NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HAGEN *v.* UTAH

CERTIORARI TO THE SUPREME COURT OF UTAH

No. 92–6281. Argued November 2, 1993—Decided February 23, 1994

Petitioner, an Indian, was charged in Utah state court with distribution of a controlled substance in the town of Myton, which lies within the original boundaries of the Uintah Indian Reservation on land that was opened to non-Indian settlement in 1905. The trial court rejected petitioner's claim that it lacked jurisdiction over him because he was an Indian and the crime had been committed in ``Indian country,'' see 18 U. S. C. §1151, such that federal jurisdiction was exclusive. The state appellate court, relying on *Ute Indian Tribe* v. *State of Utah,* 773 F. 2d 1087 (CA10), cert. denied, 479 U. S. 994, agreed with petitioner's contentions and vacated his conviction. The Utah Supreme Court reversed and reinstated the conviction, ruling that Congress had ``diminished'' the Reservation by opening it to non-Indians, that Myton was outside its boundaries, and thus that petitioner's offense was subject to state criminal jurisdiction. See *Solem* v. *Bartlett,* 465 U. S. 463, 467 (``States have jurisdiction over . . . opened lands if the applicable surplus land Act freed that land of its reservation status and thereby diminished the reservation boundaries'').

Held: Because the Uintah Reservation has been diminished by Congress, the town of Myton is not in Indian country and the Utah courts properly exercised criminal jurisdiction over petitioner. Pp. 9–22.

(a) This Court declines to consider whether the State of Utah, which was a party to the Tenth Circuit proceedings in *Ute Indian Tribe,* should be collaterally estopped from relitigating the Reservation boundaries. That argument is not properly before the Court because it was not presented in the petition for a writ of certiorari and was expressly disavowed by petitioner in his response to an *amicus* brief. Pp. 9–10.

(b) Under this Court's traditional approach, as set forth in

Solem v. *Bartlett, supra,* and other cases, whether any given surplus land Act diminished a reservation depends on all the circumstances, including (1) the statutory language used to open the Indian lands, (2) the contemporaneous understanding of the particular Act, and (3) the identity of the persons who actually moved onto the opened lands. As to the first, the most probative, of these factors, the statutory language must establish an express congressional purpose to diminish, but no particular form of words is prerequisite to a finding of diminishment. Moreover, although the provision of a sum certain payment to the Indians, when coupled with a statutory expression of intent, can certainly provide additional evidence of diminishment, the lack of such a provision does not lead to the contrary conclusion. Throughout the diminishment inquiry, ambiguities are resolved in favor of the Indians, and diminishment will not lightly be found. Pp. 10–12.

(c) The operative language of the Act of May 27, 1902, ch. 888, 32 Stat. 263—which provided for allotments of some Uintah Reservation land to Indians, and that ``all the unallotted lands within said reservation shall be *restored to the public domain*'' (emphasis added)—evidences a congressional purpose to terminate reservation status. See, *e.g., Seymour* v. *Superintendent,* 368 U. S. 351, 354–355. *Solem, supra,* at 472–476, distinguished. Contrary to petitioner's argument, this baseline intent to diminish was not changed by the Act of March 3, 1905, ch. 1479, 33 Stat. 1069. Language in that statute demonstrates that Congress clearly viewed the 1902 Act as the basic legislation upon which the 1905 Act and intervening statutes were built. Furthermore, the structure of the statutes—which contain complementary, nonduplicative essential provisions—requires that the 1905 and 1902 Acts be read together. Finally, the general rule that repeals by implication are disfavored is especially strong here, because the 1905 Act *expressly* repealed a provision in the intervening statute passed in 1903; if Congress had meant to repeal any part of any other previous statute, it could easily have done so. Pp. 12–17.

(d) The historical evidence—including letters and other statements by Interior Department officials, congressional bills and statements by Members of Congress, and the text of the 1905 Presidential Proclamation that actually opened the Uintah Reservation to settlement—clearly indicates the contemporaneous understanding that the Reservation would be diminished by the opening of the unallotted lands. This conclusion is not altered by inconsistent references to the Reservation in both the past and present tenses in the post-1905 legislative record. These must be viewed merely as passing references in text, not deliberate conclusions about the congressional intent in 1905. Pp. 17–21.

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(e) Practical acknowledgment that the Reservation was diminished is demonstrated by the current population situation in the Uintah Valley, which is approximately 85 percent non-Indian in the opened lands and 93 percent non-Indian in the area's largest city; by the fact that the seat of local tribal government is on Indian trust lands, not opened lands; and by the State of Utah's assumption of jurisdiction over the opened lands from 1905 until the Tenth Circuit decided *Ute Indian Tribe.* A contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area. Pp. 21–22.

858 P. 2d 925, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, SCALIA, KENNEDY, THOMAS, and GINSBURG, JJ., joined. BLACKMUN, J., filed a dissenting opinion, in which SOUTER, J., joined.