A Historical Overview of the Navajo People: 1863 to Present

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Description of the Diné

The Diné, or Navajo people, lived in what they called Diné Bikeyah, the Navajo Country, for more than 500 years in the Southwestern United States.[1] The boundaries of the Navajo Country encompassed an area of some thirty-four million acres and were marked by four sacred mountains that the Navajo had designated and named.[2] This geography was intimately tied to the Navajo world-view and figured into many of their traditional stories.[3] The landscape was rugged and austere, but provided fertile soil in places for the cultivation of crops, especially corn. The Navajo were at this time primarily an agricultural people, who later under the influence of the Spanish colonizers adopted herding sheep and goats as a way of life.[4]

The Navajo, though politically disunited and widely dispersed in more or less extended family units within Diné Bikeyah, by the seventeenth century had developed into what may be termed a "distinct socio-cultural" group.[5] The population of the Navajo at this time is estimated at 2000.[6] During this period, the Navajo came to develop a strong identity, which stressing their uniqueness, caused them to view themselves as very much distinct from other Native American tribes. This self-perception of the Navajo, that they were set apart from other Native Americans, was so great that the later twentieth century pan-Indian movement which advocated Native American unity attracted few Navajo followers

Prior to the nineteenth century, in contrast to earlier contact the Navajo had with Spanish-Mexican culture, the Navajo resided in Diné Bikeyah in relative cultural isolation *vis a vis* European culture, a condition which served to reinforce the perception of Navajo distinctness.[7] This perception was promoted through the extensive use of the Navajo language. The Navajo language, a

member of the Athabaskan family, remained an unwritten language until the mid-twentieth century.[8] Traditional Navajo trading partners were the peoples of the Southwest, the Spanish and other local Native American tribes such as the Ute and Apache.

By nineteenth century, Navajo contact with Anglo culture became more frequent. U.S. Indian policy during this period was designed to acculturate the Native American and "civilize" him through introduction to Western Christian values by means of force. The policy, as it affected the Navajo, was by and large a failure, and attests to the strength of Navajo identity. Aside from contact with U.S. Indian Agents on the later Navajo Reservation, contact with Anglo society was quite limited even well into the twentieth century.[9] The Navajo rejected the 'white man's' civilization, since he was essentially viewed with distrust and was considered the 'enemy'[10] whose only interest, it seemed, was the destruction of the Navajo people. At this time, few Navajo spoke English.[11]

Out of Navajo herding society developed a way of life that stressed a combination of individualism and communalism. A man's sheep were his own, but survival of the entire herd was in his common interest. A man was not obligated to participate in the care of the herd, since Navajo society stressed the free will of the individual, although he was expected to.[12] Tribal customary law was influenced by this same principle, and so, Navajo political process was one that stressed unanimity of opinion and consensus; it abhorred coercion. Later, the Navajo would come to experience coercion in its most brutal form at the hands of the United States government, when in 1863, the Navajo were forcibly removed to a reservation near Fort Sumner. The Navajo, a formerly self-sufficient, pastoral people, were transformed into a people dependent upon the U.S. government for their political and economic survival. The Navajo population during the period 1846-1880 is estimated between 12,000-15,000.[13]

The Navajo War, the Long Walk, and Imprisonment at Bosque Redondo, 1863 - 1868.

Events that led to the eventual imprisonment of some 8500 of the Navajo population[14] at Bosque Redondo (lit. 'circular grove of trees') in New Mexico Territory had been set in motion prior to the white incursions into the southwest in the mid-1800's. Earlier conflicts with Spanish settlers and neighboring tribes, such as the Ute and Comanche, during the Spanish colonial period had provided the Navajo with the reputation of "raiders" who were known for stealing livestock. The Navajo, however, had grievances of their own, since thousands of their people had been taken as slaves by the peoples of New Mexico.[15] When the U.S. took the Territory of New Mexico in 1846, the Navajo

had to contend with a new and more formidable enemy.[16] The Navajo doubtless viewed the situation as struggle to maintain the inviolability of the Navajo Country and its people.

Shortly, after the acquisition of New Mexico territory by the United States, Anglo settlers began migrating into the area during the early 1850's. Fort Defiance was established in 1851 on Navajo land to mark the new territory as that of the U.S. government. The Navajo in reply launched a formal attack on Fort Defiance in 1860. During the 1860's, speculation was taking place in New Mexico territory, since many people had been encouraged by stories of its rich mineral wealth, especially, gold. It was the promise of mineral wealth on Navajo land that had prompted General James H. Carleton to devise the plan that the Navajo should be removed from their ancestral lands.[17] Appointed in 1862 as military commander of New Mexico, Carleton shortly afterward set about executing this plan. That a military General could essentially unilaterally wage war on an Indian tribe with which there were already standing treaties, had to do with the fact that the Office of Indian Affairs, created in 1824 by Secretary of War John Calhoun was under the jurisdiction of the War Department and so not subject to Congressional oversight.[18]

General Carleton's solution to this particular "Indian Problem"[19] was to relocate forcibly the Navajo people to an inhospitable place called Bosque Redondo, some 400 miles from Fort Defiance (which had been renamed Ft. Canby), where the Navajo were to be initially rounded up. Bosque Redondo had been for 100 years a trading post and had recently been transformed into a reservation upon which Fort Sumner was situated. In creating the reservation, some 13,000 acres had been set aside as part of the grounds of Fort Sumner.[20] Here, the Navajo would stay and so free up the land they formerly occupied for other, and, it was understood, 'better' uses. This imprisonment was to have the secondary purpose of 'civilizing' the Navajo. Under the constant supervision of military authorities stationed at Fort Sumner, and living in a confined area, the Navajo could be taught the art of farming in the Western tradition of allotment and private property ownership, in addition to the learning of useful crafts. General Carleton viewed Fort Sumner as a "spacious tribal reformatory".[21] The Navajo removal had its precedent in other, earlier removals of Native American tribes that had, for example, been relocated to Indian Territory, an area expressly reserved for such purpose.[22]

In 1863, the Navajo experienced a forced march of 400 miles from Fort Defiance (Ft. Canby) to Bosque Redondo, in what is remembered as "Long Walk". According to traditional Navajo accounts, the journey was an extremely difficult one, with great suffering and loss of life. Those who were deemed unfit and those who lagged behind were either left to die or summarily executed.[23]

Some Navajo resisted and some fled. However, as a means to encourage disobedient Navajo, General Carleton, commanding Col. Kit Carson and a group of 700 New Mexico volunteers, ordered the destruction and confiscation of all Navajo property: their homes, their crops, and their livestock. This method of warfare ensured that the Navajo, who, reliant on subsistence economy and having no surplus, would have no choice but to consent, and seek out the rations the government would supply on the new reservation. This moment marked the beginning of Navajo dependence on the federal government and it would not be the last time the government and its agents used food as a weapon.[24]

Once at Bosque Redondo, the Navajo found a difficult life awaiting them. The conditions on the reservation at Bosque Redondo were poor and supplied were inadequate to support the numbers of imprisoned persons.[25] It was intended that the Navajo support themselves on the reservation and so the Navajo were put to work planting crops and trees. Crops were very poor, and so there was heavy reliance upon government rations.[26] The Navajo suffered under unfamiliar conditions, confinement in a small, fixed area, participation in what was essentially forced-labor, and loss of self-government.[27] It was certainly a great hardship for the Navajo to bear, the loss of liberty and incorporation into a militarized structure. The hardships and privation took their toll on the Navajo population, which saw a "continuous decrease" from the time of their captivity.[28] Many of the Navajo who experienced the Long Walk and imprisonment, both at the time and later, believed that the Long Walk was a punishment for wrongs committed by members of their people against white society, and that it was a deserved punishment.[29] Their forced exile from Diné Bikeyah and the four sacred mountains The number of deaths attributed to imprisonment and harsh conditions is estimated at 2500.[30]

For nearly three years the Navajo languished in their situation as things did not improve. The removal and subsequent relocation and imprisonment of the Navajo had cost a great deal of money, and it was becoming apparent to the authorities that the undertaking had been a failure from start to finish. General Carleton was relieved of supervision in 1866 and supervision was transferred from the military to the Office of Indian Affairs (OIA) the next year.[31] A report of 1867 commenting on the situation remarked that the imprisonment should be "abandoned".[32] The best solution to the problem it appeared was the return of the Navajo to their former abode, although with some restrictions which were to be imposed. The Navajo were to return to Diné Bikeyah, and yet remain on the reservation: for Diné Bikeyah was to become a Reservation.

The episode of the Long Walk and subsequent four-year imprisonment at Bosque Redondo remained long in Navajo memory. Their way of life would

never be the same, and it would never be forgotten how the white man took from them their liberty.

Treaty of 1868, the Return of the Navajo to Diné Bikeyah, and Post-Bosque Redondo Navajo Society

After five years of imprisonment, the Navajo were released from Bosque Redondo by the provisions of a Treaty drawn up in 1868. With respect to U.S. Indian policy, there was no question that the Navajo had to be confined, and in their confinement put aside their 'savage' ways.[33] Authorities had not given up on the idea of civilizing the Navajo, merely that it was not to take place in an artificial environment like Bosque Redondo. Rather, the Navajo were to adopt their former way of life, but remain under the supervision of authorities who would then be able to control and reform them in a more natural setting. The Navajo were thus confined to the Reservation, which their Country had become. According to the terms of the Treaty of 1868, Diné Bikeyah was to encompass a mere fraction, some ten percent, of what it formerly had. But, at least initially, the Navajo were happy to return to their own sacred land in1868.

A treaty was ratified between the U.S. government and Navajo Chiefs on July 25, 1868. Following a series of debates, General W. T. Sherman, representing the United States, and Navajo Chief Barboncito (1820-1871) along with other Navajo Chiefs, signed the treaty that contained the legal structure upon which new Navajo life was to be built. The Treaty set the boundaries of the reservation granting to the Navajo 3.5 million acres of their former domain.[34] The Navajo were restricted to this area and were to exist under the authority of an U.S. Indian Agent (later Superintendent) living among them, who was responsible to the Commissioner on Indian Affairs in Washington. The Treaty also ensured further dependence of the Navajo upon the government as it guaranteed them government largesse.[35] Finally, the Treaty established provisions for compulsory education. The Navajo were to receive "elementary branches of an English education," which was to serve as part of a "civilizing" program. [36] The purpose of the reservation in American Indian policy is clearly reflected in the statement of Andrew Jackson, who, some fifty years earlier, considered that there should be "forcible reduction of the Indian lands so that the natives, confined to close limits, would adopt the civilized existence of the white man."[37]

The Navajo may have returned to their lands and resumed the old ways as best they could, but there was one essential difference: all aspects of Navajo life were under the control of the U.S. government and, more immediately, subject to the arbitrary discretion of the Indian Agent. The Navajo people had

lost an essential part of their way of life, their communal rule by consensus, rooted in the essential liberty of the individual.

The Navajo had been left with nothing as a result of General Carelton's war, and so, had to start anew. The limitations of the Reservation left them without important areas for farming and grazing.[38] The land that had been left uncultivated would not bear fruit for some period of time. The geographic insufficiency of the Reservation is evidenced in its repeated expansion granted by Executive Order during the period 1878-1886, when the domain was expanded to four times size granted in the Treaty.[39] From an economic standpoint, the Navajo set about reestablishing the subsistence herding and agricultural infrastructure. The resumed their old trade networks - bartering the wool blankets they made and later the raw wool.[40] Silversmithing and ironworking emerged as crafts, and lucrative elements of Navajo barter economy.[41] The first trading post was established at Fort Defiance in 1868. During the period 1868-1892, Navajo population doubled from 9000-18,000,[42] indicating that Navajo society was prospering sufficiently to support a population of this size.

At this time, the Navajo were left to themselves because the newly imposed Agency system was weak: firstly, it lacked manpower and those civil servants in its employ had little real contact with the Navajo people. Additionally, there were communication difficulties since few Navajo spoke English and the Indian Agents did not understand Navajo. Finally, Agents relied on Navajo Chiefs for the enforcement of its directives, who essentially had no real authority over the Navajo people.[43]

The government as a matter of policy preferred a Navajo political structure that could pose no real threat to the authority it had vested in the Agent, thought it aimed to ensure the Chiefs had a certain degree of authority so that its dictates could be enforced among the people. This was especially important when the government embarked upon its new policy of assimilation toward the end of the nineteenth century.[44] Soon, the favorable conditions of non-interference that had enabled Navajo life to prosper, would come to an end and be replaced by a new form of coercion, and this time, Navajo culture itself was threatened.[45] What assimilation meant for the Navajo and other Native American tribes was certain annihilation of individual cultures. The idea that the Indian should adopt the "habits of a civilized life" imposed upon him a number of requirements. A civilized life, it was believed, was marked by literacy, knowledge of English, the living in of permanent dwellings, participation in the wage economy through cultivation of an allotment, the adoption of "citizens' clothes", and finally, religious conversion to one denomination of the Christian faith. Civilization was to be propagated by means of missions and boarding

schools established on the Reservation. The various Indian Agents made reports on the success of the civilizing program to the OIA. The measure of success at "civilizing" was determined by a statistical count: the more numerous the Native Americans who underwent religious conversions, or adopted European-American dress, the greater the success of the program.[46] Civilizing certainly implied the use of coercive practices since both schools and missions on the reservation were essentially unsupervised and as Navajo memory attests to. It may be fortunate for the Navajo that the economic depression that lasted until 1900, spurred by the 'Panic' of 1893, hampered assimilation programs. More generally, the Navajo viewed government-sponsored education with great suspicion preferring not to entrust their children to strangers who ran the boarding schools.[47] Only 3.2% of the Navajo population had an education before 1900.[48]

The Dawes Severalty Act, also known as the General Allotment Act of 1887, sought to divide up Reservation land into allotments, along the lines of the earlier Homesteading Act, for Native Americans to cultivate as private property. However, the Indians who chose to take an allotment did not receive the title to the land, since it was to be held in trust for these individuals by the U.S. originally for a period of twenty-five years. The Indian held instead a "trust patent".[49] Even so, it was apparent that without the Reservation, the traditional way of life of the individual Native American tribes would quickly disappear.[50]. Demand for land due to the expansion of white settlers in the area and conflicts between the Navajo and local ranchers over grazing land prompted the passage of the Act.[51] It was considered that if the total acreage of the Navajo reservation was divided up into allotments according to the number of persons, there would be a substantial surplus of land that could be utilized for the settlers. Grazing conflicts led the government to initiate methods to manage the resources of the Navajo reservation. This was a prelude to government management of reservation resources, which culminated in a devastating program of livestock reduction in the early 1930's.[52] Proponents of the Act were aware of recent geological surveys of Indian land that had show it was valuable in other ways too.

Interim, World War I, 1920's Oil

Even though the Navajo resisted changes the government through its Agents[53] tried to impose upon them, it became apparent as the twentieth century unfolded that the Navajo could not forever remain in complete cultural isolation. Developments in technology, inter-cultural contact at trading posts, which were by now more numerous, and a more extensive network of roads and railways,

were some of the ways in which Navajo isolation was reduced.[54] In addition, the number of schools had increased, and the reservation saw a great influx of Anglo material goods that the Navajo sought out. Finally, some few Navajo worked off the reservation bringing back with them ideas of the world, which lay outside the reservation.[55]

World War I brought more Native American peoples into closer contact with white society. Their service in WWI armed forces has been seen by some as a growing perception among Native Americans that they shared a common interest in supporting the nation and its liberty. Native Americans did have a limited tradition of participation in American wars, and were considered in stereotypical fashion to be good fighters because of their presumed tradition as warriors. Since many Native Americans were citizens, they were compelled to register under the 1917 Selective Service Act.[56] World War I saw some 17,000 Native Americans participating, with 855 volunteers.[57] The Navajo figured significantly lower in terms of participation than other tribes.[58] During WWI, the Choctaw Tribe were used as a signal corps against the Germans, using their language as code, which the Germans could not penetrate.[59] In 1919, a grant of citizenship was made to Native Americans who had served honorably. Subsequently, a grant of citizenship to all Native Americans was made in 1924 through the Citizenship Act in the hope that it would further Indian assimilation into society.[60]

Navajo contact with white society continued into the 1920's, when once again, Indian land was subjected to the designs of various capitalist interests.[61] Such interests held that the mineral wealth of Indian land was not being utilized as it should be and so, the government was asked to find a way by which Reservation land could be leased to oil and other companies. Permission for leasing was established under the Metalliferous Minerals Leasing Act of 1918, and was superceded by the more neutrally named, General Leasing Act of 1920 which permitted companies to explore the leased land for oil and mineral wealth.[62]

Significantly, the government recognized that the Native Americans had some manner of rightful claim to the land, and in so doing the government gave to the Navajo bargaining power they formerly did not possess. The Navajo Tribe had their 'title' to the Reservation recognized in 1927, since it was seen that the tribe possessed a joint interest in acquiring the fruits of the land they inhabited.[63] This act gave some clarity to the precise nature of 'Indian title' which was a legal concept filled with ambiguity. It was politically expedient to recognize the legal interest the Navajo possessed with respect to their land and would prove a useful precedent.

Difficulties companies experienced in securing leases with the Navajo, had led the government to support a stronger, more centralized political tribal government, though it would remain under the ultimate control of the U.S. government.[64] So, the first Tribal Council of the Navajo was established in 1923,[65] and possessed just what central authority was necessary to support the enforceability of leasing contracts.[66]

The government in recognizing Navajo 'title' to the land, encouraging a stronger, more centralized Navajo government, in combination with Navajo ownership of mineral wealth, laid the foundations for the development of unified Navajo tribe which could in future oppose U.S. government's absolute control of it. For the first time since their captivity at Bosque Redondo, the Navajo were closer to reclaiming the liberty and sovereignty that had been stripped from them. Sensing this greater political centralization and unity, and speaking now in more "tribal" context, the Navajo were becoming during this period a more "heterogeneous" society, approaching the time when they would emerge as the modern Navajo nation.[67]

However hopeful prospects looked for greater political independence, conditions on the Navajo and other reservations during this period were extremely poor and were continually deteriorating. Since the late nineteenth century, much Indian land had been alienated, and its total acreage had been reduced.[68] By most estimates 100,000,000 acres were lost by 1934 as a consequence of the Dawes Severalty Act. A government report of 1928, known as the Meriam Report, which investigated living conditions of Native Americans uncovered some disturbing facts. Health statistics for Native Americans were significantly worse than those of their white counterparts. For instance, TB affected 26% of the Native American population that was seven times that of the white population. Infant mortality comprised 26% of all Native American deaths; mortality of children under three years of age was 37%, more than double that of the white population.[69] Native Americans were barely able to make a subsistence living. Per capita income during the early 1920's was an average of $200 for Native Americans while it was $2000 for white Americans.[70] The Diné nevertheless experienced a continuous increase in population following their release from Bosque Redondo.[71]

"Reform" of the 1930's: the Wheeler Howard Act and Livestock Reductions

Reformers and 'muckrakers' of the 1920's had been vocal critics of government policy toward Native Americans. The generation that in WWI had fought to preserve civilization came to view that same civilization as one that was empty and devoid of value. Out of these times, emerged the Wheeler

Howard Act of 1934 also known as the Indian Reorganization Act and more popularly known as the "Indian New Deal".[72] The Act marked a reversal of earlier assimilationist-dominated policy. Now, under the influence of cultural relativist theories, many began to recognize the intrinsic value of native cultures, and sought to preserve them.[73]

Indian affairs, and so the administration of the Wheeler Howard Act fell under the authority of John Collier, who had been appointed by Roosevelt Commissioner of Bureau of Indian Affairs (BIA) in 1933.[74] Collier appeared to be a reformer interested in redressing the wrongs of earlier times, in particular those perpetrated by the Dawes Act, but his methods proved to share much in common with his predecessors, coercive and ultimately destructive, most especially the Navajo in whom he took an unfortunate special interest.

The primary purpose of the Act was to put a stop to total destruction of Indian reservations by preventing further allotment of land. The Act granted to the Navajo and other tribes greater self-determination, in addition to benefits from a number of government sponsored economic and education programs.[75]

Management of Navajo lands also figured into this reform-era and lead to Collier's creation and enforcement of the Livestock Reduction Program, which was initiated in 1933.[76] The program, as it applied to the Navajo, sought to remedy overgrazing on Navajo reservation by means of destroying surplus herd.[77] Thousands of animals were forcibly seized and slaughtered. To the Navajo, such coercion and senseless destruction were incomprehensible. The Navajo, having a special relationship with their herds saw this not as "help" and in their best interests, but rather as yet another attempt of the government to "destroy them".[78]

The Navajo were generally receptive to the promises of the New Deal, unlike in former times, when it was presumed that government programs were adversarial in kind. Navajo opinion, however, quickly changed once the Livestock Reduction program was initiated. The livestock reductions had a profound effect on the Navajo - as great as the Long Walk, most especially on way Navajos viewed white society and the Government.[79]

WWII to the Present[80]

Initially, the War in Europe attracted little attention from the Navajo and other Native American tribes, and it generally had little effect on their daily lives, until the government again intruded with its coercive laws into the Navajo world. This time, the government required that the Navajo comply with the Draft, recently put into effect by the Selective Service Act of 1940. Native American recruits eligible to fight in the war were sought out for registration. It

did not go unnoticed by Commissioner Collier, that there were some 42,000 Native Americans eligible for military service.[81] Collier with regard to the Navajo appears to have been driven by the belief that through participation in the War effort, the Navajo could improve their condition vis. white society.[82] Many Native Americans were not aware they were subject to compulsory military service, because many had no knowledge that they were citizens of the United States. The Citizenship Act of 1924, and subsequent legislation enacted under the Nationality Act of 1940, had secured their status as citizens. Many tribes and individuals among the Native American population objected to the draft and can in their opposition be considered a proto 'draft resistance movement'. Some objected on religious grounds, while others objected on the grounds that tribes had, by reason of earlier treaties, a special status of sovereignty.[83] By and large, even if there was no overt opposition, Native American, the Navajo especially, viewed this undertaking with great suspicion and the registration of their young men as just another government deception. Remarkable is the fact that many Navajo who did fight in war had heard stores recited to them by their parents and grandparents of the time of Long Walk and yet still complied with their duty (if drafted). On the Navajo reservation 125 sites were set up for registration.[84]

Problems with Navajo recruits were the same as those found generally among the Native American population. Lack of health services and public sanitation on reservations had resulted in a high proportion of Native Americans who were deemed unfit to serve. Some one-third of Native American recruits were so considered.[85] A second problem was that many Native Americans and especially the Navajo had poor English skills, and without them recruits could not be inducted into the military. In so high a proportion of Native American rejects did this result, that Secretary of War Stimson initiated an investigation to determine if prejudice was the cause.[86] A total of 4500 Navajo served in the U.S. armed forces by the end of the War.[87] From among the Navajo, a number of persons were recruited as join a special signal corps attached to the Marines, known as the 'Code Talkers'. The first group consisted of twenty-nine men. Nearly four hundred had served as Code Talkers by the end of the War.

The War had a significant effect on Navajo society just as it did on white society. Navajo people who worked off-reservation in the war industries were introduced to a wage economy. Because of the cultural interaction they experienced, many came to see that the 'outside' world had much to offer. The Navajo soldiers who fought alongside their white counterparts, and traveled abroad brought back the benefits of their experience to the Diné.

Post World War II and the "Termination" Era, 1946- 1968

With the close of the war, the economics of wartime came to an end. The ten thousand Navajos who had worked and previously throughout the West in the war industries interacting with white society found themselves back on the Reservation living their old lives and in a situation of unemployment.[88] Job experience and the financial advantage of the wage economy had no application on the Reservation. Any new awareness these workers had of themselves and their place in the larger world faded upon return to the Reservation.

Navajo war veterans had a similar, but more deeply affecting experience. The mechanical and technical skills they had acquired while engaged in service to the U.S. had no application in Diné Bikeyah, and it was not possible to seek a life outside the reservation, since the same prejudicial societal structure still prevailed in the civilian world.[89] The Code Talkers were not specially singled out for recognition, since the project remained classified. Veterans, having experienced more equal treatment in the armed services, found that still they were without the vote, though as citizens they had answered the call of selective service in the draft. The growing sentiment that the Navajo, and especially its war veterans, deserved better treatment and equal rights under the law became widespread among the Diné. As a result of court actions, the Navajo gained the right to vote in 1948 in Arizona, 1953 in New Mexico, and 1957 in Utah.[90] This movement signified the beginning of the period of Navajo nationalism, and found a leader in Navajo tribal councilman and future Chairman, Sam Ahkeah.[91]

In 1946, the U.S. Indian Claims Commission was formed to adjudicate Indian property claims against the federal government from time of the founding to 1951.[92] Few claims were actually adjudicated between the year of the Commission's commencement and its final year of 1978.[93] However, the greatest benefit to the Navajo was that it granted to tribes the paid representation of an attorney. The acquisition of legal services forever changed the Diné world. To the Navajo, the law was still a tangle of contradictory directives, and having an advocate to represent them meant greater equity when dealing with the white mans' law.[94] Norman Littell was hired as the first Navajo tribal attorney in 1947.[95]

In 1947, the Navajo Tribal Council attempted to suspend the livestock reduction program, which had been continuously and actively enforced since 1933.[96] While a majority of Navajo later understood that some of its effects were beneficial, the program had significantly changed the herding economy of the Navajo over the intervening years.[97] Some claimed it played a central role in discouraging herding among present day young people in the Navajo Nation.[98] In a traditional pastoral society where the size of the herd of goat or sheep was an

important measure of success, the long-term effects certainly were significant from a cultural standpoint, too.

During the post-War period, a number of government reports were issued concerning the Navajo situation. Not surprisingly, the findings contained in these reports differed little from those of the Meriam Report of 1928 nearly twenty years earlier. It was clear that the Navajo socio-economic situation was poor at best. The average income for Navajo was at this time merely $1.25 per week per person according to a1947 report.[99]

Termination Policy

The House Concurrent Resolution 108 of 1953, the so-called "Termination Act", sought to abolish the Federal-Tribal trust relationship, and therefore meant for Indian tribes an end to what privileges they had long ago secured.[100] Termination meant the loss of tribal lands, government-funded services, as well as the loss of tribal sovereignty – that was, tribal governments were to be dissolved. Without land and self-government, it was evident that the tribes would cease to exist. Some tribes were selected for immediate termination, while others were to be prepared for eventual termination when the particular socio-economic circumstances of the tribe were deemed ripe. Termination was seen in some quarters as a new method to assist the Indian people achieve assimilation into white society. The Navajo, fortunately, were not listed among those tribes specified in the Resolution for immediate termination.[101] 'Terminated' and other Indians, due to poor employment prospects, were encouraged to migrate to urban areas.[102] During this time, a number of Navajo migrated from the Reservation.[103] The policy of Termination remained in place through 1968, and was not formally repudiated until 1988.[104] The Act, while it did not succeed in actually terminating a significant number of tribes, it did demonstrate to the Indians that the government was prepared to abolish its trust relationship and concomitant special duties without so much as consulting the tribes.

An indirect result of termination was that some services formerly provided by BIA were over by states or local entities. This decentralization signified a trend that over the course of time was to aid the Navajo and other tribes in securing greater autonomy and self-determination.

During this decade, the Navajo experienced a number of changes that furthered their development into the modern Navajo Nation. The Navajo Tribal Council saw its authority expanded with it gaining greater fiduciary control over tribal monies in the treasury; there was also the establishment of a judicial branch of government in 1959.[105] Assistance came in the form of the Navajo-Hopi Rehabilitation Act of 1950, which provided funding for programs over a

ten-year period and, most importantly, granted the tribes authority to lease restricted tribal trust lands.[106]

In the mid-1950's, the discovery of oil in Utah territory of the Navajo Reservation and the new uranium market provided the Navajo with a potentially lucrative source of income.[107] The Navajo were entitled to lease these lands under the aforementioned Navajo-Hopi Restoration Act. The profits from these new industries, which included coal, uranium, oil and timber, would aid the Navajo people, who following the war were in grave economic circumstances. The Navajo economy had not recovered from the drop in post-war employment, nor had their herding economy recovered from the consequences of long-term livestock reductions.

Improvements in Navajo healthcare and education were made during this period. Hospitals in Shiprock and Gallup were built and health services were made more widely and easily available, although there was still a great cultural divide where medicine was concerned.[108] For the first time, public schools were permitted to be built on the Reservation, marking the beginning of the end of BIA's education monopoly.[109] Navajo children would have the opportunity to attend public schools locally, avoiding the necessity of having to travel off the reservation. It also marked the end of the boarding school culture that had dominated Navajo education. By the end of the decade, there was a general "disenchantment" with the termination policy.[110] This paralleled the disenchantment society was experiencing generally which prompted the 1964 Civil Rights Act.[111]

Self-Determination and the Modern Navajo Nation, 1968-Present

By the mid-1960's, the political climate had begun to change in favor of self-determination for Indians, due in large part to the very strong Indian opposition and growing segment of Indian activists.[112] Self-determination as a policy provided for the retention of trust status for Indians, fair treatment as sovereign entities, and continued developmental assistance from the government. As the changes in the 1960's affected the Navajo, numerous social programs created by Great Society legislation brought to the people some benefit. Johnson's War on Poverty programs were designed be administered at the local level and thus, empower the localities involved. In this spirit, the Navajo created the Office of Navajo Economic Opportunity (ONEO) (circa 1965) modeled on the Office of Economic Opportunity (1964), using federal OEO funds.[113] Another influential program the Navajo created was a legal services program called DNA Legal Services (Dinebeiina Nahiiha Be Agaditahe). DNA proved to

be a very influential program and many future Navajo Nation leaders would have some earlier association with it before their entry into Navajo political life.[114]

During this time, Navajo society witnessed an expansion in membership of the Navajo American Church. The Church, originally established in the late 1940's, can be described as nominally Christian and emphasized the use of peyote. Peyote use became a point of contention on the reservation and divided the community.[115] Those who opposed its use saw it as just another means of destruction for the Diné.

Mining success continued on Navajo land, as the Navajo government leased more land for a variety of purposes and drew upon the proceeds from these leasing arrangements. One of the largest projects was the Black Mesa strip mining operation, which opened in 1964.[116] The mining operation at the time generated a great deal of opposition because of environmental concerns and still does today, since many of the predictions about its destructiveness have come to pass.

Continuing efforts at local educational reform met with success, as Navajos demanded more local autonomy and greater input into educational programs on the Reservation. In 1968, Navajo Community College was opened (now Diné College).[117] It had been long understood that the Navajo needed educated persons drawn from their own ranks rather than relying on the advice of outsiders, since non-Navajos in the employ of the tribe for the purposes of consultation had not always acted in the best interests of the Tribe. The Navajo Nation as an entity was officially declared in 1969 by the Tribal Council. That same year, the World War II Navajo Code Talkers Program was declassified.[118] In 1970, the Code Talkers Association was formed by veterans who, freed of government restriction, sought to have their achievements publicly recognized.

Self-Determination Policy

President Nixon's Special Message to Congress on Indian Affairs in 1970 presented the nation a different proposal for U.S. Indian policy. This new proposal emphasized 'self-determination without termination'.[119] It was explained that termination was not a viable option because there were certain obligations that the federal government had with respect to the Native Americans.[120] Nixon suggested that the government and Indian community "play complementary roles", achieved through a policy of self-determination, whereby tribes would be granted greater autonomy, more latitude in decision-making, and expanded local self-government.

This policy was formally implemented by Congress some five years later with the passage of the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat 2203) (Public Law 93-638), although the "Termination

Act" at this juncture was not formally repudiated. For the Navajo and other Indian tribes, this new Act was tremendously important and served to further Navajo ambitions of self-government freed from the directives of BIA. The government policy of self-determination was premised upon redefinition of the relationship between the federal government and tribal governments. This redefinition was termed a 'government-to-government' relationship. The new policy enabled the Navajo to work toward self-determination in a number of areas, primarily in the areas of education and health care administration.

The Navajo-Hopi 'land dispute', which had be on-going for many years, especially since the mid-1950's, resulted in Hopi Land Settlement Act of 1974 ordering the forcible relocation of 10,000 Navajo from the former area designated in 1967 as "joint-use" for the Hopi and Navajo. The relocation was scheduled to commence in 1986, but due to Navajo resistance relocation remained unfinished and prompted the passage of the Navajo Hopi Land Settlement Dispute Act, signed by President Clinton.[121] The relocation marked in Navajo history what some have called a second Long Walk. It was the largest forcible removal of Native Americans since the period of Indian removals during the nineteenth century.

While social programs suffered from cut-backs in the 1980's during the Reagan administration, and so caused some hardship to the Diné, at the same time government policy concerning Indian affairs worked in their favor. Consistent with President Reagan's belief in limited government and a return to "states rights", Indian policy of the 1980's reflected this philosophy.[122] The end of the decade witnessed the scandal of Navajo Nation Council President Peter MacDonald who was imprisoned on bribery charges.[123]

Toward the end of the year 2000, President Clinton signed a bill recognizing the achievements of the Code Talkers during the Second World War. (December 21, 2000).[124] The original twenty-nine Code Talkers were awarded Congressional Gold Medals at the Capitol in Washington, D.C. on July 26, 2001 at a ceremony over which President George W. Bush presided. The medals were awarded to four of the five living Code Talkers and families received the medals on behalf of the deceased. Notably, Congress recently passed an Act to study the possibility of creating the "Long Walk Historic Trail" as an addition to National Parks Service trail system.[125]

The Navajo Nation Today

The Navajo Nation is a very young one, with a median age of 22.5.[126] The Navajo Nation Reservation is populated by some 180,000 people of whom 168,000 are Navajo Nation members.[127] Another 80,000 Navajo members live

outside the Reservation mainly in the border town areas.[128] Not all Navajo people live on or near the Reservation, and not all Navajo are members of the Navajo Nation, but all persons of Navajo descent may claim membership within the Tribe or Nation.[129] According to the Navajo Nation Vital Records Office, there are 225,543 persons belonging to the Navajo Nation.[130]

The Navajo Nation is still plagued by poverty and unemployment. As of the year 1998, some 56% of Navajos were living below the poverty line.[131] Many do not have telephones, proper plumbing, or electricity. The alcoholism rate is extraordinarily high and is by some estimates 50%. There is also a severe diabetes health crisis that affects the Navajo as it does other Native Americans.

Current issues that are of concern to the Navajo people may be observed in the various political platforms of the ten candidates who ran for Navajo Nation Council President in the 2002 election. From their platforms, it is evident that a great number of significant social and economic problems affect the Diné. One major problem is unemployment which currently stands somewhere near 57%.[132] Unemployment is seen as being related to the lack of economic development on the reservation. One striking fact is that there are apparently no Navajo-owned businesses on the Navajo Nation reservation because bureaucratic red tape is prohibitive.[133] Many of those who are gainfully employed travel outside the reservation to the border towns for their jobs. What industry there is on the reservation suffers from difficulties: the uranium industry has declined to some extent due to depressed uranium prices and has generally fallen out of favor because of environmental concerns - as Navajos witness their neighbors' illnesses from radiation exposure.[134] Likewise, the timber industry has suffered due to over-harvesting. The foresting operation at Chuska Mountains and Defiance Plateau was terminated in 1992 because of aggressive overuse resulting in the loss of many jobs. The coal industry, which supplies plants like Four Corners, and is central to the southwestern energy supply, is threatened. The Black Mesa strip mining operation has always been a source of concern to the Navajo who have long objected to the environmental consequences of having the largest strip mine operation in the world on their land. Currently, there is an environmental movement in the southwest to close the Four Corners plant down, an act which would affect operations at Black Mesa. Allegations that the Department of the Interior has been derelict in its trust duties and has not upheld its proper fiduciary responsibilities has affected the way the Navajo view the benefits from the leasing of Navajo reservation land. Many wonder if the benefits outweigh the environmental destruction such leasing has caused. Recently, the Navajo Nation won a 600 million dollar trust fund claim in the Federal Circuit Court of Appeals stemming from the Black Mesa Coal lease claiming that DOI has been derelict in its fiduciary duties. It has been referred to

the Supreme Court.[135] The case is important since it addresses the nature of federal trust responsibilities.

Lack of employment availability has resulted in 60% of Navajos permanently living outside the reservation.[136] Beyond employment concerns, it is not surprising that many seek to live off the reservation since the conditions of life are far behind those of the outside world. There are people on the reservation who still lack running water and/or electricity; housing is in both poor supply and condition.[137] Lack of properly paved roads causes hardship on those who need to traverse the reservation.

The economic situation has exacerbated underlying tensions within Diné society. The crime rate has risen to such an extent that it has prompted a number of leaders to call for greater measures to be taken to enhance public safety.[138]

Dissatisfaction is widespread among the people of the Navajo Nation. People still look to their leaders for assistance, but ultimately believe that the Council and their government is unresponsive to their desires.[139] There are signs of a growing movement which supports a return to traditional Navajo values.[140] The erosion of Diné culture is a reality many have come to recognize, as fewer young people know the Navajo language[141] and fewer are aware of even the most basic elements of Navajo culture.[142] The Navajo language has always been central to Navajo culture and its exclusive use until recent times served to unify the Navajo people. Today, the younger generation tends to resist the Navajo language instead preferring English. It is well understood that English is the key to economic success and securing a job in the outside world. The preservation of the Navajo way of life appears to have become an important concern for the Diné in the new millennium.

Appendix

A. Preliminary Thoughts On the Federal Tribal Trust Relationship and Tribal Sovereignty

[N.B. The Navajo reservation contains a total of 15,432,170 acres of trust land. There are 14,715,093 acres of Tribal Trust Land and an additional 717,077 acres of Individual Trust Allotments.[143]]

The subjects of the Federal Tribal Trust Relationship and tribal sovereignty, though seemingly filled with ambiguity, are both explained quite carefully in United States law. It becomes clear even upon a cursory examination of Indian-related legislation that the basis upon what this trust relationship, and so, sovereignty, rests is upon the particular legal definition of tribal land.[144]

The legal definition of tribal land and so the nature of the trust relationship has been developed over the past two centuries in case law and legislation, and its essential points were set out early on. Even without a comprehensive study of the law, one may observe the essential points of law governing this relationship at work in a simple piece of contemporary legislation.

One such piece of legislation which may considered of interest is the recent Secretarial Order #3206 (June 7, 1997) issued by the Department of the Interior, whose subject is "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act".[145] In this Order, Section 3, Definitions, the term "Indian Lands" is defined as " any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian Tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation." In the definition, one observes that title to Indian lands is held by the United States in trust. The precise nature of trust is not further described, though under the law, the Tribes are considered beneficiaries of this trust, since it is said that the land is held for their "benefit".[146]

The Order is careful to distinguish lands to which title is held in trust from lands that are Federal. Because of this essential difference, the government recognizes that "Indian Tribes are governmental sovereigns" and, therefore, the United States must take into account "fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinct way of life."[147] This is achieved by means of the oft referred to "government-to-government relationship" between the federal government and the Tribes.[148]

Tribal sovereignty, the Order explains, is the "power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect tribal trust resources."[149]

In attempting to discern the limits of tribal sovereignty or whether there is any real degree of sovereignty at all, as some maintain, one should refer to the well-know case, *Cherokee Nation v. Georgia* (1831), which established precedent in these matters.[150] Chief Justice John Marshal in this decision, described the tribes as "dependent domestic nations", and so, conceded that these entities retained some degree of inherent sovereignty (or right to self-government). Another precedent is to be found in *Johnson v. M'Intosh* (1823), where Marshall set forth the idea of what is commonly known as 'Indian Title'. In the decision, this legal concept is termed "title of occupancy". It was proposed that while Indians, as occupants, were entitled to enjoyment of the land they inhabited, their title was inferior to that of European settlers.[151] Because the nature of Indian Title described in this decision is based upon the premise that European title was superior to it, 'Indian title' does not exist in perpetuity. For

this reason, Marshall asserted that Indian Title could be "extinguished", though only by the Sovereign, which in 1832 was the United States government.[152]

Some have likened Tribal sovereignty in terms of the authority tribes possess in relation to the federal government to that which the states possess. But it would not be entirely accurate to draw such a comparison, for generally speaking, those lands which the tribes inhabit belong to the Federal government; there is no mixture of tax-paying private property and public state land governed by elected officials as one understands to comprise a state.

The relationship between the federal government and tribes is also said to closely approximate that between trustee and beneficiary. While it is true that the tribes have a stated legal "beneficial interest" in the land, the situation would be better described as usufructuary. Usufruct, as understood in traditional property law stemming from Roman times, entitled an individual to use of the land and to all its fruits (both natural resources and profits gained from its improvement) derived therefrom. This entitlement conferred upon the individual a number of obligations. The primary obligation was to prevent dissipation of the property. In addition, there were restrictions placed upon its use: the individual entitled to usufruct was not permitted to alienate or otherwise encumber the property. These restrictions prohibited the property from being mortgaged, pledged or alienated without the consent of the titleholder.[153]

A final note on DOI Order 3206

This order is interesting for another reason, in that it illustrates the newest method of the government to assert its ultimate control over tribal trust lands. Now, under the guise of environmental concern, the government attempts to maintain its traditional degree of control over tribal trust lands.

The Order asserts that there is some legally enforceable partnership between the tribes and the federal government to protect the environment on trust land. Principle 1. of the Order states there exist "common goals of promoting health ecosystems" that the Indian tribes and the government share which will be furthered by means of "developing and expanding tribal programs that promote the health of ecosystems…"[154]

While it is acknowledged that tribal governments are recognized "…as sovereign entities with authority and responsibility for the health and welfare of ecosystems on Indian lands," to be conducted through "government-to-government" management of the ecosystems on Indian lands (which seems quite equitable) the government reveals that the sovereignty and the authority of tribes to manage their lands is, in this respect, actually limited. The government may invoke a "direct (or directed) take under the [Endangered Species] Act," should findings determine that conservation restrictions are necessary. Past case law

with regard to private property and "direct take," demonstrates that the federal government has almost unlimited authority to restrict or acquire land for environmental preservation according to the reasons laid out in the Act. It is certain that the "government-to-government consultation" promised to Tribes before such a "take" occurs on Tribal Trust land will place no greater limits on its authority than do the rights of private property owners.

B. Federal Acts and Programs; Navajo Programs and Organizations in the Self-Determination in Period [not a comprehensive list]

Modern Navajo history of the post self-determination period examines the Navajo economic and social progress in terms of government legislation and related assistance programs. Since such legislation and programs are numerous, they have been for the most part omitted from the text and are instead here notated.

Federal

Office of Economic Opportunity OEC 1964
Civil Rights Act 1964
Indian Civil Rights Act 1968
Indian Education Act 1972
Indian Education Assistance Act 1975
Indian Self-Determination and Education Act 1975
Health Care Improvement Act 1976
Indian Amendments Act 1978
Indian Child Welfare Act 1978
Comprehensive Employment Training Act 1973
Indian Mineral Development Act 1982
Federal Oil and Gas Royalty Management Act 1982
Indian Tribal Government Tax Status Act 1983
Native American Housing Assistance and Self-Determination Act 1996 [pending?]
Indian Tribal Justice Technological and Legal Assistance Act 1999 [pending?]

Navajo

Office of Navajo Economic Opportunity (ONEO) 1965
DNA Legal Services Program (Dinebeiina Nahiilna Be Agadetahe) 1965.
CERT Council on Energy Resource Tribes 1975 [Navajo membership among twenty-five tribes].

C. *The Navajo Political Situation*

The story of a controversial former Navajo leader illustrates the general political situation within the Navajo Nation. Peter MacDonald, the former Navajo Nation Council Chairman and President, who served from 1971-1982 and from 1987-1989 was convicted and imprisoned on a number of charges in 1990 relating to bribery and crimes at the Window Rock Riot in 1989.[155] MacDonald is viewed in two distinct ways. Some believe him to be a mythic figure, larger than life, who was instrumental in advancing Navajo self-determination and sovereignty during his long tenure. He was responsible for securing numerous mineral rights contracts for the Navajo Nation seeing in this a solution to the Navajo desire for autonomy. His detractors view this 'achievement' as a sell-out to big corporations at great cost to the environment, and contend that MacDonald bought into the Anglo-style corrupt government, which in turn corrupted the Navajo Council. It is certainly true that he expanded the powers of the executive branch of the Council to the detriment of the legislature and so the proper representation of the people.[156] He served his sentence until 2001, at which time he was granted a partial Presidential pardon by President Clinton.[157] MacDonald served in WWII as a Code Talker.

[1] General agreement exists on Navajo presence in the region since at least the fifteenth century. On seventeenth century synonymy (Spanish) see, Peter Iverson, *Diné : a History of the Navajos* / Peter Iverson ; featuring photographs by Monty Roessel (Albuquerque : University of New Mexico Press, 2002), 26 [hereafter Iverson, *Diné*] and David M. Brugge, "Navajo Prehistory and History to 1850", *Handbook of North American Indians* /William C. Sturtevant, general editor, Volume 10, Southwest/Alfonso Ortiz, Volume Editor (Washington, 1983). See pp. 496-497 [hereafter Brugge].

[2] North – Hesperus Peak (Dibe Nitsaa), Colorado; South – Mount Taylor (Tsoodzil), New Mexico; East – Blanca Peak (Sis Naajini), Colorado; West – San Francisco Peaks (Dook'o'oosliid), Arizona. This estimate is calculated from the post-treaty (1868) size of territory which, at 3.4 million acres is considered to have represented 10% of the original land inhabited. See below note 28 for calculation in Robert A. Roessel, Jr. "Navajo History, 1850-1923", *Handbook of North American Indians* /William C. Sturtevant, general editor, Volume 10, Southwest/Alfonso Ortiz, Volume Editor (Washington, 1983): 506-523 [hereafter Roessel, "Navajo History"]

[3] Source = Navajo tradition and general scholarly agreement. Among the Diné there existed a superstition connected with leaving the area contained within the Four Sacred Mountains. Remarks made by Navajo Chief Barboncito (1820-1871) (following the forced removal of the Navajo (1863)) to General Sherman at a Council Proceeding of May 28, 1868 contain this idea: "When Navajos were first created four mountains and four rivers were pointed out to us, inside of which we should live, that was to be our country…It was told to us by our forefathers, that we were never to move east of the Rio Grande or west of the San Juan rivers and I think that our coming here [to Bosque Redondo reservation] has been the cause of so much death among us and our animals." [See primary documents on New Mexico State University website as part of the Regional Education Technology Assistance partnership (RETA), New Mexico : http://reta.nmsu.edu/modules/longwalk/default.htm "Historic Documents, Council Proceeding, May 28, 1868 Proceedings"].

[4] General agreement. Herding society did not develop until late seventeenth century under Spanish influence. See for example, Garrick Alan Bailey, *A History of the Navajos : the Reservation Years* (Santa Fe, N.M.: School of American Research Press, 1986), 11-12 [hereafter Bailey; and Iverson, *Diné*, 32, on the Spanish-Mexican period of Navajo history concerning herding and weaving.

[5] Bailey's phrase, 11-12. Further, Bailey characterizes the Navajo as "clannish".

[6] Cheryl Howard, *Navajo Tribal Demography, 1983-1986 : a Comparative and Historical Perspective* (New York : Garland Pub., 1993).4, citing Kunitz (1981), who estimated 2,000 Navajo circa 1700 [hereafter Howard].

[7] Bailey's term 'cultural isolation' as a description of the Navajo condition before 1900, 165. *Loc. cit*. on Navajo distinctness as it affected Navajo views on other Native American tribes.

[8] George L. Campbell, *Compendium of the World's Languages*, 2 Vols. (New York : Routledge, 2000), 1198: "Navajo, also spelled Navaho, belongs to the Apachean sub-group of the Athabaskan branch of the Na-Dené family. The Navajo call themselves the t'áádiné 'the people', and the language is Dine Bizaad (saad 'words'; bi. Zaad 'his words'). Navajo is spoken by almost 130,000 Indians in NM, AZ, CO and S.E. UT. Almost alone among North American Indian languages, it is on the increase, being widely used in the conduct of affairs on the Navajo Reservation…". It uses the Roman alphabet.

[9] Bailey, 165. There was very little contact prior to 1900.

[10] Characterization as "enemy" is Bailey's as part of his discussion regarding anti-white sentiment during/following livestock reductions which persisted strongly until the 1930's, 222-223. The general sentiment that white society worked toward the destruction of the Navajo is attested to in Navajo statements.

[11] General agreement. Few Navajo spoke English even into the twentieth century, a phenomenon which was widely remarked upon in government documents concerned with WWII draft speaking on the high proportion of rejections for lack of English.

[12] Gary Witherspoon, *"Navajo Social Organization", Handbook of North American Indians /William C. Sturtevant, general editor, Volume 10, Southwest/Alfonso Ortiz, Volume Editor (Washington, 1983): 524-535*. See pages 533 and 535 [hereafter Witherspoon]. Taken from Witherspoon's explanation of Navajo "jural relations" *vis*. rights and duties of members of the tribe. Navajo political organization stressed principle of "unanimity" - "unanimity is the only basis of collective action": "coercion is always deplored". Witherspoon, an anthropologist, remarks at length on the relationship between these Navajo social values, individualism and communalism, and their origins in Navajo herding society.

[13] Bailey, 20. Table I: Population, 1846-1880. The population averaged during this period between 12,000-15,000. See also, Howard, 4, citing Kunitz (1981), who estimated 10,000 Navajo in 1864. Current day Navajo population, 2002, is given by Iverson, 11, as 290,000.

[14] Estimates vary from 8000-8500. Robert W. Young, *A Political History of the Navajo Tribe* (Tsaile, Navajo Community College Press, Navajo Nation, AZ, 1978) page 34, gives a figure of 8354 (1864)

[hereafter Young, *Political History*]. Keleher gives a figure of 8345 as of December 31, 1864. William A. Keleher, *Turmoil in New Mexico*, 1846-1868 (Santa Fe: Rydal Press, 1952), 502 [hereafter Keleher]. This figure is apparently derived from a census of the time. See Lynn R. Bailey, *The Long Walk: A History of the Navajo Wars, 1846-1868* (Los Angeles: Westernlore Press, 1964) page 214 gives a figure of 9022 by March 1865. [hereafter Bailey, *Long Walk*]. It is understood that numbers of Navajo avoided the removal.

[15] Bailey, Lynn R., *Indian Slave Trade in the Southwest: A Study in Slave-Trading and the Traffic of Indian Captives* (Los Angeles: Westernlore Press, 1966), 73, 114, 116, 177-178, 180-181, 188; and others, as cited in Roessel, "Navajo History", 507.

[16] U.S. sources continued to portray the Navajo as aggressive. Iverson, *Diné*, 38, quoting letter of New Mexico Governor, Charles Bent to Secrestary of State James Buchanan in 1846, that the Navajo were "a warlike and wealthy tribe".

[17] Young, *Political History*, 33, says this was the primary motivation. The Mescalero Apache of the area were also relocated.

[18] OIA later became the Bureau of Indian Affairs (BIA) under the authority of the Department of the Interior.

[19] This phrase with quotations appears frequently in the literature, though with no primary source citation, apparently the words of Carleton.

[20] www.southernnewmexico. Carelton apparently had received permission from Lincoln to build Fort Sumner and establish a reservation.

[21] Keleher 1952: 310, 311 as cited in Roessel: 511. Navajo were sent there to be "transformed into sedentary farmers".

[22] As in the case of the Cherokee people who were a more acculturated tribe. The "Indian Country" was set aside in 1825, and was later in the 1830's called the Indian Territory. It would seem that the "removals" had less to do with the savage v. civilization contest and more to do with the expansion of Empire.

[23] Tales from oral tradition may be consulted in *Navajo Stories of the Long Walk Period*. [Prepared under the supervision of Ruth Roessel] (Tsaile, Ariz., Navajo Community College Press, 1973) [hereafter *Navajo Stories*]. See also Lawrence C. Kelly, *The Navajo Roundup: Selected Correspondence of Kit Carson's Expedition Against the Navajo, 1863-1865* (Boulder Colorado: Pruett Press, 1970) [hereafter Kelly, Navajo Roundup].

[24] Apparently, Agents stationed on reservation lands having unchecked and broad authority often used food as a means to control the populace because they managed the food supply.

[25] 500 Mescalero Apache were also imprisoned.

[26] Roessel, "Navajo History", 517, and others. See www.southernewmexico.com for description of role drought and insects played in crop failures, and lack of "potable" water. The crops were very poor, 1865-1866, the crop of 1867 failed entirely. See: *Status Report of the Conditions of the Navajos*, May 30, 1868, composed by U.S. Indian Agent for the Navajo Indians, Theo. H. Dodd. [See primary documents on New Mexico State University website as part of the Regional Education Technology Assistance partnership (RETA), New Mexico. http://reta.nmsu.edu/modules/longwalk/lesson/document/index.htm "Historic Documents, Status Report, The *Status Report of the Conditions of the Navajos*, May 30, 1868"].

[27] Young, *Political History*, states that there was no self-government, and that all authority was exercised by the military, 35. It appears that there were some small wages paid in return for labor.

[28] cite

[29] *Navajo Stories*, 156, 213, 229, 238. See for instance, the stories of Dugal Tsoie Begay, Friday Kinlicheenee, Hascon Bennally, and Henry Zak, reciting the words of their ancestors who refer to the deserved punishment.

[30] cite.

[31] Apparently, General Carelton had some quite public critics of the period. See excerpts of public criticisms in Roessel, "Navajo History", 515. The background of the matter is that Carleton had declared martial law 1861-1865, and so was subject to no civilian oversight. Essentially, Carlton was seen as waging war against the Navajo without the consent of Congress. Critics complained he "exceeded" and "usurped" powers and that he mistreated the Navajo in treating them as "prisoners of war" and administering to them a collective punishment rather than punishing individual crimes of Navajo persons. One critic, Judge Knapp, objected on these points: unconstitutionality of imprisonment without trial and seizure of property without compensation.

[32] Keleher, 460-461. An investigative report into the situation after the removal of Carleson was undertaken in 1867 by Lt. R. McDonald. Most scholars concur that it was economic concerns, rather than any concern for the welfare of the Navajo that prompted abandonment of the "project". The poor conditions of the reservation are reflected in the *Status Report of the Conditions of the Navajos*, May 30, 1868, composed by

U.S. Indian Agent for the Navajo Indians, Theo. H. Dodd, who recommended that "a reservation should be selected for these people where there is sufficient arable land and other resources…" [See primary documents on New Mexico State University website as part of the Regional Education Technology Assistance partnership (RETA), New Mexico: http://reta.nmsu.edu/modules/longwalk/lesson/document/index.htm "Historic Documents, Status Report, The *Status Report of the Conditions of the Navajos*, May 30, 1868".

[33] Using term of the times, referencing Native Americans' alleged 'savage state'. Iverson, *Diné*, 40.

[34] See Young, *Political History*, 40. The actual text of Treaty, Article II, merely lays out the boundaries, calculations have been done by scholars. 3.5 million is the standard figure. According to the calculation given by Roessel, it encompassed 3.4 million acres, and "contained no more than 10% …" of earlier land owned. Roessel, "Navajo History", 519.

[35] Treaty of 1868: On largesse: Art VII. If a family selected lands for farming, they were entitled to "seeds" and "agricultural implements". Art. VIII. Gave goods to Indians which they could not produce themselves, for a 10 year period, "clothing, goods, raw materials" and 10$ to each person who farmed or took up "mechanical pursuits". The Agent was to procure these goods. Settlement provisions: Art. XII: Relocation of Tribe from Bosque Redondo to reservation @ 50,000.00$. The purchase of 15, 000 sheep and goats @ $30,000.00 for the Navajo.

[36] Treaty of 1868, Article VI. A copy is available in Iverson, *Diné*, 325-334. This marked the beginning of an educational system dominated by missionaries and boarding schools.

[37] Francis Paul Prucha, *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Harvard University Press, MA 1962).233-234. Prucha discusses Jackson's opinion that the English method, that the American government had continued to employ, of viewing Indian tribes as sovereign nations was out-moded.

[38] On portions omitted, see Bailey: 26.

[39] Young, *Political History*, 45-47, and others.

[40] Bailey: 36-37; 56.

[41] Crafts that had been learned during Navajo incarceration at Bosque Redondo.

[42] Bailey, 73.

[43] Young, *Political History*, 35, alleges that the Treaty of 1868 recognized a "Navajo tribal government". This is not entirely clear from the text of the Treaty. Did the Treaty recognize a Navajo tribe or nation and the authority of its chiefs as a *government*, or did it merely recognize the chiefs as parties *to treat with* though not a true government? See, Treaty of 1868, Introduction: "Articles of a Treaty and Agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, 1868, by and between the United States, represented by its Commissioners, Lieutenant General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the **Navajo nation or tribe of Indians**, represented by their Chiefs and Headmen, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said Chiefs and Headmen being hereto subscribed) of the other part, witness: [emphasis added]. The Navajo headman in this period, 1870-1884, was Manuelito.

[44] In 1884 Henry Chee Dodge was appointed Head Chief.

[45] The only portion of the Dawes Severalty Act related to a civilizing program was contained in Section 6 where it said that a Native American should have "adopted the habits of civilized life". The Act said that should an Indian person take an allotment and make it prosper, he would be awarded US citizenship. In effect, should the Indian comply with the Act he would be thus stripped of his tribal "citizenship" and have upon him conferred U.S. citizenship. He would then be subject to all US laws, and so forfeit his special immunity as a member of a sovereign nation, though not his right to Tribal or Indian property.
SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every number of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner affecting the right of any such Indian to tribal or other property.

[46] See for example, the following sample: *Report of Siletz Agency*. Siletz Indian Agency, Oregon, August 20, 1889. Gaither to Commissioner, 20 August 1889, in United States, Interior Department, Report of the

Secretary of the Interior; Being Part of the Message and Documents Communicated to the Two Houses of Congress at the Beginning of the Second Session of the Fiftieth Congress, vol. 2, (Washington: Government Printing Office, 1890), NADP Document D139. http://www.csusm.edu/nadp/d139.htm.

[47] Iverson, *Diné*, 83; 119. Manuelito's alleged words encouraging the Navajo to seek out education [and later used as propaganda] are quoted on p. 83. The sentiments of Manuelito reflected a small minority of Navajo at the time [pre-1901]. Bailey, 107, concludes that with regard to the policy of assimilation that the "effects were not felt until the twentieth century.

[48] Bailey, 165.

[49] See above on the consequences of the Dawes Severalty Act.

[50] Though the Act was more about the seizure of excess land, and less about eradication of Indian culture. It is not clear to what extent the Navajo reservation was divided into allotments. Iverson, *Diné*, 104, notes that by 1914 it was fairly apparent to government officials that there could be no further allotments made on Navajo reservation due to problems privatization had caused economically, the "checkerboard"' land problem.

[51] Iverson, *Diné*, 94-95; 100.

[52] Iverson, *Diné*, speaks of the prelude to centralized management, 102.

[53] Iverson, *Diné*, on his characterization of the role of Superintendents promoting this civilization in a 'colonial' manner, 113.

[54] Robert S. McPherson, *Navajo Land, Navajo Culture : the Utah Experience in the Twentieth Century* (Norman : University of Oklahoma Press, 2001)[hereafter McPherson, *Navajo Land*] examines the trading post as a place for interaction between Navajo and Anglo cultures during the years 1900-1930, 73-74; 82.

[55] Bailey, 165, discusses developments leading to the lessening of cultural isolation.

[56] Thomas Britten, *American Indians in World War I: At Home and Abroad*, (Albuquerque: University of New Mexico Press, 1996), 51 [hereafter Britten]. The Selective Service Act was passed May 18, 1917. Not all persons who registered were inducted.

[57] Brian W. Dippie, *Vanishing American: White Attitudes & U.S. Indian Policy* (Wesleyan University Press, CT 1982), 194 [hereafter Dippie] The number of Native Americans participating WWI was greater proportionally than the number which participated in WWII.

[58] Bailey, 118. One WWII Code Talker, Walker Norcross, who participated in both WWI and WWII recounts that military policemen came to his school [Ft. Definance?] to have the students voluntarily enlist. See *Navajos and World War II,* editor, Broderick H. Johnson (Tsaile, Arizona: Navajo Community College Press, 1977), 105. It seems that 17,000 registered, but only 8,000 participated. U.S. Army Intelligence and Security Command website http://www.fas.org/irp/agency/inscom/journal/98-oct-dec/article5.html. On Indian participation in WWI, see Britten.

[59] A general history of their participation can be found on the Choctaw Nation website: http://www.choctawnation.com/history/choctaw_code_talkers.htm.

[60] There seem to be less noble reasons, as well, having to do with land.

[61] Pressure to acquire Navajo land had never really ceased. New Mexico and Arizona were admitted as states in 1912. Not long afterward, the New Mexico legislature requested to Congress that the Navajo reservation be allotted to homesteaders. 1918 was the last year that the Navajo reservation was increased by means of Executive Order. Bailey, 117.

[62] Young, *Political History*, 52, 56, and 89.

[63] Young, *Political History*, 59 on "equal interest" as a "legal principle". See below, Appendix C. It meant that the government recognized Indian entitlement to profits based on the nature of tribal trust land.

[64] Bailey, 111.

[65] Young, *Political History*, 59-62, on the creation of the Tribal Council and its legal limitations. It could meet only with the BIA (Bureau of Indian Affairs) Commissioner's permission. Furthermore, it was not to be "construed as a governing body". See also, Iverson, *Diné*,123.

[66] One presumes it was necessary to create some sort of corporation to hold title to the land in order to effect the leases as legal contracts.

[67] Bailey, 180, though the reasons for the heterogeneity are not really examined. Young, *Political History*, 68, points to the Navajo discussion of issues in a tribal rather than local context as a significant shift.

[68] The general estimate is that 100,000,000 million acres were lost during the period 1887-1934 when the Wheeler Howard Act ended the allotment policy. The individual allotments granted to Indians were lost in a number of ways: heavy taxation, deceit, and government policy. See Carl Waldman, *Atlas of the North American Indian* (New York : Facts On File, 2000 revised ed.), 219, for a summary of ways in which land

was alienated from Indian possession.

[69] Kenneth William Townsend, *World War II and the American Indian* (Albuquerque : University of New Mexico Press, 2000), 8-9 [hereafter Townsend]. As Townsend characterizes it, the Meriam Report revealed the "depth of the poverty, disease and illiteracy…"

[70] Townsend, 6. This in turn encouraged a migration to urban centers. Double the number of Native Americans had migrated to urban centers by 1930 from the number ten years earlier.

[71] Howard, 4.

[72] Its provisions and ideas based on the earlier Meriam Report of 1928. For a discussion of the provisions of the Wheeler Howard Act, see Dippie, 309-333.

[73] On Boaz's influence, see Dippie, 280-284. He refers to the loss of faith in "civilization" of the 1930's. For an excellent summary of the New Deal, Collier, and the Wheeler Howard Act, see Alison R. Bernstein, *American Indians and World War II : Toward a New Era in Indian Affairs* (Norman : University of Oklahoma Press, 1991). 3-8.

[74] Collier served from 1933-1945.

[75] The Tribal Council as late as 1937 was still under the complete control of the Secretary of the Department of the Interior. Young, *Political History*, 91-96, describes the situation of the Tribal Council from 1934-1937 in detail. The Wheeler Howard Act, Title II, provided for a more Indian-oriented curriculum. But even today, the Secretary of the Department of the Interior has veto power over decisions of the Tribal Council.

[76] See Iverson, *Diné*, on livestock reduction, especially pages 137, 139, and 148-149. He characterizes the way livestock reduction was presented to the Navajo people as "blackmail" in that the government threatened to withhold funds distributed through its various programs to the Navajo unless they complied.

[77] Iverson, *Diné*, describes how the dead animals were left to rot since there was no market for them. This had an impact on the Dine.

[78] Bailey, 223. The Navajo also noticed that the government took their property without compensation. Critics of the times also noticed the inequitable treatment, Iverson, *Diné*, 149, 151.

[79] Iverson, *Diné*, 153. Navajo elders contend that there is a relationship between lack of interest in herding among the young Navajo today and livestock reduction episode.

[80] Background: 1938 low employment among Native American population. 1939, drought and devastating effect on the Southwest where there was in some places a 100% crop failure. Bernstein, 16-18.

[81] Bernstein, 42. There had been significant gains in the population of Native Americans. The growth rate was double that of America, during the period 1930-1940, p. 11. Bernstein points out that while there was an increase in population among Native Americans, the percentage of full-blooded Native Americans was decreasing.

[82] Collier was generally in favor of separate Native American units, such as an all-Navajo unit (which the Navajo allegedly requested first) in opposition to Secretary of War Stimson who sought to integrate Native Americans into the military (although segregationist policy still stood for blacks). Bernstein, 22, 41.

[83] Townsend, 112, describes the situation of the Yakima as one testing the issue of tribal sovereignty.

[84] Bernstein, 24.

[85] Townsend, 64-65. He points, however, to "positive alterations" to Native American living standards as a result of the 'Indian New Deal', 27.

[86] Townsend, 66.

[87] Bernstein, 35.

[88] Peter Iverson, *Navajo Nation* (Westport, Connecticut: Greenwood Press, 1981), 49 [hereafter Iverson, *Navajo Nation*], citing Robert W. Young, ed. *Navajo Yearbook*, vol. 8 (Window Rock: Bureau of Indian Affairs, 1961): pp. 359-365 [hereafter Young, *Navajo Yearbook*] The estimate is 10,000-12,000. Iverson, using Young's statistics, states that "over half the Navajo population 19 years and older was gainfully employed." *ibid.* This is in addition to the 4,500 Navajo who served in the armed forces, Bernstein, 24. Young, *Political History*, Navajo workers were " in great demand in the copper mines, on the railroads, in the ship yards and in agriculture…", 120. On the same page Young refers to the Navajo as developing a new sense of their place in "broader society" as "Navajo Indian citizens – not merely as wards of the Federal Government". The term "wards" is, however, not legally accurate. See Appendix A to this work: *Preliminary Thoughts On the Federal Tribal Trust and Tribal Sovereignty*.

[89] Iverson, *Navajo Nation*, 50, on non-transferability of skills in Diné Bikeyah.

[90] These are standard dates. The particular cases may be consulted.

[91] On Ahkeah's role as advocate for Navajo voting rights and part in the growing Navajo nationalist sentiment, see Iverson, *Dine*, 57. Livestock reductions also played a central role in the growth of Navajo nationalism, Iverson, *ibid.*, 145.

[92] Young, *Political History*, 123.

[93] *Native America in the Twentieth Century : an Encyclopedia*, edited by Mary B. Davis (New York : Garland Pub., 1994). "Government Agencies", Paul H. Stuart, 211, the Indian Claims Commission "between 1947 and 1978, [the court] decided 546 dockets." The author compares this in a favorable light to the processing done by the Court of Claims (1881-1946).

[94] Young, *Political History*, considers it a "turning point in tribal history," 124.

[95] Iverson, *Navajo Nation*, 52, the hiring of a tribal attorney "proved to be a fundamental step in Navajo development…". Sam Ahkeah was tribal council Chairman at the time.

[96] Young, *Political History*, 126, the Tribal Council "request[ed] that livestock reduction be placed in abeyance for a five-year period".

[97] Iverson, *Navajo Nation*, 54, 221. In real terms, whether it was beneficial or not, livestock reduction by 1956 had reduced herds by 2/3 of the size they were in 1931. (221).

[98] Iverson, *Dine*, 153.

[99] Young, *Political History*, 124, an unnamed report of 1947. The most important of these reports, was the 1948 report, "The Navajo –Report of J.A. Krug, Sec. of the Interior – A Long Range Program for Navajo Rehabilitation". Congress directed that the Report be made and it later "formed the basis" for the Navajo-Hopi Rehabilitation act of 1950.

[100] Termination was begun under Truman, who had appointed Dillon Myer Commissioner of Indian Affairs. Myer was a " government bureaucrat who had managed the Japanese internment camps…" The policy was "accelerated" under the Eisenhower administration with the appointment of Glenn Emmons as Commissioner. Republican Senator Arthur V. Watkins of Utah was the primary promoter of the legislation. See Christopher K. Riggs, "American Indians, Economic Development, and Self-Determination in the 1960s," *Pacific Historical Review*, August 2000, Vol. 69 Issue 3, pp. 434-435.

[101] By 1962, the policy had resulted in the termination of "3% of all federally recognized Indians and 3.2% of trust lands." Larry W. Burt, "Termination and Restoration" in *Native America in the Twentieth Century : an Encyclopedia*, edited by Mary B. Davis (New York : Garland Pub., 1994), 221. The 1953 Public Law 280 granted law enforcement jurisdiction over tribal lands in a number of states (CA, MN, NB, OR, &WI).

[102] A Voluntary Relocation Program had been initiated in 1952 to help Native Americans move to urban areas. As of 2000, between 1/3 to 1/2 of all Native Americans live in cities. Carl Waldman, *Atlas of the North American Indian* (New York : Facts On File, 2000 revised ed.), 227 [hereafter Waldman].

[103] Young, *Navajo Yearbook*, 236. Young's chart on Navajo Relocations, Fiscal Years 1952-1960, shows an increasing number of Navajo left the reservation during this period. According to the information of the time, 3273 persons had departed the reservation and 2000 more were awaiting relocation. This takes into account a 35% return rate.

[104] In 1983, the policy had still not been formally repudiated by a Concurrent act of Congress according to Ronald Reagan in his *American Indian policy statement* of January 24, 1983. www.epa.gov/indian/pdfs/reagan83.pdf [EPA website].

[105] The jurisdiction of tribal courts did not extend to criminal matters. Criminal jurisdiction for capital crimes was reserved to the Federal courts, while lesser crimes were under the jurisdiction of the states. Tribes were first forbidden to decide criminal matters under the Major Crimes Act of 1885. Further statements concerning tribal sovereignty and Federal law are found on the Department of Justice website, contained in the policy statement: *Department of Justice Police on Indian Sovereignty and Government-to-Government Relations with Indian Tribes*. www.usdoj.gov/otj/sovtrb.htm.

[106] Young, *Political History*, 136-137.

[107] Specifically, Aneth, Utah. See Iverson, *Navajo Nation*, 78, on oil royalties for the period, 1955-1959, and on income from uranium mining.

[108] Iverson, *Navajo Nation*, 65.

[109] Iverson, *Navajo Nation*, 63.

[110] Three commissions concerning Indian affairs were convened in 1961.

[111] The Indian Civil Rights Act (ICRA) of 1968 was created to supplement the Civil Rights Act of 1964. The ICRA governed Indian-to-Indian relations and relations of Indians to their tribal governments, since this was not addressed in the earlier Act or other areas of law. Other notable Navajo events of the 1950's: 1958, Navajo Reservation gains land in Arizona; Publication of the *Navajo Times* [see now www.navajotimes.com for English online version] commenced in 1969.

[112] The National Congress of American Indians (formed 1944) played a large role in protesting the policies of termination.

[113] Iverson, *Navajo Nation*, 89-90, characterizes the program as having an "impact on literally almost everyone living in the Navajo Nation."

[114] See the interesting comments contained in the testimony of the Navajo Nation as presented by Council Vice President, Taylor McKensie, M.D., to the U.S. Senate Committee on Indian Affairs in 1999, where he states that DNA – People's Legal Services has "had a central role in introducing the concept of rule of law to the Navajo Nation…it can be said to be one of the major training grounds for law and democracy in the Navajo Nation." *Comments on S. 1508. "Indian Tribal Justice Technical and Legal Assistance Act of 1999",* Submitted to the United States Committee on Indian Affairs by the Navajo Nation, September 29, 1999.

[115] On the issue of peyote use, see Iverson, *Navajo Nation*, 84. This is still an issue today in the Navajo Nation.

[116] Because of demographic changes in the southwest, coal for use in the newly built Four Corners plant (1961) was a desirable commodity. Mining operations took place on both Navajo and Hopi land. Black Mesa is intimately connected with the Navajo-Hopi Dispute.For further information on the dispute see, David Brugge, *The Navajo–Hopi LandDispute: An American Tragedy* (Albuquerque: University of New Mexico Press, 1994) [hereafter Brugge, *Navajo-Hopi*].

[117] See www.dinecollege.edu.

[118] Deanne Durrett, *Unsung Heroes of World War II : the Story of the Navajo Code Talkers* (New York, NY : Facts on File, 1998), 100-102 [hereafter Durrett].

[119] Richard Nixon, *Special Message to the Congress on Indian Affairs*, July 8, 1970. The public statements and messages of Nixon, January 20, 1969 - August 9, 1974, have been scanned by the GPO and are available on the Nixon Foundation Website. See www.nixonfoundation.org/Research_Center/1970_pdf_files\1970_0213.pdf for text of the Special Message. President Johnson had presented a similar message to Congress on March 6, 1968.

[120] "…[the] special relationship between Indian tribes and the Federal Government which arises out of these agreements [ref. Treaties] continues to carry immense moral and legal force…".

[121] Navajo refused to move from the land in 1986 and so it took much longer than expected to relocate the selected individuals. It was extremely costly and was the largest relocation since the old days of Indian removal. Today, most people have relocated or made some settlement arrangement.

[122] Ronald Reagan, *American Indian policy statement*, January 24, 1983: "Despite the Indian Self-Determination Act, major tribal government functions…are frequently still carried on by federal employees. The federal government must move away from this surrogate role which undermines the concept of self-government.". www.epa.gov/indian/pdfs/reagan83.pdf [EPA website].

[123] See below Appendix C.

[124] Clinton paid a visit to Shiprock circa April 18, 2000, and spoke publicly about the achievements of the Code Talkers.

[125] H.R. 1384, *Long Walk National Historic Trail Study Act*: "to amend the National Trails System Act to designate the routes in Arizona and New Mexico which the Navajo and Mescalero Indian tribes were forced to walk in 1863 and 1864, for study for the potential addition to the National Trails System." HR1384 October 02, 2001 and Senate August 01, 2001.

[126] *Profile of the Navajo Nation*, Navajo Nation Washington Office www.nnwo.org/nnprofile citing the 2000 U.S. Census.

[127] *Profile of the Navajo Nation*, Navajo Nation Washington Office www.nnwo.org/nnprofile

[128] *Profile of the Navajo Nation*, Navajo Nation Washington Office www.nnwo.org/nnprofile

[129] According to the *Navajo Tribal Code*, a person must have at least one-quarter Navajo blood.

[130] *Profile of the Navajo Nation,* Navajo Nation Washington Office www.nnwo.org/nnprofile using statistics dated November 30, 2001.

[131] *Profile of the Navajo Nation*, Navajo Nation Washington Office www.nnwo.org/nnprofile.

[132] See Larry Curley in "Lack of Vision is Problem, Curley Says", Sasheen Hollow Horn, *The Navajo Times*, April 4, 2002.http://thenavajotimes.com/Politics/lcurley/lcurley.html; and also E.H. Begay in "Begay: Vision of a Navajo Language Constitution Sets Him Apart", Sararesa Begay, *The Navajo Times*, May 23, 2002.
http://thenavajotimes.com/Politics/ehbegay/ehbegay.html

[133] James Henderson in "Henderson Wants to Fill Leadership Void", Sasheen Hollow Horn, *The Navajo Times*, April 25, 2002 http://thenavajotimes.com/Politics/Henderson/henderson.html

[134] See McPherson on the uranium exposure issue. Prior to the Radiation Exposure Compensation Act (1990), the government claimed immunity from all suit concerning radiation exposure, 176-177.

[135] The Navajo contended that the tribal leases with Peabody Coal were below market value (12.5% royalty rate) and that the DOI had trust responsibilities to provide better return. President Bush, through the Department of Justice, has asked the Supreme Court to overturn the decision. See "Supreme Court to Consider Tribal Lands, " *Associated Press*, November 29, 2002 as accessed in the *Guardian, U.K*.

[136] According to Larry Curley, *ibid*.

[137] See N.A. Begay in "Begay, 'Not a Career Politician,' Says Same People Run for Office Every Year", Sararesa Begay, *The Navajo Times*, May 23, 2002. http://thenavajotimes.com/Politics/nabegay/nabegay.html and Calvin Tsosie in "Tsosie Stresses Traditional Prayer To Meet Needs of the People", Sasheen Hollow Horn, *The Navajo Times*, April 25, 2002. http://thenavajotimes.com/Politics/Tsosie/tsosie.html

[138] See statement of Atoinette Yellowhorse in "Just One of the Navajo People with a Willingness to Serve, Yellowhorse Says", Sararesa Begay, *The Navajo Times*, May 23, 2002. http://thenavajotimes.com/Politics/ylwhrse/ylwhrse.html. E.H. Begay characterizes crime as "overwhelming", "Begay: Vision of a Navajo Language Constitution Sets Him Apart," Sararesa Begay, *The Navajo Times*, May 23, 2002.http://thenavajotimes.com/Politics/ehbegay/ehbegay.html. Larry Curley concurs stating: "crime and delinquency increasing exponentially", in "Lack of Vision is Problem, Curley says", Sasheen Hollow Horn, *The Navajo Times*, April 4, 2002.http://thenavajotimes.com/Politics/lcurley/lcurley.html

[139] James Henderson says that "the government [Council] has forgotten its people" in "Henderson Wants to Fill Leadership Void", Sasheen Hollow Horn, *The Navajo Times*, April 25, 2002. http://thenavajotimes.com/Politics/Henderson/henderson.html Curley believes the solution is in decentralization, "Lack of Vision is Problem, Curley says", Sasheen Hollow Horn, *The Navajo Times*, April 4, 2002.http://thenavajotimes.com/Politics/lcurley/lcurley.html. Joe Shirely stresses that there is a need for "better representation"; and Genevieve Jackson: "[people] feel that they don't have a voice in the council.", "Jackson: Being a Leader of the People a Sacred Responsibility", Sararesa Begay, *The Navajo Times*, May 17, 2002. http://thenavajotimes.com/Politics/genjackson/genjackson.html

[140] This extends to incorporating Navajo values into governmental life. E.H. Begay advocates the creation of a new constitution in the Navajo language. E.H. Begay in "Begay: Vision of a Navajo language constitution sets him apart," Sararesa Begay, *The Navajo Times*, May 23, 2002. http://thenavajotimes.com/Politics/ehbegay/ehbegay.html

[141] The current number of Navajo speakers is estimated at 90,000-150,000. *The Athabaskan Languages : Perspectives on a Native American Language Family* / edited by Theodore B. Fernald, Paul R. Platero (New York: Oxford University Press, 2000)[Series= Oxford studies in anthropological linguistics 24], 3.

[142] Yellowhorse; Shirely: "We need the language…it is what makes us Navajo". Begay, Sararesa, "Just one of the Navajo people with a willingness to serve, Yellowhorse says," *The Navajo Times*, May 23, 2002. http://thenavajotimes.com/Politics/ylwhrse/ylwhrse.html

[143] *Forest Service National Resource Guide to American Indian and Alaska Native Relations State and Private Forestry* FS-600, April 1997. Appendix D.: Indian Lands, American Indian Digest www.fs.fed.us/people/tribal/tribexd.pdf

[144] The most authoritative work on the subject of Indian law was completed by Felix Cohen in 1942 which to this day has not been surpassed. Handbook of Federal Indian law ; foreword by Harold L. Ickes ; introd. by Nathan R. Margold. (Imprint Washington : U.S. Govt. Print. Office, 1942).

[145] http://www.usbr.gov/nepa/pdf/15.pdf [Bureau of Reclamation, DOI website]

[146] *Code of Federal Regulations* [C.F.R.] Title 25.1.150.2 [Title 25: Indians: Chapter I: Bureau of Indian Affairs, Department of the Interior; Part 150: Land Records and Title Documents – Table of Contents; Sec. 150.2: Definitions]. In (h), the Code defines "Indian land" as "an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use occupancy and/or *benefit* of certain tribes…". [emphasis added]

[147] Order 3206, Section 4., Background.

[148] See above page 14 on the government-to-government relationship. This slogan appeared during the early period of "self-determination" and is obviously meant to convey some sort of equitable relationship between the Tribe in its capacity as sovereign entity and the federal government. Tribes interpret it as being on par with the states' relationship to the federal government.

[149] Tribal Trust Resources as defined in Sec. 3 (B) of the Order "means those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.".

[150] *Cherokee Nation v. Georgia*, 30 U.S. 1, 5 Pet. 1, 8 L.Ed. 25 (1831). "They may [Indians], more correctly, perhaps, *be denominated domestic dependent nations*. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession, when their right of possession ceases. Meanwhile, they are in a state of pupilage; their relation to the United States resembles that of a ward to his guardian." at 17. [emphasis added].

[151]*Johnson v. M'Intosh*, 21 U.S. 543, 5 L.Ed. 681, 8 Wheat. 543 (1823). "Title of occupancy" at 562. On the inferiority of Indian title: "While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy." at 574.

[152] *Ibid*. The Indian claim to their land stemmed from proposition that it was a grant to them, since all land originally belonged to the sovereign and the title being subsequently transferred to the United States government as sovereign: "The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an *exclusive right to extinguish the Indian title of occupancy*, either by purchase or by conquest; and gave also a right to such a degree of sovereignty, as the circumstances of the people would allow them to exercise." at 587. [emphasis added].

[153] Federal government stipulations include prohibitions on lease, which was not part of earlier law governing usufruct. It is unclear exactly how "joint", joint consent is with regard to alienation of tribal trust land.

[154] Order, *ibid*. Principle 3.

[155] Details concerning the downfall of MacDonald are drawn from Iverson, *Dine*, and comments found among letters to the *Navajo Times*. On his pardon, see *New York Times*, cite in note 156 below.

[156] David Wilkins, "Governance within the Navajo Nation: Have Democratic Traditions Taken Hold?", *Wicazo Sa Review,* 17.1(2002): 91-129, characterizes the situation by 1989 as the executive having "virtually unlimited power", 111. Subsequent reform undertaken by the Council in its Resolution CD-69-89 attempted to reduce the power of the executive. See CD-68-89 of December 15, 1989, "Amending Title Two (2) of the Navajo Tribal Code and Related Acts". The same situation continues today. See the comments of 2001 Council President candidate, Sam Wauneka, who contends that there is only one branch with power in the Navajo Government, and that there need to be "check and balances", " Wauneka Wants to Return People to Government", Sasheen Hollow Horn, *Navajo Times*, April 4, 2002, http://thenavajotimes.com/Politics/ewauneka/ewauneka.html

[157] "Clinton Issues Pardons, Clearing Deutch and McDougal, but Not Milken or Hubbell Marc Lacey", *New York Times* January 21, 2001.

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