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Local Governments, Tribal Governments, and Service Delivery: A Unique Approach to Negotiated Problem Solving

DOUG GOODMAN, DANIEL C. MCCOOL, AND F. TED HEBERT

There is a long history of conflict between states and Indian tribes. In recent years, considerable progress has been made in reducing this conflict in some areas, but service delivery remains an issue of growing tension. Since the 1990s the federal government has reduced funding for some Indian programs; funding has increased in a few programs but has not kept up with increases in demand. As a result, tribes are forced to rely ever more on state and local services to make up the difference. These new demands come at a time when many states are dealing with tight budgets. Some states have resisted this growing need for their services, despite the fact that Indians living on reservations are entitled to all the same services and benefits as any other citizen of a state. These disagreements are an important part of the very complex and convoluted relationship between states and tribes.¹

This necessity for state and local service delivery on Indian reservations is having a dramatic impact on the American federalist system and changing the relationship between state, local, and tribal governments. There are 562 federally recognized Indian tribes, with 55.7 million acres of Indian trust land.² Clearly, Indian tribes are an important part of the federalist system. The delivery of services to Indian people, especially those living on trust land, is a critical aspect of that system. Changes in both the demand and the delivery of state services have engendered considerable political conflict.

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This article examines a unique attempt in San Juan County, Utah, to resolve conflict over service delivery. The southern half of the county consists of a portion of the Navajo Indian Reservation; the northern half consists almost entirely of non-Native people. After decades of bitter conflict between these two groups, several political leaders in the county, both Navajo and non-Indian, suggested that the best way to resolve their differences was to split the county into two counties—a county that is populated predominantly by Euro-Americans and located north of the reservation and the other consisting of that portion of the Navajo Indian Reservation that lies in the southern portion of the extant county.

The effort to divide the county was a unique application of conflict resolution methods. In recent years an effort has been made to resolve conflicts between tribes and states by using a negotiated conflict resolution process, often labeled “alternative dispute resolution” (ADR). There are many variables to this process, but all of them have certain features in common. We outline these features and then analyze the county division process as a unique instance of that process. This article first presents an outline of the conflict resolution process and describes the contemporary relationship between tribes and states. We then focus on three primary issues discussed during the debate over county division: education, law enforcement, and health services. Finally, we analyze the impact of the county division proposal and how it fits into the larger framework of conflict resolution between states and tribes.

ALTERNATIVE DISPUTE RESOLUTION

In recent years, tribes and states have sometimes turned to innovative approaches to conflict resolution in an effort to avoid prolonged court battles and internecine political struggles. This approach usually focuses on negotiation, often facilitated by the federal government, in which all parties enter into consensus-based negotiation in an effort to achieve a legally binding settlement. It has been used to resolve a number of land and water disputes and has been suggested as a way to resolve other jurisdictional problems. In its various forms, the cooperative approach to solving problems between governments has been labeled: new governance, multiple partnership configurations, intergovernmental management, intercommunity partnerships, interorganizational task groups, and collaborative alliances.³ ADR has been used to solve intergovernmental issues ranging from natural resource protection to crime reduction.⁴

Although each type of cooperative alliance is unique, they all encompass the critical principles presented in Table 1. Central to all the variants of ADR is an effort to resolve disputes without litigation.⁵ All parties to the dispute (both local and state governments and the tribes) must be accepted as autonomous actors, with the ability to make independent decisions—including the decision whether or not to participate in the negotiation process. The objective of negotiated problem solving, as displayed in Table 1, is to use an open, consensus-building process to arrive at decisions that parties to the dispute can agree to because they accept both the process and its outcomes.

Table 1
Critical Features of Negotiated Problem Solving

Alternative dispute resolution	The modus operandi is bargaining, emphasizing perceived interests rather than positions. No one party gets everything that party wants, but by sacrificing some secondary interests, primary gains can be achieved.
Partnership	Participants work as partners with a stake in the outcome, assuming that the process will require sharing both burdens and solutions but create advantages for everyone.
Autonomy	All stakeholders are viewed as autonomous actors, freely participating in the process and free to leave whenever they choose. Each party is a coparticipant, engaging in consensual negotiations and decision making.
Established rules of the game	All participants must agree early to a mutually acceptable decision-making process, including matters of jurisdiction, rules of procedure, and personnel.
Interactive process	Decision making is open and focuses on consensus building, based on full participation by all parties. Each participant's perspective is respected (though not necessarily accepted) by all, and each party may express its interests.
Ad hoc structures and organizations	A new organizational entity may be created to solve problems, using shared or temporary personnel, reflecting the multi-jurisdictional nature of its mission. This ad hoc organization may use outside technical experts, facilitators, and/or mediators.
Incremental problem solving	Cooperative alliances may solve problems in steps, delaying larger problems until more manageable ones have been resolved.

STATE-TRIBAL RELATIONS

The federal government's relationship with Indian tribes has changed significantly over the past thirty years. Passage of the 1975 Indian Self-Determination and Education Assistance Act permitted tribes to assume increased control over their own resources and a larger role in administering federal programs. In recent years many tribes have emphasized greater self-governance, and some have expanded tribal government to increase control over programs. Concurrently, Washington began shifting many service responsibilities to states as part of a large-scale devolution movement.

While intergovernmental conflicts are common in American politics, conflicts between tribes and state or local governments are unique due to the tribes' special legal status in the federal system. This tension is heightened by ambiguous and inconsistent judicial decisions.⁶ Some of the more

contentious struggles have concerned regulation of hunting and fishing, taxation authority, educational services on reservations, land-use regulation and zoning, and water rights.⁷ Budgetary limitations further exacerbate conflicts between local and tribal governments. Some of these disagreements are so contentious that it is in the interests of all parties to attempt novel methods of conflict resolution. In this article we examine one such effort.

SAN JUAN COUNTY: A DIVIDED COMMUNITY

San Juan County lies in the southeastern corner of Utah. The Navajo Nation extends into the county, encompassing more than one-fourth of the county's area. Local non-Indians often misunderstand the status of tribes as "sovereign"; one San Juan County official remarked that dealing with the Navajo Nation was "like dealing with Mexico." San Juan County officials believe their hands are tied, that they cannot act in their normal governmental capacities, and that there is a constant risk of legal conflict. Frustrations often grow on both sides to the point that extreme options are presented. In San Juan County a proposal to split the county at the Navajo Reservation line was studied by a broadly representative county-appointed group termed the Blue Ribbon Committee (BRC) from 1995 to 1997.⁸ The county commission that voted to initiate the study was composed of two non-Indian commissioners and one Navajo commissioner; all three supported the study without passing judgment on the possible merits of splitting the county.⁹

The Political Context

San Juan is Utah's largest county, with 7,925 square miles and an estimated 1995 population of only 13,535. The US Census Bureau estimated San Juan County's population at 13,901 in 2003, a 3.6 percent decline from the previous census, which counted 14,413 residents.¹⁰ Twenty-six percent of the county's land area lies within the boundaries of the Navajo Reservation (which extends into the adjoining states of Arizona and New Mexico), and about 43 percent of the county's population resides on the reservation. However, Native Americans account for more 53 percent of the county's population because many Navajos live off the reservation, and the county includes the Ute Indian community of White Mesa.¹¹ Furthermore, the county encompasses extensive tracts of land managed by the US Bureau of Land Management (BLM), the US Forest Service, and the National Park Service.

Providing public services in Utah's rural communities is largely the responsibility of local government: the county and the school district, cities and towns, and special service districts. In San Juan County, the Navajo Nation and the federal government also share in this responsibility. Local government revenue is generated primarily from property taxes, and in San Juan County those are derived primarily from taxes on oil and gas properties located both on and off the Navajo Reservation, but mainly on the reservation. However, this resource is in decline. State and federal government programs also contribute funding.

The San Juan County Commission sets local policies with regard to service delivery (within state and federal guidelines). Prior to 1984, commissioners were chosen at large, as in Utah's other counties. In 1984 the county entered into a consent decree with the US Department of Justice to divide the county into three commissioner districts. This suit was brought on behalf of Utah Navajos and provided them with one district wholly on the reservation and one district partially on the reservation. The county commission is responsible for governing the county as a whole. Each of the other entities of local government (the school district, the towns of Monticello and Blanding, special districts) and the Navajo Nation has its own governing structure and responsibilities.

The Vote to Study Partition

In San Juan County, as in many counties in Indian Country, it isn't always clear which of the various governments (tribal, federal, state, or local) bears responsibility for providing a particular service to reservation residents. Some of these issues have been resolved through litigation, others have resulted in both informal and formal arrangements, and still others remain unsettled.

For a number of years some Euro-American and Navajo residents had pushed to divide the county along or near the Navajo Nation boundary. In early 1995, the county commission, by unanimous vote, created the San Juan County Blue Ribbon Committee (BRC) to consider that idea. Forming the BRC required considerable negotiation between the two Euro-American commissioners and the Navajo commissioner. They agreed on a selection process that would include a variety of Indian and non-Indian citizen volunteers, as well as the three commissioners, local elected officials, and tribal elected officials. The commissioners also agreed that an external facilitation and research team was needed, and they selected a team from the University of Utah.¹² The BRC was composed of sixteen county residents living both on and off the Navajo Reservation. Some of the members were elected and appointed government officials; others were residents-at-large. Representatives from Utah and the Navajo Nation were also invited to attend and participate at the meetings.

Although the issue of participant autonomy was never formally addressed, the meetings of the BRC were highly interactive and participatory. It would be too much to claim that a sense of partnership developed among the committee members, but the process did create an opportunity for numerous stakeholders to voice their opinions and interact with people holding different perspectives on important county problems. The BRC met six times in late 1995 and early 1996. Meetings were held at various locations on and off the Navajo Reservation throughout San Juan County.

The BRC addressed three principal issues. The first explored the delivery of particular services on the reservation and centered on questions of jurisdiction and responsibility: Who bears responsibility now, and if the county were divided, would jurisdictional conflicts be significantly reduced? The second issue concerned where to draw a dividing line between the two

counties if a division were to occur. When the BRC began its work, some members (perhaps most) initially assumed that the only possible line would be at the Navajo Nation boundary—creating an “all reservation” county.¹³ As discussions progressed, an alternative dividing line farther north became an option as well, which would have divided San Juan County more equally, placing more area in the new southern county, including the Utah portion of the reservation. Much of this additional land included in the proposed southern county was federal, managed mainly by the BLM, in addition to some private land. A third issue concerned the financial viability of the successor counties. Addressing this final point required considerable analysis, including an estimation of future costs and revenues.

MAJOR POLICY ISSUES

In early BRC meetings, participants (committee members and the public) discussed numerous controversial issues concerning county-Navajo relations. Three service-delivery issues emerged as the most problematic: education, law enforcement, and health care. Each of these plays an important role in the larger national debate over public service responsibility in times of fiscal stress.

Education

Public education in San Juan County is principally the responsibility of the San Juan School District, including the area of the county within the Navajo Reservation. In the nineteenth century, when the reservation system was first established, Indian education was exclusively the domain of the federal Bureau of Indian Affairs (BIA). For many years the education of Indian children living on reservations was based on the objective of forced assimilation—boarding schools required children to leave their families and attend distant schools, usually with children of other tribes. Eventually the federal government realized that the boarding school system created enormous problems, and it gradually began shifting Indian education to public schools. It was assumed that the objective of assimilation would be achieved more readily if Indian students attended school with non-Indian children.

Simultaneously, tribal governments were taking more interest in Indian education. Many tribal leaders were dissatisfied with BIA schools and wanted to operate their own schools on the reservation as public schools in order to preserve tribal culture while also preparing Indian children for success in a multicultural society. This policy was statutorily recognized in the Indian Education Act of 1972 and the Indian Self-Determination and Education Assistance Act of 1975. Bilingual education was an important part of this trend, and was supported by the US Congress in the Bilingual Education Act of 1967 and the Native American Languages Act of 1992.¹⁴ Today approximately 90 percent of Indian children are educated in public schools both on and off reservations. Several laws provide additional federal funds for Indian students in public schools.¹⁵

The multi-jurisdictional character of modern Indian education reflects a larger trend in Indian policy. Originally, the federal government held exclusive jurisdiction over Indian tribes, including Indian education, based on the federal government's trust responsibility that was established in more than 370 treaties and agreements with Indian tribes. The federal government's educational responsibility varies with each treaty. The Navajo Treaty of 1868 stipulated that specific education facilities were to be provided:

In order to insure the civilization of the Indian entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indian, and faithfully discharge his or her duties as a teacher.¹⁶

The responsibility to educate American Indians began to shift in the early part of the twentieth century. In 1924, Congress unilaterally granted US citizenship to American Indians, which also made them citizens of the states and of all the states' political subdivisions in which they reside. This rendered Indian people potentially eligible for the same state and local services as other citizens. Tribal members continued to rely on BIA services, but gradually it became apparent that the BIA was not meeting educational needs. Frustrated with the federal government's failure to meet its trust responsibilities adequately, tribes began turning to states and their political subdivisions as a way to compensate for inadequate federal services. It should be noted that no explicit policy exists which delineates the relative responsibilities of federal, state, local, and tribal governments on Indian reservations in regard to education. A statement by an expert on Indian education illustrates this overlap: "Since the majority of Native Americans (90 percent) attend state public schools, it is the responsibility of the federal government to see that Native Americans are fully served by state education programs."¹⁷

In San Juan County, jurisdictional confusion resulted in two prolonged court battles concerning Indian education, which led some to believe that the only way to resolve the problem was to split the county and subsequently split the school district. Major conflict between Navajos and the San Juan School Board began with the 1975 case of *Sinajini et al. v. Board of Education of the San Juan School District*.¹⁸ The resulting consent decree required the district to build two new high schools on the reservation and implement a bilingual program. The high schools were built, but legal conflicts continued due to claims that the district failed to implement the bilingual program properly.

A second case against the district, filed in 1993, demanded an additional high school, this time at Navajo Mountain. Although Navajo Mountain is in San Juan County, it can be reached only by traveling into Arizona and back into Utah—a trip of approximately 110 miles. In *Meyers et al. v. Board of Education of the San Juan School District*, the court held that “the District, the State, the United States, and the [Navajo] Nation each has a duty with respect to the education of Native American children residing in the District.”¹⁹ A plan was implemented to build the high school. This case illustrates the extent to which the responsibility for Indian education has been extended to all levels of government, leading to the opportunity for each party to claim that some other level of government should shoulder most of the burden, so the controversy continued.

An effort to resolve these cases through negotiation resulted in a 1997 Agreement of Parties.²⁰ The purpose of this agreement was to resolve the continuing dispute over the 1975 Sinajini consent decree, dismiss another lawsuit, and resolve the remaining issues of funding for educational facilities on the Navajo Reservation.²¹ The negotiated settlement stated that “the parties desire to put the litigation behind them” and stipulated a number of agreements concerning the Navajo Mountain High School, bilingual education, incorporation of a cultural awareness program into the curriculum, special education, and establishment of a curriculum committee.²² Significantly, the parties agreed to seek dispute resolution in the future before returning to court. While some of the immediate issues have been resolved, others will be addressed only as programs are implemented. The agreement was the culmination of more than twenty years of civil rights litigation involving the San Juan School District. Disagreements centered on the nature of the educational curricula and responsibility for providing education.

Members of the BRC were quite concerned whether division of San Juan County would necessarily require an equivalent division of San Juan School District.²³ Utah has no school districts that cross county boundaries, so splitting the county would probably also entail breaking apart the school district. Dividing the county raised additional financial and legal issues for the school district. It is possible that county division could lead to further litigation, whether or not the school district division followed a county split. If the school district were not halved, the district would at the very least be faced with collecting revenue in two counties and thereby dealing with two different sets of assessment and collection officials. While this would not present an insurmountable obstacle, it would be difficult to ensure both tax equity and service equity. If the district were divided, it might lead to further litigation to ensure that successor districts honored previous settlements. Litigation might even be initiated to prevent county division. Thus, the threat of litigation hovered over BRC discussions.

Assessing the financial effect of school district division was complicated by the large role that state and federal financial assistance plays in the San Juan School District. The impact of a county split would depend heavily on how allocations of both state and federal funds were made to the successor districts. Utah’s Minimum School Program Act declares that:

- all children of the state are entitled to reasonably equal educational opportunities regardless of their place of residence in the state and of the economic situation of their respective school districts;
- school districts should be required to participate on a partnership basis in the payment of a reasonable portion of the costs of a minimum program; and
- each locality should be empowered to provide educational facilities and opportunities beyond the minimum program.²⁴

How this would affect San Juan County and other Utah counties is revealed in Table 2. A portion of the Minimum School Program is funded by the state, but local school districts are required to fund part of it with property taxes. For certain purposes, districts are permitted by state law to impose additional taxes, called “voted leeway” and “board leeway.” State matching funds are available to assist districts partially for some purposes.²⁵ It is critically important for any new school district that the Minimum School Program is provided, regardless of the taxable property in the district. However, any additional funding must be generated through property taxes—not a viable option on Indian reservations—or other state or federal funding.²⁶

While dividing the county was being considered, San Juan School District was receiving significant amounts of state and federal funds, as Table 2 shows, \$2,493 more per student than other districts in the state. The distribution of

Table 2
Sources of Funding per Pupil in Average Daily Attendance for San Juan and All Other Utah School Districts, 1993–94 School Year

Revenue source	San Juan	All other
Total revenue	\$6,633	\$4,140
Total local revenue	\$1,966	\$1,632
Property tax		
MSP ^a	\$779	\$687
Other	\$687	\$483
Tuition and fees	\$56	\$228
Other	\$443	\$234
Total state uniform schools funds	\$2,774	\$2,233
MSP ^a	\$2,559	\$2,164
Other	\$214	\$69
Federal government funds	\$1,893	\$275

(Source: Calculated from data in Utah Foundation, *Statistical Review of Government in Utah* [Salt Lake City: Utah Foundation, 1995], Tables 60, 63.)

^aMinimum State Program

these funds depends on complex formulas based on the district's resources and its student population. In sum, the division of a county along a reservation boundary would create complex and unpredictable effects on school districts.

Law Enforcement

Disagreements over schools and funding were not the only difficulties that confronted residents of San Juan County. Law enforcement jurisdiction raises other important issues and conflicts between the county and tribal members. Many of the disputes reflect jurisdictional and, potentially, liability issues that can overwhelm law enforcement officials.

In San Juan County, as in much of Indian Country, intergovernmental conflicts over law enforcement arise because of overlapping and inconsistent jurisdictions. There is considerable confusion about which government agency is responsible for law enforcement. The nature of the infraction, whether the parties are Indian or non-Indian, and the specific location of an incident can all affect which police agency has jurisdiction. Disagreements occur about how particular incidents are handled, and the public sometimes does not know which agency to contact for assistance.

The county sheriff, Navajo Tribal Police, the Utah Highway Patrol, and various federal agencies (such as the FBI, BLM, and National Park Service) all have law enforcement jurisdiction in San Juan County. The most serious conflicts arise over jurisdiction on the Navajo Reservation. Table 3 illustrates the boundaries of criminal jurisdiction on and near the reservation.

These confusing jurisdictions can be frustrating for both law enforcement and county residents. Navajos living on the reservation in San Juan County are Utah citizens and residents of the county. Discussions during BRC meetings

Table 3
General Criminal Jurisdiction on the Navajo Reservation

Crime by/against	Jurisdiction
Indian/Indian	Federal or tribal
Indian/Non-Indian	Federal or tribal
Indian/Victimless	Tribal
Non-Indian/Indian	Federal
Non-Indian/Non-Indian	State/County
Non-Indian/Victimless	State/County

(Source: Adapted from William C. Canby Jr., *American Indian Law in a Nutshell*, 2nd ed. [St. Paul, MN: West Publishing, 1988].)

revealed that a major criticism of reservation residents was the slow response time by law enforcement personnel. Further, committee members and others complained that dispatchers complicated emergency calls by asking the caller if the victim is on the reservation and if he or she is Indian. For people who need emergency assistance, these questions seem irrelevant, and it appears to them that the law enforcement agency they called—be it the sheriff's office or the tribal police—is trying to avoid responsibility. Callers see themselves as county residents as well as tribal members and just want a quick response to their problem. On the other hand, law enforcement agencies must operate within the boundaries of their jurisdiction.

In addition to serving San Juan County residents, law enforcement agencies must police thousands of tourists who visit the county each year. Most of them are non-Indian, but many of them visit sites on the reservation, such as Hovenweep National Monument and Monument Valley. This increases the workload of the tribal police and the county sheriff.

San Juan County's law enforcement problems received national attention in the summer of 1998, as law enforcement agencies in San Juan County undertook a large-scale search for three fugitives wanted for allegedly killing a police officer in Colorado and then wounding a San Juan County deputy as they fled. In addition to the San Juan County sheriff and the Navajo Tribal Police, officers from elsewhere in Utah, Colorado, Arizona, and New Mexico and numerous federal agencies joined in the search. When the search focused around Montezuma Creek (on the reservation), the Navajo Tribal Police asserted that they should be the lead agency, while the sheriff asserted his jurisdiction, since the fugitives were non-Indian.²⁷ Jurisdictional problems were further complicated when the sheriff's office and the Navajo police opted to use unconventional means to "smoke" the fugitives out of hiding.²⁸ When the suspects were not initially located, the search force was disbanded, and the tribal police had to continue the search on their own.

A few solutions to jurisdictional problems have proven effective in some areas. One is to contract law enforcement responsibility either to the tribal police or to the county sheriff's office. This, however, was unlikely in San Juan County given the political climate; neither the county nor the Navajo Nation wanted to give up any authority. Another possibility is to extend cooperation through interagency agreements. The Navajo Nation spans three states and six different counties. Each of these jurisdictions has, to a degree, law enforcement responsibility on the reservation, with the Navajo Department of Public Safety having primary responsibility.

When division of the county was being studied, state and county personnel had already made some progress on cooperating with law enforcement. Each of the relevant states and counties, including San Juan County, had a formal written agreement with the Navajo Nation. The agreement between the county and the nation provided for county deputies to be cross-commissioned as Navajo tribal officers after being trained in Navajo culture and law. The cross-commission allows deputies to arrest or cite Navajos on the reservation for traffic offenses and misdemeanors. These cases are heard in tribal court. San Juan County had a deputy assigned to a federal task force that was responsible

for investigating felony crimes on the reservation and a resident deputy on the reservation. Although this arrangement improved coordination, it did not work perfectly—as indicated by the disagreement over jurisdiction that emerged during the 1998 fugitive search. Neither the county nor the tribe fully implemented its provisions, beyond cross-certifying officers. The county was concerned with liability issues that might arise on the reservation because the tribe indemnifies its own officers but not those of assisting agencies.²⁹ The nation's Department of Public Safety retained primary responsibility for law enforcement on the reservation, and the sheriff's office assisted when requested. In instances when the county arrived first, its officers waited for a tribal officer to arrive—sometimes from distant parts of the reservation. When the BRC met, four Navajo public safety officers lived in the Utah portion of the reservation; three more lived somewhat nearby in Teec Nos Pos, Arizona. Those seven officers and the resident county deputy patrolled the 1.2 million acres (housing 5,800 residents) of the Utah portion of the Navajo Reservation. National law enforcement standards recommend having two to two and one-half officers for every thousand people. By these standards, twelve to fourteen officers should patrol and work on the reservation in Utah alone. Counting both tribal police and the county deputy, the reservation portion of San Juan County had only eight law enforcement personnel.

Although reservation residents attending BRC meetings tended to prefer that the closest officer respond to their calls regardless of jurisdiction, the county and the nation were never able to resolve all their problems and develop a fully cooperative response. Dividing San Juan County might have relieved some jurisdictional issues but not all. The northern area of the county would have included the White Mesa Ute community, which is administratively part of the Ute Mountain Ute tribe in Colorado. Although its relatively small population and geographical area make law enforcement more manageable, they present yet another jurisdictional complication.

The Utah constitution requires all counties to have a sheriff. If a new all-reservation county was created, the Navajo Tribal Police would have important law enforcement responsibilities throughout the county, but because of growing tourism, the county government would be responsible for law enforcement involving crimes of non-Indians against non-Indians, or non-Indians involved in victimless crimes—the same responsibilities San Juan County currently has on the reservation. Some of these law enforcement duties might be contracted to the tribe (or the tribe could contract duties to the county), but this could have been done in the existent county. The reservation county might more easily reach agreements with the Navajo Tribal Police, but the position of elected sheriff cannot be “contracted out.”

In sum, county residents had already made some progress on law enforcement issues by the time of the county division study. However, it was not at all clear if dividing the county would alleviate, or simply exacerbate, existing problems.

Health Services

San Juan County faces health service difficulties that are similar to those of other rural communities. Its low population density (1.7 residents per square mile), long distances to major population centers, and difficulty in developing local services are problems shared with other rural counties. In San Juan County there were additional questions about who should bear responsibility for health-care delivery, particularly for residents of the Navajo Reservation and White Mesa Ute Community. Because the county is especially remote from major population centers (250 miles from Salt Lake City), primary care must be made available locally, but the county's small population complicates delivery and imposes a significant burden on local taxpayers.

At the time of the division study Monticello and Blanding, the county's two incorporated communities, had populations of 1,806 and 3,126 respectively.³⁰ Other communities in the county are even smaller. Thus, when the county (with total population of 13,535) is classified as a low-density "frontier" county, it is not because most people cluster in the county seat but rather because most people are dispersed throughout the county.

Three public entities were responsible for health services within the county. First, the county is part of the Southeast Utah Health District, consisting of a four-county area and headquartered in Price, Utah, 150 miles to the north. It provided some essential services, including communicable disease control, prenatal care, and family planning services.

Countywide there is a separate health-care service district, created by the San Juan County Commission and governed by a six-member board appointed by the commissioners. It operated a hospital, a birthing center, and ambulance services in various communities. Its revenues derived from property taxes, service fees, and federal grants. The San Juan County Hospital is in Monticello, and clinic facilities were in Blanding, Montezuma Creek, and Monument Valley (the latter two on the reservation). There had been a second hospital at Monument Valley, operated by Adventist Health Systems. It closed during the time that the BRC was meeting and was replaced by the county-operated clinic housed in a portion of the abandoned hospital after the Navajo Area Indian Health Service (IHS) declined to take over the facility or to operate it as a clinic.

The IHS is the primary care provider for members of the Navajo Nation residing in Utah. Its centers and hospitals are located in Arizona and New Mexico (the principal ones serving Utah are at Shiprock, New Mexico, and Kayenta and Tuba City, Arizona—each of which are about sixty miles from the Utah portion of the reservation). IHS contracts with San Juan County Health Services for some care, especially for emergency services.

In 1993, the Utah Task Force on Rural Health Policy Development assessed the state of health care in Utah's frontier counties and noted that as a group they reported higher than average infant mortality, more deaths due to accidents, and higher rates of chronic disease; in addition, residents were less likely to be covered by health insurance than their urban counterparts. Even compared to the more rural counties, San Juan County stood out for its

excessively high infant mortality rate. It shares with some other Utah frontier counties difficulties presented by mountain roads, impassable canyons (in some cases, no roads lead directly to the site of health care), and inclement weather that can make travel difficult. The report noted, "San Juan County is geographically remote, medically underserved, and has a large American Indian population that receives inadequate preventive and/or primary care."³¹

For many years the San Juan County Health Services District struggled to deliver even minimal care to meet residents' needs, but it had difficulty retaining both professional administrative and medical personnel. During the county division study, it faced a legal challenge that set it apart from most other providers. The director of the Montezuma Creek Clinic—an employee of the district for eighteen years—was dismissed on charges that were disputed. She (and two other terminated employees) filed suit against the Health Services District in the Navajo Nation District Court, seeking reinstatement to their positions with back pay and damage awards. The Health Services District maintained that the Navajo court lacked jurisdiction, especially because the clinic—although within the reservation boundary—is located on school trust land that belongs to the state of Utah. Nevertheless, the Navajo court accepted jurisdiction and temporarily returned the director to her position. This order was later withdrawn.³² A Navajo judge ruled in favor of the plaintiffs and ordered them reinstated with back pay and legal fees. Several months later, a US district judge dismissed most of the suit and found that the Navajo courts lacked jurisdiction over Utah and its political subdivisions.³³ Two years later, the Tenth Circuit Court of Appeals in Denver vacated the district court's dismissal against San Juan County and the Health Services District and remanded the case back to the district court so the judge could take further precedents into account.³⁴ Utah subsequently sold the clinic to the Navajo Nation.³⁵

It was not clear what impact a county division would have had on this complicated health service situation. As the BRC met, negotiations were underway to keep the Adventist Hospital at Monument Valley open and to obtain a privately financed hospital in Blanding. Both of these efforts ultimately failed. If the county had been divided, decisions would need to be made about the future of the present Health Care District.³⁶ If the district continued in its extant form, its board would have to represent both new counties. If it were divided into two health districts, separate facilities, including perhaps a hospital in the new south county, would be needed for each county—with a population of fewer than six thousand people in each. Providing health services to either San Juan County, or two new counties, presents tremendous challenges.

DECIDING NOT TO DECIDE

San Juan County's BRC met six times over a seven-month period, identified problems and issues facing the county, and considered how and where the county might be divided. Most importantly, the committee, assisted by university facilitators, considered arguments for and against division; they had to

assess both the costs and benefits of an unprecedented and untried solution to a complex set of problems. They reviewed financial implications for the proposed new counties, using data supplied by the facilitators. The data suggested that a county located all or mostly on the Navajo Reservation would face considerable fiscal challenges.

Even if the committee came out in favor of division, the process was daunting. Utah's procedure for dividing a county requires that a petition be signed by one-fourth of the qualified electors residing in the proposed new county and one-fourth of the qualified electors residing in the remaining portion of the county. Ultimately, to accomplish the division, the proposal would require approval by referendum vote in both the proposed new county and the remainder of the extant county.

In the BRC meetings, which often became heated, participants struggled with issues about alleged service inequities, uneven tax distribution, and unbalanced representation on various governing bodies. When it was time for the committee to make a recommendation on whether to divide the county, the opinion of the three San Juan County commissioners became an important part of the deliberation. In the end, the BRC took no vote on dividing San Juan County. It concluded its meetings with the understanding that any further action to divide the county, for example the circulation of the requisite petitions, would have to be initiated by others or by individual committee members.

CONCLUSION

Indian tribal participation in state and local government is not a trivial matter. The body of law collectively known as Indian law overlays American federalism in a complex and convoluted way:

No area of federal law is more complicated or requires more expertise than federal Indian law. Hundreds of treaties, thousands of statutes, and hundreds of thousands of administrative rulings and actions are involved in federal Indian law. Over six hundred separate Indian communities are dependent in some manner on the vagaries of interpretation of federal Indian laws, and literally billions of dollars and the lives of over a million people are at stake in Indian cases.³⁷

Public policy has evolved to allow Indians slowly to increase control over their own destiny. As Thomas McGuire states, "modern legislative and judicial actions have quite consistently fostered tribal sovereignty. . . ." ³⁸ This has occurred despite repeated attempts by states to gain control over reservation lands and resources. Jurisdictional conflicts continue to surface, as:

local governments have sought to enforce local ordinances over Indian trust lands through the exercise of police powers, especially taxation and zoning, and to abridge or deny suffrage to reservation

Indians by dint of the fact that these Indians do not pay taxes to local jurisdictions. While federal preemption (nearly exclusive jurisdiction) prevails so that tribes as well as individual Indians normally remain immune to state and local taxation, non-Indian land use and some forms of development destined for non-Indian land consumption may well be subjected to the state and local jurisdictions. Less apparent are the implications of the Indian's right to vote in various local elections.³⁹

As the San Juan County case study makes clear, issues facing western rural regions are profoundly difficult and complex. Budgetary constraints at all levels of government and the concomitant devolution of federal programs make a resolution of these conflicts even more imperative.

Few local communities consider splitting local jurisdictions and creating an all-reservation county—but San Juan County's action is not without precedent.⁴⁰ Perhaps, though, there may be other settings where jurisdictional division will bring community members together to discuss critical issues and possibly negotiate a successful split. The Blue Ribbon Committee is an example of a novel approach to negotiated problem solving. The decision-making process designed by the San Juan County commissioners displayed some, but not all, of the attributes identified in Table 1. The process described in this paper demonstrated a desire on the part of county commissioners to create a partnership via the BRC that reflected the various autonomous interests in the dispute. It was definitely an interactive process, with multiple opportunities for input and feedback and an emphasis on consensus building. Furthermore, the BRC was a typical example of an ad-hoc structure. The all-or-nothing nature of the issue, however, placed limits on negotiations. Other than suggesting two, rather than one, possible boundary lines, there was little opportunity for incremental problem solving or bargaining. And the territorial nature of the dispute created a zero-sum situation where one county would lose any land gained by the other county. Such a situation does not lend itself easily to negotiated settlements that are perceived as a win-win solution by all parties.

Much of the impetus for splitting the county was to find an alternative to further litigation. Historically, the county (and other local entities) had approached Indian people and the Navajo Nation as a problem to confront. Previous difficulties in the county led to courtroom struggles. In this case the county commissioners searched for a new way to solve old problems, perhaps by splitting the county. Although committee members were brought together to discuss the pros and cons of dividing the county, much of the committee's discussion concerned how to improve service delivery in a complex intergovernmental setting.

The experience of the BRC offers some important lessons. In any jurisdictional conflict, the focus should be on recognizing differences, face-to-face discussions, and negotiated resolutions rather than focusing on division—both literal and figurative. Because participants directly confronted difficult issues, and recognized that all parties could potentially benefit or lose, there was a possibility of reaching a consensus. Dividing the county did not prove

feasible, but the frank discussions regarding seemingly intractable issues may have long-term benefits for the county and all of its residents.

Perhaps the best lesson that can be drawn from this case study is that each dilemma must be addressed by a unique combination of conflict-reducing strategies. Difficult problems do not lend themselves to easy solutions no matter what strategy is adopted.⁴¹ The challenge is to design a unique and realistic response to each conflict to arrive at a solution, or at least ameliorate current conditions. A test for San Juan County will be whether the process that began in the BRC can continue as the county moves forward to address other issues.

NOTES

1. A voluminous literature on state-tribal relations exists. See, for example, Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton, 2005); David Wilkins, *American Politics and the American Political System* (Lanham, MD: Rowman and Littlefield, 2001); David Wilkins, *American Indian Sovereignty and the U.S. Supreme Court* (Austin: University of Texas Press, 1997); Vine Deloria and David Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 2000).

2. United States Department of Interior, Bureau of Indian Affairs, "Bureau of Indian Affairs," <http://www.doi.gov/bureau-indian-affairs.html> (accessed 3 December 2004).

3. Norman Reid and Robert Lovan, "Reinventing Rural America: The New Governance" (paper presented at the annual conference of the American Planning Association, Chicago, 4 May 1993); Beryl Radin, Robert Agranoff, Ann Bowan, Gregory Buntz, J. Steven Ott, Barbara Romzek, and Robert Wilson, *New Governance from Rural America* (Lawrence, KS: University Press of Kansas, 1996); William Dodge, "The Emergence of Intercommunity Partnerships in the 1980s," *National Civic Review* 78 (1989): 5–14; R. C. Ginnett, "Effectiveness Begins Early: The Leadership Role in the Formation of Intraorganizational Task Groups" (unpublished paper, 1992); Barbara Gray and Don Wood, "Collaborative Alliances: Moving from Practice to Theory," *Journal of Applied Behavioral Science* 27 (1991): 3–22.

4. For example, see Northwest Power and Conservation Council, "Northwest Power and Conservation Council," <http://www.nwppc.org/> (accessed 19 March 2005); National Criminal Justice Association, "NCJA Projects," http://www.ncja.org/ncja_projects.html#partnerships (accessed 27 September 2004).

5. There is an enormous literature on alternative dispute resolution (ADR). In regard to Indian and non-Indian conflicts, see W. Dale Mason, "A New Era in Intergovernmental Affairs," *Publius: The Journal of Federalism* 28 (1998): 111–30; Daniel C. McCool, *Native Waters: Contemporary Negotiated Indian Water Rights and the Second Treaty Era* (Tucson: University of Arizona Press, 2002); Judy Zelio, ed., *Promoting Effective State-Tribal Relations* (Denver: National Conference of State Legislatures, 1990).

6. Charles Wilkinson, *American Indians, Time, and the Law* (New Haven: Yale University Press, 1987).

7. Jack L. Landau, "Empty Victories: Indian Treaty Fishing Rights in the Pacific Northwest," *Environmental Law* 10 (1980): 413–56; Ann McCullough, "Indian Tribal

Taxation: A Cornerstone of Sovereignty,” in *Native Americans and Public Policy*, ed. Fremont J. Lyden and Lyman H. Legters, 165–89 (Pittsburgh: University of Pittsburgh Press, 1992); Donna Deyhle and Karen Swisher, “Research in American Indian and Alaska Native Education,” *Review of Research in Education* 22 (1997): 113–94; Jessica S. Gerrard, “Undermining Tribal Land Use Regulatory Authority: *Brendale v. Confederated Tribes*,” *University of Puget Sound Law Review* 13 (1990): 349–75; Daniel C. McCool, *Command of the Waters*, rev. ed. (Tucson: University of Arizona Press, 1994); McCool, *Native Waters*.

8. For more information about the process and final report, see Center for Public Policy and Administration, *San Juan County Division Study: A Report to the Blue Ribbon Committee of San Juan County, Utah* (Salt Lake City: University of Utah, Center for Public Policy and Administration, 1997).

9. The three commissioners who initiated the county division study have since retired from county office.

10. United States Census Bureau, “Utah QuickFacts,” <http://quickfacts.census.gov/qfd/states/49/49037.html> (accessed 27 September 2004).

11. *Ibid.*

12. The authors of this article served on that team.

13. A similar effort had been attempted, unsuccessfully, across the border in Arizona. See Glenn A. Phelps, “Mr. Gerry Goes to Arizona: Electoral Geography and Voting Rights in Navajo Country,” *American Indian Culture and Research Journal* 15 (1991): 63–92.

14. Teresa L. McCarty, “Bilingual Education Policy and the Empowerment of American Indian Communities,” *Journal of Educational Issues and Language Minority Students* 14 (1994): 23–40.

15. The Johnson-O’Malley Act of 1934; the inclusion of Indian reservations as federally impacted areas, beginning in 1953; and Title V of the Indian Education Act of 1972.

16. United States–Navajo Treaty of 1868.

17. Robert Wells Jr., “Transforming Native American Education: The Long Road from Acculturation to Cultural Self-Determination,” in *Native American Resurgence and Renewal*, ed. Robert Wells Jr. (Metuchen, NJ: Scarecrow Press, 1994), 86–95.

18. Deyhle and Swisher, “Research in American Indian.”

19. *Meyers et al. v. Board of Education of the San Juan School District*, 905 F. Supp. 1544 (D. Utah 1995).

20. *Sinajini et al. v. Board of Education of the San Juan School District*, 964 F. Supp. 319 (D. Utah 1997).

21. *Chee v. Board of Education of the San Juan School District*, Civil no. 2:94-CV-0386 (1994).

22. *Sinajini et al. v. Board of Education of the San Juan School District*, 964 F. Supp. 319 (D. Utah 1997).

23. Both the Utah Attorney General’s Office and the Navajo Nation Legislative Counsel’s Office agreed that the school district would split with the division of the county. However, new legislation would be required to divide the assets and liabilities of the school district. See Center for Public Policy and Administration, *San Juan County Division Study*, A4-A6, A46-A48. With twenty-nine counties, the state has forty school districts, some countywide (as in the San Juan District), some covering lesser areas.

24. Minimum School Program Act (Utah, 2000), *Utah Code Annotated* 53A-17a-102.

25. For a description of Utah's public school finance policies, see Utah Foundation, "Utah's Public School Finances, 1993-94," Research Report 580 (Salt Lake City: Utah Foundation, 1995).

26. There is very little private property on Indian reservations, so property taxes are not a viable source of revenue.

27. Since the suspects were non-Indian and the victims were non-Indian, the county sheriff asserted jurisdiction in this case or at least shared jurisdiction with the FBI.

28. Some federal agencies disagreed with the San Juan County sheriff's unconventional decision to attempt to burn brush on the sides of the San Juan River to clear underbrush and make it easier to find the suspects. The BLM and Forest Service were apprehensive about using a controlled burn without the authorization of the FBI. The FBI, however, was worried that burning the river bottom might look like an assault and could set off a public relations nightmare, a "Waco on the river." See Fritz Thompson, "Officials to Use Fire in Search," *Albuquerque Journal*, 2 July 1998; Jennifer Dobner, "Manhunt Yields No Men, but Fires Clear Out Brush," *Deseret News*, 3 July 1998.

29. Liability issues are also a major concern for sheriff's departments in Arizona and New Mexico.

30. Estimated populations of Monticello and Blanding in 1995, taken from US Census estimates.

31. Utah Task Force on Rural Health Policy Development, *Utah's Vision for Rural Health Care: A Framework for Action* (Salt Lake City: Utah Department of Health, 1993).

32. Lois M. Collins and Zack Van Ecyk, "Judge Bans Officials from San Juan Clinic," *Deseret News*, 5 May 1999; Shawn Foster, "County Takes Issue with Navajo Court Order," *Salt Lake Tribune*, 28 April 1999; *San Juan Record*, 21 April 1999; *San Juan Record*, 19 May 1999.

33. Shawn Foster, "Navajo Tribal Court Has No Sovereignty Over San Juan Health Clinic, Fed Judge Rules," *Salt Lake Tribune*, 4 November 2000; *MacArthur et al. v. San Juan County et al.*, 309 F.3d 1216 (2002), Case No. 2:00CV584K, (2000).

34. *Ibid.*

35. Foster, "Navajo Tribal Court."

36. Utah law calls for any road, school, or election district to be disorganized and reorganized by the new boards (*Utah Code Annotated*, 17-3-6).

37. Vine Deloria Jr., and Clifford M. Lytle, *Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon, 1984).

38. Thomas McGuire, "Federal Indian Policy: A Framework for Evaluation," in *Native American Resurgence and Renewal*, ed. Robert Wells Jr. (Metuchen, NJ: Scarecrow Press, 1994), 9-46.

39. Imre Sutton, "Preface to Indian Country: Geography and Law," *American Indian Culture and Research Journal* 15 (1991): 19.

40. In 1982 the Arizona legislature passed a bill creating Dine County, a new county to be located entirely within the reservation lands. Governor Bruce Babbitt, who created a task force to study issues related to Arizona's northeastern counties, vetoed the bill. A few all-reservation counties exist in North Dakota, South Dakota, and Wisconsin. For the report that studied the northeastern counties, see Governor's Task Force on Northeastern Counties, *ASU's Final Report on Arizona's Northeastern Counties* (Tempe: Center for Public Affairs, Center for Urban Studies, Bureau of Business and Economic Research, Arizona State University, 1993).

