

FOREWORD

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The Navajo Nation has over 400,000 enrolled citizens¹ and a land base of 27,413 square miles.² The Diné people refer to the land base of the Navajo Nation as nihikéyah, meaning “the land the people live and walk upon, called home.”³

Thousands of narratives on the histories and challenges facing the Diné people and their relationship with nihikéyah are present in this world. Nihikéyah is more than property and a commodity for the Diné people; it is a physical, emotional, psychological, and spiritual foundation. Nihikéyah is the core of what it means to be human for the Diné people. The people’s matrix and way of life are interwoven with the land. It is the base of people’s understanding of life in this world. It is designed for the Diné people. The land is alive, has spirit, and the people acknowledge this through their narratives, prayers, songs, dances, traditions, and way of life.⁴

Without a reciprocal relationship with the land, the Diné people suffer. This is evident in the events at Bosque Redondo from 1863 to 1868.⁵ From 1863 to 1868, over ten thousand Diné people were forcibly removed from their homeland to Bosque Redondo, now known as eastern New Mexico near the town of Fort Sumner.⁶ In the spring of 1868, Navajo leaders Barboncito,

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1. See Felicia Fonseca, *Navajo Nation Tops Cherokee to Become Largest Tribe in US*, ASSOCIATED PRESS NEWS (May 19, 2021), <https://apnews.com/article/coronavirus-pandemic-health-government-and-politics-b8ad57f35e643db216309341f547e28e> [https://perma.cc/6LQR-6PCF].

2. See LLOYD L. LEE, DINÉ IDENTITY IN A TWENTY-FIRST-CENTURY WORLD 76 (2020); see also Simon Romero, *Navajo Nation Becomes Largest Tribe in U.S. After Pandemic Enrollment Surge*, N.Y. TIMES (May 21, 2021), <https://www.nytimes.com/2021/05/21/us/navajo-choerokee-population.html> [https://perma.cc/ZLK4-RTKC].

3. LEE, *supra* note 2, at 76.

4. See *id.* at 77.

5. See *id.* at 83.

6. LEE, *supra* note 2, at 83; see also *Bosque Redondo Memorial at Fort Sumner Historic Site*, N.M. HISTORIC SITES, <https://nmhistoricsites.org/bosque-redondo> [https://perma.cc/DH7J-2JGH].

Manuelito, Armijo, Delgado, Largo, Herrero, Chiqueto, Muerto de Hombre, Narbono, Narbono Segundo, and Ganado Mucho (all Spanish surnames, not their real Diné names) diligently negotiated with the United States government to return home.⁷ The Treaty of 1868 came out of these discussions and was signed on June 1, 1868.⁸ The treaty outlined a reservation boundary:

[B]ounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring, and west by the parallel of longitude about 109°30' west of Greenwich, provided it embraces the outlet of the Canon-de-Chilly, which canon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians.⁹

Over 7,300 people left Bosque Redondo on June 18, 1868.¹⁰ They walked thirty-five days to reach Fort Wingate in western New Mexico.¹¹ They stayed at Fort Wingate until late 1868.¹² In January 1869, they began returning to their homes across the Navajo Nation.¹³ The people did not live within the treaty reservation boundaries: they expanded it. The act of this extension illustrates the Diné people's sovereignty and way of life. Diné people decided what was best for their families and loved ones. They did not acquiesce to American domination.

Since 1868 the Diné people have built a nation based on a combined Diné and American matrix.¹⁴ This approach has been a painful process. In Diné philosophy, balance and symmetry are elements of life that must be acknowledged and sought.¹⁵ Without balance and symmetry, life is

7. See *id.* at 84; see also Treaty Between the United States of America and the Navajo Tribe of Indians, Navajo-U.S., June 1, 1868.

8. Treaty Between the United States of America and the Navajo Tribe of Indians, *supra* note 7; see also *Navajo Treaty of 1868*, SMITHSONIAN NAT'L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/navajo/treaty/treaty.cshtml> [<https://perma.cc/PQG8-QL6C>].

9. Treaty Between the United States of America and the Navajo Tribe of Indians, Navajo-U.S., June 1, 1868, 15 Stat. 667; see also *Navajo Treaty of 1868*, *supra* note 8.

10. See *New Mexico's Bosque Redondo Memorial Commemorates 150th Anniversary of the Treaty of Bosque Redondo & Formation of the Navajo Nation*, N.M. DEP'T OF CULTURAL AFFS. (Mar. 23, 2018), <https://www.newmexicoculture.org/release/721/16> [<https://perma.cc/2LHR-6GLT>] [hereinafter *Bosque Redondo Memorial*]; see also PETER IVERSON, DINÉ: A HISTORY OF THE NAVAJOS 66 (2002).

11. See *Bosque Redondo Memorial*, *supra* note 10.

12. See *id.*

13. See *id.*

14. See *Navajo Treaty of 1868*, *supra* note 8.

15. See Carmenlita Chief et. al., *Breathing Clean Air is Sq'áh Naaghái Bik'eh Hózhóo (SNBH): A Culturally Centered Approach to Understanding Commercial Smoke-free Policy Among*

challenging and will drive people into problematic situations and experiences. The Diné people view balance and symmetry in their way of life following the Sà'áh Naagháí Bik'éh Hózhóñ (SNBH) paradigm.¹⁶ SNBH is a natural teaching where a Diné person learns how to achieve healthy well-being.¹⁷ It provides a direction where the person acknowledges and overcomes the conflicts, difficulties, and contradictions in life.¹⁸ SNBH helps people strive for happiness, well-being, long life, and beauty.¹⁹

SNBH is Navajo Nation sovereignty. For example, the Navajo Nation Council codified the Fundamental Laws of the Diné based on SNBH into the Navajo Nation Code, where all laws, regulations, and rules for the Navajo government are officially registered.²⁰ The Fundamental Laws are categorized as traditional, customary, natural, and common.²¹ The following paragraphs briefly describe each law based on the legislation passed by the Navajo Nation Council in 2002.

Traditional law declares and teaches the Diné people have the “right and freedom” to “choose leaders of their choice.”²² Leaders are identified in four branches: executive, legislative, judicial, and national security.²³ Leaders are recognized “to carry out their duties and responsibilities in a moral and legal manner.”²⁴ The law calls for the respect and honor of elders and medicine people and to allow their participation and contribution to the government for growth, cleansing, protection, and blessing necessary for securing healthy leadership and the operation of the government in harmony with the laws.²⁵

Customary law teaches people a holistic education such as the language, relations or K'é, and cultural knowledge.²⁶ “Every child and every elder [should] be respected, honored, and protected with a healthy physical and

the *Diné (Navajo People)*, NAT'L LIBR. OF MED. (Oct. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5099227/> [<https://perma.cc/7FR2-6L9Q>].

16. *Id.*

17. *Id.*

18. *See id.*

19. *See id.*

20. *See generally* Kenneth Bobroff, *Diné Bi Beenahaz'áanii: Codifying Indigenous Consuetudinary Law in the 21st Century*, 5 TRIBAL L.J. (2004), <https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1042&context=tlj> [<https://perma.cc/KAQ3-X9AA>]; *see also* Navajo Nation Council Res. CN-69-02, Amending Title 1 of the Navajo Nation Code to Recognize the Fundamental Laws of the Diné (Nov. 13, 2002).

21. Bobroff, *supra* note 20.

22. *Diné Bi Beenahaz'áanii*, 1 N.N.C. §§ 201-206 (2002), <https://courts.navajo-nsn.gov/dine.htm> [<https://perma.cc/73XQ-6JE4>].

23. *Id.*

24. *Id.*

25. *Id.*

26. *See id.*

mental environment, free from all abuse.”²⁷ Diné children should be provided with “wisdom, self-knowledge, and knowledge to empower” themselves.²⁸

Natural law teaches the people the four “sacred elements of life, air, light/fire, water, and earth/pollen.”²⁹ The six sacred mountains “must be respected, honored, and protected,” for they are the Navajo Nation’s leaders and foundation.³⁰ The Diné people “have a sacred obligation and duty to respect, preserve, and protect all that was provided,” for the people are designated stewards “of [their] relatives through [the] use of the sacred gifts of language and thinking.”³¹ The people have the right and freedom to utilize the sacred elements of life and land, natural resources, sacred spaces, and other living entities “through the proper protocol of respect and offering and these practices must be protected and preserved.”³² The law states that “[i]t is the duty and responsibility of the Diné to protect and preserve the beauty of the natural world for future generations.”³³

Common law declares and teaches the people the knowledge, wisdom, and practices “must be developed and exercised in harmony with the values and principles of Diné Bibéé Ház’áanii [Diné Fundamental Laws] and in turn, the written laws of the Navajo Nation must be [created] and interpreted in harmony with Diné common law.”³⁴ The values and principles of Diné common law must be used to harness and utilize the Diné knowledge with other human beings and their knowledge.³⁵ In other words, an interwoven knowledge system is needed.³⁶

Since 1868, the Diné people have attempted to build a Navajo Nation following SNBH, yet the course has not been harmonious and symmetrical.³⁷ In some decisions and plans, SNBH was the core of the decision-making, like in the creation of Diné Fundamental Laws. However, in many other cases, an American matrix dictated what was decided. This is not an equilibrium

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. Kristen A. Carpenter & Angela R. Riley, *Privatizing the Reservation?*, 71 STAN. L. REV. 791, 851 (2019); *see also* Diné Bi Beenahaz’áanii, *supra* note 22.

33. Diné Bi Beenahaz’áanii, *supra* note 22; *see also* Carpenter & Riley, *supra* note 32, at 851.

34. Diné Bi Beenahaz’áanii, *supra* note 22.

35. *Id.*

36. *See id.*

37. *See* Jessica R. Goodkind et. al., “We’re Still in a Struggle”: Diné Resilience, Survival, Historical Trauma, and Healing, NAT’L LIBR. OF MED. (Jun. 15, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4143133/> [<https://perma.cc/3ZQZ-ZZ9J>]; *see also* Chief et. al., *supra* note 15.

way of life. The challenges and traumatic experiences of the Navajo Nation over the past two hundred years are the results and consequences of this imbalanced path.³⁸ SNBH should be the centric thinking, planning, living, and reflecting framework in all decision-making matters.

In *A Nation Within: Navajo Land and Economic Development*,³⁹ Ezra Rosser analyzed the Navajo Nation and the connection between land-use patterns, growth, natural resource extraction such as oil, gas, uranium, and coal, the continuation of high levels of unemployment and poverty, and the persistent challenges to the land and economic expansion.⁴⁰ The development of the Navajo homeland through mineral extraction, while attempting to bring wage labor and economic opportunities to the people, has resulted in unemployment, poverty, unwellness, and other socio-economic challenges.⁴¹ From the 1920s through the rest of the twentieth century, when mineral extraction was driving the Navajo economy, Navajo leadership believed they were following SNBH in their decision-making in allowing such enterprises in the homeland.⁴² However, American values, ideologies, attitudes, and ways drove the decisions. In other words, the Navajo leadership thought about their communities, families, and people in deciding to support mineral extraction in the homeland.⁴³ Nevertheless, the American government and companies forced the leadership into making the decision without seeking proper alternatives.⁴⁴ The Navajo government thought that by agreeing to these mineral extraction projects, jobs and opportunities would be provided for the Diné people.⁴⁵ They were not. While a few Diné people received jobs from some of these opportunities, the health and well-being of the workers and their families were severely impacted. In fact, some workers died because of the work.⁴⁶ Alternative ways of living with the land are the basis of SNBH and are needed for a sustainable and healthy way of life for the Navajo Nation.

38. See Goodkind et. al., *supra* note 37.

39. See generally EZRA ROSSER, *A NATION WITHIN: NAVAJO LAND AND ECONOMIC DEVELOPMENT* (2021).

40. See *id.*; see also Patrick Donnelly, *Urban Decline*, in *ENCYCLOPEDIA OF SOCIAL PROBLEMS* 977, 978 (Vincent N. Parrillo ed., 2008).

41. See ROSSER, *supra* note 39, at 181-82.

42. See *id.*; see also Chief et. al., *supra* note 15.

43. See ROSSER, *supra* note 39, at 37-38.

44. See *id.* at 37-39.

45. See *id.* at 181.

46. See *id.* at 53 (quoting William Jenney, *Having Your Yellow Cake and Eating It Too: The Environmental and Health Impacts of Uranium Mining on the Colorado Plateau*, 7 ARIZ. J. ENV'T. L. & POL'Y 27, 52 (2017)).

The Navajo Nation landscape has been wrought with an asymmetrical way of life, although there is some opportunity for sustainable transformation. Understanding the Navajo past and present challenges plays a critical role in making decisions for future generations and the homeland. This knowledge will elicit a Diné-centric paradigm and ensure that the Navajo Nation is exercising its sovereignty as a distinct nation without external force. In other words, the Navajo Nation will make decisions based on SNBH and protect and sustain the land and environment for living entities, including plants, animals, insects, air, wind, fire, mountains, lakes, rivers, and trees.

The Navajo Nation is a critical Native Nation in the United States and the Western hemisphere. The American government and other Native Nations pay attention to what is happening in the Navajo Nation.⁴⁷ The Navajo Nation has been a leading advocate for tribal sovereignty and sustaining a distinct Indigenous way of life.⁴⁸ SNBH is the central paradigm to follow in making decisions regarding the land and all things Navajo, not an American ideology based on the values of competition, individualism, and greed. As Rosser states, “there is space for the Navajo Nation to more aggressively assert its sovereignty over the land.”⁴⁹ Diné people and the Navajo Nation should follow core values, beliefs, traditions, customs, and ways, not an external matrix. The Nation should exercise its sovereignty based on its core values and not American values and ideologies.

The contributors in this special symposium engage in a conversation with *A Nation Within* and analyze what Rosser spotlights in the book from water rights, governance, legal, property, cultural narrative, and a Diné-centric angle. M. Alexander Pearl’s essay discusses how water rights impact the land and highlights Rosser’s honest scrutiny of the Navajo Nation.⁵⁰ Pearl acknowledges Rosser’s rare insider/outsider perspective in analyzing the Navajo Nation’s land and economy.⁵¹ Adam Crepelle’s piece considers the significance of Rosser’s book, water rights, and points out the wanting

47. See Nina Lakhani, *Tribes Without Clean Water Demand an End to Decades of US Government Neglect*, THE GUARDIAN (Apr. 28, 2021, 5:00 PM), <https://www.theguardian.com/us-news/2021/apr/28/indigenous-americans-drinking-water-navajo-nation> [https://perma.cc/H5ZV-32U2].

48. See NAT’L CONG. OF AM. INDIANS, TRIBAL NATIONS AND THE UNITED STATES: AN INTRODUCTION 22 (2020).

49. ROSSER, *supra* note 39, at 215.

50. M. Alexander Pearl, *Reflections on Place and People from Within*, 52 SW. L. REV. 199 (2023).

51. *Id.* at 201.

for more information in the areas discussed in *A Nation Within*.⁵² Crepelle also recognizes Rosser's unique insider/outsider point of view.⁵³ Angela Riley appreciates Rosser's honest examination and advocates for relevant good governance for the Navajo Nation and all Native Nations in the United States as they strive for self-determination.⁵⁴ Dylan R. Hedden-Nicely takes a present-day legal approach in his conversation with *A Nation Within*.⁵⁵ He considers recent United States Supreme Court decisions such as *Oklahoma v. Castro-Huerta* (2022) and the impacts these cases will have on Native Nations' relations with the United States and the American government.⁵⁶ Hedden-Nicely brings up many questions about Native Nation governing authority.⁵⁷ What does the future hold for the Navajo Nation and all Native Nations when exercising its sovereignty and self-determination? Will the United States push back or outright restrict tribal sovereignty? Jessica A. Shoemaker's article concentrates on property, land, and the call for western legal systems and governments to pay attention to Native and Navajo relations with the land.⁵⁸ She advocates that Navajo and Native collective land usage can inform western concepts of property.⁵⁹ Tamera Begay and Matthew Fletcher's piece takes a creative and cultural narrative pathway to converse with *A Nation Within*.⁶⁰ Their article is a dialogue between Nanaboozhoo and Má'ii.⁶¹ Nanaboozhoo is an Anishinnaabeg deity, and Má'ii is a Navajo messenger.⁶² Indigenous cultural narratives tell the complexities, contradictions, and realities of living in this world. The narratives represent an Indigenous paradigm. Discussing anything on Native Nations and communities should be from an Indigenous matrix. Wendy S. Greyeyes points out the need for Diné people to direct and rectify the reality of life in the Navajo Nation.⁶³ The Land Back movement in 2022 calls for

52. Adam Crepelle, *Thoughts on A Nation Within's Discussion of The Navajo Nation's Water Rights*, 52 SW. L. REV. 208 (2023).

53. *Id.* at 208-09.

54. Angela R. Riley, *Tribal Self-Determination and A Nation Within*, 52 SW. L. REV. 217 (2023).

55. Dylan R. Hedden-Nicely, *The Reports of my Death are Greatly Exaggerated: The Continued Vitality of Worcester v. Georgia*, 52 SW. L. REV. 255 (2023).

56. *Id.* at 257.

57. *Id.* at 255.

58. Jessica A. Shoemaker, *Land Reform in the Fifth World*, 52 SW. L. REV. 239 (2023).

59. *Id.* at 241.

60. Tamera Begay & Matthew Fletcher, *Ma'ii and Nanaboozhoo Fistfight in Heaven*, 52 SW. L. REV. 226 (2023).

61. *Id.*

62. *Id.*

63. Wendy S. Greyeyes, *The Nation Within: Prospects for an Indigenous Future*, 52 SW. L. REV. 271 (2023).

Americans and the federal government to seriously reflect on the history and relations with Native peoples and return homelands to Indigenous peoples.⁶⁴ The movement is creating early momentum for future actions. Greyeyes sees Rosser's *A Nation Within* as contributing to the necessary, deep conversations on the Navajo economy.⁶⁵ However, as Greyeyes points out, the plans and solutions to build a truly sovereign nation remain with the Diné people themselves.⁶⁶

Dialogues, exchanges, ideas, plans, and actions are needed to build a truly sovereign Navajo Nation, where the objective of social, mental, psychological, and physical well-being for living entities, including humans, animals, plants, insects, mountains, lakes, rivers, and the earth is paramount and achieved. This special issue symposium focused on Rosser's *A Nation Within* book contributes to a necessary debate on the future of the Navajo Nation, Diné people, nihikéyah, and a way of life.

64. See Claire Elise Thompson, *Returning the Land: Four Indigenous Leaders Share Insights About the Growing Landback Movement and What It Means for the Planet*, GRIST: FIX SOLUTIONS LAB (Nov. 25, 2020), <https://grist.org/fix/justice/indigenous-landback-movement-can-it-help-climate/> [<https://perma.cc/J26A-G35S>]; see also *What is Land Back?*, DAVID SUZUKI FOUND., <https://david Suzuki.org/what-you-can-do/what-is-land-back/> (last visited Nov. 19, 2022).

65. Greyeyes, *supra* note 63, at 271.

66. *Id.* at 280.