

6.

*Land claims adjudication; land restoration, sacred places & repatriation*

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

*General Literature & Documents:*

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

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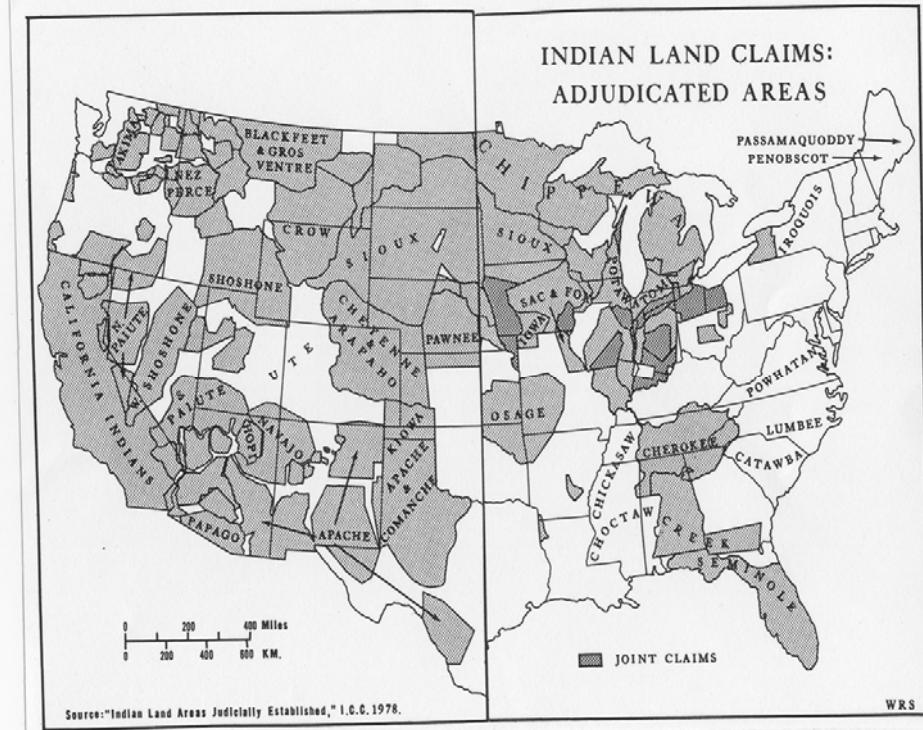


FIG. 6.1 Land Claims Judicially Established by the Indian Claims Commission. Source: ICC *Final Report* (1979); as modified in Sutton, *Irredeemable America* (1985). Few cases emanated from southern or eastern tribes, in part, because some Indian communities are unrecognized and otherwise can no longer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

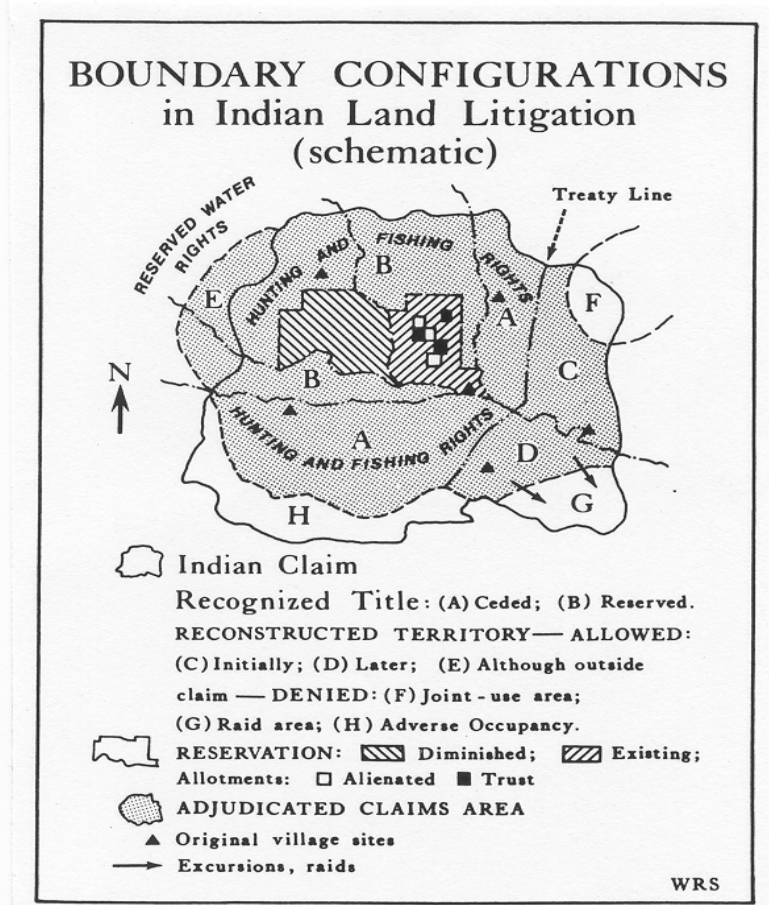


FIG. 6.2 Claims model . Not all of the elements of this schematic diagram refer to all litigated claims, but as a composite the scheme reports the scope of litigation in terms of land entities. Nearly all tribes could present data of recognized title because of the availability of the Royce atlas and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

*Specific Cases:*

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

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

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

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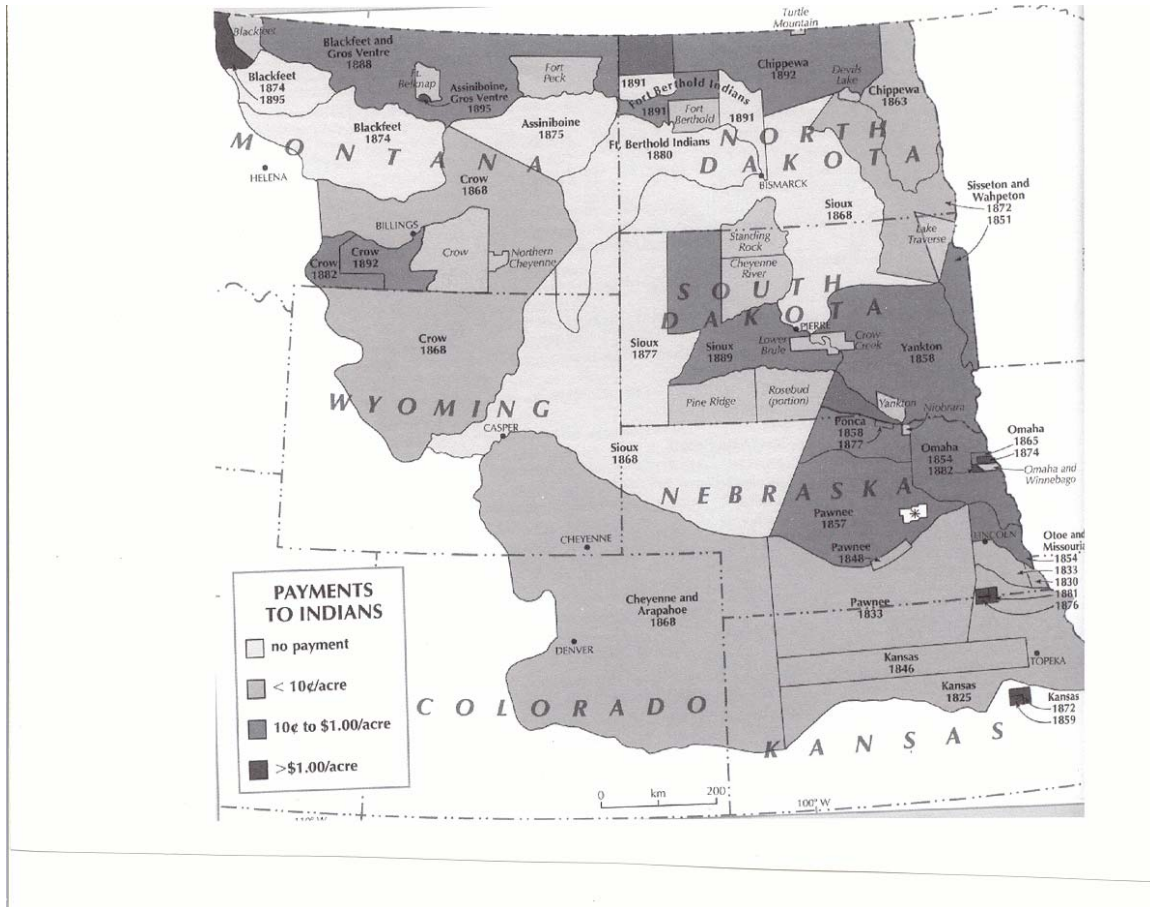
Christopher Vecsey and William A. Starna, eds., (1988) *Iroquois Land Claims* (Syracuse: S. University Press).

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

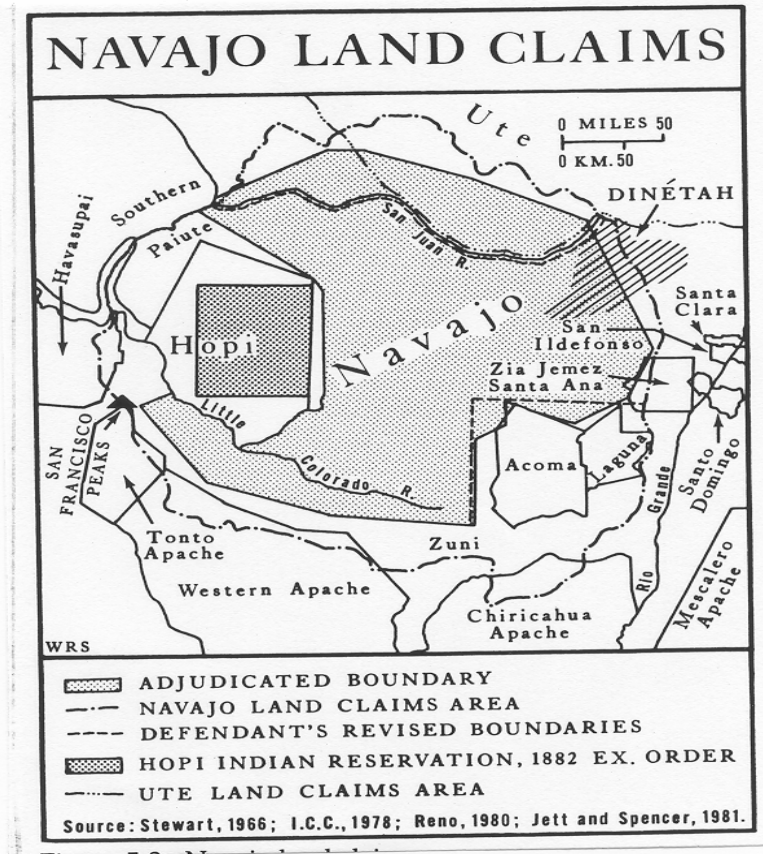
*Findings as to Land Value and Payment for Tribal Lands:*

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

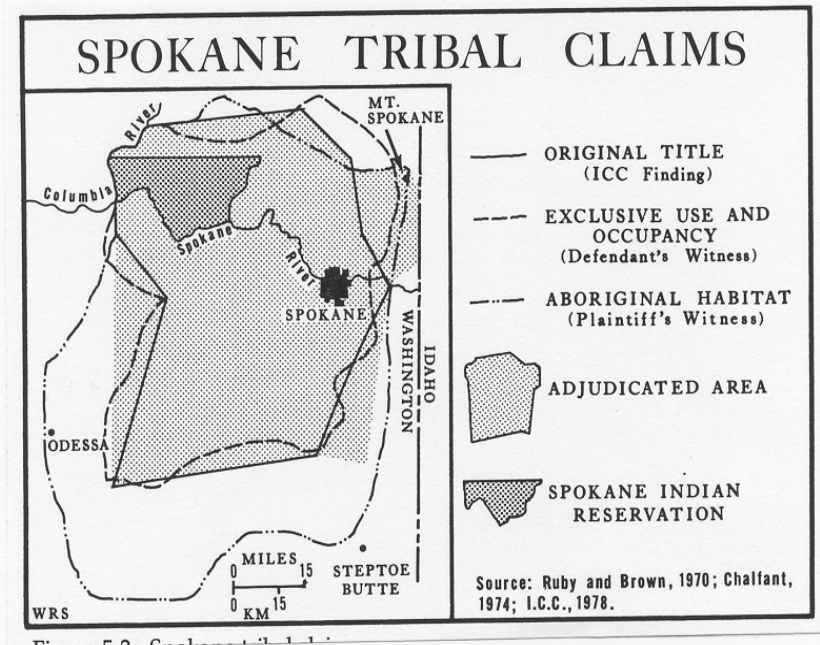
David J. Wishart, (1990) “Compensation for Dispossession: Payments to the Indians for Their Lands on the Central and Northern Great Plains in the 19<sup>th</sup> Century,” *National Geographic Research*, 6:1: 94-109.



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

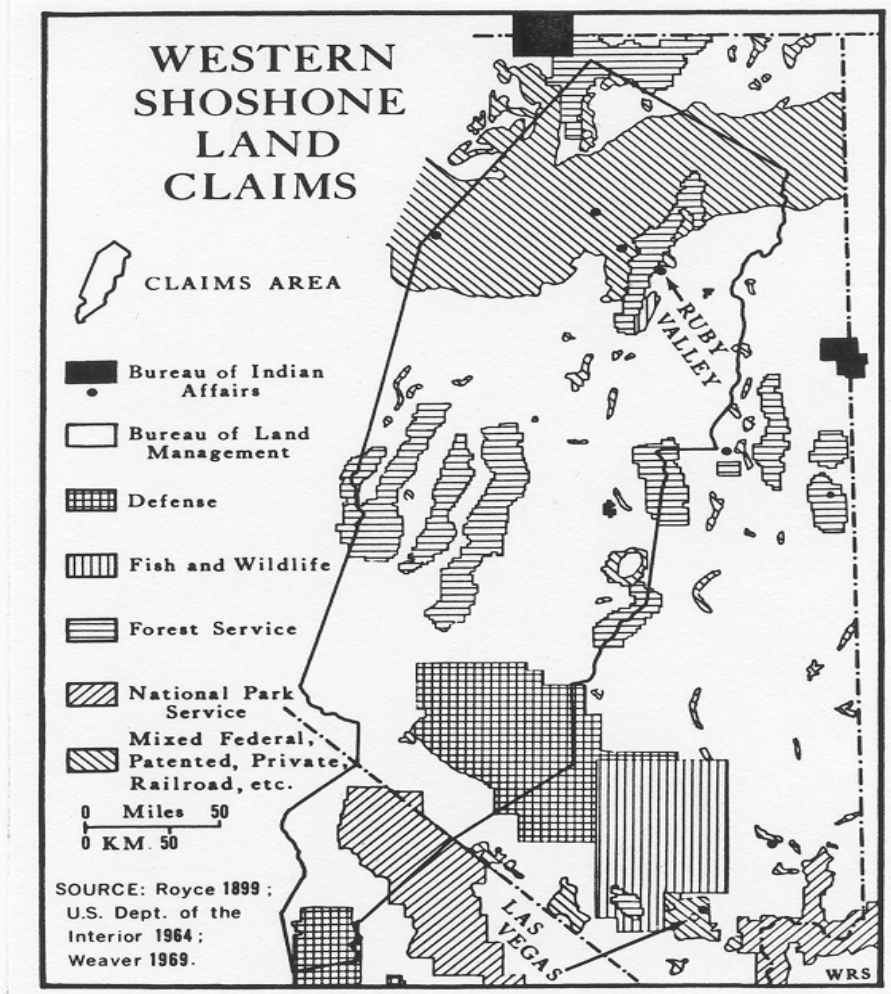


**Fig. 6.4 Navajo Land Claims.** The claims area reflects tribal identification of sacred sites such as mountains (e. g., San Francisco Peaks). The rectangular bounds on the southeast reflect competing claims by adjacent Pueblo peoples. At the time of the adjudication of the Navajo claim, the Zuni had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



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





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



*Place/Identity, Sacred Sites and Indian Religious Freedom:*

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

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

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

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

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

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

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

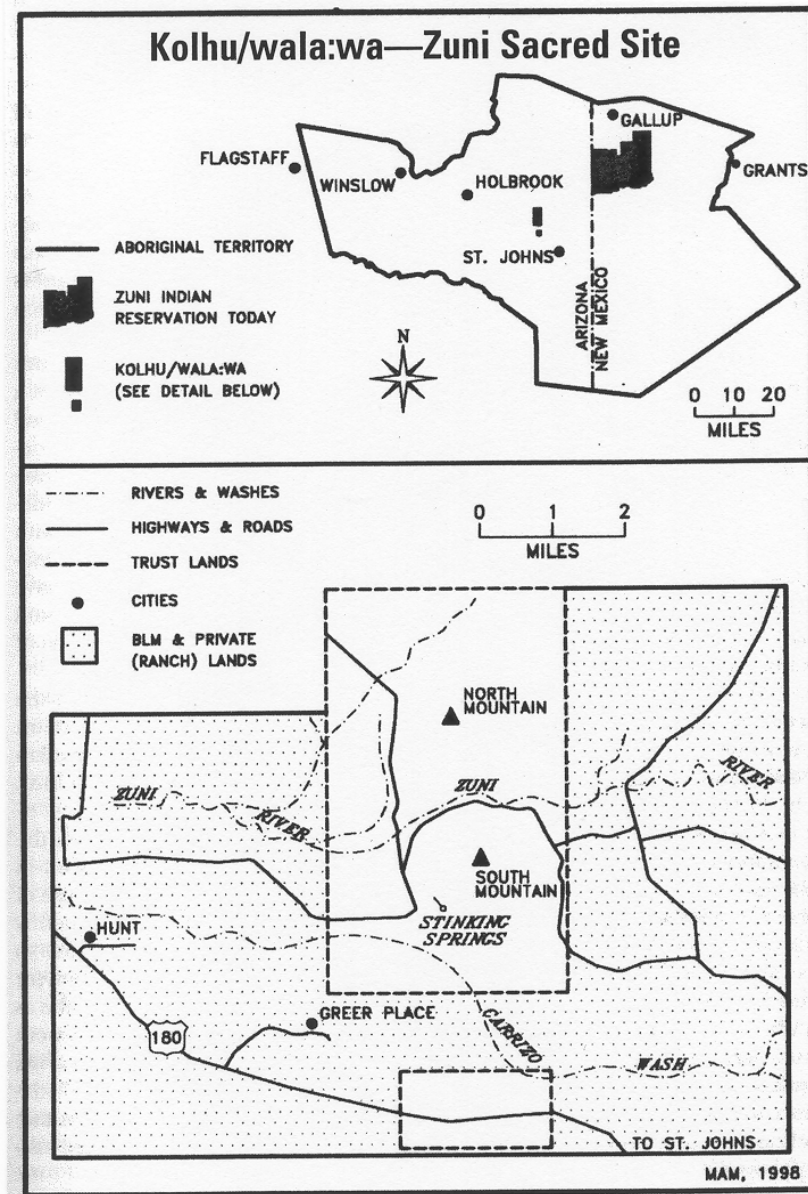
Dean B. Saugee, (1996) "Tribal Voices in Historic Preservation: Sacred Landscapes, Cross-Cultural Bridges, and Common Ground," *Vermont Law Review*, 21: 145-224.

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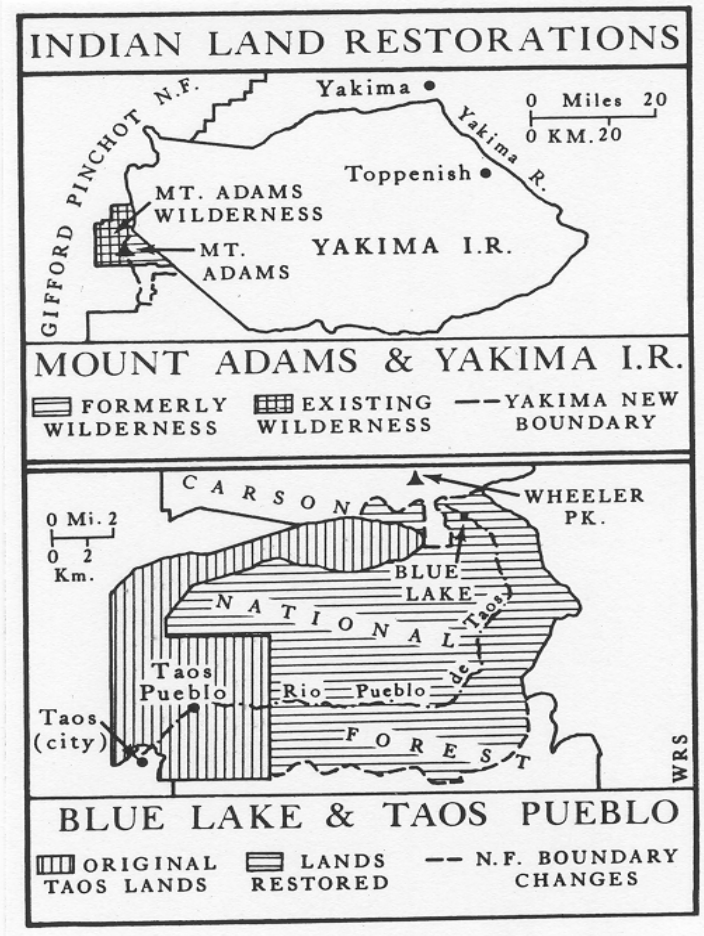
Imre Sutton, (1985), "Incident or Event? Land Restoration in the Claims Process," in *Irredeemable America, op. cit.*, pp. 211-232.

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



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



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

