

Returning Tribal Government to Traditional Principles Appropriately for the Twenty First Century: The ongoing experience of the Navajo Nation.

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*Paper Presented to the 2009 Meeting of the Southwest/Texas Popular Culture/American Culture Association
Albuquerque, NM, April 25-28, 2009*

Today, a great many Indian Nations are struggling to overcome inappropriate forms of government that were directly or indirectly imposed by the U.S. government. These alien modes of governance conflict with traditional tribal culture and values, causing ineffective governance, and contributing greatly to community disharmony.ⁱ Among the most interesting current attempts to improve tribal government, is the ongoing process of government development at Navajo Nation, which for some time has been working to reindulcate traditional values into its political institutions, in ways that are appropriate for the conditions of the current and unfolding era.

TRADITIONAL TRIBAL GOVERNANCE

Traditionally, tribal and band societies in North America, for the most part, functioned harmoniously through inclusive ways of building community consensus that balanced individual and community needs and concerns.ⁱⁱ Although each of the tribes had its own particular culture and way of governing, the general practice was that no decision was made without involving everyone who was concerned. Usually issues were discussed until consensus was achieved.ⁱⁱⁱ This was attained in large tribes and in multi-tribal federations, such as that of the Huron which in 1634 consisted of 30,000-40,000 people, by using consensus decision making in meetings at each organizational level (e.g., clan segment, village, tribe, federation) with discussion back and forth across the levels until general consensus was reached.^{iv}

Leaders (who have mistakenly been called "chiefs") functioned primarily as facilitators, consensus builders, and announcers of decisions.^v In general, they had little or no decision making power of their own, though usually they had influence. They were chosen for positions of leadership on the basis of their high moral character and ability to represent the people and lead in the long term interests of the community as a whole.^{vi}

This inclusive process of egalitarian, consensus decision making, normally limiting civil leaders to being facilitators and advisors of the people, was built upon cultural and structural foundations that, while varying in detail among Indian nations, generally followed the same basic principles. Culturally, people believed in, and related on the basis of, mutual respect, identifying with the band or tribe as an extended family, in which members supported each other in their individual endeavors to the extent that they did not contradict the common good, while they collaborated out of mutual interest and a strong sense of shared consensus. Structurally, in different ways and to different extents among various

peoples, political and social power and function were widely dispersed - generally beyond the division of powers and functions in U.S. government (though for similar reasons). At the same time, economically, as well as socially, the structure of living caused people to need each other's support, while economic power was at least not so concentrated as to upset egalitarian relations, and was most often broadly dispersed in economies based upon reciprocity (usually even more so than is supposed to be the case in current, mainstream economic theory to maintain a "free" market economy). Thus, by developing cooperation and a sense of unity through honoring diversity on the basis of mutual respect, these communities usually maintained a very high quality of life.^{vii}

The Impact of Colonialism

As U.S. colonialism developed in the late Nineteenth Century, Indian nations were denied the right to govern themselves, and their traditional leadership was undermined as part of an attempt to assimilate Native Americans into mainstream U.S. society. When the assimilationist policies were reversed in the 1930s, the Indian Reorganization Act (IRA) of 1934, the Oklahoma Indian Welfare Act of 1936 and the Alaska Reorganization Act of 1936 forced a form of government on most tribes that, with variation, generally provided for government by a tribal council elected at large, with a strong tribal chair to make decisions.^{viii} This form of representative government usually did not separate or diversify power, in many cases giving the council authority the power to review (and thus overrule) judicial decisions. Even by western standards, this form of government has serious potential problems. For tribal people, who by various means were used to having a direct say in decision making, with leaders acting as facilitators and respected guides, rather than, deciders, in a system with widely dispersed power, the IRA type governments are contrary to their traditional values, contribute greatly to community disharmony and difficulty in getting things done. A major impact of this alien governmental system has been to compound the difficulties from physical and cultural genocide that tribes are working to surmount.

Traditionally, inclusive forms of consensus decision making worked to make each member of the community feel that membership through their participation, because, direct participation in deciding about community affairs was a major source of each person's identity as a community member. The current practice of holding elections in which there are winners and losers, and the electing of councils that make decisions, rather than announce decisions made by the people as a whole, are divisive. Indeed, communication has broken down on a considerable number of reservations, so that people are often not aware of decisions being made, and in numerous instances have false impressions of what has transpired. This alienation has also been reflected in low levels of participation in elections and public meetings in many Native communities, accompanied by often vicious gossip and infighting. Those who lose an election often perceive that they have been rejected by the community, and believe that their honor has been impugned (where, for mainstream Americans this would not be the case). People who are not included in the making of a decision, even if they are invited to a meeting to state their opinion to the decision makers, tend to feel left out. Indeed today many people are, in fact, left out as their interests are not effectively represented in the tribal electoral systems. It is important to note that

the effective exclusion of people from the electoral process is a result of the nature of the system itself, and, in general, not because of who the particular leaders happen to be.

Moreover, when tribal government authority became more dispersed in the 1960s, as the War on Poverty broke the Bureau of Indian Affairs (BIA)'s monopoly in overseeing Indian affairs by having each federal agency arrange the local implementation of its programs directly with each Native nation, the results were twofold. On the one hand, the opportunity of tribal people to run their own programs was an essential educational and nation building experience. On the other hand, the new programs were often not adequately integrated into tribal governments. This often brought about a fracturing of the governance process by the development of separate services, originally reporting to different federal agencies with disparate regulations and reporting requirements. This tended to create competing serfdoms, sometimes at odds with the elected leadership.

In addition, because of institutional racism, Indian people have not been taught in school the validity of their own ways, even though traditional Native American governance had a profound effect on the development of American democracy.^{ix} Thus, Indian people have not been educated to glean public policy in a tribal government perspective. As a result, tribes are often encouraged to create codes that mimic U.S. statutes, rather than developing measures that fit their own tradition and circumstance. Because Indian people, for generations, were undermined in following their own cultures, time and energy often needs to be invested for tribal members to clarify how their traditions can be effectively applied in current circumstances. This is especially the case, as a variety of perspectives have developed as to just what those traditions are, while new traditions have come into being, such as the rise of the Native American Church, or importation of some form of the Sun Dance, by a number of Indian nations. Moreover, to varying degrees, and in a range of ways, members of Indian communities have adopted, or been affected in their ways of seeing, by non-Indian ways and institutions (including churches, as most Indian people today are at least nominally Christians, regardless of the extent to which they may also follow traditional ways and be involved in traditional ceremonies).

The Development of Current Forms of Tribal Government

The development of current forms of tribal government has taken place over a considerable period and has gone through many stages.^x Over half of the federally recognized tribes have governments organized on the IRA model. Some tribes, such as the Crow and the Yakima, have organized themselves through their own tribal agreements. Most tribes have an elected governing council of some kind (under a variety of names) that often combines legislative with executive (and sometimes judicial) authority. A few tribes, including the Onondaga, some Pueblo groups, many smaller bands in California and most Native communities in Alaska, continue to use more traditional forms of tribal governance. Many of the Indian nations that do not have IRA governments, have been influenced by it in developing their own governmental forms, or have developed other western, rather than traditionally based forms, as did Navajo Nation, that mirrored the federal government in establishing a three branch system of government with checks and balances. Many of these tribal governments have suffered some of the same problems as have been typical of many of the directly U.S. imposed Indian governments.

The problem of the inappropriateness of the more widely used current general form of governance has become of greater significance since the 1960s. Prior to that time (despite the intent of the 1930's legislation enacted under the leadership of BIA Commissioner John Collier), tribes and tribal governments had little autonomy, and much of the function of the elected council members was to act as brokers for the tribe and its members in dealing, first, with federal, and second, with state and local officials. With the Civil Rights movement and the War on Poverty, commenced an increase in the authority of tribal governments to make significant decisions in their affairs, that generally continues to expand.^{xi}

Thus the difficulties experienced by many Indian nations with inappropriate governmental processes have been intensifying over time. For some tribes, the problems have been relatively minor, while for others they have been quite serious. In too many instances, infighting has left tribal governments locked in deadlock, or quite unstable. In extreme cases, volatile conflict relating to governance has broken into violence, and/or led to a take over of tribal government by the Department of the Interior to restore or maintain peace.^{xii} Currently, tribal governments are facing increasing challenges that are making community disharmony more likely and more intense. These include demographic shifts, rapid cultural, social and economic change, growing concern as to whether economic development is occurring compatibly with tribal values, and increasing responsibility for tribal governments as the Federal government devolves authority to the tribes, states and localities.

RECREATING THE CIRCLE: INDIAN NATION EFFORTS TO APPLY TRADITIONAL VALUES TO IMPROVING TRIBAL GOVERNANCE

Over the last several decades, a number of Indian Nations have been making developing efforts to improve tribal governance by integrating traditional values and methods to contemporary situations, with an eye to the future.

Reviving Inclusiveness at Southern Ute

The Southern Utes, consistent with the inclusive participatory decision making of their traditional bands, are an interesting example of a Native Nation enlarging tribal member involvement in government in stages. First, in the late 1990's, the tribal council increased the number of general tribal meetings from quarterly to once a month. Shortly thereafter, they instituted monthly sessions for members with concerns or complaints about tribal government and services, to meet individually with the Tribal Council.^{xiii} Next, in 1999, the Southern Utes became the first Indian nation to participate in a project, funded by the U.S. Children's Bureau, to build coordination among social services that effected children, with ongoing community input. At the request of the tribal chair and council, a consulting team from the Social Research Institute at the University of Utah was brought in to help facilitate a Design Team. The team included administrators from a wide range of tribal services, since, at least indirectly, all services and the community members they interact with, have an impact on children. Community consultants, including former social service recipients and elders, collaborated in building team work among social services, with responsiveness to community needs and input. The goal was to provide culturally relevant, supportive and integrated services to ensure that all Southern Ute children

are successful in school and in life.^{xiv} The Southern Ute Indian Tribal Information Services Department, building upon inter-agency cooperation and coordination begun under the Design Program, in 2000, called a meeting of Southern Ute and La Plata County, CO social service agencies, in February 2006, to renew and expand a 2003 memorandum of understanding, which included bringing in the Mental Health Center as a collaborator. The meeting focused on working together as a consistent policy, the need to create a service directory, and the desire of non-tribal entities to increase tribal awareness of efforts to create a La Plata County Health District. Thus inclusiveness and cooperation among tribal agencies continued to foster collaboration with outside entities for more appropriate and effective delivery of services to Southern Utes.

In 2001, when there was a heated dispute over who should lead the Southern Ute nation's most important spiritual ceremony, the annual Sun Dance, when it should be held, and how it should be undertaken, the tribal chairman, for the first time, called for the Sun Dancers, and any other interested community members, to meet to resolve the problem.^{xv} After three contentious meetings, the issues were worked out. The previous Sun Dance Chief resigned. Another experienced Sun Dance chief agreed to run the ceremony according to the wishes of the assembled Sun Dance community, for one year, until a new Sun Dance Chief could be chosen. After the meetings, some of those on each side of the major set of issues that had been talked out in the sessions went to some of those who had been on the other side, out of concern that they had been too hard on them. Thus, some significant reconciliation occurred before the year's Sun Dance, which took place smoothly. At the end of the ceremony a new Sun Dance Chief was announced, who ran the 2002 ceremony, which ended with more harmony than the community had experienced in several years.

One widely experienced problem in instituting processes for reapplying traditional inclusive participatory values, that arose at Southern Ute, is that even though increased community involvement may bring tribal governance more into agreement with the basic mores of the culture, it takes time to firmly establish the new ways of doing so. Until that occurs, a new tribal chair or council majority may not appreciate them, and may eliminate them. That occurred at Southern Ute, when, even while initiating the Design Team, a new tribal chair led the council to discontinue monthly general meetings. However, that chairman was recalled by a vote of the tribe because he was seen as too unresponsive to the membership. His replacement returned momentum to expanding community participation by initiating the meetings to resolve the Sun Dance issues. The Southern Ute Tribe has since, begun using focus groups to provide member input on tribal issues (which also has become a regular practice at Navajo Nation),^{xvi} and, in spring 2004, began holding 'open forum' general meetings, with no prior agenda, to allow tribal members to raise concerns with the tribal council as the members saw fit.^{xvii}

Yurok and Alaska-British Columbia Inclusiveness

In another instance of returning to inclusive participation, the Yurok Tribe, in 2005, undertook a comprehensive, long range Tribal Transportation Plan, "Taking Back a Traditional Trail," through an inclusive discussion process, involving tribal members, community residents and other relevant stakeholders identifying community priorities, unmet needs, and the unique circumstances relating to tribal transportation, under a grant from the California Department of Transportation.^{xviii}

It was reported in May, 1996, that a few Native nations in Alaska and in Western British Columbia have adopted the Baha'I "consultation" method of decision making, which is essentially a consensus decision making process.^{xix} This consultation method involves an elected council which is trained to listen respectfully to all sides and views on an issue as expressed by community members, either in open community forums, or by representatives of different ways of approaching an issue. Only after carefully hearing the full range of concerns on a question, will the council move to crafting a policy. It attempts to do so as inclusively as possible, balancing the full range of concerns in any decision. Policies can later be reviewed by the same process, to take into account changing circumstances, and/or difficulties created, or inadequately addressed, by the earlier action.

Development of the Indigenous Leadership Interactive System and its Use By the Comanche and Other Nations

A particularly interesting set of cases has been the development of the Indigenous Leadership Interactive System (ILIS – originally called the Tribal Issues Management System: TIMS) and its application by the Comanche and, to a lesser extent, three other Oklahoma nations.^{xx} ILIS is a contemporary, computer assisted, participatory consensus strategic planning process developed specifically for tribal use over two years in a collaboration between Americans for Indian Opportunity, the Department of Communication at George Mason University, and Christakis & Associates. After its development, which included establishing options for applying it appropriately for tribal cultures and in a variety of Native settings, ILIS was successfully tried out in an intertribal planning meeting.

In 1990, the Comanche Business Committee invited Americans for Indian Opportunity (AIO), Oklahomans for Indian Opportunity (OIO), the Department of Communication at George Mason University, and Christakis & Associates, to apply ILIS to help the tribe overcome problems of conflict and infighting that were causing a variety of community problems and making it difficult for the business committee (the Comanche governing body, an IRA type government) to develop and carry out a program. ILIS is a system of consensus decision making consistent with traditional values of inclusiveness and mutual respect. To build trust, considerable time is spent in culturally appropriate welcoming and other rituals, while a tribal elder reminds the participants of traditional values at the beginning of each round of discussion and whenever a controversial topic is taken up.

The Comanche began the ILIS process at the tribal level with two meetings in which representatives of every major group among the four main Comanche communities in Oklahoma participated in creating a vision and suggesting specific plans for realizing that vision. All of the participants were very enthusiastic about their experience in returning to inclusive consensus decision making. As one participant stated, "I'd like to say that I'm really impressed. I really feel honored to be here because these are the concerns that I've had for a long time and they're not even voiced by most of us because you're not always able to say something for fear of stepping on someone's toe or saying something that's not reflecting something that you really feel, and someone misinterprets what you say a lot of times. And I just really appreciate being able to deal with these things. I just feel the oneness that I've always wanted to feel about my culture."^{xxi}

Following this initial success, the Comanches began a series of meetings going back and forth between tribal level sessions and local general meetings in each of the four communities. This led to the carrying out of a number of projects at both the local and tribal levels. In June of 1992, the four communities formalized the two level ILIS process in the "Comanche Community Participation Units Articles of Voluntary Association" which was officially made part of the Tribal governance process in a resolution of the Comanche Business Committee of July 11 1992.

During the early 1990's, a number of issues were discussed to the point of consensus through the two level process. When the resulting proposals were brought to the Business Committee, they passed easily. Proposals that had not gone through the ILIS process, typically failed to pass the Business Committee for lack of support, regardless of their substantive merit. Meanwhile, a sense of harmony and trust began to return to the community. The next general tribal meeting achieved the largest turn out in a number of years, and for the first time in at least a decade, confidence in tribal governance rose sufficiently so that a Tribal Chair was reelected.

Clearly, ILIS was a culturally appropriate vehicle for building community consensus. It functioned well, consistently with long established Comanche values. However, because of the long experience with an imposed form of government, considerable time making decisions through the ILIS process was required for it to become established as the proper way to deal with community issues. Thus a new Tribal Chair did not appreciate the value of the process, failed to replace the tribal ILIS facilitators when they left their positions, and did not use the process (though three of the four local communities were continuing to use their version of it as of early 1999). When two important issues arose in 1996 that the new Tribal Chair believed needed quick action, he simply made his own proposals to the Business Committee. The result was that people who had begun to appreciate being involved, as their values indicated they should be, felt betrayed at not being given the opportunity to participate in making the decisions. Thus Comanche affairs became even more disharmonious than they had been prior to the institution of ILIS. Although some attempts have been made to revive the ILIS process at the tribal level, none had been successful as of early 2009. The earlier experience shows that ILIS and other inclusive methods of building consensus show great promise for returning many Indian communities to harmony, but only if their use is nurtured sufficiently until tribal members can be reacculturated to handling community affairs in a neotraditional manner.

THE CONTINUING PROCESS OF GOVERNMENT DEVELOPMENT AT NAVAJO NATION

Traditional Navajo Governance

The longest, currently on going, process of tribal government development has been in progress for many years at Navajo Nation. The Dine, generally known as the Navajo, were a society governed largely at the band level with somewhat more complexity in their social organization owing to their strong clan structure.^{xxiii} Clans (extended family units) were important in public affairs, in part, because they were responsible for the behavior of their own members (e.g., debts, torts and crimes). Since clans gave considerable emotional and economic support to their members, pressure from kinsmen,

especially elders, was likely to have exerted a strong influence. In speaking of more contemporary local governance, Kluckhohn and Leighton describe what oral history says was true of the old band government and which was typical of traditional Native American government in general.^{xxiii} Headmen have no powers of coercion, save possibly that some people fear them as potential witches, but they have responsibilities. They are often expected, for example, to look after the interests of the needy who are without close relatives or whose relatives neglect them [a rare occurrence in traditional times], but all they can do with the neglectful ones is talk to them. No program put forward by a headman is practicable unless it wins public endorsement or has the tacit backing of a high proportion of the influential men and women of the area.

The two authors go on to say that at meetings, "the Navaho pattern was for discussion to be continued until unanimity was reached, or at least until those in opposition felt it was useless or impolitic to express disagreement." They point out, however, that while public meetings provided an occasion for free voicing of sentiments and thrashing out of disagreements, the most important part of traditional Dine political decision making took place informally in negotiations among clan and other leaders representing their respective groups who regularly discussed community concerns face to face. These discussions included input from women, particularly elder women, so that everyone in the community was represented. Prior to U.S. government intervention, there was no national Dine government, beyond the clan and inter-band negotiating process. However, there is evidence in oral history that prior to the Dine territory becoming part of the United States, in 1846, traditionally there were meetings, called the Naachid, every two to four years of the war and peace leaders of many of the bands, at which issues of war and peace were discussed, but it is not clear if civil issues were also considered at the meetings. As with band government, the Naachid had no power to coerce compliance of its decisions.

From Colonial Imposition to Arising Self-Determination

Under U.S. colonialism, following 1868, imposed administration was initially undertaken from a single agency. Then between 1901 and 1924 Navajo administration was decentralized into six districts with BIA personnel interacting with local band leaders.^{xxiv} During this period there was considerable resistance to U.S. administration and its cultural suppression, with the military called in as late as 1914 in the face of threatened uprisings.

"The discovery of oil on Navajoland in the early 1920's promoted the need for a more systematic form of government."^{xxv} The first business council was formed in 1922, which became formalized in 1923 into an initial tribal council. "This political structure was a dramatic and completely foreign mode of governance for Navajo society. Major differences include: the centralization of power, official demarcation of boundaries and standardization and uniform application of laws. Historically, political power was disaggregate, lacking official boundaries and consisting of multifarious interpretations of Diné cosmology and laws. At the time of its inception, the nation-state format wasn't something needed by the natural community of the Diné. Rather, it was created to serve the interests of the U.S. federal government and foreign corporations. In other words, Navajos dramatically altered their natural political institutions for benefit of outside forces-not for consideration of the Navajo community... That this process wasn't explicit doesn't undermine the effect putting tribal societies under the control

of U.S. governmental bureaucracies had on internal politics of these societies. This created a bureaucratic ruling class that runs the tribe today.”^{xxvi}

The first chapters were established in 1925, and at least fit somewhat into the Dine tradition of having local government at the band level. “But such groupings corresponded to nothing in Navajo experience, and the techniques laid down were still more foreign. The cultural provincialism of the Indian Service was shown in the fact that each chapter was told to elect a president, vice president, and secretary and to carry on according to parliamentary procedure.”^{xxvii} This arrangement made it inevitable that the younger, more western educated, Dine filled most the offices of the chapters, rather than the more locally and traditionally knowledgeable, and wiser, elders. The Indian Service attempted to direct the chapters, insisting that the leadership agree to many of its proposals or resign. This led many of the chapters to become centers of anti U.S. government agitation. Whereupon, the BIA withdrew its financial support, leading most of the local units to collapse. Yet the organization of chapters spread, and by 1933 over 100 were operating across the reservation, as they had practical advantages and integrated with the tradition of local governance through the extended families of the bands.

In the early years, until after World War II, the Navajo Tribal Council, like the councils of many tribes coping with BIA impositions as best they could, also, acted primarily as a reactive body, saying yes or no to BIA proposals, while proposing very little (though there were some examples of the council being proactive after 1940). As a body forced on the Navajo by an alien government often riding rough shod over Dine interest and culture, the Council was often a focus of protest and resistance. During the New Deal, in 1934, the Navajo voted against adopting an IRA government, “Nevertheless, the Indian Service proceeded administratively, and under the legal principle of inherent and unextinguished tribal authority, to extend to the elected authority some control over tribal affairs.”^{xxviii} In 1936, after a search of the reservation for “competent” men, led by Father Berad Haile, the BIA appointed a constitutional assembly. The assembly disbanded the old government, and appointed a provisional executive to act until a new constitution could be written. Agreement was never reached for a new constitution, but the assembly did come together on a set of rules for a new council, that the BIA approved, leading to an election in 1938.

Many Navajos were suspicious of this arrangement. “At the time of its adoption, there was vehement resistance against this method of governance. In the 1930s Jacob C. Morgan, later to become tribal chairman, led campaigns to oppose Navajo concessions of mineral wealth, the Bureau of Indian Affairs livestock reduction initiative, the creation of the first tribal council and the 1937 Navajo constitutional effort. It wasn’t until he was named chairman that Morgan ended his political opposition against the central government of the Navajo tribe. Other forms of resistance happened more subtly. Justices within tribal courts (or the courts of Indian offenses) used traditional methods of justice to resolve Navajo offenses despite BIA mandate to operate otherwise. It was the Navajo judiciary that took the lead in incorporating traditional values and concepts into the legal (i.e., political) logic of the centralized Navajo government. This led eventually to the formal incorporation of the peacemaking courts in the 1980s. But converse to this trend, the Navajo courts decided at this time that statutory law trumps common law when each is in conflict on a given issue. In other words, the will of the central government is held in higher esteem than cultural principles rooted in Diné culture.”^{xxix} However, in

1985, the Navajo judiciary was established as an independent branch, and even though legally the council could overrule the Navajo Supreme Court, for political reasons the council has respected its independence.^{xxx} Moreover, within the letter of statutory law, there has been considerable space for the courts to apply Navajo tradition in both statutory interpretation and in developing common law. This in turn has had an impact on public opinion, on the Council's writing of legislation, and upon the larger process of government development.

After World War II, the Council became more active in developing policy, which expanded greatly with the growth of tribal decision making as a result of, first, the war on poverty, and then the growing federal Indian policy of self-determination, initiated under the Nixon Administration. Among those gaining leadership skills and experience as a result of the war on poverty Indian programs were Peter MacDonald^{xxxi} and Peterson Zah. MacDonald was elected tribal chairman in 1970, and began doing a great deal to increase Navajo Nation tribal sovereignty and economic wellbeing, quite aggressively moving to extend tribal control over education and other programs, and over mineral leases. MacDonald took advantage of the concentration of power in the Navajo Nation's IRA like government, which he expanded considerably. However, after serving three terms as Chair, he lost the election in 1982 to Zah. Typical of many tribal leaders who's culture is collaborative, emphasizing consensus decisions making rather than elections, he took the election loss personally, as an attack on his honor, causing him to shift to a power seeking approach to politics. Building a strong political machine, he won the 1986 election for chairman, and ruled quite dictatorially, setting off a major political struggle which came to a head with a riot in Window rock, on July 20, 1989, that left two Dine dead and ten injured.

A substantial part of his political power was based upon his bringing needed money and jobs to the reservation by expanding mineral extraction and launching numerous Navajo owned enterprises, including the Navajo Nation Shopping Centers Enterprise and Navajo Engineering and Construction Authority. He clearly did a great deal to advance the sovereignty and economic wellbeing of Navajo Nation, though the damage to land and people from mining in the longer term have been considerable, and along with some other aspects of the development he launched, have violated some important Dine values. Moreover, MacDonald engaged in considerable favoritism, nepotism and misappropriation of moneys, which led to his suspension as chair, in 1988, and his conviction on federal charges of bribery, fraud and misuse of federal funds in 1990.

At least some of the favoritism and nepotism can be attributed to the traditional value of a leader supporting his relatives, which functioned very well in precontact times, when every member of a band was a relative. Then, assisting family members was helping the whole band, which is not the case in the modern context. This is a difficulty that requires a new approach across Indian country. But MacDonald's financial self-aggrandizement, is hardly traditional. Rather it is an offshoot of the creation of a new class of political leaders resulting from U.S. assimilation and government restructuring policies of the U.S. government.

The Post-MacDonald Reforms

As a result of the problems of the MacDonald government, the first effort to bring at least a modicum of traditional dispersion of power back into Dine government, though in a largely western format, was the creation of the current government structure, in 1989, featuring separating of powers roughly following the model of the three branch U.S. federal government, with leadership from Peterson Zah, who served as chairman of the Navajo Tribal Council at Window Rock from 1983 – 87, and who was elected first President of the Navajo Nation in 1990, under new Constitution.^{xxxii}

The current constitution establishes an 88 member elected council delegates representing 110 Navajo Nation chapters, an executive branch headed by a President, leading a sizable administrative bureaucracy and a court system. In contrast to the United States government, the legislature, as the direct representative of the people, has preponderant legal power over the other branches, making the Speaker the most powerful official in the government, followed by the President, whose powers include a veto over legislation, that can be overridden by the Council. The constitution places governmental authority primarily in the national government, located at Window Rock, which can allocate authority to the chapters.

Concentrating decision making in Window Rock has long presented difficulties. Navajo nation with the largest population of any recognized Indian tribe in the United States, spread over an extremely large reservation with poor roads and other infrastructure stretching across three states, found that attempting to govern almost all tribal matters from the tribal capital had resulted in a cumbersome, bureaucratic tribal government, that many Navaho's found to be unrepresentative and too distant to act with an adequate understanding of conditions in its many varied local chapters, or to be in communication with local citizens. The geographic separation also tended to increase the psychological separation between the educated class, composing much of government and administration, and the rest of the population. Moreover, many aspects of the nation's three branch government, modeled on the U.S. Constitution, did not fit with traditional Navajo ways, even though some traditional governmental practices were retained, and the tribal courts incorporated a considerable amount of Navajo custom in tribal law.

Decentralization and Participation at Navajo Nation

Thus, In early 1998, the Navajo Nation acted to decentralize many aspects of government to its 110 local chapters, even as it was working to improve the quality of many chapter meetings by finding ways to incorporate relevant traditional values in contemporary governance.^{xxxiii} A sales tax was established so that chapters certified in self-governing competence could obtain funding for from retail sales in their jurisdiction. At the same time, the central government began taking steps to debureaucratize its operation, and to improve the accessibility of, and communications with, each of its organs. Most of the planning and initial implementation of these efforts have been carried out by the Navajo Government Commission, an arm of the legislative branch, and its Office of Navajo Government Development. The Commission and the Office have some able staff, and have been advised by traditional elders. With a weak economy, however, it has been difficult for the nation to provide adequate resources for the immense and many faceted task. The Office has received some assistance in providing forums for local chapter officials to work out methods for improving chapter

governance through the Leadership Program at Dine College. However, the program has not had the resources to move very quickly in working with the large number of geographically dispersed chapters.^{xxxiv}

A similar, problem exists concerning the technical competence of the chapters to carry out programs effectively and to handle finances with accountability. Thus the nation's government established a process for chapters to be approved on their money managing competence, and thus be certified to operate their own programs under the decentralization statute. At first, very few chapters became involved in the certification program, as the paperwork involved was complex, while many of the chapters were understaffed, overworked and inexperienced in the more complicated bookkeeping that the revenue sharing process of applying tribal funds locally would involve. As a result, Navajo nation developed methods to simplify accounting while maintaining accountability, while finding affordable yet adequate ways to provide technical assistance to chapters on finance and other matters. This has begun to increase chapter certification, but the process is still very slow. In October, 2004, the Sweetwater Chapter became the first to have its Local Governance Act Community Land Use Plan approved by the Navajo Nation Council's Transportation and Community Development Committee, having obtained assistance from the Shiprock Agency Local Government Support Center, one of several regional centers set up to assist chapter governments. By April of 2005, six additional chapters had land use plans approved, on December 24, 2008, the number reached 10 chapters achieving certification.^{xxxv}

At the same time, public participation in Navajo Nation national government has been increased in several ways, including the institution of representative focus groups to obtain input on important issues and posting proposed legislation on the legislature's web site. This was done while allowing time for public (and Navajo executive agency) comment before issues come to a vote. In 2004, the Navajo Nation's Supreme Court's Chief Justice called for public commentary in the regular evaluation of judges.^{xxxvi} Also that year, the nation set up polling stations in tribal elections for its registered voters living off reservation in Albuquerque, Denver, Salt Lake City and Phoenix.

The Current Reform Initiatives

While the process of decentralization, initiated in 1998, began to move toward its desired ends, many Navajo found it too limited and too slow, bringing a call to reexamine the entire system of the Nation's government. Thus, in 2002, a Navajo Nation Statutory Reform Convention was held with 256 representatives from the 110 chapters and 13 organizations.^{xxxvii} They proposed 26 amendments to Navajo law, two of which that President Joe Shirely wanted to put before the voters. Following that, the council established an independent Office of Navajo Government Development. The office, however, was unable to obtain the approval by the council of any of the amendments. In 2007 the office's independent mandate was revoked, and it returned to being an organ of the Office of the Speaker.

Political discussion of government reform resurfaced as a Navajo national issue, in 2008. However, it quickly became a political football between Navajo President Joe Shirley, Jr. and Council Speaker Lawrence Morgan, and as of February 2009, there had been no real public or governmental discussion of the issues.^{xxxviii} On April 21, President Shirley announced in his annual State of the Navajo Nation Address that his administration was working, consistently with traditional Dine principles, to streamline

government and bureaucracy, to reduce costs and improve service to tribal members.^{xxxix} With the Navajo Nation beginning to feel the decline of the U.S. economy, on April 29, the President launched the first of two attempts to have Dine voters pass a constitutional amendment that would reduce the Council from 88 to 24 members and give the President a line item veto.^{xl} Shirley stated that the two provisions would save money by cutting council expenses and allowing the President to eliminate unnecessary spending that he asserted was often added to budget bills in riders proposed by individual council members. He also asserted that the provisions would create a better balance between the executive and legislative branches, in part, because a smaller council would have less time to engage in expensive micromanaging of administration. However neither referendum achieved certification from the Navajo Election Commission as having been approved, though the first received about 70% of the votes cast.^{xli}

Speaker Morgan took a different view of reform, requesting the Dine Policy Institute to prepare a report of ways in which Dine government could be revised to make it more compatible with the nation's traditions, with several options for possible action. While the Institute was working on the project, the President and the Speaker communicated about initiating reform, signing a memorandum of agreement, on August 13, to seek comprehensive reform, a reform convention, and ultimately a referendum of the people.^{xlii}

The Dine Policy Institute of Dine college issued the *Navajo Nation Constitutional Feasibility and Reform Project* report, September 2, 2008, which received a very short initial discussion by the Navajo Nation Council during its October 20-24 session.^{xliii} The executive summary stated the following findings about the existing, nationally power centered, three branch. national government, which mirrors the U.S. national government. "The concept of Nation-statism and constitutionalism is inappropriate and ineffective as applied to the Navajo Nation. Decentralization of government needs to be thoroughly examined. The current government originates from Western political history and carries a contrasting experience from that of the Diné. This has created a political system supporting a 'strong man' which is historically incongruous. The Diné must rethink their government to reflect cultural values and norms. The Diné need to utilize new terminology when communicating governance ideas. We have adopted Western concepts of government that do not reflect our cultural knowledge. The prevailing institutions (norms and values) need to be addressed, understood, and deconstructed when examining governance and its implementation. The separation of powers is a problematic system - one codified on the basis mistrust - creates a multitude of limitations. An implicit, non-codified separation of powers, based in the Diné concept of trust, adequately reflects traditional concepts of cooperation and integration. Conversely, the current system only works within a model of mistrust and does not foster efficiency or confidence. Judicial review is an essential component to regulate government."

The report acknowledges that the current western structure has had some advantages, the main one being stability, providing for community peace, and bringing a consistency that can foster economic development. But the report found that economic development, while desirable, must be balanced with other values, and that the national government, in Window Rock, AZ, at times acted contrary to traditional values, and to the will and needs of the people. This was found to be occurring partly from

Window Rock's isolation, and the alien western values built into its structure, and partly because of the inefficiency and unwieldiness of its bureaucracy.

One of the authors of the report stated, "The utilization of nation-statist political and economic development has perverted our former institutions, forcing us to make stretched analogies between traditional governance and contemporary governance... a nationstate is a framework in which to implement new and (for the Navajo) foreign institutions, such as a centralized system of governance and social services. These institutions are not historic to Navajo society, which had functions and/or roles that served similar purposes, but in a dramatically different context and at a much smaller level. Hierarchies within historic Diné institutions, such as the family, clan and *naataani*, extended no more than a few levels. Whereas contemporary institutions such as the Navajo Nations government, police force and departments of social services have rigid and deep bureaucracies, creating multiple layers of hierarchies. Ultimately, the main problems with nation-statism for the Navajo Nation is the centralization of political authority, the creation of hierarchies, over bureaucratization and the emergence of class. Centralization of authority differs from the function of our historic political institutions, which were localized. This has led to much animosity toward Window Rock from more distant communities. The creation of hierarchies is divergent from the more egalitarian, role-based Navajo society of historic times. That is to say political position had function, not scopes of authority. Creating hierarchies creates dissonance within Navajo society, where responsibility to family and clan relatives was prioritized, but now must be nullified to meet the needs of large institutions. Of course the most frequently identified aspect of Navajo governance preventing 'economic development' (i.e., the development of a service economy) is the bureaucratic nature of tribal divisions designed to assist Navajo entrepreneurs. Removing bureaucracies through increased emphasis on local rule seems a necessary first step in the process. Lastly, the emergence of class has become a serious issue on the Navajo Nation. At present, there seems to be two broad classes, with subtle subdivisions found in each of these. The dominating class is the technocratic class, administrators within government services in Window Rock. The second class is everyone else, including: pastoralist, unemployed, the seasonally employed, service-sector employees and low-rank government officials. Often, the dominating class looks downtrodden on the rest of Navajo society, especially more rural folk whom they view as backward and uneducated. This has manifested also in recent efforts at government reform, in which the executive branch has attacked the legislative branch in an attempt to remove from influence representatives from distant communities and further centralize power in Window Rock. Nation-statism has created a crisis in institutions, with the Navajo Nation trying to replicate foreign hierarchal establishments under the false assumptions that these are needed for modernization."^{xliv}

After an examination of the current Navajo government structure, and the idea of having a formal constitution, the report proposes four "Alternative Governance Models," to provide a range of options of how best to apply traditional values to the needs of the Twenty-First Century. The traditional values focus on living in beauty, or in balance. This includes concern for the economic, social, familial, and environmental well-being of the Navajo Nation. As the author of the third model states the first of four principles (p. 53), "Clearly safeguarded by historical Diné was an acknowledged ownership of goods and products of labor (however Lockian that appears to be). But more importantly was respect for

others use of land and goods delineated by its use.” This involved reciprocity, and a responsibility of those with more to help those with less, as is indicated by the third principle, below. Hence all the proposed models express concern for distributive justice. “Second, a respect for the moral order, that is in extreme cases they were moments of punitive measures meted out, but the rationale for those measures rested on a notion of restoring a sense of harmony among kin. [See the expanded discussion of this in Part II of this chapter]. Third, is a respect for the needs of others, to ensure that all needs of others were met as best as they could be by those who have. Fourth was an assurance of reciprocal security - that is one is assured that neighbors, often family, would be ready to protect against any encroachment, physical or spiritual. These four concepts appear to be the motivations of the historical Diné in their survival. Therefore, the four aspects include: rights and protection of property; respect and assurance of civil order; freedom to wealth with responsibilities; and, security from physical and spiritual dangers. Thus a government structure must be able to protect and safeguard these particular traditions of Diné, while also balancing and fulfilling its basic core function.” Other balances also needed to be preserved and restored, according to tradition, most notably between male and female genders, a point directly addressed in two of the models. The report affirms the current functioning of the Navajo court system, with none of the proposals suggesting changing the judiciary. All of the models propose the need for education to decolonize the thinking of those in government and other institutions, and the people in general.

The Four Options for Revising Navajo Government

The four options put forth in the report range from adjusting the current system of government, to totally changing it to approach returning to historically locally based governance. The first is a status quo model that emphasizes little change, but alludes to efficiency in government. It would (p. 41) streamline bureaucracy, improving intergovernmental relationships. “These possible changes, not only should be within the system, but also as a social movement to deconstruct the existing cultural norms among the people and their reliance on the bureaucratic system.” This option calls for discussing whether (and if so how, and to what extent) privatization of collectively held land, as a means of promoting wealth generation, would be consistent with Navajo values. This approach asserts the need to move much further with decentralization, “Currently, and in all reality, the central Navajo government holds all real power with little emphasis placed on local governance (as seen with the dismal results of the Local Governance Act). Policy may be formulated which would emphasize local governance without sacrificing instability in the central government.”

The second is a bicameral parliamentary model stressing the integration and cooperation of a traditional and legislative body to form and execute laws, while decentralizing power by entrusting the Navajo people with the approval of all laws. The current model would be changed by eliminating the current executive branch, and replacing it with an executive headed by a prime minister selected by the Navajo Council. The executive would then appoint a cabinet approved by the Council. Elections for the Council would be undertaken with a runoff election between the top two vote receivers in the initial voting. Terms would be for six years, with the possibility of running again for an immediate two year term. After the eight years, a council member would have to wait four year before running again, as

would a person who was not elected to a second two year term, after her/his initial six years in office. To maintain male-female balance, half the elected delegates would be men, and half women, with a lottery determining which chapters would initially elect representatives of each gender. On completion of each six or eight year service, the gender of the chapter representative would switch. The second house would be a house of elders, appointed for life by the executive, whose function would be to advise the government to assist its acting consistently with Navajo values, and who would have no formal power. All laws passed by the Council would be taken to the local chapters for approval. Effective channels would need to be constructed between the chapters and the Council to maximize political stability. Education of the populace and those in government, and the bureaucracy would be necessary to decolonize thinking and debureaucratize administration. This model would be developed over 15 years.

The Third, Dialectical Option

Third is a “dialectical model based in Navajo political philosophy” stressing the complete integration of Diné thinking as the premise behind all institutions in the governance system, and critically calling into question each aspect of politics, deconstructed and succeeded by Navajo reasoning. Underlying this approach are four principles (pp. 50-51). The theory of representation requires full participation, open to all, with “the peoples’ voice open to all aspects.” “The peoples’ will is a unified will that must be represented” in “a reciprocal arrangement that informs the relationship between representative and constituent.” Thus “a leader who represents perfectly the will of the people is established.” The theory of rights and duties, involving reciprocity and equity holds “there are certain rights, expectations, and duties that one can claim, demand and expect, while other things there is an obligation involved. Thus there is a theory of rights of access to the bounty of *Nahasdzaan Nihima* and *Nihiti’aa Yadihilil*.” Notions of property begin with an implicit recognition or respect of the ownership of others, songs, prayers, stories, material goods, and so forth. Yet, the notion of property here is not one that implies exclusive ownership where one is free to do as she pleases. Rather this concept of property, while under the individual use of one person is recognized as that, but also understood that it can be understood as communal property if certain criteria are fulfilled, such as familial criteria.” The theory of the economic order “was that of constrained capitalism, where the onus of wealth was stressed. That is those who accumulated much were expected to be concerned and giving with their wealth to those who did not have much. This is a derivative of *kîÈ*, with the understanding that the knowledge and practice brings about both a spirit of constrained development, innovation, while having the struggles of the people at the fore front of any decision.”

“The core functions of government derived from the Diné perspective include concern for the economic, social, familial, and environmental well-being of the Navajo Nation. Each of these areas corresponds to traditional notions of balance. (p. 53)” “The purposes of the Navajo Nation are the protection and development of the individual and respect for the dignity of the individual, the democratic exercise of the will of the people, the building of a just and peace-loving society, the furtherance of the prosperity and welfare of the people and guaranteeing of the Fulfillment of the principles, rights, and duties of the Navajo Nation. Education and work are the fundamental processes

for guaranteeing these purposes. The purpose of the Navajo Nation is to establish hozhoo [beauty or balance]. Hozhoo takes many forms in its economic, social, governmental, economic, political, educational, and environmental functions. Therefore the government must be able to provide effective governmental services to the people and to meet their dynamic needs. (p. 55)” This requires a government based upon trust.

“To do so, there must a separation of powers based, not on the logic of distrust, but rather on the logic of trust, implicit trust of the institution and the people who occupy those institutions. This trust is extended so long as the people are able to give that trust status by upholding it through the continued practice of *kiÈ*. Thus the separation of powers must be an implicit shared power, not a legally bound separation of powers. (pp. 55-56)” “Supervisory committees are needed to supervise the agencies and regulatory bodies; these oversight committees must be derived from the local levels. That is, a more democratic regime, than a republican regime. A single elected leader to serve as the voice of the nation, but not to retain much power, power to sign bills into law. Consistent with the Navajo Thinking, there must be a check of power, but not a codified separation of powers. (p. 56)”

“There should be a check on the powers of the leader - by the Council of Elders, who have veto authority over the leader and the Council of the People; however, the Courts of Nahata have check on the powers of the leader, the Council of Elders, and the Council of the People. The leader will have two assistants - a Hozhoojii and HashkejiiNataanii - these are appointed by the Council of Elders, with nomination from the leader, but confirmed by the Council of the People. The Council of Elders consist of 2 individuals from each agency - one Hozhoojii and one Hashkejii - these are appointed and approved by district, agency, and confirmed by the Leader. The Council of the People consists of elected officials from the various electoral districts of the Navajo Nation. The Council of the People has non-voting status for community groups and NGOs, which are appointed by the Chapter, districts, and agencies. These people are popularly elected. The Council of the People’s acts are then checked by the chapters, the districts, and the agencies. (p. 56). Ultimately these reforms must be undertaken as a grassroots work, redesigning governance over 12 years, beginning at the chapter level and working up.

The Fourth, Decentralized Option

The fourth proposal is a decentralization model stressing national and community issues with greater empowerment to social subgroups and agencies. It outlines a government that reflects more fully traditional and customary laws and norms and replaces the President with an 11 member Executive Board. The Council remains nearly as-is, with the exception of adding 12 non-voting delegates specifically dedicated to certain social subgroups and non-profit organizations. The decentralization will address the gender issue by balancing the men, predominately in positions in the central government, with the women who are the preponderance of leaders in chapters and the growing numbers of nongovernmental organizations. “Our reasoning for this transition is based on Navajo history and current social behavior. The Navajo Nation historically resembled a parliamentary system and had decentralized political units. We believe that our proposed model would move us back in this direction. . . . Therefore, we have established four major steps to move our current system of governance from a presidential model to something more like the historic *naachid*. These steps are: 1) moderate the concentration of power in the executive branch; 2) restructure agency councils to balance power

between legislative and chapter house members; 3) increase the power of the agency councils and 4) create new mechanisms through which nongovernmental organizations can influence formal governmental processes. (p. 63)”

“We would replace the Office of President and Vice President with an 11 person Executive Board, comprised of five female members, five male members, and the Navajo Nation Speaker who is the rotating chair. The members are elected, two from each of the five agencies, whereas the Speaker is a member of the Navajo Nation Council and therefore represents the interests of both the legislative branch and his or her particular community. Though the Speaker is a member of the 11 person Executive Board, he or she does not have ultimate authority over the rest of the council and therefore is a minor and not controlling member of it... Secondly, the Agencies would gain more autonomy than what they have now. Each Agency addresses different concerns due to the surrounding topography. Therefore, the Chapters would address their concerns at Agency Council, and the Agencies would have more autonomy and more representation since they have elected representatives on the Executive Board.

“Thirdly, the 88 Delegates would be elected in the same fashion as they are elected today... However, the major difference of the Legislative Branch would be the 12 Non-Voting Members of the Council. So, in total the Council would consist of 100 members. The Non-Voting Members would represent the non-profit sector on the Navajo Nation and the youth of the Nation. Since the youth population is growing at an astonishing rate and the role of women is needed, the implementation of the Non-Voting Members of Council will help eliminate some of the gender and age discrepancies. Lastly, with the removal of the entire Executive Branch, the Committees, Commissions and Divisions would have to be restructured. Therefore, we put into place four Committees: the Social Committee, the Economic Committee, the Families Committee and the Environmental Committee. Under each Committee, we placed the appropriate Program or Division. For example, under the Environmental Committee, we place the Division of Natural Resources, the Navajo Environmental Protection Agency and the Navajo-Hopi Land Commission. Each Committee would consist of 12 members, which would include ten Delegates, and 2 Non-Voting Members of the Council. The Executive Board would appoint the Committee Members. (pp 65-66)” Implementation is recommend to take three years.

Looking Ahead

It will be very interesting to see how far, and in what ways, Navajo nation goes in reforming its government. The process of bringing back traditional values to fit present and future needs has been an extended one, that has been unfolding in a series of expanding stages. The U.S. government, wishing to have a single leader and body to deal with, imposed a chairman centered form of elected government, centralized at the national level, almost completely opposite to the traditional Dine participatory band government, with regional associations, and no national government. In 1988, a partial decentralization was undertaken, but almost entirely within the national government, with the institution of three branches of government, with separation of powers. In 1998, a process of decentralization of some functions was initiated, with on going adjustments, that have developed slowly, bringing only limited control of governance back to the people in the chapters, while services remain bogged down in

bureaucracy. To further and accelerate the process, the current deliberations are now in motion. To make real and legitimate progress, the discussion will have to break out of its initial battle of press releases between the offices of the President and the Speaker, and become a true public dialogue. If major changes are to be seriously considered, consistent with Dine philosophy, there will have to be a series of community meetings and forums as well as extensive discussion in the Council. The Office of Government can also assist by organizing focus groups, conferences and other vehicles for reflecting Dine views and promoting dialogue. What the Navajos develop, may also provide lessons and guidance for other nations struggling with inappropriate governmental systems.

ⁱ LaDonna Harris, Stephen M. Sachs and Benjamin Broome, "Harmony Through Wisdom of the People: Recreating Traditional Ways of Building Consensus Among the Comanche," *American Indian Quarterly*, Vol. 25, No. 1, Winter 2001.

ⁱⁱ See also, O'Brien, *American Indian Tribal Governments*, Ch. 2; Stephen M. Sachs, "A Transformational Native American Gift: Reconceptualizing the Idea of Politics for the 21st Century," *Proceedings of the 1993 Annual Meeting of the American Political Science Association* (Washington, DC: American Political Science Association, 1993).

ⁱⁱⁱ *Ibid.*

^{iv} Bruce G. Trigger, *The Huron: Farmers of the North* (Fort Worth, TX: Holt Reinhart and Winston, 1990), especially Ch. 6.

^v Sachs, "Reconceptualizing the Idea of Politics," pp. 1-3; O'Brien, *American Indian Tribal Governments*, Ch. 2; Walker, *Lakota Society*, pp. 17-18, 23-32 and *Ibid.*

^{vi} Ernest Wallace and E. Adamson Hoebel, *The Comanches: Lords of the Plains* (Norman, OK: University of Oklahoma Press, 1952), Ch. 9; O'Brien, *American Indian Tribal Governments*, p. 17.

^{vii} Sachs, "Reconceptualizing the Idea of Politics," Part 1, particularly p. 1 and foot note 5; E. Adamson Hoebel, *The Law of Primitive Man* (New York: Atheneum, 1976), Ch. 5 & 7 and O'Brien, *American Indian Tribal Governments*, pp. 37 and 40.

^{viii} Sources for the entire discussion of the impact of colonialism on tribal governance, including the imposition of IRA governments and the impacts of the War on Poverty are in, Stephen M. Sachs, LaDonna Harris, Barbara Morris and Deborah Hunt, "Recreating the Circle: Overcoming Disharmony and Infighting in American Indian Communities," *Proceedings of the 1999 American Political Science Association Meeting* (Washington, DC: American Political Science Association, 1999).

^{ix} "Acknowledging the Circle: The Impact of American Indian Tradition Upon Western Political Thought and its Contemporary Relevance," *Proceedings of the 2002 American Political Science Association Meeting* (Washington, DC: American Political Science Association, 2002).

^x The history of this development is outlined in O'Brien, *American Indian Tribal Governments*, Parts 2 and 3. The background of the development of U.S. policy toward tribes, and of tribal-federal, state and local government relations is discussed in some detail in Ch. 3 of this volume.

^{xi} O'Brien, *American Indian Tribal Governments*, pp. 86-90; Morris W. Foster, *Being Comanche* (Tucson: University of Arizona Press, 1991), p. 138; and LaDonna Harris, Stephen M. Sachs, and Barbara Morris, "Native American Tribes and Federalism: Can Government to Government Relations Between the Tribes and the Federal Government Be Institutionalized?," *Proceedings of the 1997 American Political Science Association Meeting* (Washington, DC: American Political Science Association, 1997).

^{xii} For example, see Brenda Norell, "Chaos Continues for San Carlos," *Indian Country Today*, August 31-September 7 1998, p. A 6 and "The Power that Divides: San Carlos Conflict Isn't Resolved with New Council," *Indian Country Today*, January 4-11, 1999, p. C1; George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-1975* (Tucson: University of Arizona Press, 1998), pp. 129-133; and Gerald Alfred, "From Bad to Worse: Internal Politics in the 1990 Crises at Kahanewake," *Northeast Indian Quarterly*, Spring 1991. See also Loretta Fowler, *Arapahoe Politics, 1851-1978* (Lincoln: University of Nebraska Press, 1982), Fred Eggan's "Forward," p. 15, and "Introduction," p. 1; and Cornell, *Accountability, Legitimacy and the Foundation of Native Self Governance*.

^{xiii} *The Southern Ute Drum*, June 4, 1999, p. 2.

^{xiv} The facilitators reflected that, the Design Team has helped the community to redefine and embrace a vision of healing. Given all that has been said about post-colonial dynamics of disharmony, the commitment, courage, honesty and energy witnessed by the facilitators has been truly inspirational. According to one facilitator, "setbacks, disappointment and criticism

are balanced by a passion for creating a better future for the tribe's children." D.E. Hunt, M. Gooden, & C. Barkdull, "Walking in moccasins: Indian child welfare in the 21st century," in K. Briar Lawson, H. Lawson, & A. Sallee, Eds., *New Century Practices with Vulnerable Children and Families* (Dubuque, IA, Eddie Bauer Publishing, 2000). The three authors, two of whom are Indian, but not Ute, have been the primary facilitating team at Southern Ute. Stephen Sachs, who has a long association with Southern Ute, was a participant at several meetings in 2000. On the 2003 and 2006 follow up of the collaboration begun with the Design team, see Dave Brown, "A Meeting of Minds Over Social Services," *Southern Ute Drum*, March 3, 2006, p. 1.

^{xv} *The Southern Ute Drum*, in, 2001, reports the calling of the meetings. Information on the working out of the Sun Dance dispute was thorough interviews with community members by Stephen Sachs, and his observations at the 2001 and 2002 Sun Dances.

^{xvi} For example, see "Indian and Indigenous Developments, Tribal Developments," *Indigenous Policy*, Volume XVI, No 1, Spring, 2005; and Dave Brown, "Tribal Government Reacts to Focus Groups," *Southern Ute Drum*, September 30, 2005.

^{xvii} *Southern Ute Drum*, May 14, 2004, pp. 1, 3, 7.

^{xviii} For information, contact Outreach Coordinator. Neil Peacock, 190 Klamath Blvd., Klamath, CA 95548 (707)482-1365. (Neil Peacock. "Tribal official calls for input: Developing transportation plan," *Naive American Times*, January 12, 2005, p. 3).

^{xix} In a May 1996 discussion at the Baha'i office in Victoria, BC, it was reported to Stephen Sachs that several Alaskan and Canadian west coast tribes had adopted the Baha'i method of consultation. This is in essence a modified form of consensus decision making. Though it is undertaken with an elected council formally deciding by majority vote, a strong element of the process is that the decision makers gain a full overview of the issues from all perspectives by listening carefully to the views of all parties. See John E. Kolstoe, *Consultation: A Universal Lamp of Guidance* (Oxford: George Ronald, Publisher, 1985), particularly, Dedication, Ch. 2. 3, and 5, and pp. 81-83, 153-159, 169-172 and 175-180.

^{xx} The ILIS process and its application is discussed extensively in LaDonna Harris, Stephen M. Sachs and Benjamin Broome, "Harmony Through Wisdom of the People: Recreating Traditional Ways of Building Consensus Among the Comanche," *American Indian Quarterly*, Vol. 25, No. 1, Winter 2001. See also Harris, Sachs and Broome, "Harmony Through Wisdom of the People"; LaDonna Harris, Stephen M. Sachs, and Benjamin Broome, "Recreating Harmony Through Wisdom of The People: The Case of the Comanche and Other Oklahoma Tribes, Summary version," *Proceedings of the National [Canadian] Gathering on Aboriginal Peoples and Dispute Resolution: 'Making Peace and Sharing Power'*, (Victoria, BC: University of Victoria, 1997); LaDonna Harris, Stephen M. Sachs, and Benjamin Broome, "Returning to Harmony Through Reactivating The Wisdom of the People: The Comanche Bring Back the Tradition of Consensus Decision Making," *Native Americas*, Vol. XII, No. 3, Fall 1996; and Benjamin J. Broom, "Promoting Greater Community Participation in Comanche Tribal Governance: Planning Sessions held March 26-28 & May 13-15, 1991" (Fairfax, VA: Department of Communications, George Mason University, June 1991).

^{xxi} Broom, Benjamin, J. "Promoting Greater Community Participation in Comanche Tribal Governance: Planning Sessions held 26-28 March and 13-15 May 1991." Fairfax VA: Department of Communication, George Mason University, June 1991.

^{xxii} Clyde Kluckhohn and Dorethea Leighton, *The Navaho* (Cambridge, MA: Harvard University Press, 1974), pp. 111-123. Robert W. Young, *A Political History of the Navajo Tribe* (Tsaille, Navajo Nation, AZ: Navajo Community College Press, 1978), pp. 15-16, 25-27, reports that, according to Dine legend, the people lived in independent, self sufficient camps, in which, like other band societies, discussed below, decisions were made by the community by consensus. Headman (*Hozhooli Naat'aah*) only acted as advisors. He usually was proficient in leading at least one ceremony, governed by persuasion, "expounded on moral and ethical subjects, admonishing the people to live in peace and harmony. With his assistants he planned and organized the workday life of his community, gave instruction in the arts of farming and stock raising and supervised the planting, cultivating and harvesting of the crops. As an aspect of his community relations function, it was his responsibility to arbitrate disputes, resolve family difficulties, try to reform wrong doers and represent his group in its relations with other communities, tribes and governments. He had no functions whatsoever relating to war because the conduct of hostilities was the province of War Chiefs. "A headman was a man of high prestige, chosen for his good qualities and only remained a leader "so long as his leadership enlisted public confidence or resulted in public benefit." Also discussing traditional Navajo governance is David E. Wilkins, *The Navajo Political Experience*, Revised Edition (Lanham, MD: Roman and Littlefield Publishers, Inc, 2003), pp. 67-72.

^{xxiii} Kluckhohn and Leighton, *The Navajo*, p. 118. The Naachid is discussed by Wilkins, *The Navajo Political Experience*, pp. 70-71, and pp. 71-73 discuss the general continuance of traditional Navajo governance during the Spanish/Mexican period, 1700 – 1846, despite the occasional attempt of the colonials to designate heads of the Navajo Nation.

^{xxiv} Kluckhohn and Leighton, *The Navajo*, pp. 122-123, 157-166, discusses the development of Navajo administration and tribal government to the 1950s; as does Wilkins, *The Navajo Political Experience*, pp. 73-80.

^{xxv} The Navajo Nation web site history section: <<http://www.navajo.org/history.htm>>. Wilkins, *The Navajo Political Experience*, pp. 81- 87, sets forth a brief history of Navajo government and BIA administration from 1922-1936.

^{xxvi} The Diné Policy Institute of Diné College, *Navajo Nation Constitutional Feasibility and Reform Project* report, September 2, 2008, is downloadable in PDF from: <<http://www.navajo.org>>, pp 17-18.

^{xxvii} Kluckhohn and Leighton, *The Navajo*, p. 158. On chapters, see also Wilkins, *The Navajo Political Experience*, pp. 81-82.

^{xxviii} Kluckhohn and Leighton, *The Navajo*, p. 159. Wilkins, *The Navajo Political Experience*, pp. 82-87.

^{xxix} *Navajo Nation Constitutional Feasibility and Reform Project* report, p. 17. On the development and operation of the Dine Court system see also Wilkins, *The Navajo Political Experience*, Ch 8.

^{xxx} *Navajo Nation Constitutional Feasibility and Reform Project* report, Section III, and p. 9.

^{xxxi} On Peter MacDonald and his administration, see Bruce E. Johansen and Donald A. Grinde, Jr., *The Encyclopedia of Native American Biography* (New York: Henry Holt and Company, 1997) p. 228; Bary T. Klein, *The Reference Encyclopedia of the American Indian*, 6th edition (West Nyack, NY: Todd Publications, 1993) p. 576; and Wikipedia, <[http://en.wikipedia.org/wiki/Peter_MacDonald_\(Navajo_leader\)](http://en.wikipedia.org/wiki/Peter_MacDonald_(Navajo_leader))>. See also *Navajo Nation Constitutional Feasibility and Reform Project* report, p. 9; and Wilkins, *The Navajo Political Experience*, pp. 88-94. The discussion of MacDonald's (and Peterson Zah's) participation in Indian programs established by President Johnson's war on poverty (also mentioned by Wilkins), and the impact on MacDonald of losing the election, came from a discussion by the author with LaDonna Harris, President of Americans for Indian Opportunity, March 4, 2009.

^{xxxii} On Peterson Zah, see Klein, *The Reference Encyclopedia of the American Indian*, p.665; and *Encyclopedia of World Biography*: <<http://www.bookrags.com/biography/peterson-zah/>>. On the 1989 government reforms, see Wilkins, *The Navajo Political Experience*, pp. 92-95, Part II, and Appendix G.

^{xxxiii} Action was taken through the Navajo Nation Local Governance Act, 26 Navajo Nation Code, revised 4/28/98. The Office of Navajo Government Development has been developing alternative means for chapters to improve the quality of their meetings, for which coauthor Stephen Sachs has been a consultant from 1997 to 2002, and has instituted a process of sharing ideas for improving local meetings and governance among chapters. Much of the early work to develop decentralized government is discussed in the following documents published by the Office of Navajo government Development, P.O. Box 220, Window Rock, AZ 86515 (928) 871-7214/7161: *The Commission on Navajo Government Development Report: Executive Summary of the Local Governance Act* (Spring Report 2000); Commission on Navajo Government Development, *Engaging the People of the Navajo Nation in the Process of Nation Building* (December 3, 2001); Commission on Navajo Government Development, *Executive Summary of the Agency-Wide Summits on Nation Building; Navajo Nation Statutory Reform Convention* (March 3, 2002); *Navajo Nation Statutory Reform Convention: Red Rock state Park, Church Rock, NM, May 14-15, 2002, Proposed Amendments*; Commission on Navajo Government Development, *Navajo Nation Statutory Reform Convention, Amendments and Policy Reasons for Them* (August 2002); Budget and Finance Committee of the Navajo Nation Council, in Coordination with the Office of Navajo Government Development and the Office of the Navajo Tax Commission, *Agency Wide Hearings on the Proposed Navajo Sales Tax Trust Fund, Plan of Operation for Distributing Funds* (September 24, 2002); Commission on Navajo Government Development, *Navajo Nation Statutory Reform Convention Amendments and Status of Those Amendments* (January 23, 2003); and Office of Navajo Government Development in Coordination with the Office of Navajo Tax Commission, *Navajo Nation Sales Tax Trust Fund Distribution Plan* (March 06, 2003). For the Local Governance Act of 1998, see Wilkins, *The Navajo Political Experience*, Appendix H.

^{xxxiv} Personal communications by Stephen Sachs with the Office of Navajo Government Development (with whom he did some consulting) and the Dine College Leadership Program.

^{xxxv} See *Navajo Times*, 10/14/04 p. A12 and "Indian and Indigenous Developments, Tribal Developments," *Indigenous Policy*, Volume XVI, No 1, Spring, 2005, at: <<http://www.indigenouspolicy.org>>, and for the December 2005 update,

“Baahaali Chapter becomes LGA certifies, receives \$160,00 check as incentive,” press Release, Navajo Nation Council – Office of the Speaker, December 30, 2008 available at <http://www.navajonationcouncil.org/>.

^{xxxvi} . On legislative measures, see Bill Donovan, “Officials Put Brakes on Legislative Process,” *Navajo Times*, February 10, 2005, p.A4. On action by the courts, see *Navajo Times*, October 10, 2004, p. A14. On off reservation polling places, see the *Navajo Times*, October 14, 2004 p. A4.

^{xxxvii} Marley Shabela, “Speaker, prez battle over reform,” *Navajo Times*, December 30, 2008. p. A3. There was a battle of press releases on reform between the President and the Speaker, available at: <http://www.opvp.org/default.asp?CustComKey=6465&CategoryKey=151983&pn=Page&DomName=opvp.org>, and <http://www.navajonationcouncil.org/press.htm>.

^{xxxviii} See Shabela, “Speaker, prez battle over reform.”

^{xxxix} “Navajo President Joe Shirley, Jr. launches Government Reform Initiative.” Press release from the Office of the Navajo President, April 29, 2008, available at: <http://www.opvp.org/default.asp?CustComKey=6465&CategoryKey=151983&pn=Page&DomName=opvp.org>. While the April 29 press release speaks of the President’s State of the Navajo Nation State of the Union address calling for the establishment of a government reform taskforce, the published text does not specifically mention the taskforce or government reform. It speaks more generally of streamlining government and service delivery. The Task force was created, however, and guided the drafting and campaigning for the ballot initiatives (see the next footnote below for more information). The State of the Nation Address is available on-line at the same location as the press release.

^{xl} “Navajo President Joe Shirley, Jr. launches Government Reform Initiative.”

^{xli} “Comprehensive government reform jeopardized by Speaker’s inaction to place legislation before the council,” Press release from the Office of the Navajo President, October 2, 2008, available at: <http://www.opvp.org/default.asp?CustComKey=6465&CategoryKey=151983&pn=Page&DomName=opvp.org>.

^{xlii} Jason Begay, “Government Reform Effort Falls Short,” *Navajo Times*, December 30, 2008, p. A3.

^{xliii} *Navajo Nation Constitutional Feasibility and Reform Project* report. The authors of the report are: Robert Yazzie, Director, Moroni Benally, Policy Analyst, Andrew Curley, Research Assistant, Nikke Alex, Research Assistant, James Singer, Research Assistant and Amber Crotty, Research Intern, The authors of the four models are: “Model 1: Approaches for an Alternative Model Government” (which discusses general concerns and guidelines for all the alternative models, but does not present the first model of keeping the current form of government with modification, which is actually in the beginning of “Model 2”): Robert Yazzie, “Model 2: The Bicameral Parliamentary Model” (which contains Model 1 at the beginning of its discussion): James Singer, “Model 3: “Dine Political Philosophy:” Moroni Benally, and “Model 4: Decentralization Model:” Nikke Alex, Andrew Curley and Amber Crotty. On the reports being presented to the Navajo Council, see the Navajo Nation Council - Office of the Speaker press release, “Speaker Morgan to present report on feasibility of a constitutional government for Navajo Nation during 2008 Fall session,” October 13, 2008, <http://www.navajonationcouncil.org/press.htm>.

^{xliv} *Ibid.*, p. 19.