UNCERTAIN JUSTICE: THE UTE JURISDICTION CASE AND CONFLICTING DIRECTIONS IN FEDERAL INDIAN LAW

by

A. J. Taylor

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Approved:

Clyde A. Milner II
Major Professor

Anne M. Butler
Committee Member

F. Ross Peterson
Committee Member

Joanna Endter-Wada
Committee Member

James P. Shaver
Dean of Graduate Studies

UTAH STATE UNIVERSITY
Logan, Utah

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ABSTRACT

Uncertain Justice: The Ute Jurisdiction Case and Conflicting Directions in Federal Indian Law

by

A. J. Taylor, Master of Arts
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Major Professor: Dr. Clyde A. Milner II
Department: History

Questions of jurisdiction over Indian lands between tribal and state governments constitute some of the most vexing problems in federal Indian law. The Ute jurisdiction case captures, in one instance, the complexities that surround this important body of law. Many cases concerning Native American jurisdiction rights center on disputed interpretations of antiquated federal laws. In the Ute case, both the State of Utah and the Ute Indian tribe contested the meaning of a series of congressional acts that opened Ute lands to white settlement at the turn of the century. The protracted litigation that marked the Ute case revealed many of the inconsistencies and contradictions that plague the federal courts in their attempts to resolve jurisdiction controversies. This thesis examines the particulars of the Ute
lawsuit and, using it as a vehicle, investigates the limits of the law in deciding Indian/white jurisdiction disputes.
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CHAPTER I

INTRODUCTION: “INDIAN LAW IS STILLBORN”

On 14 October 1975, the Ute Indians and the other residents of the Uintah Basin reinstigated their war over the lands of eastern Utah. This fight, however, differed dramatically from the armed conflicts that marked the wars of the mid-nineteenth century. This time they waged their battle in the courts rather than on the land itself. Instead of Indian warriors and state militia men facing off against one another, legions of lawyers clashed in this newest contest. At stake in this twentieth century confrontation was an issue endemic to contemporary Indian/white relationships: Indian jurisdiction rights.

Claims of state jurisdiction in Indian country stand as a recurrent issue in federal Indian law. Recent developments in Native American communities point to the continuing importance of jurisdictional matters in state/tribal relationships. Aggressive western states’ land actions, an increased sense of tribal goals, and growing friction among the three sovereigns that compete for Indian lands have produced a new level of tension in Native American/white relations of the late twentieth century. The tribes, the states, and the federal government compete vigorously and unevenly for power over Indian lands. The combination of early twentieth century legislative decisions and contemporary judicial findings serve to illuminate this most recent chapter in Native American legal history.
Between 1959 and 1994, the United States Supreme Court issued more decisions in Indian cases than during any other comparable period. One might assume that the Court's sustained attention would have resulted in more conceptual clarity and predictability. But in the area of jurisdictional disputes this proved far from true, for the Court has been anything but consistent. Each new decision, in this area of law, turns on finer points and raises additional questions.¹

Beginning with the famous 1832 Supreme Court case Worcester v. Georgia, the Court labored to articulate general principles by which to resolve jurisdiction issues. Currently, significant inconsistencies exist within the Court's rulings, both as to governing principles and the application of those principles.² The justices themselves have noted the Court's capriciousness. In 1978, Justice William Rehnquist stated his belief "that a well-defined body of principles is essential in order to end the need for case-by-case litigation which has plagued this area of the law for a number of years." During a 1981 visit to Boalt Hall Law School at the University of California, Berkeley, Justice Potter Stewart commented that "any case the Court decides in Indian law is stillborn and has no precedential value."³


²Conference of Western Attorneys General, American Indian Law Deskbook (Boulder: University of Colorado Press, 1993), 98.

Often, questions that arise over the permissible application of state and tribal jurisdiction prove extremely complex. To fully comprehend these issues, basic judicial principles relevant to civil authority need to be identified. Perhaps the best strategy for isolating such principles involves tracing the historical roots of this body of law. Several important federal court cases help to delineate the reasoning courts have used in deciding issues of jurisdictional rights.

Indian tribal jurisdiction and the exclusion of state jurisdictional control over Indian country derive from two judicially created doctrines: tribal sovereignty and Indian wardship. Both doctrines stem from the opinions of Chief Justice John Marshall in two cases concerning repeated attempts by the state of Georgia to assert jurisdiction over the territory of the Cherokee Nation. In 1831, the state of

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4The concept of Indian wardship originated from the first of these cases, Cherokee Nation v. Georgia. In December 1830, the Cherokees filed suit in the Supreme Court against the state of Georgia. The Indians asked for an injunction against Georgia's encroachment on Indian territory in violation of the tribe's treaty rights. The Cherokees maintained that they were a sovereign nation not subject to Georgia's territorial jurisdiction and that Georgia's laws were null and void in Indian country. The Supreme Court dismissed the Indian petition. Rather than look at the merits of the case, Chief Justice John Marshall instead moved to a "preliminary inquiry." Marshall did not believe that the Cherokee Nation constituted a foreign state and seized on the opportunity to clarify the federal government's responsibility over Indian affairs. He observed that the relationship between the Indians and the United States government was "unlike that of any two people in existence." Marshall declared that the Indians composed "domestic, dependent nations" and noted that they occupied land that existed in a territory that the United States asserted a title to independent of the Indians' will. He concluded that the Indians' "relationship to the United States resembles that of a ward to his guardian." Vine Deloria, Jr., and Clifford M. Lytle, American Indians, American Justice (Austin: University of Texas Press, 1983), 30-31; Francis Paul Prucha, The Great Father: The United States Government and the American Indians (Lincoln: University of Nebraska Press, 1984), 75-76; Archibald Cox, The Court and the Constitution
Georgia convicted two non-Indians of a state crime committed on Cherokee lands. Reversing the trial court, the Supreme Court in *Worcester v. Georgia* held the state laws as invalid within the lands of the Cherokee Nation and overturned the convictions.  

In *Worcester*, Chief Justice Marshall recognized the Cherokee Nation as a separate political community with geographical boundaries inside which Georgia's laws held no power. Writing for the majority, Marshall ruled:

> Indian nations are distinct political communities possessing internal sovereignty. They are capable of self-government and are completely independent of and separate from the states. Hence, state laws cannot be extended into Indian Country nor may state exercise civil or criminal jurisdiction in Indian Country.  

The opinion of the Court in *Worcester* appeared quite clear. The judicial branch erected a protective barrier insulating Indian tribes from any state intrusion. States could not extend their laws into Indian country, nor could they assume civil jurisdiction over matters arising on the reservations. *Worcester* stood as one of the Supreme Court's most lasting statements; judges still cite it in modern Indian law decisions.

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7Deloria and Lytle, *American Indians, American Justice*, 204.
In spite of Marshall’s opinion, the difficulties confronting Indian/state relations did not evaporate, but rather grew over time. Tribal fears of state intrusion proved real and not mere figments of the Indian imagination. The quest for Indian land, economic competition, and the lack of understanding by both whites and Indians of one another’s culture all contributed to a troubled relationship between reservations and white settlements. Recent history has witnessed a drift away from the protective shield Marshall provided in Worcester.

The initial erosion of the Worcester bar to state power in Indian country appeared in an important decision, Williams v. Lee. In this 1959 Arizona case, the state superior court exercised civil jurisdiction over a case in which a non-Indian sought to collect an overdue debt for goods he had sold to an Indian couple on the Navajo reservation. Since the Navajos had their own tribal court system, the U.S. Supreme Court held that Arizona could not extend its jurisdiction over the reservation. Justice Hugo Black, speaking for the majority, articulated a test for states that hoped to obtain jurisdiction over Indian country:

There can be no doubt that to allow the exercise of state jurisdiction here [Arizona] would undermine the authority of tribal courts over reservation affairs and hence would infringe on the right of Indians to govern themselves.  

Thus, according to this decision, a state could take jurisdiction if it did not interfere with the right of the tribe to govern itself.

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Williams v. Lee signaled a departure from the 1832 Worcester decision. The Worcester decision established a high, almost impregnable, protective buffer. According to Williams, if state encroachment did not "infringe" on tribal self-government, the state might extend its jurisdiction onto the reservation.\(^{10}\)

Williams marked a watershed decision for two reasons. First, for decades the Supreme Court had rendered Indian law decisions on an individual basis. The Court struggled through cases without clearly articulating the development of the Worcester doctrine. After Williams, the pace of Indian law decisions handed down by the Supreme Court increased dramatically. Second, Williams presented the Court with its first case that dealt with Indian issues in a modern context. During the quarter century following Williams, the dominant issue in Indian country focused on the steadily increasing exertions of authority by tribal governments and accompanying tribal resistance to state jurisdiction.\(^{11}\)

By 1962, a new problem arose, concerning which law enforcement authorities held jurisdiction in areas where contiguous state and tribal lands intermingled. Confusion abounded. In many areas, the boundaries between Indian country and state land overlapped, adding to jurisdictional murkiness.


To understand the difficulties attached to clarifying reservation boundaries, one must turn to late-nineteenth-century federal Indian policy. Support for the allotment in severalty of Indian land fueled federal policy of the era. Despite the power it exerted over Indian/white relations for nearly half a century, the Dawes Act, the cornerstone of federal Indian policy, supplied little more than a statement of intent. The act contained no timetables and few instructions for implementation. The Dawes Act authorized, but did not require, the president to open reservation land for allotment. The act merely granted him the discretionary power to open the lands. The failure of the president to act on this power prompted Congress occasionally to enact special legislation to assure the opening of a particular reservation. In fact, Congress enacted 108 separate pieces of legislation directing the allotment of specific reservations across the nation.

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12 The upsurge of humanitarian concern for Indian reform after the Civil War gave a new impetus to the severalty principle, which was almost universally accepted and aggressively promoted, until Congress passed a general allotment law in February 1887. Allotment of land in severalty was part of the drive to individualize and assimilate the Indian into American society—an obsession of the late-nineteenth century Christian reformers. The dissolution of communal lands by allotment, together with the citizenship attached to private land-owning framed the central issue. The Dawes’s General Allotment Act constituted the final part of the government’s assimilation campaign. The law established a pathway for the legal, economic, and social integration of Native Americans into the United States. The act provided for the end of tribal relationships and stipulated the division of reservations into family-sized farms, allotted to each Indian. The plan called for each adult Indian to receive 160 acres, each child 80 acres, and the remaining land to be declared surplus (or opened) and sold to whites. For further information see: Frederick Hoxie, A Final Promise: The Campaign to Assimilate the Indians, 1880-1920 (Lincoln: University of Nebraska Press, 1984), 70-71.

13 Ibid., 77.
The methods used to open reservation lands to settlement varied. Some acts carried out the terms of agreements negotiated with tribes for the cession of surplus lands, while others, without tribal consent, unilaterally opened surplus lands to white settlement. Whatever the method, the purpose of the surplus lands acts was to return the lands to the public domain and thereby allow white settlement under homesteading and other land disposal laws. While all the acts accomplished this, not all removed the lands from the reservation.14 As a result, jurisdiction over “Indian country” became difficult to define because legislation from the Dawes Act era culminated in the intermingling of white and Indian lands on “old” reservations.

These difficulties continued unattended until more than half-way through the twentieth century. Early in 1962, a landmark case reached the Supreme Court in which the central issue concerned the composition of “Indian country.” In Seymour v. Superintendent, officials in Washington State charged a member of the Colville Indian tribe with burglary committed on the southern half of the Colville Indian Reservation. After a guilty plea and conviction, Seymour appealed on the grounds that the southern half of the reservation, composed primarily of fee simple lands owned by non-Indians, still formed Indian country. If true, then his crime constituted a federal, rather than a state, offense.15

The Supreme Court unanimously reversed the state court’s conviction. In an opinion written by Justice Hugo Black, the court held that although a congressional

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14Western Attorneys General, American Indian Law Deskbook, 47-50.

act of 1906 had "diminished" the southern half of the Colville reservation, it had not "extinguished" the reservation status. The court found it immaterial that a non-Indian held title to the particular parcel of land in question. After Seymour, litigation increasingly revolved around the "intent" of Congress in opening reservations to white settlement at the turn of the century.

This stance by the Supreme Court created new problems. Courts could rarely find intent to remove reservation status on the face of a particular statute, since Congress during the era of surplus land acts, anticipated that the reservation system would shortly cease to exist. Congress viewed the process of allotting lands to tribal members and selling surplus lands to white settlers as the "first step" toward the ultimate aim of abolishing all Indian reservations. But, in the specific instance Congress failed to clarify whether an individual piece of legislation formally sliced a certain parcel of land off a reservation. As a result, the courts began to base their determinations on the "doctrine of disestablishment." If past congressional action had disestablished a reservation, the tribe lost jurisdiction. If the reservation still held its status, the tribe retained jurisdictional authority. Consequently, courts started to examine the express language of antiquated legislation pertinent to each case. Instead of struggling with broad philosophical

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16Ibid., 352.

17Western Attorneys General, American Indian Law Deskbook, 47-50.
issues connected to jurisdictional law, this new trend culminated in case-by-case analysis and reasoning by justices.

The Supreme Court did not again decide a controversy involving disestablishment until 1973 when Mattz v. Arnett came before the Court. In Mattz, a unanimous Court held that the Klamath River Indian Reservation continued to exist within its defined boundaries, despite an 1892 law that opened the reservation to homesteading. The sparse population of the area also figured prominently in the Court's decision. Reaffirming the fundamental policy forwarded in Seymour, the Court held that "a congressional determination to terminate [a reservation] must be expressed on the face of the Act," but added, "or be clear from surrounding circumstances and legislative history." Following Mattz, courts began to look behind the written words of statutes and treaties to determine meaning and purpose within the context of time period. Repeated unsuccessful attempts by Congress to terminate a reservation could not persuade the Court that the ultimate legislation that opened a reservation intended to extinguish or diminish its boundaries. In Mattz, for example, the 1892 House legislation consistently included termination language for the Klamath River Reservation. However, in the final version of the statute the Senate struck that wording, creating a much more moderate act.

With the criteria of Mattz now in place, the Court faced a new array of cases as Native American groups tried to gain further answers about the definition of Indian country. The two most critically important of these cases centered on

whether a reservation’s original boundaries had been diminished simply by the sale of allotment lands.  

In the 1975 case of Decoteau v. District County Court, the Supreme Court found that Congress had intended to disestablish the South Dakota Lake Taverse Reservation, an area in which the dominant white population held most of the land. The Court ignored the fact that the tribe had not ceded jurisdiction of governance in any agreement. Nor did the Court consider that both the legislative and the executive branches still forwarded political recognition to the tribe eighty years after Congress had supposedly disestablished the reservation. Instead, the Court paid considerable attention to contemporary non-Indian accounts offered at trial. These testimonies suggested that Indians living on the reservation anticipated political dissolution as a consequence of the pact.

Two years later, in Rosebud Sioux Tribe v. Kneip, the Court heard another disestablishment case. This one involved the reduction of the South Dakota Rosebud Sioux Reservation. Around 1900, after creation of the reservation by treaty, Congress passed a series of acts that opened large sections of the reservation for homesteading. The main question focused on whether the later statutes resulted in the disestablishment of the reservation. If so, four South Dakota counties, at the time mostly populated with non-Indians, fell outside Indian country. The Court

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19 Deloria and Lytle, American Indians, American Justice, 76-77.

20 Ibid., 205.
found that Congress, through passage of the acts, had intended to remove the counties from the reservation and to reduce its boundaries.  

The Court based its decision on the “unquestioned actual assumption of state jurisdiction over the unallotted lands” in the area after the legislation took effect. In the majority opinion, Justice William Rehnquist stated:

The long standing assumption of jurisdiction by the State over an area that is over 90% non-Indian, both in population and in land use, not only demonstrates the parties understanding of the meaning of the Act[s], but has created justifiable expectations which should not be upset by so strained a reading of the Acts of Congress.  

In Rosebud, the Court essentially approved the incursion of state jurisdiction over time as a factor in striking down tribal authority.  

These three boundary cases, Mattz, Decoteau, and Rosebud, shared many characteristics that established them as a class, even as they differed in detail. Mattz involved a sparsely populated area, while Decoteau and Rosebud entailed more settled regions. The cases demanded a considerable amount of meticulous historical research. Attorneys gathered and debated any evidence that could illuminate the intent of Congress. Attorneys inflated minute phrasing and argued over various shades of meaning teased out of the statutory wording. Coupled with the search for Indian understandings of land cession agreements and the probable intent of Congress, the cases demanded that justices also consider the demographics of the present situation.

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21Wilkinson, American Indians, Time, and the Law, 42.

The decisions rendered in Mattz, Decoteau, and Rosebud introduced new categories used by the Supreme Court in deciding jurisdiction disputes. Although congressional intent still played a role in the decision-making process, the Court emphasized balancing tribal interests against those of the state. In relying on both congressional intent and weighted interests, the Court created a dichotomy that further muddled the philosophical base used in deciding these cases.

This split carried with it a host of problems. Rather than wrestle with comprehensive principles, the courts retreated to conservative, case-by-case reasoning, emphasizing facts over rules, and details over generalities. If a court, in a particular case, chose to focus on congressional intent, then it faced the ambiguities of legislative history. This led court members toward arbitrary conclusions about congressional intent. Since Congress often legislated for individual tribes, each case rested on a different foundation, and the courts became intoxicated with detail. Yet, if a court gave more credence to the balanced interest doctrine, the outcome could prove just as uncertain. Tribes had no means of knowing whether a court would place more emphasis on the demographics of the contested area or the tenets of tribal sovereignty.23

Perhaps no contemporary jurisdiction case better illustrates the desultory character of the courts than that of Ute Indian Tribe v. State of Utah. The Ute tribe and the state of Utah disagreed as to the original boundaries of the Uinta-Ouray

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Reservation and, therefore, claimed conflicting jurisdictions over non-Indian lands. Like most modern jurisdiction cases, the Ute case revolved around the meaning of a series of legislative statutes passed at the turn of the century. The Utes and the State of Utah contested the intention behind congressional acts of 1894, 1897, 1902, and 1905, which opened Ute lands to white settlement. The effort to reconstruct the "intent" of Congress nearly a century after it had acted on most of the legislation concerning the Ute lands provided an arduous task for the courts. Ultimately, three separate federal courts heard the case with each handing down contrasting opinions derived from different interpretations of the historical record.

Studies that focus on an examination of courts and cases that have furnished unique doctrines in United States law represent a popular element in legal history. Although this approach provides critical insights, the study of Indian law reaches beyond such a narrow treatment. Indian law is the product of vivid and complex historical relationships between two distinct and sovereign peoples. The historical forces that have created conflict in Indian/white relationships frequently provoke contemporary court battles over jurisdiction rights.

The Ute case not only affords an opportunity to understand the special character of this particular body of law, but it also highlights the nature of cultural strife and misunderstanding between Indians and whites that forged the impetus for legal action. When the United States Supreme Court handed down its 1994 decision

in the Ute case, it signaled the end of a fourteen-year legal battle that found its antecedents in a one-hundred-fifty-year history of Indian/white conflict.

Much of Ute history tells of a people constantly struggling to maintain their traditional land base, and the concomitant rights inherent to jurisdiction over those lands. Ute resistance to recurring and persistent white encroachments inveterated deep-rooted and long-lasting resentments among the Ute people. As a result, the Utes have tried continually to gain a greater degree of autonomy. This quest for sovereignty found its ultimate expression in the autumn of 1975, when the Utes claimed jurisdictional control over disputed lands once included within their reservation boundaries. For the Utes, a federal court ruling represented hope for the validation and protection of their own sovereignty.

The Utes' declaration of their governmental authority met stout opposition. Many whites, living as neighbors to the Indians, denounced the Ute assertion. White residents living in the disputed area misconstrued Ute intentions and felt it grossly unjust that they faced the possibility of being governed by a tribal council in which they had no vote. As in the circumstance of the Utes, a long history lay at the root of white hostility. Whites claimed that at the turn of the century their ancestors settled on the land in good faith, secured legal title to the land, and endured the tribulations of homesteading. More importantly, without challenge from the Utes, these settlers established local governments that had practiced

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jurisdiction over the disputed lands for seven decades. These facts guaranteed whites, so they argued, a right to government under white authority. The Ute jurisdiction claim stood as a direct threat to Anglo control and incited white anger.

The enduring Ute bitterness and the opposing white consternation underscore the intensities that drove the quest for litigation in the Ute case. These powerful historical forces destroyed any hope of a peaceful, negotiated settlement and motivated each group to pursue litigation as the sole means of solving this dispute. When coupled with the fact that a long-standing legislative history surrounded the conflict over the Ute lands, this situation assumed even greater complexity. Only by examining all of these factors does a clear understanding of the Ute case emerge.
CHAPTER II

"OUR LAND IS SMALL"

Around the year 1800, when the first significant contact occurred between white Europeans and the Ute Indians, the Utes dwelled within a territory that included large portions of northern New Mexico, western Colorado, and eastern Utah. Historians estimate that Ute lands consisted of nearly 225,000 square miles. This vast and diversified land varied from arid plains to immense mountain ranges, and terraced plateaus to rugged canyons. Virtually the entire area of Ute occupation was undisputed.¹

Seven distinct bands made up the Ute nation. Three of these shared the eastern portion of the above mentioned lands: the Uintah, the White River, and the Uncompahgre Bands. These bands traveled to visit one another, intermarried, aided each other in times of war, and shared religious, social, and ethical beliefs. Because of the Utes' relationship with the earth, their culture was closely tied to the land. The land provided many important resources to the Ute people: sources of food, clothing, and weapons; shelter from climatic conditions; meeting grounds for councils and ceremonies; and sacred areas designated for the healing of the sick.²


²Ibid., 33.
Because the Utes lived north of the Spanish frontier, they had avoided the control of European invaders for nearly two centuries. But, during the decade of 1810-1820, a great number of activities that impinged on Ute lands began in the Rocky Mountain region. There began an intense search for furs in the area of present-day Colorado, a search that initiated many arguments between native groups of the region, Spanish officials, and United States citizens who trapped the area. By 1825, a large number of people had pushed their way into what became known as Utah to gather furs. From the northwest came Peter Skene Ogden and his men of the Hudson’s Bay Company into the areas at the northern edges of the Ute domain. Other parties of trappers came from the Southwest and the East. Concurrently, Jedediah Smith crossed Utah and mapped the Old Spanish Trail, which became an important trade route for woven cloth and cattle between Santa Fe and Los Angeles.³

The Utes took part in the vigorous fur trade of the region and thrived. They exchanged animal pelts for weapons, ammunition, blankets, and trinkets. The fur trade with the Utes proved so extensive that the United States government established several trading posts in the Uintah Basin, the heart of Ute lands.⁴

The Utes had reached the apex of their prosperity, when the Mexican War and the arrival of more Anglo-Americans from the East disrupted their lives. The


⁴Conetah, A History of the Northern Ute People, 33.
war between the United States and Mexico caused a rapid influx of whites into the American Southwest. Encouraged by the reports of John C. Fremont, who traveled through Utah in 1844, members of the Church of Jesus Christ of Latter-day Saints, commonly known as Mormons, began their migration to the area in 1846 and established themselves on Ute lands before the war concluded. The Utes' reacted circumspectly to the arrival of the settlers.

Mormon settlements branched out rapidly. Six years after the Mormons first located in the Salt Lake Valley, they had expanded up and down the west side of the Wasatch Mountains, laying claim to most of the irrigable dells in Utah. Soon, conflicts developed between Indians and whites for possession of the most fertile lands.

As the Mormons moved south, taking up new territory, they pushed the Utes off their homelands. The Utes particularly valued these lands, especially for their game and fish. The Utes resisted this intrusion and armed conflict broke out between the Mormons and the natives—first at Battle Creek in 1850 and then the so-called Walker War of 1853-54. Mormon occupation of Ute winter campsites at Provo, Utah, provoked the outbreak of the Walker War. The Indian leader Wakara (called Walker by the Mormons) led the Utes in a succession of raids against the white intruders. The Mormon territorial militia quickly defeated the far-outnumbered Indians. The terms of the peace negotiations ending the war

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humiliated the Utes and secured the Utah Lake region for Mormon settlements.\(^6\)

For the next several years hostilities continued as the invading whites either killed, captured, or removed the natives from their lands.

When a new federal superintendent of Indian affairs, Benjamin Davies, arrived in Utah in early 1861, the Utes, according to him, existed "in a state...of destitution." Davies reported that the Utes had been "reduced...to the lowest ebb of destitution, suffering and want...their poverty, suffering, and distress...beyond description." The starving Utes took desperate actions. When Davies inquired about the low number of children present in the Ute camp, the Utes explained that "since the white people came the buffalo and deers had all gone away, and they had nothing to feed [the children] with...[and] they had laid them on the ground to die and be eaten by the wolves."\(^7\)

That same year, 1861, the Mormons asked the federal government to remove the Utes to some distant point reserved for them. Davies suggested that the Uintah Valley could serve such a purpose. At the suggestion, Governor Brigham Young sent a survey expedition to determine whether the area might prove suitable for


\(^7\)Letters Received, Benjamin Davies, Superintendent of Indian Affairs for Utah, to William P. Dole, Commissioner of Indian Affairs, 20 January 1861. Utah Superintendency, Records of the Bureau of Indian Affairs, Record Group 75, National Archives. (Special Collections, Merrill Library, Utah State University, Logan, Micro-film), Utah Reel Num. 83, roll 4 of 10.
Mormon agrarian settlements. In three weeks, the survey party returned and reported the country "entirely unsuitable for farming purposes,...one vast contiguity of waste, and measurably valueless, excepting for nomadic purposes...and to hold the world together." Less than a month later, at the request of the secretary of the interior, President Abraham Lincoln set aside the "entire valley of the Uintah River within Utah Territory" as an Indian reservation for the Utes.

The federal government initially made little effort to remove the Indians to the new reservation. Most of the Utes found the Uintah Basin uninhabitable for year-round occupation as had the Mormons, and many continued the struggle to use their traditional lands increasingly occupied by whites. Similar to the actions taken by Chief Wakara a decade earlier, Chief Black Hawk and a group of starving Utes began raiding white settlements throughout the eastern half of Utah and in western Colorado. The Mormons, unable to stop these depredations, took defensive measures and promised a war of extermination against the Utes. These actions led to the eruption of armed conflict. Black Hawk guided the Utes in the struggle. The war that followed borrowed his name. The Black Hawk War, 1865-1869, stands as the largest military engagement ever fought on Utah soil.

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8 Conetah, A History of the Northern Ute People, 41.


During the initial stages of the war, a delegation of Mormons and Utes met at Spanish Fork in June 1865 and signed a peace treaty. Although Ute Chief Soweet had stated at the negotiations that the Utes “...did not want to sell their land and go away; they wanted to live around the graves of their fathers,” the Utes nonetheless agreed to remove to the Uintah Valley Reservation and relinquished their claims to all other lands within the Utah territory. The treaty also made detailed stipulations for the staffing and operation of the Uintah Agency.\(^\text{12}\) Congress, ill-disposed to support Mormon interests, refused to ratify the treaty.

When promised money, livestock, farming implements, and other treaty provisions did not appear at the Uintah Agency, the intensity of the Black Hawk War increased. Black Hawk again attacked and looted Mormon villages, this time with a group of a hundred warriors. The war dragged on during 1866, 1867, and 1868 with immense cost to the settlements of central Utah.\(^\text{13}\)

Conditions only deteriorated for the Utes in 1869. The federal government and the Mormon Church refused to address Ute complaints.\(^\text{14}\) Eventually starvation, the lack of supplies, and the superior power of the territorial militia spelled defeat


Fig. 1. The Ute Indian Reservation, 1865. O'Neil and MacKay, Uintah-Ouray Ute Lands, 18. Reprinted with permission from the American West Center, University of Utah, Salt Lake City.
for Black Hawk. In 1869, the remnant of the abject Utes moved from the central valleys of Utah to the Uintah Reservation.

The first three years on the Uintah Reservation proved difficult for the Utes. Meager federal assistance reached the tribe. Hunger and disease once again spread among the Indians. The 1871 appointment of John J. Critchlow as the Indian agent for the Uintah Agency ameliorated the situation. Critchlow became a tireless advocate of Indian interests. He repeatedly solicited Congress to organize churches on the reservation to help Christianize the Indians. He endeavored to create reservation schools and established herding as a major economic pursuit, reasoning that herding suited the Indian temperament better than agriculture. The removal of the Colorado Utes into Utah stymied Critchlow’s efforts.\textsuperscript{15}

A long history of invasion, conflict, and perfidy preceded the removal of the Colorado Utes into Utah in 1881-1882. The discovery of gold at Pike’s Peak in 1859 brought many whites into Colorado. Whites invaded the area so quickly that the federal government organized Colorado as a territory in 1861.\textsuperscript{16} The succeeding year, Congress ratified a treaty that established an agency at Hot Sulfur Springs in western Colorado for the Northern Colorado Utes.

In 1865, miners discovered gold, silver, and coal in western Colorado and again whites swarmed onto Ute lands. Whites pressured Congress to negotiate a

\textsuperscript{15}O’Neil and MacKay, Uintah-Ouray Ute Lands, 8.

\textsuperscript{16}34,000 people populated Colorado in 1860. By 1880, the number had grown to over 194,000. Jorgensen, Sun Dance Religion, 43.
new treaty with the Utes, in which the Indians gave up more land. The 2 March 1868 Treaty gave the Colorado Utes roughly 1,500,000 acres of land in western Colorado. The federal government created two new agencies—the Uncompahgre, located at Los Pinos, hosted the Taviwach Utes, later known as the Uncompahgre. The Northern Colorado Utes moved to the other agency at White River and assumed that name as their own. Non-Ute settlers continued to encroach on Ute lands over the next ten years and acrimony between the Utes and whites proliferated. The battle-cry, “The Utes Must Go!” echoed across the state.

In 1878, the federal government appointed an imperious reformer named Nathan Meeker as the new agent at White River. Meeker, a former newspaper correspondent with utopian ideals, wished to convert the Indians from “heathens” into yeoman farmers. Meeker’s technique called for the stringent application of Christian discipline and the threat of military force to end Ute gambling and begging. In September 1879, the White River Utes rose in rebellion and killed Meeker and some of his staff. The U.S. Army intervened, but the White River Utes destroyed the first detachment of government troops. To prevent a hopeless encounter with the reinforced army, the leader of the Uncompahgres, Ouray, intervened and ended the uprising.¹⁷

The Meeker Massacre finally gave the Colorado citizenry the leverage needed to guarantee the removal of the Utes from Colorado. In the view of Colorado governor, Frederick Pitkin, the federal government should either remove the Utes or "they must necessarily be exterminated.... [and] the state would be willing to settle the Indian trouble at its own expense. The advantage of throwing open 12,000,000 acres of land to miners and settlers would more than compensate all the expenses incurred." In Washington, D. C., the secretary of the interior and a delegation of Ute leaders reached an agreement. The White River Utes agreed to give up their lands in Colorado and settle upon the Uintah Valley Reservation in Utah. The agreement also called for the removal of the Uncompahgre Utes, who were innocent of any violence against the whites in Colorado. Whereas the government originally intended to resettle the Uncompahgre Utes near the present location of Grand Junction, Colorado, a federal commission selected a rectangular strip of land adjacent to the Uintah Valley Reservation in Utah. By Executive Order of 5 January 1882, President Chester Arthur dictated that "the tract...of country, in the Territory of Utah, be...set apart as a reservation for the Uncompahgre Utes."

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18 O'Neil and MacKay, Uintah-Ouray Ute Lands, 12.

19 Governor Frederick Pitkin as quoted in Jorgensen, Sun Dance Religion, 46.

20 An Act to Accept and Ratify the Agreement Submitted by the Confederated Bands of Ute Indians in Colorado, for the Sale of Their Reservation in Said State, and for Other Purposes, and to Make the Necessary Appropriations for Carrying Out the Same, Statutes at Large, 21, chap. 223, 200 (1880).
Almost immediately, Congress sought to decrease the size of the Uncompahgre Reservation. As in Colorado, the discovery of minerals in Utah resulted in the loss of more land. Coinciding with the Colorado Utes' arrival in Utah, government officials had discovered gilsonite (a hydrocarbon mineral) on both the Uintah Valley and the Uncompahgre reservations. In January 1886, miners filed the first gilsonite claims on the Uintah Valley Reservation. 22 Mining companies applied immense pressure on Congress to hand the land over to mining interests—an effort which gained ultimate success.

The Utes protested the trespass of miners on their land, but agent T. A. Byrnes saw no reason not to remove the miners' claims from the reservation stating that "such lands are not...used or occupied by the Indians...for the reason that they are not fit for agricultural or grazing purposes." 23 On 24 May 1888, Congress acted and removed a strip of roughly 7,000 acres from the Uintah Valley Reservation for mining purposes.

Later in 1888, miners discovered a gilsonite vein, the Cowboy, on the Uncompahgre Reservation. With the removal of the acreage from the Uintah Valley

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21 Indian Affairs Bureau, Executive Orders Relating to Indian Reservations, 170-71.

22 O'Neil and MacKay, Uintah-Ouray Ute Lands, 15.

23 Letters Received, T. A. Byrnes, U.S. Indian Agent, to Commissioner of Indian Affairs, 18 February 1888, Uintah and Ouray Agency, Records of the Bureau of Indian Affairs, Record Group 75, National Archives. Photocopy of original in possession of Floyd O'Neil, American West Center, University of Utah, Salt Lake City. (Hereafter FO-AWC).
Reservation acting as precedent, Congress moved swiftly to restore to the public domain a twelve-mile strip of land containing the Cowboy. Despite Congressional passage of the bill, President Benjamin Harrison vetoed the legislation. He explained:

I do not think it wise, without notice even to the Indians, to segregate these lands from their reservation...to take these lands in this manner is calculated to excite their distrust and fears and...to create serious trouble. 24

Washington officials remained determined in their efforts to gain access to the mineral deposits. During the years 1890-1894, seven bills "to change the boundaries of the Uncompahgre Reservation" were introduced to Congress. In 1893, the United States assistant attorney general indicated to the secretary of the interior that earlier legislation reserved the Uncompahgre lands for the purpose of making allotments and the federal government could therefore open the reservation for sale. 25 Congress responded in 1894 by passing the Indian Appropriations Act. The act provided for an appointed commission to make allotments to the Utes and to restore the surplus lands "to the public domain." 26


26An Act Making Appropriations for Current and Contingent Expenses of the Indian Department and Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June Thirtieth, Eighteen Hundred and Ninety-Five, and for Other Purposes, Statutes at Large, 28, chap. 290, 286 (1894).
It soon became obvious that the Ute commission faced many problems, including stout Indian opposition to the act and a dearth of sufficient agricultural lands to comply with the intended allotment program. In fact, agent George Gordon described the land as, "extremely rugged and fearfully riven,...a wild and ragged desolation, valuable for nothing...there are no agricultural lands...that would...be advisable now or hereafter to attempt to practically utilize for agricultural purposes." Meanwhile, pressure by white settlers increased on the reservation boundaries and trespassing surfaced as a major problem. After complaint by agent James Randlett, the commissioner of Indian affairs recommended the federal prosecution of trespassers and requested "a sufficient military force" from the War Department to support the Indian agent on the Uncompahgre Reservation.

By 1897, the committee had made little progress in allotment and Congress again acted. After extensive debate, Congress enacted provisions within the 1897 Indian Appropriations Act that mandated the allotment of the Uncompahgre Reservation and opened all nonallotted lands to white settlement on 1 April 1898.

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28 Letters Received, James Randlett, U.S. Indian Agent, to Commissioner of Indian Affairs, 19 January 1897, FO-AWC.; Letters Received, Thomas Smith, Acting Commissioner of Indian Affairs, to Secretary of Interior, 30 January 1897, FO-AWC.

29 An Act Making Appropriations for Current and Contingent Expenses of the Indian Department and Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June Thirtieth, Eighteen Hundred and Ninety-Eight, and for Other Purposes, Statutes at Large, 30, chap. 3, 87 (1897).
Troubled by these events, the Uncompahgre sent a delegation to Washington, D. C., where it acquiesced. The group agreed to accept allotments on the Uintah Valley Reservation, if the commission could not find adequate lands on the Uncompahgre Reservation.

Poor weather and deep snow greatly fettered the allotment process for months and necessitated the commission's request for more time. While the Bureau of Indian Affairs (BIA) found initial success in pushing a delay through Congress, the request ultimately foundered. The bureau informed the Uncompahgre commission by telegram and the “opening” of the reservation went ahead on 1 April 1898 as planned. The commission had failed to make a single allotment prior to the opening. Through separate legislation, Congress eventually confirmed eighty-three allotments made within the Uncompahgre Reservation by 1899.30

Concurrent with the drive to open the Uncompahgre Reservation came an attempt to negotiate a treaty with the Uintah and White River bands for the allotment of their reservation and the opening of surplus lands. Illegal mining operations had taken place on the Uintah Reservation for many years causing mining companies to lobby for the opening of the reservation. In addition to the difficulties caused by mining interests, the Utes felt pressure on their western border as

30 An Act Making Appropriations for Current and Contingent Expenses of the Indian Department and Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June Thirtieth, Nineteen Hundred, and for Other Purposes, Statutes at Large, 30, chap. 324, 940-41 (1899).
cattlemen from Heber and Provo grazed their livestock in the western valleys of the Uintah Basin.\textsuperscript{31}

The Utes held a council in March 1887 to protest the trespass and to demand that the cattlemen pay a tax for grazing privileges. Only one cattleman agreed to pay the levy while others continued to encroach on Ute land. In September 1890, the White River and Uintah Utes held another council, once again to complain about the stock trespassing. They decided to order all the illegal cattlemen and their stock off the reservation and wished to disallow future use of their land. The stock owners protested and the Uintah agent complained, "the task of keeping the reservation clear of sheep and cattle is one of very great difficulty."\textsuperscript{32} BIA officials favored relinquishing some tribal property because the Ute population had dwindled and the Indians did not steadfastly farm the land. Forcing the Utes to surrender the land would solve the trespass problem.\textsuperscript{33}

Farmers also wanted the Utes' demesne. Starting in 1879, farmers began diverting water from the Strawberry Valley and its several streams, located on the western half of the reservation. Due to the aridity of eastern Utah, many farmers depended on the unlawfully obtained water to irrigate their crops. Farmers in Heber Valley unlawfully diverted water from the Strawberry River and built canals

\textsuperscript{31}O'Neil and MacKay, \textit{Uintah-Ouray Ute Lands}, 21-22.

\textsuperscript{32}Letters Received, Robert Waugh, U.S. Indian Agent, to T.J. Morgan, Commissioner of Indian Affairs, 25 August 1891, FO-AWC.

\textsuperscript{33}Jorgensen, \textit{Sun Dance Religion}, 51.
that carried the water from the Uintah Basin to lands in Wasatch County. White settlers built these irrigation systems on Indian land without the consent of the Utes or the authorization of the BIA.\textsuperscript{34}

A bill was introduced in Congress in 1892 that would have granted the right to divert water from the Uintah Valley Reservation. The bill did not pass, but whites continued to illegally divert water. Local whites waited for federal legislation to remove lands from the Ute reservation to confirm their right to use the water.\textsuperscript{35}

By 1887, when Congress passed the Dawes Severalty Act, the newspapers of Utah were calling for the allotment in severalty of the Uintah Reservation and the opening of the rest of the Ute lands to white settlement. Pressure mounted to appoint a commission to allot lands on the Uintah Reservation. Actually, the Uncompahgre allotment commission already held the authorization to negotiate an agreement with the Uintah and White River Utes, via the provisions of the 1894 Indian Appropriations Act. But, the commission had spent its time trying to induce the Uncompahgres to take allotments and had not yet met with the Uintah Reservation Utes. Instead, Uintah Indian Agent William Beck met in council with the Utes to try to elicit their support for allotments.\textsuperscript{36} Negotiations with the Utes proved a complete failure as the Indians assiduously opposed all proposals.

\textsuperscript{34}McKay, "The Strawberry Valley Reclamation," 72.

\textsuperscript{35}O'Neil and MacKay, Uintah-Ouray Ute Lands, 24.

\textsuperscript{36}Ibid., 25.
Fig. 2. The Uintah Valley and Uncompahgre reservations, 1890. O’Neil and MacKay, Uintah-Ouray Ute Lands, 28. Reprinted with permission from the American West Center, University of Utah, Salt Lake City.
Matters worsened for the Utes. Throughout their tenure on the reservation, the Utes heard continual talk about the opening of their reservation. By the late 1890s, action supplanted words as local, state, and federal officials initiated the opening process.37

In June 1898, Congress passed an act that stipulated the allotment of the Uintah Reservation after the obtainment of Ute consent. The Utes remonstrated. In November 1898, a White River and Uintah delegation traveled to Washington, D. C., to express its objections to the proposed legislation. Speaking for the group, the Ute Indian Sasanockit stated, “Our land is small and we do not want to sell it to anyone...We have no more land that we want ourselves for our own use.”38 Again discussions with the Uintah and White River Utes collapsed. The White River band particularly repudiated the allotment idea. Commissioner Ross Guffin reported, “The Indians were unanimous and determined in their opposition to making cession to the government of any of their lands.”39

Over the next two years Utah’s congressional delegation worked feverishly to open the reservation. In 1902, Congress held hearings to consider the matter. At those hearings, Representative George Sutherland (Utah-R) vehemently argued that the Indians did not rightfully own the reservation; therefore, negotiations and


38Letters Received, Sasanockit, et al., statement, to W. A. Jones, Commissioner of Indian Affairs, 26 November 1898, FO-AWC.

39Letters Received, Ross Guffin, Uintah Commission, to Commissioner of Indian Affairs, 7 January 1899, FO-AWC.
consent were not required to take the land. Sutherland contended that since the creation of the Uintah Reservation came from the executive and legislative branches, those two agencies had “the power to restore...[this] reservation to the public domain” without the sanction of the Indians. ⁴⁰

Congress continued to pursue disestablishment of the Ute reservation. The 1902 Indian Appropriations Act called for the allotment of the Uintah Reservation “with the consent...of the Ute Indians.” According to the act all surplus lands left over after allotment returned to the “public domain.” ⁴¹ Congress did not share Representative Sutherland’s view that it should unilaterally open the reservation; Indian consent conditioned all clauses of the statute. The 1902 act also gave special privileges to the Raven Mining Company. This and other mining companies proved the most influential interests in securing this first piece of allotment legislation.

President Theodore Roosevelt signed the bill into law on 28 May 1902, but did so with serious objections. Roosevelt especially disapproved of the favored treatment the act afforded mining lessees. He signed the bill only after influential congressmen promised to amend the bill, removing the unacceptable passages. ⁴²

⁴⁰ U.S. Congress, Senate, Leasing of Indian Lands: Hearing before the Committee on Indian Affairs, S. Doc. 212, 57th Cong., 1st Sess., 4 February 1902, Serial 4234, p. 113.

⁴¹ An Act Making Appropriations for Current and Contingent Expenses of the Indian Department and Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Three, and for Other Purposes, Statutes at Large, 32, chap. 888, 263-64 (1902).

The commissioner of Indian affairs instructed U. S. Indian Inspector James McLaughlin to meet in council with the Ute bands “with a view to obtaining their consent to the allotment of their lands.”

But, before McLaughlin began negotiations an important event took place. On 5 January 1903, the Supreme Court announced its decision in Lone Wolf v. Hitchcock, which held that Congress could allot and open Indian reservations without tribal consent.

Apparently motivated by the Lone Wolf decision, Congress felt more assured to use arbitrary means to secure land from the Uintah Reservation Utes. In the spring of 1903, Congress passed another Indian Appropriations Act that allocated funds to carry out the provisions of the 1902 act. The 1903 act further provided that if the BIA could not obtain Ute consent by 1 June 1903 then the secretary of the interior would allot the land without Indian approval.

Inspector McLaughlin found himself in the awkward position of the person delegated to negotiate Indian consent to a chain of events that would occur regardless of the outcome of the negotiations. On 18 May 1903 McLaughlin called

43Letters Received, Commissioner of Indian Affairs, to James McLaughlin, U.S. Indian Inspector, 29 April 1903, FO-AWC.

44In Lone Wolf v. Hitchcock, the Court recognized a seemingly unlimited federal power to alter tribal property and jurisdictional powers set forth in treaties between the federal government and various Native American groups. After the decision, Congress relied on Lone Wolf to open several reservations for white settlement and speed the pace of federal assimilation policy. For further discussion see: Blue Clark, Lone Wolf v. Hitchcock: Treaty Rights and Indian Law at the End of the Nineteenth Century (Lincoln: University of Nebraska Press, 1994); Wilkinson, American Indians, Time, and the Law, 24-25; Hoxie, A Final Promise: The Campaign to Assimilate the Indians, 154-56; Prucha, The Great Father, 295-96.
the Utes to a council that lasted six days. There he explained the plans to open the reservation to white settlers:

   I am here to obtain the consent of you people to accept allotments as specified by the law...My friends, if I had my choice in this matter I would be glad to see you occupy all of this country but this is impossible. The White people are coming into the country and no power can keep them out.  

McLaughlin did not intimidate the Utes. As the council wore on, Indian opposition to allotment manifested. Succioff, a Ute leader, explained:

   This land is ours...We are not going to give up any of this reservation away...It is ours and we are going to keep it. We know our reservation line, and the White Man knows it.

White River Ute Tim Johnson continued:

   We haven't got a whole lot of things to talk about...This land is ours and we haven't got it for sale...I was born on this land and we do not want to give it up.

In exasperation, McLaughlin argued to the Utes that they had no choice but to agree, stating:

   Now my friends, the statements of your speakers have convinced me that you do not understand what I have said...My friends, you want to get rid of this idea that you have the say whether your reservation can be opened or not. You are simply to say whether or not you will accept allotments...This is the condition, my friends, and it is your duty to accept it gracefully because the law of the great council has said so.

   Minutes of Council, held by James McLaughlin, U.S. Indian Inspector, with the Uintah and White River Ute Indians, 18-23 May 1903, p. 12. FO-AWC.

   Ibid., 14.

   Ibid., 15.
Of the 280 male Indians belonging to the White River and Uintah bands, McLaughlin succeeded in getting only eighty-two signatures supporting allotments. McLaughlin noted that “the attitude of the Indians...[was]...unanimously opposed to the opening of their reservation.” Despite this failure, shortly after talks with the Utes ended, the secretary of the interior authorized the mandatory allotment of lands to the Utes.

The Uintah Indian agent struggled in making allotments to the Utes. In December 1904, Agent C. G. Hall reported on the difficulties he faced. Poor weather and surveying problems, including the selection of an Indian grazing reserve, proved particularly baneful to the allotment process. The commissioner of Indian affairs had to request the aid of federal troops to patrol the Uintah Reservation and expel “sooners” anxious to settle on the lands. The Utes also continued in their opposition.

Meanwhile, Congress continually inquired of the secretary of the interior about the progress made towards opening. The secretary submitted a report indicating that the agent at Uintah needed more time to complete allotment. Once again using an Indian Appropriations Act as a vehicle for action on Ute lands, the House passed an amendment to the 1905 act providing for more time and set the opening for 1 September 1905. The amendment called for the restoration of Ute

48Ibid., 34.

lands to the “public domain” by presidential proclamation. The Senate rejected the House amendment and instead passed a bill opening the surplus lands of the Uintah Reservation for settlement under provisions of the “homestead and town-site laws of the United States.” This change of language from the House amendment emphasized opening the reservation under specific rules and regulations.\textsuperscript{50} The Indian Appropriations Act of 1905 contained another important action on the part of Congress; it allowed President Theodore Roosevelt to set aside land from the Uintah Valley Reservation as part of a federal forest reserve.

In April 1905, a commission began the work of allotting lands on the Uintah Reservation. In a period of just two months the commission allotted 103,265 acres of land. While the press reported that the Utes appeared satisfied with the opening of the reservation, the Utes made one last desperate plea to reverse the allotment process. A Ute delegation traveled to Washington, D. C., to communicate their strong opposition to the forthcoming event. The delegation found no success.\textsuperscript{51}

A presidential proclamation of 14 July 1905 set the date for entry on the unreserved and unallotted lands of the Uintah Reservation for 28 August 1905.\textsuperscript{52} Another presidential proclamation of the same day withdrew over 1,010,000 acres

\textsuperscript{50}O’Neil and MacKay, \textit{Uintah-Ouray Ute Lands}, 31.


\textsuperscript{52}U. S. President, Proclamation, \textit{Federal Register} (14 July 1905) vol. 34, pt. 3, p. 3120.
of land from the reservation as an addition to the Uintah Forest Reserve.\textsuperscript{53} Other proclamations opened 1,004,285 acres to homestead entry, set aside 2,140 acres in mining claims, and earmarked 60,160 acres as reservoir sites to conserve water for the Indians or for use in “general agricultural development.”\textsuperscript{54} In total, the proclamations removed over half of the Ute reservation’s two million acres.

The announcement of the opening triggered a land rush. Stories circulated of fabulous wealth in minerals and natural resources available on the reservation. The Deseret News reported on “the many thousands of acres of fine land” obtainable for settlement.\textsuperscript{55}

The government had too many applicants for the choice lands. Due to the paucity of suitable agricultural soil, numerous individuals took up marginal and sub-marginal farms. Almost immediately, most of the new settlers faced serious trouble. Ironically, the new land the whites were so eager to take away from the Indians proved as barren as what the Mormons had first evaluated in 1861. By 1912, scores of the settlers were poverty stricken, provoking Utah Senator Reed

\textsuperscript{53}President Grover Cleveland created the Uintah National Forest by presidential proclamation in 1897. The reserve included lands of the Uintah Mountains bordering on the south of the Uintah Indian Reservation. See: U.S. President, Proclamation, \textit{Federal Register} (22 February 1897) vol. 29, no. 20, p. 895.


\textsuperscript{55}“Filings on 630 Homesteads,” \textit{Salt Lake City Deseret Semi-Weekly News}, 14 September 1905, p. 3.
Smoot (R) to ask Congress to place a moratorium on land payments. Subsequently, many farmers abandoned their plots.56

The opening of the Uintah Reservation instigated one last revolt by the Utes. Angered by the failed attempt to keep whites off their land, the Utes requested a move to a new territory of their own. Federal officials refused. Feeling captive on their own land, a group of Utes decided to flee.

Several hundred Sioux had visited the Uintah Reservation during the 1880s and had made friendly overtures. The Utes, apparently remembering their experience with the Sioux, felt that an alliance with the Plains Indians might bring force against the federal government.57 In 1906, under the leadership of Red Cap, nearly 400 Utes assembled their horses and wagons and set out for South Dakota. White settlers' anxieties erupted and state officials panicked. The Vernal Express reported that "Indian trouble of gigantic proportions is brewing."58

Legal considerations made it impossible to restrain the Utes with armed force. The Indian agent at Fort Duchesne followed the Utes as they fled into Wyoming. The people of Wyoming called for federal intervention. In desperation, the commissioner of Indian affairs sent James McLaughlin, who had previously negotiated the opening of the Uintah Reservation, to meet with the renegade Utes.


58 Vernal (Utah) Express, 26 May 1906, p. 1.
McLaughlin convinced forty-five of the Utes to return to Utah, but the rest of the group persisted in its drive toward South Dakota. Eventually, the governor of Wyoming succeeded in achieving federal military support. When U. S. Army troops surrounded the Utes, the Indians realized the hopelessness of their situation and accepted escort to Fort Meade, South Dakota.59

There the proposed alliance with the Sioux proved a sophistry. Not only were the Sioux unwilling to enter into an alliance, but they wished that the Ute people would leave. The great campaigns against the U. S. Army had ended and the Sioux nation faced tough times. Also, the Sioux possessed no hunting grounds that they wished to share with the Utes. In 1908, after two years of bewilderment and dislocation, the peripatetic Utes returned to Utah.60

The effect of federal allotment policy proved disastrous for the Utes. The Indians disliked farming and considered it an undignified pursuit. Moreover, the lands they held contained poor soil and could not support their agricultural endeavors. Consequently, the Indians became more dependent on government support. By 1912, the Utes faced a confined reservation situation that left them feeling hemmed in. All of this bred Ute umbrage and bitterness.61


60 Ibid., 323-26.

61 Conetah, A History of the Northern Ute People, 128.
The issue of water rights particularly caused Ute resentment. The presidential proclamations of 1905 had reserved land in the Strawberry Valley as a reservoir site for the Utes. The Utes soon lost the land.

In 1903, the federal government had granted the U. S. Reclamation Service the right to send engineering parties on to the Uintah Reservation to explore the possibilities of the Strawberry Valley Reclamation Project. On 15 December 1905, the secretary of interior authorized the project and construction began in March of the next year. One complication existed. The Utes were entitled to benefits from the land. In 1907, a legal question arose concerning the Reclamation Service's liability to pay rent for use of the Strawberry Valley lands.

In 1910, Utah Senator George Sutherland introduced a bill to Congress that extinguished the Utes' title to the Strawberry Valley land with the payment of $1.25 per acre. The bill did not pass, but the Indian Appropriations Act for 1911 contained an amendment that embodied the Sutherland bill. The federal government paid the Utes $1.25 per acre for 56,859 acres, totaling $71,085. The BIA held the money in trust for the "benefit" of the Utes.62 Neither Congress nor the department of the interior consulted the Utes in any of the actions taken to remove the land from their control.63 Whites took over the Strawberry Valley.


In 1914, the federal government appointed Albert Kneale Indian agent for the Uintah-Ouray Reservation and asked him to save the “prior water rights” of the Indians. Non-Indian settlers continued to pressure for the use of additional water located on the reservation, arguing that the Utes did not use the resource. Kneale outlined a plan to cultivate ninety-five thousand acres of reservation land to utilize the water. The Utes resisted the plan.64

Kneale took an alternative course. He started an advertising campaign to encourage whites to either lease or buy Ute land. Due to the campaign’s success, Kneale had more applicants than he hoped for. Kneale thus sold over thirty thousand acres. Hundreds of more white settlers entered the basin clamoring for Ute water.

Private companies irrigated many acres in the Uintah Basin. These private operations drew water from the heads of rivers and streams in the Strawberry Valley and built dams to control flow. As a result, the water table of the lands south of the Uintah Mountains dropped dramatically, damaging Ute grazing areas. Water flowed onto Ute allotments and ruined crops.

Three decades of federal allotment policies produced deleterious effects for the Utes. Allotment destroyed traditional lifestyles and undermined political band organization. Disease and hunger ravaged the Indians. The Ute population fell drastically from 1,660 full bloods in 1900 to only 917 in 1930.65

64Conetah, A History of the Northern Ute People, 129.

65Ibid., 129.
The 1930s brought a significant change in United States Indian policy. The Meriam Report, issued in 1928, described the poor conditions on Indian reservations and called for numerous reforms. In 1934, Congress passed the Indian Reorganization Act (IRA), which ushered in the era of the Indian New Deal. The IRA's great goal aimed at reversing federal allotment policy. The act prohibited the further allotment of Indian lands, allowed the transfer of individual allotments to tribal ownership, authorized the secretary of the interior to acquire additional lands for reservations, and granted any Indian tribe the right to adopt a constitution and organize a tribal government. Under the IRA, the Bureau of Indian Affairs encouraged the Utes to use tribal funds to purchase land.

Prior to the enactment of the IRA, a controversy arose over the use of grazing areas on the Uncompahgre Reservation. When Congress originally opened the land to entry in 1898, white settlers did not claim much of the ground. Many Uncompahgre remained on the land and continued to live there, confused by the influx of whites inside the reservation boundaries. Some Utes moved to their allotments, while others tried to survive the best they could. Most of the

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Uncompahgre still considered the reservation theirs. Indians continued to graze their livestock on the land. 67

This did not present a problem until the 1920s. Then ranchers from Colorado and western Utah began driving their cattle onto the Uncompahgre range for winter grazing. Competition between white and Ute stockmen increased as the problem became more acute. Federal officials suggested removing the land as a permanent reserve for the Indians, but the proposal found little support. In 1933, the Department of the Interior took action and created a grazing reserve from the open land of the Uncompahgre Reservation--about 2.5 million acres. This did not resolve the problem, as whites and Utes continued to struggle for control.

Two years later, local stockmen, landowners, and government officials proposed a permanent Ute reserve from the surplus Uncompahgre land. The plan called for a reserve comprising roughly one-third of the Uncompahgre Reservation, leaving the rest of the open land for the use of white cattlemen. The bill encompassing this scheme failed in Congress. 68

In 1937, following the precepts of the IRA, the Indian service pushed ahead and purchased nearly 31,000 acres of privately owned land within the Uncompahgre Reservation. This left only tribal land and public domain remaining within the boundaries of the reservation. By 1942, Congress still had not acted to create an


Indian reserve. Indians and whites sought litigation to settle the dispute. Finally, six years later, Congress passed legislation establishing the Indian reserve. The law extended the boundaries of the Uintah-Ouray Reservation to include the Uncompahgre land originally designated in the 1935 plan. The annex was known as the Hill Creek Extension.\(^69\)

The boundary of the Uintah-Ouray Reservation remained in tact after 1948. Over a sixty-six-year period, from 1882-1948, the Utes lost ownership of approximately 70% of their original reservation lands. In one twelve-year period, 1894-1905, Congress opened over 2.9 million acres of Ute land to white settlement. From over four million acres in 1882, the Utes now controlled only 1.3 million acres. In 1912, James McLaughlin poignantly described the effects of the loss of their land on the Utes:

> They feel that against their wishes one million acres of land was taken from them and opened to settlement, and that another million was placed in a forest reserve.... They know that every dollar received from the sale of the ceded lands has been expended to conserve the water of the former reservation, which in all probability will be appropriated by their white neighbors.... It is difficult to believe that the rights of these Indians have been sacrificed to meet the demands of local interests, but it is more difficult, after following step by step the administration of their affairs, to reach any other conclusion.\(^70\)

In 1906, Commissioner of Indian Affairs Francis Leupp generalized about the results of Indian allotment policy and looked upon the Ute case as a fiasco. He said that two ways existed to allot Indian lands—sanely and foolishly. "The Uintah

\(^69\)Ibid., 36-37.
Reservation in Utah furnishes an example of the rushing and haphazard method.”

Perhaps more importantly, Leupp offered a nascent observation. He predicted that “trouble” would come from the way in which the government had allotted Ute land.71 Sixty-nine years later, the prescient accuracy of Leupp’s prognostication would ring true. In 1975, a new legal controversy emerged between the Ute Indian tribe and the people of the Uintah Basin.

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71 Jorgensen, Sun Dance Religion, 55.
CHAPTER III
“WE WILL NO LONGER STAND IDLY BY”

In October 1975, the Ute Indian tribe filed a complaint with the United States District Court of Utah. The Utes sought a declaratory judgment to prevent the state of Utah from interfering with the enforcement of the Indian’s right to self-government. For many years prior to this action, members of the Ute tribe made continuous efforts to improve the effectiveness of their tribal institutions and to gain a greater degree of autonomy over their lives. The promulgation of tribal law burgeoned as a natural outgrowth of this quest for autonomy.

Since 1937, the Utes had operated a tribal government and Indian court under the purview of a tribal constitution.¹ The Ute constitution claimed jurisdiction over the old boundaries of the reservation and granted specific powers to the Ute

¹Congressional passage of the Indian Reorganization Act on 18 June 1934 affirmed the rights of Indian people to local self-government. By 1934, traditional tribal governments had almost ceased to exist on over half of all reservations. BIA Commissioner John Collier tried to reverse this process by using the IRA to return tribal affairs to Indian control. The first section of the IRA gave tribes the authority to regulate law and order, tribal membership, taxation, and other matters relating to reservation life. It provided for a tribal council system of government and for the organization of the tribes as business corporations to manage the development of tribal resources. In 1937, the Utes formalized the Uintah and Ouray Ute Tribal Business Committee under the edicts of the IRA. This elected committee handled the political and economic affairs of the Ute people. For more discussion see: Conetah, A History of the Northern Ute People, 136; Deloria and Lytle, The Nations Within, 122-153; Prucha, The Great Father, 311, 321; Sharon O’Brien, American Indian Tribal Governments (Norman: University of Oklahoma Press, 1989), 82-83, 93-94.
Tribal Business Committee, including the power to levy taxes and maintain law and order. For several years, it seemed to the Utes' non-Indian neighbors that these powers, as well as others, lay dormant as far as non-Indian affairs were concerned. Many whites dismissed the concept of Indian governmental control over their lives as irrelevant and inconsequential. However, over those same years, the Utes did not remain passive.²

The Utes, with the support and encouragement of the United States government, strove to improve the sophistication and effectiveness of their tribal institutions. As their operations expanded, the Utes attempted to recodify and expand their tribal ordinances, resulting in the enactment of the Law and Order Code of the Ute Indian Tribe, which became effective on 15 September 1975. The preamble summarized the objective behind the code: “This Law and Order Code...is established for the purposes of strengthening Tribal self-government.”³ More explicitly, the code claimed that the Utes' tribal jurisdiction “shall extend to the territory within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861 and January 5, 1882, and by the Acts of Congress approved...March 11, 1948.”⁴


The code, implemented by the 1635-member-Ute tribe, asserted civil and criminal jurisdiction over twenty thousand whites living within the original boundaries of the reservation. Among its powers, sections of the code allowed Utes to sue non-Indians on the Uintah-Ouray Reservation, gave the Ute fish and game department the right to arrest non-Indians for suspected hunting violations, permitted the Tribal Business Committee to tax and license businesses within the boundaries of the reservation, and authorized tribal court jurisdiction in criminal cases where an Indian stood as victim or accused. Far from attempting a comprehensive appropriation of governmental authority in the Uintah Basin, the Utes placed restrictions on their own authority. The Law and Order Code contained subject-matter jurisdiction limitations, disallowing tribal dominion over any civil or criminal matter that did not involve either the tribe, its officers, or a member of the tribe.\(^6\)

Although newspapers in the Uintah Basin reported the possible legal ramifications of the newly created Law and Order Code in August 1975, white residents in the region took little notice. But when the Tribal Business Committee tested its unexercised authority and proposed the licensing of stores and bars that

\(\text{\textsuperscript{4}}\)Ibid., §1-2-1.

\(\text{\textsuperscript{5}}\)Subject-matter jurisdiction refers to the competency of a court to hear and determine a particular category of cases. Steven H. Gifis, Dictionary of Legal Terms: A Simplified Guide to the Language of Law (New York: Baron's Educational Series, 1983), 243-44.

Fig. 3. The Uintah-Ouray Reservation, 1975. The map shows the area that the Ute Law and Order Code claimed jurisdiction over in September 1975. Adapted from Salt Lake City Tribune, 24 February 1994, sec. A, p. 1.
sold alcoholic beverages within the original boundaries of the reservation, a controversy erupted. Many white businessmen in local towns reacted with outrage to the idea, calling it a power play by the Utes to usurp city authority. Some people made threats. The remark of local bar owner Lou Arnold indicated the magnitude of area opposition to the proposal: “I don’t care if the license ends up costing a quarter, I won’t pay it.”

Enforcement of the Ute law under the code brought immediate protest from the Utah municipalities of Duchesne and Roosevelt and from Duchesne County, all of which lay within the original boundaries of the Uintah Reservation. Officials from these governmental organizations claimed that the jurisdiction of the Utes wrongly included them and they urged their constituents to resist compliance with the Ute Law and Order Code. The State of Utah also alleged that the code likewise impaired its authority.

The Duchesne City Council defiantly announced it would not recognize the code: “This code unconstitutionally establishes another level of government.... We

7The secretary of the interior had to sign the ordinance concerning liquor licenses before it could take effect. When the issue first exploded, the secretary had not yet approved the law.


9From here on, the term “State of Utah” refers to the governmental agencies making up the executive branch of Utah’s state government, including its legal representation as provided by the state attorney general’s office.
protest anyone giving jurisdiction over non-Indians or non-Indian land.” Duchesne city officials adjured citizens to write to state representatives, senators, congressmen, the governor, the attorney general, the Bureau of Indian Affairs, and the secretary of the interior to express their concerns in an attempt to block administration of the code. A week later, Utah Governor Calvin Rampton stated he also would resist Ute enforcement of the code over the lands in contention: “I believe it would be intolerable to have the tribe’s sovereign jurisdiction extend to the large area which is now owned and occupied principally by non-Indians.”

The Utes faced mounting opposition to their legal power. In response, the tribe commenced legal action and filed a claim on 14 October 1975 with the U.S. District Court of Utah in an attempt to gain a clear definition of its reservation boundaries, and in turn, its own jurisdiction. The suit alleged that the State of Utah, through the leadership of Governor Rampton, urged citizens to ignore the Law and Order Code. It also charged that Duchesne County officials publicly maintained that they would “defy” the code and encouraged other citizens to do the same. The complaint asked for a declaratory judgment and injunctive relief to prohibit interference of the code’s enforcement and implementation.


Lester Chapoose, chairman of the Ute Indian Tribal Business Committee, assiduously propounded the legitimacy of the code at a press conference announcing the lawsuit:

We will no longer stand idly by and watch...our competency questioned.... I view this code as a step forward for my people.... Those who oppose the assertion of tribal rights either misunderstand our purpose or would like to relegate us to the shadows of the council fire as a tourist curiosity.\textsuperscript{12}

U.S. District Court Judge Willis Ritter issued a restraining order against the governmental agencies named in the suit, restraining the state from exercising any form of criminal or civil jurisdiction that interfered with any activity or business of the Utes.

The announcement of the case provoked hostilities between Indians and whites in the Uintah Basin. The Duchesne County Sheriff's Department instructed deputies on how to deal with “Indian trouble” and the Roosevelt Police Department began receiving crank calls, one of which came from a caller who asked if Roosevelt wanted another “Wounded Knee.”\textsuperscript{13} The Utes closed roads through the


\textsuperscript{13}On 27 February 1973 a group of armed and militant Indians seized and occupied the hamlet of Wounded Knee on the Pine Ridge Reservation in South Dakota in an effort to call national attention to Native American problems. The occupation, orchestrated by the American Indian Movement (AIM), resulted in an armed stand-off between the FBI and the Indians that lasted for over seventy days and ended peacefully on 8 May 1973. For further information see: Stanley David Lyman, Wounded Knee 1973, with a Foreword by Alvin M. Josephy, eds. Floyd A. O’Neil, June K. Lyman, and Susan McKay (Lincoln: University of Nebraska Press, 1991); Vine Deloria, Jr., Behind the Trail of Broken Treaties: An American Indian
reservation, an action that raised worries about confrontations at tribal roadblocks and angered Utah hunters, who used the roads for access to public lands.

Many whites misinterpreted Ute intentions and feared that a Ute legal victory would result in the loss of title to their land. A Roosevelt woman illustrated such consternation, stating, "Now they want us under their jurisdiction. I'll leave here if it comes to that. But I'll burn my house before I go." The Utes tried to palliate these anxieties by reiterating that they had no intention of taking white land, but at the same time Indian leaders fiercely affirmed the legality of Ute jurisdiction over the area. The situation bordered on violent confrontation. A white resident, who formerly worked for the Utes, warned, "If the court rules in the Indians' favor, there will be a range war out here."

In an attempt at conciliation, Senator Jake Garn (R-Utah) met with local townspeople and Ute governmental officials to hear views regarding the jurisdictional conflict. Although the two parties agreed on very little, the session eased tensions. Utes criticized talk of violence by non-Indians and Senator Garn placated white citizens when he promised to take the issue to Congress if the courts


15Ibid.
found in favor of the Utes. The meeting, however, did not resolve the disagreement. 16

Hoping to avoid litigation, Governor Rampton asked to meet with Ute Tribal Business Committee members. The governor and the Utes gathered on 30 October 1975 at Bottle Hollow Resort to arbitrate differences. Recognizing that a decision from the courts could take years, Governor Rampton proposed an interim solution aimed at preventing “misunderstandings and bad feelings” between Indians and whites in the Uintah Basin. The governor’s plan suggested that both Indian and non-Indian courts grant individuals arrested for misdemeanors or traffic violations within the reservation a change of venue to the court of their choice. 17

The next day, in a letter to the governor, the Utes unanimously dismissed Rampton’s peace-keeping plan and stated they would continue to hold whites accountable under the edicts of the Law and Order Code. 18 Tribal Chairman Chapoose said the Utes would not “give up the idea that they can not govern themselves on their own land.” 19 The rejection frustrated and discouraged

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Rampton: "where I go from here I don't know.... To have the whites subject to a government in which they have no voting power is contrary to our concept of democracy." Each group's intransigence created an impasse.

The stand-off kindled new rancor in the basin, this time over a different issue. Whites in the region increasingly resented perceived Ute wealth. Although many individual Utes lived in poverty, proceeds from Ute mineral leases and other business endeavors drew considerable attention. From 1 July 1974 to 30 June 1975, the Utes had collected over seven million dollars in oil and gas royalties. Other dividends from tribal investments totaled $440,000. "Let's face it, these people are rich. There isn't a white person out here who wouldn't change places with any one of them," Duchesne County Sheriff George Marret caustically remarked. The Roosevelt City Commission complained that the Utes received disproportionate amounts of federal grants and aid compared to other basin citizens.

The fact that federal law exempted the Utes from state property and income taxes on trust lands and allowed the Indians to collect state sales taxes without remitting excise profits further incited white resentment. Non-Indians felt it unfair that the Utes, privileged with these dispensations, could still take advantage of state


20"Rampton Stumped," Salt Lake City Deseret News, 1 November 1975, CF, UI 63-90.

education, welfare, and social service programs. Many Utes responded, reminding white residents that Indians paid federal taxes and provided jobs for numerous non-Indians in the community. The Utes also contributed abundantly to the economic well-being of the area, providing over twelve million dollars to the basin economy.

After fourteen months of stalemate and derision over the jurisdiction dispute, the election of a new state governor, Scott Matheson, brought the debate back to the forefront of Utah politics. Governor Matheson exposed the controversy to public scrutiny in the most intense light yet. In March 1977, following a series of discussions among Dallin Jensen, Assistant Utah Attorney General; Richard Dewsnup, Special Assistant Utah Attorney General; and Stephen Boyden, attorney for the Utes, Matheson announced that the state and the Utes had drafted a tentative proposal aimed at ending the disagreement.

The agreement contained several important provisions. It outlined the original exterior boundary of the Uintah-Ouray Reservation as the one established by the executive orders of 1861 and 1882. It granted the Utes the right to hunt, fish, and trap within the original boundaries of the reservation, subject only to the

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22"Utes Receive Too Much Aid, Roosevelt Officials Say," Salt Lake City Deseret News, 10 January 1977, CF, UI 63-90.

23In 1977, the Utes employed 197 non-Indians in various types of employment. Linda Garcia and Cecelia Jenks, Letter to the Editor, Roosevelt (Utah) Uintah Basin Standard, 7 April 1977.

control and regulation of the tribe. The accord provided concurrent criminal
jurisdiction between the state and the Utes over various misdemeanor and traffic
violations within the exterior boundaries and proposed cross-deputizing state and
tribal enforcement officers.

The most controversial condition in the agreement dealt with taxation. The
arrangement specified that the Utes would not directly tax non-Indians or levy taxes
on minerals extracted in the territory. Instead, the state promised to give the Utes a
proportional share of all mineral and sales tax revenues collected in the region. The
plan based the distribution of tax yields on the ratio of Indians to whites in the basin.
Thus, the Utes would have shared in state taxes from resources in the area such as
oil, gas, and oil shale and stood to gain eight-million dollars a year from these
revenues. Ratification of the compact required approval of the Utes, the Utah
legislature, and the United States Congress.25

Distribution of the plan to city, county, and state officials produced a vortex
of angry protest. Upset by their exclusion from the negotiations, city and county
officials in the basin called the proposal an infringement on the rights of non-
Indians. Most whites in the basin felt the arrangement ignored their demands and
did not constitute a compromise. Tom Tobin, attorney for Duchesne County,
summed up this attitude: "The agreement would give the Indians more power than

"Indian Boundary Claim Takes in Oil Shale Lands," Vernal (Utah) Express, 31
March 1977; "Agreement Proposed to Resolve Jurisdiction Dispute with State," Ute
if they won every lawsuit filed in connection with this problem.” An editorial appearing in the Uintah Basin Standard attacked the proposal for dismissing local non-Indian concerns: “To suggest an ‘agreement’ between two parties, where the actual parties involved are not entirely defined...and where the parties had no input as to content, is rather asinine.” Further objections came from Uintah County Commissioner Neal Domgaard and Roosevelt Mayor Hollis Hullinger. Domgaard opposed the document because, “It talks about the original exterior boundary, and we don’t accept that.” Hullinger asked why the state had to share tax revenues with the Utes: “Many Indians don’t pay taxes to support...state programs, but they get the benefits. The tribe has many millions in savings, untaxable, and the Indian lands provide no tax revenue.... Why must we defend the right to administer our own governments?” At the same time, state sportsmen reacted to the provisions granting Utes increased hunting privileges by accusing the governor of “selling-out” Utah hunters.

Ute attorney Stephen Boyden answered the criticism: “The tribe does not intend to exercise unrighteous dominion...They are only interested in governing themselves and protecting their own interests.” The bitterness the draft agreement


provoked discouraged Utah Attorney General Bob Hansen. At a meeting for basin officials to present their objections to the plan, Hansen said he “got the feeling the Uintah Basin doesn’t want to come to an agreement,” and added, “I gather there is no area of give for the average basin citizen in this document.”

In April 1977, Governor Matheson tried to assuage both sides by appointing a twenty-five-member panel to work toward resolution of the troubles between the Utes and whites. The select group included representatives from state government, federal government, Duchesne and Uintah counties, eastern Utah municipalities, and the Utes. Matheson asked the committee to further review the draft proposal between the state and Indians. The governor reiterated his belief that the accord, if agreed upon, provided a fair settlement of most points in contention.

As in all efforts preceding it, this attempt at rapprochement ran into serious obstacles. At the first meeting of the panel on 18 April 1977, Duchesne County Attorney Leroy Park stated that his constituents were not interested in substituting the jurisdiction agreement for the lawsuit: “There is no way we are going to resolve the issue of the reservation boundary by a discussion.” Loryn Ross, Duchesne County Commissioner, did not see any benefits to signing the agreement: “What could the tribe give us that we haven’t already got?” Both Ute and basin officials

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did agree on one point; the two sides could not make a final decision without settlement of the boundary question. Once again, negotiations slowed to a standstill.

After only two discussion sessions, the special committee abandoned its efforts to resolve the jurisdiction argument. On 26 April 1977, Bruce Parry, chairman of the panel, canceled the final three scheduled meetings of the committee. "No one can make any substantial tradeoffs," Parry commented.30

Two weeks later, the State of Utah took dramatic action. The state asked the federal district court of Utah to rule that the Ute Law and Order Code had no effect beyond the trust lands of the Uintah-Ouray Reservation. In a motion for summary judgment31, the state asked Chief Judge Ritter to determine that early-twentieth-century congressional action had "disestablished" the original boundaries of the reservation. Additionally, the state asked Judge Ritter to reserve judgment on the validity of the code until the boundaries were determined. The state presented a stack of affidavits from fish and game officers, elected officials, and others. The affidavits maintained that legislative, administrative, and political actions taken by various government agencies since the removal of the land from the reservation


31 A summary judgment is a preverdict judgment of a court rendered when the court perceives that only questions of law are in dispute, or that the court’s decision must be the same regardless of which party’s version of the facts the court accepts. It is a device designed to promptly decide controversies on their merits without resort to a lengthy trial. Gifis, Dictionary of Legal Terms, 422-23
proved that the land belonged in the public domain. Ritter delayed hearing of the motion. He had made an earlier determination to postpone the case, along with several others, and moved it to his fall calendar.

By the fall of 1977, the tug-of-war over the challenged lands in the Uintah Basin had deepened the already bitter feelings that adoption of the Ute Law and Order Code had engendered three years earlier. Both groups obstinately supported their original stances concerning Indian jurisdiction, hunting rights, and taxation. Acrimony resulted in more threats and increased worries about armed conflict between Indians and non-Indians.

With the approach of the 1977 Utah hunting season, the Utes once again closed access reservation roads, which led to some of the most productive hunting areas in the state. This outraged non-Indian hunters, who, in turn, threatened to go hunting on the disputed lands despite Ute warnings. Duchesne and Uintah county officials cautioned that the Utes’ “flexing of muscles” would lead to eventual violence. “There’s going to be shooting,” stated one Uintah County commissioner.

The growing friction exposed latent white prejudices and racism. In language that recalled termination rhetoric from the 1950s, many whites demanded

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that the federal government abolish the "special privileges" it afforded Indian groups. Roosevelt Mayor Hullinger supported this idea: "The Indian has been held down all too long by regulatory authority. He needs his freedom to be able to grow. Now is the time for action...Make a plan for...certain termination." Many basin citizens agreed. "Abolish All Indian Reservations. The Federal Government...should buy all remaining Indian land," a letter to the editor of the Uintah Basin Standard suggested. Other local residents fostered the idea of an innate moral claim to the land, a position that reflected white attitudes of racial superiority. "It was the efforts of the white man that made the country [the Uintah Basin] what it is today," argued Duchesne County Commissioner J. Rulan Anderton. 34

Acting on these prejudicial sentiments, many residents of Duchesne County formed a loose union with the Interstate Congress for Equal Rights and Responsibilities (ICERR), a national backlash group against Indian claims. 35 In fact, the ICERR named Roosevelt Mayor Hullinger as its first vice president. The


35 Anti-Indian groups in Washington State, Montana, and South Dakota formed the ICERR in February 1976. The association intended to fight what it perceived as federal discrimination against the white majority. Senator Mark Hatfield (R-Oregon) characterized the anger focused by the group as "a very significant backlash that by any other name comes out as racism in all its ugly manifestations." Peter Matthiessen, In the Spirit of Crazy Horse (New York: Penguin Books, 1980), 318-19.
ICERR had adopted the resolution “that all state and local laws shall apply within all reservations and to all tribes and tribal members.” The organization also held that “the constitutional rights of all Americans must supersede treaty rights of some Americans.”

The Utes labeled white association with the ICERR, along with several other white actions, as an additional example of the prejudice and discrimination they had endured since first deprived of their lands during the westward migration of Anglo-Americans. The editor of the Ute Bulletin, Maxine Natchees, maintained that Ute assumption of more power in eastern Utah brought into the open years of suppressed prejudice, fear and suspicion by our White neighbors. Even as the contents of the Law and Order was [sic] introduced in 1975…it brought fear that we were going to take over the Uintah Basin with our claim of jurisdiction…. the Law and Order Code…is a vehicle in our climb to self-determination and self-sufficiency.

“We want fairness,” explained new Tribal Business Committee Chairperson Ruby Black. Vice Chairman Charles Redfoot added, “We want our people to prosper in this modern world and be a part of it.”

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Malevolence widened the gap of misunderstanding between the two basin groups and destroyed prospects of a peaceful resolution. Beginning in the summer of 1977 and continuing into early 1978, attorneys for each litigant started filing evidential exhibits with the court in preparation for trial. Although both whites and Indians still wished for an out-of-court arrangement and continued negotiations, neither side made any conciliatory moves in late 1977.

Governor Matheson, on the other hand, did make another overture towards mediated settlement. In December 1977, Matheson established several task forces and instructed them to conduct comprehensive investigations into the debated issues between the counties and cities of the Uintah Basin and the Utes. The collective findings of the individual task forces would serve as a tentative state position and a basis for negotiating with the Utes to arrive at a compromise accord. The task forces quickly went to work, but the work assigned to some of these groups proved more formidable and time-consuming than anticipated. Due to the delays, Matheson decided to instruct the task forces to begin negotiations with the Utes even though some of the groups had not finalized their recommendations. These discussions continued sporadically over the next several months.

In what came as a surprise, in late February 1978 the State of Utah made an additional move towards appeasement. The state withdrew its request for a summary judgment by the district court. The motion to withdraw explained the state’s placatory act by asserting that “the parties to this action are currently engaged in...sensitive negotiations and.... [the pursuit of litigation] will have a substantial adverse impact on the present negotiations.”41

Reflecting the progress made in these “sensitive” discussions, that same month Matheson requested that the Utah Legislature create an ad hoc legislative committee to draw up a compromise statute to submit to the legislature. It complied and in November 1978 the task forces submitted their reports to the committee. The Utes also presented a proposal to the committee. Prospects for a resolution seemed good.42

Optimism subsided when the committee could not agree on a compact that it could recommend to the legislature for ratification and approval. Disagreements over possible solutions to the boundary argument remained the toughest sticking point. The chairman of the committee, state senator Glade Sowards (R-Vernal),

40“Governor Hopes Compact Negotiations Continue,” Roosevelt (Utah) Uintah Basin Standard, 15 March 1979. Contents of this article consist of an open letter to the people of Utah that Governor Matheson had issued and the Uintah Basin Standard reprinted in its entirety.

41“Utah Drops Motion in Ute Lawsuit,” Salt Lake City Deseret News, 2 March 1978, CF, UI 63-90.

42“Governor Hopes Negotiations Continue,” Roosevelt (Utah) Uintah Basin Standard.
wanted more time. Also, on 1 December 1978 the Utes shocked state officials when they delivered a resolution to Governor Matheson claiming 500,000 acre feet of water annually from streams in the Uintah Basin. This development, along with the committee's deadlock, darkened the possibility of reaching a bargain. Cognizant of the growing impatience of the two factions involved in the dispute, state representative DeMont Judd felt that the legislature had to address the problem during the 1979 session to avoid the pursuit of court action by the litigants. Judd made plans to introduce a bill into the Utah Legislature consisting of the Utes' proposal to the ad hoc committee.43

The Indian plan, called the Ute Indian Compact, contained concessions by both parties different from the introductory draft agreement of 1977. First, the compact recognized the initial 1861 reservation boundaries, but returned the prosecution of civil and criminal cases to their pre-1975 practice. State courts would try non-Indians arrested anywhere in the reservation, while tribal or federal courts would judge Utes apprehended in the area. Secondly, the compact required Utes to pay state sales taxes, from which they had previously enjoyed exemption. However, the state agreed to return a proportional share of all excise revenues collected in the area to the Utes. This rebate included state sales, cigarette, alcohol, transient room, and fuel taxes. Lastly, the document set Ute water usage levels at

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In comparison to the prior agreement, this new proposal removed stipulations for concurrent criminal and civil jurisdiction and restricted Ute powers to tax on non-trust lands. The Ute Indian Compact did, however, keep the provision granting Indians the right to hunt, fish, and trap anywhere on the reservation, subject only to Ute regulation. If approved by the Utah Legislature, stipulations in the pact made it binding to both groups with the approval of the Utes, the secretary of the interior, and the United States Congress.

Announcement of Ute Indian Compact elicited the same vehement response from Uintah Basin officials that introduction of the older 1977 compromise had twenty-two months earlier. County and municipal governments renounced the compact’s provisions dealing with Indian hunting and taxing privileges and attacked the proposal’s acknowledgment of the 1861 reservation boundary. Newly elected Roosevelt Mayor Ralph Shields characterized the agreement as “detrimental to all the people in the Basin.”\footnote{“Local Officials Oppose Draft Indian Agreement,” Roosevelt (Utah) Uintah Basin Standard, 4 January 1979.}
Recognition of the 1861 reservation boundaries drew the most fire from basin officials. They adamantly refused to accept that demarcation. "Until the tribe takes out that exterior boundary, there's no way we can accept it [the compact]," Neal Domgaard said implacably. Others questioned the legality of the state legislature determining the reservation boundaries. "If the Legislature passes this compact it is re-creating an Indian reservation. Only the federal government has the power to do that," stated Tom Tobin, an Indian law expert hired by Duchesne and Uintah Counties. 46 Although the Ute Compact greatly curbed Indian authority over non-trust lands, eastern Utah residents perceived the acknowledgment of the old boundary as a direct threat. They feared that if they conceded the existence of the original boundaries, in the future the Utes might renege on the arrangement and assert jurisdiction over non-Indians. 47

The compact's shortfalls galvanized basin officials' determination to seek a court ruling in the dispute. On 16 January 1979, the Duchesne and Uintah County Commissions, along with the Roosevelt City Council, passed a resolution opposing the compact. Basin officials had reached exasperation and preferred to take their chances in court. "We believe we can win a boundary fight in U.S. District Court," concluded Tom Tobin. Roosevelt Mayor Shields said, "Even if we lose the


boundary issue in court, we’re no worse off than with this proposed agreement.” He added, “We’re tired of all this haggling.” Roosevelt and Duchesne residents began organizing to form lobbying groups to fight the compact in the Utah Legislature.48

In late December and early January, several state legislators outwardly expressed their opposition to the compact. Governor Matheson understood that the Ute Indian Compact faced stout resistance in the Utah Legislature and feared that the dispute was headed for the federal district court. Matheson remained determined to avoid litigation. The indefatigable governor refused to let the issue stagnate, concerned that inaction would only further embitter the already hard feelings between the two groups.

Thus motivated, Governor Matheson inaugurated a new path to conciliation. On 3 January 1979, he announced his proposal to form a mediation group consisting of county commissioners from Duchesne and Uintah counties; delegates from Duchesne, Roosevelt, and Vernal; two members from the Utah Attorney General’s Office, and Indian representatives. Knowing that the Ute Indian Compact had very little likelihood of passing through the legislature, the governor hoped this group could renew discussions and forge another draft agreement to submit to Utah

lawmakers' for their consideration. The governor's plan would never come to fruition. 49

Nevertheless, the State of Utah and the Ute Indian Tribe now sought a delay in court action to allow this latest attempt at compromise to run its course. Both parties met in a status hearing on 4 January 1979 before new U.S. District Judge Bruce Jenkins, who had replaced Judge Willis Ritter. Judge Jenkins granted a continuance in the case until 30 March 1979, after the Utah legislative session ended, providing the legislature time to attempt a statute solution. Jenkins warned, however, that legislators sometimes were "not anxious" to settle controversial issues pending before the courts. His admonition proved poignantly true. 50

Despite staunch basin government opposition to the compact, in February 1979, state representative Judd introduced the Ute Indian Compact (identified as HB 400) into the Utah House of Representatives. Previously, several state assemblymen had made public statements doubting that the legislature had enough time to act on the measure. "I don't think it would be physically possible to present the compact to the legislature this session," reasoned State Senator Sowards. 51


Indeed, it did prove difficult for the state legislature to address the proposed statute during its 1979 session. Eastern Utah interest groups had successfully lobbied state legislators to pigeonhole the compact legislation.\(^{52}\) By early March, less than a week before the close of the session, the legislature had not acted on the bill. This inaction drew an angry and excoriating response from the Utes. Tribal Chairperson Ruby Black branded the state administration as “irresponsible” and blamed Governor Matheson for ignoring Indian claims. “To now, we’ve been very patient. We’re not asking for something that isn’t ours,” she added.\(^{53}\)

Following the Utes’ realization that the legislature did not intend to consider HB 400, the Indians retaliated with a puissant threat. During a press conference on 7 March 1979, the Utes announced that they planned to cancel all existing water pacts with non-Indians in the basin. This included water supplied to Roosevelt City by the large Uriah Heap Spring on Indian trust land and Ute participation in the Central Utah Project.\(^{54}\) The Uriah Heap Spring provided Roosevelt with half of its annual culinary water supply.

\(^{52}\)In late January 1979, Duchesne County Commission chairman Loryn Ross had already received State Senator Soward’s promise that the compact would not get through the legislature that year. “‘No Indian Compact’ Local Officials to Tell Matheson Today,” Roosevelt (Utah) Uintah Basin Standard, 18 January 1979.

\(^{53}\)“Ute Tribe to Drop All Water Pacts Over Compact Failure,” Vernal (Utah) Express, 8 March 1979.

\(^{54}\)In 1948, the upper Colorado River basin states completed an agreement that defined their respected apportionments of Colorado River water. As a result, in 1956, the State of Utah gained congressional authorization for the Central Utah Project (CUP). The CUP planned to annually divert 270,000 acre-feet of water from the Colorado River and the waters flowing from the southern slope of the
“We’re going to cut all the water off…. I’m just Indian-mad at this point,”
Black told reporters. Piqued, Black also avowed that the Utes now would only
accept the original 1977 agreement as a means of solution to the jurisdiction dispute.
Perhaps of more import than the threats, however, was Black’s revelation that the
Utes were ready to pursue litigation. “We are ready to got to court,” she stated at
the news conference, “We’re not losing anything, whether we win or lose.” As a
result, basin officials and Ute leaders now prepared to abandon negotiation and
exposed their inclination to face-off in court.55

The State of Utah, led by Governor Matheson’s unyielding desire to avert
court action, had not given up on the prospects of a negotiated settlement. On 8
March 1979, the day the Utah legislative session was scheduled to end, Governor
Matheson attempted one last frantic effort to gain a statutory settlement. The Ute
water threats had caught state legislators’ attention and spurred the legislature into a

Uintah Mountains for carry to urban regions around Salt Lake City. In 1965, CUP
supporters signed an agreement (the 1965 Deferral Agreement) with the Utes that
promised the Indians a large water project if they would defer using water on fifteen
thousand acres of their irrigable lands until the year 2005. The Utes also agreed to
defer their water diversion rights from the Rock Creek and Duchesne Rivers, thus
freeing that water flow for transport over the Uintah Mountains to the heavily
populated Wasatch Front. Ute water constituted forty thousand annual acre-feet of
the CUP’s diversion total. For more information see: “The CUP Story,” High
Country News, Special Issue, 15 July 1991; Lloyd Burton, American Indian Water
Rights and the Limits of Law (Lawrence: University of Kansas Press, 1991), 68,
74; Marc Reisner, Cadillac Desert: The American West and Its Disappearing Water
(New York: Viking Penguin, 1986), 301; Philip L. Fradkin, Sagebrush Country:

55Ute Tribe to Drop All Water Pacts Over Compact Failure,” Vernal (Utah)
Express, 8 March 1979; Robert S. Halliday, “State Ponders Reaction to Ute
frenetic attempt to work with the governor before the legislature's final midnight deadline.

Hoping to get both factions back to the negotiating table, Matheson introduced a last-minute substitute measure detailing the state's desired version of the compact, covering the same issues, but with different stipulations needed for state acquiescence. At a press conference in the afternoon of March 8, Matheson explained that he realized that in the closing hours of the session little prospect existed for passing either the state or Indian bill. Instead, he hoped his attempt would allow further bargaining by both parties. Elements and provisions of the counter-offer remained "negotiable as far as I am concerned," he told reporters.  

Members of the Ute Tribal Business Committee, who had come to Salt Lake City for the closing legislative round, rejected the state offer. Ruby Black thought the state counter-proposal made too many substantive changes. The water issue alone, on which both sides appeared closest to agreement in the Ute Indian Compact, contained over ten revisions in the new Matheson plan.  

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57 In spite of the Ute refusal to negotiate a new compact, the Indians did agree to try to work out accords on two topics peripheral to the jurisdiction question: water rights and hunting privileges. Fresh negotiations began in the afternoon of March 8, hours before the close of the session. The two factions resolved the water rights controversy rapidly. By the early evening, the Utes had bargained for a plan that granted them use of over one-fourth of Utah's entitlement to the Colorado and Green Rivers. This included over 700,000 annual acre-feet of water for irrigation purposes alone. The hunting dispute proved considerably more difficult to decide. The Utes insisted on linking fishing and hunting concessions with water rights. The Indians firmly held to the position that if the two groups could not reach an
Both litigants had publicly announced their willingness to pursue court action to resolve the issues and continued to make confrontational statements. Still, each did not seem willing to terminate repeated efforts at reconciliation. Both recognized that a poor outcome in the district court’s finding could deal a major blow to their causes. Instead of gambling with a judicial decision, both groups pursued new talks, thinking that a negotiated settlement might produce a more beneficial, and less risky, result for their demands.

With this in mind, after the failed legislative attempt, the Utes recanted their water threats. Governor Matheson, encouraged by the progress made at the last-ditch legislative bargaining session, told the press that if each side could reach a substantial understanding, he might call a special session of the legislature to decide the matter later that year.

understanding on hunting, they would withdraw from the water rights arrangement. Thus, hunting rights became the pivotal issue on the evening of March 8. In particular, the topic of deer hunting caused considerable strife. The Utes wished to take an annual maximum of two thousand deer from non-trust lands within the reservation. This constituted an additional one thousand more deer than the state-proposed maximum. The Indians also wanted a seven-month, rather than a state proposed 60-day, hunting season. Although both sides eventually agreed to an acceptable maximum of fifteen hundred deer, the Utah Division of Wildlife Resources and the Utes could not concur on a suitable length for an Indian hunting season. Each group had made allowances on the issue; the Utes reduced their demand to a five-month season and the state increased its proposal to ninety days. Even though the impasse now had reduced to nothing more than a two-month difference in the length of the hunting season, both the Utes and the state stubbornly refused to budge on the issue. Exhausted and hamstrung by this latest deadlock, negotiators ended discussions at 9:30 p.m. the evening of March 8. The standstill defeated all progress, including the affirmed water agreement. Halliday, “Indians Reject Offer,” Salt Lake City Tribune, p. 1, 4; “Governor Hopes Compact Negotiations Continue,” Roosevelt (Utah) Uintah Basin Standard, 15 March 1979.
Judge Jenkins obliged with this final attempt at arbitration. On 30 March 1979, Jenkins held another pre-trial conference with legal representatives of the litigants in the case. Jenkins allowed four months for continued talks, but set a “firm” opening date of 1 August 1979 for the trial.  

Both groups doggedly returned to negotiations in the spring of 1979. By June, the state and the Utes had reached a tentative water concord and had nearly resolved the hunting debate, giving the Utes an expanded deer hunting season. Unfortunately, each group could not find an amicable solution to the boundary controversy, central to settlement of all other contentious topics. On 19 June 1979, Gordon Harmston, the lead negotiator, announced that the state intended to delay further discussions on the hunting compromise until basin citizens and the Utes cleared up the local jurisdiction problems.

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59 The water rights dispute necessitated little consideration, since the Utes and the State of Utah had come to a previous agreement on March 8, during the waning hours of the 1979 session. Concerning hunting rights, in late March, the Utes had made a “significant compromise” and agreed to adopt hunting seasons identical to those for non-Indians, except for deer. The Ute deer season would take into account year-to-year state conservation concerns and required Indians to obtain permission from private landowners when hunting of non-trust lands. Halliday, “Judge Allows Time for Talks,” Salt Lake City Tribune, p. 1.

With time running out before Judge Jenkin’s August 1 deadline, the State of Utah understood that unless eastern Utah government officials and Ute leaders could solve the long-standing jurisdiction and boundary differences, all the parties involved in the dispute faced an arduous and protracted legal battle. If whites and Indians truly desired an out-of-court arrangement, the two sides now had to broach the volatile jurisdiction question.

The deep-seated Indian and white resentments that the Ute’s legal complaint had fomented made the boundary argument practically insurmountable. Over the four years of intermittent negotiation neither side had made any significant concessions concerning the validity of the boundary lines. So, the chances for arbitrated settlement appeared dismal.

As in all attempts preceding it, the final determinative effort to resolve jurisdiction differences collapsed. Even though by July 1979 negotiators had made some progress in developing a plan that would have allowed a sort of dual jurisdiction over non-trust lands, the boundary conflict persisted as the bane of compromise. Illustrating this point, former Roosevelt Mayor Hollis Hullinger explained the basin officials’ position: “If they will reduce their claims to what the reservation really is [trust lands], it would be a basis for other discussions.” Other local government representatives stubbornly refused to discuss the matter, reiterating their desire to seek a court judgment. “No way we will compromise. It
will have to go through the courts. It can’t be settled otherwise,” proclaimed Duchesne County Commissioner J. Rulan Anderton.61

The Utes concurred with the assessment that the boundary conflict represented the lone setback to reaching agreement. Attorney for the Utes, Stephen Boyden, reflected this attitude, commenting, “If there is some way the basin residents can settle on a line…and still maintain the rights to which each [Indian and non-Indian] is entitled, we’ll have an agreement.” But, Boyden remained pessimistic. According to him, the courts had to decide the subject: “They’re asking us to give up half the reservation…. It’s either reservation land or it isn’t and that’s up to the courts to decide. It’s a non-negotiable item.”62

At the prompting of Governor Matheson, bargaining sessions between representatives from each side proceeded until the opening of the trial on 1 August 1979. But, both groups had already resigned themselves to the inevitable court action. In July 1979, attorneys for the Utes and the local governments of eastern Utah finished their preparations for the lengthy federal court case that would adjudicate the divisive boundary issue, and thereby, also the jurisdiction conflict. Four years of numerous attempts at negotiated settlement had resulted in very little, except increased acrimony, enmity, and misconceptions between the Indian and

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white inhabitants of the Uintah Basin. The observation of Ute Tribal Chairperson Ruby Black, made shortly after the Utah Legislature’s rejection of the Ute Indian Compact, aptly expressed the frustrations felt by both litigants over the failure of negotiations: “All this work has gone up in smoke. We can see these signals from the Reservation.”

CHAPTER IV

"THE FEDERAL COURTS ARE AT WAR WITH THE INDIAN TRIBES"

Beginning at 9:30 a.m. on the Wednesday morning of 1 August 1979, U.S. District Court Judge Bruce Jenkins heard opening statements in the case of Ute Indian Tribe v. State of Utah in his crowded downtown Salt Lake City courtroom. Individuals present at the trial, including a cadre of news reporters, observed legal maneuvers by ten attorneys and listened to testimony from eighteen witnesses as the Ute jurisdictional hearings progressed over a two-day period. This brief legal exercise constituted only a modest component of what would become a prolonged and extensive judicial inquiry. In the end, three separate federal courts heard the case in a process that took over fourteen years.¹

The testimony presented at the district court trial formed a small portion of the information submitted by each litigant in support of its position. Lawyers for the opposing participants had previously submitted more than eight hundred documentary exhibits, totaling over three thousand pages of text, plus scores of photographs and maps. Besides giving careful scrutiny to this material, the court had to study extensive pre-trial memoranda and post-trial briefs presented by the parties. The court also examined numerous other historical records authenticated in

the discovery process but not included in the compilation of joint exhibits. With this voluminous historical and juridical record before it, the court faced the task of deciding which party, the Ute Indian Tribe or the State of Utah, retained jurisdictional authority over the disputed “opened” lands of the Uintah-Ouray Reservation. To do so, the court endeavored to discover and delineate the original intent of Congress’s statutory work concerning Ute lands.

During the period of federal allotment policy, the methods Congress used to open reservations varied widely. Some of the legislation directing the allotment of reservations provided for the outright cession of the unallotted lands; some provided for the restoration of the unallotted lands “to the public domain”; other acts simply provided for the opening of the unallotted lands for settlement under homesteading laws; and still other acts mandated allotment without opening the reservations at all. No specific pattern of congressional intent emerged.

The manner in which a surplus land act removed opened lands from an Indian reservation substantially affected federal, state, or tribal jurisdiction. If federal law defined the surplus lands as part of “Indian country,” it subjected that land to its authority over state jurisdiction for non-Indian citizens. On the other hand, if surplus lands fell under federal trust, states exercised civil and criminal authority over tribal members and nonmembers to the same extent as on all non-

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2The Utes claim over the “original boundary” of the Uintah-Ouray Reservation included the lands of the old Uncompahgre Reservation.

reservation lands. These circumstances forced courts to examine each congressional act individually to determine whether Congress intended the language to diminish the reservation in question. The courts’ interpretation of intent defined the legal boundaries of an Indian reservation and, therefore, the jurisdictional area applicable to tribal authority. The Ute case intensified the difficulty of this process because Congress opened these lands through a series of legislative acts instead of a single piece of legislation.

The Utes argued before the district court that the general operation of the Dawes General Allotment Act was to allocate and open the Indian reservations while continuing the reservation status of the lands. The act guaranteed tribal jurisdictional power over the area in contention. The State of Utah asserted that the Dawes Act provided for the opposite—to reduce (or “diminish”) the territorial boundaries of reservations following allotment through the restoration of the “surplus” unallotted lands to the public domain.

The case centered on three specific questions that demanded judicial consideration. First, was the Uncompahgre Reservation disestablished or

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4Western Attorneys General, American Indian Law Deskbook, 47-48.

5Interestingly, the United States government sided with the Ute position. The U.S. Justice Department, with the support of the Bureau of Indian Affairs, filed an amicus curiae (“friend of the court”) brief with the court. In the brief, the Justice Department forwarded its opinion that former congressional statutes had not disestablished the exterior boundaries of the reservations and that the Indians maintained jurisdiction. Motion of the United States for Leave to File a Brief as Amicus Curiae, Ute Indian Tribe v. State of Utah, 521 F. Supp. 1072 (D. Utah 1981), Doc. Num. C 75-408.
diminished by congressional acts of 15 August 1894 and of 7 June 1897? Second, was the Uintah Reservation diminished by a congressional act of 3 March 1905? Last, did the same 1905 act diminish the Uintah Reservation by its withdrawal of national forest lands? The three federal courts that eventually heard arguments on the case answered these questions in different manners and with differing results. On 19 June 1981, twenty-six months after Judge Jenkins had heard opening arguments, the United States District Court of Utah handed down its 174-page decision.

The district court first addressed the legal status of the Uncompahgre reservation. The initial bill passed by Congress that dealt with the lands of the reservation was the Indian Appropriations Act of 1894. It included the statement:

>Said commissioners shall...report to the Secretary of the Interior what portions of said reservation are unsuited or will not be required for allotments, and thereupon such portions so reported shall, by proclamation, be restored to the public domain and made subject to as entry hereinafter provided.  

Courts traditionally have treated the expression “restored to the public domain,” when used as the sole operative phrase, as compelling evidence that Congress intended to strip lands of their former reservation status. The Indian Appropriations Act of 1897 did not precisely mirror the “public domain” language of the first bill. It provided:

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6An Act Making Appropriations for Current and Contingent Expenses of the Indian Department, Statutes at Large, 28, chap. 290, 286 (1894).
All the lands of said Uncompahgre Reservation not therefore allotted in severalty...shall...be opened for location and entry under all the land laws of the United States.  

The Ute argued that the original boundaries of the reservation remained intact because the provisions of the 1897 act overrode the 1894 act. The 1897 act did not precisely mirror the “public domain” language of the first bill. The Utes contended that the 1897 act repealed the 1894 statute, “defeating any ‘baseline purpose’ of disestablishment arising from the public domain language.”

The district court found otherwise. The court relied on precedent from the Supreme Court case **Seymour v. Superintendent**. In **Seymour**, the Supreme Court held that explicit language restoring most of an Indian reservation to the public domain plainly suited disestablishment. In **Seymour**, a similar statute to the 1894 act “vacated and restored to the public domain” the northern half of the Colville Reservation in the State of Washington.

The district court used the **Seymour** decision to find that the terms of the 1894 act expressed in plain language Congress’s intent to disestablish the Uncompahgre Reservation, following the distribution of allotments; Congress wished to restore the “surplus” lands to the “public domain.” Although the government failed to carry out the terms of the 1894 act, the court stated that Congress passed the 1897 act to fulfill the purpose of releasing the remaining lands

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*An Act Making Appropriations for Current and Contingent Expenses of the Indian Department, Statutes at Large, 30, chap. 3, 87 (1897).*

for white settlement. The 1894 statute provided the historical “intent” of the 1897 act, according to the district court. 9 Under the district court decision, the Utes did not regain jurisdiction over all the lands of the “old” Uncompahgre Reservation. 10

The court next turned its attention to the question of whether or not Congress intended to disestablish the Uintah Reservation under the terms of the 1905 Indian Appropriations Act. The court determined that Congress did not. The 1902 Indian Appropriations Act stated:

The Secretary of the Interior [shall make]...said allotments...prior to October first, nineteen hundred and three, on which date all the unallotted lands within said reservation shall be restored to the public domain. 11 (Emphasis added).

Despite the blatant use of the term “restored to the public domain,” due to the legislative history of the statute, ambiguities surrounded the intended meaning of Congress. On several occasions, during the congressional hearings on the bill, congressmen referred to the “opening” of the reservation under the terms of the

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9 Ibid., 1106.

10 The court, however, did agree with the Utes that the “Hill Creek Extension” remained intact as part of Ute lands. Organized as a grazing reserve for the Utes, Congress added the Hill Creek Extension to the Uintah-Ouray Reservation in March 1948. The lands making up the extension originally belonged to the “old” Uncompahgre Reservation. The court stated that the purpose of the bill creating the reserve “was 'to enlarge the Uintah-Ouray Reservation'...and, indeed, that is what the 1948 Act did.” The court did not relate many details concerning this point since the defense had never contested the existence of the Hill Creek Extension as part of “Indian Country.” For more information see: Ute Indian Tribe v. State of Utah, 521 F. Supp. 1072, 1109 (D. Utah 1981); Chapter I, p. 28.

11 An Act Making Appropriations for Current and Contingent Expenses of the Indian Department, Statutes at Large, 32, chap. 888, 263 (1902).
1902 act. The tribe’s argument rested heavily on these repeated references to the term “opening.” The tribe contended that the references to “opening” the reservation mitigated the plain meaning of the 1902 act; a reservation that Congress opened, the tribe proclaimed, was not abolished, disestablished, terminated, or diminished.\(^\text{13}\)

The court sided with the Utes, but under slightly different reasoning. The court turned to the legal precedent forwarded in the 1973 Supreme Court case of Mattz v. Arnett. In the Mattz decision the Supreme Court held that the “opening” of the Klamath River Indian Reservation to allotment had not terminated the reservation, and that the land within the reservation boundaries remained “Indian country.”\(^\text{14}\) The Supreme Court in the Mattz decision stated that “congressional determination to terminate [an Indian reservation] must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history.”\(^\text{15}\)

The court maintained that the Uintah Reservation was not opened under the 1902 language prescribing “the restoration to the public domain” of allotted lands.

\(^{12}\)“Opening” phraseology slipped into amendments made to the 1902 act by a joint resolution dated 19 June 1902. The resolution reserved a tract of grazing land for the Utes “before any of said lands are opened to disposition under any public land law.” For further discussion see: Ute Indian Tribe v. State of Utah, 521 Supp. 1072, 1116 (D. Utah 1981).


\(^{14}\)Mattz v. Arnett, 481.

\(^{15}\)Ibid., 487.
According to the court, it opened under the 1905 Indian Appropriations Act, which expressly provided:

That said unallotted lands...shall be disposed of under the general provisions of the homestead and town-site laws of the United States and opened to settlement.\(^{16}\) (Emphasis added).

The imprimatur of the 1905 act secured the opening of the lands. The 1905 legislation plainly stipulated the method in which this would occur. Congress did not open the reservation under all land laws, but only the homestead and townsite laws. In this respect, the language of the 1905 act closely resembled the legislation that "opened" the Klamath River Reservation in Mattz.\(^{17}\)

In further support of the Ute position on this issue, the court cited the fact that the historical record (based primarily on congressional hearings held on the 1905 act) as to the "intent" of Congress did not support the position to terminate the Ute reservation. Congress did not employ clear termination phraseology in the 1905 act; in fact, "it was purposely rejected," the court stated.\(^{18}\)

\(^{16}\)An Act Making Appropriations for Current and Contingent Expenses of the Indian Department and Fulfilling Treaty Stipulations with Various Indian Tribes for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Six, and for Other Purposes, Statutes at Large, 33, sec. 3, 1069 (1905).

\(^{17}\)The act of 17 June 1892 that opened the Klamath River Reservation in California provided that "all the lands embraced in what was the Klamath River Reservation...[are] declared to be subject to settlement, entry, and purchase under the laws of the United States granting homestead rights." Mattz v. Arnett, 93.

\(^{18}\)The district court recalled that in 1905 the Senate had altered the 1905 Indian Appropriations Act sent to it by the House. The "public domain" language vanished from the final version of the bill when the Senate deleted that phrase and replaced it with the more limited statement that subjected the opening to "the homestead and townsite laws of the United States." During Senate hearings the
The executive branch of the federal government apparently understood the purpose of the 1905 congressional act to mean continued reservation status. The district court noted that the Presidential Proclamation of 1905, which opened the Uintah Reservation under executive authority, paralleled the terms of the 1905 congressional act.\textsuperscript{19} It provided that "all the unallotted lands in said reservation...[will] be opened to entry...under the general provisions of the homestead and townsite laws of the United States." \textsuperscript{20}

The court's ruling on this matter tilted toward the curious, considering that the court's basis for the disestablishment of the Uncompahgre Reservation rested on the opinion that a previous act of Congress provided the historical intent of a subsequent act. Yet, when deciding on the legal status of the Uintah Reservation, the court discarded the relevance of the initial legislation (in this instance the 1902 Indian Appropriations Act), which dealt with that particular subject. The court's ruling appeared to be fractured.

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\item remarks of individual senators manifested the upper house’s intent in passing the bill. Senator Thomas Kearns (R-Utah) stated that he “would like to cut out all the House amendments.” Senator Reed Smoot (R-Utah), sponsor of the Senate version of the appropriations act, assured Kearns: “That is what my bill says...that there shall be no lands settled there except under the homestead and townsite entry.”
\item The 1905 act placed sole authority for opening the reservation on the president. He alone was granted such power. The 1905 act simply outlined the provisions for opening the Uintah Reservation.
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Lastly, the district court addressed the issue of the reserved forest lands. The court found that the express wording and the legislative history of the 1905 Indian Appropriations Act justified the conclusion that Congress diminished the Uintah Indian Reservation by the withdrawal of timber lands for national forest purposes.\textsuperscript{21}

The act provided:

The President is hereby authorized to set apart and reserve as an addition to the Uintah Forest Reserve, subject to the laws, rules, and regulations governing forest reserves...such portion of the lands within the Uintah Indian Reservation as he considers necessary.\textsuperscript{22}

An earlier 1891 act empowered the president to "set apart and reserve, in any State or Territory...public land...as public reservations."\textsuperscript{23} The 1891 act also defined national forests as public reservations.

Very little legal precedent existed to guide the court on this matter. The related body of Indian law pertinent to the Ute case did not provide enlightenment about the impact of a withdrawal of lands for national forest purposes on the boundaries of an Indian reservation. The Ute lawsuit proved unique in this respect. Thus, the court elucidated its own distinct line of reasoning. The court stated that the federal government had administered national forests by law, regulation, and bureaucratic structure separate from those governing Indian affairs. Traditionally, the secretary of the interior and the Bureau of Indian Affairs administered the trust

\textsuperscript{21}Ibid., 1136.

\textsuperscript{22}An Act Making Appropriations for Current and Contingent Expenses of the Indian Department, Statutes at Large, 33, sec. 3, 1069-70 (1905).

responsibility of the federal government for the management of Indian timber reserves. The agency managed the lands included in the Uintah Forest Reserve wholly apart from those in the remainder of the Uintah Reservation. The fact that the Department of Agriculture supervised the lands in question buttressed the court’s conclusion that the national forest lands had been withdrawn for separate purposes.

“While it is true that Congress may...diminish an Indian reservation by restoring the lands to the public domain, it is also true that Congress may diminish an Indian reservation by withdrawing...lands for an inconsistent purpose,” the court maintained. Congress had disestablished the forest lands from the Uintah Reservation.

Overall, the district court decision excluded approximately 2.4 million acres from the Ute jurisdictional request. Judge Jenkins’s finding confined the Ute reservation boundaries to the territory of the original Uintah Valley Reservation. The district court, however, did not settle the lawsuit simply by defining the geographical boundaries of the Ute reservation. Jenkins’s finding simply delineated the boundaries in which Indian jurisdiction might apply. Because the Indians sought jurisdictional control over the disputed area, Jenkins had to clarify the extent of Ute jurisdiction over the reservation. His determinations on this matter had far-reaching legal ramifications, particularly with concern to Indian civil jurisdiction.

The district court handled the volatile issues of Ute criminal jurisdiction and hunting regulation rights in short order. The district court determination hinged on
two antecedent Supreme Court rulings. Because the Supreme Court had previously dealt with each of these subjects separately in the cases Oliphant v. Suquamish Indian Tribe and Montana v. United States, the district court dismissed the Ute claims. The higher court decisions took precedent. Accordingly, Oliphant disallowed Ute criminal jurisdiction over non-Indians on the reservation and Montana limited tribal game regulation to Indian trust lands.

The applicable range of Ute civil authority required closer examination by the district court. Once again implementing the precepts set forth in Montana v.

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24The 1978 Oliphant case arose out of a dispute originating on the Port Madison Reservation in the state of Washington. During the Chief Seattle Days celebration, several non-Indians were arrested for criminal disturbances. Over the objections of the non-Indian defendants, the tribal court assumed jurisdiction and tried the offenders, finding each guilty. Upon appeal to the Supreme Court, the convictions were reversed when the Court determined that the tribal court did not have jurisdiction in the case. In delivering the majority opinion, Chief Justice William Rehnquist found that only Congress could confer tribal courts with jurisdiction over offenses committed by non-Indians on reservations and Congress had not given such power to the Suquamish Indians. In Montana v. United States, the Supreme Court found that ownership of the Big Horn River bed (and its fish), located within the boundaries of the Crow Indian Reservation, passed to the State of Montana when the federal government granted the territory its statehood. Therefore, Montana retained regulatory power over non-Indian hunting and fishing on the reservation. Prior to the decision, the Crows had prohibited non-Indian hunting and fishing on their reservation. Likewise, the State of Montana had tried to assert regulatory control over non-Indians within the boundaries of the reservation. For further information see: Montana v. United States 450 U.S. 544 (1981); Wunder, Retained by the People, 182-83; Wilkinson, American Indians, Time, and the Law, 50-51; Burton, American Indian Water Rights, 45; Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978); Deloria and Lytle, American Indians, American Justice, 180-81.

United States, Judge Jenkins stated that the Supreme Court had previously articulated the relevant scope of tribal civil jurisdiction over non-Indians within “Indian country.” In Montana, Justice Potter Stewart affirmed Indian tribes’ inherent sovereign power to exercise certain forms of civil jurisdiction over non-Indians living on their reservations, including over non-Indian fee lands. In broad terms, he stated that tribes could “regulate, through taxation, licensing, or other means” the economic activities of non-Indians who entered “consensual relationships” with the tribe. Stewart added that a tribe could also retain inherent power to exercise civil authority over the conduct of non-Indians “when that conduct threatens...the political integrity, the economic security, or the health or welfare of the tribe.” Potter’s decision led to Jenkins’s conclusion that the Supreme Court had “expressly confirmed the power of Indian tribes to tax non-Indians entering the Reservation to engage in economic activity.”

Thus, the Utes won a wide range of civil powers over the Uintah-Ouray Reservation. Jenkins’s determination awarding the Utes increased civil power provided the Indians with their most important triumph in the district court decision.

Thirty-five days after the district court released its verdict, the Utes appealed the decision to the Tenth Circuit Court of Appeals. Although the Indians had gained some substantial concessions, the district court judgment ruled against the Ute

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position on what the tribe considered the two most crucial points. Under Jenkins's finding, Congress had diminished the Uncompahgre Reservation and the national forest lands were disestablished subject to the 1905 act. Therefore, the court decision granted the tribe jurisdiction over only 21% (626,474 acres) of the lands it claimed. This outcome formed the basis for a Ute appeal.

The State of Utah also appealed to the circuit court. The expansive terms of the district court's judgment on Indian civil jurisdiction engendered anxiety among the white residents living on the Uintah-Ouray Reservation. They feared that the rights afforded the Utes by Judge Jenkins's decision might lead to tribal taxation and business licensing of non-Indians. They hoped the appellate court would confine the reservation boundaries to Indian-owned trust lands and, likewise, restrict Ute civil power to those areas. Neil Domgaard, Uintah County Commissioner, articulated basin officials' distress: "The cloud that's still over us is the Indians' right to license and zone. That would be serious." Both parties had to wait over four years for the final circuit court determination.

On 17 September 1985, the circuit court handed down its decision reversing the ruling on two of the three points by the district court. In a 5-2 majority, the circuit court held that the 1894 and 1897 Indian Appropriations Acts had not diminished or disestablished the Uncompahgre Reservation; the 1905 Indian Appropriations Act had not diminished the Uintah Reservation; and the withdrawal

of national forest lands under the 1905 act had not diminished the Uintah Reservation. Contrary to the district court’s ruling, the decision marked a landmark victory for the Ute Indians.

The circuit court stated that although the district court decided that the reservation had been disestablished, it did not have the advantage of evaluating the issues in light of the 1984 Supreme Court ruling in the case *Solem v. Bartlett*. The precedent forwarded in *Solem* proves crucial in understanding the circuit court’s reversal. The court relied heavily on *Solem* to justify its conclusions. *Solem* recognized that Congress passed a number of surplus land acts at the turn of the century in response to both pressure for new lands for white settlement and the prevailing sentiment that endorsed Indians’ assimilation into American society. Each of these land acts represented “the product of a unique set of tribal negotiations and legislative compromise.”

*Solem* directed courts to consider each piece of legislation dealing with Indian affairs individually. The *Solem* decision clarified that in only two types of situations should courts find that Congress intended to disestablish an Indian reservation. The first occurred if Congress used explicit language of cession in an “opening” act. Secondly, courts could find disestablishment only when events surrounding a surplus land act unequivocally revealed a widely-held, concurrent understanding that the provisions of the bill would shrink or terminate the affected reservation. The *Solem* decision also stated:

> When both an act and its legislative history fail to provide substantial and compelling evidence of a congressional intention to diminish

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Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place.²⁹

With these dicta in mind, the court addressed the three issues raised in the case. When the circuit court handed down its decision, the justices recognized that the disestablishment question surrounding the Uncompahgre Reservation posed a difficult analytical problem. However, the circuit court finding presented a more unified and coherent line of reasoning than that of the district court. The majority opinion and concurring opinions of the court focused on the language of the 1894 Indian Appropriations Act, which called for the restoration of unallotted lands to the "public domain." The court held that "public domain" language standing alone proved insufficient to support a finding of congressional intent to disestablish the reservation.

The fact that much of the text of the 1894 act, including the "public domain" language, vanished in the 1897 act, only heightened the ambiguity of the term when replaced with the statement that required all unused land to "be open for...entry under all the land laws of the United States." In conclusion, the court stated:

Given such ambiguous circumstances, it is impossible to derive any clear indication of whether Congress intended merely to open the reservation or to disestablish it. Under Solem we are bound to resolve the ambiguity in favor of the tribe.³⁰

The fact that the district court and the circuit court ruled differently on this issue (the district court finding intent to terminate reservation status and the circuit court


determining no clear intent) exposed the difficulties and confusion that arose from attempting to uncover congressional intent.

Next, the circuit court ruled on the status of the Uintah Reservation. The circuit court agreed in part with the district court on this matter and upheld the ruling that Congress did not diminish the Uintah Reservation by passage of the 1905 Indian Appropriations Act. The circuit court did, however, disagree with the district court on the point of the withdrawal of the national forest lands.

On this issue, the court reasserted the same principles it used in ruling on the Uncompahgre Reservation. Citing the portion of the 1905 act that provided “the President...is authorized to set apart and reserve...lands within the Uintah Reservation as he considers necessary,” the court held that no language in the law amounted to explicit language of cession. Nor did it establish a “total surrender of tribal interests.” According to its decision, the circuit court clearly believed that the goals of the national forest system as of 1905 (including management of timber resources and the protection of fish and game) could have been achieved without removing jurisdiction from the Ute tribe. This pronouncement did not require the court, it believed, to conclude that Congress withdrew the forest reserve land from the Uintah Reservation. The Utes retained jurisdiction over the one million acres of forest reserve land.

31 Ibid., 1090.

32 Ibid., 1099.
As a result of the circuit court’s decision, the Utes won jurisdiction rights over nearly 2.9 million acres of their original lands. The ruling capped nearly nine years of litigation and quadrupled the size of the reservation, giving the Utes control of mineral-rich desert, forest, and range lands about the size of the state of Delaware. The reconstituted boundaries of the Uintah-Ouray Reservation, encompassing over four million acres, made it the second-largest Indian reservation in the United States.

Because the circuit court failed to address the issue of Indian jurisdiction rights in its decision, the most important outcome of the litigation resulted from the court’s silence. Without a written reversal on Judge Jenkins’s jurisdictional findings, the appellate court essentially supported the district court’s findings and extended tribal civil power over the expanded reservation area. The circuit court’s determination of the reservation boundaries defined the area that Ute civil jurisdiction affected. Therefore, although Indian criminal authority and hunting jurisdiction remained greatly restricted, the Utes obtained further legal support for the vast taxing and land use authority forwarded them by the district court decision.

On 1 December 1986, the United States Supreme Court sustained the circuit court decision when it refused to hear the case on appeal from the State of Utah. The high court’s denial stunned the white residents of the Uintah Basin. Many whites reacted with anger and trepidation. "It’s hard to figure the court system out. If it keeps going like this we could all end up back on Plymouth Rock with the rest
of the country owned by the Indians," declared Duchesne County Commissioner Ted Kappen. Roosevelt resident Dean Frandsen's comments reflected the deep indignation felt by many and directed at the Utes: "They never got the name 'Indian trader' for nothing. They'll be back after more."  

White citizens of eastern Utah voiced a profusion of concerns, the most prominent of which centered on state and basin officials' worries that the Utes might attempt to levy a severance tax on oil and mineral leases within the reservation boundaries. In 1985, the state of Utah received over forty-million dollars in severance taxes from those sources. Officials also objected to the notion that the Tribal Business Council could decide various local matters without white consent. "The Indians can vote for us, but we can't vote for them. That's taxation without representation and that's unconstitutional," pronounced Duchesne County Commissioner Alton Moon.  

The Utes tried to mollify non-Indian concerns. Claiming that non-Indian fears were unfounded, Ute Tribal Council Chairman Lester Chapoose stated, "We [Indians and whites] have co-existed in this area for more than 100 years. Nothing has changed in that time and I don't think things will change now."  


they only desired what they believed always belonged to them: the right to assert jurisdiction over their own people within the boundaries of the original reservation.

For nearly three years, the tribe exercised jurisdictional power over the reservation lands with no legal challenge. Then, in 1988, a seemingly insignificant event occurred, the arrest of Myton resident Robert Hagen. State officials arrested Hagen, an Indian, but not a Ute, near Myton in April 1988 for distribution of marijuana. He pleaded guilty to the charge. But two years later, he asked to withdraw his guilty plea, saying that the white man's court did not have jurisdiction over him because Myton fell within the reservation boundaries as defined by the 10th Circuit Court's decision.36

The case eventually reached the Utah Supreme Court, which ruled that the area in question had been returned to the "public domain" by the 1902 Indian Appropriations Act and by the homesteading laws signed by President Theodore Roosevelt, under the authority granted him by the 1905 Indian Appropriations Act. The Utah Supreme Court ruling once again raised the issue of congressional intent.

Because the Utah Supreme Court's ruling conflicted with the 10th Circuit Court's decision six years earlier, the United States Supreme Court issued a writ of certiorari37 and now agreed to hear arguments on the case. With a 7-2 decision


37 A writ of certiorari is a common law writ issued by a superior court to a lower court, commanding the latter to certify and return to the former a particular case record so that the higher court may inspect the proceedings for irregularities or errors. Gifis, Dictionary of Legal Terms, 67.
handed down on 23 February 1994 the Court effectively ended the eighteen-year-old dispute over jurisdiction of the lands. The Supreme Court turned control of the lands back to the state and local governments.

In a stunning reversal, the Supreme Court held that the operative language of the 1902 Indian Appropriations Act superseded that of the 1905 act. In delivering the opinion of the Court, Justice Sandra Day O’Connor stated that the “public domain” language of the 1902 law evidenced “a congressional purpose to terminate reservation status.” The Court ignored the obvious deletion of the “public domain” wording in the 1905 statute. More dubious, however, was the Court’s assertion that the structure of the statutes--each contained similar provisions--required that the 1902 and 1905 acts be read together. According to the Court, this meant that Congress “clearly viewed” the 1902 legislation as the basic building block for the 1905 act, resulting in disestablishment of the reservation. When considering that both the district court and the circuit court had found that the 1905 act took precedence over the 1902 legislation, the bewildering and questionable nature of the Supreme Court ruling is magnified.\(^{38}\)

The Supreme Court did not rest its decision on this analysis alone, however. In actuality, the Court assigned much more relevance to a different consideration. Justice O’Connor stated that congressional intent to diminish the reservation was exhibited by the fact that nearly 85% of the present-day Uintah Valley residents (over 18,000 people) were non-Indians. O’Connor stated:

\(^{38}\)Hagen v. Utah, 858 U.S. 925 (1994).
When an area is predominantly populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains in ‘Indian country’ seriously burdens the administration of state and local government.... A contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area.\textsuperscript{39}

The Supreme Court shifted the focus of the legal argument away from the issue of congressional intent and instead favored the doctrine of balanced interests.

For this reason, the high court’s decision was astonishing, especially in light of the Court’s earlier support of the circuit court’s ruling and its reliance on congressional intent as the most important criteria for deciding the case. The Supreme Court’s reversal marked a notable departure from the reasoning used by the two lower federal courts and relegated congressional intent to a secondary position. When the Court gave more significance to weighing state interests against federal and tribal interests than to the issue of intent, it destroyed all predictability attributable to the law in the Ute case. Until the Supreme Court’s decision, intent had formed the basis for legal judgment.

Although only two justices, Harry Blackmun and David Souter, dissented, the debate over the issue of congressional intent versus state interests remained bitter. In a lengthy and vitriolic dissent, Blackmun said the majority failed to find clear language in the historical record that the lands in contention were meant to be placed in the public domain: “The court relies on a single, ambiguous phrase in an act that never became effective...to conclude that Congress must have intended to

diminish the Uintah Valley Reservation." In doing so, Blackmun wrote, the court had neglected its duty to interpret legal ambiguities liberally in favor of Indians to uphold the federal plenary power of Indian tribes. In vituperation, Blackmun quoted former Chief Justice John Marshall and stated, "Great nations, like great men, should keep their promises." 

The high court ruling gave state and local officials solid regulatory control over taxation, wildlife, business licensing, liquor laws, and other governmental matters. The decision also acknowledged the State of Utah's right to reinstitute taxes on the basin's mineral reserves. The judgment brought relief to many of the 18,000 non-Indians of eastern Utah. "This takes a cloud of uncertainty away from our lives...Now we can start addressing some of the real issues of our area," stated basin businesswoman Beverly Evans. Utah Attorney General Jan Graham proclaimed, "Now all the people in the basin can return to the stable and lawful environment they deserve." 

The Utes reacted with dismay and virulence to the ultimate outcome of their lawsuit. In a written statement issued by the Tribal Business Committee, the Indians asked: "Has the tribe been too trusting in its dealings with others?... All that we


41Ibid.

42Ibid.

have asked of our neighbors is to respect our sovereign powers.” Although the Utes had lost their legal fight, ex-tribal leader Clifford Duncan promised the battle had not ended: “There’s going to be a lot of resentment from the tribe. The federal courts are at war with the Indian tribes. It’s a war that exists and will never end.”

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CONCLUSION: "REGARDLESS OF WHAT THE SUPREME COURT SAYS"

As much as any other dispute of the modern era, the Ute case illuminates the inherent problems surrounding Indian jurisdiction law. Most of the problems in these cases stem from the split reasoning employed by the judiciary. The courts' arbitrary utilization of the separate doctrines of congressional intent and balanced interests reveals the judicial confusion that plagues this body of law.

The federal court system's apparent capriciousness ultimately undermines the effectiveness of the law. The constant waffling of the courts in their commitment to one doctrine over the other has destabilizing effects. The current trend in this body of law provides no guidance to justices confused about the overriding importance of congressional intent or demographics in deciding a particular case. Rather than define a clear position to take in jurisdiction disputes, the courts have obfuscated the issues so that consistency has nearly evaporated. By refusing to adhere to a given principle, the courts cannot provide a unified theory on how to resolve these cases. Without specific guidelines, Indian jurisdictional law remains impotent.

The Ute case emphasizes one point in particular: Native American groups face very little certainty when entering litigation over jurisdiction disputes. In Ute Indian Tribe v. State of Utah, two federal courts focused on the issue of congressional intent, only to reach different conclusions from the same ambiguous
history. The United States Supreme Court then underplayed the intent question and gave more import to the balanced interests doctrine. In other jurisdiction cases, courts may base their decisions on a different combination of factors.

In the midst of the legal controversy in the Uintah Basin, the federal courts were given the opportunity to provide an enduring statement about the extent of Indian jurisdictional control over reservation lands, clearing up much of the uncertainty that has traditionally surrounded this complicated body of law. Instead, the courts proved indeterminate and unpredictable. They confused the issues so thoroughly that they equivocated the meaning of the law.

Increasing contact, even to the point of daily interaction, between white communities and Indian tribes guarantees future courts must struggle to articulate a definitive stance on jurisdiction rights. To accomplish this, the courts must move away from case by case determinations that emphasize the importance of varying factors in each instance. Only by articulating a standard test for deciding jurisdiction cases can the courts effectuate stability in this area of the law.

Although important, these esoteric legal issues do not fully elucidate the dynamics encompassing the Ute case. The most vexing problems in the Ute jurisdiction dispute trace to people. The long history of Indian/white conflict over the lands of the Uintah Basin imprinted lasting animosities in each group. When confronted with the legal crisis over the Ute Law and Order Code, cultural misunderstandings harbored by both Indians and non-Indians produced bitterness
that destroyed any hope for peaceful reconciliation and made litigation unavoidable. Because of these entrenched feelings, the legal outcome for the people of the Uintah Basin carried larger connotations that stretched beyond the legal question of Indian jurisdiction rights.

Whites held their own expectations of the law, because they had practiced jurisdictional control over the disputed lands for many years before the Utes implemented the Law and Order Code. Whites grew accustomed to their own local governmental authority, based on the precepts of representative government. Many of the concerns forwarded by whites about Ute control were legitimate. Under the provisions of the code, whites could not vote for members of the Ute tribal government. Many white residents resented the possibility of being taxed by a government in which they had no voice. The fact that whites outnumbered the Utes eight to one in the Uintah Basin further incited their indignation over the lack of representation. The subsequent circuit court decision that upheld Ute jurisdictional power reinforced white resentment.

The Supreme Court’s decision removed what whites considered a direct threat to their lifestyle. The Court’s decision quelled fears and provided security to the white population of eastern Utah. Although ultimately triumphant in the legal battle, the whites’ victory was predicated on negative feelings. The protracted legal process had elicited rancor and ill-will for both sides.
For the Utes, the Supreme Court decision represented one more betrayal in a long succession of broken promises. To them, the case provided yet another example of white subjugation and encroachment that the tribe had unsuccessfully struggled against for, at least, 150 years. The Utes believed that the Court’s ruling greatly impinged on their sovereignty and signified a loss of control over their own destiny. Above all else, the Utes felt cheated out of their lands. The emphatic remarks of Larry Cesspooch, editor of the *Ute Bulletin*, best illustrate these convictions and capture the extent of Ute bitterness and despondency in the aftermath of the Supreme Court’s decision:

> Its ridiculous for a non-Indian to say they know how the Ute Tribe feels...They can’t possibly know. They’ve never had their land taken away, their culture stripped from them, or been forced to fit into another way of life...no amount of money...will ever replace the lands taken from the Ute People.... Today, anyone driving through the Strawberry Valley can see what the Supreme Court’s Jurisdiction Decision has taken. Every time Ute Tribal Members drive to the Wasatch Front, we will be reminded of what was taken in 1994 by...the State of Utah. Regardless of what the United States Supreme Court or [the] State of Utah says, the Original Uintah Valley Reservation and other Ute lands taken, still possess the Ute Spirit. The bones of our ancestors are still buried there, nothing can change that. No man can take the Ute Spirit away from the land or take the land from our hearts.¹

In general terms, the purpose of the law is to provide resolution. But, in the Ute case, it produced the opposite effect. Legal redress intensified hostilities between Indians and whites. In the Ute case, the long history of Indian/white conflict instilled resentments that the legal process resurrected. Because each group

felt justified in its legal cause, each placed unreasonable expectations on the legal system as the sole means of solving its problems. Based on the animosities and misconceptions shared between the two groups, neither recognized that the law, with its numerous defects, could not adequately address all the problems that confronted Ute/white relations in the Uintah Basin. Whatever the ultimate ruling, the law could not lay ill-feelings to rest either.

Indeed, the Supreme Court’s decision may have even failed in resolving the singular issue of jurisdiction rights. By the fall of 1994, the State of Utah and the Utes found themselves back in Judge Jenkins’s courtroom. A new dispute had arisen in which the two parties contested the meaning of the Supreme Court’s ruling. The Utes asked the district court to place a permanent injunction on state and local governments from imposing their interpretation of the Supreme Court decision on tribal members. The Utes claimed that the decision only restricted Ute jurisdiction over homestead and townsite lands. The state disagreed, stating that the ruling provided it jurisdiction control over the entire Uintah-Ouray Reservation. This latest disagreement threw the argument back into the federal courts.²

Given the lack of resolution that court action so far has provided in the Ute jurisdiction dispute, and the numerous other problems facing whites and Indians in the Uintah Basin, the Ute case offers a larger realization. As interaction between

Indians and whites increases in the modern world, both groups must look past the law to find answers to their problems. The law cannot fully address the abundant and assorted issues that confront contemporary Indian/white relations. More importantly, legal decisions will seldom satisfy both sides.

Even as the Ute case promises to drag on for many more years, continuing to reopen the wounds of the past, it speaks to broader issues in American Indian legal history. With an understanding of the larger implications of the law in the Ute case, one realizes that an examination of Indian law demands realistic historical insight. The battle for jurisdictional control over the disputed lands of the Uintah Basin provides more than a study of legal doctrine applicable in one case. It suggests that to understand contemporary Indian/white relations, we should recognize the limited role of the law in resolving land conflicts.

The Ute story constitutes but one event in the astoundingly complex history of Indian/white relationships. By unraveling the intense and intricate forces that lead to litigation and placing legal decisions in the context of human lives we can gain a better comprehension of the dynamics of Indian/white relations in the late-twentieth century. Scholars must assess the utility of Indian law in this light.
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APPENDIX
May 3, 1995

Dr. Floyd A. O’Neil
American West Center
1023 Annex
Salt Lake City, UT 84112

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