

## AFTERWORD WITH GRATITUDE

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Ezra Rosser \*

### I. INTRODUCTION

It is a tremendous honor that Southwestern Law Review decided to publish a symposium on *A Nation Within: Navajo Land and Economic Development*,<sup>1</sup> and I want my response to be primarily about expressing my gratitude. Law professors and the law review format are odd. People spend days reading your massive article and marking it up with suggestions and the thanks they get is a brief mention in the star (\*) footnote. Others rarely receive even that minor level of appreciation. They work in the same space, in support of the same communities, and do so for decades, but because of a minor ancillary disagreement may also go years embroiled in needless—and *incredibly* petty—disputes with colleagues in the same field. When I first started teaching at my current school, I was randomly assigned an office next to the local pariah, an older faculty member who was disconnected from the school's power structure. But I loved being his neighbor. His dry wit would pierce the quiet of our hallway and inspire deep, heartfelt laughter among the few of us who could see beyond his sarcasm. Giving thanks is a way to acknowledge the shared humanity and work that most of us, even the most ill-tempered, are part of, even if, at times, we succumb to feelings of inadequacy or ambition-tied jealousy.

I want to give a big thanks, above the line, to Danielle K. Hart for suggesting this symposium and working behind the scenes to make it happen. Professor Hart and I are part of a subset of the ClassCrits community members who have helped organize and host a ClassCrits Conference.<sup>2</sup> Nervous as I am about performative politics and the ways rhetoric on the left

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\* Professor of Law, American University Washington College of Law.

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

2. See *Past ClassCrits Conferences*, CLASSCRITS <https://www.classcrits.org/content.aspx> [<https://perma.cc/34QM-74ZL>] (providing more information about ClassCrits XIII Conference).

is often unbounded by politics, I sometimes have mixed feelings about how problems are framed within ClassCrits. However, I do not have mixed feelings about the ClassCrits community, where I have found a rare thing in legal academia: a number of true friends. Early in my career, I despaired because I noticed that I had work friends, but few non-work friendships.<sup>3</sup> Since then, my wife and I have had two kids. Now I do not care nearly as much. I just want the school district to change its start time for middle school back a few hours and I want to get as many hugs as possible out of my kids while I still can. But, mid-life crisis aside, it is great to be a part of an academic community. Most of this response is about the Indian law community. However, I get a lot of joy and support from my other two communities—poverty law and property law—as well, and I want to thank Professor Hart, especially for her support and friendship that led to this symposium.

Before going further, I also want to thank the Southwestern Law Review editors. This issue is their baby. They did the major work. They sent endless emails. And they got it into production. A few years ago, I was named one of the editors of the *Journal of Legal Education*.<sup>4</sup> Since then, I have had the opportunity to read more drafts on legal pedagogy than I thought was possible, gain a working knowledge of Adobe InDesign, and become even more impressed with the work of the countless law students who serve as law review editors. Law student editors are so much more patient and thoughtful when working with authors than I am. The editors who worked on this symposium have my deepest gratitude.

Finally, I must thank the many contributors to this symposium: Lloyd Lee, Alex Pearl, Adam Crepelle, Angela Riley, Tamera Begay, Matthew Fletcher, Jessica Shoemaker, Dylan Hedden-Nicely, and Wendy Greeyes. We are all busy with our own teaching and research, so it truly is an honor that so many people I admire took the time to write a response to my book. As a co-author and editor, I have worked on other book projects,<sup>5</sup> but none are quite as personal as *A Nation Within*. As the conclusion notes, “This book reflects both the love I have for the Navajo Nation and the hopes I carry that life on the reservation can become easier for those Diné currently struggling. Where I let my frustration show too much and failed to demonstrate the

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3. See Ezra Rosser, *On Becoming “Professor”: A Semi-Serious Look in the Mirror*, 36 FLA. STATE U. L. REV. 215, 225 (2009).

4. Ass’n of American Law Schools, *Editorial Board*, J. LEGAL EDUC., <https://jle.aals.org/home/editorialboard.html> [<https://perma.cc/H8QG-PC4M>].

5. JULIET M. BRODIE ET AL., *POVERTY LAW, POLICY, AND PRACTICE* (2d ed. 2021); *HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* (Ezra Rosser ed., 2019); *THE POVERTY LAW CANON: EXPLORING THE MAJOR CASES* (Marie A. Failing & Ezra Rosser eds., 2016); *TRIBES, LAND, AND THE ENVIRONMENT* (Sarah Krakoff & Ezra Rosser eds., 2012).

humility appropriate for a non-Indian offering suggestions, I apologize.”<sup>6</sup> The contributions to this symposium do a great job picking up on some of the major themes of the book—history, land, tribal governance, and economic development—and they also pick up parts of the book—water settlements—that receive less comprehensive treatment and do a good job connecting the book to ongoing debates. A book written by a non-Indian living far removed from the reservation can only say and do so much, but I am deeply grateful for the effort all the contributors showed to grapple with the book and with the topics that the book covers.

Rarely do law professors get an acceptance of their work by a law review prior to having written anything. I hope this response is not an abuse of that trust. Part II of my response focuses on the Indian law and Navajo studies communities and how they create the space for a book such as *A Nation Within*. Part III argues that land and economic development matter. Place matters. Opportunity matters. And the Navajo Nation’s ability to continue to offer Diné (the Navajo word for themselves, which means “the people”) a degree of “measured separatism” depends on the tribe engaging in the often difficult tasks involved in improving governance so that Diné families can flourish while still calling the reservation their home.<sup>7</sup> Finally, in Part IV, I conclude by offering a few closing thoughts on the future of the Navajo Nation.

## II. COMMUNITY AND PURPOSE

The first thing I do whenever I give talks about *A Nation Within* is to acknowledge that the book could only be written because of the incredible depth of the Indian law and Navajo studies communities.<sup>8</sup> Writing a book about a subset of issues—land and economic development—connected to a single tribe is, in many ways, a self-indulgent exercise. In my mind, it was only possible because I knew that great scholars will reliably produce important work on a myriad of other issues and threats to tribal sovereignty that constantly pop up.

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6. ROSSER, *supra* note 1, at 212.

7. See generally CHARLES F. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY 14–23 (1987) (Professor Charles Wilkinson is credited with highlighting the importance of measured separatism as an Indian law goal).

8. See Ezra Rosser, *Guest Column: Recognizing Significance of Diné Academic Work*, NAVAJO TIMES (Oct. 4, 2021), <https://navajotimes.com/opinion/essay/guest-column-recognizing-significance-of-dine-academic-work/> [https://perma.cc/CB2D-UF9J] (applauding the academic work being produced by Diné scholars).

I sense that outside the Indian law community, there is a sense that Indian law is a bit of a backwater, with only a few people working in the field. And it can feel that way. Though Washington, D.C., where I am based, is home to six law schools, and there are another three within an easy commuting distance, for more than a decade and a half, I have been the only tenured or tenure track faculty member who regularly teaches and writes on Indian law.<sup>9</sup> And, to make matters worse, as I make clear throughout *A Nation Within*, I am non-Indian. It can often feel as if the larger legal academic world, not to mention the political world in Washington, D.C., does not really care about Indian issues.

But, in fact, the Indian law community is both deep and deeply engaged. It is incredibly liberating to know that, on practically every major issue that will arise, there is at least one person (and often many people) who will be attentive to any threats Indian nations face related to that issue. Most often, such scholars have spent decades researching and publishing on just that issue. Indian law is a large enough field, and the issues are complicated enough that no one person can be the expert on all things (though Matthew Fletcher arguably comes close).<sup>10</sup> However, there is still comfort in knowing that collectively, things are covered. That Robert Anderson has command of water issues,<sup>11</sup> that Kate Fort knows all there is to know about the Indian Child Welfare Act,<sup>12</sup> that Sarah Deer is a certified genius when it comes to

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9. Other faculty have occasionally published in Indian law, and this observation is not meant to slight their contributions to the field. See, e.g., Hope M. Babcock, *A Civic-Republican Vision of "Domestic Dependent Nations" in the Twenty-First Century: Tribal Sovereignty Re-envisioned, Reinvigorated, and Re-empowered*, 2005 UTAH L. REV. 443 (2005); Hope M. Babcock, *Here Today, Gone Tomorrow—Is Global Climate Change Another White Man's Trick to Get Indian Land? The Role of Treaties in Protecting Tribes as They Adapt to Climate Change*, 2017 MICH. STATE. L. REV. 371 (2017); see also DALIA TSUK MITCHELL, *ARCHITECT OF JUSTICE: FELIX S. COHEN AND THE FOUNDING OF AMERICAN LEGAL PLURALISM* (2007) (Dalia Tsuk Mitchell is a professor at George Washington University). Also, a number of area law schools routinely employ well-respected Indian law practitioners to teach their Indian law courses. At my own school, though I am the only faculty member who would self-identify as an Indian law scholar, Professors Christine Farley, Claudio Grossman, David Hunter, Victoria Phillips, and William Snape have all done work in support of indigenous peoples.

10. See *Matthew Fletcher Presents Indian Law Restatement*, AM. L. INST. (May 15, 2015), <https://www.ali.org/news/articles/matthew-fletcher-presents-indian-law-restatement/> [<https://perma.cc/MPR8-PEW4>]. Tellingly, Fletcher was selected to serve as the Reporter for the American Law Institute's RESTATEMENT OF THE LAW: THE LAW OF AMERICAN INDIANS. See *Elected Member: Professor Matthew L.M. Fletcher*, AM. L. INST., <https://www.ali.org/members/member/137770/> [<https://perma.cc/Z64D-MWUX>].

11. See, e.g., Robert T. Anderson, *Indigenous Rights to Water & Environmental Protection*, 53 HARV. C.R.-C.L. L. REV. 337 (2018); Robert T. Anderson, *Indian Water Rights: Litigation and Settlements*, 42 TULSA L. REV. 23 (2006).

12. See, e.g., KATHRYN E. FORT, *AMERICAN INDIAN CHILDREN AND THE LAW: CASES AND MATERIALS* (2019).

violence against Native women,<sup>13</sup> and on and on: this provides the rest of the field a bit of breathing room to work on other issues.

The list of exemplary scholars goes on and on and continues to grow. At one of the first Indian law conferences I attended, the late Philip Frickey urged everyone to do grounded work.<sup>14</sup> He argued that law review pages did not need more doctrinal complaints about *Oliphant v. Suquamish Indian Tribe*.<sup>15</sup> Instead, what was needed was work that focused on matters of importance to those living in Indian country.<sup>16</sup> It was great advice and something I hope explains much of what is presented in *A Nation Within*, but at the time it came out I was still trying to figure out my place in the community. Bethany Berger and Sarah Krakoff both began their careers working, as white women, for DNA-Peoples' Legal Services Organization<sup>17</sup> on the Navajo Nation. It was hard to see if, for all its depth, there really was space for three non-Indians doing Navajo-focused work. Berger had just published a fabulous empirical article about the experience of non-Indians in Navajo courts,<sup>18</sup> and Krakoff's tenure article, published just a few years before, on how federal Indian law impacts the Navajo Nation, remains one of my favorite Indian law articles of all time.<sup>19</sup> I feared that the space was becoming a bit crowded, a feeling that was somewhat more acute since I spent perhaps a decade daydreaming about teaching at the University of Colorado so I could be closer to the mountains and the off-the-grid log cabin where I was born.

Over time, the number of outstanding scholars in the field has only grown. One of the most important books I read while in law school, in terms of how it shaped my career, was Imre Sutton's *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature*.<sup>20</sup> The dry title aside,

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13. See *MacArthur Fellows Program: Sarah Deer*, MACARTHUR FOUND., <https://www.macfound.org/fellows/class-of-2014/sarah-deer#searchresults> [https://perma.cc/7SE8-75QY].

14. See generally Philip P. Frickey, *Transcending Transcendental Nonsense: Toward a New Realism in Federal Indian Law*, 38 CONN. L. REV. 649, 649-651 (2006). Philip Frickey's advocacy of doing "grounded work" can be seen in much of his scholarship.

15. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

16. See Frickey, *supra* note 14 at 650-51.

17. See *Ya'at'eeh | Welcome*, DNA-PEOPLE'S LEGAL SERVICES, <https://dnalegalservices.org/> [https://perma.cc/G54B-S8TY], (providing more information on the DNA-People's Legal Services).

18. Bethany R. Berger, *Justice and the Outsider: Jurisdiction Over NonMembers in Tribal Legal Systems*, 37 ARIZ. STATE L.J. 1047 (2005).

19. Sarah Krakoff, *A Narrative of Sovereignty: Illuminating the Paradox of the Domestic Dependent Nation*, 83 OR. L. REV. 1109 (2004).

20. IMRE SUTTON, *INDIAN LAND TENURE: BIBLIOGRAPHICAL ESSAYS AND A GUIDE TO THE LITERATURE* (1975).

it sucked me into the complicated world of Indian land issues. Better yet, it was dated, so I could imagine that not only was there a need for an update but that I could build a career around becoming the *next* leading expert in Indian land issues. However, I quickly realized that not only did quite a few other experts already exist—Judith Royster<sup>21</sup> and Joseph Singer<sup>22</sup> leading among them—but that a new person, Jessica Shoemaker, was poised to actually become the next expert. She would go on to publish a great deal of excellent, well-placed articles exploring land tenure challenges with a depth and sophistication that I could not equal.<sup>23</sup>

While I was not exactly jealous—as someone who grew up in part in Iowa and Missouri, I had little interest in living where Shoemaker did, a rival Midwestern state—the depth of the Indian law community had me a bit unbalanced. At the last conference I attended pre-tenure, the late Alex Skibine jokingly referred to me as “punchy” and “unafraid.” Skibine probably read more of my work in my first ten years of teaching than anyone else. He certainly read more than any member of my family. As his observation captured, I spent a few years unwisely lashing out. I wrote an ill-conceived and intemperate response to a piece by Matthew Fletcher.<sup>24</sup> While I still believe that not every agreement an attorney working for a tribe reaches with neighboring non-Indian governments is necessarily good,<sup>25</sup>

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21. See Judith Royster, *The Legacy of Allotment*, 27 ARIZ. STATE L.J. 1 (1995) (discussing the territorial sovereignty of Indian tribes); JUDITH ROYSTER ET AL., *NATIVE AMERICAN NATURAL RESOURCES LAW: CASES AND MATERIALS* (4th ed., 2018) (exploring issues relating to property rights, environmental protection, and natural resources in Indian country).

22. See, e.g., Joseph William Singer, *Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest*, 10 ALBANY GOV'T L. REV. 1 (2017) (exploring the myths surrounding the Johnson v. M'Intosh, 21 U.S. 543 (1823) opinion); Joseph William Singer, *Nine-Tenths of the Law: Title, Possession & Sacred Obligations*, 38 CONN. L. REV. 605 (2006) (examining the Supreme Court's opinion in *City of Sherrill v. Oneida Indian Nation of New York*, 414 U.S. 661 (1974), which held that the Oneida Nation is subject to local property taxation when it reacquires land from a non-Indian possessor even though the Oneida Nation had never lost the title to that land).

23. See, e.g., Jessica A. Shoemaker, *An Introduction to American Indian Land Tenure: Mapping the Legal Landscape*, 5 J. L. PROP. & SOC'Y. 1 (2020); Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 CAL. L. REV. 1531 (2019); Jessica A. Shoemaker, *Complexity's Shadow: American Indian Property, Sovereignty, and the Future*, 115 MICH. L. REV. 487 (2017).

24. Ezra Rosser, *Caution, Cooperative Agreements, and the Actual State of Things: A Reply to Professor Fletcher*, 42 TULSA L. REV. 57 (2006) (critiquing Matthew L.M. Fletcher, *Reviving Local Tribal Control in Indian Country*, 53 FED. LAW. 38 (2006)).

25. See generally JEFF CORNTASSEL & RICHARD C. WITMER, *FORCED FEDERALISM: CONTEMPORARY CHALLENGES TO INDIGENOUS NATIONHOOD* (2008) (examining how state governments have manipulated “rich Indian” images when setting policies targeting indigenous peoples and discusses how indigenous nations have responded politically to these contemporary threats to their nationhood).

Fletcher's response (in which he simply implied that *some people have the wrong view* without attacking someone by name) was a much better way to handle a disagreement.<sup>26</sup> In an article that was more property theory than Indian law, I lashed out at Joseph Singer quite unfairly—my annoyance at a single law review symposium issue with multiple contributors led me to wrongly gloss over Singer's lifetime of effort to highlight the significance of race when it comes to property.<sup>27</sup> I was unmoored, punching wildly—making what I still think of as good points, but with the wrong tone and approach.

The depth of the Indian law community helped me see a way to contribute, hopefully in a way that was (despite the introspective nature of this response) less about me and more about the people and ideas I care about. One of my fondest memories in the field was during my first year of teaching, when, after a long conference, Gloria Valencia-Weber gave me a goodbye hug as I waited for a flight at the Albuquerque airport. While we have never been particularly close, that *welcome to the community* hug meant a lot. When Valencia-Weber retired, I was briefly nervous about the field. But a beautiful thing has happened in the last fifteen years. A wave of incredibly talented Indian law scholars has joined the academy. Alex Pearl's understanding of reservation life and his humor shine through all his writing.<sup>28</sup> I met Greg Ablavsky when he was still a student, and his scholarship has made a tremendous impact already,<sup>29</sup> even though he has not yet been around long enough for me to know how to spell his last name from memory. Adam Crepelle and Dylan Hedden-Nicely have written enough in the last three years to make me worry about their health.<sup>30</sup> Equally exciting, Native scholars are *finally* occupying elite seats within the United States legal academy. Stacy Leeds and Elizabeth Kronk Warner have shown the strength of Native deans.<sup>31</sup> And though I have not met two of them in person, all of

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26. See Matthew L.M. Fletcher, *Retiring the "Deadliest Enemies" Model of Tribal-State Relations*, 43 TULSA L. REV. 73, 79-81 (2007).

27. See Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CAL. L. REV. 107, 109-11 (2013).

28. See, e.g., M. Alexander Pearl, *Paint Chip Indians*, 9 UNBOUND: HARV. J. LEGAL LEFT 62 (2015) (Pearl's parody articles are amazing and worth checking out); M. Alexander Pearl, *How to Be an Authentic Indian*, 5 CAL. L. REV. CIR. 392 (2014).

29. See, e.g., GREGORY ABLAVSKY, *FEDERAL GROUND: GOVERNING PROPERTY AND VIOLENCE IN THE FIRST U.S. TERRITORIES* (2021); Gregory Ablavsky, *Beyond the Indian Commerce Clause*, 124 YALE L. J. 1012 (2015).

30. See, e.g., Adam Crepelle, *The Law and Economics of Crime in Indian Country*, 110 GEO. L.J. 569 (2022); Dylan R. Hedden-Nicely & Stacy L. Leeds, *A Familiar Crossroads: McGirt v. Oklahoma and the Future of Federal Indian Law Canon*, 51 N.M. L. REV. 300 (2021).

31. See Julie Tenney, *Stacy L. Leeds, Leading Educator in Indian Law Joins ASU Law*, ASU NEWS (Jan. 8, 2021), <https://news.asu.edu/20210107-stacy-l-leeds-leading-educator-indian-law->

us in Indian law were thrilled when New York University School of Law hired Maggie Blackhawk,<sup>32</sup> Stanford hired Elizabeth Reese,<sup>33</sup> and Michigan Law finally brought Matthew Fletcher back to his alma mater.<sup>34</sup>

Though some great people have retired, the depth of the Indian law community continues to grow, and the level of scholarship on every major topic is impressive. In my mind, this meant that there was space to work on something that could be characterized as self-indulgent: a book about a single tribe. The fact that my connection is with the Navajo Nation was also freeing. Although not much is written about some tribes, that is not the case for the Navajo Nation, and I knew going in that my book did not have the burden of having to be *the* book about Navajo.<sup>35</sup> There is a whole literature about the tribe, written by both Navajo and non-Navajo authors: books about Navajo land that draw on Diné creation stories,<sup>36</sup> books about Navajo history in particular areas,<sup>37</sup> and books about Navajo governance.<sup>38</sup> There are beautifully researched and written books, for example, on both the relationships between Diné and their sheep<sup>39</sup> and between Phoenix and

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joins-asu-law [<https://perma.cc/UW9C-6AWF>]; see also Elizabeth Kronk Warner, U. OF UTAH, [https://faculty.utah.edu/u6024740-Elizabeth\\_Kronk\\_Warner/hm/index.html](https://faculty.utah.edu/u6024740-Elizabeth_Kronk_Warner/hm/index.html) [<https://perma.cc/G69L-SWTY>].

32. Maggie Blackhawk: Professor of Law, N.Y. UNIV. SCH. L., <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=56076> [<https://perma.cc/C39E-HSHB>].

33. Stephanie Ashe, Elizabeth A. Reese: Stanford Law's First Native American Faculty Member, STAN. LAW. (Dec. 15, 2021), <https://law.stanford.edu/stanford-lawyer/articles/elizabeth-a-reese/> [<https://perma.cc/CD73-XVMC>].

34. Claudia Capos, Matthew L.M. Fletcher, '97, U. MICH. LAW, <https://michigan.law.umich.edu/new-faculty-member-matthew-lm-fletcher-97> [<https://perma.cc/4Z3X-6VNU>].

35. For "the" book on Diné history, read PETER IVERSON, DINÉ: A HISTORY OF THE NAVAJOS (2002).

36. See KLARA KELLEY & HARRIS FRANCIS, A DINÉ HISTORY OF NAVAJOLAND (2019) (outlining key Diné historic events from pre-Columbian time to the present, using ethnographic interviews with Navajo people, who revealed their oral histories on key events such as Athabaskan migrations, trading and trails, Diné clans, the Long Walk of 1864, and the struggle to keep their culture alive under colonizers who brought the coal mining, railroad, trading posts, and climate change).

37. See WENDY SHELLY GREYEVES, A HISTORY OF NAVAJO NATION EDUCATION: DISENTANGLING OUR SOVEREIGN BODY (2022) (unravels the tangle of federal and state education programs that have been imposed on Navajo people and illuminates the ongoing efforts by tribal communities to transfer state authority over Diné education to the Navajo Nation).

38. See DAVID E. WILKINS, THE NAVAJO POLITICAL EXPERIENCE (4th ed., 2013) (discussing and comprehensively analyzing the political developments of the last decade).

39. See MARSHA WEISIGER, DREAMING OF SHEEP IN NAVAJO COUNTRY (2009) (examining the factors that led to the poor condition of the range and explaining how the Bureau of Indian Affairs, the Navajos, and climate change contributed to it).



reservation coal,<sup>40</sup> which I drew on heavily while working on *A Nation Within*. Additionally, each year the Diné Studies Conference brings together leading Diné scholars, such as Jennifer Denetdale, Lloyd Lee, and Wendy Greyeyes, and the volume of work produced by Diné scholars has notably increased over the past two decades.<sup>41</sup>

I like to joke when presenting my book to audiences that it was written for one person: Andrew Curley, a person I met while he was getting his Ph.D. and who now teaches at the University of Arizona's School of Geography, Development, and Environment.<sup>42</sup> That is not entirely true. I also wrote it for my father, who teased me one year—after I continued to delay finishing the book because I was engaged in poverty law work—by accusing me of “being like all other non-Indians and ignoring Indian issues.” I wrote it for my mother as well, who spent a career working in middle-management positions with the Navajo Nation as an environmental planner and developed a deep attachment to the reservation despite her outsider status. I also wrote it for my kids, who did not care about any other work I did and instead harassed me for years with the question: “did you finish the book yet?” But a book on Navajo land and economic development is not a path to fame, fortune, or even career advancement (my non-Indian law work tends to get more attention than my Indian law stuff). The audience for such a book, even a book with Jared Yazzie's great cover art, is inherently small. But the readers whom I care the most about are present and future Diné scholars (with Andrew Curley standing in as a representative of the larger group in my mind) and interested tribal members. In many ways, the preface to *A Nation Within* is the most important part of the book because it situates the author, explaining my connection to the Navajo Nation and, even more importantly, the limited nature of my connection.<sup>43</sup> It also expresses my hope that *A Nation Within* “reads as authentic and fair to those most familiar with the Navajo Nation: Diné who grew up and spend their lives between the four sacred mountains.”<sup>44</sup>

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40. See ANDREW NEEDHAM, *POWER LINES: PHOENIX AND THE MAKING OF THE MODERN SOUTHWEST* (2014) (explaining how inexpensive electricity became a requirement for modern life in Phoenix).

41. See, e.g., Jennifer Nez Denetdale, *Foreword to NAVAJO SOVEREIGNTY: UNDERSTANDINGS AND VISIONS OF THE DINÉ PEOPLE* (Lloyd L. Lee ed., 2017); JENNIFER NEZ DENETDALE, *RECLAIMING DINÉ HISTORY: THE LEGACIES OF NAVAJO CHIEF MANUELITO AND JUANITA* (2007).

42. See *Andrew Curley*, UNIV. OF ARIZ. SCH. OF GEOGRAPHY DEV. & ENV'T., <https://geography.arizona.edu/people/andrew-curley> [<https://perma.cc/8WJF-NKST>].

43. ROSSER, *supra* note 1, at xi-xii.

44. *Id.* at xiii.

## III. LAND AND ECONOMIC DEVELOPMENT MATTER

Nobel laureate Douglas North famously declared, “institutions matter,” and dedicated his career to exploring the how and why of that assertion.<sup>45</sup> Though couched in a different language, scholarship on tribal economic development similarly reflects an awareness that institutions matter, that place matters, and that culture matters. Diné living on the Navajo reservation do not need to be experts in new institutional economics to appreciate how their institutions sometimes succeed and sometimes fail to meet their needs. Especially when it comes to land and land governance, the Navajo Nation faces enormous challenges—some tied to the legacies of extractive industry and some tied to internal political pressures. What is clear is that land matters, place matters, and opportunity matters if Diné families and the Navajo Nation are to flourish.

Just as there is not a single definitive book about all aspects of Navajo life, there is not a single definitive answer to how the Navajo Nation should hold onto the past and meet the demands of the past and present. There are differences among Diné and differences across regions of the Navajo Nation. The tribe is not a monolith, and tribal members are not necessarily in complete agreement about the direction forward. Just as non-Indians often have internal conflicts, Diné can also be both troubled by climate change and appreciative of the benefits of coal mining. Colonial impositions by the United States government are part of the explanation for some of the Navajo Nation’s difficulties in asserting meaningful control over its land base.<sup>46</sup> However, internal disagreements about how to weigh grazing rights claims against the need for housing among those with formal sector employment also contribute to such problems. Put differently: things can be messy. Wishing to “clean” that mess through strident calls for aggressive assertions of tribal sovereignty or unidimensional understandings of culture, risks characterizing Diné and the Navajo Nation government in falsely simplified and static ways. The complications cannot be boiled away: there is too much complexity, and the challenges are too great, which makes land and economic development issues all the more salient.

On a recent trip to the reservation, I met a charming four-year-old boy. He was bright, kind, and playful. My kids had a great time playing with him, building dirt tracks for a toy truck, and finding excuses to run around in the

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45. See Douglass C. North, *The New Institutional Economics and Third World Development*, in *THE NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT* 17-18 (John Harriss et al. eds., 1995).

46. See J. M. Bacon & Matthew Norton, *Colonial America Today: U.S. Empire and the Political Status of Native American Nations*, 61 *COMPAR. STUD. SOC’Y & HIST.* 301, 302-03, 320 (2019).

late evening sun. But it was also painful. The boy's parents were unemployed and on the verge of separating; his housing situation—a tiny dilapidated one-bedroom trailer shared by six people—was incredibly unstable and lacked basic utilities, and the local school he would enter the following year offered little chance of protecting him. Jurisdiction questions may animate the law, and the Supreme Court cases set often-indefensible limits on tribal sovereignty, but the most pressing matters in this boy's life, and the lives of most people in his community, revolve around basic questions of economic security and opportunity. That my own kids, in contrast, will never really experience the immediacy of such concerns and will be protected from such material hardship is not as much of a reflection on them, or their parents, as it is on the way advantages and disadvantages have systematically been distributed.

Structural imbalances reflect power imbalances. Non-Indian indifference at a political and societal level to the conditions in which many Diné families live is part of the problem. It is hard to believe that the country would tolerate as many non-Indians living without running water or electricity as it has tolerated Diné families living in overcrowded housing without essential services. Besides indifference, another partial explanation for the economic challenges facing the Navajo Nation can be found in the long history of powerful outside corporations extracting tremendous value from the reservation without fairly compensating the tribe.<sup>47</sup> Finally, lest a discussion of the structural roots of Diné poverty be simplified to yet another denunciation of external forces, a mere working out of the long tail of past and present colonialism, it must be acknowledged that governance failings within the Navajo Nation are also a contributing factor to the challenges facing Diné families. Institutions matter, whether those institutions take the form of foreign corporations, federal executive agencies, or the Navajo Nation central administration.

The way forward is not certain, and *A Nation Within* tries to be clear that it is up to Diné to decide how to best improve conditions on the reservation. The book offers some ideas related to governance reform, covering everything from how the Navajo Nation might reclaim the range to how it might better empower local entrepreneurship by adjusting the power between local governments and the central government. But I will admit that personally, I am not sure what levers of change are likely to create possibilities and what reforms are foreclosed politically. I am also ambivalent about whether change must be rooted in theory or not. To return to a point I made earlier, within a book that is self-indulgent because of its

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47. ROSSER, *supra* note 1, at 50.

focus on a subset of issues connected to one tribe, the most self-indulgent part of the book is the chapter on economic theory. I have mixed feelings about whether I should have included that chapter or cut it from the final draft. I sense that it is of interest to a few academics but might cost me some readers who appreciate the history chapters that precede the economic theory chapter but never finish the book because they get beaten down by the theory chapter. Looking beyond the reaction of readers, the danger of an economic theory chapter is that it risks elevating the notion that theory is important. Personally, I am not sure. Academics have applied any number of theories to explain tribal economic development and underdevelopment. But what matters to me is less whether one particular theory is right or wrong and more whether economic conditions change in ways that allow Diné families on the reservation to live full lives, lives marked by economic security, community, and hope for the future.

#### IV. CONCLUSION

Taking a long view, I am optimistic about the future of the Navajo Nation. As I note in *A Nation Within*, the tribe has weathered almost unimaginable external pressure. And that pressure did not cease with the signing of the 1868 Treaty of Bosque Redondo by the United States and the Navajo Tribe. Yet, despite the forces pushing each successive generation towards assimilation and pushing against Diné identity, there is still something distinctly Diné about life on the reservation. Though *A Nation Within* does not shy away from the internal challenges that the Navajo Nation faces nor from some of the more problematic examples of leadership failures, the Navajo Nation remains. It offers a place for Diné to build a Diné society. A place defined by “*k’é*,” the connection and love that bind members of the tribe, and a place where outside influences noticeably fade and where space exists for Diné lifeways to dominate. Given all that non-Indians have done to take land from Indian nations and to repress tribal connections, the continued vitality of the Navajo Nation is of critical importance. Hopefully, *A Nation Within* and these symposium responses help the readers better understand and appreciate both the challenges that the Indian nations face, as well as the importance of respecting the right of Diné to determine the best path forward for the Navajo Nation.