


Assessing the Federal Assimilation Policy and Dine Bibeehaz'aanii

Navajo Nation Law and CLE Conference
October 28, 2016
Phoenix, Arizona

Deschene case

- Top vote getter was challenged on his qualification for Navajo fluency.



Deschene case (cont.)

- “Candidates are required to speak Navajo fluently. But one of the two candidates who won the primary doesn’t. He says he’s a product of cultural destruction.”
- “Deschene blames his limitations on what he calls the tribe’s cultural destruction. Up until the 1960s, the U.S. federal government forced thousands of American Indians to attend boarding schools - among them, Deschene’s mother. While there, she was punished for speaking her native language. The U.S. government later relocated his parents to Southern California, where Chris was born.”

Source: National Public Radio npr.org

Deschene case (cont.)

- “The fact that he's - that he's still learning is very representative of the people that he means to lead.”
- “She points out **half the Navajo tribe** on and off the reservation **doesn't speak the language.**”
- “I think it's very important that the presidency **serve as a role model** and carrying on that way of life and that culture. If there should be a non-speaking Navajo to take the helm, I'm not exactly sure where that person is going to take us.”

— Source: National Public Radio npr.org

The People Decided

- Referendum vote (2015)
- Close vote – 52% vote for, 48% voted against
- Abolished fluency requirement

Nobody is talking about
Assimilation

My goal

- Candid discussion about Federal Assimilation Policy and Fundamental law

Overview

- Where does it come from?
- What was its purpose?
- Why is it so difficult to discuss?
- What was it's impact?

“Assimilate”

- : to cause (a person or group) to become part of a different society, country, etc.
- : to adopt the ways of another culture : to fully become part of a different society, country, etc.
- Source: Merriam-Webster Dictionary

Origins

- Where does this “fundamental law” come from?

English Assimilation Policy

- Pre-Columbian
- Irish raided English farmers
 - Irish – Fighting, raiding, marauders
 - English – Sedentary, farmers
- Queen Elizabeth converted Irish
 - Raiding Marauders to Farmers
 - Sedentary
 - Pacified

Assimilation – What is it?

- It is part of something bigger
 - European approach to Native America at contact
- Invasion and warfare
 - Objective –
 - To destroy the People because they present an obstacle to property acquisition.
 - Levels of destruction
 - Killing people
 - Damaging culture, identity, and beliefs

Federal Indian law

- This approach is incorporated into federal law as federal Indian law
 - Policies – Warfare, Removal, Reservation, Assimilation, Termination, Self-determination

Roots of Federal Indian Law (overview)

- US case law –
 - Marshall trilogy – Johnson vs. McIntosh
- European international law –
 - **Doctrine of Discovery**
- Religious law –
 - Papal Bulls
 - Bible

Johnson vs. McIntosh (1823)

- Did two things:
 - Provided **justification** for the terrible things done to Native Americans since contact
 - Incorporated European International law which was based on religion
 - Provided a **blueprint** on how to handle the surviving Native Americans

Johnson vs. McIntosh (1823)

- Facts
 - Two non-Indians purchased land
 - McIntosh won (bought land from Congress)
 - Johnson lost (bought land from Tribe)
- Issue
 - Which title is superior?
- Held
 - Tribe had no right to sell land
- Reason
 - **Because** land was acquired by **Discovery Doctrine** (Reliance on European International Law)

Basis of Discovery law is religion

- Religious law – Papal Bulls (Catholic Church), Pope
- Bible – Book of Genesis (“Subdue the earth”)



Aketl'ool – the Root

- “And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish **the earth**, and **subdue it**; and **have dominion** over the fish of the **sea**, and over the fowl of the **air**, and over **every living thing that moveth upon the earth**” **Genesis 1:28**



Two ways

- Subdue the earth and all living things on it.



- “The earth is my feet..”



McIntosh – Humane approach

- Two levels of destruction
 - 1. warfare/annihilation,
 - 2. be humane/ **how doctrine is maintained** (2 options)
 - a) **assimilate**
 - » “mingle”
 - » “one people”
 - » “citizenship”
 - b) **remain separate and distinct**
 - “safely governed”

McIntosh – Assimilation language

- “The title by conquest is acquired and **maintained by force**. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. **Most usually, they are incorporated with the victorious nation, and become subject or citizens of the government with which they are connected. The new and old members of society mingle with each other; the distinction between them is gradually lost, and they make one people.** Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that **confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers.**”

McIntosh – Assimilation language (cont.)

- When the conquest is complete, and the conquered inhabitants can be **blended** with the conquerors, **or** safely governed as a **distinct people**, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame, and hazard to his power."

• Johnson v. Macintosh, 21 U.S. (8 Wheat.), 1823.

"Distinct"

- "different in a way that you can see, hear, smell, feel, etc. : noticeably different"
- Merriam Webster Dictionary

Is discovery still good law?

- Does it make sense?

Is it okay to acquire a Ferrari by discovery?



• City of Sherrill vs. Oneida Nation (2005)

- City of Sherrill taxed Oneida-owned parcels, including a gas station and a textile printing factory.
- The Oneidas refused to pay and the city foreclosed.
- Issue
 - Whether land is sovereign Oneida territory?
- Held
 - No, because of the **non-Indian character of the land**, regulatory authority over the area, the tribe's long delay in seeking judicial relief, and **doctrine of discovery** to limit the Oneida Nation's sovereignty.
- Reason
 - **Because** land was acquired by **Discovery Doctrine** (Reliance on European International Law)

Evangelical response (2013)

- I was no different than many of you eight years ago in terms of **knowing nothing about the Doctrine of Christian Discovery**. I had **never heard of it** until my enlightenment at that time. Many years earlier I had learned about Manifest Destiny, which can be understood as an American application of the Doctrine of Christian Discovery, but **I didn't understand the religious origin of the Doctrine of Christian Discovery**, an essential understanding if an informed person wants to act to contribute to the effort of dismantling the Doctrine's effects in the world.
- Source: John Dieffenbacher-Krall, Why the Doctrine of Discovery Matters to us today, (2013)

Evangelical response

- **When I learned about Doctrine of Christian Discovery, I felt a sense of outrage that such an evil, unjust concept could be advanced in the name of the Prince of Peace, Jesus Christ, and form the foundation of Federal Indian Law.** I felt moved to preach on the subject, which I did in October 2006 at my home parish, St. James' Episcopal Church in Old Town, challenging my fellow parishioners, the Episcopal Diocese of Maine, the entire Episcopal Church, and the worldwide Anglican Communion to repudiate the Doctrine of Christian Discovery.
- Source: John Dieffenbacher-Krall, Why the Doctrine of Discovery Matters to us today, (2013)

Justification

- Why was it implemented?

European perspective

- “Manifest destiny”
- “Life, liberty, and the pursuit of happiness”
- ***What does that mean?***

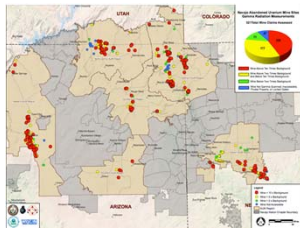


Assimilation – What is it?

- It is part of something bigger
 - European approach to Native America at contact
- Invasion and warfare
 - Objective –
 - To destroy the People because they pre~~vious~~^{vious} an obstacle to **property acquisition**.
 - Levels of destruction
 - Killing people
 - Removing culture, identity and beliefs

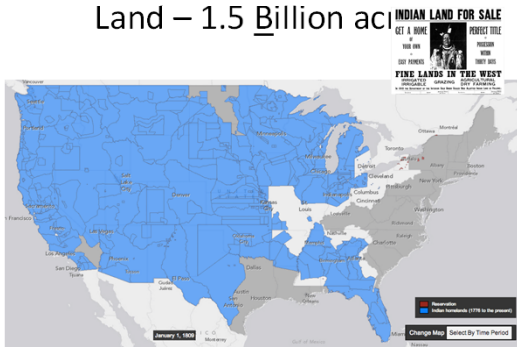
Property = natural resources

- Land
- Gold
- Oil
- Water
- Etc.



Source: Navajo EPA

Land – 1.5 Billion ac



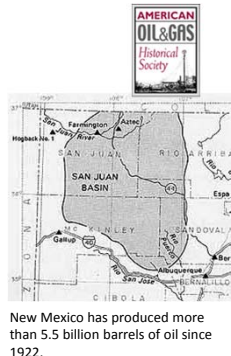
Gold



“Black gold” (Oil)

- “New Mexico’s first commercial oil well is drilled September 25, 1922, on the Navajo Indian Reservation near Shiprock by the Midwest Refining Company.”

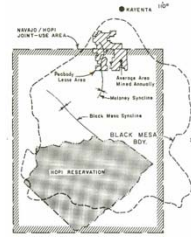
- Federal government formed the Navajo government
- Third leading oil and natural



Coal

- “According to available data the Wepo Formation contains not only the **highest rank** and **highest quality** coal on Black Mesa but the **largest minable reserves** as well. The coal seams are thicker, more numerous, more widespread, and more accessible for strip mining.
- “The company has identified 42 separate coal deposits, and mining operations **will move to a new deposit as each active deposit is finally depleted.**”

- -Source: Chemical Analysis of Coal Samples From The Black Mesa Field, Arizona, Arizona Bureau of Mines (1977)
- Navajo-Hopi land dispute



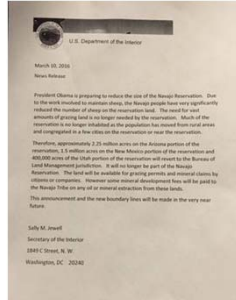
Domestic water use
map (2010)

- Also out West, the U.S. Census Bureau **projects** the **populations** of Nevada and Arizona **will more than double between 2000 and 2030**. But those two states get some of the nation’s lowest amounts of precipitation, so **more people will be vying to use water resources that already aren’t plentiful.**

- Source: Ellie Kincaid, Business Insider, *California isn’t the only state with water problems* (2015)

Threat will continue

- Cultural resources
 - Sacred sites
- Natural resources
 - Uranium
 - Natural gas
 - Reservation land
 - Obama Hoax (2016)



Stubborn

- Why is it so difficult to talk about it today?

Defeat in warfare

- Raises sufferings from Long Walk of 1863-68
- Historical Trauma
 - Effect – social issues
 - alcoholism,
 - high crime rate,
 - high domestic violence,
 - high single parent rate,
 - poor health,
 - etc.



Goes to the core of personhood

- Cultural identity and beliefs

- Language – cultural identity

- Nobody wants to be told “you are inadequate”

- Blood quantum –

- Competing religions –

- People are stubborn in their religious beliefs



Inter-tribal discrimination

- Based on ‘Navajoness’

- Goes both ways

- Starts as childhood bullying

- “John”, “Rezzie”, “Bilasana”, “Apple”

- Develops into adult discrimination

- An effect of federal policy to “divide and conquer”

- Woven into this issue is Interracial dating, marriage, children, adults (“mixed-race”)

- Blood quantum



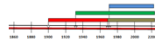
Collision

- Long-term

- Short-term (2014 election)

Assimilation laws (Long-term)

- 1870s – Boarding school
- 1880s – Allotment
- 1890s – Courts of Indian Offenses
- 1890s – Prohibition of Native Ceremonies
- 1930s – Sheep reduction
- 1940s – Termination
- 1950s – Urbanization (one-way bus tickets into cities)
- 1970s – Navajo Hopi land dispute
- 1970s – Public schools



Boarding school - before



- Navajos taught their children

Boarding school - after



- Children ripped from their families
- Taught by White teachers

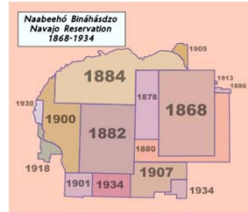
Boarding school

"Kill the Indian,
Save the man."

- Stripped culture and identity
 - Appearance
 - Hairstyle
 - Clothing
 - Language, Beliefs, Religion
 - Habits, Customs
- Effects
 - Alone
 - Felt out-of-place
 - Shame



Sheep reduction - before



Source: The series "Ansel Adams Photographs of National Parks and Monuments," U.S. National Archives and Records Administration.

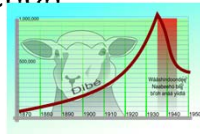
Sheep reduction- after



- Men **left** their **families**
- For off-reservation jobs

Sheep reduction

- Economy



Sheep reduction

- Property Ownership

- Grazing permits
- Homesite leases



- Property disputes



Navajo Hopi Land Dispute

- Sheep reduction – Justification

- Dust bowl

- Federal Government

- Forced sheep reduction
- Created CFR Grazing Regulations
- Created grazing Districts

- Grazing District 6

- Becomes Navajo-Hopi Land dispute.



Sheep reduction → Grazing Districts → Hopi-Land Dispute



1974 Hopi Settlement Act -before



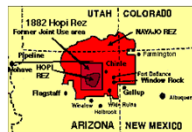
- Navajo extended families **lived together**.

1974 Hopi Settlement Act -after

- Removal (by 2010)
 - 3765 families certified
 - 2207 families denied
 - **3553 families relocated**

- Relocation
 - Sanders
 - Bordertowns - Flagstaff
 - Phoenix
 - Albuquerque

- Dispersed
 - Extended families ripped



Hopi Land Dispute Report (2012)

- "Mr. Johnny Jack was **disgusted** with the U.S. Government for using the Navajo language to fight against Japan. His three younger brothers went to war with the understanding they were fighting for their land. But when they returned, they learned their land was taken away by the **same government that they fought for**. For Mr. Jack, it made no sense for Dine children to enlist and fight for a nation that took land from the Navajo people—especially as first occupants."

Public school



- Schooling used to eliminate Native I and culture.
 - “Schools should be established, which children should be required to attend; their **barbarous dialect should be blotted out** and English language substituted.” Reports of Indian Peace Commission (1868)
 - “We are **learning how to be non-Native**”

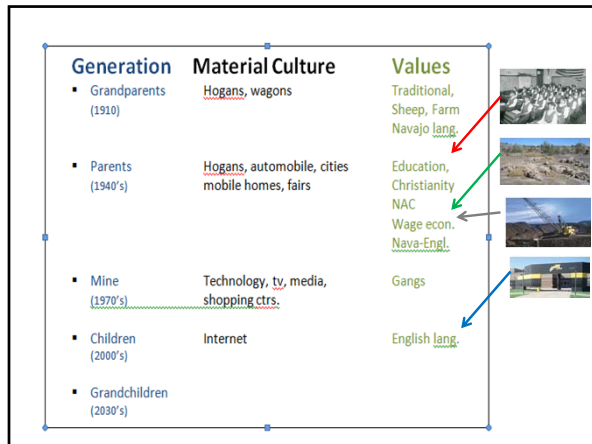
Major Changes

- Trading Posts / Shopping Centers
- Highways
- Media
- Internet

Strategy – Divide & Conquer

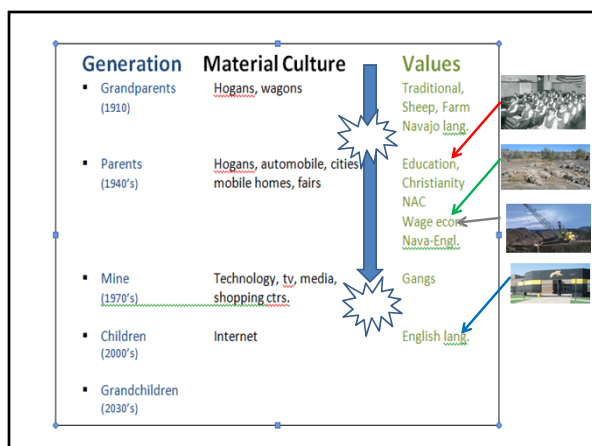
- **Boarding school** Children **separated** from family
- **Livestock reduction** Adults **separated** from family
- **Hopi land dispute** Extended families **separated**
- **Public schools** Children **separated** from elders





Strategy – Divide & Conquer

- Disconnect between families.
- Disconnect from land.
- Disconnect between generations.
- Disconnect = Culture not passed down



Language Loss

- A study conducted in early 1990 found that only 18% of all 3-5-year-old children in Navajo Nation Headstart Programs spoke Navajo. This means the majority of Navajo children (82%) don't speak their native language. The quickly depleting culture is a threat to the Navajo Nation's future existence

- Study by Paul Platero. Watchman, D. (1994).

Efforts to curtail assimilation

- Indian Child Welfare Act (1978)
 - Promotes keeping Native children in Native foster homes.
- Native American Languages Act (1990)
 - Promoted right of Native Americans to be taught in their own languages.
- UNDRIP Article 8:1
 - "Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture."

Short-term impact

Candidate lost

- People felt cheated (government vs. people)
 - People's role in government diminished
 - → **Democracy suppressed**



R. As recent events have developed it is obvious there is much confusion and misinformation among the Navajo people about the value of their participation in the primary election; about whether their voice through their vote has been heard. At present there is no finality in the electoral process as a result of the dispute over the voice of the People.

People's jobs ended

- Election board (Election board vs. Court)
- Chief Justice (resigned)



Challenged Government stability

- Separation of powers
- Co-equal branch
 - Who has more power?
 - Courts
 - Council
 - **President**

S. The Navajo Nation has been at this precipice 25 years prior at which time the Navajo Nation was deeply divided, causing great disharmony to Navajo families and the government; currently there is the potential to completely destabilize the electoral process at various levels which will lead to instability in government, threatening the functions of the executive agencies, law enforcement, fire protection, emergency medical services and other vital services to public safety. There is a pressing public need for the Navajo Nation Council to address this matter.

Inconsistent requirements

- Must speak Navajo "fluently"
 - President
 - Vice-President
- Must speak Navajo and/or English
 - Council Delegate
- Must speak Navajo and English
 - Election Supervisor
- No Navajo language requirement
 - Chapter Officers

U. The Navajo Nation Election Code lists numerous qualifications for elective office. Included in these requirements are the ability to speak Navajo and English. The Election Code, however, is not consistent as to these requirements. For example, some positions merely require the ability to speak Navajo, while others require speaking Navajo "fluently." Some positions do not require any Navajo language requirements at all, such as for Chapter Officers and school board members. And, all positions, except for school boards and the Board of Education, require the ability to speak English.

Raised tribal issues

- Incompetence
 - Educated vs. Non-educated
 - Speaker vs. Non-speaker (fluent)
- Corruption (Government vs. The People)
 - Old guard vs. New guard

Raised sensitive issues

- Tribal identity/assimilation
 - What is a "leader"?
 - Who is a "Navajo"?
- Blood quantum
- Religion discrimination
 - Traditional,
 - NAC,
 - Christianity



Raised Intertribal discrimination

- Name-calling
 - "John", "Rezzie",
 - "Bilasana", "Apple"



Short-term impact - Chaos



The Navajo Response



Naachid



Courts of Indian Offenses (1892)

- Navajo Police
 - Naat'aanii
- Navajo Courts
 - Used traditional teachings to resolved disputes



Tribal Courts (1959)

- "Hashke doo Na'nitin" from the bench
 - Peter Macdonald
- Navajo Common Law

Dine Bibeehaz'aanii (2001)

- **Duty to preserve, protect, and enhance** Dine Life Way and sovereignty...
- Council has **not acknowledged** and **recognized** such laws in the Code...
- Left up to the Judicial Branch, until now...

3. It is the duty of the Nation's leadership to preserve, protect and enhance the Diné Life Way and sovereignty of the people and their government; the Nation's leaders have always lived by these fundamental laws, but the Navajo Nation Council has not acknowledged and recognized such fundamental laws in the Navajo Nation Code; instead the declaration and practice of these fundamental laws have, up to this point in time, been left to those leaders in the Judicial Branch; and

Dine Bibeehaz'aanii (2001)

- Concerned fundamental law **knowledge is fading**... especially **among the young people**.
- Primary concern – **negative forms of behavior** and **natural events**
- **If we all observed and lived by these laws,**

these negative events would not have
4. The Navajo Nation Council is greatly concerned that knowledge of these fundamental laws is fading, especially among the young people; the Council is also concerned that this lack of knowledge may be a primary reason why the Diné are experiencing the many negative forms of behavior and natural events that would not have occurred had we all observed and lived by these laws; and

Dine Bibeehaz'aanii (2001)

- Dine Bibeehaz'aanii (2001)
 - Duty to preserve, protect, and enhance... **by incorporating into Code.**
 - **Acknowledge** and **recognize** their importance...
 - **Generate interest** to learn...

5. The Navajo Nation Council finds that the Diné Life Way must be protected and assured by incorporating these fundamental laws into the Navajo Nation Code in a manner that will openly acknowledge and recognize their importance and would generate interest to learn among all Diné; and

Navajo Assimilation Cases

- Ford case – Jurisdiction case, FLD test case
- Benally – Considered “assimilation policy”
- Deschene – 1st assimilation case

Ford Motor Company vs. Todocheene (D. Ariz. 2002)

- “To hold otherwise could create a **tumultuous** situation where tribal courts would be able to regulate the conduct of non-Indians by, among other things, developing their own individual tort systems and law in deciding liability and imposing damages for such claims. In fact, Judge Bedonie, in his May 16, 2002, Order denying Ford’s Motion for Reconsideration, opines that “Navajo Courts should synthesize Navajo Custom Law with due process to enhance Navajo Culture when interpreting the NNBR [Navajo Nation Bill of Rights] and the ICRA [Indian Civil Rights Act].” Judge Bedonie emphasizes this point, by referring to the Navajo coyote stories, and, specifically, the **story of Coyote and Skunk**, as an illustration of how Navajo due process comports with federal law.”

“tumultuous”

- loud, excited, and emotional
- involving a lot of violence, confusion, or disorder

Source: Merriam-Webster Dictionary

Ford vs. Todacheene (2002)

- “Judge Bedonie then states that this type of analysis allows the tribal court to consider “all parties equally as relatives” therefore, comporting with due process.”
- “Interpreting the second Montana exception consistent with the Todocheenes', the tribal court's and Judge Bedonie's argument is **directly contrary to** the fundamental premise of the Montana decision, which is that the tribes' status as **dependent sovereigns** necessarily entails a **sharp limitation on their jurisdiction** over nonmembers.”

Benally vs. Benally (2003)

- Divorce case.
- Assets divided through Peacemaking.
- Party argued “No due process” in Peacemaking.
- Held - PM affords due process
 - Assimilation considered



Benally vs. Benally (Kayenta, 2003)

- US policy – assimilation (*Johnson v. McIntosh*).
- Rapid loss of Navajo language
- Role of Navajo traditional laws and values – **makes Navajo distinct** from Americans
- Role of Navajo government – **Maintaining a distinct culture**
- Consequence of assimilating (when no longer “distinct”)
 - **treaty obligations dissolve**
 - **open reservation** and resources to **public domain**.

Attempt to Repeal Fundamental law (2010)

- The bill would **prohibit** the Office of Hearings and Appeals, district courts, and even the Navajo Nation Supreme Court **from citing fundamental law** as a basis for their rulings.
 - "People have a right to participate in the formation of their government" Shirley
- The council's move follows recent decisions by a hearing officer and the **Supreme Court that went against the council's** wishes in the matter of putting **council reduction** to a vote.
 - "courts have misused the traditional law"
- "The primary purpose (of Fundamental Law) was to preserve, protect and enhance the life way," Delegate Raymond Joe said during his presentation. "Instead **there's this growing tension**" because of **how the law has been used** in court findings.

Tsosie vs. Deschene (2014)

- First Navajo assimilation case
- Fluency standard created ("dilkooohgo")
 - Is this still valid?

Deschene Procedure

- Office of Hearings and Appeals (OHA)–
 - Dismissed case for not meeting filing deadline.
- Navajo Supreme Court (NNSC) –
 - Found fluency is a reasonable requirement
 - Sent back to OHA for further fact finding.
- OHA –
 - Default judgment due to Deschene refusing to participate.
- NNSC –
 - Appeal not perfected.

Deschene Procedure (cont.)

- NN Board of Election Supervisors
 - Members removed.
- NN Council
 - Council resolution failed to pass.
- Referendum
 - Fluency requirement removed.

Deschene Important points

- Acknowledged the significance of Dine bizaad.
 - “Nihizaad t’aa’akah beiyoohneeh”
- Leaders are **all** saying the same thing

Deschene – Fundamental law

- “In this society, this Court has an obligation to interpret Navajo law and enforce Navajo law. When we carry out that responsibility, that responsibility is not limited to an interpretation of statutory laws -those laws made by human beings to regulate other human beings in society. We consider ancient laws also. **The ancient laws of the Holy People** take precedence because these **are sacred laws that we were placed here with.**

- SC-CV-57-14-Opinion(1), slip op at 10-11.

Deschene – Fundamental law (cont.)

- “As an illustration, we recount the time in our history when the Navajo people, after being placed on this Earth, lived with the Holy People so they would be educated about our ancient laws -the right and wrongs. But there came a time when the Holy People were about to leave. If you can picture that occasion, the people were in a hooghan and the Holy People were one-by-one filing out. One of them, **Haashch 'eelti' (Talking God)**, poked his head back through the doorway and said, “My children, there is one thing that I must tell you: **do not forget the value system that we have given you.**”

• SC-CV-57-14-Opinion(1), slip op at 10-11.

Deschene – Fundamental law (cont.)

- “In the Navajo language that system is expressed as **Naakits'aadahgo oji**. **Core** to that system is the **language**. The **value system** -the **law** of the Navajo people -is embedded in the language. When Haashch'eeyalti said that to the people, that in itself became the establishment of a law -**bee haz 'aanii**. Now you take that law and apply it. It is how our people **survived** as a society since time immemorial.

• SC-CV-57-14-Opinion(1), slip op at 10-11.

Deschene – Chief Manuelito quote

- “Over 140 years ago, upon the return of the Navajo people back to Navajo country from Hweeldi, the people were gathered somewhere around Fort Wingate, and the leader at the time, **Manuelito (Hastiin Ch'ilhaajini)**, spoke to them. He said, “My people, my relatives, my children, you are about to go back to the homeland. As you do, I must tell you that **you must not forget our ways. You must not forget the language (nihizaad nihil ch 'aawole'iigo), the prayers, and the songs. This is what got us through this experience that we are coming from.**” When you think about that and the law that was established by the Holy People, our human leaders of the past obeyed that. And they carried out the responsibility of instructing the young ones that they must also carry this on. So that is ancient law that we consider in the interpretation of Navajo statutory laws.



• SC-CV-57-14-Opinion(1), slip op at 10-11.

Deschene – Excerpt *(translated)*

- Hostile framework acknowledged
 - “The **American policy** has **affected us**, their language is **pressuring us**, they **established us with it**, **causing us to lose our language** and **making our language difficult** for us.”
- Prioritized
 - “Therefore our law, our language, our **culture** will be **prioritized**, it is our **hope**.”
- Option #2 (Remain separate and distinct)
 - “Even though, like that, **we live in the American society**, we will **not lose our language**”
 - SC-CV-68-14-Opinion, slip op at 9-10 (translated).

Ben Shelly Veto Legislation CO-47-14 (10/28/14)

The Diné language is sacred. Navajo leaders should have both language and cultural fluency in order to be qualified. Every society has an obligation to hold onto their traditions. If we lose our language and culture, who are we?

We, as a Nation, have not committed enough attention to the potential loss of our Navajo language and culture. Nor have we committed enough resources to ensure that our children know their language and culture. As hard and divisive as this subject as become, it is essential for the Navajo People and its government to address this fundamental matter.

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this day of OCT 28 2014, 2014, for the reason(s) expressed in the attached letter to the Speaker:

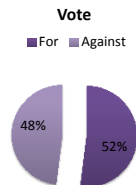

Ben Shelly, President
Navajo Nation

Fluency referendum (2015)

- **Peterson Zah**
 - Current law – Present has to speak fluently Navajo language and understand English language very well.
 - A person does not have to really understand and speak the Navajo language very well.
 - We should not have to change and compromise our language.
 - The language is the **basis for our culture**. It's the **basis of our history**.
 - It's our **sense of who we are**. Its **our identity**.
 - The Navajo people is internationally known for speaking the Navajo language and continue to maintain that language,
 - We helped the United States in conflict with the other countries.
 - It **makes us a distinct** Navajo people
 - **Learn the Navajo language**.
 - That's the **way to survive** and the way to keep ourselves going.

Fluency referendum (2015)

- Results– 52% - 48%
- Abolished fluency requirement





The Future

What is the future?

• At cross-roads

– Lovejoy

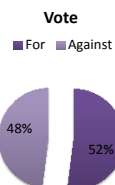
- 2006 – 47% - 53%
- 2010 – 48% - 52%

– Fluency

- 2014 – 52% - 48%
- Source – Navajo Election Administration

- **Finding** – Traditionals declining.

- (i.e. **Assimilated increasing**)



Survival

- Depends on tenacity, adapting, mobility, versatility





Transcending the controversy

Reality

- Knowing **who you are** = Self-esteem / Pride
- We are a **proud** people



Break down the **myths**

- Language and culture = poverty / dysfunction
- Language and culture = corruption



Identify sources of threat

- Both
 - Internal
 - External
- Two ways
 - “Subdue the earth and all living things on it...”
 - “The earth’s feet are my feet...the earth’s body is my body...”



Understand Assimilation Policy

- Strategy
 - Divide and conquer
- Broke down extended family structure
 - Tsoi separated from Cheis
 - Replaced with substance abuse
 - Dysfunction
- Own people contribute
 - Shame each other



Loss of cultural identity – No longer “distinct”

- Benally – “Public domain”
- Donald Trump – “She doesn’t look Indian”
- Bryant (dissent) – Assimilation is a factor of sovereignty
 - Reaffirms McIntosh
 - Reaffirms Allotment (taking)
 - Reaffirms Olipphant (diluted reservation)
 - Reaffirms Dimishment (“Indian character of the land”)

US vs. Bryant (2016) (Thomas dissent)

- “Indian tribes have varied origins, discretetreaties with the United States, and **different patterns of assimilation and conquest**. In light of the tribes’ distinct histories, it strains credulity to assume that all tribes necessarily retained the sovereign prerogative of prosecuting their own members. And by treating all tribes as possessing an identical quantum of sovereignty, the Court’s precedents have made it all but **impossible to understand the ultimate source of each tribe’s sovereignty and whether it endures**. See Prakash, *Against Tribal Fungibility*, 89Cornell L. Rev. 1069, 1070–1074, 1107–1110 (2004).”

Two choices

- 1. **assimilate** (“blended with the conquerors”)
 - » “mingle”
 - » “one people”
 - » “citizenship”
 - Result – No standing to raise tribal rights
 - Result – Loss of reservation
- 2. **remain separate and distinct (reservation)**
 - “safely governed”
 - Result – Language and culture preserved

Indications of Assimilation

- Outsiders become the Experts
 - Hurons –
 - No longer know traditions
 - Archeologist discovered buried long house community
 - Archeologist were teaching the Huron about their own cultural identity
 - how community was organized
 - where the leaders lived
 - where the shamans lived
 - 80% of the food consisted of corn
 - village surrounded by corn fields...
 - Navajos – most studied group

Challenge

- How do we reconcile ?
 - Discovery Doctrine
 - Citizenship
 - Tribal membership

T'aa'akwidi
