

CHANGING WORDS, CHANGING WORLDS: SYMBOLIC AND MATERIAL CONTEXT
OF LEGAL LANGUAGE IN ADMINISTRATIVE PRACTICE AND LOCAL NARRATIVE
ON THE HOPI RESERVATION

by

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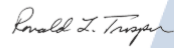
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Abstract

In this dissertation, I am interested in understanding the after-lives of law, where problems now begin elsewhere after laws have passed, both those developed for the benefit of Native Nations, in general, but also laws promulgated by the Hopi Tribe itself. I analyze how Hopi people talk about laws, when speaking English, as discussed further below, in terms of local narratives and administrative practices. I seek to understand what explains the ways in which people speak and act in relation to these laws as a matter of local social realities and cultural practices, social changes, and developments. The research variables are Hopi Mesas, clans, and gender. I use here a legal semiotic methodological approach, because semiotics helps to explore ideas, beliefs, and attitudes. I am interested in how Hopi people construct a politics of self-knowledge through statements regarding their ideas and values attributed to a Hopi natural law which perhaps compete with Bourdieu's notion of law existing as a "universalizing attitude." Here, Hopi people seem to construct a framework of cultural sovereignty, which is defined herein as, a means of manifesting rejection of external, conflicting values, and affirming internal cultural values, that exist on par with, if not superseding to the actions of Hopi inherent political sovereignty and United States sovereignty. The two research questions I explore are: (1) what explains Hopi participants' statements about the law on the basis of local social categories of Mesa, clan, and gender, and (2) how does legal language use function to explain Hopi cultural sovereignty and its meanings. I answer the first question by tabulating responses on the basis of different kinds of Hopi social semiotic registers of identity and cultural practice and cross-referencing them to the three variables in order to look for inconsistencies and distinctions that prove salient according to each of the three variables. The second research question is answered

by looking particularly to statements that relate to Hopi positionality within villages and the tribal government, as well as in terms of outside relations.

Chapter 1. Introduction, seeking Hopi knowledge and perspective

Legal semiotics is interested in understanding how people use legal language. The majority of the literature on legal semiotics is focused on institutional settings of legal speech, but I'm interested in how people use language in daily speech and administrative practices that inform and shape the way laws are implemented. Hopi people and the Hopi Tribe must confront a variety of laws that seek to protect and frame their legal interest, and at times, as it will be shown, Hopi people have suffered injustices inherent in the laws that continue to interrupt and disrupt the Hopi people's adherence to the covenant with M̄asaw at the time of Emergence. I focus on seven laws (National Historic Preservation Act, National Environmental Policy Act, Endangered Species Act, Indian Arts and Crafts Act, American Indian Religious Freedom Act, Hopi Constitution and By-laws, and the December 16, 1882 Executive Order which established the Hopi Reservation [hereinafter 1882 Executive Order]) in order to understand how legal language, particular provisions and thematic themes that are stated and presumably addressed by each law, is implemented and distributed as a matter of administration and social practice. My goal is to understand better how legal implementation occurs, and explain areas where there are purported "implementation gaps" between legal norms and daily social reality. I also want to investigate further Bourdieu's notion that law is a "universalizing attitude," so as to grapple with how law and culture interface in terms of cognition and expression, as well as the rhetorical and political-economic force of the law in particular contexts. For that reason, this dissertation will seek to "circle back" on these laws to understand their daily, social reality, but more broadly, the ways in which cultural sovereignty plays a role in Hopi ideas, beliefs, and attitudes about the laws and about Hopi society in the early decades of the twenty-first century. My interviews were carried out with a great deal of deference to research participants on which matters they chose to

converse. Research participants all seemed to be aware that this work was aimed at understanding Hopi people's concerns and perspectives about topics that they wished to discuss, to circle back on problems that began elsewhere but which they wished to talk about.

This dissertation explores the ways in which Hopi people speak about legal and regulatory language when speaking English, and how this varies in relation to three local identities: Mesa, clan, and gender. The subsequent chapter, chapter two, will discuss the theoretical framework and methods. Chapter three discusses the political organization and economic activity of the Hopi Tribe at the level of the tribal nation. The following chapter four will detail the variables of the research. Subsequent chapters (five through eleven) will explore particular statutes and regulations and report on findings about the ways in which Hopi people use the language found in these documents in speech and on the basis of the three variables outlined above. Chapter twelve provides some brief points of analysis using the variables and a conclusion. I will analyze the findings on the basis of these distinct identities in order to evaluate similarities and divergences across Hopi society today. I chose these categories because of their salience in Hopi culture as well as the availability of research on the categories over a historical trajectory that can further ground and elucidate symbolic and material elements of Hopi civilization.

I should state a brief word as to Hopi orthography within this text. Hopi orthography herein is based on the Hopi Dictionary (1998). However, wherever quotations are used from other texts or where names of establishments on the Hopi Reservation are used and which are based on other forms of Hopi language orthography, the original source spelling will be maintained. The research has focused much on the use of legal language in English by Hopi individuals. Given the extensive nature in which Hopi concepts, metaphors, metonyms, and even objects (such as a wide range of ceremonial objects) which are found within Hopi culture and

society (see Hopi Dictionary 1998), it must be assumed that much is “lost in translation” when focusing almost exclusively on Hopi people’s use of English. It was not possible to learn the Hopi language for the purposes of conducting this research, as the Hopi language is not readily considered appropriate, as I was informed early on, for outsiders to learn.

Chapter 2. Theoretical framework and methodology

Theoretical framework

Law and language are closely linked to social and cultural events within a specific period of time and space. Scholars have demonstrated their conceptual and temporal links (Mattila 2006, Tiersma 1999). Legal discourse is therefore said to be rooted in a specific and particular language. Law develops from language use of cultural groups and at the global level, countries. Legal language becomes a proxy for expressing that which is opaque, developing, permanent, and plural, and therefore legal language is a source of progress (Gendreau 2001, Griffith 1986, Wagner 2005, Watson 1985). The ambiguities and pluralism of law are often associated with diverse views on responsibility which can in turn weaken legal regimes. Scholars have noted the problem is not one associated with enforcement of legal norms, but with complex processes by which social actors fill in the gaps through informal or even illegal practices (Klepp 2011). Legal thought is also reflected in the structural elements of social change, and the social debates which underpin it (Le Roy 2007). Due to the often fragmented and ambiguous nature of law, conjoined with its ‘universalizing attitude’ (Bourdieu 1987), legal regimes or, more specifically, the use of legal language within social contexts, create space for negotiation and maneuver (Klepp 2011), and for association and positioning, be it cultural, technical, or political in terms of cognition or expression (Schwoebel 2017). As such, the meaning of signs in legal language use invokes cognitive (symbolism, colors, markings), linguistic (semantic, lexical, and textual), and communicative (emitter, receiver, and situations) aspects (Klepp 2011). Recursive and dynamic words in law become the domain of a specialized legal language that is amenable to real-time, case-specific forms of analysis, but this specialized language is said to have “mobility” with common language, making the cognitive, linguistic, and communicative aspects of law have

cultural purchase and legibility (Gémar and Kasirer 2005). In the end, I seek to produce a written text on the “politics of self-knowledge” through a semiotic study of the meaning of linguistic resources as originating in seven laws and related to their affects and after-lives within contemporary Hopi society and the ethical subjectivities they produce vis-à-vis the state, the people, and the land. I contend here that the benefit to the Hopi Tribe is through demonstrating some of the elements of Hopi cultural sovereignty, as fundamentally based on ideas, beliefs, and attitudes regarding Hopi natural law, an area of law that is pre-existent and independent of positive or codified law and is based on cultural constructions of a moral order and the dictates of Hopi reason.

Let me try to be clear on the aforementioned points, how law, language, and politics are intricately connected, as will be discussed further below, and this can be observed in the fact that *Brown vs. Board of Education* provided a right to education irrespective of ethnic origin. Yet, this right has not been “realized” in practice, in standard human rights-speech, because education, as a right, has been interpreted to allow for funding to be connected to local property taxes. I can remember an instance where a state politician in Arizona invited me to dinner, and when a question was raised on the rights of African Americans to education, he stated, “Well, I mean, they are only 5 percent of the population.” It would appear to me, and I think it is time for scholars to realize, that the situation is impenetrable and untenable, if critical reflection has actually reached the halls of academics. There too, I have some serious doubts overall, as some academics appear to me to be entirely wedded to politics, a disgraceful portrayal, in my view, of their duties to objectivity. It is hidden and obscure, and academics can be masters at “never show your true face,” as one professor in my Ph.D. coursework so humanely reflected. As a young

scholar, I have a question for establishment academics, if I were to put my best suit of armor on, when is this going to stop?

Ingold (1993) interrogates definitions of space in legal implementation to evaluate how a ‘global’ discourse dominates and decontextualizes local communities’ understandings and uses of space and land through what Milton (1993:186) refers to as an “iron cage of technological thought.” This is achieved by bureaucrats through a discourse of development and procedures for conflict resolution by collapsing and dissolving various forms of space into legal procedure (Griffin 1997). However, this focus in the academic literature has largely been on maneuvering practices, rather than negotiation (c.f., Dongoske and others 2015), and on statutes that are dominated by procedural aspects, such as the National Environmental Policy Act. Other statutes which are more substantive or aspirational in nature, at least those which have been interpreted as such by the courts, are implemented and socially ingrained through different sets of references and practices. I am interested in understanding what (and who) is involved in law’s implementation at the granular level of social practice, and what, in turn, explains people’s experiences of the law (Mills 2018), not in terms of materiality, but as a matter of worldviews, beliefs, attitudes, and embodied experiences. Certainly, the drafting of legislation may be (mis)guided by geopolitical, national, and local politics, implicating that the normative framework is in the first case situated among a particular power “elite” (Clarke 2010). Dominant and embedded affective ideologies explain, for instance, the implementation practices of the Rome Statute, the international treaty that deals with war crimes, crimes against humanity, torture, and genocide. Without an accompanying Arms Trade Treaty that would hold accountable governments which trade in arms to suspected and known despotic regimes, the Rome Statute enshrines, and even codifies, a specific and politically motivated notion of “justice.” Such

practices are tailored to micro-emotional regimes in terms of the performance of “justice” in international law (Clarke 2019). In grappling with the interpretative meanings and practices of laws as a social practice and their associated knowledge production, I employ what Riles (2005) refers to as “circling back as ethnographic practice” on these laws to explore the linguistic resources that substantiate or curtail their social reality.

An act of circling back, of engaging intellectual and ethical origins from the perspective of problems that now begin elsewhere, requires actively engaging ethnographic subjects as a source of intellectual surprises and as points of contact for resolving scholarly problems. From the outset, it must be assumed that there is no immediately apparent lack of knowledge of the subject and no otherwise obvious knowledge vacuum for ethnography to remedy. This work has perhaps much in common with human rights reporting and policy work. But despite the similarities, unlike the field of human rights, which is instrumentalist and associated with what Riles (2005) calls a “temporality of projects” that are characterized by discrete segments of time for projects to be identified, carried out, and resolved, circling back as ethnographic practice is a descriptive project and performed on two planes of temporality: the past and the present. My research is neither forward-looking nor limited by a periodic approach of policy work and report writing, but rather seeks to explain how the past is brought into the present in matters of legal implementation as a set of linguistic resources in social life (Miyazaki 2004). I am eager to explore the ways in which communities and individuals construct their own reporting mechanisms through narrative and knowledge production, rather than relying on technocratic codes to predetermine reporting practices and procedures in response to the call made by scholars and activists for international human rights treaties to contain self-reporting provisions (Messer 2008). I examine prospective orientations whose necessarily “provisional, indeterminate

and open-ended nature” (Miyazaki 2004:137) formulates hopeful reflections on knowledge rather than a mere disclosure of acquired data and facts. In doing so, I seek to circumvent and protect against any indulgence that this ethnography might be instrumentalized as a legal text by proposing any kind of ethical status or cultural essentialism on the part of research participants (Jean-Klein and Riles 2005; Redfield 2005). I think that important because essentialism ignores social creation and agency, and so it is of little use in understanding legal language as a set of socially diverse practices. It would appear to me that essentialist portrayals cannot answer questions about legal language and how it is distributed and what explains the ways in which that occurs. The statements recorded and analyzed do not represent, legally or politically, Hopi people. This research was carried out in collaboration with the Hopi Cultural Preservation Office, and some statements and topics have been omitted from the final version; however, I seek here to demonstrate a range of ideas, beliefs, and attitudes among Hopi people so as to fight against any essentialization but while also demonstrating some of the congruencies in terms of Hopi thought and perspective.

The study of law and language, and sociolinguistics, more broadly, is fascinated by how language use performs certain kinds of work, and I am interested in Hopi constructions of a politics of self-knowledge through a moral order and cultural sovereignty. Law is filled with representations of various sorts. For instance, as a semiotic sign, the gavel within the courtroom setting performs various functions at different moments of a trial. Despite the first instance of legal enforcement being individual and communal narratives of a grievance, the majority of anthropological work on legal language use has focused predominately on the courtroom context, referred to as “courtroom talk” (Conley and others 1978; O’Barr 1982) and “courtroom questioning” (Danet and others 1980; Harris 1984; Woodbury 1984; Walker 1987; Dunstan

1980; Lane 1990; Eades 2000), all of which seek to explain how language works to effectuate courtroom control (Danet and others 1980:223). In regard to the latter, for instance, some scholars have emphasized the syntactic nature of courtroom questions, while others have examined other aspects of questions such as intonation and context to determine how the relation between form and function of questions are to be determined within a courtroom setting. Eades (2000) interrogates both approaches on the basis of the receiver witness or litigant who might understand a controlling, less open question (yes/no response), to be an invitation to provide a detailed explanation. This emphasis in the literature is due in large part to the observer's paradox, in which research can be limited to particular settings and confidentiality and non-disclosure may be essential elements in certain legal procedures, whereas courtroom hearings are conversely open, except in rare cases, to the public and statements made within them are part of the public record and require no consent on the part of participants. Circulating back, however, extends the purview of legal anthropologists significantly, towards looking at law outside the confines of legal procedures of institutions, and understanding its social influence and forms of social cohesion and social dissonance.

Notwithstanding, the focus in the literature has been and continues to be on situational power, what Walker (1987) terms "linguistic power," that is said to permeate the institutional legal process. The understanding of power, however, within the courtroom has developed beyond the mere brute hierarchical or contested stature of judge and attorney over witnesses (Harris 1989). Recent scholarship analyzes the subtle forms of broader ideological and material power as they are represented, reproduced, and legitimized through courtroom talk, such as patriarchy and women (Matoesian 1993, 2001; Ehrlich 2001). Eades, furthermore, critically investigates the role of neocolonialism and Aboriginal peoples as it pertains to courtroom speech

(2004, 2006, 2008). These studies, by following their predecessors, look at both moments of agency as well as the perpetuation of structural inequalities. Recent scholarship has fruitfully engaged language ideologies, such as rules of evidence or individual judge's preconceived and committed political ideologies, as they link to distinct cultural logics (Eades 2004, 2006, 2008), such as whether Aboriginal claimants can use oral history within the court, as well as courtroom procedural speech, such as how judges create the law by their politically-motivated understandings of guilty pleas (Philips 1998). However, language and law studies have yet to incorporate into their analysis elite deference, judgements on witness credibility in cases of extreme trauma, coercive forms of gas lighting, or economic or political/career incentive that may surface in legal process. Moreover, the experience of victims within the courtroom and associated procedures is basically absent from the scholarship, with few notable exceptions (Matoesian 2001; García 2019). However, even in the of the latter citation, the emphasis is on the applicability of findings about Mayan victim courtroom speech to United States immigration proceedings, rather than victims themselves, demonstrating perhaps the influence of the peculiar form of American liberalism, as I explain in the subsequent sentence, in some areas of ethnographic analysis. This situation is, in my view, peculiar because of the potential for *revictimization* or even reinforced or progressive trauma within criminal justice, administrative, legal, medical, educational, or mental health systems (Maier 2008).

Sociolinguistics is primarily concerned with why people choose one language form over another. Language forms, however, are broader than speech and may include gestures, postures, and even material forms of 'texts,' such as clothing styles. Moreover, Pierce's phenomenological approach to signs (1960), things that represent something, provides an approach to understanding how meaning and cultural categories may also be represented through embodied practices. For

instance, a drink can only become a toast through the articulation of words that are followed by a physical action, what has been called a form of reflexive “embodied material culture” (Dietler 2006). Moreover, signs exist according to rules and in relation to other associated signs which make up a particular field (Eco 1979). The meaning of signs may also have contrast such as when a female pop singer wears a suit to convey a contrasting message with the wearing of a suit as the typical attire of persons engaged in private sector work. The distinctive elements of a sign, the ways in which signs cluster together, and the impacts on social organization may be interrogated through an ethnographic study. A sign may be motivated on the basis of a variety of things, everything from pure personal enjoyment or to express identity or political position. Since Geertz (1973), ethnography has sought to connect the existential grounds of experience (what people think, feel, and remember) with its symbolic drivers, or forms of representation. A society’s symbolic structures can be studied through descriptive assemblages which include principal tropes, their alternatives, as well as metaphors and metonyms which undergird symbolic action, social development, and social change. As Ricoeur (1974:99) explains:

But the semantics of the word demonstrates very clearly that words have actual meanings only in a sentence and that lexical entities—words in the dictionary have only potential meanings and for the sake of their potential uses in sentences. As concerns the metaphor itself, semantics demonstrates with the same strength that the metaphorical meaning of a word is nothing which may be found in a dictionary (in that sense we may continue to oppose the metaphorical sense to the literal sense, if we call literal sense whatever sense may occur among the partial meanings enumerated in the dictionary, and not a so-called original, or fundamental, or primitive, or proper meaning). If the metaphorical sense is more than the actualization of one of the potential meanings of a polysemic word (and all words in common discourse are polysemic), it is necessary that this metaphorical use is only contextual; by that I mean a sense which emerges as the result of a certain contextual action. We are led in that way to oppose contextual changes of meaning to lexical changes, which concern the diachronistic aspect of language as code, system, or langue. Metaphoric is such a contextual change of meaning.

Indeed, tropic representations exist at a second order beyond mere semantic meaning to at times engage “moral content” whereby metaphors may point to essential “values and precepts of a society” (Weiner 1988:124). The important point here, as Bernstein convincingly demonstrates, is that there are implicit links of coder (the hearer-speaker dyad), code (the paradigm within which speech is heard), and the encoded (the speech), which together inform and shape experiences, social realities, and the consequences of speech events (1972, 1973; Atkinson, 1985). In this area of literature, ‘structure’ is deemed metaphoric and used by analogy to characterize overarching areas of thought as they are connected with important historical trends and social change (Baudrillard 1993). Likewise, ‘identities’, or a multiplicity of them, emerge as a result of the semiotic process and will be organized and vary on the basis of time and across different cultural settings (Geertz 1973). However, identities, as understood to exist within a cultural context, are not mutually exclusive, and sociolinguists are concerned with how identities are encoded as emergent and parallel and as related to mind-body integrity, cultural continuity, and epistemology (Heim 1995).

Messages conveyed through language are subject to formative processes (Atkinson 1990, 1992), written or unwritten and based on context, and may be mapped diagrammatically to move towards greater levels of abstraction and highlight a particular social domain through its various links and areas of coherence and contention. The categories of the social domain, its metaphors and paradigms, however, do not remain as glosses over and above cultural practices, but rather are informative and presupposing of an array of cultural practices and individual choices that are observed in social behavior. The signs, meanings, and behaviors can thereby be articulated in the cultural work of symbolization. I argue here that legal language and semiotic registers, more broadly, like the subset of such symbolizations found in trademark regimes (Agha 2015), are

taken up in distinct cultural practices, their significance may be routinely reanalyzed through locale-specific metasemiotic frameworks, which formulate various forms of life in particular societies. My emphasis on metasemiotic statements is explained in subsections towards the end of this chapter. Linguistic forms connect to usage through the mediation of meanings and speaker ideologies, and thus form the total linguistic fact (Silverstein 1985). The goal here is to outline the terms of the social meaning involved and to descriptively demonstrate how agentively, rather than structurally, linguistic variables of legal language can and do encode social meaning (Campbell-Kibler, 2009, 2010; Eckert, 2008a; Podesva, 2007; Zhang, 2005, 2008). Several research participants in this study each emphasized that Hopi ideas and beliefs are interpreted at a personal level, and instances of that become clear in later chapters. In this research, I engaged not only in participatory observation and interviews with a variety of Hopi people across the Hopi Mesas and from various socioeconomic backgrounds, but I also review letters submitted by Hopi people and the Hopi Tribe itself to a federal agency as a means to comparatively understand open and closed registers of different kinds of texts. In the former cases, many conversations were open and fluid, while the letters were more fixed and the discourse more constrained to a particular matter and set of political relations and subjectivities.

Similar to Halliday and Hasan's concept of register, which is defined as a semantic concept that "can be defined as a configuration of meanings that are typically associated with a particular situational configuration..." (Halliday and Hasan 1990:38f). I rely here on Hymes' (1979) so-called S-P-E-A-K-I-N-G model to categorize speech situations. With the help of eight components of legal language use, speakers may characterize the context of an interaction, and, thus, make clear the signs, meanings, and behaviors developed in legal language use. Hymes' components of semiotic registrars are: (i) setting, (ii) participants, (iii) ends, (iv) act sequence,

(v) key, (vi) instrumentalities, (vii) norms, and (viii) genre (cf. Halliday and Hasan 1994:22). I use this framework merely to gloss over the topics, but what it shows is that this approach suggests that there are countless different language situations, and in fact linguistic situations are the primary concern of register which look principally at “variety according to use” (Halliday and Hasan 1990:41). However, I use Halliday’s notion of closed and open registers to make further explorations into Hopi legal language use in a variety of ways, as discussed in subsequent chapters. Notably, registers are not only distinguished on the basis of context-based approaches, but also text collections, such as newspapers, dictionaries, dialogue, letter, etc. (Biber and Finegan 1994). I incorporate here letters to a federal agency alongside statements made within a research study by a non-Hopi ethnographer, to understand different forms of registers.

However, while Biber is concerned mostly with the prevalence of grammatical features of different texts, and on that basis was able to identify four major registers: conversation, fiction, newspaper language, and academic prose (Biber 1999), I remain committed to investigating the lexical equivalents because Hopi talk about law often presupposes at least some form of cross-cultural communication, and it is the meaning of those semiotic resources that I am most interested in understanding, and how those meanings may be distinguishable and shown to be consistent in material respects with current statutory or regulatory frameworks. However, a study that only looks to semantics, or linguistic signs of use, is limited to propositional utterances, pure references and characterizations. Silverstein (1985:193) cautions, “[t]he problem set for us when we consider the actual broader uses of language is to describe the total meaning of constituent linguistic signs, only part of which is semantic.” This broader study of linguistic signs is relative to their general communicative functions which are referred to as pragmatics in the form of performance speech (Schilling-Estes

1998), and these broader aspects of the meaning of utterances is pragmatic meaning. Again, like trademarks, legal and regulatory language use “is the precipitate of a meta[pragmatic] discourse that groups disparate phenomena together” as matters of interpretation. In context, typifications of law’s sign value are spoken about, which makes law “known to a social domain of persons through its own dissemination” (Agha 2015:S175). This study investigates several metapragmatic concepts in sociolinguistics that I will explain in some detail, including indexicality, iconization, and style; enregisterment and ethno-metapragmatics; and retextualization and intertextuality. I use these particular concepts on the basis of a grounded theory approach. It was these concepts after I collected the data that emerged from the study, and therefore, I find them essential in terms of understanding agentive encoding and the politics of self-knowledge that are infused through expressions of cultural sovereignty in legal language use. I group these concepts in this order because their usage in the literature has overt and subtle linkages. For instance, ethno-metapragmatics has been called evidence of “enregisterment in action” by appealing directly to clusters in semiotic registers (Penry Williams 2019:295). At one fundamental level, these theories are concerned with linguistic variation, the range of which covers macro-variation as well as micro-variation, and such forms of variation that matter in social life (Gumperz, 2003; Hymes, 1996; Maryns & Blommaert, 2001; Rampton, 1995).

Indexicality, iconization, and style: linguistic and social meaning of things/context

On indexicality, Blommaert explains the work of linguistic variation:

[Linguistic variations] function as powerful sources of indexical meanings that connect discourses to contexts and induce categories, similarities and differences within frames, and thus suggest identities, tones, styles and genres that appear to belong or to deviate from expected types (2007:115; see also, Agha 2005; Silverstein 2003a)

Words and expressions in language often derive some part of their referential meaning from indexicality. For example, pronouns indexically refer to the entity who is speaking and

possibly their gender; *then* indexically refers to a time frame of a subsequent event in speech; and *over there* indexically refers to a locational frame excluding the immediate surroundings where the word is spoken. Put more simply, an index in a book is a kind of semiotic index, for the concept refers to all textual methods of linking speech and objects. The connection should be understood as fundamental to the speech-event, such as the word “this” or “that” index from their very utterance a particular object. Linguistic variables (i.e., a morpheme, such as a change in tone, a form of pronunciation, syntax, lexical choices, or phrases that label an information granular, such as “hot,” “hot surface,” “hot (bodily/weather) temperature,” or “you look hot”) that function indexically are known as deictics (e.g., this, that, etc.), given that they point to something, an object of some sort. In that sense, indexicality is fundamentally associated with contiguity or association (Peirce 1960). However, there are many words and expressions in language that can be characterized as non-distinctive, and variation in lexicon, prosody, voice quality, etc. may have social-indexical meanings and fundamentally depend on the situation in which they are used. Whenever variation takes on meaning, social types are constructed which may connect to a range of categories such as ethnicity, age, class, gender, etc., both particularly and in overlapping ways, so all must be observed. The linkage of linguistic variable to social information, so long as it is distributed systematically, is the product of indexicality and may occur through macro-sociological categories, such as gender, ethnicity, or political affiliation, or micro-social information like stances or attitudes (Eckert 2008; Ochs 1992; Silverstein 2003b).

Silverstein has expanded on Peirce’s framework (1960) by describing an indexical order with three progressive orders. Peirce’s framework explains semiotic resources on the basis of indexes (e.g., deitics and linguistic variables that “point to” objects), icons (e.g., a pie graph and linguistic variables that stand for or are images of themselves), and symbols (e.g., “a tree,” rather

than “that tree,” which is an index, and linguistic variables which represent a mere quality, or the image invoked in the phrase, a tree). Silverstein further breaks down the index into a three-tiered indexical order for explanatory purposes.

The first-order (i.e., n th order) indexicality is pre-ideological in nature, but still performs semiotic work of forming associations and continuities, such as macro-sociological concepts such as gender or ethnicity. In other words, first-order indexes simply indicate membership in a particular social group. As Lesley Milroy points out, however, the social categories of anthropology may not be fully inclusive of first-order indexes, because local categories such as church or peer group membership can also be subject to indexicals (2004:167). Moreover, the relevant social categories will vary across societies according to sociolinguists. Milroy further noted that race and ethnicity take precedence in American linguistic ideology while social class is more salient in British ideology (2004:167). For those reasons, social actors are said to create and re-create categories of speaking and kinds of speakers as well as types of sociolinguistic variables, and so the first-order indexicality is principally concerned with a semiotic act of noticing. It is therefore important to understand the ‘pragmatically salient’ classes of morphemes (including intonation, word choice, or phrases) that are recognized by speakers within a particular social context, if one wants to understand what is being indexed firstly, and then move on to second-order indexicality to understand what that index means, its ideological inputs, contexts, and ramifications (Errington 1985).

Once a relationship is noticed, ideologies may play a part in semiotic actions and these ideologies form the basis of second-order indexicality (i.e., $n+1$ st order; which means first-order plus some specified other thing, not $n=2$). Silverstein’s second-order indexicality involves the politically or morally imbued cultural constructs, often stratified and whether idealistic or

hegemonic, of the first-order indexical associations and continuities with a kind of assertive meaning. At this second level, social actors are prone to rationalize, explain, and dismiss and through such an effort, ideologies become naturalized and countervailing in indexical relations deemed socially (read: naturally) wrong. It is at this point that there exists a potential for social actors to employ socially meaningful variables to direct change, and therefore, second-order indexes are considered metapragmatic, which describes how the effects and conditions of language use itself become objects of discourse, such as the technical vocabulary of “wine talk” that are “metaphorical of prestige realms of traditional English gentlemanly horticulture” (Silverstein 2006; see also, Woolard 2008:438). That wine talk is noticed among a segment of higher class individuals, or today, also among “yuppies,” is evidence of first-order indexicality, and that it is prestigious and gentlemanly is a reflection of its second-order indexical reference.

The constructed natural relation between linguistic variables and social ideas (cf. Agha 1993, 2005) allows for strategic and material construal which produce a third level of indexicality (i.e., $(n+1)$ +1st order). Third-order indexicality has acquired a meaning above and beyond the meaning of its first-order index, and therefore, its interpretation is equally distinct from the ideology of the second-order index and is related to some social value (Jensen 2016). Silverstein describes these third-order indexes, or Labovian stereotypes, as “markers that have tilted in the direction of ideological transparency, the stuff of conscious, value-laden, imitational inhabitation—consciously speaking ‘like’ some social type or personified image” (2003:220). Silverstein’s description marks the difference between dialect variations and their significance, and the lingo that is overtly fashionable among prestigious or other social groups. In my view, academic jargon, such as in post-structural literature, is evidence of a third-order index. Therefore, following this example, a first-order is the scholar, second-order the student learning

the scholarly language, and third-order a neoclassical economist. One example of this ordering would be that a real economist is one who uses words correctly like “marginal cost,” “multiplier,” or even “price.” The word “maximize” is understood to refer to an “economic man” who judges according to his (!) preferences to make the best choice (see, Sahlins and others 1996).

The indexical order does not only assist in identifying those noticed speakers and the social values which attach to their speech, but also the cognitive aspects of semiotic registers. For instance, within the profession of economics, one may connect a first order index, the price (i.e., the sum of value added at each step in the making of a product) of a gallon of milk, to a second order index, milk is a commodity and as such has a price, to a third order index, a price reflects true value in the economy (i.e., benefit minus cost). The third-order index depends upon many assumptions, including that everything that goes into making a gallon of milk available in the grocery store has a price as well. If emission of methane by cows is not included, then the price is “wrong” if one thinks non-commodified inputs matter. Here the summation formulas of benefit cost analysis are included within an index of costs, or an index of benefits, where one can sum over commodities and then over time achieve revenue.

As a matter of indexicality, social change is said to occur at a macro-level on the basis of awareness of sign valuations associated with semiotic acts, whereas at a micro-level, social change is said to be rooted in unconscious semiosis (Labov 1963, 1972). Labov, for instance, notices the increased use of a diphthong on Martha’s Vineyard after a great influx of tourists began to visit the island in the co-construction of localness. Labov’s informants never reported that this was a conscious act, but it was nonetheless there, and was a reflection of change to the

social structure. Eckert (2000) provides an analytic approach to linguistic variation not as a mere social reflex but as ongoing creative acts of social meaning and identity construction.

As is noted from the indexical orders discussed above, semiotics often entails acts of distinction and difference. Among the ideologies that purport to socially perform these functions, Irvine and Gal (2000) have identified iconization as another important element of semiotics. Iconization (also referred to as rhematization; see Gal 2005) is where linguistic signs are considered natural depictions or images of the qualities of the speaker and are therefore similar to second-order indexicality. Here, linguistic variables are said to portray the essence or nature of a particular kind of speaker (Irvine and Gal 2000:37–39). For instance, when a person from the southern region of the United States speaks comparatively slow to other dialectal speakers of American English, this is thought to be an iconization of the belief held by those outside the region that southerners are slow, less educated, or backward. For insiders, however, slow speech iconizes a variety of internal social values associated with a rural lifestyle and age-stratified forms of deference. Although the cause and immediate necessity are socially noticed and identified, the connection between social and linguistic group may be “historical, contingent, or conventional” (p. 37). The sound and morpho-lexical choices of the speaker are said to denote the kind of speaker one is (i.e., (un)educated, (ir)rational, (un)assertive), because those choices are considered to epitomize a particular way of being. However, these categories of speakers may vary flatly across different sectors of a particular society. Andronis (2003) makes this point clear in her description of iconization associated with Unified Quecha speakers in Ecuador:

Within the indigenous context, while a speaker of Unified Quichua may be seen by other speakers of Unified Quichua as an educated or powerful individual for using the lexemes and structures particular to that variety, she may be seen by speakers of dialectal Quichua as a “neotraditionalist,” or as someone who is not really indigenous. On the other hand, speakers who utilize or emphasize dialect features in their speech are in some communities thought to be “more authentic”

or “more indigenous” than other speakers. How these features are iconized (and to what degree) is dependent solely upon the prevailing ideologies of the given community (p. 264).

Prevailing ideologies here simply means shared ideas that are connected in a particular way. Therefore, again, as noted with first-order indexicality, it is important to locate the “pragmatic salient” classes of morphemes to understand what is it going on socially in terms of linkages to linguistic variables both in metapragmatic statements about language and in spontaneous natural use (Errington 1985:294–295).

Frequency of occurrence is known to be one of the main sources of salience (Rickford and McNair-Knox 1994), but so is contrast (e.g., Cavanaugh 2005). In regards to the latter, linguistic variations through contact between kinds of speakers may cause a categorical absence of one such variety in one form of linguistic variation to become noticeable and meaningful, making it particularly iconic. Campbell and Muntzel (1989), for instance, note the high degree of use of the glottal stop among Xinca-speakers in Guatemala, primarily because of its complete absence in Spanish (see also, Alim 2002; Bailey and Tillery 2004). The glottal stop here is iconic because it references the difference between the Xinca, as a community of practice, and the surrounding settler state. The linguistic variables simply vary by community of practice, and once they are noticed, meaningful, and connected to social value, then the full indexical order is present in speech. Errington suggests three things which make classes of morphemes salient: (1) whether they refer; (2) to what they refer; and (3) the mode in which they refer (see also Silverstein 1981). The determination for each of these elements will establish the degree of salience of a particular linguistic variable. Personal pronouns, for example, are a pragmatically salient class because they fulfill all three features. The salience of morphemes, for Errington, follows a clear pattern: referential elements will be more salient than non-referential ones; personal reference

will be more salient than non-personal; and the indexical mode of reference (deixis) will be more salient than the non-indexical. This last qualification deserves more explanation. Errington suggest that the indexical mode is from its utterance heavily anchored in a social situation of use, and therefore its social meaning is more obvious and direct. Iconic speakers, often core members of a particular community of practice (e.g., Labov 2001; Eckert 2000; Zhang 2005), make salient a particular style of speech, not necessarily through innovation, but through making a style of speech recognizable and prone to imitation. I thought it helpful in this research, for instance, to consult with Hopi scholars at length to understand better complementarities and distinctions in the research findings. To find out, in other words, what am I hearing (through the salience of particular Hopi tropes and linguistic variables) and what explains it (through the indexical order and metapragmatic statements used by Hopi people and by the investigated Hopi social categories of this work).

Style refers to linguistic variables which are a distinctive form of second-order indexes, each of which have particular and specific social meaning. In Eckert's model, a speaker's linguistic style can be woven with multiple social positionings and sorts of affiliation to membership in various communities of practice. Such a model distresses traditional concepts in sociolinguistics developed by Labov (2002) that claim major linguistic change are developed at an unconscious level, outside the confines of individual intention or desire. However, the notion is entirely consistent with recent works that explore language ideologies, which investigate the cultural conceptions at play in language structure and use, and how use inevitably informs and shapes the structure (see, Nicholas 2019; Schieffelin and others 1998).

Elizabeth Traugott's (2001) re-examination of Ellen Prince's (1987) data on stylistic variables in Yiddish is an important reference point for understanding style. Traugott finds that

the attributes of speech to persons which are most attentive are those that encode subjective evaluations, such as intensifiers, evidential markers, discourse markers, and deictics of person and place. Style is connected to indexical field, where any linguistic variable may have a range of social meanings dependent on context (Eckert 2008). Style is also related to different modes of expressing similar meaning, such as social categories ('burnout' or 'uneducated'), genres ('stoner' speech), and linguistic forms (non-postvocalic [r] in New York City English) (Eckert 2008; Labov 1966). Bakhtin (1981:292–293) suggests that speakers acquire not languages or linguistic variables, as such, but rather social 'voices,' whereby voices merge linguistic form with social attributes and individual intentions and desires. It is this social intention that Silverstein and Errington see as not only an unavoidable part of the total linguistic fact to be explained but a rich resource for explanation of linguistic form. Eckert (2008) reminds us that it is not a coincidence that situations (e.g. 'fighting'), genres ('cursing'), social categories ('burnout'), and linguistic form (negative concord, (DH), and/or raised (ay)) are all linked. Speakers take up particular attributes of style inherently depending on the situation, the genre, and the identity that they aim to index.

Enregisterment and ethno-metapragmatics: linguistic and social meaning as things/context

Enregisterment is defined as "[t]he process by which a linguistic repertoire comes to be associated, culture-internally, with particular social practices and with persons who engage in such practices" (Agha 2003). In other words, enregisterment has to do with how linguistic variations that have been registered as a type gain a particular role in a scheme of social values, such as "correct" and "incorrect" forms of speech, which may vary by situational context. Enregisterment is concerned with processes of value production, maintenance, and transformation. A speech chain identifies the historical antecedents of an enregistered sociolect,

or a way of speaking that has a role in social values (e.g., the role of institutions, such as education, novels, scholarly works, speeches, and popular media, etc.). Since style is a bricolage, created through a diverse range of available things, once it becomes fixed it becomes an enregisterment, so that it is then available for distribution (see, Zhang 2005, 2008).

Ethno-metapragmatics, following Silverstein (1976), is a meta-level description of the complex pragmatics of a semiotic register as contextually understood forms of speech (Parmentier 1994:144). Although ethno-metapragmatics functions to ideologically link language usage with social meaning in a contextual manner, it remains non-deterministic. In social practice, the rules for interpretation involved may be gained either explicitly or implicitly. Most interestingly, the “macro-sociological” signification of the *n*th-order indexical is contingent upon the conditions of the “micro-contextual” discursive act in which it is invoked. Silverstein (2003:194) makes note of limitations associated with the larger linguistic explanatory power of ethno-metapragmatic utterances: “And of course in such a metapragmatics there are characteristic modes and degrees of ‘misrecognizing’ (Bourdieu) *n*th-order indexicality, or of ‘falsely’ becoming conscious of it (Marx), or of forming certain ‘secondary rationalizations’ of it (Boas).” In Eckert’s (2000) study she found high school burnouts associated the qualities of urbanity, which were defined as six vocalic variables and one syntactic variable, with desirable traits (tough, streetwise, independent), while for the jocks, they were construed as the opposite (lowbrow, brash). In other cases, ethno-metapragmatics may be sociologically relational as a form of linguistic practice, such as the use of T/V forms between speakers and addressees in Spanish through “alternation rules” (Brown and Gilman 1960). For these reasons, ethno-metapragmatics are often fundamentally associated with *n* + 1st order indexical valorizations that are infused with ideological constructs.

Intertextuality and retextualization: linguistic and social meaning between things/contexts

Intertextuality involves the recontextualization that relates elements from different texts, signs, and meaning within another context (Connolly 2014). Since meaning is linked significantly with context, intertextuality involves the creation of new meaning. The author or speaker can explicitly or implicitly utilize elements from other texts. The importance of this becomes clear when the meaning of a word is clearly based on its meaning in other contexts. The meaning of “rights” within the United States as a dualist country (i.e., implementing legislation is required for human rights and international criminal law to have any domestic effect) within the international system is one example. Intertextuality also, therefore, suggest the shaping of a text's (e.g., international treaty) meaning by another text (e.g., dualism). Bauman and Briggs claim that the process of intertextuality includes a varying amount of control that depends on access, legitimacy, competency, and value, which they call the “political economy of texts” (1990). Access, legitimacy, competency, and value are all culturally situated social constructions that will vary among contexts, and may include the involvement of institutions (see also, Bernstein 2003). In that sense, intertextuality may link in fascinating ways with the rules of ethno-metapragmatics, only in that the former is more bound to $(n+1)+1$ st order because intertextuality involves indexes of overarching social values (e.g., Said 1978), but ones which are contingent on context, but are social values or customary forms of a normative order or which are strategies of necessity or hegemony nonetheless. The question for researchers is what explains this, and perhaps, how does one create an inclusive form of transformative politics on that basis, but which unabatedly divorces any form of essentialization (Latour 1993, 2004, 2005).

Intertextuality refers to such speech acts as quotation, allusion, and parody. There are two types of intertextuality: referential and typological (Mayer 1995). Reference refers to the use of

fragmented textual forms within a current text which are sometimes called “traces,” whereas typological refers to the development of similar structures and patterns of previous texts, which might include general presuppositions about kinds of persons or situations (see, Porter 1986). For example, one can compare a sentence which begins “in my experience” in a formal sense to “one time I was...” in an informal narrative sense. Bakhtin’s conception of dialogism coupled with heteroglossia is useful here as it connects intertextuality with the above-mentioned concepts of indexicality and ethno-metapragmatics (1981). Dialogism refers to the continuous conversation between authors across areas of literature. Heteroglossia makes clear that the intertextual use of words and phrases, or references to a particular texts in a segmented, complete, or formative way, may contain multiple meanings, and therefore, the context of intertextuality is equally significant.

While intertextuality focuses on the ways in which prior texts are employed within new text, retextualization focuses principally on the process of shifting genres (De Marinis 1993) and creating different modes of speech, such as written-to-written, written-to-speech, or written-to-video recorded (Dikson 2018). Retextualization has recently also become a reflexive consideration for ethnographers as local narratives change genre and form into ethnographic writing, which might otherwise possess an unequal kind of authority, and has led to new practices of divergence, dissensus, and contested interpretations (Thompson and others 1998). Retextualization implies textual social networks. For example, a study which combines analysis of a music video, a live performance, and an interview with the artists about their new release would provide greater context into the development of each of these texts in so far as the social context is accounted for in terms of the intended audience and situation in which each of these texts was produced.

Methodological framework

This study proceeds to investigate these topics (e.g., indexicality, enregisterment, etc.) through various complimentary approaches, including interviews, participatory observation, and written comments on public proposals. I conducted twenty-five interviews on site on the Hopi Reservation and via phone calls that were conducted remotely with enrolled Hopi tribal members. The research participants were residents of all the three Hopi Mesas and persons of various socioeconomic backgrounds. The ages of research participants ranged from 35 to 86 years old. This work was carried out over a two-year period from January 2018 through March 2020 and under a permit from the Hopi Cultural Preservation Office. At the initial stages of proposing a project to Hopi CPO, I recall one official in the office emphasizing the point: “We want you to speak our culture back to us,” and who later mentioned: “With some research done on the reservation, we have recognized the quality of the work, but have often reflected to ourselves, this is not meant for us.” It is that request that I always sought to keep in mind throughout this research process, and my hope is that besides the academic nature of the theoretical section, that this research may be of interest and benefit to the Hopi people.

Research participant interviews were augmented with fourteen additional interviews with tribal and village government officials and administrative staff; however, the questions posed to them did not inquire specifically about the different statutes, but rather asked general questions about their work and missions of their respective organizations and departments. I also engaged during the fieldwork in participatory observation at households, tourist venues, and Hopi Tribal Council committee hearings. In addition, public scoping comments submitted to the Bureau of Reclamation (BOR) by Hopi tribal members and the Hopi tribal government during an

environmental impact study of the Kayenta mine complex are included within this study, and are interspersed across the dissertation on various thematic topics. Notably, the comments submitted to the BOR from individual Hopi citizens were all based in villages on Third Mesa.

Information regarding research participants' gender, village/Mesa affiliation, and clan was collected during the interviews I conducted. In total, I interviewed fifteen males and ten females about seven federal statutes. Interviews focused on questions pertaining to the seven statutes that were identified as of interest to Hopi people. The Endangered Species Act, for instance, is currently a topic of discussion on the reservation because a proposed project by an outside company to build a wind power facility in northern Arizona which has the potential to impact raptor populations, a species that features prominently in the Hopi ceremonial system and oral tradition. Responses to interview questions were coded using a grounded theory approach (Strauss and Corbin 1994). Topics within legal semiotics were then identified on the basis of these responses, allowing for theoretical constructs to be selected on the basis of Hopi research participants' statements. Research participant's confidentiality was in part safeguarded by not using the names or specific village and clan information of research participants in reporting on their statements. I therefore refer to research participants on the basis of which Hopi Mesa they are from and their gender. Individuals from most Hopi villages took part in this study, with representation from all three mesas. The breakdown in terms of Hopi Mesa research participation was five participants from First Mesa, fifteen from Second Mesa, and ten from Third Mesa. The reason more Second Mesa residents participated in the research relates to the fact that I stayed in a village at Second Mesa for a brief period during the fieldwork. This provided greater access to village residents from Second Mesa for the purpose of collecting interviews. Table 1 identifies the clan affiliation and gender of research participants.

Table 1. Clan affiliations and gender of research participants.

Clan	Number	Gender
Corn	3	1 male, 2 females
Coyote	2	2 males
Greasewood	2	2 males
Spider	5	3 males, 2 females
Sunforehead	5	2 males, 3 females
Tobacco	3	1 male, 2 females
Water	5	4 males, 1 female

As a collaborative project, the benefits to the Hopi Tribe were important to identify. These benefits include a separate but ongoing research project that will look into possible intellectual property frameworks that the Hopi Tribe could develop for the purposes of protecting Hopi genetic resources and other cultural products. The Hopi Tribe is currently considering drafting a new tribal ordinance which would seek to protect Hopi blue corn as a form of intellectual property. Seeking and acquiring knowledge from Hopi participants has involved relational responsibility and anticipated outcomes on my part, which was frequently noted by several people involved with this research. I intend with the current and future projects to work on matters of direct interest to Hopi people, if I am fortunate enough to do so. Additionally, I think the concepts and research findings explored here related to cultural sovereignty may be of some use to the Hopi Tribe in considering and developing policy. Lastly, I think much in this dissertation would be helpful for federal officials and courts in understanding some of the shortcomings and even acts of injustice that can occur with misguided and poorly informed legal implementation or enforcement practices.

In terms of positionality, this study is rooted in my personal and professional commitment to fighting against human rights violations. I enrolled in law school at Berkeley Law in order to

fight injustices and not be a bystander in history. I decided initially not to pursue an academic career because I wanted to do something, and I viewed academic work as a matter of pure intellectual pursuits. In law school, I focused principally on federal Indian law and international law, and decided to work in the area of Indigenous peoples' rights once I graduated. At the time, the notoriety gained from resource extraction deep within the Peruvian Amazon Rainforest was something that grabbed my attention, and my first job following law school was to work with local attorneys and develop a "know-your-rights" campaign among Machiguenga representative organizations in the Peruvian Amazon. Additionally, it was during my studies that a famous case was issued by the Inter-American Court on Human Rights, a regional human rights body of the Organization of American States. The *Awás Tigni* case was heralded as the first instance in which the property rights of Indigenous peoples had been recognized by an international tribunal. However, the after-life of this case would produce a much different reality than the doctrinal purity of its decision. The rainforest area in Nicaragua where the Indigenous community who brought the case lived was soon inundated with paramilitary groups who confiscated areas of land and deforested much of the once pristine rainforest where the Mayagna people called home. I became very interested in understanding how this could happen, and understand better what my professors in law school frequently referred to as "implementation gaps" which they bemoaned as an area of research that receives scant attention. As another example of my personal experience that has led to me to this current project, I worked for some years in program development for an international human rights organization. Through this work, I had the privilege of meeting prominent thinkers and practitioners in many areas of international law, from maritime law, to international criminal law, to human rights. On one occasion, I was engaged in a conversation with a well-seasoned and well-known professional from the United

Nations. Having worked for decades in international law, she had developed a larger vision of future, potential frameworks that could resolve, in her view, some of the entrenched social problems faced by the world today, such as poverty, environmental crisis, etc. One of the elements of that overarching vision involved a perhaps neoclassical economic view to privatize all land so as to circumvent continued conflicts over land and resources, and provide everyone with a source of income. When I asked, “What about the world’s Indigenous peoples?,” she quickly retorted, “I think you have to forget about those people.” Well, I do not intend to forget and I think it is time, as my research participants have gone to such incredible lengths to explain, for a real transformative politics where Indigenous interests are valued and peoples’ rights recognized.

Felix Cohen, one of the most preeminent scholars of federal Indian law of the twentieth century, once compared American Indian’s rights to the miner’s canary, and the fact that some rights enshrined in the Constitution have been denied to American Indians causes many great concern, and rightfully so, about the mere recognition of that document by institutions and those in power. In terms of human rights, neither political party currently recognizes those rights as fundamental to their platforms, and when Mary Robinson, former President of Ireland and then acting United Nations High Commissioner for Human Rights, requested the United States and other countries to donate a single helicopter to end the genocide in Darfur, Sudan not a sound was heard from anyone in leadership regarding the government’s denial of that request. These are just some facets of the larger problem as I perceive it. As an intellectual pursuit, my interests are to understand what rights mean based on contexts as well cross-culturally, and since the Hopi Tribe was a plaintiff in a lawsuit that has unequivocally denied First Amendment Freedoms to American Indians in a case that concerned the San Francisco Peaks and the use of reclaimed

water in order to assure, according to the federal government's stated aim, the continued operations of a ski resort (which only provided nominal local revenues), I became very interested in working with them on these questions.

Chapter 3. Political organization

Hopi sovereignty and Hopi as form of political organization

The Hopi Tribe is a sovereign nation that enjoys government-to-government relations with the United States federal government. The Hopi people continue to reside on a portion of their ancestral homelands located in the Black Mesa region of the United States. The Hopi Tribe, however, although existing as a federally-recognized entity during the nineteenth century, did not officially come “into being” until October 24, 1936, when the Hopi Constitution and Bylaws entered into force by popular vote of Hopi members. Before that, decision-making was decentralized in nature and occurred at the village level or, since 1849, by the Bureau of Indian Affairs (BIA). 1849 was the year the United States appointed James S. Calhoun as Indian agent for the Southwest Territory, which was then headquartered in Santa Fe. The Moqui (Hopi) Pueblo Agency was not established until 1869 at Fort Wingate, Arizona, and was moved to Fort Defiance in 1871, and finally the Moqui (Hopi) Reservation in 1874. Hopi identity was equally based on a variety of interwoven local groups, including villages, clans, religious societies, kiva groups, households.

Tribal sovereignty in the United States is an inherent attribute of Native peoples (Green and Work 1976). Tribes retain all powers of a sovereign despite the lack of statutory language explicitly recognizing those rights with the sole exception of external relations with foreign governments (Frickey 1990). For instance, American Indian tribes have a right of eminent domain over their lands although this right is not statutory or constitutional in nature, it is inherent. The only legal instrument where this right can be observed is in the Indian Civil Rights Act, a federal statute that extends the restrictions of the U.S. Bill of Rights to tribal governments, and in this case which obligates tribal governments to provide for just compensation in land

takings. There are only three exceptions as a matter of practice that do not apply to tribes as sovereigns, given that tribes do not have a currency, postal service, or military. All other powers of a sovereign are vested in tribal governments despite the fact that some commentators have argued that Congress enjoys unlimited authority over Indian Affairs (Prygoski 1997). I, however, take the view espoused by other legal scholars that plenary power in Federal Indian Law references a preemptive federal prerogative over and above the interest and actions of state governments (Rich 2011; Frickey 1990). The foundational cases in Federal Indian Law stipulate this view as part and parcel of the basic legal framework, and any departures by the courts should be explained by the shifts in public opinions that gave rise to the policies of assimilation, boarding schools, criminal sanctions on the practice of Native religions, and food rations (see, Frickey 1990; see also, Frickey 1993:footnote 158). That is certainly not the present situation.

The Hopi Constitution was adopted under the Indian Reorganization Act (IRA), a statute that some scholars and federal officials have referred to as an exercise of indirect rule (see, Beardall and Escobar 2016). However, the Hopi people did not rely as heavily as other tribes (see, Fay 1967; see also, Taylor 1980) in adopting the template model provided by the BIA (Begay and others 2007:50–51). Some tribal governments, in recent years, and at an increasing rate, have engaged in constitutional reform beyond the confines of the IRA, but the Hopi have yet to do so. The authority of the Secretary of Interior to approve or veto tribal government actions is often one of the primary provisions that is removed by newly constituted tribal governments. In 2010, efforts were made at Hopi to adopt a new constitution, referred to as Draft 24A, which would have reformed the tribal government from a unicameral system to one based on checks-and-balances of four distinct branches: Legislative, Judicial, Executive, and Villages. The draft, however, was not approved (410 voted in favor, 656 opposed), reportedly due in large

part to the perception that village inherent sovereignty could be abrogated by the other branches if incorporated into a centralized government authority (Fonesca 2011). For instance, the draft stipulated that the executive would have authority to represent the new government in all matters to do with outside governments. Currently, village leaders retain the right to represent their respective village's interest with outside local, state, and federal governments. Ben Nuvamsa, former Hopi Chairman, released a statement after the vote was finalized which stated, “[Màasaw] gave us specific instruction that we must honor our covenant; that we have to hold on to and protect our Hopi way; and that we must not forget who we are. I am glad that our people spoke against this potential atrocity. This was a dangerous non-Hopi proposal and would have caused irreparable harm to our people.”¹

Local BIA officials at the time the original constitution was adopted claimed there was 50 percent voter turnout in the election, but later scholars would argue the BIA relied on population figures that were grossly misconfigured (Morman 2018:54). The IRA legislation itself required a majority vote for adoption of the constitution to occur. The voting results in the election in 1935 were 519 in favor and 299 opposed. The vast majority of Hopi people, and in fact entire villages, abstained from voting in the tribal election. However, the abstentions of these votes were ignored, despite the IRA's statutory language, as prescribed by a majoritarian democratic system where abstaining renders no real effect.

Prior to the formation of the Hopi Tribal government, the Hopi people were made up of separate, autonomous villages that were organized into various institutions on the basis of clan affiliation, religious societies, and kiva groups, as I will outline below. These institutions and

¹ Ben Nuvamsa's released comments can be found electronically here: <https://beyondthemas.com/2011/01/28/nuvamsa-responds-to-defeated-hopi-tribe-constitution-draft-24a/>

subgroups at Hopi continue to have major importance at the village level of Hopi society. Several research participants bemoaned the perceived continued lack of full recognition of village authority regardless of the fact that the current Chairman of the Tribe visited with religious society leadership during his campaign for office, which was seen by some research participants as a welcomed change. The question participants asked, however, was “what will happen next?” Indeed, these subgroups often play a role in various forms of Hopi Tribal affairs. For instance, land use issues can sometimes present challenges (due to approvals and permits) to economic development by way of capital construction for housing, commercial buildings, and other types of infrastructure, but in addition, the subgroups identified above at Hopi can also play an oppositional role in these matters. Clans, for example, may demand to be consulted on project proposals in cases where development proposals would potentially affect the land or resource interests of particular clans (see, e.g., LaCapa 2006). The Hopi Tribe continues to face case-by-case decision-making resolution of land use issues when it comes to deciding locations for future economic development. On a few occasions, the Hopi Tribal Council, for instance, built government buildings on lands traditionally held in the Badger Clan and on lands belonging to the Sand Clan (Whiteley 1985:369). As it was, heated discussions did occur but in the end, the clans’ interests were overridden.

Hopi villages retain autonomy and are “self-governing” under the Hopi Constitution, but the precise meaning of that language and its applicability to various contexts is a heavily debated topic on the reservation. The Hopi appellate court in the Bacavi Village's Certified Question, Case No. 2008-AP-0001 has referred to villages as possessing “inherent aboriginal sovereignty.” A question that became frequently posed by research participants during fieldwork: who should have authority? The Hopi Constitution stipulates four areas where the villages retain exclusive

jurisdictional authority: appointment of guardians, family disputes and regulation of family relations, inheritance, and assigning village farm lands. However, this latter reservation of rights by the villages is a topic that is debated among Hopi research participants regarding the Constitution and will be discussed in more detail in Chapter 9 on the Hopi Constitution. Villages also reserve the authority to appoint their own leaders and determine which model of governance to follow, whether that be under a *kikmongwi* hereditary leader, or a democratic model, one under an elected official referred to as a Governor or a village board of directors. The village leader, whether *kikmongwi* or Governor, may be assisted in carrying out their duties by a Community Service Administrator (CSA), a hired Tribal government employee who assists in general administrative matters of the village. The *kikmongwi*, where in place, must certify representatives to the Hopi Tribal Council. I will describe these offices in more detail below in discussing village governance.

Perhaps most telling, the Hopi Tribe is a unicameral government and its representatives are elected from each of the villages. Of the twelve villages that presently comprise the Hopi Reservation, only eight send representatives to council. The other four villages (i.e., Songòpavi, Orayvi, Hotvela, and Lower Mùnqapi) retain the position which has been voiced since the government was originally formed: the Tribe lacks authority to represent Hopi people's interest. Representatives serve two-year terms and there are no term limits. Several participants expressed a view that they considered Hopi Tribal government actions illegitimate because of the lack of proper quorum. Table 2 lists names of villages with the corresponding number of representatives that serve on tribal council and how they acquire their seats (Ashley 2016). Voting occurs across the tribal reservation for the Chairman position and voting occurs also in nearby urban centers

with large Hopi populations, including Flagstaff, Phoenix, and Gallup. Representatives are apportioned on the basis of village population size.

Table 2. Election and appointment of Tribal Council representatives by village.

Village	Number of Allocated Representatives	Process by which representative acquires seat
First Mesa Consolidated Villages (FMCV; Wálpi, Sitsom’ovi, Tewa)	4	Appointed by FMCV
Musangnuvi	4	Appointed by Village board
Supawlavi	3	1 Appointed by <i>kikmongwi</i> 2 Elected
Songòopavi	4	N/A
Orayvi	2	N/A
Kiqòtsmovi	4	Elected
Hotvela	4	N/A
Paagavi	3	Elected
Lower Mùñqapi	2	N/A
Upper Mùñqapi	4	Elected

Source: Ashley (2016).

A view that a centralized institution with ultimate authority cannot represent Hopi people’s interest arguably has parallels in the historical role of the *kikmongwi*, who lacked all forms of coercive authority. Arguably, the Hopi Constitution as adopted conflicted with Hopi forms of direct democracy and decision-making that had developed over generations (Mormon 2018:53-56). Even this role, however, has changed in dramatic ways since ratification of the Constitution, given that the *kikmongwi* today often takes a political and adjudicatory role rather than being limited to only advisory and ceremonial matters. Indeed, the Hopi Constitution calls on him to do so. One research participant from Second Mesa explained traditional view regarding this office, “the *kikmongwi* is a father to the villagers and he should show care and guidance to everyone as a father would. He is supposed to be kept away from politics and disputes so he can show care to all his children and commit himself to the ceremonial life of the village. He should be kept separate from politics and not dabble in it.”

According to the constitution, the Hopi Tribal Council has the power and authority to represent and speak for the Hopi Tribe in all matters for the welfare of the Tribe as a whole, and to negotiate with federal, state, and local governments, and with the councils or governments of other tribes. Although an executive branch (i.e., Chairman and Vice Chairman) and judicial branch exists, their powers are limited under the Hopi Constitution. The Chairman essentially serves three functions. Firstly, the Chairman oversees council meetings in which s/he enjoys a voting right in case of a tie. The Chairman also serves as a spokesperson for the Tribe and carries out other duties as delegated by Council. The Chairman may finally call for special meetings when requested by villages engaged in a dispute or by at least four Tribal Council members. The Tribal courts may hear certain disputes and enjoys limited subject matter jurisdiction pursuant to the villages' retained self-governing authority. In matters that concern the four areas that are within the exclusive jurisdiction of the villages, the village must waive its authority, in writing, to resolve the legal matter in order for the court to have concurrent jurisdiction. For instance, the Hopi Tribal Court has organized a Children's Court to oversee implementation of Indian Child Welfare Act, but the court may only exercise jurisdiction in an adoption case if the village government has submitted its waiver of jurisdiction. Research participants note that sometimes there is a back-and-forth between the village government and the court, causing undue delays in resolving important matters (see also, Sekaquaptewa n.d.). An organizational chart was recently adopted by the Hopi Tribal Council which outlines the make-up of the Hopi Tribal government (Figure 1) (see, Ashley 2016).

HOPi TRIBAL GOVERNMENT ORGANIZATION CHART

APPROVED: November 25, 2015
Resolution H-118-2015

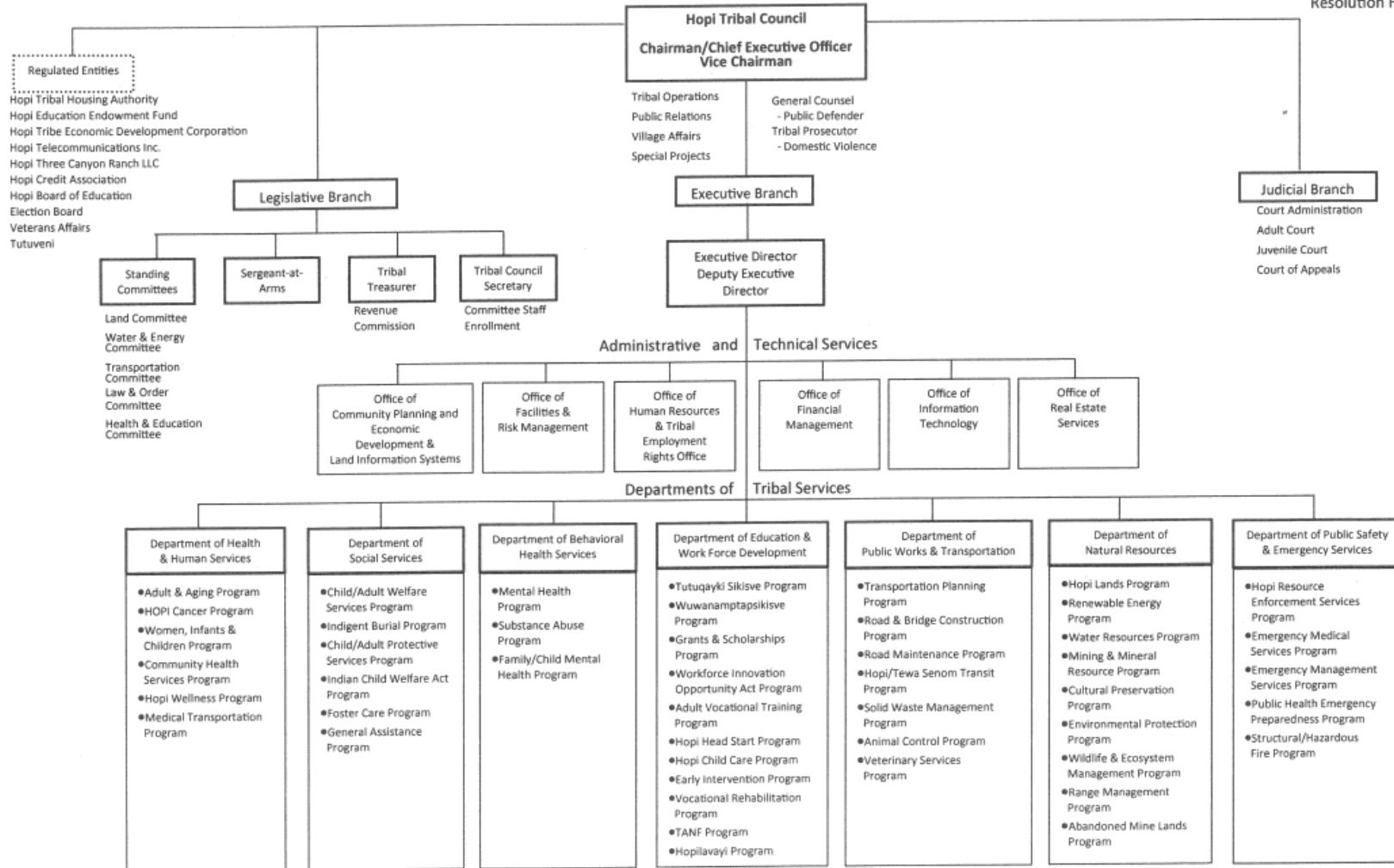


Figure 1. Organizational chart of the Hopi Tribe pursuant to Hopi Tribal Resolution H-118-2015. Source: Ashley (2016).

Hopi economic activity

Reportedly, 86 to 88 percent of Hopi Tribal revenues are collected from royalty payments from Peabody Coal, constituting about 12 million dollars annually (Committee on Natural Resources, United States House of Representatives Joint Oversight Hearing 2011). Peabody Coal extracts coal from Kayenta Mine, the only supplying mine for the Navajo Generating Station (NGS) which is located in Page, Arizona. NGS is currently in the final stages of closure, despite various attempts to keep it open by locating new owners. The current owners of NGS (called ‘participants’ because one such entity lacks voting rights on the board) include utilities and federal agencies, an uncommon practice in the field of energy. The Kayenta mine is the last remaining coal mine in northern Arizona, and there is only one other in the southern part of the state. The energy produced from the coal at Kayenta mine is used principally for the Central Arizona Project (CAP), an over 200-mile water aqueduct that delivers water from the Colorado River along the border between Arizona and California to the urban areas of Phoenix and Tucson, and then ends at the San Xavier de Bac District of the Tohono O’odham Nation. The CAP also provides water for the Gila River Indian Community under its water settlement agreement (DeJong 2009:248–249).

The impetus behind closure of the Kayenta mine is fundamentally economic in nature, although there is also a political nexus. In recent years the energy market has been flooded with natural gas supply following the emergence of more effective hydraulic fracking technologies. The price for natural gas has plummeted dramatically as a result. Moreover, local and state policies on renewable energies, such as Renewable Energy Portfolio standards and smarter technologies, have further incentivized more integrated regional markets in energy supply grids that have increased the marketability of renewable sources of energy. In regard to the latter, intermittent sources of energy such as solar and wind are able to come online and compete once preferential treatment exists as established by fiat, or energy markets are regionally integrated and local weather or sunshine

conditions are no longer of pivotal importance (Ackerman and Fisher 2013). CAP Board members have decided to import natural gas into the state (Arizona notably has very nominal LNG reserves) rather than continue to purchase in-state coal produced energy which would require, so it is argued, pushing costs off to consumers (Central Arizona Project 2017).

In 2018, the Hopi Tribe predicted revenue shifts caused by the closure of NGS would reduce the operating budget of the Tribe by six percent; however, these cuts may not come into place for another few years given previous years' earnings. For instance, in December 2019 a budget was presented to the Hopi Tribal Council for the next fiscal year which would only constitute a little more than a one percent reduction for 2020 (Laban 2020). Still, as shown below, budget reductions have occurred on the reservation and the revenue loss might result in major impacts on the Hopi Reservation given that the majority of jobs are found in the public sector (Table 3), either through Hopi Tribal administration or in the healthcare field at the Tribally-controlled Indian Health Services. In addition, officials within Hopi village governments who participated in my research noted that the majority of their funding is derived from the Tribal government, and these funds have been reduced "by a third in the past five years." According to a research participant who works for one of the village governments, Hopi village governments can also acquire funds via grants but applications must be approved by the Tribal government prior to submission. Several village officials reported that they are exploring grant opportunities in order to continue basic government service programs.

Table 3. *Employment by sector on the Hopi Reservation.*

Business/Employment	2015	2016	2017
Hopi Tribal Administration	491	564	561
U.S. Indian Health Service	261	260	262
Moencopi Legacy Inn/Denny's Restaurant/ Affiliates	113	112	110
McGee's Trading Post/affiliates	50	50	49
Hopi Cultural Center Hotel/Restaurant	49	48	50
U.S. Department of Interior Law Enforcement Services	43	43	43
Kykotsmovi Village Store	39	38	38
U.S. Bureau of Indian Affairs (BIA)	20	20	20
Hotevilla Co-op Store	14	13	12
Total	1,080	1,148	1,145

Source: Ashley (2016).

External affairs

As noted, the Chairman of the Tribal government represents the Hopi Tribe in negotiations with external entities including local, state, and federal agencies. The Chairman, lead attorney, and other officials likewise often appear on behalf of the Hopi at federal congressional hearings. However, at the time of negotiations on the Navajo-Hopi Land Settlement Act (Public Law 93–531), a factional group of so-called Traditionalists appeared and often spoke separately on their perspectives and proposals (Clemmer 1994; Richland 2008a). One such contentious claim for the Traditionalists was that the Navajo people living in the Hopi Joint Use Area should not be required to relocate. This group, however, was frequently dismissed by Hopi people, given that its members were not associated with clans that hold ceremonial knowledge (Geertz 1994; Richland 2008b).

The Hopi people have a cultural interest in numerous resources and sites outside of the reservation proper. For this reason, the Hopi Tribal Council created the Cultural Preservation Office (CPO) under the Hopi Department of Natural Resources to engage in consultations with federal and state agencies, museums, and private institutions that possess or control Hopi cultural

resources and human remains. Under numerous federal statutes and executive orders, some of which are discussed later, the Hopi Tribe has a right to be consulted on these matters and, in some instances, may also have a right for certain items to be repatriated to the Tribe. Village leaders may also represent village interest in external negotiations, but I focus the discussion here on the CPO, which has developed an auxiliary office of village elders who act as advisors. This group of village advisors is referred to as the Cultural Resources Advisory Task Team (CRATT). There are twelve members of CRATT, and meetings are held on a monthly basis with CPO and CRATT members. Leigh Kuwanwisiwma was the first director of CPO and continued in that role for several decades. He explains the reasoning for the formation of CRATT.

Early on I realized I needed help—I'm a commoner, not initiated into any major Hopi religious societies. Therefore, I formed a core of central advisors, the Cultural Resources Advisory Task Team (CRATT), which consists of eighteen men representing the Hopi clans and villages on the three mesas. Meeting monthly, CRATT includes many of the tribal members whom we engage in historic preservation research. For field and museum research projects, a team of CRATT members joins us to share their knowledge of our history. During fieldwork, ideas are passed around among cultural advisors, and there are many diverse opinions. Hopis belong to different clans—so that clan identity helps to shape CRATT contributions to a project—but no matter which clan they belong to, all Hopis share a common way of thinking. I rely on CRATT as the first sounding board for issues that I need help with. The team's cultural advice is valuable, even though I ultimately have to make executive decisions (Kuwanwisiwma 2018:7).

The CPO office has produced some of the most current and cutting-edge scholarship on the Hopi people in the form of cultural affiliation studies (e.g., Ferguson 2003). According to information gathered in fieldwork for this dissertation, one such study is currently being planned to evaluate Hopi cultural affiliation to the peoples who inhabited the region archeologists refer to as Mimbres, an area that covers parts of Arizona and New Mexico.

The Hopi Tribal Council delegated authority to the CPO for consultation with land managing agencies, museums, and private entities over cultural and environmental resources of

cultural and religious interest to Hopi people. Federal compliance is a major segment of the office's work, reviewing and commenting on various rules and agency decisions, and I was told by officials that the Tribe has a policy of always responding to every request for consultation. I was able to view some of these responses during my fieldwork. Some of them involved detailed discussions on issues regarding land management decisions, while others simply deferred to the decisions of other tribes, such as the Tohono O'odham Nation. This is a major undertaking; the former director of CPO has written: "I typically edit, review, and sign about ten letters a day" (Kuwaniwiswma 2018:6). The Hopi CPO must determine for each project whether to support it or reject it, and whether mitigation of adverse effects is possible. While attending CPO meetings, I observed personnel from private enterprises, public museums, and universities make presentations for various proposed projects to the administrative staff at CPO.

The Hopi CPO, under Hopi Tribal Ordinance 26, also received the mandate to develop specific programs that address cultural resource concerns on the reservation. For instance, archival research at the Hopi Tribe's Cultural Preservation Office revealed that the CPO developed a village mapping project to include village sites and their known cultural and agricultural resources. A research participant who worked in the office explained one such initiative that was part of this project: "We had the distinct privilege of going out to the Snake Society lands and documenting the places where they collect. This, of course, can be really useful in terms of land management." The Hopi CPO also has developed a language program and Senior/Youth program that carries out educational and recreational programs in the local schools. As an important corollary, Ordinance 26 also explicitly provides for CPO to undertake an overseeing and monitoring role for outside research projects with academics and new exhibits in museums. The Hopi CPO, in conjunction with village authorities, has also developed rules for

tourists visiting the reservation in order to protect the integrity of Hopi ceremonies. These rules include prohibitions against video recording, photography, and etching while on the reservation, without first receiving a permit from Hopi CPO. As of 2019, CPO, and more specifically its current director, has also been awarded Tribal Historic Preservation Office status, taking over this position from the State Historic Preservation Office for on-reservation resources and the procedures used to protect them which are covered by the National Historic Preservation Act (see, <https://www.nathpo.org/thpos/find-a-thpo/#az>).

Two points from the fieldwork demonstrate the importance of CPO's role on the reservation. For one, I was frequently asked during fieldwork by potential research participants whether a research permit from CPO was currently held, and when I replied in the affirmative, that greatly facilitated numerous conversations on matters of relevance to my study. I found that working under the supervision of the Tribal government was enormously helpful, and having built relationships with some of the staff at CPO also helped to establish a foundation for future conversations. Secondly, while visiting a village on Third Mesa merely as a visitor rather than a researcher, I was told by someone about the presence of an important religious shrine nearby. When I asked whether I might be able to view it, I was informed being able to observe the shrine would "require a permit from Leigh," a reference to Leigh Kuwanwisiwma, the then-director of CPO, and I would need to explain why it was important for me to visit the site before I would be allowed to view it. In other words, the site was off-limits without a compelling rationale for seeking a permit. The same holds true for all archeological sites on the reservation, with the sole exception of Dawa Park which is frequented by certified Hopi tourist guides.

Other such instances occurred during the fieldwork. For instance, I had the privilege of staying in one of the villages for a short period of time. I was informed that I must notify the

CSA of the village, not the *kikmongwi*, who was preoccupied with ceremonial matters. There was high activity around one of the kivas, where I was able on one occasion to greet the *kikmongwi*, who I had previously known. The need to notify the CSA was more than a formality; it was an important matter that had to be resolved before I could remain in the village. When I approached the CSA, he asked me to remain in the office while he made a call. He then phoned a person and notified her that a Caucasian male would be visiting for research purposes and that I had a permit from CPO. He said that she should inform anyone who reports my presence to her about the nature of my visit. I was equally notified on several instances by different people about where in the village I should not venture. I was told it was best not to even approach a row of houses on one side of the village, and that if I did, I would surely be reprimanded quickly by the nearby residents. “People will tell you very quickly not to go somewhere that you don’t belong so do keep an eye out as you are walking around the village,” one research participant stated. “It would be best to always have a guide with you while you are staying here. And, plus they can explain things to you about the village.” This person further remarked that the area was of high ceremonial importance and non-Hopis are simply not allowed. Another research participant explained further, “You see there are things kept there that have significant power. They could cause harm to someone who came close to them, even kill someone. We don’t want to see that happen so we let people know that the area is off-limits, like way off-limits.” The CPO permit, with significant limitations, opened many doors at Hopi where the normal restrictions placed on a person marked as a tourist no longer applied. It acted as a personal invitation to remain at Hopi and speak with individuals at length, many of whom seemed to have a way of approaching me rather than the reverse.

The CPO is also involved in administrative oversight work of the arts industry on Hopi, as well as work involving the clean-up of items left by non-Hopis who practice New Age religions. Some New Age adherents believe it within their rights (it is actually against Hopi Tribal laws, which CPO helps to enforce by notifying the police) to engage in drum circles and deposition of crystals, leaving items around the Hopi Reservation. According to one staff member, the Hopi CPO currently receives around \$246,000 each year to carry out its mandate from an allocation from the Hopi Tribal Council, an amount that has reduced by more than 50 percent since 2005, when \$500,000 was awarded. CPO has also received grant funding from outside sources such as for the development of its Hopi language program, but this program was transferred to the Hopi Department of Education in 2016.

Kuwanwisiwma goes on to explain that during his tenure as director for CPO, “I understood my mission to be simple: to uphold the Hopi philosophy of unity, reciprocity, cooperation, industriousness, respectfulness, and most importantly humility” (2018:5). Some of this work has involved preservation of Hopi cultural norms and practices, such as educational programs, while other areas have required significant innovation. For instance, repatriation of human remains has required the Hopi to develop an appropriate ceremony for reburials. As Kuwanwisiwma stated, “We didn’t have a tradition of reburial, but Dalton Taylor (a Hopi priest from Second Mesa in the Wuwtsim Society) said, ‘Let’s help our ancestors out’” (2018:10). Many ancestral remains of Hopi people remain in repositories. In the states nearest to the Hopi Reservation alone this includes: 600 at Bureau of Land Management in Tres Rios and 1,500 at White River National Forest. The aim of CPO even under new leadership seems to remain the same. As Kuwanwisiwma stated,

I admired the traditional leadership of my grandfather's and my father's generation. I sought to learn from them the philosophy of the Hopi—to be who they are in their Southwest home and to maintain the integrity of their culture in ceremonies, farming, social and kinship systems, and every other part of their lives. It was their philosophy to maintain their culture as much as possible so that the future generations of Hopi would benefit from it, learn from it, and hopefully carry it on (2018:5).

Chapter 4. Variables of the research: Mesa, clan, and gender

The variables of Mesa (whether First, Second or Third), clan, and gender were chosen for this study because of their salience in Hopi culture as well as the availability of research on the categories over a historical trajectory that can further ground and elucidate symbolic and material elements of Hopi civilization. In regards to salience, for example, Hopi research participants from across different Mesas often referred to similar ideas and perceptions of what it means to be from First or Second Mesa. Framing statements were frequently employed such as “I am from First/Second Mesa, so...” However, village affiliation was undoubtedly the most frequently referenced by research participants. Third Mesa residents did not as frequently use Mesa characterizations from the outset, and instead framing statements relied on particular villages within Third Mesa. The exception here being with statements related to the distinct dialects of the three Hopi Mesas by Third Mesa research participants, but also by others. Clans were equally salient concepts, as one research participant from Third Mesa stated, “One of the first things people out here want to know about you is what clan you are a member of. It is more important to know which clan than your own name (laughter).” Gender was chosen because of its relevance in terms of cultural and religious practice, as well as its connection to art production. Art production is considered a major form of economic activity on the Hopi Reservation, and it is also a subject matter covered by one of the statutes herein discussed. One tribal official noted, “We have a lot of artists.” In regards to gendered cultural and religious activities, and as will be discussed below, Hopi religious societies are sexually divisioned between men and women with the exception of the Katsina Society which is open to initiation for both boys and girls around the age of seven or eight. Most research participants also referred to the importance of relational “roles” as connected to different Mesas, clans, and gender. For instance, a Tobacco Clan member

explained notions of interdependency and inclusion that comprise the Hopi people's community cohesion, "we are the ones, my clan, who provide the tobacco in ceremonies. Without us, there can be no ceremony."

Mesa

The majority of reservation residents live along the State Highway 264 corridor in villages on First, Second, and Third Mesas, and in residential areas that are part of particular village territories. I had originally intended to focus on particular villages as a variable, but Hopi research participants were concerned about the extent to which their statements would be made confidential internally. I then decided to switch to Mesa affiliation, not on account of IRB requirements, but on account of Hopi individual's understanding of how the confidentiality of their statements could best be assured. The Mesas are composites of villages, with First Mesa containing three villages, Second Mesa having three, and Third Mesa with four. Wàlpi, Sitsom'ovi, and Tewa are the villages of First Mesa. Musangnuvi, Supawlavi, and Songòopavi are those that make up Second Mesa. Finally, Third Mesa is comprised of Orayvi, Kiqòtsmovi, Paaqavi, and Hotvela (see Figure 2. Location of Hopi reservation and villages. Modified from Hedquist among others (2014)).

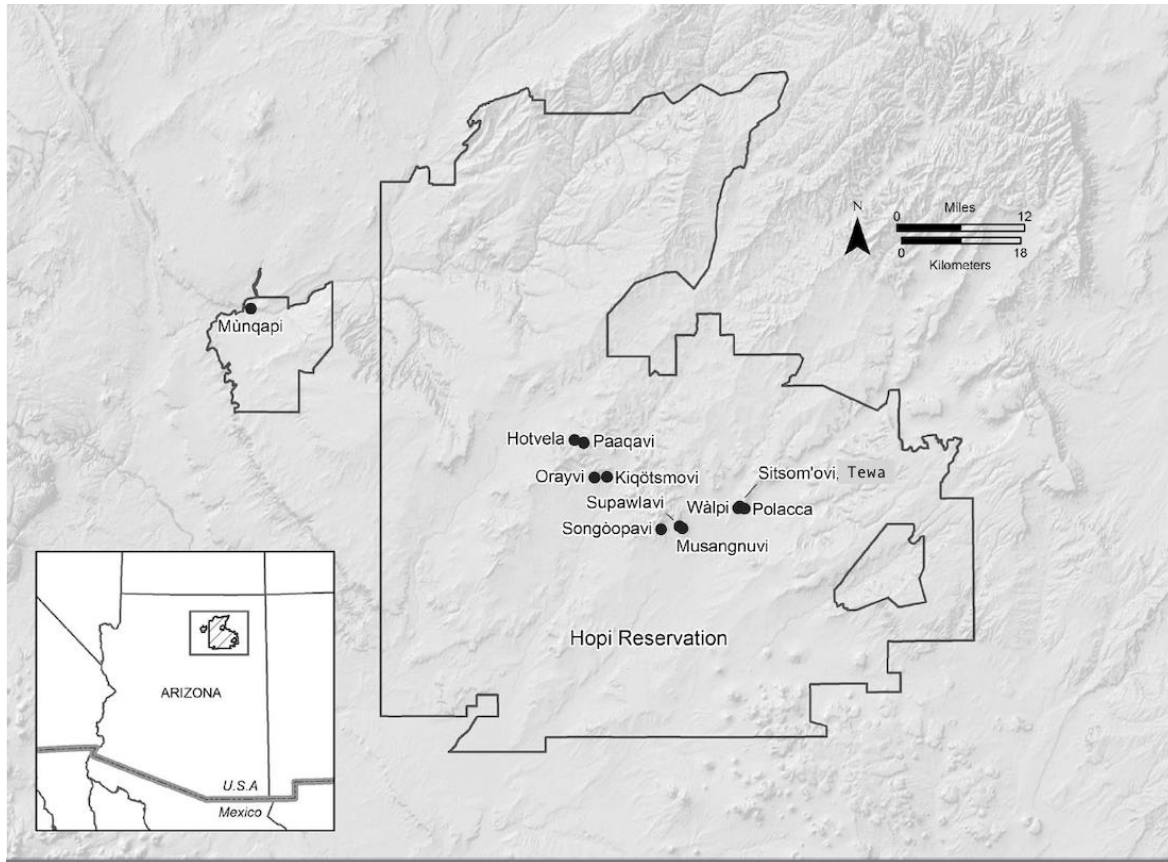


Figure 2. *Location of Hopi reservation and villages. Modified from Hedquist among others (2014).*

In addition, Hopi communities of Polacca, Keams Canyon, and Spider Mound are located on the reservation, but are not considered “villages” as they lack representation under the Hopi Constitution. The different Mesas are distinct in that Hopi villages on the different Mesas seem to maintain relatively closer forms of social interaction. For example, research participants sometimes noted that ceremonies that had died out at one village might later be transferred to another on the same Mesa. Moreover, villages of a particular Mesa may be considered “daughter villages” to another. Therefore, it is not uncommon that close family and social relationships extend between villages on the same Mesa. Notwithstanding, these comments should not infer the lack of important social and religious connections between Mesas. Ceremonies may be organized across different Mesas so as to occur in

tandem or in intermittent years, for the benefit of Hopi village members as a whole. Titiev (1944) notes Hopi clan relations and responsibilities also extend from one Mesa to another.

Since Mesas are composed of distinct villages, I focus most of my discussion of this variable on the villages that comprise each of the Mesas. Sometimes without even asking, research participants often characterized First Mesa as the most accommodating to outside influence, Second Mesa as the most traditional and remote, and Third Mesa as the most bureaucratic, and in some cases, “modern.” The village of Hotvela was often noted as the exception to these characterizations because it was also considered equally traditional to the villages on Second Mesa, thus reinforcing the commonly reported perception that Second Mesa is the “most traditional.”

Since Spanish colonial times, the majority of the villages have been situated on the tops of Mesas, perhaps for defensive purposes (Clemmer 2018). During the initial Spanish period, however, there were only five villages: Orayvi on Third Mesa, Musangnuvi and Songòopavi on Second Mesa, and Wàlpi on First Mesa. Supawlavi on Second Mesa and Tewa and Sitsom’ovi on First Mesa all formed during the Spanish period, and in some ways, whether directly or indirectly, as a result of Spanish presence within the region. Tewa, for instance, is the most obvious case of this, as described below. Beginning in the late-nineteenth century, settlements were reestablished at the foot of the mesas at Kiqòtsmovi and Polacca. Kiqòtsmovi was established by what was then termed “progressives” or “friendlies,” Hopi families that were willing to accommodate United States assimilation policies at the turn of the century from the village of Orayvi (Whiteley 1988). It is also the seat of the Hopi Tribal government, and is often referred to in the vernacular as “K-Town.” Polacca sits at the base of First Mesa and was largely established as a modern residential area for villagers from Wàlpi. Wàlpi has some of the most longstanding architectural structures on the reservation, which were renovated in the 1990s after a grant from the National Park Service, and intentionally lacks many modern conveniences such as electricity and running water. Wàlpi today is

largely only inhabited during ceremonial periods (although home guards are ever-present) and persons in their mid- to late-thirties from the village often refer to themselves as “a member of the last generation.” Other notable Hopi settlements include Keams Canyon, the seat of the Hopi Tribal Appellate Court and the location of the BIA’s Hopi agency office, as well as Spider Mound (Yuwehloo Pahki), the easternmost residential area established after the partition of Hopi and Navajo lands by Hopi relocatees who found themselves within the newly-configured Navajo reservation. I will now turn to some brief historical remarks about each of the villages found at the three Hopi Mesas.

Wàlpi (“place of the notch”) is one of three villages on First Mesa. The First Mesa is the easternmost mesa with established villages on the reservation. Archeologists believe Wàlpi, in terms of its present location, was established around 1690 after the Hopi people had deserted another nearby settlement (Cordell and McBrinn 2016). The village’s original location, close to the base of the Mesa, can be observed when standing on top of the Mesa. After the Pueblo Revolt in 1680, the village of Tewa was established by Tewa-speaking people from eastern pueblos, who were invited to come to Hopi to serve as warrior guards (Stephen 1936). Today, the village of Tewa continues to speak the Tewa language, although many residents are trilingual, speaking Tewa, Hopi, and English (Kroskirty 2000), particularly amongst the elderly as language shifts do also appear among younger generations. The Tewa people retained their own religion but they also adopted some Hopi ceremonial practices, and many are initiates into Hopi religious societies. When the Constitution was drafted, villagers from Tewa were concerned over membership requirements that required blood quantum. They argued their initiations made them Hopi. Oliver La Farge, the drafter of the constitution, would instead adopt a provision that allowed for either Hopi or Tewa ancestry to qualify for membership.

La Farge was an historical figure, anthropologists and novelist, hailing from a wealthy and prominent family of New York. In 1930, he joined a civil organization known as the Association on

American Indian Affairs which often pitted itself against the work of the Bureau of Indian Affairs. However, when John Collier was appointed as Commissioner, La Farge accepted a position as field representative for the Bureau itself. La Farge had spent time on three expeditions to the southwest in the 1920s as a student researcher and later director for the Peabody Museum. He also visited Central America, and wrote an ethnographic text on ritual among Mayan people of Guatemala, recognizing some of the central Christian themes but emphasizing the Mayan cultural continuities associated with both traditional religious practices as well as interpretations of Catholic rituals and ceremonial roles (Kleinpoppen 1985).

The third village, Sitsom’ovi, was established by clans from Wàlpi once the village had overgrown its capacity, and which the Escalante expedition of 1776 witnessed villagers constructing the homes (Clemmer 2018). Given the Wàlpi gap (Figure 3), there is limited space for growth, making relocation for some of the clans desirable or necessary. Tewa and Sitsom’ovi remain under the leadership of the Wàlpi *kikmongwi*.



Figure 3. The “Wàlpi gap”, a notch in the mesa that separates Wàlpi from Tewa. Source: Ansel Adams (1941).

Beginning in 1891, Polacca was formed as a satellite town for Wàlpi residents who desired to be closer to the trading post and school located in Keams Canyon. By 1930, Polacca then became largely a place for renting out homes to tourists who had ventured onto the Hopi Reservation in order to observe dances and ceremonies (Hoover 1930). Many of its residents today are Hopi or Hopi-Tewa, and maintain connections to First Mesa villages, retaining ownership of their homes and attending ceremonies.

Once the Hopi Tribe was formed, according to research participants from First Mesa, the three First Mesa villages formed the First Mesa Consolidated Villages organization, so as to have a stronger voice in government given the smaller population relative to other Mesas. A representative from one of these villages, however, said that in recent years, each village has created distinct village boards and program offices, insisting that village funding allocations be awarded to each village separately. There was criticism and activism within the Tribal government, asserting that First Mesa villages were being “underfunded.”

Second Mesa is also made up of three distinct villages, built on top of two formations that jut out from the larger mesa table. Moving west from First Mesa, the first formation is the location of Musangnuvi and Supawlavi. Musangnuvi, a village with prehistoric roots at Hopi, became the first village to prohibit non-Hopis from attending the Snake Dance in 1971 after a group of “hippies” committed acts of disturbance during the previous performance of the ceremony. Other villages would soon follow their example and today the ceremony is banned for non-Indians across the Hopi Mesas.

Supawlavi, like Tewa, was established by a clan from outside of Hopi during the Spanish colonial period. The Tansy Mustard Clan (Asangyam) established the village, and several research participants from other villages referred to the villagers from Supawlavi as Zuni.

According to the ethnographic literature, the Tansy Mustard Clan migrated through Zuni just prior to entering the Hopi Mesas (James 1974:27–28). Other accounts indicate that Supawlavi was established as a daughter village by Songòopavi “to be a place for ceremonial paraphernalia where it could be most securely kept from Spanish hands” and as an “innocent town” that would be spared by the Spaniards when they returned to find the “guilty” parties who had killed the priests (Spicer 1962:192; Nequatewa 1936:46). Supawlavi was the original source of the “hostile” movement that was composed of village leadership who opposed federal policies on the reservation. The movement began when a group of five leaders from the village opposed the creation of a day school on Second Mesa (Twitchell 1911). The leaders would later travel to Orayvi where they were received by a sympathetic chief to their cause. The final village on Second Mesa, just west of Musangnuvi and Supawlavi, is Songòopavi, a village which retains a comparatively fuller range of religious societies than most other villages. In my fieldwork, I observed one of these sodalities preparing for an upcoming ceremony. The village was bustling with activity in various quarters, including the kivas and the plaza, with many vehicles entering and exiting the village, and some villagers who had resettled in nearby urban areas returning to the village for an extended weekend.

In 1906, the village of Orayvi split over political differences between two factions, the so-called Hostiles and Friendlies, who were so named on account of their willingness to accommodate federal assimilation policies such as boarding schools and allotment (Whiteley 1988). More than half the population from the hostiles were expelled from the village and went on to form the village of Hotvela. Today, Hotvela villagers on occasion assert the claim that their village is the only village at Hopi that retains the full calendric ceremonial calendar. Some of the exiled families would later return and attempt to reenter Orayvi, but were refused entry. This

segment of the exiled population would then return to Hotvela where again they were denied entry, and thus were forced to live in makeshift camps until finally they were able to establish the village of Paaqavi. In time, three other villages which had formed the previous so-called friendly faction became increasingly established as separate from the mother village of Orayvi: Lower Mùnqapi, Upper Mùnqapi, and Kiqötsmovi (sometimes, particularly historically, referred to as “New Orayvi”). Kiqötsmovi has one of the central meeting places on the reservation, a convenience store with a deli and large grocery section. This store proved to be an ideal location for meeting Hopi research participants during their lunch hour. Lower Mùnqapi remains under the jurisdiction of the *kikmongwi* of Orayvi, whereas Upper Mùnqapi has adopted its own constitution and is governed by a secular, democratically-elected executive referred to as a governor. Upper Mùnqapi has also developed a village corporation, the only current example on the reservation. Participants from Lower Mùnqapi noted emphatically the continued importance of ritual life in the village. Participants from Orayvi were quick to note the village is the most continuously inhabited place in the United States, whereas villagers from Wàlpi and Songòopavi were quick to assert their own precedence.

Village social and political organization differs dramatically. At the proverbial apex of the leadership structure of Hopi villages is the role of the *kikmongwi* or a Governor, or a village board. Villages that have adopted an election-based model for determining their leaders include Paaqavi, Kiqötsmovi, and Upper Mùnqapi. The *kikmongwi* is a hereditary position (Kroskrity 2003) but one that may be contested in practice between possible candidates. The *kikmongwi* nomenclature refers to ‘leader of the houses’—“the houses” being a reference to the various clan houses of a particular village (Voth 1903). The position is available to various persons on the basis of their affinal relationship to a clan mother, generally an elderly woman of the leading

lineage within the particular clan that claims leadership in the village. My contention is that the lineage is primal due to its early settlement within a particular village. The temporal primacy requirement would explain in my view the reason why the associated clan of the *kikmongwi* office is not the same across Hopi villages, because segments of clan migrated between villages throughout Hopi history and the establishment of villages on the Hopi Mesas. For example, lineages of the Badger Clan (Honangyam) moved from Orayvi to Wàlpi, and then to Sitsom'ovi, and it is at Orayvi where the Badger Clan is in “control” of the significant Powamuy ceremony. However, this point is poorly understood in the ethnographic literature, and so this remains a mere conjecture on my part. Challenging this perception is the known fact that ceremonies can transfer to other clans, but here I think it an important point that Wàlpi is occupied by members of the Badger Clan. The *kikmongwi* carries out essential ceremonial roles within village ceremonies, having some part to play in each society or kiva. However, other traditional leaders provide some relief here, such as during the Home Dance, and may also assist the *kikmongwi* in resolving clan/land issues. According to research participants from Second and Third Mesa, the *kikmongwi* “organizes” the ceremonies and the ceremonies are carried out at his behest, which he does under the mandate of Màasaw.

It is often assumed in popular literature on the Hopi people that the Bear Clan (Honngyam) is said to be the leading clan at the Hopi villages (c.f. Clemmer 2018:161). For instance, the Bear Clan is said to have gained the position of the *kikmongwi* at Orayvi because it was the first clan to arrive at Third Mesa, and to meet and enter into a covenant with the deity and guardian of this world, Màasaw, who afforded the lands (e.g., Titiev 1944; Malotki and Lomatuway'ma 1987). While this point is certainly the case for some villages, such as Orayvi and Songòopavi, Hopi research participants were quick to disregard and outright challenge the

applicability of this perception to all villages. “That’s totally inaccurate,” one village staff member from Wàlpi stated. “I guess that’s true for Orayvi and at other villages – I don’t know, I have heard that– but it’s not true here at Wàlpi. At Wàlpi the *kikmongwi* is held by the Roadrunner Clan (Hospo'ngyam).” I found this statement surprising because the early ethnographic literature has claimed the Rattlesnake Clan (Tsu'ngyam) holds the *kikmongwi* office at Wàlpi, which it took over after the extinction of the Bear and Spider Clans (Kookyangngyam) that resided there in historical times. Courlander and Hermon (1971) are unique within the literature in that they report that it is the One-Horn/Agave Clan (Kwanngyam) that occupied the role of *kikmongwi* at the village who were likewise only acting on behalf of the preceding clan who held the office. I mention this point here because it is relevant to the concerns of some Hopi research participants about the reliability of information reported in the anthropological literature, and it assists to understand better how the Hopi “village” is a contested construct intertextually across academic literature and cultural practice. The situation remains rather unclear as the participant from Wàlpi noted that the claim was based on the prehistoric period referred to as the “gathering of the clans,” when the Roadrunner Clan first entered Wàlpi. The clan was said to be “offered” the position of *kikmongwi* because of the ceremonial efficacy of their prayers. The person went on to explain:

Here at Wàlpi the origin of the *kikmongwi* is not held by a clan that arrived first at the mesa. The Roadrunner Clan was not the first to arrive but rather it arrived much later. It became the clan of the *kikmongwi* because of its ceremonial knowledge. As I heard it the story tells that another clan arrived around the same time. When the two clans arrived, each were asked to perform a ceremony that made their children smile. The other clan performed its ceremony and some hours later the rain began to pour. The Roadrunner Clan would then at a later point perform its ceremony and it began to rain almost immediately. The Roadrunner Clan was then offered the *kikmongwi* title and it has been that way ever since.

Notably, clan names, as will be explained below, vary significantly and clans may use more than one name, given that they often have multiple totems (*wu 'ya*) used to identify themselves, which I will explain in a later section.

All Hopi villages are said to have *kiikyam* (a ruling clan), which appears in every case be related to Hopi stewardship ideas and their covenant with M^àasaw. This point requires further exploration considering the points addressed above. Leigh Kuwanwisiwma has described the Bear Clan's role in slightly different terms than one of the authority to rule. Motisinom and Hoopq'yaqam are collectively considered the Hisatsinom (ancient people) ancestors of the Hopi people (Ferguson and Colwell-Chanthaphonh 2006:97; Kuwanwisiwma 2004). Motisinom refers to those clans who traveled from the north and were already present at the Hopi mesas (*Tuuwanasavi*, the Earth Center) when Hoopq'yaqam people arrived from Palatwapi in the south. These events culminated in what the Hopi refer to as the "gathering of the clans," which occurred when clans of the Motisinom and Hoopq'yaqam converged on the Hopi Mesas. Contemporary Hopi culture is the sum of all the histories, ceremonies, rituals, and knowledge brought to the Hopi Mesas by these many smaller social groups (Ferguson and Loma'omvaya 1999). Once reaching the Hopi Mesas, the Bear Clan, one of the Hoopq'yaqam, was given the office of *kikmongwi* as a responsibility, more than an elitist status, so the other clans could forgo the arduous task of dividing and allocating lands between clan groups. The other clans that constituted the Motisinom were thereby enabled to continue their life of a stringent work ethic and ceremonial commitment, alongside all other life-promoting practices (*natwani*), which were represented in the original covenant with M^àasaw who carried and gifted to the Hopi people a planting stick, seeds, and gourd with water, the hallmarks of a humble (*okiwa*) and hardworking

(*tumala*) life of a dry farmer in this arid region. The combination of both concepts is represented in the Hopi concept of selfless humility, *na'okiwqatsi* (Sekaquaptewa and others 2015).

Kuwanwisiwma goes on to further describe the cultural knowledge and beliefs, *navoti*, regarding locations of origin as encoded eras of Hopi history that today are enshrined in Hopi oral tradition (Ferguson and Colwell 2006). He notes the Emergence era, a time when the Motisinom came into contact with M^àasaw and Hoopoq'yaqam began on their migration route to find the earth's center place (Tuuwanasavi). The Hoopoq'yaqam entered into a separate covenant to endure hardships in order to seek Tuuwanasavi. The southern clans would bring with them the non-Katsina religious societies to Hopi, but today on the Hopi Reservation some Motisinom clans are the owners of the non-Katsina societies as well (e.g., at Third Mesa M^àasawu Clan controls Kwan or One-Horn Society).

There is only one explanation in the ethnographic literature that can explain how a ceremony could transfer to a clan that is not in the same phratry as the original custodial clan. In a footnote, Parsons (1921:212) refers to the practice of clans inheriting a ceremony from a dying clan within a village on account of the new chief priest's paternal clan affiliations. That Hopi male would be considered a "child of the clan" for the original custodial clan, and the ownership over the clan could thereby transfer to an entirely different phratry. This situation would happen only in the case where no clans of the original custodial clan's phratry were present in the village or the eligible candidates within that phratry refused to volunteer to take up the office, again reinforcing the Hopi notion that holding office is a responsibility that one undertakes rather than an elite status that enables one to "rule" through acts of power (Parsons 1921:212). Indeed, a Hopi concept of "power" is frequently noted as a topic of interest among Hopi intellectuals interviewed for this research.

The village governance structure is composed of various other elements besides the office of *kikmongwi*. Research participants noted that religious societies may serve important roles within the Hopi village governance structure. A society at one village on Second Mesa, for instance, serves as the ‘speakers’ in order to assist in village governance. In the ethnographic literature this group may be part of the grouping of clan and society chiefs (*momngwit*; singular, *mongwi*) that are referred to as the lieutenants. There is little explanation of these roles besides where they fall in the line of processions of particular ceremonies. When I inquired about the general duties of the speakers, for instance, a female research participant from Second Mesa explained, “We have traditional politics here at [this village]. There is one society that takes the heat. When a *kikmongwi* has to make a controversial decision, he sends out the speakers to notify people and receive their input. The *kikmongwi* should use the speakers so he can stay away from contentious issues.” The same participant also explained that the One-Horn Society is the only institution within the village that may impeach a *kikmongwi* from office. The participant further noted: “That’s what I call traditional politics,” a topic largely ignored within the vast ethnographic literature on the Hopi.

Another point of common knowledge regarding the Hopi would appear equally fallacious from the perspective of research participants. Some scholars have argued that Hopi society is composed of various hierarchical clans, referencing the *pavansinom* (core segments of matrilineal lineages who hold office) and *söqavungwsinom* (commoners; applied to clan members whose clan did not bring with them “ritual knowledge and objects” (*wiimi*) upon their migration into the Hopi Mesas) (Whiteley 1988:60–66). However, this notion proved to be disastrous while studying at Hopi. When asked about the hierarchical nature of clans, every participant without exception denied this notion rather vehemently. On a few occasions people

appeared annoyed by the insinuation, arguing that “each clan is important” in its own right, “no clan is higher than another,” and each clan exists “independently” of others, and on one occasion in particular the question caused an uproar among bystanders, leading one person to exiting the situation entirely by retiring to her house and closing the door with some force. Although relying on the ethnographic literature, and without noticing the presence of bystanders, due to the way research participants and I were standing at the time, the situation was entirely disconcerting. I realized later that the point my research participants were making had much to consider. The Motisinom although generally lacking in chief priesthood positions within the societies, represent the segment of Hopi society which retained the original stringent lifestyle of the covenant with M̄asaw, and perhaps by extension brought many of the values concerning humility, hard work, and ceremonial commitment that Hopi people frequently espouse into the present. For that and other reasons, Hopi people do not reference a belief in a hierarchical clan structure. Even at a material level, it is apparent in the literature that the primal clan lineages and religious societies owned the most fertile lands that could produce foods, while commoners often had to rely on less fertile areas, but it is also the case that Hopi ceremonies often involve massive food redistributions (Hough 1915:138; Titiev 1944:143–144) and ceremonial feasts (Whiteley 1985:372), which are means of redistributing the surplus. Certainly, the issue of hierarchy may come down to an emic and etic perspective, but it also appears to me the concept has little resonance in terms of certain, quite integrated aspects of Hopi cultural lifeways. The extent to which the surplus was redistributed historically seems simply unknown, and so the scholarly approach to the linguistic data may produce various interpretations (see, for instance, Malotki 1999). For that reason and more, Hopkins and others (2017:23) have adopted a distinct approach by referencing the clan model developed at Hopi as “a dynamic hierarchy of responsibilities.”

Villages on the Hopi Reservation are often regarded as traditional, modern, or hybrid. The *kikmongwi* is the head of all religious authority, and steward of village and clan lands. These types of traditional villages include First Mesa's Wàlpi which oversees Sitsom'ovi and Tewa. Second Mesa includes Musangnuvi, Supawlavi, and Songdòpavi; Third Mesa traditional governments include Orayvi and Hotvela. Lower Mùnqapi remains under the authority of the traditional governance at Orayvi. The Upper village of Mùnqapi, Kykotsmovi, and Paaqavi embrace democratic forms of government authorized by the Hopi Constitution, and have village governors and boards of directors. Upper Mùnqapi is the only village with an adopted village constitution. Paaqavi is sometimes considered a hybrid village (Sekaquaptewa n.d.) because it purportedly has both a Governor and a *kikmongwi* who share executive authority; however, research participants from this village indicate that the *kikmongwi* office is no longer in active operation in the village.

A traditional village is distinguished by the preservation of the *kikmongwi* position and other institutions of traditional authority which include religious societies and kiva groups. A modern village selects its leaders through an election process. There is no village where Hopi ceremonies of some variety do not have a presence. Some participants were quick to note that ceremonies at Orayvi are more "cultural than religious" (see also, Loftin 2003), given the Orayvi prophecies to that effect and the split in 1906. However, Whiteley (1988) has noted that his research participants who participated in dances at Orayvi attempted to do so "with a good heart," thus implying dances still retain a spiritual dimension. Modern villages have the position of a Governor often in place of a *kikmongwi*. A CSA, as noted, is an administrative role and is found in all Hopi villages. In traditional villages, the CSA handles matters that are seen as outside the purview of the *kikmongwi* office, and often consults with and takes direction from the

kikmongwi and other traditional leadership. A CSA from one such village stated, “I see my role as an advisor and one in which I take direction from the traditional leadership.” The CSA position in modern villages is more in line with an Executive Assistant or Program Manager.

Hopi villages provide various kinds of service and develop programs for the benefit of their members. According to a village government official who participated in the research, the Wàlpi village has developed three programs that are implemented to enhance the interests of Wàlpi villagers. These programs include a Senior/Youth initiative (which covers topics of health, recreation, and exchange with other tribal nations), cultural preservation program (which, among other services, provides home repair services for minor and major repairs, as well as sanitation services during ceremonial events when many village affiliated members return to the village), and finally, a security program (which provides a continuous security presence within the village to address problems of vandalism and looting of people’s homes for religious artifacts). The security program was developed according to several participants from the Hopi Tribal government who noted home intrusions were a particularly acute problem for Wàlpi in the early 2000s. Village governments are largely dependent for their financial resources on allocations from the tribal government. Again, one village government official noted these budgets have been cut by a third in the past five years. The village official from Wàlpi noted that the house maintenance program has had to prioritize minor repairs in recent years due to a shrinking budget unless safety concerns were involved that necessitated a major repair.

The Governor also serves as an executive for a village board of directors as well as a political function in that they represent their respective village’s interest in discussions with county, state, and federal agencies. Depending on the village, the board of directors is either appointed by the *kikmongwi* or democratically elected into office. The Hopi appellate court in

the case *In The Matter of the Estate of: Neomi Komaquaptewa* has framed current village composition in this way:

The answer to the question is not obvious, because the respective villages at Hopi vary significantly in terms of their governmental structures: some are "traditional" villages . . . some are "modern" villages . . . and most are "hybrid" villages, where the division of power between traditional leaders and popularly elected village board members remains somewhat uncertain. Traditional legal authorities, as well as the Village Board, may possess the power to resolve [exclusive village jurisdictional powers outlined in the constitution].

To provide an example, if a family dispute over inheritance exist in a village, the issue would not be handled by a probate court, but rather by the *kikmongwi*, the Governor, or the village board. If whichever institution were to determine that the matter would be better handled by the Hopi court system it may relinquish its jurisdiction, but such must be done explicitly and in writing. In such cases, the Hopi Tribal courts will gain concurrent jurisdiction, and the dispute may be sent back to the village in some instances if the court determines that the village authorities are more suited for resolving the dispute.

Hopi religious societies and sororities

Although the three variables of the research are Mesa, clan, and gender, it is essential to briefly cover topics about religious societies and sororities. This information is particularly significant, as will be demonstrated later in terms of access to knowledge regarding cultural sites and Hopi notions of stewardship and environmental conservation. Moreover, the societies are intricately interwoven with clans and village governance, and so I review these Hopi institutions so as to provide some greater context of the research variables. Kiva groups, on the other hand, will not be discussed in any detail in this research, because kiva groups cross-sect many social groupings at Hopi and my goal is to evaluate how legal language is used by discrete social categories as a mean to evaluate its universalizing attitude and to begin a project of circling back.

The religious societies are numerous and can include the One-Horn Society, Two-Horn Society, Snake Society, Antelope Society, Gray and Blue Flute Society, Wuwtsim Society, Singer's Society, Powamuy Society, and Katsina Society. The women's society ceremonies generally follow calendrically the non-Katsina society ceremonies and include: Lakon, Owaqöl, and Maraw. The religious societies are important social groups at Hopi, as seen in six basic facts regarding their social existence: their "ownership" by distinct clan groups (e.g., according to research participants, the Spider Clan owns the Antelope Society and supplies its chief priest), their serving as repositories of *wiimi* (sacred knowledge and ceremonial objects), their open membership, with certain limitations, across clan groups, their role in village governance, their cooperation across societies (e.g., Snake and Antelope Societies perform the Snake Dance; Powamuy and Katsina Society perform the Bean Dance), and their society lands for agricultural development. According to the conventional view in Hopi ethnography, the key to Hopi social organization is a balance between distinct groups of different orders (Eggan 1949; Eggan 1950; Titiev 1943; Titiev 1944; Whiteley 1985). Distinct groups weave together so that different combinations are together for different purposes. The corresponding duties imposed on group membership thereby limits the tendency towards exclusive allegiance to more strictly defined kin groups such as clans, lineages, and households.

Not all villages retain all of these societies. For instance, the Basket ceremony conducted by the Maraw Society was mentioned by several research participants as a ceremony of major importance and deep significance in the Hopi ceremonial system. Participants from villages that maintain the ceremony noted their pride in its preservation. This topic was also raised in discussing the men's and women's societies. There are four men's societies and three women's societies. One research participant from a village that maintains all of these societies reflected on

how a village on Third Mesa no longer maintains these particular religious sodalities. “Those societies were not maintained [in that village]. I don’t really understand why [the villagers] decided not to continue them. The men and women’s societies are so important – they are essential to everything that is Hopi, the very foundation!” Societies maintain society lands for the purpose of nurturing crops needed for the society’s ceremonial activities and conduct cyclical and calendric ceremonial practices, sometimes in conjunction with other society groups. In theory, any Hopi clan member may join the societies, if they are sponsored for initiation by a current member, although the chief priesthoods are generally reserved for the clan that ‘owns’ the society and its respective ceremony (Connelly 1979:548; Whiteley 1985). However, initiation into different societies is often contingent on family and other relations, especially in terms of the person selected to be the candidate’s godparent. Initiation is never simply a matter of personal choice.

The ceremonial calendar refers to the calendric ceremonies that occur within a village and generally follows a particular model. Some ceremonies are held on alternating years such as the Snake Dance and Flute Dance, while other ceremonies only occur after a particular number of years has passed. Peter Whiteley describes the ceremonies as follows:

The ceremonial calendar ... runs roughly as follows. The beginning of the year, reckoned in lunar months, falls in October-November; it is marked by the Wuwtsim (usually untranslated, but roughly “Manhood” society) ceremonies, including those of the Aa'alt (Two-Horn society), Kwaakwant (One-Horn society), Taatawkyam (Singers' society). These four societies perform in tandem. Each is regarded as complementary to the other three, although Aa'alt and Kwaakwant have a specially paired ritual relationship. Each society is predominantly associated with a particular religious concern: the Wuwtsim and Singers with fertility, the Two-Horn with hunting and game animals, and the One-Horn with the dead and with supernatural protection of the village.

The ritual cycle is coordinated with the natural cycle, which dictates parallel cycles of secular human activities. Wuwtsim and Soyalangw serve as master

ceremonies that bring together many religious concerns, renewing and reorienting the world and human society's position within it. Overall (and oversimply), agricultural fertility and productivity, human fertility, game-animal fertility, war, curing, and social harmony are the major issues upon which ritual interest is trained (1988:159–161).

The ceremonial calendar is a means to ensure rain, fertility, good crops, and a good, happy, and long life (Whiteley 1988:61–64). Hopi research participants frequently referred to their religious practices as associated with the “good things” of life. The calendar itself is associated with solar and lunar time, and it is divided into two periods: Katsina season and non-Katsina Society ceremonies (although these are non-Hopi terms). Frigout (1979:564) described the ceremonies in this way: “In a sense, all Hopi life is based on the ceremonies, which assures vital equilibrium, both social and individual, and conciliate the supernatural powers in order to obtain rain, good harvests, good health, and peace.” Secakuku (1995:x) referred to the emphasis on “unity” for everything in the universe, but he further cautions that the calendar is not based on a rigid order that is imposed, ideologically or practically. He states, “The timing of ceremonies, the precise rituals involved, even the philosophical responses to the underlying concepts may vary among the Hopi villages.” One research participant recalled how the Snake Dance ended at one of the Hopi villages because the *kikmongwi* believed it was necessary part of Hopi prophecy. That *kikmongwi* then attempted to influence the *kikmongwi* of another village to end the practice as well. However, the latter religious leader decided to continue the ceremony, noting “I had a really good person in line for it. He was a medical student and I knew he would do an excellent job, so I decided we would continue the ceremony.”

Collaborative ceremonial performance can be readily observed in the performance of the so-called Snake Dance which is held in custodial ownership by the Rattlesnake Clan, which is also represented in the chief priest office of the Rattlesnake Society. Research participants told

that the Antelope Society priests (whose chief priest is a member of the Spider Clan) are “sent out” early in the morning after being sanctioned through ceremony by the Rattlesnake priests on the day of the Snake Dance to obtain the snakes and then bring them back to the village to perform the ritual dance. Upon arrival, the Antelope priests return to the kiva where the Snake priests have been awaiting their return. The Antelope priests recall how their efforts went answering questions such as: Were there any problems? Did anyone become overheated? What areas were searched? How many snakes were acquired? Since the early twentieth century, it is often been reported in the ethnographic record that it is the Rattlesnake priests who collect the snakes for the Snake dance (Stephen 1936:726, 732, 736; Voth 1903:286–290); however, this is simply not the case, or at least it is not the case across Hopi villages according to my research participants.

Each society conducts its ceremony at a particular time of year although the scheduling is flexible depending on weather conditions and astronomical signs. These ceremonies are fundamentally interwoven with agricultural practices, serving a functional role as a kind of agricultural almanac, but one which is deeply religious and contains esoteric knowledge of history, cultural practice, and values. The clan that owns a particular society provides its chief priest. In Hopi English, the sponsor of new initiates is often referred to as a “godparent” (Whiteley 1988). By being initiated, Hopi people gain a broad extended family network as their sponsor and his/her phratric (his/her clan and the other associated clans of the same phratry, described in the subsequent section) relatives become their father/aunt, terms that apply from birth to a person’s paternal lineage, clan, and phratry members.

The Katsina Society continues to be conducted today—it is the first right of passage into the religious domain of Hopi—for both males and females. As a person matures, the societies for

which one may be initiated become divided on the basis of gender (Whiteley 1985:366). According to research participants, Hopi men and women may join more than one society over the course of their life, and given the clan's role in village governance, societies serve as an important catalyst in Hopi public life and village affairs. In practice, a Hopi person often joins religious societies on the basis of the societies to which his/her Katsina Society "godparent" is initiated. Other societies are joined later in life, frequently after the neophyte has reached adulthood. According to the people I interviewed, some societies require near consensus, especially among the group's leadership, on the initiation of new members, and disputes may occur. "There was one person who I thought should be initiated," one research participant explained, "but there was some disagreement among our leaders. I didn't agree with their reason for denying them initiation. The participant, who was from Second Mesa, went on to explain, "Now I am no longer a novice; I've been there several years and I am one of the eldest. I can now finally speak up and give my opinion. I couldn't really do that before."

Society lands served the purpose of providing a source for produce used in the ceremonies of their respective societies. The produce was used directly in ceremonies, such as cotton (*pösövi*) on altars which is said to symbolize clouds and corn meal (*hooma*) as an offering. No mapping of these lands has been published in the literature as opposed to Hopi clan lands which have been recorded at Orayvi and Songòopavi. In regard to society lands, it is important to note that some lineages who were most directly in control of the ceremonies enjoyed greater access to these lands than others. The following chart () demonstrates the ownership by clans of different societies in Orayvi around 1890.

Table 4. Orayvi ceremonies and societies, circa 1890; adapted from Whiteley (1985).

Time of Year	Ceremony and Society	Controlling Clan
November	Wuwtsim	Sparrowhawk
	Wuwtsimt	Sparrowhawk
	Taatawkyam (Singers)	Parrot
	Aa'alt (Two-Horn)	Bow
	Kwaakwant (One-Horn)	Maasaw
December	Soyalangw	Bear
February	Powamuy ("Bean Dance")	
	Powamuy	Badger
	Katsina	Kachina
July	Niman ("Home Dance")	Kachina & Badger
August		
Odd Years	Flute	
	Blue Flute	Spider
	Gray Flute	Patki
Even Years	Snake-Antelope	
	Snake	Snake
	Antelope	Spider
September–October		
Odd Years	Owaqöl	Sand
Even Years	Maraw	Lizard
	Lakon	Parrot

SOURCE: Eggan (1950,103) and Frigout (1979:575).

However, this list cannot be equally applied across Hopi villages. The list of controlling clans possessing *tiiponi* (emblem of ceremonial office) at Wälpi on First Mesa (Table 5) demonstrates how little the above chart can apply when studying across Hopi villages.

Table 5. Wälpi clans in control of *tiiponi*, the signatures of society chief office, as of 1936.

Society with <i>tiiponi</i>	Clan and Lineage
Winter solstice chieftaincy	Patki (corn)
Horn	Bear and Reed
Antelope	Snake
Snake	Snake
Flute	Horn and Patki
Powa'mu	Katsina-Parrot
Chukuwimkya	Katsina-Parrot
Mamzrau	Snake and Cedarwood
Lalakon	Patki
Owa'kul	Reed and Badger
War	Reed

Source: Stephen (1936:1073)

Here, only the Rattlesnake Clan's custodial ownership of the Rattlesnake Society is observed as the same between the villages of Wàlpi on First Mesa and Orayvi on Third Mesa. Because of the different standing of clans across villages, and the rights and duties associated with it, as well as the fact that each clan has its own migration stories, some ethnographers engaged in consultation work with federal and state agencies often noted during interviews that in order to gain Hopi perspectives on cultural and environmental resources, project managers must first satisfactorily answer the question, "which Hopi?" (T. J. Ferguson, personal communication 2019).

Hopi clan system

The Hopi clan system is extensive and complex in nature and it is often stated that it serves as the cornerstone of Hopi society (Anyon 1999:24; Whiteley 1988:52). The nomenclature, classification, and ordering of these clans varies among different Hopi villages and over time (Curtis 1922:61–62; Mindeleff 1900). Significantly, each Hopi clan has its own history of migration (Anyon 1999:24; Whiteley 1988:52). According to a working document prepared by the Hopi Cultural Preservation Office, there were historically sixty-one clans at Hopi, and there are about 34 active clans at present. These clans are grouped into 12 phratries, although the composition of each phratry differs slightly from village to village (Lowie 1929:331–332; Mindeleff 1891:38–39). The reasons for this are not well-understood in the literature.

Various numbers of Hopi clans have been reported in the anthropological literature. Some clans are noted to have gone extinct or to have been reidentified, while others have merged, and some have been revitalized through adoption. For instance, one research participant noted that a particular clan has only one remaining member, and because that member is male, the clan will eventually become extinct. "It really is upsetting, if you think about it," the

participant stated; “all that history and knowledge that has passed down through that clan will be gone.” However, the differences in the reported number of clans may be in part due to confusion among scholars that some clans have more than one *wu’ya* or clan totem as a religious icon. *Wu’ya* are sometimes referred to as an “ancient,” and often appear on clan religious iconography. Another name for *wu’ya* in Hopi is *naatoyla*, meaning “relative,” and this invokes terms of family relations. One research participant from Second Mesa who is not a member of a clan with Måasaw as a *wu’ya* explained this by stating, “well, I think of *naatoyla* and *wu’ya* in terms of relations, because we are all related to Måasaw. That’s the connection. That’s the connection in terms of relations. But, I don’t know. I’ve never really thought about it like that before.” In terms of clans having and using various names, the Fog Clan (Paamösngyam) is one example because it has multiple *wu’ya* which include Rain and Snow, and in speech, Hopi individuals may refer to these other *wu’ya* in identifying their clan affiliation. In other cases, the clan might be translated differently by the Hopi person or researcher, which may explain particular variations. For instance, the Squash Clan (Paatangngyam) is variously referred to as the Pumpkin Clan by Hopi people and academics alike. In order to serve general administrative purposes, the Hopi CPO developed the following list of Hopi clans (Table 6).

Table 6. Hopi Clans Organized by Hopi Name.

<i>Hopi Name</i>	<i>English Gloss</i>	<i>Phratry</i>
Aawatngyam	Bow Clan	5
Alngyam	Horn/Deer Clan	10
Angwusngyam	Raven/Crow Clan	1
Asngyam	Tansy Mustard Clan	5
Atokngyam	Crane Clan	9
Honangyam	Badger Clan	7
Honngyam	Bear Clan	2
Hoongyam	Arrow Clan	4 (1st), 5 (3rd)
Hospo'ngyam	Roadrunner Clan	
Isngyam	Coyote Clan	6
Katsinngyam	Katsina Clan	1
Kawayvatngyam	Watermelon Clan	
Kookopngyam	Black Throated Sparrow Clan	6

Kokootngyam	Burrowing Owl Clan	
Kookyangngyam	Spider Clan	2
Kuukutsngyam	Lizard Clan	3
Kwaangyam	Eagle Clan	4
Kwanngyam	Agave Clan	10
Kyarngyam	Parrot Clan	1
Kyelngyam	Sparrow Hawk / Kestrel Clan	9
Leengyam	Indian Rice Grass Clan	6
Lenngyam	Flute Clan	10
Manangyam	Collared Lizard Clan	
Masihonangyam	Gray Badger Clan	7
Masikwayngyam	Gray Hawk Clan	4
Masilenngyam	Gray Flute Clan	
Masngyam	Mâasawu Clan	6
Morivosngyam	Bean Seed Clan	
Naanawngyam	Lizard Clan	
Oomawngyam	Cloud Clan	8
Paa'isngyam	Water Coyote [Desert Fox] Clan	6
Paaqapngyam	Reed Clan	4 (1st), 5 (3rd)
Paakwangyam	Frog Clan	8
Paamösngyam	Fog Clan	
Paatangngyam	Squash Clan	9
Paavatngyam	Tadpole Clan	8
Paawikwangyam	Aquatic Bird/Duck Clan	8
Pangwu'ngyam	Mountain Sheep Clan	
Patkingyam	Water Clan	8
Pifngyam (1st & 2nd Mesa) Pipngyam (3rd Mesa)	Tobacco Clan	1
Piikyasngyam	Immature Clan	8
Pisangyam	White Sand Clan	
Piqösngyam	Bearstrap Clan	2
Poovolngyam [Polingyam]	Butterfly Clan	7
Qalngyam	Sun Forehead	4
Qa'öngyam	Corn Clan	8
Sakwalenngyam	Blue Flute Clan	
Sivap'ngyam	Rabbitbrush Clan	
Sowi'ngyam	Jackrabbit Clan	1
Taawangyam	Sun Clan	4
Tafngyam (2nd Mesa) Tapngyam (1st and 3rd Mesa)	Cottontail Rabbit Clan	1
Tangaqapngyam	Rainbow Clan	8
Talwiiipikw'ngyam	Lightning Clan	8
Tevngyam (1st and 2nd Mesa) Tepngyam (3rd Mesa)	Greasewood	5
Tsa'kwaynangyam	Chakwaina Clan	11
Tsorngyam	Bluebird Clan	2
Tsoongongyam	Pipe Clan	
Tsöpngyam (3rd Mesa) Tsöfngyam (1st and 2nd Mesa)	Antelope Clan	
Tsöqangyam	Mud Clan	

Tsu'ngyam	Rattlesnake Clan	3
Tuwangyam	Sand Clan	3

Source: Leigh J. Kuwanwisiwma, Peter Whiteley, Micah Loma'omvaya, and T. J. Ferguson, 2007, Hopi Cultural Preservation Office. Published with permission of the Hopi Cultural Preservation Office.

As Hopi society is matrilineal and matrilocal, one's clan is associated with the female line. A person uses terms associated with kinship for their clan relatives (see, Hill and Hill 1997). Clan members of one's maternal line who are a generation older are referred to as "our mother" (*itangu*; singular *ingu*) or "our uncle" (*itaataha*; singular *taha*). The meaning of "our" here demonstrates the concept of Hopi mothers as clan mother, godmother, and biological mother. Fellow clan members who are of the same generation are referred to as brothers and sisters. And finally, the younger generation is referred to as child (by a woman speaker) or sister's child (by a man speaker). On the paternal side, one's father's clan is also considered to be related, but the terminology used to refer to such persons is distinct. All three generations discussed above are equally referred to as father (*itana*) and aunt (*kya'a*) (Parsons 1932). These rules apply not only to the clan itself but also to all members of clans associated with the overarching phratry (Parsons 1932). A person, for instance, born to the Bow clan (mother's line) and who is a "child of" the Water Clan (father's line), would, therefore, refer to all phratry members of the Water clan (Corn, Cloud, Immature, Rainbow, Tadpole, Duck/Aquatic Bird, and Frog) as father or aunt, regardless of genealogical distance. Members of the same phratry as Bow (Greasewood and Tansy Mustard), including all Bow Clan members, are referred to as uncles/mothers, brothers/sisters, and child/sister's child based on the generation to whom one is speaking and in the final case based on one's own gender. These family ties are strong and observable. Clan relatives spend time visiting with each other, eating meals together, assisting each other with

personal needs, and more, and have specific social roles in a Hopi person's major life moments, such as naming, marriage, etc. (Parsons 1939).

Titiev (1944:58) settles on the following definition of the Hopi clan:

Clan—A totemically named, exogamous, unilateral aggregation of matrilineal kindred, comprising one or more lineages all of which are supposedly descended from one ancestress. Each clan has at least one *wu'ya* stored in *the* clan house. If this *wu'ya* forms the nucleus of a pueblo ritual, the controlling clan furnishes the officers who conduct the ceremony. It is the only kinship group for which there is a native term, and since land is held in the name of the clan, this unit is the cornerstone of Hopi society.

Titiev (1944) regards clan solidarity as stronger than that of the village:

Despite a nominal allegiance to the Village chief, each clan is to a large extent autonomous, choosing its own officers and transacting its own affairs with a good deal of independence. Since a clan owns land, houses, gardens, and water-rights, it is virtually a self-sufficient unit. Only the rule of exogamy and the custom of matrilocal residence force it to cooperate with other groups (p. 69).

The Hopi clan has often been regarded as a kind of “corporation,” holding land, houses, and ceremonial knowledge “in trust” for future generations (Eggan 1950:110). However, much contemporary ethnography challenges this notion, arguing that only certain lineages within clan groups were in practice the ones who owned these real and intangible resources, and various other Hopi institutions, such as religious society and kiva group, cross-cut and interlock clan groups, forming a kind of tapestry (Whiteley 1985:364–367, 1986). Moreover, clan lands were awarded for ceremonial purposes in most cases on account of various preceding factors related often to their ritual efficacy. However, clan lands and ceremonial ownership are not the sole social means of recognizing clans. While one clan may be the “owner” of a particular ceremony, another clan's ceremonial responsibilities may be expressed in a particularly strong role they occupy to assist the *kikmongwi* in the performance of the Soyalangw (Winter Solstice) ceremony (Whiteley 1985:369). The clan house, or the house that retained a particular clan's religious

iconography was owned only by the clan mother and inherited only by her female descendants. Likewise, the priesthoods of religious societies that conduct ceremonies are passed down hereditarily, not only within a clan, but within a specific lineage. All priests of a particular ceremony, be it Flute or Snake ceremony, for example, are not only members of a particular clan but descendants of Flute or Rattlesnake women who were often direct family relatives of former priests.

Clan names refer mostly to animals and plants, but their precise definition is often rooted in migration stories. The *wu'ya* may have material representation in ritual objects of various sorts. The following account was provided to Peter Whiteley regarding the Badger Clan's adoption of their name prior to their acceptance in the village of Orayvi:

We were living at Kiisiwu [Shady Springs, about fifty miles to the northeast of Oraibi]. The people had heard of Oraibi and they decided to try to move there. So we picked up and migrated over here. Our leader went to see the Oraibi *Kikmongwi* to ask for permission to live in the village. He refused. So we set up camp in a valley below Oraibi [subsequently called Honansikya, Badger Valley]. That first night, the leaders wanted to pray. So they set up a *pongya* [sand altar], right there on the ground. They started to pray. Right in the middle of their *pongya* a Badger emerged from the ground. That's when we became Badgers (Whiteley 1988:145).

According to another version recorded by Curtis (1903:93) the manner in which the Badger Clan heard of the Orayvi settlement in the first instance was through a messenger, a butterfly, who was sent to scope the local area for other settlements. The butterfly returned and told the Badger people about the location of Orayvi, leading the Badger Clan to accept the butterfly as one of its *wu'ya*. The Butterfly Clan is one of the known clans that is a member of the same phratry as Badger. Also, in the version recorded by Curtis, a skunk also appears and provides three kinds of paint by eating plants and defecating different colored excrement. The skunk, unlike the butterfly, is neither a known nor an extinct clan at Hopi as far as the ethnographic record shows; however,

it is one of the known *wu'ya* of the Badger Clan. As these elements of Badger Clan oral tradition clearly show, the various *wu'ya* of particular clans may not relate to fellow members of phratries, but rather to the oral traditions around migration to the Hopi Mesas. Indeed, Whiteley (1988) argues some clan names and their associated *wu'ya* may be topogenical (referring to place names along migration routes) rather than genealogical (i.e., particular clan relational, genealogical references) in nature.

Clans are regarded as having been independently migratory units that arrived at different times and from different directions (cf. Fewkes 1900; Mindeleff 1900). Hopi clans are generally distinguished as those who arrived from the north (e.g., Rattlesnake, Horn/Deer; from a place called Toko'navi, Navajo Mountain in present-day southern Utah), those who arrived from the south (e.g., Water, Squash, Crane, Corn, Tobacco; Palatkwabi, somewhere in southern Arizona but possibly extending much further south), and those who arrived from the east (e.g., Kokop, Mâasawu; Muiobi, somewhere near the Rio Grande and from various pueblos in New Mexico such as Jemez, Acoma, and Zuni). However, as noted, there are generally two overarching groups: the Motisinom ("First People") and the Hoopq'yaqam ("Those Who Went to the Northeast," referencing the general direction traveled while migrating) (Ferguson and Loma'omvaya 1999). This distinction is related to the origin place of each. The Motisinom are said to have entered into the Fourth World from the Sîpâapuni near the Grand Canyon; the Hoopq'yaqam, on the other hand, trace their origin to Yayniwpu, a place that some believe to be in the Valley of Mexico, which is referred to in Hopi as Yayniini ("The Beginning"). The Hoopq'yaqam would leave Yayniwpu, following Mâasaw's instructions, and find their way to Palatkwapi ("Red Walled City"). Some research participants emphasized that both groups originated at Sîpâapuni, but it was the Hoopq'yaqam, in particular, who took on the duty of migration.

Suggested locations of Palatkwapi range from southern and central Arizona to Mesoamerica, and even as far as South America (Andreani 2002:31). However, as Teague (1993:445; cf. Anyon 1999:31) concluded:

There might have been a number of places associated with the name Palatkwapi, representing the different southern homes of the various clans, and also reflecting the sequential occupation of villages during the passage from the south to the Hopi mesas in northeastern Arizona. The precise location is less important than the associations connecting this concept with the social context that prevailed in late prehistory throughout southern and central Arizona and parts of northern Mexico.

Again, Kuwanwisiwma provides the following account:

Thus Yupköyvi became a gathering place for clans who had stopped at what might be called staging areas some distances away. Among the initial clans to settle in the Chaco landscape were Parrot and Katsina. Later, the Eagle, Sparrowhawk, Tobacco, Cottontail, Rabbitbrush, and Bamboo clans arrived (Kuwanwisiwma 2004:45).

Clans with these migration stories are perfectly connected by the historical phratries at Hopi today. The Eagle, Rabbitbrush, and Tobacco Clans have reported Palatkwapi origins in their migration accounts, but they are also said to have been some of the first clans to leave the area (Courlander and Harmon 1971:65). Interestingly, these clans have provided accounts of both a southern origin (connected to Hoopq'yaqam people) as well as a connection to Yupköyvi (generally a Motisinom affiliation). From there, the full gathering of the clans occurred at the Hopi Mesas. As is evident, Hopi oral tradition indicates these clans would have joined up with the Motisinom prior to their arrival at the Hopi Mesas.

Ethnographers sometimes report that clans in different villages have their own versions of clan history (Whiteley 1988:52). Different clan segments that ended up in different villages may have often had different migration histories. However, only abbreviated versions of clan histories have been provided to anthropologists and therefore the collected clan histories may be a function of ethnographic investigation more than a cultural fact. The general trend in clan

migration accounts is that clans separated along their migration routes and then regrouped before entering Hopi villages as a collective. The Water Clan's migration narrative as reported in Ferguson and Lomaomvaya (1999:89–90) is a quintessential example (Figure 4).

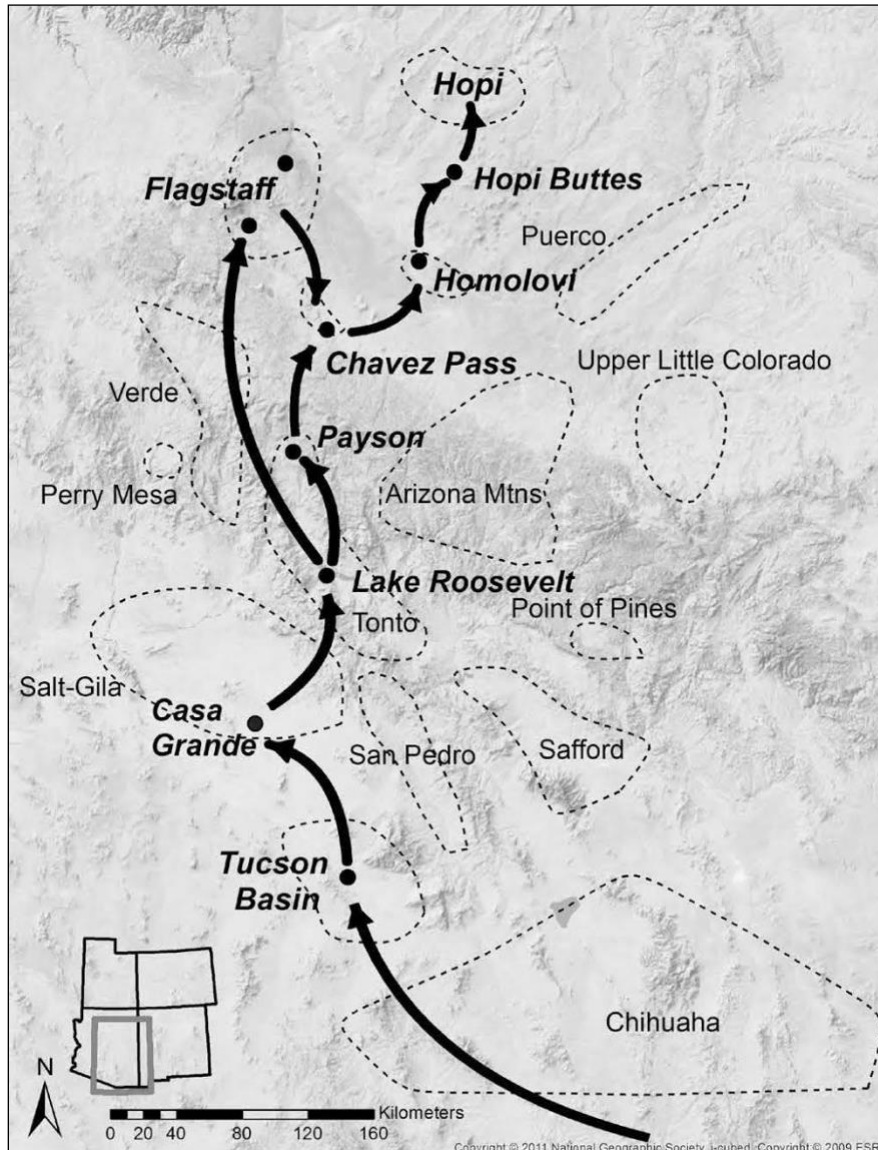


Figure 4. Water Clan's migration route to Hopi Mesas: Source: Bernardini (2018:79) based on the account in Ferguson and Lomaomvaya (1999).

From there, segments of the clan then established themselves in various other Hopi villages. For example, the Badger Clan from Orayvi has a direct connection with Awat'ovi (Kuwaniwisiwma 2018:208), a former Hopi village south of Keams Canyon, but then a subgroup

of the Badger Clan became established in the village of Wàlpi and later Sitsom'ovi (Courlander and Harmon 1971:221; Stephens 1936:860 n.1).

Clan associations are further observed through ritual action, since many clans “custodially own” ceremonies as well as specific ceremonial roles like the chief priesthood (Eggan 1950:90). Each major ceremony is associated with a clan, a society, or a kiva group (Eggan 1950:89; Whiteley 1988:61–64). As a side note, a “kiva group” is a ceremonial association of members that controls a special, often underground chamber used for the performance of rituals. Kivas belong to particular clans, but their membership cross-cuts lineages, clans, religious societies, and even villages (Eggan 1950:116–120). The kiva group is par excellence at demonstrating the interwoven nature of Hopi society.

Ceremonies are generally considered to have been given to the Hopi people in the Third World before humanity emerged into the present Fourth World. Particular ceremonies, in the modern sense, may not remain with the same clan who received them at the point of origin. Some clans may become too small, while others may go extinct entirely, and their ceremonial practices will be transferred to a different clan, but generally always in the name of the dying clan (Levy 1992:22–30). For that reason, the clan affiliations with certain ceremonies may vary between villages (Connelly 1979:548; Frigout 1979:575). Since clans are distinguished by their unique migration histories, as well as their ceremonial ownership and stewardship over particular resources and lands, it is not uncommon for Hopi people to emphasize “I can only speak for my clan.”

Indeed, the notion that knowledge which a clan possesses should be shared with anyone unaffiliated with that clan is in some ways anathema to Hopi thought. This issue once came up in a dispute between clans that was heard in the Hopi appellate court. Richland (2008b) reports the

witness providing testimony on clan lands was informed by the judge that the Court would use village customs in rendering their decision. A Hopi Tribal ordinance directs judges to give preferential weight to village customs and norms in matters of legal interpretation. The Hopi elder, however, quickly retorted, “What are you going to do with the village’s knowledge?” (Richland 2008b:78).

It is also important to note, as another significant caveat, that Hopi clans do not enjoy absolute control over all ceremonial activity. Households also perform ceremonial activities. For instance, one research participant from First Mesa noted that her particular household was responsible for maintaining particular ritual items that were associated with three deities.

Those beings, they came from the east, and one of them was blind, or maybe it was two of them, yes – it was two; and they walked from the east, from way over near the other pueblos like Zuni and Acoma, and were led by the third. They came walking all that way, from the east. They came to my family and my family has since taken care of them which we still do today. We still have those religious relics in my family’s home and I’m very proud of that.

Hopi clans are aggregated together through their clan migration stories and the stories related to emergence into the Fourth world. These aggregations are generally referred to by anthropologists as phratries, although they are nameless in Hopi but have practical and ceremonial effects. Titiev's (1944:58) definition of a Hopi phratry is:

Phratry—a nameless division of kindred made up of two or more clans which share certain privileges, mainly ceremonial, in common. The outstanding features of the phratry are that it delimits the greatest extension of kinship terms based on any given relationship, and that it marks the largest exogamic units recognized by the Hopi.

Whiteley notes that “Both Eggan (1950:78) and Titiev (1944:51–52) report that Hopi assignment of clan names to [other Hopi] individuals fluctuates extensively” (1988:53).

However, I would state my reading of Eggan and Titiev’s works would indicate the opposite to be true; indeed, I find it remarkably consistent considering the villages studied were populated

with several hundred members. Titiev, for instance, notes only 17 instances in which discrepancies were noted in the identification of an individual's clan affiliation by another Hopi person, a mere 1.9 percent of such instances recorded. The vast majority, 863 individuals, were correctly and consistently identified according to their clan affiliation. It is true, however, as Whiteley reports that phratries of other persons were always correctly identified within the village of Orayvi. The assignment of individuals to phratries, and accounts of which clans co-occur in particular phratries, are highly consistent throughout the ethnographic reporting on Hopi clans. "Phratry lines are more clearly distinguished than clan ties" (Titiev 1944:53), and due to various factors which anthropologists have not been able to clearly work out, clans may have a multiplicity of names and certain lineages within the clan, as they emerge over the course of history, may adopt new names, thus making "the phratry grouping [exert] an enormous stabilizing influence in Hopi society" (Eggan 1950:78). The Coyote Clan of First Mesa provides an illustrative example. According to Titiev (1944:55–56), the Coyote Clan has a migration story that lists various *wu'ya* and names. In their migration account, the Coyote people met M^àasaw, a deity and guardian of the Fourth world according to the stories of emergence:

After they came out, they came to a place where a man was sitting by the roadside. The man said, "I am your uncle, but they call me Coyote." They went along with him. They came to a good place where there were cedar trees. They said it was a good thing for them to have that name in their clan. They built a fire. They said they would have Fire in their clan. They saw a tall man standing by the trail. Then he said he called himself M^àasaw. So they called him their uncle. Here they got his name.

This account indicates that Coyote, M^àasawu, and Kookop clans are members of the same phratry, and indeed they are and have been so recorded in the ethnographic literature.

Parsons, a twentieth-century ethnographer at Hopi, noted that the Coyote Clan had an altar piece associated with M^àasaw in their clan house at First mesa. To complicate matters further, in

some villages, Coyote and Mâasawu are considered distinct clans; however, the stabilizing effect of the phratry holds true given that these clans, whenever distinct, are members of the same phratry (i.e., what Hopi ethnographers refer to as Phratry VI). Moreover, *Kookop* clan (untranslated; but often said to relate to fire or burning embers), also has Mâasaw as one of its *wu'ya*, and interestingly, all three clans are members of the same phratry in villages where they exist such as on Third Mesa.

The Hopi rationale for the grouping of clans into phratries is variable (see Eggan 1950:64–80). Some clans associate the origins of their *wu'ya* with migration stories. The usual, most basic example cited is Phratry I. Whitely retells an abbreviated version of the migration story:

During their migrations, a group of people came upon a dead bear and decided to take this animal for their *wu'ya*. Other groups arrived successively at the eponymous site and did or saw something with the bear carcass, from which each one took its name. Some cut a strip of hide for a carrying strap and became the *Peqösngyam* (Bear-Strap clan); others saw a bluebird sitting on the skeleton, and became *Tsorngyam* (Bluebird clan); the last group (others are Gopher and Greasy Eye-Cavity clans) found a Spider spinning her web between the bones and took *Kookyangsowuuti* (Spider Grandmother) for its *wu'ya* (1988:53–54).

The nomenclature of other clans, while still related to migration stories, is more clearly related to a particular ancestral figure. For instance, the Gray and Flute Clan retell in their migration story how they were living at a pueblo called *Leñyanobi*, “Place of the Flute”, before they were then joined by the Horn/Deer clan and moved on to another location. The place gained its name from its original progenitor, a man who had travelled to the Underworld and seduced a young woman by playing a flute. They were then married in the Sun-house, a name that may refer to the sun itself or the Sun Clan matriarch’s residence, but in this case referring to the actual sun. The descendants of their union began to call themselves the Flute people (Fewkes 1900:590). Returning to a point made earlier, this would seem to indicate that while particular clan *wu'ya*

might be a result of topogenical features of migration accounts, clan phratries may indeed be a clear genealogical designation.

Upon each clan's acceptance into a village (what research participants referred to as the clan's "adoption" into a village), as a general matter, the *kikmongwi* would allocate a portion of land for the clan to use for agricultural purposes. After this occurred, the lands are known to belong to the clan, not the *kikmongwi*. However, these lands were to provide the necessary food and other plant material for the purpose of conducting ceremonies, which clans in particular villages do at the behest of the *kikmongwi*. Acceptance into the village itself is often said to have occurred by virtue of ceremonial knowledge. However, the Horn Clan at Wàlpi, sometimes referred to as the Deer Clan, retells of their entry into the village as related to their previous cohabitation of a village with members of the Rattlesnake Clan. Because the Rattlesnake Clan had already arrived at First Mesa, the Horn/Deer Clan along with their counterparts, the Flute Clan, were readily accepted (Fewkes 1900:591). The migration accounts regarding their entrance into the village, however, do indicate that the Flute Clan was asked and in response confirmed its *wiimi* (ritual items and the knowledge of how to use them; see, Kuwanwisiwma and Ferguson 2004).

The role of allocation of lands was largely reserved to the "mother town," or the town with daughter towns on each mesa: Wàlpi, Songòopavi, and Orayvi on first, second, and third mesa, respectively (Connelly 1979). Clan land allocations varied in size from a few hundred square yards to a square mile or more (Forde 1931:367). Some clan lands were separated from others, while others were clearly allocated from another clan's previous holdings. The conventional wisdom has it that most economic activities were articulated by the clan or segments of it. However, Peter Whiteley (1988) has convincingly shown that due to the small size of these lands

they were insufficient for providing all the necessary needs for the corresponding population size on Third Mesa. Moreover, some of these lands were explicitly ceremonially connected, known as *wimvaavasa*, literally “ceremonial/ritual farming fields.” While Whiteley is referring in particular to Orayvi, Beaglehole has shown the same for Second Mesa, where clan lands have a clearer and more symmetrical division (1937:15–16). Supporting the linguistic evidence, Whiteley demonstrates that as it applies to Orayvi, clan lands were often utilized only by the primary family who held leadership offices and undertook religious prerogatives within a particular clan (e.g., the clan mother, clan society priests, or the *kikmongwi*). Indeed, these lands were assigned on the basis of a particular clan’s primacy and *wiimi*, not as a function of the clan’s population size (Forde 1931:368). All lands were technically owned by the clan mother of these various associated clans in the form of a trusteeship for future generations (Bradfield 1971:20; Forde 1931:373). Levy (1992:24), however, remarks that a “free area” of land was also established and was sufficient for fulfilling the basic needs of clans that lacked their own assigned lands. The free area was open for agricultural development to clans lacking any corporate land of their own (cf. Titiev 1944:63, 181; Whiteley 1985, 1986). By extension, it must be assumed that free areas provided the necessary supplemental resources for clans which held custodianship over actual designations of land. One male research participant from Second Mesa seemed to deny outright the notion that having access to land is a function of one’s lineage, arguing that instead a land allocation depended solely on individual industriousness. “If you really are committed then you will succeed and have your farm.”

Whiteley argues the household was the primary economic unit and center for economic activity. In addition, cooperative economic ventures (planting, hunting parties, repairs of trails and cleaning of natural springs, for example) existed, but in many cases these groups drew across

household and clan affiliations to include the general populace of a village whether related or not. During some Katsina dances, for instance, and according to research participants, certain Katsinam would recruit men to work on a particular project, such as cleaning the springs or removing debris that had accumulated along trails. One elderly research participant from Second Mesa explained,

I went Taos Pueblo. That place, their village, is very beautiful. I asked them there I said how do you maintain these buildings so well. And you know what they said? They said that once a year all the men get together and replaster the buildings. So that way it takes very little time and they finish the whole village within one day, just 24 hours. We use to do that here in this village. A Katsina would go around and recruit men to work on projects. I would really like to see that brought back. We could fix many of the buildings around here that need some work and make the village beautiful like it once was.

While the clan lands are owned by the clan at large, it is the women in the clan who maintained rights to access the land and had the power, subject to veto by the *kikmongwi*, to dispose of clan-lands (Eggan 1950:114; Forde 1931:371; Kennard 1979:554). One research participant from a village on First Mesa explained,

Here at Wàlpi when a man marries, if he wants to raise crops, he must go the clan leaders of his wife's clan and ask permission. The women make an initial decision which is then endorsed by the *kikmongwi*. On occasion men may be denied or told they have to wait for some period of time until the lands will be available for them to farm, so they may decide to use the lands open to all the villagers or they may go to the Hopi Tribal government to acquire lands that it controls.

To make the point clearer, the woman who the prospective farmer is tied to may in practice be the man's sister or mother if the farmer is unmarried (Whiteley 1988). Clan agricultural lands were documented by Titiev for the village of Oraibi in 1944, see Figure 5.

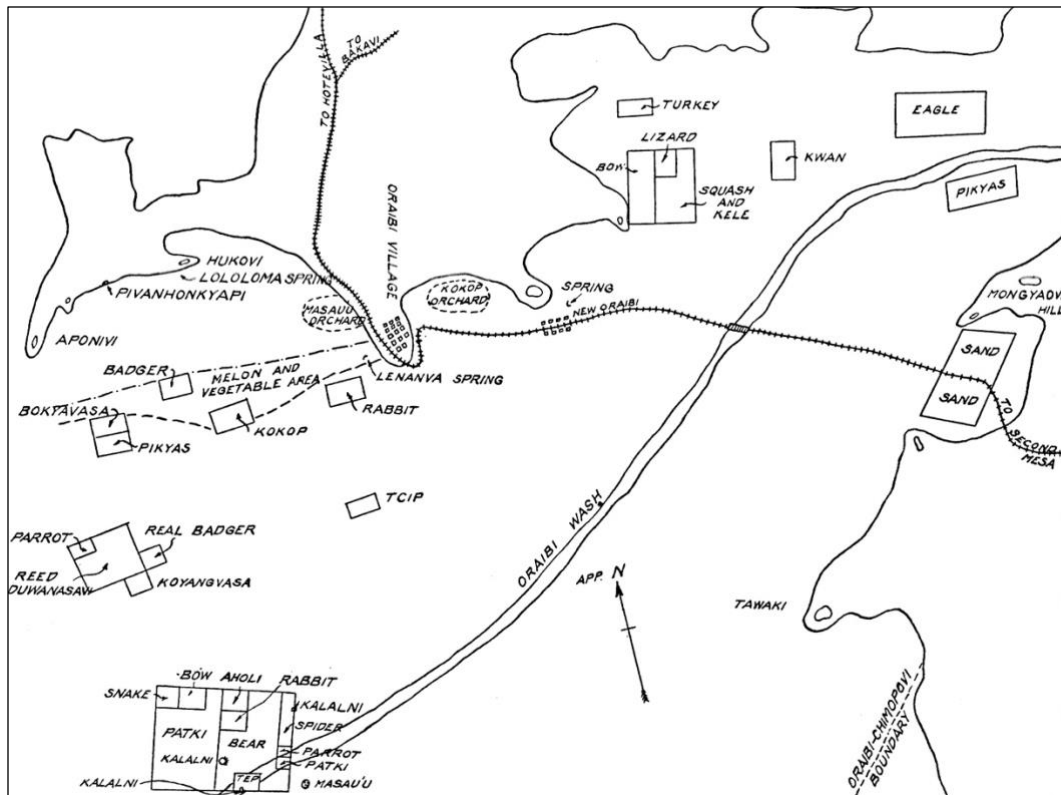


Figure 5. Orayvi clan lands circa 1944. Source: Titiev (1944).

Hopis also possess rights to certain natural resources and extraction areas, such as eagle nesting sites and natural springs, by virtue of their clan affiliation (Beaglehole 1936:20; Fewkes 1900a:693; Fewkes 1906:348; Stephen 1936:XXXI, 389, 565, 1076–1077;). The natural environment plays an important role in Hopi ceremonies. It is also common for Hopis to procure water from springs in areas where Hopi clans formerly resided prior to their settlement at the Hopi Mesas (Fewkes 1900a:693–694; 1900b:592). The water from such springs is considered sacred and is often used by priests in religious ceremonies (Hough 1906:168). The route taken to these areas reenacts ceremoniously the routes Hopi ancestors took in migrating to the Mesas. Some of these routes are marked specifically by various features and form pilgrimage trails (*homvũikya*). *Kukhepya* is a Hopi word that means to go along looking for footprints. Footprints refer to the literal tracks left by people crossing a terrain as well as the symbolic associations embodied in the term *itaakuku* “our footprints,” i.e., the ruins, potsherds, petroglyphs (*tutuveni*),

shrines, rock piles, trails, artifact scatters, farming areas, and archaeological sites (*kiikiqö*, meaning ancestral village) that Hopi ancestors intentionally left behind during their long migrations to the Hopi Mesas (Kuwanwisiwma and Ferguson 2004).

The deity Måasaw instructed Hopi people with the words, “*ang kuktota*,” meaning “along there, make footprints,” directing Hopi ancestors to mark the landscape with material evidence of their migrations. These footprints are seen by Hopis as the historical evidence that they traveled the land and fulfilled their spiritual covenant (Colwell-Chanthaphonh and Ferguson 2006; Courlander 1971:36; Dongoske and others 1993; Ferguson and Colwell-Chanthaphonh 2006:95; Ferguson and others 2000; Kuwanwisiwma and Ferguson 2004; Kuwanwisiwma and Ferguson 2009; Mindeleff 1891:31). As the footprints were left, Mastutskwa (Måasaw’s land) became Hopitutskwa (Hopi Land) on the basis of the original covenant that was entered into between the Hopi people and Måasaw (Hopkins and others 2017).

Migration routes did not follow direct or linear routes (Anyon 1990:30). Clan groups sometimes returned to previous inhabited villages they had occupied, and over the course of their migration, clans separated into smaller groups and then regrouped at later points. Donald Dawahongnewa, Water Clan, Songòopavi, told ethnographers that small bands would remain behind if there was a pregnant woman, or a woman who had recently given birth and were awaiting the 20 day period of infant isolation (Ferguson and Colwell-Chanthaphonh 2006:104). Anyon (1999:30) makes the point that clan migrations took different routes, arriving at different destinations and at different times, and thus clans arriving at the Hopi Mesas did so from different directions and at different times (see also, Whiteley 1988:52). Notwithstanding these complexities, Zedeño and Stoffle (1996:82) make the point that the Hopi people have always considered themselves to have been one people. One Hopi scholar interviewed for this study

stated, “the concept of Hopi is somewhat disjointed. Plus, you have to layer on top of that this history of a group of people becoming a people.”

By returning to the sites along the migration routes, Hopi people remember their covenant with M̄asaw and reflect upon its meaning within their contemporary lives. When Hopis visit such places, they commonly leave offerings, such as *hooma* (prayer meal) and *paaho* (prayer feathers), as part of their stewardship responsibilities voluntarily undertaken with the deity M̄asaw. The amalgamation of all these sites, ancestral villages, sacred springs, rivers, trails, petroglyphs, etc., constitutes the vast region of Hopitutskwa (Jenkins and others 1994:2). In other instances, Hopi religious societies use the landscape by taking materials to construct temporary shrines along paths away from the Mesas, which are then brought back ceremoniously over the course of a particular ritual (Fewkes 1906:361). Other times, resources are collected by Hopi people when they visit ancestral sites for use in ceremonial and other practices. In all cases, however, the landscape of Hopi people remains a vital and intrinsic element of Hopi cultural and religious life.

The Hopi people retain a cultural affiliation claim to past identifiable groups whose settlement patterns are exceptionally broad in scope, geographically speaking (see, for example, Ferguson 2003). Archeological nomenclature for identifying past groups in the southwest include Ancestral Pueblo, Fremont, Mogollon, Sinaguan, Salado, Mimbres, Hohokam, and Cohonino cultural groups, but each of these are known among Hopi people to be Hisatsinom (ancient ancestors) (Hopi Tribe 1994), and cultural affiliation studies have convincingly demonstrated some of these connections (e.g., Ferguson and Loma’omvaya 1999).

Gender

Hopi research participants noted various ways in which gender plays a role in social relations. Joking is quite common on the reservation and teasing through jokes with sexual undertones appears to be a common practice. One research participant from Second Mesa also referred to the women's society of Maraw where women poke fun at the poor behaviors of their male counterparts in the Wuwtsim Society. The men will later have their turn to do the same. The participant noted, "You learn quickly growing up here that you must behave yourself, especially in public. If you don't, things will be made public, and it's real and can be very embarrassing."

Various gender dyads are present in Hopi stories (brother/brother, brother/sister, sister/sister, solitary warrior/Spider Woman, solitary warrior/female demoness). Geertz explicates the associated themes of these stories and makes the argument that the brother/sister dyad resonates particularly strongly in Hopi thought (1996). Other scholars in discussing Hopi gender have noted that Hopi society is based on a sibling dyad in the form of the clan mother and *kikmongwi* position within Hopi villages (Stappert 1995).

The male's role in Hopi society changed dramatically in the initial decades of the twentieth century. The lack of work opportunities, coupled with a significant decline in agricultural practices, constituted major economic changes for Hopi men (Stappert 1995). Women's growing economic autonomy, particularly through the arts market, also altered gender dynamics based on cooperation and reciprocity that were dominant during pre-reservation life. And the ending of male religious societies at several villages uprooted a major driving force for many Hopi men in terms of their involvement in ceremonial and political life of the villages.

Certainly, other societies remained, but the male societies were generally open and available to all men within the villages, and most Hopi men were initiated to them.

Some changes in gender roles are directly associated with particular historical periods. The boarding school era is perhaps most pronounced in that it is where young girls were taught how to embroider. Hopi women were able to thereby enter a traditional area of men's work, textiles. There are exceptionally notable examples of Hopi women producers of textiles, which generally are sold for tourists and the off-reservation art market, with marked exceptions like Ramona Polyema's work, who is not a known artist in Southwest galleries (and therefore, I was unable to obtain an image of her work for this project), but who has created an internal market at Hopi (personal communication, Mark Bahti). However, the principal purpose for textile-making, ceremonial garments, including dresses, kilts, and sashes, are still the exclusive occupation of Hopi men. Hopi women have also found space in the agricultural sector with the introduction of permaculture and proliferation of household gardening. Yet, again, the traditional model still remains with Hopi men being the sole farmers within clan lands. The most gender-restrictive artistic practice among Hopi people might be that of katsina doll (*tihu*) carving (Stappert 1995). I now turn to discussing the various case study statutes for this study and how these variables were reflected in the data produced.

Chapter 5. The National Historic Preservation Act and the National Environmental Policy Act

Statutory and regulatory background: National Historic Preservation Act

The National Historic Preservation Act (NHPA) of 1966 was passed in order to create an administrative process that would require federal land managing agencies to consider the potential adverse effects of federal undertakings on historic properties. According to the language of provisions within the NHPA, the federal government's role is to “provide leadership” for preservation, “contribute to” and “give maximum encouragement” to preservation, and “foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony” (Sec. 101 [42 USC § 4331]).

The NHPA, however, was not the first time Congress had confirmed historic preservation as a national priority (King 2013). In 1906, the Antiquities Act (P.L. 59-209) was passed, which for the first time recognized the value of historic preservation. Under the Antiquities Act, Congress delegated to the President the right to establish National Monuments on federal lands and by further obligating federal agencies that manage public lands to preserve for the benefit of future generations sites of historic, scientific, commemorative, and cultural value. The Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461-467) then established a national policy of preservation for public use of sites, buildings, and objects deemed to be of national significance, and further required the federal government, under the office of the National Park Service, to conduct surveys of such places on federal lands. The Reservoir Salvage Act, 1960 (P.L. 86-523) and Archeological and Historic Preservation Act, 1974 (P.L. 93-291) followed in the footsteps of the “salvage archaeology” movement, by requiring the preservation of archaeological data in large-scale development projects (i.e., data recovery through archaeological excavation), but this time the policy was expanded by not requiring such places to be of “national significance” in

order to be covered. Salvage archeology had its roots firmly established through the River Basin Program, a federal program developed to capture and preserve the range of archaeological resources that would have otherwise been lost following the damming of the Missouri River.

In 1979, Congress again confirmed its commitment to protecting archaeological resources against unwarranted destruction with passage of the Archaeological Resources Protection Act (ARPA) (P.L. 96-95, as amended). This act for the first time imposed criminal and civil penalties upon persons without permits who excavate or remove archaeological resources from public or tribal lands. The Act also specifically recognized individual tribal member's ownership interests, assuming the land in question is allotted land, in archaeological sites by requiring landowner consent before a permit can be issued for archaeological investigations on individually-owned reservation lands. These statutes each recognized historic preservation as a national policy, but fell short in terms of creating administrative requirements which would demand consideration in every case of conflicts between development and preservation. Moreover, the central aim here was to protect sites of national significance and preserve archaeological data.

The NHPA has been referred to as “the cornerstone of American historical preservation” (Fowler 1976:31), “the premier land management tool” (Alexander 2012:895), and the “most transformative ... law” (Phelps 2017:472–473) mandating historic preservation on federal lands. I have discussed elsewhere the unfettered endorsement of the courts on the power of federal agencies to manage public lands as these institutions see fit (Schwoebel 2017). The NHPA established for the first-time historic preservation of sites as a national policy which must be part of any calculation where a project receives assistance, through funds or permits, of the federal government. Notwithstanding various possible interpretations of “preservation,” the oft-cited preferred means of mitigating adverse effects to historic properties, continues to be in many

cases “data recovery,” or archeological excavation of a site. Other so-called “alternative mitigation” measures are available, and these options are flushed out through the consultation and public-input process (see, Advisory Council on Historic Preservation n.d.). These other options include, for instance, the preservation of sites and their incorporation into heritage tourism plans, burying sites in place, rerouting or re-siting projects away from eligible historic properties, and developing educational media on the sites that would have otherwise not been available. It has sometimes been claimed by federal agencies that avoidance and minimization of impacts are the preferred option of mitigation (see, e.g., U.S. General Services Administration 2001:4–28), but these standards lack any description, and the fact they are considered “alternative” mitigation measures seems to indicate they remain in much historic preservation work to be subservient to data recovery, or that is, excavation of sites (see, e.g., National Park Service 2013). As will be shown below, this is clearly the perspective of Hopi Tribal officials who have worked in the area of historic preservation for several decades, and refer to the NHPA as the “excavation statute.” If nothing else, there is clearly a conflict and lack of clear direction on this particular matter with respect to historic preservation work.

When sites themselves are preserved, it is the “integrity” of the site that has become the object of preservation work, rather than simply the data they can provide. The shift to the integrity of historic sites was, however, not without its limitation, provided the federal government maintains control over the determination of integrity for historic preservation oversight, funding, and monitoring. Integrity is evaluated on the basis of location, design, setting, materials, workmanship, feeling, and association. The integrity requirement is meant to ensure a place still has the look and feel as it did in the past. Sites either retain the characteristics that make them eligible for inclusion on the National Register or they do not.

The NHPA created positive obligations on the part of the federal government. The federal government thereby became an active steward of these resources, and obligated itself to careful and thorough review and assessment of projects which may on their face be deemed beneficial for the public but which could be detrimental to historic properties and archaeological resources. This review process is referred to as Section 106. To comply with Section 106, federal agencies are required to identify sites that are listed or deemed eligible for listing in the National Register of Historic Places (NRHP). However, the full and comprehensive range of intangible and tangible qualities that historic properties may possess has arguably only moderately been addressed in federal implementation of the NHPA. For instance, during the Obama administration, the use and development of a “cultural landscape policy” only began to surface and became the foundation for the establishment of the Bears Ears National Monument (see, Schwoebel 2018).

According to the NHPA, historic properties are eligible for inclusion in the NRHP when they meet at least one or more of four criteria related to their “significance.” The site must be: (a) associated with events that have made a significant contribution to the broad patterns of our history; (b) associated with the lives of persons significant in our past; (c) embodied of the distinctive characteristics of a type, period, or method of construction, or representative of the work of a master, or possession of high artistic values, or representative of a significant and distinguishable entity whose components may lack individual distinction; or (d) possess a history of yielding, or potential to yield, information important in prehistory or history.

Under criteria (a), “our” has been interpreted to mean either a site of national significance or any segment thereof, such as rural community or a tribe. The concept of “persons” under criteria (b) is inclusive of spiritual persons, such as human ancestors or deities; however, the

personhood of the entity must be embodied in a site or object that is included or eligible for inclusion on the National Register. In other words, the “person” must, at least in terms of administrative practice, be associated with a historic property through cultural/religious beliefs or practices about a particular place. Therefore, a Native view that holds water to be sacred and living, such as in the Standing Rock example (see, Ekberzade 2018; Estes 2019; Estes and Dhillon 2019), would not make a river eligible for historic preservation. On the other hand, the particular site along the river where sweat lodges were held in conjunction with ceremonial practices or where a personified deity is said to be associated might be eligible, but not the river itself, and certainly not the ecological system which the river supports. The spiritual essence of places, regardless of cultural conceptions, in my view, must be anthropomorphized, or Potamoi- zed, a neologism that denotes the Westernization of Indigenous cultural and spiritual systems after the Greek gods of rivers and streams. In the case of Standing Rock, the Army Corp of Engineers crafted a procedure whereby they sought consultation with the Sioux tribes by demarcating each water crossing as a separate project, which the Sioux refused to participate in (Colwell 2016), and the Advisory Council on Historic Preservation criticized (Nelson 2016) for not allowing the tribe to be consulted on the entire pipeline project. Notwithstanding, the ACHP might have recognized the entire river, or the water of the river, as a TCP, but it failed to do so. The listing of a historic property on the NRHP only deals with the record, and so it becomes incumbent on tribes to think and speak metasemiotically about their cultural values and ideas. In my view, this situation is a matter of administrative practice and complexities, rather than a reflection on the current status of the law. Indeed, the California and Oregon SHPOs and at least one federal agency (i.e., Federal Energy Regulatory Commission) agreed in at least one instance,

and as a divergence from general practice, that the Klamath River, its water and wildlife, was a TCP and eligible for listing on the NRHP (King 2004).

As a matter of preservation, absent a TCP designation, a river may only be designated as subject to preservation work under National Wild and Scenic Rivers System. This system generally necessitates a particularly high standard based on current ecological conditions and aesthetic values, as evidenced in the small number of rivers so designated in the United States (less than one fourth of one percent), or an act of Congress (National Wild and Scenic Rivers System n.d.). The important point here is that implementation of NHPA and its regulations is often narrowly tailored to tangible resources that have a delineated, often negotiated boundary around them, not intangible resources or cultural continuity as such. Criteria (c) is often used for sites of architectural significance and the final criteria (d) applies primarily to sites of archaeological importance that can produce data. Moreover, even if a site is listed or deemed eligible for being listed, there is no negative obligation on the part of the federal agency not to destroy the site. The impacts must simply be evaluated, and techniques of obfuscation appear to be easily employed.

A good example of the above points is found in the Record of Decision (ROD) of the San Francisco Peaks Snowbowl Facilities Improvements Proposal (USFS 2005). In that instance, the United States Forest Service (USFS) recognized that the entire mountain constituted a TCP and repeatedly recognized the cultural and religious significance of the entire mountain to tribal nations including the Hopi, but then went on to state, repeatedly, that specific cultural practices and objects had not been identified within the Snowbowl SUP area, a rather obfuscating act of bureaucratic acrobatics, and given that the initial objective of the proposal was to ensure continued operations of the ski resort, a process in which the concerned tribes played no part in

defining, the Forest Service was under no legal obligation to safeguard against adverse effects to the tribal interests and resources. If tribes had been involved, perhaps the stated goal of the proposal might have been framed, "to determine the best option for continued management and development of the San Francisco Peaks." Since the goal had been articulated without tribes, the tribes were told in the ROD they could merely enter into a MOA on mitigation (mitigation measures were repeatedly acknowledged as "impossible"), change the law at the federal level, or engage in the next round of developing a forest plan. In terms of the forest plan, a draft of which was issued in 2011, however, the interests of tribes were again narrowly tailored to three areas: identified cultural sites and remains, managing recurring activities such as native plant gathering, and improving plant and animal populations. Perhaps an agency policy, or even rule, that a finding of "impossible" mitigation should give greater weight to a no action alternative within the ROD, especially when under the purview of the American Indian Religious Freedom Act, unless justified for public health and safety, would take a major step towards resolving these recurrent problems. I speak more on this topic in a subsequent chapter on the American Indian Religious Freedom Act.

Traditional cultural properties are historic properties that are kinds of historic sites which are eligible for inclusion within the National Register of Historic Places. The significance of traditional cultural properties derives from their association with cultural practices or beliefs of a living community that (a) are rooted in that community's history and (b) are important in the retention and transmission of the cultural identity of the community (Parker and King 1998:1). Hopi traditional cultural properties are important because they comprise the tangible sites and places involved in passing down Hopi culture through generations by oral transmission and practice. As part of their contemporary lifeways, Hopis continue to commemorate thousands of

places that are associated with deities, shrines, historical events, water sources, mountains, ancestral villages, and other historical and religious traditions. The lack of what King (2009) calls “routine recognition” of these sites is what led to the development of the National Park Service Bulletin 38, which confirms and clarifies traditional cultural properties as eligible for inclusion on the National Register of Historic Places (NRHP).

The NHPA covers both historic properties and traditional cultural properties, the latter of which, as mentioned, is a subset of the former. Historic properties include any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register. Eligibility criteria also require that the historic property be at least 50 years old. The federal regulations promulgated to implement the NHPA clearly state “Properties of traditional religious and cultural significance to an [Native] tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register” (54 U.S. Code § 302706). Traditional cultural properties, as a concept are broad in scope, and include archaeological sites, resource procurement sites, springs, landforms, religious sites, viewsheds, and other sites with cultural importance to any community, Native or non-Native, within the United States, so long as they are of current importance as a matter cultural practice. Eligible historic properties for TCP status are potentially broad in scope, and may include everything from areas of religious importance to places of a more general social significance to a living community, like a general store as a community meeting place.

Section 106 of the NHPA requires federal agencies to evaluate potential impacts to registered sites on the National Register, or sites that are eligible to be registered. The latter cases are covered by a concurrence letter between the State Historic Preservation Officer or Tribal Historic Preservation Officer and a federal agency that acknowledges a property’s eligibility,

rather than preparation of an NRHP nomination that can necessitate extensive time and resources. In addition, Section 106 requires some federal nexus, either through a license, permit, or funds with a particular project. Tribal lands are also covered by the NHPA, and therefore tribal governments who establish Tribal Historic Preservation Offices (THPOs) must develop procedures to carry out Section 106 for local development work. Several states, including Arizona, have laws modeled after the NHPA that apply to state lands.

The Section 106 process is an administrative procedure with no specific substantive rights attached to it. It involves a series of procedural steps which must be completed prior to a project proposal advancing, if a federal permit or funding is associated with the project. This process is carried out by a federal agency that has been mandated to control an area of federal lands with the assistance of a State Historic Preservation Office (SHPO) and, if established, a Tribal Historic Preservation Office (THPO), or if no THPO has been established then a tribal organization or appointed person on behalf of the tribe. If the latter is the case, then the tribe will defer to the judgement of the SHPO on whether to support or reject particular proposals, but will still retain a role in consultation work. Once a federal nexus is established, the appropriate SHPO and THPO must be notified. For tribes that lack a THPO (which accounts for around 70 percent of tribes within the United States), notification will still occur; however, as noted, the SHPO's determination will be final in these cases as a matter of administrative review. Consultations between the tribe or the THPO must be government-to-government in nature, and are often closed-door meetings by invitation-only, where members of the public and researchers are not permitted unless they occupy an established role.

The federal agency undertaking the Section 106 must establish a plan for engaging the public through scheduled public forums as well as notices in the federal register. The number,

timing, and proximity of these meetings can produce contentions on whether the consultation process is “meaningful,” as well as the extent to which information is provided and the format in which it is provided. After notification of parties is established, the process turns to the identification of historic properties that fall within the scope of the project. The area of potential effect (APE), for instance, can become bogged down in contentious debates among parties. At a national-level, however, it should not be forgotten that such accommodations are contingent entirely on the will of a particular agency director, and courts will generally defer to agency “discretionary decisions” such as this (Tatum and Kappus Shaw 2014). When historic properties touch on religious practices of tribes, in particular, it can be incumbent upon tribes to do their best in proactively and consistently building political relationships in order to protect their religious freedoms, a rather untenable situation. Moreover, agency officials are often promoted as standard practice, despite calls for reform, by relocating officials from one national forest, park, district to another (Rettie 1996). Therefore, tribes must not only rebuild relationships as new personnel come onto the scene, an arduous task within itself, they must also continuously divulge sensitive information in cases where there is a lack of institutional memory.

If a historic property is not currently listed on the National Register of Historic Places, it must be identified and its significance evaluated. This requirement has resulted in disagreements over the privacy of knowledge concerning tribal sacred sites or the reticence of tribes to share information with outsiders concerning their religious systems. For instance, the Pueblo of Sandia argued in the Tenth Circuit case of *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995) that divulging sensitive information regarding their religion should not be required in order for a historic property to be deemed eligible for listing on the National Register as a traditional cultural property. The Forest Service had disagreed and rejected the tribe’s request on

the basis that detailed information had not been provided to the Forest Service for evaluation of the site's historical significance. More specifically, the letters sent by the Forest Service requested detailed information describing the location of sites, practices associated with them, and the frequency of such activities. Some of the requested information would later be provided through an affidavit of a Sandia elder and religious leader, as well as a detailed ethnographic report. These documents, however, were never supplied to the SHPO prior its determination on whether to approve the project. For that reason, the case was eventually decided on technical aspects of information sharing and good faith with the New Mexico SHPO. The Court would also state in dicta, however, that the regulations provide heavy weight to the notion that information regarding traditional cultural properties when they involve tribal religions may not be readily divulged to outsiders. Often, the information regarding the location of particular sites may be omitted from final agency reports in order to preserve confidentiality (see 36 CFR 800.11(c)); however, agency personnel may still persist in soliciting information regarding specific sites or objects and their uses, rather than merely designating a 'cultural use district,' as the regulations would ostensibly allow. In other words, there appears to be a site-specific, and the corollary, practice-specific requirement by agencies, regardless of the fact that the regulations have recognized the sensitive nature of information on Native religious practices.

Another case on this point appears also to be illustrative of the general imposition on tribes to divulge sensitive information although again the court's reasoning is only stated in dicta as the court remanded the case on other grounds. The Ninth Circuit in *Mukleshoot Indian Tribe vs. United States Forest Service*, 177 F.3d 800, 807 (9th Cir. 1999) stated that the failure to thoroughly and, with sufficient time, identify and evaluate historic properties, while insensitive to tribal interests that had requested a full study be performed, was likely not a violation of the

NHPA on account of the failure of the tribe to divulge that information when the opportunity was available. Therefore, the regulations on this matter which relate to recognition of sensitive information appear to be interpreted by agencies and courts as merely a suggestion (see Chapter 8 on the American Indian Religious Freedom Act).

Once historical significance is determined, the agency will then evaluate adverse effects to historic properties. Possible mitigation measures will be discussed and a plan for implementation may be drafted. Adverse effects can range significantly from physical destruction or alteration of a historic property to the lease, sale, or transfer of the property to a non-federal entity. Adverse effects also include significant changes in the use of the property, so a Section 106 process might be required, for instance, in the development of a new management plan. In addition to physical impairments, visual, atmospheric, or auditory elements that diminish an historic property's integrity might be considered to be adverse effects. A property that becomes demolished through neglect will also trigger an adverse effect, unless that purported neglect is connected to properties of religious or cultural significance to tribes.

As noted, if a tribe, such as the Hopi Tribe, has a Tribal Historic Preservation Office, the goal here is either to support, reject, or offer possible mitigation measures on project proposals. This stage of the process is often conjoined with an Environmental Impact Statement (EIS), whereby the various alternatives are assessed alongside the proposal for development. The alternatives in the NEPA process generally include a mitigated proposal and a no-action alternative. Adverse effects may be resolved, for instance, by realigning or restructuring projects, data recovery, educational programming, or other measures. Once mitigation measures, if any, are determined and agreed upon by the parties to the consultation, then a Memorandum of Agreement is signed. In practice, a tribe may undergo all stages of this process but then refuse to

sign the MOA on account of their reticence to fully endorse the project. In other words, this process can be as much a political process of positioning and consensus as it is an administrative review process. Regardless, no substantive rights are held by tribal or state citizens by virtue of NHPA, the statute merely establishes an administrative process for review, which in general ends in the advancement of a proposal. Finally, if parties disagree on the final outcome, a request may be sent to the Advisory Council for comment.

Advisory Council on Historic Preservation (ACHP) is an independent agency of the federal government that promotes the preservation, enhancement, and productive use of the nation's historic resources, and advises the executive and legislative branches on national historic preservation policy. Congress charged ACHP with enforcing section 106 and promulgating implementing regulations (16 U.S.C. § 470s). ACHP's current membership is composed of eighteen positions, including various heads of federal agencies. The Secretary of the Interior and Secretary of Agriculture are joined by the secretaries of seven other federal agencies involved in historic preservation work, whose precise composition in terms of their membership in ACHP may change from one administration to the next. Currently, the heads of the following agencies are included: General Services Administration, Secretary of Defense, Secretary of Transportation, Acting Secretary of Homeland Security, Secretary of Housing and Urban Development, Secretary of Education, and Secretary of Veterans Affairs. The Architect of the Capitol also enjoys a seat on the Advisory Council. There are also three ex-officio members including, President of National Conference of SHPOs, Board Chairman of the National Association of Tribal Historic Preservation Officers, and Chair of the National Trust for Historic Preservation. There is also additional political representation at the local level in that a seat is

reserved for a governor and a mayor, although both seats are vacant at the time of writing. The Advisory Council is further composed of four experts in field of historic preservation.

Currently, ACHP participants cover expertise in the fields of urban development, architecture, repatriation, as well as a former head of the National Park Service. Four at-large members of the public are also included, but in practice these members also often have extensive relevant experience in the field of cultural resource management and historic preservation. For instance, the current at-large members include an arts foundation director, former chief development officer of the U.S. Holocaust Memorial Museum, a former NPS historic preservation deputy secretary, and a former tribal chairman. The latter two also occupy the seats of Chairman and Vice-Chairman on the Advisory Council. Finally, one member of a Native Nation or Native Hawaiian organization is included on the council although tribal interest might also be represented through the at-large member positions and the ex-officio position of the Board Chairman of the National Association of Tribal Historic Preservation Officers. While some of these offices are permanent positions (e.g., ex-officio members and Secretary of the Interior), others are dependent on appointments by the current administration. The work of ACHP in maintaining the National Register perhaps adds a veneer of authority to sites, districts, and objects listed therein, but some commentators have called for a more decentralized approach – arguing that the National Register has become weighed down by its high degree of professionalism, and the interest of the public in historic preservation suffers as a result (King 2009). Arbitrary standards, unconsidered assumptions, and costly, inefficient, and irrelevant requirements have been placed on communities, sometimes to the extent of denying the very existence of a community as such, by officials who are not personally acquainted with communities but rather make determinations based on the record provided. For instance, in one

such controversial case dealing with the Dune Shacks of Massachusetts, the Advisory Council on Historic Places outright denied a local community's perception of itself as a community, which some scholars have heavily criticized as a misuse of administrative power (King 2009).

Statutory and regulatory background: National Environmental Policy Act

A discussion of the NHPA should be adjoined with a discussion of the National Environmental Policy Act (NEPA), 1969 because in practice the administrative processes governed by these statutes occurs in tandem and often review similar kinds of impacts. For instance, the NHPA refers to historic properties, while NEPA refers to the human environment which includes 'cultural resources.' Section 106 is often carried out in conjunction with NEPA analysis in the preparation of a "detailed statement", pursuant to the statute, which is referred to as an Environmental Impact Statement. Like Section 106, NEPA analysis is triggered once a federal nexus is established, which is referred to as a federal undertaking. Here, the purpose of the act is not only to ensure "productive" harmony, as with NHPA, between people and their environment, but also "enjoyable" harmony, while also "fulfill[ing] the social, economic, and other requirements of present and future generations of Americans." The Act furthermore establishes the federal government as a steward of the environment, noting the responsibility of the present generation to act as a trustee for future generations. Environmental conditions should not only be safe and healthful, but also productive, and aesthetically and culturally pleasing. The NEPA has been called "America's environmental Magna Carta," but grossly misunderstood by academics and government agencies alike, largely because the principles it espouses have yet to become a national agenda for action (Keith Caldwell 1998:147). I suppose I agree with the statement that NEPA is not well understood, if one were to consider that the statute is meant to provide for substantive rights protections, as some scholars contend. If that is the case, then truly

the act's implementation is falling far behind the standard it was meant to achieve. In the political terrain, these spaces for public action have yet to be realized, arguably due to a situation where shifts in public opinion in favor of greater forms of environmental protection have yet to overcome the assumptions of political parties, and the ways in which people gain and legitimate their authority within them, who as a consequence have sought merely to promote symbolic references to areas of necessary reform and action. Constitutional obligations, so it might be argued, are subservient to political exigences and the gaining and use of power by whatever means necessary.

NEPA has also received significant criticism on account of a perception that in reality the statute serves not as a tool for achieving its laudable goals, but rather as an instrument for administrations to achieve or prevent from moving forward projects that it so desires, regardless of public input. In that sense, critiques have exclaimed that the law is treated as “the lowest common denominator—the procedural requirement” (Lindstrom and Smith 2008:11). Notwithstanding, Taylor (1984) points out that three systematic failings of government decision processes were addressed by NEPA: (1) use of long planning periods to search for possible impacts and to explore design options; (2) important early choice points in agency decision processes are made visible or accessible to other agencies or the public; and (3) development of stronger norms of analysis underlying the creation, sharing, and criticism of empirical information.

In terms of Native peoples' interest in aboriginal territories and resources, NEPA has also gained the critical glare of scholars and practitioners alike. Dongoske and his colleagues (2013) have demonstrated the central thrust of these concerns. They note that the NEPA process demonstrates a cultural ethnocentrism by relying exclusively on a Western scientific materialism

in its analysis, and in its very presentation of information. Native peoples and their concerns are often lumped together under “cultural resources” of Environmental Impact Statements, the domain of what are predominately non-native archaeologists, historians, and cultural anthropologists. “It is really ridiculous,” one THPO explained. “I keep saying this is our ancestors, the spirits, the living water. It is not a ‘cultural resource.’” One Northern Arapahoe/Blackfeet scholar, Tarissa Spoonhunter, who has worked extensively on NHPA and NEPA matters on the Blackfeet Reservation in Montana put it this way: “I have walked the national parks near our reservation with rangers before. On one such occasion, we saw many sacred plants and animals. I want to protect those, all of this, I explained to her. She told me that wasn’t under her mandate” (2014). The Environmental Impact Statement’s lack of a comprehensive view of environments and places has created an epistemological division that many are worried will cause ongoing jeopardy, if not ethnocide, to the lifeways, perceptions, beliefs, values, and relationships to the environment of Native peoples (e.g., Dongoske and others 2013). Cajete (2000) lays out some of the key elements of Native epistemologies that ground not only their “cultures,” but their systems of knowledge—Native sciences. It stands to reason that such frameworks could, but simply are not as an unspoken but underlying decision, employed in assessing environmental impacts (Dongoske and others 2013).

Hopi research participant comments on NHPA

The legal and regulatory language of the NHPA is indexed (a textual method of linking speech and objects) by Hopi people in various ways. Foremost among them, village and religious society knowledge are marked as a matter of “authorization” to speak. Numerous research participants across Hopi Mesas noted in interviews where they were “not authorized” to speak on archeological sites and their significance, or conversely whether they were initiated or “culturally

active.” One male research participant from Second Mesa indexed the cultural norm related to religious society knowledge alongside its personal meaning: “You have to earn this stuff. Pain and effort in my personal life to get this stuff. A lot of that I hold very close to my heart.”

Archaeological sites and traditional cultural properties themselves are also indexed as “living, breathing sites.” Explicit references are made to the precise language found in the statute, but are equally filtered through a Hopi epistemological frame.

At a more structural level, the work of institutions is frequently indexed alongside regional power relations in the Four Corners area. Notably, the NHPA applies to federal land, and this includes land management decisions on reservations of federally-recognized tribes. The Hopi Tribe has developed an archeological survey process that must be carried out prior to new developments, whereas the village governments have also developed protocols to protect “cultural sites” or “ancestral sites” (the preferred alternate tropes, in my fieldwork, to “historic properties” or “archeological sites”).

On the reservation, the Cultural Preservation Office is involved in various efforts to protect Hopi cultural and ancestral sites, but villages and ceremonial gatherings may also be involved in this work. For example, in terms of the natural springs which are used for ceremonial purposes by particular clans, research participants indicated clean-ups of those springs have been organized by the villages, the Tribal Water Department, and the Broadface (Wukotaywa), a Hopi Katsina, during dances. The villages often employ elders as advisors in these projects and bring in the youth to do the work, and the Broadface continues the practice directly, organizing communal work projects. “They’ll create a roadblock during that dance and Broadface will send people who come down the road to clean the spring. I’ve seen that happen pretty recently.”

Research participants, both men and women, repeatedly stylistically (a speech act of (multiple) social positionings and sorts of affiliation to communities of practice) discussed whether they were “authorized” or “privileged” to speak on a particular matter. This iconization (a natural depiction of an object itself) and ethno-metapragmatics (a contextually understood form of speech that has meta-level and emic description) of silence, as will be discussed more fully in the National Environmental Policy Act section, indexes a person’s prior initiation, or whether a consensus has been reached among such individuals on what will be made available to the non-Hopi public. In general, research participants noted there should be an apparent reason for making such statements, such as its utility in land management, as will be explained further below. In general, knowledge is not disclosed, as a male research participant from Second Mesa described, because “When initiated we enter into a covenant with ceremony energies and things. To disclose you break that agreement and there are consequences to that.” Moreover, Hopi ceremonial knowledge is distributed and no one person has a right to know all aspects of Hopi religious and epistemological systems. A male research participant from Third Mesa stated, “You don’t even have the right to listen to that unless you are initiated.” Another male participant from Second Mesa stated, “Some cultural teachings are only allowed to initiated individuals into certain ceremonies. A lot of that information is granted upon the position in the society. So it’s not like all information is shared. It’s like a right-of-passage within our village. [Historic] properties and sacred knowledge, not everyone is privy to that. We (a particular religious society) safeguard certain prophecy others safeguard other parts. This is safeguarded so no one is privileged to learn all of this information.” For uninitiated individuals, some knowledge may be gathered by simply being a member of a community, and such individuals indexed their personal commitment to safeguarding this information. Another male participant from Third

Mesa stated, “I’ve worked and lived in this community my whole life to gain little pieces of information, and I’m certainly not going to share that with a pot-smoking hippie, or an anthropologist, for that matter.”

One research participant who was former employee of the Hopi Cultural Preservation Office stated, “in my experience clans are very open to talking about the migration routes; however, the knowledge is generally very closed. In the case you are dealing with a religious society it’s a double jeopardy—clan knowledge and clan knowledge of their societies.” A member of the Hopi Cultural Resource Advisory Task Team from Second Mesa stated, “we are very cautious about divulging things (sensitive information) like that.” In some cases, society knowledge has been divulged for the purpose of historical site preservation. For instance, the Rattlesnake Society from Second Mesa has informed the CPO of its snake hunting grounds in order to protect those areas from future development. “We were privileged to be able to go out to those sites,” a CPO research participant stated. The process generally entails that individuals who make statements to CPO on behalf of their clan or religious society may then redact portions of the transcript. The redacted transcripts are then provided to the CRATT team who makes additional comments and may redact additional portions of the transcripts prior to publication. These staff members are seen as an authority on these matters and may determine what is appropriate to divulge, and how to do so. One female research participant from First Mesa explained, “I’m not an authority on this stuff, but Hopi CPO does this work. They provide information, but within bounds, of course.” When asked why non-divulging of cultural information is important or a cultural norm, one male research participant involved in religious societies at Second Mesa stylized (a speech act of (multiple) social positionings and sorts of

affiliation to communities of practice) further, “Why? Well, I mean why do Christians practice Easter? Why are Christians born again? These are very important.”

However, at a more general level, Hopi research participants frequently noted that their knowledge on matters only extends as far as “own village” or, less frequently, “own clan.” Among the villages, Songòpavi and Hotvela are frequently indexed as the “most traditional,” but sometimes this occurs in jest, such as “everyone says they are the most traditional. Blah blah blah. I think my village and clan, family are very traditional, too. I mean like in my family we’ve kept the language alive.” One female research participant from Second Mesa further explained this perspective as a matter at least in part of the retention of Hopi rural lifestyle:

Songòpavi is seen as the most traditional. It remained isolated because after people [Navajos and Europeans] came to Wàlpi they found their way to Orayvi and so Songòpavi remained remote. Other villages are seen as less traditional because everyone else is changing. They either no longer do the ceremonies, they do them but in a non-traditional way, or because of the loss of language.

The significance of Hopi cultural (and in particular, ancestral) sites is indexed in both general terms as well as specific or particular terms. The meaning of such sites is also indexed as a physical quality in that the sites are said to be “living and breathing sites” due to the ceremonial activities and depositing of ceremonial items prior to Hopi ancestors having left an area. Another male research participant from First Mesa indexically referenced the general meaning of ancestral sites, “These sites are still an active part of Hopi culture and our identity. They are part of who we are. They show the scope of how ranging our people are or were. Cause a lot of those lands aren’t available to Hopi people anymore but we should still have access without interference from anyone.” Another male research participant from Second Mesa stated, “People don’t understand even when we do ceremonies on the reservation those places like Chaco Canyon and Mesa Verde are involved. Down in Chaco Canyon people have experienced things

while we are doing ceremony here, spiritual things. So really need to have respect for an area during certain times of the year. That's something most people don't understand." One male research participant from Second Mesa noted:

Cultural sites are significant because generations old places of our Hopi people and what we have today are very living sites. Now these cultural sites upon our migration, live there, done ceremonies there, deposited sacred things into these places which breathes lives into these places. So, they are living breathing places. We visit them. We take things there and bring them home to bless this world. Very, very sacred and very important to us.

This notion also applies for Hopi people in terms of other Native communities within the United States. One male research participant from Second Mesa retextualized (a process of shifting genres) a National Monument in New Mexico where Zuni people hold ceremonial activities. "We respect that and we leave them alone. They are engaged in a spiritual realm in those activities and so we believe that must be respected. Otherwise it's like coming in without knocking."

The significance of Hopi cultural sites is also indexed according to personal experience and family connections. One male research participant from Second Mesa explained, "Homol'ovi is very important to [my village]. Some of the clans come from there. Mesa Verde is really important to me, too. I have a picture of me when I was a baby with my dad there. He had taken the whole family. My dad is Badger Clan and the Badger Clan is from there. They built that." However, Hopi as a relational society (see, Trospen forthcoming), one of which is based on a set of relational contingencies and obligations, is also referenced in many of these statements. This same participant also explained, "We maintain our connection with these places on the basis of the direction we (Hopi clans) come from."

The specific language and processes associated with the statute are also explicitly indexed and many such instances are related to proposals for legal reform. For instance, at the

institutional level, the role of Western courts in determining the rights of Native peoples to sacred sites is indexed explicitly as necessarily biased due to a lack of understanding by non-Natives regarding the topics and cultural practices associated with such places. “We only have rights to these places,” one female research participant from First Mesa explained, “depending on who is interpreting that. If interpreted by Indigenous courts, I think we would have some advantage. So it really depends on who is interpreting that.” Another male research participant from Second Mesa explained, “Right now we are stuck in a catch 22 situation. We have to fight the U.S. government, using its laws and its courts.” A “difficult situation” and a “rock and hard place” are metaphors frequently employed for indexing the overarching problem at hand, particularly at the administrative level. One male official from the Cultural Preservation Office explained,

Like archeologists the goal is to mitigate ten-percent that’s good enough for science and the rest of the site was pretty much free for all. We had to fight that and change archeological standards. But we were caught between rock and hard place if we were overly demanding that all 100 sites be mitigated that would be like we were accommodating excavation because that’s the whole goal of act and they just call it “mitigation.” And that’s really just another way of destroying a site, I think. It was hard. That’s how difficult it was you know in terms of how Hopi Tribe would present their position, and that also played into how consultations would occur with other tribes. We’ve had a leading role nation-wide and our office has been very respected for some of the groundbreaking work we’ve accomplished.

In terms of excavation as a means of mitigation, another male research participant from Second Mesa stated, “I understand why Hopi people don’t want those places open (excavated) because there are still living, breathing things out there.”

Specific statutory and regulatory provisions are also the subject of indexicality. These statements were often related to calls for legal or policy reform, as well as efforts aimed at litigation. In regards to the latter, one male research participant from Second Mesa stated, “We

have to stand up now or kids will wonder. It's a matter of prophecy and how it informs our lives." Of the instances in which specific provisions of the law or regulations were indexed, three topics seemed to be the most salient among research participants: categories of historic properties, government-to-government consultation, and area of potential effect. The four categories under NHPA for an historic property to be deemed eligible for inclusion on the National Register were in terms of their relatedness to Hopi cultural ideas about cultural sites indexed on several occasions. For instance, one research participant involved with the Cultural Resource Advisory Task Team (CRATT) indexed the statutory language to advocate for an expansion of these categories on the basis of Hopi precedence:

CRATT has talked about whether we think the four categories are broad enough. One thing if we could change or add to that. Hopi's oldest culture here in the American southwest. In court system we haven't won these cases when clear indication they belong to the Hopi. The time, first in time first in right, that's the presence here. We are talking about B.C. times with Hopi related things. But the courts have said the Hopi have no right to the Colorado river. That is a severe blow to the Hopi. How can we not have any rights to that when our presence is predating in history by 4,000 years?

Another research participant from Third Mesa who had been heavily involved in previous consultation efforts noted his concern that sites are not protected, and Hopi concerns go unheeded, in terms of the "emotional, spiritual level." "The agencies don't seem to want to hear any of that when we begin talking about it," he averred. Research participants here seem to identify a third-order indexical. In the first-order, sacred sites are an issue of public policy and administrative review. In the second, individual administrators under-valuate the spiritual significance of these sites, and in the third, mitigations is believed to be a readily available and reliable means of resolving the undervaluation. Although some of the regulatory language was found to be satisfactory by some research participants, other problems were directly indexed.

“We can’t get anywhere with regulations if they just keep introducing new staff,” one female research participant from Third Mesa stated.

Government-to-government consultation as a norm for engaging with tribal nations in these matters was also explicitly indexed. The symbolic meaning of the concept coupled with prior instances that demonstrate a lack of full respect for the concept were stylized (a speech act of (multiple) social positionings and sorts of affiliation to communities of practice) in these statements. There was some concern among research participants over a lack of a comprehensive framework for all federal agencies. A male research participant from Third Mesa stated, “It really depends on who you are dealing with. The Department of Interior has a pretty good process, but for the Army Corp of Engineers, it’s pretty much nonexistent.” Many research participants who were not directly involved in consultation work simply noted that the Cultural Preservation Office carries out this work which was found to be a positive thing, generally speaking, for Hopi society and culture. One male participant from Third Mesa went to some lengths to explain the meaning he sees in the phrase “government-to-government consultation,”

Government-to-government consultation recognizes, just the term, it recognizes that we are a separate government but working on people levels, serving our people. It means that not one is above the other. We are working together, collaborative to serve both interests. It should really be stressed what that means. They recognize us as a government and we should be treated as such with equal rights and concerns and things like that. We are representing and looking out for the interest of our Hopi people.

Several participants expressed a view that the concept existed, but the practice remained largely wanting. “They have the upper hand,” one female participant from Second Mesa stated. “If they want our water, at the end of the day they are going to take it.” One male research participant from Third Mesa who has been involved in consultation work stylistically contested in a

pragmatic and metaphorical way, “Really it depends on heart of the listener and if they want to understand. White men will never fully understand these things.”

The letters to the BOR during its public scoping efforts for the Kayenta mine complex indexed a variety of other concepts related to government-to-government consultation. Technical or procedure aspects were the most salient, but historical trauma and distrust were almost equally present in the submitted comments. Many of these letters indicated that Hopi people and their government were “ignored,” having only been brought into the process at a later stage of public scoping, rather than during the initial planning. One such letter indexed an agreement (i.e., Technical Work Group, TWG, agreement) between agencies that referenced the Hopi Tribe 21 times despite the Tribe’s lack of involvement in the interagency agreement. For the author of the letter, this fact raised issues of the trust responsibility held by the federal government for the benefit of tribal nations, and seemed to indicate further a view that Hopi Tribal citizens were being represented through a process through textual references where they had in reality been excluded. Moreover, there was a general sense of distrust regarding the validity of information that had been presented to the tribal communities. For that reason, the author wrote that “There is such a disparity of facts now floating in the internet that there needs to be an economic impact study of two natures: One, a study commissioned by the federal agencies, and two, one commissioned by the Indian tribes funded by the U.S. Congress or by private sources.” Another letter writer referenced the consultation meetings that occurred on the reservation as further evidence of a lack of effective or actual engagement with tribal communities. An “open house” was schedule from 1:00 p.m. until 7:00 p.m., the author states, and a colleague who attempted to participate went to building at 5:30 p.m., only to find, “no one was there when he showed up.” The current public scoping process of sending letters was also distrusted by some of the Hopi

letter writers. One such person wrote, “I realize that the intent of the BOR and NGS is to go forward with the project no matter what comments are submitted.” Several of my research participants echoed this concern that public scoping processes are meaningless and produce little to no fruit, a procedural requirement, but nothing more.

Other participants noted some of the technical needs for effective consultation to occur. Interpreters were needed so that local people can make “informed comments” and presentations based on “on-hand story telling not by technical words” were indexed among tribal citizens. The Hopi Tribal government called for not only full technical reports, but also information pertaining to “the underlying modeling processes.” Additional reports were also called on by several authors. One such person reflected on the need for a comprehensive hydrologic assessment, which he intertextualized (relations between texts, signs, and meanings across contexts) with a letter from the former Secretary of the Department of Interior which indicated such a study would be completed prior to any additional permit approvals, “but that was 20 years ago.” The Hopi Tribe also noted a lack of statistics on respiratory disease morbidity rates that exist on the Hopi Reservation, and called on the United States to direct the Indian Health Services to begin collecting the necessary data. Monitoring stations were additional indexed as necessary, and the Hopi Tribe offered to provide sites for such installations within school yards on the reservation.

Another primary provision in the regulations concerning the NHPA that Hopi people speak a great deal about is the “area of potential effect” (APE; sometimes referred to as the “hairy APE” among archeologists due to recurrent debates on the extent of this area) (see, King 2013). In common practice, impacts from development are often considered and sought to be mitigated up to one mile away from archeological sites. Hopi research participants discussed the boundary issue of the APE and indexed its incompatibility with Hopi cultural ideas. Hopi research

participants seem to argue that agencies have failed at intertextuality, understanding their mandates to preserve historic properties in light of Hopi cultural and religious ideas, the very things which make such sites “significant” under the law. One male research participant from Second Mesa who is involved in religious societies noted that Hopi ceremonies that involve ancestral sites are of major significance in Hopi religious beliefs. The sites are said to contain a “spiritual energy” that plays a functional role in Hopi ceremonies that seek to benefit and pray for the well-being of the entire world.

These energies are not confined to that one spot like an “area of potential effect.” If we say a mile away from this won’t be any effects on that, that’s completely contrary. In actuality a sacred site is spoked out in cardinal directions. Shrines and cairns mark a landscape. One mile away is not sufficient enough. At Black mesa, for instance, there are cairns pointing true north and true south, and one of those shrines was destroyed. It severed that energetic connection to Hopi people. Every site has points like Chaco Canyon that might include sacred springs and (other) sacred areas. They are not just that one spot. They are pointing out to areas. It’s like a spider web, a forever network that encompasses the entire world. Nothing is sufficient. And these projects sever these connections. We don’t need any more water transmission lines. These things need to stop. The spiritual energy is like ether, a magnetic connection. In all our people’s prayers, [we] put [our] hearts and minds to one point. These places magnify this energy, and send good crops, good health not only for Hopi but for all things, all people of the world, the plants, the animals. Our prayers are conveyed through these spiritual lines and then consumes the earth and blesses this earth. I don’t want to confine my answer to a certain spot or region with some administrative boundary around it. Because we feel this earth is very sacred, and when we do ceremony we bless the entire world.

Another male research participant from Third Mesa referenced the APE but related it to his experience of becoming involved in a consultation effort at San Francisco Peaks, and the jurisdictional issues that came, to his mind, to the fore. He explained:

I think there were several moments in our consultation where fed agents in consultation wanted to get San Francisco Peaks to be nominated as an historical property. And they also had same thinking for the Grand Canyon too. With the Grand Canyon, the Park service already had legal

boundaries. With San Francisco Peaks a boundary was created just right at bottom of the Peaks. Hopi resisted that. We didn't want to have any role in creating a boundary around one of the most sacred landscapes in Hopi. That halted that effort. Again, Hopi led the way, and the other tribes picked up on it. Like with the Peaks, if you want to dissect Hopi religion, the Peaks are extensively linked to the Grand Canyon. And the San Francisco Peaks are connected to the Hopi villages. It's like that because there are shrines from the villages to the Peaks, and from the Peaks to the Grand Canyon. Because the Grand Canyon around confluence area is the spiritual home of our ancestors and there are certain things that apply from that knowledge that link the spiritual people (deities) over to the San Francisco Peaks. We brought that up to Coconino forest about the linkage and from the Peaks to the Hopi villages, and the Peaks to the Grand Canyon. They told us they had not even thought about that because of jurisdictional matters. The shrines that connect Peaks to Hopi villages are still visited today for annual pilgrimages in winter and summer solstice. Prayer feather and prayer sticks are deposited there, particularly for Hopi at Humphrey where there is a shrine up there. That shrine is still visited today. Because have to define a project area legally, we told them you do the boundary and you be legally responsible for it, eventually that's what they did. That's how they were forced to do their own boundary and not the tribes.

A different male research participant from Second Mesa also reflected on his view that the APE concept itself was fundamentally flawed. "That's what I don't like. They push their laws on us," he stylistically contested. Several research participants from various Mesas contested 'historic properties' and 'area of potential effect' by challenging the fundamental concept that they apply exclusively to buildings, objects, and other manufactured materials of the human past. One such male participant from Second Mesa stated, "In Hopi stories the environment plays heavily into the plot of the story. Most of the stories teach a lesson about particular aspect of the culture. The environment is crucial. It's not something that's left out. Animals, birds, and bees are definitely part a historic site place itself, the flora and fauna. Also, the *air*."

Another key matter in terms of legal implementation for research participations related to perceptions on regional power relations which were also indexed as a frame for understanding current problems and concerns. One male research participant from Second Mesa stated, "The

court seems to work in Navajo people's favor in associating with these people. Presence or time-depth is meaningless to them. History and archeology will tell you that we have been here. That's a frustrating thing. Four corners area and most especially in the Grand Canyon area, including the water sacred sites are involved here." One female participant from Third Mesa stated, "the federal agencies are not going to listen to us. They'll listen to Navajos because they have money, lobbyists, and political clout." The Dakota Access Pipeline controversy (see, Mengden 2017) and, more often, the San Francisco Peaks public debate and litigation (see, Tatum and Kappus Shaw 2014) are indexically referenced by a majority of research participants to make their various claims regarding their stylistic positions.

Hopi research participant comments on NEPA

Hopi research participants spoke about the provisional language and subject matter of NEPA by focusing on outside development that affects Hopi people's interest as well as by generally discussing the development concept and its permissible and impermissible set of practices pertaining to Hopi Reservation lands. The development concept as it applies to the Hopi Reservation was discussed at length, with many ideas, beliefs, and attitudes about what kind of development is desirable and which forms are deemed less appropriate. To some extent, Hopi research participants seemed to place limits on the penetration of the market at Hopi by referring to various cultural ideas and norms. In addition, a Hopi scientific perspective is often intertextualized (relations between texts, signs, and meanings across context) with a Hopi development discourse that touches on social norms coupled with ceremonial prerogatives:

Clan lands, soil and water, are used in ceremony. So it's spiritual and religious to benefit all things in this world. Going back to the science perspective, everything is contingent upon one another (and) all work together to bless all things. Clan lands can't be used for development because when people target clan lands for development it's the clan people who will benefit rather than the tribe as a whole.

As it relates to outside development which impact Hopi interest, while some scholars have advocated for the greater use of “Native Science” (Cajete 2000) as part of NEPA compliance work (Dongoske and others 2013), several Hopi research participants indicated, above all other topics, that “Hopi science” was a private matter that could not be discussed. As one male religious society member from Second Mesa iconized, “Some things very sacred so can’t really go into that.” In my view, it is important for Hopi individuals involved in consultation processes to note that these are iconic references, rather than symbolic. Such statements do not reference a belief in an abstract sense, but rather are iconic of the ways in which things are, a reality. For this reason, and according to research participants, damage to the religious interest of Hopi people can cause ongoing emotional turmoil, on a daily basis, the equivalent perhaps to prohibiting Catholics from believing in or having access to ceremonies that have to do with transubstantiation, for it is a physical, actual reality for adherents. I will first discuss the general development concept, before then discussing development as it applies to the Hopi Reservation, and finally statements that index specific NEPA statutory provisions.

Many research participants stylized a development discourse with an environmental Hopi ethos that conjoins environmental concerns with those which are cultural and social in nature at a metaphorical level. Moreover, comments on the development concept also generally referenced development and culture as well as modernity and traditional Hopi lifeways. One male research participant from Second Mesa explained the stylization referred to above, “Everything is contingent upon one another. Mainstream separates spirit and science. But in a Native perspective, everything is interwoven and all work together, hand in hand. So, everything is included, interwoven.” One of the letters sent by a Hopi person to the BOR during its public scoping effort for the Kayenta mine complex noted some of the attributes of what he also termed

“Hopi science.” He stated, “Hopi belief is that everything is always in a state of vibration and that the central role of religious practices is to keep the universe vibrating in balance and harmony. Basic to this, culture is predicated on preserving the Earth and her creatures. The work is sacred and humans are stewards, not masters.” Importantly, this comment also indexes certain key elements of Hopi social organization. Development was often framed and styled in terms of general population welfare, again, of “our Hopi people.”

An environmental Hopi ethos is also attached to one which often appears cultural or religious in nature. Another female research participant from Second Mesa discussed the general ethos around preservation and development, with the former taking precedence in certain areas. “Our elders they told us don’t develop over there because there are shrines there.” Another male research participant, also from Second Mesa, discussed the development concept in lieu of what he had been taught as he was socialized into Hopi society:

Development and cultural sensitive sites: it’s a real bull. Burial sites and ruins are big things. We are taught as kids there are spirits everywhere. We would go there to visit those places as we hiked around but our parents would always warn us to be careful and that we should stay away from them because there are spirits there. And then you have things like shopping centers, and that’s a real sensitive subject for many individuals. But outside the reservation, developers haven’t really been open-minded to cultural sensitive issues of tribes.

Another male research participant from Second Mesa intertextualized the shopping center not entirely as a sensitive issue, but one which has to do with villages and their jurisdiction on the Hopi Reservation and decision-making of clan leaders. “Those areas are under the authority of the clans and womenfolk have ownership of clan locations. So, it’s not really sensitive issue like sacred sites, but it has to do with where we build houses and other facilities. Clan lands are meant for farming and so there are some land disputes between clans.” Another male research

participant from Third Mesa, however, cautioned, “well, clan lands are not really meant entirely for farming. Some of them were but those lands were specifically designated.”

Statements regarding development are enregistered (a process of value production, maintenance, and transformation) according to particular social practices in two competing ways. The first holds that culture opposes development, and the second that culture and development can occur in tandem, but under certain conditions. In neither case is development spoken about as necessity regardless of culture. Culture always plays some role, and arguably one in which it takes precedence over development. As a matter of employment, for example, research participants often referred to the need to take time off in order to attend Hopi ceremonies and benefit from the set of relational goods that accompany the ceremonial activity, as well as the time commitment necessary for retired persons, who are sometimes involved in other community activities or have various family obligations, to attend ceremonial functions. Research participants frequently expressed the view that “it is difficult being Hopi” on account of these and other factors. This statement, for instance, was also made by a Hopi rancher, who felt his form of gainful employment was not as highly valued by other community members as those who engage in farming.

Hopi cultural lifeways are opposed to development for some research participants according to variously indexed forms of development. For instance, the topic of agriculture expansion on the reservation was raised by many. Some research participants felt this was incongruent with Hopi cultural norms and practices. An elderly male participant from First Mesa stated, “Well, I don’t think we should sell our Hopi corn.” “When I grow corn, I have that available for my family. If I have anything left over, I give that to all my family members and clan relations. *That’s* our culture.” Another male participant indexed Hopi migration narratives,

and that seeds and corn which were given as a gift to the Hopi people. His statements, however, reflected not an ideological position, but a matter of general social values, “so we’re not supposed to sell [our corn] because it was given, and a person who sells it may not continue to gift those things over time because over time they may become more and more stingy.” Gifting of food and bartering, rather than commodification, were seen as a superior form of economic activity among several research participants, for it leads to relational development where economic activity contributes to increasing the quality of relationships that are positively valued. In this sense, “relational development” is also an icon, for it refers to the embodiment of particular cultural values through behavior, action, and even creativity. It cannot be understood as an index, for the concept of development is fundamentally linked to commodification. A male research participant from Second Mesa stated, “when you give food, you are giving the gift of life, so that’s a very sacred thing.” “Gift of life” and “sacred” are here again in this sentence icons, not symbols, for they are either embodied linguistic variables or objects that form a likeness to the thing itself, although the words, at least in English, may fail to do this and therefore may falsely imply a symbol rather than an icon. The material benefits of a modern, developed society are also enregistered for Hopi people as unnecessary in some cases. “Technology, cars, all those things are nice, but not anything we really need.”

The culture concept among Hopi research participants is also referenced in line with development and economic activities. Generally, Hopi society and social relations are said to be embedded in agricultural development. “We were basically vegetarians traditionally. I always remind my grandchildren of that,” one male research participant from First Mesa stated. He then went on to index the basic social practices of traditional Hopi agricultural activities:

This year I don’t know if I’ll still do that cause I’m too old. Rather, I’ll ask my nephews. You tell them to come with you and I’ll show you how to work on your

field. And same time ask them to help you clean up the fields and plants. And while take a break you sit down and you pray, for the land to keep moist underneath and to have plants start forming the roots so you can have plants, for plants to start growing. You pray for clouds to come and bring rain. Not torrential rains, but nice, heavy drizzles, drizzles, you know, so as to keep ground moisture.

One female research participant from Second Mesa discussed agricultural production as a necessary safety net, not as a matter of political organization but individual use. Concepts of agricultural production are directly tied to individual well-being and health. “Our crops, that’s why Hopi always been healthy. Nowadays there’s a lot of obesity around particularly with the younger people. Back then work was hard, no tractors, no mechanical tools. Just work by hand on the fields every day. It’s hard and tough exercises. And then when you finish doing your work you walk home, usually 10–20 miles. Now modern tractors are being used on the fields and people take their trucks down to the fields from the top of the mesas.” “So, we better learn how to plant and take care of it and harvest so you can provide food, vegetables for your family to eat,” a male research participant from First Mesa stated. “Tractors,” both as a material object of equipment but also a symbolic point of reference were frequently discussed by research participants.

Tractors – it’s a modern way of working on your fields. Many things easy, a lot easy than using your hands to hoe away the grass and especially the big bushes. I still do that. I don’t have modern tools I can afford to get them I just don’t want to. You have to get all branches off then use shovel to dig in and take roots out. There’s 1–2 acres of field but I can still do that even though now I’m older.

Several research participants felt that tractors were an index for non-traditional methods, whereas others stated that tractors had to be earned through hard work, and so seeing from “both sides” was necessary. A research participant from Third Mesa discussed and provided examples in which the Hopi uses of a tractor may be distinct from non-Hopi uses. Certain tools attachments are used on tractors so as not to disturb too much of the soil when planting seeds while

maintaining ground moisture. The relations with the seeds are maintained in this way so as to make tractor use consistent with Hopi ideas on relationality. One male research participant from Third Mesa discussed the non-conventional and traditional means of using a tractor by many Hopi farmers. Other research participants indexed not material objects but cultural norms to assess whether agricultural development was being carried out in a traditional manner. One such participant who was male from Third Mesa provided some detail on the traditional agricultural system, “After three years if clan doesn’t farm another clan can come in and take over it. It’s been like that forever.” He added further, “It’s like with my house which is located on clan lands. It will one day belong to the clan. There’s no sense of private property out there. Unless allotted land then that’s a whole different story.” Somewhat relatedly, a male research participant from a different village on Third Mesa also discussed the topic of private property. “In my village, because the traditional authorities were said to no longer remain after the break-up of Orayvi, people basically homesteaded to get their lands, and for those people they do have a very strong sense that it is their private property. There was a big upheaval about that some years ago when the Hopi Tribe wanted to use these lands and the local land users fought that and got a special meeting on the Tribal Council’s calendar, which pretty much put an end to that.” Here, the choices being made, and the ideas which support them, are in part rooted in a particular local setting, and its historical context.

According to some research participants, other forms of economic activity, such as ranching, faces unique challenges as a form of development. One man from Second Mesa stated, “My farm plot is near a cattle range area so we can farm there but I would have to go through a cattleman’s association and range management, and a few other individuals, and talk to them about it. Could do fences but we have a belief that fences are not a part of our doing.” Hopi

ranchers discussed their economic activity as “secondary or even tertiary in people’s attention out here.”

Many research participants discussed at length development on the Hopi Reservation itself. Tourism, in particular, was frequently raised as a form of economic development, but additional forms were also indexed. Research participants indexed various economic initiatives that they would personally support and encourage on the reservation. One male research participant from Second Mesa stated,

It would be good to have a gas station and other conveniences. What I really want is a home for the elder so can take care of them instead of sending people way up there. Those people are our ceremonial leaders and I don’t want them out there in places like Gallup or Flagstaff at hospices, want them here. It’d be good to have all those things out here. But all the land out here is very sacred. I come from Second Mesa. The northeast side [of the Reservation] that would be okay for building new facilities. I think we also have to address the issue of level of expertise of the professionals here if we are going to do that. I’m sorry to say the medicals here are just beginners. We need professional people to do that.

Another research participant, also from Second Mesa, indexed forms of economic development focused on the youth that she would like to see. She stated,

We need youth entertainment. It’s dark country out here. No one thinks of youth except to teach them to do things but they need entertainment, like a skating rink, a playground, a movie theatre. There’s bad programs on tv that they are watching. If we had a movie theater then you could select things. Historical films about our own people, things like that.

Other research participants made similar proposals. “We need a library,” one male participant from Second Mesa declared. Another male research participant from Second Mesa called for wind generation facilities. That developments should be “Hopi-owned” was also referenced on a few occasions, although not always seen as a practical solution politically or economically. That the Hopi Cultural Center “is owned by some non-Hopi guy” was specifically indexed with a negative connotation. A proposed solar project that would be tribally owned was

offered as a viable economic option to the Hopi Tribal Council, according to participants, but the Tribe is currently exploring finding a third-party. The participant called for this energy system to be “at a scale that is less invasive and could create the same energy,” and noted further, “I’m sure there must be wind turbines that will not impact eagle populations, but that can create the same energy. If not, I don’t understand why they haven’t done that yet. Maybe we are just stuck with the smaller household ones but that would help a lot of people because the electricity costs have gotten so high.” The Hopi Reservation landscape itself was also indexed in speech related to development work, particularly in terms of standards for the aesthetic qualities of development. A male participant from Second Mesa stated, “We shouldn’t build to have eye sores. There’s a new building out here that’s near the veteran center and it sticks out like a sore thumb. Buildings should fit in with the landscape.”

As mentioned, some Hopi research participants stylistically contested whether Hopi corn could be sold on the market. During a meeting of an office under the Natural Resource Department in 2019 the issue was raised. A statement was made shortly after the meeting regarding the discussion: “Hopi has a lot of unused land. In terms of the national government—its use it or lose it. Hopi could be using that. Certain parts of the land for cultivation of the corn in a way that it could be marketed to outside the community of Hopi or traded with other tribes. It’s Ojibwe that does the rice, I believe. Somewhere in Oklahoma natural sweet corn as well. Traditional barter system of natural resources I would say is something to look into.” Another male research participant from Second Mesa stylistically contested the direct sale of Hopi agricultural products: “Edible plants, natural strains could [be exchanged], if given an opportunity to grow it at a scale that is maintained without modifying the heirloom seeds, to other tribes that have renewable resources as well.” Hopi agricultural methods that focus on

conserving water and nutrients were considered by some research participants not to fall under the tribal water rights doctrine (sometimes called the Winters Doctrine), given that participants felt these methods did not constitute legitimate “use of water” under the current law. Moreover, Hopi development of a seed stock is based largely on evolutionary principles. Selecting the heirloom seeds properly each year keeps them in evolutionary balance with the environment, particularly if conditions are changing. Some modifications of the seeds make them less viable, and a cultural norm requires Hopi farmers not to continue those practices. Others make them more viable, and a Hopi cultural norm requires farmers to continue that practice. The judgements about which seeds to save for future planting are key to the survival of the heirloom seeds.

Hopi research participants also sometimes indexed structural concerns as impediments for future development. A male research participant from Third Mesa stated, “There’s a real problem with the fact that the [Hopi] Tribe cannot take on debt like any other sovereign in the United States. Our lands are held in trust status. As long as we don’t have complete control of our lands, the right of ownership, this is a major problem, because we have nothing for collateral. That’s just crazy.” Several participants, both male and female, stylistically contested the notion of tribal sovereignty as unfulfilled until economic independence is achieved. Along similar lines land tenure insecurity was indexed wherein the conditions of undeveloped countries were seen as part and partial of the hardships faced by Hopi people. “Basically, we are still a third world nation and being surrounded by Navajo Reservation creates huge obstacles as far as development. Just to run a line out or in, we have to get permission from the Navajo Nation which is just another layer of red tape that makes economic development so difficult.” These indexed realities, coupled with another indexed below—that the Hopi Tribe received 32 cents per acre for lands taken by the United States government—should be compared with statements

made by members of Congress who were interviewed for this study. One republican member stated, “If tribes want to be sovereign, then the ball is in their court. There will be no bail out (for the closure of the Navajo Generating Station). It’s on them. They want the benefits, they have to bear the cost.” The failure for coal development to achieve a semblance of economic or environmental sustainability due to general poor management of coal extraction within the United States, coupled with the lack of funding for the BIA, has likely required the Hopi Tribe to spend its royalties so as to cover a variety of costs, without even considering the costs to the environment and climate change. In its letter to the BOR, the Hopi Tribe, stylistically contested the representative’s sentiment by penning, “As coal production declines and NGS is retired, we would like to have the federal government and members of the Salt River Project (SRP) work with the Hopi people to ensure a transition to another economy which would be controlled by the Hopi people for the benefit of the Hopi people. This would include providing funding to accomplish long term strategic planning, economic development, and infrastructure development to help develop a diversified economy.”

Village protocols and procedures were also indexed as a matter that must be addressed for some Hopi villages which have instituted and developed these practices. One male individual from Second Mesa who was involved with these processes at his village described the procedure.

When someone wants to start a new development, like a new shop, a tract of land will be identified. The spokespersons (for the *kikmongwi*, who traditionally were made up of the Blue Bird clan, but today who are generally connected through extended kinship ties to the *kikmongwi*, because the Blue Bird clan likely has only one remaining male member) will first go conduct a site visit. If doesn’t interfere with a shrine or path to shrines or anything else when we notify the chief and he will give his determination. Advisors to leadership provide information on proceedings and provide research on it. Their job is to keep the leaders abreast so they can make an informed assessment. I represent my leadership with government or on Indian issues.

The research participant clarified further his role: “Some projects we may not agree with. I don’t know like a movie theater, but you know, we would just have to see. If not beneficial would discourage it, but I’ve not seen anything like that happen.” “Village protocol” was indexed as a significant aspect of village life among various research participants from Second Mesa, for it ensured that the appropriate authorities were involved, the roles of which appeared foundational of a Hopi relational economy. One female participant stated, “there are protocols. People outside don’t know about that, but there are and I myself have had to follow them with the businesses I’ve developed. It basically entails letting the leadership know what you are doing.” Another female participant from Second Mesa noted these protocols are often a matter of practice and negotiation rather than codified norms. “You don’t really know whose interest are at stakes between the villages, clans, and societies until you start something. Then you start to get letters in the mail from groups you might not have even known had an interest.”

Returning to a previous point, tourism as a form of economic activity on the Hopi Reservation was indexed in various interviews. Largely, statements enregistered kinds of speakers in terms of two primary tropes: visitation to archeological sites on the reservation and participation in Hopi ceremonies, particularly Katsina dances and religious society dances, like the Snake Dance, which has recently been closed to tourists in all Hopi villages. Those Hopi research participants who focused on the first topic were enregistered as speakers who focus on tourism forms for the sake of the entire Hopi population, whereas those who focus their comments on the latter were enregistered as those who were particularly interested in the impacts of tourism on their specific village. Hopi interest versus village interest was a topic that permeated much of research participants’ comments in the study. One research participant from

Second Mesa indexed the general historical trend and the significance of this trend to the general population:

Back in 1978, I remember, people just walking around here and they found something and they stole it. The tribe enacted a system to protect those things. But the [Hopi] public isn't privy to those things because they tend to leave those things in the hands of leaders and people are busy doing what they're doing. Tourists think they have every kind of right and I have to remind them, yes, you're Americans, but this is our homeland. Leaders here have to be tight-lipped so things don't come back to them.

Tourists may be taken to Dawa Park, an archeological site located on the Hopi Reservation by tour operators. One male operator, from Second Mesa, stated,

I tell them to take no pictures, but some of them do anyway. I tell them we never find out what happens but for Hopi people there are cultural and spiritual consequences to those actions. What you do to us comes back to you. You treat someone like that it comes back. A lot of that is in our stories too. Action reverberates too. I think there is a need for more guards and services out there to keep things in line with our rules and laws on that.

Another female participant from Second Mesa discussed the issue that many non-Native tourists visiting the reservation tend to approach Hopi people and ask many questions about Hopi culture and identity. This scenario was indexed in a negative sense as inappropriate and intrusive. One elderly male research participant from Second Mesa who is deeply involved in Hopi religious societies and ceremonies jokingly referred to the situation: "Sometimes tourists come here and I have to tell them: don't ask too many questions. I'll have to send you over to white people who can help you because I'm only an Indian. I don't know too much about my Indian tribe. "

The visitation of tourists at Hopi dances and ceremonies that are held in village plazas, rather than kivas, which are closed, were also indexed situations in which many research participants discussed their views on limitations of development as pertains to cultural values and norms. One female participant from Second Mesa stated, "I don't like it when the tourists talk during our ceremonies. Oh, they ask so many questions. What's going on? Why are they

doing that? Sometimes they even get in the way of things happening because they want to see closer. That's not what they are supposed to be doing. I tell them, and I have, that you should be there and watch, taking it all in, taking it into your heart, and carrying that with for your wellbeing and health in your life."

The general prohibition across Hopi villages against sketching during ceremonial events was indexed in particular and explained by one research participant from male First Mesa in these terms: "We prohibit sketching for a few reasons but mostly it's a matter of privacy. We let people observe these ceremonies because we need people with a pure heart and clean thoughts about it which will bring the clouds and bring the rain. If trying to copy it or put down on paper that's not a pure heart, that's intrusion."

Another female participant from Second Mesa stated "it's a matter of accuracy for me. I'd only like to see portrayals of our culture to be accurate and people who sketch things may not get it right and plus it causes a distraction for everyone else who is at the ceremony in a spirit of unity and prayer. It's just really disrespectful." Such statements seem to index a norm against privatization of Hopi relational goods, and that certain elements of Hopi intellectual property retains exclusive rights to prepare derivative works. Moreover, relational goods require the proper formation and maintenance of relationships, and therefore, distractions within that process are seen in a negative light. Photography is also prohibited on the same basis, and a person caught doing either activity may be escorted out of the village by Hopi Tribal police.

While most of the forms of development indexed by research participants have to do with local forms and options for development, some research participants also indexed national and global topics, such as fossil fuels and the implications of climate change. One female research participant from Second Mesa indexed climate change by framing its origins in a lack of proper

understanding about human nature, which Hopi society has enshrined in its ceremonial system. “There is an intense understanding of human nature. Human nature that we create our own problems. Chaos for selves and earth. We [Hopi people] created processes to provide space to think about the whole. The lack of that philosophy is what has resulted in climate change.”

Hopi research participants often intertextualized (relations between texts, signs, and meanings) their comments with statements from their personal grandparents, as well as community elders, as a means of providing further support to their statements. One male research participant from First Mesa stated, “Our elders told us don’t let go of gourd and planting stick. And the seeds, you know. They are the strongest thing to prosper with. It’s a matter of [public] health. We should start eating organically again. Prepare foods from Hopi blue corn.” One male research participant from Second Mesa stated, “My grandpa said don’t go to any other kivas after I was initiated into a kiva society. I think it has to do with protection. So when I went with a bunch of other people to Bandelier National Park there was a famous kiva there where Billy Jack had a picture taken of him. But, because of what my grandfather told me I didn’t go in there.” The perspectives of elderly Hopis are often referred to as clear cut on matters of traditional interpretation. “Old people want things left and right,” a male research participant from First Mesa stated. In addition, the comments of elders were generally not spoken about as a matter of interpretive authority, but as a matter of personal engagement to incentivize people to take on a certain responsibility. One male research participant from Third Mesa declared, “Our elders talked about things to us because they want you to do something about it.” While cultural knowledge is relational, many research participants indexed their personal interpretations and how cultural knowledge becomes ingrained and embodied in individual subjectivities. One female research participant from Second Mesa stated, “Everyone interprets teachings from a

personal level.” At the administrative level, moreover, a letter sent to BOR during its public scoping efforts stated, “John Poleahla, a Hopi elder, in a letter to President Obama called Black Mesa “our living museum, cathedral and an academy of our oral traditions.” Mr. Poleahla was also a clan chief in the village of Wàlpi, as well as a former police officer for the Hopi Tribe, but it is his statement as an elderly person that becomes intertextualized, where there is significance shared between two different meanings and situations, among possible social categories.

Possible areas for future development are also spoken about in terms of areas that have already been developed, “Hopi Cultural Center land is already disturbed so we could have a natural food store there.” Another male research participant encapsulated the point by stating, “Land is sacred and it belongs to women clan members. But there are places outside that could be open to outside.” Another male research participant from Second Mesa explained further some of the deep historical context at play in land development and the ways in which history is associated with current rights and entitlements within particular villages, “At the time of the Pueblo Revolt some clans came here but my clan was already in the area. Some of that stuff (historical events) is really sensitive in the Hopi community because it attaches to rights.” A comment was further made that explained some of the issues at play and how cultural ideas are constructive of particular subjectivities:

Building on clan lands that’s a permanent thing and so I don’t think it should be encouraged because those lands are distributed to the most industrious, or someone with a compassionate heart. That’s because what people reap from the land will be used to bless all things. If honest and sincere about harvesting, you will manage, and that applies to anyone out here so there’s no hierarchy in Hopi. Everyone’s equal in ceremony.

Research participants frequently retextualized published works on Hopi culture. For one, the work of consultation, as it relates to discussing Hopi cultural practices, indexes the incorrect

portrayal of Hopi culture within both academic and popular literature. “Ethnographers got things wrong sometimes and we want to remedy that. Like this whole idea of Hopi prophecies being about the destruction of the world and the world coming to an end. Hopi is about life, not destruction.” One male research participant in particular indexed “the 2000 thing,” a set of occurrences that happened at the end of the second millennium where a large number of individuals showed up on the Hopi Reservation in expectation that the world was coming to an end. “We want to avoid that happening again.” Another male participant from Third Mesa spoke about misperceptions of Hopi people due to ethnographic and popular materials that have inaccurately described their society and ceremonial system. “We want best things for our kids. Just like they do,” he stated. The participant then discussed his concern was that information must be tailored to a specific purpose and goal because otherwise, “people will make it their own” in ways that may misunderstand the cultural meaning. The information shared during consultations is aimed at a functional purpose: “to have companies listen to us, so we share common knowledge, not the esoteric things.” Another female participant from Second Mesa, noted to me during an interview, “you know this has to do with you too. It’s about humanity and our responsibilities towards each other and this earth.”

Finally, Hopi research participants indexically referenced specific provisions of NEPA. Some of these comments focused on the general purpose of the legislation and the present approach to compliance. For example, environmental impacts consider a specific project area, but will also look at cumulative impacts and impacts to nearby areas, such as downstream. One male Hopi participant from Second Mesa in the study discussed Hopi notions of environmental stewardship:

From a Hopi perspective, everything is all linked together. The rocks, plants, the *air*, the water. Everything exists as connection to one another. In our ceremonial

we include everything: rocks, plants, animals, water, fire, light. That's not like they think in Western science. Like in pharmaceutical they extract particular part of something. In Native people's views things work together. Same way in cultural site. Oil, gas, work together with the larger landscape. You disconnect when you create (extract) that. Everything is contingent in nature as way Hopi believe it. That's why really frustrating to talk to mainstream about Hopi scientific perspective. Everything contingent, all matters. All have life, frequency, vibration, so all work together.

While arguments may be made that cumulative impacts are not fully addressed in mainstream practices, Hopi research participants here appear to be saying that the registers or lists, even when presumably exhaustive, are too short. Hopi research participants would seem to agree that lists need to be longer, indexing the variety of connections which must be accounted for.

One of the topics taken up at length among research participants was Hopi stewardship ideas. Although not mentioned explicitly in NEPA, "stewardship" and "protection of the environment" are often said and thought of, such as in various federal agencies "Stewardship programs" as the central thrust of the law. Indeed, NEPA places the federal government as an environmental steward with responsibility to engage the public and consult with Native Nations in their land management decisions. Hopi people discussed stewardship according to indexed notions of Hopi identity.

Bless Creator's creations – that's the primary purpose. Everything has connection to one another. Like if see a Pine tree on one side of the San Francisco Peaks there it has a connection to the other trees on the opposite side of the mountain. Same with rocks which also have the oldest memory; they too are connected to others. All things sing a certain tune and seeing this a person can understand that all have a purpose in this life. All contributing to the perpetuity of life. In order for that to continue we need to bless these things. We, as people, need to be in harmony and in tune and in balance with that. Primary purpose of human existence is to bless the Creator's creations, all animals and all things, we have a responsibility to bless them, to protect them. Plants and animals cannot speak for themselves. Say like black mesa strip mining. There are plants, animals, insects out there they cannot speak for themselves. We feel like these animals are just like us. They have kids too and want good for their kids. So, as a Hopi that's our responsibility to make certain they and their children see the light of day tomorrow.

One research participant in a letter to the BOR during public scoping, noted that the NEPA's mandate to consider cumulative impacts was myopic in how the concept is interpreted and used. In order to account for the impacts to Hopi people, more is required. The individual, who is male and from Third Mesa, noted:

To most Native Americans and certainly to Hopi, words such as "cumulative" and "comprehensive" when co-opted and re-defined to describe hydrological impacts exclude non-material effects upon the physical world, leaving Native people vulnerable to unintended, but nevertheless very serious, impacts on their life-ways and religious practices.

A Hopi perspective on cumulative impacts would indicate that every person is important. There is no hierarchy between leaders and commoners. Everybody matters, not just one or the other. Similarly, all living things matter and have to be considered.

Stewardship responsibilities are said to be rooted in Hopi migration accounts. Migration accounts, however, importantly index current cultural and religious practices associated with pilgrimages, demonstrating once again how history is embodied as a present set of cultural practices and ideas. The register or list of impacts does not change with time, with some things falling off due to being old concerns. Rather it is the age of things which substantiates, and stylizes, their presence on the list. One male participant from Second Mesa stated, "Visiting and continuing of pilgrimages that's part of stewardship aspect." Another male participant from Third Mesa spoke about the connections here between stewardship as a religious, political, administrative prerogative,

Based on our footprints. All our archeological sites, landscapes, rivers, waterways, in some cases springs, certainly pottery shards, burials, petroglyphs. All of that is part of our evidence out there that indicate a Hopi ancestral landscape. Relationship that we still *do* today [emphasis added]. Which has never been broken through pilgrimages. Some of the outlying shrines that even the Cultural Preservation Office doesn't even know about. But we are losing lands that we use to enjoy in some way. Regaining lands has been a long struggle for

the council. And access to religious areas. There are still over 400 eagle nesting sites in traditional gathering areas.

One female research participant from Second Mesa stated, “The last people of earth were us—the humans. It is our job to understand all else that came before us are a gift. That’s the natural law.” A male research participant, also from Second Mesa, used several of the tropes from the migration narratives to develop a view of a Hopi stewardship model:

Hopi stewardship was set up to live by certain set of rules which was planting stick (take care of land and animals) gourd (water in general in all forms; ice, air or flowing water) and protect it in a way because it is not infinite it has an end, just like the gourd is a limited space. Like the gourd we are only allotted so much and seeds so we plant life. Everything that is grown whether it is grown naturally or through individual hands have to maintain it and respect it and benefit the land and us equally. Without one benefiting more than others so stewardship is about a balance between everything and all things. So, when we were told to hunt to go out and hunt, we were always told to only harvest what we think or know we need. So, if we go out and deer hunt. We don’t just pack up everything in a trailer and we don’t just go out and have fun shooting bullets. We plan to take a life and let that life know what its purpose is in terms of taking it and bring it home in terms of feed a family and sustain certain ceremonies that are going on. When we take a deer or elk, we offer it a place to be accepted and greeted and then feed it and dress it. Like we are adopting a family member for the first time. Then we make prayer feathers for it using birds like eagle and hawks. Then we send it home with tobacco and other things. A hunt is not just a killing. That goes back to our stewardship. We have to be worthy enough to be given the right to take a life.

Hopi research participants were also asked to speak to various specific provisions under NEPA. For instance, the Act specifically indicates that it seeks to protect the public’s “enjoyable use of the environment.” For Hopi participants, joy is reflected in statements that the whole system will continue in use as part of the original covenant and gifting. Joy supports sustainability, and joy is substantially reduced when development projects shatter Hopi connections and uses of places. One male research participant from Third Mesa, for instance, discussed the destruction of cedar trees at Black Mesa. “Another example is the cedar tree. Hopi use that for purification purposes. In essence, it purifies the air. We use it to purify the house

when there's a death in the house. Then when we bury our people when we finish that we purify ourselves by standing over the smoke and purifying ourselves. But to the mining companies, it's of no value. They bulldoze probably thousands of those trees. They're not going to plant any more cedar, you know. It's just too much money." One male research participant from Second Mesa declared that this concept, from a Hopi perspective, involves "Our sustenance, ceremonial use, for whole world people. The nature gave to us so we can enjoy that and sustain our ceremonial life. That's what I think that means. Edibles but also medicinal plants too. That's what we mean by sustenance. Medicinal, food, and ceremonies. Everything we need in life is what's provided out there. That's why I don't like bulldozing because there are these things too." Indeed, Hopi people at times reflect that "we are rich people" (*Itam kyahaksinom*) because of the Hopi notion, *itam hiihita ak yeese* (the land which gives us much to live with). Therefore, the primary reciprocal responsibility and appreciation is stewardship.

The concept that NEPA seeks to ensure "productive harmony" was also taken up by Hopi research participants. Productive harmony from a Hopi perspective frequently indexes ceremonies and the responsibilities that come along with them. These responsibilities require a balance between work and ceremonial life which are viewed at a personal level as a major challenge. Winter time was indexed as a "busy time of year" due to cultural and religious responsibilities. "From Wednesday to Sunday, pretty much every week I am in and out of the house attending to ceremony responsibilities," one male research participant who lives at First Mesa indicated. These responsibilities are reportedly matched by the younger generation who are beginning to become involved. "There are a lot of young people. Teenagers, 20s and 30s years old are very involved. There were a lot this year which is good because they continue to practice the Hopi culture and learning it at the same time. Younger people already initiated in kiva

ceremonies so following year they'll start practicing." These activities are stylized as oppositional to "modern life," with work and school seen as something "we must get by with." This idea does not create so much a balance as an "uncomfortable equilibrium," one male research participant from Second Mesa stated. However, that goal is said to only be achievable by following the tradition which is predominately followed by the older generation. "I'm in my late seventies," one male research participant from First Mesa stated, "and these kids today, by that I mean, people in their 50s and 60s—I call them kids, they don't really know what they're doing. I really get after them sometimes." Some younger Hopi in their 30s and 40s insisted that Hopi remains a "valid, living, and breathing culture," and recognized that to be Hopi means that others within the community will correct your behavior at various points. "We call it hard talk," a male participant from Second Mesa stated. "Good things" is a concept frequently employed to refer to the continuance of Hopi cultural and religious life and the purposes and benefits of it.

Productive harmony was also discussed as a juxtaposition between modernity and traditional life. Hunting and acquiring natural resources in a traditional manner was sometimes referenced. "When I go to ceremony, not one thing on my plate was bought at a store. We sometimes joke and refer to the farmer's market in Flagstaff as the 'Katsinas' market.' For me, nothing is from the store. I grew it or I killed it and people know they can come to me for those things." Another male research participant from Third Mesa stated, "We've gotten so modern. That's the problem, making money and not adhering to culture and fulfilling one's role." The traditional ways of Hopi life are also referenced as a project of cultural renewal and revitalization. "We need to get back stuff we've already lost. We use to live into our hundreds, like my grandpa. We need to realize that we already had the knowledge. We just didn't know it at the time. Today, people aren't taught work anymore and that's very important."

Finally, NEPA calls for the “fulfill[ment] of the social, economic, and other requirements of present and future generations of Americans.” Perhaps this provision, among all others, would be the optimal place for Hopi people to assert their claims for longer registers in the NEPA process. Research participants commented on a Hopi stylistic notion of what this provision means. One research participant from Second Mesa stated,

Take this in what we have now, to save and preserve it for future generations, our children, grandchildren. That’s just a common teaching that we have. Nowadays we just live in two worlds, modern and cultural world.

In terms of how far into the future Hopi people conceive as important for decision-making, another participant from Second Mesa indexed the Haudenosaunee notion of “seven generations,” but then retextualized that phrase within a Hopi cultural frame. The male research participant stated: “There’s a commonality within all the nations which is seven generations. In Hopi thought we call that mother to daughter and that is the basic idea.” An elderly male First Mesa resident likewise stated, “You have to think how affect kids the things you do in modern world. Have to keep modern things in mind but talk to them about Hopi stuff so continue to learn Hopi ways, and practice their Hopi culture.” Notably, this statement was not syntactically phrased “how the modern world affect your kids,” which would provide a different kind of meaning more familiar perhaps to non-Native speakers. The modern-world is not all encompassing, but rather it is the Hopi world which is the foundation that encompasses all things and behaviors, a kind of metaphorical safe-space within the strictures of modernism, and exceptions apply to the modern world in so far as it provides for basic necessities. Finally, the Hopi language and its availability and common usage was also explicitly indexed as an essential quality by which to judge the responsibilities of the present generation vis-à-vis future ones.

In various letters to the BOR, Hopi citizens referred to the interest of future generations. One female Third Mesa resident noted, “ I know it is important for the future of life and this is my concerns as put simple: I want more studies and regulations if possible on long-term effects on pollution emissions, climate change to the air and environment, the economic ecological changes to plants, animals, special species, and minerals used or withdrawn, including water.” A male participant stated, “The N-Aquifer has to last both tribes into the far future, generations to come!!...The water is worth much more than power production in dollars...” In that sense, future generations is a term that is indexed as a present tool that should be operationalized for administrative review, rather than an aspirational statement with little to no real-world effect. Hopi research participants seem to regard NEPA as capable of addressing their concerns. Afterall, it would appear in Hopi thought that “responsibility,” whether as a general cultural trope (e.g., returning to the village for ceremony when one works off-reservation), or in terms of present generations towards future generations, or in terms of the fiduciary duty of the federal government towards tribal nations, must produce and not produce certain, identifiable things and behaviors.

I tabulated all the comments by semiotic resource type (e.g., enregisterment, index, style) and cross-referenced these tabulations with the participant’s Mesa connection, gender, and clan. However, only a few immediate patterns seem to emerge. Female participants were quick to note the needs of younger generations in terms of current development, as well as development in relation to village protocols for different forms of development. Male participants spoke in more detail about Hopi ceremony as it relates to archeological sites, and certainly spoke at greater lengths about employment and work, particularly in agriculture. Male participants also spoke about development needs of the elderly generation at greater length. Hopi ideas and religious

beliefs and practices, however, were equally spoken about by male and female participants alike, particularly for initiated individuals, but not exclusively. Clan affiliations appeared most significant under the NHPA where specific sites were referenced, but intellectually, since pilgrimages are tied to stewardship, statements regarding clan migration ancestral sites might also be understood according to the topics addressed in NEPA. Notably, this project was unable to interview clan members who have sought in recent years to be consulted on different reservation development projects that were to take place on their clan lands. However, many research participants were personally acquainted with these individuals and appeared to report objectively on the issues that were under consideration. Mesa connections, however, did appear tied to the extent to which people spoke about structural political relations (particularly between the United States federal government and the Hopi Tribe) and regional power dynamics being largely reserved to statements from Third Mesa research participants. Research participants from First and Second Mesa emphasized, on the other hand, Hopi-inflected interpretations of the provisions of the two statutes, such as so keenly shown with the notion of Hopi stewardship.

Chapter 6. Endangered Species Act

Statutory and regulatory background: Endangered Species Act

The Endangered Species Act (ESA), 1973 (16 U.S.C. § 1531 et seq.) is the bedrock law in the United States for protecting imperiled species. When Congress passed the Endangered Species Act, it recognized that the rich natural heritage is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” The law applies to all territorial and marine species that are threatened or endangered of extinction with the sole exception of pest insects that could harm an economically viable species or agriculture. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is also defined by the act as one that is likely to become endangered in the foreseeable future. The listing of a threatened or endangered species is based solely on biological status, not on economic or other factors. However, the regulations developed for the ESA have created the category of “candidate species,” which are species for which the federal government has enough information to warrant proposing them for listing but is precluded from doing so by higher listing priorities. Therefore, while external development interests provide little-to-no grounds for refusing to list a species, a tentative list may be tied to agency appropriations and staffing concerns. Threats to the species are wide-ranging and include habitat loss, overutilization for commercial purposes, disease or predation, and other causes.

The goal of the Act is not only to prevent extinction, but also to bring species back to healthy population levels. Indeed, the implementation of the ESA has created two programs: a list of all covered species and a recovery program for reintroduction. Once a species is listed, critical habitat must be designated and a recovery plan developed. Critical habitat relates to specific, demarcated geographic areas, whether occupied by listed species or not, that are

determined to be essential for the conservation and management of listed species. In 1978, Congress amended the law to make critical habitat designation a mandatory requirement for all threatened and endangered species. However, the amendment would also add economic considerations into the process of determining habitat in stating that critical habitats shall be designated: “on the basis of the best scientific data available and after taking into consideration the economic impact, and any other impact, of specifying ... area as critical habitat” (16 U.S.C. 1533(b)(2)). As far as the recovery program, the United States Fish and Wildlife Service (USFWS), the federal agency mandated with overseeing the implementation of the act, describes recovery as the “process by which the decline of an endangered or threatened species is arrested or reversed, and threats removed or reduced so that the species’ survival in the wild can be ensured.”

Once species are listed, they automatically gain protection if located on federal lands. State land agencies and private landowners may also be eligible for grants to enhance the habitat protection of listed species. In addition, non-federal entities that own habitat properties may be required to consult with the USFWS, especially in cases where a federal nexus exists, such as a water permit to develop wetlands.

The ESA also provides for other direct protection of listed species in its taking provision. The ESA makes it unlawful for a person to take a listed animal without a permit. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct.” Through regulations, the term “harm” is defined as “an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

Native Nations in the United States enjoy a unique position in relation to the implementation of the ESA. The Department of Interior and the Department of Commerce issued a Joint Secretarial Order in 1997 entitled “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act.” Tribes had expressed concerns regarding the impact of ESA laws and regulations on economic activities such as timber harvesting, building construction, water development, and salmon harvesting. In addition, statements by tribal leaders included views that single-species orientation to conservation is seen as too narrow and a whole natural system approach is more desirable. The Joint Secretarial Order established five governing principals for the enforcement of ESA on tribal reservations: (1) government-to-government relations, (2) distinctiveness of tribal lands from federal public lands, (3) technical and capacity-building assistance, (4) sensitivity to Native culture and spirituality, and (5) information sharing regarding Native resources and non-disclosure of sensitive cultural or religious information. The ESA regulations would further define item two of the established principles in determining conservation measures required of tribal governments. Such measures must be: (1) reasonable and necessary (2) least restrictive means available, (3) not discriminatory against Native activities, (4) not based on the sole regulation of non-Indian activity, and (5) not entirely based on voluntary enforcement.

The Bald Eagle Protection Act of 1940 (16 U.S.C. 668-668d, 54 Stat. 250) provides for the protection of bald eagles, the national emblem, and golden eagles by prohibiting, except under certain circumstances, the taking, possession, and commercial trade of such birds. In 1972, the penalties under the act were increased. In 1978, an amendment allowed for the Secretary of Interior to permit the taking of golden eagle nests that interfere with natural resource development. A 1994 Memorandum (59 F.R. 22953, April 29, 1994) was signed by President

Clinton, directing heads of executive agencies to set out policies concerning the collection and distribution of eagle feathers for Native American religious purposes. Today, a national repository exists through which individual Native persons may acquire eagle, hawk, and owl carcasses, as well as body parts and feathers.

Hopi research participant comments on ESA and Bald Eagle Protection Act

Hopi comments on eagles variously indexed Hopi belief systems, cultural harvesting and use, the repository, and wind energy development. A male research participant from Second Mesa described eagles as “a huge part of Hopi culture.” As for some of the beliefs regarding eagles, another male research participant from Second Mesa stated, “Eagle is a messenger. The eagle was the one who directly helped humanity move from the Third World to Fourth World in the migrations. Feathers we deem carries a message to the spirit world, natural world, Guardian of Fourth World, and into the future and into the cosmos.” Another male participant from Second Mesa stated, “eagles are very important, but all animals are so as well. Like in our Winter Solstice ceremony, all feathers of different birds are used. All treated in same way and all important. All are sacred.” A letter submitted during the BOR scoping process for the Kayenta mine complex on behalf of the Hopi Tribe also seemed to make this point but in an administrative manner, calling on all species in an impacted area from resource development to be surveyed and categorized for the purpose of possible future listing. The letter states,

While currently only one endangered species is known to exist in this area— Navajo Sage or Hopi Sage as we like to call it—that is currently listed, we want to ensure that the Native lands, grasses, reptiles, birds, and animals are surveyed and categorized in the impacted areas for future listing.

At the same time, the eagle has high cultural significance. As another male research participant from Second Mesa stated, “Not just take care of the eagle and revere the eagle but every species out there of animal. Eagle being the top because we see them as closer to the thunder beings and

they give us further sight than we have.” One female research participant from Second Mesa noted, “Our clans gather eagles for home dance.”

As a matter of harvesting, Hopi research participants clarified that it is not simply a matter of collecting eagles at known harvesting locations. Participants indexed a variety of practices that must go along with harvesting, as well as beliefs that are associated with it. One participant from First Mesa stated, “First, pre-scouting occurs before eagles are harvested. There are pre-visits, and the preparations that must occur back in the village to ready the collector spiritually. And then finally collecting occurs.” Another male research participant from Second Mesa intertextualized the practice of hunting with eagle collection:

With hunting for elk or deer or collecting eagles and their feathers, we believe animals self-regulate. They present themselves to a worthy person to take them. Suppose to be in a certain posture and animals will know that. They don't make themselves visible to you if not prepared ritually and in yourself. You have to be deserving of that animal. They are people just like us. Their purpose is to be transformed into another energy. That's why they are selective on who will take their spirit. That's what is hard to explain to courts or mainstream. This part of indigenous understanding of things.

The general locations of these harvesting areas were indexed according to a female research participant from Second Mesa as “mountains, buttes, and canyons,” which are “distant places” to Hopi villages. The participant also indexed a “general knowledge,” but one which tied to specific clans, of where to collect and gather eagles and their feathers. Once collection occurs, one male research participant from First Mesa described the general cultural protocols about harvesting that were used before the current permitting system came into effect: “If there are five eaglets in a nest, then you take one or two. If three, then just take one.” He then went on, “It happened in the past that if one clan knows that another village comes to the same general area, then there can be stinginess, then they may try to collect all of them, but generally, I don't think there was overharvesting mostly.” While visiting one village on Third Mesa, I witnessed several

of the fledging eagles that had been obtained that year sitting in cages on top of people's homes. A female research participant from the village explained, "these eagles are gathered each year from certain harvesting sites that are located pretty far away. People have to drive out there to get them. They are raised long enough so the religious practitioners can acquire some of their feathers and then they are released again."

Research participants acknowledged that the ESA does not apply to tribes in the same way as public lands, and this was noted as a "good thing for tribes" by one male participant from First Mesa. Another male participant from Third Mesa explained a case brought by an environmental organization that required a federal agency to investigate the harvesting of eagles by Hopi people. The Hopi Tribe, through CPO, was required to provide information to a federal agency regarding harvesting sites, but locational information on specific sites was redacted from the report. Permits to collect eagles and feathers were also indexed in terms of the context in which they are awarded. However, these comments will not be included in this dissertation after consultation with the Hopi CPO because of concern that the process is not well-understood by many.

Practices associated with the repository were also indexed by research participants. An elderly man from Second Mesa noted, that the repository was "beneficial to some extent, but now everything out there is disrupted, destroyed, obliterated, already disturbed that balance. It's like with repatriation, it replaces what was originally there. This [repository] program might have good purpose for someone." The "waiting period" to receive items from the repository was noted as often excessive, sometimes taking several years, and the process generally requires the signature of a clan leader or village chief. The Cultural Preservation Office is directly involved in administering these requests as well as following-up on ones that have exceeded stipulated wait

periods. Natural collection was considered a superior practice among some. “Some of us don’t procure our regalia from our own hands. I do that for the betterment of my people so they can get that and people know me for that.” Another male research participant from Second Mesa discussed the practice of receiving from the repository. “When the animal is received, they are blessed in a certain way. Just like we do with the eagles [in harvesting]. It must be received and blessed in a good way. Then we believe that’s the proper way to do that.”

Finally, wind energy development was indexed. One male research participant from First Mesa referred to wind turbines as “the number one eagle killers.” Another male research participant from Second Mesa said “I’ve heard winder turbines could hit eagles. It’s really kind of hard to see that as possible from my personal view because I’ve driven through California and other places and the blades don’t move at a very high speed. I don’t know how effective they are because they take so much force to be used. I’m just surprised they haven’t found a way to create turbines that are not so invasive to the eyesight and to the environment. Maybe they could create ones with small blades connected.”

The statements made by research participants were again tabulated and cross-referenced to determine any relations to the three variables of the study. Clan membership was an important index, as individuals often offered information as to whether their clan had an eagle harvesting site. Gender sometimes portrayed an interesting divergence. While both men and women referenced the importance of eagles to Hopi people, men focused their statements on cultural ideas (e.g., eagles associated with offering better sight) and Hopi emergence narratives, while women focused on current cultural practices regarding the use of eagle feathers within particular ceremonies, such as the home dance. The one exception was a man from Second Mesa who contextualized the cultural significance placed on eagles by referencing the feathers of all local

bird species which are used on the altars of the Winter Solstice ceremony. Men also discussed the cultural practices associated with preparations to collect eagles as well as the topic of the ways in which economic development might impede eagle conservation. A person's Mesa residence appeared to have little to do with how Hopi spoke about the topics under the ESA. However, in terms of the Bald Eagle Protection Act, research participants from Third Mesa discussed their experiences with the repository, particularly the associated waiting periods and how the objects are used by them in creating different cultural and religious works, while First and Second Mesa residents discussed the cultural practices and ideas (e.g., "When the animal is received, they are blessed in a certain way.") involved in the use of eagle parts that are acquired from the repository.

Chapter 7. Indian Arts and Crafts Act

Statutory and regulatory background: The Indian Arts and Crafts Act

In 1990 Congress enacted the Indian Arts and Crafts Act (IACA) to curtail the widespread imitation of Native arts and crafts sold on the market. The IACA is fundamentally a truth-in-advertising law. The IACA was intended to protect the interests of American Indian artists by making it a federal felony to “falsely suggest” that handcrafted materials are “Indian” when in fact they are not. The IACA is attached with severe criminal penalties punishable by a quarter-million dollar fine and five years in prison, and it authorizes certain Indian plaintiffs and the Attorney General to bring civil actions in federal courts. Notably, the use of IACA as a statute relies predominately on prosecution. At present, there is no national trademark regime that could administratively address some the concerns for protection and promotion of American Indian artists in regard to their economic interest and the cultural vitality of tribal nations. The lack of a trademark regime is perhaps most surprising considering that the predecessor of the IACA was a 1934 law which called on the government to develop such a program (P.L. 355-74). However, according to an interview with administrators at the Indian Arts and Crafts Board (IACB), the agency established to oversee implementation of the Act, the reason for this is due to a legal interpretation within the Board that the Lanham Act (P.L. 79-489) requires an amendment to allow for an agency to hold a trademark for the benefit of individual producers of works of art. The primary target of the legislation was overseas knockoffs, but handcrafted goods in the United States made by people not enrolled in a state or federally-recognized tribe have also received significant attention. In fact, the legislative history reveals that Congress was concerned with issues of misrepresentation within the domestic market of Native goods.

The Act defines “Indian” as those people who are either enrolled in a state or federally recognized tribe, or persons who are certified by those governments. To be sure, federal courts have consistently affirmed the authority of Native Nations to determine their own membership as one of the most fundamental powers of tribal sovereigns (e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n. 32 (1978)). Indeed, the act follows the central thrust of federal Indian law, that to be American Indian in the United States is most fundamentally a political status, rather than an ethnic status or cultural category. Felix Cohen, in the leading treatise on federal Indian law states when “tribal membership as determined by the Indian tribe or community itself is the essential element of the definition of ‘Indian,’ a person of complete Indian ancestry who has never had relations with any Indian tribe may be considered a non-Indian for some legal purposes” (1941:19; see also Kramer 1960).

The IACA has maintained a lack of clear direction provided that no regulations have been adopted in its 30 years of existence. This scenario is largely due to the fact that IACB has only a small staff with very nominal funding, resulting in a situation where enforcement has been extremely “ad-hoc” and litigation remains the primary means of implementing the Act (Hapiuk 2001:1014). Notably, outreach and educational programs are also offered. Also, of important note, the statute governs what is a very expansive area of economic activity by Native peoples across the United States both on and off reservations that may include anything from religious items to social regalia to contemporary fashion under one catchall phrase, “arts and crafts.”

Hopi tribal membership (i.e., enrollment) is determined by the Hopi Constitution. At the time the Hopi Constitution passed into law the Hopi Tribe based its membership on one-half blood quantum requirement on one’s mother side. Non-Hopis who married into the tribe were also allowed to be adopted and could become members by virtue of their village adoption. When

the Constitution was drafted, villagers from Tewa were concerned over membership requirements which required blood quantum. They argued their initiations into religious societies made them Hopi, and argued that such a cultural norm should be codified into the new constitution. Oliver La Farge, the drafter of the constitution, would instead adopt a provision which allowed for either Hopi or Tewa ancestry to qualify for membership. Many public services at Hopi openly acknowledge the Hopi and Tewa origins of tribal members. For instance, the Hopi/Tewa Sinom [People] Transit Service indexically references both segments of the reservation community. Finally, the Hopi Tribe, alongside all other tribes in the United States, and on account of a standard that was devised by the federal government, do not permit dual citizenship in another tribal nation. One must relinquish any other tribal citizenship prior to being enrolled with the Hopi Tribe so long as all other conditions are met.

The original requirements for citizenship required that individual members meet one of four criteria. Meeting any one of the four qualified the individual for Hopi membership. A census was taken in the preceding January of the year that the Constitution entered into force. All persons either listed on the census or who could prove eligibility for inclusion within a year of the constitution's ratification were automatically considered citizens. Since 1930, the federal government had begun the practice of noting blood quantum on Indian Census records. Indian census records remained distinct for reservation residents until 1940 (although one final Indian census was taken in 1950) because Native peoples within the United States were not considered citizens until 1924, and efforts at federal renumeration had been separate from the general census as a matter of administrative practice. Notably, every individual listed on the Hopi 1936 census were listed as full-bloods (F). The second and third eligibility criterion for citizenship were for children of Hopi citizens, either whose father and mother were citizens or if only the mother was

an enrolled member. The final qualification for tribal citizen fell to those who were tribal members of other tribes, but who had married a Hopi person and were subsequently adopted through an established administrative procedure.

In practice today, the process occurs through the Hopi Enrollment Office, which then submits a report to the Chairman, Vice-Chairman, and Secretary of the Hopi Tribe with its recommendations. Once an agenda item has been made by the Secretary's Office, the Hopi Tribal Council will then approve new enrollees through a vote. Tribal membership provides individual eligibility of the various tribal programs such as: housing, land assignments and grazing permits, scholarships, business permits, and others. In addition, according to village officials on First Mesa, tribal enrollment is also required in order to receive services from village governments.

Today, any person who matches the blood quantum requirement is eligible for tribal citizenship. Village affiliation under the constitution, however, is determined according to each village. Hopi people may relocate to other villages largely without restriction; however, in some cases, it may be required to have a matrilineal connection. Reasons for relocation to a different village vary widely, from individual preference, employment, marriage, or other reason. Such affiliation may be required to establish residence within a particular village although non-village residence is also available on the reservation such as at Spider Mound, Polacca, and Keams Canyon. Village affiliation (what the Tribal government calls "village registration"), allows for an individual to receive a certain number that constitutes four digits. This number will indicate an individual's voting precinct. Some Hopis are not officially enrolled due to the membership requirements, although they speak Hopi fluently and live on the Hopi Reservation.

As of the 2010 census, there were 19,338 Hopi individuals residing in the United States. However, as of 2014, there are only 14,390 enrolled Hopi tribal members. Regarding the latter, a little more than half, 7,815, live on the reservation. Over twenty-five percent of the people who identify as Hopi within the United States are not members of the Hopi Tribe, which can be explained by at least two factors. First, the Colorado River Indian Tribe (CRIT) is a separate sovereign nation whose members are comprised of descendants of various tribal nations including the Hopi. The CRIT Reservation was created in 1865 by the federal government for “Indians of the Colorado River and its tributaries,” originally for the Mohave and Chemehuevi, who had inhabited the area for centuries. Some people of the Hopi and Navajo Nations were relocated to the CRIT reservation in later years by the federal government in order to promote irrigation-based agriculture. While precise numbers are not available of Colorado Indian Tribe’s enrollment by tribal affiliation, the total enrollment is only 4,277. It seems likely that the number of Hopi members is a small fraction, given that by the last wave of “colonists” to the CRIT reservation in 1951, there were only 148 Navajo and Hopi families combined (Fontana 1963:164). The discrepancy between the census figure and enrollment (nearly 5,000 individuals) therefore is perhaps best explained by the fact that federal census takers do not rely on tribal enrollment standards but rather individual self-ascription. The remaining one-fourth of Hopi identified persons in the United States are likely a combination of Colorado River Tribes enrolled members and descendants of the Hopi Tribe who have either fallen out of enrollment due to blood quantum requirements or are prevented from enrollment due to their enrollment with another tribe. I reached out on numerous occasions to Colorado River Indian Tribes to inquire about their enrollment figures on the basis of tribal affiliation, but to no avail.

Finally, Hopi Tribal jurisprudence has dealt directly with the matter of tribal membership on a few occasions. This issue raises concerns for some Hopi research participants about the rights of off-reservation residents and tribal citizens, more broadly. While the case does not touch on the right to Hopi tribal membership (i.e., tribal nationality), it does concern the rights associated with Hopi tribal citizens. Moreover, I contend that the case helps to elucidate some of the meanings and practices associated with who is considered Hopi among Hopi people. The *Smith v. James* (2 Hopi Appellate Tribal Court 319 (1999)) Hopi appellate court case heard a case involving a suit brought by three nieces of a defendant. The aunt, who was the defendant, and clan mother, claimed a right to establish a residence on clan lands that she, the aunt, testified her father had bequeathed to her when he passed. The nieces (who were connected to the aunt matrilineally, and therefore, the land might have passed to them according the basic Hopi norm of matrilineal inheritance) claimed that even if that was true (I assume on the basis of a general notion of fairness), the land should rather pass to them from their mother because the defendant had moved off the Hopi Reservation, married a non-Hopi, and failed to attend Hopi ceremonies as part of her responsibilities as a Hopi person.

The issue of the case was whether and how the Hopi courts should use village knowledge to determine the rights of Hopi people to reside within a village. Under the tribal court's precedence, the Court must follow a rule whereby "the customs, traditions and culture of the Hopi Tribe must take precedence in a court's decision of what law to apply before a court reaches the use of any foreign law, including federal or Arizona state law" (see, Hopi Indian Credit Assoc. v. Thomas, No. AP-001-84 1996.NAHT.000000). The Hopi trial court invited elders from the village to testify, but allowed both parties to select their own village experts. The Hopi appellate court's decision held that the village government itself must appoint the experts

and that the case had to be remanded to the lower court. Since then, the nieces have never rebrought suit and so the case was never decided on the merits. However, it raises important points about the ways in which Hopi society may continue to transform. In an interview, one of the Hopi appellate court judges who heard the case stated, “I had nights during that case where I would just sit up and cry. I mean at the end of the day what you have is an elderly woman who wants to just go back home.” These points on tribal membership, and its contextual legal meanings, are essential to understanding the meaning of the IACA in Hopi cultural and social practice, as it involves a “truth-in-advertising” law as to who in the entire United States counts as Hopi, for the delineated purpose of art production, but upon penalty of a prison sentence or a quarter-million dollar fine. I suggest there are very clear answers to this question but there is nested meaning associated with “being Hopi” in ways that are interesting for both legal scholars and ethnographers, and certainly for the Hopi people themselves. Moreover, “being Hopi,” as the semiotic resources used to discuss this statute seem to demonstrate is a phrase that is reflective of what sociolinguists call “heteroglossia,” citizenship and the rights associated with it do not fully encapsulate the ways in which Hopi identity is expressed among Hopi people in practice, and in some instances there may even be conflicts between cultural practices and legal status.

Therefore, there are multiple meanings, some which are complimentary and others which appear demonstrative of a form of Hopi cultural dissonance.

Hopi research participant comments on IACA

Hopi statements regarding the IACA seem to focus on two overarching tropes: Hopi tribal membership and gender roles as constitutive of kinds of artwork. The first references and indexes tribal membership criteria, village affiliation, as well as cultural ideas on what it means to be Hopi. The second enregisters artists as gendered subjects or creative subjects, first and

foremost and as a kind of authority and index, because a Hopi understanding of responsibility entails both positive and negative obligations. I will first discuss the cultural notions that surround what it means to be Hopi and the administrative rules for Hopi tribal and village enrollment. I will then discuss possible cases for certification of Hopi artists, and then circle back on the IACA in terms of how the cultural norms interline statutory language in how Hopi people speak about the IACA through a Hopi discourse of artistic authenticity. Importantly, as mentioned, the Hopi Tribe is currently exploring the development of an Intellectual Property Ordinance within Hopi tribal law, and some research participants referred to this initiative with acute enthusiasm. The development of such an ordinance might prove to be the first comprehensive effort at such an aim in all of Indian Country (Shabalala 2018).

Being Hopi is broken down into administrative and political status of enrollment, but also kinship and cultural affiliation with villages and religious societies. As a general matter, Hopi people often reference being Hopi not as an ethnic status, but as a cultural and ethical ideal, or a state of becoming, wherein every individual endeavors to reach certain socially valued traits as embodied in certain behaviors and forms of reasoning. Leigh Kuwaniwiswma explains:

Becoming Hopi is not only about people with different migration histories joining to build shared communities, learning to speak a common language, or becoming a federally recognized tribe. Many Hopi people say they are still becoming Hopi in the sense that *Hopi* is a set of values to which people aspire: humility, hard work by hand, generosity, living in balance and harmony, and respect for others. Because all humans are flawed and can never fully live up to these high aspirations, one has to work hard to become Hopi. Therefore, in addition to recognizing the multiple origins of Hopi, archaeologists should attend to the common Hopi (and other Pueblo) values and shared material expressions of those values (2018:134–135).

In my fieldwork, one female research participant from First Mesa explained this in regard to her elderly uncle. She indexed a prior conversation between herself and her uncle when she had reflected to him how much she admired him as a person, noting his discipline, hard work, and

commitment to ceremonial life. She said, “I told him, you know, if you think about those things, it’s really amazing. I mean *you* are Hopi. I told him that. I said ‘I mean *you really are*, and I am just, like, *wow*. All the things we talk about and that is who you are. You’re *really* Hopi.’”

As a matter of tribal enrollment rules, some Hopi research participants who live off the reservation due to their parents having relocated to major urban centers such as Phoenix or Flagstaff openly criticized the blood quantum requirement. These participants noted the difficulty in meeting other Hopi people in these areas, and that they had started families with non-Hopis as a result. Exclaiming a strong sense of dissatisfaction with the enrollment process, they noted their children would not be eligible for enrollment due to the blood quantum requirement which was precipitated by historical and economic trends around migration, and in stark contrast to their personal wishes for their children’s full incorporation into Hopi society. “I am Hopi,” one female participant registered at First Mesa noted, “but it really upsets me that my children cannot be. I grew up in Phoenix and I fell in love and married someone who is not Hopi. That’s not actually my fault. Now my children won’t be Hopi and it’s because of blood quantum. I don’t think it is really fair and it hurts me to think about it. I mean it’ll probably impact all of my descendants, my grandchildren, everyone.” Equally, a reservation resident who is female and from Second Mesa, and who has a father who is a member of a different tribe, noted, “To me, I just think these blood quantum rules are going to phase us out.” A male research participant from Third Mesa stylistically contested these notions by stating, “We are losing our full-bloods. I think we go back to the way it was [one-half blood quantum in the Constitution from the current one-fourth requirement which was changed in 1992].”

Patrilineal descendants were considered by research participants as a major topic on the Hopi Reservation today and were indexed frequently by research participants. In many cases,

patrilineal descendants remain ineligible for participation in much of the cultural and religious life at Hopi due to the fact that clan association (i.e., a matrilineal claim) is often required for initiation purposes into many of the religious societies and kiva groups. For that reason, some Hopi research participants felt it inappropriate that such individuals make certain works of art, particularly katsina dolls, as that is said to require initiation. Likewise, research participants from First, Second, and Third Mesa noted that one cannot be considered a “traditional farmer” unless one is a member of a clan, rather than on the basis of farming techniques alone. Research participants, however, frequently noted village decision-making on these matters, and how different villages have taken different approaches. Some participants noted that patrilineal descendants were “not really Hopi” and that “they’re just members” because they are uninitiated. Pat Sekaquaptewa, a former Hopi Appellate Court judge, who is a patrilineal descendant, has advocated publicly for greater inclusion of patrilineal descendants into the cultural life of the village. I want to make clear that matrilineal status is irrelevant to matters of ceremonial participation, although it may be highly consequential in terms of initiation. Moreover, chief priesthood positions more specifically and in some locations, village affiliation, may be determined in part by one’s matrilineal status. One male research participant from Second Mesa stylistically referenced the concept of belonging in the ceremonial context that according to Hopi values and ideas, “Every person is a cloud. That’s what we are taught. So, every person is important in their own right and they bring that with them to the ceremony and with their prayers. No one has a right to keep others from the ceremonies and in fact it is not beneficial to keep people away. That’s the correct way of seeing things.”

In the broadest sense, being Hopi is referenced as a process of learning one’s responsibilities as a member of a society, and the values that entails, but also as a human being.

One elderly male research participant from Third Mesa in the context of the federal government's response to Covid-19 stated, "I don't know about Trump. I don't, but my hope is that he is working on becoming Hopi." The statement here appears to be that Hopi as a term can be solely, although certainly not exclusively, applied to ethical ideals of every individual.

Another elderly man from Third Mesa said to me after a phone interview, "I hope one day you will come home, your real home which is here with the Hopi people." The notion of *qa hopi* or not being and behaving in a Hopi way is equally associated with particular undesirable behaviors and psychological states (such as anger, greed, laziness, etc.). One sign at Third Mesa, for instance, reads: "Alcohol is kahopi." The philosophical and religious ideas of the Hopi people are in my view concentrated on the individual, meaning each individual has work to do, in order to become Hopi, a hardworking, selfless, humble, socially and religiously committed individual, but the term may also be used in a universal manner, to adjudge the behavior of any individual and to hope for their individual intentions and efforts to reach the stated, particular goal. In that sense, Hopi is a third-order index, above individuals and above clans, even above humanity, because it is a very particularized ideal, gained through intention and act of entering into an agreement with M^aasaw and thereby engage in an effort to become stewards and leave footprints, but all while according to the distinctiveness of Hopi society.

Patrilineal descendants often indexed their own personal stories of affiliation as well as proffered ethno-metapragmatic statements about styles of communication at Hopi. One such male descendant from Third Mesa stated, "I'm a child of my father's village because when I was young my father asked the *kikmongwi* to adopt me." "For that reason, I was able to get a land allotment and also build a house on our clan lands. However, the house doesn't really belong to me. It belongs to the clan. That's how it works out here." Each research participant interviewed

indexically referenced Hopi as a “matrilineal society” in explaining the rationale for exclusion of patrilineal descendants. “I know I have heard of some Hopi kids whose mom is Anglo or from some other Tribe who are initiated, but that’s a decision made by each village, and I know I’ve heard at least a couple of villages who have made statements that no such initiations will be permitted.” Another male research participant from Third Mesa stated, “as a bottom line, no one who does not have a matrilineal connection are allowed to be initiated. We are a matrilineal society. However, there are always exceptions, and as of right now that exception applies if one’s mother is from one of the other pueblos. We have, in my village, denied people whose mother was Navajo, for example. I guess we kind of picked on the Navajos.”

One male research participant from Third Mesa who is a patrilineal descendant noted ethno-metapragmatically the practice of introducing yourself among Hopi peers. “One of the first things people out here want to know about you is what clan you are a member of. It is more important to know which clan than your own name (laughter). I just use my father’s clan.” Other research participants, however, were against this notion. A male from Second Mesa who grew up off the reservation but who has since returned stated, “No, that simply cannot be. A person’s clan can only come from their mother’s side. No one should claim their father’s clan as their own.” One elderly Hopi man from Second Mesa explained, “Sometimes even some of the Hopi will be closed off to what we are doing.” The matrilineal requirement is sometimes explained in terms of matrilocal residence patterns that are still seen as the cultural norm and best practices as a matter of residency within particular villages. “The male person in a relationship is expected to leave the home, not bring the bride to his home. So, the (male) individual is considered a visitor, you know.” The rationale for the practice related to matrilineal descendants is explained in an

interview setting through a metaphorical reference that establishes the stylistic authority of the cultural norm and practice.

As a matter of village administration, officials within village governments responded differently to their rules for village affiliation. At Wàlpi, for instance, one village official indexed the administrative practice that “we try to keep things matrilineal” in terms of village affiliation and residence. While inter-village matrilineal residence patterns remain common across the reservation, in some cases it was reported that due to increased population and reported overcrowding of matrilineal homes, patrilineal residence patterns are also becoming more widespread. However, at Paaqavi on Third Mesa a different standard is used than matrilineal residence. Here rather than indexing the cultural practices of a matrilineal society, the unique history of Paaqavi, coupled with the continued resonance and authority of the Hopi elders who reside there, provided for an exception to the general norm. One village official explained:

After the Orayvi split in 1906, our people left but then tried to go back while the people at Hotvela remained in exile. When the people were rejected from reentry into Orayvi, they had no place to go, so many people suffered a lot. They had to set up makeshift housing and many people went hungry. Some died. Our elders told us because of all of the suffering we had to endure that everyone should be welcomed to settled at Paaqavi. That’s the same standard we use today. We don’t have a matrilineal requirement.

Culturally, Hopi research participants often referred to the concept of “child of a village” to refer to a person’s village affiliation and “child of a clan” to refer to a person’s patrilineal connection to a particular clan. For matrilineal clan affiliation, Hopi people refer in English to being “members of” a particular clan. But, again, in the first case that is based often on a matrilineal claim, or through cultural adoption, rather than administrative practice. One is a “member” of a particular clan or has “clan affiliation” almost exclusively on the basis of one’s matrilineal lineage.

Since most villages retain a matrilineal requirement for village affiliation, the question was posed by one of my advisors as to whether an individual could be a recognized member of a village, but not of the Hopi Tribe. This is significant in terms of the IACA because it raises the question of who is eligible to create Hopi art if one were to be recognized by a sovereign village, but not the tribal government. This was, however, shown not to be the case. An official in the Enrollment Office explained that Hopi Tribal and village enrollment are processes which usually occur, and later work, in tandem. The Tribe's purpose for this, as a political entity, is to ensure that enrolled citizens are allocated to the correct voting precinct for tribal elections. "The villages generally will determine the matter first and a number is provided. The first four digits indicate the person's village affiliation," the Enrollment officer explained. 1612 is the number for Tewa residence, for example. In order to receive services from the village, however, an individual must subsequently become a member of the Hopi Tribe. A female research participant from First Mesa explained, "There is one woman here. She's involved in the ceremonial life but she's not a member of the village and we had to send her home when she came by the village office because she is not an enrolled member of the tribe. She's a member of another tribe, but her mom is Hopi. She can however fully participate in ceremonies here."

Cultural affiliation in various ways may be available for individuals who fall outside the confines of tribal enrollment. It was found that some individuals reside on the reservation, speak the language, and participate in Hopi religious societies, but are not enrolled members with the Hopi Tribe. Notably, these individuals would also not be eligible for a business permit to conduct business activities on the reservation, such as running an art gallery, which also requires an enrollment number. Members of the Cultural Preservation Office confirmed there is, however, a certification process for unenrolled artists, but that it is rarely if ever used. "I don't even think

the artists here really know about it,” a male participant from Third Mesa explained. Since the IACA recognizes both enrolled members as tribal artists as well as those certified by the tribe, it was important to learn how the Hopi Tribe handles both processes under the Act. Since many artists may fall out of enrollment due to various factors, it would seem important for the tribe to help artists understand how they can be sure to produce art within the confines of the law through the available process of certification, and to make that process as simple as possible.

The male research participant from Second Mesa who is not an enrolled member due to his enrollment with his father’s tribe further explained, “I might get teased sometimes by my peers but sometimes elders will pull me aside and they tell me, you really are Hopi because your mom is Hopi.” To that effect, he further stylistically contested the notion of tribal enrollment as governing who should be considered Hopi, “Tribal enrollment, meaning a number, is solely based on federal accounting of how many people are enrolled. Not much else changes, except with the housing issue, problem. Whenever I have to fill something out I always acknowledge I am both [other tribe’s name] and Hopi. I even have a clan land allotment that I can use, it’s a cultural allotment.” Another research participant from Third Mesa who has worked for decades in the Hopi Tribal government explained that persons who are not enrolled but who have a mother who is Hopi and who become initiated into religious societies should be permitted without question to produce art. The participant stylistically contested the overarching legal authority of the IACA by stating, “if [such a person] wants to make artwork, then I think that is just fine.”

Other norms are at play in terms of Hopi cultural involvement and recognition, how Hopi individuals recognize each other. One of the most central norms has to do with residency on the reservation or frequent visitation to the reservation. Hopi people who grew up in urban centers

off the reservation index instances in which they were called “*Pahaana*” (white man or woman) by their local peers. These individuals are quick to index the ethnic mixture of contemporary Hopi society. “No Hopi who exist right now who is purely that,” one male research participant from Second Mesa claimed. The participant went on to further index his cultural involvement at Hopi and proficiency in the Hopi language as the pure indexes of Hopi identity. “The point is to understand and participate because I believe—everyone wants to be Hopi. I am Hopi and I speak the language because my parents made sure that even though we were away from the reservation while I was growing up, we kept the language alive.”

Cultural involvement and language proficiency were stylistically claimed to be markers of good parenting, demonstrating the indexing of cultural values in terms of social and family life. “Apparently these things are rubbing off on my son. He’s got perfect attendance and citizenship award at school.” Another female research participant from Second Mesa spoke about Hopi people who grew up off the reservation but have later returned through again referencing being Hopi as a kind of internal and behavioral deixis of becoming. She stated, “But it’s up to you as a person. Some people out here may call you *Pahaana*. But if you keep ceremonial cycle, doing your thing, they can criticize all they want but it’s there.” Other Hopi individuals who are currently leaving the reservation to seek employment, join the military, or go to school are also indexed in these discussions. One man from Second Mesa indexed the frequent visits by these persons back to the reservation as evidence of their continued cultural belonging. “Some young people go to school off reservation, colleges, and military. We have those kind of people away. But we are just getting the feeling that won’t take them away from their culture because they are always calling and asking for ceremonies and when get some leave they always come home and take part.”

Language proficiency was a very salient marker for Hopi identity among research participants, although it was a matter of contention in terms of its current usage for eligibility to run for some of the highest political offices on the reservation. In regards to the former point, one male research participant from Second Mesa stated, “even though I grew up off the reservation, my family raised me to be Hopi. We kept the language alive and I am a fluent speaker.” In regards to the latter point, one male research participant from Third Mesa explained, “I believe it’s (the language proficiency requirement) used as a means of keeping the same group of people in office. That needs to change. We need new blood in our tribal government.” Economic activities, particularly rainfall farming, without the help of modern technology are equally salient markers upon which an individual’s Hopi affiliation is based and the cultural values and practices are indexed through a deixis and ethno-metapragmatically on this basis. One research participant stated, “People will say, if you’re singing this (religious song), how can you use a tractor? You must not understand what it’s meaning.” Indeed, “modern” and “tradition” are frequently used markers, and are used to again stylistically index Hopi distinctiveness. One male research participant who lives at First Mesa stated:

We are not too into modern things, modern world. Hopi only Indian tribe in the nation that still does almost all traditional Indian ways. Tradition, religion. Most of the Indians all over the country have done away with that and now are doing a lot of modern things. Only social dances, not much rituals, religious stuff. A lot of powwows you see. Highly modernized thing now. We don’t do those things. You won’t see Hopi people at the powwows.

Finally, research participants noted that non-Hopi individuals may also be brought into some degree of clan affiliation through various means of adoption. As an administrative matter, adoption has no effect in terms of recognition or services. However, as a matter of cultural practice, adoption is still used by particular clans and villages for purposes as they see fit, and the Hopi Tribe recognizes the authority of these institutions to conduct such cultural activities.

“That’s really up to the villages to do as they want, or clans,” a Hopi Tribal official stated. One male participant from Second Mesa indexed an instance in which a longtime friend had fallen seriously ill with a medical condition. “He called me and he said he really felt like it would help if he could be adopted. I talked to my mom about it and we decided we would do that for him.”

At the individual level, Hopi gender concepts are often related to “roles” in speech, and these roles as attached to gender are indexed either as necessarily constitutive of producing artwork or contrary to creativity for the purposes of art production. One female research participant from Third Mesa explained the roles in a general sense:

Men are involved in ceremonies but its women who prepare them to do that: wash their hair, prepare the food. Men need to be out there in the fields to fulfill their responsibility. Lot of people are only part-time Hopis. Preparations for these ceremonies is weeks at a time for these things. They can’t be taking care of the fields. But women have an edge by saying we’ll give the land to someone else if don’t farm. It is not an easy thing to be Hopi.

“Traditionally, each gender had a particular role and that’s how it was,” one female participant from Second Mesa explained. Structurally, however, gender in leadership positions between male and female religious societies and clan mothers and the *kikmongwi* position are often referenced as a “balance in leadership” between male and female and “not one above the other, more or less equal.” However, other statements indicate that “really it’s the women who run things.”

As noted, gender often comes up in conversations regarding artwork on the Hopi Reservation. Some research participants claimed stylistically that gender was a salient concept for the production of certain kinds of works. Katsina dolls, for instance, are indexed metaphorically as “a prayer stick” (*paaho*) and for that reason “only initiated men should make them.” This, by extension, also indexes, through a particular village’s cultural norms, the rites of initiation, and in some cases and by extension—a person’s matrilineal claim. Other participants,

however, stylistically claimed that nowadays katsina dolls have “become an art form in a general sense” and therefore the traditional norm for making the dolls was no longer relevant as a matter of art production. A female research participant from Second Mesa stylistically referenced an upcoming publication by a noted scholar on Hopi katsina carvings that will focus on women carvers. She further indexed particular social facts that explain her stylistic claim that women should be allowed to carve katsina dolls, “Guys get mad at women when we sell our dolls to support our kids. Men have fun with their money. As long as one knows what the katsina looks like, then that’s okay.” Several participants related this to the production of forgeries brought in from foreign countries which sometimes have actual Hopi designs but are made from materials that are not known on the reservation. “People get really angry about that. That one (katsina dolls) is really sacred.” Attendance at katsina dances was the general means by which artists reported they assure accuracy. Several male research participants also referenced women katsina carvers, and often noted they felt like it was “okay, but controversial.” Many of these participants indexed female relatives or close acquaintances who were carvers. “For me,” one male participant from Second Mesa stylistically contested, “it’s really about creativity and I think that’s the most important thing. No one should put the brakes on creativity.”

Although the katsina dolls have been commercialized since 1901, the date placed on the sale of 400 katsinam dolls by Frederick Volz, a trading post owner, to the Fred Harvey Company, the industry remains almost exclusively male-centered (Walsh 2019). Katsina dancers, during the six-month period of the Katsina season, distribute *tiitihu* (singular, *tihu*) during dances to young girls and women. For young girls, one of the purposes in gifting the dolls is to teach them about the different katsina. Eggan (1950) also reports the use of katsina dolls in kiva ceremonies during Powamuy and Niman. However, today, katsina dolls are also widely

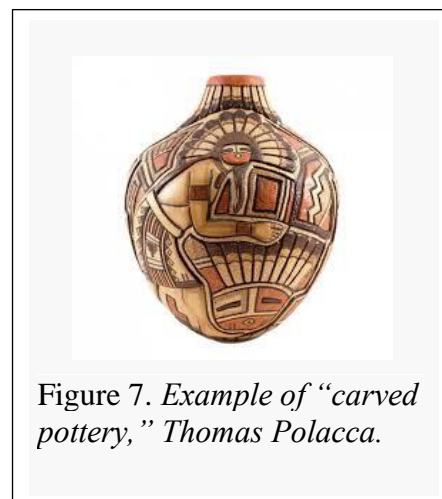
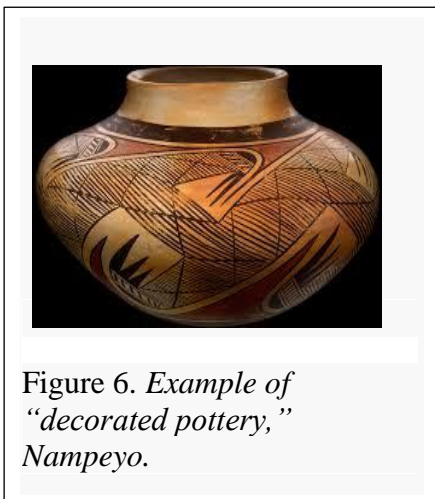
available in southwest art galleries, museum gift shops, and across the reservation in artist shops. The market ranges significantly with some pieces of exceptional skill earning in the tens of thousands of dollars. Some scholars have argued that First Mesa has seen the greatest acceptance of female katsina doll carvers because it is the “most American” village given its willingness to accommodate outside influence after a continuous history of interaction with foreign cultures. Yet, Stappert’s (1995) research participant from Polacca in 1990 noted a traditional view remains intact at First Mesa: “It’s a man’s work. Women are not supposed to carve katsina dolls. On the other hand, men should not make pottery – this change of gender roles is the wrong way.” Other commentators have reported their research participants spoke of concerns over fertility and a healthy pregnancy given the spirit that is associated with the *tihu* (Malotki 1991:58).

Hopi pottery making is another place in which the gender of artists is metapragmatically indexed, but in different ways. Some claim that pottery is really a “utilitarian deal,” while other participants say that only women should make pottery because clay is a “female element.” The latter group also focus their interpretation of cultural norms in terms of traditional roles for Hopi men and women in which women are the gatherers of natural resources. Still other participants said “I’ve never heard of pottery being talked about in terms of gender, it being solely a female craft.”

Hopi men have had an easier time entering into the traditional female forms of art. Hopi pottery is well-known, and First Mesa, especially with the legacy of the renowned potter Nampeyo, has become a center of pottery making. One female research participant from Second Mesa discussed this at length, noting the remarkable success of Hopi male potters who are direct descendants of Nampeyo, who by virtue of that fact there is often the perception that they have been taught the strongly guarded “family secrets” of their craft. The research participant further

reflected on an experience they had with a famous potter at First Mesa. She discussed how she posed a question regarding the potter's techniques. The research participant recalled, "And you know what she said? (smilingly) It's a secret. It's really beautiful pottery. Do you know about it? It's paper thin." A female research participant from First Mesa on the other hand, framed a statement regarding pottery, "Well, we have certain families here."

Hopi men may, however, face social pressure not to be potters. Still, these concerns would appear to be overridden with a significant family tradition where the knowledge of distinct techniques are passed down from one generation to the next. Thomas Polacca, a self-taught potter and a great grandson of Nampeyo, has developed a unique and strikingly distinct style of pottery referred to as "carved pottery," where figures are carved into the unbaked bisque prior to its firing in a kiln (see a comparison of the work of Nampeyo and the work of Thomas Polacca in Figure 6 and Figure 7).



Sources: Museum of the American Indian – Smithsonian Institute [electronically available at <https://americanindian.si.edu/static/exhibitions/infinityofnations/southwest/264462.html> and Cameron Trading Post [electronically available at: <https://www.camerontradingpost.com/hp14101-tom-polacca-pottery.html>].

According to one research participant from Third Mesa, the decorative style of pottery making has been indexed as a cultural property of First Mesa. “They sometimes complain that other Hopis should not be making the decorative style, just the utilitarian style, because First Mesa is where the pottery was commercialized early on.” There is a repeated notion that different artworks are indexed by gendered subjectivities which is stylistically challenged by appeals to creativity and family traditions. One participant from Second Mesa stated, “What matters most is whether a person has that creative spark that comes from inside them. I say if anyone has that, then it shouldn’t be put to waste. You should use that and create your art, katsina dolls, pottery, or whatever.”

In terms of katsina doll carvers male participants spoke about creativity and support for close personal relations, or conversely, the fulfillment of traditional roles. Women participants spoke of earning a livelihood as sufficient grounds for carving, and did not speak about traditional roles, although the controversy was referenced. For pottery, male participants spoke either of roles or creativity, and female participants spoke of roles or family traditions. In terms of both katsina doll carvers and potters, there were no distinctions between members of different Hopi clans, likely due to the fact that initiation is open to all clans and pottery was also a tradition that encompassed Hopi’s various clan associations. Although no particular difference could be identified in the ways in which members of different clans spoke about the topics associated with the IACA, several katsina carvers interviewed referred to their clan *wu’ya* and its associated symbolism as inspiration for their artistic renderings. These markings, such as a smoking pipe painted on a doll, a web used in place of a signature for a Spider Clan artist, or the carving of a clan *wu’ya*, were sometimes sources of creativity or inspiration in contemporary renderings of an artistic katsina doll.

As for Mesa residence, there were few real differences or distinctions regarding katsina dolls carvers. For pottery, however, Second Mesa residents spoke at great lengths regarding the traditions and techniques of First Mesa residents, perhaps because such participants often related pottery to the particularly strong tradition of Hopi basket weaving that is associated with Second Mesa. First Mesa residents spoke extensively about family traditions, and Third Mesa residents generally referred to other Mesas in terms of pottery. As for membership, and the right to produce art under IACA, no particular differences were observed between any of the three variables, and the matter was seen by all participants as something for each village, and in some cases, clans to decide for themselves as rights to produce art often stemmed from matrilineal claims vis-à-vis initiation, a matter which varies by village, although no research participants contested explicitly the right of enrolled patrilineal descendants to make any form of art.

Chapter 8. American Indian Religious Freedom Act

Statutory and Regulatory Background: American Indian Religious Freedom Act

Federal law prohibited certain forms of American Indian religious practices until 1978, and in some cases these sanctions were enforced under criminal laws, specifically the Indian Religious Crime Codes (also known as the Code of Indian Offenses, 1883). The American Indian Religious Freedom Act (AIRFA) (Public Law 95-341) was passed in that year, recognizing the rights of American Indian populations to access sacred sites, freedom to worship through traditional ceremonial rites, and the possession and use of objects traditionally considered sacred by their respective cultures. The legislation specifically declared that “henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian...including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.”

In the implementation of the act, the legislation called for federal agencies to evaluate their policies and procedures in consultation with Native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious and cultural rights and practices. However, the legislation fell short in terms ensuring environmental integrity of sites, merely safeguarding access instead (Gilio-Whitaker 2019). In effect, a site which is a sacred grove, for instance, could be “protected” under the act if access to site were preserved despite it being bulldozed of the ancient growth trees which have some bearing on its religious significance. In other words, “access,” not “religious integrity,” was the way in which American Indian religious freedoms were explicitly codified into law. Furthermore, AIRFA contains no enforceable rights, but rather, exist as a statement of federal policy. Native peoples

and tribes are thus still dependent on the willingness of federal land managers to permit access to sacred sites under necessary conditions (Tatum and Kappus-Shaw 2014:21–22). Justice

O’Conner once took pains to disagree the statute went any further:

Nowhere in the law is there so much as a hint of any intent to create a cause of action or any judicially enforceable individual rights. What is obvious from the face of the statute is confirmed by numerous indications in the legislative history ... Representative Udall emphasized that the bill would not “confer special religious rights on Indians,” would “not change any existing State or Federal law,” and in fact “has no teeth in it” (*Lyng v. Northwest Indian Cemetery Protection Association*, 485 U.S. 439, 439)

Gulliford (2000) has called the statute “useless law.” The topic of “specialized rights” has often been employed in opposition to Native people’s collective and individual rights. Certainly, this characterization does not provide a rationale for the denial of First Amendment constitutional rights to Native peoples. One legal scholar interviewed for this research stated, to that regard, “What the Court has simply done is limit the number of cases going through the courts. After AIRFA, many cases started to move their way through the courts, and the Supreme Court has simply put the brakes on that. At the end of the day, I just want to say to them: do your job. Stop creating arbitrary standards so that they can say that they can’t” (Melissa Tatum, personal communication, 2017). I will discuss more about this point in the next paragraph. The religious practices of Native peoples are also directly covered by the First Amendment free exercise clause, Executive Orders (particularly 13007), and provisions and regulations associated with the National Historic Preservation Act.

The extent of protections under the AIRFA, and the Religious Freedom Restoration Act, was tested by the Supreme Court case, *Lyng v. Northwest Indian Cemetery Protective Association*, in 1988. Although according the government’s own report (Theodoratus Report 1979), the building of a road through a sacred and religiously significant landscape of the Yurok,

Tolowa, and Karuk Nations would destroy the Indigenous religion, the Supreme Court held that the government could proceed with the planned action (Brown 1999:126). Earlier Circuit Court cases had held that centrality to religious practice was sufficient for a finding of a breach to American Indian religious freedoms (*Sequoyah v. Tennessee Valley Authority* 620 F.2d 1159 (1980)). The Supreme Court here, however, changed gears dramatically, and argued that an impairment to American Indian religious freedoms could only be found in a very limited set of circumstances that must surround an act of coercion. The identified grounds, relying on the factual grounds of preceding cases, were theretofore limited to those particular factual circumstances: imposition of a sanction (fine or imprisonment) or denial of a benefit for which an individual was otherwise be entitled to receive (see also, *Navajo Nation v. USFS*). However, there is at present a major distinction between the Circuits, with the 10th Circuit, for instance, refusing to abide by the 9th Circuits application of substantial burden standards in *Navajo Nation v. USFS*. In *Comanche Nation v. U.S.*, the 10th Circuit considered only whether the “spiritual experience” of the tribal religious practitioners would be inhibited from building a warehouse on top of a Comanche sacred site.

Since *Lyng* involved a land management decision on federal public lands, the federal agency was found to be entirely within its rights to “destroy” a Native religion, according to its own report, given its “right to use what is, after all, its land.” Some federal Indian law experts have argued that this case clearly shows that First Amendment protections are not readily recognized until this day for American Indian citizens of the United States. More troubling still, commentators have noted that in terms of religious freedoms, the Supreme Court seems to have extended the requirements of legal analysis (the court’s “test”) for litigants in which it is notably sympathetic (e.g., see *Yoder v. Wisconsin* wherein the Court refers to Amish communities as

aligned with the virtues of Jefferson's ideal "sturdy yeoman" in expanding the test for religious free exercise to include parental rights in determining whether Amish young adults should be required to remain in school until the age of eighteen). For American Indians, however, the test has often been reduced in subsequent cases, from centrality of religion in *TVA*, to only criminal or civil sanction in *Lynx* despite federal acknowledgement that particular actions would "destroy" an Indigenous religion. In the *Lynx* case, a substantial burden obviously existed, it would "destroy" a religious system outright, and a compelling interests, the next element of the test was absent, considering that logging operations often cost the government money. But the court did not reach the second element in its analysis because its decision focused and then narrowed the applicability of the first element of the test.

Notably, under the second element of the test, the government must have a compelling state interest to impose measures that would interfere with religion. In *Yoder*, however, the issue of Amish youth becoming burdens on the state given their lack of education and subsequent possibility on becoming burdens of the state if Amish youth so choose not to pursue an Amish lifestyle was not deemed relevant and the test was reformulated to protect their religious freedoms on a new basis: parental rights under the free exercise clause. To my surprise, I have learned that Hopi people too have spoken about parental rights at length during court proceedings on the San Francisco Peaks, but yet they have nonetheless failed to achieve legal relief, and there is no such mention in the USFS's EIS on the matter. One male research participant from Third Mesa who was involved in the consultation at the Peaks stated, "We tried to explain [to the agency] that it's a matter of teaching our children that this is a sacred place. If there is treated sewage water being dumped there and people skiing and treating it as a recreational area, then it won't be easy for them [our children] to see it in that (religious) way."

Rather than trying to grapple with the discursive formation of this view here, although I do think an archeology or genealogy of knowledge production (see, Foucault 1979) is required for Indigenous religious freedoms, I am interested in understanding Hopi people's views and usages of language found in the AIRFA.

Hopi research participant comments on AIRFA

Hopi research participants discussed AIRFA by focusing on the general trope of Native religious freedoms. These statements focus on public educational programming as well as the sentiments of federal officials who have influence over the implementation of AIRFA. In regards to education, one person stated, "(Hopi) people are very much in favor of this recognition of rights. Such things like that, (non-Hopi) people need to be made more aware that Hopi enjoy these rights." There was also a common view that despite legal protection, these rights were "non-existent" in practice. These statements were made particularly in relation to private actors, such as construction companies, who have in recent years demolished important Hopi religious sites.

One female research participant from Third Mesa explained Hopi religious rights as a matter of individual subjectivities and personal, ongoing experience in the world. "I don't think a lot of people understand. Things like what happened at San Francisco Peaks—that is a continual, daily emotional pain for Hopi people. It's really difficult for people." Another female participant who is from Second Mesa stated, "They have these laws with protection, but there's nothing to it. There's always some fine print that reverses the protection that the laws give." One male research participant from Second Mesa also made this point but contextualized it with a larger argument regarding a possible remedy that could overcome this perceived problem in implementation:

I just say respect all the Native people in the nation. Respect them and don't get into their ceremonial life. We pray for whole world, life. We pray for everyone. I hope they will realize that someday and respect everyone. That is what should happen. The written laws I don't really understand them because they can have fine print. In spiritual terms, though, I can't really say anything about that.

Another research participant from Second Mesa made a similar appeal to increased protection, but by indexing a more specified practice that agencies could adopt. "We want more accommodation for our ancestral places. (Hopi) people would definitely support that.

We forgive our enemies. Our spirituality is what (we) can give to the world. So I just say leave us alone when it comes to that. It would be a really great thing for Hopi people if we could have unfettered (and exclusive) access to our sites at least for some (period of) time each year. So we could be there to do our ceremonies. That would be something that would really make a difference for people like myself and also for our younger generation."

One of the letters from the BOR scoping process for the Kayenta mine complex specifically indexed Native American religious freedoms, but while also calling forth an example of cross-cultural communication. The letter stated,

When springs cease to flow because of groundwater extraction and religious pilgrimages to these springs consequently become meaningless, our Constitutional rights are abridged in the same way yours would be if Native people were in a position to allow you to visit your churches and synagogues and mosques, but to make no mention in them of Jesus or G-d or Allah, nor to carry out any service. Religious environments that do not allow religious purpose and expression are stripped of meaning. To Native People, our highest church, our synagogue, our Mecca, is the land itself.

Another male research participant who has been heavily involved with consultation work indexed the concept of substantial burden explicitly.

American laws are based on Christian values and concepts. There is no clue what substantial burden is. They just base everything on money. The coercion definition applies to things that cost people money. That's their view of religion, but it's not ours. A Hopi concept has to do with being in tune with nature. For Hopi, in tune means there are unseen things that help us, guide us

in day-to-day, that are in place. I guess there is the concept of guardian angels. Those things have always been there since humankind has existed. It's like being good stewards. We take by planting our crops and drinking water, but you have to also take care of it. There needs to be a policy to understand this connection.

This research participant went on to index the historical context and the common experience of historical trauma that exist among Hopi people until the present day, "It's always been like this, back to the 1500s when the Spanish started to impose themselves on our religion. Things have changed, I guess that's true, but our religion still remains. So what is religion? I think our dances, our ceremonies, our pilgrimages, that is religion. We have not given up on that and for many Hopi people there is a perception that the federal government is doing everything in its power to get us to stop us from practicing our religion. Agencies have their own agendas." He then proposed a possible reorientation of substantial burden that would be applicable to Hopi people,

Substantial burden could be through upsetting peaceful prayer. That's substantial burden. One of the problems is that federal policies always lump all Native Americans into one group. For some tribes, their traditional cultures are centered on powwows which have lots of money involved in them. For others, the Native American Church and its use of peyote is important, but those things are very new, whereas Hopi religion is 1000s of years old, like the Spanish remarked on the some of the same ceremonies we practice today. But for Hopis, things like roads, more people, fences, houses, electrical lines, those things are a substantial burden because peacefulness and connection are hindered. You can't really put a money value on it. It's impacts our prayers and our connection to Earth and Mother Earth.

Such references to substantial burden speak to the metaphysical domain in Hopi thought, where Hopi people perceive realities experientially, rather than on the basis associated with Western societies of academic learning and theories (Deloria 2012). The ongoing struggle by Hopi people to abide by their covenant with M̄asaw is equally based on Western models of colonization, and its endorsement by the courts. Hopi men generally

focused their attention on pilgrimages and redefining substantial burden so that the presumptive and constitutional right to religious freedom may account for Hopi-specific religious practice. After all, such a situation would appear to be the purpose of the Act, to protect Native religious freedoms according to particular Native religious systems, and the Court has certainly taken such an approach to other religious communities. Female participants on the other hand focused their comments on historical trauma and distrust of the federal government.

After tabulating and cross-referencing the data, there was no noticeable distinctions between Mesas and clans besides that clan members often referenced particular ancestral sites in which members of their own clan undertake pilgrimages. This final point seemed to demonstrate the semiotic stylization that connects ‘belonging’ to ‘knowledge’ which is so common among Hopi people in which research participants often stated, in other contexts but explicitly, “I can only speak for my own clan.”

Chapter 9. The Hopi Constitution

Statutory and regulatory background: The Hopi Constitution

The Hopi Constitution was adopted in 1936 after John Collier had sent his officer, Oliver La Farge, to the Hopi Reservation to outline the organization and governance of the Hopi Tribe. The Constitution was adopted pursuant to the Indian Reorganization Act of 1934 (25 USCA, secs. 461–62, 464–79). One male research participant from Second Mesa explained, “all the villages did not accept the constitution at first, but the Tribal Council was built up over time because certain village leaders approved and supported particular tribal chairmen.” Opposition among Hopi people was expressed individually through abstention, although several entire villages abstained, and structurally through villages refusing to send representatives to Council. The Hopi villages were established into a federation, with representatives to be sent by each respective village based on population size, and a tribal chairman and vice-chairman elected by the Hopi population-at large.

The Constitution recognizes villages as autonomous and self-governing. Moreover, as Richland (2008b:34–35) argues, the Hopi tribal government has never meant the erasure of village authority; however, some research participants felt, in at least some cases, that village authority has been truncated, and an ongoing contention exist as to matters of proper jurisdiction. As such, the villages retain exclusive jurisdiction over four subject matter areas of jurisdiction: probate, child custody, “farming lands,” and family disputes. Currently, four villages do not send representatives to Council: Songòopavi, Lower Mùnqapi, Old Orayvi, and Hotvela.

One unique feature of the Hopi Constitution is that it explicitly safeguards the interest of Hopi people in off-reservation resources by calling on the Tribal government to take steps to ensure their preservation. This is largely limited to eagle nesting sites (Article IV, Constitution

and By-Laws of the Hopi Tribe (1936)). Notably, some tribal ordinances have created similar duties for other kinds of Hopi cultural resources, such as archeological sites (e.g., Ordinance 26). The Hopi Constitution also calls on the Tribal Council to preserve and protect "the good things of Hopi life" (Preamble) as a sacred duty.

The Hopi Tribal government is a unicameral government, with majority of powers vested in the Tribal Council. For instance, the primary duty of Hopi Chairman is to preside over Hopi Tribal Council meetings and call special meetings in the case of village disputes, or in the case s/he is so requested by a minimum of four council representatives (Article I and Article II, Constitution and By-Laws of the Hopi Tribe (1936)). In 1972, the Hopi Tribe adopted Ordinance 21 which established a Hopi judiciary to replace the BIA's Courts of Indian Offenses operating on the reservation (Hopi Ordinance 21, secs. 1.1.1., 1.2.1, 1.3.1). In the *Paaqavi* case, cited previously, the Hopi Tribal Appellate Court discussed the structural elements of Hopi sovereignty as vested in Hopi villages. "The entire structure of the Hopi Constitution indicates that the authority of the central government of the Hopi Tribe rests on the bedrock of the aboriginal sovereignty of the Hopi and Tewa villages (which) delegated limited power to the central Hopi government" (see, Fletcher 2020:143).

Whiteley (1988:230) convincingly argues that the Hopi Constitution has become: "the de facto political form for the majority of Hopi people." Today, the Hopi Tribe oversees the management and disbursement of funds generated from tribally owned enterprises, particularly those carried out under the auspice of the Hopi Tribe Economic Development Corporation, while also managing affairs between the Hopi Tribe and outside political entities at the state, tribal, and federal levels, such as consultation work, Indian Health Services, the Hopi Tribal Housing Authority, among other initiatives. However, in regards to political representation, village

governments may also represent specific village interest before outside agencies. There remains, in my view, a need for an exhaustive sociological historical study of the Hopi people, based on the stated interests of Hopi tribal members and tribal government officials, but also scholars of Hopi history and culture. Several Hopi tribal officials noted their desire for more detailed studies of particular disputes that have occurred between federal agencies, other tribes, and the Hopi Tribe, a detailed investigation of how such matters have actually played out in practice, looking at both concepts and behaviors.

Hopi research participant comments on the Hopi Constitution and By-laws

While it has sometimes been reported that the retention of the ceremonial calendar at Hopi is the hallmark of a “traditional village” (e.g., Ruggles 2005), and while that may certainly be the case, research participants were quick to index village leadership as the better gauge for determining whether a village is considered traditional as a matter of social organization. A male research participant from Second Mesa, explained the “traditional” ways of Songòopavi are largely related to the retention of leadership roles. “There are twelve leadership positions in the village. It’s not just the *kikmongwi*. It’s also the spokespersons, among all the other *momngwit*. Songòopavi is the only village to retain all twelve traditional leadership positions.” However, the role of the *kikmongwi* is spoken about as of vital importance for Hopi cultural and religious life. One male research participant from Third Mesa stated, “There’s no *kikmongwi* at Orayvi so there’s no way to organize and run societies over there. So, for that reason, the dances and things are not as religiously significant as they were. The people of Second Mesa and also Hotvela are the most traditional.” Since there are only three villages that do not send representatives to the Hopi Tribal Council, I will refrain in this chapter from reporting on Mesa affiliations of research

participants in terms of their comments on representation, as doing so would possibly conflict with confidentiality standards of the research.

The focus on leadership and authority raises the salient point of research participants on debates as to jurisdiction. One female research participant from Second Mesa explained this in terms of the administrative reach of the Hopi Tribal government in matters of regulations and funding,

Traditional government has tried to be autonomous but with appointments of CSAs because each village has that now, even our traditional village, that has changed. Now it's where we get an allotment of money from Hopi Tribal government which says this is your operating budget for certain things we have in place now, like sewage and trash, mainly. So that's the person who takes care of those things. Placement of water towers and stuff. It is helpful but it's created more of a reach of the government to say you have to follow these guidelines or rules or we will no longer fund you. If traditional government had mindset to do so they could state a sovereignty rule over the tribal government over so many issues related to land and resources because tribal government has become a corporation willing to sell certain parcels of natural resources just so they can stay afloat and stay a government. Tribal sovereignty supersedes council government, the chairmanship and whatnot. But they [council members] have become more or less afraid to assert those things, to be seen as ignorant and backwards minded.

One village representative further discussed this point to explain some of the current work his office is undergoing at a village on Third Mesa. "We are now considering carefully applying for grants to fund our own projects. This will help us to remain independent and offset financial losses that the Hopi Tribe is currently experiencing." Indeed, all research participants stylized "tribal sovereignty" as defined by some greater form of economic independence from any outside authority, and the majority of research participants referenced "village sovereignty," sometimes interchanged with "Hopi sovereignty," as constituted by twelve independently sovereign villages.

Village sovereignty was further contextualized by the practices of what is sometimes referenced as "traditional politics," in terms of membership rules (discussed in the IACA

chapter), and as a matter of sending representatives to Council. In regards the final point, one male research participant referred to the maintenance of a historical “vow” on behalf of the current villages which refuse to send representatives. The vow that was undertaken was said to be the primary basis upon which current decisions are made for sending representatives to council, but village members from unrepresented villages argued, in part, the reason was because the Tribal government’s decision-making structure is inconsistent with Hopi traditional values (i.e., “centralized” vs. “interdependence”). In the latter case, for instance, the autonomy of individual school principles to work in conjunction with the Hopi education department has been a source of conflict over current efforts to establish a centralized Hopi school system. A female participant from one such village demonstrated how lack of representation, however, remains contested stylistically, “We are one of the larger villages, so we could have several seats on Council that would really allow us to have a major voice. I’m on a team that’s formed in my village to send people there. People think just “traditional” so don’t want anything to do with the Tribal government, but then when there are problems, they go there. It’s kind of a situation that doesn’t make much sense.” Aspects of traditional politics include fulfillment of designated roles for the traditional chiefs and religious society leaders (i.e., *momngwit*), ability of every villager to be involved in decision-making, and consensus-building, among other factors.

Some of these attributes, however, according to research participants were falling to be achieve in modern practice. One male participant stated,

Traditional politics has always been the input from almost every individual in some form of manner. I’ve seen that more growing up in the past decade. Dominance plays its role, too. “I’m a chief or I’m an individual of stature you have to follow what I say.” Traditional government has strayed in that matter. Well we have always been taught that each individual clanship has its role and its purpose, so for one to discern and say you [a targeted Hopi clan] are no longer a viable source or representative so we [clans in leadership] are going to take everything [i.e., a clan’s position in the traditional structure and ceremonies, land,

and resource sites] from you. That mindset has taken over traditional government now. When a collective of voices of minds and hearts in the beginning what does each individual see and why do they see it that way in their hearts. Not overly exerting their authority over another. Not everyone happy but moving forward. That's the vision I want to see or come close to, but vision is never definite its always adapting and growing.

Another research participant bemoaned some of the social problems she witnessed which she would like for the traditional leadership to address. "Not a good sight. There's certain things One Horn society should be doing. Controlling the village and keeping it safe. There's a lot of burglaries. Need to get One Horns out here, doing their job, and guarding the village. That's supposed to be their job." Each Hopi society, and each clan, for that matter, has something to contribute, to the overall success and prospering of the village via the ceremonial order, at the behest of the *kikmongwi*, who acts under the covenant with the guardian of this world, M^aasaw. Rather than one of "power relations" and "hierarchy," the diverse social groups at Hopi seem to act as a union of relational subjects, each of which bears "responsibilities," not power. The *kikmongwi* and *momngwit* roles are said to be "leaders," but not in a sense familiar to Western readers, since they are fundamentally ceremonial offices. The respect associated with these positions is based on the knowledge, experience, and moral integrity for those individuals who have gained such qualities through living their lives in selfless humility, *naa'okiwqatsi*. Sekaquaptewa and others (2015) stylize these leaders as something different than leaders in the Western sense. They note, "However, the moral leadership possessed by these individuals does not correspond to persons with actual powers of compliance that characterize "leaders" in other societies, for these latter persons lead by powers other than by conscience and example."

Research participants also explicitly and implicitly indexed jurisdictional debates on the Hopi Reservation. As a male research participant from Third Mesa stated,

There is actually this huge debate, because you see at the time Constitution was written, village sovereignty and jurisdiction was recognized over things they already had. So, the Constitution recognizes “farm lands,” but really many here think that village jurisdiction extends over all village lands, and so too with clan lands and the lands belonging to religious societies, not just those under cultivation. In truth, they don’t own these lands or their ceremonies but they cultivate them (and practice their ceremonies) at the behest of the *kikmongwi* and he carries on for the guardian of this world, M^àasaw.

Other research participants referenced jurisdictional matters in an indirect way, indexing specific instances where the matter had come to bear in a particular dispute. One female participant from Second Mesa stated, “Last year, there were some people from my village who went out to hunt rabbits on clan lands. During that these Hopi rangers showed up and demanded to see their permit. Well, we told those rangers that they have no jurisdiction here. These are village lands. Villages are supposed to be autonomous and the tribe has no right to require a permit.” When I later asked about the jurisdictional complaint voiced by village members, a village government official stated, “well, whatever tribal ordinance created the permitting requirement that requires the rangers to enforce it, those rangers just have to go by that.”

Another such instance was reported that involved a Caucasian police officer for the Hopi Tribal Police Department who attended a Snake Dance on Second Mesa and was assumed to be sketching in a notebook that he was using during the ceremony. A participant from that village recalled the event. He stated, “I saw my mom and a bunch of the older ladies walk up to him. First they said, ‘what are you doing here? These dances are closed to all non-Hopi.’ Then they said, ‘and what are you doing with that notebook? Are you sketching the dancers? You cannot do that. This village is sovereign and you have no right to be here.’ I told my mom (later) I thought that was crazy because he was doing the very thing that he was supposed to be there protecting, making sure our laws aren’t violated.” Here, the idea of law with a universalizing attitude in a particular territory and over particular subjects is apparent, but it is mediated through common

knowledge and practice of a cultural system. Certainly, Hopi laws here have rhetorical effect and political economic force, but the issue of sketching as enforced by the villagers framed prohibitions on sketching over concerns for accuracy and control of Hopi cultural knowledge and expression. The question might be asked, therefore, what would happen if a Hopi tribal member who worked as a police officer was noticed holding a notebook and pen during a ceremonial dance? Which are these comments indexing, personal/relational affiliation or village authority? It may be difficult to say, because presumably a Hopi tribal member who worked as a police officer would know beforehand that holding a sketch book during a ceremonial dance is inappropriate and against Hopi customary (and statutory) laws, but here there is indexical uncertainty.

Certain matters in terms of administration and implementation of the Hopi political system were also raised as challenges considering the largely separate and distinct processes of a bureaucratic order coexisting alongside traditional cultural systems on the reservation. For instance, a tribal official discussed the difficulties of people who wed in traditional marriages to obtain a certificate. “When I’m asked, I just tell them, ‘how am I supposed to know if you had a traditional wedding? I wasn’t at your wedding.’” Marriage certificates can be significant in terms of obtaining official documents, such as a passport, or filing joint taxes when a person has undergone a name change. Life insurance policies and custody cases can also require that a marriage certificate be produced.

These levels of governance in some cases compete directly, but in other cases they are seen to be intertwined into one legal and political order. For instance, a greater presence of the Hopi chairman at the village level was often indexed as a positive symbol of leadership. For instance, during the current Chairman’s campaign for office, many Hopi people were encouraged by the

fact he had visited with some of the traditional leadership at Musangnuvi. One research participant from Third Mesa commented further, “the chairman needs to go out there and talk to the villages. Like they need to show up on these big historical votes.”

Several research participants also stylistically contested the Hopi Constitution by proposing various kinds of reforms. In terms of the membership criteria, a research participant from Third Mesa wanted to see those standards reverted to the more stringent blood quantum criteria of 50 percent. “Right now, we are about 60 percent half-breeds. We are losing our full-bloods so I’d like to see that changed back.” Another research participant from Second Mesa discussed membership as a matter of village jurisdictional authority. “The tribe has no business doing that. The village should be the deciding thing. Blood quantum is going to be a way of distinguishing people and phasing us out.” Through these two statements, tribal membership as conceived through blood quantum and as a stylistically contested concept becomes evident.

Various other proposals were made. “I think the Constitution should recognize parental rights, particularly the role of the (maternal) uncle in disciplining children,” a male research participant from Second Mesa stated. Another male participant from Third Mesa suggested an amendment which would call on the Tribal Council to protect natural resources and cultural heritage, much like the current constitutional provision on eagle harvesting sites. “Those things are already noted in Tribal ordinances and I think the Constitution should reflect that.” In fact, several research participants, unsurprisingly, referenced the “right of nature” movement as a laudable goal and something that should inform Hopi Tribal governance. For after all, persons have rights, autonomy, and value, and nature is made-up of persons such as springs, mountains, and insects. Intellectual property rights over artwork and agricultural products were also mentioned, but predominately, except in one statement, these statements were about ordinances

rather than constitutional reforms. A male research participant from Third Mesa argued that the language requirement to hold office should be removed. “Take away the language requirement for one. It prevents young people from running for office so you have the same people there all the time, and it doesn’t allow for new blood into the system.” The larger question here, or so it would appear, is do these statements, and for that matter the Hopi Constitution, refer to individuals, or to relational entities? Certainly, Collier and LaFarge recognized relationality, what they probably conceived of as “communalism,” in Hopi society, and for that reason recognized villages as self-governing, but the inherent authority of societies and clans has had to become a matter of commonsense practice, rather than constitutional order. This situation again demonstrates that the universalizing attitude of law is subject to a cultural order among Hopi people, probably because the legal order in the first (historical) instance got it somewhat skewed or wrong. The constitutional recognition of cultural, village-based practice, might resolve many of the disputes that occur today.

Hopi research participants spoke variously about the Hopi Constitution on the basis of gender. Female participants focused their statements predominately on village autonomy, and the ways in which villages are or should be politically organized. Male participants, on the other hand, focused the majority of their comments on tribal constitutional reforms. While all research participants admitted that the current constitutional framework “works well” or is a “good system,” certain constitutional reforms were deemed necessary. Several statements, however, noted that village autonomy should not be abridged in any constitutional reform effort. There did not appear any obviously distinct ways in which speaking about the Hopi Constitution was reflected on the basis of Hopi clanship or Mesa residency, except, of course, only participants

from Second and Third Mesa spoke about personal experiences regarding the lack of representation on Council, given where those villages are located .

Chapter 10. 1882 Executive Order and Indian Claims Commission

Statutory and regulatory background: Executive Order 1882

On December 16, 1882 President Chester A. Arthur signed an Executive Order creating a Hopi Reservation of 2.5 million acres “for use and occupancy of the Moqui [Hopi], and such other Indians as the Secretary of Interior may see fit to settle thereon” (Ferguson 2003:21; Jones 1950). This language followed the general formula for which Congress authorized the President to establish reservations, but in the case of the Hopi it would cause endless confusion and debate in years to come. The reservation created was a perfect rectangle, 70 miles by 55 miles. The reservation did not follow any specific Hopi markers, either the Hopi use area, topographic features, or Hopi wishes, for Hopi people were never asked (Clemmer 2018:89–91). Its boundaries included 300 Navajos, and excluded the 100 Hopis living in Mùnqapi. The original purpose of the reservation was to achieve three primary aims as outlined in the original request from the Indian Commissioner of Indian Affairs at the time, J. H. Fleming. The three aims were: to vest title in Hopi people, to afford protection from the United States, and to provide legal authority to evict “unprincipled whites” and “arrest and punish mischiefmakers” (Clemmer 2018).

On March 7, 1882, the Hopi Indian agent, J. H. Fleming, renewed an earlier request that a reservation be set aside for the Hopi Tribe, which would include the Hopi villages, the agency buildings at Keams Canyon and ostensibly enough land for agricultural and grazing purposes. In response to this plea, the Commissioner requested Fleming to describe the boundaries “. . . for a reservation that will include [Hopi] villages and agency and large enough to meet all needful purposes and no larger.” Fleming had also reasoned, “With a reservation I can protect them in their rights & have hopes of advancing them in civilization” (see, Bush 2014).

Beginning in 1940, the BIA began taking steps to have District 6, a district which was devised to implement grazing controls within the exterior boundaries of the Navajo Reservation (which at the time included the Hopi Reservation), declared an exclusive Hopi Reservation. The grazing district was established by the BIA with District 5 applying to the Navajo and the Hopi village of Mùnqapi. District 6 was “reserved specifically for Hopi use,” although it was known at the time that Navajos occupied areas of the district (Brugge 1994:33-35). By 1941 the BIA submitted to the Secretary of the Interior an order for his signature that would have officially turned District 6 into an exclusive Hopi Reservation, with the remainder of the 1882 Hopi Reservation designated as part of the Navajo Reservation, for the exclusive use of Navajos. The Solicitor General held that congressional approval would first be required but proffered a possible political fix: "grazing [and]...farming segregation" whereby the BIA would only award permits on the basis of Hopi membership within District 6, and likewise, on the basis of Navajo membership for District 5.

The designation of District 6 was carried out under the authority of the Navajo BIA Agency, without any Hopi input into the decision-making process. It was part of a new BIA plan to handle the entire area of the Hopi and Navajo reservations as "one super land management district." The area included within District 6 included the principal Hopi villages and surrounding lands, but this amounted to only about one-third of the lands within the 1882 Hopi Reservation. Although there were repeated BIA assurances that this new boundary “shall not be construed in any way as fixing an official boundary” between the Hopi and Navajo peoples, the lands outside of district 6 would later be held to have been extinguished through administrative action.

The Hopi Reservation today, approximately 3,000 square miles in area, is comprised of lands surrounding the main population center (which previously made up of District 6), the adjoining Hopi Partitioned Lands (HPL), and the separated Mùnqapi District. Additionally, Hopi lands are located within two non-contiguous geographic areas referred to in this work as the 1882 Executive Order Reservation, following those lands so deemed abandoned by the Indian Claims Commission's decision, and the 1934 Act Reservation. Lands within the 1882 Executive Order Reservation consist of areas now referred to by Hopis as District 6 and Hopi Partitioned Lands; however, these lands are not exhaustive of the 1882 holdings because later cases and statutes would find that some of these lands rightfully belonged to the Navajo. After extended litigation between the 1970s and 1990s, Hopi lands were further recognized to include lands within the village of Mùnqapi Village (sometimes referred to as Mùnqapi Island) and allotted lands (*Sekaquaptewa v. MacDonald*, 448 F. Supp. 1183, 1193 (1978) (often referred to as, "*Sekaquaptewa I*"), *aff'd in part, rev'd in part; Sekaquaptewa v. MacDonald*, 619 F. 2d 801 (often referred to as, "*Sekaquaptewa II*"), *cert. denied*, 449 U.S. 1010, 101 S. Ct. 565, 66 L. Ed. 2d 468 (1980); *Masayesva v. Zah*, 793 F. Supp. 1495 (D. Ariz. 1992)). These lands were part of the June 14, 1934 Act, which consolidated the Navajo Reservation, and which borrowed from the language of the executive order, recognizing the Navajo Reservation and the lands rights of "other Indians as may be already located thereon," a slight distinction from the language used in the original Hopi Reservation under the 1882 Executive Order.

The central legal rationale for why the Hopi had to give up areas of land that were included within the 1882 Executive Order had to do with the abovementioned provision on the right of the Secretary of Interior to settle other Indians thereon. This provision caused heated debate and drawn out litigation over whether this language indicated the need for a formal settlement

process by the Secretary of Interior as required to vest land interest in other settled Native peoples or whether the fact that many Navajos had settled the lands within the 1882 boundary *ipso facto* established land rights for non-Hopi Native peoples within the 1882 Executive Order boundaries. Sills (1986) blames the “haphazard terms” of the 1882 Executive Order as the root cause for decades of increasing tensions, problems and tensions about which my research has made clear still continue until the present day (see also, Brugge 2001).

The Navajo presence on the original Hopi Reservation had historical roots. External pressures from railroad, ranchers, land companies, and settlers, had pushed Navajo people westward and escalated the population size of Navajo people who had resided adjacent to Hopi communities for generations (Redhouse 1985; Brugge 1994). For its part, the Hopi Tribe would later argue the “so-called Land Dispute” is “so-called because it was never a dispute for the Hopi to claim rights to the 1882 Hopi Reservation, which is part of their ancestral lands. The Hopi were merely trying to protect what was always theirs” (The Hopi Tribe 2001). In the end, Congress passed the Navajo-Hopi Land Settlement Act, steered by the senior Senator from Arizona, Barry Goldwater. The Settlement Act was signed by President Clinton on October 11, 1996.

In 1970, the Indian Claims Commission reviewed the BIA’s adjustments of District 6 and found that the creation of District 6 as an exclusive Hopi Reservation was an act by the United States which “extinguished” Hopi aboriginal rights to the remainder of the 1882 Hopi Reservation, some 2,500,000 acres of land. The Indian Claims Commission, which actually served as the Indian's Court of Claims, was established to hear unresolved and highly variegated claims accrued up until 1946 from Indian Country. Some scholars see the Termination policies as fundamentally linked to the ways in which Native land claims were processed and evaluated

of by the ICC (Sutton 1985). The Indian Claims Commission had no authority to grant or restore lands to tribes; however, it could recognize lands for which it determined Native title had not been extinguished (Clemmer 2004). The ICC's primary purpose was to award compensation for lands taken. Despite the ICC's purported finalizing determination on land claims through compensatory damages, some moral philosophers have argued that land restoration, particularly for sacred lands and lands of historical significance, would allow for an important, if not essential, means of Native cultural resiliency and as a hallmark of Native land disputes in the contemporary period (Hendrix 2005). These efforts, however, to regain sacred lands by Native Nations have largely failed in the courts (see, *Havasupai Tribe v United States*, 752 F. Supp. 1471 (D. Ariz. 1990), cert. denied, 503 US 959 (1992)).

The ICC encompassed all Native Nations of the United States, but its adjudicatory authority was dependent on individual sovereign tribes bringing a claim for monetary relief. Its goal was to resolutely end the tribal claims that had so long been pressed on the Courts, the Congress, and the Executive Branch, and had been a major source of frustration to all parties involved in Indian affairs. Their final resolution, proclaimed the optimistic policy, would allow Congress more time for other matters, save the government money, ease the burden of their defense on the Justice Department, give America a source of pride in its system of justice, and, of course, greatly benefit Native peoples. Initially, ten years were allotted for the Commission to accomplish all of this, although claims had to be made by individual tribes within the first five years. Failing completion of its task in the prescribed decade, the Commission, to give all the claimants their promised day in court, was renewed in 1957, 1962, 1967, and 1972.

Beyond the requirement for money damages rather than land restoration, the Indian Claims Commission restricted its own authority by adopting *dicta* (i.e., non-controlling language of only

persuasive precedential worth) from a Supreme Court case that was decided in 1941, *United States v. Santa Fe Pacific Railroad Co.* In a court of law, the case may have been distinguished from some of the tribal claims, but here in a court of equity it was merely considered a rule that the statute which created the Commission allowed for it to adopt for itself. The Supreme Court had stated in the *United States v. Santa Fe Pacific Railroad Co* case, again, in dicta, that occupation of lands had to be exclusive in nature.

Native traditional territories are legally cognizable within the United States according to three Supreme Court cases referred to as the Marshall Trilogy. Under this triad of cases (*Johnson v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 544 (1832)), issued in the beginning decades of the nineteenth century and each authored by Chief Justice John Marshall, who was a staunch federalist, aboriginal or Native title involved land rights of tribal nations on the basis of their own tenure systems since prior to contact. Aboriginal title, relying largely on the Doctrine of Discovery, could be extinguished by the discovering European power, and later only the federal government, through cessation in the form of a treaty or a just war (i.e., “conquest”) (see, Miller and others 2010). For instance, Watson (2011:516-517) argues that Native land rights can be aggregated and diffused so as to lead to four basic conceptions of rights to land that the Courts have discussed explicitly in American jurisprudence:

(1) The indigenous inhabitants own the lands they occupy and also hold the right of possession. In addition, the indigenous inhabitants are free to sell or transfer their property rights to whomsoever they please. Preexisting indigenous property rights were unaffected by European “discovery.”

(2) The indigenous inhabitants continue to *own* the lands they occupy but, after discovery, cannot sell their lands to whomsoever they please. The discoverer holds a “right of preemption,” giving the discoverer the exclusive right to acquire the property rights of the indigenous inhabitants.

(3) The indigenous inhabitants continue to *possess* the lands they occupy but, after discovery, no longer own the lands they occupy. The discoverer owns the land subject to the native title, i.e., the right of possession (or occupancy). The discoverer/owner can transfer ownership notwithstanding the native title. The discoverer/owner has the exclusive (preemptive) right to extinguish the native title. Once the native title is extinguished, the discoverer/owner of the lands also has the right of possession.

(4) The indigenous inhabitants have no property rights. The discoverer owns the land *and* holds the possessory rights. The indigenous inhabitants are trespassers (or perhaps “tenants at will”). When the discoverer/owner makes payments to the indigenous inhabitants it does so to expedite their removal, not to acquire property rights.

Watson demonstrates how the most affirming and diminishing legal perceptions of Native title have been expressly rejected by the courts, and the two intermediary approaches have been endorsed at different points in the Court’s jurisprudential history. In 1823, the Supreme Court decision in *Johnson v. McIntosh* adopted the view that Native tribes held a “limited possessor” right to their lands, proclaiming that European discovery of America “gave exclusive title to those who made it,” and that such discovery “necessarily diminished” the power of Indian nations “to dispose of the soil at their own will, to whomsoever they pleased.” Nine years later, however, the Court in *Worcester v. Georgia* endorsed the “limited owner” view of Native title. The discovery doctrine was deemed more limited in scope, which “gave to the nation making the discovery . . . the sole right of acquiring the soil,” but did not “annul the previous rights of those who had not agreed to it.” In other words, according to *Johnson*, Native tribes retained only a possessory right to their lands, not ownership, and held limited disposition rights. *Worcester*, on the other hand, included a right of ownership and possession, and held the doctrine of discovery simply excluded unlimited disposition rights vis-à-vis other European nations (Watson 2011).

In the ICC case of the Hopi Tribe, which is referred to as Docket 196, extinguishment required a more nuanced understanding which pulled from the *Hualapai* Supreme Court case

cited earlier. A case brought in conjunction with the Hopi Tribe's claim involved a specific case from the village of Songdopavi; however, this claim was withdrawn after the village petitioners realized it would not return any land claims, but only provide for compensation. The Hopi, like the tribe in the *Hualapai* case cited, had no cessation treaty with the United States, and had never been subjected to a pernicious just war by the United States. Instead, extinguishment of their aboriginal title occurred, so it was reasoned, through administrative action and the gradual encroachment of other tribal groups. The Commission would rely on this definition of extinguishment in stating that Hopi aboriginal title was extinguished first through the creation of the 1882 reservation, and subsequently through the establishment of the District 6 as a grazing district exclusively for Hopi use. The Commission would likely justify this rule on the basis of its desire to not be barred down in endless litigation and that the ICC heard cases for monetary damages against the United States, not against or between tribal nations. Here, the point of research participants that the federal Indian law has refused to take a tribe-by-tribe approach to the detriment of Hopi tribal interest appears resonate to the issues at hand, for this particular situation was perhaps largely unique to the Hopi and Navajo.

As a matter of equity, this factual finding of extinguishment likely increased the award the Hopi Tribe would receive from the ICC substantially. The Hopi Tribe would, however, challenge these findings, seeking to reopen the Commission's determination of facts regarding extinguishment after a final decision had been made. It would appear the Hopi Tribe was less interested in the financial award and more interested in having an official institution recognize their territorial claims.

The Commission would hold that Hopi lands outside of the 1882 Executive Order Reservation and District 6 had been extinguished and disregarded the cultural and religious

practices through pilgrimages and other practices of the Hopi people as evidence of continued use and occupation of those lands. The Hopi Tribe contested this finding of fact and asked for a rehearing to beseech the Commission to reconsider its finding. In its Order on the Motion for a rehearing, the Commission would persist in its original findings, reasoning:

The Hopi Indians pursued a static, nonnomadic, nonexpansionist, agricultural mode of life. They lived, as they do today, in their ancient pueblos high atop three mesas in east central Arizona. From these protected sites, the Hopi Indians descended to the valleys below to cultivate neighboring fields for grain. They also gathered wood and wild plants and, as the occasion demanded, hunted for game....Plaintiff argues that the existence of Hopi eagle shrines throughout the area, which it claims to have owned aboriginally, together with evidence that the Hopis visited these shrines at intervals for religious purposes and had a strong spiritual attachment to these holy places support a finding of Hopi aboriginal ownership. However, it is clear that those eagle shrines in the peripheral areas claimed by the Hopi plaintiff as traditionally belonging to the Hopi Tribe had been abandoned for centuries (31 Ind. C1. Corn. 16, 21-22).

The Commission cited only one authority in making its determination, leaving out of its decision testimony from Charles Pitrat and Florence Hawley Ellis. Fred Eggan, a distinguished anthropologist who worked extensively at Hopi, provided expert testimony during the hearings before the ICC. The Commission cites to part of Eggan's testimony in regard to the lands outside of villages: "They abandoned them physically. They did not abandon spiritually and they continued to make use of them. They continued to visit them" (31 Ind. C1. Conn. 16, 22). The ICC would then go on to state that there was historical evidence of Navajo presence in areas outside of the villages proper, which allowed for it to quickly disregard further consideration on the matter. Finally, on the specific point regarding the Hopi Tribe's claim to annual pilgrimages and ceremonial sites outside the immediate villages and agricultural lands, the Commission stated:

[T]he Commission does not agree with Hopi plaintiff that the sporadic and intermittent visits of Hopi Indians to sacred shrines in the outer reaches of the overlap area substantiates Hopi aboriginal title to all those lands lying between the

village sites and these distant shrine areas. First of all the record clearly documents a long time Hopi abandonment of many shrine areas as well as common usage by other tribes of other shrines. While admitting to actual physical abandonment of shrines, the Hopi plaintiff insists that Hopi Indian presence is unnecessary to sustain ownership rights to their sacred places as long as spiritual attachment or rapport is sustained. However, even if we were to accept Hopi spiritual attachment as a indicia of aboriginal ownership, the Hopi in our judgment have failed to meet the evidentiary burden of showing continuous and exclusive use of their outlying and remote shrine area.

Hopi lands were held “abandoned” not on account of a principal of law (e.g., land easements for instance may be exercised periodically and the holder will still retain rights to them and must be compensated should a derogation of their rights occur), but by virtue of the testimony of an anthropologist. “Spiritual” connections carried little weight in the eyes of the Commission perhaps because it implied intangible and subjective interest. The Commission, however, achieved this by adding additional language to the general requirement of exclusive use and occupation. The Commission would additionally require that the lands be “actually and continuously” used and occupied, language that was not used in any other case brought before the ICC. The terms actual (read: not spiritual) and continuous (read: not calendric) was effective in abolishing Hopi claims to tribal lands. By doing so, the Commission spent no time in explaining whether each harvesting site claimed by the Hopi had an overlapping claim by the Navajo, when they were occupied, for what purpose, how long, and how different purposes were to be weighed and why. The Commission further stated, “Archeological discoveries merely show that at some time in the distant past the Hopis had lived in the outlying regions of the claimed area and used (sic) these sites for religious purposes.”

The Commission would further reason that Hopi people had demonstrated their “acquiescence in and acceptance of their new reservation status” by virtue of statements to the local BIA office, complaining that Navajos were encroaching “on our reservation.” The

Commission failed to reference the historical record where Hopi people had presented countless petitions, lawsuits, and visits to Washington to protest adjustments to the 1882 reservation.

Between the late nineteenth century to the entering of the ICC complaint in 1951, such protests occurred on nearly twenty occasions in 1894, 1925, 1926, 1928, 1930, 1931, 1932, two such efforts in 1933, 1934, two such efforts in 1938, 1939, 1940, 1944, 1945, and two such efforts in 1951 (Hopkins and others 2017:37–38).

The Hopi Buttes Volcanic Field is one recognized area in the ethnographic literature where eagle harvesting sites are located (Fewkes 1900). This huge expanse of land (965 sq. mi) was ignored in its entirety by the Commission while also being lumped together with all other harvesting sites that are known to exist north of the reservation by a quick and simple reference to non-exclusive use. Certainly, Navajo peoples were located within the region, but the area is expansive and it is arid and mountainous, not allowing for settlements to a large swaths of the region. Moreover, the quick retort by Eggan would prove to have little cultural explanatory purchase, given that many of the “spiritual” practices he referenced actually have and continue to still have physical dimensions. Put simply, Hopi people still visit these areas whenever possible until the present day. The Buttes today are located partially on the Hopi Reservation but the majority is located within Navajo Nation Reservation, with a few individual features lying just south of the border of Navajo Reservation. As noted previously, in Article 4 of the Hopi Constitution and By Laws, the Hopi Tribal government took upon itself the duty to negotiate with outside public agencies to secure the rights of Hopi people to their eagle nesting sites and shrines in outlying areas.

The Indian Claims Commission faced an immense task from a technical and legal standpoint. The records were old and voluminous. The case presentation involved the expertise

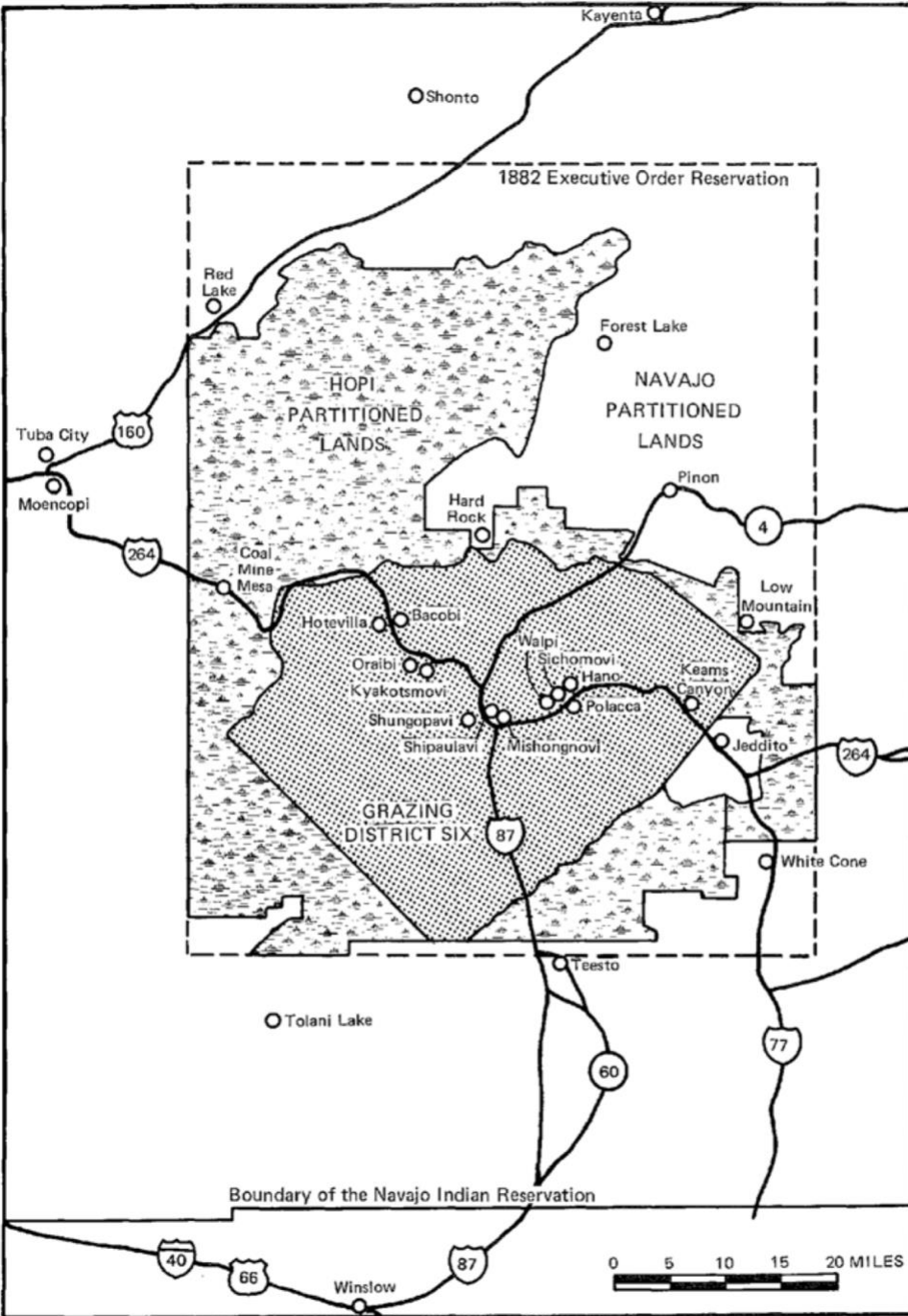
of anthropologists, ethnologists, historians, land appraisers, and attorneys. The great majority of these cases involved inadequate compensation for the area ceded as defined in the treaties. The experts had to establish which tribe lived where and when. This done, they were called upon to value the land at the “time of taking.” Then the amount paid to Native tribes had to be determined, compared to the value, and the difference, if “very gross,” paid by the government, and subtracted from the total sum were the services provided by the federal government during the interim. This often took years. Issues to be established and documented were those of fact and of law, and were complex and time-consuming. The ICC process was perhaps characterized best by federal Indian law expert, Felix Cohen, in what he called “the backwash of a great national experiment in dictatorship and racial extermination.” Cohen wanted the ICC to become an exercise in hearing and learning, so as to rewrite the future by telling the story of American history from Native perspectives, and he was heavily critical of the fact that tribes unable to retain attorneys were often left out of the process (Koffman 2019).

In handling cases, the Commission had to determine the extent to which aboriginal title was taken without just compensation. In doing so, it was necessary for the Commission to develop corresponding maps that plotted all aboriginal title that it recognized across the United States. These maps had certain Western imposed rules. Most significantly, there could be no overlapping area of aboriginal title between tribes, land must belong to one tribe and one tribe alone. These maps are still used in some administrative work such as for prima facie evidence in cases where cultural patrimony or human remains are discovered that fall under the purview of the Native American Graves Protection and Repatriation Act. Some legal matters, such as the adjudication of water rights hold from the outset that Docket 196 paid Hopi people for Hopituskwa, and for any right Hopi may have had by virtue of the Treaty of Guadalupe Hidalgo.

To that end, the Office of the Special Master in the Little Colorado River Adjudication states, “The Hopi Tribe's aboriginal water rights were incidents of aboriginal title, and the extinguishment of the Hopi Tribe's aboriginal title to certain lands, as determined by the Indian Claims Commission in the 1970s, terminated aboriginal water rights to those lands” (Brown 2013). The Hopi Tribe disputes the effect of Docket 196 and has preserved its right to appeal rulings in future litigation, such as the current Little Colorado River Adjudication, that rely on Docket 196.

The Navajo-Hopi Land Settlement Act (P.L. 104-301) created a Joint Use Area and a formal partitioning process that included livestock impoundments and relocation of Navajo and Hopi families that found themselves on the wrong side of the border. Some Navajos refused to leave, and the Hopi Tribal Council afforded 75-year leases for them to remain on the lands under Hopi tribal administrative and regulatory control. These leases were codified through the Settlement Act. The Hopi relocatees largely resettled in Spider Mound, a recently established Hopi community near Keams Canyon, and the Navajos were resettled throughout the region including in major urban areas and in small communities along and south of interstate 40. Although predicted to cost taxpayers around 41 million dollars the relocation program has far exceeded this amount many times over, with expenditures totaling well-over \$500 million.

While much of the exterior boundaries of the Hopi Reservation have largely been determined by District 6 and the 1934 Navajo Reservation Act, the so-called joint-use areas required extensive litigation and a settlement process between the Hopi Tribe and the Navajo Nation to determine other areas and cross-boundary resource rights under an Intergovernmental Compact (Clemmer 1995:235–245). The current Hopi Reservation is, therefore, principally composed of District 6, Mùnqapi Island, Hopi Partition Lands, and lands acquired from the settlement (Figure 8).



Source: Office of Navajo and Hopi Indian Relocation 1981 Plan to Congress. | GAO-18-266

Figure 8. Hopi Reservation (minus Muncapi District) with outlined District 6 and Hopi Partitioned Lands.

In addition, one area was an exception, for it was delineated not on the basis of historical settlement patterns or resource interests, but rather on account of a particular individual's

property interest. On the southwestern corner of the Hopi Reservation an unusually shaped land demarcation is observed. According to Hopi research participants, this land boundary was established during the partitioning process because of the existence of one homestead that belonged to a Navajo lawmaker. The lawmaker's clout had afforded sufficient recognition of his land claim, as opposed to the land interest of the entire Hopi people, and the narrow zig-zagged line that is observed on the map today is a reference mark to the road that leads to his family homestead (Figure 9).

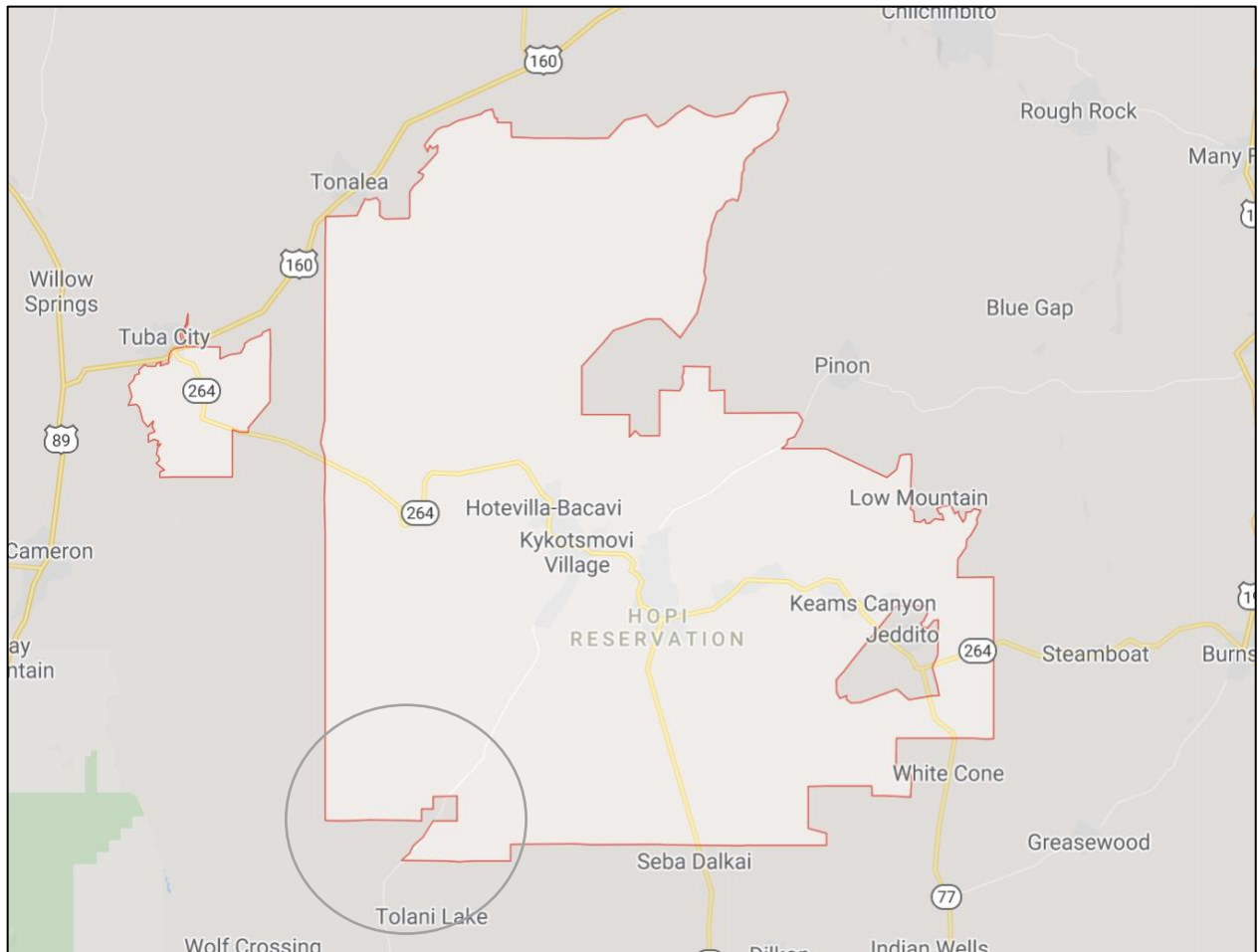


Figure 9. Map of Hopi Reservation with area encircled.

Hopi research participant comments on the 1882 Executive Order

One male research participant from Third Mesa explained the traditional concept of Hopitutskwa as indexical of particular landscape features: “The villages, the ceramics, known landscape, rivers, are all footprints combined with clan knowledge of some of these areas because these things are literally intertwined with how we look at our ancestral past today.” He then went on to index the retention of place names of Hopi ancestral sites that are indexed and used in contemporary Hopi religious practices:

Take songs, for example. They have these place names still sung in these songs. Songs mention places like Mesa Verde which we call Salapa, and many, many Hopi clans are associated with that place. So that word Salapa is routinely composed into these types of songs. It reinforces people’s knowledge that they have already when visit these sites. The history of these sites and the songs about them are still old, old compositions of what happened there and what was part of the different clans as they began to go into some of these big sites prior to coming out to Hopi.

Hopi thought and religious ideas about Hopi lands are broad in scope. One research participant explained, “Hopi people are the grandfathers of humanity because of our ceremonies which preserve the whole world and keep it in balance for everyone. In that sense, it’s all lands that belong to Hopi people, it’s the whole universe. Hopi people are the grandfathers of the universe.” Notwithstanding, the various features that mark the migration routes of Hopi clans fulfilling the covenant that was entered into with M̄asaw, a certain area is considered of utmost cultural and religious importance. This area is often referred to as *kiisonvi* (plaza or heartland), a core area of Hopitutskwa (Figure 10) (Hopkins and others 2017). Administratively, the Hopi Tribe may defer to another tribe in consultations when certain areas are of great distance from the reservation. However, culturally speaking, the boundary of Hopitutskwa is considered to extend from the Colorado River to the Rio Grande, and as far south as the Isthmus of Panama or even South America (Hopkins and others 2017). The northern claim is said by some Hopi

research participants to be inclusive of all of the North American continent. One Hopi research participant explained, “There is a flute player petroglyph in Alberta, Canada. Our people went everywhere. They just kept moving.” Another research participant referred to the Cherokee people as “cousins” of the Hopi, because some Hopi clans that came up from the south went east across present-day southern Texas. “Some of them went into Georgia and others went north at the Mississippi River, until they reached the Snake effigy mound in Ohio. There, they had to cross the mound in order to escape their enemies. They joined with Cherokee ancestors until at some point the present-day Cherokee went southeast.”

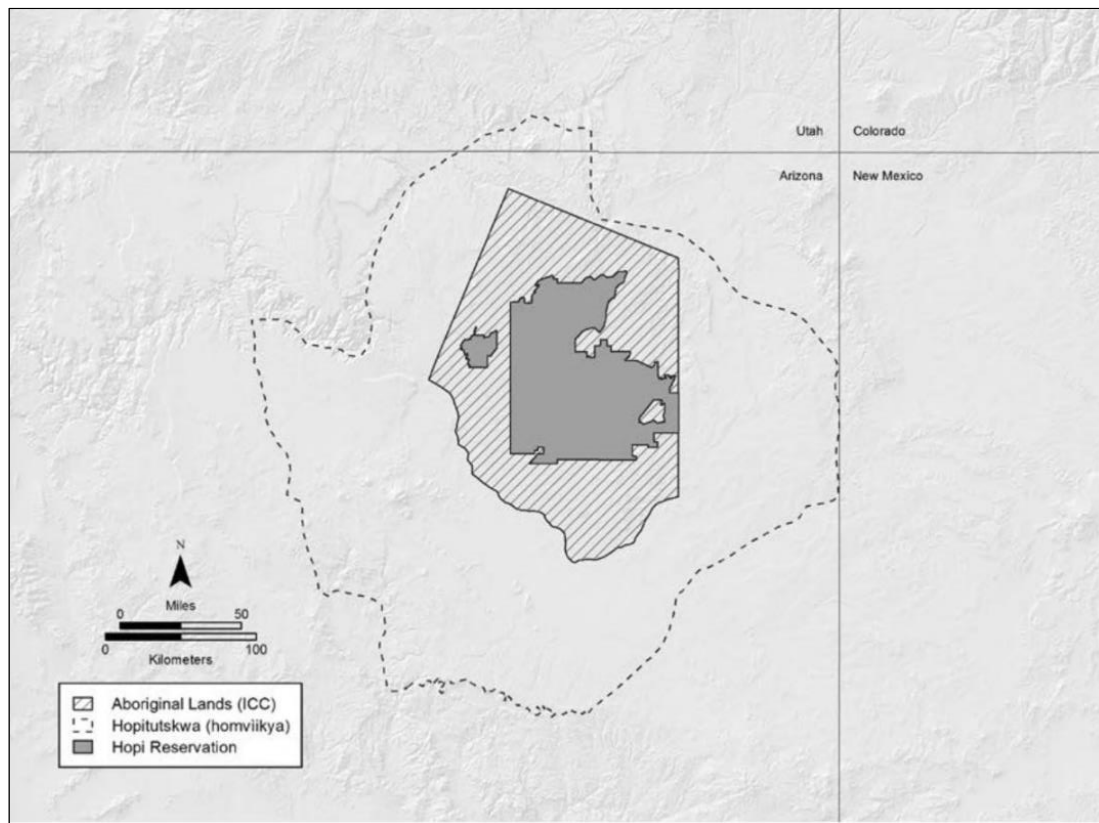


Figure 10. Hopitutskwa core area overlaying ICC aboriginal lands determination and present Hopi Reservation. Source: Hedquist and others (2018).

In regard to the present reservation boundaries, both positive and negative affective ideologies were indexed. One male research participant from Second Mesa explained, “We are in

occupied territory. Plus, we are the only tribe to have a reservation within a reservation. But, you know, we're not a reservation—that's a misnomer. We don't talk about it like that. This is our homeland, or our home. People should quite calling it that. We don't call it 'the rez.'" Hopi stylistic contestation as unique or particular within Indian Country when it comes to the law's import has been referenced repeatedly throughout this study, although cultural alignments to other Native peoples are also readily apparent.

The legacy of the formal partitioning Hopi and Navajo lands still has reverberations today. While driving away from the Hopi Reservation with one research participant from Second Mesa, he showed me the present boundary as well as the original boundary line of the 1882 reservation to the south. "You see that arroyo right there, that was the 1882 reservation boundary," he stated. The land was wide open, with only a few dilapidated and presumably unused corrals in sight. He was explaining how he and his son enjoyed grazing livestock with stock horses. I asked if any Navajo people grazed in the area. "No," he stated, "I just don't understand why we can't do some grazing around here." He then went on to discuss some of the current conflicts between Hopi and Navajo people. He explained that there exist a clandestine group of vigilante Navajo youth who call themselves, "the Keepers." They drive along the highways just outside of the Hopi Reservation where "police are never around." He then recalled one incident where he had personally encountered this group:

I was driving with my son in the truck along Route 15, that's a very dangerous road at night for Hopi people to be driving on but you know I didn't have a choice in that instance. All of sudden a white truck pulled around us and drove in front of us some yards ahead. The driver then turned the wheel sharply and slammed on his breaks so that the truck was perpendicular to the road. I stopped my truck there and noticed there were four people in the truck and they all wore bandanas as masks. They all just sat there staring at us. My son and I had been out hunting that day so I had my rifle with me. I grabbed the rifle and placed it on the dashboard. I was very thankful. The men sat there another ten minutes staring at

us until they eventually drove off. These are the group that call themselves the Keepers.

Several other research participants noted their own difficulties caused by the land conflict. They recalled their experiences with young white tourists who visit the Hopi Reservation. These tourists spoke to some research participants and repeated a critical view of Hopi people that they had heard from some Navajo people who they had visited previously. A female participant from Second Mesa explained, “Navajo people tell these young white kids that we are really bad people and then they come here and accuse us directly saying, ‘you Hopi people are destroying Navajo culture.’”

The ruling of the ICC also played some part in Hopi legal discourse. As noted, one of the ICC’s findings was that Hopi people acquiesced to reservation boundaries. This final point was raised during fieldwork through a conversation with one of my research participants. The First Third Mesa resident who was female noted that during the early reservation period many Hopi religious practitioners would leave the reservation in order to visit shrines used prior to important ceremonies. In addition, the research participant noted, “I have heard stories that the religious practitioners would go off the reservation to practice their songs when they were being forbidden from doing so in order that they would not be forgotten. They would stand out in the middle of a field and just sing their songs for practice. Thinking of that, it just makes me very sad.”

The reservation boundaries were eventually surveyed, and a male research participant from Second Mesa referenced oral history regarding that process: “When the land surveyors came out here, people say that some Hopi men went out to the area where the surveyors were and they would lay down a U.S. Flag on the other side of the land that they claimed. Some of this stuff, if you think about it, is kind of funny.” The area of land demarcated to provide legal recognition of the Navajo lawmaker’s homestead is indexed through stories passed down from older family

members. One participant from Third Mesa stated, “Hastiin Yazzie. That was his name. That’s what my uncle used to call him. ‘Hastiin’ means like sir or man [in Navajo]. He was a Navajo lawmaker that worked on Hopi. He was then appointed to the Navajo Council which he sat on and basically voted ‘yes’ with anything that had to do with natural resource development on the Hopi Reservation.”

In terms of the ICC legislation, research participants focused on the historical context. One research participant from Third Mesa stated,

The law that established the ICC gave deadlines for tribes to file a claim. Its purpose was to make amends to tribes for all lands they had lost to the government. My grandfather and them who were proponents of the council they learned they were going to be compensated for the land. And their position was our land is not for sale. So, to their credit they opposed it through the 1930–60s. They didn’t want to lose any more land, particularly to Navajos, and they didn’t want to be compensated for the land thinking that if they accepted the money that would end our interests beyond the 1882 reservation. It was eventually brought up again by John Boyden who was good friends with the chairman at the time, who was Mormon, too. That’s why the connection. The remnants of this council at that time only included the chairman, vice chairman, and tribal secretary, I think. So, Boyden’s pitch was that it’s not about land but about compensation and there’s a deadline for the Hopi tribe. The chairman was a good chairman, went to all villages. Boyden put pressure on them. Look, they’ll be some money for you guys. Cause you know the council had no money at that time, all way into the 60s. You guys can [finally] get paid, that kind of stuff. The villages rejected it. So, the chairman relied on his friends who supported him, mostly from Songdopavi and Musungnuvi. Well, chairman we’ll draw some lines on the map because we have clan traditions in this area. Since no other villages wanted to participate, the chairman and other guys just decided let’s just file and at least get a little bit of money. We didn’t get much, just 32 cents per acre.

Finally, the view espoused in *Johnson v. M’Intosh* that holds that the Hopi Tribe only has a right of possession rather than ownership was also discussed by research participants. One male research participant from Third Mesa referred explicitly to this matter:

They tell us we are wards of the government, and that the Hopi Reservation land is actually federal land—that’s the quick answer. But as a Hopi that’s not acceptable. Within Hopi villages, like in my family, I’ve got farming lands through a process that we have as a traditional law, you know. Part of a common practice, you know. Like when

my grandfather split from Orayvi in 1906, that land he acquired was then handed down to my uncles. Then my uncles gave that to me in writing. In accordance with our own laws and common practices.

Again, it bears repeating, the quotation provided by the research participant from Third Mesa, who stated, “There’s a real problem with the fact that the Tribe cannot take on debt like any other sovereign in the United States. Our lands are held in trust status. As long as we don’t have complete control of our lands, the right of ownership this is a major problem, because we have nothing for collateral. That’s just crazy.”

Male research participants largely focused their comments on Hopi aboriginal claims. Female participants on the other hand more often referenced oral histories about the reservation. There was no distinguishable difference between Hopi clans. As for Mesas, residents of Second Mesa discussed cultural and religious practices of Hopi people as pertaining to the Hopi aboriginal land base, and residents of Third Mesa discussed technical issues with the “reservation” system in terms of contemporary economic development.

Chapter 11. Conclusion (and some analytical remarks)

This research aimed to investigate how Hopi people use legal and regulatory language when talking in English, and what explains how it is used. Secondly, I wanted to understand how these uses, through various metasemiotic models, might help to explain and detail Hopi cultural sovereignty, especially considering that law, following Bourdieu, has long been referred to as a universalizing attitude. Semiotics was useful in this effort, for as a field of intellectual pursuit it helps to indicate and clarify ideas, beliefs, and attitudes. The collaborative research methods were also instrumental in providing access to participants and building rapport within the research.

I have outlined the basic statutory language for each of the seven statutes reviewed and provided Hopi perspectives of each of these laws. For instance, I have mentioned several instances where specific provisions of laws or regulations were referenced by Hopi informants, including the courts' interpretations of those legal instruments. The following table (Table 7) list some of the principle statutory provisions which Hopi research participants referenced.

Table 7. Statutory and regulatory language referenced by research participants.

NHPA	NEPA	ESA	IACA	AIRFA	Hop Constitution	E.O. 1882
Historic property	Productive harmony	Eagle protection	Tribal members	Access	Self-governing villages	Reservation
Traditional cultural property	Enjoyable use	Unlisted species	Indian (Hopi) art	Free exercise of religion	Sovereignty	Native title
Government-to-government consultation	Cumulative impact			Substantial burden		Abandonment
	Stewardship					
	Future generations					

Each of these statutory provisions have carefully been discussed in this dissertation in terms of Hopi ideas, beliefs and attitudes concerning their meanings, both in terms of how they connect to Hopi cultural ideas and practices, but also as a matter of structural relations, between villages and the Hopi Tribal government, and the Hopi Tribe vis-à-vis the United States federal government. For instance, the concept of traditional cultural property was interpreted as too narrow for it lacked the precedence of Hopi people as grounds for recognition of cultural areas, as well as any cognition whatsoever of “emotional, spiritual connection.” This is relevant to legal analysis in many cases, given that the statutes aim to protect Hopi cultural and religious systems, and given the government-to-government role in consultation that is purportedly the standard for effective government action. Interpretations of statutory provisions, coupled with explicit statements regarding structural relations, also appear to challenge Bourdieu’s notion of law as a universalizing attitude as it applies to Hopi society. Cultural sovereignty, as defined by the covenant with Mâasaw, is the primary universalizing attitude upon which even laws may be subjected to evaluation. Therefore, culture, its associated ideas and expected behaviors, appears imperative to any discussion of social change and development (not to mention to the distribution of knowledge), and in some cases or societies, this may be even more fundamental than the legal order, and may even directly contest that order. As a human rights concern, the covenant with Mâasaw, and its stewardship and relational orders upon which it is predicated, appears to emerge as the reporting mechanism for the protection of Hopi political, civil, cultural, social, and economic rights, as so enshrined as legally binding obligations under the International Convention on Civil and Political Rights and the Convention on Economic, Social, and Cultural Rights, treaties which were divided as a consequence of Cold War politics following World War II, and nothing more, and both of which the United States has ratified.

I began the research by proposing three possible variables: Mesa affiliation, gender, and clanship. These were my biases walking into Hopi as someone who knew very little besides what I had previously read in the academic literature or popular media. I selected these categories on the basis of the ethnographic literature which had repeatedly noted their salience as concepts within Hopi culture. While this certainly proved to be correct as reflected in certain salient features of a Hopi legal discourse (Table 8), at other moments the most recurrent distinctions made by research participants were not on the basis of these three variables, but rather others. In some ways, as became clear in moments of the study, it would appear to be that the “re-righting and re-writing” of the ethnographic literature on the Hopi is a crucial undertaking, and I have sought here to explain a few areas where I have noticed disjuncture, sometimes even major ones that harmed the relational nature of the research, between what ethnographers say about Hopi and what Hopi people say about themselves. The question of whether this was due to an emic/etic view, or rather on account of which points are emphasized and truly and thoroughly investigated is a matter of conjuncture and presupposition, as it is rooted in a past that at this point no one can truly know. To me, it is either a matter of invented tradition faced by a marginal group struggling to retain its autonomy, or the failure of early ethnographers to engage in due diligence or comprehensive investigation. Neither option appears to me to be terribly surprising or noteworthy.

The claim by some anthropologists that Hopi society is based on “power” and “hierarchy” was a point of significant disagreement, because, in part, leadership is purely a set of responsibilities (read: not elitism, too; everyone matters equally in ceremony, because every person “is a cloud”), “to be a father” (*na’amni*), and to be humble (*okiwa*). Therefore, to speak of an “inner circle,” as is so common in Western politics, or to speak as though one has authority

over others is considered “not being hopi” (*qa hopi*), ill-mannered or misbehaving. Hopi village or traditional governance is based on territorial jurisdiction (topographic markers designate particular boundaries, for instance), coupled with a patchwork of responsibilities and relationships, in which a duty is taken on according to individual preference and subjectivity as well as set of relations. One example of this from the research relates to the enforcement of customary Hopi criminal law during the Spanish period when a particular missionary committed an act of egregious violence against a Hopi man by setting him on fire in the middle of a village plaza for “idolatry” (see, Sheridan and others 2020).

RPTM: One of the priests was thrown off the Mesa, you know.

MS: I’ve heard that.

RPTM: The story I was told was that there was a meeting at that point among the villagers and a particular clan stepped forward and accepted the responsibility and there was a ceremony then when a katsina was brought forth.

MS: Really? I didn’t realize it was connected to a particular clan.

RPTM: Oh yes. That’s important.

I noticed that Third Mesa residents were quick to employ a bureaucratic-styled register, although certainly with Hopi cultural tropes also encoded in their speech, while Second Mesa residents communicated more on cultural notions and a philosophically-styled speech, interpreting statutory provisions, rather than commenting on structural problems in procedural or technical aspects of the law. However, it was rare that distinctions could be made on the basis of the three variables chosen. Research participants “pointed to” other variables as more significant, particularly religious society initiation and age group (particularly, one’s elderliness). Since, however, these two variables were not part of my research, I will have to reserve any conclusive statements here regarding them.

Table 8. Data of Hopi research participants patterned statements regarding the seven statutes and on the basis of research variables.

	Gender	Mesa	Clan
NHPA NEPA	Female: younger generations needs for development; Hopi village protocols. Male: older generation needs for development; ceremonies and archeological sites; employment.	First and Second Mesa: Hopi interpretations of provisional language. Third Mesa: U.S./Hopi structural relations.	Clan: particular sites; family connections.
ESA	Female: village ceremonies that rely on eagle feathers. Male: cultural ideas about eagles; Hopi emergence story; preparation rituals for collecting.	<i>(repository only)</i> First Mesa and Second Mesa: cultural practices associated with acquiring eagle parts. Third Mesa: wait time and kinds of religious paraphernalia created.	Clan: whether had a harvesting site.
IACA	(katsina carvers) Female: earning a livelihood. Male: creativity and family relations; roles (pottery). Female: roles or family traditions. Male: roles or creativity. (membership) Female: “that which is inside you.” Male: Hopi as a state of “becoming.”	(pottery) First Mesa and Second Mesa: family traditions and First Mesa. Third Mesa: First Mesa. <i>Otherwise, no obvious distinctions or divergences.</i>	<i>No obvious distinctions or divergences.</i>
AIRFA	Female: historical trauma, distrust, and regional power relations. Male: pilgrimages; a Hopi-inflected interpretation of “substantial burden.”	<i>No obvious distinctions or divergences.</i>	Clan: particular sites
Hopi Constitution	Female: village autonomy; “traditional politics.” Male: areas of constitutional reforms.	<i>No obvious distinctions or divergences.</i>	<i>No obvious distinctions or divergences.</i>
Executive Order 1882/ICC	Female: Oral histories of elder relatives. Male: Hopi aboriginal claims.	Second Mesa: cultural and religious practices of Hopi people as pertaining to the Hopi aboriginal land base. Third Mesa: technical issues with the “reservation” system.	<i>No obvious distinctions or divergences.</i>

The question might then be asked what does all this have to do with semiotics and the indexical order. Put simply, the indexical order relates to three-tiered orders that relate to an

object (including metaphors and metonyms of social groups), a position or attitude regarding that thing, and a social value connected to a particular object, in terms of first-, second-, and third-order, respectively. The three variables of the research, and in particular the statements of my research participants, can be observed and evaluated in terms of their indexical reference on the basis of the indexical order. I have plotted the ways in which each variable is represented indexically according to the seven statutes of the research (Table 9).

Table 9. Research variables as related to the indexical order.

	NHPA	NEPA	ESA	IACA	AIRFA	Hopi Constitution	Executive Order 1882
1st Order	Clan (particular sites or areas)	Clan (particular sites or areas)	Clan (particular harvesting sites)	Gender (on art production)/Mesa (on family history)	Clan (particular sites)	n/a	n/a
2nd Order	n/a	Gender (positional framing on forms of development)	Mesa (positional framing on repository)	n/a	Gender (positional framing, both structural and interpretative on religious freedoms)	Gender (on positions in regards to constitutional reforms and village autonomy)	Mesa (on positions related to the Hopi land base)
3rd Order	n/a	Mesa (social values as interpretative of the present legal framework)	Gender (values of ceremonial participation and implications of migration accounts)	Gender (on values associated with the behaviors of being a Hopi person)	n/a	n/a	Gender (on social values which esteem elderly Hopi individuals and the social values attributed to Hopi aboriginal claims)

I think this research could have developed even further if I had been able to relocate to Flagstaff and thereby spend more time on the Hopi Reservation. Due to work obligations and the significantly higher cost of living in Flagstaff than where I was living during my Ph.D. program, this was not possible. However, an essential and critical need of research within Hopi communities is to be present, visible and active, and to build relationships. I had some success at this given the time I had committed to I building relationships with some individuals prior to the

commencement of fieldwork, but I think it must be acknowledged that this too had its limitations because the interactions were often only brief.

I propose that what I learned most from this work was that Hopi migration accounts and the like involved me too, because migration accounts and their ceremonial and stewardship engagements as connected to the covenant with M̄asaw and as continued today, involve all of humanity, but also the very human rights of Hopi people. I have also come to appreciate further that Hopi people wish that and must be respected and left alone in their ceremonial lives. It was from that understanding that the work moved forward, and I think it is something, thanks to the people involved, that became explicit in my understanding of Hopi society and culture, its changes and developments, by the end of the research. I endeavored at all stages of the research to demonstrate deference to Hopi people, and craft a dissertation that “spoke back” to Hopi people. I am extremely appreciative of their efforts.

I sought to explore by circling back on these statutes and regulations what explains how Hopi people speak about the law. Rather than a “universalizing attitude” being attributed to law, I found and argue that it is a cultural framework that is actually the universalizing force in terms of Hopi social practice, administrative work, and personal attributes of identity that explain Hopi experiences, ideas, beliefs, and attitudes related to the legal order. Cultural sovereignty seems to be of crucial importance here, as an additional framework to political sovereignty and the fiduciary responsibilities of the United States towards Hopi people. I contend that cultural sovereignty helps to understand the essential concept, ideas, and practices of tribal sovereignty, and particularly, in this case, Hopi sovereignty. Cultural sovereignty in some ways converges with political sovereignty, and legal structures, but at other times it directly contests them and is a social force of transformative politics of self-knowledge, particularly as a matter of external

Hopi relations. In terms such as this, cultural sovereignty speaks to individual agency, experience, and interpretation, but also to the deeper issues at play in terms of engaging with non-Hopi peoples, such as respect, being listened to, and allowed to speak, if not decide. It also entails a Hopi sense of the world, where all things and objects and behaviors become interpreted and interpretable through a Hopi framework. This framework is no doubt multifaceted as it includes a range of statements and possibilities such as: “We are a matrilineal society;” “We are losing our full-bloods;” “[In terms of initiation into Katsina society at a Third Mesa village,] there are always exceptions and right now that exception is for children [with a matrilineal claim] of members of other pueblos,” “[Referring to returned Hopis on the reservation] people can call you *Pahaana* but if you decide for yourself you want to be responsible for ceremonial ways, then it’s there;” “each clan is independent;” “it’s what’s inside you;” “[referring to clan farm lands for an unenrolled fluent Hopi speaker,] it’s a cultural allotment;” “we just want to be shown respect;” “leave us alone;” “sometimes I have to tell tourists not to ask too many questions;” “if your mother is Hopi [but you are not enrolled] and you are initiated, and you want to make some art, then I think that’s just fine;” among many others. For these reasons, cultural sovereignty may have much more to do with natural law and moral sense of right and wrong and the dictates of Hopi reason than with a statutory legal order, but that statutory order can and ideally will in time be interpreted in order to fully account and appreciate cultural (and political) sovereignty.

Finally, I have to consider the implications of this research considering that this study developed under relational obligations of a collaborative project with the Hopi people. I consider this aspect of the work in two points: future implications for my own research, and possible recommendations that could be made to the Hopi Tribe. For one, this research would not have

been possible but for the assistance and guidance of Hopi scholars. In my human rights work, I found it essential and crucial in terms of effectiveness to collaborate with local attorneys. Here too, the extended conversations I enjoyed with Hopi scholars helped to elucidate cultural ideas and connections in terms of Hopi natural law as fundamentally connected to the dictates of Hopi reasoning. It certainly helped to deepen my understanding of Hopi cultural ideas, contemporary issues, and forms of reasoning. I think collaboration, for me, must move forward with building community projects of study, rather than collaborative research as so often defined in the literature as solely based on benefit sharing, and maybe peer-review. Collaborative research may be defined as “answering questions that communities have,” but it may also be defined as doing so within a framework that speaks the culture back to the community and concentrates on topics that people wish to discuss in a relational and respectful manner.

As far as recommendations I could proffer to the Hopi Tribe as an implication of my research findings, I think one in particular stands out. It seems given the depth and recurrence of statements reported herein that taking a more foundational and fundamental approach to Hopi natural law could prove useful in promoting and realizing the rights and basic principles of governance and decision-making of Hopi people as they are understood. A Hopi Natural Law Commission could perhaps achieve this aim by acting as both an advisory policy body and a reporting mechanism for receiving individual or collective petitions. Hopi departments who develop base programs could thereby be offered assistance in developing programs in accordance with Hopi forms of thought and practice that are consistent with a cultural sovereignty model. In interviewing one Hopi Tribal office, I inquired as to the office’s mission or purpose; however, it was reported that the office lacked any such statement. Perhaps a Hopi Natural Law Commission could be of great assistance in explaining to Hopi people the benefits

of their government, and integrating into government practices Hopi cultural understandings and indeed Hopi language, its lexicon but also its wealth of concepts that might lead to very different aims and processes than a Western-styled system, such as Hopi emphasis on interdependence as incongruent with Western concepts of centralization in government. The work of the Haudenosaunee Confederacy, the White Earth (Anishinaabe) Reservation, and the Navajo Nation to craft and develop particular statutes, institutions, programs, and even constitutions using an Indigenous-inflected, cultural sovereignty model are particularly on point here.

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