

1987

Diné Bibee Haz' Áanii: An Analysis of the Navajo Political System

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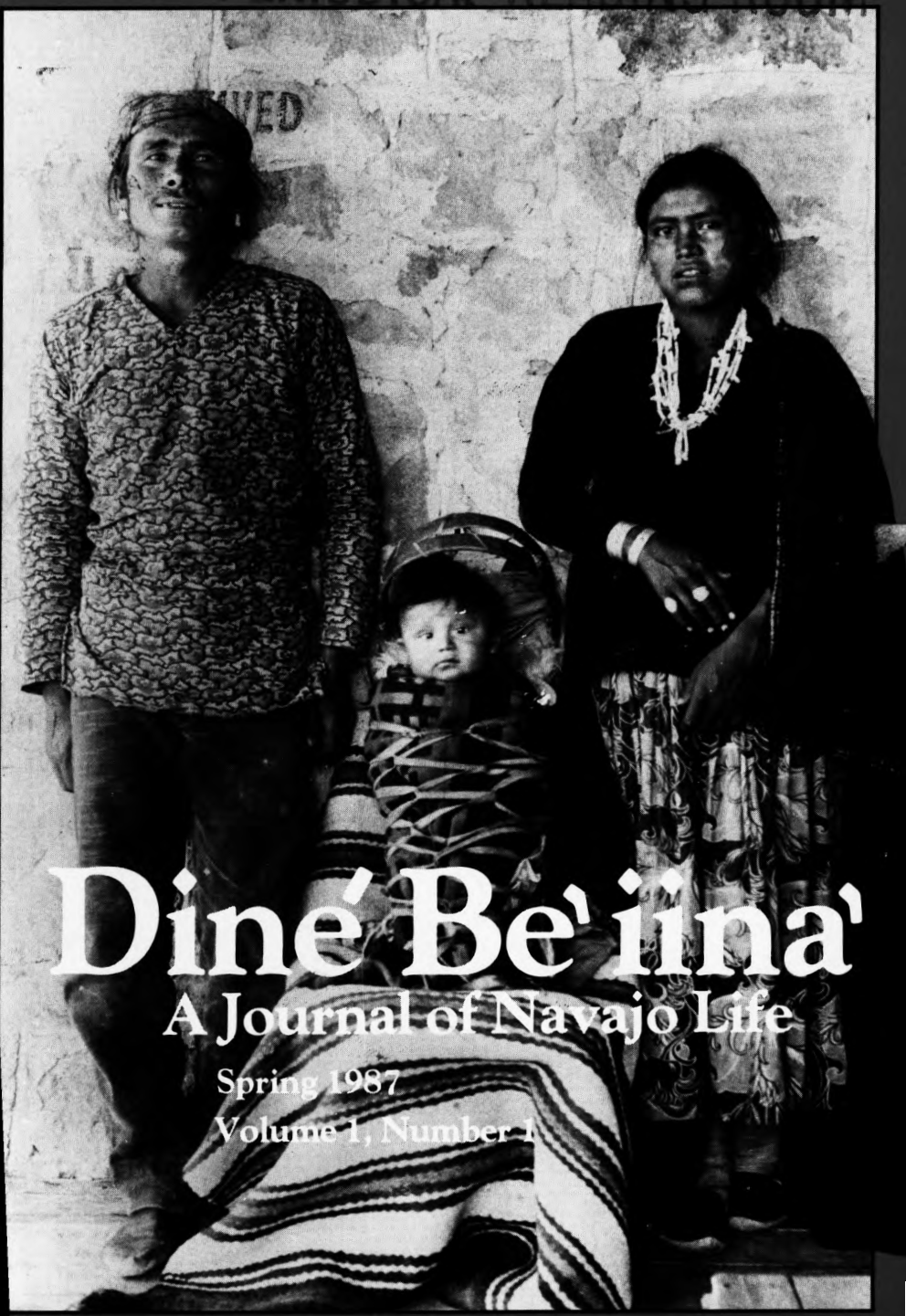


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Recommended Citation

Wilkins, David E. "Diné Bibee Haz' Áanii: An Analysis of the Navajo Political System." *Diné Bi' Journal* 1, no. 1 (Spring 1987): 1-22.

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Diné Be'ina'

A Journal of Navajo Life

Spring 1987

Volume 1, Number 1

DINÉ BIBEE HAZ' ÁANI*

An Analysis of the Navajo Political System

by David E. Wilkins

Introduction

The Diné (Navajo) people have a representative/legislative form of government modeled loosely after the American system. The present governmental structure, established in 1938 by the Secretary of Interior, is outlined in the *Navajo Tribal Code*. This article encompasses the background of the Code, describes the efforts of tribal and federal officials to enact a tribal constitution, and discusses the key functions of government: legislative, executive and judicial. It also examines the various subunits of government operating within the reservation. Finally, it contains recommendations that, if enacted, could strengthen and legitimize Navajo government.

Tribal Code Principles

In 1935 Navajos narrowly declined to accept the provisions of the Indian Reorganization Act¹ (1934) which, among other things, granted tribes the right to reorganize along constitutional lines. In lieu of a tribal constitution, the Interior Secretary approved a limited set of "Rules for the Navajo Tribal Council"² which were written by Commissioner of Indian Affairs John Collier. These original rules still provide the basic framework of Navajo Tribal Government; nevertheless, over the last forty-eight years, many new laws have been enacted by the Tribal Council and its Advisory Committee. To consolidate and arrange these scattered laws, in 1962 all preceding tribal resolutions and pertinent federal laws were codified in two bound volumes under the title *Navajo Tribal Code*. The Code, now entails four volumes and contains the general and permanent provisions of the resolutions of the Tribal Council and its Advisory Committee. The Code includes the Navajo Bill of Rights, tribal government structure and powers, qualifications for

*This article is extracted from a new book (*Diné Bibeehaz'aani: A Handbook of Navajo Government*) by Navajo Community College Press. The book will be available in January 1987.

tribal membership, election laws, fiscal matters, business and commercial activities, land use and natural resource matters, law and order, etc.³

Tribal Code Authority

Constitutions represent the fundamental law of the United States, other countries, and many tribal groups. A constitution delineates a system of government in that it sets forth the people, procedures, and structures that can legitimately create and protect the laws. Constitutions also serve two other broad and basic functions: 1) they establish the relationship between the people and the government; and 2) they represent a grant of power from people to their leaders. The *Navajo Tribal Code* does not, however, derive its authority from the Navajo people, since they were not the ones to establish the government. There are, of course, unwritten customs and traditions that play an important, if limited, role in Navajo government. These customs and traditions should be considered when interpreting the Code.

Nevertheless, the real authority for Navajo Tribal Government springs from the July 26, 1938 Rules which provided for a governing body to consist of a chairman, vice-chairman, and seventy-four delegates (now eighty-eight) elected on the basis of land management districts.⁴ Once the election procedures were established, the Council was given recognition as the governing body of the Navajo Tribe by the Secretary of Interior. Another critical distinction between the Federal and other tribal constitutions and the Navajo Tribe's organic law is that the "Rules" for the Tribal Council contained no statement of powers which the Tribal Council was authorized to exercise on behalf of the Navajo people. Thus, since the Council's powers are not defined, they are also not limited. The Tribal Council is not entirely free from constraints, however. This will be discussed shortly.

Why is There a Tribal Code and not a Constitution?

The Navajo people voted against the Indian Reorganiza-

tion Act largely because they believed that by adopting it more livestock reduction would result. This was an erroneous belief, but conflicting reports from Chee Dodge, Jacob C. Morgan, and John Collier and associates confused Navajos about the true merit of the law.⁵ Although Collier was stung by the Navajos' rejection, he continued to emphasize the need for an overhaul of Navajo government. Moreover, many Navajos also began to view the Tribal Council with disdain, believing that it actively supported the government's stock reduction program and did not represent the views of the Navajo people.

The last meeting of the original tribal council was held November 24, 1936,⁶ under acting Chairman* Marcus Kanuho. Jacob C. Morgan, Shiprock delegate, and the most outspoken critic of stock reduction, protested the impending break-up of the old tribal council. Despite Morgan's histrionics, during this last meeting the council established an executive committee charged with calling a constitutional assembly for the purpose of writing and adopting a tribal constitution.

This executive committee, led by Chee Dodge, Marcus Kanuho, Henry Tallman, and Father Berard Haile, toured the Reservation throughout the winter, and by February 1937, had a working list of 250 nominees for the constitutional assembly. The executive committee ultimately pared this number down to seventy⁷ for practical purposes, but chose them carefully to provide equal representation for the entire Reservation. When the seventy delegates met in the spring, their principle objective was to appoint a committee to draft a constitution. Once it was written, it would be sent to the Interior Department for approval and then sent back to the Navajo citizenry for ratification.

Later that year the constitution was completed. By this time, however, J.C. Morgan and his associates had become so vehement in their opposition to the constitutional process that the Secretary of Interior, fearing a permanent split

*Tom Dodge has resigned in May and accepted employment with the Bureau of Indian Affairs.

in the tribe and more hostility to the stock reduction program; rejected the constitution. Instead, the Indian Bureau gave the assembly delegates the option of declaring themselves to be the new tribal council. The delegates voted themselves into office later, and in 1938 the Interior Department issued a simplified set of by-laws, sufficient only for the election of the new Tribal Council and executive officers.

Following these latest "Rules," the first election was held September 24, 1938 and Jacob C. Morgan was elected Chairman and Howard Gorman chosen Vice-Chairman. The first tribal council meeting convened November 8, 1938. The 1938 by-laws enlarged the council membership from twenty-four to seventy-four delegates. The Commissioner of Indian Affairs no longer retained the right to appoint delegates, and the tribal council meetings no longer required a federal official's presence.

The constitutional question was raised again in 1950. The Navajo-Hopi Rehabilitation Act,⁸ enacted in 1950, included a provision authorizing the Tribe to adopt a constitution. The Tribal Council drafted one⁹ and prepared to send it to the Interior Department for approval. Simultaneously, however, the discovery of oil in Navajo country in 1953 sparked much debate. The Tribe wanted to take advantage of oil and gas development, and had a bill introduced in Congress that would have allowed the Council to develop minerals in partnership with energy companies without the approval of federal officials.¹⁰ Washington refused to grant the Navajos the freedom to develop their own minerals, without federal sanction, even though termination fervor was strong.

Normal Littell, General Counsel for the Tribe, then suggested that the pending constitution be withdrawn. He apparently feared that the Secretary of Interior would grant himself too much power over the Tribe's affairs by way of the Secretary's veto power which was to be included in the Navajo constitution.¹¹ The issue of a tribal constitution was

again shelved.

Raymond Nakai, Tribal Chairman from 1963 to 1970, revived the issue. In fact, one of Nakai's campaign pledges in both elections was the adoption of a constitution.¹² A constitution was finally submitted to the Tribal Council on November 14, 1968.¹³ The Council approved it, but it was never submitted to the Navajo people for ratification.

As noted earlier, section six of the Navajo-Hopi Rehabilitation Act authorized the tribe to adopt a constitution.¹⁴ This provision is still applicable today, although no major drive to secure one has been made since 1968. One reason is that in past years the Tribal Council has felt that a constitution would define and limit their powers; for, councilmen believe they can exercise all sovereign powers still vested in them; whereas, constitutional limitations would mean that some council actions would have to go before the people for approval. This, say some councilmen, is time-consuming and expensive.¹⁵ This rationale, however, is extremely weak. While it is correct that the Interior Department must approve all tribal constitutions and can veto many tribal laws, it also holds this same power over most major Tribal Council resolutions. This power of the Secretary is commonly referred to as "Secretarial Review."¹⁶

Finally, some councilmen stress that it is too expensive and time-consuming to involve the Navajo people in direct participation with certain tribal resolutions. This situation could be remedied without much difficulty. Procedures for initiative and referendum, which will be discussed later, would solve this problem economically and efficiently.

Structure of the Navajo Tribal Code

The *Navajo Tribal Code* is divided into twenty-three titles. These include Federal relations, tribal administration, personnel policies and procedures, courts, domestic relations, education, labor, land, water, taxation, etc. Each title contains historical notes showing the organic resolution, cross references to related matters in the Code, the United States

Code, federal Indian law, and appropriate state laws. Furthermore, annotations are included which detail how court decisions have interpreted the provision's meaning.

An important appendix section preceding the Code sets out the texts of the 1850 and 1868 treaties, pertinent congressional acts, executive orders, and state disclaimer clauses. An excellent index is also included.

Legitimacy of the Code

From the Federal Government's point of view, the Navajo Tribal Council is a legitimate government because of the 1850 and 1868 treaties;¹⁷ only sovereign nations can enter into treaties. But for most Navajos, the tribal government was not considered legitimate until the 1940s. The traditional economy of Navajos had been broken by livestock reduction, and more Navajos became dependent on wage work.¹⁸

Secondly, World War II involved over 18,000 Navajos in full-time work. Many of these individuals and their families recognized the need for education and relevant jobs. Subsequently, oil, uranium, and gas discoveries in the 1950s (and coal in the 1960s) enabled the Tribe to begin to provide the services and programs that are the true functions of government.

Limits to Governing Power

There are currently four limitations on the powers that may be exercised by tribal government: tribal elections, removal, secretarial veto power, and constitutional conflicts. These mechanisms should be clearly understood by the Navajo people. But of more importance are the proposed limitations that will be discussed later in this article. Limitations, when properly exercised, can contribute to open, stable government.

The first limit, and certainly the most obvious one, is that tribal elections are held every four years.¹⁹ If the Chairman, Vice-Chairman, or council delegates fail to meet the expectations of their constituents they may be voted out of office.

The same holds true for chapter officials on the local level. Tribal judges are the only tribal officials exempt from this, since they are appointed and generally serve until age seventy.

Tribal councilmen may also be removed if more than 50 percent of the registered voters in his/her district sign a petition. The Chairman and Vice-Chairman are also subject to removal, but at least two-thirds of the Tribal Council must vote in favor of removal. Removal can be based on any of the following reasons: insanity (when judicially or medically determined), felony conviction, failure to attend council meetings or, in the executive's case, absence for three consecutive months without the Council's permission, or habitual alcohol indulgence.

The third limitation, alluded to earlier, is the Secretary of Interior's veto power. Although the United States Supreme Court in *Kerr-McGee v. The Navajo Tribe* (1985)²⁰ said the Tribe did not need the Interior Department's consent to tax companies, the Secretary still must sign off on all major Tribal Council and Advisory Committee resolutions. This may be challenged in the future, but, for the present, it remains federal policy.

And finally, tribal resolutions must not conflict with federal or state statutes. In essence, then, the only limitation that Navajos can exercise directly is to elect qualified candidates and hope that they faithfully carry out their duties. The Tribal Council, however, as the governing body has virtually unlimited authority since its powers still lack definition. This is important to remember because Congress and the Interior Department have not interfered substantively with the internal political affairs of the tribe since the 1930s. And although the Navajo Nation lies within several states' boundaries, the states are barred from intruding into Reservation affairs if their action interferes with tribal self-government or impairs a right reserved by treaty or federal law.²¹

NAVAJO TRIBAL GOVERNMENT: AN OVERVIEW

The Navajo Tribal Council (Legislative Function)

The Navajo Tribal Council is the heart of the government. All other functions, people, agencies, and officials receive their authority and guidelines from this legislature. The Chairman represents the Tribe's interest only at the will of the lawmakers. Tribal Council delegates are concerned with order and stability, justice, protection of cultural values, efficiency, and the balancing of written and unwritten law. Above all, they act as representatives of all Navajo people and function as decision makers regarding tribal requests. This is the basic activity of any legislative body: to review requests for action, and say yes or no. The Tribal Council performs many political roles, but their primary responsibility is to make law.

The Council currently consists of eighty-eight delegates. They have four regular sessions each year, although special sessions may be called by the Chairman at the recommendation of the Advisory Committee or by written petition of a majority of Council delegates. Because of the immense size of the Reservation and the large population, lawmaking is done primarily through the fourteen standing committees who divide the labor. Nearly all legislative actions reflect a committee recommendation. The fourteen standing committees are: Advisory, Budget and Finance, Central Loan, Economic and Community Development, Education, Emergency Services, Ethics, Health and Human Services, Intergovernmental Relations, Judiciary, Labor and Manpower, Public Safety, Resources, and Roads and Transportation.

It is beyond the scope of this article to review the functions of all the committees, but mention should be made of the powerful Advisory Committee. This committee is comprised of eighteen members and serves as the Executive Committee of the Navajo Tribe with general authority to

act for the Tribal Council when it is not in session. The Tribal Chairman selects the committee membership and chairs this body.

Council delegates are also influenced by other entities both within and outside the government when it comes to lawmaking. Groups and individuals that influence, and at times participate, in lawmaking include tribal attorneys, executive officers, special interest groups, local governing bodies, and the Bureau of Indian Affairs. Finally, candidates for the Tribal Council must meet stringent qualifications before they can pursue public office.²²

Tribal Courts (Judicial Function)

Indian law has proliferated at a phenomenal rate. Currently, there are over 400 ratified treaties and agreements, 5,000 federal statutes, 2,000 federal court opinions, 250 tribal constitutions and charters, 500 tribal groups with their own customs and traditions, numerous state opinions and statutes, countless congressional hearings and reports, United States Solicitor's Opinions, and federal regulations.²³ Luckily, Navajo judges are not required to learn all the "law." Nevertheless, Navajo courts and their judges are required to understand and interpret a great deal of law.

Like most parts of the Navajo Tribal Government, the judicial branch has power only because it has been delegated authority by the Tribal Council. On the other hand, the Council depends on the judiciary to interpret and, if necessary, to enforce its legislative actions. Navajo courts have four chief functions: 1) interpreting law; 2) enforcing law; 3) resolving disputes between people; and 4) settling issues between people and government.

The Navajo Tribal Council established a Judicial Branch of six tribal court judges and a chief justice in 1959.²⁴ There are currently three structures in the Navajo judicial system: 1) Navajo Supreme Court (this replaced the Court of Appeals); 2) District Courts; and 3) Juvenile Courts. The Chief Justice serves as the head of the Judicial Branch. All judges

are appointed by the Tribal Chairman after being recommended by the Judiciary Committee. They must be confirmed by the full Tribal Council before assuming their roles. Once they are seated, the judges must complete a two-year probationary period. If they successfully last this stint, they may serve until the age of seventy.

In an effort to reintroduce traditional Navajo concepts of adjudication, the Navajo Tribal Council enacted a resolution in 1982 which established Peacemaker Courts.²⁵ These are traditional courts involving community leaders who are appointed and supervised by district court judges. Peacemaker judges use custom and precedent to resolve community disputes.

In non-criminal matters the Navajo court's jurisdiction is almost limitless. They have personal and subject matter jurisdiction over all matters arising within the Navajo Nation. The Tribal Council has also granted the Courts special jurisdiction in areas such as juvenile cases, housing cases, exclusion of non-members, repossession of property cases, etc.

In criminal law, on the other hand, tribal courts have been handicapped by a United States Supreme Court ruling, *Oliphant v. Suquamish*²⁶ (1978), in which the court held that Indian nations did not have the authority to prosecute non-Indians. This was a questionable ruling, but until and unless it is overturned it will remain the law.

Finally, the Navajo Nation Bar Association and the Navajo Tribal Council's Judiciary Committee play important roles in maintaining the comparatively independent status of the Judicial Branch.

Chairman and Vice-Chairman (Executive Function)

The chief executive officer of the Tribal Council and its administrative organization are the Chairman and Vice-Chairman. The executive aspect of government takes direction and authority from the Navajo Tribal Council. It may also be restrained by a diligent judiciary. Most of the Navajo

Tribe's budget goes to the executive function, whose basic task is the carrying out of laws. Obviously, this entails complex and broad activity and a comprehensive network of governmental systems. The executive function further entails organizing systems that give force and meaning to law. The leaders are continually involved in decision making. Finally, executive power is seen in the daily operations of administration.

The Navajo Tribal Chairman derives authority from three basic sources: the *Navajo Tribal Code*, delegations by the Tribal Council, and traditional influence. The principal powers of the Chief Executive are: chief law enforcer, chief policy maker, power of appointment, diplomacy, lawmaking, and chief administrator. Administrative powers exercised by the Chairman include the authority to select an alternate site for tribal council meetings, convening special meetings of the Council, the right to review all resolutions, and serving as Chairman of the Advisory Committee. Candidates for executive office must meet similar qualifications as councilmen regarding tribal membership, allegiance to the tribe, and residence; however, unlike council delegates, individuals vying for the Chairman and Vice-Chairman positions must "be able to speak and understand Navajo and read and write English . . ."27

Local Government

In 1972 a breakdown of governmental units in the United States revealed this:

- 1 National Government
- 50 State Governments
- 3,044 Counties
- 18,048 Municipalities
- 16,991 Townships
- 15,780 School Districts
- 23,886 Special Purpose Districts (hospitals, fire, etc.)
- 77,800 Governmental Units²⁸

This figure is misleading, however. Tribal governments, if added, would enlarge the number considerably. Consider the Navajo Reservation. In 1985 the following governing units existed:

- 1 National Government
- 109 Chapter Governments
- 1 Township
- 5 Agency Councils
- 15 District Grazing Committees
- 3 Off-Reservation Land Boards/
Grazing Committees
- 41 Off-Reservation Grazing Committees
- 1 Eastern Navajo Land Board
- 6 Land Boards (On-Reservation)
- 182 Governmental Units

Chapters

The 109 chapter community governing bodies are the most recognized unit of local government on the Reservation.²⁹ The formation of chapters contrasted with the Tribal Council and the Grazing Committees which were both federally-created institutions thrust upon the Navajo. Chapters, on the other hand, utilize pre-existing patterns of political selection and social control when they are formed. Although a federal official, Superintendent John G. Hunter, supplied the form and idea for formalized chapters, the content of these chapters was left to the Navajos. Hunter's ideas of "town meeting" type governments was soon culturally integrated into the Navajos' existing sociopolitical system, and Navajos were allowed to accept or reject the idea of establishing a chapter government.³⁰ The formalized Tribal Council and Grazing Committees, on the contrary, did not allow for tribal consent.

A June 20, 1955 tribal resolution officially recognized chapters as the "grassroots" political organization of the Tribe and provided \$78,690 to finance certified chapters.³¹

The resolution stated that there should be one chapter for each of the seventy-four election communities. This resolution was amended in 1958 and 1959³² to establish the mechanisms for the creation of "new" chapters, spelled out the officers and their duties, and made provisions for the recall of officers.

The function of chapters today differs little from that during the 1930s in that they still provide a place for discussion and dissemination of information. Today's chapter governments may enact local ordinances on any community matter. These ordinances, however, must be submitted to the Advisory Committee and the full Tribal Council for approval. Furthermore, chapters may appropriate funds (if available) for community projects. These are subject, of course, to any limitations imposed by tribal or federal officials.

Each chapter has an elected president, vice-president, and a secretary. Chapter officers serve four-year terms.

Township(s)

On November 5, 1985, the Navajo Tribal Council approved the plan of operation of Kayenta chapter officials and a planning board to create a township.³³ Kayenta, in effect, became the first town on the Navajo Reservation. Over the next five years the planning board, which will govern until a town council is formed, will seek to draft an overall land use plan, set up a simpler leasing system, and make laws to govern the new land system. Once the land use study is completed, the town government will withdraw land (with the permission of local Navajos) and enact zoning laws to expedite the location of new businesses.

The town's plan grants them more power than chapter governments currently exercise. Town officials have the powers of review and approval which were scattered throughout the tribal bureaucracy. The town will also be able to deal directly with local land issues and business development, although final approval of business leases will

still rest with the central government in Window Rock.

The 7.5 square mile town will not replace the regular chapter government; instead it will be within the chapter boundary and will primarily encompass a "downtown" area. This is a bold and long overdue pilot project that may lead to a decentralization of government.

Agency Councils

Agency Councils are council-of-government type organizations made up of the council delegates, chapter officials, and grazing committee members.³⁴ There is one council for each of the five Bureau of Indian Affairs administrative agencies on the Reservation. Council officers include a president, vice-president, and secretary. The Council generally meets four times a year to discuss agency-wide issues such as roads, grazing conditions, etc.

The BIA pays the per diem and mileage of executive officers when they meet to discuss the Bureau's annual budget, and the Tribal Council provides some funding. The Agency Council, however, has virtually no authority within the Tribal Council.

Grazing Committees

Grazing Committees were first established on January 13, 1953.³⁵ Title 3 of the *Navajo Tribal Code* specifies that each land management district shall have one grazing committee composed of as many members as there are delegates to the Tribal Council from that district, with the exception of District 15 which includes land both within and outside the Reservation. District 15 has only one delegate on the Reservation but is authorized to have a grazing committee of three members. Thus, there are presently seventy-eight district grazing committee members representing the fifteen on-Reservation land management districts.³⁶

The Tribal Council delegate, following his election, is responsible for holding a meeting of the people of his precinct for the purpose of electing a grazing committee member by a majority vote. Grazing committee members

serve approximately four years. District Grazing Committees perform a myriad of duties, including: organizing and conducting sheep dipping, spraying and dusting, branding, livestock disease prevention, removing surplus stock; overseeing the transference and subletting of grazing permits; preservation of forage, land, and water resources; arbitrating land disputes; etc.³⁷

The central position in the grazing committee structure is occupied by the Resources Committee of the Navajo Tribal Council, which calls itself the Central Grazing Committee. The Resources Committee consists of six members selected by the Chairman. There is one council delegate from each of the five BIA agencies, except Western Navajo which has two representatives. Established in 1950,³⁸ this committee provides overview services to ensure the greatest utilization of all Navajo resources. Besides serving as the Central Grazing Committee, this body also oversees the activities of the Eastern Navajo Land Board and considers land and grazing disputes on appeal. The Tribal Resources subcommittee of the Advisory Committee also exercises some jurisdiction over the District Grazing Committees.

Off-Reservation Land Boards

There are three land management districts situated outside the Navajo Reservation proper, District 15 (a portion is on the Reservation), and Districts 16 and 19. These off-Reservation lands have organized land boards and they also function as the grazing committees. Each of the boards has three members, although the figure can increase to five depending on the work load.

Land Board members are elected by ballots that are mailed to qualified "permittees" in the area under that member's jurisdiction. Board members serve four-year terms. Their duties include allocation of grazing permits in accordance with the Off-Reservation Navajo Grazing Code, arbitration of land disputes, cooperation with tribal and Bureau Range and Land Operation offices, and range improvements. The

Advisory Committee of the Tribal Council functions as the Central Land Board. In 1971 an Eastern Navajo Agency Joint Land Board,* consisting of all members of the three Land Boards, was established.

Eastern Navajo Land Board and Grazing Communities

This nineteen member board consists of the representatives of forty-one grazing communities. A grazing community is a range unit which is combined into a larger administrative unit. The boundaries are set by the District Land Boards and follow the common interest of a particular area's constituency.

On-Reservation Land Boards

There are six major irrigation projects within the Navajo Reservation: Many Farms, Hogback, Fruitland, Ganado, Red Lake, and Moencopi-Tuba. Each of these projects has a three-member land board that oversees land use assignments, reviews and recommends cancellation of use permits if "beneficial use" is not being made of the acreage, works with tribal and BIA irrigation representatives, and devises plans for irrigation water. The Advisory Committee serves as the Central Land Board for these irrigation/land use projects.

Problems with the Present Structure of Navajo Government

As noted previously, the Navajo people had no formal part in the establishment of the Navajo Tribal Council, and were not afforded the opportunity to vote on its structure. This is a serious shortcoming that could be modified easily. But first, a brief discussion of several other concepts that Navajo people and their leaders might wish to consider to strengthen and, more importantly, to legitimize their government.

Reserved Powers Clause

A reserved powers clause serves as a reminder that the people are really sovereign, not their leaders. In most constitutional governments, the people delegate, rather than give up

*The Eastern Navajo Agency Joint Land Board should not be confused with the Eastern Navajo Land Board, despite their similarity.

their powers of self-government. The reserved powers clause also recognizes that government is always limited to only those powers and activities that the constitution outlines.

Initiative and Referendum

Some tribal governments and many state governments provide that the voters may also initiate legislation. An initiative means that voters can propose laws directly. If a certain percentage of voters favors a proposal, it is placed on the election ballot. If it is approved by a majority vote on election day, it becomes law. This is a weapon against elected legislatures that are unresponsive to the popular will. Currently, there is no mechanism for this on the Navajo Reservation.

Referendum is another important way Navajo citizens could more actively participate in lawmaking. This provides that certain tribal resolutions may not become law, even though passed by the Tribal Council, unless the resolution receives the additional approval of all the people in a direct vote. In other words, an existing or proposed tribal resolution must be submitted to the people for their consent if the Council receives a petition signed by a certain percent of eligible voters. The result of the majority vote is binding upon the tribal council.

Initiative and Referendum would serve two valuable purposes. First, they would provide the Navajo people with some security against harsh tribal laws, and make it more difficult for outside interests to gain special favors or advantages. Secondly, they would encourage popular interest, discussion, and criticism of tribal affairs and policies by enabling tribal citizens to have a direct voice in critical areas. Initiative and Referendum would require some additional expense, time and energy. But the advantages are much more attractive, and should receive serious consideration.

Separation of Powers

Traditionally, Navajo clan leaders combined their spiritual and practical abilities. On a larger more regionalized scale,

however, Navajos were careful to maintain the separateness of peace leaders and war leaders. The people understood that a warrior, although skilled in war-time activities, would probably not be the best person to discuss peaceful pursuits. The same held true for individuals skilled in peaceful diplomacy.

Many governments today (both tribal and Western) adhere to a similar belief. Councilmen (legislators) are able to write laws, but they realize that the Chairman and his staff (executive) are better equipped to carry out the law. Similarly, tribal court judges (judicial) are trained to interpret laws, and are not in the business of making or enforcing the laws. The purpose of separating these functions is to ensure against a concentration of power in one particular branch. In other words, it prevents any one branch or function from making, interpreting, and enforcing the law. At the same time, there are checks and balances which mean that the functions are not completely separate. Each branch may be restrained or checked by powers belonging to the other branches. While a structural separation of governing powers may seem unnecessary, every tribe should consider the benefits of some checks and balances. These could be applied, without having three distinct branches of government. For instance, the Tribal Chairman might exercise the veto power over tribal resolutions; and the Council might be able to overturn the veto with a two-thirds or three-fourths majority vote. Moreover, with Initiative and Referendum in place, the people would also have a direct say in what laws should be enacted or defeated.

Presently, the Navajo Tribal Chairman wields an extraordinary amount of power in tribal government. Besides being Chairman of the Council, he chairs the Advisory Committee, selects the chairmen and members of all standing committees, appoints all judges, and sits on the Resolutions Review staff, just to mention a few.

One possibility the tribe might wish to consider would be to have an independently elected judiciary.* This would

*Tribal judges were elected in the 1950s.

ensure that the administration of justice was not controlled by any one branch, thus fostering the separation of powers.

Finally, the Tribe's Office of Legislative Affairs, established in the early 1980s, has been working on tribal government reform since its inception. In lieu of a tribal constitution, the Office has recommended that the Tribal Council adopt a comprehensive Plan of Operation. This plan would need the approval of the Council (and should be ratified by Navajos through Referendum) and would, for the first time, outline the powers and duties not only of the Council but of the Chairman and Vice-Chairman. Amendments to the proposed tribal Plan of Operation would go before the Navajo electorate. If ever enacted, this document would stabilize and legitimize Navajo Tribal Government.

What Today's Navajo Expects of Tribal Government

The lives of Indian people are more regulated than any other group in the United States. A jurisdictional quagmire surrounds Navajos living on federally protected trust land. This is because a Navajo's life is regulated by four different governing structures: 1) local government: Chapter, Townships, Grazing Committees, Land Boards, etc.; 2) Navajo Tribal Council; 3) State Governments (to a lesser extent); and 4) Federal Government.

Navajos have different expectations from each of these entities. On the local level Navajos are concerned about the basics, i.e., wood, water, grazing and land use permits, livestock, home repair, jobs, etc. Tribal people turn to their council for less personal and sometimes more abstract issues, particularly those related to the outside world. Issues such as land disputes, protection of water rights, taxation, civil rights, voting rights, economic improvement, licensing of traders, and reapportionment top the list.

Conclusion

The scope of Navajo Government has enlarged considerably since 1938. The structure of tribal government, however, has remained fundamentally unchanged. This article has at-

tempted to highlight the present format, but more importantly, to challenge the reader to consider changes that could make the government more accountable. Governments, after all, are vehicles designed to protect and preserve what is held dear by their constituents. They are not perfect organizations, and are constantly evolving. The resurrection of traditional Navajo concepts of government, combined with more active participation by the Navajo people, will help ensure that Navajo Tribal Government continues to perform the tasks required of it by its citizens.

1. Navajos voted 7,679 for the Act and 8,197 against. (Robert Young says the vote was 7,608 to 7,992.) This veto of the Reorganization Act was a striking defeat to John Collier. See Donald Parman's *The Navajos and the New Deal* (New Haven: Yale University Press, 1976), for the lively account of the New Deal era on the Reservation. *Indian Reorganization Act*, June 18, 1934, 48 Stat. 984, 25 U.S.C. Sec. 461 et. seq.
2. These rules were subsequently approved and issued by Secretary of Interior, Harold Ickes, on July 26, 1938. See Robert Young's *The Navajo Yearbook* (Window Rock, Arizona: Bureau of Indian Affairs, 1961), Vol.-8., pp. 407-411, for transcript of the Regulations.
3. *Navajo Tribal Code* (Oxford, New Hampshire: Equity Press, 1978) 4 Volumes. The Code consists of twenty-three titles. See Volume I for relevant appendix material and a list of the titles.
4. See *Code*, Title Two, Administration of Tribal Affairs.
5. Parman, *Navajos and the New Deal*, pp. 25-80; see also, Peter Iverson's *The Navajo Nation* (Albuquerque: University of New Mexico Press, 1983), pp. 33-42; see also, Parman's "J.C. Morgan: Navajo Apostle of Assimilation," *Prologue*, Vol. 4, No. 2 (Summer, 1972), pp. 83-98, for an indepth look at the significant role played by J.C. Morgan during this period.
6. See *Navajo Tribal Resolutions, 1922-1951* (Window Rock, Arizona: Navajo Tribe), p. 589. This volume contains most of the early Tribal Council resolutions.
7. See Young, *Navajo Yearbook*, p. 379; see also Parman, *Navajos and the New Deal*, p. 164. And see *The Indian Truth* (May 1937) a newsletter published by the Indian Rights Association (Philadelphia, Pennsylvania), who alleged that Commissioner Collier and Superintendent Fryer handpicked the seventy delegates.
8. April 19, 1950, 64 Stat. 44-47, as amended; 25 U.S.C. Sec. 631-640.
9. See *Navajo Tribal Council Resolutions* (1953), pp. 23-30, for a draft of proposed constitution.
10. Mary Shepardson's *Navajo Ways in Government*, American Anthropological Association, Memoir No. 96 (Menasha, Wisc: June 1963), p. 82.
11. *Ibid.*

12. *Navajo Times*, April 4, 1963; November 10, 1966.
13. Navajo Tribal Council Resolution CN-92-68, "Establishing Procedures for the Adoption of a Navajo Tribal Constitution." Copy on file in the Navajo and Indian Studies Division, Navajo Community College, Tsaile, Arizona.
14. See Supra, Note 8.
15. Shepardson, *Navajo Ways in Government*, p. 82.
16. 25 U.S.C.A. Sec. 1A. The Secretary of Interior has extremely broad powers over Indian Tribes and their resources, but he "does not have despotic power . . . (and) is subject to legislative restrictions." *United States v. Arenas*, 158 F.2d 730, cert. den., 331 U.S. 842.
17. Treaty of 1850, 9 Stat. 974; Treaty of 1868, 15 Stat. 667; see also *Navajo Tribal Code* Title I for copies of these documents.
18. Iverson, *The Navajo Nation*, p. 49; see also George A. Boyce's *When Navajos Had Too Many Sheep* (San Francisco: Indian Historian Press, 1974).
19. See *Navajo Tribal Code* Title Eleven, Sec. 1-401. This title describes the election laws in effect on the Reservation.
20. April 16, 1985 (citation unavailable); see also *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 731 F.2d 597 (1984) and *Southland Royalty Co. v. Navajo Tribe of Indians*, 715 F.2d 486 (1983). In both of these lower court decisions it was held that the Navajo Tribe had the power to tax energy companies without submitting the taxing ordinance to the Secretary of Interior for approval.
21. See *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Williams v. Lee*, 358 U.S. 217 (1959); *Warren Trading Post Co. v. Arizona State Tax Commission*, 380 U.S. 685 (1965); and *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973).
22. See Supra Note 19, Section 4 "Qualifications."
23. Vine Deloria Jr. and Clifford M. Lytle's *American Indians, American Justice* (Austin: University of Texas Press, 1984), p. 110.
24. See *Navajo Tribal Code*, Title Seven, Sec. 201 "Judicial Branch."
25. James W. Zion, *Navajo Peacemaker Court Manual* (Window Rock: Navajo Tribe, 1982).
26. 435 U.S. 191 (1978).
27. See Supra Note 19, Sec. 4. "Qualifications."
28. Rudie W. Tretten's *State and Local Governments* (Boston: Allyn and Bacon, Inc., 1977), p. 2.
29. See *Navajo Tribal Code*, Title Two, Sec. 4001-4006, for regulations governing chapters; see also Appendix (1982-1983) of Title Two, pp. 178-180 for listing of chapters.
30. See Aubrey W. William's Jr.'s *Navajo Political Process* (Washington: Smithsonian Institution Press, 1970), p. 33.
31. See Navajo Tribal Council Resolution CJ-20-55 in *Navajo Tribal Council Resolutions, 1955*, pp. 19-20.
32. See Navajo Tribal Council Resolution CMY-28-58, passed May 5; and ACO-149-59, passed October 2.
33. See *Gallup Independent*, November 6, 1985, p. 1.
34. Navajo Tribe. "Navajo Tribal Government: Documentary Series Number T.G.R. 001." Pamphlet prepared by Office of Legislative Affairs (Window Rock: Navajo Tribe, 1985), p. 4.
35. See Navajo Tribal Council Resolution CJ-6-53, passed January 13, 1953, in *Navajo Tribal Council Resolutions, 1953*, p. 96.
36. Navajo Tribe, "Navajo Division of Resources," brochure printed in Window Rock, Arizona.
37. *Ibid.*
38. See Navajo Tribal Council Resolution, CJ-30-50, adopted July 15, 1950, in *Navajo Tribal Council Resolutions, 1922-1951*, p. 540.

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