



## THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

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John F. Kennedy School of Government • Harvard University

### HONORING NATIONS: 1999 HONOREE

#### **New Law and Old Law Together Judicial Branch, Navajo Nation**

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For hundreds of years, the Navajo lived under a traditional justice system composed of both Navajo common law and consensus-oriented judicial procedures.

The aim of the justice system was simple: to restore harmony. But beginning in 1892, with the forced introduction of the Bureau of Indian Affairs' Courts of Indian Offenses, this harmony began to rupture. The break was made complete with the Navajo Nation's wholesale adoption of a western court system in 1959. Over the next 25 years, the Nation wrestled with the alienating and disempowering effects of laws and procedures inconsistent with their culture and history. Tribal members who were used to resolving their own disputes were made dependent on modern institutions, including western-style police and judiciaries. Self-reliance and community participation withered.

By the early 1980s, members of the Judicial Branch recognized that, in order for the court system to regain its legitimacy and effectiveness, it needed reform. In 1981, the Chief Justice of the Navajo Supreme Court began reintegrating traditional Navajo law into the Nation's court system, a policy which received official support with the Navajo Tribal Council's passage of the Judicial Reform Act four years later. In 1982, the Judicial Branch created the Navajo Peacemaking Division, a forum for community-led, consensus-based dispute resolution. The goal of the Peacemaking Division is not to replace the previously established court system but to provide an alternative to it for certain types of disputes. Resolution techniques are drawn from the Navajo philosophy of K'e, which values responsibility, respect, and harmony in relationships. Instead of a single judge adjudicating guilt or innocence and imposing a sentence, Navajo peacemaking is characterized by a participatory process in which the affected parties work with a community leader to resolve their own problems.

Today, Navajo common and statutory laws are the "laws of preferences" in the Nation's Supreme Court, seven district courts, and five family courts, and 250 Peacemakers in the Nation's 110 districts successfully help to resolve a wide variety of individual, business and property disputes. This unique integration of Navajo and Western law occurs on a daily basis. For instance, bar membership rules require formal training in Navajo common law as a condition to practicing in Navajo Nation courts. The courts actively use this common law to decide cases, although legal opinions are published in English. In many instances, disputants can choose to resolve their differences in either a Western-style or traditional forum.

The strength of the Judicial Branch's mixed legal system is buttressed by its independence

from other branches of government. On many reservations, the tribal council and executive leaders control the judiciary through discretionary hiring and firing practices and reversals of judicial decisions. The Navajo Nation has taken numerous steps to avoid these pitfalls. For example, the hiring process balances legislative and executive branch influence, as the Navajo Tribal Council's Judiciary Committee creates a list prospective judges, an appointee of the Tribal President selects nominees, and the full Council confirms appointments. More importantly, the Judicial Branch has full and binding judicial review over actions of the Nation's legislative and executive branches--including the power to overturn legislation, prevent indiscriminate terminations, and enforce the separation of powers between all three branches of government.

The Judicial Branch's success has had a positive impact on tribal and non-tribal courts across the country. Judges from the Navajo Nation meet regularly with their counterparts in surrounding state courts, which now refer cases to both divisions of the Navajo court system. Indian and non-Indian courts refer to opinions published by the Navajo Nation courts and rely on the Navajo Peacemaker Division as a model for alternative dispute resolution. And, since 1992, the Navajo Nation Supreme Court has held over a dozen sessions in off-reservation venues, a practice that enables law students, legal scholars, and the public to witness and gain a better understanding of the Navajo's unique system of justice.

The Navajo Nation Judicial Branch's innovative legal system is independent, fair, responsive, and consistent with the Nation's culture and traditions. Perhaps the Branch's most important contribution to governance, however, is its ongoing exercise of de facto sovereignty. By establishing and enforcing Navajo laws in Navajo ways, the court system-which handles over 9,000 cases per year-exemplifies the Navajo Nation's commitment to self-government and self-determination.

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