

TRIBAL SELF-DETERMINATION AND *A NATION WITHIN*

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Native Nations in the United States are stronger today in some respects than they have been in the last 250 years. Despite this growth, however, tribes continue to experience the instability that comes from the ruptures of colonialism and must work to recover, rebuild, and revive the cultural lifeways that make them who they are as Indigenous Peoples. This presents a significant governance challenge for many Indian nations in the modern ep dive into the remarkable experience of the Navajo Nation in his monograph, *A Nation Within*.¹

Rosser identifies some of the central obstacles facing the Navajo Nation, which are likely recognizable to and shared by many nations throughout the world, Indigenous and otherwise, including concerns around housing, education, extractive industry, poverty, and environmental degradation.² But

the Navajo Nation has managed historically and how it continues to function today as a nation *within*; an Indigenous tribe with inherent rights of

the January 6th hearings,¹⁸ you know that the hard (and sometimes ugly) work of governance and good governance, in particular cannot be overstated. In my own work, I have tried through my scholarship particularly in *Good (Native) Governance*,¹⁹ but also through many other writings to explore the challenges that Indian nations face in governing well after so many centuries of dispossession and oppression. Every tribe has its own story, but most in the United States still operate under the vestiges of this shared history. The trauma is real, and it is still very alive and recent for many Native people.

From a governance standpoint, many of the issues percolating up in tribal communities are, in part, remnants of the colonial project, which is still ongoing in the United States (and around the world).²⁰ For example, some of the flawed colonial structures—such as Courts of Indian Offences, Indian Reorganization Act Constitutions, Termination Acts, and/or blood quantum based tribal membership—that were imposed on tribes continue to cause innumerable problems in some tribal communities in the present moment.²¹

However, other issues identified by Rosser, like greed and corruption, also play a role within the domain of Native governance.²² Native people are human, like all others. To deny or romanticize this reality is to deprive Native people of their humanity. Tribal governments and government officials are not immune to destructive behavior. And Indigenous systems of checks and balances, many of which existed long before the formation of the United States, were often disrupted by the imposition of colonial forms of

When a tribe experiences this phenomenon—what Cornell and Kalt of the Harvard Project call a *poo*—tribes lack faith in the institutions that are supposed to protect them. Consequently, some tribes

18. See *Select Committee to Investigate January 6th Attack on the U.S. Capitol*, CONGRESS.GOV, <https://www.congress.gov/committee/house-select-committee-to-investigate-the-january-6th-attack-on-the-united-states-capitol/hlij00> (last visited Apr. 10, 2023).

19. See generally Angela R. Riley, *Good (Native) Governance*, 107 COLUM. L. REV. 1049 (2007).

20. *Id.* at 1088-89.

21. See *Denezpi v. United States*, 142 S. Ct. 1838, 1849-50 (2022); see also Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't*, JOINT OCCASIONAL PAPERS ON NATIVE AFFS., PAPER NO. 2005-02, at 16 (2006), https://www.honigman.com/media/site_files/111_imgimgjopna_2005-02_Approaches.pdf [<https://perma.cc/2ELX-RH35>]; *Trump Administration Takes Indian Country Back to Termination Era*, INDIANZ (Sept. 10, 2018), <https://www.indianz.com/News/2018/09/10/trump-administration-takes-indian-countr.asp> [<https://perma.cc/P5FC-NFEL>]; ROSSER, *supra* note 1, at 131.

22. ROSSER, *supra* note 1, at 11-12.

falter and, at times, repeat a cycle of dysfunction that appears difficult or impossible to break.²³

Rosser does not shy away from these realities. Simultaneously beautiful and harsh in its rendering, his honest, searing examination of the Navajo Nation and its own journey in the modern world delves deep into the challenges faced by Native Nations today. In *A Nation Within*, Rosser takes a magnifying glass to the Navajo Nation, weaving a provocative narrative of

unfathomable resources and harsh limitations.²⁴

While *A Nation Within* holds lessons for all Indian nations, it is

and has significant natural resources as a basis for an economic engine.²⁹ The Nation has long been on the cutting edge in terms of developing Navajo jurisprudence, wherein an entire body of Diné law is now recorded in Navajo court decisions.³⁰ In all these ways, Navajo is unique, if not entirely anomalous, within the US system, where there are 574 federally recognized Indian tribes (227 of which are Alaskan Native Villages), but none that are truly comparable to Navajo.³¹

While keeping to the unique situation at Navajo, what Rosser so elegantly does with *A Nation Within* is employ the situation of the Navajo Nation to animate broader, universal problems within Indian country. For example: what is the proper balance between tradition and modernity? How can a tribe successfully govern using institutions imposed by a colonial power that sought to supplant traditional structures that have nevertheless endured? When should one speak and when ought one be silent? What is sacred and untouchable versus what can be commodified so that a tribe may achieve other (traditional) goals? And there are undoubtedly many others.³² In this way, Navajo could stand in for any of hundreds of tribes struggling to answer these and similar questions.

The relevance of this examination reaches far beyond U.S. borders as well. Indigenous peoples around the world—and, from my experience, most commonly in the other—are similarly in the midst of developing solutions to these very difficult questions in their own unique ways. In Native Nation Building I, the course I co-teach with Professor Joe Kalt at the Harvard Kennedy School of Government, we focus on a variety of factors that seem to contribute to functional, effective

29. Angela A. A. Willeto, *Navajo Culture and Family Influences on Academic Success: Traditionalism Is Not a Significant Predictor of Achievement Among Young Navajos*, 38 J. OF AM. INDIAN EDUC. 1, 8 (1999); ROSSER, *supra* note 1, at 10.

30. See, e.g., RAYMOND D. AUSTIN, *NAVAJO COURTS AND NAVAJO COMMON LAW: A TRADITION OF TRIBAL SELF-GOVERNANCE*, at xvii (2009) (describing a unique side to tribal court jurisprudence in the United States . . . [that] involves retrieving ancient tribal values, customs, and norms and using them to solve contemporary legal issues).

31. U.S. Dep t of the Interior Indian Affs, *About Us*, BIA, <https://www.bia.gov/about-us> [<https://perma.cc/57K61275nN>].

tribal governments.³³ I have highlighted many of these in my past work, drawn heavily from the research of the Harvard Project and the Native Nations Institute as well. But one that Rosser expressly engages in *A Nation Within* and that Professor Kalt emphasizes in our course, is that of corruption,

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with leaders like Vladimir Putin and Ferdinand Marcos, who squander the resources and riches of their nations for their own self-advancement, oftentimes leaving the most vulnerable behind.³⁵ When pirates act under these conditions, they undermine the efficacy of government. Nations struggle.

established tribal leadership programs, language immersion schools, beading classes, Peacemaking Circles, civics classes, tribal colleges, and the list goes on, to support and develop the next generation of tribal leaders.⁴⁵ In fact, my own tribe, the Citizen Potawatomi Nation, the furthest removed tribe of Potawatomi in the United States, has been a leader in this regard.⁴⁶

But self-determination is not a panacea; rather, it is a path. It comes with weighty obligations, insofar as it requires Indian nations to determine, by themselves, the metes and bounds of sustainable practices according to their own cultures and communities.⁴⁷ In breaking free from colonial bonds, it also diminishes the impacts of colonialism as a sufficient excuse for dysfunctional government in a modern world.

Notably, while self-determination places both the power and the responsibility in the hands of tribal governments, Indian nations have only been in a period of recovery for several decades. In fact, tribal efforts to address the history of oppression and colonization are, by any measure, embryonic. Tribes, like Navajo, have had remarkably little time to experiment with various systems of economic development, resource management, and governmental infrastructure *vis a vis* the time they governed pre-contact.⁴⁸ That some of the chosen endeavors have failed is