Dine Constitution Project

A feasibility study conducted on behalf of Dine Policy Institute
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What DPI Does

• [http://www.dinecollege.edu/policy.php](http://www.dinecollege.edu/policy.php)
• Theoretical development of Dine' based policy process and *methods of analysis*
• *Economic development*
• *Government development*
• Social development (e.g., Family issues)
• Environmental issues
• Safety and Security
• *International Issues*
• *Indigenous Rights*
• Health
• Government Services
• Other areas as assigned by the Navajo Nation
The Main Concerns

1. What is a constitution? What does it serve? Its purpose? As someone says “It would serve as a “solution” to our common Navajo issues.” In some respects, that is hardly a reason.

2. Does the Navajo Nation need a constitution? If not, why not? If we do, what are the pros and cons?
More Concerns

3. If we need it, what reasons would be accepted as legitimate by the Navajo people?

4. If a constitutional model is to be developed that is “culturally relevant”, then what would it look like? In this context, what would culturally relevant mean? What steps should be developed within the Navajo Nation legislative process to make the constitutional adoption possible?
Even More Concerns

• If there’s there to be any meaning to a Dine’ constitution, it should reflect a piece of organic document that will be our “Navajo” thinking, or speech, our planning, our life, our protection? How can such a model be achieved? How can such a model be designed to address issues most pressing to the Navajo Nation?
“... building intellectual bridges between two entirely different systems of knowing the world,” Vine Deloria, 1994. (Cajete 13-14)

- **Concept of Pathways (Cajete Page 55)**
  - Paths have been traveled before
    - Dine governance existed before contact
  - Those who have traveled a pathway before can lead those who travel a pathway now
    - There may be a disconnect between modern Dine governance and traditional Dine governance or,
    - Dine governance on paper is not what Dine governance really is

- **Indigenous Tracking (Cajete Page 56)**
  - Seeking Wisdom
    - What did Dine people do traditionally to govern themselves
  - Vision
    - Hoping I can understand what I see, and explain it to you accurately
  - Finding a source
    - Future research, verify that the Vision was correctly understood
Some Definitions Especially Related to Dine Governance

- Norms – culturally constructed rule
  - Western culture writes them down and calls them rules, statutes, or laws
- Sanctions – consequence of violating a norm
- Traditional – pre-contact governance method
- Governance – how a people govern themselves or are governed by another
- Organic – reciprocal between governor and governed
- Mechanistic – extracting via the office of power
My Goals/Methods Section

• Utilize the Concept Building Method Developed by Political Scientist Gary Goertz of University of Arizona:
  – Build a concept of traditional Dine governance
    • Discuss how these traditional values can and should be incorporated into a normative Dine constitution
  – Address how the current Dine governance model incorporates or fails to incorporate traditional Dine governance norms
Social Science Concepts: a users guide

• From Drive train to the street
  – The disconnect between theory and method in social science
    • Let’s be reliable, replicable, and valid

• Concept building based on logic, not allegiance to one method or another
  – Clear delineations of various levels of abstraction of a concept
  – Relationships across levels clearly delineated
Level of Generality

• Based on the assumption that some words imply more generality than others
  – Indigenous versus Dine
• Keep all levels of generality consistent
  – Indigenous, Native American, First Nations go together
    • All the above imply a regional grouping
  – Dine, P’urepecha, Tohono O’odham go together
    • All the above imply a tribal grouping
The Levels

• **Basic**
  – The most general
  – A place holder for a label

• **Secondary**
  – Less general than basic
  – A set of necessary and/or sufficient conditions which must be present in order to satisfy the test of the presence or absence of the basic concept

• **Data/observation**
  – Least General
  – Tied to the secondary level
  – Serves as the observable traits of each secondary level trait
• Is it similar to Dine language? I’m no linguist but . . .
  – My observation:
    • Consider the way Dine language treats a foreign concept such as “computer” as detailed in Cleary and Peacock 1998, page 128.
      – “. . . new things that come into [the] language are just described.”
  – My Interpretation:
    • Dine language is resistant to stretching an existing Dine term to fit the foreign concept of a computer. Rather, a computer is described in Dine language.
      – Dr. Begay’s reaction:
        » “This is also a way of giving meaning to a foreign concept or a way to identify it, define it, and have control over or recognition of it.”
  – My reaction
    – Identification/definition is the basic level, recognition/control in descriptive terms is the secondary level, and Dine words used is the data/observation level.
  – Consider this possibility
    • English words represent basic level concepts
    • Dine words may represent data/indicator level concepts
Some Theory

• Social Constructivism may apply
  – Norms
    • There is evidence of norms concerning Dine governance
      – Norms are usually not “observable” in terms of western science
  – Sanctions
    • What western thought might call a punishment that is usually extracted from a violator
      – Sanctions differ because they are self actuated as part of the responsibility of an individual
        » Western thought would say a sanction lacks an enforcement mechanism
A Western Government in a Vacuum

• Let’s look at the Wilkins Diagram
• Navajo Tribal Council
  – Tribal Council
  – Advisory Committee
  – Tribal Council Code
    • Bill of Rights
    • Government Structure and Power
    • Tribal Membership Criteria
    • Election Laws
    • Fiscal matters
    • Business and commercial statutes
    • Land Use/natural resource management
    • Law and Order (Oliphant)

• WHERE ARE THE NORMS?
In December 1989, the Navajo Nation Council enacted Resolution CJA-72-89, which codified the separation of powers between the three branches.


Figure 1. Three-branch government of the Navajo Nation

The Navajo Nation government, like all indigenous and nonindigenous governments, is confronted by a battery of critical issues that push it hither and yon. We have already dealt with many of these—the
Traditional Dine Governance

• The Good
  – An organic set of norms and sanctions
  – Logical
  – Conditions are clearly linked to recognition

• The Bad
  – Probably not appropriate for Dine Nation today – needs modification
  – Resolve problem of data and condition connection
Table 1: Three-level View / Concept of Naatanii

Naatanii

Advice and Counsel from Hastoi and Hataali

Selected by Dyiin Dine’ e

Intermediary between Dyiin Dine’ e and Dine people

Limited Scope to Region - reach of directives (geography)

Manage Political Economy, Morality, Internal affairs

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

+ = and
- = or
Table 2: Three-level View / Concept of War Naataanii

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

+ = and
- = or
Table 3: Three-level View / Concept of Peace Naataanii

- Peace Naataanii
- Contribute to the sacred needs of Dine Life and Culture
  - 1. Recognition by Hastoi
  - 2. Recognition by Hataali
  - 3. Recognition by Dine People of a given region
- Exhibit Character
- Be a good speaker
- Exhibit Charisma
- Contribute to the day to day needs of Dine Life and Culture

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

+ = and
- = or
Table 4: Three-level View / Concept of War Naachid

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

* could be six
+ = and
- = or
Table 5: Three-level View / Concept of Peace Naachid

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

* could be six
+ = and
- = or

Peac Naachid

Two to Four Years Since the Last Meet or Tribal Emergency
+ *Twelve War Naataanii
+ No War or other threat is at hand
+ *Twelve Peace Naataanii
+ Peace Naataanii have the Floor
History of Current Dine Government

• 1922 Create Council – who does it represent?
• 1934 IRA era – Dine vote down a constitution
• 1936-37 – Vote on Constitution again but reject in Lieu of “rules”
• 1938 Rules are imposed and council elects itself
  – Recognized by Sec. of Interior as a body representing Navajo people
• 1953 – Constitution issue raised but withdrawn by Dine government
  – Skeptical of a federal heavy hand in light of oil discovery
• STILL NO NORMS!!!
Table 6: Three-level View / Concept of 1922 Tribal Council

- **Business Council**
- **Distribute Royalties**
- **Three Navajos "apparently" choosen by Secretary of Interior**
- **Lease Land**

Access to and distribution of oil, oil revenue.

+ = and  
- = or
Table 7: Three-level View / Concept of Tribal Council Modifications of January 3, 1923

- Committee to Create a Navajo Tribal Council
- Navajo Tribal Council
- Meet when the Commissioner is Present
- *Delegate from each Agency
- *Alternate Delegate from each Agency
- Chair
- Vice Chair

* Removable at the Discretion of The Secretary of the Interior

Federal Instrument of Dealing with All Matters of the Tribe
Table 8: Three-level View / Concept of Tribal Council of January 24, 1923

- **Tribal Council**
  - Twelve Delagates
  - ***Twelve Non-Voting Alternates
  - Chair
  - Vice Chair
  - Federal Representative Present
  - *Convene at the Liberty of the Commissioner

- **Give Commissioner Hagerman Advice**
- ****Give Commissioner Haggerman the Authority to sign all oil and gas leases

**All of the Changes**
- * - Changed to Commissioner of Indian Affairs 10/15/28
- ** - Revoked 10/3/33
- *** - Given Vote 7/10/34
- **** - Expanded its scope of Observation
Table 9: Three-level View / Concept of Tribal Constitutional Assembly 1938:
This Became the "Rules for the Navajo Tribal Council

Executive Committee Created 11-24-36

Constitutional Assembly devised

- Rules for Participation - as Council Members
- Basic Level Morphs into Legislative Body
- Seventy-Four Delagates
- Executive Office: Chair and Vice Chair
- Resolution / Ordinance Approved by Secretary of Interior

*Write a Constitution

* Changed objective to Governing Dine Country in 1938
  - Unclear to me how these rules relate to previous councils but they all appear to overlap somehow
More History

• 1968 – Tribal Chair Nakai era Constitution
  – Approved by Tribal Council
  – Never voted on by Dine people

• Today
  – Reports of a late 2007 push
    • Spearheaded by Ivan Gamble – law student
      – Attempting to get the tribal council to convene a constitutional convention

• AND STILL NO NORMS???
Where does the Tribal Council get its Legitimacy?

- The U.S. recognized the Dine government in the 1850 and 1868 treaties
  - Certain leaders perceived as friendly toward the U.S. interests were singled out as the leaders of the entire group of Dine people
Dine People and Tribal Council

• A factor of colonialism
  – Destroy political economy of Dine people
    • Male/Female dichotomy
      – Valorize and masculinize wage labor
      – Devalorize other forms of living and feminize it
        » Subsistence
        » Sharing
        » Enterprising
    • Subsistence, sharing, and enterprising are also (alternatively) linked to primitive existence
  – Although wage labor is “good”, it rarely exists in Dine country at first
Wages and Dine Country

• The tribal council is legitimized by WWII
  – A war economy puts many Dine people to work
  – War also occupies the time and energy of males

• Mineral extraction takes off
  – Technology flourishes

• Dine people begin to equate employment and education with success i.e. a good salary
Norms Must Exist

• Part of the study is to understand the Dine Cultural norms and see how they might fit into a modern constitution

• Primary and secondary research omits much of the norms

• One exception is Wilkins
  – His treatment seems to dichotomize Dine cultural values between pre and post contact
Modern Dine Governance Is Messy

- Tribal Code
- Codified Resolutions
- “Rules”
- Executive Branch Consolidates Power
  - Later revised
- Legislative Weakened
  - Later revised
- Judicial Court Created
- CD 68-89
Table 10: Subset View of Modern Dine Governance: unclear what still holds power
You should have a 500 year old headache!

Codified Resolution

Executive and Standing Committees

Legislative

"Rules"

Judicial

CD 68-89
Today – CD 68-89

- Reset Tribal Council as governing body
- Codified separate judicial branch
- Breadth of executive limited to implementation of laws
- Breadth of legislative branch limited to enacting laws
- Committee system reduced from 18 to 12
The Levels of Dine Governance

• Basic – labels

• Secondary – a real debate needs to take place
  – Some of the conditions are able to be constructed as stand alone three-level concepts – but going further may violate Dine norms and is likely not necessary to create a viable method of governance
Secondary Level Necessary Conditions

• Are they necessary? (Ragin 2000, pg. 33-34)
  – We want the outcome to be constant: good Dine governance
  – We want to identify which conditions must be present in order to produce the desired outcome
  – Construct a composite portrait
  – Consider how some conditions might be substitutable (or not)
Secondary Level Sufficient Conditions

• Are conditions sufficient? (Ragin 2000, pg. 89-104)
  – Focus on the combination of conditions which together are sufficient to produce good Dine governance
  – Identify which conditions, if any, are sufficient to produce good Dine governance
  – Necessary conditions are not inherently sufficient conditions
Necessity and Sufficiency Tests

• Necessity tests are passed if a condition is identified as needing to be present alone
• Sufficiency tests are passed if a condition or combination of conditions contributes to the desired outcome
  – Which conditions are necessary to produce good Dine governance?
  – Which conditions are sufficient to produce good Dine governance?
  – Which conditions are both necessary and sufficient to produce good Dine Governance?
  – Which conditions are neither necessary nor sufficient to produce good Dine Governance?
Modern Dine Governance Future Research

• If Dine want a pure Constitution, it will likely be incompatible with Dine Values

• Dine Values have evolved (social constructivism)
  – Some aspects of modern Dine life can be addressed with Constitutional governance
    • Political economy
    • Globalization
Combining Dine Norms w/ Western Concepts

• Naataanii
  – War Naataanii
  – Peace Naataanii

• Naachid
  – War Naachid
  – Peace Naachid

• Major Break between pre and post contact
Future Research Continued

• Legitimacy comes from the Dine people
  – Must conduct interviews with Dine citizens
    • How much legitimacy are traditional forms of governance given
      – Based on age
      – Based on gender
      – Based on socio-economic and education level
      – Dichotomize member of government and non-member
    • Answers help us gauge how much of the traditional values need to be included in a normative Constitution
Future Research Continued Again

• Adopting a new government
  – Constitutional or otherwise
  – Legitimacy is key
    • Discover what is legitimate in the eyes of Dine
    • Include those traits in a legislative maneuver
  – Organic/mechanistic dichotomy
    • Depends on legitimacy traits
      – Do Dine people want a method of extracting resources from the Dine governmental administration
      – Do Dine people want a series of responsibilities from themselves to the Dine Nation codified
        » What if needs change? Written documents get stale.
Alternative Future Research

• Discover and make clear links between current Dine Tribal Council and traits we discover are legitimate
  – Use necessity and sufficiency tests
  – Gather information from Dine Citizens to discover what is legitimate
  – Develop normative governance model based on research proposed
Potential Model For Future

- Use Naataanii and Naachid System
- Naachid System becomes Dine governing body
  - 5 agencies
- Peace Naataanii become Domestic Naataanii
  - Each work in conjunction with their regional Naachid
- War Naataanii becomes International Naataanii
  - Monitor international political economy, interaction with other Indigenous nations, and all foreign nations including, U.S. states, and U.S. Federal government.
- Unfortunately, these modifications MUST deal with tribal council overlap and contradictions
Domestic Naachid Proposal

• Govern the geographic areas roughly in line with the current agencies
• Quick Math – will need to be further studied
  – 110 chapters split into 5 agencies equals 22 chapters per agency or Domestic Naachid
• Take existing chapters and split into 11 domestic and 11 international Naataanii
• All 22 Naataanii meet in odd years
• Domestic Naataanii has the floor unless International emergency exists
Table 11: Three-level View / Concept of Proposed Domestic Naachid

Data/Observation Level
1. Recognition by Hastoi  
2. Recognition by Hataali  
3. Recognition by Dine People via vote

+ = and
- = or
International Naachid Proposal

- Govern the geographic areas roughly in line with the current agencies
- 11 chapters per International Naachid
- All 22 Naataanii meet in even years
- International Naataanii has the floor unless Domestic emergency exists
Table 12: Three-level View / Concept of Proposed International Naachid

- **Data/Observation Level**
  1. Recognition by Hastoi
  2. Recognition by Hataali
  3. Recognition by Dine People via vote

- **Symbols**
  - + = and
  - - = or

- **International Naataanii**
  - Bi-Annual Meeting in Even Years or Tribal Emergency
  - Eleven International Naataanii
  - Except for Tribal Emergency, Even year
  - Eleven Domestic Naataanii
  - International Naataanii have the Floor
Naachid Problems to be Resolved

• Chapter structure needs to be further researched and incorporated
• Unclear, at this point, how to utilize attributes of Hastoi and Hataali
• Enforcement mechanisms will be a huge debate
  – Coercion or traditional (My suspicion: traditional RESEMBLES modern day UN)
• Clear list of Domestic Naachid responsibilities
  – These should not overlap with international list – need more concept construction – set theory approach
• Responsibilities delegated to proposed structure MUST be deleted from current structure
• Offices of current government COULD be shifted into proposed structure
International and Domestic Naataanii

• Domestic Naataanii is based on Peace Naataanii
• International Naataanii is based on War Naataanii
  – Needs to be developed further for two reasons
    • War Naataanii is not clear enough in my head as it is described by Wilkins
    • Must resolve a debate – do we agree that International politics is war continued by other means? (U.S. Department of War became Department of State)
Table 13: Three-level View / Concept of Proposed Domestic Naatanii

Domestic Naataanii

Contribute to the sacred needs of Dine Life and Culture + Exhibit Character + Be a good speaker + Exhibit Charisma + Contribute to the day to day needs of Dine Life and Culture

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

+ = and
- = or

Exhibit Character

Be a good speaker

Exhibit Charisma

Contribute to the day to day needs of Dine Life and Culture

Contribute to the sacred needs of Dine Life and Culture

Exhibit Charisma

Be a good speaker

Contribute to the day to day needs of Dine Life and Culture

Contribute to the sacred needs of Dine Life and Culture

Exhibit Charisma

Be a good speaker

Contribute to the day to day needs of Dine Life and Culture

1? 2? 3

1? 2? 3

1? 2? 3

1? 2? 3

1? 2? 3

1? 2? 3
Table 14: Three-level View / Concept of International Naatanii

Data/Observation Level
1. Recognition by Hastoi
2. Recognition by Hataali
3. Recognition by Dine People of a given region

International Naataanii

Knowledge of and Experience (need to conceptualize)

+ = and
- = or

Knowledge of War Way Ceremony

1? 2? 3

1? 2? 3
The Beauty of it All is Optimism

• Take Dine Values and Place Them Under a Western Label
  – Notice that the Domestic Naataanii is exactly the same as the Peace Naataanii
  – We could change the basic level concept name to “chapter”

• But they all need work
  – International Naataanii necessary conditions
    • Add conditions of economic and political savvy
    • Be International in mindset – ala Deloria – Broken Treaties
The Need to Account for Existing Government

- Where do Chair and Vice Chair fit?
- Where do Judges Fit?
  - Can justices fill the role of Hataali (wisemen)?
    Need a concept of Hataali
- Where do Legislators Fit?
  - Can Legislators be individual Naataani?
- Need Research into the Actual Connection between Chapters and Legislative Branch