

# ***Federal Disconnect: The Navajo Nation's Sovereignty and Justice Must Be Respected***

SKYE GRUBB

WR 122, Willamette Promise

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The United States has always had a troubled past with the Indigenous peoples of North America. A long history of hostility, broken treaties, displacement, and attempted genocide is deeply embedded in the relationship between the United States and the Navajo Nation (Singer et. al 4-7). The historical lands of many native tribes, including the Navajo Nation's, have been seized and used in European ways for European gain. Beyond this attempted genocide, many tribes remain, the most extensive collection of those survivors being the Navajo Nation, who call themselves the Diné (Scott 1). Despite their survival, they face many continued challenges in the modern day, with cultural assimilation, native elites, gatekeeping, and many other things picking away at their culture. The governance of the United States justice system is one of these many problems. The justice system is harsh on indigenous people, and many cultural issues combined with the punishment-only strategy the United States employs ensures that the

Diné fall victim to the same fate again and again (Washburn 3-5). While the United States has officially recognized the Navajo Nation's sovereignty, it has not and might never recognize the spirit of Navajo law, which will only lead to a further disconnect between the justice the Diné receive and the kind that they need. Federal overreach and the United States government's approach to criminal justice directly harms the Navajo people and their culture, both historically and in modern times.

The Navajo Nation land, called the Diné Bikéyah, is larger than 10 out of 50 states, with a population of 250,000, and is located in parts of Utah, New Mexico, and Arizona (Navajo Nation 1). With a population that large, having a structured judicial system is paramount to ensuring the safety of the communities and the people within them. The first tribal government of the Navajo Nation after colonization was arranged in 1923, when American companies began to develop an interest in the oil on the Diné Bikéyah (Navajo Nation 1). Prior to these times, the Navajos settled their disputes independently without the influence of colonizers, via the wisdom of chosen leaders called hozhoji' Naat'aah, which roughly translates to "peace chiefs" in English (Yazzie 1). Traditional Navajo law was based on respect, relationships, and restoring trust in the community. American law focuses intently upon punishing the individuals that are in the wrong in any given situation, while Diné law focuses on repairing harm and healing the community for the good of all (Robert Yazzie 1). Modern Navajo law has, unfortunately, become a Western institution with Navajo influences when, at best, it should be the other way around (Singer et al 4). From this one major difference in the spirit of the law arises a deep disconnect between Americans and the Diné.

The modern day court system of the Navajo is widely considered the most sophisticated form of Indigenous government (Navajo Nation 1). It was not welcomed upon its inception. In the 1950s, there was a large movement by the United States government against the Dine and their tribal government, forcing them to recreate their legal system in the image of the state court systems in order to keep their sovereignty (Yazzie 3). This in itself led to significant losses. The new system further divorced the traditional peace-making strategies from the Navajo people and introduced an entirely colonized version of law. Fortunately, there was considerable pushback in the 1980s, and restorative justice became the focus once more ("Courts & Peacemaking in the Navajo Nation" 3). This has allowed some return to traditional practices, but Western ideologies still weigh heavily on the Diné.

Prosecutors who are not Diné do not understand the traditions and cultures of those they are prosecuting, and therefore cannot correctly punish the Dine for any crime. This has exceptionally damaging consequences when a felony is committed by a member of the Diné. Federal crimes are punished much more harshly, as much of the the process of justice is out of the hands of the Diné (Washburn 18). Prosecutors are integral to the process of convicting anyone, but even more so when in reference to sentencing a Navajo person. Prosecutors represent the public that is bringing the crimes and evidence against the Diné defendants, but it is impossible for them to correctly represent a community that they are not a part of (Washburn 17-19). The disproportionate sentencing is not the only difficulty facing Diné defendants. Criminal justice matters on the Diné Bikéyah must pass through a jumble of agencies, reducing

efficiency and leading to outcomes where the lives of Dine individuals are in the hands of those who know nothing about them and do not care for them as their own community does (Fonseca 1). Oftentimes, serious crimes involving only Diné perpetrators and victims, of which the tribal government has jurisdiction, must be deferred anyway because there are simply not enough resources for the Navajo Nation to handle alone (Fonseca 4). Several cases highlight this costly struggle for justice by the Diné, but it is best highlighted through a 2020 case of capital punishment.

In 2020, the first Native American ever to be subjected to capital punishment was executed after months on death row. He was Diné, and prior to his execution, the Navajo Nation rallied behind him, not proclaiming his innocence, but demanding the right to punish their own people, and asking for the convicted man's sentence to be reduced to life in prison only (Fonseca 1). The Navajo Nation did not make any farfetched demand. They asked to be able to decide what is right for their own people. Jonathan Nez, in a statement about this case, said "We don't expect federal officials to understand our strongly held traditions of clan relationship, keeping harmony in our communities and holding life sacred. What we do expect, no, what we demand, is respect for our people, for our tribal nation..." (Fonseca 3).

That is not to say that the United States government has not made strides towards a more beneficial system to the Navajo people. In 2013, President Obama re-signed the Violence Against Women Act, giving tribal prosecutors more power to prosecute in situations of domestic violence, dating violence, and much more ("Tribal Justice and Safety" 1). This kind of acknowledgement of tribal sovereignty and civil

jurisdiction is absolutely integral to empowering the Navajo Nation to care for its people. When more power is given to the Navajo Nation in cases involving their own people, other issues that have previously hindered victims and police alike, such as underreporting, can now be rectified (Wakeling and Jorgenson 22). It is still difficult to ascertain what resources are being widely used. "The federal government has made small strides over the years to restore criminal jurisdiction to tribes. The landmark Tribal Law and Order Act of 2010 expanded the sentencing authority of tribal courts if they meet certain conditions. But a decade later, few tribes have taken advantage of it" (Fonseca 4). In July of 2010, the Executive Office of U.S. Attorneys developed a program called the National Indian Country Training Initiative, which offers many classes to prosecutors in order to educate them about issues when it comes to prosecuting Indigenous cases ("Tribal Justice and Safety" 3). While this can assist in the disconnect between prosecutors and the Diné, it can never be a replacement for the culture and its traditional restorative justice practices. Federal prosecutors still prosecute a large quantity of cases, with cases filed against Indigenous people increasing by 34 percent between 2009 and 2013 ("Tribal Justice and Safety" 5). While this might seem like a good thing, which it can be in some aspects, such as with the issue of underreporting, it is also essential to understand that the Diné need to be able to prosecute their own people in their own way as a community.

While national crime rates are dropping, those same rates are rising within the Navajo Nation's border. New Mexico, which includes a large portion of the Navajo Nation, is the third most violent state (Antonio 2). "44.1 percent of calls to the Navajo

Department of Public Safety involved violence, and alcohol underlies almost all of this violent crime" (Nez 1). Many alcohol-related crimes are also associated with domestic violence. In fact, 80 percent of Diné or otherwise Indigenous women are subject or affected by violence in their lifetimes (Antonio 1). In some areas, there are as many as 33 homicides per 100,000 people, the national average being 6-13 per 100,000, about four times less than the Navajo Nation's average (Nez 1). In 2017 alone, there were 2,524 violent crimes, and those are only the reported ones (Nez 1). Underreporting is a massive issue within the Navajo Nation, stemming from shame, familial humiliation, or the tradition of dealing with problems in a restorative way that the current justice system forced upon the Navajo Nation by the U.S. simply cannot manage (Wakeling and Jorgenson 22). Police brutality is also a massive issue. "Native people are more likely to be killed by police officers than any other minority group in the Nation" (Antonio 2). When dealing with the justice system and its failures within the Navajo Nation, it is impossible to separate the plight of Diné women and children from the struggles of the Navajo Nation itself. Almost 40 percent of Indigenous children live in poverty, which can often be a direct cause of later criminal offenses as children attempt to escape poverty in any possible way (Antonio 2). When Navajo sovereignty is not respected, federal agencies and local Navajo Nation agencies struggle to decide jurisdiction, wasting time and precious resources the Navajo Nation cannot spare (Nez 2). The lack of agency infrastructure does not protect Diné women or their children, leading to repeated systemic failures (Antonio 5). It is also imperative to take into account the damage this causes to the culture of the Diné. "When we talk about the missing and murdered Native

women of New Mexico, we are not talking about statistics or numbers...We are talking about our life-givers, our nurturers, our legacy carriers...we are talking about the centers of our worlds" (Antonio 4). Infrastructure must be instituted to protect all Navajo people, and the federal government must assist.

Cost has hindered the Navajo Nation's justice system since its inception. Federal agencies often demand data from tribal justice agencies, which is costly to the tribal government and the data is very rarely returned, rendering reporting of said data almost useless to the Diné (Wakeling and Jorgensen 24). With this lack of return, the tribal justice system cannot determine what methods work with preventing and punishing crimes committed in the Diné Bikeyah. In President Jonathan Nez's 2019 testimony to a funding priorities committee, he highlights the desperate need for public safety funding, with an estimate of \$74 million in funding still unmet. The Navajo Nation has a population of 250,000 people, with only 200 police officers and roughly 30 investigators (Nez 1-2). They do not have funding to hire any medical examiners, which forces them to transport bodies to very distant locations; they do not have their own crime lab, so any crime committed solely under Navajo jurisdiction cannot be forensically processed; the detention centers are underfunded, leading to struggles keeping them thoroughly and safely staffed; there are only 14 prosecutors for the entire Nation, ensuring the court system is overloaded (Nez 2). The United States government claims the Navajo Nation as a domestic dependent nation, but refuses to properly support them (Belfi and Nazario 3).

Even with the improvements to respecting Diné law and legal sovereignty, the land sovereignty of Indigenous peoples is still not federally respected, despite the fact that it works hand-in-hand with justice. “The Navajo Nation courts have general civil jurisdiction and limited criminal jurisdiction” (“Courts & Peacemaking in the Navajo Nation” 5). This has led to many issues, some of which have even gained global attention, such as the Standing Rock. A Texas energy company demanded the rights to build and maintain use of an oil pipeline through sacred Indigenous lands (Belfi and Nazario 1). Over and over again, the access pipeline has been ordered to stop, shortly followed by those orders being overturned. Judges ruled on the matter, but federal appellate courts blocked the rulings, openly disrespecting Indigenous sovereignty (Belfi and Nazario 1-2). The construction of this pipeline violates Ft. Laramie treaty between the United States and the Indigenous tribes that have the rights to the land, but that was simply not enough to stop the pipeline (Belfi and Nazario 2-3). This is not the first violation of a treaty the United States government has inflicted upon Indigenous peoples. The United States has repeatedly moved to recognize and recognized the sovereignty of Indigenous peoples, but never acted in good faith on those recognitions.

These continued acts of colonization continue to have profound effects on the Diné, even on personal levels. Colonization still has residual effects on every part of Navajo culture, from the structure of the justice system to how the Diné present their culture (Singer et al 4-7). For a significant portion of American history, the United States was committed to their genocide against the Navajo people, as well as assimilating some natives they referred to as “salvageable” (Scott 2). Assimilation refers to the

adoption of practices and mannerisms in order to become an accepted part of a different community, which, in the case of the Diné, was often forced (Scott 2). For quite some time, it was simply illegal to be Diné. "Many traditional practices were made crimes: polygamy, wedding gifts, traditional probate practices, etc. It was a crime to see a medicine man or woman, and be a medicine man or woman" (Yazzie 2). Indigenous people are still culturally recovering from colonization, while also combating what still remains around today. Carla Fredericks, an Indigenous leader and director of the American Indian Law Clinic, highlights some of the recovery between generations; "I'm really encouraged by Indigenous youth and activists who are open to reconstructing institutions in a way that's very different from my generation, where we just accepted the institutional realities" (Fredericks 2). Escaping from colonization and assimilation is often a lifelong process, and many Indigenous people are sharing their experiences with it through their art, such as Pamela J. Peters: "Being a documentarian is reclaiming and recapturing our voices. I'm not just researching. I already know about our communities. What I am doing is about recapturing and reclaiming what most people identified in this context of Western ideology" (Peters 4). She is fighting assimilation through helping her community. The native elite, those who have been very well assimilated, can often recycle colonial violence upon members of their very own community, to the detriment of all (Scott 4). In this way, through requirements set forth by the government in terms of education and in what opportunities are extended to Indigenous people to participate in their government, the federal government is still forcing the Dine through the process of colonization.

It must be conceded that the federal government is integral to ensuring the safety and the future of the Navajo Nation and every Dine. Funding from the United States is a necessary support for the survival of the Dine and their culture, including their historical lands. That alone does not mean that the federal government is doing enough. With funding stretched as thin as it is among all sectors of the Navajo Nation, crime rates, poverty, and many other contributing factors will still damage the Diné. The federal government must find a way to recognize the sovereignty of the Dine in every way on their lands while funding them on their path of traditional justice and community balance in order to solve the deep-rooted federal disconnect that leads to harm for all involved.

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## **Author Bio**

Skye Grubb was born and raised in Jefferson, Oregon. She attended K-12 in the Jefferson School District and is looking forward to attending her first year of college at the University of Oregon in the fall, where she will be pursuing a major in Biology. In her free time, she cares for a herd of about twenty llamas and loves writing, both academically and creatively. She is also a musician, proficient in playing bassoon, tuba, trombone, guitar, and bass guitar. Her interest in the Indigenous peoples of North America was sparked by several events over recent years, such as the growing Land Back movement and the Missing and Murdered Indigenous Women and Girls movement, where Indigenous people campaigned for their rights.