

MA'II AND NANABOOZHOO FISTFIGHT IN HEAVEN

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In the form of a cute, cuddly, and innocent waabooz,¹ Nanaboozhoo² munched on the chewy, bitter Tłohdá'ákáłitsoh³ he found everywhere in this land, far from his own. Although, it was a bit dry. In this land, Dinétah, Nanaboozhoo thought he could see forever. There were few trees. The sky was bright blue and limitless. The air smelled like a kind of dirt he had never experienced. And, boy howdy, was it dry. He couldn't smell water for the life of him. But there was water, to be sure, or else there wouldn't be this bush.

Ma'ii⁴ is on his way to trick the Navajo Nation into suing a large corporation with unlimited legal resources over cultural appropriation⁵ when he smells water in the wind. Ma'ii found that strange because it hasn't rained in months.

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1. Rabbit or bunny, in Anishinaabemowin. As native Anishinaabemowin and Diné spakers, the authors are responsible for the translations of words written in Anishinaabemowin and Diné. However, they recommend the OJIBWE PEOPLE'S DICTIONARY, maintained online by the University of Minnesota, <https://ojibwe.lib.umn.edu/>; DUAL LANGUAGE = SAAD AHAH SINIL: A NAVAJO-ENGLISH DICTIONARY (Martha Austin & Regina Lynch, eds., rev. ed. 1990) (1983); NEW MEXICO STATE UNIVERSITY, SELECTED PLANTS OF NAVAJO RANGELANDS WITH NAVAJO NAMES DATABASE (2018), <https://navajorange.nmsu.edu/>.

2. Nanaboozhoo, Wenabozo, Manabozo, or any other spellings and pronunciations, is the trickster god of the Anishinaabeg, the Odawa, Bode'wadmi, and Ojibwe people of Anishinaabewaki, the lands of the Anishinaabeg in and around the Great Lakes region of North America. See BASIL JOHNSTON, THE MANITOUS: THE SPIRITUAL WORLD OF THE OJIBWAY 51, 243-44 (1st ed. 1995).

3. Salt grass, in Diné.

4. Ma'ii is the Navajo word for Coyote, and he is considered a trickster and messenger in the Navajo culture. Guy H. Cooper, *Coyote in Navajo Religion and Cosmology*, 7 THE CAN. J. OF NATIVE STUD. VII 181, 182 (1987).

5. Navajo Nation v. Urban Outfitters, Inc., 191 F. Supp.3d 1238 (D.N.M. 2016).

Down the path, through the sandy ditch, Nanaboozhoo can smell coyote scat in the wind. He knows what that means. He takes one more sniff of the fragrant Tsétah Ts'ah⁶ and transforms into a man. He pretends to be startled when he sees a coyote on this path.

NANABOOZHOO: Aaniin,⁷ friend.

MA'II: Yá'át'ééh⁸ sik'is.⁹ Don't bother with shapeshifting, I can smell what you are. You might as well be your authentic self, and judging from that smell, you live near water.

NANABOOZHOO: Touché. What a pleasant surprise! I was just on my way to the big federal Indian law conference in Albuquerque! Perhaps you are as well?

MA'II (still sniffing the wind): Mmmm, not today, though I'd be happy to walk with you as far as Tségháhoodzání.¹⁰ I enjoy conversing with other tricksters. We are often misunderstood. Where are you from, sik'is?

NANABOOZHOO: Aho! I'm glad you came along. I've been meaning to ask a denizen of the Nation about a book I read on the plane, something about Navajo economic development?¹¹

MA'II: Yáadilá!¹² Yes, I'm familiar with that book and the issues surrounding economic development for Navajoland [points lips northwest]. The author grew up that way. In the book, he acknowledges and expresses his frustrations as an outsider, but he still offers his solutions on the matter.¹³

NANABOOZHOO: I confess that I follow Navajoland events on social media and my news feeds. Decades-long drought. Colorado River drying up. Climate change making it too hot to live. Sacred lands devastated by mining. Lots of problems the Anishinaabeg don't have. We have a mild climate, lots of nibi.¹⁴ Well, we've had mining and pipelines, too.¹⁵ But we

6. Black sagebrush, in Diné.

7. Hello! or Greetings! in Ojibwe.

8. Yá'át'ééh is the Navajo "hello" and it is used to greet people.

9. Sik'is means "my friend" in Diné.

10. Window Rock, the capital of the modern Navajo Nation, in Diné. See WENDY S. GREYEVES, A HISTORY OF NAVAJO NATION EDUCATION: DISENTANGLING OUR SOVEREIGN BODY 23 (2022).

11. See generally EZRA ROSSER, A NATION WITHIN: NAVAJO LAND AND ECONOMIC DEVELOPMENT (2021).

12. Diné word that translates to the English phrase "good grief."

13. ROSSER, *supra* note 11, at xi, 17-18.

14. Water, in Anishinaabemowin.

15. See Christian Thorsberg, *HotSpots H2O: Anishinaabe Activists and Allies Resist Enbridge Line 3 Pipeline, a Project that Threatens Wetlands and Ignores Treaty Territory*, CIRCLE OF BLUE (June 28, 2021), <https://www.circleofblue.org/2021/hotspots/hotspots-h2o-anishinaabe-activists-and-allies-resist-enbridge-line-3-pipeline-a-project-that-threatens-wetlands-and-ignores-treaty-territory/> [https://perma.cc/B2LP-USX5].

don't have much land left. You have land, but not much water. So, what are Diné solutions?

It seems to me that the problem is bad government coupled with a lack of economic growth. This is the oldest problem in Indian country.¹⁶ How to incorporate Indian country into the American economic mainstream? How to solve the poverty problem in Indian country? Good government, good economies? But there's a real chicken-and-egg problem if tribes can't have one without the other.

MA'II: Aoo'!¹⁷ "Tribal economic development." What does that even mean after decades of colonization and federal intrusion? It should just be economic development. "Tribal economic development" is a mantra that has been floating around Indian country for decades. It means all things good for Indian country: good government, good culture. When scholars and other commentators talk about improving the lives of Indian people, they almost always say "tribal economic development."¹⁸ Every Indian country problem can be solved with capitalism. Is poverty a problem on the rez? Tribal economic development. Corrupt or incompetent tribal leaders? Tribal economic development. That's the accepted paradigm. But it doesn't answer your chicken-and-egg problem. Also, you won't get great service around here to scroll your social media. There are no cell towers. So much for economic development.

Also, bad governments exist everywhere. Blaming tribal leadership choices because they are trying to balance cultural values while creating jobs for the people seems like an impossible choice.

NANABOOZHOO: Well, the solution must be capitalism, or at least the kind of capitalism that has dominated the United States throughout its history, which made it for a long time the world's largest economy, yadda-yadda.

MA'II: Pure, free market capitalism has never existed in the United States.¹⁹ What the United States has is primarily government-sponsored capitalism dressed up as free market capitalism.²⁰ We know that an enormous amount of wealth in the United States originated in slavery and the

16. See Frank Pommersheim, *Economic Development in Indian Country: What Are the Questions?*, 12 AM. INDIAN L. REV. 195, 195-96 (1984).

17. Yes, in Diné.

18. See e.g., ROSSER, *supra* note 11, at 109-24 (titling a chapter "Improving Tribal Governance" and discussing "tribal economic development" almost exclusively).

19. See Kimberly Amadeo, *America is Not Really a Free-Market Economy*, BALANCE (Apr. 5, 2022), <https://www.thebalancemoney.com/america-is-not-really-a-free-market-economy-3980689> [<https://perma.cc/8EU5-DQFB>].

20. See *id.*

dispossession of Indigenous lands and resources.²¹ Corporations pay lobbyists to sway the laws in their favor.²² We know that the founding documents of the United States enabled both of those sources of wealth acquisition by forming a national government best suited to the preservation, at least for a time, of slavery and to dispossession.²³ That much we can agree on?

NANABOOZHOO: Sure. I'll give you that much. For now.

MA'II: So, government-sponsored capitalism is American capitalism. We just lie to ourselves, accept the circumstances, and pretend it was good old-fashioned spit, grit, and determination that made America rich.

NANABOOZHOO: I'm only going to give a little more leeway, counsel.

MA'II: Capitalism never really worked for Indian tribes before. When you are the target of the capitalists, capitalism is your downfall. Plus, it's not a real good cultural match, to borrow a phrase.²⁴

NANABOOZHOO: Is this really a fight between capitalism and socialism? With apologies to Bob Miller, isn't that reductionist?²⁵

MA'II: Completely true. And to channel the wildly underrated film, *Clue*, with Tim Curry, socialism is a red herring.²⁶ Socialism as a descriptor of what tribal nations do is often a poor fit. Karl Marx wrote from experiences deep within the theory and experience of a culture of capitalism. Marx and the capitalists agree that the exploitation of resources is necessary.²⁷ Socialism and capitalism effectively have the same goal—to exploit the world for economic gain—just differing in whom the beneficiaries will be. Let's not also forget about Niccolò Machiavelli's principles:

21. See EDUARDO GALEANO, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT* 38, 79, 82 (Cedric Belfrage trans., Monthly Press Review 1997).

22. See Lee Drutman, *How Corporate Lobbyists Conquered American Democracy*, ATLANTIC (Apr. 20, 2015), <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/> [<https://perma.cc/M9YQ-54HQ>].

23. See HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES* chs. 1-9 (Cynthia Merman & Roslyn Zinn eds., Longman 4th ed. 1994).

24. ROSSER, *supra* note 11, at 118, 121 (citing Stephen Cornell & Joseph P. Kalt, *Two Approaches to Economic Development of American Indian Reservations: One Works, the Other Doesn't*, in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT* 3, 18 (Miriam Jorgensen ed., 2007)); see also Angela R. Riley, *Good (Native) Governance*, 107 COLUM. L. REV. 1049, 1065 (2007).

25. See Robert J. Miller, *Economic Development in Indian Country: Will Capitalism or Socialism Succeed?*, 80 OR. L. REV. 757 (2001).

26. *CLUE* (Paramount Pictures 1985).

27. Marx did not really say this, see John Bellamy Foster, *The Crisis of the Earth: Marx's Theory of Ecological Sustainability as a Nature-Imposed Necessity for Human Production*, 10 ORG. & ENVT. 278, 282-83, 292 (1997), but Ma'ii is a trickster and prone to exaggeration.

Whenever those states which have been acquired as stated have been accustomed to live at liberty under their own laws and in their freedom, there are three courses for those who wish to hold them: the first is to ruin them, the next is to reside there in person, the third is to permit them to live under their own laws, drawing a tribute, and establishing within it an oligarchy which will keep it friendly to you. Because such a government, being created by the prince, knows that it cannot stand without his friendship and interest, and does its utmost to support him; and therefore he who would keep a city accustomed to freedom will hold it more easily by the means of its own citizens than in any other way.²⁸

Does this sound familiar?

NANABOOZHOO: Well, isn't it fair to say that modern American Indian tribes also work deep within a capitalist mode of thinking? Gaming. Payday lending. Coal mining. It's all capitalism, right?

MA'II: What an incredibly loaded question. So many things push tribes toward capitalism, or what I would call the unrestricted acquisition of wealth. Most obvious for tribes like the Navajo is the terrible history of unlimited exploitation of our homeland and sacred places by the United States government on behalf of mining companies.²⁹ We went decades with little or no control or benefit from this exploitation.

NANABOOZHOO: American-style capitalism, that is, capitalism enabled and protected by a strong government, took away from Indigenous people.³⁰ Why couldn't real capitalism be the solution?

MA'II: I guess that's the trick. Find a solution for Indigenous peoples. But how to theorize an answer? Yet again, an impossible question.

NANABOOZHOO: I'm still going to keep capitalism, whatever that means, in my back pocket, but let's explore the cutting edge of modern tribal economic theory.

MA'II: You're talking about Cornell and Kalt. That's a bilagáana³¹ theory. Hardly an indigenous theory.

NANABOOZHOO: Ha! And yet it's everywhere. And it takes a theory to beat a theory. The accepted paradigm.³² There must be tribally-led

28. NICCOLÒ MACHIAVELLI, *THE PRINCE* 27 (Wildside Press 2016) (1532).

29. ROSSER, *supra* note 11, at 49-70.

30. *See* ZINN, *supra* note 23, at 127.

31. White people, in Diné. *See* ROSSER, *supra* note 11, at xi.

32. *See, e.g.*, Jordan Karl Lofthouse, *Culture and Native American Economic Development*, 9 *J. OF ENTREPRENEURSHIP AND PUB. POL'Y* 21, 21-22, 26-27 (2019) (citing Stephen Cornell & Joseph P. Kalt, *Where Does Economic Development Really Come From? Constitutional Rule among the Contemporary Sioux and Apache*, 33 *ECON. INQUIRY* 402 (1995)); Stephen Cornell & Joseph P. Kalt, *Successful Economic Development and Heterogeneity of Government Form on American Indian Reservations*, *THE HARV. PROJECT ON AM. ECON. DEV.* (1995); Marc L. Roark, *Scaling Commercial Law in Indian Country*, 8 *TEX. A&M L. REV.* 89, 119 (2021) (citing Stephen

governance, and governmental institutions must be sound and have a cultural match, good strategy, and good leadership. Cornell and Kalt coined the term “nation-building.”³³

I guess on that level of generality, that taxonomy is useful for any governmentally-dominated economy.

MA’II: I suppose Indian tribes in the third decade of the twenty-first century, a half-century after the codification of the tribal self-determination,³⁴ all pretty much fulfill the first requirement, or could choose to at any time they wish. Tribes now actually do establish their own governments as they see fit.³⁵

NANABOOZHOO: The second requirement of solid legal infrastructure is much trickier, but still doable. Tribes can establish sound governing structures. One could argue, though I imagine most commentators would not, that even the tribal governments established under the Indian Reorganization Act³⁶ satisfy the second requirement. I mean, they’re basically corporate structures, just with elected officials instead of appointed board members. The tribal government employees do all the work; the elected officials tend to be seen but not heard.

MA’II: Agreed. Add in the federal contracting requirements of Public Law 638.³⁷ If a tribal government meets the federal contracting baselines, then pretty much by definition, they meet the second requirement.

NANABOOZHOO: And that’s where scholars and other commentators focus their attention—on the first two criteria. That’s low-hanging fruit. It’s relatively easy for strangers to Indian country to assess. All tribes must do is enter into self-determination contracts under Public Law 638, and they’re already there. You spend the government’s money following their baseline rules for managing federal dollars. It’s not easy. Tribes need to ease into it, building their capacities, but most tribes can do it right now. Scholars just argue mostly over details.

Cornell & Joseph P. Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, 22 AM. INDIAN CULTURE & RES. J. 187 (1998) and Stephen Cornell & Joseph P. Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, 18 AM. INDIAN Q. 250 (1994); Eric S. Trevan, *Reframing Tribal Planning—Re-Building Our Own Communities for Local Development*, 4 LOC. DEV. & SOC’Y 1, 3-4, 16 (2022) (citing Stephen Cornell & Joseph P. Kalt, *Sovereignty and Nation-Building: The Development Challenge in Indian Country Today*, 22 AM. INDIAN CULTURE & RES. J. 187 (1998) and Stephen Cornell & Joseph P. Kalt, *Where’s the Glue? Institutional and Cultural Foundations of American Indian Economic Development*, 29 THE J. OF SOCIO-ECON. 443 (2000)).

33. See ROSSER, *supra* note 11, at 117-18.

34. 25 U.S.C. §§ 5301-5423.

35. See SHARON O’BRIEN, AMERICAN INDIAN TRIBAL GOVERNMENTS 3, 197, 257 (1989).

36. See 25 U.S.C. §§ 5101-5144.

37. See 25 U.S.C. §§ 5301-5423.

MA'II: It's really the only great success story of federal Indian affairs. A decent chunk of tribes, maybe even a majority, rely on federal contracting as their primary economic engines.³⁸ I'm thinking of tribes with no access to a non-Indian market or exploitable natural resources. And tribes that choose not to engage in what you call capitalism.

NANABOOZHOO: And what about the other criteria? "Cultural match?" What does that even mean? And strategy and leadership? These last two seem to be business school terms. The cynic in me says that the chimookmonanag³⁹ that descend on Indian country as consultants assume Indian people are poor decision-makers, poor leaders, and so on. They also assume that these Indian people need someone to advise them on strategy and leadership, even to step into their shoes and do those things for them.

MA'II: Remember how Vine Deloria facetiously said that the anthropologists were our friends?⁴⁰ Now it's consultants and lobbyists. Tribes can pay now. But for tribes with little or no resources, small numbers, and no economic market, where does all this go?

NANABOOZHOO: Those tribes probably can't afford a good consultant either.

MA'II: Heh. Let's cut to the chase. The tribes that do well economically have access to non-Indian markets. That's all there is to it. There's no theory there. Do you have a brick-and-mortar gaming facility in a big market? Or massive natural resources like coal, oil, gas, and uranium? You're rich. The part of the theory that might matter is the part that helps tribes decide what to do with the béeso.⁴¹

NANABOOZHOO: Yeah, something to push back on inequality and inefficiency, even corruption. It's the tribal government, in the first instance, that controls the capital, access to resources, and so on. It's the government that can make or break a tribe.

I still have to come back to capitalism. Get the government out of the way. Let the market decide things.

MA'II: I'm going to let that go for now, but let's keep exploring.

NANABOOZHOO: Aho.

MA'II: Tribal government structures, I suppose, is where "cultural match" comes in. The trick is to find a tribal economy enabled by a tribal government that brings Indian people out of poverty. The going theory starts with the history of federal control or dominance over every aspect of tribal

38. See ROBERT J. MILLER, RESERVATION "CAPITALISM": ECONOMIC DEVELOPMENT IN INDIAN COUNTRY 53 (2012).

39. White men, in Anishinaabemowin.

40. See VINE DELORIA, JR., CUSTER DIED FOR YOUR SINS 78-100 (1969).

41. Money, in Diné.

economies, going back to treaty times. Ezra Rosser's book points out that Navajo Nation rejected the Indian Reorganization Act, which was Navajo's first true step to a cultural match before the term was even coined.⁴² However, it still has not solved the economic issues.

NANABOOZHOO: It's easy to pick apart a tribal economy dominated by the Bureau of Indian Affairs. But that's over now. It's more complicated to pick apart a tribal economy dominated by tribal elected officials and their consultants.

MA'II: Right. We have moved toward the rise of tribal government, beginning in the 1920s for the Navajo Nation⁴³ and in the 1970s for most of the rest of Indian country.⁴⁴ These are not indigenous governments or indigenous economies. They are governments designed by the federal government, under the thumb of federal regulations, and dependent on the federal government.

NANABOOZHOO: Well, colonialism was pan-Indian. The United States wanted tribes to have similar governmental structures so it would be easier for federal officials to interact with tribal governments.⁴⁵ You know, they needed someone in apparent, if not actual authority, to sign off on natural resources extraction leases, for example.⁴⁶

MA'II: Exactly! Navajo was the prototype for that kind of arrangement.

NANABOOZHOO: Still, ask any tribal attorney who has been around. They'll tell you that tribal governments are all different but have a lot of commonalities. It often starts with the tribal constitutions, which tend to establish similar governmental structures, like tribal councils.⁴⁷ But really, the sameness is the requirement of federal contracting. If tribes want federal money to run tribal governmental programs, they must play by federal rules.⁴⁸

MA'II: There is that, but economic development is another thing. A tribe in the desert southwest will have different economic opportunities than a tribe in the northern Great Plains or Alaska.

42. See ROSSER, *supra* note 11, at 41-43.

43. *Id.* at 36-37.

44. See Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1, 19-26 (2014).

45. See GRAHAM D. TAYLOR, *THE NEW DEAL AND AMERICAN INDIAN TRIBALISM: THE ADMINISTRATION OF THE INDIAN REORGANIZATION ACT, 1934-1945*, at 97-98 (1980).

46. See ROSSER, *supra* note 11, at 36 ("oil").

47. See, e.g., WAGANAKISING ODAWA TRIBAL CODE OF LAW, [CONSTITUTION] Oct. 26, 2022, tit. I, art. VII (creating tribal council).

48. See generally Danielle A. Delaney, *The Master's Tools: Tribal Sovereignty and Tribal Self-Governance Contracting/Compacting*, 5 AM. INDIAN L.J. 308 (2017).

NANABOOZHOO: Cultural match isn't a thing if there's nothing to sell?

MA'II: That's it in a nutshell. A better term for today, with its pros and cons, is indigenous markets.

NANABOOZHOO: So, are recommendations to make tribal government more efficient and with a better cultural match doomed to fail? Like burning neeshch'íí⁴⁹ at the opening of a rabbit hut, ayyyy?⁵⁰

MA'II (suspicious): Há'át'íí laa!⁵¹ You know my stories and failures well.

NANABOOZHOO: I'm retired.

Okay, counselor, then if not capitalism, then what?

MA'II: I think we start with deeper philosophical principles.

NANABOOZHOO: Philosophy has never been my strong suit, but I'll toss out a few ideas. The traditional Anishinaabeg believe that humans were placed last on Anishinaabewaki⁵² by Gitche Manido,⁵³ after all the living creatures, the great forces like wind and thunder, and the inanimate entities like rocks and dirt.⁵⁴ Gitche Manido placed humans last, not because they were the most important, but because they were among the least important.⁵⁵

The black robes, the mekadewikonayewaag,⁵⁶ taught that their God placed humans last because they were the most important creatures. "Man" was to name all things and exercise dominion over the world. The world was to be remade as "Man" chose.⁵⁷ That thinking permeates the law as well. Consider property principles: one cannot own property unless one improves the land and changes it in order to maximize wealth.⁵⁸

MA'II: What possible analog for that philosophy exists for the Diné? Who knows? But perhaps one useful item is that effective Diné leaders are obligated to assist the people in keeping the proper distance from the four sacred mountains: Sisnaajiní,⁵⁹ Tsoodzil,⁶⁰ Dook'o'ooshíid,⁶¹ and Dibé

49. Pinyon nuts, harvested and sold by the Navajo people.

50. This references the Diné story of the coyote being tricked by the rabbit.

51. What, in Diné

52. Indian country, in Diné.

53. The great spirit, in Anishinaabemowin.

54. BASIL JOHNSTON, OJIBWAY HERITAGE 12-13 (1976).

55. *Id.* at 13.

56. Priests, in Anishinaabemowin.

57. *Genesis* 1:26 (King James).

58. See Carol M. Rose, *Possession as the Origin of Property*, 52 U. CHI. L. REV. 73, 85-86 (1985) (examining the issue of land possession giving right to a property right).

59. White Shell Mountain, or Blanca Peak, in Diné.

60. Turquoise Mountain, or blue beard, or Mount Taylor, in Diné.

61. Abalone Shell Mountain, or the summit that never melts, or San Francisco Peak, in Diné.

Nitsaa.⁶² This distance is critical for maintaining balance, peace, and harmony, or Hozho.⁶³ However, let's also not forget the religious philosophies that have intertwined with indigenous cultures. So how does one create a cultural match with so many layers of control?

NANABOOZHOO: Fair enough. I guess my question is what does all this mean for tribal economic development?

MA'II: Well, we were talking about cultural match earlier. Again, the term indigenous markets is a better fit. I translate it to markets that fit indigenous communities' philosophies and strengths. However, I don't see anyone making recommendations to tribal nations to seek "cultural match" that have even the remotest understanding of tribal culture and religion.

NANABOOZHOO: Yes.

MA'II: In fact, tribal economic development advisors usually tell tribes to keep the culture out, to maintain a healthy business environment, that is, of course, for non-Indians.⁶⁴ Those who created the rules are expecting everyone to abide by them, even though it only benefits them.

NANABOOZHOO: Seems logical.

MA'II: That's a staple of the old neoliberal law and development mission—to open the markets to western economies for easy entrance, exploitation, and then exit.⁶⁵ We get deforestation in Brazil from thinking like that.⁶⁶ Navajos have known about that for a century. We got Lake Powell.⁶⁷

NANABOOZHOO: So, you're skeptical of outsiders. I get that, but many Native people have adopted the theoretical framework.⁶⁸ Are you saying there's a disconnect between the practice and the theory? Say it isn't so!

MA'II: I know you're joking, but yes. For scholarly outsiders, the analytical framework always starts with modern-day tribal government, usually goes into the colonizer's interference, but almost never delves

62. The Big Sheep, or Hesperus Mountain, in Diné.

63. Harmony and balance, in Diné.

64. See STEPHEN CORNELL & JOSEPH P. KALT, WHAT CAN TRIBES DO? STRATEGIES AND INSTITUTIONS IN AMERICAN INDIAN ECONOMIC DEVELOPMENT 25-28 (1994).

65. See generally Sierra Deutsch, *Populist Authoritarian Neoliberalism in Brazil: Making Sense of Bolsonaro's Anti-Environment Agenda*, 28 J. OF POL. ECOLOGY 823 (2021) (highlighting the major anti-environment policies by the Bolsonaro regime in Brazil).

66. See Maria Guadalupe Moog Rodrigues, *Privatization and Socioenvironmental Conditions in Brazil's Amazonia: Political Challenges to Neoliberal Principles*, 12 J. OF ENV'T & DEV. 205, 225-27 (2003).

67. See Daanish Mustafa et al., *Scalar Politics of Indigenous Waterscapes in Navajo Nation and Nepal: Conflict, Conservation and Development*, ENV'T & PLAN. E: NATURE AND SPACE 1, 9-14 (2021).

68. MILLER, *supra* note 38, at 4-5.

meaningfully into the tribal culture. Most recommendations by these academic outsiders are superficial enough to have applicability to just about any tribal nation.

But I have my doubts that the theory translates into practice. The theory is lazy, establishing a general rule based on the mistaken framework that if a tribe did something that worked, other tribes should try the same. But there's little explanation or understanding of why the thing the tribe did worked.

NANABOOZHOO: So, you're saying the recommendations that are kinda sorta superficial are no good?

MA'II: I guess you could say I'm saying that. There are surely some recommendations that work out. The thing is, the truly valuable, bespoke recommendations are so valuable as to be trade secrets. No one gives that advice away. Not in a book. Not publicly.

However, I will say that any indigenous person looking to improve their community through economic development must do the work. Research and due diligence are necessary steps for a sustainable economy. My stories always remind people that there is no fast way to success.

NANABOOZHOO: What about recommendations like Ezra Rosser's?⁶⁹ He's got significant awareness of the situation at Navajo.

MA'II: Yeah, I have to give him that, grudgingly. He writes that the feds and the Nation must establish a fair, transparent, and responsive land use system,⁷⁰ which I completely disagree with. Reforming the land use system will not solve Navajo's the economic problems.

What Ezra Rosser and the tribal leaders fail to recognize is that their own membership becomes educated, and there is no space to welcome them back. Navajo has the size, in terms of membership and lands, to create an indigenous market that works for them.⁷¹ Those innovative ideas from our educated population benefit other communities and corporations. Those educated Diné need to bring their ideas home to create an indigenous market that works for the Navajo.

And I, as the trickster, have not been able to make them see that. They are trying to fit into a system that does not work for them when they should be looking at their own citizens.

NANABOOZHOO: Do you disagree that a land use system is actual economic development? Or do you think that the feds should be kicked out altogether? What do you mean?

MA'II: There's a paradigm of thinking that has to go by the wayside, but I agree that the feds should be kicked out. That paradigm is that

69. ROSSER, *supra* note 11, at 141-61.

70. *Id.* at 214.

71. *See id.* at 35.

reservations are the primary source of wealth needed to preserve tribal communities. It's so pervasive that people can't even think of a reservation any other way, meaningfully. For most people, the reservation is a farm, a manufacturing facility, a tourism trap, and a place for us to live, conduct ceremonies, and bury our dead. I don't believe the ancestors are happy with us using our homelands as economic engines.

Again, the impossible question arises: how do we balance livelihood with our ancestors' wishes?

NANABOOZHOO: Then what's the point of a reservation?

MA'II: Fortunately, the Navajo reservation was created near our original homelands, and the idea of a reservation is a little different for us. Navajos must do the work and create their own indigenous market that still honors our traditional values. Maybe the reservation as homeland means we use our homeland as a true homeland. Think simply of a home. We don't go in the basement or the front yard to dig up coal or gas.

NANABOOZHOO: Well, you're forgetting about *The Beverly Hillbillies*.⁷²

MA'II: We don't invite people into our backyards to camp or hunt and fish. And we don't invite people into the living room to bet on football games or play craps. But that's what pretty much everyone assumes that tribal homelands are for. Not only do they assume it, but *they also insist on it*. I'm saying that Navajos need to create these spaces that work in protecting the homeland while the people still thrive off it.

NANABOOZHOO: Okay, I think I see where you're going with this. There's a tribe in Michigan that negotiated for a 20,000-acre reservation in 1836.⁷³ The lands they selected, or tried to select, were full of swamps and maple groves, skirted by beaches. There wasn't much land, to begin with, and the Anishinaabeg were choosing the least farmable and developable land. But maybe they weren't thinking of their reserved lands as the entirety of their homelands. They needed those lands to center their ceremonies, including spring sugar bushing and wild rice cultivation. The beaches were essentially ports for transportation by water. And once they selected those lands, they left them alone most of the time. They bought other lands outside the reserved lands, for cultivation and so forth.

MA'II: Yes, a different paradigm. Remember a few years back when Interior officials were driving around D.C. trying to figure out what the

72. *The Beverly Hillbillies* (CBS television broadcast Sept. 26, 1962).

73. MATTHEW L.M. FLETCHER, THE EAGLE RETURNS: THE LEGAL HISTORY OF THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS 32 (2001) (describing the history of the treaty times and early efforts to establish reservations).

commutable distance was for Indian people on the reservation?⁷⁴ They figured someone could comfortably commute thirty miles. So, if an off-reservation gaming facility were more than thirty miles from the reservation, the Department would disapprove it because it had a too-tenuous connection to the reservation.⁷⁵

NANABOOZHOO: Yeah! I remember that! And I remember thinking that the Department's tricksters were even more inventive and vicious than I could ever be.

MA'II: I think you're finally getting it, little bunny. Your Nookomis⁷⁶ would be proud.

NANABOOZHOO: If she heard about half the things I've done, she'd never talk to me again.

MA'II: Ha!

NANABOOZHOO: So how does that translate to Navajoland?

MA'II: I guess that's for another book.

Nanaboozhoo nodded and bade Ma'ii farewell. He saw from Ma'ii drooling that his friend smelled a tasty bunny, so he turned himself into a migizi⁷⁷ and flew away gracefully. It was still a long trip to Albuquerque. He'd need his rest for the two days of Indian law conferencing with the aunts and the consultants.

74. See Matthew L.M. Fletcher, *Indian Tribal Businesses and the Off-Reservation Market*, 12 LEWIS & CLARK L. REV. 1047, 1058 (2008) (explaining the off-reservation market as twenty-five miles beyond the boundary of reservations).

75. Kathryn R.L. Rand, et al., *Questionable Federal "Guidance" on Off-Reservation Indian Gaming: Legal and Economic Issues*, 12 GAMING L. REV. & ECON. 194, 198-200 (2008).

76. Grandmother, in Anishinaabemowin.

77. Eagle, in Anishinaabemowin.