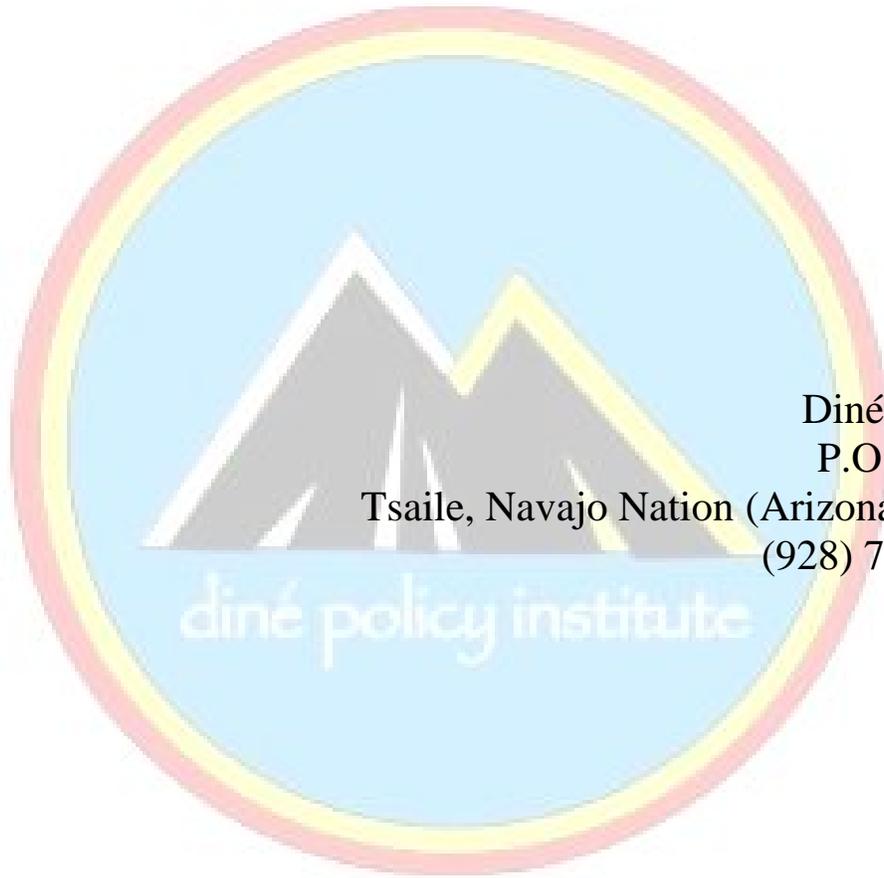

Navajo Nation Government Reform Project

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Prepared for
The Office of the Speaker of the Navajo Nation

INTRODUCTION

In July of 2007 the Speaker of the Navajo Nation Council, Lawrence Morgan, gave the Diné Policy Institute a task to research aspects of our current form of government and make recommendations for government reform based on our findings. This is an interim draft that highlights some of our findings.

The goal of this report is to construct a model for an alternative government for the Navajo Nation. This model must consider reforms from the past and address current dilemmas that confront the Navajo Nation government and people. The outcome of this research will help to formulate new models of Navajo governance. Our approach is one of cultural appropriateness.

The design and work plan of this research is broken into five sections that follow succinctly into one after the other. The first three sections, *Historical Overview*, *Contemporary Overview*, and *Other Government Structures*, will serve as the foundational piece to set up the final sections: *the Model Government* and *Implementation*. For the purpose of this draft report, we are including the following: *Historical Overview*, *Decision Making Process* and are recommendations for a *Model Government*.

To summarize, the *Historical Overview* will discuss early reforms and produce a report outlining the causes and effects of these reforms. The report will also contain a graphic modeling of each government structure from one major reform to the next.

In the *Contemporary Overview*, the goal is to highlight major current challenges of the existing government structure. The report will contain a model of the current government and pinpoint sections of major shortcomings.

In the section on *Other Government Structures*, this area will highlight explorations of other governments. This section will offer suggestions of ways the alternative government can manage current obstacles.

Forth, in the *Model Government* section, the report will highlight the final product(s). Several suggested final models of alternative government will offer a new direction of the Navajo Nation government. Each of these new models will incorporate the evolution of the Navajo government in lieu of its strengths and shortcomings. Ultimately, this new model government will be built on an intelligent and thoughtful design from all aspects of the historical overview, contemporary overview and other government structures.

The final section will deal with the issue of *Implementation*. This section will discuss the challenges of implementing a new model government and the costs and benefits of such an undertaking. It will also discuss previous reform efforts on the Navajo Nation that were successful in garnering tribal support.

Historical Analysis

The making of the modern
Navajo Nation government

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The Navajo Political Self-Identity

A historical overview of Navajo governance

By James C. Singer

The purpose of this section of the report is to examine the current state of the Navajo government, the implementation of “traditional” Navajo principles, and consider the effects of Western political thought on the modern Navajo Nation government. We analyze the evolution and interpretation of the Navajo political self-identity from 1868 to present-day.

This section attempts to create connections between traditional principles of government and its current condition today. The current government of the Navajo Nation is heavily influenced from the US political experience. These influences must be recognized in order to better implement traditional principles into Navajo governance. We will examine the founding theories of the US government vis-à-vis the current three-branch Navajo government. Finally, consideration of Navajo sovereignty and its evolution over four periods of Navajo political history will be addressed.

Western Influence on the Navajo

The current Navajo government based in Window Rock, Arizona is in many ways, a deception. It cannot be considered effectively “Navajo.” Rather, it is a Western institution with traditional influences – not the other way around. These traditional influences seem to mask the true nature of Navajo politics, and they also give consolation to the Navajo people that their institution is original and unique to them. *Dine Bizaad*, the Navajo language, is frequently heard in committee and council meetings and even included as specific terms in the Navajo Nation Code, but it does not mask the Navajo’s use of the Robert’s Rule of Order instead of the traditional “talking things out” in formal meetings. Further still, the three-branch presidential system the Navajo use resembles little of our traditional community-centered, local governments of the past. Granted, the Navajo Nation boasts the most intricate tribal government in the United States, but it is only a copy; the end result of nearly 140 years of US occupation.

It is not necessarily our fault. The hostility the US has historically demonstrated against Indigenous peoples in the Americas helped forge the social and political environment that the Navajo have had to struggle against. In many ways the creation of US-style governance was done in order to appease our occupier, was extralegal, and not done with the consent of the Diné.

The Evolution of Navajo Sovereignty

This section will highlight three periods of modern Navajo political history beginning at 1868 until today. The periods are marked by major events such as the creation of the first Navajo Council (1923), the Navajo rejection of the Indian-Reorganization Act (1934) and the chairman scandals of (1989). Here we analyze the sociopolitical effects of these events, measured by the Navajo Nation’s ability to control their basic social institutions. This section will measure how western (specifically the US) political-theory influences Navajo governance.

The Treaty of Bosque Redondo (1868)

A society is balanced among several basic social institutions. These basic institutions needed for a functioning society include the political, economic, cultural, religious, education, familial and martial realms. Anthropologists and sociologists alike assume all societies possess these basic institutions for their inherent success or demise. As societies become more complex, an array of other social institutions arise, but it is generally agreed upon that these basic institutions are what make up a society. In the case of the Navajo we see different shifts of who controls these basic social institutions.

Before the signing of the Treaty of 1868, the Navajo exercised great control of these institutions. The Spaniards and later the Mexicans who claimed the lands the Navajo possessed¹ were not able to integrate into Navajo life. The Spanish tried many times to establish missions in Navajo country, but each time the Navajo rebuffed their encroachments. Each attempt to establish a Navajo leader friendly to the Spanish Crown failed. Consequently, the Navajo maintained all of their inherent sovereignty throughout Spanish occupation of New Mexico. At this time there was no centralized Navajo government. The natural community served as the basic political unit on which life was maintained. These communities consisted of a few dozen families at most and the geographic region that surrounded their use. The local *naataanii*, or leader, was the head of a deliberative body of leaders consisting of *hastoi*, or elders, and *hataali*, or medicine men. Two types of *naataanii* existed, a peace *naataanii* in times of peace and a war *naataanii* in times of war (Spicer 1962: 383). These leaders enforced the economic laws of the tribe as well as enforcing moral and ethical conduct among community members. The adult population of a natural community chose the *naataanii* who had to be of great moral and ethical character. The war *naataanii* needed to know several of the “war ways,” while the peace *naataanii* needed to know the “blessing way” and be a charismatic orator. Wilkins notes that, “it is important to remember,” they had no “coercive powers, and his or her effectiveness depended almost entirely upon the quality of their personal character” (2002: XXXX).

The Spanish and later the Mexicans were unable to subject the Navajo in any degree and they became a powerful force in the region with the expansion of their livestock. This was due to the different communities throughout *Diné Bikeyah* that could not speak for or command the other. Whatever agreement made between Spain, Mexico, or later the United States, and a Navajo community was binding only upon one community and not the Navajo as a whole. In this case, the loosely confederated communities acted as a valuable defense from Western integration into Navajo society.

The first major change of Navajo sovereignty occurred in the years preceding the Treaty of 1868. In 1848, the Treaty of Guadalupe-Hidalgo was signed which ended the Mexican-American War. With their loss to the United States, Mexico surrendered its land claims from what is now the majority, plus some, of the American Southwest; included was *Dine Bikeyah*. We quote directly from *The History of North America*:

¹ Europeans had claimed that the sole act of discovery gave them the right to extinguish the indigenous title of residence – accomplished either by the silver coin or the steel musket.

In all claims by and contests between the European nations regarding their rights in the New World, the Indian title to the soil is nowhere allowed to intervene, it being conceded by these powers that the nation making the discovery had complete dominion over the territory, and the sole right of dealing with the natives regarding their claims to the soil, and of establishing settlements on it. This was understood to be a right with which no other European government could interfere; it was a right which each government asserted for itself and to which all others assented. This theory and policy were, as is apparent, based upon the assumption of dominion without any consideration of the natives. It is on this right and claim – passed from Great Britain to the United States by the Treaty of Paris of 1783; from France by treaty of 1803; from Spain by treaty of 1819; from Mexico by treaty of 1848 and purchase of 1853; and from Russia by cession of 1867 – that the United States government bases its claim to dominion over the territory within its bounds; and this claim, like that of the European powers, is maintained regardless of any title in the aboriginal population.²

This was the general direction of federal Indian policy at the time. The US was either trying to eradicate or assimilate American Indians and their culture. The US used ethnic cleansing, genocide and military corrosion American Indian tribes and the Navajo into docile populations. For the Navajo, a reservation was set aside in Bosque Redondo, New Mexico in which agricultural was promoted. Here, on this reservation, we see the beginnings of Western domination in the Navajo social structure. The military was the first encounter the Navajo had with the United States—unlike the eastern tribes whose first encounter was with colonists. The Homestead Act was passed in an attempt to fulfill so-called “manifest destiny” that would expand the US territory to the Pacific Ocean. Racism fueled US expansionism. As a consequence of Bosque Redondo, the Navajo experienced several sociological effects:

1. The United States attempted to destroy the natural political structure of the Navajo by reforming the natural community and assigning leaders.
2. Extensive loss of life disrupted the natural order of society.
3. Many of the elders and leaders died who held key positions and had the knowledge to conduct certain ceremonies, (i.e. the *Naachid*.)
4. Through the Treaty of 1868, the Navajo abandoned their defense and military operations against the federal government.

The First Navajo Tribal Council

Mineral Law during the early years of the twentieth century played a key role in the development of modern Navajo government. Oil was discovered in the states of California and Wyoming, and the Placer Act of 1870, which was amended in 1897 to include petroleum, created problems for the petroleum industry. The claimed areas were not large enough for the operators to successfully take advantage of oil reserves, only

² Guy Carleton Lee (editor), Cyrus Thomas, *The History of North America: Indians in Historic Times* (Philadelphia: George Barrie and Sons, 1903) 399-400.

about twenty acres per individual and 160 per association. Lawrence Kelly notes, “[f]urthermore, title to a claim was not granted until discovery had been made” (1968: 38). Additionally, the Taft Administration made it increasingly difficult to withdraw large areas of the public domain from mining. Subsequent attempts in Congress and in the Courts provided no further progress from either the exploiters or conservationists. Still, the US needed to obtain lands under which minerals and oil laid. Senators made the distinction between treaty lands and executive-order lands that Indians held. Senator Weldon B. Heyburn said, “that Indian executive-order reservations were in certain aspects similar to public domain lands.” The US was still trying to establish a general leasing policy for public lands, including Navajo land. Thus when oil was discovered on *Dine Bikeyah*, the senators argued for a policy “which vested title [of] the executive-order reservation in the federal government” (Kelly 1968: 37-48).

Navajo lands that were not “executive-order lands” but were treaty lands were under an 1891 law which stated that mineral leasing on treaty land was under “the authority of the council speaking for such Indians.” Prospectors were eager to exploit the treaty lands and sought permission to speak with the general Navajo council. These councils were not permanent authorities but arose as companies requested leases. In 1922, however, with oil discovery on treaty lands, Wilkins notes, “The federal government established the semblance of a central Navajo governing authority with which Washington might interact in providing leases for mineral development” (Wilkins 1999: 101). The Navajo at this time still saw themselves as a loosely unified people, held together by common linguistic and cultural elements. A ruling body over the entire Navajo was a foreign idea to them. Therefore, the creation of the tribal council was the result of US and oil interests’ attempts to obtain resources found on Navajo land. Navajo governance was still largely community-based with local leaders making decisions which affected only their communities. Thus the council’s creation was also reactionary, and the “[t]he initiative came not from the Indians themselves, but from the prospectors who were securing the leases” (Kelly 1968: 49).

In the fall of 1922, however, power shifted to a greater degree toward the US when the Department of the Interior (DOI) created a permanent business council to deal with leasing proposals. The business council, as Wilkins shows, was “selected by the Secretary of the Interior,” and the “legality of this non-representative and non-elected body was immediately questioned because it utterly failed to meet the 1868 treaty requirements of securing the approval of three-fourths of the adult males” as pertaining to transactions regarding Navajo lands (Wilkins 1999: 103).

Herbert J. Hagerman, Special Commissioner to the Navajo, along with Secretary Fall helped the tribe establish a business council to allow the Navajo Nation to deal with petitions for leases. The policy stipulated that a council of twenty-four delegates would be selected from the overall tribal membership. The council consisted of one voting delegate and one alternate, non-voting delegate. The council then elected a chair and vice-chair. In the case that a delegate position was not filled, one would be appointed by the Secretary of the Interior. Furthermore the tribal council could not convene unless the Commissioner was present. Wilkins observes that “The Secretary of the Interior,

nevertheless, maintained tremendous authority over the tribal council,” insomuch that the Commissioner, according to this document, was given “the authority to sign all oil and gas leases on behalf of the Navajo Indians.” (Ibid: 103). In essence, the creation of the Navajo Nation council cemented the unilateral relationship between the federal government and the Navajo and it showed the Navajo’s consent to US authoritarian colonization. Why would the Navajo agree to such terms that would limit their sovereignty when in the years preceding and including the period of the lease petitions they showed more freedom by rejecting western influence? The answer lies with Hagerman. He informed the council that by approving the outlining document more lands might be appropriated to their use. The Council would not exercise those powers of sovereignty until 1933. (Ibid: 103). This proved to be a fateful step for the Navajo people. The creation of the tribal council:

1. Eliminated the distinction between treaty lands and executive order lands.
2. Paved the way for other executive-order tribal lands to be withdrawn from public lands and for Navajo use.
3. Made for the creation of a permanent, central political body that enabled the Navajo, as a whole, to interact more directly with the federal government.

During this period it could be argued that the federal government exercised its authority to its greatest degree—save the years of forced migration and habitation at Bosque Redondo. At this time, the Department of the Interior was the sole authority of policy and the Secretary of the Interior was at its head. The Navajo Nation was at the mercy of the whims and prerogative of one man. Ultimately, whatever he said, went. The tribal council placed a clause, which was normal for Indian constitutions and gave the Secretary of the Interior the final say in whether or not a tribal resolution could become law.

Oddly enough, this is not seen as counter to the so-called founding principles of the US. The US had envisioned a government “by the people, for the people and of the people.” But as Rhodehamel writes, “As conceived by men like Washington, theirs was a revolution that would not bring revolutionary social change. The equality for which they had fought was an equality of rights, not social station. Distinctions would remain in the new, republican America. Lesser folk would still defer to the betters, and the management of public affairs would always be entrusted to gentlemen” (XXXX: 92). Cullen writes, “But whether by nature or nurture, it was clear to [the Founding Fathers] that many of the people who lived in the United States slaves, women, Indians lacked this virtue, and that is why they were excluded from what became a democratic republic” (XXXX: 50-51). It came down to a racial/ethnic issue; one that has been echoed since the Marshall opinions. Because Indians were not white men they were not entitled to the same rights, and liberties as white men were.

Case Analysis

The 1920s: Foundations of Navajo Government

By Moroni Benally

The year 1923 is commonly agreed to be the beginning of westernization of the “traditional” Navajo political structure. However, following the pattern of colonization³, it can be seen that the westernization of the Diné began in 1863. With the round up of the Diné by Kit Carson and the US, this action de-legitimized the political status and political structure (however decentralized it may have been) of the Diné.

The thrust of colonization rests in its ability to weaken and dismantle the cultural base. Accordingly, it “is the process of re-constructing or shaping the rest of the world on western norms and institutions” (Ozay 1995 XXX). This “reconstructing and shaping” of a culture rests on the principles of colonization and is made operable through assimilation. “Cultural conquest leads to the cultural in-authenticity of those who are invaded; they begin to respond to the values, the standards and the goals of the invaders.”⁴ The Navajo at Bosque Redondo begin to assimilate (however, slight it may have been at that time) to the colonizer’s way of being by a ‘reconstruction’ of their self to a ‘new colonized’ self. Thus, today, the Navajo Nation has been defined, both legally and culturally, by the United States. They believe these definitions contrary to evidence they experience daily. The reconstruction of new colonized self rests on the assumption of one believing the constraints placed upon them by others, as natural, real and existent, and as ‘culturally appropriate.’

The period from 1863 to 1923 was the period in which the Navajo people began to respond to the oppressors values. Some argument can be made that colonization began earlier with the Spanish. While true, the internalization of the oppressors did not begin until the incarceration at Bosque Redondo. These values over that period were slowly and systematically introduced, through education, trading with white traders, dependence on the US for basic necessities, such as food and clothing, and in terms of political and governmental formation and development. This period laid the foundation for the first council established in 1924, subsequent political epochs, and to the present day.

Historical Analysis

1863-1868

With the incarceration of the Diné in Bosque Redondo, the Diné were subjected on a daily basis to the militaristic and hierarchal organization of the U.S. government. This

³ Colonization is a process of domination; it is of one group imposing their construct of reality (as being correct and rational) on another group. There are three fundamental premises of domination: 1) Domination of the political discourse by removing the group from the dominant political agenda, and undermining their political institutions, essentially marginalizing the people’s political voice; 2) Domination of the economic base by weakening it, thus crippling the people; and, 3) Domination of the knowledge base by weakening the epistemological base of the people.

⁴ Paulo Friere

first imprint during their incarceration may have influenced those to come, as to how western governments and political systems and subsystems were to be organized. In addition, this period from 1863 to 1868 was a period where a different culture and way of thinking and knowing was forced upon the Navajo.

This period can be characterized, partly, as the genesis of the present structure of the Navajo Nation. It was here that the Diné were first indoctrinated with western organizational and governmental practice. They were confronted with this daily and was instilled in them. The Navajo were forced to become dependent on this organization for their survival. In their weakened and dependent state, these Navajos soon learned through direct experience how non-Navajo organizational structures worked. After their return to Dinétah in 1868, the Navajo were still subject to the organizational dictations of the Indian agents such as: where they could live, how many sheep they were to have, where their children were to be educated, how much area could be used for grazing, and who their leaders were to be.

The Navajo Nation signed a treaty of surrender with the United States Government in June of 1868. This treaty is the legal foundation of the Federal-Navajo relationship. The Treaty states the Navajo will surrender their arms and some of their land only, not their autonomy or self-governance. At that time, the treaty supported elements of sovereignty for the Navajo Nation. This sovereignty is *de facto* and reserved to the Navajo Nation. However, the normative rules governing this sovereignty are often de-coupled from actual behavior.

1868-1878

Upon their return home, the Navajo were encountered with limited land, and federal Indian policies that “embraced assimilation and ventured a cautious but heartfelt optimism about the Native capacity for progress”(Iverson 2002: 70). The Diné returned home dependent on the Federal government for food rations (Locke XXX:392), and permission to settle on their own territory. During this period, there was volatility because the Federal government was not meeting their treaty obligations, young warriors were raiding neighboring settlements, and many people were on the brink of starvation.

Headman, such as Barboncito, a traditional leader was recognized by the US. The US negotiated with him, as the voice of the people. The introduction of the another form of political representation and organization was not familiar to the people. Though, many were familiar with Barboncito before and during the Bosque Redondo, the notion of one unifying figure who represented the will of the people was a foreign notion. During the incarceration, the Diné also recognized that single leader, because it was with that leader the US dealt. After the incarceration, the US considered these men or headman and *de facto* leaders of the people. This recognition of the single leaders ran contrary to traditional conception of the relationship between a leader and the people.

The Navajo had a participatory and consensual system. The people retained the power of making decisions, the leader simply carried out the will of the people.⁵ Whereas, the conception of leadership and representation the US imposed on the Navajo, was one where the leader represented all people, as a single leader, and could make decisions on behalf of them.⁶ Thus there was a power shift within the political structure, moving the power from the people to the selected and later elected person.

1878-1923

“From 1878-1910, the ‘Head Chiefs’ of the Navajo People were appointed by the Navajo Indian Agent and were confirmed by the Secretary of the Interior” (Wilkins 2000: 79). The Indian Agent became a very powerful figure transformed the traditional political landscape. His actions led to many Indian nations relinquishing more rights to the US Government. His appointment of tribal leaders after the recognized fashion of occidental ideology, and not Native cultural norms, thereby constructed a powerful barrier for the Navajo people in relation to their traditional governing rights and practices. The period of Head Chiefs led to the further transmogrification of the traditional notions of leadership and representation to that of a western concept of Delegate and Representative.

In the 1880s, the US developed the trust relationship with the Navajo Nation, by making it a ward of the state. This severely limited their sovereignty and ability to self-govern. By the early 1920's this trust relationship took full form and became the doctrine governing the US relationship with its treaty based tribes. At this time, the Federal government assumed a greater role in designing the affairs of the Navajo Nation.

1923

With the discovery of oil on the Navajo Nation, the need for a formal government granting leasing rights to outside interests was purportedly needed. The Indian Agent authorized the organization of the business council, in 1922, to sign oil leases (Iverson 2002: 133). This business council was short-lived, because the “council really could not represent all Navajos...”(Iverson 2002: 133). However, the impact of that council still resonated today. It was at this business three of the subsequent members of the first Tribal Council imported meeting procedures and regulations. These regulations and procedures were not consonant with traditional values and norms. These rules and regulations were derived from a body of rules developed over time, known today as the Robert’s Rules of Order.

Later in June 1923, the first Tribal Council was formed and held. Delegates were “selected” from the various parts of the Reservation: six delegates and six alternates. In this council and subsequent councils, assembled at the request of the Indian Agent, the meetings were conducted according to rules set by the Indian Agent, and set up according to the principles of governance used within business clubs. “It is certainly fair to

⁵ Personal conversation with Herbert Benally, Diné College professor of Navajo History and Philosophy.

⁶ This is cursory analysis, more research must be done on the thesis submitted here.

conclude that the Council was created not to protect or to assert Navajo sovereignty, but to provide a stamp to approve leases and other forms of exploitation” (Iverson 2002: 134)

Conclusion

These governance systems from 1863-1923 were monumental in their contribution to the present government structure, its strengths and its weakness. The period before 1863, Navajo governance was based on traditional principles, during the Bosque Redondo, the governance structure and power relations started to change. Bosque Redondo saw the rise of western political representation imposed on the Navajo. It went from communal power to power concentrated in a single person. This single person representing the will of the people and the shift of power relations facilitated the “representative” form of government of the first and subsequent Tribal Councils.

In addition to the changing dynamics of power and the increases use of western political constructs, the Navajo Tribal Council and by extension the people, began to rely on modes of policy analysis that favored Euro-American values instead of traditional Navajo values.

DRAFT

Case Analysis

Navajo Rejection of 1934 IRA Constitution

By Andrew Curley

Early years of governance

The year 1934 is significant in the history of Navajo governance. It was in this year the Navajo people, in a referendum vote, voiced their opposition against the proposed “Indian Reorganization Act” (IRA) of 1934, which would have created a US style constitution government for the Navajo people (Iverson 2002: 145; Young 1978: 86; Wilkins 1999: 60). The rejection of this Bureau of Indian Affairs’ (BIA) proposed government has had profound impacts on the Navajo Nation government today, and has set the political course for the largest Indian tribe in the United States. The debate that preceded this referendum vote is useful to examine in light of today’s concerns about governance. Tensions found in this dispute at the time are existent in the current discourse on government reform. Specifically, the relevance of a centralized government to the political orientation of the Navajo people and the consequential consideration of local, or what is called “regional” rule as opposed against the greater national interest of the tribe are the most applicable and comparable features of this discussion relevant to our current political situation.

The Navajo Zeitgeist

But first let us consider the context of the Navajo Nation at the time. The Navajo people have never had a government similar to that of Western European nation-states⁷ (Wilkins 1999: 68). There have been arguments put forth that a bi-decennial gathering of what were called “Navajo headman” served the similar function of a parliamentary body, codified in the idea of citizen governments, which in democratic manifestation are designed to represent the nebulous and hard to discern voice of the people (Young 1978: 17; Wilkins 1999: 39, 68). After the Treaty of 1868, in which the Navajo economy was restructured and movement of livestock and human habitation were curtailed to a fraction of their historic and traditional land base, our system of governance (or lack thereof) was also changed.⁸ US tampering with our historic mode of economy and lack of political orientation have had severe repercussions on the Navajo people that increased poverty and have thus skewed culture and forged false senses of political orientation (i.e., toward

⁷ David Wilkins makes the erroneous claim that the US federal government and historic Navajo society both had “governing structures” that “share[d] some important features (Wilkins 1999: 37). He goes on to compare the Navajo Naachid, a “periodic tribal assembly of clan leaders—Naataanii...” with the US government. To do this Wilkins cites an obscure quote from James Madison that established the purpose of government to justify his position that “both American founding fathers and traditional Navajo clan leaders were interested in achieving and maintaining order and stability, and protection of the liberty and freedom of their citizens. These later terms “liberty and freedom” come straight from the lexicon of Western philosophy and have no parallel in historic Navajo society.

⁸ On the restructuring of the Navajo economy, many scholars of the Fort Sumner experience cite then US General Carleton’s intention to turn pastoral Navajos into farmers. Iverson points out that Carleton also described Navajo land as resource rich and of good pasture (Iverson 2002: 50). Conditions set forth by General Sherman to the Navajo in the treaty of 1868 laid the foundation for what the US thought would be an agricultural economy, with limited range land (disincentive for pastoral living) and increased training for agriculture. See Articles V, VI and VII of 1868 treaty.

a greater pan-Navajo national identity and allegiance to the US as legitimate Navajo overlords.)

In 1934, the Navajo Nation was in deep penury. According to the Meriam Report on Indian governance—released only six years prior—Indian people were deeply impoverished (Iverson 2002: 177; Kelly 1968: 140). Much of this poverty is attributable to Indian people’s sudden and drastic change in economic-orientation and related transformation in land-use policy (Wilkinson 2005: 58). Suddenly confined to a small reservation and reliant on a pastoral economy, the Navajo couldn’t muster the resources needed to suffice their basic needs.

During this time the BIA retained strong oversight over the Navajo Nation—but still recognized its inability to make decisions for the nation. Specifically, and according to the 1868 treaty, the US government couldn’t enact any policy or allow any development on the Navajo Nation without the consent of $\frac{3}{4}$ the tribal male population. Under pressure from US-based oil firms (who had recently discovered oil in Navajo territory) the BIA moved to create a representative democracy for the Navajo people. Meaning, rather than decide in a referendum on an issue (or in this case, proposed development scheme) as is mandated in the 1868 treaty, the BIA helped forge a “tribal council” that would in theory represent the will of the Navajo people and make decisions on their behalf.

Historically, all efforts to centralize the political will of the Navajo people into one representing body have failed. This is evident in the number of treaties Spain, Mexico and the US in aggregate signed with Navajo representatives stipulating myriad conditions were never legitimized by the Navajo people as a whole. So, for example, when Spanish governors in New Mexico met with a Navajo headman and signed an agreement, that agreement was never applicable to the entire Navajo nation as a whole, but rather to a particular band that that headman represented. However, Spain, Mexico and, later, the United States, held the entire Navajo people accountable to these extralegal agreements the vast majority of the Navajo people didn’t even know existed. This created a dissonance with the naïve European-invaders who believed that all nation groups they encountered were organized politically into a fashion similar to that found in Europe at the time.

In fact, most of the Navajo wars between various groups of Navajos and Mexican and Spanish colonizers were a result of the territory of New Mexico’s inability to come to a compromise with the Navajo people. A modern parallel is Israel’s inability to come to cease fire agreements with the Palestinian population, whose natural political orientation (toward a broader, pan-Arabic identity since Ottoman times) has been confined into a quasi-nation state status. When, for example, the colonizer state of Israel makes an agreement with the Palestinian Authority in the West Bank, Hamas in the Gaza Strip might not endorse this agreement. Though the analogy is not exact, the similarities are relevant when considering the historic political orientation of the Navajo people.

Therefore, suffice it to say that the creation of the Navajo Nation council in the 1920s, a council designed to represent the national-will of the Navajo people (an identity that

previously did not exist) did not take naturally to the Navajo people. Conversely, the Chapter House movement, in its nascence at the time, was immediately absorbed by the Navajo people as a local form of governance for regional self-determination. Meaning, the Navajo people, based on the matrilineal land-use policy, and cluster living style, were more adept to localized decision-making rather than thinking for a broader, more abstract nation-state as a whole. At the time of the proposed IRA constitutional government, the Navajo people were still living largely off the land and organized in this historic/traditional family-cluster fashion.

Watershed Moment

In 1931, then President Roosevelt made Indian advocate John Collier head of the Bureau of Indian Affairs. Collier's objective was to change the tone and approach of federal policy toward Indian nations. Based off recommendations found in the Meriam report, Collier tried to strengthen Indian governance by creating for them nation-state governance. Meaning, regardless of historic and traditional political orientation, Indian governments should organize their governments in a method that could be more answerable to US style of governments. Taking a constitution designed for a men's club, Collier touted US-style three-branch governance as a way for Indian people to organize themselves politically. Such a streamlining of governance, in Collier's judgment, would reverse the effects of the Dawes Allotment Act, which decentralized land-tenure policy to the individual Indian with the idea of making Indians self-sufficient farmers. Given that the majority of Western Indian tribes were pastoral or nomadic, this policy proved to be disastrous with many Indian selling Indian land to non-Indians for instant monetary relief and thus drastically reducing the size and territorial integrity of their tribal lands. Collier felt that centralizing Indian governance would prevent future mismanagement of tribal assets and allow Indian people to augment their negotiating voice. What Collier failed to take into account was 1) the economies of Indian nations at the time and subsequently 2) the political-orientation of Indian peoples.

At the time Navajo people were still largely pastoralist, dependent on a sheep economy. As Wilkins argues, due to perceived effects on large-scale dam projects, the US government instituted a traumatic program of livestock reduction, in which Navajo herd sizes were forcibly reduced. It was believed at the time that this would stymie the effects of desertification and erosion. This was an extremely unpopular measure for the Navajo population and one that permanently tainted the peoples' faith in the Navajo Nation Council, who compromised on and, thus, endorsed the livestock reduction program. Missionary Jacob C. Morgan harshly attacked the measure and blamed personally then Chee Dodge for the program. He then equated livestock reduction with Collier's proposed IRA constitutional government and suggested the US government would further reduce sheep herds if the Navajo people approved of the proposition. As a result, the Navajo Nation in a referendum vote narrowly rejected the proposed constitutional form of government. Collier was deeply hurt with the Navajo Nation's rejection of his government and would later allude that it was the BIA's failure to win the endorsement of the smaller government's (i.e., Chapter Houses) that resulted in the proposition's failure.

Cultural Relevance

Though the rejection of the proposed IRA constitutional government may have been a result of Jacob C. Morgan's characterization of the measure, the broader struggle of the tribal council against the interest of the people is more demonstrative of the cultural mismatch of a centralized government to represent the interest of the Navajo people. The Navajo Nation's political-orientation is a consequence of its localized, decentralized pastoral economy. *Naat'aani*'s, elected representatives function historically as community leaders as opposed to national leaders. The Navajo people didn't previously have a notion of a large, national political unit. Therefore, the idea of a tribal council representing all of Navajo people was in harsh contrast to their intuitive sense of a political decision-making, decision-making that was done on behalf of a smaller political division and one that was localized to a particular region.

The average Navajo voter likely didn't consider Collier's government and its nuanced differences from that of the then existing council in 1934. They likely wouldn't have been able to appropriately discern the difference between a three-branch style of government and the single representative body of the Navajo Nation Council at the time. What's important to consider is the Navajo people felt as though the tribal council had made a poor decision in endorsing the livestock reduction program, and that further tampering with Navajo political orientation would lead to future hardships for the people.

Conclusion

The Navajo peoples rejection of this large-scale government reform demonstrates the significance of local politics in the Navajo political orientation, and the lessons learned from this effort are still applicable to today's political context in which propositions of constitutional governments are floated around without much analysis as to their appropriateness to the Navajo context. Eventually the tribal council, through the adaptation of the Navajo Nation Code in the 1950s and the creation of the separated judiciary in the 1970s in effect created a three-branch style government. Peter MacDonald increased the power of the executive and after 1989 the Navajo Nation Council reduced presidential powers. But, the problem of local versus centralized government control remains. This is evident in the Local Governance Act (LGA) movement in which Chapter Houses seek increased autonomy and more local control in terms of their political decision-making powers and ideas for economic development. The controversy surrounding large-scale development projects, such as the proposed Desert Rock power plant and casinos and more localized, small-scale entrepreneurial endeavors is also a consequence of this.

Case Analysis

Crisis, turmoil and reform—the fallout from 1989

By Wendy Greyeyes

The 1989 Reform

The reforms of 1989 were to redistribute the very authoritative nature of the Chairman's power. This period reflected the tribes demand to decrease the Chairman's role and diffuse the power into a more transparent three branch government. Political Scientist David E. Wilkins simplifies the impact of these changes in his book *Navajo Political Experience*:

- Formal separation of powers between the executive and legislative branches
- Diluted the power of the chief executive by creating the office of the Navajo Nation President and Vice President who now serve as the Nation's chief executive officers. The president no longer serves as the head of the legislative branch.
- Created a Speaker of the Council position. This individual presides over the council's deliberations
- Defined and set limits on the powers of the executive and legislative branches
- Reduced the number of standing committees from 18 to 12
- The power to appoint the membership of the legislative committees was taken from the Chairman/President and given to the Speaker of the Council, subject to the confirmation of the council (Wilkins 2003:95).

The 1989 governmental crisis caused a major overhaul of the Navajo government and symbolizes our current government structure. A significant number of scholars have discussed the significance of these changes. These scholars argue that these changes were modifications representing the tribe's movement towards a more structured government, one that resembles state governments. The outcome created amendments to the Title II. On December 15, 1989, the Navajo Tribal council implemented resolution, CD-68-89, titled, "Amending title Two (2) of the Navajo Tribal Code and Related Action." The law was enacted April 11, 1990. The resolution states the following:

Whereas: 1. The pursuant to 2 N.T.C., Section 101, the Navajo Tribal Council is the governing body of the Navajo Nation; and
2. Recent controversy involving the leadership of the Navajo Nation has demonstrated that the present Navajo Nation government structure allows too much centralized power without real checks on the exercise of power. Experience shows that this deficiency in the government structure allows for, invites and has resulted in the abuse of power; and

3. The Judicial has been reorganized by the Judicial Reform Act of 1985...and treating the Judicial Branch as a separate branch of government has proven to be beneficial to the Navajo Nation and has provided stability in the government; and
4. The lack of definition of power and separation of legislative and executive functions have also allowed the legislative body to overly involve itself in administration of programs thereby demonstrating a need to limit the legislative function to legislation and policy decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation; and
5. There is an immediate need to reorganize the Navajo Nation government by defining the powers of the legislative function to legislation and policy decision making and further limit the executive function to implementation of laws and representation of the Navajo Nation; and
6. The number of standing committees of the Navajo Tribal Council has grown to eighteen (18) and some standing committees can be combined ... thereby reducing the number of standing committees to twelve (12) and to provide for a more efficient and responsive committee system; and
7. The reorganization of the Navajo Nation government as proposed herein is intended to meet the immediate needs of the Navajo people for a more responsible and accountable government and will have no effect on the long term Government Reform Project which will proceed as authorized and directed by the Navajo Tribal Council, and
8. It is in the best interest of the Navajo Nation that the Navajo Nation government be reorganized to provide for separation of functions into three branches, and provide for checks and balances between the three branches until the Navajo people decide through the Government Reform Project the form of government they want to be governed by...

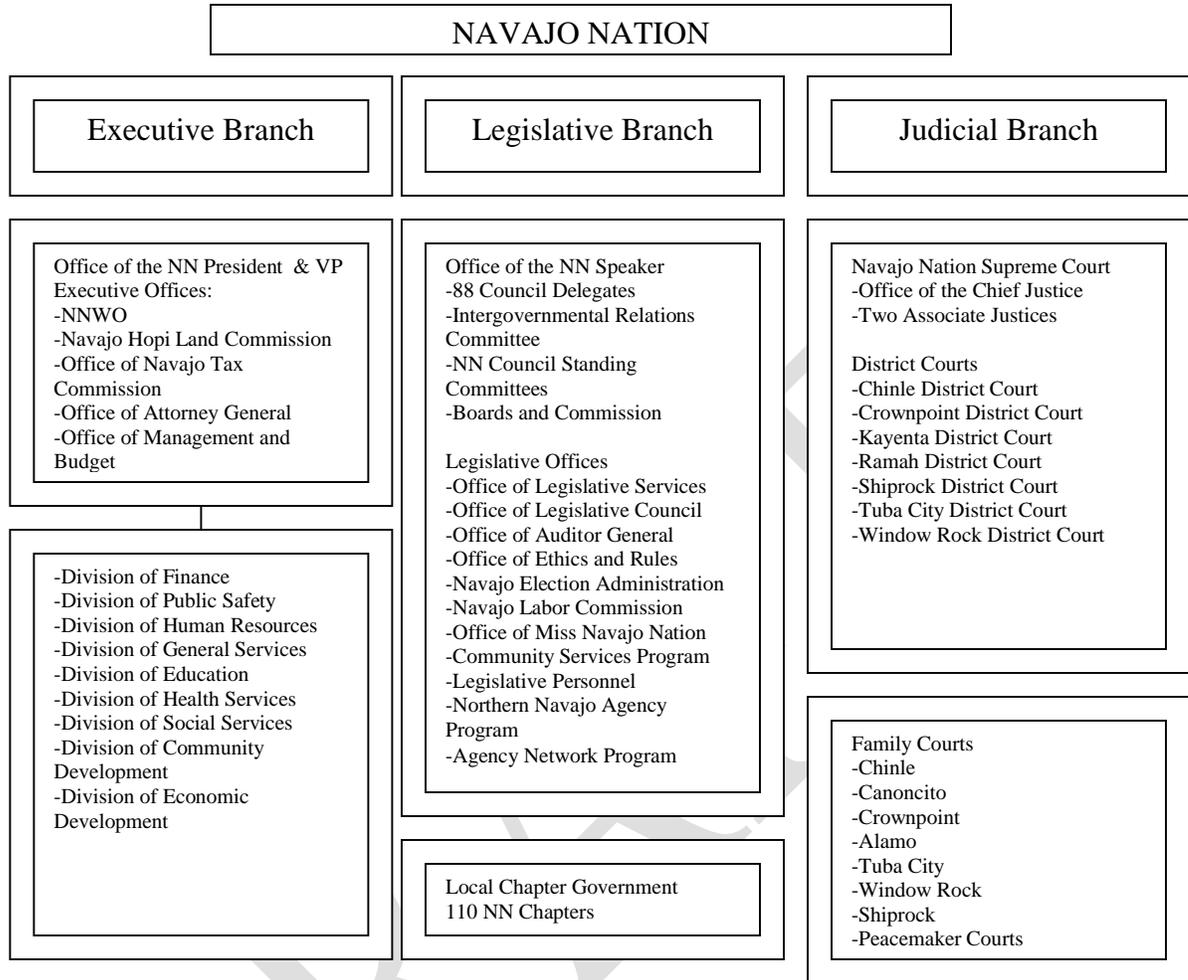
An assessment and impact of this resolution has been a hot topic among scholars. Scholars have assessed the ramifications of the benefits and continued challenges of these reforms.

First, a report from attorney Eric Lemont situates the 1989 reforms as a reflection of the effectiveness of tribal institutions in overcoming the challenges of political reform. The use of tribal institutions shows the tribe's recognition of the durability of council's power and the availability of tools at their disposal to restructure their government especially when the chairmanship had ultimate authority to make many decisions. Additionally, Lemont states that the intensity of the 1989 reformation triggered a high level of participation of its members thus increasing civic awareness in the short and long term (Lemont 2006:4). Civic awareness raises and develops a society ruled by the people. In strengthening civic engagement and awareness, these serve to increase the foundations for developing a more transparent government.

The Lemont continues to explain that the 1989 reforms had other effects by enhancing the separation of powers, restructured tribal councils and patterns of representation (Lemont 2006:11-12). The separation of powers came from diminishing the chairmanship's role and created the Speaker of the Council. The report reflects that government reform usually does not occur unless some political crisis occurs, as in the case of the removal of Chairman Peter MacDonald, who enjoyed a large number of non-oversight and power. The report states, "In many instances, reform processes don't even get off the ground unless there exists some type of political crisis strong enough to overcome other governing priorities and a bias towards the status quo" (Lemont 2006:14). In terms of the Lemont's observations, we see that conflict was paramount in the crisis surrounding Chairman Peter MacDonald's removal. The political crisis involved the government and the Navajo people realizing a problematic situation had sprouted and extreme transformations were necessary.

Second, another perspective of the significance of this circumstance is articulated by Professor David Wilkins. Based on his analysis, this period does not have the optimistic tinge of Lemont's work rather, Wilkins argues, the situation did not symbolize a perfected state of democracy. Wilkins writes, "Even as the Navajo Nation government became more democratic [with the 1989 reforms], these changes lacked fundamental political legitimacy because the Navajo people have yet to sanction the government's existence in a formal manner" (2002:113). In essence, much of the changes and reforms came from the tribal council rather than a full vote from the general Navajo Nation population.

Overall, the 1989 reform brought about rapid changes within the course of 6 months. This period shows that much of the changes had to come internally from the tribe itself. In making these broad changes, we see later reforms involved the inclusion of the Local Empowerment plan developed by the Office of Navajo Government Development. This organization helped to facilitate the move towards a decentralized government and shifting power to more local government. In 1998, the council approved the Navajo Nation Local Governance Act. So these transformations indicate that the tribal council is always in a state of revision in order to improve its durability to meet the needs of its Navajo people.



Source: Office of the Navajo Government Development. Navajo Nation Government Booklet (Window Rock, Arizona: Office of the Navajo Government Development, 1997): 18.

Contemporary Analysis

**The most pressing issues facing the Navajo
Nation governance**



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Economic Policy and Development on the Navajo Nation

Problems with perception

By Moroni Benally

Economic development on the Navajo Nation is inhibited by a number of factors related to ownership of land, guarantee of the rule of law and human capital. The foregoing is well accepted in the economic world as being the causatory factors of both growth and stagnation.

The Navajo Nation Economic Policy can be summed as: Create more jobs. This policy while worthy in its objective implicitly focuses on business development as the catalyst for economic development on the Navajo Nation. Thus, economic and development policy are seemingly focused on creating business. While this single perspective approach to economic development may work under “normal” economic conditions, one need simply drive throughout the Navajo Nation to recognize that economic conditions here are not “normal.”

In 2006, President Joe Shirley outlined ten economic initiatives, of these initiatives nine were focused on business development and only one focused on issues related to governance. Since the economic conditions on the Navajo Nation are not the same as they would be in Farmington, NM this economic policy, though laudable, seems to downplay the importance of the root problems of economic growth and development. By touting an economic policy of creating more jobs, Shirley’s administration suggests that lack of jobs is the prime cause of underdevelopment on the Navajo Nation. After a serious analysis of the economic situation of the Navajo Nation, it is readily apparent that jobs and growth as the foci of development is only a part of what should be a comprehensive economic development policy. Thus economic and development policy should be comprehensive and focused on systemic issues of governance (i.e. rules and regulations) which ultimately becomes the source of delay in job creation, not merely the lack of jobs.

Looking at the demographics of the Navajo Nation, it is easy to see why a policy focused on job creation might be stressed. The current unemployment rate of the Navajo Nation is 48.04% (this is the classical definition of people actively looking for jobs), but a further look puts that number at 67.8% (this accounts for all able-bodied, individuals who cannot find a job). The per capita income is approximately \$7,300. With a median family income of \$22,400, where roughly 43% of households receive some wage or salary (ostensibly for work), 3.5% receive income from self-employment, 2.9% receive income from interest, dividends, or net rental, 12.2% receive social security income, 9.6% receive income from supplemental security income, 9.5% receive public assistance income, 5.9% receive some form of retirement income, and 12.5% receive other types of income. This places the total income on the Navajo Nation for the year 2000 at \$1.3 billion. This is estimated to be \$1.5 billion for the year 2004 with a forecast of 1.6 billion for year 2007. Of this total income 71.6% leaks off to border towns. This is equivalent to \$1.074 billion a year. Roughly 71 cents of every dollar a citizen of the Navajo Nation earns is spent off the nation while the remaining 29 cents circulates and becomes the base for taxes and economic growth and development.

The USDA estimates that non-metro rural counties have an average leakage rate of about 25%. The Navajo Nation's leakage rate is nearly two times larger than the average around the United States rural areas.

With this in mind it again suggests why job creation, with its subtext of business development is the focus of Navajo economic policy. The Navajo Nation seeks to reverse or slow the leakage rate to build their economy. Yet, the more basic question has not been posed to the Navajo Nation citizenry, that is, "what is economic development?" A cursory analysis of this question through simple surveys and interviews finds that Navajo citizens are concerned with jobs. For many, economic development is merely an issue of business development, not the substantive issue of government reform.

The intersection of economic development and government is known as political economy. The political economic situation of the Navajo Nation is such that the Navajo Nation seeks to develop businesses to develop the economy. While redundant, the point must be made that governments have a great deal of power in terms of developing the economy, by creating regulatory and procedural facility in setting up businesses, in clearly demarcating issues surrounding land, and by providing the necessary incentives to change peoples attitude concerning development. However, these factors are derived from neo-classical economic perspective that favors capitalism and individualism over communalism and community.

With the passage of the Foundation Laws of the Diné in 2002, it is clear that there is a desire for economic development that comports with traditional principles and values. Few economist and business developers on the Navajo Nation, however, venture to consider cultural preferences and values as factors and variables in growth. The Navajo Nation, well assimilated, economically, by the world's standards, has yet to experience any economic boom. Many federal programs have been implemented on the Navajo Nation to augment growth. These programs have been based on the neo-classical theory of utility maximizing human behavior; but these programs have had limited success and have put the Navajo people and Nation at an economic disadvantage against their non-Navajo neighbors. This limited success can be linked to cultural preferences and values, which often contradict the utility maximizing behavior.

The following is an analysis of how current economic development policy often limits the use of cultural values, and how these economic values often contravene and contradict traditional values.

A Consideration of Navajo History

Before the Treaty of 1868 and the intervention of non-Navajo theories and practices of economy, the base economy for the Navajo was livestock, and limited adoption of the Spanish techniques of silversmithing, weaving, and agricultural production. After their incarceration in Bosque Redondo, from 1863-1868, the Navajo stopped their traditional raiding for government supported technical schools and land reparations. "The treaty makers...assumed that the Navajo would be assimilated into the American mainstream if he were made a property owner, and entrepreneur farmer and economically independent of the United States government (Ruffing 1978: 16). However, the social cost of this allotment of land to a group of people with no traditional conception of land ownership was devastating. The Navajos "did not have the capital or technical knowledge necessary to develop

the land [and they] belonged to extended families in which economic support was mutual” (Ibid: 16).

In the late 1800s, the Indian Agent became a very powerful figure who began to transform the Navajo traditional concepts of land and economy to Euro-American notions of land and economy. Through his influence, the cultural dynamics changed, the social order was restructured. Consequently a Lockian¹ form of ownership was introduced to the Navajo, who had no prior concept of private ownership. This property concept led to an economic development policy based on foreign notions of land tenure. During the 1930s, the traditional self-sufficiency model of Navajo economy had produced an environmental catastrophe. The Navajo inherited 15,000 sheep as a result of reparations from the federal government for the seizure of land in 1868. By the 1930s, the number of sheep had increased to 1,300,000. This livestock contributed to erosion by overgrazing. Yet, the sheep were still the basis of all economic activity.

In 1934, a livestock reduction program was instituted by the BIA, “[a]s a result of the reduction program, the Navajos suffered a severe economic shock-and psychological shock as well” (Ruffing 1978: 20). “If you take my sheep, you kill me. So, kill me now. Let’s fight right here and decide this,” (Downs 1963: 20) these were the words of one Navajo shepherd confronting federal agents. This program was a failure economically for the Navajo. It contributed to the growing distrust and suspicion of non-Navajo economic practices and theory. This program ended the self-sufficient nature of the traditional economy.

The Navajo could not return to a self-sufficient traditional economy that paid respect to the values they had internalized. They essentially had “forced entry” into a free market economy. This began the “hiatus between values of traditional Navajo people and the actions of the tribal government,” (Ibid: 18) which dealt with the issues of entry and exit of the market, budget constraints, development of their resource endowment, and adoption and effective diffusion of technology onto the reservation. Through the assimilationist policies, the Navajo cultural physiognomy was dramatically transmogrified - to a new 20th century style of cultural adaptation.

Emergence to the modern era

During the 20th century, the social, cultural and political development and adaptation of the Navajo Nation government (i.e., tribal council with recent manifestations including an executive branch) moved in the direction of self-governance. Through these struggles the Navajo Nation, along with other Indian nations, entered the realm of and tacitly consented to the appellation of ‘developing nation’. It is precisely this cultural resistance to a new form of governance and technology that controlled the amount of development (and how much of it occurred) on the Navajo Nation. The Navajo over the past century and a half resisted the economic development in part because of their cultural norms.

¹ “But the chief matter of property being now...the earth itself. As much land as a man tills plants, improves, cultivates, and can use the product of so much is his property.” Locke continues by noting that the transfer of such property is possible but only through the introduction or use of money. (Second Treatise of Government. John Locke. Edit. By C.B. Macpherson, pg 21)

Cultural Values and the Economy

In the context of tradition, the values of the Navajo people affected their economic preferences, the things they choose (e.g., government structures, trade relations, technology use and adoption). The values of the Navajo people are circumscribed in a holistic world-view known as “*sa’ah naghái bik’eh hozhóón* (SBNH), a harmonious, peaceful, and happy way of life” (Benally 1999: 31-32). Benally describes the relation between SBNH and everyday life as being inseparable for the Navajo. SBNH as the personification of values for the Navajo people caused them (in part) to resist new forms of technology and non-Navajo knowledge.

In essence, the existence of another set of preferences that affected the economic consumption of goods, and subsequent use and adoption of technology undermined the “universal applicability of orthodox economic theory. It implies that all men are not created equally endowed with the tendency to maximize utilities subject to some budget constraint.” (Ellis 1988: 120). The Navajo goals of life are not detached from their subsistent needs in order to survive. Benally states that the goals of the Navajo are to advance “[t]o a [possession] of the language, thought, knowledge and teachings of *diyín dine’é* and to live as *diyín dine’é*, to seek to be like the Holy People, [and] to live in a harmonious and peaceful way (*hózhóójí k’ehgo*), [and, lastly] to learn behavior becoming of *hózhó*, a state where harmony and peace abounds.” (Benally, pg. 4)

Thus, in all choices, the Navajo people would theoretically choose to maximize their return to harmony or balance, in all decisions in regards to their economy and other aspects of life. “The assumption that Navajos want a traditional life-style and an adequate standard of living is probably true. However, if they are faced with a choice...they will choose those economic pursuits which do not disrupt traditional life-style [and preferences of SBNH] even though it means a lower material standard of living” (Ruffing 1978: 77). It is evident that Navajo values spill over into their preferences and hence their resistance to technology and new knowledge that would negate and undermine their traditional conceptions of success and wealth. “In Traditional Navajo Society, not to possess a knowledge of stories, teachings, songs and prayers is to be poor” (Benally 1999: 4). Hence, the opposite would be true: to possess these things would make the Navajo rich, both intellectually and materially, because the Navajo belief is that in the possession of these things, the Holy People would bless them with more harmony.

Michael Ellis, of the Department of Economics at the New Mexico State University, constructed a model based on the Navajo preference for harmony and balance, called the “harmony maintenance” model. “Its function is to describe the position of harmony in terms not associated with the material maximization, and then to show how the Navajo maintain this position in the face of forces that try to disrupt it” (Ellis 1988: 123). As already noted, harmony is the position of greatest balance for the Navajo, material gain would be sacrificed for a return to harmony, in defiance of the neo-classical economic theory which “rests on assumptions about human nature that characterize all human beings as both psychological and ethical hedonists. Men are cast as utility maximizers, with all forms of human behavior explainable as some derivative form of this maximization process” (Ibid: 122). Thus, the Navajo preferences and existence are circumscribed and influenced by the tendency to return or regain balance after being put off balance. Ellis’ model attaches great importance to the value of Navajo preference for harmony over all other options. His model incorporates the effects of both humankind and nature (Ibid: 122).

Essentially, the Ellis explains that “in the Navajo model...harmony maintenance (attainment of H) is not the result of a maximization process. [Rather it is] a preconceived, predetermined level for the factors that enter into the Navajo harmony function. More is not necessarily, not typically, preferred to less. Change (which may be exogenous, but which the Navajo perceives as being under their religious control) causes disharmony and disequilibrium. So the utility maximizer is observed *adjusting to the environment* that he encounters. The Navajo attempts *to move back to its ideal position*. [sic] Hence, the rather somber prospect of the Navajo in perpetual disharmony is reflected in attempts to move back to the desired situation” (Ellis 1988: 126). With the inability of the Navajo to return to a harmonious position, disharmony continues and manifests itself in all forms of social ills (such as alcoholism, low-income, non-use of technology).

The cultural values of the Navajo have had a profound effect on the adoption of General purpose technology and subsequently economic growth. General purpose technology (GPT) can be defined as technology used in a wide number of sectors, for example the internet which is a technology that cuts across a number of different sectors and industries. This GPT has the greatest implications in the interest of economic development and growth. The Navajo Nation has adopted some forms of GPT, for survival purposes. But, according to the former President of the Navajo Nation, Peterson Zah, “the technology sector on the Navajo Nation was almost non-existent before April 2000, at that time, when President Bill Clinton visited the reservation.” (Peterson Zah, telephone interview, Mar 05, 2002) Mr. Zah was referring to the Internet. He stated further that the Navajo Nation to this day does not have the infrastructure to support broadband or other internet technology, and subsequently economic development.

The Navajo Nation has attempted to implement various forms of economic development policies, but these policies have not been consonant with their values. “Many other tribes explicitly, and often with great intertribal tension, see [economic development] as involving a trade-off between goods and services and their culture. For tribes with this kind of internal conflict, the definition of success may be incompatible with either a tribe-as-corporation or a privatization approach to development. If being a Navajo means refusing to shut down common [ineffective techniques] or accept hierarchical labor-management relationships, then narrowly defined economic development and the concept of being a Navajo may be noncomplementary” (Cornell and Kalt 1997: 145-146).

In comparison to the United States, the Navajo Nation has stagnated and found itself according to the Human development index Report from UNESCO below Belize who ranked 54, the United States ranked 6th, and first was Norway. (Human Development Indicators 2001: 142) This report simply measured GDP and how many of the basic needs were met.

The Navajo Nation has transportation costs that are inflated, making technology available only to those who can afford it and have the skills to use it, and chapter who have sufficient resources. Second, since the Navajo Nation has limited infrastructure to support economic development, the nation remains an alien to the global market. Third, convergence of technology is partially viewed as an attack on the traditional-style of life- it would disrupt and cause disharmony. And, fourth, the Navajo Nation has no network or infrastructure to support R&D. Though R&D is not considered to be an attack on tradition, skilled and talented people are difficult to keep on the reservation. The brain drain then becomes a result of the cultural resistance to non-Navajo paradigms of knowledge and development.

Though cultural preferences have indeed been a cause of the slowed economic growth, “an unyielding adherence to traditional values, even when neighboring peoples seem to offer other and more ‘rational’ ones, is precisely what has enabled the Navajos to retain their social and cultural integrity through four centuries of environmental and political transformations, and apparently it is still doing so today” (Ruffing 1978: 76). It has been postulated that the Navajo Nation and their set of different preferences may not last long.

New economic theory may categorize the Navajo people as ‘emerging maximizers’ who will learn by doing in the market place. This approach will only put the Navajo people into another era of disharmony and failed development programs. The Navajo will continue to resist all forms of knowledge that are inconsistent with *sa’ah naghái bik’eh hozhóón* (SNBH). I have shown in the preceding pages how the Navajo have resisted an all-inclusive adoption of technology, due to the strength and power of their cultural preferences. It is clear that the Navajo will search for new ways and models of adopting and using technology that is consistent with SNBH. As they do so, they will learn by doing.

DRAFT

Environment and development on the Navajo Nation

Examination of ecology

By Andrew Curley

Why environment matters

One of the most pressing issues facing the Navajo people is the status of our environment⁹. In recent history of development and political modernization, the Navajo people have been subject to drastic changes in environmental policy, land use and resource extraction. This has had profound effects on the economic prosperity of the Navajo people and our social and political orientation. In this section of our government reform report, we will consider the broader implications of resource use, land-use and development policy on the Navajo Nation with respect to environment. With this we hope to create a better understanding of the status of the Navajo Nation environment and encourage an approach to future prospects of environmental policy on the Navajo Nation.

History of resource use on the Navajo Nation

The land on which the Navajo live is ancient. Not to say that the actual elements on and below the surface of the Earth are any older than the rest of the world, but the topography, the rolling mesas, steep rocks mountains and plains are old and predate human inhabitants. Whereas the topography in the Eastern part of the United States and most of Western Europe has changed drastically in recent years as a consequence of human development, the land on which the Navajo live has remained unchanged for generations. This has implications for the way in which the Navajo perceive the value of their land—its ancient appearance has increased its value in the minds of the Navajo and the natural world has become central to the spiritual wellbeing of the people.

Historically the Navajo have lived off what today would be called renewable resources. The Navajo used sheep as a source of food, clothing and indication of material prosperity. Sheep are renewable. They are self-generating creatures that, with proper care, can maintain a population for generations. Likewise the Navajo learned agriculture from neighboring Pueblo tribes and from their own experiments with seeds (Reno 1981: 11). Previous generations of Navajo historically sustained off corn, squash, melon and certain types of beans. These resources were too self-generating and maintained for generations. There was relative sustainability in the Navajo economy. Meaning, relative to Western economies, the Navajo Nation was stable. Great fluctuations in prosperity didn't occur or weren't historically recorded. It is reasonable to assume some growing seasons were better than others, but the structure of the economy was based on renewable resources and wasn't susceptible to outside fluctuations. It is important to note that during this time neither government services nor extractive industries were forms of economic pursuits. Therefore, it is reasonable to assume that principles and values currently characterized as "tradition" is rooted in these times—during decentralized, localized governance and small-scale pastoral and agricultural forms of economy. This is the main source conflict between today's economic and political direction and the divergent economic and political orientation found in the base Navajo population.

⁹ For the purposes of this paper suffice it to say that the term "environment" refers to natural elements (either manipulated or left in natural state), or the overall ecology in which people live—aspects of the natural world that have potential to affect their physical and spiritual well-being.

All problems related to environmental change (whether one considers such change development or degradation) occurred after the Navajos return from Bosque Redondo in 1868 and the subsequent reservation lifestyle—ill suited for a sheep-based pastoral economy (Iverson 2002: 68).¹⁰ When the Navajo returned to the present day Navajo Nation, they were a fraction of the pre-Bosque Redondo population and their sheep herds and crops had all been obliterated by the US military. The US at this point, initiated a policy of dependency, forcing Navajo people to become “wards” of the state. They supplied the sheep, forced open their market, allowed for non-Navajos to establish trading posts deep in Indian country and introduced commodities into the Navajo lifestyle. Additionally, the US government had made it policy to convert so-called nomadic Indians into industrious farmers, and therefore gave incentives for Navajos to become agriculturists. This was first attempted with the conclusion of the 1868 treaty in which additional lands outside of the small reservation boundary were offered to Navajo “heads of family” who wanted to become farmers. As Raymond Locke writes, “the treaty authors had applied the principles of the Homestead Law to the Navajo treaty, either ignoring or ignorant of, the fact that there were very few tracts of one hundred and sixty acres within the reservation that would suffice to support a family” (1976: 385).

The Bureau of Indian Affairs (BIA) micro-managed all aspects of Navajo life following release from Bosque Redondo. As a result of area confinement and expansion of life stock Navajo grazing lands experienced drastic desertification and erosion. This prompted officials in Washington D.C., engaged in public works programs like the Hoover Dam, to call for “livestock reduction” (Wilkens 1999: 85). Much of the environmental deterioration was a consequence of the confinement of grazing land initiated by the US¹¹ (Kluckhohn and Leighton 1946: 73). In order to appease the needs of the Navajo people, the US expanded the Navajo reservation several times during the subsequent 60 years, the largest expanse occurring in the early 1900s. Collier’s administration moved toward a policy of greater Indian autonomy over their lands, and established collective ownership (rather than individual ownership) over reservations lands (Wilkens 1999: 59). It was at this point that current Navajo land policy was forged. The BIA helped the then recently established tribal council establish grazing lands and grazing permits. Livestock reduction helped reduce the degree of erosion on the Navajo Nation, but the forcible nature of the policy is something that is still bitterly remembered by Navajos today (Ibid 1999: 85).

The emergences of extractive industries

Since the 1920s, foreign corporations have eyed minerals found within the Navajo Nation for extraction. The most infamous of these is uranium, which was banned from mining and processing on the Navajo Nation in 2005. But initially extraction started with oil. It was the interest of oil firms in the eastern part of the Navajo Nation that prompted the BIA to create a council for the Navajo

¹⁰ Although Iverson states that there was a misunderstanding between the Navajo and the US government regarding the boundaries of the reservation and, thus, Navajos moved into locations beyond the reservation boundary. This is a significant consideration as the formal reservation boundary might have had little impact on the overall economic success of the Navajo people.

¹¹ Wilkens suggests that Navajos became disenchanted with the Navajo government (i.e., Navajo Council) for their tacit approval of the BIA Livestock Reduction program in the early 1930s. Kluckhohn and Leighton, though inappropriately characterizing Navajo’s affinity for livestock and sheep as irrational and based on “emotions,” in their seminal work, “The Navaho,” suggest that overgrazing was a consequence of BIA policy. They write, “Most of the [BIA Navajo] administrators from the time of Fort Sumner to the start of the New Deal were imbued with the current philosophy (during the 1930s) that quantity expansion and exploitation of nature is the way to prosperity, so they urged the Navahos to increase their flocks.” The authors conclude this led to erosion—first observable in the 1880s.

people (Iverson 2002: 133; Kelly 1968: 69; Wilkens 1999: 82; Young 1978: 55). The creation of the Navajo Nation Council, to sign contracts on the behalf of Navajos stemmed from a provision within the 1868 treaty that mandated “no future treaty for the cession of any portion or part of the Reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three fourths of all the adult male Indians occupying or interested in the same...” (Young 1978: 55). Since its inception the Navajo Nation government has been significantly influenced by the expansion of extractive industries on the reservation.

From 1945 to 1988 Navajo country contributed approximately 13 million tons of uranium ore to nuclear development. Initially this activity served as the economic foothold for the Navajo Nation but eventually waned in value (Brugge XXXX: 3). During World War II, the US paid corporations to extract uranium from the Navajo Nation to suffice their atomic program in Los Alamos, NM. This turned out to have negative impacts on the Navajo population as these contracted firms tended to exploit Navajo labor. Workers’ safety was neglected and many open-pit mines were left open, thus exposing the local population to its deteriorating health effects (Eichstaedt 1994: 36). Economic prosperity derived from mineral extraction is not without its cost. As a result of uranium mining, 1,000 to 1,200 Navajo uranium miners died as a result of lung cancer and other illnesses associated with radon exposure (Benally XXXX: 2).

In 1955 oil was discovered in Aneth Strip in the southern Utah section of the Navajo Nation and drilling started soon afterward. It was during this time that the Navajo Nation budget became dependent on extractives. As oil, gas and coal revenues flowed in, the tribal governmental bureaucracy expanded and became more and more dependent on mineral sales. In this sense, the Navajo Nation became addicted to oil, gas and coal. By 1958, 93% of the total income for the Navajo Nation came from mineral extractions. Eventually by 1975 this number had dropped to 70% (Reno 1981: 131). What’s more, the Navajo Nation only received a fraction of mineral sales but bore all of the social and environmental cost.¹² Through mineral extraction, tribal leaders tried to move away from dependency on the federal government. But the money received from extractions wasn’t enough to jumpstart economic development and consequently shuffled the Navajo Nation from one dependent situation to another. Meaning, whereas before mineral extraction the Navajo Nation was dependent on the federal government to fulfill its budgetary needs, after extractions began the nation became dependent on outside mineral corporations to meet its ends (Ruffing 1980: 44).

Coal has been a large part of the tribal government’s revenue since the 1950s (Reno 1981: 106). Peabody Coal negotiated a contract with both the Hopi Tribe and the Navajo Nation in the 1960s. The company told the tribal council and then Chairman Nakai that coal was a finite resource with rapidly diminishing value.¹³ Nakai and the Hopi Tribes signed a 35-year agreement with Peabody in 1966 to mine 64,000 acres and use Navajo water to slurry the coal to a refinery in Nevada (Iverson 2002: 242). The passage of the 1964 and 1966 leases was done against opposition from local residence. Fifty-three families located on the leased land refused to move, despite the offered

¹² As we will demonstrate in the second section of this report, social and environmental costs are more closely intertwined with the Navajo than the dominant US-Anglo core.

¹³ Iverson claims that industry consultants told Navajo officials that nuclear power was “just around the corner” and soon coal would become “obsolete,” leaving the Navajo Nation’s window of opportunity on coal revenue returns short.

compensation. Hopi traditional leaders protested the coal lease. The Hopi tribe's lawyer, John Boyden, secretly represented Peabody Coal (Iverson 2002: 243; Wilkinson 2005: 311). Both tribes sold their water to the company at "egregiously low rates."

In the 1970s it was understood that Peabody received an overgenerous price for the water usage and paid an unacceptable amount for coal royalties. Then Navajo Nation Chairman Peter MacDonald's strong stance against the coal industry prompted Peabody to renegotiate its contract with the tribe. Philip Reno quotes MacDonald with having said, "We ask now quietly and constructively—we will not ask much longer; we will withhold future growth at any sacrifice if that is necessary to survive" (1981: 117). In 1975 MacDonald helped create the Council on Energy Resource Tribes (CERT) in response to the US "energy crisis" which mimicked the formation of the Organization of Petroleum Exporting Countries (OPEC) (Reno 1981: 130; Ruffing 1980: 48-52; Wilkens 1999: 167). CERT's intention was to leverage tribal bargaining power on economies of scale. Collectively Indian nations hold about 20% of the US energy resources. But then US President Carter neglected CERT and Indian tribes in general during his national energy summit in 1979. CERT then sought advice from OPEC, malignly portrayed in the US media, and therefore became tainted in the US consciousness. But this collected action put mining interests on guard and resulted in improved negotiations with Indian tribes (Ruffing 1980: 52).

Eventually extractives dominated tribal coffers and the tribal government was richer than it had ever been before. For some this created a temporary stymie toward penury, as Navajos employed in the extractive sector of the economy enjoyed better employment compensation than other sectors of the Navajo economy at this time (e.g., small-scale manufacturing, pastoral, artesian and informal.) This dependency on oil, gas and coal continues to have profound effects on the Navajo people, economy and politics. Mineral resources account for over \$60 million in royalties and taxes to the Navajo Nation, which amounts to approximately 60% of the budget of the general fund (Choudhary XXX: 8). A majority of these taxes and royalties were from the Peabody Coal Mine, the Pittsburg and Midway Coal Mine, and Navajo Mine. As of January 1, 2006, Peabody Coal Mine is no longer in operation due to a court order concerning water rights in the Black Mesa area. In 2008 the Navajo Nation estimates that the Pittsburg and Midway Mine will close unless its lease is renewed (Choudhary XXXX: 8). Since these two mining operations constitute approximately 40% of the Navajo Nation general fund, its closure would put the Navajo Nation in a severe budget shortfall. As of 2005 coal revenues on the Navajo Nation generated \$72 million from 27.5 million tons of coal extracted. Oil revenues generated \$30 million and gas revenues generated \$2.11 million. Between 1999 and 2005 coal productivity and revenues steadily rose, whereas oil and gas production have been declining with unstable and unpredictable revenue generation. Coal mining and production remain valuable natural resource for the Navajo Nation and has buttressed the Navajo budget for many years. The 2005-2006 Navajo Nation Economic Development Strategy predicted that coalmine closures would result in large cuts in the budget and loss of many high paying jobs. This report also explored "prospective sources of revenue" in anticipation of monetary loss. This segment outlines possibilities of creating an income tax on the Navajo Nation, slot machine leasing and rentals to outside users and gaming development (Choudhary XXXX: 8).

Significance of Toh

Water is a vital source to the Navajo people, and its importance to surrounding non-Navajos is waxing. From all accounts of Navajo agriculture, historic Navajo farmers depended on a rain-fed crop (as opposed to irrigated systems) (Kluckhohn and Leighton 1946: 55). Therefore the rain and changing of the seasons was of dire consequence to traditional Navajo (Ibid: 44). Farming in historic Navajo society was reliant on rain. Analogously, water was to the historic Navajo economy as oil is to the modern, post-industrial economies.

Additionally, as the Navajo holding of sheep and horses increased, water holes and streams increased in importance.¹⁴ Essentially, the Navajo historically were dependent on water for their substance and their livelihood. But with the introduction of livestock post-Bosque Redondo, the Navajo water supply came under severe constraints. Because the Navajo rely primarily on rain in this semi-arid terrain, overgrazing became problematic by the time of the 1934 proposed IRA constitution. Without allowing sufficient time to fallow, the vegetation loss led to increased desertification and, eventually, erosion. Overgrazing created huge drainage runoffs that carried rainwater off the Navajo Nation and into neighboring communities (Kluckhohn and Leighton 1946: 49).

Part of the intention of the federal government post-Bosque Redondo was to assimilate Navajos into US-style farmers, with large land holdings and irrigated fields. General Sherman, on drafting the Navajo treaty of 1868, allowed the Navajos direct access to portions of the San Juan River in modern New Mexico precisely for this reason. The federal government thought Navajos could become industrial farmers. Despite this commitment, the US in the 1930s initiated large-scale dam construction to rebound its troubled economy. These dams overcommitted water resources to non-Indians. As the National Water Commission reported to Congress in 1973, legally Indian nations (20 claiming use to the Colorado River and its tributaries alone) have “superior” interests, but the federal government has approved water use for non-Indian interest that “the Indians have a priority right [to]”¹⁵ (Reno 1981: 47).

To understand the modern Navajo water situation, one has to understand “western” water law and its anomalous facets compared against other, riparian-based water law (Shiva XXXX, XX). Western water law operates under the doctrine “prior appropriation”—meaning that water rights are established on the earliest “priority date” (i.e., “first in time, first in right”). This means that the interest with the first priority date has superior water rights to that of subsequent users. Many Indian tribes, including the Navajo for usage of the Colorado Basin, have established a water usage date of “time immemorial,” or even before their formal reservations were created. These tribes are deemed technically to have first “priority date,” but much of this has been ignored in practice. (Pevar 1983: 241).

Indian water law stems from the 1908 US Supreme Court decision *Winters vs. the United States*, which granted tribes water rights that could meet the “purposes of Indian reservation”—whatever

¹⁴ Kluckhohn and Leighton claim that the introduction of the horse by the Spanish allowed Navajos to “supply hogans and outlying sheep camps with food and water from considerable distances,” thus influencing the Navajos’ ability to access water (Ibid 1946: 38).

¹⁵ These claims are quoted in Reno’s *Mother Earth, Father Sky, and Economic Development: Navajo Resources and their Use* (1981). The original source for the National Water Commission is “Water Policies for the Future,” Final Report to the President, National Water Commission, 1973.

that might be. This decision interpreted water rights to be implicit, though not expressively explicit, in treaty settlements. Meaning, when the US settled treaties with Indian tribes, there was an assumed provision for water rights (Pevar 1983: 240; Thorson, Britton and Colby 2006: 22).

In 1963 the Supreme Court heard the case of *Arizona vs. California* in which the doctrine of “practicably irrigable acreage” (PIA) was established. This was a method by which to determine the “purpose” of the reservation as was advanced in the *Winters* ruling. Meaning, because *Winters* claimed that reservations held water rights insofar as maintaining the purpose of the reservation, this so-called purpose had to be established before settling water rights. In *Arizona vs. California*, the US Supreme Court determined that five Indian nations using the Colorado Basin were established for agricultural purposes, therefore water must be allocated to fulfill needs deemed necessary for this mode of economy (Thorson, Britton and Colby 2006: 50).

This doctrine made the claim that water quantification for purposes of establishing water rights can be scientifically determined through hydrologic, topographic inspection. The Navajo Nation must establish PIA in settling the lower Colorado water settlement claims. Additionally the Navajo Nation has been in settlement negotiations with the State of New Mexico for water rights over the San Juan River in the northwestern part of the state. The amount of water upon which the Navajo Nation settles will significantly impact the future course of development on the Navajo Nation (as future development schemes require a lot of water.)

At present time, Indian nations face outside threats on their water resources. Particularly in regards to these above mentioned settlement agreements. Aside from waxing demands from surrounding states and municipalities, the Navajo Nation must take into account its own needs, in terms of industrial development and citizen use. With the federal government ambivalent on how much water rights might suffice the “purpose of a reservation,” it is difficult for Indian nations to demonstrate need. If water requests exceed this so-called “purpose” then rights are jeopardized and require negotiation. Also, the Navajo Nation is semi-arid and water is scarce. With the fallout of global warming and an increased scarcity of water, water rights and water settlements for the Navajo Nation will have profound consequences on the future for the Navajo Nation.

Dine Bikeyah and economic orientation

The idea of land tenure has changed significantly since the establishment of the Navajo reservation. As a consequence or area confinement, and out of lack of cultural understanding, the federal government with the passage of both the Dawes Act of 1878 and the subsequent Indian Reorganization Act of 1934, the Bureau of Indian Affairs has attempted to impose ideas of land rights and property ownership on the Navajo people.¹⁶ For the Navajo people land rights and/or property have come in two forms. The first, based on the Dawes Act, was the idea of individual allotments to families. This experiment wasn’t pervasively attempted on the Navajo Nation, but the logic was to turn Indian pastoralist or hunters into farmers. Because the US dealt deeds out to so-called male heads of household transmogrified the Navajo matriarchal familial organization into a patriarchal society.

¹⁶ The 1887 Dawes Allotment Act was enacted to make Indians industrious, male-headed farmers. Tinged with many ideological underpinnings of Americana, such as individualism and personal freedom, this act ran counter to the collective identities of Indian nations. The Wheeler-Howard Act, or Indian Reorganization Act, abolished this messianic attempt at individualism after observing failure, and reestablished collective ownership over tribal resources—through modern constitutional governments however.

With this change a new strata of society emerged that would prove to be a formidable political interest in the Navajo Nation government. Livestock owners accrued more wealth based on the higher value of the livestock (as opposed to sheep which was the norm pre-1868)¹⁷ (Kluckhohn and Leighton 1946: 106). Livestock interests grew exponentially and they helped to influence Navajo Nation government policy toward livestock in terms of taxes and grazing permits. This has become an increased ecological strain on the Navajo people as cattle consume much more vegetation and water than sheep. And they increase the hazards of roadway travel. What's more, with increased consumption, cattle take up a higher portion of resources reserved for communal usage. This further polarizes economic equality, causing stark class divisions on the Navajo Nation that historically were much tamer.¹⁸ Meaning, pre-1868 Navajo people had difference in wealth based on livestock owned, but the degree of difference between the lower and upper strata of Navajo society have grown wider as a consequence of the introduction of cattle. Additionally, livestock has altered the ontological orientation of Navajo families who start to reflect western rancher families based on economic similarities. A cowboy culture existed around cattle, and as a consequence Navajo cattlemen start to imitate their white neighbors.

Ecological consequences of industrial economic development

Some of the components listed in this section have already been discussed, but it's useful to take into particular consideration the consequences on the Navajo environment of industrial economic development. As we have stated earlier extractives has been the main and most substantive form of economic development on the Navajo Nation since governmental inception. And as we have shown earlier, the Navajo government was created in order to act as a signatory body for oil and gas drilling leases. As a consequence little environmental safeguards were established in order to protect both workers and community members. Demonstrated in the history of uranium extraction, such lack of environmental safeguards has had severe consequences on the health of the Navajo people.

For example, the uranium development in the 1950s and oil and gas exploration concurrently significantly expanded tribal coffers, but as a consequence hundreds of mine workers were sickened from the radiation and died prematurely. Additionally, families used ore left from extraction to construct homes and make household improvements. This led to the poisoning of entire families. Water sources were also polluted and children endangered themselves from playing

Many people contracted cancer from uranium work or black lung disease from coal extraction. Water sources have been polluted, aquifers have been drained—but tribal bureaucracy has significantly expanded as a result of increased revenues. We have therefore made ourselves

¹⁷ Kluckhohn and Leighton describe the emergence of new class-strata "in recent times" (1946) as "a few wealthy Navajos who are heads of 'outfits'." The authors' definition of "outfit" is nebulous, but instructive. Essentially the authors claim that the "outfit" is "a group of relatives...who cooperate for certain purposes—such as use of range land. The authors claim that this group is different from the historic Navajo "extended family" in that "the members of the true Navaho (sic) extended family always live at least within shouting distance of each other, whereas the various families in an "outfit" may be scattered over a good many square miles...etc." This change in familial-orientation is necessary in understanding both class and politics in the contemporary Navajo Nation—especially in this report where such distinctions affect resource use (Ibid 1946: 109).

¹⁸ For example, in 1940 livestock constituted 44% of economic activity on the Navajo Nation, though roughly 26% of the then Navajo population owning no livestock at all. And of the livestock owning population, 42% owned less than 60 head of sheep, and roughly 11% of the population owned 500 sheep or more—demonstrating extreme class stratification among pre-WWII Navajos (Kluckhohn and Leighton 1946: 54).

dependent on non-renewable, dirty resource extraction for sustenance. The two largest employers on the Navajo Nation is mining and governmental service, with being contingent on more extraction. These resources are limited, however, and though continued expansion could compensate budget needs, this is an unstable, non-balanced mode of economy. Transitional industries are in desperate need, but tribal decision-makers are opposed to such prospects. The Shirley administration has been particularly hostile toward new technologies. He has even advocated for US lawmakers to invest more in coal the renewable energies. This was done with the obvious intent to get his extractive fix.

The current state of the environment

The current state of the Navajo environment is both good and bad. There has not been substantial environmentally damaging industrial development and much land and natural scenery; waterways, forests, etc. remains intact. However, there are many challenges. Decades worth of air pollution from four-corners power plants will severely affect the health of people in these areas for generations to come. Superfund sites resulted from uranium extraction still need cleanup. Water quality needs improvement for human consumption. Desertification and erosion from over grazing is a continual concern. What's more effects of global warming, changing weather patterns, increased scarcity of water and waxing outside demands will put sever restrain on our ability to maintain current population levels—let alone grow and develop. There are more challenges than solutions now, but given the Navajo people's tenacity and resolve, such problems will be overcome.

But it is this sphere of development that indigenous, specifically Navajo, can offer much to the outside world. As Bolivian President Evo Morrales said, indigenous peoples are the “moral reserve” for humanity. Meaning, knowledge accrued throughout generations of living close with the earth have led to unique and needed environmental policy. Generations prior to reservation life, Navajos created an economic system that were in balance with the surrounding environment. This stability helped our people survive in Diné tah for hundreds upon hundreds of years. Today, just 140 years since our ancestors were released from Bosque Redondo, we face great challenges to our environment. Government expansion and mineral extraction have gone hand in hand. Today more and more people are discontent with the status quo of the Navajo Nation government and continued reliance on environmentally damaging resource extraction for development. We have made ourselves dependent on resource extraction and, according to the Foundational Laws of the Diné, we are out of balance and in violation of natural law. Particularly in terms of coal extraction, we have lost our inherent responsibility for the earth as is advanced in the laws. Being the only legal document to bridge our bodies of Western-influenced laws (the Navajo Nation Code) and historic Navajo principles and laws, it is the best first place to consider the Navajo Nation's approach to environment with respect to historic Navajo mode of thinking. In this next section we will consider current environmental policy through the prism of the Foundational Laws of the Diné.

Specifically, we will examine current trends in environmental policy, the ban of uranium extraction, and a current challenge to this policy on the nation, the proposed Desert Rock power plant. In this section of the report we argue that the proposed Desert Rock power plant is in violation of natural law of the FLDs.

Navajo Nation Health Care Development

A history of healthcare on the Navajo Nation

By Nikke Alex

Why healthcare matters

In looking at government reform, one must consider current health care development and the current health status of the Navajo Nation. From changes in federal Indian Policy, the state of health care has altered throughout Indian Country. Since the beginning of the century, the Navajo Nation government has evolved and the health care services have expanded. More recently, the state of health care has improved on the Navajo Nation since the beginning of the century. However, improvement is still needed. With the Navajo Nation population increasing at an extraordinary rate, the Navajo Nation government should address health care.

Brief Federal Indian Law History and Health Care

Since the birth of the United States in 1776, the US government has trampled over American Indians for their land and myriad natural resources. Unlike other minority groups, American Indians have a special relationship with the US government on part of the many treaties that have been signed. This government-to-government relationship was established in 1787 in the United States Constitution.¹⁹ For over two centuries, the US government has attempted to rebuild Native Nations in hopes of breaking the federal Indian trust relationship and reliance on the US government. Since the main goal was to civilize and acculturate the Native Nations, today many American Indians face hardships in rebuilding the social, physical and mental aspects of their communities.

The appropriations of health care services were in direct correlation with federal Indian policy. In 1921, Congress passed the Snyder Act that specifically allocated funds to Native Nations for “the relief of distress and conservation of health...[and] for employment of ...physicians...for Indian tribes” (25 U.S.C. § 13). This Act was the first formal provision which allocated money to Native Nations health care needs. The Snyder Act sparked federal Indian policy to change. A few years later, the Johnson-O’Malley Act of 1934 (25 U.S.C. §§ 453-454) was passed and allowed the Bureau of Indian Affairs (BIA)—and later Indian Health Services (IHS)—to enter contracts to with states and territories to provide medical, educational, and social welfare services (Wilkins 2002: 132).

In light of the Reorganization Era, the Indian Reorganization Act of 1934 created drastic changes in federal Indian policy. At this time, Native Nations were expected to support economic development and self-determination; therefore, they were to treat their communities like businesses. However, health care services were still under the tutelage of the BIA, which hindered the health care development within many Native communities. In this pendulum of policy changes, the height of the Termination Era greatly affected Indian Country. However, in 1954, the Transfer Act was passed which moved the responsibility of Indian health to Public Health Services (PHS). Therefore,

¹⁹ Article I, Section 8

in 1955, the Indian Health Service (IHS), an agency within the Department of Health and Human Services (HHS), was created and is responsible for providing federal health services to American Indians and Alaskan Natives.

The Indian Health Service is the most important federal health care provider and health advocate for American Indians. The HIS' main goal is to raise the health status of American Indian people to the "highest possible level." As IHS began to expand within Native communities, health care began to improve. The creation of IHS has been one of the most helpful federal programs that have been created for American Indian communities.

Preceding the 1950s, most American Indians lived on reservations. However, during late 1950s and early 1960s, US government policies were created to acculturate Indian peoples into the mainstream American society. The Indian Self-Determination and Education Assistance Act of 1975 was passed.²⁰ This act gave Indian tribal governments more control over their tribal affairs and diminished the control that Bureau of Indian Affairs had over tribal programs (O'Brien 1989: 265).

Many American Indian community leaders started to notice that American Indians were not receiving adequate healthcare, or care that addressed their unique cultural background. As a direct result of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) and the activism, the Indian Health Care Improvement Act (PL. 94-437) was passed in 1976. The Indian Health Care Improvement Act (IHICIA) was passed by Congress to address the poor health conditions of American Indians throughout the United States. Section 3 of the IHICIA specifically states, "it is the policy of the this nation, its fulfillment of its special responsibilities and legal obligations to the American Indian people, to meet the national goal of providing the higher possible health statues to Indians and to provide existing Indian health services with all resources necessary to effect that policy." The IHICIA was specifically passed with the intentions of generating equal healthcare for American Indians and the general U.S. population.

History of Navajo Nation Health Care Services

Since the passing of P.L. 93-638, the Native Nations have had the opportunity to self-govern some aspects of their programs particularly the health service program. In 1977, the Navajo Nation Council established the Navajo Division of Health Improvement Services, which is now called the Navajo Division of Health (NDOH). The purpose is to: "plan develop, promote, maintain, preserve, and regulate the overall health, wellness and fitness programs for the Navajo population" (Joe, George 2004). The target populations of NDOH were Navajos and their families residing on the reservation and surrounding areas. For the fiscal year of 2003, the NDOH's budget was \$78.8 million, seventy-two percent that came from federal funds, eight percent from state funds, seventeen percent from tribal funds, and two percent from tribal trust funds. As of 2003, the NDOH employs over 1,100 health professional, paraprofessional, and technical personnel throughout the Navajo Nation.

In addition to basic health services, NDOH "[has] taken the lead in advocating for increasing capacity and improving many public health concerns, such as: heath promotion/ disease prevention, alcohol and substance abuse, elder care, and diabetes prevention" (Joe, George 2004). The primary

concern of NDOH is improving the quality of health for the Navajo Nation. They have partnered with other programs to meet their goals and have recently identified the most pressing health concerns of the Navajo Nation.

In addition the NDOH, the Navajo Area Indian Health Service (NAISH) provides health care services to the Navajo Nation. The NAISH provides services to over 200,000 people within the Four Corners area and is responsible for not only providing services to the Navajo Nation but other tribes as well. Comprehensive health care is provided by NAIHS and the Navajo Nation through inpatient, outpatient, contract and community health, and environmental health programs. The NAISH consists of six hospitals, ten health centers, thirteen health stations and community based activities. They include: Chinle Comprehensive Health Care Facility, Crownpoint Health Care Facility, Dziłth-Na-O-Dith-Hle, Fort Defiance Indian Hospital, Gallup Indian Medical Center, Inscription House Health Center, Kayenta Health Center, Shiprock-Northern Navajo Medical Center, Tohatchi Health Care Center, Tsaile Health Center, Tuba City Indian Medical Center, and Winslow Health Center (McSwain, Roger G).

In 2002, three 638 Self-Determination contracts were approved by the Navajo Nation Council. These 638 contracts were for Winslow Health Center, Utah Health Care System and Tuba City Indian Medical Center and have allowed the Navajo Nation to plan, conduct, and administer federal Indian programs for the benefit of the people. These health care centers have been administered by the Navajo Nation, and have been successful in addressing the health care needs of the people.

Current Navajo Nation Health Disparities

Today, the Navajo Nation faces many health related problems varying from environmental health to behavioral health to chronic diseases. It has been extremely difficult to address all the people's needs. Thus, it is imperative that the Navajo Nation government responds to the ever changing needs of the people. In FY 2007, The IHS sanitation construction program funded first time water and sewer service to 1,098 Navajo homes. Additionally, the Navajo Nation and local health corporations administer approximately \$89 million of the annual NAIHS funding to deliver and support the delivery of health care services to Navajo people.

In 2005, the NAISH published the 2005 Navajo Community Health Status Assessment. This study has successfully summarized the current health status of the Navajo Nation. Though the study of the Nation's demographics, we are able to examine and interpret the health needs of the Nation. Therefore, it is important to point out various key trends of disparities on the Navajo Nation. More recently, the Navajo Nation population has a high percentage of children and a lower percentage of elders than the U.S. population. The Navajo Nation has thirty-three percent few college graduates than the general U.S. population. Unemployment is twice the 2000 U.S. Census rate, but has declined by 2.9% from 1990 to 2000. The Navajo population has a median age of 24 years which is twelve years below that of the entire U.S. population, and the annual per capita income of \$7,100 is one-third of the average in the U.S. The median value of Navajo housing is \$23,000 which is one fifth U.S., and over one third of the homes lack the basic utilities of running water and electricity.

Rates of enteric disease²¹ are higher than the U.S. Life expectancy for Navajo is lower than the U.S. population which indicates that many are dying a premature death. Lastly, Navajos have experienced an increase of sexually transmitted diseases and in some cases are two to three times the national average.

During 1999 to 2001, the five leading reasons of death for the Navajo people include unintentional injuries, cancer, heart disease, diabetes, and influenza/pneumonia. In FY 2000, the leading reasons for outpatient visits were diabetes, hypertension, upper respiratory infections, routine childcare, ear infections, pregnancy and childbirth related, accidents, musculo-skeletal conditions and supplemental procedures (prevention tests). As the demographics alter year to year, the Navajo Nation is faced with assorted health needs.

For example, cancer mortality rates for the Navajo Area death rates—1999 to 2001—are lower than that of all other races in the U.S. except for cervical cancer which is about twice as high as the U.S. rate for all races. The cancer rates have been contributed by mining—both coal and uranium. The Navajo Nation contains over one thousand abandoned uranium mines. The Four Corner region is where the largest quantity of uranium was mined in the United States. The exposure to the mining industry and the US wage economy altered the lifestyle of the Navajo greatly. Also, the Navajo men were exposed to alcohol for the first time. The introduction of alcohol sparked other issues such as, substance abuse, crime, and addiction of which are still major problems on the Navajo Nation. Not only did the uranium mining industry affect the health of miners, but also, as a direct result, the mining industry introduced new social and health issues to many Navajo families (Brugge, D., Benally, T., & Yazzie-Leweis, E. 2006: 5).

In the 1960s, only after ten years of mining, the first cases of lung cancers began to appear in Navajo uranium miners. This greatly affected Navajo communities because it was the first time they had experienced this disease. The health hazards of uranium and radiation were known since the 1920s due to European health studies (Brugge, D. and Goble, R. 2002: 1412). Not only were the Navajo exposed to the danger of the radon, but were also exposed to more than 36 toxic chemicals (Motavalli, James 1998). It was not until 1976 that miners were informed of the dangers of mining uranium. Thus, for over forty years, mining companies and the US government failed to educate the Navajo of this health disaster or implement safety precautions. As a result, the Navajo Nation has been faced with new diseases and illnesses due to the contact with outsiders.

Uranium mining has greatly altered the physical and psychological health of the Navajo Nation and has introduced health problems to the elders of the Nation. The elders are forced to deal with lung cancer, pulmonary fibrosis, silicosis, cor pulmonale, and pneumoconiosis. Additionally, the families of the miners were strained by the effects of the social, mental, and behavioral factors of mining. Mining is one of many examples where the problem has had an effect on the Nation's holistic well-being.

In contrast to the elders of the Nation, the youth face other health disparities than the elders. According to the 2000 U.S. Census, the median age of the Navajo Nation is 23.8 years. Since we

²¹ You can contract Enteric Illnesses by eating, drinking or swallowing food or water that has been contaminated with a pathogenic organism. You can also contract some of these illnesses from contact with an infected person via fecal-oral transmission.

are such a young Nation, it is vital we examine the demographics of the youth. In regards to pre-teenagers, nineteen 19% were at risk for being overweight and 19% were overweight; and while teenagers, 13% were at risk for being overweight and nine percent were overweight. Fifty-three percent of middle school students and 77% of high school students have tried smoking a cigarette. Additionally, 47% of middle school students and almost 70% high schools students have tried alcohol. Teen pregnancy for the Nation is higher than the U.S. rate. Lastly, motor vehicle related deaths are directly correlated with the Navajo population under the age of 25, and is five times the U.S. rate.

Conclusion

As previously mention, the mining industry and other Western influences have tainted the overall health of the Nation from the environment to the physical health of the people to the social and mental health of families. As a Nation in the 21st Century, it is impossible to ward off Western influence; therefore, the Navajo Nation must address the health disparities of today with new medical technology along with traditional medicine in order to address the constant health needs of the people. After examining the demographics of the Nation, it is imperative we examine the health care and health status of the Nation when address Navajo Nation government reform. The Navajo Nation is a young Nation, and the needs of the youth are far different than those of the elders. There new strides must be taken to address these altering health needs.

Also, as the Nation is pushing towards complete sovereignty and self-sustainability new ideas of healthcare development are needed. Therefore, the Nation should consider a National health care system. B. Freedman and F. Baylis state, “a government-funded health insurance program may be purposively understood as an institution designed to secure health, [but] it is constrained by economic and political factors” (Boetzkes, Elisabeth 2000: 5). Many political and economic factors withhold the health care system from advancing. However, as new a new Nation, the Navajo Nation should be able to break current reliance on the U.S. and create a national health care system to ensure holistic health for the people.

Critique on the Decision Making Process
Using Navajo thought for governance



Principle Author

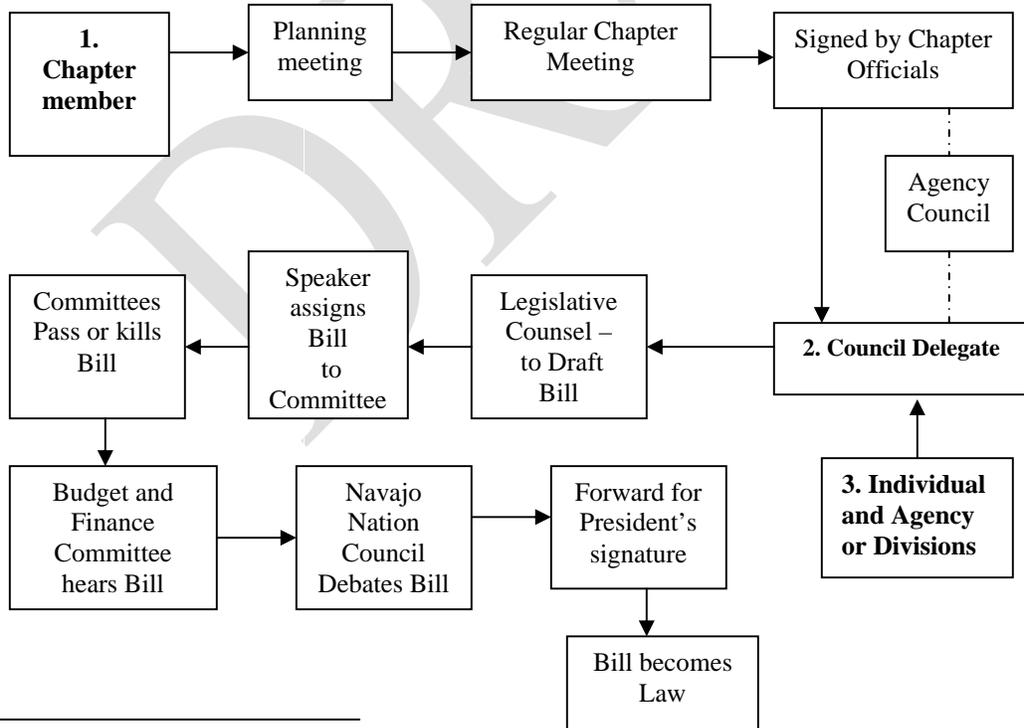
Moroni Benally—Policy Analyst

The policy-making process in the Navajo Nation is largely derivative of the policy-making process of the dominant society. **Table 1** outlines of the policy-making process for the Navajo Nation. This process seems to comport, though not perfectly, with dominant models of policy-making which includes several phases: 1. Agenda Setting, 2. Policy Formulation, 3. Policy adoption, 4. Policy Implementation, 5. Policy Assessment, 6. Policy Adaptation, 7. Policy Succession, 8. Policy Termination.²² Other policy scientist and scholars have developed similar models.²³

One can readily observe that Agenda Setting circumscribes the process of planning meetings, and chapter meetings, in addition to Standing Committee meetings. Yet, the process begins far before that with recognition of some issue some person or actor wants the policy-makers to address. At these chapter and committee meetings policy formulation happens. Each phase of the policy-making process can be correlated to the policy-making process of the Navajo Nation.

The following table shows the policy-making process in the Navajo Nation. Policies can be derived from three primary sources. At the Chapter level, policies usually arise from the request of individual members or through the planning meeting. Other sources include, the Council Delegate herself. The Delegate can decide to introduce some legislation without the input from the chapter or community. The third source is the outside groups or actors approaching the Delegate and asking for that Delegate to sponsor legislation.

Table 1



²² William N. Dunn, *Public Policy Analysis: An Introduction*, 3rd ed. (New Jersey: Prentice Hall, 2004), 45.

²³ Dipak K. Gupta, *Analyzing Public Policy: Concepts, Tools, and Techniques*, (Washington D.C.: CQ Press, 2001), 47.

From the model above, it is easy to categorize the different nodes into the generally understood model of policy-making. Table 2 organizes the different elements into the generally accepted model for policy-making. This categorization provides a foundation for understanding how policy is made in the Navajo Nation, who the actors are, and who is responsible for monitoring the policy. Tables 1 and 2 are simple models of complex reality.

Table 2

Policy-Making Stages	Correlates in the Navajo Nation Policy-Making Process.
<i>Agenda Setting</i>	Chapter Member, Planning meeting, Council Delegate, Individual and Agencies, Divisions.
<i>Policy Formulation</i>	Planning Meeting, Regular Chapter Meeting, Agency Council, Council Delegate, Individual and Agency or Divisions, Legislative Counsel, Committees, Navajo Nation Council,
<i>Policy Adoption</i>	Regular Chapter Meeting, Agency Council, Navajo Nation Council, President's review
<i>Policy Implementation</i>	President, Agency, Division, Chapter, Council.
<i>Policy Assessment</i>	Council Delegate, Chapter Member, Chapter Coordinator, Division Heads, President
<i>Policy Adaptation</i>	Council Delegate, Chapter Member, Chapter Coordinator, Division Heads, President
<i>Policy Succession</i>	Council Delegate, Chapter Member, Chapter Coordinator, Division Heads, President
<i>Policy Termination</i>	Council Delegate, Chapter Member, Chapter Coordinator, Division Heads, President

Policy Analysis

Policy analysis is embedded in the policy-making process. Policy analysis is important in that it can shape how policy is conceptualized, understood, and therefore what solutions or mitigation factors are necessary. William N. Dunn writes, "The role of policy analysis in policy making has two aspects. On one hand, methods of policy analysis are designed to produce policy-relevant information that is potentially useful in all phases of policy-making. On the other, the uses of policy analysis in practice are indirect, delayed, general, and ethically controversial. This is to be expected, considering that there are many patterns of information use based on the intersection of its composition, scope, and expected effects" (61). In short, policy analysis matter to policy-makers.

Elements of the classical stages model of policy analysis can be found within the policy analysis process of the Navajo Nation. The classical stages model of: 1 -Verify, Define, and Detail the Problem, 2 -Establish Evaluation Criteria, 3- Identify Alternative Policies, 4- Evaluate Alternative

Policies, 5- Display and Distinguish among Alternative Policies, 6- Monitor and Evaluate the Implemented Policy.²⁴ It is this analytic process that is embedded in the policy-making process of the Navajo Nation.

This classical stages model is an amalgamation of other models.²⁵ These models all start with the premise that there is an issue that needs to be solved, and that it must be solved in a logical, rational (sometimes), and systematic (sometimes) way. David L. Weimer and Aidan R. Vining write, policy analysis is a “systematic comparison and evaluation of alternatives to public actors for solving social problems” (26). Jacob B. Ukeles writes, “Policy analysis can be defined as the systematic investigation of alternative policy options and the assembly and integration of the evidence for and against each option” (223). Policy analysis is then an activity by which individuals can rigorously test policy options and provide well-reasoned information to policy-makers.

Policy analysis influences each stage of the policy-making process such as the agenda setting process, however that may not always be the case. Dipak Gupta defines two kinds of agendas: “those that government institutions act on, known as institutional or governmental agendas, and those on which they delay action, called systemic, or noninstitutional agendas” (47). John W. Kingdon writes, “The agenda, as I conceive of it, is the list of subjects or problems to which governmental officials, and people outside the government closely associated with those officials, are paying some serious attentions at any given time” (3).

Critique of the Policy Analysis Process

The policy- analysis paradigm utilizes a set of notions that do not reify Navajo conceptions of the world or methods of decision-making. The paradigm takes as its starting point, an epistemological position rooted in objectivism – that of being able to discover the truth through a priori knowledge and empirical analysis. This objectivist tradition lays the foundation of positivism. Positivism, understood as being able to understand the world through metrics of quantification. Thus notions of positivism are found embedded in many of the methods utilized by policy analysis.

The policy analysis paradigm of – Define the Problem, State the problem, select alternatives, Select Criteria, Collect data, evaluate alternatives, select/recommend alternative. While appearing very benign, this specific process, and its derivatives, assumes that the decision-maker will bring a particular set of assumptions to bear on the process. While this may be true, much of the dominant literature and practice in the field of policy analysis is heavily reliant on economic analysis. With this specific method of analysis in mind, it immediately delimits options of analysis to a very specific set of values and, frankly alternatives that are considered for any policy.

Taking an epistemological perspective, the policy analysis process is very benign in that it lays out a description of decision-making that may be extant in many societies across the globe. However, the

²⁴ Carl V. Patton and David S. Sawicki, *Basic Methods of Policy Analysis and Planning*, 2nd ed. (New Jersey: Prentice Hall, 1993), 53.

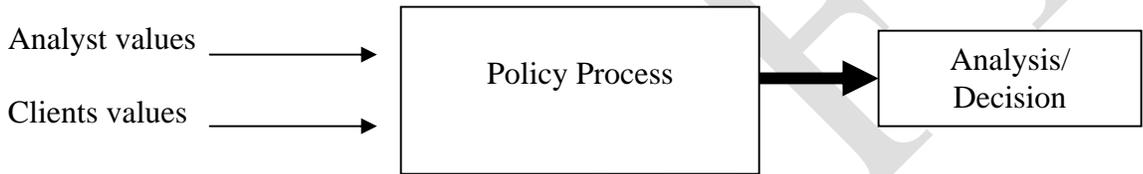
²⁵ Eugene Bardach, *A Practical Guide for Policy Analysis*, 2nd ed. (Washington, D.C.: CQ Press, 2005), xiv. William N. Dunn, *Public Policy Analysis: An Introduction*, 3rd ed. (New Jersey: Prentice Hall, 2004), 6-7. Davis B. Bobrow and John S. Dryzek, *Policy Analysis by Design*, (Pa: Univeristy of Pittsburg Press, 1987), 21. To list a few.

key difference in these models of decision-making lay in the assumptions brought to the model. However, other models of policy analysis are not so benign.

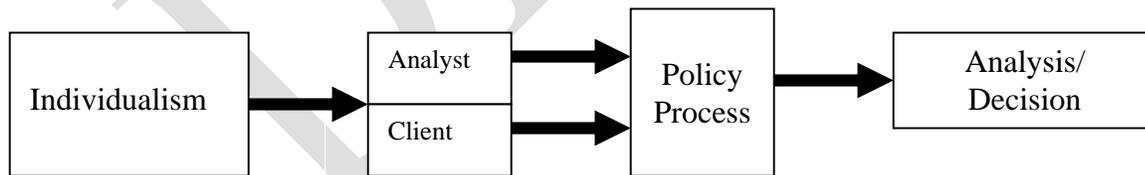
The indigenous world is very complex and notions utilized to understand that world are also complex. Hence it is difficult to generalize indigeneity to a set of assumptions or propositions. Further, the ‘west’ is also very complex and cannot be viewed in monolithic terms, as many groups tend to do. Thus in order to avoid the seemingly inevitable dichotomization that seems to plague most scholarly work on ‘indigenous’ and ‘western’ incompatibilities, I will refer to a very distinct regional understand of Navajo, and reference explicit dominant schools of thought.

Critique of Policy-Analysis

Policy analysis in general suffers from the burden of objectivism. When considering the policy process as a benign process, it is important to remember that the analyst does bring to that process a certain prescribed set of values (her own), and those of the client. Thus the policy process is immediately affected by the value sets brought by the analyst and client. Using a very systems model approach we see the following:



In this model, it is evident that the values of both client and Analyst influence the policy process and ultimately the decision. In this model, it is easy to assume that the values both the Analyst and the Client are different. However, this simple dichotomy of the values does not delineate the similarities of the Analyst and Client. Contextualization is necessary. The Analyst and Client both operate according to the assumptions propounded by the dominant way of thinking and “doing business.” Thus, values differentiation may be limited to morality, and not values that are more fundamental, such as the valuation of individuated rights, and of simply individualism. Thus the following diagram might be more appropriate in describing more inputs into the policy process:



In the model above, it is easier to see how a certain assumptions can affect the process. Hence, the seeming differences in a culture attuned and subscribing to individuality, are those of moral decisions even those debating group rights versus individual rights. Both concepts rest upon a foundation of individualism.

Policy Analysis in the Navajo Nation

Policy analysis may be performed by any number of individuals who can be classified as policy analyst, for the Navajo Nation, some are: Staff attorneys, Legislative Advisors, Program and Project

Specialists, Education Specialist, Community Services Coordinator, etc... These identified and others are analysts for the Navajo Nation. Each of them reviews and analyzes issues given to them by policy-makers or other actors. As each of them researches and analyzes processes certain assumptions of how the world works enters their analysis.

Table 3 and 4 show analysis from a random selection of legislation from the January 2007 or Winter session of the Navajo Nation Council and from the April or Spring Session. Winter Session Agenda included 10 items and Spring Session included 17 items. Every third item was selected for review: 3 from Winter and 5 from Spring Session. Each of the legislative items were then analyzed. Broad themes were created to identify the analytic portions of the legislation that correspond to the policy-analysis process.

For example, on Table 3, legislation 0075-06 dealing with amending the Navajo Nation Code to include an express and implied waiver of Sovereign Immunity was being introduced. The legislation *problemitized* this issue by stating that the original legislative intent was not being followed, and the law was not implemented correctly. The legislation also including implicit reference to the values of equity and efficiency, and legislative intent was also invoked as *criteria* in analyzing this policy. The *alternatives* that were identified included implicit reference to do nothing and pass current legislation as is. No specific alternative were identified. The alternatives were *evaluated*, actually only the proposed legislation was evaluated using the criteria of legislative intent, efficiency, and equity. Lastly, the legislation implied that the courts would have the *monitoring* capacity.

Each of the selected pieces of legislation were analyzed. Each of the legislative items seemed to comport with aspects of the dominant policy analysis process. It was found that each legislation attempted to define policy problems, each of them established some criteria for evaluating the policy, and others had monitoring and implementing included in the legislation. This analytic process is fairly benign and does not appear to be in contradistinction with the Navajo values, principles, and norms. However benign the process may be, the actual method of analysis in each of the stages can be implicated for its value orientation.

Charles W. Anderson writes, "What counts as a 'problem,' and a 'good reason,' and as a mistake in judgement depends on the normative standards embedded in a specific framework of analysis."²⁶

²⁶ Charles W. Anderson, *The American Political Science Review* "The Place of Principles in Policy Analysis," vol. 73, No. 3 (sep., 1979), p. 714.

Legislation No.	Policy	Define the Problem	Establish Evaluation Criteria	Identify Alternatives	Evaluate Alternatives	Display and Distinguish Alternatives	Monitor and Implement	
January 2007 – Winter Session Navajo Nation Council	0775-06	Amend the Navajo Nation Code to include a waiver of Sovereign immunity	Original Legislative intent not in the law	None stated. Implied criteria is legislative intent, efficiency and equity	Two alternatives: do nothing; pass legislation	If not passed, then possible infringement of sovereignty; If passed then there should be efficiency and economic benefit.	None	No specific mention of implementation; however, it is implied that the courts will be given power to implement.
	0844-06	To provide \$299, 075 to the North American Technical College	Lack of job opportunities and training on the Navajo Nation.	None stated. Implied criteria of economic possibility	No alternatives. Only two: pass or no pass.	No evaluation of the alternatives, except the grant proposal.	None	Monitoring by OMB Circulars and Federal Workforce Investment Act, and the Navajo Nation Council.
	0867-06	Recommend Standing Committees for 21 st Council	No Standing Committees	None specified	None.	None.	None.	None.

Legislation No.	Policy	Define the Problem	Establish the Evaluation Criteria	Identify Alternatives	Evaluate Alternatives	Display and Distinguish Alternatives	Monitor and Implement	
April 2007 Session - Spring Session of the Navajo Nation Council	0166-07	Establish MOA for sharing of gaming revenue	MOA needed for gaming to develop.	Current law: Navajo Gaming Ordinance, and IGRA, and Arizona Compact.	Pass current recommendation, or not.	None.	None.	Left Unclear; but implied that the Navajo Gaming Commission would monitor this.
	0890-06	Change the name of chapter.	Navajo name not used for place.	An appeal to the FLD, but unclear as to which FLD is invoked.	Pass or not.	None.	None.	The Chapter affected will monitor and implement.
	0078-07	Provide \$915,976 to NB to build new building	NB helps preserve Navajo language; building is dilapidated and unsafe.	Implied criteria are safety and public image. Economic possibility.	Pass or not. No real alternatives identified.	Passing will assist in “disseminating information to the Navajo people.” No real evaluation, except that in the proposal. Performed simple CBA.	None.	Left Unclear. Implied that Council and NN will provide monitoring.
	0141-07	Change meeting day for Ed Com. From Friday to Tuesday.	Minimal results with meetings on Fridays.	Implied: Religious observance; Work effectiveness	None. Pass or not.	People will not be exhausted and will work more productively on Tuesday.	None	Presumably the Education Committee.

DRAFT

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