



Áłchíní Bi Beehaz'áanii: Applying Navajo Fundamental Law to Preserve Cultural Heritage

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Introduction

In 1989, a mom travelled 200 miles off the reservation to give birth to twins, and right after she was released from the hospital, the Holyfields, enrolled members of the Choctaw Nation, went to the courthouse to terminate their parental rights. The court quickly facilitated the adoption of the twin babies, without giving notice to the Choctaw tribe. Finally after a year, the Choctaw tribe tried to petition to void the adoption decree, because they did not receive any notice, and therefore, did not comply with Indian Child Welfare Act. The state court argued that since the Holyfield's had their babies off the reservation, then the tribe did not have jurisdiction. The Supreme Court voided the adoption and returned the twins to the Choctaw Nation. The Supreme Court ruled that since the reservation had a limited number of hospitals where a woman can have a baby, most of them went off the reservation to have babies. The babies and the mother were still domicile of the tribe, and so the tribe had exclusive jurisdiction. *Mississippi Band of Choctaw Indians v. Holyfield* was one of the first times that the adoption involving Native children made it to the Supreme Court. The Supreme Court's interpretation of ICWA was to rule in favor of a tribe.¹

The question is, was it is the right thing to do? It's easy to see that the Nonnative couple could have provided for the child, and that child would not have been exposed to the everyday struggles of being in a foster care system. It's also understandable the importance of maintaining cultural heritage, but if the tribe cannot provide adequate homes for the child, wouldn't they be better off being placed in a stable home? These are questions that will be explored throughout the unit.

Áłchíní are considered sacred and holy in the Navajo Culture. This principal is so important that the Navajo Nation claimed authority to assert jurisdiction over all Navajo children regardless of where they reside.² Do the children know they have rights? Do they know their rights? Do they know that their culture and heritage is an important part of who they are, and an important part of their rights?

Kayenta Unified School District is located inside the borders of the sprawling and vast Navajo Reservation that is approximately 17,544,000 square miles located in the four corners area. The scenic reservation extends into southeastern Utah, Northwestern New Mexico, and a majority of it is in Northeastern Arizona. It is the largest reservation in the United States. The tribe has approximately 350,000 members according to 2016

data. The town of Kayenta is a rural community that has a population of approximately 5,189 people according to the 2010 Census. The population is mostly Navajo people. Kayenta Township and Kayenta Chapter are the two government systems that operate in the town. The township is operated by a 5 member elected board that meets the needs of the town and people who live within the vicinity of the township, while the Kayenta Chapter is operated by the Navajo tribal Council Delegate that represents the town of Kayenta and the surrounding communities at the Navajo Nation Capital in Window Rock, Arizona. Most of the funds generated by business in town come from community members and surrounding community members who come into town to shop at the only Bashas Shopping Center, several fast-food restaurants, and a couple of gas stations within a 50 mile radius. Additional moneys are generated from tourists who pass through the town to visit several tourism prospects. The town is located about 30 miles from the Utah border and picturesque Monument Valley, and about 90 miles from the Four Corners, the only place where four state borders meet. Furthermore, it is approximately 50 miles from Canyon De Chelly in Chinle, Arizona. Kayenta Unified School District #27 has three schools; Kayenta Elementary School, Kayenta Middle School, and Monument Valley High School. According to the June 19, 2019 School Board Minutes, approximately 2,698 students attended the school district. A majority of the students are Navajos.

I teach fourth grade English Learners (EL) in a Structured English Immersion (SEI) class. Students in the SEI classroom are identified using the Primary Home Language Other Than English (PHLOTE) survey. Basically, the survey asks three questions: does the child speak another language, do the parents speak another language, and does anyone in the household speak another language? If a parent or guardian answers yes on one or more of the questions, they are considered for SEI class, dependent on how well they do on the placement assessment. If the student passes the placement test, they are placed in a general education classroom. If they do not pass, they are placed in an SEI classroom. An SEI class offers intensive 4 hour block of English Language instruction which include one hour of oral communication/ vocabulary, one hour of reading, one hour of grammar, and one hour of writing for students who speak English as a second language. The state of Arizona has established proficiency standards for each domain. The goal is to reclassify the students as proficient in the English Language within two years of identifications. The students are assessed each year using Arizona English Language Assessment (AZELLA). In order for a student to reclassify, they have to test proficient in composite score, and especially score in proficient in reading and writing domains.³

Any curriculum with meaningful content, especially related to history and culture is lacking in most schools due to the current focus on raising test scores for English Language Arts and Mathematics. Often I find myself teaching foundational reading skills, when I should be teaching my students comprehension skills. I believe that comprehension can be taught from content rich curriculum. This unit will help teach students comprehension skills using Navajo history, and the implication of policies.

Content Objective

Shift in Indian Policies

Federal Indian Policies has seen many significant changes since the United States became a nation. Some of the changes in policy to deal with the “Indian Problem” had three underlying assumptions: 1. Indians would assimilate, 2. Indians would eventually disappear, die out due to relocation, loss of traditional subsistence and economic practices, and 3. Indians would be exterminated: as a result, the Federal Indian Policies were

marked by short term solutions.⁴

American Indian History is divided into several sections; the Treaty Making Era, Removal Era, Reservation Era, Allotment & Assimilation Era, Indian Reorganization Act Era, Termination & Relocation Policy Era, and finally, the American Indian Self-Determination Policy Era. The Treaty Making Era began before the United States became a nation. Native Americans had treaties with European powers, and that practice continues through 1871, overlapping with other eras.⁵ The practice of making treaties is an agreement between nations, in this case, the agreement between United States and tribal nations. The Constitution along with Treaties were determined as the “Supreme Law of the Land,” and that is still the case today. Many treaties were attempted between the Navajos and various governments to prevent raiding. However, the treaties were unsuccessful because the governments involved did not understand the Navajos governed themselves through “Natural Community” system. Basically, the Navajo family units lived in bands of family units with their own headman. A headman was only responsible and governed his own band. So when a headman signed on behalf of his family unit, it did not include all other bands of Navajos.

Under President Andrew Jackson, Federal Indian Policies changed quickly. The Indian Removal Act was passed by Congress to remove Native Americans from the east coast, the southeast, and Northeast United States to west of the Mississippi in order to obtain more land for the expanding American colonies, and the discovery of gold in Georgia. As the non-Indian population continued to grow, more and more people started moving west seeking to make their fortune in ranching, farming, industry, and mining, especially after the discovery of gold in California. However, miners and settlers targeted California Indians for extinction, especially during the California Gold Rush.⁶ In wake of expansion of the United States to the west in the late 1840's, the reservation concepts were created to relocate more Native Americans, as opposed to killing Indians. Most Indians relinquished their land in exchange for a guarantee for tribal sovereignty. Many congressional laws were passed to gain federal control over Indians. When Indian Military diminished, the government relinquished their promise for Indian sovereignty. By 1871, Congress prohibited further treaties. Fortunately, the Navajos were able to negotiate the Treaty of 1868 before it went away. The Treaty allowed the Navajo people to go “home.”⁷

After the Civil War, Native Americans again found themselves in the way of “progress.” This marked the beginning of the Allotment and Assimilation Era. From 1887 through 1933. By this time, the population of America reached from coast to coast, but Native Americans are still visible. Senator Dawes and congress passed the Dawes Act along with other legislation to break up tribal land holdings as a means to assimilate the “civilize” the Indians into the dominant culture and society. In other words, the agenda was to actively and aggressively end tribal sovereignty.⁸ The General Allotment Act allowed the President of the United States to divide the reservation into 160 acres allotments to each family and placed in 25 year trust. The leftover reservation lands were opened up to white settlers. The goal was to encourage the Indians to become farmers, and acquire the habit of thrift, industry and individualism needed for assimilation into white culture.⁹ In addition, Following the Dawes Act, other policies allowed Indians to lease or sell allotment with permission from Indian Affairs, before the 25 years were up in response to pressure from white settlers. In the end, The Dawes Act was considered a failure, and played a huge role in opening vast amounts of Indian Lands to white settlers.

The 1928 published Meriam Report findings included extreme poverty, and extremely poor health conditions of American Indians in 20 states. Again, the Navajo Reservation was excluded from the allotment provision. The reservation actually increased in size. First of all, the Navajos had honest agents on their side who

advocated on behalf of the Navajos because the reservation was not suitable for farming. Secondly, the Navajos had a strong delegation who made numerous trips to lobby to extend their reservation.¹⁰

By an Act of Congress in 1934, The Indian Reorganization Act also known as Wheeler-Howard Bill was passed to mark return to American Indian self-governance. The goal of the Wheeler-Howard Bill was to restore management of affairs to tribes, prevent further depletion of material resources, and build up economically sound basis for livelihood. John Collier was appointed as commissioner for Indian Affairs by President Roosevelt in 1934. His first order of business was to end allotment policy, and reconsolidated the land into reservations, and reinstate or reorganized tribal governments.¹¹ Tribes were also encouraged to create their own constitution and by-laws. Unfortunately, the constitutions were standardized and largely based on the American constitution. Within the two year provision, 181 tribes adopted the act. The Navajos and 77 other tribes rejected the act.¹²

Termination and Relocation: Indian Policy (1945 – 1961) under President Eisenhower was designed to force Indians into white civilization as a way to include Native Americans into the New Deal.¹³ The federal government wanted to relieve itself of the burden of providing for Indians after World War II. The objective was to sever land ties, and rescue Indians from poverty on reservations, but ultimately, they wanted to terminate ties between the federal government and tribal government, and tried to make the Indians disappear. The plan was to relocate Indians from rural communities to urban cities to eliminate government dependency and assimilate them through total immersion, unconcerned with Native American cultures. Many relocated Indians suffered through victimization, and unemployment, while the reservations suffered from decreased funding. Despite the devastation, the government was unprepared for increase in Indian resistance, and cultural resiliency. The Termination and Relocation policy created a lasting distrust between federal government and Native American tribes.¹⁴ The Navajos were fortunate enough to escape the termination policy and Public Law 280 because the government did not feel like the Navajos were ready to be emancipated.¹⁵ Public Law 280 allowed certain states civil and criminal jurisdiction over Indian Reservations.

Response toward Native American Indians began to change around the 1960s especially after coalitions and factions like the American Indian Movements and other groups were established. The resistance drew attention to the plight of Native Americans as a result of federal policies. Both President Lyndon B. Johnson and President Richard Nixon supported the policy of self-determination for American Indian People. President Nixon was able to reinstate the status of some tribal nations that were terminated in the previous era. Two critical pieces of legislation passed in congress: The Indian Self Determination and Education Assistance Act (1975) and the Indian Child Welfare Act (1978).¹⁶ American Indian Self-Determination Policy ended termination and relocation policies, and emphasized the status of tribal nations as sovereign nations, domestic dependent nations with a status higher than states, re-affirmed treaties, in conjunction with the Constitution, as the supreme law of the land. It also authorized the Bureau of Indian Affairs to contract directly with tribal nations to run their own programs and services.

Indian Self Determination Policy allowed for maximum Indian Participation in federal services to Indian communities that was more responsive to the needs and desires of the local communities. The policy allowed for transition of services of programs to be planned, conducted, and administered by tribal governments. However, the tribal organizations had to contract with Health and Human Services, and Secretary of Interior to operate federal programs.¹⁷

In addition, tribes began developing departments, and running their programs in education, forestry,

economic development, environmental management, health and safety. One aspect was that the tribes were able to employ their own qualified tribal members to run the programs and administration. Additional legislative policies were added by Congress that supported the Self-Determination status of American Indian Nations as governments. Some examples include but not limited to; Tribal Forest Protection Act (2002), the Indian Gaming Regulatory Act (1988), and the Tribal Law and Order Act (2010). Furthermore, numerous Executive Orders of the President reinforces Self-Determination of Native tribes including EO13007 (1994) Protection of Indian Sacred Sites, and EO13175 (2000) Consultation and Coordination with Indian Tribes, and many more.¹⁸

Indian Adoption Project

The United States Children’s Bureau (USCB), the Bureau of Indian Affairs (BIA), and the Child Welfare League of America (CWLA) collaborated on the Indian Adoption Project which was designed to remove legal barriers and allow Native children to be adopted by non-Native children. The justification was that the child would have a better life. The success of the project depended on six factors: demand for adoption by white couples, media coverage, living conditions, high fees for adoptions, and assimilation. Indian children were publicized as being highly adaptable. In addition, the Indian Adoption Project was a way to solve the “Indian Problem.” Children were being removed from reservations because parents were considered incapable of taking care of their children. These adoptions were made within the particular context of the “termination” era. Originally, the plan was to adopt out 50 children and study the success of placement. The placements were often in eastern states, far from the reservations. Approximately 12,881 Native children were adopted out to non-Native parents.¹⁹

Indian Child Welfare Act

The Devils Lake Sioux Tribe noticed that the local county welfare office routinely removed children from their homes and placed them in foster care. They allowed non-Indians to adopt the children without consent from the parents. The tribal officials were not consulted over the adoptions. With the assistance of Association on American Indian Affairs (AAIA,) the tribe decided to challenge these actions. Events following this challenge led to the passage of Indian child Welfare Act.²⁰

On November 8, 1978, the Indian Child Welfare Act (ICWA) became Public Law. ICWA was designed to protect Native American families, and preserve cultural heritage. Whenever possible, ICWA is to make an active effort to keep Native children with their biological parents.

Title I of the legislation gave the tribal government the power to assume jurisdiction of child custody over an Indian child. The child must be a member of the tribe or eligible member of a federally recognized tribe. Membership will be determined by the relevant tribe. Temporary foster care placement, hearings to terminate parental rights, pre-adoption placement after termination of parental rights, and adoptive placement require ICWA intervention.

The tribe has exclusive jurisdiction of the proceedings if the mother or the child live in Indian country. If a proceeding is brought to the state court by a child or parent who live outside Indian country, then the state court is required to notify the relevant tribe. The tribe intervenes and the case will be transferred to tribal courts. In the event that biological parents waive transfer, the state courts are still required to follow ICWA's preferential placement, unless they can show good cause to the contrary. Preferential placement include a child being placed with member of Indian child's extended family, placement with other members of the Indian child tribe, and placement with an another Indian families.

Controversies and misunderstandings continue to undermine the intent of ICWA. Despite being aware of the requirements ICWA, many state child welfare departments often fail to report to tribes, and often proceed under state courts. When this happens, the tribe has to file a petition with the state court as an intervention.²¹ Others believe that because of placement priorities emphasized parental and tribal placement, ICWA jeopardized the safety of American Indian children, especially when high standard of evidence is required to intervene in the case of an abused child. Since the passage of ICWA, 25% more children are being placed in out of state home care. Children are being moved to home care to await culturally appropriate placement, instead of preserving families or preventing placement.²² Funding for social services has also become an issue, especially to meet the needs of children being placed in foster care. Caseloads are often large, and high turnover rate for case workers. The high turnover rate prevents the welfare workers from learning the provisions of ICWA.²³

Naat'áani

According to Navajo Origin Stories, four chiefs were designated as the first leaders by Changing Woman after the Navajos emerged from the Lower World to the Upper World. Each Chief was assigned to each cardinal direction, with the East Chief having priority. The function of first Naat'áanii were selected to provide discipline to the people. Disciplines included corrections of behavior, maintenance of moral restriction, and enforcement of economic laws. They worked as mediators between the people and the Diyin Dine'é (Navajo Deities). They organized the world, held the first council, and established clans²⁴. The people were given directions on how to build hogans, develop farming using an irrigation system, and hunting.

Before the Spaniards and the Americans came to the southwest, the Navajos had their own government, but it did not share any similarities to either the Spanish government or the American government. Navajo societies governed through "natural communities" that was more economically based and geographically determined. The cohesiveness of the Navajos people came from the common linguistic and cultural heritage in a well-defined territory.²⁵ The people did not have a main leader or central government because their political organization in general did not extend beyond local band who were led by Naat'áanii²⁶. Naat'áanii were headmen who often sought advice from elderly or a medicine men to address internal matters, intertribal affairs, hunting, and food gathering issues. Women were not excluded from becoming Naat'áanii.

The Navajos recognized a need for separate War Naat'áanii and Peace Naat'áanii. Neither Naat'áanii had power over the other, and often influence depended upon the quality of personal character. To become eligible to be selected as a War Leader, an individual had to have extensive knowledge of War Way Ceremony, which were conducted to bring about successful raids against outside forces. Peace Leaders had to have to the ability to speak with eloquence, have excellent character, and charisma. In addition, they had to serve both in sacred and day-to-day aspect of Navajo life and culture.²⁷ Women had as much voice as the men. Once selected, a Peace Naat'áanii served for life. The responsibility of the Peace Naat'áanii included

economic development, disputes, and diplomatic representative. Evidence suggests that the 12 Peace Naat'áanii and 12 War Naat'áanii gathered periodically every two to four years, and odd years during emergencies. The gathering served for several purposes: to conduct a ceremony to insure a productive winter and fertile soil, and during a war, War Naat'áanii often took the floor. In addition, the assembly often served as a political regrouping, despite community Naat'áanii exercised regional authority.²⁸

When Spaniards and American colonies expanded into the southwest, they often assumed that the Navajos had one main leader who could speak for the tribe. The government would make a treaty to stop the Navajos from raiding with one Naat'áanii, but that Naat'áanii only represented his band of Navajos. Unfortunately, the tribal assembly became extinct due to the hardship caused by the conflict with the federal government.

The treaty of 1886 marked the beginning of the current government. Originally, the Indian Agents appointed "head chiefs" and confirmed by Secretary of Interior. Manuelito was appointed as head chief, followed by Henry Chee Dodge. In addition, regional headman were appointed by the Indian Agents to represent their communities, and often met annually with the Indian Agents to discuss issues. The Indian Agents exercised their power of authority by replacing any Head Chief who didn't "play ball."²⁹

In 1900's, the Navajo Reservation quadrupled in size, and the population doubled. A single Agent could not effectively oversee the affairs of the Navajos. To correct the problem, the reservation was divided into six agencies operated by agency superintendent. The superintendent from Luepp, AZ suggested using the chapter system to better serve the communities. The local governments were quickly established, where each chapter elected a president, vice president, and secretary/ treasurer. The meetings at the chapter houses were usually held once a month to discuss local projects, livestock improvements, and agricultural practices. Local governments were not new, but an extension of family structure, with additional ideas such as majority voting, elected officials, and the office of chairman. Although the local governments were established, it was still not centralized.

In 1922, Oil was discovered on the Treaty Portion of the reservation. Originally, interested companies had to contact Agency Superintendent, who gathered a general council of Navajos to consider the company's request. This practice suggested that the council acted as subordinates to the government agents, and did not represent other Navajos in other agencies. The Oil and gas companies pressured the Department of Interior and Agency Superintendent. Leases granted to the companies were sporadic, so the companies exerted more pressure, this time including the commissioner of Indian Affairs to take away leasing powers from the Navajos. The Navajos refused to surrender their rights to lease tribal lands. The Interior Department changed its policy so that royalties from gas and oil, bonuses, and rentals would belong to the whole tribe, not exclusively to one agency. Secondly, the Bureau of Indian Affairs had to establish a "business council" that authorized lease grants. However, the "business Council" failed because it required a majority vote as stated by Article 10 of the Treaty of 1868. Once again the federal government exerted its power by assigning a Commissioner of Indian Affairs. Commissioner Burke established a document to create a Navajo Tribal Council, which included an elected Council member from each agency, who would serve for four years. In addition, if a council is not elected, the Secretary of Interior would fill the position, and the council had to meet in the presence of Commissioners presences. Furthermore, the commissioner reserved the rights to remove a council member. The document was rejected upon arrival.

When the document was rewritten, it excluded the removal power of Secretary of State, and added a forum, interpreter, and a means of succession in the event that the chairman or vice chairman position became vacated.³⁰ The number of council members were also increased from 12 to 24 member: 12 voting delegates,

and 12 nonvoting alternates. The Council still had to convene in the presences of Commissioner of the Tribe. The first Chairman elected in office was Chee Dodge, but failed to elect a Vice president. With the newly established central government, the council was able to unanimously approve the resolution to give Commissioner Hagerman the authority to sign all gas and oil leases on behalf of the Navajo Indians.³¹

Currently, the tribal government include the president, Vice president, and 24 Council Delegates. The Council Members meet 4 times per year. In 2010, Johnathan Nez announced that the Council members were reduced from 88 members to 24 members, a change in Title 22 of Navajo Nation Code, which meant that the reservation had to be redistricted immediately among the 24 council members. Now each member represents anywhere from 1 -9 chapters, depending on the size of the population.

Navajo Foundational Law

Law in America is defined and practiced as written laws which are enforced by authority figure. When there is a conflict, rules developed by legislatures, courts, and administrative agencies are applied. Ironically, the application of the rules was developed by a system that is foreign to the actual problem, and the judgement is concluded according to the parameters set by the Law.

The Navajo System is best described as a “Horizontal” model, where all sides are portrayed equally: there is no one person above another, no right or wrong, winners and losers or consequences. The core of the justice system is problem solving and requires careful examination of each aspect of a given problem and reach a conclusion on how best address it. The end goal of a final decision is restorative justice which allows for full and equal participation of the people in a dispute. There must be healing in this Peacemaking Justice System.

Navajo Justice System was designed based on the principle and application of Navajo Foundational Law, roughly related to Natural Law. The foundational building blocks of Navajo foundational Law included three core principles: Hózhó, K'é, and K'éeí. The law, or beehaz'áanii means something fundamental, something that is absolute, and exists from the beginning of time.³² According to Navajo Origin, essence of life derives from beehaz'áanii, and is the source of healthy and meaningful life. The principle of beehaz'áanii was given to the Navajos by the Holy People for better thinking, planning, and guidance stated in songs and ceremonies which tell us of hózhó - restoration of balance and harmony.

Navajo use K'é or clanship to achieve restorative justice. K'é principle describes the ideal relationship among everyone, and the idea that everyone is related; therefore, must aspire to treat each other with respect. The principle of K'éeí is the concept of clan kinship. Navajos use clan kinship to refer to specific relationships among relatives, and it is used as a matter of family etiquette. Each clan represents a specific origin, and a specific attributes and behavior, which is used to guide interaction between and among clans.

According to the Navajo Fundamental Law, the Navajo Children's Code (Áłchíní Bi Beehaz'áanii Act, ABBA) proclaims that all children, including unborn occupy a place in Navajo society because they are holy and sacred. In addition, the Navajo Nation need to act aggressively and culturally appropriate way to protect her most precious and vulnerable resource. ABBA recognized the importance of extended families, K'é and K'éeí, and the foundational importance of restoring family relationships to Hózhó.³³

According to Navajo Fundamental Law, termination of parental rights is not customary or traditional to Navajo culture. Severance of parent-child relationship can be sought as a last resort, and after all options are exhausted including customary adoption. Customary adoption is allowable by Law if both parents consent in writing for their child to be adopted, if the parental rights of birth parents are not terminated. The child gains

parents using customary adoption but does not lose his clan relatives. Extended families, as well as Nuclear Families have the same rights under Navajo Nation Law because it emphasizes the treatment of family units. The bottom line is that a child's right to relationship will maximize access to parents, siblings, extended families, culture, and people. Furthermore, fathers do not need to go under scientific testing to determine paternity because it shakes the stability of the family and ensures that a child does not consider themselves fatherless. In addition, a non-Native father may resume custody since he became an in-law, as long as he is takes responsibility for the child.

Adoption on the reservations are under the jurisdiction of the Navajo Tribal Court. The tribe has a right to place a child. The guidelines for eligibility include but not limited to Navajo families. A married couple could petition to adopt a child. An unmarried or single person over the age of 21 are eligible to adopt Navajo Children. Many Native Children and Navajo children continue to float around in foster care, and many of these children are cared for by non-native foster parents. They do a fantastic job caring for the kids. However, the tribal adoption laws prevent them from adopting these kids who desperately need homes. The tribal adoption laws supersedes the state adoption laws.

Court Decisions: Challenges to ICWA

Adoptive Couple v. Baby Girl

A South Carolina couple, Matt and Melanie Capobianco, wanted to adopt baby girl Veronica. The adoption seemed like a done deal, especially since the mother relinquished her rights as a mother and put her daughter up for adoption. The father also relinquished his rights through a text message. However, the father was able to invoke the Indian Child Welfare Act to get his daughter back. The Capobianco had to give up 27 month old baby girl they cared for since birth.

The Supreme Court cited that ICWA did not apply in this case because the father was never present in his daughter's life, and therefore, the family was not "intact." Since the father did not have custody at the time the baby was put up for adoption, intact Indian family did not apply to him or his family. This was by far not the end of ICWA, but it was devastating to families. The placement provision remains, which means that a family who fall within this provision would formally still adopt a child.

Brackeen

The Brackeens decided to become foster parents. When a baby boy was placed in their care for a few months, they were warned that it was only for a few months because he was Native American. Once the Brackeens found out that the parents terminated their parental rights, they decided to adopt the baby with the support of the biological parents. By this time, the baby was with them for over a year. A state family court denied the petition to adopt the baby due to ICWA. According ICWA, the state had to contact the Navajo Tribe, the biological mother's tribe. The tribe wanted to place him with a Navajo couple, which invoked the preferential placement clause and decided to place baby boy with an unrelated family within the same tribe. The justification of the court was that the Brackeen did not show "good cause" to adopt a Native child into a non-Native family. The Brackeen sued the federal government, and were successful in getting custody of baby boy. In early 2018, Baby boy was officially adopted by the Brackeen.³⁴

Rebecca Black

In 1940, before ICWA, Rebecca Black, a Quinault tribal member, was removed from her grandmother's home,

and her parental right was terminated for being sick in the hospital. Black was taken from her family and adopted by a white family. Her new family made her feel like she needed to be grateful for being rescued from a poor existence. She didn't learn anything about her culture. She became pregnant in her teens and was forced to sign "volunteer" adoption papers. She ran away from her adoptive parents, and eventually found her way back to her birth mother. She began fostering kids from tribes around Washington State. Her work allows her to keep her foster children attached to their tribal community. However, there is a shortage of foster care homes for children who need placement.

Lessons and Activities

The Unit will be taught three times a week for 6 weeks. Each week will focus on different parts of the unit. It begins with the discussion of the importance of having a good leader. Then it will talk about how Naat'áanii's from the past used Deliberative Democracy to solve issues. Today we have a Navajo government in place to help rule over the Navajo Tribe. The students will explore the history of the Navajo Tribal Government. The following week the students will learn about how the Judicial System protects their rights as children. Finally, on the last week, students will discuss how orphan children of the Navajo people are affected by the Fundamental Laws.

Naat'áanii

The children will be able to find the characteristics and character traits of a Naat'áanii.

The teacher will give the students a short passage of a famous Naat'áanii: Borboncito or Manuelito. These spiritual leaders were effective in helping the Navajos return to Navajoland from Fort Sumner, where the Navajos were held in captivity. When the students are reading, they will be asked to identify some of the characteristics and character traits that made these people Naat'áanii. The students will discuss what kind of Naat'áanii were they? What made them successful Naat'áanii? How did they help the people?

These Naat'áanii did not have the same government system that we have today. How did they run their government? Would we be able to run a government in the same fashion? The students will use an activity with Capturing Kid's Hearts (CKH). The goal of CKH is to reach the youth of America and help them take their place as leaders of our country.³⁵ Before the students begin, they will define leadership. Using the previous lessons, what makes a person a leader? Can anyone be a leader? The students are all leaders, and will take on different leadership roles.

Deliberative Democracy

The children will understand and define the meaning of Deliberative Democracy. They will implement Deliberative Democracy in their classroom procedure to solve issues.

The Students will read a short passage about how the Navajo people used to have a Deliberative Democracy, especially when they had to make an important decision. One of the main characteristics of a leader is to be a good speaker and a good listener. Explain to the students that being a good speaker is a good quality to have because it allows you to let people see your point of view clearly. One of their Domains for Structured English Immersion class is listening and speaking. Explain that in class, the students will have to learn to listen and

speak to solve any issues that arise in class.

In the activity, the students create a Social Contract for the class. A Social Contract is an agreement of behavior that leads to self-managing group.³⁶ The speaker who suggests a behavior expectation has to “sell” the suggestion with confidence and enthusiasm. The key is everyone has to agree on the behavior. To allow students think time, have them discuss it in small groups and work your way up to a larger group.

Create A Government

The students will analyze and explain the historical aspects of our current Navajo government. Students will also explore how distributive outcome upsets the majority in government and affect policies when coalitions get involved.

Before teaching the students a lesson, the teacher will open with an activity called Build Your Own Island. Each students will be given an island, and explain to them that there are many plants and animals on the island, but no people. They will have to hunt for their own food and build their own shelter. Remind them that there is no one on the island to tell them which food to eat or not eat, or where to build their shelter. Basically, they can do whatever they want on the island.

Eventually, half of the islands will be taken away from the students. The students who lose their islands will be assigned to join another island. They need food and shelter, so they will need to build a new life on the new island. The new resident ends up looking for food in the same place as the original dweller, but tell the original owner of the island to stay away. What happens now? What happens when the new people build their shelter near your water source? What happens when they tell you that you cannot get water from your spring anymore? How do you settle the dispute? Do you fight for the land or do you sit down and talk?

When you are by yourself, there aren't any rules, especially when you live on the land alone. When newcomers come, you have to establish rules. The rules have to be fair. A Leader is usually chose to make sure the rules are enforced. This is one way governments are established.³⁷

What happens when the island has to be divided between three or more residents? Additional Islands will be removed, and the students who lost their islands have to join another island. How do the residences of the island divide island? How do they divide the resources on the island? All of a sudden, the residents now have to divide the island and its resources into three or more parts. Ideally, the residents would divide the island and its resources equally among the residents. What if one part of the island had more resources than the other side? What if one resident had something on their piece of land that another resident desired? What happens when two residents team up?

The rules suddenly change when more people get involved. How do the residents distribute the island? Preferably, the island would be distributed equally, but sometimes that is not how things work in the real world, especially in government. Majority Rule affects the distributive outcome most of the time. To demonstrate this point, the children will play Divide-A-Dollar game with the island. The students will be given scenarios, i.e., team up with a person with a water well, or team up with a person who has good hunting area, etc... How does the new coalition influence the majority? How does this affect the rules and leadership of the island?

Not many students are aware of how their own government was established. They will read a passage about why the Navajo tribe needed a central government. Why do people need a government? Why did we need a

central government? The students will learn about the three branches of the government. The Navajo leaders had to fight for their rights, especially for their sovereignty. Eventually, after many attempts, the tribe was able to establish a government. The first chairman of the Navajo Nation elected into office was Chee Dodge.

Dine Fundamental Law in the Judicial System

The students will demonstrate an understanding of how the Judicial System protects their rights as children, and as children of the Navajo people.

The Judicial Branch of the Navajo government was designed using the philosophy of Dine Fundamental Law, especially regulations related to families, and children. The Law uses Fundamental Laws to maintain Navajo culture and heritage. Fundamental Law use three core principles: Hózhó, K'é, and K'éeí. Students will explore each principle and how it related to their family and family units. They will discuss the similarities and differences between each families. Are the family's definition of the three principles similar? How can we use these principles in the classroom, as it related to us, and to our behavior?

K'éeí is one of the principles often explored in our school. The principle of K'éeí allow us to address each other as family through our clanship system. The activity will require students to share their clans with the class. By fourth grade, the students can introduce themselves using the clanship system. Using the clans, the students will establish who is related to them. Who are your brothers, who are your sisters, who are your aunts, uncles, grandmas, or grandfathers? The teacher will model K'éeí by addressing each student by kinship. How does this affect the culture in the classroom? How does this effect our behavior? How does this relate to our social contract?

Fundamental Laws and Adoption

The students will explore and analyze how fundamental laws effect adoption of Navajo children.

Many students have been moved from parents to uncles or aunts, but they do not believe they are being fostered or adopted, since they are basically in the same family unit. The principle of K'é of the fundamental law works in these situations. What about the children who do not have relative who are related to them? What happens to them? Where do they go? Who fosters them and who adopts them?

The students will watch a videos and read about students who were adopted. The students will have discussions about each adoption case based on what they learned about the policies and fundamental laws. What is right and what is not right? Who says it's not right. Students will use details from the previous lessons, as well as from the text and videos to support their opinion.

Strategies

Listening and Speaking

During the course of the unit, students will establish Listening and Speaking skills and strategies to communicate with others. There will be many discussions throughout the unit. In order for the students to have meaningful discussion, they have to be able to listen purposefully. They have to focus on the speaker's

point of view and the details. When a student responds, they have to be able to respond appropriately. Students may agree and present additional details, or they may disagree. When the student disagrees, they need to verbalize their point of view with details.

Socratic Seminar

Socratic Seminar is an extension of Listening and Speaking. The process of a Socratic Seminar include comments that contribute significantly to discussion, uphold norms for conversations, and builds and elaborated on other's comments. In addition, the students contribute in a positive way, and disagree or agree respectfully. The discussion seminars will continue as long as needed. The group has to listen attentively, and demonstrate interest with body language and facial expressions.³⁸ Students will be divided into groups of 3-4 students.

Reflection Journal

Taking notes is one of the important skills students need as they go up in the grades. It helps them remember things they would not because they learn so many things in a day. Reflection journal will be assigned at the end of each day for students to write down something they might have learned or something they thought was interesting. They may use their reflection journal to review for the lesson the following day.⁴⁰

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Appendix

For my SEI Class, I use both the Arizona ELL Proficiency Standard, Arizona's English Language Arts Standards, and Navajo Nation Standards.

III-LS-1: HI-6: responding to comprehension questions by demonstrating relationships among facts, ideas or events and extending the information to other relevant contexts using appropriate academic vocabulary. (e.g., problem/solution, cause/effect, compare/contrast, etc.)

4.SL.1 - Engage effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grade 4 topics and texts, building on others' ideas and expressing their own clearly.

In this unit, the students will discuss many comprehension questions based on topics presented. They will use their listening and speaking skills to establish effective Socratic Seminars. The students will prepare themselves with the materials covered, and make inferences based on topic.

4.RI.3 - Explain events, procedures, ideas, or concepts in a historical, scientific, or technical text, including what happened and why, based on specific information in the text.

The main events that students will be able to explain are the historical aspect of their government, especially the significance of Navajo Fundamental Laws.

4th-6th Diné Government Standards: C1PO3 - I will identify the attributes of a good Navajo leader, and 4th-6th Diné History Standards: C1PO2 - I will recognize leaders that have impacted the Nation.

Students will identify and define the character and traits of a good Navajo Leader. When students discuss character traits of a leader, they will read about great leaders like Borboncito or Manuelito.

4th-6th Diné History Standards: C2PO4 - I will establish kinship with my peers.

Students will use Deliberative Democracy to establish relationship with peers using a student established Social Contract.

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