

1

Introduction

The Navajo people survived. They did so despite innumerable attacks and invasions by first Spanish, then Mexican, and finally American forces. They continue to survive. Since well before 1705, when “Maestre de Campo and principal military leader Rogue Madrid” recorded in his journal that he was ordered to “go forth to make war by fire and sword on the Apache Navajo enemy nation,”¹ Navajos have been under almost constant pressure from outsiders.² It wasn’t until Kit Carson’s campaign of 1863–4, in the midst of the Civil War, that the US Army ultimately defeated the Navajo tribe militarily. “Forces led by Kit Carson waged a scorched earth campaign against peach trees and goats, horses and squash, largely starving out the Navajos” until the Navajos had no choice but to surrender.³ Thousands of Navajos were led on a forced march to Fort Sumner, where they were involuntarily held.⁴ Yet, despite such genocidal energy directed against them, Navajos survived as a people and as a tribe.

On June 1, 1868, the United States government signed the Treaty of Bosque Redondo with the Navajo tribe.⁵ The Treaty was a hard-fought victory for the Navajo people who had been interned at Fort Sumner for more than four years. General William Tecumseh Sherman was in charge of the negotiations on the American side, the same general who, just a few years before, played a pivotal role in bringing the South to its knees by marching his army across Georgia. Despite being seated across from such an imposing figure, the Navajo were unbending during the negotiations: they demanded that they be allowed to return to their homeland. Speaking directly to Sherman on May 27, 1868, Barboncito – a key Navajo leader involved in the negotiations – said, “It appears to me that the General commands the whole thing as a god. I hope therefore he will do all he can for my people . . . I am speaking to you now as if I was speaking to a spirit, and wish you to tell me when you are going to take us to our own country.”⁶ The treaty signed was far from perfect. The reservation envisioned by the treaty was too small to meet the needs of the Navajo people, did not account for their future growth, and would need to be supplemented by additional land set-asides. Navajos would continue to face hurdles and

challenges, some from Washington and some decidedly more local. But despite such hardships, the Treaty of Bosque Redondo was an impressive victory. The Treaty not only recognized the right of the Navajo people to return to Dinétah, their homeland, it also paved the way for the modern Navajo Nation.

In some parts of the United States, it is easy to forget that the entire country once belonged to the Indians. But reminders are everywhere. Iowa and Kansas are named after tribes and the Mississippi River derives its name from a Choctaw word meaning “Great Water.” Mohawk ironworkers helped build many of New York’s iconic skyscrapers and numerous tribes work to protect the fish and water quality of the Great Lakes.⁷ Paintings and carved depictions of Indians – including Pocahontas saving John Smith, Natives greeting settlers at Plymouth Rock, and the Lenape Indians signing a treaty with William Penn – adorn nearly every major room of the US Capitol building. And on reservation land across the United States, Indian nations continue to exercise tribal sovereignty, as they have since before the formation of the country.

From contact until the late 1800s, the Indian question was at the forefront of American politics. Competing powers – the British and the French, the British and the Colonists, the Spanish and the Mexican, the North and the South – actively sought alliances with Indian tribes in the many wars for control of what is now the continental United States. And though the popular mythology of the nation’s expansion (both at the time and today) is often based on some version of manifest destiny, all along there were those who recognized the humanity of Indians and called for fairer treatment of Indigenous peoples. Villages and church groups across the country, some far removed from Georgia, sent memorials to Congress protesting Cherokee removal. Even policies such as allotment – an imposition of fee simple ownership of land on tribes and the sale of any “surplus” land to non-Indians – that proved disastrous for Indian tribes reflected both non-Indian desire for Indian land and a belief that Indians would benefit from such policies. To treat the conquest of the continent as an expression of a single racist ideology is to selectively forget that Indian policy was infused in and inseparable from politics. For much of American history, issues involving Indians were matters of intense public debate.

But once the Indian wars were over and Indians were confined to reservations, the Indian question receded, relegated by geopolitics and economic growth. Sure, there were occasional reminders that Indians were not entirely exterminated, but, by the twentieth century, Indian issues were of secondary importance throughout much of the country. Periodic flare-ups, such as the Alcatraz and Wounded Knee occupations, forced Americans to briefly take note of the continued existence of Indian tribes, but they did not return Indian issues to the front burner. That may be changing. During the 1990s, Indians regained a bit of the popular spotlight through the combined might of Hollywood, in the form of a white soldier (Kevin Costner) who goes native in the Oscar award-winning *Dances with Wolves*, and the almighty dollar, in the form of Indian casinos sprouting up in California, New York,

Connecticut, Florida, and elsewhere. But that could just be a taste of what is to come. Despite the relative neglect of all things Indian throughout the past century, the Standing Rock protests of 2016–17 suggest that Indian issues are poised to assume greater national importance.

Though legal battles remain, the Dakota Access Pipeline is now fully constructed;⁸ by that measure, the Standing Rock protests failed. In August 2016, members of the Standing Rock Sioux tribe blocked further construction of a portion of the pipeline that was to run under the Missouri River, one half mile from their reservation. They described themselves as “water protectors,” not protesters, and were quickly joined by Native Americans of other tribes who arrived in droves from across the country. The protest became front-page news, lasting into the winter, with the protest camps taking on the characteristics of entire towns. A temporary victory occurred when the federal government, under President Obama, temporarily halted construction of the pipeline, but that position was quickly reversed by President Trump, as discussed in Chapter 5. By late February 2017, authorities employed heavy equipment and their power to arrest resisters to force the last of the water protectors to leave Oceti Sakowin camp.⁹ On the one hand, even with an unprecedented level of collective energy – perhaps even higher than the days of the American Indian Movement and the occupation of Wounded Knee – directed against the pipeline, Indians still lost. On the other hand, the protests showed that it will be hard for the country to ignore matters that are important to Indians moving forward. Given the right circumstances, Indian voices can and will help drive and push the national political and social conversation.¹⁰

Whether the larger society wants to engage Indians or not, there is likely to be a rise in non-Indian and Indian negotiations, agreements, *and* conflicts. In a 1970 Special Message to Congress on Indian Affairs, President Richard Nixon announced a change in the federal approach to Indian tribes.¹¹ Explicitly rejecting the preceding policy of terminating tribal authority, Nixon argued that “[t]he time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.” Nixon’s speech ushered in the self-determination era, a period in which most tribes have assumed control over nearly all aspects of tribal governance. For the past half-century, “self-determination” and “sovereignty” have been the words on the lips of tribal and federal officials alike. Moreover, the idea that Indian nations should be in charge of setting their own course continues to be the primary operating principle of federal Indian law and policy. Many tribes today are flexing their muscles: opening off-reservation casinos, purchasing property to expand their land bases, and demonstrating in politics and in business that they must be taken seriously as peoples and as nations.

Popular views of white-Indian relations have changed over time but continue to deny Indian peoples an active role in shaping the country. The “good cowboys versus bad Indians” version of history has been partially replaced by popular acceptance of

“Indians as victims” in the settlement of the continent, but both accounts gloss over Indian decision-making and agency. The United States is “a nation built on land stolen, or skillfully traded (to put it in the best light), from the original inhabitants.”¹² Indians lost much of the continent to whites militarily, but negotiated agreements – often formally memorialized through treaties – are as important in that story as the military defeats. Through these agreements, Indian tribes typically gave up land, often a significant amount, in return for recognition of their remaining land rights as well as for a variety of other guarantees, including peace, annuity payments, and protection from “bad men among the whites.”¹³ Treaties that conveyed vast tracts of land to the United States also recognized the right of Indian tribes to reservation lands and to valuable water, hunting, and fishing rights.

The country’s history is replete with examples of Indians being pushed from their land because whites wanted it for farming, industry, and even national parks. Ironically, the undesirable land that Indians were often left with turned out to be quite valuable land.¹⁴ Today, Indians reservations contain 56 million acres, or 2.3 percent of the total land area within the United States.¹⁵ Significantly, “Indian lands contain about 30 percent of the coal found west of the Mississippi, up to 50 percent of potential uranium reserves, and as much as 20 percent of known natural gas and oil reserves.”¹⁶ Additionally, reservation lands have “substantial reserves of minerals such as gold, silver, copper, bauxite, and others.”¹⁷ Even when it comes to renewable resources, Indian reservations include some of the best sites for locating wind and solar electrical generation facilities.¹⁸ As the Supreme Court has recognized, tribes enjoy significant water rights even if those water rights were not explicitly provided for in treaties.¹⁹ The two major rivers that flow through the Navajo reservation, the Colorado and the San Juan, for example, “carry a big share of all water used in seven western states and northwestern Mexico.”²⁰ These resources, coupled with recent enhancements in the political power and autonomy of the tribes, places relations with surrounding society on a knife’s edge. Non-Indians have always wanted Indian resources, especially control or access to Indian land, and, going forward, conflict over resources could expose new fissures in the relationship between tribes and non-Indians.

When considering these potential challenges, it is worth highlighting that Native peoples and Indian nations survived the country’s best efforts to eradicate them, to sweep them out of the way in the name of manifest destiny and development.²¹ In many respects, the odds were long. Disease, conquest, confinement, and forced assimilation exacted a terrible toll on tribal communities.²² And the legacy of what has been appropriately called a genocide²³ can still be seen in the hardships endured by many Native Americans today. Survival under such circumstances is itself a form of success, but many tribes are doing more: signs of a rebound can be seen across Indian country. Indian nations have taken over many of the programs formerly run by the federal government, population numbers are dramatically rising, and a sense of hope can be felt on many reservations.

The emerging power of tribes challenges some of the earliest lessons taught to American schoolchildren. Rather than two types of sovereigns in the United States, there are three: the federal government, state governments, and Indian nations.²⁴ More fundamentally, the importance of Indians in the national story can no longer be relegated to brief mentions beginning with discovery and contact and ending with westward expansion. Tribal assertions of their right to shape the direction of their economic development and to control their natural resources show that the existence and role of Indian nations cannot be relegated to the dustbin of history.²⁵ Instead, the decisions made by tribal governments can have tremendous and immediate significance to non-Indians living in neighboring and even distant communities.

This is not to say that tribes do not face significant challenges. President Nixon began his 1970 Special Message to Congress by stating, “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 people ranks at the bottom.”²⁶ Sadly, though the self-determination era ushered in a period marked by tremendous improvements in the power tribes have to determine their own fate, for many tribal communities Nixon’s observations about the relative hardships faced by Indians remain true to this day.²⁷ According to the Census Bureau, 21.6 percent of all families, 29.8 percent of families with children, and 47.9 percent of single female-headed households of those identifying as “American Indian and Alaska Native” lived in poverty in 2015.²⁸ The same 2015 survey also reported that when viewed at the individual level, 26.6 percent of all people, and 33.8 percent of all Native children lived in poverty.²⁹ By way of comparison, the national poverty rate for 2015 was 13.5 percent.³⁰ On the Navajo Nation, the official 2015 unemployment rate was 21.5 percent compared to just 5.0 percent nationally,³¹ the median household income nationwide, \$56,516, was more than double that of the Navajo Nation, which was only \$26,203.³² Compared to the general population, Alaska Natives and American Indians live in worse housing: they are more than six times as likely to live in housing with inadequate plumbing (1 percent compared with 6 percent), six times as likely to have heating deficiencies (2 percent compared with 12 percent), and nine times as likely to live in overcrowded homes (2 percent compared with 18 percent).³³ Their life expectancy is 4.4 years lower than the nation’s overall life expectancy, and they “continue to die at higher rates than other Americans in many categories, including chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, intentional self-harm/suicide, and chronic lower respiratory diseases.”³⁴ They are more than twice as likely to be the victim of a homicide and are seventy percent more likely to commit suicide.³⁵ As President Obama observed in an op-ed published by *Indian Country Today*: “Native Americans face poverty rates far higher than the national average – nearly 60 percent in some places. And the dropout rate of Native American students is nearly twice the national rate. These numbers are a moral call to action.”³⁶

Sadly, Indians are too often seen by the larger society as either destitute wards, who depend on federal assistance, or as wealthy capitalists, who manipulate tribal sovereignty in order to operate casinos. The truth is that these extremes neither define the Indian experience nationwide nor the situation of any particular tribe. There are tribes that have gotten rich from Indian gaming; their success has allowed them greater independence from federal agencies and provided them freedom to diversify their economies. There are also tribes that continue to struggle with the debilitating effects of subjugation and land loss, a struggle that manifests itself in the form of chronic unemployment, limited educational achievement, and alcohol and drug abuse. With 574 federally recognized tribes, generalizations are impossible and carry the danger of characterizing Indian communities based on stereotypes rather than according to the nature of their lifeways.³⁷ The outsiders' gaze is impossible to entirely ignore or discount, but the best way to understand Indian life is to start with an examination of particular Indian communities. The struggles and challenges facing Indians look different from the ground up than they do from the standard perspective, which is narrowly focused on how Washington has treated tribes over time.³⁸ When the perspective on tribal economic development is based on reservation experiences, there is more space to recognize Indian independent action and to entertain cautious optimism.

Visitors to the Navajo Nation often marvel at the wide-open spaces, the brilliance of the stars at night, and the dramatic mesas and rock outcroppings found across the reservation. One can drive for miles without seeing a house, and along some roads it is rare to see another car. But just out of sight are many different environments and ways of living.³⁹ The word "Navajo" has been attributed to residents of Tewa Pueblo who encountered the tribe and "called them '*navahu'u*,' meaning 'farm fields in the valley.'"⁴⁰ The Navajo word for themselves is "Diné," which means "the people." In this book, the two terms will be used somewhat interchangeably, with a preference for Diné when referring to the people and for Navajo when discussing the tribal government. The Diné word for whites is "Bilagáana," which translates as "white, the other, or the enemy,"⁴¹ and captures both the "us-them" dynamic at work compared to the word "Diné" and the difficult history of Diné-Bilagáana relations. Similarly, Navajo Nation and Navajo tribe, or "the tribe," are used interchangeably. Even though Navajo Nation is a better term when it comes to emphasizing the tribe's sovereign status, in practice "tribe" and "tribal government" are used frequently on the reservation and in writing about the Navajo Nation. Group names have been a challenge for the indigenous peoples of the Americas ever since Christopher Columbus thought he arrived in India.⁴² These days, some people, particularly non-Indians, bristle at use of the term "Indian," preferring instead "Native American" or "Indigenous." But "Indian" is the term that continues to dominate writing on the subject and often is preferred on the reservation. For both reasons, this book will also not drop the term "Indian" even though it originated out of a mistake.

Diné believe that they are now in the fifth world, having emerged from four previous worlds,⁴³ and that their homeland was defined in this period of emergence. When First Man brought soil from the fourth world into the fifth world – the Glittering World – and used that soil to create the four sacred mountains:

In the east he put Sisnaajinii, or Blanca Peak, Colorado, placed it in white shell, covered it with daylight and dawn, fastened it to the ground with lightning, and assigned it the symbolic color of white. To the south went Tsoodzil, Mount Taylor, in which he placed turquoise; he then covered it with blue sky, fastened it with a great stone knife, and gave it the color blue as its symbol. Dook’o’oosliíd, or the San Francisco Peaks, is the mountain of the west. Securing it to the ground with a sunbeam, First Man put abalone inside and covered it with yellow clouds and evening twilight, yellow being its color. Black is the color of Dibé Ntsaa, or Hesperus Peak in Colorado, the mountain of the north. It is fastened by a rainbow, impregnated with jet, and covered with darkness.⁴⁴

The four sacred peaks mark the traditional boundaries of Diné territory and are central to Diné identity.⁴⁵ Depictions of them can be seen on the Navajo Nation seal and flag.

The Diné Glittering World has many layers that go unseen by tourists rushing to catch the sunrise at Monument Valley or stopping for a bite to eat at Cameron Trading Post on their way to the Grand Canyon. The Navajo Nation is larger than the state of West Virginia, with more than 27,000 square miles spread across significant parts of Arizona, New Mexico, and southern Utah. As a report by the US Commission on Civil Rights highlighted, “The reservation contains . . . some of the most visually magnificent landscapes in America.”⁴⁶ The reservation includes everything from the sand swept expanses west of Kayenta to the forests and lakes of the Chuska Mountains above Cove. In Window Rock, graduates from some of the best universities in the United States are working to defend the sovereignty of the Navajo Nation using cutting edge tools. At the same time, just a few miles away, families herd sheep, much as their ancestors did following the return from Bosque Redondo. There are children who grow up on the reservation who never learn to speak Diné, but there are also children, especially in rural areas or those cared for by grandparents, who arrive at kindergarten speaking fluent Diné and few words of English. For many Diné, and some non-Indians with deep ties to the reservation, the area can exert a strong pull, making it hard to imagine living off-reservation.⁴⁷ After birth, Navajos traditionally bury the umbilical cord of their babies near their home, and returning to where their umbilical cord was buried remains a driving force for many tribal members throughout their lives.⁴⁸

Such a strong connection to place may seem strange given the opportunities and experiences available off-reservation. A number of explanations exist to explain the strength of the Diné connection to their land and to their reservation. In academic literature, even as writers about Indians tend to criticize stereotypes, they argue that

Indians in general have a deeper relationship to the land than non-Indians. This position takes a variety of forms, including notions that Indians' lives are more tied to the land, that indigenous peoples tend to be more place-based, and that tribal peoples have a greater commitment to protecting the Earth. Even though this position is itself a stereotype, there is some truth behind it, at least when it comes to Navajos. Diné live where they were formed as a people according to their creation story and where all their stories are set: it was within the four sacred mountains that Changing Woman taught Diné about the stages of life and where the Hero Twins defeated the monsters.⁴⁹ The natural beauty of the area coupled with the fact that families are often very tight, with several generations living together, fortify the close ties many Diné have to their homeland. As a 1975 report about conflicts between Indians and non-Indians in border towns noted, "The Native American, unlike the white man, is not a stranger to this area. Indeed, the Navajo considers this land to be sacred."⁵⁰

Land provides the basis for the independent sovereignty of the Navajo Nation and creates the space necessary for Diné families to live distinct lifeways.⁵¹ Since contact, the relationship between colonizing non-Indians and the indigenous groups they encountered has been driven by two competing impulses: integration and separation. Indian policy swings between these two extremes, non-Indians alternatively hoping Indians will simply assimilate into the larger society or hoping Indians will remain removed from it. Reservations sprung out of the impulse to isolate Indian communities. Many were later opened up to non-Indian settlement when the integration impulse and desire for Indian resources once again came to dominate federal policy. But, importantly, the reservation lands that remain today provide the critical "center to resist the historical pressures created by the dominant society."⁵² It is on reservations that words like "self-determination" and "sovereignty" assume concrete form. It is on reservations where Indian nations behave like nations, regulating life and providing governance services to their members. The Navajo Nation is a nation in part because it has a territory to govern. Such territory also allows greater opportunity for Indian families to live life on their own terms and on the terms of their ancestors. This is both a matter of separation from the heavy influence of American society off-reservation and a matter of belonging. While Indians are now ironically "outsiders" in much of America, Navajos belong and non-Indians fairly obviously do not "belong" on the Navajo reservation.⁵³ Even Bilagáanas who have spent considerable time living on the reservation remain "outsiders" in many public spaces – whether at the grocery store or at religious ceremonies – within the Navajo Nation. For Diné living on reservation, the land provides an immense sense of freedom and of home that is not available elsewhere. A place to be Diné among other Diné.

The long-term success or failure of the Navajo Nation implicates more than just a single tribe, it helps answer the question of whether the United States is better than its founding. The United States is built upon land that belonged to Indians; the

country's existence owes itself in part to the fiction that the land was *terra nullius*, unoccupied, and therefore properly subject to European claims.⁵⁴ Though slavery is often referred to as America's original sin, the racist dismissal of tribal land rights as inferior to those of the US government is also a significant part of the country's ignoble foundation. Upon arrival, European immigrants had to confront a number of difficult questions, including: "Are Indians people?" and "what rights do Indians have?" In one of the first Indian law cases heard by the US Supreme Court, Chief Justice John Marshall started an answer to these questions by describing tribes as "domestic dependent nations."⁵⁵ Ever since then, courts, tribes, states, and the federal government have been trying to figure out what that means. At times, the non-Indian answer, as expressed through everything from indifference to assimilationist and even genocidal policies, has been that the content of "domestic dependent nations" is thin and easily wiped away in favor of the country's development.⁵⁶ Students at all levels, from elementary school through graduate school, are typically taught that there are only two types of sovereigns – the states and the federal government – in the United States, ignoring the sovereignty of the peoples who pre-date European settlement.⁵⁷

The best description of the powers of tribes probably comes from the first treatise on Indian law, Felix Cohen's *The Indian Law Handbook*, published in 1941. Cohen explains: "From the earliest years of the Republic the Indian tribes have been recognized as 'distinct, independent, and political communities,' and, as such, qualified to exercise powers of self-government, not by any delegation of powers from the Federal Government, but rather by reason of their original tribal sovereignty."⁵⁸ What makes Indian nations unique is that they enjoy a legally enshrined right to differ from the surrounding society. States enjoy similar rights – Maryland can adopt a different definition of armed robbery than Virginia, for example – but the amount of state variation is limited by the Constitution. By contrast, Indian nations can adopt laws for their members that depart, sometimes sharply, from off-reservation norms.⁵⁹ Indians are not simply another racial group because, unlike other groups, they enjoy collective, sovereign rights that operate independent of their rights as US citizens. There are detractors who argue that collective rights have no place in America today, that Indian rights should be limited to the rights of ordinary Americans. This argument is but a modern manifestation of the same genocidal impulse that supported manifest destiny. Put differently, the continued ability of tribes to carve out separate space within the larger United States is remarkable given the tremendous efforts that have been put into making Indians and Indian nations disappear.

Although subject to certain limitations, especially when it comes to the exercise of authority over non-Indians on reservation land, Indian nations continue to have the power to set their own course. Tribes can, for example, determine membership rules, establish tribe-specific marriage, divorce, and inheritance laws, and enforce their development preferences through zoning and leasing.⁶⁰ For small tribes

surrounded by non-Indian communities, such pockets of difference at times stand out. The Salt River Reservation, because of its relative lack of development, is a notable break from the ever-expanding blob that is Phoenix. At other times, such small tribes blend in almost imperceptibly with the surrounding non-Indian community. Aside from tribal members and some local non-Indians, people who regularly visit the area may not even know that there is Indian land nearby. For tribes with few tribal members and a small land base, not only is it hard to keep outside society from inserting itself into daily life, but a small population also means there are too few tribal members to independently staff a small government. Such tribes have little choice but to either depend on, or partner with, neighboring non-Indian governments. Part of what makes the Navajo Nation unique, even among recognized tribes, is that it is big.

The Navajo Nation has both the largest land base of any Indian tribe (including Alaska Native communities) and the largest population living on reservation.⁶¹ According to the 2010 US Census, the total population of the Navajo Reservation, including off-reservation trust land, was 173,667.⁶² And most people living on reservation were either “American Indian and Alaska Native Alone,” or “American Indian and Alaska Native in combination” (166,321 and 2,497, respectively).⁶³ Only slightly more than 2 percent of the population, 4,346 people, were “Not American Indian and Alaska Native alone or in combination.”⁶⁴ This means that the Navajo Nation is remarkably, for lack of a better word, “Navajo.” Non-Indians living on the reservation are the exception. (Navajos are not the largest tribe in the United States; that honor goes to the Cherokee Nation, which employs a lineal descent rule for tribal membership instead of the Navajo Nation’s one-quarter blood quantum requirement.) The Navajo Nation’s large population means that the tribe has the ability to fill most government positions with tribal members. Additionally, the Navajo Nation governs a large territory, equivalent in size to the Republic of Ireland, populated almost entirely by tribal members. Finally, in part because “the 27,000-square-mile Navajo Nation boasts some of the most abundant energy resources on tribal lands in the United States, including fossil fuels and the potential for using wind and sun,” the Navajo Nation has a wealth of natural resources.⁶⁵ Because of its population, size, and resources, the Navajo Nation is arguably better suited than any other tribe to provide meaningful content to the idea of “tribal sovereignty” and to test whether the United States is truly committed to treating Indians better today than they were in the past.

By exploring in detail the Navajo Nation, its history, development path, and future possibilities, this book illuminates the challenges facing Indian communities and the relationship between tribes and non-Indians. Others have written about various aspects of the Diné world prior to the establishment of the reservation, including their traditional beliefs⁶⁶ and their unique connection to elements of the natural world.⁶⁷ But *A Nation Within* largely leaves such matters to one side, focusing instead on the rise of the Navajo Nation following the signing of the Treaty