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David E. Wilkins

University of Richmond, dwilkins@richmond.edu

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The Navajo Political Experience

Fourth Edition

David E. Wilkins

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Introduction

The **Diné** (Navajo) inhabit a vast land of beauty, grace, and great diversity. It is a sprawling territory, bounded by sacred mountains and great rivers. The Navajo **Reservation**, first delineated in the 1868 treaty, has nearly quadrupled in size since then through some twenty-five additions. Today the Diné land base is over 27,000 square miles (more than 18 million acres), encompassing a large portion of northeastern Arizona, a part of northwestern New Mexico, and some 1,900 square miles in southeastern Utah. Interestingly, the Navajo Nation also includes three satellite (geographically separate) Navajo communities—Cañoncito, Alamo, and Ramah, all in western New Mexico—and completely encircles two other tribes, the Hopi Nation and the San Juan Paiute.

The Navajo Reservation represents 36 percent of all Indian lands in the continental United States. This tremendous stretch of land, the largest of the 278 Indian reservations in the country, is slightly larger than the state of West Virginia. Nearly 15 million acres of Navajo tribal land are held in **trust**¹ by the federal government.

According to the Navajo Nation's Census Office, in 2011 there were approximately 300,048 members of the Navajo Nation. The 2010 U.S. Census, however, counted 286,731 individuals self-identifying as Navajo alone, though the number jumps to 332,129 for those claiming to be Navajo in combination with other races.

Unlike many reservations which were allotted (subdivided into individual plots) and opened for white homesteaders, **allotment** was never widely implemented on the Navajo Nation, and therefore the number of non-Indians and non-Navajo Indians remains quite small. According to the 2010 Census over 90 percent of the Reservation population was Navajo. Although the Navajo population continues to grow rapidly, economic statistics are not nearly as encouraging, as the data in chapter 13 will reveal.

Navajo tribal **government** and **politics** is the subject of this book. Government institutions and processes may come into power overnight, but to understand them completely, an historical review must be done. Therefore, a good part of this study is devoted to examining historical developments that shaped the Navajo people and their social and governmental institutions into their present form.

Historically, Navajo society was welded in part by highly effective political principles, values, clans, and internal structures. Traditional Na-

vajo social structures, however, bore very little resemblance to Western European political systems. Inroads into Navajo country by other Native peoples, the Spaniards, Mexicans, and later, Americans, necessitated a gradual altering of the aboriginal structures which Navajos had utilized since the dawn of time, although the principles and values undergirding those structures continue to suffuse the altered structures.

By the early part of the twentieth century, nearly four hundred years of interaction with foreign powers compelled substantial modifications in Navajo institutions and in various aspects of Navajo society and culture. The federal government, in 1923, set into motion a series of events which completely revamped Diné government. In effect, Washington officials “created” a federally recognized political institution, the Navajo Tribal Council, although in its earliest incarnations it was known simply as a Business Council. Vestiges of traditional political structures remained (e.g., headmen or **Naataanii**, the basis of Navajo Chapter government), but the United States wielded the self-ascribed power to grant or withhold both recognition and federal funds from these tribal institutions.

The Navajo Tribal Council, reorganized in 1938 and renamed the Navajo Nation Council in 1989, has been a fixture in Navajo lives for more than seventy years. It was not until the conclusion of World War II, however, that a majority of Navajo people began to view the tribal council as “their” government. Mary Shepardson summed it up best when she noted that: “The majority of Navajos regard the Tribal Council as capable of meeting important needs of the tribe; increasingly they accept its **authority**, regard its rules as binding, and view as legitimate its right to use force within the limits permitted by the Federal Government.”² This statement is more accurate today than ever before, and the tumultuous events of 1989, and especially in 2009—when the people for the first time had the opportunity to express their consent on how the Council should be restructured—attest to this. In 2009 the electorate voted in a national referendum to reduce the size of the Council from eighty-eight members to twenty-four members, and they also voted to give the nation’s president line-item veto authority.

There remain, however, some segments of the Navajo citizenry who still challenge the legitimacy of the central government in Window Rock, particularly since the Navajo electorate still has had very little opportunity to express their sovereign will by directly participating in a **constitutional convention** or voting on the overall governmental structure. We will discuss these important issues in the next chapter.

The Navajo Nation Council currently consists of twenty-four delegates. It is led by the Speaker of the Council, who is the presiding officer of the council. The Council’s primary function is to legislate: that is, it is the law-making branch of a representative **democracy**. Although the Secretary of the Interior continues to wield veto power over certain Council decisions, the Navajo political system, with the changes wrought in 1989,

2002 (adoption of the Fundamental Law), and the Title II amendments of 2012, continues to mature and be reshaped to better meet the needs of the Diné people.

Many Navajos believe that it is in their best interest to adhere to and enhance what is most distinctive about the Navajo people, especially in the areas of cultural retention, values specific to the Diné, and most importantly, to retain and invigorate the Navajo language.

This was made evident in 2005 when the Navajo Nation Council adopted the **Navajo Sovereignty in Education Act**, which emphasized the importance of the Diné language, culture, history, and civics and codified Navajo control over educating the citizens of the nation.

Navajos also understand that sovereignty and self-government imply a necessity and the inclination to negotiate appropriate agreements with surrounding states, other tribes, and the federal government. A good example of this can be found in the much-improved relationship between the Navajo Nation and the state of New Mexico. In 2005 the governor of New Mexico signed Executive Order No. 2005-004, directing that all of the state's executive departments adopt tribal consultation plans with the various Native nations, including the Navajo Nation. And in 2012, Governor Martinez notified Navajo president Ben Shelly and the leaders of several other nations that their 2001 Indian gaming compact was due to be renegotiated, since it was set to expire in 2015.

The Navajo Nation operates one of the most complex political systems in Indian Country. The Nation, unlike some other tribal governments, generally approaches the negotiating table with a politically united front, although the events surrounding the nation's affairs in 2009 and 2010, in the wake of the Council's reduction in size and several Supreme Court rulings that reminded the Council that it, too, was subject to the Fundamental Law of 2002, threatened that relative political homogeneity for a brief but intense period of time. This is not meant to imply that Navajo citizens or government branches are always in agreement with one another, but rather points out that mechanisms are in place to mediate these differences.

In a sense, the general political cohesiveness of the Navajo people can be viewed positively. It means that the Navajo Nation Council, despite its reduced size, is the recognized voice of all Navajos. But while political divisiveness does rear its head on occasion, this does not threaten the integrity of Navajo National government. Importantly, the incorporation in 2002 of the Fundamental Law, which codified foundational concepts like *hózhó* and *k'é*, has sent a powerful signal that Navajo lawmaking was being moved closer to the traditional forms used in the past.

The judicial branch has shown the greatest willingness to integrate traditional Navajo legal and political principles into the already-established Western legal system that remains generally operative throughout the Reservation.

The tension between the Navajo Supreme Court, which heavily relies on the Fundamental Law, clashed directly with the **executive** and **legislative branches** in 2009–2010 after the two ballot initiatives were approved that reduced the size of the Council and that gave the president line-item veto power over specific items in the annual budget. A majority of the Council delegates initially refused to accept the reduction, claiming that a section of the Navajo Nation Code, 102, required that any change in the government's structure had to be approved by a majority of registered voters in each of the 110 chapters. The popular vote of 25,206 to 16,166 to reduce the size thus fell short of a supermajority, in the Council's opinion. Timothy Nelson filed a lawsuit that worked its way to the nation's Supreme Court asking that the supermajority principle be upheld, thus invalidating the results of the ballot initiatives. But in a major opinion to be discussed in chapter 8, *Nelson v. Shirley* (see appendix K), a unanimous court, led by Chief Justice Herb Yazzie, held that the supermajority principle was "an extraordinary majority impossible to be attained judging from voter turnout in any previous Navajo nation election. . . ." ³

The Court stated that while the Council could limit itself in making laws, "it cannot limit the Diné when they are attempting to address the structure of their governing system." The Court voided section 102 and effectively overruled the Council by relying on the Fundamental Laws, which are "the immutable fundamental laws of the Navajo Nation and may only be acknowledged, not enacted, by the Council." And since the people's laws are founded in the Fundamental Laws, they are superior to the statutory laws enacted by the Council.

The evolution of the Navajo political system is the topic of parts II and III of this book. In those sections we will analyze the present structure of Navajo government, highlight its strengths and flaws, and analyze the dynamics of Navajo politics.

James Q. Wilson, a noted political scientist, has stated that "judgments about institutions and interests can only be made after one has seen how they behave on a variety of important issues or potential issues." ⁴ In this regard, Navajo national government, as presently constituted, is still in infancy. Nevertheless, members of the Nation's Council, the judicial system, the executive branch, and the growing tribal bureaucracy are part of a very old society with roots dating back hundreds of generations.

Navajo citizens, like citizens of the larger society, tend to assume that the way decisions are made now is the only way decisions can be made. In fact, there are many other ways to operate government based on popular **consensus**. Navajo traditions, history, and beliefs weigh heavily, whether consciously or not, on what is decided by tribal leaders.

While the federal government did indeed create the first business and later tribal councils, the 1850 and 1868 treaties between the Navajos and the United States represent critical sources of Navajo political power. These two ratified agreements acknowledged the sovereign political stat-

us of Navajo People. So long as these covenants exist, encircled as they are and suffused by Diné culture, values, and political principles, the Navajo Nation is entitled to exercise all those powers of self-government not specifically surrendered in those treaties with the United States.