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SPECIAL FEATURE

JURISDICTION OF UTE RESERVATION LANDS

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In 1994, after years of litigation involving several court cases, the Supreme Court of the United States handed down a landmark decision that ruled on jurisdiction over former Ute reservation lands. This case has since become the final word in jurisdiction of reservation lands throughout the United States. As with most policy setting decisions, the underpinnings of this case were framed centuries earlier. Throughout the colonial era, and continuing after the ratification of the United States Constitution, an isolation/separation policy developed and was practiced towards the Native Americans by first the colonial governments and later by the United States. By the late 1880s, the government admitted failure, reversed this policy, and attempted forced assimilation of Native Americans into Euro-American culture with the passage of the Dawes Act. Huge portions of Native American reservation lands were seized by the General Allotment Policy of 1887, implementing the Dawes Act. Nearly a century later, the Ute Tribe demanded jurisdictional rights over reservation land that was taken from them under the allotment policy. This demand necessitated litigation to settle the jurisdiction issue between the Ute Tribe and jurisdiction institutions of the cities of Roosevelt, Ballard, and Duchesne, Duchesne County, and the State of Utah. But what put the wheels in motion that lead to this conflict was the conflicting governmental policies of the nineteenth century; isolation followed by forced assimilation. This resulted in the controversy over jurisdictional land issues among the Ute Tribe that plagued the courts and troubled both the Ute and Non-Indian communities of the Uintah Basin from 1981 to 1994.

The isolation/separation policy of the American Federal Government was an outgrowth of colonial attitudes and policy. When England first established colonies in the New World they proceeded from a premise that the two races, the English and the Native Americans, were incompatible.[1] One of many

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1. For a general overview of the policy, see RICHARD WHITE, IT'S YOUR MISFORTUNE AND NONE OF MY OWN 110, 115 (1991). Additional documentation of the policy of separation is evident in the following: Letter from George Washington to James Duane (Sept. 7, 1783); Report on Committee on Indian Affairs (Oct. 15, 1783); Treaty of Fort McIntosh, Jan. 21, 1785 (U.S.-Wiandot, Delaware, Chippawa, and Ottawa Nations), *cited in* DOCUMENTS OF UNITED STATES

significant differences was their respective views of land ownership. The English divided land up into individual parcels owned usually by one person or a family. In contrast Native Americans' territorial lands were communally rather than individually held. The English also acted from the premise that each tribe was an individual nation, therefore each tribe was dealt with through a separate treaty. This method of interacting with the native Tribes varied from their European neighbors to the north, the French. The French saw financial benefits from using the Indians as partners in the fur trade.[2] The Spanish, to the southwest, also differed from the English in that they wanted to convert the Indians to Christianity and utilize them as laborers.[3] The English wanted as little to do with the Indians as possible. Mostly they wanted them out of the way. From the start the English settlers in America wanted their towns, cities, and colonies separated from the Indians' territory. After the Revolutionary War and the framing of the Constitution, the new government continued similar policies.[4]

The separation of the races caused problems between Native Americans and Euro-Americans for over two-hundred-and-fifty years. As immigrants continued to pour into America, the new arrivals wanted additional land that native tribes occupied. Generation after generation the Americans pushed Native Americans westward resulting in displacement throughout the entire region.[5] As settlers took land from the Eastern Indian tribes in the late eighteenth and early nineteenth centuries, the Indians were forced to move ever further westward, causing the tribes that already occupied those lands to move, creating a domino effect. During the first half of the nineteenth century, the western tribes started to feel the strain that their eastern counterparts had long suffered. Miners, explorers, hunters, homesteaders, and Mormon pioneers flowed into the West, and like the eastern settlers, they too wanted land occupied by Native Americans.

Western tribes were forced to inhabit ever-shrinking territories and adopt new lifestyles. Particularly disastrous to western tribes was the mass slaughter of buffalo that were killed by the tens of millions in the 1870s and 1880s.

INDIAN POLICY 1, 3, 5, 6 (Francis Paul Prucha ed., 1990). In these documents the major issues are peace between the White and Indian Nations and the attempt to impose upon the Native Americans boundaries to insure separation.

2. JAMES AXTELL, THE INVASION WITHIN: THE CONTEST OF CULTURES IN COLONIAL NORTH AMERICA 3-5 (1985).

3. Albert L. Hurtado, *Sexuality in Early California's Franciscan Missions: Cultural Perceptions and Sad Realities in* MAJOR PROBLEMS IN THE HISTORY OF THE WEST 69-80 (Clyde A. Milner II et al. eds., 1997).

4. President Washington's Third Annual Message (Oct. 25, 1791), *cited in* DOCUMENTS OF UNITED STATES INDIAN POLICY, *supra* note 1 ("That the mode of alienating their [Indian] lands [was] the main source of discontent and war"); *see also* WHITE, *surpa* note 1, at 110, 115.

5. ARRELL MORGAN GIBSON, THE AMERICAN INDIAN: PREHISTORY TO PRESENT 290-91 (1980).

This practice eliminated the most significant food source of native peoples. Equally damaging to the old ways of life were the white invaders who took their most valuable lands. For the Northern Ute Indians, in what became Utah, this invasion upon their native habitat began in 1847, when the Mormon pioneers began filling the Salt Lake Valley.[6]

Prior to 1847, most Euro-Americans who came to Utah were Spanish explorers and later mountain men who came to trap beaver and trade with the Utes. Few, if any, of these visitors to Ute lands intended on staying. The Utes of Northern Utah and Western Colorado were, at this time, at the pinnacle of their military strength. George Brewerton, a frontiersman, met the Utes in 1848 and said of them: "The Eutaws are perhaps the most powerful and warlike tribe now remaining on the continent. They appear well provided with firearms, which they are said to use with the precision of veteran riflemen."[7]

With the entry of the Mormons to the homelands of the Utes, and nearly a decade later the miners of Colorado, the Utes, for the first time, felt large scale encroachment. The native people failed to recognize that what started as a trickle of pitiful, near-starving emigrants would swell into a flood that covered their lands. This influx of settlers eventually resulted in the Utes being dispossessed of the land they had lived upon for generations.[8]

When the Mormons first settled the Valley of the Great Salt Lake in 1847, most Utes felt little or no concern. That valley was the unofficial border between Ute lands and their enemy to the north, the Shoshone. Both tribes occasionally hunted there but neither permanently occupied the land. The Mormons did, however, unknowingly bring death to the Utes that first year. Within months of their arrival measles spread through the Indian villages and several died.[9]

By spring of 1849, at Ute Chief Wakara's request, Brigham Young sent settlers south to San Pete, Utah, and Sevier Valleys to establish permanent settlements. Young promised the Utes that the Mormons would neither drive them from their lands nor interfere with Ute lifestyles. But within a few short months the Utah Valley settlers built a fort on a site where the Utes had camped for generations. Mormon-owned cattle grazed where the Utes had traditionally wintered their horses. In the fall Mormon fishermen took large numbers of spawning lake trout out of the Provo and Spanish Fork rivers.

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6. FRED A. CONETAH, A HISTORY OF THE NORTHERN UTE PEOPLE 37-42 (1982). In this study the present-day Utes, of the Uinta Basin, are referred to as Northern Utes to differentiate them from the Southern Ute and the Ute Mountain Utes of Southern Colorado. On the Northern Ute Reservation there are presently three divisions called bands: the Uintah, Whiterivers, and Uncompahgre. All three of these bands prior to removal to the reservation were actually divided into several smaller bands each designated by a separate band name.

7. GEORGE D. BREWERTON, OVERLAND WITH KIT CARSON 42 (Charles H. Carey ed., 1930).

8. John R. Alley, Jr., *Prelude to Dispossession*, 50 UTAH HIST. Q. 104 (1982).

9. HUBERT HOWE BANCROFT, HISTORY OF UTAH: 1540-1887, at 278 (San Francisco, the History Company 1891); CONETAH, *supra* note 6, at 37.

These same fish were a dietary mainstay of the Timpanogots Utes who timed their return to Utah Valley each fall to coincide with the spawning runs of the trout. Within the first year of the Mormons settling on their land the Utes felt threatened. The Mormons, though, failed to recognize that their occupation of Utah Valley and other eastern valleys of the Great Basin disrupted the fragile ecology and traditional subsistence patterns of the Ute people. The two cultures did not understand each other's use of the land for providing sustenance. From a settler's point of view the Utes camped and hunted or fished for a short time in one place, did not plant or farm the land, and then moved on. Little did they understand that the Utes followed the same cycles: camped in the same places, and hunted and fished the same valleys and streams year after year. Ute use of the land was much different than the Mormons' anticipated use of it.[10]

By 1850 the Timpanoguts Utes of Utah Valley, in desperate need of food, turned to raiding Mormon livestock. This resulted in retaliatory raids by the cattle's owners on Timpanoguts' camps and battles ensued at Battle Creek, Rock Canyon, and Payson. Several Utes were killed. The hostilities continued until February 1851, when the Utah Territorial Indian Agency was formed to deal with the Indians. A short peace was enjoyed but renewed conflict erupted in 1854 with the Walker War and again in 1865 with the Black Hawk War.[11]

In the early 1850s, the Utah Territorial Indian Agency addressed the problem between Mormon settlers and the Utes by urging peace on both sides. As both Indian Agent and spiritual leader for the Mormons, Brigham Young issued the policy of "feed the Indians."[12] Over the next few years, Mormon settlers continued settling on the fertile, tillable lands of Utah that were the Utes homelands. For all its vast acreage Utah has only a few valleys that are highly desirable for farming and these are surrounded by miles of sage, cedar, and mountains. Like the San Pete and Utah Valleys, soon Fillmore, Sevier and the southern portions of Ute claimed lands were settled and again the Native Americans were expected to vacate. Brigham Young established several small Indian farms or reservations at Corn Creek, Spanish Fork, Twelve Mile Creek, and elsewhere in the territory. The purpose of these Indian farms was to segregate the Utes from the growing number of Mormon settlements, create the opportunity to teach the Utes farming, and provide a means to feed the Utes.[13]

The Indian farms, poorly outfitted and worked by unwilling volunteers, failed. In 1855 federal appointee Garland Hurt replaced Brigham Young as

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10. CONETAH, *supra* note 6, at 38.

11. *Id.* at 38-42.

12. Brigham Young continued as Indian Agent until 1854 when he was replaced by Garland Hurt. *Id.* at 41.

13. David Rich Lewis, *Environment, Subsistence, and Dependency: Farming and the Northern Ute Experience, 1850-1940, in* MILNER II ET AL., *supra* note 3, at 359-70.

Indian agent and took over management of the Indian farms. A few short years later newly appointed Indian agent T.W. Hatch reported that the Indian farms were in a "destitute condition, stripped of their stock, tools, and moveable fences, and no one [was] living upon either of them."[14] Most of the Utes refused to settle on the farms, preferring to live according to traditional ways. As it fell into disuse, Mormon settlers encroached on the land which was set aside for these Indian farms.

Garland Hurt was forced by federal government penury to abandon the Indian farms. The idea of separating the Utes from the Mormons and removing the Utes to some isolated region of the territory remained with Hurt and other federal territorial officials. The search was undertaken to locate such an area.

In 1861 Brigham Young sent a small expedition to the Uinta Basin to investigate its suitability for settlement.[15] The earlier Bean expedition's report had postponed Mormon entry into the Basin for nine years. Young wanted a second look at that region. Shortly after the expedition's return to Salt Lake City the *Deseret News* printed their report:

> The fertile vales, extensive meadows, and wide pasture ranges . . . were not to be found; and the country, according to the statements of those sent thither to select a location for a settlement, is entirely unsuitable for farming purposes, and the amount of land at all suitable for cultivation extremely limited. . . . After becoming thoroughly satisfied that all that section of country, lying between the Wasatch Mountains and the eastern boundary of the Territory, and south of Green River Country, was one vast "contiguity of waste," and measurably valueless, excepting for nomadic purposes, hunting grounds for Indians and to hold the world together [sic] . . . .[16]

This discouraging report reversed Young's plans for settling the Uinta Basin and postponed Mormon entry into the region for another several years. For territorial Indian officials, the expedition had located a place considered of little value which was isolated geographically. This rendered it, by government standards, an ideal location for an Indian reservation.

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14. Letter from T.W. Hatch to Commissioner James D. Doty (September 1862), *in* ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS 205 (1862) (microfilm copy, Harold B. Lee Library, Brigham Young University, Provo, Utah).

15. There are two accepted spellings of the word Uinta. For geologic features such as the Uinta Basin or Uinta Mountains it is spelled without the *h*. For institutions created by man, such as Uintah County or the Uintah Ute Reservation the latter spelling is generally accepted. However some authors, unknowingly, may use either spelling. There are places in the following text that the spelling is left in context even though it does not follow the correct form.

16. *Uinta Not What Was Represented*, DESERET NEWS, Sept. 25, 1861.

In 1861 President Lincoln issued an executive order establishing the Uintah Indian Reservation.[17] This new reservation encompassed all of the territory within the drainage of the Duchesne River, mistakenly named in Lincoln's Executive Order as the "Uintah" (sic) River. This included all the land on the south side of the Uinta Mountains to the Tavaputs Plateau, from Strawberry to the confluence of the Duchesne and Green rivers. In 1864 the United States Congress voted to approve President Lincoln's action and make the Uinta Basin the permanent homeland for the Uintah Utes.[18] The reservation was created to separate them from the Mormon settlers in accordance with the isolation/separation policy. However, it was not until 1868 when the first agency was established, that the Utes moved to the Uinta Basin.[19]

Originally this reservation was set aside for the Uintah Utes of Utah, which consisted primarily of the Utes who had lived in the Uinta, Utah, Sanpete, and Sevier Valleys. In 1879, following the Meeker Massacre, the White River Utes from Colorado were sent to the Uinta Basin to share the Uintah Ute Reservation. In 1880 the Uncompahgre Utes, also from Colorado, were sent to the Uinta Basin, but given their own reservation that was later combined with the Uintah Reservation.[20]

The Indians on the reservations did not know how to support themselves with little game to hunt, and had to rely upon the United States Government to take care of them. The government did not provide adequate supplies on a regular basis to all the Indian reservations. In addition to negligence the federal government often appointed corrupt Indian agents who took advantage of the supplies that where sent for the Indians.[21]

The mismanagement and corrupt practices of the era affected the Utes. In 1871 Agent J.J. Critchlow, in his first annual report, complained that his predecessors had not sufficiently provided for the Utes in foodstuffs and

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17. Executive Order of President Abraham Lincoln (Oct. 5, 1861) *in* EXECUTIVE ORDERS RELATING TO INDIAN RESERVATIONS, MAY 14, 1855-JULY 1, 1912, at 169 (1912) (microfilm copy, Harold B. Lee Library, Brigham Young University, Provo, Utah).

18. Even though the 1865 Senate failed to ratify the Spanish Fork Treaty, it did pass an act to disallow Ute claims to all lands not included in the Uintah Reservation. *See* Act of Feb. 23, 1865, ch. 45, 8 Stat. 432. This act states:

> Be it enacted . . . , that the President of the United States . . . be . . . authorized . . . to enter into treaties with the various tribes of Indians of Utah Territory, upon such terms as may be deemed just to said Indians and beneficial to the government of the United States: Provided that such treaties shall provide for the absolute surrender to the United States, by said Indians, of their possessory right to all the agricultural and mineral lands in said Territory except . . . lands . . . set apart for reservations for said Indians . . . .

Id. § 1, 8 Stat. at 432.

19. CONETAH, *supra* note 6, at 89-90.

20. *Id.* at 77-113.

21. DAVID RICH LEWIS, NEITHER WOLF NOR DOG: AMERICAN INDIANS, ENVIRONMENT, AND AGRARIAN CHANGE 15-16 (1994) [hereinafter LEWIS, NEITHER WOLF NOR DOG].

clothing.[22] The Utes, along with other Native Americans in the last quarter of the nineteenth century, saw reservation life as a period of readjustment and loss of culture, restriction of travel and personal freedoms, and loss of social and personal esteem. Placed in a situation where the Ute People became dependant on the federal government for most of their needs it is little wonder that the Ute population, like other tribes, declined under reservation life. The government's reservation policy forced Indians onto reservations stripping them of the ability to maintain control of their traditional lands.[23]

The reservation policy more than justified, in terms of real dollar value, the cost of feeding and clothing rather than campaigning against warring nations of Indians. All reservation Indians became "wards of the government." The government treated Indians as children unable to care for themselves; the Utes were no exception to this way of thinking.

The conditions on reservations throughout the West were deplorable. In response social reformers set about to reverse the isolation/separation policy. They believed that Indians needed to assimilate into the Euro-American culture to survive. The reformers convinced Massachusetts Senator Henry L. Dawes, chairman of the Senate Indian Committee, that distributing land in severalty [property owned by individuals not shared with any other] was a solution to the Indian problem. Dawes pushed the bill through Congress and on February 8, 1887, President Grover Cleveland signed the General Allotment Act, referred to as the Dawes Act, into law.[24] The Dawes Act addressed "the demand of reformers that Indian reservations be allotted in severalty to individual Indians and that tribal relations be broken up."[25]

The Dawes Act had three main objectives. The government believed that the only way the Indians could survive was to get them to assimilate into the white culture. Breaking up tribal land holdings and replacing native culture with white culture was the primary goal. In an effort to end tribalism the government divided the reservations, allotting individual Indians a certain amount of land. Surplus reservation lands were then returned to the general domain, meeting a second goal of putting large tracts of the remaining Indian Lands into the hands of homesteaders. During the next three decades thousands of acres of Indian reservation lands were opened to homesteaders resulting in land rushes on the former reservations.[26] In addition to allotment, the government's third objective was to further assimilation by removing Indian children from their families and placing them in Indian boarding

22. COMM'R OF INDIAN AFFAIRS, 1871 ANNUAL REPORT 547 (1872).

23. JOHN D. BARTON, A HISTORY OF DUCHESNE COUNTY 61-64 (1998).

24. General Allotment Act (Dawes Act), ch. 119, 24 Stat. 388 (1887).

25. DOCUMENTS OF UNITED STATES INDIAN POLICY 171 (Francis Paul Prucha ed., 1975).

26. WHITE, *surpa* note 1, at 110, 115. Before Congress passed the Dawes Act Indians held over 155,600,000 acres of land on ninety-nine Indian reservations and the Indian territory. Thirteen years later Indian reservation lands had dwindled to less than seventy-nine million acres, a 50% reduction of land.

schools. In these boarding schools the Indian children were not allowed to speak their native language or practice their religious ceremonies. Some of the Indian children learned and embraced the white culture, but most resented the whites and returned to their native culture after their schooling was complete.[27] Initially, participation in the Dawes Act was voluntary on the part of the individual tribes. But in 1902, in the landmark case of *Hitchcock v. Lone Wolf*, the Supreme Court ruled that an individual Indian or tribe did not have to consent to allotment.[28] This granted the United States government plenary power over all Indians, which meant that the government could allot and sell excess land without the Indians' consent. The court argued that even though the Indians' right of occupancy prevented white trespass, it did not prevent the government from acting unilaterally in the sale of surplus lands. With the *Lone Wolf* decision the last obstacle to breaking up reservations was removed. Now the government could force allotment of Indian lands and give 160-acre parcels to individual Indians and then open all the remaining lands to homesteading as outlined in the Homestead Act of 1862. Most Indian tribes still opposed the Dawes Act, but with *Lone Wolf* they had no choice in the matter. In 1902 the United States Government passed the General Allotment Act, amending the Dawes Act, allowing allotment of Indian land regardless of tribal consent.[29] Indians were each given an allotment and promised United States citizenship.[30]

In 1903 the Uintah/Whiterocks Reservation under went allotment. In March of that year James McLaughlin, a United States Indian Inspector, was sent to the Uinta Basin to inform the Indians that their land was to be allotted and that if they would sign an Allotment Agreement they could choose the piece of land they wanted. Of the 127 Ute men in attendance at the first meeting all refused to sign.[31] The Utes believed this was similar to a treaty, and if they did not sign then the government could not allot their land. However, since *Lone Wolf*, the government did not give them any other option. After six councils, McLaughlin finally convinced some of the Utes that the U.S. government would allot the reservation without their consent, and that if they wanted to choose their allotment of land they must sign the Allotment Agreement. Most of the Ute men still refused to sign. Of the 280 Ute males in attendance, only 82 signed the agreement.[32]

The move to allot the reservation lands upset the Utes so deeply that 300 left the Uintah Reservation in protest. Under the leadership of Red Cap from

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27. Kim M. Gruenwald, *American Indians and the Public School System: A Case Study of the Northern Utes*, 64 UTAH HIST. Q. 251, 252 (1996).

28. Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).

29. General Allotment Act (Dawes Act), ch. 119, 24 Stat. 388 (1887).

30. Northern Utes Respond to the Break-up of Their Reservation 1903, *available in* MILNER II ET AL., *supra* note 3, at 342-45.

31. *Id.* at 348.

32. *Id.*

the Whiteriver Band, they fled cross-country to the Sioux Reservation hoping their long-time friends would help them. However, upon arrival in South Dakota, they found the Sioux were in no position to offer aid. They too were destitute. After two years the Utes returned to Utah in defeat.[33]

After allotment, Congress opened the Ute Reservation lands to homesteading under the provisions of the 1862 Homestead Act. Starting in August 1905 thousands of would-be settlers flooded the roads into the Uinta Basin. Within a few short years several new towns sprung up including Myton, Roosevelt, and Duchesne; and some 3800 homesteaders were making their homes on former reservation lands. By 1913 Duchesne County was formed. The conflict over jurisdiction that arose decades later was partially set by the creation of these towns and counties.[34]

By the 1930s government officials realized that the Dawes Act was not working any better than the separation policy had. The Indians were still dwindling on the reservations and they resented governmental control of their lives. As individual land owners, the Utes were expected to live and raise crops on their allotment of land. This put them miles away from relatives and friends. They frequently left the farms for extended visits and the farms declined in their absence.[35] In short, the objective of forcing the Utes to receive land in severalty and absorb them into mainstream American society failed. The Native Americans were thwarted, for the most part, from becoming successful, independent farmers living without government assistance due to their lack of understanding of agriculture, poor land allotments, insufficient water delivery systems, and their cultural aversion to farming.[36]

To deal with the problems of forced assimilation, the New Deal Democrats passed the Wheeler-Howard Act in 1934 (often called the Indian Reorganization Act).[37] This bill provided for a reversal of governmental policy from forced assimilation to isolation once again. Tribes could now reorganize themselves into tribal governments and write constitutions.[38] The Ute Tribe choose to reorganize themselves and was officially formed in 1937.

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33. Floyd A. O'Neil, *An Anguished Odyssey: The Flight of the Utes 1906-1908*, 36 UTAH HIST. Q. 315 (1966).

34. BARTON, *supra* note 23, at 116.

35. LEWIS, NEITHER WOLF NOR DOG, *supra* note 21, at 62-66.

36. The reasons why the Utes, like the majority of tribes in the West, failed under the Dawes Act, are complex and require comprehensive study. It is not the purpose of this study to detail those problems. For additional reading see CONETAH, *supra* note 6, at 115-37.

37. Howard-Wheeler Act (Indian Reorganization Act), ch. 576, 48 Stat. 984 (1934).

38. *Id.* § 16, 48 Stat. at 987. The government set up other facilities to assimilate the Indians. However, it was believed that the best way was to teach the children because they were less set in their ways. The Dawes Act was a failure. It has a lasting impact upon the Ute tribe that has continued to cause problems for over a century. The present jurisdictional issues over lost land directly stem from the General Allotment, and the selling of the excess land without Ute consent.

The Utes wrote a constitution and elected a business committee to run the affairs of the tribe.[39] The business committee is in many ways similar to the Indian Councils of past generations.[40]

Membership eligibility for the Northern Ute Tribe consisted of being born in the tribe and residing on the reservation. By October 1937, it was determined that one must be one-eighth Indian to qualify for membership. On March 31, 1953, the tribe passed Resolution Number 600, stipulating that enrollees must be one-half Indian to be a member of the Ute Tribe.[41]

Years after the reorganization of the Northern Ute Tribe a problem arose that has been a source of continuous tension between the Utes and their neighbors. The problem concerned jurisdiction over the land that allotment had confiscated. For seventy-six years, this question did not surface in a significant case. In 1981, however, the Ute Tribe sued Duchesne County, Duchesne City, and Roosevelt City for jurisdiction over their lands.[42] The Utes argued that although Congress had in fact opened the lands to homesteading in 1905, Congress never intended that the tribe should lose jurisdiction. The Ute Tribe argued that it should have legal jurisdiction over all of the lands that were established as their reservation in 1861. The tribe maintained that this jurisdiction allows retention of taxation rights, and the privileged status of a nation within a nation. The tribe argued that even with the loss of lands due to homesteading, it should still be the governing body over all lands that were once theirs. The tribe further argued that it had full precedence over any other governing body including city, county, and state powers. The land the tribe wanted governing rights over included private lands, state lands, and all federal lands.[43]

Many Utes felt that the land had unjustly been taken from them and that they did not deserve, nor did Congress intend, for them to loss jurisdiction as well. The reservation of the Utes, however, had already been allotted and the remaining land was opened for homesteading. The decision to open and allot the reservation may or may not have been right or fair at the time, however, this is the cardinal issue. The main point of the jurisdiction question centered on what Congress really intended when it forced the Utes into compliance with the Dawes Act and then returned the surplus lands to the public domain.

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39. CONETAH, *supra* note 6, at 136-39.

40. *Id.* at 136-39.

41. *Resolution Seeks to Divide Uintah, Ouray Ute Tribes on Blood Basis: Petition Suggests Mixed Bloods Better Prepared to Assume Responsibility Than Fulls*, ROOSEVELT STANDARD, Apr. 8, 1954.

42. Jurisdiction was argued in courts for the next decade yet it was never fully defined. Radical speculation rumored that Ute jurisdiction rights meant total law enforcement and possible property taxation of non-Utes. Even though the Ute tribe did gain jurisdiction rights for nine years they never tested the limits of that authority.

43. BARTON, *supra* note 23, at 367-68, 376-82.

When the Ute Tribe challenged the federal, state, and local governments' right of jurisdiction over what had been reservation land prior to the Dawes Act, the case was first argued in the 10th District Court before Judge Bruce Jenkins. He ruled that the Uncompahgre Reservation was terminated with allotment but that the Uintah Reservation was not terminated and therefore the tribe did have jurisdictional rights. Duchesne County and the cities of Roosevelt, Duchesne, and Ballard were the losers. Jenkins' ruling gave the Ute Tribe jurisdiction over all former reservation lands. With some reluctance, the State of Utah appealed to the Federal Appellate Court. After reviewing the case the Appellate Court, which consisted of a three judge panel, ruled in a two to one decision that with the exception of trust lands, the reservation was terminated and the lands were returned to the public domain and therefore governed by the laws of the federal government and the State of Utah.[44]

With the Appellate Court ruling most parties thought the matter was closed. In 1983 the United States Supreme Court ruled on a similar case in *Solem v. Bartlett*.[45] This opened the door for the Ute Tribe to ask for another hearing based on the *Solem* decision that allowed other factors to be considered in tribal land cases. The Court was now to consider if the land that was put back into public domain was automatically removed from the reservation. Due to the *Solem* decision the court also needed to weigh whether the Indians were paid for their land, if they had agreed to the loss of their lands at the time of allotment, and if they had not, what rights they now have concerning that land. In other words, the court now needed to decide what Congress really intended when it terminated the reservation.

Based on the *Solem* decision, the Ute Tribe requested another appeal; this time from the entire Judicial Panel of the Tenth Circuit Court of Appeals. The Tenth Circuit ruled that public domain was an insufficient reason to disestablish the reservation. This meant that all the land that the Ute Tribe had once owned they still had jurisdiction over, until the next court decision. The State of Utah requested an appeal and was denied. Utah then asked the U.S. Supreme Court for a writ of certiorari, which was also denied.

The next several months were tense for both the Indian and non-Indian communities on the land in question. The tribe had won a major legal victory but knew that they still had to live with the non-Indian population in the area. Anything rash or hasty could trigger more bad feelings and negative reactions. As is often the case with major court cases, a pair of nonrelated incidents occurred that eventually landed the whole affair in the U.S. Supreme Court.

In 1983, Clinton Perank, a part-blood Ute was arrested in Myton for breaking into the American Legion building. Perank, whose mother was non-Indian and father Ute, was not a member of the Ute Tribe at the time of his arrest. He pled guilty in the circuit court and was placed on probation. In

44. Ute Indian Tribe v. Utah, 521 F. Supp. 1072 (10th Cir. 1981).

45. 465 U.S. 463 (1984); *see also* Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977).

1986, he was arrested again, this time for violation of his probation. Between these two arrests he had become a member of the Ute Tribe. In his hearing Perank's attorney argued that the circuit court decision that had found him guilty of breaking into the American Legion building was wrong due to the fact that it did not have the right to try him because he was not tried in Indian Court. Perank's attorney based his argument upon the 1983 Tenth Circuit jurisdiction ruling. The Tenth Circuit decided that Perank was in violation of his parole and that the original ruling was correct because his enrollment status was in question at the time of the original ruling, and Myton was not on the reservation. Prior to the allotment and opening of the land in 1905, Myton had been within the boundaries of the Ute Reservation. So it was part of the land which the Ute Tribe was contesting for jurisdiction. Perank was sent to the state prison for parole violation. In October 1988, Perank appealed and the Utah State Supreme Court upheld the decision.[46]

The second key jurisdiction case also arose in 1988. Robert Hagen, a member of the Little Shell Band of Chippewa, was caught in a drug bust and arrested on possession of marijuana with the intent to distribute. Hagan argued that the sheriff's department of Duchesne County did not have the right to arrest him because he was an Indian on reservation lands. Hagen was turned over to a U.S. Attorney and arraigned in a Bureau of Indian Affairs court. Judge George Tabone ruled that Duchesne County had no jurisdiction over Hagen because he was a member of a recognized Indian tribe and was arrested on reservation lands. However, Duchesne County processed the charges against Hagan and a trial was held. Hagen pled guilty to one count of possession of marijuana. At sentencing he still claimed that Duchesne County lacked personal jurisdiction.[47]

Hagen appealed and the Utah Court of Appeals reversed the decision, making Duchesne County prove that Hagen was not an Indian. The State of Utah appealed the case for Duchesne County to the Utah Supreme Court. The Utah Supreme Court agreed to hear the case, which focused on two important factors. First, was Hagan an Indian? Second, a clear determination had to be made regarding the meaning of tribal lands. With all the questions of *Hagen*, Perank's attorneys once again appealed his case on the jurisdiction questions.[48]

On the same day that *Perank* was decided, the Utah Supreme Court ruled that the reservation had been diminished and that Hagen's status as a Native American was immaterial. This resulted in contradictory rulings from the Tenth Circuit and the Utah Supreme Court. With this contradiction the Supreme Court of the United States agreed to hear *Hagen* and rule on the

46. State v. Perank, 858 P.2d 927 (Utah 1992).

47. Interview with Herb Gillespie, Attorney, Duchesne County, in Roosevelt, Utah (Mar. 12, 1992) (follow-up interviews conducted in 1994 and 1998).

48. *Id.*

issue of jurisdiction. The Supreme Court agreed to use the records from *Perank* in deciding *Hagan.* The decision of the Supreme Court for Hagen would also settle the jurisdictional questions in *Perank.*[49]

On November 2, 1993, Jan Graham, Attorney General for the State of Utah, and Martin Seneca and Daniel Israel, representing Hagen and the Ute Tribe, presented their case to the U.S. Supreme Court. The court looked to Congress' intent when it returned the non-allotted reservation lands to public domain in 1905. Did Congress intend the land to be returned to public domain and leave jurisdiction to the tribe, or had tribal jurisdiction over the land also diminished? The Court needed to determine if the reservation was diminished by Congress in 1905 based upon three things: first, the statutory language used to open the Indian lands to homesteading, second, the contemporaneous understanding of the action, and third, the identity of the persons who moved onto the opened reservation lands.[50]

On February 23, 1994, the Court handed down its decision that the reservation was in fact diminished and that this was the intent of Congress in 1905. In the decision, the Court quoted the Act of May 27, 1902, which provided for allotment of some Uintah Reservation land to Indians, and that "all [of] the unallotted lands within said reservation shall be restored to the public domain."[51] This decision was based upon three specific arguments. The first was that Congress intended to eliminate the Ute Reservation through allotment of tribal lands. Second, the homesteaders who moved onto the former reservation lands in 1905 were non-Indian, and the population that presently (1994) occupied lands from the terminated reservation were approximately 85% non-Indian and 93% non-Indian in the area's largest city (Roosevelt). Third, the Court noted the State of Utah's assumption of jurisdiction over the opened lands from 1905 until the Tenth Circuit decision.[52]

Throughout the past years of litigation, this controversy has been on the cutting edge of national Indian Policy. Tribes and politicians throughout the nation have watched the roller-coaster ride of jurisdiction being granted by one court and taken away or amended by the next. Residents of Duchesne and western Uintah County, from both the Ute and Anglo communities, along with law enforcement agencies, and local and state governments, have all felt a vested interest in the eventual outcome since the first ruling in 1983. At times emotions ran high on the various sides, yet all acted with moderation and good judgement. When the Supreme Court finally handed down the decision that the reservation had been terminated and therefore the Utes did not have

49. *Id.*
50. Hagen v. Utah, 510 U.S. 399, 411 (1994).
51. *Id.* at 404.
52. *Id.* at 413-21.

jurisdictional rights over non-Indians, the non-Ute community breathed a collective sigh of relief.

The jurisdiction issue, complete with its several legal cases makes for an interesting study on how modern policies are formed. The most significant impact is that the 1994 Supreme Court ruling of *Hagen v. Utah* established, at least until the next case, national Indian/Reservation policy. This case study clearly demonstrates that governmental policies have direct impact decades after they are adopted. The isolation/separation policy and the conflicting General Allotment Policy, now generations since repealed, set into motion events that have taken many cases and years of litigation to settle.[53]

53. Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1977). Here the court clarified the *Hagen* ruling and added an exception to it, stating: "We therefore conclude that *Hagen* did not erase the boundaries of the Uintah Valley Reservation and that the current 'limits of [the] reservation' thus embrace the three categories of non-trust lands at issue." *Id.* at 1530. Those lands are specifically: lands that passed from trust to fee status pursuant to non-Indian settlement under the 1902-1905 allotment legislation, lands apportioned to the Mixed Blood Utes under the Ute Partition Act of 1954, lands allotted to individual Indians that have passed into fee status after 1905, and lands that were held in trust after the Reservation was opened in 1905 but that since have been exchanged into fee status by the Tribe for now trust lands in an effort to consolidate its land holdings pursuant to the Indian Reorganization Act of 1934. *Id.* at 1529.

On a more positive note, as a result of the jurisdictional issues, tribal leaders and elected officials from Duchesne and Uintah Counties have much better dialogue and a mutual desire to arbitrate issues and concerns before they get to the courtroom than they have in the past. For the first time ever the Ute Tribal Business Council invited anyone interested to attend and give input at one of their meetings on March 22, 1994. The leaders of both communities hope that a new era of mutual trust and understanding will evolve. Dialogue has led to the passage of legislation by the Utah State Legislature. Senate Bills SB0062, 0181, 0213 from the 2000 legislative session, all authored by State Senator Beverly Ann Evans, address some of the tribal concerns. Included is a provision to return the state's severance tax to the county where it is taken. The net gain for the tribe would be about $2 million and nearly half million for Duchesne County. The partnership between the State of Utah, Duchesne County, Uintah County, and the Ute Tribe; in this manner would be a first since the jurisdiction issue came up in 1981. SB 0213 is a Motor and Fuel Tax Exemption on the Uintah and Ouray Reservation, and SB0062 is an agreement between the Ute Tribe and the State of Utah authorizing the tribe and state to enter into agreements over hunting and trapping on Indian lands. And Utah State Senate Bill 0181 is an agreement finalized between the State of Utah, Uintah and Duchesne Counties, and the Ute Tribe. Key points of agreement include exempting Unrolled tribal members living within the original or extended boundaries of the intah and Ouray Reservation and who earn a living from work on the reservation from paying state income taxes; the tribe-operated gasoline station and tribal members who purchase fuel within the boundaries of the present reservation are exempt from the state of Utah's fuel tax; and no sales tax charged to tribal members for goods and service received within the current reservation boundaries. These bills bring finality to the twenty-five-year lawsuit that resulted in millions of dollars of litigation and new working relationships between the various communities.