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"Life Comes from It"

Navajo Justice Concepts

Robert Yazzie

Navajo justice is unique because it is the product of the experience of the Navajo people. Prior to contact with European cultures, Navajos developed their ways of approaching life through many centuries of dealing with obstacles to their survival. Likewise, Navajo concepts of justice are a product of the experience we have gained from dealing with problems. To understand these concepts fully, the essential character of Anglo-European law must be compared to that of Navajo law.

Law, in Anglo definitions and practice, is written rules that are enforced by authority figures. It is human-made. Its essence is power and force. The legislatures, courts, or administrative agencies who make the rules are made up of strangers to the actual problems or conflicts that prompted their development. When the rules are applied to people in conflict, other strangers stand in judgment, and police and prisons serve to enforce those judgments (Barsh and Henderson 1978). America is a secular society, where law is characterized as rules laid down by human elites for the good of society.

The Navajo word for "law" is *beehaz'áanii*. It means something fundamental, and something that is absolute and exists from the beginning of time (*Bennett v Navajo Board of Election Supervisors*, 6 *Navajo Rptr.* [Navajo Nation Sup. Ct. 1990], 201-3). Navajos believe that the Holy People "put it there for use from the time of beginning" for better thinking, planning, and guidance. It is the source of a healthy, meaningful life, and thus "life comes from it."¹ Navajos say that "life comes from beehaz'áanii" because it is the essence of life. The precepts of beehaz'áanii are stated in prayers and ceremonies that tell us of *hózhó*—"the perfect state." Through these prayers and ceremonies, we are taught what ought to be and what ought not to be.

Our religious leaders and elders say that human-made law is not true "law." Law comes from the Holy People who gave the Navajo people the ceremonies, songs, prayers, and teachings to know it. If we lose our prayers and ceremonies, we will lose the foundations of life. Our religious leaders also say that if we lose those teachings, we will have broken the law.

These contrasts show that while Anglo-European law is concerned with social control by humans, Navajo law comes from creation. It concerns life itself and the means to live successfully. The way to a meaningful life can be learned in teachings that are fundamental and absolute.

Navajo justice is also pragmatic, and to explain how that is so, I will

describe the problems Navajos address, contrast Navajo thinking with the major concepts of Anglo-European law, outline Navajo dispute resolution processes, and discuss the practical, problem-solving emphasis of Navajo law.

The Social Problems Navajos Face

The core of Navajo justice is problem solving. Navajo legal thinking requires a careful examination of each aspect of a given problem to reach conclusions about how best to address it (Yazzie 1993). Navajos have faced different problems as they have learned the ways of survival in a sometimes hostile environment. In the times of legend, Navajos slew monsters. Today, Navajos face new monsters:

Domestic violence, involving abuse to spouses, elders, and children (Zion and Zion 1993).

Gang violence, when Navajo youth do what they please and refuse to listen.

Alcohol-related crime, such as driving while intoxicated (DWI), with resulting loss of productive lives, and disorderly conduct and fighting among neighbors and families in communities.²

Child abuse and neglect (Hauswald 1988).

The breakup of families in divorce and separation, with lasting effects upon children.

These problems are today's monsters; they are problems that get in the way of a successful life. The element common to all of the stated problems, including widespread alcohol abuse, is a loss of hope. A disease of the spirit infects too many Navajos and leads to increased court caseloads.³ What do modern systems of justice offer to deal with these problems? Have the courts been effective in addressing them? Perhaps the very nature of these problems, grounded in a loss of self-respect and hope, gives us clues about how to address them effectively.

The Adversarial System: Vertical Justice

The first modern courts were introduced to the Navajo Nation in 1892 (BIA 1982; Aberle 1982). Today's Navajo Nation courts were created in 1959 (1958 Navajo Nation Council Resolution Nos. CO-69-58 and CIA 5-59, codified at Navajo Trib. Code tit. 7, § 101 [1978]) and reconstituted in 1985 (1985 Navajo Nation Council Resolution No. CD-94-85, codified at Navajo Trib. Code tit. 7, § 101 [1978]). The courts of the Navajo Nation use

the state model of adjudication, that is, the adversarial system. There are obvious conflicts between Anglo-European justice methods and those of Navajo tradition. In trying to resolve these conflicts, Navajo Nation justice planners sometimes use models to help analyze the differences between the Anglo-European and Navajo legal systems. One useful model describes the Anglo-European legal system as "vertical" and the Navajo legal system as "horizontal" (Barkun 1968; Falk 1959).

A "vertical" system of justice relies upon hierarchies and power (Barkun 1968). That is, judges sit above the parties, lawyers, jurors, and other participants in court proceedings. The Anglo-European justice system uses rank, and the coercive power that goes with rank, to address conflicts. Power is the active element in the process. Judges have the power to affect the lives of the disputants directly for better or worse. Parties to a dispute have limited power and control over the process. A decision is dictated from on high by the judge, and that decision is an order or judgment that parties must obey or else face a penalty. The goal of the vertical system, or adversarial law, is to punish wrongdoers and teach them a lesson. For example, defendants in criminal cases are punished by jail and fines. In civil cases, one party wins and the other party is punished with a loss. Adversarial law offers only a win-lose solution; it is a zero-sum game. The Navajo justice system, on the other hand, prefers a win-win solution.

A fundamental aspect of the vertical system is the adjudicatory process. Adjudication makes one party the "bad guy" and the other "the good guy"; one of them is "wrong" and the other is "right." The vertical system is so concerned with winning and losing that when parties come to the end of the case, little or nothing is done to solve the underlying problems that caused the dispute in the first place.

For centuries, the focus of English and American criminal law has been punishment by the "state." The needs and feelings of the victims are ignored, and as a result, no real justice is done. There are many victims of any crime. They include the direct recipients of the harm and those who depend on them—family members, relatives, and the community. These are people who are affected by both the dispute and the legal decision. Often, the perpetrator is a victim as well, caught in a climate of lost hope, alcohol dependency, and other means of escape.

The victims, or subjects of the adjudication, have little or no opportunity to participate in the outcome of a case. Their needs and feelings are generally not considered, and thus are not addressed. They leave the courtroom feeling ignored and empty handed. The adversarial system is all or nothing, in which strangers with power decide the future of people who have become objects rather than participants.

Money is a driving force in modern American society. Lawyers operate the adversarial system, and money buys lawyers. The best lawyers cost the most. Legal procedures are costly, and only the most wealthy litigants can afford them. Money for justice turns it into a commodity to be bought and sold (Cahn 1960). Many people in our wage- and money-driven industrial society cannot afford redress, so they sometimes turn to extralegal methods for a remedy. For instance, the verdict in the Rodney King case sparked angry outbursts in Los Angeles because the adversarial trial of police ignored systemic violence and racism.

What do consumers of law get from the adversarial adjudication process of the vertical system? This is a difficult question to answer since its methods do not repair damaged relationships, families, communities, and society; instead this process promotes further conflict and disharmony.

Another element of the vertical system is a preoccupation with "the truth." The adversarial system dictates that there must be a winner and a loser. The side that represents the truth as it is perceived by the court wins, while the other side loses. "Truth" becomes a game where people attempt to manipulate the process, or undermine it where it does not suit their advantage. Each person has a version of "the truth," which represents that individual's understanding or perception of what happened.

People have strong feelings about truth, yet the vertical system does not allow the individual an opportunity to express his or her version of the truth in court. This role is taken from the individual and given to a power figure who is a stranger, both to the participants and to the situation in question. Individual perceptions of the truth are based upon one's perspective; the "rules" of the vertical system prevent the parties from presenting their perspectives. As a result, the parties feel disappointed and cheated because they each know what they think happened and the conclusions which should be drawn from that perspective.

When there must be a winner and a loser, truth is important. However, not all situations are best resolved through the adversarial determination of winner and loser. Sometimes solving the problem presented by a situation is more important than determining right and wrong and imposing penalties. Truth is irrelevant to a method of law that emphasizes problem solving.

For example, in a divorce, husbands and wives fight over property, child custody, and hurt feelings. Each party views the situation from his or her perspective of the truth. Based on that "truth," each feels that he or she should win and that the other party should lose. The adversarial system calls upon a husband and wife to make important decisions about their future—and those of their children—at a time when they are not emotionally prepared to look wisely to the future. The couple is not allowed a means to express

their hurt and anger, and because there is no opportunity to deal with emotions, lawyers and judges make unpalatable decisions for the couple. In the process, children are wounded, and the separated couple often fight more after the divorce than before. The process is alien to Navajo thought. In the Navajo tradition, there is a greater concern with the well-being of children and the ability of people to go on with life without hurt feelings.

Vertical justice looks back in time, to find out what happened and assess punishment for it. We may never know what really happened. Vertical justice does not look to the future. It does not try to find out what went wrong in order to restore the mind, physical well-being, the spirit, and emotional stability. I insist that any definition of "law" must contain an emotional element: one of spirit and feelings. Where the feelings of parties are separated from the process and the decision does not address them, dissatisfaction follows. Where the legal system ignores the emotions of the parties, there can be no restoration of relationships.

Vertical adversarial adjudication relies upon power, force, and coercion. When powerful figures abuse their authority, there is authoritarianism and tyranny (Sagan 1985). Navajo thought recognizes the danger of hierarchical, or vertical, systems. There is a Navajo maxim that one must "beware of powerful beings." Likewise, coercion is so feared in Navajo ethics that the invocation of powerful beings (e.g., calling upon them to use their force against another)—a form of coercion—is considered to be witchcraft. The inappropriateness of the vertical system, as imposed upon Indian nations in modern systems of law and courts, becomes more obvious when it is compared to the horizontal Navajo approach.

The Navajo System: Horizontal Justice

The "horizontal" model of justice is in clear contrast to the vertical system of justice (Barkun 1968; Falk 1959). The horizontal justice model uses a horizontal line to portray equality: no person is above another. A better description of the horizontal model, and one often used by Indians to portray their thought, is a circle. In a circle, there is no right or left, nor is there a beginning or an end; every point (or person) on the line of a circle looks to the same center as the focus. The circle is the symbol of Navajo justice because it is perfect, unbroken, and a metaphor of unity and oneness. It conveys the image of people gathering together for discussion.

Imagine a system of law that permits anyone to say anything during the course of a dispute, a system in which no authority figure has to determine what is "true." Think of a system with an end goal of restorative justice, which uses equality and the full participation of disputants in a final decision.

If we say of law that "life comes from it," then where there is hurt, there must be healing.

Navajo concepts of justice are related to healing because many of the principles are the same. When a Navajo becomes ill, he or she will consult a medicine man or woman. Patients consult Navajo healers to summon outside healing forces and to marshal what they have inside them for healing. A Navajo healer examines the patient to determine the illness, its cause, and what ceremony matches the illness to cure it.⁴ The cure must be related to the exact cause of the illness, because Navajo healing works through two processes: First, it drives away or removes the cause of illness; and second, it restores the person to good relations in solidarity with his or her surroundings and self.

The term "solidarity" is essential to an understanding of both Navajo healing and justice.⁵ Language is a key to law, and those who share common understandings of the values and emotions that are conveyed in words are bonded through them (Sagan 1985). Words are signs that also convey feelings. The Navajo understanding of "solidarity" is difficult to translate into English, but it carries connotations that help the individual to reconcile self with family, community, nature, and the cosmos—all reality. The sense of oneness with one's surroundings, and the reconciliation of the individual with everyone and everything, makes an alternative to vertical justice work. Navajo justice rejects simply convicting a person and putting him or her in prison; instead it favors methods that use solidarity to restore good relations among people. Most important, it restores good relations with self.

Navajo justice is a sophisticated system of egalitarian relationships, where group solidarity takes the place of force and coercion. In it, humans are not in ranks or status classifications from top to bottom. Instead, all humans are equals and make decisions as a group. The process—which we call "peacemaking" in English—is a system of relationships where there is no need for force, coercion, or control.⁶ There are no plaintiffs or defendants; no "good guy" or "bad guy." These labels are irrelevant.⁷ "Equal justice" and "equality before the law" mean precisely what they say.⁸ As Navajos, we do not think of equality as treating people equal *before* the law; they are equal *in* it.⁹ Again our Navajo language points this out in practical terms.

Under the vertical justice system, when a Navajo is charged with a crime, the judge asks (in English): "Are you guilty or not guilty?" A Navajo cannot respond because there is no precise term for "guilty" in the Navajo language.¹⁰ The word "guilt" implies a moral fault that commands retribution. It is a nonsense word in Navajo law due to the focus on healing, integration with the group, and the end goal of nourishing ongoing relationships with the immediate and extended family, relatives, neighbors, and community.

Clanship—*dooneike'*—is a part of the Navajo legal system. There are approximately 210 Navajo clans.¹¹ The clan institution establishes relationships among individual Navajos by tracing them to a common mother; some clans are related to each other in the same way. The clan is a method of establishing relationships, expressed by the individual calling other clan members "my relative." Within a clan, every person is equal, because rank, status, and power have no place among relatives.

The clan system fosters deep, learned emotional feelings, which we call *k'é*. The term means a wide range of deeply felt emotions that create solidarity of the individual with his or her clan. When Navajos meet, they introduce themselves to each other by clan: "I am of the [name] clan, born for the [name] clan, and my grandparents' clans are [name]." The Navajo encounter ritual is in fact a legal ceremony, where those who meet can establish their relationships and obligations to each other. The Navajo language reinforces those bonds by maxims that require duties and mutual (or reciprocal) relationships. Obviously, one must treat his or her relatives well, and we say: "Always treat people as if they were your relative." That is also *k'é*.

Navajo justice uses *k'é* to achieve restorative justice. When there is a dispute, the procedure, which we call "talking things out," works like this: Every person concerned with or affected by the dispute or problem receives notice of a gathering to talk things out.¹² At the gathering, everyone has the opportunity to be heard. In the vertical legal system, the "zone of dispute" is defined as being only between the people who are directly involved in the problem (*Association of Data Processing Serv. Orgs. V. Camp*, 397 U.S. 150, 153 [1970]). On the other hand, as a Navajo, if my relative is hurt, that concerns me; if my relative hurts another, I am responsible to the injured person. In addition, if something happens in my community, I am also affected. I am entitled to know what happened, and I have the right to participate in discussions of what to do about it. I am within the zone of a dispute involving a relative. In the horizontal system, the zone is wider because problems between people also affect their relatives.

The parties and their relatives come together in a relaxed atmosphere to resolve the dispute. There are no fixed rules of procedure or evidence to limit or control the process. Formal rules are unnecessary. Free communication without rules encourages people to talk with each other to reach a consensus.¹³ Truth is largely irrelevant because the focus of the gathering is to discuss a problem. Anyone present at the gathering may speak freely about his or her feelings or offer solutions to the problem. Because of the relationship and obligation that clan members have with and to each other, relatives of the parties are involved in the process. They can speak for, or speak in support of, relatives who are more directly involved in the dispute.

The involvement of relatives assures that the weak will not be abused

and that silent or passive participants will be protected. An abused victim may be afraid to speak; his or her relatives will assert and protect that person's interests. The process also deals with the phenomenon of denial, when people refuse to face their own behavior. For instance, a perpetrator may feel shame for an act done and therefore be hesitant to speak. Relatives may speak to show mitigation for the act and to try to make the situation right. For example, Judge Irene M. Toledo of the Navajo Nation Ramah Judicial District has recounted a story in which the family helped a man confront the results of his actions.

The actions of this particular man commenced as an adversarial paternity proceeding familiar to today's child support enforcement efforts. The alleged father denied paternity while the mother asserted it. Judge Toledo sent the case to the district's Navajo Peacemaker Court for resolution. The parents of the couple were present for talking things out in peacemaking. It is difficult for a man and a woman to have a relationship in a small community without people knowing what is going on. The couple's family and everyone else who was present at the peacemaking were well aware of the activities of the couple. In light of the presence of family, the man admitted that he was the father of the child, and the parties negotiated paternity and child support as a group.¹⁴ The participation of a wider circle of relations is an effective means to address denial and get directly to a resolution of a problem rather than get sidetracked in a search for "the truth."

The absence of coercion or punishment is an important Navajo justice concept because there are differences in the way people are treated when force is a consideration. If, as in the vertical system, a decision will lead to coercion or punishment, there are procedural controls to prevent unfair decisions and state power. These safeguards include burdens of proof on the state, a high degree of certainty (e.g., proof beyond a reasonable doubt), the right of the accused to remain silent, and many other procedural limitations. If, however, the focus of a decision is problem solving and not punishment, then parties are free to discuss problems. Thus, another dynamic we may see in Judge Toledo's example is that if we choose to deal with a dispute as a problem to be solved through discussion, rather than an act that deserves punishment, the parties are more likely to address their dispute openly.

Traditional Navajo civil procedure uses language and ceremony to promote the process of talking things out. Navajo values are expressed in prayers and teachings—using the powerful connotative force of our language—to bring people back to community in solidarity. Navajo values convey the positive forces of *hózhóńí*, which aims toward a perfect state. The focus is on doing things in a "good way," and to avoid *hashkéji naat'áa*, "the bad or evil way of speaking."

The process has been described as a ceremony (Bluthehouse and Zion

1993). Outside the Navajo perspective, a "ceremony" is seen as a gathering of people to use ritual to promote human activity. To Navajos, a ceremony is a means of involving supernatural assistance in the larger community of reality. People gather in a circle to resolve problems but include supernatural forces within the circle's membership. Ceremonies use knowledge that is fundamental and that none of us can deny. Traditional Navajo procedure invokes that which Navajos respect (i.e., the teaching of the Holy People or tradition) and touches their souls. Put in a more secular way, it reaches out to their basic feelings.

For example, traditional Navajo tort law is based on *nalyeeh*, which is a demand by a victim to be made whole for an injury. In the law of *nalyeeh*, one who is hurt is not concerned with intent, causation, fault, or negligence. If I am hurt, all I know is that I hurt; that makes me feel bad and makes those around me feel bad too. I want the hurt to stop, and I want others to acknowledge that I am in pain. The maxim for *nalyeeh* is that there must be compensation so that there will be no hard feelings. This is restorative justice. Returning people to good relations with each other in a community is an important focus. Before good relations can be restored, the community must arrive at a consensus about the problem.

Consensus makes the process work. It helps people heal and abandon hurt in favor of plans of action to restore relationships. The dispute process brings people together to talk out a problem, then plan ways to deal with it. The nature of the dispute becomes secondary (as does "truth") when the process leads to a plan framed by consensus. Consensus requires participants to deal with feelings, and the ceremonial aspects of the justice gathering directly address those feelings. If, for any reason, consensus is not reached (due to the human weaknesses of trickery, withholding information, or coercion), it will prevent a final decision from being reached or will void one that stronger speakers may force on others.¹⁵

Another Navajo justice concept we must understand for a better comprehension of Navajo justice is distributive justice. Navajo case outcomes are often a kind of absolute liability, in which helping a victim is more important than determining fault. Distributive justice is concerned with the well-being of everyone in a community. For instance, if I see a hungry person, it does not matter whether I am responsible for the hunger. If someone is injured, it is irrelevant that I did not hurt that person. I have a responsibility, as a Navajo, to treat everyone as if he or she were my relative and therefore to help that hungry or injured person. I am responsible for all my relatives. This value, which translates itself into law under the Navajo system of justice, is that everyone is part of a community, and the resources of the community must be shared with all.¹⁶ Distributive justice abandons fault and

adequate compensation (a fetish of personal injury lawyers) in favor of assuring well-being for everyone. This affects the legal norms surrounding wrongdoing and elevates restoration over punishment.

Another aspect of distributive justice is that in determining compensation, the victim's feelings and the perpetrator's ability to pay are more important than damages determined using a precise measure of actual losses. In addition, relatives of the party causing the injury are responsible for compensating the injured party, and relatives of the injured party are entitled to the benefit of the compensation.

These are the factors that Navajo justice planners have used in the development of a modern Navajo legal institution—the Navajo Peacemaker Court. Before the development of the peacemaker court, Navajos experienced the vertical system of justice in the Navajo Court of Indian Offenses (1892–1959) and the courts of the Navajo Nation (1959–present). Over that one-hundred-year period, Navajos have either adapted the vertical system to their own ways or expressed their dissatisfaction with a system that made no sense (Vicenti et al. 1972). In 1982, however, the Judicial Conference of the Navajo Nation created the Navajo Peacemaker Court (Zion and McCabe 1982). This court is a modern legal institution that ties traditional community dispute resolution to a court based on the vertical justice model. It is a means of reconciling horizontal (or circle) justice to vertical justice by using traditional Navajo legal values, such as those described above.

The Navajo Peacemaker Court makes it possible for judges to avoid adjudication and avoid the discontent adjudication causes by referring cases to local communities to be resolved by talking things out. Once a decision is reached, it may (if necessary) be capped with a formal court judgment for future use.

The Navajo Peacemaker Court takes advantage of the talents of a *naat'áanii* (peacemaker).¹⁷ A *naat'áanii* is a traditional Navajo civil leader whose authority comes from his or her selection by the community. The *naat'áanii* is chosen based on demonstrated abilities, wisdom, integrity, good character, and respect of the community. The civil authority of a *naat'áanii* is not coercive or commanding; he or she is a leader in the truest sense of the word. A peacemaker is a person who thinks well, who speaks well, who shows a strong reverence for the basic teachings of life, and who has respect for himself or herself and others in personal conduct.

A *naat'áanii* acts as a guide, and in a peacemaker's eyes, everyone—rich or poor, high or low, educated or not—is treated as an equal. The vertical system also attempts to treat everyone as an equal before the law, but judges in that system must single out someone for punishment. The act of judgment denies equality, and in that sense, "equality" means something differ-

ent from the Navajo concept. The Navajo justice system does not impose a judgment, thereby allowing everyone the chance to participate in the final judgment, which everyone agrees to and which benefits all.

Finally, *naat'aanii* is chosen for knowledge, and knowledge is power that creates the ability to persuade others. There is a form of distributive justice in the sharing of knowledge by a *naat'aanii*. He or she offers it to the disputants so that they can use it to achieve consensus.¹⁸

Today's consumers of justice in the Navajo system have a choice of using the peacemaking process or the Navajo Nation version of the adversarial system (Tso 1992). The Navajo justice system, similar to contemporary trends in American law, seeks alternatives to adjudication in adversarial litigation. The Navajo Nation alternative is to go "back to the future" by using traditional law (Austin 1993).

Navajo Justice Thinking

The contrast between vertical and horizontal (or circle) justice is only one approach, or model, to see how Navajos have been developing law and justice. We, as Navajo judges, have only recently begun to articulate on paper and in English what we think and do. Navajo concepts of justice are simple, but our traditional teaching, which we use to make peace, may sound complicated.¹⁹ Peacemaking—Navajo justice—incorporates traditional Navajo concepts, or Navajo common law, into modern legal institutions. Navajo common law is not about rules that are enforced by authority; it deals with correcting self to restore life to solidarity. Navajo justice is a product of the Navajo way of thinking. Peacemakers use Navajo thought and traditional teachings. They apply the values of spiritual teachings to bond disputants together and restore them to good relations.

This chapter uses English ways of saying things and English language concepts. It uses "paper knowledge" (in the words of a Navajo academic and lawyer, Elise B. Zion) to try to teach you some of the things that go on in a Navajo judge's mind. To give a flavor of Navajo language thinking, consider the following:

Never let the sun catch you sleeping. Rise before the sun comes up. Why? You must not be dependent. You must do things with energy and do things for yourself. You must be diligent, or poverty will destroy you.

Watch your words. Watch what you say. Remember, words are very powerful. The Holy People gave them to us, and they created you to communicate. That is why you must think and speak in a positive way. Be gentle with your words. Do not gossip. Gossip has a name. It has a mind, eyes, and a voice. It can cause as much trouble as you make by calling it, so do not

call it to you. It causes disharmony and creates conflict among people. It is a living monster because it gets in the way of a successful life. So, as we and our young Anglo friends say, "What goes around comes around." Remember that there are consequences to everything you say and do.

Know your clan. Do not commit incest. You cannot court or marry within your own clan. If you do, you will destroy yourself; you will jump in the fire. Incest is something so evil that it will make you crazy and destroy you.

You have duties and responsibilities to your spouse and children. If you are capable and perform them, you will keep your spouse and children in a good way. If not, you will leave them scattered behind. You will not be a worthy man or woman. If you act as if you have no relatives, that may come to you.²⁰

The Holy People created human beings. Due to that fact, each must respect others. You cannot harm another. If so, harm will come back on you. There are always consequences from wrongful acts, just as good comes from good. Like begets like; harm must be repaired through restitution (*nalyeeh*) so that there will be no hard feelings, and victims will be whole again.

These teachings, and many others, are spoken from the beginning of childhood. Navajo judges are beginning to look at familiar childhood experiences as legal events. For example, when a baby first becomes aware of surroundings and shows that in a laugh, there is a ceremony—the "Baby's First Laugh Ceremony." Family and friends gather around the baby, sharing food and kinship, to celebrate with the child. What better way can we use to initiate babies into a world of good relationships and teach them the legal institution that is the clan?

These learned values serve as a guide in later years. As a child grows, he or she will act according to the teachings. Elderly Navajos tell us that we must always talk to our children so that they can learn these Navajo values and beliefs. If we do not, there will be disorder in the family and among relatives. The children will not listen, and they will have no responsibility to live by. We have youth violence because parents failed to talk to their children (Hauswald 1998).

Conclusion

Traditional peacemaking is being revived in the Navajo Nation with the goal of nourishing local justice in local communities. The reason is obvious: Life comes from it. Communities can resolve their own legal problems using the resources they have. Local decisions are the traditional Navajo way, in place of central control. Everyone must have access to justice that is inexpensive and readily available, and that does not require expensive le-

gal representation. Peacemaking does not need police, prosecutors, judges, defenders, social workers, or the other agents of adversarial adjudication. Peacemaking is people making their own decisions, not others forcing decisions upon them. There are 110 chapters, or local governmental units, in the Navajo Nation. As of this writing, there are 210 peacemakers in 89 chapters, and we will extend the Navajo Peacemaker Court to every community.

This revival assures that Navajo justice will remain *Navajo* justice and not be an imported or imposed system (Austin 1993). Navajo peacemaking is not a method of alternative dispute resolution; it is a traditional justice method Navajos have used from time immemorial.

Author's Note

I adapted this chapter from an instructional outline I developed for presentations to non-Navajo lawyers and judges. It evolved in my thinking since January 20, 1992, when I assumed responsibilities as the chief justice of the Navajo Nation and chose Navajo common law and the Navajo Peacemaker Court as personal priorities. These ideas will continue to grow as I discover more about my culture, language, and traditions.

I draw upon two sources as I attempt to reconcile Navajo justice thinking with Anglo-European thought. I am a product of Bureau of Indian Affairs (BIA) boarding-school education, the type of education that was so destructive of the Navajo culture (Hauswald 1988). When I got out of boarding school, I was given a ticket to California to learn a manual skill in an electronics school. They told me I could not go to college, so I went to college. I was fascinated with the power, authority, and (as I thought then) money that went with being a lawyer, so I went to law school. When I got my law degree, I put it to use as a trial judge in the courts of the Navajo Nation. That returned me to another school—the school of Navajo life. Now, I seek to reconcile my paper knowledge with the vast knowledge that is held by my elders — “the keepers of the tribal encyclopedia” (in the words of Canadian philosopher Marshall McLuhan).

Sometimes I get impatient when I consider how traditional wisdom has so much value that has been forgotten. Sometimes I get angry about how Anglo law has overcome Navajo law, to the harm of Navajos. I read an evaluation of my talk on Navajo common law, after a conference with state judges and lawyers, which said, “Yazzie is bashing Anglo justice systems again.” That is not my intent.

Emotions are important to me. The stereotype of the stoic, passive, or unemotional Indian is false, and emotions are an important part of Indian life. Navajos have a lot of pride, and when used in a good way, pride is a

very positive emotion. How else could I have thrown away a ticket to an electronics school and insisted that I was capable of getting a college degree? It took a lot of drive and a little angry pride to tough it through law school in a time when non-Indians assumed that Indians were not capable of understanding the mysteries of “the law.”

To me and too many other Navajos, law is something that “just is.” To explain it in my own mind and to you, I need a basis for comparison. That basis is the shortcoming of modern American adjudication, and I am not alone in decrying its destructive elements. I share a fondness for centuries of English-American common law traditions, but changing circumstances now require us to take a new look at that indefinable quality we call “justice.” As we of the Navajo Nation discuss the traditional knowledge that gives us power to survive in modern times, I find a property that is immensely valuable. I want to share it with you out of respect and to honor Navajo distributive justice. You, who have taken an interest to read this, are like a relative. This relationship will help us grow together in a good way, because life comes from it.

Notes

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1. The term “Holy People” refers to divine personages or spirit forces that were instrumental in the creation of the world. Following creation and the exodus of the Navajo people to their present place in this world, the Holy People went into the rocks and earth, where they still help. “Put there from the beginning of time” is a well-known Navajo phrase that means the Holy People established certain fundamentals as part of creation. “Life comes from it” refers to the fact that law is basic and that a meaningful life is one of its products.

2. We estimate that of our current criminal caseload (cases brought forward plus new filings), approximately 90,000 matters, or 70 percent of the offenses, are related to or the product of alcohol use. This leads us to wonder whether criminal law is the best tool to address crime and alcohol (Barsh and Henderson 1978). Driving while intoxicated is a problem all jurisdictions in the Southwest share. Alcohol-related mortality (deaths that are the product of alcohol consumption) is high in New Mexico. It has the highest motor vehicle–accident fatality rate in the United States. Blood alcohol levels are present in 51 percent of auto crash deaths, 49 percent of homicide victims, and 42 percent of suicides (Chavez et al. 1993). Disorderly conduct and fighting is our greatest category of criminal offenses. Navajo Nation trial judges agree that disorderly conduct most often involves drinking and fighting in family and community settings.

3. Over 85,000 criminal and civil cases were pending in FY 1992, and 93,000 in FY 1993.

4. In Navajo thought, like begets like.

5. Note that one dictionary definition of the word “solidarity” recognizes Native thought as “a union of interests, purposes, or sympathies among members of a group;

followership of responsibilities and interests: 'The savage depends upon the group . . . for practical cooperation and mental solidarity' (Bronislaw Malinowski)" (Morris 1981).

6. Again, forcing a person to do something against his or her will is a form of witchcraft, something that is considered horrible in Navajo thought.

7. Navajo Nation associate justice Raymond D. Austin recently told an audience of lawyers at a conference that we must not use bad words to accuse others because the Holy People gave us our language and told us we must not abuse others with it. I cannot call another a "bad guy," and when Navajos are called upon to do so in adjudication, that goes against their ethical values.

8. Navajos sometimes appear to be literal because the Navajo language is very precise. The maxim is that "words are very powerful" because we use them with precision, and they mean what they say.

9. In Anglo thought everyone is equal *procedurally* within the judicial system. Yet there are still glaring inequalities among the poor, women, AIDS victims, and others who are distinguished by gender, class, race, or sexual orientation. In Navajo thought, all people are genuinely equal in status and outcomes; equality is not limited to an individual's involvement with the judicial process.

10. Judges of other Indian nations point out the same conclusion for their languages. As in the state and federal courts, guilty plea rates are high in tribal courts. Is it because of the overwhelming power of the "state"? Is it because (as we believe) Indians are essentially honest and tell the truth? Is it because those who are charged in our courts have a different concept of fault? Is it because our traditional law disregards "guilt" and "innocence" in place of problem solving?

11. There are four original clans. As Navajo women married people from other Indian nations, or women from other nations became clan mothers, the number of clans grew. However, the exact number of clans that resulted from this process is a point of some controversy among the Navajo people. A Navajo is a member of his or her mother's clan and "born for" his or her father's clan; the use of grandparent clans establishes even more extended relationships so that most Navajos are relatives of most others.

12. Disputes commonly involve matters such as land squabbles, divorce, probate, or contract. Navajo "notice" need not be in writing, and it is not concerned with a specific written statement of an accusation or proposed punishment. There is a right to participate in a gathering to solve problems because it affects everyone. Navajo due process requires notice to a wider circle of people than is required by general American due process.

13. There are some unspoken limitations, of course, such as the prohibition against abusing each other with words.

14. Judge Toledo also saw a creative use of services, such as supplying firewood in place of money, which the father did not have.

15. The Navajo language tells us a lot about Navajo attitudes toward Anglo justice. A lawyer, 'agha diit' aahii, is one who takes away with words. This definition describes someone who uses words for coercion. Someone who "takes away with words" is a pushy bossyboots.

16. One study of Navajo witchcraft directly relates the beliefs and practices to sharing and group survival (Kluckhohn 1944).

17. The word "naat'aanii" refers to someone who speaks well and whose words reflect good guidance. Sometime around the year 1832, Chinle area Navajos attacked the Hopi village of Oraibi because of the killing of a Navajo leader. Darts at the Enemy, by a Hopi. The death was particularly harmful to the man's Towering House Clan, because

when he delivered speeches, "he would 'talk in' all kinds of goods from every side (i.e., he would bring prosperity to his people by saying they were to receive it)" (Preston 1954). The respect for Darts at the Enemy shows that successful planning is the aspect of "speaking well" that Navajos respect in a leader.

18. I have often said that "knowledge is power." To Navajos, knowledge is a form of wealth or property. Sharing it with those who do not have it is distributive justice and assumes that those the naat'aanii helps are entitled to a fair share of that power.

19. As Navajo judges and their staff discuss law, history, religion, and philosophy to improve their system, language barriers and conceptual differences become more obvious—that is, there are difficulties when we discuss such things in English and write them down. Mary White Shirley, a Navajo lawyer, once complained to a non-Navajo lawyer: "You silly Anglos; you always have reasons for everything. Don't you know that some things just *are*?"

20. Navajo says of a wrongdoer, "He acts as if he has no relatives." It is horrible to think that such a thing could happen. Homer Bluehouse once said that when a person did something very evil, or was a repeat offender, the community would shun him or her. That often leads to suicide because being without relatives is the worst thing that can happen.

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