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THE NAVAJO NATION TOMORROW— 51ST STATE, COMMONWEALTH, OR...?

Theodore Wyckoff *

Introduction

With 150,000 members living on 25,000 square miles of land, the Navajo Indian Nation is the largest Indian tribe in the United States, living on the nation's largest reservation. An energetic, hardy, resilient people, inhabiting a vast area of buttes, mesas, canyons, deserts, mountains, and forests, a land endowed with great natural beauty and much hidden wealth, the Navajos are today caught up in a worldwide phenomenon: a climate of pervasive economic and political ferment, a spirit of dynamic social change, and a massive movement toward self-awareness, self-realization, and self-fulfillment.

The Navajos' population has doubled in the last twenty years, their school enrollments have tripled, and their literacy rate is up 20 per cent. They constitute almost 30 per cent of the half-million reservation Indians in the United States, and one out of every five Indian school children nationwide is Navajo.¹

Navajo socialization to democratic politics has grown from nothing into a significant factor on the American southwestern scene. Their political voice is heard in Washington, and they are represented nearly in proportion to their population in the legislatures of Arizona and New Mexico.

There can be no doubt about it: Navajo-land is a place on the move. One may well ask: what is the nature of the changes these people face? What is the future of this land? Are Navajos going to live as they have for most of the last hundred years, an isolated Indian tribe on a vast underdeveloped reservation? Or are they going to become integrated and absorbed into the mainstream life of this nation and of the states wherein they reside? Is their reservation, their tribal identity, and their way of life to survive, or are these going to disappear into the past? Might something

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new and unprecedented happen to them? Might the Navajo Nation evolve into an all-Indian 51st state in the American Union, or might it fashion for its people some other legal status, such as that of a commonwealth, like Puerto Rico?

It is to the consideration of these questions that this paper is addressed.

Background

In June 1868, a treaty of perpetual peace and friendship between the Navajo Indian Nation and the United States of America was signed by General William Tecumseh Sherman and Indian Peace Commissioner Samuel F. Tappan, signing on behalf of the United States, and by Barboncito and 28 other chiefs, on behalf of the Navajo Indian Tribe.² The treaty marked the decision by an estimated 1,500 braves of the Navajo Tribe to foreswear their former raiding activities in what was then New Mexico Territory, and to accept the offer of the United States Government to occupy a permanent reservation in what they considered to be their native homeland in the Canyon de Chelly area of northeastern Arizona. Opinion leaders and decision-makers in the tribe had been led to make this decision following four years of distasteful captivity and attempted agriculturalization at Fort Sumner, New Mexico, on the Upper Pecos River, where, under the watchful eye of federal troops, their pre-1864 raiding activities had been rather effectively curtailed.³

In return for the promises of the Navajos to keep peace and, among other things, to permit the peaceful construction of wagon roads and railroads on their reservation, the United States guaranteed to the Navajo Nation permanent, exclusive possession of the land, including the right to exclude from the reservation anyone the Navajos wanted to exclude, except United States Government personnel on duty. Implicit in these treaty terms was the understanding, resulting from several treaties under the Articles of Confederation, and an 1831 Supreme Court case involving a missionary to the Cherokees and the state of Georgia, that the internal affairs of the Navajos remained exclusively within the jurisdiction of whatever tribal government existed. In ratifying the Treaty of 1860—to quote from a Supreme Court opinion ninety years later—Congress recognized the authority of the Navajos over their reservation, and has done so ever since, and “if this power is to be taken away from them, it is for Congress to do it.”⁴

The land to which the Navajos took title under the treaty was, at the time it was established, the largest Indian reservation in the

United States (6,600 square miles), and the Navajos, although numbering only some 12-15,000, were one of the largest tribes in the United States. At least 25 later additions of land have enlarged the reservation to its present total area of more than 21,000 square miles, over three times the original area. During the same period the population of the tribe has increased more than tenfold to its January 1976 estimated total of 150,000.⁵

By far the largest part of the Navajo Tribe and reservation is in Arizona and New Mexico. Eighty-three thousand people live on 14,000 square miles of reservation, plus 2,700 square miles of "Joint Use Area," in Arizona, and 61,000 people live on and near the 6,000 square miles of Navajo land in New Mexico. There are 4,800 Navajos on the 1,900 square miles of reservation in Utah, and there are, practically speaking, no Navajos—and no land at all—in Colorado.

The phenomenal growth of the Navajo people and their distinctive cultural identity, plus the wealth of natural resources discovered on the reservation since 1920, have combined to give the tribe an importance far beyond anything envisioned when Barboncito sat down with General Sherman over 100 years ago. Navajos giving military service in World War II, Korea, and Vietnam, and Navajo youth attending high school and college where their great-grandfathers were unlettered warriors, have brought a measure of "mainstream" American acculturation to the tribe, which is an indication of what may be expected in the future. A working structure of tribal government holds forth real promise that Navajos may be fully capable of self-government. At the same time the sheer physical and demographic size of the Navajo land and people have created for the Bureau of Indian Affairs (for nearly 200 years custodian of the welfare of the nation's Indian tribes) the largest single administrative unit within the BIA hierarchy.

What kind of people are these Navajos, who have grown to such impressive numbers in the last century? For one thing, they appear to have plenty of intelligence to draw on. According to the testimony of many who know them well—missionaries, BIA officials, school teachers, college professors—there is no shortage of highly intelligent individuals among the Navajo. It is true that Stanford Achievement Test results show Navajo children to lag behind national SAT norms, but this almost certainly does not reflect any basic difference in intelligence, but rather the vast cultural gulf between the environment in which Navajo children grow up and that of the designers of SATs.⁶ In point of fact, well

A circular map of the Hopi Indian Reservation in Arizona. The map is enclosed in a double-lined circular border. It shows the reservation's boundaries, major towns like Tuba City, Hotevilla, and Oraibi, and surrounding areas including the Colorado River, Lake Mohave, and the Navajo Nation. The map is oriented with North at the top.

District 7 Total		District 8 Total		District 9 Total		District 10 Total		District 11 Total		District 12 Total	
1 Capperman	457	1 Forest Lake	400	1 MacLean Water	347	1 Burnham	139	1 Boon	916	1 Crystal	100
2 Roberts	1,729	2 Rock Point	2,556	2 Ed Meier	400	2 Freshland	360	2 Brent Springs	1,042	2 Fort Lawrence	100
3 Kuba	1,000	3 Pines	1,000	3 Hirschman	300	3 Hirschman	300	3 Chai-Dah-Tah	1,000	3 Kaptan	100
4 Kuba	2,264	4 TalkChoo	1,000	4 Westwater	1,316	4 Westwater	1,316	4 Chai-Dah-Tah	1,000	4 Kaptan	100
				5 Tree Mesa	375			5 Chai-Dah-Tah	1,000	5 Kaptan	100
								6 Chai-Dah-Tah	1,000	6 Kaptan	100
								7 Chai-Dah-Tah	1,000	7 Kaptan	100
								8 Chai-Dah-Tah	1,000	8 Kaptan	100
								9 Chai-Dah-Tah	1,000	9 Kaptan	100
								10 Chai-Dah-Tah	1,000	10 Kaptan	100
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								31 Chai-Dah-Tah	1,000	31 Kaptan	100
								32 Chai-Dah-Tah	1,000	32 Kaptan	100
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								35 Chai-Dah-Tah	1,000	35 Kaptan	100
								36 Chai-Dah-Tah	1,000	36 Kaptan	100
								37 Chai-Dah-Tah	1,000	37 Kaptan	100
								38 Chai-Dah-Tah	1,000	38 Kaptan	100
								39 Chai-Dah-Tah	1,000	39 Kaptan	100
								40 Chai-Dah-Tah	1,000	40 Kaptan	100
								41 Chai-Dah-Tah	1,000	41 Kaptan	100
								42 Chai-Dah-Tah	1,000	42 Kaptan	100

over a thousand young Navajos have earned college bachelor's degrees, substantial numbers have earned master's degrees, and at least five or six have earned doctorates. The numbers of those attending colleges and universities is up sharply. Over 2,000 Navajo high school graduates each year are attending college on tribal scholarships. The significance of this, as has been said, is that "you can't spread that much education around without *something* happening."

Most young Navajos, however, do suffer from lack of contact with the English language until they enter school, and many suffer from cultural deprivation as a result of a rural, isolated, and primitive childhood environment. In many cases, living in hogans beyond the reach of electricity, and therefore with no television and no opportunity to hear spoken English, Navajo children are simply not exposed to the socializing influences that almost every other American child experiences. Our American civilization has apparently progressed to the point that a child who cannot see Captain Kangaroo and Sesame Street on television has to be labeled as "culturally deprived."

If one were to venture some generalizations attempting to explain why despite its handicaps this tribe has been so successful, several items might come to mind. Foremost is the thought, concurred in by many non-Indians who have known them well, that the Navajos are a particularly adaptable people; most notably it is one tribe that learned very successfully to get along with the white man. This does not necessarily mean close living together; on the entire reservation—an area larger than Massachusetts, Vermont, Connecticut, and Rhode Island combined, there are scarcely 3,000 permanent white residents; and if from this number one were to subtract the number of missionaries, school teachers, and other federal employees and their families, the number of non-Navajos would drop to a mere handful. The fact is that the Navajos were wise enough to come to terms with the white man in 1868 and lucky enough to possess as their homeland a piece of the earth's surface so barren that the white man did not want it. Only after the Navajos were firmly established in legal possession of their reservation, did other Americans realize they had given the Navajos title to some very desirable pieces of real estate, rich in oil, gas, coal, helium, uranium, and other natural resources, and endowed with many areas of great natural beauty, such as Utah's Monument Valley and the red rock and pine forest country around Window Rock.

The Navajo adaptability to changing circumstances has been

evident for centuries. Even back in the 1300's and 1400's, when they were still wanderers, recently arrived via Colorado and Wyoming from the Pacific Northwest, they proved themselves to be quick learners, ready to learn from other, more advanced cultures. They learned to cultivate the ground for corn, squash, and beans from the Pueblo and Hopi Indians who had lived in the Southwest for many centuries before the Navajos arrived.⁷ They learned to treasure horses, cattle, and sheep after these were introduced into the Rio Grande Valley of New Mexico by the Spaniards in the sixteenth and early seventeenth centuries. After they settled permanently into reservation life, they took readily to several new crafts to which they were introduced, notably silversmithing and blanket-weaving. These became the first two products to provide a cash income, assured of a market as these items were by the trading posts and by the concessions of Fred Harvey along the Santa Fe Railroad. More recently, the Navajo's ability to accommodate himself to Anglo or mainstream society has been demonstrated in a number of ways: lumber, textile, electronic, and other manufacturing enterprises have been established on the reservation in recent years with more or less encouraging results.

Change is Coming

There are three major elements in the line of reasoning suggesting that a change in the status of the Navajos may be in the wind. First, as has been suggested, is the sheer size of the tribe and their reservation, combined with the unique identity and cohesiveness of land and people. Second is the remarkable development of the tribe's capacity for self-government during the half-century since 1920, combined with the rather passionate fierceness with which Navajo spokesmen have been pushing for a greater measure of tribal autonomy. Third is the feeling that the time is ripe, which is to say that the situation can be viewed against the larger national setting in which Navajos find themselves: 50 states and 200,000,000 other Americans who have problems of their own, but who want to do something for the Indians, as long as it does not cause too much trouble and does not cost too much.

We have referred to the startling growth of the Navajo people in the last century. In recent decades the annual rate of growth has averaged 3.5 per cent, a rate which, compounded, signifies a doubling of the population every twenty years. This is a growth rate surpassed by only seven or eight nations of the world. At this

rate (and there would seem to be good reason to expect that the rate would continue for at least the next decade or two), the tribe will number a quarter of a million members by 1990. This is more than the entire population of Alaska when it became a state. Raymond Nakai, former Navajo Tribal Chairman, stated to the author that he sees no reason why—with modern economic development—the reservation, which is larger than four states of New England, should not be able, like New England, to support a population of several millions.

Putting these growth statistics into cultural terms, they become even more striking when one considers that they refer entirely to one identifiable social, ethnic, and linguistic group: a people to nearly all of whom Navajo, not English, is their native language and to whom English is only a second language, learned in school. It may seem strange, but it is a fact that there are more than ten times as many people speaking Navajo today as there were a hundred years ago, and there is nothing to indicate that the trend is going to be reversed. Several radio and television stations in northern New Mexico and Arizona broadcast programs in Navajo, almost 10,000 copies of one Navajo grammar have been sold, and three dictionaries of the Navajo language are in current use.⁸

Along with its unique and colorful setting and culture—red rock, sandstone arches, natural bridges, children and their flocks of sheep, cowboys and their horses and cattle, women wearing blankets, young men driving pickups, old men with black hats and long hair in knots, silversmiths with head bands, peach orchards in Canyon de Chelly and dinosaur tracks at Tuba City—Navajo-land also possesses a highly identifiable set of socio-economic problems of massive and uniform proportions. A high rate of functional illiteracy (defined as five or less years of schooling)—about 45 per cent compared to a national average of 2 per cent, a high rate of unemployment or “nonemployment”—over 45 per cent as compared with the national average of 6-9 per cent, and poverty—60 per cent as compared with the national average (according to 1970 Census figures) of 14 per cent, and a score of other parameters—lack of improved roads, lack of piped water, shortage of marketable industrial skills, problems of public health, shortage of doctors and hospital beds, and many more mark Navajo-land as really an underdeveloped country in its own right, and not simply as an economically depressed region of the United States.⁹

It would be unfair to imply that the Bureau of Indian Affairs (BIA) and the tribe itself have not been working to ameliorate

these problems of underdevelopment. Both organizations have done so for years, along with others. For nearly a century after 1864 several Christian missionary programs were the primary groups active in education. The Department of Health, Education, and Welfare is active now in Public Health Service hospitals and other programs. The Department of Labor is active in manpower training programs; the Department of Housing and Urban Development works through the Navajo Housing and Urban Development Authority (recently the subject of some allegations of corruption); the Four Corners Regional Commission and the Office of Navajo Economic Opportunity under federal poverty programs, and the new Navajo Community College at Tsaile, financed by the tribe, are all further cases in point. The process of modernization has been going for a century, much accelerated since World War II, but no realistic observers actually expect miracles overnight.

Second of the three factors suggesting change in the Navajos' future is their rapidly developing political socialization and capacity for effective self-government

The development of the structures and functions of self-government within the Navajo Tribe provide the political scientist—theoretician and practitioner alike—with a classic laboratory example of the evolution of modern democratic structures from a primitive, decentralized system of families, extended families, clans and nomadic groups. Mary Shepardson's *Navajo Ways in Government*¹⁰ describes vividly how a simple but relatively effective modern political culture has emerged from a traditional tribal matrix.

Reduced to simple terms, Navajo tribal government in 1976 consists of an executive branch with a popularly elected tribal chairman and vice chairman running together on a ticket not identified by party labels; a legislative branch in the form of a Tribal Council of 74 members, each of whom represents a district composed of one or two chapters, and a judicial branch headed by a Tribal Court with a chief justice and six permanent judges. Pay for council members is \$12,000 plus per diem for the fifteen days or so they are in session each year.

The tribe operates, not under a constitution, but under a set of documents equal to a constitution in all but name: a set of resolutions of the Tribal Council which over the last half-century have established the tribe's basic governmental institutions and the functions thereof.¹¹ The key consideration in these resolutions is that legally *all power resides in the Tribal Council*; the chairman

and the judges of the Tribal Court possess only that power they can persuade the council to give them.

Some chairmen have been more successful than others. The present chairman, electrical engineer Peter MacDonald, 47, now serving in his second four-year term, has been very successful in his relations with the council, but even he has not been able to get the council to approve everything he has proposed. The chairman is, of course, the principal spokesman for the tribe, the principal initiator of programs, and its principal leader of public opinion. He has regular access to the press (the weekly *Navajo Times*) and such television and radio programs as are on the air from Gallup and Flagstaff, and using these to best advantage becomes a test of his practical political skill. MacDonald's impressive leadership has won him national recognition, not only as the best-known spokesman for all Indians, but as a national leader in his own right. *Time* magazine named him as one of its "200 young leaders for America's future" in a special edition in July, 1974.¹²

Other aspects of Navajo politics reflect the colorful uniqueness of Navajo culture, but in a simple way they are practically and effectively democratic. Election campaigns, for example, although they frequently generate high interest, are models of low-key, no-corruption campaigning on personal rather than partisan issues. Tribal elections are held every four years, in non-Presidential election years. Turnout in tribal elections is high, over 70 per cent; in national elections it is low, about 30 per cent. In November of 1974 almost 80 per cent turned out to reelect MacDonald.

Tribal political campaigns are technically nonpartisan although not entirely so in practice. Registration, electioneering, and voting in tribal elections are quite separate from those in national and state elections. Tribal elections are conducted under rules legislated by the Tribal Council, not by the states of Arizona, New Mexico, or Utah, which do, however, set the rules for all other elections. Registration and voting in tribal elections is at a member's place of clan membership, not his current residence; almost all electioneering is in the Navajo language, and voting is on ballots printed with the candidates' pictures. Tribal campaigns overlap and follow off-year national general election campaigns, a circumstance that causes some confusion of issues, personalities, and parties. Chairman MacDonald and others feel that the voters would be better served by tribal elections at a time entirely divorced from national elections, *e.g.*, in odd-numbered years only.

Accommodation between Navajo political institutions and those of the federal government is accomplished by the BIA Area

Director in Window Rock in coordination with the chairman and general counsel on behalf of the tribe. At the time of this writing the person who had been nominated to fill the vacant office of Area Director was a Navajo with almost twenty years' experience in BIA and tribal work, Edward O. Plummer.

Government at the local level (for all purposes except school and police) is in the hands of 102 chapters, which range in size from 400 to 7,000 members. School administration is in the hands of 14 locally elected school boards on and near the reservation, five of which are all-Navajo in membership. (24,000 of the 42,000 Navajo school children are in these public schools; 18,000 are in BIA schools, which are mostly dormitory schools for children who live too far from a bus line to go to public school.) Police administration is performed by the Navajo Tribal Police, directly under the supervision of the Tribal Council.

With the increase in population the number of chapters is continually growing, with several of the newer chapters actually being in Navajo settlements outside present reservation boundaries—all of these in New Mexico. The chapter, an innovation introduced in 1924 by John Hunter, then BIA agent in Leupp, has achieved a remarkable acceptance and utility. With the building of impressive chapter houses, and the payment of salaries, albeit nominal, to each chapter president, vice president, and secretary, the chapters have developed into effective town-meeting type institutions attracting wide and lively public interest. A frequent sight as one drives across the reservation on a Sunday morning is, every few miles, a chapter house surrounded by scores of cars and horses, whose owners are all inside discussing some current water or grazing problem. Figure 1, reproduced above, shows the location and boundaries of the 102 chapters.

It should be noted that the chapters exercise only the powers delegated to them by the Tribal Council. They, like the tribal chairman, could legally be excluded from the decision-making process if the Tribal Council so voted. The effect of this is to make informal political and power structures in practice as important as the formal structures.

Concurrent with the growth of structures for self-government, there has been a concerted movement at all levels to maximize, in every way possible, Navajo independence and autonomy. In this matter, the delegates to the Tribal Council have not hesitated to make their desires known, and the men occupying the position of general counsel for the tribe since 1947 have found themselves instructed on repeated occasions to do all they can overtly to further the cause of Navajo autonomy.

The movement for Navajo autonomy has components which are both legal and historical, yet psychological in a completely modern way. Legally, the treaty signed in 1868 by General Sherman and Barboncito is anything but a dead letter. Navajo leaders are well aware of the guarantees and tribal rights the treaty promised them in exchange for their military agreement to cooperate with the white man. They also allege (on rather flimsy evidence, however) that several provisions of the treaty were never carried out in the way they should have been, such as the guarantee to provide a school house and a competent teacher for every 30 children who could be "induced or compelled to attend school."

Navajo spokesmen also cite the dictum of Chief Justice John Marshall in 1831, who characterized Indian tribes as "domestic dependent nations." In the *Worcester* case cited above, Marshall had said:

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress.¹³

But they also remember well, as they were reminded in a 1970 editorial in the *Navajo Times*, that it takes more than a Supreme Court opinion to change the law of the land. Only six years after John Marshall wrote the opinion quoted, political chicanery still deprived the Cherokees of their land and United States Army troops were used to drive them along the "Trail of Tears" to a strange land 800 miles west.¹⁴

The Navajos are determined that no such injustice shall be visited on them, and thus they were highly interested in the 1959 case of *Williams v. Lee* cited above. The case involved the right of a trader legally to seize an Indian's sheep and sell them in payment of a debt. The United States Supreme Court reversed a decision of the Arizona Supreme Court, ruling that the state had no jurisdiction over civil affairs on the Navajo reservation, as this would undermine the authority of the tribe to govern itself, as recognized by Congress in the treaty of 1868. It was here that Court observed, "If this power is to be taken away from them, it is for Congress to do it."¹⁵

It was stated above that there are three elements in the thinking that suggests that a change may be in the wind for the Navajo Nation. The third consideration is the thought that the time may be

ripe for a change, that the climate of public opinion in the United States might favor a change now. In this climate of American public opinion, two superficially contradictory trends seem to converge into a feeling that something ought to be done for Indians.

The two trends are, first, a feeling that something should be done to eliminate poverty among Indians and right the wrongs suffered by Indians at the hands of whites over most of American history, and second, a widespread feeling that bureaucracies that have outlived their usefulness should be phased out or at least cut back. In the late 1970's some Indians and some observers of Indian affairs take these two trends to mean that Indians should be helped to pull themselves up socially, politically, and economically, using federal government money, but without federal bureaucracy, *i.e.*, without the Bureau of Indian Affairs.

The idea of eliminating or reducing the role of the BIA is not new. In a Concurrent Resolution as long ago as 1953 the United States House of Representatives resolved that it was the "long-range goal" of Congress to terminate the reservation system. In 1954 that statement of principle was put into specific terms in Public Law 399 of the 83d Congress, terminating "Federal supervision over the property and affairs" of the 3,200 Menominee Indians of Wisconsin.¹⁶ This unhappy and ill-advised piece of legislation was enacted against the wishes and best judgment of Menominee leaders, who had seen it voted down repeatedly in tribal meetings. It was eventually forced upon the tribe as the price of receiving seven million dollars that had been awarded to them following a suit against the United States for mismanagement of the tribe's forest resources. The vote to accept the government's proposal to terminate came under conditions of practical duress when Senator Arthur Watkins of Utah, chief proponent of the legislation, as much as told the 174 Indians voting that regardless of how they voted, the reservation would be terminated anyway.¹⁷

Termination did thus become a fact, in the form of a self-governing county incorporated under the laws of Wisconsin. The experiment continued for twelve years (1961-1973) but with no real economic underpinnings, *i.e.*, no adequate tax base, it failed, a victim of bankruptcy. Termination was repealed and the Menominees were restored to tribal and reservation status on December 22, 1973.¹⁸

Under somewhat different circumstances, the Klamath Indian Tribe of Oregon was also terminated; this action appears not to have had as unfortunate repercussions as the Menominee experience.¹⁹

The Menominee experiment, which took the form of an autonomous all-Indian county within the framework of Wisconsin state government, should not be confused with a superficially similar Arizona proposal, which was actually quite different because it applied to only a part of the Navajo reservation. In 1974, 1975, and 1976, a proposal was abroad to change the boundaries of two very large counties in Arizona, Apache and Navajo, each of them about half Indian and half Anglo, so that one of them would be all Indian and the other mostly non-Indian. The reasoning behind the proposal was that under "one-man, one-vote" the small Indian majority in Apache County had gained enough votes to control the county government, while Indians were exempt from practically all property taxation. (As with the Menominees, because the Indians owned no land as individuals, there was no tax base.) The non-Indian rallying cry in Apache County thus became "no representation without taxation!" The proposal was defeated at the polls, probably because of the strong racist overtones, and the repercussions were minor because it turned out that much of the county's income came from taxes on several hundred miles of power companies' transmission line easements which were in the Indians' area anyway.

The dilemma surrounding the idea of termination seems to be one of conflicting values. On the one hand, maintenance of traditional Indian cultures often means accepting a subsistence standard of living (read poverty) and this is inadmissible under the prevailing American scale of values. On the other hand, federal help to Indians means either paternalism (read welfare) or encouraging Indians to seek economic independence (read jobs), which means leaving the reservation, not always a happy experience.

Aware of the problem, President Nixon, at BIA insistence, in 1970 recommended that the idea of termination be dropped, substituting therefore the more sophisticated and certainly more democratic concept of self-determination, letting individuals and tribes decide for themselves what they want. Congress did approve the President's recommendation and the concept of self-determination became the official policy of the United States. Any specific actions to change the reservation system must now fall within the self-determination guideline.²⁰

Some of the ideas in President Nixon's message on Indian self-determination are worth quoting, realizing, of course, that the basic draft of the message was written in the Bureau of Indian Affairs.

The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian ranks at the bottom The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities.²¹

The President went on to point out that the House of Representatives' 1953 proposal to terminate the trustee relationship between the federal government and the Indian tribes denied a moral and legal responsibility accepted by the United States government since the earliest days of independence and is thus "morally and legally unacceptable." On the other hand, paternalism on the part of the federal government stifles the free and independent development of both Indian tribes and individuals and is not a satisfactory solution. "Federal termination errs in one direction, Federal paternalism errs in the other." Avoiding the two extremes, the concept of self-determination is one that steers a course between the two extremes:

Self-determination among the Indian people can and must be encouraged without the threat of eventual termination It should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency [The tribe should be free to take over any such program] whenever the tribal council or comparable governing group vote[s] to do so.²²

Change is Coming: How Much Change?

Therefore, changes are in the wind, and for the nation's largest tribe, they may come sooner than for most other Indians.

The possible forms change may take are four. Statehood is one; some other legal status especially tailored to the Navajo situation, such as the commonwealth status enjoyed by Puerto Rico, is another; a third form avoids name changes and any redrawing of maps, and concentrates instead on changing the substance of powers granted to tribes; and a fourth form is that envisioned by Congress in 1953; flat termination of reservation status, along with all the unique cultural tribal identity inherent in the concept of "reservation." In the third case, the name "reservation" con-

tinues to be used, so that to all appearances there is a minimum change and a maximum of continuity.

Before attempting to evaluate the relative merits of these four courses of action, it would be well to look at the actual situation as it exists now. We might start by noting that a drastically revised charter such as that of a state or commonwealth is not as farfetched as might appear at first glance. In fact, the earliest of many treaties between the United States Government and American Indian tribes as far back as 1778 even invited the Delaware Nation, in exchange for help in the Revolution, to join the Thirteen Colonies, "and to form a State whereof the Delaware nation shall be the head, and have a representation in Congress."²³

In the time frame of the 1970's, the Navajo Tribe occupies a legal position different from any other subsector of American society, operating largely outside the normal parameters of the BIA bureaucracy. It is rather remarkable, for example, how much closer Window Rock, the Navajo capital, seems bureaucratically to Washington than it does to either Phoenix or Albuquerque. The BIA Area Director in Window Rock has as his immediate superior the Commissioner of Indian Affairs in Washington, not the director of a BIA regional office. The Secretary of the Interior and the President, the congressional committees on Indian Affairs, and the Supreme Court of the United States are far more frequently on the lips of tribal officials and BIA functionaries than anyone in the state capitals of Arizona, New Mexico, or Utah.

Aside from carrying Arizona, New Mexico, or Utah license plates on his car and paying Arizona, New Mexico, or Utah gas taxes when he fills his tank, the average Navajo thinks of himself as a Navajo rather than as Arizonan, New Mexican, or Utahan. Navajos pay federal income tax and receive federal benefits, but they pay only nominal state taxes, receive few state benefits, and they question even these.

In matters of legal jurisdiction the state police and highway patrol of Arizona and New Mexico have jurisdiction only on the few state and federal highways within the reservation, not on other reservation roads, where tribal police do the patrolling. Even along the federal and state highways, state police and highway patrol jurisdiction extends only to the right-of-way line. To minimize jurisdictional conflicts, Arizona and New Mexico have frequently appointed Navajo tribal policemen as deputy sheriffs of the counties wherein they work. In other areas of legal jurisdiction, the division is between the federal government and the tribe, not between the federal government and the states.

Misdemeanors are tried in tribal courts and felonies in federal courts, with the result that the United States Department of Justice and the FBI pick up a sizable bloc of work which under other circumstances would normally be handled by the states.²⁴

If the Navajo Tribal Council is to debate and choose some sort of change in the reservation's legal status, it will surely give central attention to a key factor in the debate, namely that reservation status includes one important Indian right that no other legal status offers: the right to exclude from their reservation anyone they wish.

The primary reason for this is the desire to keep traditional ways and life-styles relatively uncontaminated by undesirable features of American mainstream life. In the 1940's and '50's the official BIA philosophy and policy, in those days not particularly opposed by Indian leaders, was to encourage—even force—Indians to go out into mainstream society and “make it” as white men do. Two decades of not-too-successful experience with this policy, exemplified by the inability of many Indians to adapt to industrial city life, led to the reversal of the trend in the '60's and '70's. Now the policy, strongly concurred in by Indian leaders, is to leave the decision on life-style up to the individual himself. To the Navajos this particularly means maintaining on the reservation a situation where the style of life they are accustomed to is not swamped by undesired non-Navajo cultural influences. Therefore, the right to control the demographic make-up and cultural character of the reservation is an important one for Indians.

It is true that the 1785 and 1786 treaties and Chief Justice Marshall's opinion quoted above, which form the legal basis for the right of exclusion, contradict the equal protection of the laws guaranteed by the fourteenth amendment. As of this writing, there has been no definitive legal confrontation between the two principles.

The right of exclusion has an interesting history. The treaties of 1785 and 1786 used as a formula the words:

if any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands hereby allotted to the Indians to live and hunt on, such person shall forfeit the protection of the United States of America, and the Indians may punish him or not as they please.²⁵

This formula held through 1795, but thereafter it was watered down or conspicuous by its absence.

The post-Civil War period saw a great strengthening and expan-

sion of the reservation system, and as part of the system, exclusion. The exclusion formula that was written into treaties signed in 1868 with the Sioux, Crow, and Navajo all had essentially identical wording: "The United States agrees that no persons except those . . . so authorized . . . shall ever be permitted to pass over, settle upon, or reside in, the territory prescribed in this article."²⁶

The right to exclude anyone they wish from the reservation is one that would certainly disappear if statehood status—or almost any status other than that of reservation—were to become a reality. As it is now, Navajo authorities exclude, not the general public, but only business enterprises considered undesirable, and officials of the states of Arizona, New Mexico, and Utah, who have no jurisdiction on the reservation, and certain federal officials who they claim are not covered by treaty provisions of 1868. A celebrated case in 1968 and 1969 was the barring from the reservation of Theodore Mitchell, Director of DNA—the federal poverty program's Navajo Legal Aid Service—ostensibly on the grounds that he was rude to a council member, but more likely for the reason that being independent of tribal control, the DNA was a threat to tribal autonomy and constituted a direct intrusion into the power of the tribe exercised through its council and chairman. Mitchell, however, won the case, citing his rights under the fourteenth amendment, but in deciding for Mitchell the court skirted the main issue—the legality of exclusion—by saying only that the tribe had not followed due process in excluding Mitchell. The tribe appealed the decision; the appeal was denied; Mitchell left the reservation anyway, and the status of the matter is that there is still no clear-cut boundary between the right to exclude and the fourteenth amendment.²⁷ The Navajo claim to autonomy and independence from the jurisdiction of the state governments involved also includes the notion that chronologically Navajo tribal autonomy preceded Arizona and New Mexico statehood by almost half a century and was only negligibly affected by the arrival of statehood in 1912. It is worth noting in this connection that Navajos share none of the state traditions of which Arizonans and New Mexicans are proud; their traditions are strictly products of their own tribal legends and culture. "Cowboys and Indians" have rather different connotations in the two cultures.

There are more than legal aspects to the movement toward autonomy, however. There is a generous measure of new self-consciousness and self-confidence reflected in the bumper stickers proclaiming "Indians discovered America" and "Indian Power!" *The Navajo Times*, "published for—owned by—the Navajo Tribe," and published weekly in Window Rock since 1959, has

become a powerful factor in crystallizing public opinion within the tribe. Honors to returning military servicemen and the crowning of queens are standard fare, but controversy and blunt language likewise play a role in molding public opinion, with the Bureau of Indian Affairs as often as not the scapegoat.

Limiting Factors

In any discussion of the future legal status of Navajo-land there are unquestionably several limiting factors which must be taken into consideration. The economic viability of the reservation, whatever its future status, comes first to mind; beyond that the impact of various solutions on the three states in which Navajo-land is located must be considered; and beyond that, the interests of the Navajos' closest neighbors, the Hopis, must be examined.

Navajo Economic Development

At one time, around the turn of the century, the Navajos were a wealthy, happy tribe. They had fairly good grazing and agricultural land, and all the mutton, corn, melons, and peaches they could eat. But overgrazing, and the explosion of human and sheep population changed all that. Prosperity turned to poverty as the numbers of hungry human mouths around the fire increased, and as herds of starving sheep succumbed to fierce winter storms. Poverty became measurable when it came to be defined in terms of cash income—\$3,000 for a family of four—as it did during the Johnson Administration. By the 1960's and '70's, poverty had become the number one Navajo social problem.²⁸

No solution has yet been found to the problem of Navajo poverty. Nothing has been found which adequately replaces the once rich pastures. It is true that cash has been found to blunt the sharpest edge of poverty and to drive away the specter of starvation, and it is true that cash has been found to upgrade housing, health, and education. The cash comes from oil, coal, and gas leases and similar resources, collected and dispensed in relatively small amounts by the tribal treasury, and from federal government appropriations dispensed, in larger amounts, by HEW, HUD, the Labor Department, and BIA. However, cash payments are a poor substitute for wage and salary income resulting from productive work. *In the economic rehabilitation of the Navajo people, it is the opportunities for productive work that have been lacking*, as an essential ingredient in a healthy society.

Why is this so? Essentially it is because no basic industries have

developed to replace the sheep. There is some basic industry, but not much. A few hundred are employed mining Black Mesa and Four Corners coal and in the associated electric power-generating industry. The Fairchild experiment, which employed 470 people at Farmington, New Mexico, terminated unhappily, and other, smaller industrial ventures have not done much better. Navajo Chairman Peter MacDonald believes that most basic industries or large-scale productive enterprises are ill-adapted to the Navajo situation: he notes that industry brings in a type of white man's industrial regimen—time clocks, labor contracts, penalties for absenteeism, strikes, strife—a regimen that is alien to the Indian way of doing things. MacDonald believes that Indian-owned small business—stores, motels, gas stations—are a better way of bringing Indians into the modern American economic milieu.

The reasons for the failure of the Fairchild experiment at Shiprock bear examination. Under contract with the Navajo Tribe, the Fairchild Camera and Instrument Corporation in the mid-sixties opened a factory making electronic components, which by 1975 employed 473 Navajos, with a \$55,000 weekly payroll. In March, 1975, protesting the layoff of 140 workers and alleging "atrocities" (more accurately described as unearned corporate profits and unfair personnel policies), a group of Indians from AIM, the American Indian Movement, invaded the plant illegally. The day after the "invasion," Fairchild officials broke off negotiations with the invaders, informed the tribal chairman that it expected the tribe to end the invasion, and set a deadline a few days later by which time it demanded the tribe reach a solution. The deadline came and passed, and when nothing happened the company announced it was closing the plant.

The company criticized the tribe for its do-nothing attitude during the eight-day siege; neither the chairman nor the council had acted, said the company, to achieve a solution. In closing the plant, Fairchild abandoned an investment it valued at more than a million dollars.²⁹

Fairchild had been assisted in its operation by a Department of Labor-funded job training program which paid half the salaries of job-trainees for periods up to two years. The manager of the plant, Mercer Curtis, commented on the problems of operating an industrial plant on the reservation: turnover during the ten years of operation had averaged 50-60 per cent (per annum, presumably), despite high unemployment rates outside the plant. However, AIM sleuths going through company files discovered that layoffs were based on seniority; as soon as an employee com-

pleted his subsidized training, he was laid off to make room for a new—and newly subsidized—trainee. Confidential company files read by AIM occupiers disclosed that Fairchild thought it could outbluff BIA and the tribe if any attempt were made to end the subsidy program.³⁰ The upshot of the matter was that the tribe and the federal government were not outbluffed and in 1976 the plant was reopened and a new operation was started with a new contractor.

The conclusion from the above? Economic development may be, and probably is, on the way, but it will not come about easily. Navajo-land's development problems are typical of those of many other underdeveloped lands.

One further aspect of the Navajos' capital investment and financial picture should be mentioned. This is that reservation status entails a number of legal considerations militating against normal off-reservation methods of raising capital. Bonds for municipal improvements—schools, streets, public utilities—while perfectly legal, are unsaleable because there is no tax base to back them up. No one owns land or improvements in fee simple; reservation status means that the United States government holds all property *in trust* for the Indians. The trustee cannot give the property entrusted to him to the beneficiary unless the trust relationship is terminated and, as we have seen, "termination" is a bad word. There are ways around this "no-bond" situation: the Tribal Council, in setting up the Navajo Housing Authority under HUD guidelines, found one way to make bonds saleable by specifically authorizing NHA to sue and be sued.

Raising equity capital for construction of plant or equipment on the reservation is likewise as difficult as it would be in any country where private ownership of real or capital property does not exist. The investor does not have freedom to do with his investment as he wishes; on the reservation his hands are tied because Indians have the right of exclusion; the investor is not free to hire anybody he wants. In the Fairchild situation, the tribe built the plant for the company, which operated it under contract, but the company ended up quitting the business after its contractual obligations were fulfilled. In another instance, a major natural resource about thirty miles south of Shiprock—a coal deposit suited for the production of coal gas, several billion dollars' worth over the next thirty or forty years—will probably remain undeveloped in the foreseeable future because there is no way of inducing the equity capital required to come onto the reservation. Thus, "coal gasification" is one of those bright hopes for the economic

development of Navajo-land which gets dimmer the closer one gets to it.³¹

One partial solution to the problem of Navajo economic development may lie in the formula developed to utilize one of the reservation's important resources, timber. In this case a wholly owned tribal enterprise has been formed, Navajo Forest Products Industries, to run a sawmill, hire lumberjacks, and supervise harvesting of the fine stand of Ponderosa pine north and west of Window Rock. The formula has been extended to Navajo Agricultural Products Industries to supervise farming by overhead irrigation of 110,000 acres on the San Juan River northeast of Shiprock. NAPI has been entrusted by the tribe to the directorship of Dr. Bahe Billy, a Navajo with a Ph.D. in agriculture from the University of Arizona. The first unit of 10,000 acres went under cultivation in 1976.

Impact of Autonomy on State and Federal Governments

As to the states of Arizona, New Mexico, and Utah, if greater autonomy were to mean the official loss of land and the redrawing of maps, the effect would appear to be more psychological than anything else. Arizona would drop from sixth to eighth in size in the United States, but New Mexico would remain unchanged at fifth. In the matter of state revenues, in budgets, income and outgo, practically speaking, there would be no change. A slight loss in automobile license fees and gasoline taxes would be balanced by a commensurate reduction in highway maintenance expenses on several hundred miles of BIA-built two-lane highway on the reservation. Legal jurisdiction from the point of view of the states would remain essentially unchanged. With the loss of a huge block of territory, Coconino County might no longer be the second largest county in the United States. The population loss in the states of Arizona and New Mexico, 83,000 and 61,000 respectively, would not be enough to cause a loss of a seat in Congress, although if statehood were the solution, the addition of a Navajo congressman would probably cause the House of Representatives to be overstrength by one member until the next decennial census.

In New Mexico, in contrast with Arizona and Utah, where the reservation and Navajo lands are coterminous, 18 chapters with some 30,000 tribesmen lie outside the official reservation boundaries. The status of these lands, approximately 4,500 square miles, and the location of the new boundary, would have to be determined by agreement between the parties concerned. However, there are several legal formulas providing greater

autonomy which do not require the redrawing of any maps. The present situation, where periodic specific grants of new power to the tribe are made by act of Congress and presidential or executive fiat, provides the tribe with greater autonomy, affects the states hardly at all, and requires no redrawing of maps.

What would be the effect of these various formulas on the federal government? Most formulas would probably signify the end of the era of BIA control, with the substitution of established federal programs applying elsewhere in the country, with probably many of the present BIA personnel performing the same functions they now perform, but with new titles. The Federal Four Corners Commission, established to implement the federal anti-poverty program primarily among the Navajos, presumably would continue to operate without change. Certain elements of legal jurisdiction would presumably be relinquished by federal legal authorities, *e.g.*, the responsibility of handling felony cases. The effect on the federal budget would presumably be minor except for the fact that in the case of statehood, two Indian senators and an Indian congressman thrusting their ladles into the federal pot might be expected to extract a few extra benefits which the Indians are not now enjoying.

If statehood were the solution, it may be noted that it would not be the first occasion on which Indians have sat in the United States Senate. Oklahoma has had several Indian or part Indian senators and Herbert Hoover's vice president from 1929 to 1933, Charles Curtis, was an Indian. Certain it is, that the admission to membership in the Union of an exclusively Indian state speaking its own language and displaying its own distinctive subculture would be the occasion for great surprise in this country as well as abroad.

If statehood were to be the solution, or some other written form of formal constitutional autonomy, how would the mechanics work? In the case of statehood, the Constitution is quite simple and explicit. Article IV, Section 3, reads:

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.³²

Presumably the same requirements would apply to any formula granting full autonomy in a form other than statehood. Thus, nine legislative bodies would have to give their approval: the two

houses of each of the state legislatures of Arizona, New Mexico, and Utah, the unicameral Navajo Tribal Council and both houses of the United States Congress.

One can conjecture that without some outside impetus all these legislative bodies are not going to concur overnight. However, the possibility of an outside impetus is not to be ignored. One can assume that some extremist group, American Indian Movement, Communist, or other, will sooner or later try to obtain some sort of federal concessions by force. Although AIM has not been notably active or successful on the Navajo reservation (probably because of the very considerable autonomy the tribe already possesses), it is clear that the Navajo drive for autonomy is just one facet of the much larger nation-wide Indian drive for increased civil rights and wider participation in the good life.

Impact on the Hopis

One important group will be more directly affected than any other by any major change in the Navajo's legal status. This is the Hopi Tribe, and their potential opposition is one important reason for thinking that change for the Navajos will probably be evolutionary and incremental rather than revolutionary and major.

The reason the Hopis' opinions can be expected to have a legal impact on the Navajos' actions is that the Hopi reservation is an island in the middle of the Navajo reservation, and Hopis cannot get on or off their own territory without going through Navajo territory. Clearly any advance for the Navajos who surround them must not be at the expense of the Hopis, who are as entitled to equal protection of the laws as anyone.

Numbering about 7,000 individuals, 6,000 of whom live on the reservation, the Hopis are a completely different ethnic group from the Navajos; they have entirely different language, traditions, culture, and social organization. Less than one-twentieth the size of the Navajo Tribe, Hopis consider themselves to be exclusively an Arizona tribe, not a multi or interstate group like the Navajos.³³ Hopi affairs are administered through the BIA's Phoenix area office, not through Window Rock.

Navajo-Hopi relations are not completely amicable. The major issue at present between the two tribes is one of conflicting land claims. An Executive Order of 1882 gave the Hopis a huge area of 2,500,000 acres (3,700 square miles), some of which had been partly occupied by Hopis as far back as 1,000 and possibly 2,000 years ago. The problem of conflicting land claims arose over 300 years ago when Navajos started moving onto lands the Hopis considered theirs, crowding the Hopis out.³⁴

A partial solution to the dispute was contained in a decision by three federal judges in 1962 which gave the Hopis clear title to 650,000 acres (1,000 square miles) and the right to share in the surface and subsurface rights of the remaining 1,822,000 acres (2,700 square miles).³⁵ An act of Congress, Public Law 93-531, in 1974, then mandated that the resulting Joint Use Area be physically split between Hopis and Navajos, even though that might force many Navajo families to move. As this is written, the partition line is being surveyed, fencing has started, and some families already have moved.³⁶

The land dispute between the two tribes is outside the scope of this paper, but clearly the Hopis have a real interest in any major change in the Navajos' status, particularly if that were to be anything like statehood. Unquestionably the Hopis are jealous of their status, separate, distinct, and independent of the Navajos. Most probably, Hopi reaction to greater Navajo autonomy would be to insist that they remain a part of Arizona as are the other smaller Arizona tribes despite the fact that they, the Hopis, will always be geographically an island in Navajo-land.

Implications of the "Commonwealth" Concept

If the avenue were "commonwealth" rather than statehood, just what would that mean? Puerto Rico, of course, calls itself a commonwealth, but so also do Virginia, Pennsylvania, Kentucky, and Massachusetts. In the Trust Territory of the Pacific, where problems of status are matters of high current interest, one of three regions, the Marianas (Guam, Tinian, Saipan), has requested commonwealth status from the Congress, while the Carolines (Yap, Ulithi, Truk) are thinking of something similar but with looser ties, and the Marshalls (Kwajalein, Bikini, Eniwetok) are talking about something entirely different—complete independence.³⁷

The word "commonwealth" in itself has no particular legal significance beyond that of a government in which sovereignty is vested in the people. One wag is alleged to have said that the reason Puerto Rico was called a commonwealth in the first place was that "it sounded good and nobody knew what it meant." When the Navajos talk about commonwealth, what they really mean is a governmental status short of statehood but defined in law so that they retain most of the advantages of being part of the United States, while dropping some of the disadvantages of being split among the states of New Mexico, Arizona, and Utah. What commonwealth status means to Puerto Rico (actually the Spanish

translation of commonwealth is "free associated state," *estado libre asociado*) is that they combine most of the advantages of being American citizens with almost all the autonomy that independence would give. Puerto Ricans are self-governing with respect to almost everything of concern to them, except for foreign relations and control of the army, and except for the fact that many federal programs extend benefits beyond what Puerto Rico could afford out of its own treasury. However, it is largely Puerto Ricans who staff United States military units in Puerto Rico, while the civil servants who administer United States federal programs in Puerto Rico are almost all Puerto Ricans, and so it can be said that Puerto Ricans practically have de facto autonomy.

In addition to these considerations, Puerto Ricans are not locked into commonwealth status. They can use it as a stepping stone either to statehood or independence, or they can keep the commonwealth if they want it as a permanent end condition in itself.³⁸ Essentially what Navajo opinion leaders have in mind in speaking of "commonwealth" is a status similarly tailored to fit the needs of the Navajo situation, within guidelines set by Congress.

Conclusions

From all this discussion, is there any set of conclusions that can be drawn?

Certainly some "solutions" are out of the question for the foreseeable future. Flat termination of the reservation system seems to be out of the question. There are too many legal and moral responsibilities bequeathed to Americans of this century by Americans of the last, for termination to work at this stage of Navajo cultural development. The Menominees, who were thought to be more advanced than any other Indians, probably provide the best evidence for this conclusion. More valid than drawing analogies to any other tribe, however, as well as more directly meaningful, is probably the sociological fact that the Navajo Tribe is *one cohesive social group*, it is not just 150,000 human beings. It is quite different from 150,000 immigrants passing through Ellis Island. Although it may be desirable to have Indians enter mainstream American society, the attempts to encourage this over the last generation have shown that individuals—and tribes—must be permitted to choose their own pace and measure of acculturation. The formula of self-determination is unquestionably a wise formula, while termination is not.

Statehood as the answer to the question of the future of Navajoland is a possibility, but much debate would certainly precede such a step. Every existing state has existed previously in some other form—usually that of a territory or colony,³⁹ so one can imagine that the Congress would require that a prospective Navajo state undergo a period of apprenticeship before acceptance as a full-fledged, equal Member-of-the-Union. This would seem to say that some sort of half-way status, like a commonwealth, is a prerequisite to any realistic possibility of statehood.

There is no reason, of course, that the present reservation system cannot continue as is, shifting around the bits and pieces of federal and tribal structures so as to meet tribal needs and desires.

One variation of the “keep the reservation” plan has been suggested by an eminent German sociologist, Rene König of the University of Cologne, whose visits to Navajoland have extended over most of a 20-year period. An exceptionally kind and understanding friend of the Navajos, König proposes that the Arizona and New Mexico towns of Gallup, Flagstaff, Page, Winslow, Holbrook, and others be enlisted as sort of half-way houses, well suited to offering the Indians some measure of mainstream acculturation, while still maintaining maximum opportunity for preserving traditional family and cultural ties to the reservation. Professor König cites statistics to show that in fact a considerable migration of Navajos from the reservation to nearby towns has been occurring. Not only have the percentages of Indians in five nearby towns which he cites grown in the censuses from 1940 to 1960, but with the growth in size of these towns the absolute numbers of Indians living off-reservation (but near enough to feel at home) has grown more than tenfold. Updating König’s figures to include the census of 1970, the total numbers of Indians living in these five largest towns has grown from 355 in 1940 to 6,500 in 1970.⁴⁰ König’s solution, however, does not seem to get to the heart of the problem.

There is considerable weight of argument to support the idea of continuing the reservation system without fundamental change. These arguments are mostly variations on the theme that the treaties, acts of Congress, resolutions of the Tribal Council, and federal appropriations that the Navajos now have, imperfect, ambiguous, and mutually contradictory though they often are, are better, and offer more concessions and advantages, than any practically attainable “rewrite” could possibly be.

Take, for example, the Treaty of 1868. This is the cornerstone of the Navajo legal system now and as a treaty of the United States

Government, it is, under the Constitution, part of the law of the land. That treaty's promise of one teacher for every 30 Navajo children is better than anything the Navajos have now, or have ever had from the government. It is an unfulfilled federal obligation which the Navajos could probably go to court to get, if they wanted to press the point. No authority of the government is now going to offer more than the Treaty of 1868 gave; furthermore, the United States cannot unilaterally abrogate the treaty; and finally, the Navajos see no reason why they should voluntarily give up the benefits of a treaty they (or their forefathers) paid dearly for a century ago." The Treaty of 1868 is thus veritably "locked in" and engraved in granite.

A formal Navajo constitution is another case in point. The governmental structures the Navajos now have, based on resolutions of the Tribal Council, some dating back forty and more years ago, are every bit as effective as if they were embodied in one formal written document entitled "Constitution." The rationale for keeping what they now have is identical to that which sustains the "unwritten" British constitution: if the system is working, why meddle with it? As long as it works, and people are satisfied, no legislative majority will ever vote to change it. If it ceases to be effective, that may be another story, but as the saying goes, "We'll cross that bridge when we come to it."

In still another illustration of the same point, consider the case of federal statutes and federal appropriations. The Indian Self-Determination Act of 1975^a gives all Indians (and Alaskan natives) as complete control over their own legal status as any legislation conceivably could, short of seceding from the Union. (*That*, presumably, is out of the question.) This legislation continues completely in the tradition of congressional Indian policy of the twentieth century, the whole thrust of which has been (since 1934 at least) to give Indians just about anything they have wanted, reserving only the right of decision on money amounts appropriated to implement the legislation.

In the area of money, today's Navajos have had little to complain about. Sharing in federal programs equally, along with other Americans, Navajos are the beneficiaries of HUD's housing programs, HEW's public health, public education, and public welfare programs, the Department of Labor's apprentice training programs, the Department of Justice's Law Enforcement Assistance programs, the armed force's recruiting programs — and all of these without even mentioning the many ongoing, long-standing BIA programs.

To sum up the arguments in favor of keeping existing documents and legislation: the greatest virtue of the existing documents is that they *are working*, they *are accepted*, and they do not have to undergo any legislative revision or debate to continue in effect. If *nothing* further happens, these documents still remain on the books.

All this recitation of the many good reasons for keeping the essentials of the legal status the Navajos now have, does not change the fact that a *change of name*—from “reservation” to something else—*without an alteration of the tribe’s existing legal status*, might have psychological advantages of tremendous impact. In other words, the matter of semantics bears examination. There is no reason, other than semantic and emotional, for substituting any other word for “reservation.” Under the reservation rubric, in point of fact, much of the work of the BIA in Navajo-land has been taken over by Navajos, just as Puerto Ricans staff federal offices in San Juan. The new top BIA official on the reservation—reporting directly to the Commissioner of Indian Affairs—is, as has been noted, a Navajo.

But, there is much psychological significance to the name given to the solution. Making no name change at all may be the easiest solution, in the short run, but doing the same thing *with* a name change from “reservation” to something else may generate tribal pride and enthusiasm of a highly desirable nature. The feeling of self-worth accruing to citizens of a uniquely identifiable polity might provide the impetus for as much progress in a year as slow, incremental, uninspired evolution might in twenty. Whatever that “something else” might be, commonwealth, republic, or whatever, the semantic and psychological value of shedding forever the style “reservation” and all the painful and sorrowful memories that word entails, and assuming a totally new designation such as “The Navajo Commonwealth” or “The Navajo_____,” might symbolize for this great Indian people a new birth, a new dawn, a new day, a new life.

The social scientists, the political scientists, sociologists, anthropologists, demographers—have been having a great time studying the Navajo. The BIA, HUD, HEW, OEO, the Census Bureau, and the Four Corners Commission have conducted survey after survey. One Navajo official⁴³ confided to his friend, still another expert, sociologist König: “We are fed up with being surveyed. Now what we want is *change!*”

NOTES

1. The statistics in the paper are based on information from the Office of Information and Statistics, BIA Navajo Area Office, Window Rock, Ariz.; Office of the Schools Director, BIA Navajo Area Office, Window Rock, Ariz.; Board of Election Supervisors, Navajo Tribe, Window Rock, Ariz.; BUREAU OF THE CENSUS: U.S. CENSUS OF POPULATION 1970, U.S. Summary (vol. 1, pt. 1 § 2); *id.* Subject Report (vol. 2, ser. PC (2), American Indians (USGPO, 1973).

2. The text of the Treaty of 1868 and commentary thereon are in 3 N.T.C. 245-55 app. (1970), and in INDIAN TREATIES, 1778-1883, 1016 (C. Kappler ed. 1973) [hereinafter cited as INDIAN TREATIES].

3. Several sources point out that the reputation of the pre-1964 Navajos as raiders rather unjustly ignores the fact that the Navajos were as frequently themselves the victims of raiding as they were the instigators. Spanish or Mexican colonists along the Rio Grande considered isolated Navajo bands to be as much a source of slaves—for house servants—as the Navajos considered the little Mexican ranches to be sources of livestock—sheep, cattle, and horses. See D. BROWN, BURY MY HEART AT WOUNDED KNEE 14 (1970); JOURNAL OF PRIVATE JOSIAH M. RICE, 1851: A CANNONEER IN NAVAJO COUNTRY (R. Dillon ed. 1970).

4. *Williams v. Lee*, 358 U.S. 217 (1959). This opinion by Justice Hugo Black powerfully reiterated the principles established in the case of *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), which Justice Black called "one of [Chief Justice Marshall's] most courageous and eloquent opinions." Quoted in part earlier in this article, Marshall's writ, braving a storm of criticism, denied the right of a state to legislate for an Indian nation or an Indian reservation. Although Georgia refused to obey the Court's mandate, Black notes that the broad principles of the decision came to be accepted as law. In effect Marshall was simply reaffirming the principle that lawful treaties were part of the law of the land under the Constitution. The treaties referred to were signed with the Wyandots, Delawares, Chippewas, and Ottawas in Western Pennsylvania in 1785, and with the Cherokees, Choctaws and Chickasaws in Hopewell, South Carolina, in 1785 and 1786. INDIAN TREATIES, *supra* note 2, at 6, 8, 11, 14, 16. Other similar treaties followed later.

5. Office of Information and Statistics, BIA Navajo Area Office, Window Rock, Ariz. (1976).

6. Stanford Achievement Tests were administered reservation-wide for the second through eighth grades in seven of the eight years from 1964 through 1971. They showed Navajo children to range from 0.5 year to 0.8 year behind national norms at the second-grade level, and 1.4 to 1.0 years behind at the eighth-grade level. Navajo children at all grade levels scored relatively the lowest in word meaning and word skills. In the middle range of scores, grades in arithmetic and social studies were high relative to language skills and science. An unexplained statistic was that from 1967 to 1971, in all tests and at all levels and in all parts of the reservation, achievement levels declined in eight out of ten cases by a tenth of a year or more, in several cases by a half or three-quarters of a year. DIVISION OF EDUCATION AND INSTRUCTION, BIA, STATUS REPORT OF THE NAVAJO AREA TESTING PROGRAM (1968); COMPARISON OF 1967-68 AND 1970-71 AREA, AGENCY AND SCHOOL NORMS FOR SAT (1971). See also P. Duganne, "A Project to Attack the Learning Deficiencies of a Group of Navajo Children" (unpublished thesis, Northern Ariz. Univ. Library, 1972).

7. I. F. ELLIS, AN ANTHROPOLOGICAL STUDY OF THE NAVAJO INDIANS (Navajo Indians 1974). The two volumes of this series constitute part of the evidence presented in 370+ court actions before the Indian Claims Commission in Washington.

8. See I. GOOSSEN, NAVAJO MADE EASIER (1968) and dictionaries by B. Haile (1951), L. Wall & W. Morgan (1966), and H. Hoijer (1974).

9. United States and Navajo statistics are not exactly comparable due to major differences in the cultures compared. "Illiteracy" according to the BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1960 (90th ed.), used as a source for United States statistics, means inability to read and write in any language. "Functional illiteracy" as used in BIA MANPOWER SURVEY (1970) means five or less years of formal schooling. "Unemployment" means ready, able, and willing to work but unable to find a job, whereas "nonemployment" among the Navajo means wanting to work but unqualified, untrained, non-English-speaking, unwilling to leave reservation, or too discouraged to continue look-

ing for work, and for any or all of these reasons unable to find work.

10. M. SHEPARDSON, *NAVAJO WAYS IN GOVERNMENT: A STUDY IN POLITICAL PROCESS* (1963).

11. The Tribal Council was formalized as the governing body of the Navajo Tribe by a resolution of the preexisting BIA-appointed council approved by the Commissioner of Indian Affairs and the Secretary of the Interior July 26, 1938. The chairman of the tribe received formal confirmation of his duties as Chief Executive Officer of the tribe's administrative organization by a resolution of the Tribal Council Aug. 6, 1959. The Judicial Branch of Tribal Government was formalized in a Council Resolution passed Oct. 16, 1958. 7 N.T.C. §§ 101-102, 131-33, 135, 171-73, 201-203, 221, 251-52, 254 (1970).

12. *TIME*, July 15, 1974.

13. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561 (1832).

14. See D. BROWN, *BURY MY HEART AT WOUNDED KNEE*; *Navajo Times*, Oct. 1, 1970.

15. *Williams v. Lee*, 358 U.S. 217, 223 (1959).

16. 25 U.S.C. 891-902 (1970) (originally enacted as Act of June 17, 1954, ch. 303, §1, Pub. L. No. 83-399, 68 Stat. 250); *PUBLIC PAPERS OF THE PRESIDENTS, Dwight D. Eisenhower*, 582-83 (USGPO, 1955).

17. I am indebted to Professor Philleo Nash of American University for pointing out the injustice that was done to the Menominees under the policy of termination. Letter from Philleo Nash to author (Sept. 2, 1976). Nash was from 1961 to 1966 Commissioner of Indian Affairs.

18. For an account of the Menominee experience, see N. LURIE, *MENOMINEE TERMINATION: FROM RESERVATION TO COLONY*, 31 *HUMAN ORGANIZATION* 257-70 (1972); *Hearings on the Menominee Restoration Act Before the House & Senate Interior Affairs Subcomm. on Indian Affairs*, 91-93d Congs. (1971-73). Menominee Restoration Act of Dec. 22, 1973, Pub. L. No. 93-197, 87 Stat. 770, repealed by Pub. L. No. 83-399.

19. 25 U.S.C. § 564 (1970) originally enacted as Klamath Termination Act of Aug. 13, 1954, ch. 732 § 1, Pub. L. No. 83-587, 68 Stat. 718). It was followed in 1959 by 25 U.S.C. § 565, giving financial assistance to the terminated tribe (enacted as Pub. L. No. 86-40, 73 Stat. 70).

20. *Special Message to the Congress on Indian Affairs, July 8, 1970*, in *PUBLIC PAPERS OF THE PRESIDENTS, Richard Nixon*, 564-76 (USGPO, 1971).

21. *Id.* at 564.

22. *Id.* at 566-68.

23. Treaty with the Delawares, signed at Fort Pitt (Penn.) Sept. 17, 1778. *INDIAN TREATIES*, *supra* note 2, at 5.

24. On July 16, 1976, President Ford proposed in a message to Congress that all criminal and civil jurisdiction be returned to the nation's Indian tribes. CBS News, July 16, 1976.

25. *INDIAN TREATIES*, *supra* note 2, at 11, 42, 71, 75, 97.

26. *Id.* at 998, 1008, 1016.

27. The *Mitchell* case was extensively covered in *The Navajo Times* in 1968 and 1969.

28. See G. BOYER, *WHEN NAVAJOS HAD TOO MANY SHEEP* (1974).

29. *BUSINESS WEEK*, Mar. 17, 1975, 28. See also *THE PROGRESSIVE*, May 1975, at 32-33.

30. *THE PROGRESSIVE*, at 32-33.

31. The pros and cons of the gasification project are discussed in an article by Jerry Kramer. *Coal Gasification: A Crucial Issue*. *Navajo Times*, Jan. 23, 1975. Kramer does not, however, speak of the issue which Graham Holmes and others see as decisive: the unwillingness of private capital to take on the risks inherent in on-reservation investment.

32. U.S. CONST. art. IV, § 3.

33. This circumstance at times has curious consequences. Daylight savings time is one such: when the rest of the nation goes on daylight savings time, Arizona, blessed with more than enough hot summer sun, does not. But the Navajo reservation, stretching into two other states which do go on DST, does. But then, the Hopis, in the middle of but not part of the Navajo reservation, do not. This can be very confusing to the traveler, who may

have been confused to start with if he has been told that Indian time is "sun time," and that Indians do not use clocks anyway.

34. A Navajo hogan ruin north of Pinyon, Ariz., in the area in dispute was tree-ring dated from the year 1622. Stokes & Smiley, *Tree-Ring Dates from the Navajo Land Claim: II, The Western Sector*, 26 TREE-RING BULLETIN (1964).

35. *Healing v. Jones*, 210 F. Supp. 125 (Ariz. 1962).

36. 25 U.S.C. § 640d (Supp.1974) (Act of Dec. 22, 1974, Pub. L. No. 93-531, § 1, 88 Stat. 1712); *Sekaquaptewa v. MacDonald*, 544 F.2d 396 (9th Cir. 1976). For developments in the land dispute prior to 1975, see Goodman & Thompson, *The Navaho-Hopi Land Dispute*, 3 AM. INDIAN L. REV. 397 (1975).

37. The legislature of the Marshall Islands even sent a delegation to the United Nations Trusteeship Council to talk independence. See *Micronesians' Future Disputed in UN Council*, Christian Science Monitor, July 8, 1976, at 9.

38. For a good discussion of Puerto Rico's status, see K. WAGENHEIM, *PUERTO RICO: A PROFILE* 137-58 (2d ed. 1975).

39. Except, of course, that Maine was a part of Massachusetts, Vermont a part of New York, and West Virginia a part of Virginia.

40. R. KÖNIG, *INDIANER WOHN? ALTERNATIVE* in ARIZONA 221-28 (1973); BUREAU OF THE CENSUS, 1 CENSUS of POPULATION, 1970 (vol. 1, pt. 4), 51, 57-58; pt. 33, 51; pt. 46, 69 (USGPO, 1973).

41. For a reminder of this, reread Chapter 2, *The Long Walk of the Navahos*, in D. BROWN, *BURY MY HEART AT WOUNDED KNEE*.

42. 25 U.S.C. § 450 (Supp. 1975) (enacted as Indian Self-Determination and Education Assistance Act, Jan. 4, 1975, Pub. L. No. 93-638, 88 Stat. 2203).

43. KÖNIG, *supra* note 40, at 22.