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# **SHE SAVES US FROM MONSTERS: THE NAVAJO CREATION STORY AND MODERN TRIBAL JUSTICE**

Heidi J. Todacheene\*

*After we get back to our country it will brighten up again and the Navajos will be as happy as the land, black clouds will rise and there will be plenty of rain.*

–Barboncito, 1868

## **Introduction**

Traditional Navajos believe the *Diné Bahane*<sup>1</sup> or the “Navajo creation story” and journey narrative was given to the Navajo people by the Holy Beings. Changing Woman is the Holy Being that created the four original clans of the Navajo and saved humans from the monsters that were destroying the earth. The Navajo tribe is matrilineal because Changing Woman created the clan system in the creation story. This means all Navajo people can trace their family through the bloodlines of the females in their family. The role of Changing Woman in the creation of the Navajo people demonstrates the fundamental importance that women have within the community both traditionally and presently.

Before the introduction of the Euro-American cultural and judicial system, Navajo women had a significant economic and social importance in the tribe due to the balance between the gender roles established in the creation story. Unfortunately, over time traditional Navajo beliefs deteriorated. This deterioration created the imbalance in the gender roles we see today in the tribe. This imbalance is most illustrated by the lack of women serving in leadership positions within the Navajo Nation’s political arenas. Moreover, movement away from

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<sup>1</sup> *Diné Bahane*’ is the Navajo word for the “Navajo creation story” that explains where the Navajo people emerged from and about the traditional Navajo homeland.

traditional thinking has caused Navajo women to become frequent targets of domestic violence in the community as a whole.

The goal of this paper is to attempt to provide a general social and political framework of the Navajo tribe using the creation story and journey narrative. This will provide a comprehensive insight into the history and modern functioning of the tribe for someone who may not understand traditional Navajo thought. Modern legal cases have been integrated into this paper to demonstrate how Navajo courts use and preserve traditional concepts in current legal analysis. This paper will try to convey a traditional Navajo perspective whose ideology is deeply rooted in the creation story and illustrated through the Holy Beings, especially Changing Woman. This will provide context and background to modern issues disfavoring Navajo women within the tribal system that we see today.

Section One of this paper will explain traditional Navajo governance through the creation story and the journey narrative focusing on Changing Woman, and the creation of the Navajo clan system. There are many traditional interpretations of this story, but the general framework of Navajo belief will be established here. Additionally, we will explore the three fundamental doctrines of Navajo thought, and how these doctrines were traditionally integrated into gender roles and family identities within the tribe. Then the role of the war and peace leaders of the Navajo will be examined to see how the tribe was traditionally governed and to understand how the Europeans were dealt with as they arrived in the southwestern part of the United States where the Navajo tribe is currently located.

Section Two will examine the history of the Navajo government. This will explain the traditional methodologies of the political system and how it functioned. This is necessary to appreciate fundamental ideologies behind Navajo natural law and reasoning, and its inclusion in modern court decisions. Afterward, the Navajo creation story focusing on Changing Woman will be introduced. Case law will be used in this section to provide an overview of where women fit within the Navajo Nation legal system and modern society.

Section Three will explain the modern operation of the Navajo Nation's three-branch government system and creation of the court-system. This section will demonstrate the significance the Navajo court-system has had on other tribes by serving as a model for tribal replication and implementation of traditional indigenous adjudication. The Navajo Peacemaking Court will also be introduced here to explain how traditional Navajo values are utilized to resolve modern disputes.

Section Four will then discuss how the history of the tribe and cultural clash with the Euro-Americans created a shift of the role of women that we see within the tribe today. It will look at the hierarchy between genders, and the existing domestic and political relationships that have been instituted on the reservation.

Lastly, Section Five will show how Navajo women and tribal leaders can reflect on Changing Woman's role in the creation story to influence women to move into leadership positions within the tribal governance system to discontinue gender hierarchy established by colonization. Hopefully, this paper will stimulate ideas to reform the existing legal and political system and aid in reestablishing balanced gender roles to preserve the traditional matrilineal way of Navajo thinking.

## I. TRADITIONAL DINÉ GOVERNANCE

Before the European concept of governance was introduced to the *Diné*<sup>2</sup>, the Navajo people governed their society through values called *Diné bi'i'ool'ijil* meaning "Diné Life Way." *Diné bi'i'ool'ijil* included Navajo philosophy, language, culture, spirituality, and governance.<sup>3</sup> This communal-based system valued harmony and reciprocity between members of the tribe where the power flowed from the People upward to the leaders.<sup>4</sup> The tribe was organized, and remains today, through a matrilineal clan system where the tribe attains their primary identity via inheritance of their mothers' clans.<sup>5</sup>

*Diné* history begins with the creation story in the First World where the Insect People move through the four lower worlds to the Fifth World.<sup>6</sup> In the First World, there was no sun, moon, or stars — only an ocean to the east, south, west, and north.<sup>7</sup> A flood came and the Insect People were pushed into the Second World, which was only bare ground.<sup>8</sup> The Third World was a place inhabited by grasshoppers

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<sup>2</sup> *Diné* is the Navajo word for "the People" and Navajos commonly refer to themselves by this term.

<sup>3</sup> RAYMOND D. AUSTIN, *NAVAJO COURTS AND NAVAJO COMMON LAW: A TRADITION OF TRIBAL SELF-GOVERNANCE I* (2009).

<sup>4</sup> SHARON O'BRIEN, *AMERICAN INDIAN TRIBAL GOVERNMENTS* 14-15 (1993).

<sup>5</sup> MARY SHEPARDSON, *WOMEN AND POWER IN NATIVE NORTH AMERICA* 159 (Lilliam A. Ackerman & Laura F. Klein eds., 2000).

<sup>6</sup> MARSHA WEISIGER & WILLIAM CRONON, *DREAMING OF SHEEP IN NAVAJO COUNTRY* 71 (2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

with a river in the east.<sup>9</sup> In the Fourth World, the Insect People found a land of snow-covered mountains and Pueblo people.<sup>10</sup> The Fourth World was *Dinétaah*<sup>11</sup> where the Mirage People laid “two ears of white corn and two ears of yellow corn on the ground and covered them with buckskin” subsequently creating First Man and First Woman.<sup>12</sup> Frightened by a flash flood, First Man and First Woman came up through reeds in the center of a lake rising onto the surface of the earth into the Fifth World.<sup>13</sup> The Fifth World was where the four sacred mountains are today creating *Diné Bikéyah*:<sup>14</sup>

To the east they placed *Tsisnaajinii* (Blanca Peak); to the south, *Tsoodzil* (Mount Taylor); to the west, *Dook’o’oosliid* (San Francisco Peaks); and finally, to the north, *Dibé Ntsaa* (Mount Hesperus in the La Plata Mountains). Within these sacred mountains rises *Ch’ool’i’i* (Governador Knob), where Talking God and Calling God created Changing Woman.<sup>15</sup>

Between these mountains, the *Diné* were created from corn in the same way the Mirage People created First Man and First Woman. The Fifth World is important to understanding Navajo culture. In the creation story, the Fifth World identifies important cultural concepts like: the parameters of *Diné Bikéyah*, the origins of corn, agriculture, and traditional Navajo clanship formulated through Changing Woman.<sup>16</sup>

#### a. **Asdzáá Nádleehé — Changing Woman**

*Asdzáá Nádleehé*, or “Changing Woman,” is the source of familial relations, the clan system, fertility, and life power governing the *Diné*. *Asdzáá Nádleehé* is referred to as *shimá* or “mother” due to her importance, authority, strength, power, and role in motherhood.<sup>17</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Dinétaah* is the original Navajo settlement in northwestern New Mexico according to the *Diné*.

<sup>12</sup> WEISIGER & CRONON, *supra* note 6.

<sup>13</sup> *Id.*

<sup>14</sup> *Diné Bikéyah* is the general idea of “Navajoland”.

<sup>15</sup> WEISIGER & CRONON, *supra* note 6.

<sup>16</sup> WEISIGER & CRONON, *supra* note 6, at 72.

<sup>17</sup> AUSTIN, *supra* note 3, at 157.

Changing Woman saved the Navajo people from destruction when "... the people had lost the ability to reproduce, and the monsters then inhabiting the world were killing the people ... First Man and First Woman [had] Changing Woman to restore the power of generation and give birth to the Twins, who would destroy the monsters."<sup>18</sup>

Changing Woman is also called "Earth Mother" because she created the earth and the sky.<sup>19</sup> Both the earth and the sky represent continuous life and sustenance for the survival of the Navajo people throughout time. Since *Asdzáq Nádleehé* gave these resources to the *Diné* to sustain future generations, her role as a provider continues to be honored through song, prayer, and ceremony today:<sup>20</sup>

The life and fertility of motherhood [in Navajo] are symbolized not only by the earth but also by corn pollen, yellow corn, and red menstrual blood...Corn pollen, which is yellow, is probably the single most sacred item in the Navajo universe. In order to give Changing Woman the power of generation, she was fed corn pollen [in the creation story].<sup>21</sup>

Corn pollen is a sacred resource vested with extraordinary power that was given to the *Diné* by the gods to be used in ceremonies.<sup>22</sup> It is used for prayer, blessings, offerings, sanctifying, purifying, and a pathway to communicate with the gods.<sup>23</sup> "At the time, Changing Woman's first menstrual period, the puberty rite was first performed for her ... songs [were] used on that night ... to enable her to create a new race, and to transmit to this new race the power of generation."<sup>24</sup> In the creation story, Changing Woman was dressed and fed corn pollen, and it was used to bless her *kinaaldá*. A *kinaaldá* is a traditional coming of age ceremony first performed on Changing Woman.

In a *kinaaldá*, Navajo girls become women after their first menstrual cycle by acquiring Changing Woman's strength, power,

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<sup>18</sup> GARY WITHERSPOON, *NAVAJO KINSHIP AND MARRIAGE* 15 (1975).

<sup>19</sup> *Id.* at 16.

<sup>20</sup> *See generally id.* at 15-16.

<sup>21</sup> *Id.* at 16-17.

<sup>22</sup> *See* Thomas M. Raitt, *The Ritual Meaning of Corn Pollen among the Navajo Indians*, 23 *Religious Studies* 523, 525 (1987).

<sup>23</sup> *See id.* at 525-27.

<sup>24</sup> WITHERSPOON, *supra* note 18.

authority, and fertility.<sup>25</sup> This ceremony honors a woman's fertility and ability to reproduce by bringing the community and family together to welcome a young female into womanhood in the way of Changing Woman. The *kinaaldá* ceremony honors the young woman's fertility and her body is molded for *hózhó*<sup>26</sup> and strength. The young woman blesses the children, and she is told of her future role in the way of Changing Woman.<sup>27</sup>

During the first *kinaaldá*, Changing Woman told the Navajo to make a round, red corn cake for the ceremony to symbolize Mother Earth.<sup>28</sup> In today's ceremonies, a red mixture called *chiidik'osh* is used to signify the red menstrual blood and the reproductive and fertility qualities associated with becoming a woman.<sup>29</sup> Corn pollen is still used today during *kinaaldás* to honor a woman's fertility and her reproductive qualities like the Earth's.<sup>30</sup> Without Changing Woman and the matrilineal society she created, the matrilineal clan system that governs the *Diné* would cease to exist today.

## b. The Creation of the Navajo Clan System

Changing Woman created the four original Navajo clans in *Diné análýaa*<sup>31</sup> in the Fifth World of the Navajo creation story. Her laws governing domestic relations are called *Yoolgail Asdzáq Nádleehé Bibee Haz'áannii*. She is responsible for creating the four original Navajo clans from where the People descended from and live today. *Asdzáq Nádleehé* is the connection between the matrilineal and matrilocal past and present because she serves as "the central symbol of Navajo social organization [through] motherhood."<sup>32</sup> Today, all Navajos are connected through clans, and kinship ties strengthen the tribe. Changing Woman not only created the clan system, but her womanhood saved the *Diné* from complete destruction and protected future generations of Navajo children:

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<sup>25</sup> AUSTIN, *supra* note 3, at 157.

<sup>26</sup> *Hózhó* translates to "beauty", "beautiful conditions", and "balance" in English.

<sup>27</sup> SHEPARDSON, *supra* note 5, at 164.

<sup>28</sup> Witherspoon *supra* note 18, at 18.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Diné análýaa* translates to "re-creation of the *Diné*" in English.

<sup>32</sup> Gary Witherspoon, *A New Look at Navajo Social Organization*, 72 *Am. Anthropologist* 55, 55 (1970).

[Changing Woman] rubbed skin from her breast, her back, and from under her arms to create *Kiiyaa'áanii* (Towering House), *Honágháhnii* (One Walks Around You), *Tódich'ii'nii* (Bitter Water), and *Hashtlishnii* (Mud) clans...Changing Woman, Born for Water, and Monster Slayer [her twins]...defined new terms and set standards of behavior on how people should love and what to expect of life.<sup>33</sup>

Traditionally, *Diné* women were honored for their ability to sustain life by bearing children to ensure new generations of Navajos. As mothers, women's roles are to provide nurturing environments for their children so they can grow healthy and strong. Changing Woman is the symbol of the role of women within the tribe because women try to emulate her as a mother and a provider. This is a very important societal function for a Navajo Woman.

Family is considered the core of Navajo society and family cohesion is a fundamental tenet of the Navajo People. It creates *Diné Bibeé Haz'áanii*: Navajo customary law or Navajo common law. This law governs the people in domestic relations.<sup>34</sup> In its cases, the Navajo Nation Supreme Court acknowledged the traditional role and authority of *Diné* women in a decision made in *Riggs v. Estate of Attakai*.<sup>35</sup>

Traditionally, women are central to the home and land base. They are the vein of the clan line. The clan line typically maintains a land base upon which the clan lives, uses the land for grazing and agricultural purposes and maintains the land for medicinal and ceremonial purposes. The crucial role of women is expressed in the principles established by White Shell Woman and are commonly referred to as *Yoolgaii Asdzáq Nádlehé n Bi Beehááanii*. These principles include *liná Yésdáhi* (a position generally encompassing life; heading the household and providing home care, food, clothing, as well as child bearing, raising, and teaching), *Yódi Yésdáhi* (a position encompassing and being a provider of, a caretaker of, and receiver of materials things such as jewelry and

<sup>33</sup> PETER IVERSON, *DINÉ: A HISTORY OF THE NAVAJOS* 11-12 (2002).

<sup>34</sup> *Davis v. Means*, 7 Nav. Rptr. 100 (Nav. Sup. Ct. 1994).

<sup>35</sup> *Riggs v. Estate of Attakai*, No. SC-CV-39-04 (Nav. Sup. Ct., June 13, 2007).



rugs), *Nit'iz Yésdáhi* (a position encompassing and being a provider of and a caretaker of mineral goodness for protection), *Tsodizin Yésdáhi* (a position encompassing spirituality and prayer).<sup>36</sup>

The Navajo Nation Supreme Court reiterated the significant role *Diné* women had traditionally and established how these traditional beliefs help govern law of the modern Navajo Nation. To understand how women can continue to carry out the principles established by Changing Woman in the creation story, the three foundational Navajo doctrines of Navajo natural law must be examined.

### 1. The Three Foundational Navajo Doctrines

Traditionally, Navajos used the three foundational doctrines *k'é* (kinship solidarity), *hózhó* (harmony, balance, and peace), and *k'éí* (clanship system) as common law governing their lives.<sup>37</sup> These doctrines retain more of a spiritual nature opposed to a legal nature. However, the modern Navajo Nation courts use the doctrines to decide legal issues in the course of litigation. This use helps preserve “Navajo culture, language, spirituality, and identity for future Navajo generations.”<sup>38</sup>

First, *k'é* is one of the three interdependent Navajo doctrines that includes *k'éí* and *hózhó*. “*K'é* is the foundation of *Diné* social relationships.”<sup>39</sup> *K'é* sets rules for *Diné* relationships with the family, the clan, related clans, and with everyone in and outside of the community. *K'é* is the basis which maintains relationships through respect, kindness, cooperation, friendliness, mutual obligations, love, sharing, and giving.

Second, *hózhó* includes balance, harmony, perfection, and beauty, which are essential qualities to restore the community. Everything branches from *hózhó* because the universe is interdependent and interrelated. When everything is in its proper place, *hózhó* has been attained. Navajos strive for it throughout their lives. This is a law of the natural world that can never be attained, but is a challenge for people to return to regardless of racial or cultural

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<sup>36</sup> *Id.*

<sup>37</sup> AUSTIN, *supra* note 3, at xxi.

<sup>38</sup> *Id.* at 8.

<sup>39</sup> WEISIGER & CRONON, *supra* note 6, at 97.

identity. Presently, the Navajo Nation court has not defined *hózhó*, but the best way to learn and understand it is to repeat the process and relearn *hózhó* philosophy through repetition in daily life.

Third, *k'éei* is similar to the *k'é* doctrine that values positive attributes like unselfishness, friendliness, peacefulness, and cooperation with everyone in society.<sup>40</sup> *K'éei* is a particular type of *k'é* because it governs relationships *only* with *shik'éei*, or clan relatives.<sup>41</sup> Not only does *k'éei* determine who is a relative, but it regulates duties, responsibilities, and reciprocity among relatives and nonrelatives. The doctrine is relied upon to guide domestic issues like marriage, inheritance, and property ownership:

The *k'éei* doctrine and its emanating rules regulate domestic matters by defining Navajo identity; determining clan relatives, those a Navajo calls *shik'éei*; illuminating responsibilities, duties, and mutual obligations among clan relatives; and establishing the bounds of proper behavior among unrelated Navajos and with non-Navajos in general.<sup>42</sup>

## 2. Traditional Role of Women and Familial Identity

In the family unit, *Diné* women served as leaders by transmitting traditional culture from the grandparents' generation to the grandchildren's generation. "A Navajo's biological grandparents, particularly the maternal grandmother and maternal grandfather, because of traditional matrilineal residence, were the teachers of Navajo etiquette, history, stories, creation and journey narratives, and spirituality."<sup>43</sup>

Out of many clans, there are four original clans that Navajos will identify with to link themselves to kin members. These four clans also help govern domestic relations when issues arise in the Navajo Nation courts.<sup>44</sup> The Navajo matrilineal system traces lineage through the mother's family to identify clan relatives and govern *Diné* domestic relations.<sup>45</sup> "Lineage is not traced through the father's clan

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<sup>40</sup> See generally WITHERSPOON, *supra* note 18, at 37.

<sup>41</sup> AUSTIN, *supra* note 3, at 137.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 141.

<sup>44</sup> *Id.* at 140.

<sup>45</sup> *Id.* at 138.

because the matrilineal system traces the descent through the female line.”<sup>46</sup> Navajos first identify their mother’s clan of which they are “born-of” clan and next identify their father’s clan, of which they are “born for”.<sup>47</sup> Afterward, the maternal grandfather’s clan is addressed, then the paternal grandfather’s clan. Navajos who identify with others in the same clan refer to others as *shik’éei* or “my relatives”.<sup>48</sup> This system of kinship unites the Navajo society and creates of the social structure of the culture. Uniting generations through clanship is a significant role for a Navajo woman within society:

A fundamental rule in Navajo society, and lesson learned early in life, is that every Navajo must know his or her clans and linked clans, because they ‘are essential to a Navajo’s identity and must be known for Navajo religious ceremonies. One must know them to be in *hózhó* (harmony and peace).’ The long-standing belief that the clan system is central and indispensable to Navajo culture has been incorporated into Navajo jurisprudence.<sup>49</sup>

When a woman passes her clans to her children through birth, it continues the generational social framework of the tribe and illustrates the role the female plays in creating identity for the *Diné*. The female role in the Navajo matrilineal system is the best way to raise a child because they are under the protection and supervision of the mother and grandmother.<sup>50</sup>

The matrilineal social structure sustains Navajo lineage by enabling generations to trace their descendants through the female line.<sup>51</sup> The matrilineal clanship system gives the *Diné* not only their place within their family, but also their individual identity for the rest of their lives.<sup>52</sup> Both the “born-of” and “born-for” clans take precedent

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<sup>46</sup> *Id.* at 140.

<sup>47</sup> *Id.* at 142.

<sup>48</sup> *Id.* at 140.

<sup>49</sup> *Id.* at 157 (quoting *Davis v. Means*, 7 Nav. Rptr. 178, 182 (Window Rock Dist. Ct. 1983)).

<sup>50</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>51</sup> See AUSTIN, *supra* note 3, at 140.

<sup>52</sup> *Id.* at 142.

over the maternal and paternal grandfather's clans because the child is closer in proximity to the parents under the *k'úi* system.<sup>53</sup>

Since *Diné* society was traditionally matricentered, women controlled property-use, kinship, spirituality, and the economy.<sup>54</sup> After a couple was married, they built the *hogan*<sup>55</sup> near the wife's family where the wife would remain close to her mother, aunts, and sisters.<sup>56</sup> A woman needed her mother and aunts to help raise a child in protection and trust.<sup>57</sup> This gave Navajo women a large amount of influence over economic negotiations because they owned most of the livestock.<sup>58</sup> In a society that measured wealth by ownership of livestock, this allocated the wealth to women.

Men also had important roles. They worked as political, cultural, and interfamilial mediators by maintaining strong relationships with their families, and traveled home often.<sup>59</sup> Both sexes worked together equally to maintain *hózhó*.<sup>60</sup> Men and women complimented each other. This relationship balance is symbolized in nature as well. "The sun is male, while the earth is female."<sup>61</sup> The sun gives the earth light and warmth to maintain life, while the earth gives the sun something to revolve around and for which to provide. Without one, the other would not function to its full capacity. This symbolizes the relationship between men and women in nature.

### 3. Naat'áanii — Leadership

"Indigenous peoples saw political leadership as a 'burden upon the selfless, an obligation for the most capable, but never a reward for the greedy'."<sup>62</sup> Traditionally, both men and women became *naat'áanii* or "leaders" selected by the people. *Naat'áanii* were respected individuals in the community that had great oratory skills. These

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<sup>53</sup> *Id.* at 140.

<sup>54</sup> WEISIGER & CRONON, *supra* note 6, at 80.

<sup>55</sup> A *hogan* is the traditional dwelling of the Navajo. Today, they are still used as homes, but are mostly maintained for ceremonial purposes.

<sup>56</sup> WEISIGER & CRONON, *supra* note 6, at 80.

<sup>57</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>58</sup> WEISIGER & CRONON, *supra* note 6, at 81.

<sup>59</sup> *Id.* at 83.

<sup>60</sup> *Id.* at 84.

<sup>61</sup> *Id.*

<sup>62</sup> KAREN O'CONNOR & LARRY J. SABATO, THE ESSENTIALS OF AMERICAN GOVERNMENT: CONTINUITY & CHANGE 19 (3d ed. 1998).

oratory skills were important because words are sacred and powerful in Navajo culture.<sup>63</sup> The Navajo Nation Supreme Court stated “[a] leader must always speak the truth and has a responsibility to communicate it to the people, *Naat’áanii éí t’áá’anígóó yálti’ doo t’óó ániida éí biniinaa éí bidine’é yil ahidéélt’i’go yichi’i’*” *yálti’ doo yil ahidiits’a’*. If words are said, they are meant.”<sup>64</sup>

Great leaders are careful to use their language thoughtfully to express their knowledge and achieve goals for the community. Elected *naat’áanii* are skilled in speech, persuasion, gestures, and *k’é* to lead the traditional communities of ten to forty families.<sup>65</sup> Additionally, these leaders had to have knowledge of the creation scripture, the journey narrative, and the Blessing Way Ceremony in order to affectively lead the people. These skills enabled the *naat’áanii* to pass traditional knowledge to future generations and sustain oral tradition. When the community met to choose a *naat’áanii*, women had an equal voice and votes were usually unanimous.<sup>66</sup> When a *naat’áanii* was chosen, “the *Diné* People kept a delegate to his or her word” because the words of leaders in the tribe were powerful and sacred.<sup>67</sup> Once the community selected the *naat’áanii* a ceremony followed where corn pollen from the four sacred mountains was placed on the lips of the leader to enable the *naat’áanii* to speak wisely and provide the people with powerful speeches.<sup>68</sup>

*Diné* traditionally had two types of leaders: *haskééji naat’ááh* (war leader) and *hózhóóji naat’ááh* (peace leader). The separate leaders were important because each had their own function in the Navajo community and together they promoted harmony. The war leaders had to have knowledge of the War Ways and be respected in the community as great warriors.<sup>69</sup> The peace leaders had to have the trust of the community and wisdom. At times, women served as peace leaders for the Navajo.<sup>70</sup> They oversaw family disputes, healed medicinal issues, and represented the tribe in dealing with other communities including affairs with the Spanish, Mexicans, and Americans.

<sup>63</sup> AUSTIN, *supra* note 3, at 122.

<sup>64</sup> Office of Navajo Nation President and Vice-President v. Navajo Nation Council, No. SC-CV-02-10 (Nav. Sup. Ct., May 28, 2010).

<sup>65</sup> DAVID E. WILKINS, THE NAVAJO POLITICAL EXPERIENCE 69 (2003).

<sup>66</sup> *See id.*

<sup>67</sup> In re Grievance of Wagner, No. SC-CV-01-07 (Nav. Sup. Ct., May 14, 2007).

<sup>68</sup> *See* WILKINS, *supra* note 65, at 70.

<sup>69</sup> *Id.* at 70.

<sup>70</sup> *Id.* at 71.

### c. The War and Peace Leaders at Naachid

Both the war and peace *naat'áanii* would meet every two to four years, and at times of tribal emergencies in meetings called *naachids*.<sup>71</sup> *Naachid* can mean to “gesture with the hand” in Navajo.<sup>72</sup> The last recorded assembly took place at *Tsin Sikaad*<sup>73</sup> in the early 1850s or late 1860s.<sup>74</sup> In total, the twenty-four *naat'áanii* (twelve peace leaders and twelve war leaders) would meet in a *hogan*<sup>75</sup> where a four-day dance was performed, followed by subsequent meetings and ceremonies during the winter.<sup>76</sup> The purpose of the *naachid* was both ceremonial and political. Ceremonially, they were performed for an abundance of water and fertility for the communities.<sup>77</sup> Politically, they worked as council meetings; the twelve war or peace *naat'áanii* directed the proceedings of the *naachid* depending on if it was a time of war or peace.<sup>78</sup> Although women not commonly either war or peace *naat'áanii*, “[w]omen played an active role in the *naachid*, and could speak openly to the gathered delegates if they had participated in the raids or had achieved prominent status through some other means.”<sup>79</sup>

Tribal members who did not agree with the decisions made at the *naachid* did not have to obey decisions nor were they punished.<sup>80</sup> Politically, these meetings allowed the twenty-four *naat'áanii* to quickly assemble if outside threats were made to the tribe during war times, and functioned as a great political tool allowing respected members of each *Diné* community to meet and relay information to their communities. However, the *naachid* was primarily ceremonial and remained that way until it began to fragment with the arrival of the Spaniards.<sup>81</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> AUSTIN, *supra* note 3, at 11.

<sup>73</sup> *Tsin Sikaad* translates to “Lone Tree” in English.

<sup>74</sup> WILKINS, *supra* note 65, at 71.

<sup>75</sup> *Hogans* are traditional Navajo one-room homes with a fire placed in the middle. They are circular in shape and made of wood, mud, and dirt. The doors of *hogans* are always facing the eastern sky to welcome the sun rising in the mornings following the natural path of the sun to bring good fortune to the family. Today, *hogans* are still used, but mainly for ceremonial purposes on the Navajo reservation.

<sup>76</sup> WILKINS, *supra* note 65, at 71.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See generally WILKINS, *supra* note 65, at 72-73.

## II. HISTORY OF THE DINÉ

### a. Contact with the Spanish

Spanish-Navajo contact in the 1500s is hard to track because the Navajo were unified people but were located as groups with localized leadership patterns.<sup>82</sup> The first European reference about the Navajo tribe was made by Fray Geronimo de Zarate Salmeron in 1626. However, the *Diné* commonly raided Spanish communities for livestock and commodities as retaliation for selling Navajos into the Spanish slave trade.<sup>83</sup> In 1650, the Navajo, Apaches, Jemez, Isleta, Alameda, Sandia, and San Felipe joined together in a failed attempt to overthrow the Spanish.<sup>84</sup> The Indian slave trade continued into the 1660s when Bernardo Lopez de Medizabal served as governor of New Mexico.<sup>85</sup> Many Navajos were killed and enslaved during his governorship, but aided in the Pueblo Revolt of 1680 that drove the Spanish away until near the beginning of the eighteenth century.<sup>86</sup>

By 1705, New Mexico territorial Governor Franciso Cuervo y Valdez sparked a war in retaliation to the Navajo raids against the Spanish and Pueblo communities.<sup>87</sup> This forced the Navajo to retreat to Canyon de Chelly and created a new *Diné Bikéyah* for the People. This safe haven avoided mass killing and slavery.<sup>88</sup> The Spanish and Mexicans unsuccessfully tried to raid the Navajos in Canyon de Chelly until the mid-1830s when American forces began to take over.<sup>89</sup>

### b. Contact with the Bilagáana

The *bilagáana*<sup>90</sup> government expanded into the southwestern part of America around 1846.<sup>91</sup> This encompassed the lands the Navajos and other Native communities had lived on for generations. During this year, the antebellum frontier officer of the United States Army, Stephen Watts Kearny, ordered the Navajo to return stolen

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<sup>82</sup> IVERSON, *supra* note 33, at 25.

<sup>83</sup> *Id.* at 26.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *See id.*

<sup>87</sup> *Id.* at 28.

<sup>88</sup> *Id.* at 29.

<sup>89</sup> *Id.* at 32.

<sup>90</sup> *Bilagáana* translates to “Anglo” or “white people” in English.

<sup>91</sup> IVERSON, *supra* note 33, at 35.

property and prisoners they took within the New Mexican territory to the settlers.<sup>92</sup> The *Diné* refused to give back any property, convincing the Americans that the *Diné* were overwhelmingly defiant.<sup>93</sup> In 1851, Governor James S. Calhoun issued a proclamation authorizing the people of the territory to attack hostile Indians entering settlements “for the purpose of plunder and depredation.”<sup>94</sup> However, the Navajo were able to consistently avoid punishment due to their knowledge of the land enabling them to escape.

Governor Calhoun’s proclamation echoed the United States Army’s attitude toward Indians during the late nineteenth century and foreshadowed the federal government’s efforts to reduce the “Indian Problem”.<sup>95</sup> Infamously in 1869, United States Army officer, Philip Sheridan, echoed this notion when he told Comanche Chief Tosawi, “[t]he only good Indians I ever saw were dead.”<sup>96</sup> Western attitudes towards Native Americans, illustrated by Governor Calhoun and Officer Sheridan, were predicated on the Euro-American concept of the “Doctrine of Discovery”. In 1452, Pope Nicholas V issued the decree called the Doctrine of Discovery that advocated for the exploitation, conquest, and colonization of all non-Christian peoples and territories.<sup>97</sup> “[N]on-Christians were considered enemies of the Catholic faith and, as such, less than human.”<sup>98</sup> Pope Nicholas deemed non-Christians “enemies of Christ” to “put them into perpetual slavery”, and “to take all their possessions and property”.<sup>99</sup> For centuries, this Doctrine has been used by European governments to justify their conquest and mistreatment of indigenous people throughout the world.

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<sup>92</sup> *Id.* at 38.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 42.

<sup>95</sup> The “Indian Problem” references the U.S. government’s initiative to assimilate American Indians under the Dawes Act in 1887. When western expansion became impeded by Indian reservations, the “solution” to this problem resulted in divesting tribes of two-thirds of their reservation lands under the guise of protecting Indian property rights. The Dawes Act effectively forced Native Americans to become farmers and dismantled their tribal affiliations.

<sup>96</sup> *New Perspectives on the West: Philip Henry Sheridan (1831-1888)*, PBS, [http://www.pbs.org/weta/thewest/people/s\\_z/sheridan.htm](http://www.pbs.org/weta/thewest/people/s_z/sheridan.htm) (last visited Jan. 19, 2015).

<sup>97</sup> Steve Newcomb, *Five Hundred Years of Injustice*, SHAMAN’S DRUM, Fall 1992, at 18.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*



A landmark decision made by the United States Supreme Court in 1823 wrote the Doctrine of Discovery into American law, which survives as precedent today. The Marshall Court in *Johnson v. M'Intosh* held that the United States can extinguish Indian title subject to the right of occupancy through conquest or purchase.<sup>100</sup> This opinion made, "...discovery the sole right of acquiring the soil from natives, and establishing settlements upon it."<sup>101</sup> In the opinion, Chief Justice Marshall also wrote:

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.<sup>102</sup>

This attitude towards Native Americans that the United States Supreme Court and military officials perpetuated during western expansion and, memorialized through the Discovery Doctrine, effectively allowed the United States to fill the shoes of the Crown after the Revolutionary War. It diminished tribal power to dispose of the soil and rationalized the United States' policy of Indian removal<sup>103</sup> for the purpose of western expansion and assimilation of indigenous people in America.

## 1. Hwéeldih — The Long Walk

By the 1860s, the United States' failed attempts to force the *Diné* to submit coupled with the new vision of Indian Christians who could read and write English brought about a new campaign to "civilize" Navajos. From 1863 to 1864, Colonel Kit Carson redirected United States' military efforts toward a massive slaughtering of *Diné*

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<sup>100</sup> *Johnson v. M'Intosh*, 8 Wheat. 543, 5 L. Ed. 681 (1823).

<sup>101</sup> *Id.* at 573.

<sup>102</sup> *Id.* at 590.

<sup>103</sup> The Indian Removal Act of 1830 (IRA) was President Andrew Jackson's policy signed into law on May 26, 1830. The purpose of Indian removal was centered on ethnic cleansing. The IRA allowed the President to "negotiate" with tribes to remove tribes living east of the Mississippi River to federal lands west of the river.

in their homes and burning of their livestock.<sup>104</sup> The remaining 8,500 Navajos walked over 400 miles to *Hwééldih* — Fort Sumner at the Bosque Redondo Reservation.<sup>105</sup> *Diné* refer to this death-march as the “Long Walk” driven by violence, death, and cruelty.<sup>106</sup>

The Long Walk was not an isolated event, but was documented into at least fifty-three separate episodes from 1863 to 1866.<sup>107</sup> The *Diné* were forced to march in groups of not only men and women, but also children and the elderly.<sup>108</sup> They walked during all seasons, and followed many routes to the reservation.<sup>109</sup> Navajos were separated from their families, women were forced to walk pregnant, and no one had enough food or clothing to endure the tortuous journey.<sup>110</sup> Other tribes, such as the Mescalero Apaches, were also forced onto the reservation by the federal government.

If an individual made it to Fort Sumner, the lack of promised federal funding created an American concentration camp of death, starvation, and punishment for Indians. The United States government efforts to “Americanize” Navajos and Mescalero Apaches at *Hwééldih* resulted in the death of over two thousand *Diné*, a spread of disease, and the loss of traditional ceremonies and cultural knowledge.<sup>111</sup> Conditions forced Navajo women into prostitution leading to an outbreak of syphilis.<sup>112</sup> The Long Walk also caused Native Americans to experience generational trauma after the *Hwééldih* experience. “[T]he years spent by some of the *Diné* at *Hwééldih* had a powerful effect on Navajo identity and the Navajo future...”<sup>113</sup> The Long Walk has been the most culturally and socially destructive event the *Diné* have faced in modern times. The repercussions of *Hwééldih* continues to plague the surviving families of the Navajo People and the culture.

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<sup>104</sup> AUSTIN, *supra* note 3, at 2.

<sup>105</sup> *Id.* at 3.

<sup>106</sup> IVERSON, *supra* note 33, at 51.

<sup>107</sup> *Id.* at 52.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> AUSTIN, *supra* note 3, at 5.

<sup>112</sup> IVERSON, *supra* note 33, at 59.

<sup>113</sup> *Id.* at 53.

## 2. Naaltsoos Sání—The Navajo Treaty of 1868

The end of *Hwéeldih* came when Headman<sup>114</sup> Barboncito successfully negotiated the Navajo Treaty of 1868 between the Navajo and the United States.<sup>115</sup> This treaty released the American Indian prisoners from the Bosque Redondo Reservation.<sup>116</sup> General Sherman wanted to release the *Diné* to an Indian Territory located in Oklahoma, but he was moved by a plea made by the *Diné* women to return to *Diné Bikéyah*.<sup>117</sup> Barboncito supported the women and told General Sherman, “When the Navajos were first created, four mountains and four rivers were pointed out to us, inside of which we live, that was to be our country, and was given to us by the first woman of the Navajo tribe.”<sup>118</sup> The General was moved by the women and their stories, and allowed the people to return to *Bikéyah*.<sup>119</sup>

General Sherman and ten Navajo representatives signed the treaty on June 1, 1868.<sup>120</sup> The Navajo representatives (Delgadito, Barboncito, Manuelito, Largo, Herrero, Chiqueto, Muerto de Hambre, Hombro, Narbono, and Armijo) endorsed the Navajo Treaty of 1868 delegating the reservation and sovereignty of the nation to the Navajo people.<sup>121</sup> The Treaty defined the boundaries of the Navajo reservation and affirmed the sovereignty of the *Diné* over their nation.<sup>122</sup> By creating the boundaries of the Navajo Reservation, the treaty created what is today called the “Navajo Nation”. The Navajo view this treaty as a covenant with the Holy Beings that must always remain honored as a sacred agreement because it brought an end to the suffering endured at *Hwéeldih*.<sup>123</sup>

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<sup>114</sup> Since the Navajo were historically separated into communities, the tribe did not have “chiefs” that Euro-American culture stereotypically assigns as the leaders of all American Indian tribes. Instead, “headmen” like Barboncito were the recognized leaders of their specific community and governed the Navajo people within their location.

<sup>115</sup> AUSTIN, *supra* note 3, at 6.

<sup>116</sup> *Id.*

<sup>117</sup> IVERSON, *supra* note 33, at 63.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> AUSTIN, *supra* note 3, at 6.

<sup>121</sup> IVERSON, *supra* note 33, at 64.

<sup>122</sup> *Id.*

<sup>123</sup> AUSTIN, *supra* note 3, at 6.

### 3. After Hwééldih

On June 18, 1868, the *Diné* left *Hwééldih* and returned to *Diné Bikéyah*, with rations and surplus sheep that the United States government issued them while leaving Fort Defiance.<sup>124</sup> The reservation land General Sherman allocated to the Navajo on behalf of the U.S. government was about 3,328,302 acres.<sup>125</sup> The government subsequently issued more reservation land to the Navajo due to conflicts that they had with the Hopis and Utes who also lived within the boundaries of the allotted reservation, and the insufficient space for the tribe.<sup>126</sup> Navajos, especially the women, took advantage of the land and became skilled at raising livestock.<sup>127</sup>

*Diné* women held power in their communities, where mothers, daughters, and sisters formed strong bonds of interdependence and men often stood on the periphery... But women's power did not rest merely on female solidarity. Women were important to economic production, and significantly they also controlled the means of their own production; livestock and land... It was the intertwining of these strands — stock ownership, matrilineal residence, and matrilineal land-use patterns — that gave women power over their lives. Like the individual fibers of a braided cord, each reinforced the other.<sup>128</sup>

Although the 1868 Navajo Treaty granted sovereignty and political status to the Navajo Nation, the *Diné* tried to return to their traditional governance system established before *Hwééldih*. The Navajo believed “*Diné Bikéyah* itself was the essence of identity, for that land demarcated an imagined community of people long before a political nation arose.”<sup>129</sup> In an effort to return to traditional governance, the Navajo spread out into bands creating a governmental system each led by a headman. Both respected *hastóí* (elder men) and respected *sáanii* (elder women) advised each of the band's headman,

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<sup>124</sup> IVERSON, *supra* note 33, at 67.

<sup>125</sup> *Id.* at 68.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 78.

<sup>128</sup> *Id.*

<sup>129</sup> WEISIGER & CRONON, *supra* note 6, at 64.

which showed the equal roles men and women shared in traditional governance.<sup>130</sup> The traditional gender balance created by the *hastóí* and *sáanii* roles exemplifies *hózhó*. The emphasis on equality and balance showcases the values of traditional Navajo society which is often lacking in Western society.

As the reservation expanded, the federal government tried to suppress “American Indian languages, cultures, and spirituality through the Court of Indian Offenses and the Bureau of Indian Affairs Indian boarding school, and the establishment of the Navajo Tribal Council<sup>131</sup> in 1923.”<sup>132</sup> These institutions, created by the federal government, disassembled the traditional governance and political system of the Navajo. By the end of the twentieth century, the *Diné* government functioned similarly to the Euro-American political system.<sup>133</sup> These forced federal actions and assimilation has caused the Navajo people to give up their traditional matrilineal organization and adopt the patrilineal culture of *bilagáana*.

In 1991, the Navajo tribal government system was reorganized into the present three-branch system. The first western style government was originally established in 1923 to address the growing concerns of American companies who wanted to lease Navajo land for oil exploration.<sup>134</sup> The companies wished for a recognizable government with which to negotiate leasing contracts within the boundaries of the Navajo Nation. These three branches govern, *Diné Bikéyah* or “Navajoland”, which stretches 27,000 square miles over New Mexico, Arizona, and Utah state lines which has a population of over 250,000 people that is represented by 110 chapters comprised of 88 council delegates.<sup>135</sup> The Nation’s Council consists of delegates interested in preserving *Diné* heritage through sustaining the language for future generations.<sup>136</sup> Additionally, there are twelve committees of the Council that carry out legislative work for the Navajo when the Council is not in session.<sup>137</sup>

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<sup>130</sup> AUSTIN, *supra* note 3, at 10.

<sup>131</sup> The Navajo Tribal Council (NTC) is a modern reformulation of the *naachid*. The NTC was created in 1922 by the U.S. Secretary of the Interior for the certification of mineral leases within the reservation.

<sup>132</sup> AUSTIN, *supra* note 3, at 12.

<sup>133</sup> *Id.* at 13.

<sup>134</sup> *Id.*

<sup>135</sup> OFFICIAL SITE OF THE NAVAJO NATION – HISTORY, <http://www.navajonnsn.gov/history.htm>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

### III. MODERN NAVAJO COURTS

As explained above, the Navajo Nation government is arranged in a system that includes a legislative, executive, and judicial branch to address modern issues and to enact legislation concerning the *Diné*. The three-branch government operates separately, where one branch is careful not to overstep the role of another. This governmental separation has roots deep in traditional Navajo governmental structure. Akin to the way a medicine man or woman performs his or her ceremony, “guided by the holy people. It is not acceptable for one medicine person to tell another how to conduct a ceremony.”<sup>138</sup> Since the Navajo Nation has based its governmental infrastructure off the Euro-American system, while sustaining traditional *Diné* customs, the Nation now operates the most complex government among American Indian tribes.<sup>139</sup>

Despite the adherence to tradition, however, changes were made to the Navajo government over time to more closely replicate the American judicial system. For instance, in 1985, the Supreme Judicial Council was replaced by the Navajo Tribal Court of Appeals. The appellate court subsequently turned into the Supreme Court of the Navajo Nation mimicking state and federal arrangements.<sup>140</sup> This arrangement gives the Navajo Supreme Court the authority to adjudicate trial court decisions, petitions for extraordinary writs, law practice, bar membership, and to exercise authority over the rules for all of the Nation’s courts.<sup>141</sup>

The Supreme Court sits in Window Rock, Arizona and is a three-member body consisting of the Honorable Chief Justice Herb Yazzie and the Honorable Eleanor Shirley.<sup>142</sup> Currently the third seat is open, and a district court judge is designated to fill the spot and hear cases when they arise. The Navajo Supreme Court is the “court of last resort” that hears appeals from Navajo District Court, Navajo Family Court, and certain agencies proscribed under the Navajo Nation Code of Judicial Conduct.<sup>143</sup> Further strengthening the ties to traditional law,

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<sup>138</sup> Tuba City Judicial District v. Sloan, 8 Nav. Rptr. 159 (Nav. Sup. Ct. 2001).

<sup>139</sup> AUSTIN, *supra* note 3, at 13.

<sup>140</sup> *Id.* at 31.

<sup>141</sup> *Id.* at 32.

<sup>142</sup> THE SUPREME COURT OF THE NAVAJO NATION, <http://www.navajocourts.org/indexsuct.htm>.

<sup>143</sup> WILKINS, *supra* note 65, at 140.

the Navajo Nation has a Peacemaker Court that focuses on alternative dispute resolution and traditional mediation practices once used by the *naat'áanii*. Unlike the Western-style courts, this court takes traditional values and community dynamics into account when resolving disputes.<sup>144</sup> This will be discussed further below.

The Navajo courts serve as a model for other tribes to replicate traditional adjudication. In their decision-making, all levels of Navajo courts use the three foundational Navajo doctrines, natural law, and language, to sustain traditional culture for future generations. In support of this notion, the Supreme Court stated, “[t]he ideal Navajo Nation government is not one that is governed by perfect individuals, but which is oriented toward the public interest and recognizes fully that the power to govern comes from the People, *Hózhóojí dóó Hashkééji*.”<sup>145</sup>

#### a. **Hózhóji naat'aah — Navajo Peacemaking**

The Navajo Peacemaker Court was established in 1982 by *Diné* judges seeking to find a substitute for the Euro-American hierarchal justice system.<sup>146</sup> “This court is a modern legal institution which ties traditional community dispute resolution to a court based on the vertical justice<sup>147</sup> model ... by using traditional Navajo legal values.”<sup>148</sup> The Navajo Peacemaker Court uses *hózhóji naat'aah*, the customary practice of peacemaking, to resolve modern disputes between Navajos.<sup>149</sup> Similar to the traditional war and peace leaders, Navajo peacemaking employs a *naat'áanii* to guide disputing parties away from *hóochxo'*, the place of chaos, to *hózhó*.<sup>150</sup> By working toward a state of *hózhó* between the parties, the people are able to heal

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<sup>144</sup> See generally *id.*

<sup>145</sup> Office of Navajo Nation President and Vice-President v. Navajo Nation Council, No. sc-cv-02-10 (Nav. Sup. Ct., May 28, 2010).

<sup>146</sup> NAVAJO NATION, THE PEACEMAKING PROGRAM OF THE JUDICIAL BRANCH OF THE NAVAJO NATION – PLAN OF OPERATIONS 2 (2012) [hereinafter PEACEMAKING PROGRAM], available at <http://www.navajocourts.org/Peacemaking/Plan/PPPO2013-2-25.pdf>.

<sup>147</sup> “Vertical justice” is a term used to describe the adversarial Anglo-American adjudication process. This retributive legal system depends on hierarchical power enforcement and coercion.

<sup>148</sup> Robert Yazzie, “Life Comes From It”: Navajo Justice Concepts, 24 N.M. L. REV. 175, 186 (1994).

<sup>149</sup> See PEACEMAKING PROGRAM, *supra* note 146, at 2.

<sup>150</sup> Yazzie, *supra* note 148, at 187.

since the issue has been addressed by the Navajo concept of “talking things out.” “*Hózhójí naat’áanii* scolds, persuades, pleads, cajoles and educates everyone, using stories, to fully talk out their problems, in order to reach their mutual decision for the good of the whole.”<sup>151</sup>

The Navajo Peacemaking Court mimics traditional *naachids* that the war and peace *naat’áanii* used to discuss issues concerning the tribe.<sup>152</sup> This type of dispute resolution illustrates how Navajo judges implement the past to create solutions for modern issues. By using the *k’é* doctrine, modern peacemakers educate and persuade groups to listen and talk to each other in an effort to make decisions for the afflicted party.<sup>153</sup> Unlike adjudicatory processes implemented by the states and the federal government, the Navajo Peacemaker Court focuses on the Navajo way of thinking, emphasizing the power of words and the significance of the Navajo language. “Watch your words... [They] are very powerful. The Holy People gave them to us, and they [were] created [for] you to communicate. That is why you must think and speak in a positive way.”<sup>154</sup>

The Peacemaking Program exercises *Diné* peacemaking through family group conferencing, regularly scheduled group engagements, a youth apprentice mentoring program, teaching traditional dispute resolution curriculum, and community outreach programs.<sup>155</sup> The Law and Order Committee of the Navajo Nation approved this program’s new tradition-based services in July 2012.<sup>156</sup> This allowed the incorporation of newly enacted laws including the Vulnerable Adult Protection Act<sup>157</sup> and the *Álchíní Bi Beehaz’áannii* Act<sup>158</sup>, which extended peacemaking to reach more people in the community. The priorities of the program focus on including people of all faiths in the traditional process by teaching people about the importance of children and family *hózhó*, teaching people about the

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<sup>151</sup> PEACEMAKING PROGRAM, *supra* note 146, at 10.

<sup>152</sup> *See generally id.*

<sup>153</sup> *Id.*

<sup>154</sup> Yazzie, *supra* note 148, at 188.

<sup>155</sup> *See generally* PEACEMAKING PROGRAM, *supra* note 146, at 15-22.

<sup>156</sup> *Id.* at 1.

<sup>157</sup> *Vulnerable Adult Protection Act* protects vulnerable adults (ages 18 and over) from physical, verbal, sexual, and emotional abuse, neglect, and abandonment. Under the Act, a court must discuss the option of peacemaking when a case involves one of these issues.

<sup>158</sup> *Álchíní Bi Beehaz’áannii Act* allows professionals and families to refer matters concerning children to peacemaking for a tradition-based resolution without need for a court order. This aids self and family accountability and preserves and/or reunifies families.



status accorded to elders, protecting vulnerable adults, and addressing extreme family discord with an emphasis on domestic violence. This alternative program evidences that, although “*Diné* traditional culture has eroded steadily through the years”,<sup>159</sup> recent innovative ideas like the Navajo Peacemaker Court stop the erosion and breathe life back into the culture.

#### IV. THE MODERN ROLE OF DINÉ WOMEN

##### a. Hierarchy between Genders

The Navajo Nation Council, judges, and Navajo People finally began adjudicating their cases with traditional legal principles in the early 1980s. This helped revitalize the lost *Diné* justice system *naat’áanii* practiced before contact with the *bilagáana* and the Long Walk. Despite the efforts made to incorporate traditional values, “the modern Navajo government...is patriarchal in practice because it reflects Euro-American ideas about leadership... [and] the influence of Christianity.”<sup>160</sup> Although the Navajo were traditionally a matriarchal society created by Changing Woman, the effects of *bilagáana* societal corruption has influenced “attitudes about career choices, political involvement, marriage, and other matters restrict[ing] individual options and limit[ing] possibilities for achievement and fulfillment.”<sup>161</sup>

When the modern Navajo tribal government was originally created in 1923, it was modeled after a hierarchical belief system in which women were essentially chattel<sup>162</sup>. This was a severe break from the three foundational Navajo doctrines and illustrates how the hierarchical belief system disrupted the traditional balance between traditional Navajo gender roles. This egalitarian structure is further reflected in the grammatical structure of the Navajo language through the absence of hierarchical social constructions before the onset of Western ideologies. “The Navajo language has never had slaves or a subordinate class of people [like Euro-Americans] so pronouns like “he” or “she” had no use in the language. The emphasis is more on

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<sup>159</sup> PEACEMAKING PROGRAM, *supra* note 146, at 27.

<sup>160</sup> IVERSON, *supra* note 33, at 303.

<sup>161</sup> *Id.*

<sup>162</sup> “Chattel” is a legal relationship similar to slavery that treated women as property of men.

relationships between people than on gender.”<sup>163</sup> Instead of using personal pronouns, the Navajo language addressed people by naming their relationship to that particular person.<sup>164</sup> The Navajo language illustrates the traditional cultural significance of personal relationships and people in relation to one another through linguistic and grammatical construction.

The power and role of women in Navajo society has often been misunderstood. During the 1920s, *bilagáanas* believed Navajo women ruled families with absolute authority; however, “dominance” in traditional *Diné* culture was nonexistent.<sup>165</sup> *Bilagáanas* described Navajo society as “matrilineal.” The English word “matrilineal” places women above men in a society that follows women:

English is a hierarchical language. By comparison it may look like *Diné* women have more value and rights because women are seen as less [in white culture]. However, in reality, a Navajo woman is an individual who is female who is valued because of her individuality and her relationships with other Navajos who are related by clans, but not better than anyone or anything.<sup>166</sup>

Traditionally, neither sex dominated the other but worked together through separate roles to sustain *hózhó*. *Bilagáanas* were unaware of the gender balance and traditional values Navajo men and women practiced.<sup>167</sup> Juxtaposed to American women, Navajo women mattered and had equal but separate roles.<sup>168</sup> For instance, either Navajo men or women could divorce a spouse, while American women could not.<sup>169</sup> To sustain *hózhó*, men and women worked together in complimentary but equivalent ways.

When the *Diné* are described by English-speakers as “matrilineal,” it stems from a lineal sequential language and society founded in Christianity. This Biblical notion expresses constant

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<sup>163</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>164</sup> *Id.*

<sup>165</sup> WEISIGER & CRONON, *supra* note 6, at 82.

<sup>166</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>167</sup> WEISIGER & CRONON, *supra* note 6, at 82.

<sup>168</sup> *Id.*

<sup>169</sup> 1 *Corinthians* 7:39; *Matthew* 5:31-32.

hierarchy, especially dealing with gender roles.<sup>170</sup> This is opposite from the Navajo creation story where there are no hierarchal constructions. Instead, Changing Woman constantly changes from old (in the winter) to young (in the spring). This morphology symbolizes the continuous focus on movement in traditional Navajo thinking.<sup>171</sup>

When we came in, our grandmother lay curled up, nearly killed with old age. She got up and walked with a cane of whiteshell to a room at the east. She came out again somewhat stronger. Then, supported by a cane of turquoise, she went into the south room. She came back walking unaided. She went next into a room at the west. She came out a young woman. She went into the north room and returned, a young girl so beautiful that we bowed our heads in wonder.<sup>172</sup>

*Diné* culture and language focuses on motion, and this is exemplary of life because life is always moving in cycles and transitioning. Based on a language, someone can identify what a culture values. “Navajo language contains some 356,200 distinct conjugations of the verb ‘to go’.”<sup>173</sup> This shows the cornerstone of Navajo language is movement and flux: if there is movement then there is life. Changing Woman is a particularly important Holy Being to focus on since she embodies the movement in life and constant change. Due to her role, women should be valued for inspiring movement and fluctuation as a life force that sustains future generations and enables positive change.

Changing Woman created the original clans of the Navajo and bore the Monster Slayer Twins who saved the Navajo from destruction from the monsters. Traditionally, women were valued for their reproductive qualities and ability to facilitate movement in the way of Changing Woman. However, with the onset of Western culture, the Christian concept of the Virgin Mary suffocated the cultural significance of Changing Woman and her life-giving powers. When missionaries forced Christian values on Navajo children in boarding

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<sup>170</sup> *Id.*

<sup>171</sup> See generally Adriana C. Risetto, *Between Four Sacred Mountains—The Diné and the Land in Contemporary America*, University of Virginia (1997), <http://xroads.virginia.edu/~ma97/dinetah/change2.html>.

<sup>172</sup> *Id.*

<sup>173</sup> GARY WITHERSPOON, LANGUAGE AND ART IN THE NAVAJO UNIVERSE 48 (1977).

schools in the late nineteenth and early twentieth centuries, the idea of Immaculate Conception diminished the role of women. The Virgin Mary's "Immaculate Conception takes the female fertility role away from women. Immaculate Conception does not exist in Navajo culture because sex and pregnancy are a part of life and movement. Sex and reproduction is only a celebration [of life]."<sup>174</sup>

A woman's womb symbolizes different types of action in Navajo culture.<sup>175</sup> The womb is where both birth and sexual intercourse take place. Men are juggled between the two actions, and between his mother and his wife. It is from his relationships with his mother and wife that a man obtains his status.<sup>176</sup> In this female-dominated social structure, the mother-child relationship is unbreakable and sturdy, but the intimate relationship a man has with a woman is vulnerable and fragile.<sup>177</sup> Women are the foundation of the social structure and family unit like Changing Woman is for the Navajo People. These relationships also demonstrate the necessity of the male-female relationship. "The men by themselves could not have children, and the women by themselves could produce only monsters."<sup>178</sup> They are distinct from but complimentary roles to one another. Without the female, the male would be worthless, and vice-versa.

The introduction of Christianity on the Navajo reservation not only affected women, but also any person with female characteristics. The onset of Christianity diminished the traditional role of transgender, bisexual, and gay *Diné*, which achieved the goals of the assimilation process on Indians. Once revered for their ability to embody both the male and female gender roles, *nádleehé* were condemned with the onset of Christianity.<sup>179</sup> For both women and individuals who did not conform to Christian gender roles, the *bilagáana* belief system forced them into a submissive role to white, heterosexual men. The ramifications of the assimilation process brought about by the United States federal government, and implemented through Christian boarding schools, achieved its intended results: to encourage removing "Indian children from their homes for

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<sup>174</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>175</sup> See WITHERSPOON, *supra* note 18, at 35.

<sup>176</sup> *Id.* at 27.

<sup>177</sup> *Id.* at 28.

<sup>178</sup> *Id.* at 23.

<sup>179</sup> *Nádleehé* translates to "changeling" or "two-spirit" in English.

extended periods of time so white ‘civilization’ could take root while extinguishing Indian culture and any childhood memories of ‘savagism’.”<sup>180</sup> This diminished traditional cultural values including the teachings of Changing Woman that signified the importance of women within the tribe.

**b. Hierarchy in Modern Domestic and Political Relations**

Traditionally, Navajos believed the matrilineal situation was the best way to raise a child because the child could remain under the protection and supervision of the mother and her family. The mother also needed the help of her sisters, mother, and other relatives to bring the child up in a trusting environment. “*Diné* traced descent exclusively through their mothers, and a newly married couple generally built their *hogan* near the wife’s family. Consequently, close knit networks of mothers, daughters, and sisters structured families and gave them cohesion.”<sup>181</sup>

Due to this social structure, inheritance flowed from his mother’s line; his mother, his mother’s sisters and brothers, and her sister’s children, before being allocated to the male’s family and children.<sup>182</sup> A close, well-respected relative distributed the inheritance according to the laws of Changing Woman following the female’s family line. Men’s inheritance stemmed from their fathers following the same clan paradigm.<sup>183</sup>

Additionally, Navajo traced their land and property-use rights through the females, which gave males access to the land through their relationships to their mothers, sisters, and wives.<sup>184</sup> Since *Diné* women controlled the use of the property, they also owned many of the sheep and goats that provided sustenance and wealth for their families.<sup>185</sup>

Changing Woman—the primordial symbol of womanhood—created the *Diné* and gave them sheep and goats to sustain them for all time. This symbolic relationship between women and their flocks was

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<sup>180</sup> DAVID W. ADAMS, EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875-1928 19 (1995).

<sup>181</sup> WEISIGER & CRONON, *supra* note 6, at 80.

<sup>182</sup> SHEPARDSON, *supra* note 5, at 161.

<sup>183</sup> *Id.*

<sup>184</sup> See WEISIGER & CRONON, *supra* note 6, at 80.

<sup>185</sup> See *id.* at 98.

generally apparent to outsiders, even if they did not fully comprehend its meaning...Women's ownership of livestock gave them power that clearly impressed many Americans...Navajo women drew authority from their economic autonomy as livestock owners.<sup>186</sup>

For traditional Navajos, goats and sheep symbolized womanhood and motherhood that embodied the female way of thinking. For men, horses symbolized prestige and masculinity. Horses were akin to the male sun and the Hero Twins birthed by Changing Woman.<sup>187</sup> Horses were a way of hunting, racing, and raiding — all embodied the masculine aspects of the animal.<sup>188</sup>

Sheep also provided a way for women to economically support their families. Women gathered wool for weaving from the sheep. This enabled *Diné* women to create their famous rugs with traditional *Diyin Dine'é*<sup>189</sup> designs that were sold at trading posts in the late eighteenth century.<sup>190</sup> The rug designs emphasized the complementary nature of men and women. The skill of the women weavers translated to direct profits for their families. “By 1935, traders estimated that weavers’ percentage of the income credited at trading posts income was 30 to 50 percent.”<sup>191</sup> The additional finances that the women procured from selling their weavings to trading posts gave them almost complete authority within the Navajo social and economic domain unlike *bilagáana* women in western society.

Weaving is an integral part of womanhood in Navajo society. “Like sheep, weaving... contain[s] much more meaning than their economic aspects imply.”<sup>192</sup> Similarly to how Changing Woman gifted sheep to the *Diné* in the creation story, Spider Woman<sup>193</sup> taught the Navajo how to weave on a loom for trade and prosperity of the People.<sup>194</sup> The roles Spider Woman and Changing Woman teach

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<sup>186</sup> *Id.* at 99.

<sup>187</sup> *See id.* at 98.

<sup>188</sup> *Id.*

<sup>189</sup> *Diyin Dine'é* translates into “Holy People” in English.

<sup>190</sup> *See* WEISIGER & CRONON, *supra* note 6, at 101.

<sup>191</sup> *Id.*

<sup>192</sup> WITHERSPOON, *supra* note 18, at 91.

<sup>193</sup> Spider Woman is one of the Holy People in Navajo culture. She originated in the First World in the creation story.

<sup>194</sup> Victoria Weaver, *Navajo Blankets—What Do They Mean? The Importance of Spider Woman*, WESTERN MARYLAND COLL.,

Navajo women as weavers and sheep herders are fundamental to Navajo women's traditional cultural identity as leaders within the community. The creation story is the teaching of the *Diyin Dine'é*, and how the Navajo people were taught to live in *hózhó*. The creation story and the values it teaches have aided Navajos in resisting the forces of damaging colonial beliefs, such as the Doctrine of Discovery.

During the 1920s, the hierarchical Euro-American social structure began to reframe *Diné* social landscape and governance. By moving governance from local to centralized, this patrilocal Euro-American governance reshaped the Navajo social landscape away from the teachings of Changing Woman and Spider Woman severely disrupting the *Diné* social structure around female roles and influence. Some scholars believe the Navajo resettlement structure after *Hwééldih* developed "a whole new social geography centered on newly powerful groups of men; patrilocal patterns... replaced matrilineal ways of configuring space."<sup>195</sup> The change in social structure stemmed from the "colonial enterprise and mentality underpinned by an ideology of paternalism."<sup>196</sup> The most significant and devastating effect of this paternalistic mentality was marked by the Navajo Livestock Reduction plan implemented by the United States government in the 1930s.

The Navajo Livestock Reduction aimed to control the overgrazing and land erosion the sheep and cattle caused the Navajo reservation.<sup>197</sup> Washington bureaucrats, far removed from the realities and culture of Navajo life, disregarded the cultural significance livestock held for the Navajo, especially the women. At the time of the reduction, the Navajo Nation Council was made up of Navajo men who understood the cultural significance of livestock and the "matrilineal terrain" livestock encompassed.<sup>198</sup> However, these men were largely influenced by the checks they received from Washington.<sup>199</sup> The Council severely underestimated the cultural issues the livestock reduction would create for their people and traditional values, or they simply did not care:

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[http://www2.mcdaniel.edu/art.students/navajo\\_blankets/spiderwoman.html](http://www2.mcdaniel.edu/art.students/navajo_blankets/spiderwoman.html) (last updated Aug. 3, 1998).

<sup>195</sup> WEISIGER & CRONON, *supra* note 6, at 91.

<sup>196</sup> IVERSON, *supra* note 33, at 152.

<sup>197</sup> *See id.* at 147.

<sup>198</sup> *Id.* at 142.

<sup>199</sup> *See id.*

I think my people really got hurt by the livestock reduction program because they are really close to their animals... [T]he government came and took the cattle and the sheep and they just shot them. They threw them into a pit and burned them. They burned their carcasses. Our people cried. My people, they cried. They thought that this was another *Hwééldih*, Long Walk. They asked the government, ‘Why are you doing this to us? What are you doing? You gave the animals for us to use, and now you are turning around and killing our livestock.’<sup>200</sup>

The livestock reduction again illustrated the paternalistic mentality the federal government held in dealing with the Navajo. By 1944, the United States government had brutally slaughtered 452,048 sheep, cattle, goats, and horses to meet federal livestock quotas established without Navajo consent.<sup>201</sup> In a culture that refers to sheep as *shimá*, which translates to “my mother” and references the earth or other life giving entities, the livestock reduction symbolized the cultural devastation and unraveling of *Diné* values within the traditional matrilineal framework similarly to the introduction of hierarchical Christian values.<sup>202</sup>

## V. RECLAIMING THE ROLE

*Fellow Councilmen, we must understand that here we have an opportunity for development of our human resources as well as our material resources...[W]e have reached a capacity where we cannot increase our grazing...[W]e must look for other means for our future generations.*

– Ned Hatathli, 1955

### a. Women as Modern Leaders

Transitioning from a traditional matrilineal social structure to a male-dominated framework has inflicted many monsters on the Navajos. The Navajo Nation is now one of the most violent reservations in the country. According to Federal Bureau of

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<sup>200</sup> *Id.* at 153.

<sup>201</sup> WEISIGER & CRONON, *supra* note 6, at 205.

<sup>202</sup> See generally WITHERSPOON, *supra* note 173, at 91-94.



Investigation (FBI) reports, “[t]he modern Navajo Nation is one of the most violent reservations in the country. In the last five years more rapes were reported on the Navajo Nation than in San Diego, Detroit and several other more populous U.S. cities.”<sup>203</sup> New Mexico’s U.S. Attorney, Ken Gonzales, noted “there is a gravity of violence seen on Indian reservations ... Homicides, child sexual assaults, and domestic violence against women are commonplace ... It’s widely known that Native American women suffer violent crime at a rate three and a half times greater than the national average. One third of all Native American women will be raped in their lifetimes.”<sup>204</sup>

The expectation that a man will move to his wife’s family is infrequently held in non-Navajo society. In modern times; however, when women move into a man’s locale, women and children become vulnerable because there is no longer the protection that her family traditionally provided.<sup>205</sup> “Her brothers, aunts, in-laws, father, and mother are not there, which is why in cases of divorce or domestic violence, many judges tell victims to move back to their mother’s home.”<sup>206</sup> The alarmingly high number of domestic and sexual violence incidents that take place on the Navajo reservation suggests the traditional *k’éi* values, which governed family relations, have rapidly deteriorated since the introduction of *bilagáana* culture. However, the spirit of Changing Woman and reclaiming the strength of Navajo women can be found in programs like “Home for Women and Children” in Shiprock, New Mexico. This program, and others like it, provides support for women and families enduring domestic violence [or sexual abuse].<sup>207</sup> “Home for Women and Children is committed to provide these services utilizing traditional *Diné* teachings of *k’é* and *hózhó*.”<sup>208</sup>

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<sup>203</sup> Laurel Morales, *Navajo Nation, Feds Take on Overwhelming Violent Crime*, FRONTERAS: THE CHANGING AMERICA DESK (March 1, 2013), <http://www.fronterasdesk.org/news/2013/mar/01/navajo-nation-feds-take-overwhelming-violent-crime>.

<sup>204</sup> *Journey Through Indian Country—Part 1: Fighting Crime on Tribal Lands*, The FBI: Federal Bureau of Investigation - Stories (June 1, 2012), [http://www.fbi.gov/news/stories/2012/june/indian-country\\_060112](http://www.fbi.gov/news/stories/2012/june/indian-country_060112).

<sup>205</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>206</sup> *Id.*

<sup>207</sup> See HOME FOR WOMEN AND CHILDREN—TEMPORARY SHELTER (2009), <http://www.homeforwomenandchildren.com/Facility.html>.

<sup>208</sup> Shondiin Silversmith & Cindy Yurth, *DV Programs: Awareness improving, action lagging*, NAVAJO TIMES, (Oct. 17, 2013), <http://navajotimes.com/news/2013/1013/101713dv.php#.UquQWvRDtFt>.

Politically, the Navajo Nation has remained mostly a men's club.<sup>209</sup> Of the 24 elected members from the 110 chapters that make up the Navajo Nation Council, Amber Kanazbah is the only female.<sup>210</sup> In a society where women make up over half of the voting population, more female leaders are needed.<sup>211</sup> During the 2010 Navajo Nation Primary, Lynda Lovejoy ran against the current president Ben Shelly in the Nation's presidential race. Unfortunately, Lovejoy lost by 3,375 votes.<sup>212</sup> The election stirred up gender issues in the Nation perpetuating the idea that "leadership roles are not a part of the traditional role of Navajo women."<sup>213</sup>

Akin to the United States' failure to elect a female president or vice-president, to date the Navajo Nation has also failed to elect any women to serve as president or vice-president. This fact illustrates the depth of assimilation and rejection of traditional Navajo values in the government.<sup>214</sup> While men have traditionally held many leadership roles within the tribe, women also served as peace and war *naat'áanii* and participated at the *naachids*.<sup>215</sup> "Navajos see each person [and governing body] as having female and male aspects that create balance."<sup>216</sup>

It appears that white culture has erased traditional values from the minds of the Navajo, replacing them with male-dominated hierarchical principles reflected in both the political and domestic domains. There is no simple explanation for the extreme shift away from women leadership and influence. One factor can be attributed to the lack of economic and political power Indigenous men attain in the larger framework of the white, male-dominated American social structure. This deficiency has severely affected Native women and indigenous communities as wholes. "Navajo men often face the

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<sup>209</sup> IVERSON, *supra* note 33, at 303.

<sup>210</sup> NAVAJO NATION COUNCIL—OFFICE OF THE SPEAKER (2015), <http://www.navajonationcouncil.org/council.html>.

<sup>211</sup> IVERSON, *supra* note 33, at 304.

<sup>212</sup> See Felicia Fonseca, *Shelly secures Navajo president seat—Lovejoy unable to make history*, THE BUFFALO POST, (Nov. 2, 2010), <http://www.buffalopost.net/?tag=lynda-lovejoy>.

<sup>213</sup> Jenna Cederberg, *Lovejoy discusses ending bid for Navajo presidency*, THE BUFFALO POST, (Dec. 23, 2010), <http://www.buffalopost.net/?tag=lynda-lovejoy>.

<sup>214</sup> OFFICIAL SITE OF THE NAVAJO NATION – HISTORY, <http://www.navajo-nsn.gov/history.htm>.

<sup>215</sup> See WILKINS, *supra* note 65, at 71.

<sup>216</sup> Felicia Fonseca, *Navajo closer than ever to electing woman leader*, THE BUFFALO POST, (Oct. 19, 2010), <http://www.buffalopost.net/?tag=lynda-lovejoy>.

challenge of living a dual cultural reality on and off the reservation.”<sup>217</sup> This challenge is reflected in the harsh realities of the Navajo Nation inflicted by Navajo men, such as domestic violence and suppression of women as political leaders. When men feel they should command power, aggression can be initiated when they feel frustrated in their inability to obtain that power.<sup>218</sup> Physical dominance [over female partners] is an avenue for men to regain some power when they feel there is a discrepancy.<sup>219</sup>

Changing Woman birthed the Monster Slayer Twins to save the *Diné* from the monsters inhabiting the earth. She created the clans for the people. She created the earth and the sky. She provided sustenance for her people and for the future generations. She provided customary law governing domestic relations. In the creation story, *Asdzáq Nádleehé* is the connection between the matrilineal past and the present. Following Changing Woman’s way, Navajo women like Annie Dodge Wauneka<sup>220</sup> advocated for “integrating the role of traditional and modern values and of the importance of Navajo men and women working together.”<sup>221</sup> Wauneka reminded people to follow Changing Woman’s teachings. “[A]lthough women had not been tribal leaders [traditionally], they had always held a strong role in the family, they could own their own property, and their views and opinions were respected.”<sup>222</sup>

On the reservation today, reoccurring domestic violence issues and suppression of female leaders fails to reflect the teachings of Changing Woman. In an effort to move away from the continual problems which plague the *Diné*, like domestic violence and the suppression of female political leaders, the Navajo must look to the creation story and previous generations to understand how to kill these

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<sup>217</sup> Telephone Interview with Judge Carol Perry, Window Rock District Court (Oct. 15, 2013).

<sup>218</sup> See Julia C. Babcock et al., *Power and Violence: The Relation Between Communication Patterns, Power Discrepancies, and Domestic Violence*, 61 *Journal of Consulting and Clinical Psychology* 40, 40 (1993).

<sup>219</sup> *Id.*

<sup>220</sup> See generally CAROLYN NIETHAMMER, *I’LL GO AND DO MORE: ANNIE DODGE WAUNKA* (2001) (Annie Dodge Wauneka was an honorable female activist of the Navajo Nation who drastically improved the health and education of the tribe. She was awarded the United States Presidential Medal of Freedom for saving the lives of many Navajo by educating them about prevention and treatment of disease like tuberculosis. She served as the second woman on the Navajo Tribal Council in 1946).

<sup>221</sup> *Id.* at 245.

<sup>222</sup> *Id.*

modern monsters. Navajo women have to embody the attributes of Changing Woman to encourage movement, change, and new life to kill these monsters similarly to when she birthed the Monster Slayer Twins who saved the *Diné* from destruction.

**b. Reflection of Our Creation Story**

The tension of the *bilagáana* and *Diné* cultural clash still survives on the Navajo reservation and within the hearts of the People. It is perpetuated by philosophies behind Euro-American adjudicative processes. The Navajo Nation's judicial branch was created as a mirror image of the Euro-American legal system, continuing a male-dominated cultural tradition. The Navajo judges found that these processes did not suffice to solve the issues arising on the reservation. To be able to properly adjudicate these issues, *Diné* judges created the Navajo Peacemaker Courts that more adequately reflect traditional values of the tribe. However, even with the value placed on traditional methods of problem solving, the current court system and legal proceedings still fails to adequately incorporate a balance between male and female gender roles that the creation story emphasizes to maintain *hózhó*.

Changing Woman taught us the rules of conduct with our relatives and all of creation. Everything has a life force and deserves respect. Male and female are of equal value and must live and work together to have "*Bik'eh hozhoon*". A woman represents Beauty Way, love, life, home, security, peace and strength and is responsible for the preservation of our culture and to strengthen our cultural belief, that the family is the foundation of our society. Our prayers and our songs stress the equality and completeness of life.<sup>223</sup>

The separation of male and female functions is a concept that is so deeply rooted in Navajo culture that it is accepted without question: it is essential to maintaining balance and harmony.<sup>224</sup> Today, neither the Navajo Nation courts nor the Navajo Peacemaker Court have

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<sup>223</sup> HOME FOR WOMEN AND CHILDREN—MISSION STATEMENT (2009), <http://homeforwomenandchildren.com/>.

<sup>224</sup> Office of Navajo Nation President and Vice-President v. Navajo Nation Council, No. SC-CV-02-10 (Nav. Sup. Ct., May 28, 2010).

separately defined roles for men and women, which is needed to maintain *hózhó*. This shortcoming in the courts adds insult to the injury that is the lack of female leadership and balance for the future of the Navajo Nation.

The Navajo Nation's complex history dealing with the *bilagáanas* has disrupted the traditional respect women in the tribe once had. The absence of holding women in high esteem is not only seen in the lack of female leaders, but is also reflected in the high frequency of domestic violence and sexual assault cases the Navajo Nation sees annually. In a society that once valued women as property owners, decision makers, sheep herders, weavers, hearts of the home, and origins of the family line, the respect for Navajo women today is far removed from the teachings of Changing Woman.

There are ways the Navajo Nation may begin to subdue these monsters. First, the judicial branch can make changes to incorporate women in leadership positions on the Tribal Council or support women running for elected positions. Second, the Nation could take proactive steps to address the social stigmas women such as Lovejoy face when running for president or for other political offices. Third, the Peacemaking Program can integrate Changing Woman's stories into their "Priorities" section to emphasize the importance of females in the Navajo Nation and in traditional Navajo thought. Fourth, the Navajo people have to remove themselves from the history taught to them through the Christian boarding schools that has been passed down to their children. Although there has been a significant loss of traditional culture through the forced implementation of these schools, the *Diné* must remember the creation story is the true origin of the People. Ultimately, the *Diné* must divorce themselves from the hierarchical, male-dominated Euro-American ideologies and redirect the tribe back toward the three fundamental doctrines of Navajo thought.

Without affirmative governmental initiatives supporting Navajo women, balance and harmony between men and women remain absent in the community. Joe Kee, Jr. "paid a tribute to the strength of Navajo women. 'You are our backbone, the hearth fire of our society... Our ancestors never gave up... I thank our ancestors for their determination.'"<sup>225</sup> Unfortunately, societal issues largely affecting Navajo women will continue to be fundamental problems on

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<sup>225</sup> IVERSON, *supra* note 33, at 323.

the reservation until the *Diné* government chooses to actively confront them and reteach traditional values to future generations.

### Conclusion

Over a tumultuous history, Navajo people continue to have great strength in adaptation and survival through ceremonies and physical endurance. To overcome the modern monsters, the *Diné* should return to traditional practices and beliefs, which sustained our survival in the past. Only when we return to the ways of the creation story, and the values Changing Woman taught, can the tribe begin to heal the social disturbances that continue to haunt our families' generation after generation. The modern monsters we must kill are alcoholism, drug addiction, domestic violence, child abuse, poverty, the continuation of broken families, assimilation, and suppression of our indigenous identity.

The monsters result from the cultural clash that began with the Long Walk. Since that time, maladaptive cognitive and emotional behaviors have been passed down through broken family ties and improper social constructs. It is far past time to reject these monsters and reformat the Navajo court system and government to reflect a harmonious balance between males and females exemplifying the cultural standards found in the Navajo creation story. In the way of Changing Woman, Navajo women today have to facilitate movement and bare life to kill the monsters currently inhabiting our world. Through empowering women, the Navajo Nation has the potential to serve not only as a role model for preserving traditional values and language for indigenous people in the judicial branch, but as a role model for the world by giving women prestigious leadership positions in the executive branch as well. It is time our people look to the creation story and the teachings Changing Woman gave us to advance indigenous governance systems.