# A NATION WITHIN

## Navajo Land and Economic Development

EZRA ROSSER

## A NATION WITHIN

In *A Nation Within*, Ezra Rosser explores the connection between land-use patterns and development in the Navajo Nation. Roughly the size of Ireland or West Virginia, the Navajo reservation has seen successive waves of natural resource-based development over the last century: grazing and over-grazing, oil and gas, uranium, and coal; yet Navajos continue to suffer from high levels of unemployment and poverty. Rosser shows the connection between the exploitation of these resources and the growth of the tribal government before turning to contemporary land use and development challenges. He argues that, in addition to the political challenges associated with any significant change, external pressures and internal corruption have made it difficult for the tribe to implement land reforms that could help provide space for economic development that would benefit the Navajo Nation and Navajo tribal members.

Ezra Rosser is Professor of Law at American University Washington College of Law where he teaches Federal Indian Law, Property Law, Land Use, and Poverty Law. A graduate of Yale, Harvard, and the University of Cambridge, Ezra is a non-Indian who grew up, in part, on the Navajo Nation.

# A Nation Within

## NAVAJO LAND AND ECONOMIC DEVELOPMENT

**EZRA ROSSER**
American University

CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India

103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108833936
DOI: 10.1017/9781108987585



First published 2021

*A catalogue record for this publication is available from the British Library.*

*Library of Congress Cataloging-in-Publication Data*
NAMES: Rosser, Ezra, author.
TITLE: A nation within : Navajo land and economic development / Ezra Rosser, American University, Washington DC.
DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2021. | Includes index.
IDENTIFIERS: LCCN 2021012266 (print) | LCCN 2021012267 (ebook) | ISBN 9781108833936 (hardback) | ISBN 9781108987585 (ebook)
SUBJECTS: LCSH: Law and economic development – Navajo Nation, Arizona, New Mexico & Utah. | Navajo Nation, Arizona, New Mexico & Utah – Economic conditions. | Navajo Indians – Economic conditions.
CLASSIFICATION: LCC KIK1074 . R67 2021 (print) | LCC KIK1074 (ebook) | DDC 343.791/3070899726–dc23
LC record available at https://lccn.loc.gov/2021012266
LC ebook record available at https://lccn.loc.gov/2021012267

ISBN 978-1-108-83393-6 Hardback
ISBN 978-1-108-98744-8 Paperback

To my mother, Norma Cady
&
To my father, James Rosser, and his wife, Zelma King

# Contents

# Illustrations

MAPS



FIGURES

# Preface

The translation my stepmother gives for the Navajo word "Bilagáana" is "white people, the other, or the enemy." Navajo-English dictionaries tend to use a more neutral definition. But I have always felt that the more pointed definition given by my dad's second wife, Zelma King, who for years taught written and spoken Navajo, was more accurate. At the very least, it better captures my experiences as an outsider who grew up in small part on the Navajo Nation. Tellingly, the Navajo word for themselves, Diné, means "the people" and is a term that does not include Bilagáanas.

I love the Navajo Nation, but my love is that of an outsider. It has its limits and frustrations. My wife likes to remind me that her love for our sons is unconditional but her love for me is without limits but conditional. The same can be said of my affection for the reservation. I both love and get annoyed by the vastness of the land, the long distances one can drive between towns and between grocery stores. I stand in awe at both the strength of some of the tribal leaders and the transparent selfishness of others. Perhaps more than anything else, my outsider status manifests itself in my conflicting desires: when I am away from the reservation, I often feel that I should return to it and that I don't belong in the privileged white world where I work, and when I am on the reservation, I often feel that I should escape it because the reservation is a place I visit but has never truly been my home.

Being an outsider undoubtedly influences my understanding of the Navajo Nation and the arguments found in this book.[1] In perhaps the single greatest book on Indian issues, *Custer Died for Your Sins: An Indian Manifesto*, Vine Deloria, Jr. dedicated an entire chapter to "Anthropologists and Other Friends." In a scathing, and quite funny, critique, Deloria skewered the often well-meaning scholarly outsiders who descend onto Indian reservations to conduct research. Deloria began, "Into each life, it is said, some rain must fall. . . . But Indians have been cursed above all other people in history. Indians have anthropologists."[2] He went on to explain that the researchers who invade every summer come with conclusions already formed and are indifferent to the practical consequences of

their research.[3] Scholarship about Indians not only created false narratives regarding the nature of Indians, but Deloria wrote, "Academia, and its by-products, continues to become more irrelevant to the needs of the people."[4] Deloria argued that Indians "should not be objects of observation for those who do nothing to help us."[5] He ends by urging researchers "to get down from their thrones of authority and pure research and begin helping Indian tribes instead of preying on them."[6]

I first read *Custer Died for Your Sins* in graduate school in England, as far removed from the reservation as I had ever been, and I remember simultaneously laughing aloud in the library and being deeply troubled about what his insights meant for me personally. It was not until I met Professor Robert A. Williams, Jr., an Indian law scholar and member of the Lumbee Tribe, that I decided to become an Indian law scholar myself. As a non-Indian, but someone committed to working to improve the lives of people living on the Navajo reservation, it can be very difficult to figure out the best role to assume and career to pursue. I was all too aware of the challenges of being a Bilagáana on the reservation.

When Diné introduce themselves, they traditionally start by telling others the clans to which they belong. These fairly long introductions serve to place the speaker in the Diné social world and to establish connections between the people talking. If I was a member of the Navajo tribe, it might be enough for me to note my tribal membership. But given that my outsider status is so important, it is worth describing fully the extent and limits of my connection to the Navajo Nation. I was born in Fairplay, Colorado and by the time I was eight, my parents had lived in Colorado, Missouri, and Iowa. Following their divorce and a final custody determination just before I started fourth grade, my mother moved to Durango, Colorado to be a bus driver and my father moved to the nearest town where he could find work as a teacher, Kayenta, Arizona. For the next three years, I went to school in Durango, a somewhat distant removed border town, and my brother and I were shuttled the three-hour drive to Kayenta, a town well within the Navajo Nation, for weekend and summer stays with my father. Then in seventh grade, my brother and I lived with my father and his new Navajo wife in Kayenta while my mother got situated in her new job, working as an environmental planner for the tribe. She lived in Gallup, New Mexico in a tiny apartment on a hill overlooking the town and worked in Window Rock, the capital of the Navajo Nation. In eighth grade, my brother and I lived just outside of Window Rock in a partially-completed house before my mother bought a modular home across the street from the main government complex.

I left the reservation to go to boarding school in ninth grade. I did not suffer particular animosity in middle school on account of my race. If anything, there were frequent reminders – such as the assumption that white students should be in the high track classes – that I was relatively privileged. But the school system left a great deal to be desired. Most of my Bilagáana peers from middle school would go on to get in trouble with the law for everything from drug dealing to vehicular homicide associated with drunk driving. And neither the Kayenta nor Window Rock high

schools offered advanced classes. So I left for boarding school, then college, then graduate school, and finally work as a law professor, returning to the reservation only to see my parents. My younger brother, Saul, suffered through one additional, particularly hard year on the reservation before he too left to follow a similar path. Non-Indians make up between 2 and 3 percent of the population of the reservation and Saul ended up needing school security officers to escort him on the bus to and from school to protect him from racially motivated attacks. (Saul stood out more than I did, not only because he has bright blonde hair, but also because his survival technique was to fight back when bullied whereas mine was to let it be known that I would tell on whoever picked on me.) After I left for boarding school, my mother, Norma Cady, continued to work as an environmental planner for the tribe in Window Rock and Tuba City, Arizona for another twenty years. My father, James Rosser, and his wife, Zelma King, built a house on her family's traditional lands near Red Valley, Arizona.

Given my childhood experiences on the reservation, it was a challenge to figure out the roles I could and should play, as well as those I should not. Committed to the idea that Diné should decide the direction of the tribe and that the most important jobs that impact the Navajo Nation should be filled by Diné – whether those jobs are located on the Navajo Nation or in Washington, DC – it was hard to see a way to support the tribe while being mindful of the fact that I am a Bilagáana. Having seen the valuable contributions Robert Williams, Jr. made to Indian country, when he suggested that I consider becoming an Indian law professor, it was as if light was suddenly shone on a path that would enable me to work on the issue I cared about, reservation poverty, without taking on roles best assumed by Diné. *Custer Died for Your Sins* resonated not only because I understood the pain and humor it expressed, but also because it forced me to once again question my place and work. There are two basic options after recognizing one's outsider status: to abandon the field or to acknowledge that status and move forward with as much humility as possible.[7] Though at various times I have stepped back a bit to work in the comfortable academic space of pure theory, my first and deepest commitment is to doing what I can to improve the welfare of Diné living on the reservation. The goal of this preface, accordingly, is to acknowledge my outsider status in the hopes that the book itself reads as authentic and fair to those most familiar with the Navajo Nation: Diné who grew up and spend their lives between the four sacred mountains.

# 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 genocide[23] 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 Tewas 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 lightening, 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'ooslííd, 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 predate 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 beliefs[66] 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

of Bosque Redondo, and especially the period following the formation of the Tribal Council in 1923. While the Navajo Nation is neither a state of the United States nor a foreign nation,[68] Diné have created a large administrative state – complete with an active court system, numerous departments that deliver and regulate social services, and a three branch system of government – that in many respects mirrors that of other states and nations. For the Navajo Nation to become the nation that it is today and for it to fully assume these many roles and powers, it had to first change from a people to a nation. That change was not easy, in part because of the heavy hand that the United States played and continues to plays in limiting and shaping the options available to the tribe. Especially when it comes to use of the land, the federal government has an outsized role in directing the nature of reservation development and resource exploitation. The Navajo Business Council, the precursor to the Navajo Tribal Council, was created in 1923 in order to facilitate oil leases on the reservation for the benefit of off-reservation corporations. Most reservation land is held in joint trust by the tribe and the federal government, which means that tribes are still required to obtain federal permission for a wide variety of development decisions, from large scale projects to minor land use changes. Over time, Diné leaders have created more space for independence from federal oversight by selectively pushing back against federal direction and by advocating for their rights to self-determination. The notable emergence of a robust version of tribal sovereignty on the Navajo Nation is a major theme of this book, even as the tribe's nation-building work continues today.

Not all the development challenges facing the Navajo Nation can be attributed to outsiders or to the colonial legacy. Despite how tempting it is for Diné leaders and well-meaning progressives to blame everything on whites or on the federal government, Diné have not always had the best leadership nor have the Navajo Nation's administrative agencies always put the best interests of the people first. Internal issues or failings within an Indian tribe are harder to write about or discuss than problems that can be attributed to non-Indians. As Raymond Orr notes in his path-breaking book on tribal politics, "Acts of Congress, decisions of the Supreme Court, and public depictions of American Indians receive greater critical attention in political science than the polities themselves."[69] One Indian law scholar joked to me at a conference that Indian law professors have never written anything negative about a tribe, while Indian studies scholars only write about the bad things tribal governments have done. The reluctance among Indian law advocates to criticize Indian nations comes out of a justifiable fear that anti-tribal forces will use any frank discussion of tribal government weaknesses as a weapon to further attack tribal sovereignty.[70] Left unacknowledged in the reluctance and fear that surrounds discussions of tribal governance failures is an appreciation of the fact that *all* governments are imperfect. The fact that greed, corruption, scandal, selfishness, and ugly politics can be found in tribal government should not be surprising – after all, politics in Washington and in state houses all too often can be described by the

exact same words. *A Nation Within* focuses on tribal land and development, topics that cannot be covered without turning a critical eye not only towards the federal government but towards the Navajo Nation government as well. Orr observes, "It is believed, and mistakenly so, that tribes and American Indians are so fragile that to explore the disagreements within tribes would damage political units and communities that have survived cultural, social, biological, and spiritual catastrophes during five hundred years of colonization."[71] This book shares Orr's belief that scholarship should engage in the messiness of life and politics on Indian reservations.[72]

A frequent explanation given on the reservation for why something does not work – why a project failed, why a permit was stuck in process, why someone is referred to office after office without getting meaningful help – is that "it is the tribe." That such an explanation is accepted as normal reflects the fact that there remains a lot of space for tribal governance to improve. The history of the tribe includes its fair share of leadership challenges but also many moments when Diné leaders stepped up for the good of the people and the Navajo Nation evolved to better serve tribal members. Another major theme of the book is that the institutional development and capacity of the Navajo Nation government matters and is central to understanding the tribe and its future. If the Navajo Nation is to effectively chart a development course and earn the buy-in of those living on reservation, it will have to hold leaders accountable when wrongdoing is discovered, improve its institutional effectiveness, and learn from past experiences.

One lesson that Diné do not need to learn is that land use decisions shape reservation life. For outsiders, the Navajo reservation can appear as a vast emptiness, with little evidence of human habitation, much less development.[73] Through such a lens, it seems a trifling matter to permit a school to be built, to allow a new commercial development, or to approve a new coal mine. After all, there appears to be plenty of land that is not being used. But Diné know better. They know that it is hard to find any part of the reservation that is not subject to an ownership or use right claim. Rather than being unclaimed, land parcels – even land that appears to be of little use for either farming or herding – are often subject to multiple overlapping and conflicting claims. Since contact, non-Indians have justified the dispossession of Indians in part by arguing that Indians were not using the land adequately – that they were leaving the land "a wilderness."[74] Tribes on the East Coast were continually pushed west by Europeans who were convinced that they could get more value out of the land. Diné are not so different. Wave after wave of non-Indian experts and powerful corporations, convinced they know better than the tribe, have heavy-handedly imposed their understanding of how tribal land should be used upon the Navajo people. The New Deal stock reduction program, which wiped out much of the wealth of the tribe in the name of erosion control, is the most significant episode of direct federal domination, but is hardly an outlier. Senior federal officials have, at various points, bent to corporate lobbying to undercut the Navajo Nation's bargaining position when negotiating large-scale extractive industry leases; blocked

development projects after the tribe had already obtained the necessary permits; and thwarted the ordinary growth of commercial enterprises through systematic inaction.[75] But it is a mistake to attribute reservation underdevelopment solely to federal land use priorities and practices. The tribal government has also struggled to establish a workable system for managing change and for dealing with alternative development views within the tribe. Not only has de facto tribal control of use of rangeland since the end of World War II failed to reverse the loss of usable reservation land, but the tribal bureaucracy dampens tribal entrepreneurship. Further limiting the role of the federal government in tribal land use decisions is a good first step, but the Navajo Nation must also improve the tribe's institutional capacity to facilitate locally appropriate development. If the Diné economic situation is to improve, if fewer children on the reservation are to be raised in poverty, then the federal government and the Navajo Nation must recognize the critical importance of establishing a fair, transparent, and responsive land use system.

One of the challenges when exploring tribal land use rights is that for centuries it has been convenient for whites to assert that Indians do not understand nor recognize private property rights, especially over land. The assumption that Indians, as tribes and as individuals, simply moved over the land and did not have ownership rights over the land has a long lineage. This narrative offered Europeans another excuse, besides religion, for dispossessing the continent: if Indians do not recognize property rights, non-Indians can treat Indian property rights casually. Like most stereotypes, the idea that Indians did not believe in ownership may have contained slivers of truth, but it worked more for the benefit of those doing the stereotyping than for those victimized by the stereotype. As Professor Robert Miller observes, "throughout history Euro-American settlers and government officials downgraded, ignored, and actually lied about how Indians and tribes supported themselves, defined property rights, and operated their economies."[76] As Miller explains, "It was perhaps a purposeful strategy in which Euro-Americans chose to ignore Indian property rights and economic abilities because they wanted to justify taking those rights and assets for themselves."[77] In truth, Indians had different understandings of property rights than the understanding of property rights imported into the New World, but that does not mean that property rights were not important to them. That it was hard for non-Indians to recognize the extent of Indian land claims or where the territory controlled by one tribe ended and that of another tribe began does not mean such boundaries did not exist. Accustomed to a particular form of enclosed farming and more intense forms of land use that did not characterize the New World, Anglo-Europeans adopted a dismissive attitude towards Indian property rights. That attitude persists into the present.

However much it found popular acceptance and contributed to the mistreatment of Indians historically, the belief that Indians do not believe in private property is mistaken. One of the foremost experts on Indian land, Professor Jessica Shoemaker, provides a great summary of Indian property rights:

> The nuances of indigenous property law institutions varied by tribe, and they were necessarily informed by both the unique landscape in which each tribe was located and basic differences in social structures, such as whether a given tribe engaged primarily in settled farming or more nomadic hunting. Generally speaking, most of these indigenous property law institutions included at least some allocations of individual use rights. Although sometimes generalized in collective understanding as a historic communal or commons-ownership regime, in fact most original (pre-European contact) tribal land tenure systems consisted of indigenous institutions for the allocation of individual use and occupancy rights to tribal members based on an individual's actual, continuous use of a particular piece of land. Thus, indigenous tenure was based not on an idealized version of the commons but instead on systems of individual use and occupancy rights, with individual Indians enjoying specific rights in land as perfected by actual use. These individual use and occupancy rights, generally, would revert back to the tribe upon abandonment by the individual property holder.[78]

Although Indian land rights are wrongly equated with rights to the commons, in fact, as Shoemaker highlights, tribes had sophisticated systems of private property largely tied to use. Property rights extended beyond land; tribes traditionally recognized private rights over everything from personal property, such as cooking utensils and trade goods, to horses and other animals.[79] The fact that some Indian cultures emphasize sharing to a greater extent than the larger society does not mean that property rights are not important.[80] Just as a gift from parents to their children does not negate the idea of private property within the family, or, between the family and the rest of the world, so too, private property rights exist and matter even if customarily members of some Indian tribes have a wider circle of concern.

Unlearning much of what is "known" about Indians involves more than just rejecting harmful beliefs, it also requires questioning even positive stereotypes. The notion that Indians do not believe in property rights is not far removed from the "positive" stereotype that that Indians are earth-loving environmentalists. These views serve to make Indians "other" and fail to recognize that Indians participate in the same complexity, humanity, and dualities as non-Indians. Non-Indian stereotypes "that either romanticize Native peoples as pre-industrial, primitive peoples living in harmony with nature without the benefits of civilization or technology (the 'noble savage') or vilify Native peoples as rapacious commercial entrepreneurs" must be rejected.[81] The idealization of Indian life prior to contact, of Indian commitment to the environment, and of Indian spiritual knowledge threatens to reduce Indians to a two-dimensional romantic caricature.[82] Imagining that Indians are only Indian if they fit in a particular, externally created box, provides fodder for those who would like to curtail tribal sovereignty. Spaghetti westerns left an indelible mark on the American psyche. Indians were only Indians if they looked like Sioux warriors, lived in tipis, and hunted buffalo. But most Indians were never thus and Navajos in particular do not fit that mold. Diné have

a living, constantly changing culture that defies non-Indian stereotypes about what Indians are or how they should live.

Diné survived as a people and as a culture in part through selective incorporation of ideas and elements from the other groups they encountered. Much of what is considered traditional in Diné society today reflects the influence of neighboring groups. Diné got sheep and horses from the Spanish, aspects of their family life from Pueblo tribes, and everything from automobiles to basketball from Americans.[83] Despite not originating in the tribe, these and many other elements incorporated from other cultures have become integral to reservation life.[84] Yet, despite incorporation being a constant in their history, Navajo culture remains distinct.[85] Kids living on the reservation may play video games, speak English at school, watch the same shows on television as kids do in Iowa, and even be brought up in non-Navajo religions,[86] but all around there are reminders that a distinct cultural understanding of what it means to be Diné continues to exist. The same can be said about the Navajo government. It is easy to identify moments at which the tribe, often but not always with the strong encouragement of the federal government, adopted institutional practices or structures that replicate something found off-reservation. But the Navajo Nation government remains distinctly Navajo, in part because the tribe makes incorporated elements its own, infusing institutions that appear identical to their off-reservation counterparts with Diné values.[87] It is rather remarkable when one considers the various invasions the tribe has faced, from military to pop culture, that the Navajo "have thrived in spite of forces that, upon surface examination, might have seemed overwhelming."[88]

The first action Roque Madrid took upon invading Navajo Country in 1705, according to his own campaign journal, was to seize two Indian women, without provocation, one with a child, that he came across and "put[] them to torture so that they would tell me where they were from, what they were doing there, or where their camps were."[89] Madrid reported that the torture didn't work, and later noted that all of Navajo country "did not want to fight but to be our friends."[90] This was true despite the fact that Navajos would have been well within their rights to make the same demands of the invading force. The Navajo desire for peace was not enough: "In a campaign of only twenty days, Mre. de campo Rogue Madrid led approximately four hundred soldiers, citizen militia, and Pueblo Indian auxiliaries through little-known country in northwestern New Mexico, fought three battles with the Navajos, and suffered only five men wounded and one killed. A later historian stated that between forty and fifty Navajos had been killed."[91]

Roque Madrid's invasion, and others like it, became the model not only for Kit Carson's 1863 scorched earth campaign but also for the more subtle attacks on Diné life and independence that continue to this day. For some non-Indians, the current Indian renaissance is something to fear and it is almost inconceivable that tribes should be able to exercise authority over their territory. As one anti-Indian journalist recently wrote, "As you enter reservations across the country, you'll find ominous

signs warning that you're subject to the laws of the tribe and the territory."[92] Such signs also are found whenever one drives across state lines, but in this reactive political environment, forces opposed to Indians see "ominous signs" whenever tribes assert their sovereign authority. Rather than fear the fact that Indian tribes are arguably better positioned today than they have been since conquest to establish tribe-specific and culturally appropriate land and development frameworks for life on the reservation, non-Indians should welcome Indian nations and recognize their unique place.

The story of the Navajo Nation told in *A Nation Within* unfolds in three parts: past, present, and future. Chapters 2–4 focus on the past. Though it is the size of West Virginia, the Navajo Nation is relatively unknown to non-Indians except the few who live there. Chapter 2, "The Navajo Nation," presents a portrait of the reservation, covering everything from the ubiquitous poverty and unemployment to the structure of Navajo extended families. The chapter also launches the reader into a brief history of the tribe, moving from the Navajo creation story to the Navajo long walk and internment to the establishment of the reservation with the signing of the 1868 Treaty with the United States. This part of the Diné story is full of highs and lows. On the one hand, the US Army's scorched earth campaign succeeded in forcing Diné to leave their homeland at gun point. The cruelty of the long walk and of the tribe's subsequent four year internment at Fort Sumner is a cultural trauma still felt today. On the other hand, tribal leaders succeeded in negotiating the tribe's return to their land. Not only were Diné able to return home, but also they were able to push for additional territory to be added to the Navajo reservation at a time when most tribes were experiencing continued land loss.

Chapters 3 and 4 highlight the close connection between land use demands, including the interests of non-Indians in reservation resources, and the evolution of tribal governance. As Chapter 3, "A New and Old Deal for Navajos: Oil and Sheep," shows, the modern Navajo Nation government was founded in large part so that oil leases on the reservation could be approved. But the Navajo Nation government did not act as mere rubber stamp for non-Indian interests. Though it did permit oil leasing, the tribe went on to reject the signature piece of New Deal policy directed at Indians, the Indian Reorganization Act. After presenting this foundational period of the Navajo Nation government, the chapter then presents one of the most tragic events in the collective memory of the Navajo people, federally imposed livestock reduction, which continues to shape tribal land use patterns as well as federal-tribal relations. Chapter 4, "War Production and Growing Pains: Uranium and Coal," focuses on the problematic nature of Navajo uranium and coal development following the end of World War II. By not revealing the dangers involved and holding back information on the value of the resources, the US government facilitated particularly destructive forms of development while failing to ensure the tribe received fair compensation. The half century reliance of the Navajo Nation on extractive industries for jobs and government revenue can be traced, in part, to the

inequities in bargaining position and legal authority over the land that surround the mining agreements approved by the tribe in the early part of the self-determination period.

Having described the growth of the reservation, the formation of the Navajo Nation government, and the land use and resource challenges, *A Nation Within* switches gears to the present. Chapters 5–7 set up some of the more controversial questions – should the tribe pursue environmentally destructive forms of development? What should be done when tribe leaders are corrupt? Can economic or governance theories improve reservation life? – that animate the rest of the book. Chapter 5, "Alternative Environmental Paths," uses the pan-Indian 2016 anti-pipeline protests at Standing Rock as a jumping off point for discussing the complicated relationship between Indians and the environment. It shows why stereotypes about Indians as environmental stewards are misleading while also affirming the special connection that Indians often have to their land. As the chapter shows, tribal sovereignty provides a way of dealing with both tribal environmental justice concerns and tribal decisions to pursue development that harms the environment.

In many ways, Chapters 6 and 7 are the most difficult parts of the book. Chapter 6 because it tackles a difficult subject and Chapter 7 because it is more theoretical than the other chapters. Arguably the most controversial chapter of the book, Chapter 6, "Golf Balls and Discretionary Funds," focuses on corruption by tribal officials. Tribal sovereignty advocates and non-Indian scholars are often reluctant to talk about tribal governance failures, but this chapter highlights the significance of corruption and the need for improvement within the tribal government. It uses the stories of Tribal Chairman Peter MacDonald's corruption in the 1980s as well as the more recent controversies involving the Tribal Council's use of discretionary funds for personal benefit to show how corruption impacts tribal economic development and tribal land policies. Chapter 7, "Improving Tribal Governance," uses economic theory and tribal-centered writings to explore ways that the Navajo Nation might improve its governance practices. A section on the dominant form of economic theory off the reservation, neo-classical economics, provides a grounding on approaches that have been dictated to tribes by outside experts. The subsequent section on tribal economic development theory, highlights the importance of cultural match and good governance when it comes to reservation development. Although the ideas discussed in Chapter 7 are useful when considering the land use and governance challenges presented in the chapters that follow, readers whose interests are less theoretical and more grounded in the Navajo experience can skip this chapter without losing too much.

Building on the previous sections, *A Nation Within* in Chapters 8–11 considers the future direction of the Navajo Nation. These chapters highlight existing land use challenges as well as efforts by the Navajo Nation to assert authority over land on the reservation as well as over resources located beyond the reservation border. Chapter 8, "Locally Grounded Development," focuses on how governance changes and

allowance for greater local autonomy might create space for economic development. The Navajo Nation has 110 chapters, each with a separate governance role and each with unique challenges. Just as American politicians routinely advocate for local control under the banner of federalism, so too many Diné feel that the tribe would be better with some form of Navajo federalism. Chapter 8 looks at whether rebalancing the division of authority between the centralized bureaucracy in Window Rock and local chapter houses could help cut through the red tape that currently undermines efforts to build community at the local level.

Chapters 9 and 10 relate closely to Chapter 8. Despite the Navajo Nation's size and relative lack of development, tribal members often find it nearly impossible to get permission to use land. Chapter 9, "Reclaiming the Land," focuses on homesite leases and, revisiting a topic first introduced in Chapter 3, grazing regulations. Both areas are ones in which the tribal government and tribal leaders recognize contribute to stunted growth on the reservation. The chapter argues that returning to a use-dependent understanding of property rights offers a way to free up land for those who want to make a life on the reservation. Chapter 10, "Creating Space for Experimentation," continues along a similar line, exploring business site leasing and public housing on the reservation. It highlights the dynamic potential of local experimentation, coupled with an allowance for localities to capture some of the benefits of experimentation, to facilitate development. Both public housing and business site leasing offer lessons from past successes and past failures, but, as the chapter explains, local empowerment could help spur deeper capital investment in parts of the reservation that are currently neglected.

The final substantive chapter, Chapter 11, "Sovereign Assertions," looks at ways the Navajo Nation is pushing its sovereignty beyond the reservation border. This chapter discusses three areas where the Navajo Nation must push the physical and legal boundaries of sovereignty in order to protect tribal interests. When it comes to water rights, off-reservation environmental destruction such as uranium mining, and protection of sacred sites, the Navajo Nation has played an active role asserting its interests and lobbying neighboring non-Indian governments. This chapter celebrates such efforts and emphasizes the ways Navajo interests are interconnected with surrounding off-reservation communities.

The conclusion, Chapter 12, observes that while the Navajo Nation faces serious challenges, it is up to the task and should be allowed the freedom to pursue its own path. Connecting the grassroots Diné response to the COVID19 crisis to the response by tribal leaders to previous crisis moments, the conclusion argues that the Navajo Nation must be allowed moments of failure and face consequences when it makes bad calls if it is to succeed. The Navajo Nation is uniquely situated to push for a more full version of sovereignty. It is time for Diné and non-Indians alike to recognize the power of the Navajo nation to move forward with a form of sovereignty that is wrapped in fewer federally-imposed guard rails.

The hope is that this book, by drawing out the history, law, and forces that impact tribal lands and tribal economic development, contributes to the independence and strength of the Navajo Nation and of other Indigenous peoples. The place of Indian nations within the United States cannot be understood through a purely theoretical lens. Exploring the history and institutional development of the Navajo Nation opens a window on the practical significance of tribal sovereignty today, highlighting the central role of the tribal land base in the continued vitality of Indian society and peoples. In 1848, one of the great Navajo leaders, Manuelito, argued for an attack on Fort Defiance. "We will make war and drive these blue-eyed ones from Navajoland."[93] The attack failed, and blue-eyed ones still have their outposts across the reservation. But the reverse is also true: on the reservation, Navajos, much more than the few non-Indians in their midst, not only still exist, but also have created a living, distinctly Navajo culture.[94] Undoubtedly, Diné will continue to survive and thrive in their own ways.[95]