	40
4	4	Mo ke ten o qua				1	5	NE. SE.	4	6	17	40
5	5	No ten			1		3	NE. SE.	4	6	17	40
6	6	Naw thah ten o qua				1	1	SE. NE.	4	6	17	40

Figure 2. Photograph of the top portion of the first page of the Kickapoo Allotment Register. The title at the top of the page reads, "List of Allotments of Lands made to the Kickapoo Indians, January 1, 1865 By Edward Wolcott, Comr." Columns were used for recording Family Number, Person Number, Name of Allottee, whether Man, Woman, Boy, or Girl, Age, Subdivision, Section, Township, Range, and Number of Acres. (Photograph by authors.) (National Archives: Kickapoo Allotment Rolls)

The individual allotment entries were then manually transcribed from the digital photographs into an Excel spreadsheet, with one line per allotment entry. The spreadsheet was then used as an input for TractBuilder, an add-in program to ArcGIS that reads aliquot subdivisions of the public land survey system and creates a digital map of the allotments. The resulting ArcGIS shapefile is a digital map that can be displayed and queried. In the GIS it is also possible to overlay other map layers, such as land use, soils, streams, woodlands, original survey maps, and more, to aid in visual and digital analysis.

Patterns of Severalty Allotments

The map of initial allotments (Figure 3) reveals several patterns of interest. First, the allotments in common form a single large tract of land forming a rectangle of five miles by six miles, or approximately 19,000 acres. The allotments in severalty, on the other hand generally form a linear pattern stretching from northwest to southeast, with a few small clusters of outlying allotments. Although the allotments in severalty were somewhat spread out, they were loosely connected in most cases. Using the ability of GIS to overlay multiple landscape features on a single map, we overlaid maps of rivers and streams, pre-European settlement woodlands, and existing cultivated fields as mapped on the original land surveys of the 1850s (Figure 4). The resulting map reveals that, unsurprisingly, the Kickapoo Tribal members who took allotment in severalty overwhelmingly selected lands along the Little Delaware River. River bottom lands provided access to a perennial source of water, timber for fuel and construction, access to game, and rich soil for farm and garden plots. Given that the Kickapoos had resided in the area for 30 years prior to allotment in 1862, it is likely that the lands they selected were lands on which they already had taken up residence. Two pieces of circumstantial evidence support this view. The first is that a majority of the cultivated plots mapped by government survey crews in the 1850s fall on or very

near to lands selected as allotments in severalty (small black polygons in Figure 4). In other words, the cultivated parcels were likely garden plots and fields already farmed by the Kickapoos at the time of allotment. The second supporting piece of evidence comes from the report of the Kickapoo Indian Agent in his 1887 report (Annual Report of the Commissioner of Indian Affairs 1887, pp.121-2):

While the tribe is supposed to occupy their reservation in common, as a matter of fact each individual or head of a family holds his land in severalty. ... Each family has its fixed habitation and a patch or field contiguous to it under some kind of fence. The individual right to these is unquestioned and recognized as sacred by the tribe.

Although the agent was speaking of Kickapoos living on the allotment-in-common tract of land, it is clear that the Kickapoo Tribe practiced a kind of internal apportionment of land to individuals and families, forming their own version of allotment in severalty. This was no doubt also true of those who had accepted allotment in severalty 25 years earlier.

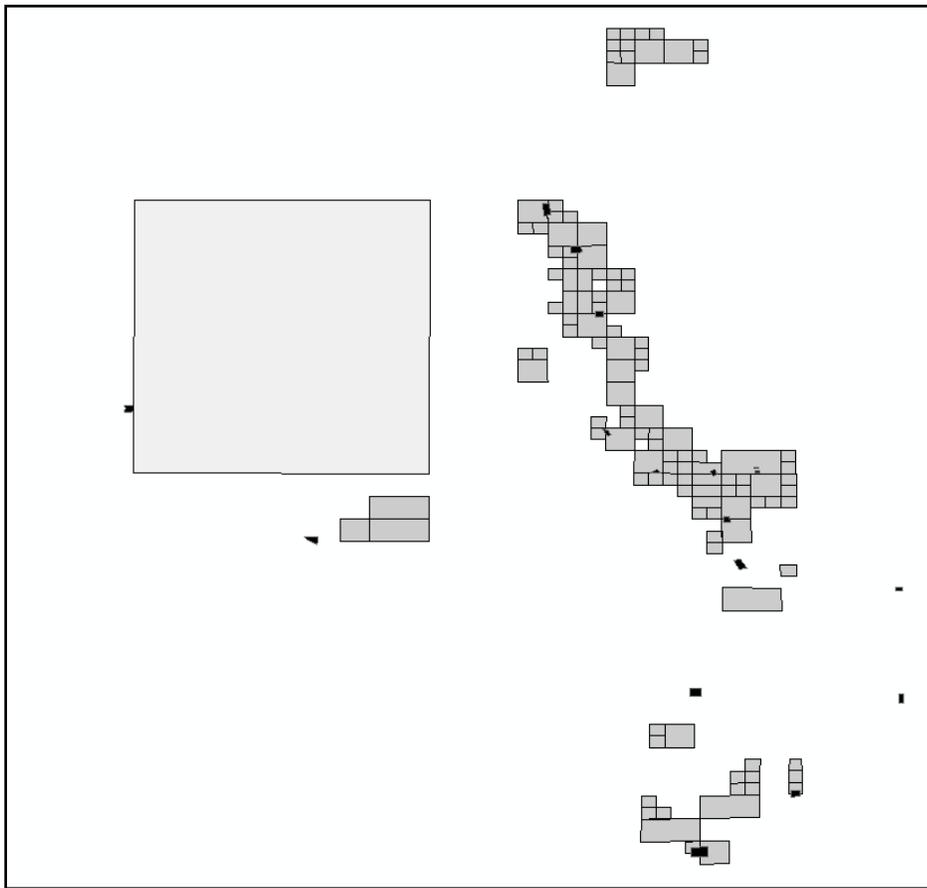


Figure 3. Lands allotted as a result of the Treaty of 1862. The large square on the left (light gray) is the land allotted in common, while the smaller parcels on the right (mid-gray) are the allotments in severalty. The small black polygons are cultivated fields as mapped in the original land surveys. (Map by authors in ArcGIS.)

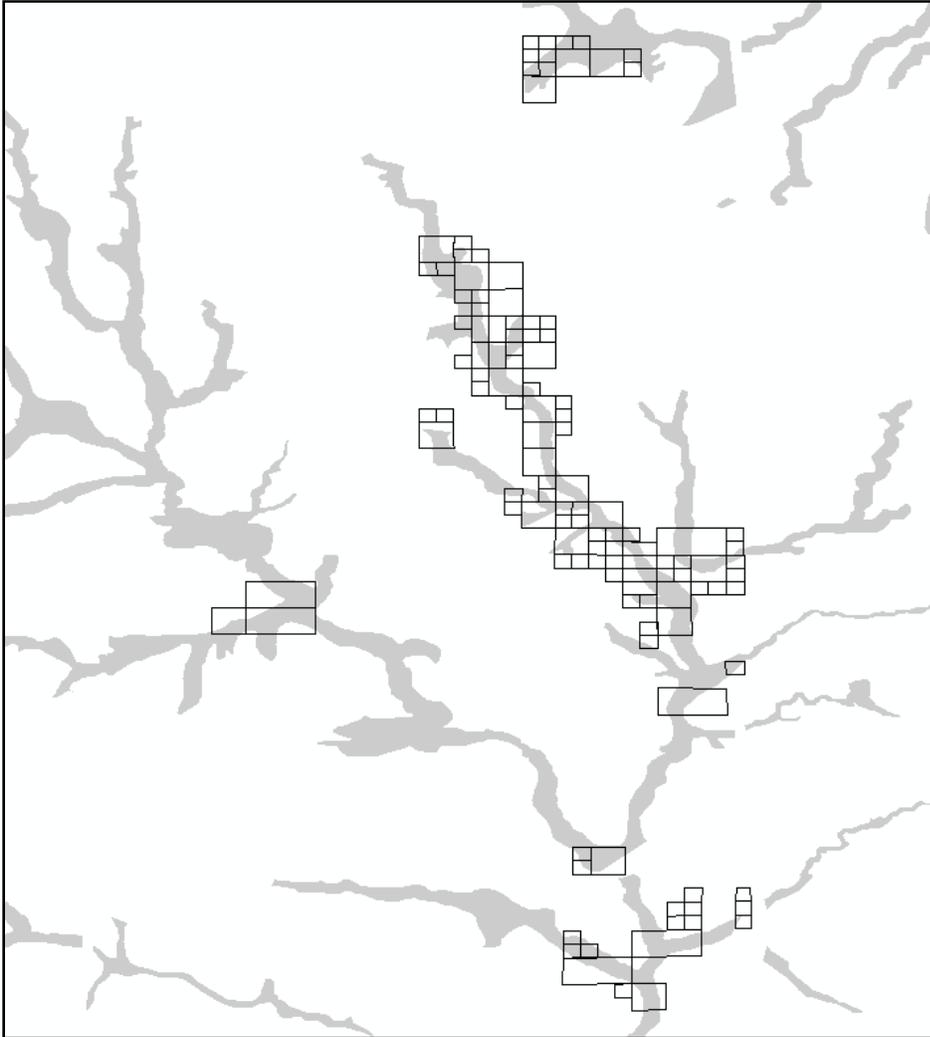


Figure 4. Allotments in severalty overlaid on a map of stream-bottom woodlands. The relationship between the location of the allotments and the woodlands is readily apparent. (Map by authors in ArcGIS.)

The Loss of Severalty Lands

It appears that no sooner had allotment in severalty been completed that white land speculators began seeking ways to gain possession of the choice bottom lands, and they were willing to resort to any means to accomplish their ends, including outright fraud. In 1887, when the Kickapoos who had taken allotment in common were under pressure to submit to breaking up their lands through allotment in severalty, as were the members of the nearby Prairie Band Potawatomi, the Indian agent noted in his annual report that both tribes were adamantly opposed to allotment in severalty (Annual Report of the Commissioner of Indian Affairs 1887, p.123):

The Prairie Band and the Kickapoos are strenuously opposed to taking their land in severalty, deterred by a full knowledge of the misfortunes in which member of either tribe, so taking their lands some years ago, were involved. I am not aware that there is a single member of either tribe who favors the policy.

Although the foundation of their opposition was no doubt their spiritual belief that doing so would be offensive to the Creator, they also had another, more practical, reason for their determined refusal. As the agent further reported regarding the sale of severalty lands that had been allotted under the Treaty of 1862 (Report of the Commissioner of Indian Affairs for 1887, p.123):

...much trouble has arisen in consequence of invalid sales. Any kind of a written contract with an allottee was deemed a sufficient warrant for the purchaser to take possession of the land and to hold it. In this manner great frauds have been perpetrated and grievous wrongs done to the allottees.

The Indian agent's statement not only makes clear that fraud had been perpetrated against Kickapoo Tribal members to obtain their land, it makes clear the means by which it took place.

As both Banner (2005) and Debo (1940) explain, one common method of defrauding allotment holders of their lands was for dishonest speculators, also known at the time as land sharks, to induce the holder to sign a document purported to be a lease or similar instrument when in fact it was a deed. As Commissioner of Indian Affairs Ezra Hayt noted in 1878, land sharks would approach allotment holders with what they said was a contract for a sale of timber on the allotment holder's land, or might even pretend to be acting as government agents distributing funds to the poor. The land shark would then ask the allotment holder to sign a "receipt," which in reality was a "warranty deed, which is recorded, and generally the land is sold to a third and innocent party before the Indian discovers the fraud" (Report of the Commissioner of Indian Affairs, 1878, p. viii). In such cases the allotment holder rarely prevailed in court and ultimately was forced off his or her land. Small wonder that the Kickapoos and Prairie Band Potawatomis in the 1880s were "strenuously opposed" to further land allotment – they knew it would expose them to the same kinds of fraud that had dispossessed previous allotment holders.

To further examine the fate of the Kickapoos allotments in severalty, we examined records in the tract books at the Register of Deeds office in the Brown County, Kansas courthouse (Tract Books, Brown County, Kansas). Although the allotment in severalty lands lie within the boundaries of three counties (Atchison, Brown, and Jackson), the majority of them fall within Brown County: 4,475 acres held by 73 allottees. We were able to locate records for 63 of the 73 allottees and examined them for patent dates and sale dates. (A land patent refers to the deed that a first landholder receives from the federal government, whether by purchase, homesteading, or allotment.) Although allotments in severalty under the treaty of 1862 were made to the Kickapoo tribe in the 1860s, patents were not issued to the severalty allotment holders until beginning in 1871, and many patents were issued in that year.

Not surprisingly, sales of allotment lands to non-Natives began to be recorded in the same year that land patents began to be issued (1871). The tract book entries show that 80% of all severalty land in Brown County was sold by 1890 and 98% by 1900; the mean year of sale was 1883. However, it is unlikely that these dates tell the whole story. It was frequently the case that sales and other transactions were not recorded at the time of the actual transaction, but at a later date. Thus, the dates in the tract books should be regarded as "not later than" dates rather than actual transaction dates. Therefore, it is likely that many of the transactions, fraudulent or otherwise, happened at earlier dates than those recorded. In any case, within 30 years of allotment, virtually all the land that had been allotted in severalty to members of the Kickapoo Tribe had fallen out of their hands. Small wonder that the remainder of the Tribe, those who had taken

allotment in common, feared the impacts of the allotment in severalty that was forced upon them under the Dawes Act of 1887 and a related Congressional Acts in 1899 and 1903 (Annual Report of the Commissioner of Indian Affairs 1903).

Conclusions and Future Directions

Through using archival land allotment documents in a GIS, we have been able to discover and document two important facets of the land allotments in severalty made to members of the Kickapoo Tribe in Kansas as a result of the fraudulent treaty of 1862. First, those who elected to take allotments in severalty wisely chose lands in wooded stream bottoms that provided access to the resources that would sustain them in their traditional lifestyle. The second discovery was that within two or three decades, and probably sooner, virtually all the allotment-in-severalty lands examined in our study had passed from the hands of their original owners into the hands of non-Native speculators and land owners. Although this was a relatively small chapter in the unremitting history of Native lands lost because of allotment, it was a tragedy to Kickapoo tribal members who had permanently lost their land.

We regard the research described in this paper merely as a prologue to a more extended study of the patterns and impacts of Native land allotment in Kansas. To further extend our examination of temporal patterns of the loss of the allotment-in-severalty lands, we plan to examine land records in the courthouses of Atchison and Jackson counties. In addition to examining temporal patterns, we also plan to further examine the identities of major purchasers of lands. We noted in our study of land records in Brown County that a relative handful of individuals were involved in the majority of land sales. By researching contemporary newspaper archives and court records, we hope to be able to tentatively identify those involved in land fraud and speculation.

A major thrust of our future research will be to examine land allotment patterns among the Prairie Band Potawatomi Tribe, whose reservation lies just to the southwest of the Kickapoo reservation and whose language and culture share many commonalities. Based on preliminary research, it appears that the Prairie Band Potawatomi may have undergone a similar process of “dual” allotment – severalty and in common. An examination of their experience will provide an important adjunct to the fate of the Kickapoo allotment lands. In addition to allotment registers of the type studied for the Kickapoo Tribe, we will also study sales records in the county courthouses, and will seek to examine copies of correspondence sent to the Office of Indian Affairs during both the allotment and sale/fraud time periods. These will no doubt provide valuable and, it is hoped, candid insights into the behavior and tactics of those accused of defrauding the Native people in northeast Kansas of their allotment lands.

Acknowledgements

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