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Sovereignty and the Structure of Dependency at Northern Ute

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INTRODUCTION

In 1983, prompted by allegations that there were some economic successes among tribes rich in energy resources, I initiated research among two tribes that were most frequently cited as successful: the Northern Ute (Uintah and Ouray Ute Indian Reservation) of eastern Utah, and the Crow of south-central Montana.

Inasmuch as my colleagues and I had been monitoring energy resource-rich tribes for about twelve years and not one of us had observed the development of a profitable, self-sustaining economic base among the reservation societies that we had studied, I was skeptical of the claims for economic successes.[1] The skepticism was not borne solely of observations. I was also skeptical because of my knowledge of the political-economic niche that American Indians have occupied since subjugation, but puzzled as to whether Federal Indian legislation of the 1970s had made such a difference as to facilitate development.

The Reagan Administration's "New Federalism" had been rolling on line for two years, the Indian Self-Determination Act for eight years, the Indian Financing Act for nine years, and the rapid extraction of Indian-owned energy resources for ten years (following the Arab oil embargo) when my students, Stephanie Reynolds Romeo, LaVerna Price, and JoAnna Endter, and I began our inquiry among the Northern Utes and Crows. If these tribes had been successful in implementing the provisions of the

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Indian Self-Determination Act and had gained a toe-hold in the market through the extraction and sale of their energy resources, the New Federalism should affect them positively rather than negatively.

Our inquiry continued for three years, but the answers to our questions were quite clear to us by the end of 1983. The answers were clearer yet by late 1986. The influences on Indian affairs of Reagan's New Federalism policies and the plummeting of prices in the world energy market have been weighty and incontrovertible. They have also demonstrated the qualified impotence of the Federal Indian legislation of the 1970s—qualified because provisions of the legislation nourished changes of attitudes and styles among some Indian leaders which altered Indian/non-Indian business and governmental relations in measurable ways. That body of legislation has not, however, stimulated successful economic development, nor could it have done so, for dependent Indian Reorganization Act governments and corporations. This claim will be analyzed below.

THE WAY THINGS WERE IN 1983

The Northern Utes

In 1983 the Northern Utes had an operating budget of $16 million on an annual income of $17 million from all sources. The lion's share of those funds derived from oil lease royalties, but other lease income, interest income, and federal transfers through the Indian Self-Determination and Education Assistance Act made up the rest.

The Northern Ute tribe owned and operated a motel-resort that lost large sums annually for a decade, including about $600,000 in each of 1982 and 1983. It also owned and operated a cattle operation that had been losing about $500,000 annually. It had joined with the Colville, Yakima, and Navajo Tribes in the mid-1970s to create the American Indian National Bank, with offices in Washington, D.C. The bank was not profitable; did not pay dividends; and had moved to modest quarters by 1983. The Tribe's bowling alley registered modest profits in the early 1980s so long as overhead expenses were not tallied.

In addition to these enterprises, the Northern Utes had developed a small industrial park on the reservation in the 1970s and

created a tribally-owned chemical industry, a fabrication industry, and a sheepskin vest production firm. All had folded by 1982. Nevertheless, the Council of Energy Resource Tribes (CERT) to which the Northern Utes belonged misrepresented the Northern Ute enterprises as successes to other CERT members as well as to potential investors and other persons who attended CERT's national meetings after these businesses had been terminated. The Northern Utes contributed to this dark humor by showing up at more than two national meetings, at CERT's request, with literature and displays trumpeting their defunct and their losing tribal enterprises.

Despite these large business losses, in 1983 the Northern Ute Tribe employed 600 persons (70 per cent Ute). Many were funded from Indian Health Service and Bureau of Indian Affairs contracts over which the Tribe assumed control. The Tribe had constructed and moved into spacious and comfortable offices on a mesa overlooking the superintendency town of Fort Duchesne. Moreover, the BIA, which had shrivelled in employees and functions since the Utes began to implement the provisions of the Self-Determination Act, had moved into quarters of the new tribal building as renters. The tribal building was perched above the former BIA offices, now occupied by some tribal programs. Those offices, in turn, were perched above the old Tribal administration buildings which were situated on the valley floor and which also were occupied by tribal programs. The symbolism was not lost on the Northern Utes who, in fact, orchestrated the changes. They chose to locate their administrative offices above the BIA, and to dominate that necessary, but also bothersome institution.

All enrolled Utes (5/8ths Ute blood, born on the reservation), whether or not they were employed, received monthly per capita payments of $400 from the Tribe. The Tribe also administered a loan program as a budget item through which it sought to assist the businesses—usually small livestock operations—of tribal members.

The Crow

In 1983 the Crow Tribe was in receivership. Because of fiscal mismanagement, which included the skimming of funds by a tribal employee from the annual Crow Fair, the Bureau of Indian Affairs assigned a fiscal officer to the Tribe with complete authority

to handle all tribal fiscal affairs. For revenues the Tribe was dependent on federal transfers and on long-term coal leases on ceded land to which the Tribe retained mineral rights (the Sarpy Creek Mine). The Tribe received 17 1/4 cents per ton for the coal extracted from the mine. There was no escalator clause in the contract so the royalty price could not be raised. The situation was worsened by the plunge in energy prices which, in turn, reduced the need for coal. Coal production had slumped badly by 1983. A tribal-owned motel had gone under and been converted to apartments for which rent was not collected. And a tribal industrial park, which once hosted a non-Indian-owned carpet mill, had been closed since the mid-1970s.

Observations of Utes and Crows in their dealings with Bureau of Indian Affairs officials and the relative differences in how each tribe used the provisions of the Indian Self-Determination Act made it evident that the Utes were gaining the upper hand over local Bureau representatives, but the Crow were not. Both tribes were dependent on unearned income and public sector income, but the Utes had greater income than the Crow principally because the Northern Utes owned oil reserves and the Crow did not.

The Utes had sufficient capital to embark on eight separate business enterprises, but four had failed, two were losing over one-half million dollars apiece annually, one was not profitable, and one was profitable (trivially and marginally) only if overhead expenses were not calculated. The losses were being carried by the oil royalty income. Those were the facts in 1983. Neither the Northern Utes nor the Crow was an economic development success. We focus our attention on the Northern Utes because their case shows clearly the political and economic constraints that have thwarted Ute economic development. A comparable analysis of the recent political economic processes that have influenced the Crow must be provided elsewhere.

A BRIEF POLITICAL-ECONOMIC HISTORY

Northern Ute sovereignty was abrogated by the Federal Government in the mid-nineteenth century. A concise analysis of the bends and twists in Northern Ute history since reservation subjugation would be helpful in understanding contemporary Ute society, but we forego the challenge to provide it.[2]

Let us focus, instead, on that history since 1936 and the ratification by the Northern Ute Tribe of a constitution under the provisions of the Indian Reorganization Act (IRA). Several reports have claimed that full bloods were opposed to ratification of a constitution and that mixed-bloods supported it.[3] Indians were dependent on horse traction in the 1930s. One paved road situated from east to west cut across the reservation at that time. Only the superintendency town of Fort Duchesne was located near the road, although mixed-blood homesites were clustered in the "Indian Bench" area within about ten miles of Fort Duchesne. For the most part full-blood residential communities were located from the confluence of the White and Green Rivers on the south to the Uintah Mountains 40 miles north of Fort Duchesne, and on tributaries of the Duchesne River about 35 miles west of the superintendency.

Voting on the initiative occurred during a very cold period of heavy snow cover. It was alleged that superintendency personnel transported pro-ratification mixed-bloods and full bloods to Fort Duchesne. There were about 300 mixed-bloods at that time. Thirty percent of eligible voters made it to the polls. They overwhelmingly supported ratification (213 to 8). Two years later 30 percent fewer voters turned out to ratify a charter under provisions of the IRA which vested limited executive, legislative, judicial, and economic authority under the elected Tribal Business Committee. Authority was limited, hence sovereignty was limited, by the Secretary of Interior, who possessed veto authority over the decisions of the tribal government.

From ratification to the early 1950s the Business Committee was controlled by mixed-blood Utes. The Tribe was penniless, so the budget and tribal operations were controlled, in fact, by the local BIA superintendent. During this period the Tribe re-acquired some land that had been expropriated by the Federal Government in 1907 pursuant to the General Allotment Act of 1887. The return of land to the Tribe and the removal of that land from the local tax roll stirred the anger of local whites, predominantly Mormon (Church of Jesus Christ of Latter-day Saints) ranchers and farmers. The local issues were the Government's give-away to the Indians at local taxpayer expense and the special Indian privilege of freedom from taxation on that land.

During these early years under the Indian Reorganization Act the Tribe possessed neither funds nor access to significant funds that would provide them with an economic base. A livestock

cooperative was created by several mixed-bloods and a few full bloods. The co-op, with some assistance through the BIA's revolving credit fund, operated until the early 1950s, but did so with very few livestock, at long distances from markets, and with little capital. Except for occasional farm labor (haying, for example) Utes were not employed by local whites. Employment was restricted to work made available by the Bureau of Indian Affairs.

In 1951 the Confederated Ute Tribes (Northern, Southern, and Ute Mountain Utes) won a $31 million judgment in the Indian Claims Commission for land appropriated from them in Colorado. The Northern Ute share was $18 million. Before the award was distributed the Northern Utes organized several community meetings to discuss their problems and their desires. One nagging problem was the Uintah Indian Irrigation Project begun in 1907 and continuing thereafter. The project was aimed at controlling the waters that rose on or traversed Ute territory. The Uintah Project was paid for by Ute Tribal Funds deposited in the Federal Treasury and Federal funds provided on behalf of the Tribe and individual members of the Tribe (which were to be repaid). Tribal members could not pay personal fees for access to Project water and were in arrears in personal charges for the development of the irrigation system. As a consequence they were disallowed from farming their land. The water delivered by the system, in turn, was purchased by white farmers and ranchers who had purchased erstwhile Ute land made available following allotment. The Tribe filed suit in the U.S. Court of Claims for "compensation for wrongful and wasteful use of tribal trust funds [in the] Uintah Irrigation Project."

The Indian Claims Commission award exacerbated some lingering factional problems on the reservation. Many full bloods resented the leadership role that had been played by the mixed-bloods in tribal government. They especially resented cooperative land use schemes fostered by the BIA and the Business Committee, and the tribal jobs that were created for mixed-bloods when fund became available. Many mixed-bloods felt that they could manage the tribal estate better if they were free from full blood demands, and they were tired of the constant bickering. Full bloods and mixed-bloods alike desired per capita distribution of the judgment funds. And practically all Utes were angered when judgment funds allocated to each individual Indian were used to pay Uintah Indian Irrigation Project obligations incurred

during the previous 40 years. The land against which charges had been incurred became the property of the tribe. This collectivist scheme infuriated allottees and heirs alike.

Following on the heels of the claims award, the U.S. House of Representatives in 1953 passed Concurrent Resolution 108—a sense of Congress—which paved the way for several specific Termination Acts. Termination took a very special form at Northern Ute inasmuch as it allowed for a division of full bloods from mixed-bloods, with trust status retained by the former and termination from trust status and Federal services provided for the latter.

The upshot was a Federally-approved separation of the mixed-bloods (50 percent or less Ute blood), hereafter the Affiliated Ute Citizens (AUC), and the full bloods (more than 50 percent Ute blood), hereafter the Northern Utes (NU). Persons of 50 percent blood quantum could choose to be AUCs or NUs. The AUCs, comprising 27 percent of the tribal membership at the time the separation and termination legislation for them was ratified by Congress, received 27 percent of the judgment award and 27 percent of the tribal estate in the northwestern sector of the reservation. The NUs, on the other hand, assumed control of the Tribal Business Committee.

Local whites expressed bitterness about the per capita payments disbursed to AUCs and NUs, and to the Individual Indian Monies (IIM) accounts created for each Indian. The local agricultural economy, principally livestock and hay, was withering as family farms and ranches collapsed. Some local livestock operations grew, of course, buying up folded ones and leasing Indian land at special tax discount rates.

The Tribal Business Committee did not control tribal funds. All tribal budgets were approved or disapproved by the local BIA, the BIA area office, and ultimately the Secretary of Interior. IIM accounts, in turn, were controlled by BIA employees with final authority for disbursement from any account vested in the BIA superintendent.

The Roller Coaster at Northern Ute From Nothing to Something—1951–1962

From the time that all Northern Utes were relocated on the reservation until the claims award was granted, the Northern Ute

were destitute. In the late 1940s households averaged over six members and household incomes averaged about $1,500. But with the award the Utes gained access to cash for personal needs and tribal programs. In real dollars the amounts provided from the public transfers to families as per capita payments and IIMs were trivial, amounting to about $11,000 per person between 1951 and 1960.

Yet, in the first flush of the judgment award, the Tribe had access to some capital. Much of it was used to pay debts for which the Federal Government had obligated the Tribe without initially gaining the Tribe's consent (e.g., the Uintah Irrigation Project). Ten percent was paid to the attorneys who argued the case.

Other judgment awards for land expropriated in Utah ostensibly added about $12 million to tribal coffers, yet the Federal Government assessed "off-setting costs" for Federal services from these awards before the monies were made available.

In 1954 as the AUCs and NUs dissociated, a "True Ute" organization sought to disband the Tribal Business Committee as a non-traditional organization that had no authority to allocate and distribute Ute funds. The True Utes feared that the new Business Committee would continue to spend tribal funds on unpopular projects. They wanted funds allocated on a per capita basis. Yet from 1954 through 1962 the Tribe plunged through the funds made available through the several claims awards. All budgets were structured and approved by the BIA. The BIA denied per capita payment distributions after 1953 and insisted as well that $4 million be held in the Federal treasury and could not be allocated.

About mid-way through this period of high unearned income, many nuclear households were formed as the population grew and young marrieds established themselves. Average household size was 4.4, about a thirty percent drop from 1950. Household income shot up to about $6,750, a 350 percent increase over 1950. Large amounts of unearned income clearly made a difference.

As funds dwindled the True Utes became more aggressive in their demands to fire the tribal attorney and disband the IRA government. They called for constitutionally-approved General Council meetings on several occasions (plenary powers are vested in the Northern Ute General Council which is composed of all voting eligible Northern Utes). They could not achieve a quorum. On June 28, 1960 the True Utes attacked the tribal offices

and drove administrators and employees from their desks, holding the tribal offices for four days until, hungry and tired, they were repelled and incarcerated in the tribal jail. The overflow was placed in jails in local white towns.

General dissatisfaction increased and in 1962 the Tribe had no viable economic enterprises. It had expended all its judgment funds save the $4 million in the Federal treasury. The BIA threatened the Tribe with receivership as the Business Committee closed its programs and laid off practically all employees. As their publicly-derived funds plummeted between 1960 and 1962 the Tribe, through the aegis of the BIA's Land Operations Division, signed 99-year oil leases with several multi-national oil companies at 15 percent royalties on profits. The oil companies kept the books; they also drilled and capped the productive oil and gas wells that they discovered.

The Plunge: From Something to Very Little—1963–1973

The decade beginning in 1963 was a tight period at Northern Ute. The Johnson Administration's "War on Poverty" brought several programs and some employment to the Tribe, whose income was restricted almost completely to Federal transfers of public funds through those programs, and some lease income. Over twenty-five percent of Northern Utes received welfare payments from state and Federal programs for which they qualified. Income pooling and the sharing of skills and services characterized native households. By 1965 households had expanded by fifty percent from the 1956 average (from 4.4 to 6.6) and their average income had plummeted to $2,600. The size, composition and functions performed by the households were strikingly similar to Ute households of 1951 and earlier. These larger households provided a locus and nexus for sharing resources with kinspersons and affines who could not maintain households of their own.

The Climb: From Very Little to a Lot (Relatively Speaking)—1973–1982

The Arab Oil Embargo of 1973 demonstrated how deeply the Northern Utes were tied to the world political economy. As the value of domestic oil skyrocketed, wells that had been capped

over a decade earlier were put into production. Oil was pumped and royalties began to flow. There was also a rush to lease more oil and gas on the reservation, with the BIA acting as leasing agent, and pressure to lease oil shale, tar sands, coal, and uranium as well. The royalties, which climbed to about $15 million annually in the late 1970s and early 1980s, provided the base for a dramatic expansion of tribal programs and employment.

The Federal Indian legislation of the 1970s affected the kinds of programs that the Tribe embarked on, as well as the changed relations between the Tribe and the BIA. For the previous twenty-five years many skilled Utes had moved between tribal and BIA jobs. Prior to 1951 and between 1963 and 1973 the bulk of the employment had been with the Federal Government. Many of these specially-experienced Utes had also served one or more terms on the Business Committee. They knew the persistent problems that had gripped the Tribe, and they were well aware of some of the ways that the Tribe had been dominated by the Federal Government, state government, and local whites.

Using the provisions of the Self-Determination Act they began to contract for control of services. The Indian Education Act was used to gain an important voice in the disposition of Johnson-O'Malley Act funds by local school boards. The Indian Child Welfare Act was used to stop the removal of children from their families without hearings, and so forth.

Elected and appointed officers of the Tribe began to assert control in speech and acts over BIA and IHS personnel. At its high point in about 1982 the Tribe employed over 400 Utes (70 percent of its work force). At the time there were 2,200 enrolled Northern Utes and another approximately 500 to 1,000 children of enrolled Utes who were not entitled to enrollment because one of the parents was not a Ute.

Oil royalties increased with production, but also with the rapid rise of the price of oil from a single-digit price to the mid-thirties (in dollars) per barrel. Federal transfers in jobs, payments, and services for which the tribe contracted also increased. As the operating budget of the Tribe climbed to $16 million annually, the Tribe began providing $400 per month per capita to all enrolled Utes. Smaller nuclear households again began to dominate reservation residence patterns.

CERT advised the Business Committee to venture into several enterprises, including the manufacture of sheepskin vests and chemicals, and a fabrication plant. The Tribe joined with three

other tribes to provide funding for the American Indian National Bank.

Pointedly, tribal employees began to assert control over the BIA's leasing agents. The Tribe refused to let long-term leases, refused to accept fifteen percent royalty contracts, and refused to allow the BIA to lease allotted land (land individually owned by allottees or heirs) for fifteen percent royalties. They wrote all-new lease contracts, demanding royalties from 25 to 35 percent. The Tribe did not control production as an owner-operator, or even as a joint owner-operator, so it was still on the sidelines. Indeed, the $15 million annual royalty the Tribe received was a return from about $100 million profit generated by the oil companies from Ute resources. Although a minor player in the oil business, the Tribe was receiving more for its resources than previously. The oil companies drilled, pumped, transported, refined, and sold the oil; they also kept the books. The Tribe had neither the capital, the access to capital, nor the expertise to control production on the reservation.

Another Plunge: From (Relatively) a Lot to Little with Prospects for Less, and from Limited Control to Dependence—After 1981

As the Reagan Administration cut back on Federal funds and specific programs that assisted Indians—job training, health, education, social services—the Tribe stepped in with its own funds to keep offices and programs operating and to keep people employed. The drop in oil prices from the mid-thirties per barrel to the low teens in 1985 decimated the tribal treasury as royalty income dropped precipitously. Wells were capped as long-term lease holders awaited the next dramatic rise in oil prices. When the Tribe sought oil lease bids at sales in 1984 and 1985, no one showed up for the short term leases.

Each of Reagan's annual budgets provided less for Indian affairs than the previous year, so by mid-1985 there was a fiscal crisis at Northern Ute. Programs had to be cut, employees fired. The resort motel was closed in 1986 with a $197,000 deficit outstanding. The Colville Tribe of Washington, which was riding on the same energy resource-public funds transfer roller coaster as the Utes, joined the Northern Utes in seeking to sell the moribund American Indian National Bank. The cattle operation was allowed to continue, even though it incurred prodigious deficits.

The Utes liked the livestock and found the operation consonant with their expectations about what kinds of enterprises are appropriate for them. By mid 1987 tribal unemployment was 80 percent.

The first evidence that the chimera of self-determination was being exposed occurred in 1985. Because the tribal treasury was being depleted, the Tribe could not meet all of its financial obligations. Its jail became overcrowded and also fell into bad disrepair. The Tribe had contracted for the control of law and order under provisions of the Self-Determination Act. It sought funds from the public sector for this public sector service. But if funds are not available, real consequences can occur, not merely theoretical ones. The jail roof leaked. Jail inmates were in poor health. Several suicides occurred among the jail population.

As wards of the Federal Government, the Northern Ute Tribe sought financial assistance from the BIA as the responsible agent. That agency could have overseen the Ute operation and supplied funds to it. The BIA refused to respond to the Tribe's requests. As suicides within the jail mounted and health problems increased, the jail was declared a health hazard. The Tribe could not staff the jail or the police force adequately, nor could it purchase equipment and make repairs.

Having no other institution to which it could turn for assistance, the Tribe retroceded the law and order division to the Bureau of Indian Affairs. The BIA found the funds to take over the function. Health, education, and social service functions conducted by the Tribe will likely be retroceded in the near future. Except for a new attitude that eschews subservience and obsequiousness, the Northern Ute government appears to be headed back to where it was in 1973: a limited sovereignty with a modest unearned income, few prospects for successful penetration of any markets, and a more complete dependency on a public sector economy locally controlled by the BIA.

As the Tribe worked on its Fiscal Year 1987 budget it optimistically projected $8 million, or about half of the Fiscal 1986 budget. Ross Swimmer, Assistant Secretary of Indian Affairs, advised the Tribe that the budget should be cut to $2.5 million inasmuch as it had little prospect for generating more than $6 million. He advised cutting per capita payments severely, cutting back some and eliminating other programs, and investing the difference. Already many tribal offices, including public relations (the tribal

newspaper and media services), were either closing down operations or cutting back drastically.

Tribal members, on the other hand, sought immediate per capita distribution of all judgment funds remaining in the tribal treasury. The residents were frightened by the deep and rapid plunge in tribal funds.

THE SUBTEXTS: SOVEREIGNTY AND JURISDICTION

Indian sovereignty has always been limited. The First Article of the Constitution provides Congress with plenary powers (full and absolute, without qualifications) over Indians. Chief Justice John Marshall, writing for the U.S. Supreme Court in the famous "Cherokee" decisions of the 1820s, found Indian title to land to be impaired (Indians have rights akin to usufruct, at Congress's pleasure). The General Allotment Act of 1887 allotted land in severalty against the wishes of tribes and placed unallotted lands in the public domain. The Indian Reorganization Act of 1934 brought an alien form of government to all tribes who ratified constitutions under its provisions. The IRA also vested veto authority in the Secretary of Interior, thereby further limiting tribal sovereignty.

The original reservations on which Northern Utes resided encompassed about 23 million acres in Colorado and Utah. Through Federal expropriation and the forced relocation of populations, all Northern Utes came to reside on four million acres in Utah. Implementation of the General Allotment Act reduced Northern Ute title to 355,000 acres by 1934. The millions of acres withdrawn from the reservation lost their trust status, but the withdrawal created problems of jurisdiction to be battled in the courts in the 1980s.

The Northern Utes organized under provisions of the IRA. The powers of the BIA over all Business Committee decisions were final in fact, if not in law; whereas the powers of the Secretary of Interior, at Congress's approval, were final in law. The constitution and charter that were ratified delegate certain powers to the tribe, such as determining its rules for membership (enrollment), levying taxes, and the like. But the constitution yields odd results when ordinances based on that constitution are challenged in the courts.

Sovereignty and Disputes within the Tribe

Initially mixed-bloods controlled the Business Committee. Termination legislation in the early 1950s allowed for the separation of full bloods from mixed-bloods and for full bloods to take control of the Business Committee. This special separation and termination legislation also created problems to be disputed in the courts in the 1980s.

One of the first acts passed by the Northern Ute Business Committee after termination was begun in 1954 established the enrollment criterion: to be enrolled a person must have 1/2 Ute blood plus one drop. When termination and separation was complete in 1958 the Tribe revised the requirements. They were simple: to be enrolled a person must be 5/8ths Ute blood quantum and be born on the reservation. During the 1950s and again during the 1970s the population on the Northern Ute reservation grew dramatically. The Tribal Roll, on the other hand, increased by a little less than 100 percent between 1950 and 1982 (from 1,150 to 2,244). The annual birth rate over the period was approximately three percent. If all children born to enrolled members had been enrolled, the Tribal Roll should have totalled about 3,000 in 1982. In fact, in 1982 there were more than 700 children born of mixed parentage residing on or near the reservation—an enrolled full blood Northern Ute whose spouse was from another tribe or was a non-Indian.

In the 1980s as per capita payments of $400 monthly were distributed to tribal members but as jobs began dwindling, enrolled parents of fifteen unenrolled children (because of mixed parentage) went to court to get their children enrolled. The Tribe expressed fears about the dilution of the full bloods and their culture, but also about the drain of resources that they determined belonged solely to full bloods. They thought that they had resolved this issue in 1954 when AUCs were separated from NUs. The enrolled parents of unenrolled children did not want their children to be denied any part of the tribal estate or tribal culture.

The Tribe had established enrollment criteria as its constitution provided. The Tribe, with the BIA as intervenor, defended its sovereign authority to establish enrollment criteria as well as the 5/8th blood quantum criterion. The courts rejected the Tribe's claim and found that the Northern Ute/Affiliated Ute Citizen separation and termination legislation specified 1/2 Ute blood as

the significant criterion established by Congress (plenary authority). That is, at termination a person of 1/2 Ute blood could choose to be a Northern Ute or an Affiliated Ute citizen. Less than 1/2 Ute blood quantum assigned a person to the mixed-blood group.

The Tribe was told that it had not acted properly in establishing membership criteria in 1954 and 1958, yet it was free to establish new criteria. The 5/8ths blood quantum, birth on the reservation criteria were passed in a new referendum. Yet in April of 1986 the Tribal Court found the criteria to be illegal. So, in mid-1986, the Tribe rescinded all previous ordinances that had established criteria and created a new enrollment ordinance. Henceforth a child must be born to a tribal member who is resident on the reservation at the time the child is born.

In August of 1986 the Tribe began enrolling children of the petitioners while worrying about the fate of the elders as well as the diluting of the tribal blood quantum. At the first two enrollment sessions the Business Committee enrolled 407 petitioners, tabled 41 petitions, and denied 42 petitions. As of early September, 1986, the Committee was in receipt of 113 new applications for enrollment.

The enrollment issue is a clear example of the limitations on the constitutional authority of the Northern Ute Tribe. Charter authority is also limited inasmuch as business deals can be vetoed by the Secretary of the Interior and all budgetary decisions are constrained by the BIA.

The enrollment issue has been joined with other issues by a growing group of Ute dissidents who wish to award funds in the Tribal treasury on a per capita basis, establish a 5/8ths blood quantum requirement, and amend the tribal constitution in several ways.

Sovereignty and Disputes between the Northern Utes and the Affiliated Ute Citizens

The Northern Ute Tribe also believed that it gained control over the 73 percent of the reservation that was its share of the tribal estate following the termination of the mixed-bloods. But in the early 1980s the Affiliated Ute Citizens went to court on the theory that they were terminated, but that termination did not explicitly take away the rights of mixed-bloods to hunt and fish on

tribal lands. The courts agreed that Congress had not explicitly taken away these rights, so they were reserved. The AUC were found to be entitled to 27.6 percent of the annual bag and catch on the reservation.

In 1986 the AUC went to court in quest of its reserved water rights as provided by the Winters Doctrine, gathering rights to wild plants, timber rights, subsurface mineral rights and all other reserved rights to be determined by the courts. They also sought reversionary interest in the management of reservation lands. In these instances, of course, the plenary powers of Congress absolutely limit tribal authority, and the courts, following conservative principles, merely determine what rights have been reserved, i.e., have not been specifically taken away by Congress.

U.S. District Court Judge Bruce S. Jenkins ruled that the AUC represented individuals, thus it had no standing in the court. The right to participate in joint management, Judge Jenkins ruled, was a collective right to be exercised by the authorized representatives of the AUC. The AUC's federally-authorized representative is the Ute Distribution Corporation (UDC) which was formed by mixed-bloods upon termination. Ten shares of UDC stock was issued to each of the 490 AUC members at the time of termination. UDC stock is freely transferable. In mid-1986 160 mixed-bloods retained 1,361 shares of the original issue. Judge Jenkins ruled that mixed-bloods who sold their shares were presumably compensated for the value of the rights the shares presented, including the right to participate in the management and proceeds of the non-distributable assets.

In this instance the mixed-blood Indians who sold their UDC stock can hunt and fish on Northern Ute land, but whether the UDC represents them and whether UDC stockholders will gain the right to participate in the management and proceeds of the non-distributable assets await court test.

Sovereignty and Disputes with Local Whites

Local white-Ute disputes have an 80-year history from the time that the Uintah Valley and Ouray Reservations were allotted and the remainder opened to white homesteaders and purchasers. Taxation has always posed problems, with whites claiming that Indians are a drag on the Uintah Basin economy, particularly because Ute trust-held land is not on the tax rolls, and because Utes reap benefits from tax dollars while paying none.

In 1979, however, Eileen Stillwaggon determined that the Northern Utes were not a drain on taxes or on the Basin local economies. To the contrary, payments to whites in the area by the Tribe, Ute households, and the Federal Government in behalf of Utes was about $11 million in 1978. The Northern Utes constituted six percent of the Basin population at that time, but the retail sales of white-owned businesses in the Uintah Basin from Ute spending was eleven percent. Total Uintah Basin incomes attributable to Ute spending was $244 per capita ($976 per four person household).

Stillwaggon also determined that the local whites' allegation that the taxes they paid benefitted the Ute Tribe but not themselves was wide of the mark. In 1979 taxes for Ute programs cost Basin residents nine cents per household. In return each white household in the Basin received about $575 in benefits from Federal Indian spending. The combined Ute and Federal spending accounted for about $1550 per white household at a cost of nine cents.[4]

In 1985 the 10th Circuit Court awarded the Northern Ute Tribe jurisdiction of 4.1 million acres of the original Uintah Valley and Uncompaghre reservations. The current Uintah and Ouray Northern Ute Reservation is slightly over 1 million acres. The Court found that Congress had not explicitly taken away jurisdictional authority from the reservation, nor disbanded the reservation when the General Allotment Act was enforced on the Northern Ute reserves.

The decision gives the Northern Ute Tribe exclusive jurisdiction over its members—whether or not they are in incorporated white towns or unincorporated county areas. It also will probably give the Tribe jurisdiction over game and some other resources, but not title to land or mineral resources. The State of Utah cannot impose taxes in the jurisdictional area, so local white residents fear that the Tribe will exact taxes, deny access to resources, and seek to usurp authority over criminal and civil issues. Several public meetings with county and state officials have emphasized these fears.

Utah's congressional delegation, most importantly Senator Jake Garn, lined up with the counties in opposition to the jurisdiction decision. The Senate Select Committee on Indian Affairs scheduled hearings in June of 1986 to air the jurisdictional issue with representatives from the Northern Ute Tribe and its attorney, Martin Seneca. Senator Garn carried the congressional delega-

tion's complaints to that committee prior to the arrival of the Ute. The meeting was cancelled abruptly when the Ute delegation appeared in Washington for the hearings. Senator Garn is preparing a bill to strip jurisdiction over the original reservation from the Northern Utes.

The Tribe, nevertheless, has not shrunk from legal conflicts with the State of Utah or the local counties. In February 1987 the Tribe filed suit in Federal District Court to restrain State and county governments from imposing taxes on oil and gas pumped from Ute-owned wells. The Tribe argues that by Federal law the State and counties may impose taxes on oil and gas only to the level required to support State and local services actually provided to the Northern Ute Tribe and its members. The Ute brief demonstrates that in the five years from 1982 through 1986 the State and counties have taken five dollars away from the Tribe through taxation for every dollar that has been returned to the Tribe and its members. The Ute claims are consonant with Stillwaggon's analysis of the Uintah Basin economy.

The group of Ute dissidents who seek to change the Ute constitution and reaffirm the right to establish a 5/8ths blood quantum requirement for enrollment argued at a tribal meeting held in September 1986 that the tribe had become a "sanctuary for everyone and we are bringing back the Affiliated Utes [AUC], everyone lives on our reservation tax-free." It was argued that jobs were going to whites rather than to Utes, that the tribe's attorney was getting rich while Utes suffered, and that tribal employees should be swept from the house. In some despair it was declared that the tribal membership had lost its fishing and hunting case, its enrollment case, and its judgment fund [per capita distribution] case, and was certain to lose its jurisdiction case. The group wanted to "fight for its rights."

The present is much like the past. Utes are not employed in white-owned businesses: Ute land is leased by whites and multi-national corporations who receive special tax benefits and huge profits in so doing; Utes pump large amounts of cash into the white economy; an Indian owned and controlled economy has not been developed; and whites deride Utes as lazy, immoral wards of the Federal Government—a drain on local taxpayers.[5]

SUMMING UP SOVEREIGNTY, OR WHO CONTROLS THE ROLLER COASTER?

The Northern Ute roller coaster is driven by the Federal Government. Multinational corporations keep the books and receive all fees collected for the rides. Frequent riders receive rebates, normally about fifteen percent of the profits, but not fifteen percent of the ticket price.

The coaster plunges as Federal funds are withdrawn from, and climbs as Federal funds are deposited in, riders' accounts. Speedier and higher ascents reflect the actions of the world-wide energy market on which Ute riders became dependent in conjunction with Federal transfers of funds and in-kind services.

Reagan's New Federalism changed government policy, demonstrating that the 1970s Federal Indian legislation held little practical meaning without Federal funds to implement their provisions. And even when funds were available, the 1970s legislation tied Indians to the public sector economy—services, education, health care, and the like.

The New Federalism *and* the plunge in the energy market demonstrate that Northern Utes are the dependent owners of resources beyond their control. The Secretary of the Interior and Congress have ultimate control of Northern Ute affairs. The Tribe's constitutional authority to govern its internal affairs, establish enrollment criteria and to levy taxes can be, and is, denied by the courts and Congress. The Tribe's charter authority to enter into contracts can be, and is, denied (or approved) by the Secretary of the Interior. Jurisdictional issues over fish and game, crimes, taxation, and such have exacerbated acrimonious relations with the Utes's neighbors in the area, non-Indian and mixed-blood alike. Constitutional authority over enrollment criteria has fueled disputes among Northern Utes. The access to reservation resources has been granted to mixed-bloods and that will not be changed. The jurisdictional authority over the erstwhile reservation boundaries granted to the Northern Utes, on the other hand, will likely be changed—that is, withdrawn—by Congress.

The roller coaster continues in its rapid descent. It will bottom out and start its climb with the next Federal policy that pumps public sector funds into reservation economies.

NOTES

1. See Joseph G. Jorgensen, et. al., *Native Americans and Energy Development* (Cambridge: Anthropology Resource Center, 1978); Joseph G. Jorgensen, ed., *Native Americans and Energy Development II* (Boston and Forestville: Anthropology Resource Center and Seventh Generation Fund, 1984).

2. Joseph G. Jorgensen, *The Sun Dance Religion: Power for the Powerless* (Chicago: University of Chicago Press, 1972); Donald G. Callaway, Joel C. Jenetski, and Omer C. Stewart, "Ute," in *Great Basin*, Warren L. D'Azevedo, ed., *Handbook of North American Indians*, Volume 11, William C. Sturtevant, General Editor (Washington: Smithsonian Institution, 1986), 336–367.

3. For more extensive treatments of Northern Ute history, see: Ralph Hanson, Unpublished Manuscript on Ute History. Roosevelt, Utah; Gottfried O. Lang, "A Study in Culture Contact and Culture Change: The Whiterocks Ute in Transition," *University of Utah Anthropological Papers* 15, 1953; John A. Jones, "The Sun Dance of the Northern Ute," *Bulletin of the Bureau of American Ethnology* 137, Anthropological Paper 47 (1955): 203–264.

4. Eileen M. Stillwagon, "Economic Impact of Uintah and Ouray Indian Reservation on the Local Non-Indian Economy." Unpublished Ph.D. Dissertation. American University, Washington, D.C., 1979.

5. Joseph Jorgensen, *The Sun Dance Religion . . .* , 1972.