

PROTECTION OF NAVAJO SACRED OBJECTS

BY

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I grew up on Navajo land near a town called Gallup, New Mexico. As the closest town of any size, this is the place where my family and I did our shopping, dining and all other business. The town's population is predominately Navajo. I remember homeless Navajos who were constantly intoxicated knocking on people's vehicle windows asking for change. My dad would roll the window down and they would politely slur in Navajo asking for spare coins or dollars and he would give them small change. We walked downtown to a pawnshop and observed non-Navajo tourists' purchase Kachina dolls, jewelry and t-shirts. When Grandma had no money for groceries, she carried her Concho belt, rugs and/or buckskin to pawn. When she was unable to pay her pawn, the pawnshop owners sold it for three times the amount of money they had given her – making huge profits from Navajo culture.

The pawning is the most vivid memory I have of my childhood whenever we went to town. Pawning was usually the only purpose to drive the long distance into town. The exploitation of Navajo culture did not occur to me as a child. Instead, I looked forward to driving into town every chance I got.

Now, every trip I make back to my hometown I see how the Navajo culture is being sold. This happens through many ways from pawing sacred items to recording ceremonial songs. Navajo people are not extinct and the culture is not for sale. I now realize I once played a part in this loss, by driving my grandma into town to pawn.

Profiting from Indigenous cultures does not happen only on the Navajo reservation but all throughout the nation and the world. Reminiscing about my childhood memories inspired me to study and write about the cultural loss on my reservation. Money, used according to non-Navajo values, has and will destroy Navajo culture and with it the people's strength.

INTRODUCTION

Introduction

This thesis examines how Navajo cultural items are being misused, lost, stolen, and sold by pawnshops, Indian stores, museums', and pow-wows, to name a few and argues that tribes should consider enacting tribal codes to prevent this cultural loss. Navajos and Non-Navajos are both victims and the perpetrators of this loss. This study draws from years of personal direct observation, and secondary and primary sources.

The first chapter reviews the history of the Navajo - United States relationship and shows how US policies altered the Navajo people from a position of self-efficiency to one of dependency. It is important to discuss the background of this appalling native and European history, because the loss of Navajo cultural systems and objects stems in large measure from this history. United States' policies included stripping the Navajo and other tribes of their lands, resources, and cultures. The loss of lands and resources and federal policies forced the Navajo to depend on the government and the whites for goods to survive. To provide these goods, the government sold licenses to non-Indians to establish trading posts on the Navajo reservation – a system that continues to today. This system of dependence is seen in the pawnshops located on and off the Navajo reservation, which seems to be the largest “taker” of Navajo culture today.

Chapter two examines the commercial routes by which Navajo sacred items leave the Navajo people. Pawnshops and Indian stores, owned by non-natives and natives, desecrate sacred items through their sale, use, and even exhibition. Museums and art galleries continue to violate sacred traditions through the display and sale of sacred images and paintings, and the recording of sacred songs are sold as commercial CDs, at pow-wows and over the internet.

Chapter Three reviews how Navajo traditional law and western law conceive of “ownership,” especially the ownership of sacred items. The chapter begins with a brief review of the Western law of ownership, with its emphasis on individual ownership. Western law essentially operates according to the “nine-tenths rule;” that possession is nine-tenths of the law – meaning that individuals have the right to do as they will with possessions, until and if, a court proves the individual obtained the item illegally.¹ ()

Navajo law, based on communal ownership, is explained through the Navajo creation story and Navajo teachings. As the two societies interacted, Navajo laws of ownership increasingly conflicted with western laws of ownership – usually resulting in the loss of Navajo land, culture, and property. As the remainder Chapter Three illustrates, serious problems emerge when western legal concepts are applied to specific items the Navajo people consider to have spiritual nature.

¹ Understanding Property Law by John G. Sprankling

Chapter Four briefly reviews existing federal and state laws designed to protect native sacred items before evaluating whether current Navajo cultural preservation programs are able to prevent the types of loss discussed in this thesis. As this research finds, current tribal programming does not extend to these types of losses. Tribes cannot depend upon federal or states to develop policies for the protection of all sacred items. Tribal governments are also well aware that they cannot presume that everyone will follow customary principles of tribal law. The Dine, however, have always adapted – taken the best of the new and blended it with the old. This thesis presents such an adaptation – the development of tribal legislation that will serve to protect the old ways.

Specifically, this thesis proposes a set of tribal code designed to protect traditional forms of ownership. The adoption and implementation of this, or a similar set of principles or codes, may assist the Navajo Nation in establishing a legitimate structure that clarifies the tribe's expectations to those intending to exploit or violate sacred items.

As stated, the purpose of my research is to provide guidance and practical solutions to the Navajo people regarding the incorrect utilization and loss of sacred items. The preservation of these items is for future generations, who hold the future strength of the Navajo Nation in their hands. This research fulfills the mission statement of the Center for Indigenous Nations Studies Program and is important to all indigenous communities, as

each possesses its own philosophies and knowledge concerning that which is of spiritual importance.² Each community can adapt the proposed code for the preservation of their own spiritually identified items.

² The Center for Indigenous Nations Studies contributes to the survival, self-sufficiency, mutual support, empowerment, and decolonization of Indigenous Peoples throughout the world. The Center, working from a cross-cultural and global perspective, educates students through a combination of instruction, study, research and practical experience.

CHAPTER ONE BACKGROUND: NAVAJO - US HISTORY

Background

Indigenous people of North America occupied the continent for thousands of years prior to European arrival. Once the Europeans, and later the Americans arrived, land became the major issue. Most Indians who lived in the west did not settle on any part of the land permanently, as the environment required them to be nomadic hunters. Whichever individual Indian, tribe or village was using the land at the hour, the day or the week, that land was “theirs” temporarily. The Europeans, who were agriculturalists, were unable to grasp this concept, and considered the land open, and ready for the taking. The settlers needed Indian land for settlement for the establishment of a new nation. As the tribes resisted this taking, the Americans turned to policies of war, subjugation, and genocide. As discussed below to obtain Navajo lands, the US government burned hogans and villages killed livestock and forced the people on the Navajo Long Walk.³

By the mid to late 1800s, the United States had imposed a policy of land division on tribes through passage of the Dawes Act. Designed to assimilate Indians, the Dawes Act ended tribal communal ties to the land, forcing upon native peoples private property ownership and individualism. Indians had always lived collectively and mutually with their own governing systems and laws. The Indian way of life emphasized responsibilities to an

³ Angie Debo, *In the History of the Indians of the United States* (Norman: Oklahoma, 1970)

individual's tribe, village, or clan and to carry out tradition, ceremonies and heritage for the next generation.

The introduction of new systems led tribes to abandon their traditional ways and adapt to the new society. Individual ownership of property for example caused Indians to forget about their tribal responsibilities toward their people. Instead of providing for their families, they cared only for themselves. For example, the individual ownership of property replaced traditional communal ownership. These changes devastated Navajo traditionalists and Navajo people began to speak out about returning to tribal responsibilities. Reminded of their traditional ways strengthened as the Navajo came to understand and appreciate their distinctive spiritual and cultural heritage.⁴

Navajo History

The Navajo people call themselves, "Dine," which means "The People." The Navajo creation story explains how the Dine emerged into this world. The story illustrates that the Navajo creators gave the Navajo people the land, language, and ways of life. The ways of life is a pattern of life set for the Navajo people with laws and forms of government, including the concepts of ownership.

⁴ In the mean time, American Indian Studies became an academic discipline in major institutions and universities to help Indian people enhance their self-sufficiency and assist in cultural preservation and language revitalization.

The perspective of the non-Indian scholar is to categorize the Navajos or Dine, as Athabaskan linguistic speakers. Although denied by traditionalist who follow the Creation Story, scholars believe that Navajos and Apaches originated in western Canada with other Athabaskan speaking tribes and migrated down to the southwest approximately 500 years ago. As nomadic hunters living in small bands, some scholars also believe they adopted traditions from those living in the area, first from the Pueblos, and later the Spanish. These influences may have extended to the adoption of the horses, sheep, weaving, pottery making, Pueblo religions, and even the clan system.

It is unclear where the term, "Navajo" originated. During the 16th and 17th centuries, the Spanish often referred to Navajos as "Queredos" or "Apaches." The term "Navajo" emerged around the 1630's, when a Spanish man called them, "Apache Indians of Nabaju." Although Nabaju referred to the name of a place, the term eventually referred to a group of people, now called, the Navajo. ⁵

Navajo Long Walk

The arrival of European settlers disrupted the Navajo people's traditional ways of life. To the US, the Navajo were a problem. They resisted giving up their lands and they were constantly raiding upon Rio Grande settlements. In response, the United States government gave Colonel Kit Carson instructions to destroy all crops and livestock. The intruders

⁵ Garrick Bailey & Roberta Glenn Bailey, *A History of the Navajos: The Reservation Years* (Santa Fe: NM, 1986)

plundered the land and the people ran for their lives. Seven hundred federal troops, Utes, Pueblos, Spaniards, and white settlers attacked the Navajos, killing them, burning their homes, destroying crops and seizing their herds. The intruders sold captured women and children into slavery, other Navajos died of starvation and exposure. On March 6, 1864, the US Army forcibly removed the remaining Navajos from their homelands and forced them to walk 300 miles in the harsh winter, supposedly to their new reservation at Bosque Redondo, near Fort Sumner.⁶

Rather than moving to a new area of land, the military held them at Fort Sumner, which for the next four years served as a harsh prison camp for approximately 8,000 Navajos. Here, the government forced the people, torn from their homelands of mountains, to live on flat land, eat alien food, and drink bitter waters that made them ill. The remaining people hid in the Grand Canyon, on Black Mesa, and other inaccessible spots. After four years of death, ill treatment and bad health, the federal government allowed the Navajo to return to their homeland. The Bosque Redondo experiment had failed, costing \$1,000,000 – an exceedingly high amount after a costly Civil War. On June 1, 1968, the Indian Peace Commission and President Grant recognized the Navajo's sovereignty in the Treaty of 1868.⁷

⁶ Carol Niethammer, *I'll Go and Do More: Annie Dodge Wauneka, Navajo Leader and Activist* (Lincoln: Nebraska, 2001)

⁷ Lapahie Harrison, Jr. *US Treaty with the Navajos, 1868* 27, Aug. 2001, Accessed 12 Jan. 2008 <http://www.lapahie.com/Dine_Treaty.cfm>.



Establishment of Reservation

The Treaty of 1868 established a reservation for the Navajo in their homeland. The treaty also established a relationship between the US government and the Navajos, which by the turn of the century had become that of a parental guardian relationship with the responsibility to “care” for the Navajos. In return for returning to their lands peacefully and ceding large tracts to the federal government, the treaty promised annuities and rations. In return the Navajo promised to refrain from scalping or killing settlers.

Although through this treaty and the reservation, were established to help the Navajo, “start over,” only a fraction of their original homelands was returned to the Navajos. Comprised of land less desirable to settlers, the 35 million acre reservation was not enough land for all of the people. It also took away the best winter range land and watering places. Although the treaty required the government to provide the Navajo people with sheep, cattle,

seeds, and \$5 per capita for ten years, the Navajo people had a hard time “starting over” once they returned to their homelands. Ultimately, as their flocks increased, the Navajo started to prosper and continued to practice their traditional ways of life.

School/Education

The federal government lingered on to the idea of assimilating the Indians into white mainstream society. Education proved to be one of the primary means the federal government planned to accomplish this. The education of the Navajo, in the government’s eyes, was essential for their assimilation. For that reason, included in the Navajo treaty, was the funding for education.

According to Article VI of the Navajo Treaty of 1868, the Navajo people were required to give their children up to receive an education.

“In order to insure the civilization of the Indians entering into this Treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is here by made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among the said Indians, and faithfully discharge his or her duties as a teacher.”

The US gave money to church organizations to carry out the education progression and the white Christian organizations accepted the money.

However, according to the white Christian oppressors, Indians were lawless savages that needed help, thus their position was to “kill the Indian and save the man.” They believed that their Navajo ways were wicked and against Christian values.

The Indian agents and politicians at this time were very ignorant and corrupt. The treaty’s promises were broken. The US Indian boarding school systems all over the nation were intent on transforming the Navajo children to live more as whites and never return to their reservation.

Since the majority of families lived far distances, children had to attend boarding schools for an education. Most Navajo children resisted leaving the reservation. Indian agents and white Christian missionaries were not above kidnapping the children and transporting them to off-reservation boarding schools. Here, many children found a life of misery and loneliness. Suits and dresses replaced their traditional clothing. The missionaries cut their long hair and washed their mouths with soap if they spoke Navajo. They were given “pronounceable” names. The children who did not comply with rules suffered harsh consequences. Others were physically and sexually abused. An unknown number died or never returned to their families.



Tom Torlino (Navajo) when he arrived at Carlisle Indian School, October 21, 1882



Tom Torlino three years later

Indians no longer had the central element of land that surrounds Indian way of life. Their languages, ceremonies and ways of living were stripped away. This experience traumatized the children throughout adulthood. When they returned to their reservation after graduation, they lived in fear and hesitated practicing their ceremonies or speaking Navajo. Some Navajos were not accepted by their people because they were “too assimilated” and fled to the cities. Without, or shamed by the knowledge, the boarding school generation did not teach their children the Navajo way of life, causing their descendants to live without the generations of knowledge, culture, and language of their people.⁸

⁸ Hilary Anyaso, “American Indians Are Still Here,” *Diverse Issues In Higher Education* 21 Nov. 2007: 6

Economy

The Navajo people did their best to adapt to the new society but continued to struggle. The 1870's brought railroads through Navajoland bringing diseases, intoxicants, and more white settlers clamoring for land. By the 1940's the main sources of income were agriculture, livestock and wage work. By the mid 1950s, the Navajo population had increased to 85,000, and there were insufficient jobs to support the Navajo economy. A third of all Navajo income came from wage working with the railroad employing the most Navajo workers.

Wage work consisted of different jobs, such as teachers, day-school assistants, matrons, advisers, maintenance workers at agency plants, and road and irrigation employees. Other wage employment came from traders and missionaries who used Navajos as interpreters and handy men. For the year 1940, the Navajo tribe's total income was \$4,027,530 or \$81.89 per capita. Over the next 18 years, - wages increased only 2.1%. The Navajo people had a low standard of living.

The land became very dry because of overgrazing. The Navajo people had too much livestock and the land was not able to feed all of them. The grass began to disappear. The rainwater did not remain on the surface and ran down the steep slopes to gullies that stretched far. This ate away at the bottoms of fertile valleys. The more it rained, the more damage the water

caused. The gullies and slopes drained away the surface bodies of water. To add to this, the rain came less and less every year.

By 1933, the problem had become so serious that the new administration told the Navajo people to reduce the number of their livestock, which at the time numbered 1,700,00 sheep and goats. The federal government regarded the sheep as useless animals that were commercially unsalable and responsible for the deterioration of the range.

The Roosevelt administration implemented the stock reduction program with the intent of reducing the Navajo's dependence on livestock, permanently. The Bureau of Indian Affairs, headed by BIA Commissioner, John Collier, took control of the reservations resources and appointed the Navajo police and white ranchers to carry out the program's requirements. The program required that herd sizes in each district depended on the size of the district. If families were from a small district, they cut their flock according to size. Navajo families that lived off the reservation on public land or allotments fell under the Taylor Grazing Act of 1934.⁹

White ranchers and the Navajo police first conducted a count of the sheep. The counting of the sheep was done at the dippings, where a pesticide was used to get rid of fleas on the sheep. When Navajos returned to collect their sheep they were told they could not take their entire flock of

⁹ Taylor Grazing Act of 1934 is a federal law that regulates grazing on federal public land, this law gave the Secretary of Interior the authority to establish grazing districts through approval by the state.

sheep home due to the overgrazing problem. When the Navajo people attempted to get their sheep back, tribal police beat them. Those that did not bring their sheep in for dipping, had their sheep seized at their homes. For those that refused to give up their sheep, their sheep were killed.

Between 1937 and 1940, the government destroyed about 100,000 sheep. After the Navajo lost their sheep, they shifted toward great dependence on the federal government. Navajos started to lose their power and strength. Livestock was the number one source of income on the reservation. With the Navajo economy in decline, Navajos searched for other ways to make money.

Trading posts had replaced the traditional intertribal trade network. Non-Indian traders obtained licenses to trade with the Indians on the reservation. As traders began to bring coffee, sugar, flour and other needs to the reservation, the trading posts doubled in number.

Eventually, trading posts served as a social and economic establishment on the reservation. As whites moved into the west, there was a high demand for handmade Navajo blankets made of wool. To make ends meet the Navajo began making commercial versions of their crafts selling; blankets, wool and jewelry.

As times became even more difficult, the Navajo people pawned their personal jewelry because the traders accepted them in exchange for credit or money at the store. When bills were due, Navajos gave wool, blankets or

lambs to get their jewelry out of pawn. The lambing season then, usually paid bills – at least for the Navajo who owned big flocks of sheep. Those that had no sheep had to turn to wage work.

Around the 1890's, the Navajo people had no reason to look for wage work, because they had large flocks of sheep and prospered. After the sheep reduction program, many of the Navajo people suffered economically. They worked wage labor to meet urgent needs for themselves and their families. The federal government provided a limited number of permanent jobs for the people at the agencies or temporary construction jobs. The railroads employed a larger number of Navajos but did not pay well. Some trading posts hired some Navajos but most could not speak English and could not communicate with the white traders.¹⁰

Peabody

The Navajo people found it difficult to bring themselves out of poverty. They lived in isolated areas on non-irrigable land that no one wanted. It was hard to get, or keep a car, without a job - and without a car, they could not drive to the railroads, trading posts or other job sites. Then a company moved onto the reservation and provided jobs and money for the people but destroyed the land.

¹⁰ Garrick Bailey & Roberta Glenn Bailey, *A History of the Navajos: The Reservation Years* (Santa Fe: NM, 1986)

The Peabody Western Coal Company came onto the Navajo reservation to extract coal. They offered to enter into a lease contract with the Navajo people and Hopi people. The tribes accepted. The tribes signed away a piece of their sovereignty to the company. This became very detrimental culturally to both tribes.

The company mines about eight million tons of coal annually. The coal is crushed, mixed with water, and sent through a slurry pipeline to power the Mohave Generating Station owned and operated by Southern California Edison Company. Through this process, Peabody has pumped 1.3 billion gallons of drinking water from the Navajo Aquifers. This has caused a serious drought on the Navajo reservation for about the past ten years.

Using this method to process coal is peculiar because water on the reservation is scarce. This amounts to indirect genocide and cultural imperialism that has gone unchallenged for years. The water and land is used not only for survival by the Navajo people but for agriculture, livestock, and for ceremonies. The extraction of coal contaminated what is left of the streams and wells and has affected the people's health. Former mine workers have developed black lung disease because of the small amounts of coal dust they have breathed in over many years. Coal continues to be exploited today by this massive, powerful company.

In an article written in the *Gallup Independent* on Thursday November 15, 2007, state representative Tom Udall stated that there was no cancer on

the Navajo reservation before uranium mining. Now there are reports of lung cancer. There is a lot of information that is not known by the Navajos, such as how many are living near abandoned uranium mines. There are 1,300 abandoned uranium mines across the reservation and more and more people are getting sick without realizing it. ¹¹

Water is sacred to the Navajo people. It is a bringer of life. However, years ago some Navajo and Hopi leaders made a mistake by entering into a contract with the world's largest private mining company. It destroyed the land, water, and our people's health. This type of battle continues today in every area of Navajo life.

Welfare of the Navajo People

In 2005, according to the Navajo Nation President Joe Shirley, Jr., the Navajo Nation was at a 90% poverty level. ¹² Many of the people still live without electricity, plumbing and paved roads. The people rely heavily on federal funding, royalties, and taxes. Poverty and low employment has led in part to a climbing crime rate and overpopulated jails, bad health, high school drop out rates, and poor infrastructure of school buildings.

The Navajo Nation has a 50% unemployment rate, according to Roxanne Gorman, Navajo Nation Program for Self-Reliance Department

¹¹ James Brown and James Eychaner, *Simulation of Five Ground-Water Withdrawal Projections for the Black Mesa Area: Navajo and Hopi Indian Reservations* (Tucson: Arizona, 1988)

¹² Senate Indian Affairs Committee on Navajo-Hopi Land Dispute, Washington, DC July 21, 2005.

Manager (NNPSR.)¹³ This program helps Navajo families with financial assistance, offers day care, work-related expenses, educational assistance and pays for training. They currently serve 4,000 families. Their goal is to help them get started in becoming self-reliant and only serves them for five years. However, many families struggle from the necessities of life such as homes and food. Many depend on assistance from either the tribe, state or federal government such as the food stamp program or USDA food distribution program.

According to a report from the Navajo Nation Division of Public Safety, appearing in the *Navajo Times*, crime rates increased from 2006 to 2007. Violent crime increased from 6,594 in 2006 to 8,454 cases reported in 2007. For 2007, these included 19 cases of murders, 328 cases of rapes (resulting in only 17 arrests), 846 cases of child abuse, 8,938 cases of DWI, and 1,089 cases of vehicle break-ins. The Division of Public Safety also noted that a high number of these crimes involved alcohol.¹⁴

The Nation has inadequate facilities to care for criminals. According to the *Gallup Independent*, there are only 59 jail beds on the Navajo reservation and 3 adult detention centers with more than 44,000 arrests each year. The tribe has waited since 1957 for federal funding to build new jails. One jail alone costs approximately 6 million dollars. In 2007, the Bush Administration

¹³ Sararesa Begay-Hopkins, "NNPSR Hosts Visit with US Department of Health and Human Services Regional Directors" *Navajo Nation Office of the Speaker Newsletter* 7 Sept. 2007: 1-4

¹⁴ Bill Donovan, "Alcohol Fuels Crime Increases" *Navajo Times* 3 April. 2008: 1-2

cut \$15 million that Senator Pete Domenici of New Mexico had provided for new jail construction in 2006.¹⁵

Along with alcohol, a lack of education hinders improving the crime rate. In 2006, John Reyhner of Northern Arizona University published a study on Native American education. He found that the rate of all Native American dropouts is twice that of mainstream society due to high absenteeism. Much of this is due to the long trips to and from school, crime and teenage pregnancy.¹⁶

A 2007 article in the *Indian Country Today* stated that, Native Americans have the highest rate of diabetes in the nation. Despite the Nation's best efforts and millions of dollars spent for treatment, the number of Navajos with diabetes has doubled over the past decade including an increase of almost a third within the past five years. As with tuberculosis was a century ago, diabetes is the latest scourge of the Navajo population.¹⁷

For years, the Navajo reservation has suffered severely inadequate housing. According to a 1996 *Seattle Times* article, "Largest Tribe Has Greatest Need," Betty Tso-Yazzie wrote about inspecting a home on the reservation that housed five people. She stated, "It was built out of old railroad ties and half-inch sheets of roofing paper and scrap lumber. It is

¹⁵ Kathy Helms, "Navajo Officials to Feds: We Need More Jails" *Gallup Independent* 2 Oct. 2007: 1-2

¹⁶ Jon Reyhner, "Dropout Nation" *Indian Education Today* Jun. 2006: 28-30.

¹⁷ Rebecca Schubert, "Navajo Nation Promotes Diabetes Awareness" *Indian Country Today* 21 Nov. 2007: 1-3

about 16 feet by 16 feet. The roof was coming off. There was a big hole. You could see daylight coming through. It had a dirt floor. Five people lived there.” President Clinton did give \$24 million for infrastructure and housing but the Navajo reservation still lacks adequate housing up to this new millennia.¹⁸

The struggle continues today. The welfare of the people is dreadful but in spite of this the Navajo people continue to fight colonialism. Old people say that the struggle is a result of the major loss of traditional ways of living. The people’s strength lies in the culture. The Navajo Nation Government strives to implement culture into the governing system but it raises challenges because it is a European style government system.

¹⁸ “Largest Tribe Has Greatest Need” *Seattle Times* 4 Dec. 1998: 1

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CHAPTER TWO HOW CULTURE LEAVES THE NAVAJO

Introduction

Cultural loss is a major issue facing the Navajo people. The studies of Navajo history on the reservation including: the US government boarding school systems, the dreadful social and economic status of Navajo people, the early Navajo trading, and the Navajo Long Walk produce the need for the protection of Navajo culture and sacred items.

Culture is leaving the Navajo people in many ways. There are different ways Navajo culture leaves the reservation: pawning jewelry, rugs, Navajo wedding baskets, paintings, drawings, and sculptures. Indian stores market cedar, Indian tobacco, and other items. Museums display sacred ceremonial paraphernalia or ancestral remains and pow-wows commercialize Indian culture.

It is against Navajo customary law to make a living off Navajo culture. Authentic Navajo jewelry and hand-spun woven rugs can be worth thousands in the European value system. When Navajos sell their sacred items, they lose their consecrated meaning. It is a blessing and responsibility to possess and to care for the Navajo culture for future generations. If Navajo culture becomes non-existent, the people will be gone. The people will lose their Dine identities and teachings of how to live a respectful, prideful, honest life to ensure balanced harmony will be lost as well.

Poverty brings about most cultural loss. There are not many jobs on the reservation and, as a result, the high unemployment rate continues to hit the people. It was not until the late 1980s that the Navajos started commercializing their crafts. From this point on Navajos started to produce “new” items for the white market. This continues today, Navajo crafts, sacred items and pictures are in pawnshops, art galleries, Indian stores, on internet sites, in museums, at pow-wows. Both native and non-native individuals sell them. Sacred items are any paraphernalia used for ceremonial purposes such as Yei Bi Chei masks or Navajo wedding baskets. Traditional items are other cultural items are items not generally used in ceremonies such as pottery. Items that are made for the sale to tourists include paintings or rear view mirror decorators such as dream catchers.

Pawn Shops and Indian Stores

Fur was in high demand when Congress passed the Trade and Intercourse Act in 1790, to control the Indian fur trade.¹⁹ The following year, the government established the Factory System, which required traders to purchase licenses to trade with the Indians. Although, the factory systems were set up to protect Indians from deceitful private traders, the government took advantage of the tribes by forcing tribes to cede their lands in order to have access to the trading post and their goods.

¹⁹ The Trade and Intercourse Act of 1790 is a federal law that regulated commerce between Indian tribes and non-Indians and restricted travel by non-Indians onto Indian land.

The US government thought that if the traders sold goods at a cheap price, the Indians would stay close to the factory and become “civilized.” Instead, the Navajo’s state of self-sufficiency shifted to dependency. This gave the settlers an opportunity to trade with the Navajos on the reservation. The traders and settlers sold basic supplies that the Navajos depended on for survival in exchange for wool and rugs. “Trading posts once thrived because of the isolation of the reservations,” Jeanie Puleston Fleming.²⁰

As a way of doing business, the traders allowed Navajos to obtain goods on credit at the trading posts. There were few jobs available and families had to travel long distances to the trading posts. The traders worked like loan officers providing loans to people. The Navajo people would pawn their valuables such as buckskins, jewelry or Navajo baskets in exchange for money or credit. The Navajo people would use the money or credit for gas or groceries.

Over time, the trading post practices shifted to the more urban areas. People, mostly non-Indians, opened pawnshops to serve a function similar to those served by isolated trading posts. Today the pawn system works like an inexpensive loan with low interests rates over an extended repayment period. For example, if a Navajo squash blossom is worth \$1500, the owner can pawn a necklace for a minimum of \$20 or a maximum of \$500. The owner takes out only the amount he or she needs. The item would stay in the store

²⁰ Jeanie Puleston Fleming, “Fair Trades in Gallup,” *Sunset* 1 Oct. 1998: 40.

and the owner pays monthly interest on the money borrowed. As long as the owner either keeps up with the monthly payments, or repays the money borrowed in full, the items are considered “live pawn.” If the owner skips several months, or abandons payments, the item goes, “dead pawn” and the pawn shop owner can sell it for as high price as possible.²¹ It is important to understand the history of the early trading between Navajo people and Europeans because it partly assisted in the initial establishments of pawnshops on Navajo lands. After the 1900s, the number of trading posts increased, as did the value of Indian made goods. Navajo crafts such as rugs and turquoise jewelry became very valuable.²²

²¹ Caitlin O’Neil, “Life on the Reservation,” *The Navajo Yesterday and Today* 7 Oct. 2003: 1

²² Leo W. Banks, “Navajo Rugs,” *Arizona Highways* 2 Aug. 2004: 42-43.



Turquoise Squash Blossom

Pawnshops have contributed to the loss of Navajo culture through the sale of sacred items left as pawn. Hundreds of pieces of turquoise jewelry, Navajo baskets, buckskins, and hand woven rugs sit in pawnshops all over the reservation. When items go dead pawn, tourists purchase them for top

dollar. Tourism is a top economic generator on the Navajo reservation and keeps businesses alive.

An estimated, 35 pawnshops are located in and near my hometown of Gallup, New Mexico.²³ These pawnshops have become historically and widely known for “Indian trading.” The owners of the pawnshops are typically non-Indians who make their living by profiting off Navajo culture. They maneuver Navajo people’s perception of pride in their culture by advertising pawnshops as a tribute to Navajo heritage. For example, Ellis Tanner Trading sponsors an annual celebration entitled, “Native American Appreciation Day.” At this event, traditional song and dances take place and vendors come to sell Indian food and jewelry. In the middle of the celebrating, the owner who is non-Navajo, Ellis Tanner, makes an appearance to the Navajo crowd. He wears traditional Navajo attire and speaks about how he feels honored to serve the Navajo people.

The whole perception of honoring Navajo culture is misleading. For example, the Ellis Tanner Trading Company billboards depict non-Navajos wearing Navajo traditional attire which goes against Navajo custom. Navajos wear traditional attire only in ceremonies because of the spiritual meanings within them.

²³ *Gallup Yellow Pages* (Gallup, NM, 2008)

The Ellis Tanner website states that the company is a “modern-day old fashioned trading post.”²⁴ Its mission is to serve Navajo people as a place where people can pawn for cash, buy or sell jewelry, lambs, pinion nuts, wool and rugs. It also provides a general store for people to purchase groceries and has tax preparation services. The company’s philosophy begins with the story that Ellis Tanner’s great-grandfather helped settle the area, forming friendships between the Tanner family and the first Navajo political leaders. In the early days, most Americans and settlers spoke to Navajos they saw that had some sort of credibility or authority and did not make decision with the whole tribe.

The Navajo people have been pawning with the same traders for generations. Some traders became concerned for their Navajo neighbors and it surpassed the necessity of a purely business relationship and as a result, they established friendships with each other. They needed each other.

Navajos continue to pawn, buy and trade their crafts today. Some pawnshops have also become historic sites that bring people and money to the area. Nevertheless, there were other traders who took advantage of the Navajo to generate profit. Some Navajo people even help them take advantage mainly due to alcoholism.

Indian stores, whether owned by non-Indian or Indians, work much like pawnshops. Navajos bring in Indian items for money or trade and the store

²⁴ Ellis Tanner Trading Company, “Honesty and Reputation in Native American Art” 23 Apr. 2003, 5 Feb. 2008 www.etanner.com.

sells them. These stores are open to the public so anyone can purchase these Indian goods and paraphernalia. Some of these stores, however, sell items that are sacred such as Indian tobacco, turquoise jewelry, cedar, and ceremonial paraphernalia. This abandons proper use of sacred items. Ceremonial items have specific purposes and some may only be touched or handled by authorized or initiated tribal members of ceremonies, such as the Yei-Bi-Chei mask for the Yei-Bi-Chei ceremony. This gives non-Natives and unauthorized individuals the ability to purchase and own the items, not meant for commercial sale or private ownership. Again, according to old people, the authenticity and power stray away from the items once this happens.

An additional loss comes from storeowners on the Navajo reservation that has recording studios and record Indians singing ceremonial songs for distribution or sale on commercial CDs. These are distributed and sold. Old people taught me that ceremonial songs are not to be recorded or made a living off. This is especially true of healing ceremonial songs. Navajos sing ceremonial songs at certain times for specific purposes because of their meanings. Some songs can only be sung in the winter for instance. Some ceremonial songs belong to families or clans that can only be sung by them. There are also songs that only spiritual leaders can sing. If people lack this knowledge, they may sing songs without permission or at wrong times, according to tradition.

Indian stores sell other items such as clothing with native designs, robes, and women's shawls. The sale of these items for profit, whether to Indians or non-Indians, ignores the traditional Navajo way of giving these items as honorariums. Most individuals with great artistic talent in drawing unique native designs for t-shirts sell them but the profit generated are not used to help Navajo people as whole. Traditionally, Navajo people have responsibilities to care for each other; Navajos over look traditional teachings once again.

Art Galleries and the Internet

In Navajo culture, paintings or drawings have the same meaning as photographing which is prohibited in Navajo culture, specifically images pertaining to ceremonies or sacred items. Ceremonies or sacred items such as dancers in the Yei Bi Chei ceremony are not to be drawn or painted. Old people say that taking photos during ceremonies takes the efficacy away from ceremonies. It chases away the good spirits and the ceremony does not complete. If the ceremony is not completed the sick person does not heal. Therefore, traditional law prohibits paintings and drawings that pertain to Navajo ceremonies.

This leads to other problems; outsiders may become inspired to paint and draw Navajo ceremonies and may depict Navajo culture incorrectly. This will mean to the Navajo creators that the artists are mimicking or poking fun of the good spirits and may cause the power that heals to vanish. Additionally,

the profits that the artist realizes are rarely shared fairly with the Indigenous people, whose culture or objects helped to create the artwork. However, western law fails to recognize that the culture, Navajo sacred items and images belong to the Navajo people, clans, families or communities.

The protection of intellectual property rights is in the integration of traditional ceremonies into contemporary artwork by Indians and non-Indians. Competition exists between some Indian and non-Indians. If paintings or drawings are original artwork, then their work will be protected under copyright acts in western law.²⁵

When Indians perpetrate their own stereotypes, by drawing or painting their own ceremonies or sacred items, we give others permission to do it. This leads to stereotypical advertisement. Outsiders discriminate against Indians by portraying them as savages or backward in society. They mock Indians because our religion or language is different. Canada is the only country to extend a formal apology for stereotypical advertisements of Indians.²⁶ They admitted the advertisements were insensitive and inappropriate. The US, however, consistently allows degrading commercial images of Indians such as the Washington Redskins and Cleveland Indians mascots. Indians see their resources traded in market economies, which increases the number of the Indian population that gets involved.

²⁵ James S. Anaya, *Indigenous Peoples: International and Municipal Law* (Burlington: VT, 2003)

²⁶ Marie Battiste and James Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage* (Saskatoon, Saskatchewan: Canada, 2000) 167

Artists have great talent. There are many other things can be drawn or painted. Drawings or paintings of Navajo ceremonies are not creative artwork invented by artists but rather pictures of sacred rituals and/or sacred items.

The internet also serves as a means to perpetuate Indian stereotypes. Selling sacred Navajo items on EBay give the world access to Navajo sacred items. Tribes have been fighting for 500 years to protect their sacred sites, lands, and culture. When native people sell sacred objects or ceremonial paraphernalia or depict sacred images on the internet or in stores, this diminishes tribal struggles to protect their sacred sites and heritage. It is against tribal ways to destroy or exploit sacred sites or shrines. On the parallel, Indians that exploit the sacred on the internet, also violate traditional teachings. This takes the logic out of the struggle of fighting to protect our sacred homelands when sacred items are exploited on EBay.

Additionally, Indians create and operate their own native websites that promote ceremonial paraphernalia. The sincerity in our Indian ways might be viewed as a hoax if we continue at this rate of perpetuating our own stereotypes and avoiding the old people's teachings. As Vine Deloria, Jr. stated it is not that Indians designated things to be sacred, it came out of the hundreds of years of experience.

Our elders did not make up the teachings and traditions. It came from the very beginning of creation and needs to continue. The internet can be a detrimental tool in destroying Indian culture. Tribes are constantly trying to

reclaim sacred items from museums, private hands and, powerful institutions but they are for sale on EBay.

Museums

For years, museums have had displayed Indian human remains and sacred ceremonial objects that were dug up from unmarked Indian cemeteries and graves without tribal consent. Museums hung ancient sacred artifacts from the walls of the museums or displayed in glass cases with incorrect descriptions. This displayed disrespect to Indian people. For years, Indians attempted to reclaim their items back.

After years of lobbying by tribes, Congress signed the Native American Graves Protection and Repatriation Act (NAGPRA), into law.²⁷ Some of these items have been used by our grandfathers grandfather's for many generations and are not replaceable. So once the spiritual nature leaves it will not return. This is the reason our old people teach us to hold them with the utmost care and respect.

Outsiders such as researchers, hobbyists, collectors or anthropologists have collected and studied human remains for years. In 1998, the Museum of Natural History in Mesa, Arizona had two Yei Bi Chei masks donated by private individuals. The Navajo people consider these masks highly sacred. A notice under NAGPRA was sent to repatriate the items from the museum.

²⁷ The Native American Graves Protection and Repatriation Act of 1990 is a US federal law that requires federal agencies and institutions that get federal funds to return Native American cultural items to tribes.

The Navajo officials stated that the items have ongoing historical, traditional, and cultural importance that is central to the culture itself. The museum admitted that the cultural items did have a relationship with the Navajos and the items were returned.²⁸ Although NAGPRA forced the museum to return the masks there are still hundreds to thousands of items that are considered to have a spiritual nature within them that are still in the hands of private and state ownership.

Pow-Wows

Today pow-wows are an intertribal social gathering where dancing and singing takes place. In the past, pow-wows were gatherings of Indians who experienced genocide during the federal Indian policies of extermination and assimilation that yearned to re-live their traditional ways of life. Different tribes would gather to sing and dance to try to bring back the old ways and this began to heal and lift their spirits.

Visitors came to these pow-wows and began to take photos of the dances. Eventually they began to pay the Indians to put on performances such as Buffalo Bill's "Wild West Show."²⁹ Today, pow-wows attempt to honor Native American heritage by serving as a means to continue tradition.

²⁸ National NAGPRA Online Databases, "Notice of Intent to Repatriate," *National Park Service US Department of Interior* 2 Feb. 1998, 6 Jan. 2008
<http://nps.gov/history/nagpra/fed_notices.html.

²⁹ The Wild West Show consisted of shows where skills of showmanship or sharp shooting would serve to entertain, when Native Americans played the part in attacking the whites and Buffalo Bill would come in and save the day.

Dancing at pow-wows, however, consist mainly of competitions for prize money, which not a part of the Indian way of life.



At many pow-wows today there are vendors that sell artwork or crafts. Navajos became know for selling their handmade turquoise silver jewelry. Eventually, others began to make silver jewelry with imitation turquoise or because of admiration or inspiration.

For instance, Trisha Waldron who is a non-Indian and is inspired by her familiarity with native culture, designs jewelry with American Indian themes and symbols. The Waldron cooperation markets a line of jewelry called the "Circle of Nations." The corporation advertises the jewelry under names such as "Navajo" or "Crow" and sold with tags that give facts about each tribe.³⁰

³⁰ Trisha Waldron, "Welcome to the World of Trisha Waldron"1 Apr. 2008 <trishawaldrondesigns.com>

The Indian Arts and Crafts Act of 1990 (IACA), forbids selling Indian goods that are sold that falsely suggest that it is “Indian made.”³¹ The Native American, INC. brought suit against the Waldron Corporation in federal district court in 2004. The jury concluded that the Waldron Corporation did not violate IACA because Trisha Waldron, the designer, is not claiming she is an American Indian in her advertisements and the corporation continues to sell their products.

No matter where – through pawnshops, Indian stores, internet, or pow-wow individuals sell sacred items to others for money, this violates the traditional way of giving. In the old ways, giving was to show appreciation, to celebrate, to mourn or to encourage. Designs belonged to families or clans. Poverty and capitalism forced Indian people to look for different ways to make money. Money, assets, and wealth surround life today and these things have caused Navajo teachings to lose importance.

³¹ Indians Arts and Crafts Act of 1990 is a federal law that prohibits misrepresentation in marketing Indian arts and crafts in the US, violations can result in civil or criminal penalties.

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CHAPTER THREE CONFLICTS IN OWNERSHIP

Introduction: Navajo Cultural Teachings

When a special gift is given, one cherishes it. The Navajo people were given the gifts of life and a culture by their creators. The people's responsibility is to care for and protect these gifts. The Navajo culture provides for a system of balanced harmony called "hozho." Spiritual teachings order the Navajo culture, which is rich and complex. Hozho teaches the Navajo people through traditions and customs how to survive and be thankful, peaceful healthy, efficient and resourceful in the world.

To the Navajo, all of life is spiritual, including many items that Western society considers only as objects or commodities to be bought, sold or traded. Navajo teachings say that the items were created for them to possess a beautiful culture, to remind them of the gift of life and to receive blessings. Because of the meaning and spirituality that they carry within them, the Navajo people must preserve and protect these sacred objects.

Navajo Cosmology

Divine spirits lay the core foundation for the creation and survival of the Navajo people and their culture. These spirits are called, "Dyin Dine" or Navajo Holy People. They created a pattern of life for the Navajo people. Today this pattern of life thrives in the oral stories, such as the Navajo creation story and the teachings of how to maintain a balanced life of harmony or "hozho."

The earth is a Navajo deity that represents the mother of the Navajo people. She cares for the people by providing land, water, air and nature for human survival. Navajos show respect for her as they would for their own biological mothers. Similarly, as own cannot “own” his or her mother, nor can the Navajo people “own” their Creator or Mother. Navajo culture, as a result, has no concept of or word for “own” only “Eii shi” which is translated into “its me” for claiming ownership. Instead of individual private ownership, Navajo concept of ownership is a collaboration of rights with responsibilities. Life and all its creations are set only for the Navajo people to use, not to own. This is the basis of Navajo customary law.

According to Navajo customary law, all things belong to clans. The clan system establishes relatives, kinships and how relatives should interact, such as whom may marry, how relatives behave toward one another, and preventing incest. Dyin Dine distinguishes who people are through the clan system. Every Navajo individual belongs to four clans which are their mother’s, father’s, grandfather’s and grandmother’s clans. Each clan holds different traits; for instance, some are warriors, leaders, and healers. Each clan also carries the responsibilities to fulfill their characteristics. For example, Mother Earth designated certain areas of land for each clan to use. In return, clan members must care and use the land properly.

The first man was created out of white corn and minerals of turquoise.
The first woman was created out of yellow corn and minerals of abalone.

Navajo men represent turquoise and therefore, use it for offerings to return whatever he used. For example, if a deer was killed for food, it was returned to Mother Earth with a piece of turquoise along with a prayer. Therefore a circle circulates around the relationships between the Navajo people and their environment.³² In the Navajo Creation Story, humans were created out of sacred minerals from nature. For this reason Navajos maintain a good relationship with their environment because it is essential for their survival.

Before the Navajo people, there were three underworlds. Events took place in these worlds that shaped the Fourth World, where Navajos currently exist. Before the Fourth World, the forces of life were created: Mother Earth, Father Sky, fire and water, the four holy components of life.

The environment, animals, spirits, and the forces of nature are central to Navajo culture. This collective belief in natural and spiritual elements, which generations have handed down orally, is a part of communities, families and clans. According to Navajo customary law this belief cannot be written down. It is not a religion, folklore, myth or legend but rather a way of life.

Good Spirits and their power are in the air, water and nature. Ceremonial paraphernalia is made out of nature and provides a piece of the good Spirit's healing power. This helps strengthen of the Navajo people

³² Wilson Aronilth Jr. *Foundation of Navajo Culture* (Navajoland: USA, 1991)

mentally, physically, emotionally, and intellectually. Therefore, ceremonies and dances need to be continued, the songs need to be sung and the language needs to be spoken. If the culture is not continued, the culture will die out and the good Spirits will leave. This means that the Navajo people will no longer exist.

Because Europeans and Americans did not understand indigenous thought and the complexity and sophistication contained in their stories they referred to them as folklore, legend or myth. Today there are more acceptances and understandings of what indigenous knowledge has to teach, but certain elements remain difficult for western culture to grasp.

Navajo Traditional Laws of Ownership

An examination of the difference between Navajo and western customs, laws, and practices reveals how each culture conceived of ownership and property.

Navajo traditional law gives each clan the responsibility for determining ownership and the inheritance of sacred items. Healers, because of their knowledge of the spiritual meanings within them, are responsible for keeping and caring for sacred items. Otherwise, Navajo sacred items can slip away to other clan members or to non-Navajos.

The Navajo people have stories and teachings that for explain why our elders tell us to do things and tell us not to do things. Many of these teachings are beginning to diminish because most children do not listen to the

elders anymore. Technology has replaced the storytelling and children are not learning the old ways, and as a result, the people are losing their strength.

Sacred Items

Traditional Navajo attire, Weaving and Turquoise

The Navajo regard their traditional attire and jewelry as sacred. The traditional attire symbolizes the sacred forces within nature and identifies the people as Navajo. Jewelry, made from sacred elements found in the earth, represent protection.

The traditional Navajo dress is carefully woven from hand spun sheep wool. Weaving is a Navajo tradition that has been taught to generations after generations with stories that tell of its spiritual nature. The Navajo marriage dress is worn in the Navajo wedding ceremony for the woman to respectfully represent herself as a Navajo woman, to the Dyin Dine.

The Navajo wedding ceremony takes place in the female Hogan called, "Naan, Se' dyinii H'og'an" meaning, "sacred plant or log home." Traditionally, the man and his family will travel to the woman's home where the wedding will take place. They bring blankets, rugs, baskets, jewelry, horses, sheep and cattle to give to her family. This is to honor the woman's family for allowing him to marry her. This ceremony traditionally taught Navajos ways to give honor.

The designs woven onto the dress represent the four sacred directions. Weaving was learned from Spider Woman, a Navajo deity who

wove the first rug. Spider Woman was first discovered by the hero twins who were fighting off the enemy monsters that were killing the Navajo people. In the Creation Story, they heard her singing and weaving. She blessed the people with the ability to weave creative designs without measuring devices or specific instructions. Old people say when we see a spider we remember Spider Woman. Navajo weavers today weave rugs with designs they think of and do not need special training; it lies in the spirit of Spider Woman.³³

The foot gear are red moccasins that resemble the earth. The wrap represents the clouds and the moccasin wrap ties symbolize the sun beam and the lighting beam. The hair tie represents the sun rays and knowledge. This strengthens our mental and intellectual abilities. When the moccasins or hair tie are worn the wrong way or by the wrong person, the spirits go away. Old people tell us to keep our own hair tie and moccasins.

Turquoise jewelry is worn to keep her connected with the good Spirits. In the old days Navajos took pride in its possession and wore it for protection against any unforeseen events or misfortunes. It was seen to insure success in hunts and protection in battles.

³³ Spider Woman, in the Navajo Creation Story, used her supernatural powers to send the Hero Twins, Monster-Slayer and Child-Born-Of-Water in search for their father, the Sun, who showed the Twins how to kill the monsters who were killing off the Navajo people.

Sacred Items in Ceremonies

Ceremonies help Navajo people restore health or bring good blessings. Sacred items contribute to positive outcomes of ceremonies. Individuals are authorized to become medicine people, healers or dancers that use sacred items for ceremonies. They are chosen for the characteristics they showed such as humility and being strong, honest and compassionate. When they got this power, it was handed down to younger members of their clan who were born with this authorization. This established communal ownership of sacred items. These do not belong to individuals to own privately.

For example, the Yei Bi Chei healing ceremony is also known as the “Night Way Ceremony.” It takes place only during the winter and could go on for many days until the patient is healed. The ceremony symbolizes two Dine spirits, Talking God and Hasjeowon. These two gods are the most important Navajo deities with the power to heal. Talking God is the maternal grandfather of all the deities. He is very kindhearted and is in charge of earth and wealth and is the leader of the Yei Bi Chei ceremony. A man represents him in the ceremony and dances. He wears a robe and a mask of white buckskin. Around the eye and mouth are lines that represent mist from the ground with a rain cloud above it. Also, a cornstalk symbol goes from the mouth upward and a color of yellow sits over his chin for the evening sun

crossed with lines representing rain. This representation comes from four sacred elements in life: water, fire, air and earth.

The man representing Talking God has a very special part in assisting the patient to become well. Some of the items utilized are the robe, mask, rattles, moccasins, paint, songs and feathers. Man, nature and the spirits work together to heal and restore harmony in the people. Traditionally, the men who dance come from a clan line authorized to sing the songs and use the sacred items of the Yei Bi Chei ceremony. Learning these ways can take years.

Western Law Concepts of Ownership

No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without justification.

Fifth Amendment to the US Constitution³⁴

Historically, when people owned property, it meant they were wealthy and had good social and political standing. This gave them power. But today property is earned or inherited. What you have built, created or purchased is yours.

According to John Locke, an English political theorist, the right to own private property derived from natural law. Even prior to the establishment of the American government, Locke argued that the purpose of government was to protect property rights. His theories of property rights were used when

³⁴ US Constitution, 5th Amendment Bill of Rights

writing the constitution. His ideas furthered the notion that without rights to property, no other liberties can exist and people create government to protect their lives, liberty and estates which is their property.³⁵

Conflicts over Ownership

When western laws or concepts of property are applied to Navajo societies it generates predicaments. For example, under western law if a married Navajo couple's spouse dies and the man remarries, the new wife obtains rights on the property and/or land. Because she is married to him she has legal rights to sell, trade or give the land or property away, regardless if it is viewed as sacred or not.

When traditions are not followed, sacred items are not used correctly and songs are not sung at appropriate times by authorized individuals. When tribal members ask for sacred items without the traditional knowledge or authorization to use them, this creates conflict between traditionalists and modern aged people in families or clans. The traditionalists argue that the rightful inheritors, according to traditional law - should possess the sacred items while others argue they have obtained rights of ownership by purchasing the items or by other means.

For example, on March 20, 2008 an article appeared in the *Navajo Times* about seven adult children fighting over cattle, money, and jewelry said to be on their dead parents inside the coffins and ended up in the Navajo

³⁵ John W. Yolton, *John Locke and the Way of Ideas* (London, 1956)

Family District Court. Navajo customary law forbids digging up people for it brings their spirits back and they haunt the living and cause illness or another death.

Four children want the bodies left alone because the only reason to dig up the bodies is because of greed. The other three do not believe that the jewelry was really buried with their parents and believe the four possess the jewelry and this is the reason they want to dig the bodies up; to see if its there.

Yellowhair is presiding over this case and heard testimonies from a traditional Navajo medicine man and a Christian minister who are both Navajo on whether he should allow the bodies to be dug up. Bennie Silversmith has been a member of the Dine Haatali Association for 38 years and stated that Navajo law prohibits the bodies being dug up.

The Navajo Christian minister Reverend Bobby Boyd stated that nothing will happen if the bodies are dug up, as long as everyone is Christian. He did suggest however that it is better to leave the bodies alone and try to work out family problems because family is more valuable than jewelry.

This type of conflict is common between religious organizations and our own traditions. I think the decision in this case will be controversial in most Navajo's lives. Our identities as Navajo people and our teachings are put to the side or replaced. Tribal teachings instruct that sacred items such as jewelry are to be treated with the utmost respect because of the deep

spiritual meanings they represent. This means that these sacred items should never be sold, exploited, or warged for any reason. They are blessed.

In spite of the appalling native and European histories, Navajo culture has survived and is being revitalized today. The strength of the Navajo Nation lies within its culture. To revitalize the culture is to revitalize the people's strength. The Navajo people live in a world that presents challenges to carrying on the Navajo way of life. To attempt to successfully live simultaneously in the Navajo world and the dominant world, mutual understandings have to take place.

Our grandmothers and grandfathers tell us that it is not Indian way to be mean or greedy. The good Spirit lies in us and all around us. They teach us to be respectful toward our Mother Earth and all of our surroundings, including people. They realize that we live in a world of clashes but we need to learn how to live in this world together. If we do our part then we are living according to Dyin Dine. This is the reason they tell us never to forget who we are as Navajo people. It is important to remember the old people's teachings, not just for ourselves but for the future generations. They need the land, ceremonies and languages too.

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CHAPTER IV PROPOSED CODES

Introduction

Many Europeans regarded the Indigenous people of North American as lawless savages. The Americans, after the establishment of their new nation on Indian lands, propagated the vanishing race theory and enacted policies designed to culturally, if not physically, accomplish genocide. Today, states and corporations continue the process of colonization, calling it globalization.

Despite the Navajos' last 500 years of history and the current changes occurring around the globe today, the Navajo people have survived. They have survived by retaining and preserving their traditional culture and knowledge often in the face of overwhelming odds. Today the Navajo people fight to define who they are as indigenous people and articulate their rights to self-determination.³⁶

As mentioned in Chapter Three, after years of lobbying efforts, tribes in 1990 succeeded in obtaining passage of the Native American Graves

³⁶ The Save the Peaks coalition is a grassroots organization that deals directly with the United States Forest Service and the City of Flagstaff, Arizona. They deal with legal issues and advocate for the respect and protection of sacred sites. The coalition was formed in 2002 when the Coconino National Forest wanted to use 180 million gallons of wastewater to build the Arizona Snowbowl Ski Resort on the San Francisco Peaks. The San Francisco Peaks is one of the Navajo people's sacred mountains, including other tribes around the Flagstaff area. The establishment of this ski resort would cause detrimental destruction to the Navajo culture by a depletion of water resources, destruction of sacred sites and habitat destruction. Colonization continues today in newly different areas such as arts and sciences.

Protection and Repatriation Act (NAGPRA). NAGPRA provides a process for museums and Federal agencies to return certain native cultural items such as human remains, funerary objects, to culturally affiliated tribes and organizations. NAGPRA has provisions for unclaimed and unidentifiable items and penalties for noncompliance or illegal trafficking. NAGPRA also authorizes Federal grants to tribes or organizations and museums to help with the documentation and repatriation of native cultural items and the review board facilitates the resolution disputes.

NAGPRA, while representing a huge step forward, has several shortcomings. The law applies to federally recognized tribes. State recognized and non-federally recognized tribes are not covered. The law is enforceable only against museums and institutions that receive federal funding. Remains and sacred objects held in private museums and private hands are not required to return these items.

NAGPRA and similarly enacted state laws apply only to certain defined items. US copyright and patent laws are wholly inadequate to the protection of traditional knowledge, especially communally owned knowledge. Efforts to protect cultural and traditional knowledge are occurring at the international level. For the last two decades, groups and/or organizations have come together to acknowledge basic indigenous human rights. For example the Working Group on Intellectual Property Rights has created a strategy for the use and protection of traditional knowledge. The United Nations Declaration

on Indigenous Rights is a stepping-stone for the acknowledgment of the protection of indigenous people's rights and cultures.

Current Navajo Programs to Preserve Culture

The Navajo Nation is a sovereign nation and has the inherent right and responsibility to care and protect Navajo culture for the future generations. Towards this end the Navajo Nation has programs and emerging programs that provide ways to preserve Navajo culture. Outside entities such as universities also contribute to the preservation of Navajo culture. These projects include different areas such as the revitalization of language, protection of sacred sites and apprenticeship projects.

The Navajo language is essential to Navajo life, the culture, and the identity of the people. The immersion schools on the reservation teach and communicate with the students in the Navajo language. The students learn to read and write in the Navajo language half of the day, spending the other half learning English. In Leupp, Arizona, the Flagstaff Unified School District conducted research to determine the number of students who spoke Navajo. The test results showed that only 10% spoke Navajo. With the support of the parents, the school opted to establish a bilingual program. This created a snowball affect and the combination of the support of parents, communities and tribal officials raised the awareness of the importance of revitalizing the Navajo language.

The Navajo Traditional Apprenticeship Project teaches individuals young or old, to conduct ceremonies. This can take many years to a lifetime to learn. Medicine people or healers have done many good things for Navajo people over the years. Old people say that our people's health and social problems is a result of the loss of the people's strength. The strength lies in the culture. Therefore, the culture needs to stay alive by practicing ceremonies. To conduct ceremonies the usage of sacred items is required a need that lies at, the heart of this thesis. Old people authorize young people to use sacred items for ceremonies and not for anything else.

To an extent, the Navajo culture allows the sale of certain tribal items but only those that do not have spiritual nature. Traditionally if sacred items are misused, the spiritual nature will go away. This will cause traditional Navajo ceremonies to become lost and it may become difficult for Navajos to find other effective remedies to cure illnesses or to re-gain emotional, physical or mental strength. The remainder of the chapter offers a proposed code designed to assist the Navajo people in preserving these spiritual items.

Proposed Code

For the purposes of this thesis, the Division of Sacred Items with the Sacred Items committee is a Standing Committee that is overlooked by the Navajo Nation Tribal Council, which this code is sanctioned under. Navajo traditional law is the foundation of this code.

Navajo Nation Sacred Items Protection Code

Section 1: Definition of Terms

Sacred Items - Ceremonial objects and/or any other object/s that is considered to have spiritual nature

Medicine Men – “Hataali” Individuals who are traditionally authorized and/or initiated through birth or clan right or through the Navajo Traditional Apprenticeship Program to conduct ceremonies

Traditional Law – The long-established Navajo law that includes the traditional government all around them including sovereignty, legal authority, and governmental structure as conceived by the Navajo people

Section 2: General Provisions

201 Purpose and Authority

In order to protect Navajo way of life by management and preservation of sacred items of the Navajo people a code will be ratified to secure just and equitable usage of sacred items and to provide for the exercise of the inherent sovereign powers of the Navajo Nation.

Section 3: Collection of Information

301 Collection of Information

The collection of Information will be carried out by the NAGPRA Committee and will be inserted into the Sacred Items Navajo Nation Database; this will include the description of the sacred items and the names of their owners

Section 4: Establishment of Committee

401 Sacred Items Committee

The established committee will be called the Navajo Nation Sacred Items Committee and will be under the Navajo Nation Office of Dine Culture, Language, and Community. This Committee will:

- (a) Contain eight members who will serve for four consecutive years with the option of being re-elected;
- (b) Appointed by the 119 Peacemakers court judges that serve the Navajo Nation
- (c) Two will be from the Hataali Association, four will be elders, and two will be Peacemaker judges; who can volunteer themselves or appoint other judges.

Section 5: Responsibilities of the Sacred Items Committee

501 Responsibilities of the Committee

The committee will be responsible:

- (a) To establish a Registry for Navajo sacred items, a NAGPRA Committee, Dispute Resolution Committee and a Grant Writing Committee
- (b) May publish guidelines where or when they deem necessary
- (c) Will appoint people to serve on the NAGPRA Committee
- (d) Will appoint people to serve on the Dispute Resolution Committee
- (e) Will appoint people to serve on the Grant Writing Committee

Section 6: Establishment of Registries

601 Purpose of Navajo Nation Registry

The Navajo Nation Registry will:

- (a) include ceremonial objects and objects considered to have spiritual nature held by families or anything else they deem sacred
- (b) A provision of the registry will be located at all 110 Chapter Houses in each agency with the headquarters located in Window Rock, Arizona under the Navajo Nation Office of Dine Culture, Language, and Community

602 Who Registry is intended for

This registry is intended for individuals or families of the Navajo Nation for the purposes of protecting and preserving sacred items for future usage of rightful inheritors; by registering their items they must follow and abide by the tribal law

Section 7: NAGPRA Committee Responsibilities

701 Responsibilities of the NAGPRA Committee

The committee will be responsible:

- (a) to collect, organize and catalog information from outside entities, public or private such as museums that may hold Navajo sacred items and give information to the Sacred Items Committee

Section 8: Dispute Resolution Committee Responsibilities

801 The committee will be responsible:

- (a) to be mediators for disputes that occurs among Navajos

Section 9: Grant Writing Committee Responsibilities

901 The committee will be responsible:

- (a) to work closely with the NAGPRA committee
- (b) to write grants for purposes of purchasing back sacred items to the Navajo Nation from states or private hands or other locations off the Navajo reservation

Section 10: Dispute Resolution

1001 Dispute resolution process

Upon usage disputes over certain sacred items that occurs between families or Individuals the Dispute Resolution committee will chose three people from the Sacred Items Committee to form a mediation committee that will be a mediator between the opposing parties in the Peacemakers court

1002 Usage

Upon all other circumstances such as a dispute over sacred items usage, the Sacred Items committee may publish usage guidelines depending on what the sacred item is and what it is used for

Section 11: Prohibited Acts

1101 Requirements

Inheritors must follow traditional law

- Sacred items cannot be sold, pawned or traded
- Western laws will not apply to sacred items

1102 Violations

The penalty for violations will result in the parties involved to attend classes on the meaning and purpose of sacred items at Dine College

Section 12: Liaison with other Tribal Agencies Organizations

1201 Tribal agencies and Organizations

The Sacred Items Committee will work with different tribal agencies or organizations such as the National Association of Tribal Historic Preservation

Officers who assist in:

- (a) Implementing federal and tribal preservation laws
- (b) Advocate and lobby congress
- (c) Rejuvenate cultural traditions and practices of tribal

CONCLUSION

“What is wrong with America today is a rights society, rather than a responsibility society.” Vine Deloria Jr.

At the time of first contact Indian and Eurocentric worldviews collided and never came together. This disrespect is shown by the treatment Indians receive such as the extraction of natural resources, the destruction of sacred sites and no compensation or acknowledgement in the use of indigenous knowledge. In spite of their human rights violations, Indians continue to make efforts to hold onto their Indian ways of life.

Strength lies within cultural beliefs and is vital in keeping the people strong spiritually, mentally, physically, and most importantly intellectually. The land, our mother, was never intended to be taken advantage of, sacred items were never meant to be sold or exploited, animals do not exist to be killed for trophies. They all contain a good spirit and power that is a mystery beyond human intelligence. This way of understanding is difficult for westerners to understand. Rather than being responsible and respectful toward Mother Earth, they claim the “right” to mine sacred lands or climb sacred mountains.

Where would Navajo people be if they did not have their culture or language? How would Navajo people identify themselves? Being a Navajo carries the responsibilities to practice, transmit and pass on the old ways. It is a way of life and our identity. The Navajo people struggled to maintain the

Navajo ways of life and some even gave up their lives for it to continue. We know this because they tell us. They practiced ceremonies and spoke the language in secret. If they did not, they were prosecuted. They shed tears as they share with us their hopes and concerns for the Navajo way of life to continue and never die out.

Old people taught me that our people's mental, physical and spiritual strength lay within the culture. This is the reason the culture is important and must continue. We do this by speaking the language and practicing ceremonies, customs and traditions. Therefore, we need to keep our items and places we use for ceremonies, sacred. Ceremonies provide a way to help maintain good mental, physical and spiritual strength and using them for personal gain is not keeping them sacred. When we commercialize our ceremonies, we destroy its spiritual nature. We have responsibilities to protect our culture and language for the future Navajo Nation.

However, a gap lies in a generation that did not get the opportunity to learn the Navajo way of life. The culture did not continue because they felt ashamed of their identity for a long period. They were discriminated against for being Indian. They tell stories of how their "half breed" relatives got better treatment at stores and restaurants. They received strength that helped them through their obstacles by practicing the ceremonies that restored their strength. It is because of our elder's efforts that we still can maintain our culture today. They do not tell us not tell us these stories for no reason. They

do not tell us to continue to live the Navajo way of life for no reason. If it were not important, our elders would not say anything at all.

The strongest teaching from our elders is to continue our ways of life through practicing our traditions. We cannot let go of what they struggled to keep for us. We may not practice the culture the exact same way our ancestors did, but we need to do our best. We encounter challenges by living in two worlds. Nevertheless, our elders also tell us to get a mainstream education because it is essential to live effectively in both worlds. This thesis is to serve as a different method of passing on the old people's teaching of continuing our ways of life by integrating it with a mainstream education.

Our old people's teachings are instructions from the Dyin Dine to demonstrate to the Navajo people how to live good lives so we can receive good blessings from them such as good health and prosperity. The Dyin Dine show themselves in different forms today, such as the dawn, twilight, thunder and clouds, changing seasons or snow or rain; sometimes you can see them and sometimes you cannot. The Dyin Dine continues to give blessings everyday. In turn, Navajo people should show appreciation and respect toward their creators by following tradition and customs.