

# Cultural Understanding of Jurisdiction

Restoring Ancestral Winds, Inc.



“The criminal justice crisis that exists in Indian country today is a manifestation of a failure of law so extreme that it has actually caused reservation crime to flourish.”

- Angela Riley

# K'é Bil Nast'ii:

Family in Woven in It

- North –  
Home-place  
Holdilzin

Impacts our  
home-place

- East-  
Thoughts  
Bikehgo  
Daiinaanii

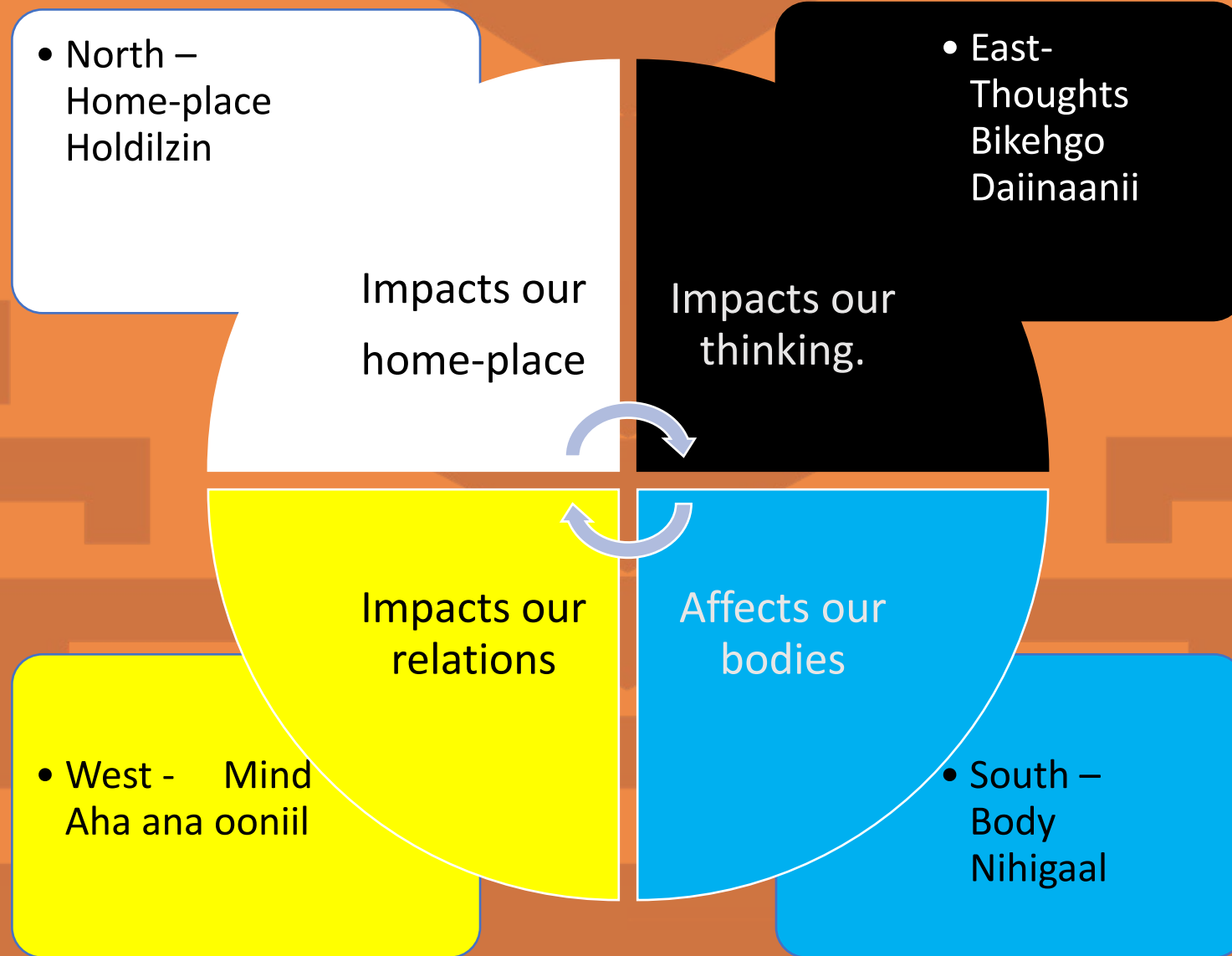
Impacts our  
thinking.

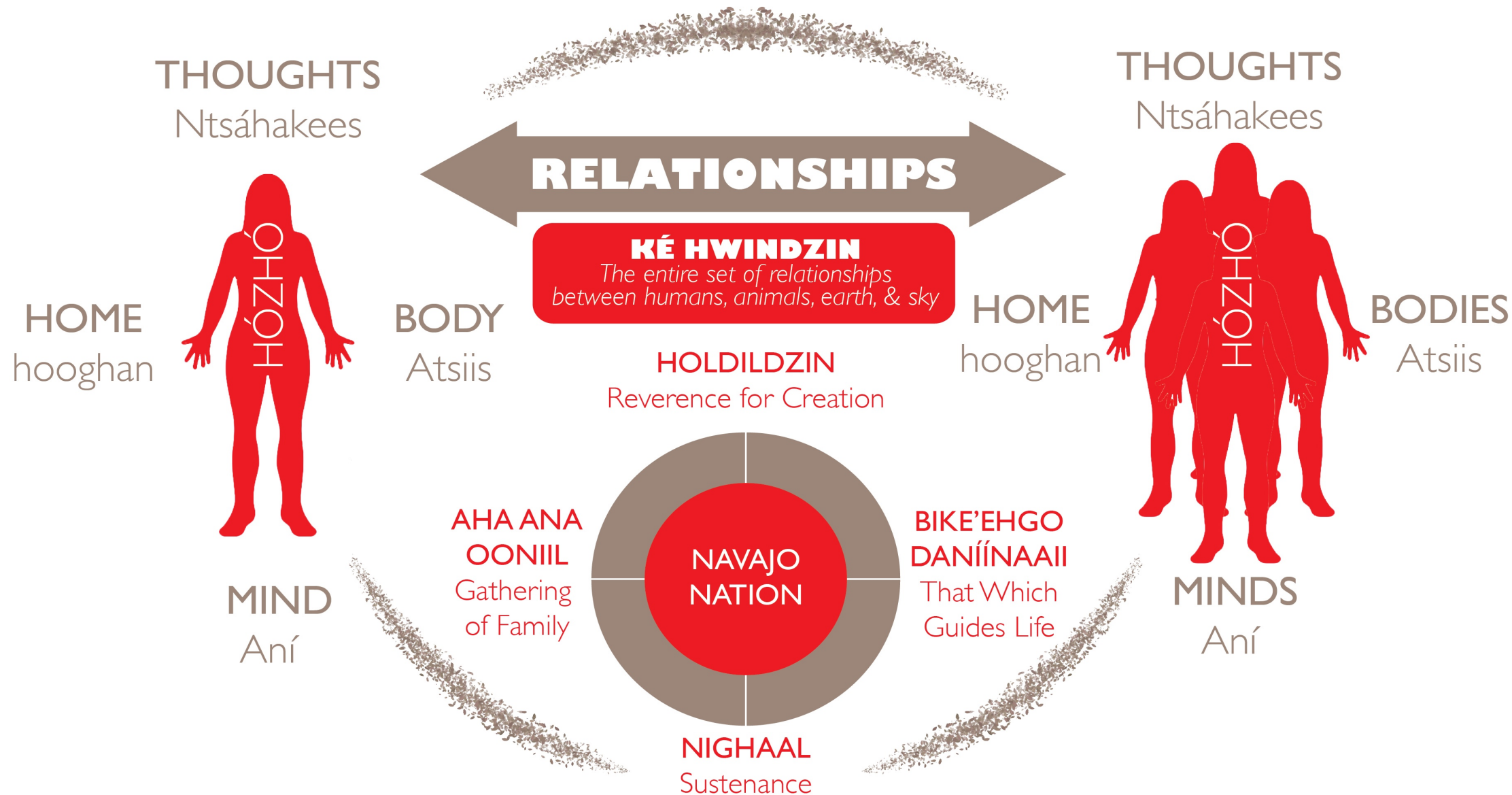
Impacts our  
relations

- West - Mind  
Aha ana ooniil

Affects our  
bodies

- South –  
Body  
Nihigaal





# Indigenous analysis of Jurisdiction

1. Do the conditions (the collection of statutes and court decisions) produce ethical and moral outcomes for all involved;
2. How the conditions affect the livelihood of the victim and perpetrator, as well as the livelihood of the community and nation;
3. How the conditions impact the relationships in the community or nation and with other governments;
4. How the conditions maintain the relationship to the land (Benally, 2008) (Wilson, 2009).

# Ethical and Moral Outcomes

Indigenous people understand crime as an imbalance or disruption in balanced relationality or the set of values that give direction to Indigenous ways of being (Cunneen, 2018).

The set of values often include the cultural norms and protocols, ways of healing, balanced relations with all people and the natural world.

These values inherently include safety for the individual, both presently and in the future. It includes healing for the perpetrator, as well.

Further it includes developing and maintaining good relations to ensure safety and protection for all relations. These values give direction to Indigenous communities. U.S. federal statute and case law inhibit the exercise of the Indigenous relational duties to protect and provide safety (Mantegani, 2021).

# Livelihood

- Being able to provide a livelihood, self-sufficiency, and sustenance for all within the scope of Indigenous relations is critically impacted by jurisdiction in Indian country.
- For example, the gray zones of jurisdiction are correlated with increased criminal behavior. Perpetrators physically, emotionally, and fatally harm their victims impacting them – in many cases – for years.
- The victim's ability to provide for themselves and their families can be deeply disrupted resulting in disharmony among relations. This also includes the ability of Tribal law enforcement and courts to fulfill their duties to maintain harmony within the nation.
- Consequently, widespread crime is linked with depressed economic conditions for Tribes, and therefore widespread impacts on the values of self-sufficiency.



# *Community and Family Relations*

Criminal behavior or violations of the duties of balanced relationality disrupts the set of relations at the individual, community, nation, federal levels. Two sets of relations are impacted;

- Direct family relations
- Tribal nation level or all inter-governmental relations.

This includes the set of agreements between Tribal nations and municipalities, counties, states, and the federal government.

Limited understanding of treaties and other law and cases that determine the corpus of federal Indian law and policy often negatively impacts the relationship between Tribal Nations and other governments. For example, Tribal protective orders are often questioned or worse ignored by non-Tribal law enforcement; Tribal protective orders ought to recognize by the full faith and credit clause in the 2013 re-authorization of Violence Against Women Act.

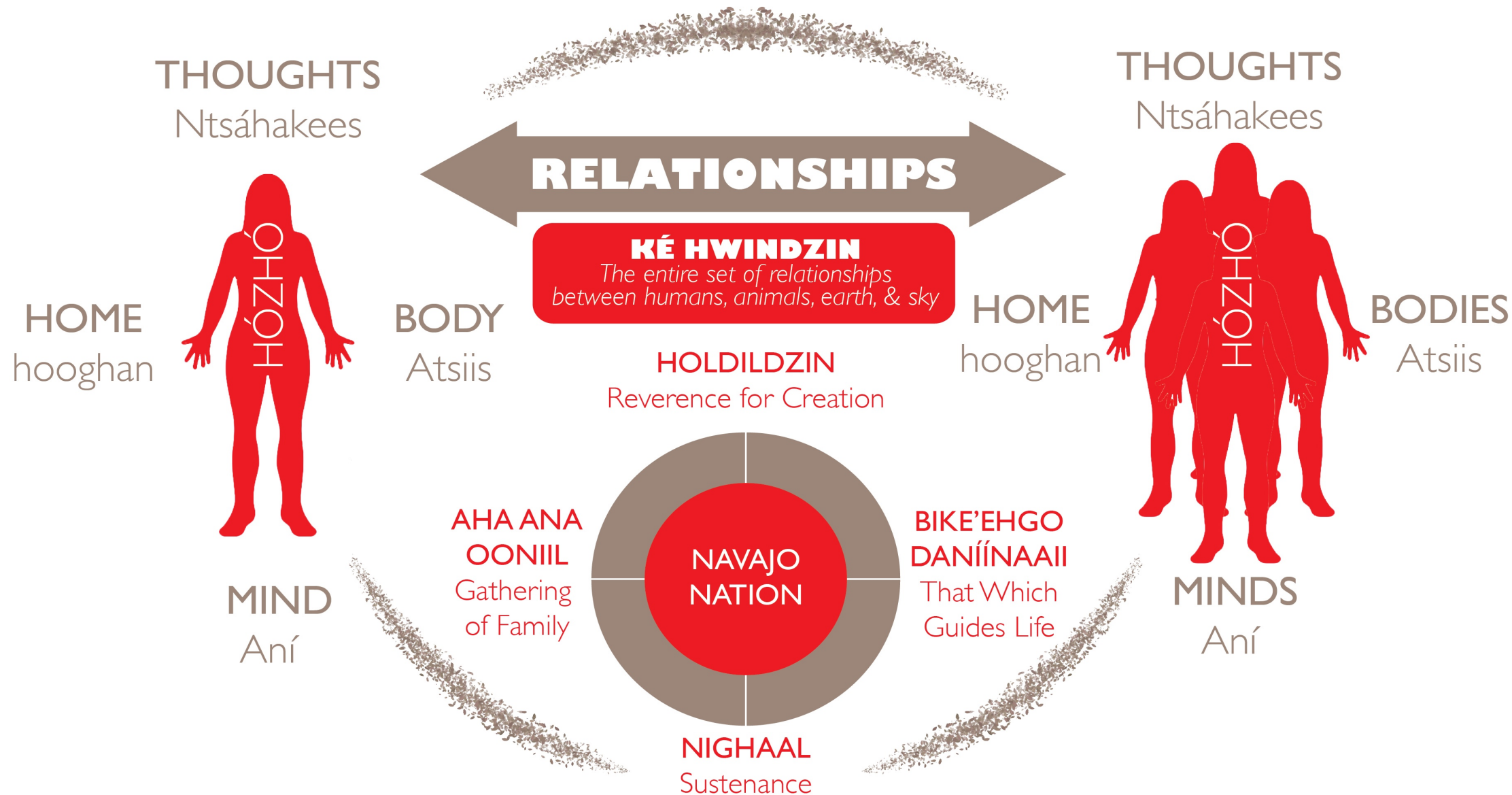
# *Land relations*

- Relationship to land is a critical component of balanced relations. Not only is land a source of life, it is also the part of the foundation of relations and duties.
- The relationship Tribes have with the U.S. is premised on land, on territory, or geography; Tribes, through their creation narratives and cultural values hold that their duties as stewards of the land is not just limited to “land” but to all those living on the land.
- The land stewardship duty is also to protect and keep safe those living on the land. The ability for Tribes to exercise their cultural duty is inhibited by the disaggregating criminal jurisdiction from land (or geography). In other words, Tribal Nations are legally bound not to exercise this specific cultural responsibility.

# Jurisdiction in Utah

- 4.5 percent of the land in Utah or 2.45 million acres is Tribal land.
- There are 8 federally recognized tribes in Utah, and the non-federally recognized Timpanogas Tribe, currently seeking federal recognition.
- In 1980, Congress passed the Paiute Restoration Act but conferred state and civil jurisdiction over the reservation.
- In 1987, the Northwestern Band of Shoshone Nation was federally recognized, they fall under the criminal jurisdiction of the states of Idaho and Utah because the land they own is not held trust by the federal government.

- In 1989, the San Juan Southern Paiute Tribe was federally recognized; the Tribal members live in the Navajo Nation and other areas in southern Utah, as a result, because they do not have a specific land-base, they fall under the jurisdiction of the Navajo Nation, Hopi Tribe, White Mesa Community, and San Juan County.
- The White Mesa Community, Confederated Tribes of the Goshute, Skull Valley Goshute, Ute Indian Tribe, and the Navajo Nation each fall under federal, not state, jurisdiction for crimes committed on reservation land.
  - Highways passing through reservation land is state jurisdiction, not Tribal criminal jurisdiction. Major crimes committed on fee-simple land surrounded by Tribal lands, depending on the race or ethnicity status of the perpetrator and victim, may fall under federal or state criminal jurisdiction. These tribes do not enjoy exclusive or concurrent criminal jurisdiction over major crimes regardless of racial or ethnic status of the perpetrator or victim.



# Summary

- The tension between values and legality is evident when working with Tribes.
- Tribal communities have a duty to care for ALL people on their land, this is limited.
- Tribal communities and individuals tend to assume what is legal is also moral.
- Understanding these ways of being can significantly impact how we navigate jurisdiction.

# Questions



# Thank you

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