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## Enduring Sense of American Selves

A window particular  
carved of water and the wind  
from an ocean of sandstone

People emerging from the earth  
four levels into the Glittering World  
four sacred mountains

Opening to the east homeland opening  
women to the north men to the south  
center-west ancestors

Changing Woman at the source  
mother and child  
corn-pollen blessings

Grandmothers Grandfathers saying  
middle-mountain horse wagons  
sheep bells clanging in the distance

Teachers testing Red Lake waters  
journaling Little Colorado poems  
walk the long walk back

Fifty arrowheads for the States  
for the Navajo Nation  
blue yellow red

Three bands of the rainbow  
at the circle's opening dwell the Diné  
people of the sacred mountains

Hesperus and Blanca  
San Francisco Peaks and Taylor  
red rock heart of the Colorado Plateau





Conquered removed returned abiding  
spiritual practical patriotic optimistic  
creative citizens of clans chapters states

Nation within a nation celebrating  
sovereignty in all its forms  
enduring sense of American selves

Free and responsible communities  
acknowledging and protecting  
each other's existence.

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In celebration of Jennifer Nez Denetdale's *Reclaiming Diné History, The Legacies of Navajo Chief Manuelito and Juanita* and the Middle Ground Teachers' Workshops, Window Rock and Holbrook, Nov. 17, 2006



# Navajo Teachers Sovereignty Workshop



The Navajo people are citizens of their families, clans, chapters, states, and two nations, the Navajo Nation and the United States. Talk about sovereignty! Few other Americans have so many layers of an experience that stretches so far back and has such portent for the future.

This workshop brings us together across a suspension bridge that crosses the great Colorado River. May we walk in understanding and in beauty.

## **What is Sovereignty? The Landscape of U.S. / Tribal Relationships.**

- 1. Go around the circle of persons assembled. Have each state what “Sovereignty” means to them.**

(answers)

- 2. Let’s further explore these concepts of sovereignty by gathering the facts that reside within symbols surrounding us. The judicial method involves a careful examination of the facts and the applicable law in rendering a judgment. Remember, each of you is under oath to tell the truth as you testify to us, the jury of your peers!**

### ***The Symbols:***

Window Rock, Navajo Seal, Navajo Flag, Navajo Council Chambers, Navajo Fair, Navajo President’s Inauguration, Side-by-side Navajo Nation and United States flags.

### ***Questions about the Symbols:***

Describe facts about this Symbol from what you see.

What does this Symbol mean to you?

What does this Symbol imply for the rights and responsibilities of citizens making decisions in community?

In what communities are you a citizen? (e.g., family, clan, chapter, Navajo Nation, New Mexico, Arizona or Utah, the United States)



Window Rock

### **Window Rock**

Point out the circle nature has provided. How was this circle created? See the lone tree at the top of the arch. How has it survived? What in your own life and in your community's life is like this tree? Observe that the circle the land provides is repeated in Navajo symbols.

### **The Navajo Seal**

“Fifty outward pointing arrowheads form the outer edge of the seal. Inside this are three bands of the rainbow. They are open at the top, as is the ring of arrowheads. This open area at the top signifies life. Inside the rainbow are two stalks of corn. Corn signifies many important things in the Navajo culture. The whole teaching of our ceremonial system is all in a stock of corn which symbolizes life. In the main stock of the corn there is a blessing waiting. The leaves that come off the corn stock are the different paths one can take and the different levels of knowledge. Of the different ways there is the night way, mountain way, bead way, lightening way, family way and warring way. Inside the corn are the four holy mountains. These holy mountains mark the boundaries of the Navajo land the Holy Ones gave us thousands of years ago. They also represent Mother Earth and the Universe. Directly between the top and the bottom mountain is a horse, a cow and a sheep. These animals also represent life to our people. The sun is above the top mountain, representing Father Sun and life.”<sup>1</sup>



Navajo Seal

## ***The Navajo Nation Flag***

“On a tan background, the outline of the present Nation is shown in copper color with the original 1868 Treaty Reservation in Dark Brown. At the cardinal points in the tan field are the four sacred mountains. A rainbow symbolizing Navajo sovereignty arches over the Nation and the sacred mountains. In the center of the Nation, a circular symbol depicts the sun above two green stalks of corn, which surrounds three animals representing the Navajo livestock economy, and a traditional hogan and modern home. Between the hogan and the house is an oil derrick symbolizing the resource potential of the Tribe, and above this are representations of the wild fauna of the Nation. At the top near the sun, the modern sawmill symbolizes the progress and industry characteristic of the Navajo Nation’s economic development.”<sup>2</sup>



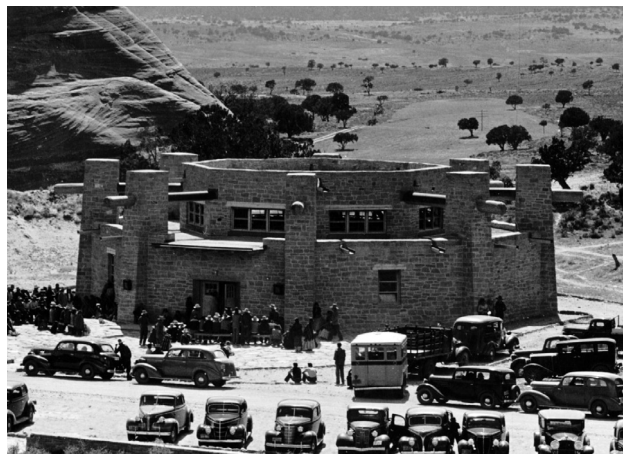
Greg Hobbs

*Navajo Flag*

## ***The Navajo Tribal Council Chambers***

“See the Navajo Nation government in action as the 88 Council delegates (representing 110 Navajo Nation chapters, or communities) discuss critical issues and enact legislation to determine the future of the Navajo people. Reorganized in 1991 to form a three-branch system (executive, legislative and judicial), the Navajos conduct what is considered to be the most sophisticated form of Indian government. While the Council is in session, you’ll likely hear delegates carry on the tradition of speaking in Navajo, providing a perfect example of how the Navajo Nation retains its valuable cultural heritage while forging ahead with modern progress. When the Council is not in session, legislative work is done by 12 ‘standing committees’ of the Council. Inside the circular Council Chambers, the walls are adorned with colorful murals that depict the history of the Navajo people and the Navajo way of life.”<sup>3</sup>

**[Author’s Note:** By a vote of the people of the Navajo Nation, the number of Council delegates has been reduced from 88 to 24.]



Photographed by Millon Snow

*Navajo Tribal Council Chambers, courtesy of the Navajo Nation Museum, Window Rock, Arizona NE19-83 (detail)*



Hogan

### **The First Hogan**

“The first Hogan was built in the underworld by the Holy People. According to Navajo legend, Talking God (Háásch elt í) instructed First Man and First Woman on how to construct and build it. The first Hogan was the ‘forked stick’ or ‘male’ Hogan (ách í ádeez áhí). It contained a vestibule in the front and was only for sacred ceremonies inside.

“The Holy Gods were aware of the needs for the family, so the ‘circular,’ ‘round,’ or ‘female’ Hogan (tsé

beehooganí) became the home for the Diné people and it was built next. This Hogan was much larger and did not contain a vestibule. In it, the children were allowed to play and cry and the women would cook, weave, talk, and entertain. Here too, children were born and men could tell jokes and stories.”

Cornmeal or corn pollen is applied to the four main posts and strewn around the inside to bless a new Hogan. This strengthens the Hogan and provides spiritual, physical, and mental protection for the family that will reside there.<sup>4</sup>

### **Navajo Nation Fair**

“The Navajo Nation proudly sponsors the ‘World’s Largest American Indian Fair’ — the Navajo Nation Fair — attracting visitors from around the world. Held in early September each year, the fair takes place in Window Rock, Arizona, capital of the Navajo Nation, where more than 100,000 people attend the five-day gala. One of the highlights of the fair is the all-Indian rodeo, lassoing in more than 900 Indian cowboys and cowgirls from eight different Indian rodeo associations throughout North America. The Navajo Nation Fair Rodeo offers competition in all events for both men and women.

“The Navajo Nation Fair offers a variety of other events including horseracing, an inter-tribal pow wow, arts and crafts exhibits of world-renowned Indian artists, Miss Navajo Nation competition, an Indian fry bread contest, a baby contest, concerts, country and western dances, song and dance competition, agricultural exhibits, livestock exhibits, food concessionaires, a carnival, and of course, the Navajo Nation parade through the Window Rock area.”<sup>5</sup>

## **Navajo President's Inauguration**

By Troy A. Eid<sup>6</sup>

*Window Rock, Ariz.*

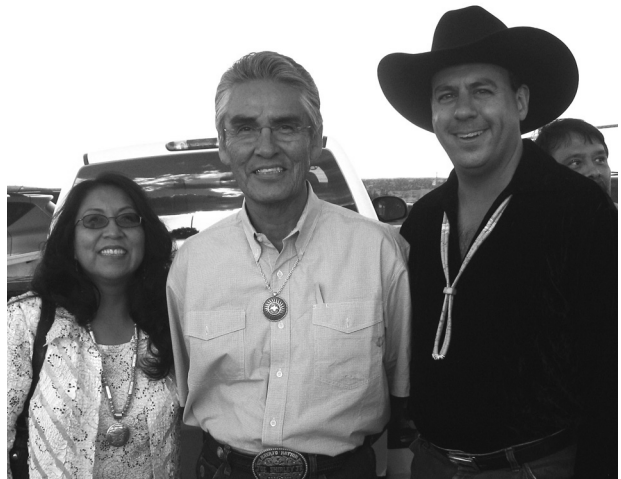
“The inauguration this week turned out to be a very moving experience. Not the inauguration at the state Capitol in Denver, where Gov. Bill Ritter and our other distinguished state leaders took their oaths of office. I mean the biggest inaugural you may never have heard of, the one in this dusty capital nine hours’ drive southwest of Denver, where 10,000 people gathered in a frigid rodeo arena to witness the swearing-in of President Joe Shirley Jr. and the other elected leaders of the Navajo Nation.

“The Navajo Nation is the country’s largest Indian reservation, bigger than all the New England states combined, and home to 225,000 tribal members. Historically, Navajoland reached well into Colorado. Some of the visiting dignitaries here — like Darius Smith, a Navajo tribal member who now lives in Denver, where he serves as Mayor John Hickenlooper’s anti-discrimination office director — are a reminder that thousands of Navajo people still call Colorado home.

“Then there were the handful of visiting federal officials from the Four Corners states, who were greeted with polite but tepid applause from the crowd. Like other Indians living on reservations — including the Southern Ute and Ute Mountain Ute nations in Colorado — the Navajo have been forced to rely on the U.S. government for many of their basic public safety needs for the past 140 years.

“By act of Congress and federal court decree, major crimes committed on reservations — including murder, rape, and any other offense punishable by more than a year in jail or a \$5,000 fine — must be handled by federal law enforcement officers, prosecutors and judges. This is an enormously important federal responsibility. Yet only a handful of federal representatives journeyed here to pay respects to representative government, Navajo-style.

“There's a Navajo joke that ‘the white people may have invented bureaucracy, but we Navajo took the time to perfect it.’ The truth is, the Navajo system of representative self-government, like other democracies elsewhere, can be complicated, frustrating and painfully slow. Yet Tuesday’s inauguration, like the one in Colorado, reminded us there is no better system. There were no F-16s for the ceremony here; our ‘flyover’ consisted of a lone National Guard medical helicopter.



*First Lady Vikki Shirley, President Joe Shirley, and Troy Eid*

Troy Eid collection

“The total combined household income for the thousands of Navajo families seated in the bleachers averages less than \$6,500 per year. The simple dignity and solemnity of the occasion transformed this humble setting into a place of beauty. The crowd roared when the high school band, dressed in headbands and velveteen shirts, broke into ‘Hail to the Chief’ as President-elect Shirley walked up to the podium.

“Then came ‘The Star Spangled Banner,’ sung in the Navajo language. Indeed, nearly the entire three-hour ceremony was conducted in Navajo — or ‘code-talking,’ as the locals call it. Rising at a height of three stories behind the platform, a Navajo rug — the largest ever woven — attested to a resilient culture that it is respected throughout the world. It is miraculous how the Navajo, pushed to near-extinction in the mid-19th century, have survived and flourished.

“This, despite all the strikes against them, and regardless of the inequities that persist to this day. The same goes for the Utes and the other Native peoples of the Southwest who can help us appreciate how truly special Colorado is — if we would only pause to listen.”

*Troy A. Eid is U.S. Attorney for the District of Colorado.  
[now in private practice with Greenburg Traurig, LLP in Denver]*

*Side-by-side Navajo Nation and United States flags at a community gathering place, site of Nov. 17, 2006, Window Rock workshop*



**3. Ask each person to give a short presentation of what she and he learned from this discussion centering on this question:**

What does “Homeland” mean to you and your fellow citizens?

**4. Using these symbols and what you have learned from talking with your fellow teachers, write a poem or a short essay on the theme “What is Sovereignty?”**

**Examples:**

*Navajo Poet Luci Tapahonso:*

Excerpt from *In 1864*<sup>7</sup>

My aunt always started the story saying, “You are here because of what happened to your great-grandmother long ago.”

They began rounding up the people in the fall.  
Some were lured into surrendering by offers of food, clothes,  
and livestock. So many of us were starving and suffering  
that year because the bilagaana kept attacking us.  
Kit Carson and his army had burned all the fields,  
and they killed our sheep right in front of us.

We couldn’t believe it. I covered my face and cried.  
All my life, we had sheep. They were like our family.  
It was then I knew our lives were in great danger.  
We were all so afraid of that man, Redshirt, and his army.  
Some people hid in the foothills of the Chuska Mountains  
and in Canyon de Chelly. Our family talked it over,  
and we decided to go to this place. What would our lives  
be like without sheep, crops, and land? At least we thought  
we would be safe from gunfire and our family would not starve.

The journey began, and the soldiers were all around us.  
All of us walked, some carried babies. Little children and the elderly  
stayed in the middle of the group. We walked steadily each day,  
stopping only when the soldiers wanted to eat or rest.

We talked among ourselves and cried quietly.  
We didn't know how far it was or even where we were going.  
All that was certain was that we were leaving Dinetah, our home.  
As the days went by, we grew more tired, and soon,  
the journey was difficult for all of us, even the military.  
And it was they who thought all of this up.

We had such a long distance to cover.  
Some old people fell behind, and they wouldn't let us go back to help  
them. It was the saddest thing to see – my heart hurts so to  
remember that. Two women were near the time of the births of their  
babies, and they had a hard time keeping up with the rest.  
Some army men pulled them behind a huge rock, and we screamed  
out loud when we heard the gunshots. The women didn't make a  
sound. But we cried out loud for them and their babies.  
I felt then that I would not live through everything.

When we crossed the Rio Grande, many people drowned.  
We didn't know how to swim – there was hardly any water deep  
enough to swim in at home. Some babies, children, and some of the  
older men and women were swept away by the river current.  
We must not ever forget their screams and the last we saw of them –  
hands, a leg, or strands of hair floating.

There were many who died on the way to Hwééldi. All the way  
we told each other, "We will be strong, as long as we are together."  
I think that was what kept us alive. We believed in ourselves  
and the old stories that the holy people had given us.  
"This is why," she would say to us. "This is why we are here.  
Because our grandparents prayed and grieved for us."

The car hums steadily, and my daughter is crying softly.  
Tears stream down her face. She cannot speak. Then I tell her that  
it was at Bosque Redondo the people learned to use flour and now  
fry bread is considered to be the "traditional" Navajo bread.  
It was there that we acquired a deep appreciation for strong coffee.  
The women began to make long, tiered calico skirts  
and fine velvet shirts for the men. They decorated their dark velvet  
blouses with silver dimes, nickels, and quarters.  
They had no use for money then.

It is always something to see – silver flashing in the sun  
against dark velvet and black, black hair.

### **Navajo Nation Supreme Court:**

**Author's note:** On June 2, 2010, the Navajo Nation Supreme Court released a decision invalidating Navajo Nation Council Resolutions CO-41-09 (placing President Joe Shirley, Jr. on administrative leave) and CJA-08-10 (purporting to prevent the courts from considering and applying Diné Fundamental Laws).

The opinion of the court explains that the source of Navajo law traces back to the origins of the Navajo people. It describes Fundamental Law as follows:

*Diné bi beenahaz' áanii* are the very foundational laws of Navajo culture. They are not man-made law, and may not be “enacted” by individuals or entities or the Navajo Nation Council, they may simply be acknowledged by our man-made laws. Our elders and medicine people are the keepers and teachers of *Diné bi beenahaz' áanii*.

*Shirley v. Navajo Nation Council*, No. SC-CV-02-10, slip op. at 15 (Nav. Sup. Ct. June 2, 2010).

The opinion also addresses the origins of the Fundamental Law of separation of powers:

The laws, culture, and value system of the Navajo People have their genesis in the Journey of the Diné from time immemorial to the Emergence into this world. The People are taught early on about the role and responsibilities of a leader and how they are selected. . . . There is a well-known episode from our Emergence that tells us how a dispute came to be and how it was resolved. The episode began when a question arose as to who would be selected as leader. . . .

A group of People nominated the wolf *Ma'itsoh* and they talked about his qualities, that he would protect the People so that we would come to no harm, and he had powerful words and connection to the Holy People. Another group nominated the bluebird *Dólii*, that he was compassionate and had qualities of nurturing, which the People need because that's the way people grow. Yet another group nominated the mountain lion *Náshdóitsoh* because he was a hunter, so the People would never go hungry, so it was about survival. Finally, the last group nominated the hummingbird *Dah yitíhí*, who was swift and would go from plant to plant bringing back pollen, and the pollen represents spirituality and reverence which the People need to have for one another.

The People couldn't agree to choose one leader among those nominated, they each wanted the one each nominated. . . .

In spite of what each group had previously assumed was vital to sustain life, the People felt that *Ma'itsoh*, *Dólii*, *Náshdóitsoh* and *Dah yitíhí*, each brought back a crucial element for life, therefore all would be leaders and must work together to sustain life. The People decided to make all of them leaders. We re-tell this story to emphasize that, since beyond recorded

time, the People have understood the separation of functions of leaders, and that in order to survive as a People, there must be collaboration and coming together both in the community and in the leadership chosen by the People to pool skills, resources and characteristics. . . .

With this episode, Fundamental Law was established that there should not be concentrated power. . . .

*Id.* at 21-23.

*Hazaad jidísin*, words are sacred in Navajo thinking. . . . A leader must always speak the truth and has a responsibility to communicate it to the people . . . . If words are said, they are meant.

*Id.* at 25-26.

### **5. The remainder of this workshop takes us into the text of primary source documents key to the history and law of United States/Native American relationships.**

The Indian Policy of the United States can be divided into six eras: (1) The Colonization Era (1492-1776); (2) The Relocation Era (1776-1880s); (3) The Allotment Era (1887-1930s); (4) The Indian Reorganization Era (1934-1960s); (5) The Termination Era (1960-1970s); and (6) The Self-Determination Era (1975 to the present). See *Treaties: Nez Perce Perspectives* at 18 (copyright 2003 by the Nez Perce Tribe).

Below are excerpts from three primary source documents important to Navajo Tribal current self-determination and sovereignty issues: the United States Constitution, Chief Justice John Marshall's opinion in *Worcester v. The State of Georgia*, and the U.S./Navajo Treaty of 1868.

These and other primary source documents for use in this workshop will be posted on the Middle Ground web page of the University of Northern Colorado, Presidential Academies Program ([www.unco.edu/middleground](http://www.unco.edu/middleground)). They include the 1877 General Allotment (Dawes) Act; the 1934 Indian Reorganization (Wheeler-Howard) Act; the 1968 Indian Civil Rights Act; the 1978 Indian Religious Freedom Act; the Indian Self-Determination and Education Assistance Act; and the Indian Child Welfare Act.

The Dawes Act provided for reservation lands to be allotted to individual members of the tribe. After 25 years of the land being held by the United States in trust for the allottee, the laws of the states would then apply to allow the lands to be sold to non-Indians. This law anticipated that the Indians would become farmers like other homesteaders and the reservations would be eventually extinguished by Indians being completely assimilated into the States. Ironically, the farming purpose of the Dawes Act laid upon the creation of the reservations, whose purpose was to transform the Indians into leading a pastoral life like other Americans, led to the 1908 United States Supreme Court *Winters* decision. This case recognized an implied reservation of water for the reservations that would be senior to all water rights obtained under State law subsequent to the date the reservation

was created (the Arizona Supreme Court's 2001 *Gila River* decision holds that the amount of water reserved is that necessary for all purposes of the Indian homeland).

The Dawes Act created a checkerboard of land ownership within the reservations. The Indian Reorganization Act reversed this policy in favor of encouraging the establishment of tribal governments, keeping the remaining reservation lands intact, and reacquiring for the reservation lands that had gone out of Indian ownership, if possible. Recent U.S. Supreme Court decisions recognize the sovereignty of tribal governments over Indians within reservation boundaries but not over non-Indians.

The Indian Civil Rights Act applied the basic protections of the U.S. Constitution Bill of Rights to tribal governments (for example of a Bill of Rights decision, see Colorado Supreme Court *Schaefer* 4<sup>th</sup> Amendment case on a tent as a dwelling protected against unreasonable search and seizure). By an earlier 20th Century law, Congress recognized that Native Americans are citizens of the United States and the States in which they reside, 8 U.S.C. § 1401.

The Indian Religious Freedom Act provided for U.S. protection of the right of Indians to practice their traditional religions and access to sacred sites and objects. This Act has led to conflicting decisions about the use of eagles in Native American religious practices (the *Tawahongva* and *Winslow Friday* decisions of the Arizona and Wyoming federal district courts).

The Indian Self-Determination and Education Assistance Act recognizes a preference for tribal government involvement in all financial and educational programs and services of the United States affecting the Indian peoples (example, the Animas La-Plata Project of the U.S. Bureau of Reclamation is being built by Ute Mountain Utes, Southern Utes, and Navajos employed pursuant to contracts between the United States and Tribal organizations; each of these Tribes is getting a share of the Animas-La Plata water under a settlement agreement).

The Indian Child Welfare Act requires the States to give notice to the Tribes whenever children of Indian heritage eligible for membership in the Tribes may be placed in non-Indian foster and adoptive homes. This allows the Tribes to intervene and obtain placement of the children with extended family members or other Native American families (example, *B.H. v. People*, Colorado Supreme Court decision).

**6. Discuss these texts in light of the enduring persistence of the Navajo people in protecting and securing their homeland in the face of colonial policies of Manifest Destiny, immigrant thirst for free land under the Homestead Act of 1862, and the access to western lands made possible through the Railroad Act of 1862.**

Consider Jennifer Nez Denetdale's testimony about her search for her ancestors:

"The historical picture often paints Navajos as thoroughly chastised by the U.S. military and then forced after 1868 to eke out a living on the reservation. In contrast, like other stories recorded by Navajos, those by T'ógi clan members shed light on how

Navajo families strove to recreate family and community and maintain a grip on the land. Their stories are about survival and persistence. The process of recovering them has led me to affirm kin ties and reconnect with community and family members across generations. Old stories take on new forms as I become part of the process for reimagining and imbuing them with new meaning.”<sup>8</sup>

**7. In looking at the provisions of the United States Constitution and the 1868 Navajo Nation Treaty, is Chief Justice John Marshall’s vision of the American nation peacefully co-existing with Native American nations a vision capable of being realized? How do the eras of Manifest Destiny, the Civil War, and the Civil Rights Movement demonstrate an America still in transition to realizing the goals of the Declaration of Independence?**

**A. United States Constitution**

Article I: The Legislative Branch

Section 8 (Powers of the Congress)

Clause 3:

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . . .

Section 10

Clause 1:

No State shall enter into any Treaty, Alliance, or Confederation . . . .

Article II: The Executive Branch

Section 2 (Powers of the President)

Clause 2:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .

Article IV: The States

Section 3

Clause 2:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Article VI: Legal Status of the Constitution

Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**B. *Worcester v. The State of Georgia*, 32 U.S. 515 (1832) (excerpts from opinion of Chief Justice John Marshall)**

“America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

But power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin; because holding it in our recollection might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, ‘that discovery gave title to the government by whose subjects or by whose authority it was made, against all other European governments, which title might be consummated by possession.’

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case by the particular government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political; but no attempt, so far as is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport, generally, to convey the soil, from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown did not affect to claim; nor was it so understood.

The power of making war is conferred by these charters on the colonies, but *defensive* war alone seems to have been contemplated. In the first charter to the first and second colonies, they are empowered, 'for their several *defences*, to encounter, expulse, repel, and resist, all persons who shall, without license,' attempt to inhabit 'within the said precincts and limits of the said several colonies, or that shall enterprise or attempt at any time hereafter the least detriment or annoyance of the said several colonies or plantations.'

The charter to Connecticut concludes a general power to make defensive war with these terms: 'and upon *just causes* to invade and destroy the natives or other enemies of the said colony.'

The same power, in the same words, is conferred on the government of Rhode Island. This power to repel invasion, and, upon just cause, to invade and destroy the

natives, authorizes offensive as well as defensive war, but only 'on just cause.' The very terms imply the existence of a country to be invaded, and of an enemy who has given just cause of war.

The charter to William Penn contains the following recital: 'and because, in so remote a country, near so many barbarous nations, the incursions, as well of the savages themselves, as of other enemies, pirates, and robbers, may probably be feared, therefore we have given,' &c. The instrument then confers the power of war.

These barbarous nations, whose incursions were feared, and to repel whose incursions the power to make war was given, were surely not considered as the subjects of Penn, or occupying his lands during his pleasure.

The same clause is introduced into the charter to Lord Baltimore. The charter to Georgia professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, 'at present waste and desolate.' It recites: 'and whereas our provinces in North America have been frequently ravaged by Indian enemies, more especially that of South Carolina, which, in the late war by the neighbouring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; and our loving subjects, who now inhabit there, by reason of the smallness of their numbers, will, in case of any new war, be exposed to the like calamities, inasmuch as their whole southern frontier continueth unsettled, and lieth open to the said savages.'

These motives for planting the new colony are incompatible with the lofty ideas of granting the soil, and all its inhabitants from sea to sea. They demonstrate the truth, that these grants asserted a title against Europeans only, and were considered as blank paper so far as the rights of the natives were concerned. The power of war is given only for defence, not for conquest.

The charters contain passages showing one of their objects to be the civilization of the Indians, and their conversion to Christianity — objects to be accomplished by conciliatory conduct and good example; not by extermination.

The actual state of things, and the practice of European nations, on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims, and the charters they granted. Their pretensions unavoidably interfered with each other; though the discovery of one was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts arose between them, which gave importance and security to the neighbouring nations. Fierce and warlike in their character, they might be formidable enemies, or effective friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominion over their persons, their alliance was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe; lavish in professions of duty and affection, in return for the rich presents they received; so long as their actual independence was untouched, and their right to self

government acknowledged, they were willing to profess dependence on the power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country: and this was probably the sense in which the term was understood by them.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the crown to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign powers, who, as traders or otherwise, might seduce them into foreign alliances. The king purchased their when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr. Stuart, superintendent of Indian affairs, in a speech delivered at Mobile, in presence of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says, 'lastly, I inform you that it is the king's order to all his governors and subjects, to treat Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly, all individuals are prohibited from purchasing any of your lands; but, as you know that, as your white brethren cannot feed you when you visit them unless you give them ground to plant, it is expected that you will cede lands to the king for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done, for the future, at a public meeting of your nation, when the governors of the provinces, or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with your people will be faithfully kept, so it is expected that you, also, will be careful strictly to observe them.'

The proclamation issued by the king of Great Britain, in 1763, soon after the ratification of the articles of peace, forbids the governors of any of the colonies to grant warrants of survey, or pass patents upon any lands whatever, which, not having been ceded to, or purchased by, us (the king), as aforesaid, are reserved to the said Indians, or any of them.

The proclamation proceeds: 'and we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve, under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories lying to the westward of the sources of the rivers which fall into the sea, from the west and northwest as aforesaid: and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and license for that purpose first obtained.

'And we do further strictly enjoin and require all persons whatever, who have, either wilfully or inadvertently, seated themselves upon any lands within the countries above

described, or upon any other lands which, not having been ceded to, or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements.’

A proclamation, issued by Governor Gage, in 1772, contains the following passage: ‘whereas many persons, contrary to the positive orders of the king, upon this subject, have undertaken to make settlements beyond the boundaries fixed by the treaties made with the Indian nations, which boundaries ought to serve as a barrier between the whites and the said nations; particularly on the Ouabache.’ The proclamation orders such persons to quit those countries without delay.

Such was the policy of Great Britain towards the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical exposition of the charters she had granted: she considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged.

This was the settled state of things when the war of our revolution commenced. The influence of our enemy was established; her resources enabled her to keep up that influence; and the colonists had much cause for the apprehension that the Indian nations would, as the allies of Great Britain, add their arms to hers. This, as was to be expected, became an object of great solicitude to congress. Far from advancing a claim to their lands, or asserting any right of dominion over them, congress resolved ‘that the securing and preserving the friendship of the Indian nations appears to be a subject of the utmost moment to these colonies.’

The early journals of congress exhibit the most anxious desire to conciliate the Indian nations. Three Indian departments were established; and commissioners appointed in each, ‘to treat with the Indians in their respective departments, in the name and on the behalf of the United Colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions.’

The most strenuous exertions were made to procure those supplies on which Indian friendships were supposed to depend; and every thing which might excite hostility was avoided.

...

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union. Is this the rightful exercise of power, or is it usurpation?

While these states were colonies, this power, in its utmost extent, was admitted to reside in the crown. When our revolutionary struggle commenced, congress was composed of an assemblage of deputies acting under specific powers granted by the legislatures, or conventions of the several colonies. It was a great popular movement, not perfectly organized; nor were the respective powers of those who were entrusted with the management of affairs accurately defined. The necessities of our situation produced a

general conviction that those measures which concerned all, must be transacted by a body in which the representatives of all were assembled, and which could command the confidence of all: congress, therefore, was considered as invested with all the powers of war and peace, and congress dissolved our connexion with the mother country, and declared these United Colonies to be independent states. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several courts of Europe; offered to negotiate treaties with them, and did actually negotiate treaties with France.

From the same necessity, and on the same principles, congress assumed the management of Indian affairs; first in the name of these United Colonies; and, afterwards, in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction, and with the forces of the United States, and the efforts to make peace, by treaty, were earnest and incessant. The confederation found congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as will those of Europe.

Such was the state of things when the confederation was adopted. That instrument surrendered the powers of peace and war to congress, and prohibited them to the states, respectively, unless a state be actually invaded, 'or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States in congress assembled can be consulted.' This instrument also gave the United States in congress assembled the sole and exclusive right of 'regulating the trade and managing all the affairs with the Indians, not members of any of the states: provided, that the legislative power of any state within its own limits be not infringed or violated.'

The ambiguous phrases which follow the grant of power to the United States, were so construed by the states of North Carolina and Georgia as to annul the power itself. The discontents and confusion resulting from these conflicting claims, produced representations to congress, which were referred to a committee, who made their report in 1787. The report does not assent to the construction of the two states, but recommends an accommodation, by liberal cessions of territory, or by an admission, on their part, of the powers claimed by congress. The correct exposition of this article is rendered unnecessary by the adoption of our existing constitution. That instrument confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and *with the Indian tribes*. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. The shackles imposed on this power, in the confederation, are discarded.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very

term 'nation,' so generally applied to them, means 'a people distinct from others.' The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister states, and by the government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent: that their territory was separated from that of any state within whose chartered limits they might reside, by a boundary line, established by treaties: that, within their boundary, they possessed rights with which no state could interfere: and that the whole power of regulating the intercourse with them, was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December 1828.

In opposition to this original right, possessed by the undisputed occupants of every country; to this recognition of that right, which is evidenced by our history, in every change through which we have passed; is placed the charters granted by the monarch of a distant and distinct region, parcelling out a territory in possession of others whom he could not remove and did not attempt to remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the king of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties; extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others, recognizing their title to self government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence-its right to self government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. 'Tributary and feudatory states,' says Vattel, 'do not thereby cease to be sovereign and independent states, so long as self government and sovereign and independent authority are left in the administration of the state.' At the present day, more than one state may be considered as holding its right of self government under the guarantee and protection of one or more allies.

The Cherokee nation, then, is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.

The act of the state of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity. Can this court revise, and reverse it?

If the objection to the system of legislation, lately adopted by the legislature of Georgia, in relation to the Cherokee nation, was confined to its extra-territorial operation, the objection, though complete, so far as respected mere right, would give this court no power over the subject. But it goes much further. If the review which has been taken be correct, and we think it is, the acts of Georgia are repugnant to the constitution, laws, and treaties of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the government of the union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of congress for regulating this intercourse, and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation with its permission, any by authority of the president of the United States, is also a violation of the acts which authorise the chief magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized, and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the chief magistrate of the union, those duties which the humane policy adopted by congress had recommended. He was apprehended, tried, and condemned, under colour of a law which has been shown to the repugnant to the constitution, laws, and treaties of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the constitution, laws, and treaties of his country.

This point has been elaborately argued and, after deliberate consideration, decided, in the case of *Cohens v. The Commonwealth of Virginia*, 6 Wheat. 264.

It is the opinion of this court that the judgment of the superior court for the county of Gwinnett, in the state of Georgia, condemning Samuel A. Worcester to hard labour, in the penitentiary of the state of Georgia, for four years, was pronounced by that court under colour of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.”

### **C. Treaty Between the United States of America and the Navajo Tribe of Indians**

CONCLUDED JUNE 1, 1868. RATIFICATION ADVISED JULY 25, 1868.

PROCLAIMED AUGUST 12, 1868. U.S. TREATY WITH THE NAVAJOS, 1868

ANDREW JOHNSON, President of the United States of America, to all and singular to whom these presents shall come, greetings:

Whereas a Treaty was made and concluded at Fort Sumner, in the Territory of New Mexico, on the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Lieutenant General W.T. Sherman and Samuel F. Tappan, Commissioners, on the part of the United States, and Barboncito, Armijo, and other Chiefs and Headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which Treaty is in the words and figures following, to wit:

Articles of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo Nation or tribe of Indians, represented by their chiefs and head-men, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and head-men being hereto subscribed), of the other part, witness:

#### ARTICLE 1.

From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If the bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be

tried and punished according to its laws; and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

## ARTICLE II.

The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Canon Bonito, east by the parallel of longitude which, if prolonged south, would pass through Old Fort Lyon or the Ojo-de-oso, Bear Spring, and west by a parallel of longitude about 109 degree 30' west of Greenwich, provided it embraces the outlet of the Canon-de-Chilly, which canon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employees of the Government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in the article.

## ARTICLE III.

The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter-shop and blacksmith-shop, not to cost exceeding one thousand dollars each; and a schoolhouse and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

## ARTICLE IV.

The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

ARTICLE V.

If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as she or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eight acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspect, which said book shall be known as the "Navajo Land Book."

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

ARTICLE VI.

In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settle on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than ten years.

ARTICLE VII.

When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitle to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeed-

ing year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII.

In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian--each Indian being encouraged to manufacture their own clothing, blankets, etc.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate for year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs, in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE IX.

In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2d. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3d. That they will not attack any persons at home or traveling nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

#### ARTICLE X.

No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him provided in article 5 of this treaty.

#### ARTICLE XI.

The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

#### ARTICLE XII.

It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any condition provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

2nd. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3rd. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mexico, and when completed, the management of the tribe to revert to the proper agent.

### ARTICLE XIII.

The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander or the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induced Indians now away from reservation set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W.T. Sherman, Lt. Gen'l, S.F. Tappan, Indian Peace Commissioners.

Barboncito (Chief), Armijo, Delgado, Manuelito, Largo, Herrero, Chiqueto, Muerto de Hombre, Hombro, Narbono, Narbono Segundo, Ganado Mucho, Riquo, Juan Martin, Serginto, Grande, Inoetenito, Muchachos Mucho, Chiqueto Segundo, Cabello Amarillo, Francisco, Torivio, Desdendado, Juan, Guero, Gugadore, Cabason, Barbon Segundo, Cabares Colorados

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-fifth of July, one thousand eight hundred and sixty-eight, accept, ratify, and confirm the said treaty.

## Notes

1. This language, from [www.explorenavajo.com](http://www.explorenavajo.com), has been replaced on that website with a different description of the Navajo Seal.
2. This language is from the Navajo Nation's website, [www.navajo.org/history](http://www.navajo.org/history). Used with permission of the Navajo Nation.
3. This language is from the Navajo Nation's website, [www.navajo.org/history](http://www.navajo.org/history). Used with permission of the Navajo Nation.
4. From *Diné The People*, by Suzanne Eltsosie, [www.marquette.edu/library/neh/eltsosie/resource/hogan.htm](http://www.marquette.edu/library/neh/eltsosie/resource/hogan.htm). The Navajo Tribal Council Chambers is shaped like a Hogan.
5. This description of the Navajo Nation Fair is from [www.americanwest.com/pages/navajo2.htm](http://www.americanwest.com/pages/navajo2.htm).
6. Troy Eid, "Navajo President's Inauguration," Perspective, *The Denver Post* (Jan. 13, 2007). Reprinted with permission.
7. "In 1864," from *Sáanii Dahataal/The Women Are Singing*, by Lucy Tapahonso. © 1993 Luci Tapahonso. Reprinted by permission of the University of Arizona Press.
8. Jennifer Nez Denetdale, *Reclaiming Diné History, The Legacies of Navajo Chief Manuelito and Juanita* (Tucson, Ariz.: University of Arizona Press, 2007).



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