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## Profile of the Law of the Navajo Nation

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# Profile of the Law of the Navajo Nation

Bidtah Becker

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## I. Introduction

The Navajo Nation is a sovereign, self-governing society that has been in existence since the Holy People gave the Navajo the land between the Four Sacred Mountains for their use and occupancy. Long before the Europeans arrived as newcomers, the Navajo people were living according to the laws, the rules, and the prayers taught to them by the Holy People, laws that brought order, beauty, peace, and harmony to the People and their world.<sup>4</sup>

The Navajo Nation is a non-IRA<sup>5</sup> tribe and is not governed by a written constitution. The Navajo Nation government consists of a three-branch system. The nation has a six volume, twenty-four title<sup>6</sup> code. Title II outlines the administration of tribal affairs, including the executive and legislative branches. Title VII outlines duties of the judiciary.

The modern Navajo Nation government is best described as a western / traditional blend of governance. Before contact, respected Navajo families represented several

groups through the selection of a *Na'táanii* or “headman.”<sup>7</sup> A *Na'táanii* was selected from a group of candidates by a majority vote based upon important leadership qualities, including wisdom, knowledge of tradition, citizenship in the community, successful living in harmony, and representation of a family possessing high morals.<sup>8</sup> The *Na'táanii* served for life or until his or her service was no longer necessary.<sup>9</sup> The *Na'táanii* served the family groups by fostering the cohesion of the community.<sup>10</sup> He or she rendered decisions in all types of disputes both in peace and war times.<sup>11</sup>

In 1923, the first official Navajo Council was formed.<sup>12</sup> The Council handled all administrative and legislative affairs of the nation. In 1958, the Navajo Nation created the Court of Appeals.<sup>13</sup> Before 1958, a Court of Indian Offenses, also known as a CFR court, operated as the judicial authority within the nation.<sup>14</sup> The Navajo Nation was governed by a single branch system until 1990 when the Council amended Title II of the Code to create the current three-branch system.<sup>15</sup> It has been suggested that the three-branch system is reflective of traditional Navajo governance.<sup>16</sup>

## II. Governmental Profile

The following is an outline of the modern Navajo Nation’s three branch government. The outline reveals the highly organized and detail oriented nature of the government. In the outline, we also discuss how traditional Navajo law has been incorporated into the legislative and judicial branches.

### A. The Executive

The Executive Branch consists of the President, Vice-President, and divisions, departments, offices, and programs as established by law.<sup>17</sup> The President is the Chief Executive Officer and selects the Vice-President as a running mate.<sup>18</sup> They are elected every four years at the same time as Council delegates.<sup>19</sup> There are currently ten major divisions and seven offices and departments.<sup>20</sup> The Executive is the largest of the three branches.<sup>21</sup> Eighty percent of the budget is appropriated to the administration of it.<sup>22</sup>

### B. The Navajo Nation Council

The Legislative Branch consists of the Navajo Nation Council and any entity established under the Council.

#### 1. The Speaker

The Navajo Nation Council established the Office of the Speaker of the Navajo Nation which became operational in 1990.<sup>23</sup> The Speaker is the presiding officer and is elected from among the members of the Navajo Nation Council.<sup>24</sup> The Speaker’s term is two years.<sup>25</sup>

The Speaker of the Council has various responsibilities within the Legislative Branch of the Navajo Nation government which the Council has delegated. Among the responsibilities and authorities of the Speaker of the Council are:

- Presiding over the Navajo Nation Council sessions;<sup>26</sup>

- Directing and supervising programs and personnel under the Legislative Branch, as provided by law;<sup>27</sup>
- “Voting only in the event of a tie vote;”<sup>28</sup>
- Calling a special session of the Navajo Nation Council;<sup>29</sup>
- Serving as the Chairperson of the Intergovernmental Relations Committee;<sup>30</sup> The Inter-governmental Relations Committee consists of the Speaker, the Chairpersons and Vice-Chairpersons of the Standing Committees;<sup>31</sup>
- Recommends Navajo Nation Council Delegates for appointment to Standing Committees subject to confirmation by the full Navajo Nation Council;<sup>32</sup>
- Recommends to the Budget and Finance Committee an annual operating budget or amendment thereof for the Legislative Branch and advises the Council on the annual budget recommended by the Budget and Finance Committee.<sup>33</sup>

## 2. Delegates

The Navajo Nation Council consists of eighty-eight delegates.<sup>34</sup> All powers not delegated by the Council are reserved in the Council.<sup>35</sup> All delegates to the Council must be enrolled members of the Nation and over the age of twenty-five.<sup>36</sup> The term of office is four years and is unlimited.<sup>37</sup> There are four regular sessions of the Council held for no more than five business days.<sup>38</sup>

## 3. Standing Committees

There are twelve standing committees of the Council.<sup>39</sup> Each council delegate is appointed to at least one standing committee and each committee has a delegate from each of the agencies.<sup>40</sup> The Intergovernmental Committee is a unique committee among the twelve. The Speaker sits as the head of the Intergovernmental Committee as do the chairs and vice-chairs of each of the other committees.

## 4. Chapters—Local Governance

A Chapter is a local governmental unit within the Navajo Nation. There are 110 Chapters which represent the foundation of the Navajo Nation government.<sup>41</sup> Chapters are designed to provide a forum to address local needs.<sup>42</sup>

Chapter Officials (President, Vice-President, Secretary/Treasurer) are elected from each community and are to work closely with the Council delegate from the region.<sup>43</sup> In 1998, the Chapter system was greatly enhanced by Council passage of the Local Governance Act.<sup>44</sup> The Act defines the relationship between Chapter Officials, administrators, and the membership. Chapter membership set policy and act as a legislature in local matters. Once decided by the membership, Chapter Officials carry out local policy.

The Act also defines broad powers for local Chapters. Chapters may issue leases on land, buy, sell, or lease Chapter property, and enter into intergovernmental agreements with other Chapters, as well as the Navajo central government, county, state, and federal government.<sup>45</sup> Chapters may also hire their own legal counsel,

establish their own peacemaking systems, and subcontract with the Navajo central government.<sup>46</sup> Chapters can also choose the form of their governmental structure, levy taxes, alter or amend plans for land use, acquire property through eminent domain, issue bonds, establish zoning ordinances, and acquire and administer capital improvement projects.<sup>47</sup>

The empowerment of local Chapters with considerable governmental authority may reflect traditional notions of decentralized governmental structure.<sup>48</sup> As previously discussed, customary government consisted of local headmen who made decisions for comparatively small family units. The organization of a centralized “tribal” government has been a relatively recent innovation. While the powers of the Chapters may reflect modern issues, the return of authority to local units may bring modern Navajo governance more in line with a structure familiar to traditional Navajos. The emphasis on local authority may more readily facilitate tribal administration from a distinctly Navajo model.

## 5. Traditional Law Reflected in the Navajo Code

As Speaker Gorman’s introductory passage reflects, traditional law plays an important role in the internal law of the Navajo Nation. Gorman also reminds the user of the Navajo Nation Code that the “Code itself instructs that the customs and traditions must be taken into account when interpreting the Code.”<sup>49</sup>

The following are two subject areas where traditional law has been incorporated into the Navajo Code:

### 1. Navajo Nation Membership<sup>50</sup>

“No Navajo law or custom has ever existed or exists now, by which anyone can ever become a Navajo, either by adoption or otherwise, except by birth.”<sup>51</sup>

Despite this statutory provision, the Navajo Supreme Court has recognized some form of “membership” in the Navajo Nation through affiliation with a Navajo.<sup>52</sup> In *Means*, the Navajo Supreme Court cited several Navajo clans as examples of such affiliation (e.g. the “Ute people clan,” “Zuni clan,” and the “Mexican clan”), as they originated in the intermarriage of Navajos with non-Navajos.<sup>53</sup> The Court recognized Russell Means’ status as a hadane or in-law to a Navajo with reciprocal obligations arising from that status.<sup>54</sup> However, the Court clarified that Means’ consent did not constitute an “adoption” in any formal or customary sense” but the assumption of tribal relations and the establishment of “familial and community relations under Navajo common law.”<sup>55</sup> Thus, the relationship between the legislative pronouncement and the Court’s findings is unclear.

### 2. Marriage

“Parties who are Navajo Nation members, or who are eligible for enrollment, may not be of the same maternal clan or biological paternal clan...”<sup>56</sup>

This is an example of traditional law that has always been the law of the Navajo people. In 1993, the Council was reviewing tribal marriage laws largely because Navajo common law wives were found to be ineligible for access to federal benefits to survivors of Navajo uranium miners.<sup>57</sup> Navajo common law wives did not fit the definition of spouse for the federal benefits. When the Council codified common law marriages as a valid form of marriage under Navajo law, it also codified the traditional law about who could marry whom.<sup>58</sup>

While reviewing the marriage laws, the Council learned that over the past 20 years, it [had] become quite common to hear traditional people on the reservation at chapter meetings or seminars criticize the younger Navajos for forsaking Navajo tradition. The most common complaint in this area was that young Navajos were not asking each other what clan they were before they started dating.<sup>59</sup> This codification of the traditional law is a response to the concern expressed by the elders. Thus, if two people from the same clan marry, they will not have a valid marriage under Navajo law.<sup>60</sup>

The codification of traditional marriage law presents three interesting points. First, it is a bold step for the Council to incorporate traditional law into the code because unlike the judiciary, there is no provision in the Code which requires the Council to incorporate traditional laws into its legislation. Second, the Council by codifying the traditional law, ensures that all modern Navajos will learn or continue to follow traditional teachings.<sup>61</sup> This is a positive step toward preventing the loss of traditional ways.

Third, it is exciting for the Navajo Nation to incorporate traditional teachings into the day to day operations of a modern bureaucracy. In this case, it is in the mundane issuance of marriage licenses. Incorporation of traditional teachings into the modern bureaucracy demonstrates that traditional teachings continue to survive in a modern society. It demonstrates to the younger generations that they too must heed the teachings of the Holy Ones.

Another example of codifying traditional law relating to marriage is where the Council included the traditional Navajo wedding ceremony as one of five methods in which to contract marriage.

The contracting parties engage in a traditional Navajo wedding ceremony which shall have substantially the following features:

1. The parties to the proposed marriage shall have met and agreed to marry;
2. The parents of the man shall ask the parents of the woman for her hand in marriage;
3. The bride and bridegroom eat cornmeal mush out of a sacred basket;
4. Those assembled at the ceremony give advice for a happy marriage to the bride and groom;
5. Gifts may or may not be exchanged;
6. The person officiating or conducting the traditional wedding ceremony shall be authorized to sign the marriage license.<sup>62</sup>

What is interesting about this section is that it is a thumbnail sketch of what is a traditional wedding ceremony. It does not outline every detail of the wedding ceremony, such as songs and prayers. This codification of the traditional wedding ceremony proves to be a good compromise between codifying traditional practices which can lead to non-Navajo exploitation of traditional practices and the wholesale disregard of traditional law by the modern government.

## 6. Efforts to Continue and Strengthen Knowledge of Traditional Life

Traditional law can be found by consulting counselors (medicinemen), a community's knowledge, and anthropological studies. These sources reveal that traditional law is found in creation beliefs, religious ceremonies, and stories.<sup>63</sup> In the following code provisions, the Navajo Nation strives to keep alive the traditional language and culture of the tribe. This action in turn strengthens the knowledge and use of traditional law in modern Navajo society.

### 1. The Navajo Language

The Navajo language is an essential element of the life, culture and identity of the Navajo People. The Navajo Nation recognizes the importance of preserving and perpetuating that language to the survival of the Nation. Instruction in the Navajo language shall be made available for all grade levels in all schools serving the Navajo Nation. Navajo language instruction shall include to the greatest extent practicable: thinking, speaking, comprehension, reading and writing skills and study of the formal grammar of the language.<sup>64</sup>

### 2. The Navajo Culture

The survival of the Navajo Nation as a unique group of people growing and developing socially, educationally, economically and politically within the larger American Nation requires that the Navajo People and those who reside with the Navajo People retain and/or develop an understanding, knowledge and respect for Navajo culture, history, civics and social studies. Courses or course content that develop knowledge, understanding and respect for Navajo culture, history, civics and social studies shall be included in the curriculum of every school serving the Navajo Nation. The local school governing board, in consultation with parents, students and the local community, shall determine the appropriate course content for the Navajo culture component of the curriculum.<sup>65</sup>

These are important provisions in the Navajo Code because they demonstrate the Navajo government's policies of promoting language and culture. Furthermore, it would be exciting if the government could put money and programs behind these provisions. It is not unheard of in the history of the world for nations to require their people to learn a new language or learn how to write their language in a new alphabet. Nothing should stop the Navajo government, except for lack of resources, from taking bold and drastic measures to teach each Navajo the language and culture and history of the tribe.

### C. Judiciary

The Navajo Nation operates a two level court system with trial courts and the Navajo Nation Supreme Court.<sup>66</sup> There are presently seven districts (Chinle, Crownpoint, Kayenta, Ramah, Shiprock, Tuba City, and Window Rock).<sup>67</sup> The Ramah district contains two satellite courts—Canoncito and Alamo. Five of the seven districts have family courts.<sup>68</sup> The courts of the Navajo Nation<sup>69</sup> are only staffed by members of the Nation and this is significant because not all tribes have such a requirement.

Navajo does not require its judges to be trained in western law. Persons appointed to the bench must be able to speak Navajo and English and “have some knowledge of Navajo culture and tradition.”<sup>70</sup> This includes an understanding of the clan system, an understanding of religious ceremonies, and an appreciation of the traditional Navajo lifestyle.<sup>71</sup> This requirement is vital because the judiciary is required to incorporate traditional teachings.<sup>72</sup> The Navajo Codes states “[i]n all cases the Courts of the Navajo Nation shall apply any laws of the United States that may be applicable and any laws or customs of the Navajo Nation not prohibited by applicable federal laws.”<sup>73</sup>

## 1. Opinions

Written decisions are published as slip opinions under a numerical system and are periodically collected into reporters. There appear to be two reporter systems which are the Navajo Reporter, cited as Nav. R., and the Navajo Law Reporter, cited as N.L.R. The Navajo Reporter presently has five volumes. The Navajo Law Reporter has five volumes and a supplement. The Navajo Law Reporter is available in one binder and includes published cases up to 1987. The supplement in the Navajo Law Reporter includes cases to March 1998. However, at present there is no satisfactory digest that organizes the cases into easily retrievable categories or a Shepard-like system to track the use of cases in subsequent decisions. At most, the Navajo Law Reporter binder has an alphabetical index of cases.

The Navajo judicial system appears to follow a “common law” model uniquely adapted to accommodate the inclusion of unwritten “customary” or “traditional” Navajo law. Like state or federal courts, the Navajo courts may decide a case based upon motions of the parties or after briefing and oral argument at the appellate level. The Navajo Nation Supreme Court may take certified questions of law from district courts.<sup>74</sup> Cases may be decided and published through written opinions by a certain justice. Opinions follow an American common law structure of questions or issues presented and holdings. The justices cite to previous Navajo opinions as precedent and may look to opinions from other jurisdictions or general practice treatises for guidance.

## 2. Navajo Common Law

The Courts of the Navajo Nation are commanded to “apply any laws of the United States that may be applicable and any laws or customs of the Navajo Nation not prohibited by applicable federal laws.”<sup>75</sup> As mandated by the statute, the Navajo courts appeal to “Navajo Common Law” or the uncodified custom of the Navajo people as an additional source of precedent.<sup>76</sup> The Navajo Nation Supreme Court has



likened Navajo common law to the “lex non scripta” or the unwritten law of English common law as described in *Blackstone’s Commentaries on the Law of England*.<sup>77</sup> The Court has stated that Navajo customs and traditions are law as part of a broader Navajo “Common Law.”<sup>78</sup>

One issue raised by the use of Navajo common law is, how do persons not cognizant of traditional Navajo law present their arguments for or against its use? Aware of this issue, the Navajo courts have developed guidelines for discovering and implementing Navajo customs and judicial procedure by which to bring them before the court. “Where any doubt arises as to the customs and usages of the Navajo Nation the court may request the advice of counselors familiar with these customs and usages.”<sup>79</sup>

A litigant may demonstrate the common law principle to be applied through recorded Navajo court opinions, learned treatises on the Navajo way, judicial notice, or the testimony of expert witnesses who have substantial knowledge of Navajo common law.<sup>80</sup> The courts can look to custom which is “generally known throughout the community,”<sup>81</sup> and anthropological writings viewed from Navajo perspectives.<sup>82</sup>

When custom is presented in one of these ways it appears the ultimate decision to apply them to the facts of the specific case lies in the district court judge’s discretion. If traditional law is not argued at the district court level, it appears the ability to do so before the Navajo Supreme Court has been waived.<sup>83</sup>

Judicial notice of Navajo common law is appropriate “[w]here no question arises regarding custom or usage . . . if a custom is generally known within the community, or if it is capable of accurate determination by resort to sources whose accuracy cannot reasonably be questioned, it is proven.”<sup>84</sup> If a district court takes judicial notice of a particular custom as Navajo common law, the court is required to clearly indicate the custom upon which it relied.<sup>85</sup> Clear references facilitate examination of an order by the Navajo Nation Supreme Court.

If expert witnesses are required, the courts have developed a unique procedure under the laws of evidence. In cases where Navajo custom is disputed the trial court is to hold a pre-trial conference with two or three expert witnesses appointed by the court.<sup>86</sup> The parties to the litigation may only ask clarification questions.<sup>87</sup> The experts can discuss how a particular Navajo custom should be applied in the case and should reach a consensus on the issue.<sup>88</sup> The trial court then has discretion to allow the testimony of an expert on the relevant custom. Similar to the federal rules of evidence to qualify as an expert the trial judge must be satisfied that an individual is indeed an expert on Navajo common law.<sup>89</sup> An expert may be qualified through reading or practice, through “familiarity with Navajo traditions acquired by oral education, or his adherence to a traditional way of life, or through his long-term interest in deepening his knowledge of Navajo custom, or through his status within the community as a person with a special knowledge of custom.”<sup>90</sup>

The Navajo courts have applied traditional law in several diverse situations. Perhaps the most high profile application occurred in *Means v. District Court of Chinle* where

the Navajo Nation Supreme Court applied traditional notions of reciprocal relations between a spouse (or under customary law a hadane) and his in-laws to justify criminal jurisdiction over a non-member Indian.<sup>91</sup> In *Means* the Court applied the concept of affiliation with a Navajo as consent to jurisdiction which was suggested in a previous opinion.<sup>92</sup> In another case, the Navajo Nation Supreme Court and the district courts applied traditional law to modern questions of child support in emphasizing a father's absolute obligation to provide support to children.<sup>93</sup> The Navajo Nation Supreme Court has also applied traditional notions of authority to uphold a reversal of conviction of a Navajo police officer where customary notions of leadership provided a defense to the charge.<sup>94</sup>

### 3. Peacemaker Court

The Navajo judicial system also includes a traditional peacemaking court, sometimes referred to as court-annexed traditional mediation.<sup>95</sup> The foundational principle of the Peacemaker Court is k'e, or "respect, responsibility and proper relationships among all people."<sup>96</sup> Through non-adversarial discussion between parties, peacemakers look to achieve Hozho nahasdlii, or a state realized at the end of journey.<sup>97</sup> Peacemaking sessions are facilitated by Navajo persons who are bilingual and possess knowledge of traditional Navajo culture.<sup>98</sup> Based upon traditional Navajo ceremonies that seek a common goal among groups of individuals, the Peacemaker Court assists disputants in the healing process by fostering a mutually beneficial agreement.

As mediation becomes more accepted in Anglo-American law, more non-Navajos may look to the Peacemaker Courts for guidance in organization and structure. Chief Justice Yazzie of the Navajo Supreme Court reminds us that the Peacemaker Court is "ODR" or "Original Dispute Resolution" as opposed to "ADR" or "Alternative Dispute Resolution."<sup>99</sup>

### III. Research Protocol

In compiling sources for this profile, the compilers focused on primary texts created by the Navajo Government and its members. With the exception of Chief Justice Yazzie's presentation, these sources are all written material in English. Of particular aid was the Navajo Nation Government Book which is published by the Office of Navajo Government Development.

<sup>1</sup> The tribal governmental profile was conceived as a description and profile of a particular tribe's law. Originally written to fulfill coursework in Professor Christine Zuni Cruz's course, Law of Indigenous Peoples, the profile has been adapted to be more informative and less interpretive for purposes of the journal. We encourage the reader to view the Navajo Nation's website at <http://www.navajo.org>.

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<sup>4</sup> Nelson Gorman, Jr., preface to, Navajo Nation Code at ix (1995).

<sup>5</sup> Indian Reorganization Act, see, 25 U.S.C. § 476 (1994).

<sup>6</sup> See generally, NNC tit.1 (Gen. Prov. 1995); NNC tit. 2 (Admin. Tribal Affairs 1995); NNC tit. 3 (Agric & Livestock 1995); NNC tit. 4 (Env't 1995); NNC tit. 5 (Com. & Trade 1995); NNC tit. 5A (Navajo U.C.C. 1995); NNC tit. 6 (Comm. Dev. 1995); NNC tit. 7 (Cts. & Proc. 1995); NNC tit. 8 (Decedents' Est. 1995); NNC tit. 9 (Dom. Rel. 1995); NNC tit. 10 (Educ. 1995); NNC tit. 11(Elec. 1995); NNC tit. 12 (Fiscal Matters 1995); NNC tit. 13 (Health & Welfare 1995); NNC tit. 14 (N. N. Motor Veh. C. 1995); NNC tit. 15 (Lab. 1995); NNC tit. 16 (Land 1995); NNC tit. 17 (L. & Ord. 1995); NNC tit. 18 (Mines & Minerals 1995); NNC tit. 19 (Parks & Monuments 1995); NNC tit. 20 (Prof. & Occ. 1995); NNC tit. 21(Pub. Util. & Comm. 1995); NNC tit. 22 (Water 1995); NNC tit. 23 (Conservation & Wildlife 1995); NNC tit. 24 (Tax. 1995).

<sup>7</sup> Office of Navajo Government Development, Navajo Nation Government 9 (4th ed. 1998) [hereinafter Navajo Nation Government].

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

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

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

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 15.

<sup>13</sup> Navajo Nation Government, *supra* note 7, at 28.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 15.

<sup>16</sup> Gorman, *supra* note 4, at x.

<sup>17</sup> 2 NNC §§ 1001, 1002 (1995).

<sup>18</sup> *Id.* § 1005 (1995).

<sup>19</sup> *Id.* §§ 1002, 1003 (1995).

<sup>20</sup> Navajo Nation government, *supra* note 7, at 22-28. The divisions are: 1) Education, 2) Social Services, 3) Health, 4) Public Safety, 5) Finance, 6) General Services, 7) Economic Development, 8) Human Services, 9) Natural Resources, and 10) Community Development. Other executive offices are: the Tax Commission, Navajo-Hopi Land Development, Management and Budget, Navajo Nation Washington, D.C. Office, the Department of Justice, the Environmental Protection Agency, and the Public Defender. *Id.*

<sup>21</sup> *Id.* at 22.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Id.*

<sup>25</sup> 2 NNC § 282 (B) (1995).

<sup>26</sup> *Id.* § 285 (B)(1) (1995).

<sup>27</sup> *Id.* § 285 (B)(2) (1995).

<sup>28</sup> *Id.* § 285 (B)(4) (1995).

<sup>29</sup> *Id.* § 285 (B)(5) (1995).

<sup>30</sup> Navajo Nation government, *supra* note 7, at 21.

<sup>31</sup> *Id.* at 18.

<sup>32</sup> *Id.* at 21.

<sup>33</sup> 2 NNC § 285 (B)(6) (1995).

<sup>34</sup> *Id.* § 102(A) (1995).

<sup>35</sup> *Id.* § 102(B) (1995).

<sup>36</sup> *Id.* § 103 (1995).

<sup>37</sup> *Id.* § 105(A) (1995).

<sup>38</sup> *Id.* § 162(A) (1995).

<sup>39</sup> See Navajo Nation government, *supra* note 7, at 18-20. The twelve standing committees are: (1) Intergovernmental Relations Committee; (2) Budget and Finance Committee; (3) Economic Development Committee; (4) Education Committee; (5) Ethics and Rules Committee; (6) Government Services Committee; (7) Health and Social Services Committee; (8) Human Services Committee; (9) Judiciary Committee; (10) Public Safety Committee Resources Committee; (11) Transportation and Community Development Committee; (12) Resource Committee. *Id.*

<sup>40</sup> 2 NNC § 180 (1995).

<sup>41</sup> *Id.* § 4001(B) (1995).

<sup>42</sup> Navajo Nation government, *supra* note 7, at 33.

<sup>43</sup> 2 NNC § 4021(1995).

<sup>44</sup> Navajo Nation Government, *supra* note 7, at 33.

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

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

<sup>47</sup> *Id.* at 33-34.

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

<sup>49</sup> Gorman, *supra* note 4, at x.

<sup>50</sup> This topic raises an interesting question about the interplay between traditional law and statutory law: Does the tribal council have the ultimate power to determine what is a customary law or not? In *Means v. District Court of the Chinle Judicial District*, 26 ILR 6083 (May 11, 1999) the Navajo Nation Supreme Court suggests that there is a membership status for non-Navajos. *Id.* at 6087.

<sup>51</sup> 1 NNC § 702(A) (1995).

<sup>52</sup> See *Means v. District Court of the Chinle Judicial District*, 26 ILR 6083 (May 11, 1999).

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 6087.

<sup>56</sup> 9 NNC § 4 (D)(1995).

<sup>57</sup> Bill Donovan, *What Clan Are You?*, Navajo Times, April 29, 1993, at 1.

<sup>58</sup> *Id.*

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

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

<sup>61</sup> The Navajo Nation Marriage License includes a section for listing the Mother's Clan and the Father's Clan of the Man and the Woman. See 9 NNC § 6 (1995).

<sup>62</sup> 9 NNC § 3 (D)(1995).

<sup>63</sup> Raymond Austin, *Incorporating Tribal Customs and Traditions into Tribal Court Decisions* 8-9 (1992)(on file with the UNM Tribal Law Journal).

<sup>64</sup> 10 NNC § 111 (1995).

<sup>65</sup> *Id.* § 112 (1995).

<sup>66</sup> Navajo Nation Government, *supra* note 7, at 29.

<sup>67</sup> *Id.*

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

<sup>69</sup> 7 NNC § 354 (A)(1995).

<sup>70</sup> *Id.* § 354 (E)(1995).

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

<sup>72</sup> 7 NNC § 204 (A) - © (1995).

<sup>73</sup> *Id.* § 204 (A) (1995)(emphasis added).

<sup>74</sup> See e.g., *In re Certified Questions II*, N.L.R. Supp. 84 (Nav. Sup. Ct. 1989).

<sup>75</sup> 7 NNC § 204 (A)(1995).

<sup>76</sup> See *generally*, *Dawes v. Yazzie*, 5 Nav. R. 161, 164-65, 5 N.L.R. 82, 84 (Nav. Sup. Ct. 1987).

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

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

<sup>79</sup> 7 NNC § 204 (B)(1995).

<sup>80</sup> *Dawes*, 5 Nav. R. 161, 165, 5 N.L.R. 82, 84 (Nav. Sup. Ct. 1987).

<sup>81</sup> *Id.* at 165, 5 N.L.R. at 84.

<sup>82</sup> *Id.* See also, *Austin*, *supra* note 63, at 8.

<sup>83</sup> See *Dawes*, 5 Nav. R. at 164-66, 5 N.L.R. at 83-4.

<sup>84</sup> *Id.* at 165, 5 N.L.R. at 84.

<sup>85</sup> See *Id.* at 165-66, 5 N.L.R. at 84.

<sup>86</sup> *Id.* at 167, 5 N.L.R. at 85.

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

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

<sup>89</sup> *Id.* at 166, 5 N.L.R. at 85.

<sup>90</sup> *Id.* at 167, 5 N.L.R. at 85.

<sup>91</sup> See *Means*, 26 ILR 6083 (May 11, 1999).

<sup>92</sup> *Navajo Nation v. Hunter*, N.L.R. Supp. 429, 431 (Nav. Sup. Ct. 1996).

<sup>93</sup> See *Alonzo v. Martine*, N.L.R. Supp. 260, 261 (Nav. Sup. Ct. 1991).

<sup>94</sup> See *Navajo Nation v. Platero*, N.L.R. Supp. 278, 280 (Nav. Sup. Ct. 1991).

<sup>95</sup> Navajo Nation Government, *supra* note 7, at 30.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

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

<sup>99</sup> Chief Justice Robert Yazzie, Presentation at the University of New Mexico School of Law (October 28, 1999).

<sup>1</sup> The tribal governmental profile was conceived as a description and profile of a particular tribe's law. Originally written to fulfill coursework in Professor Christine Zuni Cruz's course, Law of Indigenous Peoples, the profile has been adapted to be more informative and less interpretive for purposes of the journal. We encourage the reader to view the Navajo Nation's website at <http://www.navajo.org>.

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<sup>4</sup> Nelson Gorman, Jr., preface to, Navajo Nation Code at ix (1995).

<sup>5</sup> Indian Reorganization Act, see, 25 U.S.C. § 476 (1994).

<sup>6</sup> See generally, NNC tit.1 (Gen. Prov. 1995); NNC tit. 2 (Admin. Tribal Affairs 1995); NNC tit. 3 (Agric & Livestock 1995); NNC tit. 4 (Env't 1995); NNC tit. 5 (Com. & Trade 1995); NNC tit. 5A (Navajo U.C.C. 1995); NNC tit. 6 (Comm. Dev. 1995); NNC tit. 7 (Cts. & Proc. 1995); NNC tit. 8 (Decedents' Est. 1995); NNC tit. 9 (Dom. Rel. 1995); NNC tit. 10 (Educ. 1995); NNC tit. 11(Elec. 1995); NNC tit. 12 (Fiscal Matters 1995); NNC tit. 13 (Health & Welfare 1995); NNC tit. 14 (N. N. Motor Veh. C. 1995); NNC tit. 15 (Lab. 1995); NNC tit. 16 (Land 1995); NNC tit. 17 (L. & Ord. 1995); NNC tit. 18 (Mines & Minerals 1995); NNC tit. 19 (Parks & Monuments 1995); NNC tit. 20 (Prof. & Occ. 1995); NNC tit. 21(Pub. Util. & Comm. 1995); NNC tit. 22 (Water 1995); NNC tit. 23 (Conservation & Wildlife 1995); NNC tit. 24 (Tax. 1995).

<sup>7</sup> Office of Navajo Government Development, Navajo Nation Government 9 (4th ed. 1998) [hereinafter Navajo Nation Government].

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

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

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

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 15.

<sup>13</sup> Navajo Nation Government, *supra* note 7, at 28.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 15.

<sup>16</sup> Gorman, *supra* note 4, at x.

<sup>17</sup> 2 NNC §§ 1001, 1002 (1995).

<sup>18</sup> *Id.* § 1005 (1995).

<sup>19</sup> *Id.* §§ 1002, 1003 (1995).

<sup>20</sup> Navajo Nation government, *supra* note 7, at 22-28. The divisions are: 1) Education, 2) Social Services, 3) Health, 4) Public Safety, 5) Finance, 6) General Services, 7) Economic Development, 8) Human Services, 9) Natural Resources, and 10) Community Development. Other executive offices are: the Tax Commission, Navajo-Hopi Land Development, Management and Budget, Navajo Nation Washington, D.C. Office, the Department of Justice, the Environmental Protection Agency, and the Public Defender. *Id.*

<sup>21</sup> *Id.* at 22.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Id.*

<sup>25</sup> 2 NNC § 282 (B) (1995).

<sup>26</sup> *Id.* § 285 (B)(1) (1995).

<sup>27</sup> *Id.* § 285 (B)(2) (1995).

<sup>28</sup> *Id.* § 285 (B)(4) (1995).

<sup>29</sup> *Id.* § 285 (B)(5) (1995).

<sup>30</sup> Navajo Nation government, *supra* note 7, at 21.

<sup>31</sup> *Id.* at 18.

<sup>32</sup> *Id.* at 21.

<sup>33</sup> 2 NNC § 285 (B)(6) (1995).

<sup>34</sup> *Id.* § 102(A) (1995).

<sup>35</sup> *Id.* § 102(B) (1995).

<sup>36</sup> *Id.* § 103 (1995).



<sup>37</sup> *Id.* § 105(A) (1995).

<sup>38</sup> *Id.* § 162(A) (1995).

<sup>39</sup> See Navajo Nation government, *supra* note 7, at 18-20. The twelve standing committees are: (1) Intergovernmental Relations Committee; (2) Budget and Finance Committee; (3) Economic Development Committee; (4) Education Committee; (5) Ethics and Rules Committee; (6) Government Services Committee; (7) Health and Social Services Committee; (8) Human Services Committee; (9) Judiciary Committee; (10) Public Safety Committee Resources Committee; (11) Transportation and Community Development Committee; (12) Resource Committee. *Id.*

<sup>40</sup> 2 NNC § 180 (1995).

<sup>41</sup> *Id.* § 4001(B) (1995).

<sup>42</sup> Navajo Nation government, *supra* note 7, at 33.

<sup>43</sup> 2 NNC § 4021(1995).

<sup>44</sup> Navajo Nation Government, *supra* note 7, at 33.

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

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

<sup>47</sup> *Id.* at 33-34.

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

<sup>49</sup> Gorman, *supra* note 4, at x.

<sup>50</sup> This topic raises an interesting question about the interplay between traditional law and statutory law: Does the tribal council have the ultimate power to determine what is a customary law or not? In *Means v. District Court of the Chinle Judicial District*, 26 ILR 6083 (May 11, 1999) the Navajo Nation Supreme Court suggests that there is a membership status for non-Navajos. *Id.* at 6087.

<sup>51</sup> 1 NNC § 702(A) (1995).

<sup>52</sup> See *Means v. District Court of the Chinle Judicial District*, 26 ILR 6083 (May 11, 1999).

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 6087.

<sup>56</sup> 9 NNC § 4 (D)(1995).

<sup>57</sup> Bill Donovan, *What Clan Are You?*, Navajo Times, April 29, 1993, at 1.

<sup>58</sup> *Id.*

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

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

<sup>61</sup> The Navajo Nation Marriage License includes a section for listing the Mother's Clan and the Father's Clan of the Man and the Woman. See 9 NNC § 6 (1995).

<sup>62</sup> 9 NNC § 3 (D)(1995).

<sup>63</sup> Raymond Austin, *Incorporating Tribal Customs and Traditions into Tribal Court Decisions* 8-9 (1992)(on file with the UNM Tribal Law Journal).

<sup>64</sup> 10 NNC § 111 (1995).

<sup>65</sup> *Id.* § 112 (1995).

<sup>66</sup> Navajo Nation Government, *supra* note 7, at 29.

<sup>67</sup> *Id.*

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

<sup>69</sup> 7 NNC § 354 (A)(1995).

<sup>70</sup> *Id.* § 354 (E)(1995).

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

<sup>72</sup> 7 NNC § 204 (A) - © (1995).

<sup>73</sup> *Id.* § 204 (A) (1995)(emphasis added).

<sup>74</sup> See e.g., *In re Certified Questions II*, N.L.R. Supp. 84 (Nav. Sup. Ct. 1989).

<sup>75</sup> 7 NNC § 204 (A)(1995).

<sup>76</sup> See generally, *Dawes v. Yazzie*, 5 Nav. R. 161, 164-65, 5 N.L.R. 82, 84 (Nav. Sup. Ct. 1987).

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

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

<sup>79</sup> 7 NNC § 204 (B)(1995).

<sup>80</sup> *Dawes*, 5 Nav. R. 161, 165, 5 N.L.R. 82, 84 (Nav. Sup. Ct. 1987).

<sup>81</sup> *Id.* at 165, 5 N.L.R. at 84.

<sup>82</sup> *Id.* See also, Austin, *supra* note 63, at 8.

<sup>83</sup> See *Dawes*, 5 Nav. R. at 164-66, 5 N.L.R. at 83-4.

<sup>84</sup> *Id.* at 165, 5 N.L.R. at 84.

<sup>85</sup> See *Id.* at 165-66, 5 N.L.R. at 84.

<sup>86</sup> *Id.* at 167, 5 N.L.R. at 85.

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

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

<sup>89</sup> *Id.* at 166, 5 N.L.R. at 85.

<sup>90</sup> *d.* at 167, 5 N.L.R. at 85.

<sup>91</sup> See Means, 26 ILR 6083 (May 11, 1999).

<sup>92</sup> Navajo Nation v. Hunter, N.L.R. Supp. 429, 431 (Nav. Sup. Ct. 1996).

<sup>93</sup> See Alonzo v. Martine, N.L.R. Supp. 260, 261 (Nav. Sup. Ct. 1991).

<sup>94</sup> See Navajo Nation v. Platero, N.L.R. Supp. 278, 280 (Nav. Sup. Ct. 1991).

<sup>95</sup> Navajo Nation Government, *supra* note 7, at 30.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

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

<sup>99</sup> Chief Justice Robert Yazzie, Presentation at the University of New Mexico School of Law (October 28, 1999).