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A CASE OF WATER: A RHETORICAL ANALYSIS OF THE LEGAL AND SOCIAL
EFFECTS OF THE ARIZONA V. NAVAJO NATION SUPREME COURT CASE

By

MYKEL PATRICK GREENE

Bachelor of Arts, Eastern Washington University, Cheney, WA, 2022

Thesis

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for the degree of

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A Case of Water: A Rhetorical Analysis of The Legal and Social Effects of The Arizona v. Navajo Nation Supreme Court Case

Chairperson: Dr. Greg Larson

The water crisis effecting the Navajo Nation is among the worst in recent memory—a situation that has only been exacerbated by the U.S. Supreme Court’s 2023 5-4 decision in favor of Arizona in the case of *Arizona v. Navajo Nation* 599 U. S. ____ (2023). This case, which was the culmination of a 20-year legal battle, sought assistance and potential aid from the federal government regarding water usage and assessment. However, considering the *Arizona v. Navajo Nation* decision, the Navajo will have to manage this crisis alone. This paper will use frame analysis to identify the various frames the Navajo legal team and government use. The legal team **framed the water crisis to garner support** from the United States government. Additionally, the eventual decision in favor of Arizona leads to the **two main frames of the Navajo government: a sense of opportunity and a sense of loss**. Inspiration for the frames comes from literature on nuclear colonialism (Endres, 2009) as well as the Red Power movement of the 1960s and 70s. My evidence comes from specific artifacts, such as the opening remarks of Navajo Counsel Shay Dvoretzkey, as well as direct information from the Navajo Times and specific releases and speeches from the Navajo Government. This paper utilized a frame analysis built from the definition described by Goffman (1974) as a rhetorical technique to understand how the water rights case and its immediate aftermath were framed and to show how the leaders crafted their responses. Several frames were created based on the analysis. From Dvoretzkey’s arguments, three key frames were noted: framing the case as an issue of broken treaties, fairness, and an issue of moral duty. In the immediate aftermath of *Arizona v. Navajo Nation*, the tribal government found itself split into two factions, some focused on the opportunities the case presents and others focusing on the loss and its negative attributes. The frames employed by both groups tell a story of heartbreak and defeat, as well as the opportunity for something greater.

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A Case of Water: A Rhetorical Analysis of The Legal and Social Effects of The Arizona v.
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Chapter 1: Introduction, Literature, & Theoretical Framing

Cassie and Donavon Scott are members of the Navajo tribe living near the town of Page, Arizona. Cassie is the Vice President of the Lechee Tribal Housing, and the Scotts live near its headquarters in a double-wide trailer that lacks running water or indoor plumbing. Like several of their neighbors, the reason they have no access to running water is the \$10,000 cost to link up with the water pipeline that supplies water to those who are connected to a nearby reservoir. Armed with a 750-gallon tank, the Scotts rely on a water truck to provide them with enough water to survive and go about their lives. The Scotts' story is not unique on the Navajo Nation, where roughly 30% of the population lacks reliable access to clean drinking water, according to the Navajo Water Project. Whether it is from a contaminated water source or a lack of indoor plumbing, the reality of water insecurity and the need for water storage tanks is one that many families within the Navajo Nation must face.

The Navajo are a North American Indigenous tribe located across 27,000 square miles of land in northeastern Arizona, northwestern New Mexico, and southeastern Utah. This area has been designated as tribal land since June 1, 1868, with the signing of the Treaty of Bosque Redondo. As of 2023, almost one-third of the reservation's 170,000-person population does not have access to a reliable source of clean drinking water, and thousands live without any running water (Sullivan). Although the Treaty of Bosque Redondo with the Navajo (1868) and the Supreme Court case *Winters v. United States* (1908) made the United States government responsible for maintaining Navajo water rights, in 2023, the government challenged the Navajo's requests and won the Supreme Court ruling (*Arizona v. Navajo Nation*). *Arizona v.*

Navajo Nation established that the U.S. is not responsible for building pipelines, pumps, or wells for the Navajo, instead leaving the water infrastructure responsibility to the Navajo Nation. This change was devastating for the Navajo. Their primary goal in *Arizona v. Navajo Nation* for the Navajo was to obtain a water assessment from the U.S. government. This assessment could have been used to identify problem areas of the Navajo's water system and work with the Navajo to design solutions and start developing a plan with the federal government to help alleviate some of the water crisis. The ruling, along with ongoing struggles with the states of the Colorado River basin, presents significant hurdles to the Navajo Nation's ability to create and maintain water infrastructure. Left out of the Compact and therefore kept away from the negotiating table, the Navajo Nation has struggled to assert rights to this resource, and, as of the 2000s, debates about the Navajo Nation's use of water from the Colorado River remain unresolved. Moreover, with *Arizona v. Navajo Nation* ending a 20-year legal battle for the Navajo against the United States government, the water situation has continued to deteriorate.

With the world in a climate flux, water is becoming even more sought-after than ever, especially in the ever-expanding yet permanently dry Southwest. On one hand, it is essential to regulate water usage and take care of the watershed so all can use these natural resources. However, it is also important to acknowledge the Navajo Nation's claims for why they deserve at least a water assessment, as well as the ways they frame these claims through the rhetoric of their legal team. In this project, I have reviewed previous studies conducted by researchers like Danielle Endres, who focused on the Shoshone and Paiute's struggles with the federal government dumping nuclear waste on their land, along with the works of classic Native resistance movements like Red Power and the American Indian Movement or AIM. I conducted a frame analysis based on the argument that the Navajo Nation's legal team takes advantage of

framing in how they present their case to the Supreme Court. As a result of the Supreme Court's decision for Arizona in *Arizona v. Navajo Nation*, the Navajo government was divided, and each side utilized framing to discuss the loss with the public. This framing resulted in the creation of two sides, each having intense feelings about the case. Overall, the goals associated with this project were to analyze and identify the themes utilized by the Navajo legal team in the Supreme Court, as well as the Navajo government in the aftermath of the loss.

Background: The Navajo Water Crisis

Three key issues rise to the surface when examining the causes of the Navajo water crisis: lack of access, lack of infrastructure, and lack of potable water. Looking first at the lack of access to water, the basis for this project comes from the 2023 Supreme Court decision against the Navajo Nation in *Arizona v. Navajo Nation*. This decision removed the United States government's obligation to the Navajo regarding the potential assessment of their water infrastructure and implementation of government assistance in mitigating the water crisis. The first Colorado Compact law, which is recognized as the law of the river and its usage, was passed in 1922, two years before Native Americans were federally recognized as citizens under the Indian Citizenship Act of 1924. The Compact is crucial for understanding the context of the water crisis; it states that members of the Compact cannot affect the obligations of the U.S. government to tribes, meaning the water the government takes to provide for its obligations is not counted as part of the Compact. This gives the federal government rights to the tribe's water allocation precedent if the federal government chooses to act. Still, because of *Arizona v. Navajo Nation*, the obligations the U.S. government has had as an overseer of water rights can be seen to not hold due to the government officially taking a step back and giving more autonomy and, therefore, responsibility to the Navajo when it comes to water access.

Second, looking at the lack of infrastructure, water projects in the Navajo Nation have been proposed and passed but still need to be finished, and the effects are noteworthy across the reservation. As noted by the Indian Health Service (2012), 30% of households in the Navajo Nation lack access to public water or indoor plumbing. Additionally, 12% of the tribe's public water systems suffer from health-based violations, which is more than double the national average. Showing a lack of proper water infrastructure and evidence of the third and final cause of the water crisis: potable water. As noted by Hoover (2016), there are 500 abandoned uranium sites across the southern United States, and these sites jeopardize the safety of drinking water found in surrounding areas. Many of these sites are within the Navajo Nation, thus potentially contaminating Navajo water sources, a risk that is only heightened because the sites are unregulated due to a lack of infrastructure. These unregulated sources are the norm for many who lack access to regulated, safe sources of drinking water. Due to the issues related to water access, infrastructure, and drinkability, the Navajo find themselves on the edge of disaster and at risk for long-term complications if they are unable to find constant and stable sources of water for their people.

Another contributing factor to the water crisis is the colonialist actions of the U.S. government. We can see the exertion of colonial power through the historical water projects that have occurred in and around the Navajo Nation. Bray (2021) notes explicitly that, in the 1960s, two federally funded projects were approved at the San Juan River to help irrigate the region better. One is known as the San Juan Chama Project, which designated water for urban use in New Mexico. The other, the Navajo Indian Irrigation Project, was set to provide water to family farms in the Navajo Nation. The first project was completed on schedule in 1976. However, the Navajo Indian Irrigation Project, even now in 2024, has yet to be finished. Bray (2021) refers to

this inequality as a measure to appropriate Navajo resources and show colonial dominance. Colonial dominance is further outlined by the Supreme Court case *Arizona v. California*, in which the government kept the Navajo from the water bargaining by maintaining their position as the overseer of their rights. (1963). Overall, the U.S. government's actions toward Navajo water affairs form a pattern of inaction dating back at least 60 years, with Navajo projects and needs not given proper attention. The government has only sometimes put the needs of the Navajo as a primary concern. According to the Navajo Water Project, this repeated inattentiveness has resulted in a lack of proper infrastructure. Along with the cost of water being 72 times higher than the national average, which reduces access. The actions of the U.S. government clearly show attempts to maintain control over Native water rights, but with the Navajo water crisis in full swing, it is clear their control has not garnered success in maintaining a water system.

Understanding the political debates regarding the lack of clean water infrastructure available to the Navajo Nation requires reflection on the dual power of water as a resource and as a colonialist bargaining chip. Using natural resources as either a bargaining chip or a threat has influenced the decisions of state and federal government organizations. The current rule of the land regarding Native Americans and drinking water was established in *Winters v. United States* in 1908. The Supreme Court ruling gave the United States the responsibility to provide the tribes with access to reliable sources of water (*Winters v. United States, 1908*). Many tribal nations, including the Navajo, trusted their water rights to the United States government so the government could serve as a negotiator in future water deals. One hundred and twenty years later, many tribes still have their water rights managed by the United States. This management continues to give the government the final say on how the tribes obtain and use water. Through

this government management, other groups like the states of the southwestern United States have gained significant power in water disputes. It should be noted that the state of Arizona has had a significant influence on water management due to its membership in the Colorado Compact and being the primary state that the Navajo Nation calls home. The politics and red tape associated with water in the region show signs of water colonialism tendencies at the state and federal levels.

As a concept, water colonialism naturally stems from colonialism itself. Colonialism refers to the policy or practice of acquiring full or partial political control over another country (Merriam-Webster, 2024). Focusing on water specifically allows a colonizing government to maintain political control over another country, group, or sovereign population, such as the Navajo Nation. By managing a tribe's water access, the United States can exercise colonialism as both a means of control and a means of persuasion in the courts. Notably, the U.S. was able to control the Navajo's ability to negotiate for water rights because of the *Arizona v. California* (1963) case. The Supreme Court argued that enough water needed to be reserved to satisfy the future and present needs of the Natives in the region (*Arizona v. California*, 1963). Fifty years later, however, it's clear there was not enough water for the future, as evidenced by the Navajo water crisis.

With water access, it is essential to understand how Native Tribes and by extension the Navajo's situations differs from that of the average American. The Property and Environment Research Center notes some key differences between the water rights of Native tribes and water districts for major metropolitan areas. They note that specifically, the Metropolitan Water District out of the greater Los Angeles area can buy and sell water rights from other state water districts to hold off cuts and restrictions on their water usage. The tribes of that same region hold some of

the oldest water rights in that region with claim to a sizable portion of the water but without ways to utilize or market their rights for financial incentives. Tribal water rights require congressional approval for changes relating to the sale of said rights. This congressional oversight is a crucial difference between water districts and Tribal water. Not allowing the Tribes to market their rights is inequitable as without being able to generate capital, it's harder to develop infrastructure or purchase rights in times of drought. The government oversight Tribes must deal with shows inequity as well as the impact the U.S. government has on Tribal water and the need for better oversight.

Looking at how the present-day cases from the Supreme Court affect Navajo water rights and conducting analysis, it's important to first understand how past decisions are influencing present-day water policy. The Winters Doctrine, which emerged from the landmark Supreme Court case *Winters v. United States*, reserves the right of tribes to have enough water to fulfill the purposes of reservations that are actively serving as homelands (Intertribal Council of Arizona, 2011). Several principles of tribal water law are associated with the Winters Doctrine, including the fact that tribal rights are almost always superior to the rights of the state because reservations were established first. The Winters Doctrine also establishes that future needs must be met, not just present ones. With the supply of water in the Southwest shrinking, the Winters Doctrine's declaration of tribal rights and designation of future needs makes the *Arizona v. Navajo Nation* decision even more problematic. Moreover, in June of 2023, the Supreme Court ruled against the Navajo Nation in a dispute involving the use of water from the Colorado River (Phillis & Metz, 2023). The Navajo had been in intense negotiations with the state of Arizona over water use for almost two decades, with the Navajo Nation formally suing the United States in 2003, arguing that the federal government had a responsibility to quantify the tribe's water needs and attempted

to compel the government to act by helping the Navajo come up with a system for sustainability to alleviate fears for the future. After decades of wins, losses, and appeals, the result of the case would be a Supreme Court loss. Leading to a need for a new plan and potentially new ways for the Navajo to find a seat at the negotiation table. Amazingly, for both the state and the Navajo, the basis for their arguments are documents over 100 years old, the Winters Doctrine and the Colorado Compact

The Navajo's exclusion from the Colorado Compact is a major obstacle preventing them from having a legal claim on the Colorado River. The *Arizona v. Navajo Nation* decision further complicates matters, with the Supreme Court seemingly denying the enforcement of rights and protections it had granted and upheld for over a century. With little help coming from Congress, the water situation in the Southwest continues to deteriorate. As noted by Grant Christenson, a Navajo law expert, the tribal representatives argue that the Navajo are being treated as second-class citizens (Phillis & Metz, 2023). Christenson also clarifies that the Navajo are recognized as having rights to water by the Supreme Court. Still, to make these rights a reality and understand what the future could hold, we must understand the contradicting legal precedents and systemic structures against which the Navajo Nation must fight.

Background *Arizona et al. v. Navajo Nation*

The *Arizona et al. v. Navajo Nation* case has a long and impactful history in the United States legal system. The basis of the case comes from the ideas established by other cases, statutes, and legislation like the Colorado Compact, which has become collectively known as the Law of the River. Under these laws and rules, the Navajo have not been given equal footing with the states surrounding them, which in turn led to the Navajo filing charges against the U.S Department of the Interior utilizing language from the National Environmental Policy Act

(NEPA) as well as arguing the Government was breaching trust claims for not considering the water rights of the Navajo in the creation of the Law of the River. This case would lead to other groups joining the side of the Federal Government, including the states of Arizona and Nevada, intervening not to destroy the Navajo but to, in their eyes, protect their claims to the Colorado River. This renewed case, now known as *Arizona et al. v. Navajo Nation*, would spend the next several years working its way through the superior courts and appellate courts before arriving before the Supreme Court in 2022. With litigators Frederick Liu and Rita Maguire representing the federal and state parties, respectively, and Shay Dvoretzky representing the Navajo Nation, the case would be argued on March 20th, 2023.

A focus of the case would become interpretation due to the primary artifact being the 1868 Treaty of Bosque Redondo. This was due not only to the age of the treaty and, therefore, its language but also to examine closely the specific duties imposed by the treaty on the U.S. government. Liu argued that the treaty was no longer valid due to the passage of time and the lack of specific wording referring to an assessment of the water or water infrastructure in the way the Navajo claimed. In the end, this would persuade the court, with the final ruling being five in favor of the Federal Government and states and four voting with the Navajo. The majority opinion provided by Justice Kavanaugh notes this by saying, " The treaty says nothing about affirmative duty for the United States to secure water" (*Arizona et al. v. Navajo Nation, 2023*). Along with this, Kavanaugh notes the precedent set by *Choctaw Nation v. United States* in 1943, which noted, "Indian treaties cannot be rewritten or expanded beyond their clear terms." With the majority using the treaty wording as how their decision was made, the dissenting justices pointed to the nature of the Navajo request and the agreement from both sides that the Navajo do, in fact, have enforceable water rights. Justice Gorsuch noted the following: "The Navajo had a simple

ask: they want the United States to identify the water rights it holds for them. And if the United States has misappropriated the Navajo's water rights, the Tribe asks it to formulate a plan to stop doing so” (*Arizona et al. v. Navajo Nation*, 2023). This interpretation matches with Shay Dvoretzkey’s opening remarks and focuses on framing the case as the Navajo wanting their fair share more so than modifying the 1868 treaty. Even with a Supreme Court loss the fight for water will continue, and with their water rights validated the Navajo will continue to fight for their rights well into the future.

Literature Review- Resistance and Colonialism

The basis for my arguments comes from Danielle Endres' research on nuclear colonialism, and my arguments are further informed by historical examples of Native resistance, such as Red Power movement of the 1960s and 1970s. Observing how other scholars have framed similar resource struggles has allowed me to craft my framework for this project. This literature review will touch on key concepts of resistance, colonialism, and framing to give some examples of nuclear colonialism, tribal claims, and Native protest rhetoric.

Nuclear Colonialism

As defined by Endres (2009), nuclear colonialism “is a system of domination through which governments and corporations disproportionately target and devastate Indigenous peoples and their lands to maintain the nuclear production process” (p. 39). The concept of nuclear colonialism shapes my understanding of water resources as a tool of colonial control, in part because of the similarities in government behavior toward Indigenous land rights and usage of resources. Endres (2012; 2013) centers her research on the Shoshone and Paiute Tribes' fight against the United States government dumping and storing nuclear waste at Yucca Mountain in Nevada. Yucca Mountain is culturally significant to both tribes and as a result, the tribes have

fought to participate in environmental decision-making regarding the mountain. Although both tribal governments and the United States federal government saw Yucca Mountain as a valuable location, for the tribes, it was a sacred and spiritual place. For the United States, it was determined to be a potential sacrifice zone, meaning a place the U.S. government felt could be a good area to store toxic material (Endres, 2012). Nuclear colonialism and the experiences described by Endres help with understanding why the situation at Yucca Mountain is highly unethical. Endres notes, "By 2035, there will be approximately 119 metric tons of high-level nuclear waste at the Yucca Mountain site" (Endres, 2009, pg. 47). A similar situation to what has befallen the Navajo, but instead of a lack of water there is an excess of toxic materials.

I suggest similarities between nuclear colonialism and water colonialism. Both cases center on resource control—whether in terms of a lack of water or the desecration of land—and thus show the power a colonizing government can continually exert over sovereign Indigenous nations. Through nuclear testing and nuclear disposal, the United States attempted to reinforce colonial rule over sovereign tribes. Endres (2013) notes the historical impact of nuclear colonialism by the United States government on the Shoshone, with over 900 nuclear weapons tests being conducted on Shoshone land from the 1950s to the 1990s, leading a Western Shoshone spiritual leader to refer to the Western Shoshone as the most nuclear-bombed nation in the world (Endres, 2009). The government's control over resources serves the government in multiple ways, whether it be restricting access to waterways or forcing nuclear waste onto certain lands. Nuclear colonialism is a much better-explored concept with American tribes than water colonialism; therefore, by using the methods used to study nuclear colonialism, we can learn about water colonialism.

Tribal Claims and Water Colonialism

Water colonialism can be understood as the appropriation of Indigenous water (Hartwig, 2022). Those affected can be any colonized people, but the most common victims of water colonialism and water injustice in the United States are Indigenous tribes. Water colonialism has various causes, ranging from simple bureaucratic procedures to corrupt governments profiting from Native resources. With similar resistance and pushback to the oppressive systems from tribes, there is a clear connection between water and nuclear colonialism. Due to this connection, much of what Endres has contended on nuclear colonialism can be utilized with my work on water.

As I examined the intersection of water rights and colonialism, one of the critical issues that appeared throughout this case study is a lack of or insufficient claims to water rights held by the tribes, at least in the eyes of the federal and state governments. For reference Indigenous populations in the other case studies did not always have the necessary legal documents to back up their claims for assistance. However there is actual documentation regarding the government's role in maintaining water for the US. Tribes—*Winters v. United States* (1908). *Winters* established that the government is responsible for meeting the present and future needs of Indigenous tribes regarding water access. However, due to the Supreme Court's decision in *Arizona v. Navajo Nation*, which contradicts the responsibilities outlined in *Winters v. United States*, there are grounds to say that the *Winters* Doctrine has been pushed to the side. This shows that even when a court case has affirmed rights, the strength of the argument lies with those in power.

Water colonialism represents a governments ability to use water as a control mechanism. Taylor (2020) expands on water colonialism and how the government lacks legitimate claims regarding tribal water and control in the eyes of the tribes. Furthermore, Taylor (2020) posits that

the government can be willing to recognize a tribe's claim to their former land without granting material benefits or control. Instituting a policy of land recognition can symbolically recognize a place as the traditional homeland of an Indigenous group. Still, it does not extend this recognition to material claims to resources on that land. The United Nations Declaration on the Rights of Indigenous Peoples, or UNDRIP, frames the action of land recognition as ceremonial, reaffirming that all tribes are entitled to “fundamental human rights and freedoms” (UNDRIP, 2007). Return of land and recognition can have a positive political effect. Yet, as it has been done, the tribes lack total access to lands that have been taken and tapped for things like cities and campuses, given the extensive usage of the land by the United States. It cannot be expected that many major metropolitan areas could be turned over to their original owners based solely on this recognition. In the case of the Navajo, symbolic recognition is demonstrated by the government's recognition of the Navajo's traditional homeland as being in the Colorado River basin. However, recognizing the homeland has not afforded the Navajo additional water from the river nor claims that it could be utilized to gain additional access. This symbolic acceptance without any true change represents the clear disconnect between governments.

With the Supreme Court deciding not to give the Navajo a water assessment and essentially offering them autonomy, it may seem like the Government is leaning away from water colonialism since it is giving the Navajo the opportunity to do things for themselves. However, this separation from the federal Government sets up more significant opportunities for failure and, in turn, enhances the need for the Government in the future. Neglect can serve as a form of colonial control since by not acting, the U.S. government is raising the opportunity for the water crisis to continue to get worse. If the Navajo can figure out deals and lessen the extent of the water crisis, the ability of the U.S. government to retake control is still present thanks to the

water rights still being held in trust. Ironically, the British used a similar style of colonialism in the 18th century when dealing with the thirteen colonies. This idea of salutary neglect revolved around the idea of giving a sense of autonomy to the colonies through lax enforcement of trade regulations. However, it left the door open for occupational behavior in the event of uprising or unrest. As noted by Britannica, this policy would eventually lead to the colonies developing enhanced levels of autonomy, eventually leading to the American Revolution and the creation of the United States. While the U.S. policy is not salutary neglect, the key similarities of enhanced autonomy with oversight do perpetuate similar colonialist tendencies to that of the old British Empire.

Neglect as a form of colonialism can be connected to both nuclear and water colonialism. Neglect can be identified in a variety of ways, whether it be the neglect of a whole group as *Arizona et al. v. Navajo Nation* where the neglect comes in the form of giving the Navajo control over their water with restrictions on where they can get it, and a distinct lack of infrastructure when compared to other players in the region like the state of Arizona. With nuclear colonialism, the neglect exists as neglect of the ideals of the Tribe and what they want. With the Shoshone and Paiute fighting the building of nuclear waste storage sites on Yucca Mountain, the government is neglecting the opinion and wants of the Shoshone and Paiute just as much as they are neglecting the requests of the Navajo through denying them water assessment. Also linked to this is the idea of dispossession and neglecting the rights of a group to a set resource or landmark. Whether that be a river, mountain, or cultural site, dispossession of something is also a type of neglect. With nuclear and water colonialism, dispossession is a contributing factor to both issues. Neglect comes in multiple forms and can be expressed in multiple ways in relation to colonialism.

Indigenous Protest Rhetoric

Navajo Nation's struggles in the Supreme Court are marked by three key factors of resistance for tribal governments: self-determination, sovereignty, and notions of decolonization as noted by Andrew Curley a Navajo scholar and professor at the University of North Carolina (Curley, 2019). First, Curley refers to self-determination as a "tradition of Indigenous resistance" (Curley, 2019, p. 57). Self-determination boils down to control, whether that be personal autonomy or running a government. Self-determination can also apply to the method used by the government to maintain its resources, such as filing a lawsuit in the Supreme Court. Second, Curley (2019) also defined sovereignty as a tradition of Indigenous resistance but focuses on the state of the Navajo and the importance of negotiating within a colonial space, referring to sovereignty as self-governing and self-determination related to resources, the economy, and life. Sovereignty, then, is the authority to govern and establish the legitimacy of control. To achieve sovereignty, Indigenous groups must fight and push the powers at hand both for recognition and for the ability to control their people and resources. For the Navajo, sovereignty is their ability to run as a self-governing state within the United States. Navajo sovereignty has, at times, been questioned or fought, especially when it comes to resource control. Third, notions of decolonization are a rallying cry, showing resistance to the current system. Decolonization expands beyond the return of resources; the ability to receive and utilize the resources is equally important (Curley, 2019). In fact, Curley defines decolonization in the realm of the Navajo as challenging the premise of Western water law (Curley, 2019). These strategies helped the Navajo to stand up to the government's decision-making.

Decolonization rhetoric is a constantly changing and adapting strategy of resistance. According to Black (2009), decolonization rhetoric has been used since the 1830s in response to the Indian Removal Act. Indigenous folks who were forced out of their homelands while

attempting to expose issues related to the government and the government's justification for their removal employed decolonization rhetoric to expose the colonial rhetoric of the day and show the problematic nature of such discourse. In modern times, an example of decolonization rhetoric is the fight for the removal of Columbus Day as a national holiday and replace it with Indigenous Peoples' Day. Tribes undertook specific protests and state-by-state initiatives to remove Columbus Day due to the perceived harm that comes with glorifying Christopher Columbus, ending with President Biden officially proclaiming Indigenous Peoples' Day in 2021. With modern events continuing to show the strength of Native resistance, decolonization rhetoric continues to be a strong method of generating change.

Tribal sovereignty and the level of control tribes can have over their resources is key to understanding how tribes are able to fight for their resource rights. Tribal sovereignty can be best explained by viewing tribes on reservations as sovereign nations (Coffey & Tsosie, 2001). For almost 100 years, until 1871, the U.S. government made treaties with various tribes, setting a standard of recognizing sovereignty because treaties can only be made with sovereign nations. Even with the United States government no longer making treaties with tribes after 1871, methods such as litigation and policy reform have continued to be used throughout recent history. These include the Indian Self-Determination Act and the Tribal Self-Governance Act of 1994, which increased tribal Independence and reformed the Bureau of Indian Affairs. Moving to the present day and with more lawsuits on the way for the tribes, being able to maintain and recognize sovereignty is a crucial way to resist colonial structures and continue to fight for the rights that were technically granted over 100 years ago with the Winters Doctrine. The language of the doctrine, although over 100 years old, acts as the groundwork for many of the rhetorical

claims that tribes have employed in defense of their water. It's much like how treaties are still used as rhetorical devices, and their specific language is cited in land rights cases.

Native protest rhetoric is a rhetorical device that describes the unique perspective that Native people hold when it comes to resistance movements (Lake, 1983). Movements like Red Power, which was active at the same time as the Black Power movement in the late 1960s and 1970s, sought to incite change in U.S. policy toward Native Americans. Red Power included actions like the American Indian Movement, or AIM, as well as the numerous protests and what the government called occupations committed in protest of the late 1960s and early 1970s. Red Power was known for utilizing symbolic gestures, attempting to gain mass attention through peaceful occupation, and utilizing rhetoric as a place. Using rhetorical acts to spread the message of Red Power continued to grow all the way to the 1973 Academy Awards, with Sacheen Littlefeather denying the Oscar for *The Godfather* as the guest of winner Marlon Brando and giving an impassioned speech on Native rights. Littlefeather's act served as a symbolic interaction between the public and the Red Power movement. The symbolic gestures work to show the influence that Red Power had, as well as their preferred means of generating attention.

Beyond the symbolic gestures undertaken by the groups involved in the Red Power movement, the groups also undertook several more physical examples of protests, including the protests and occupation of Alcatraz and the Bureau of Indian Affairs building in Washington, DC. By occupying Alcatraz, which was a ceremonial land for many tribes in pre-colonial times, Red Power was utilizing rhetoric as a place by building their protests around the locations they were choosing to protest in. Protestors didn't call it an occupation; they were merely retaking what was rightfully theirs. The specific language the protestors used came from the treaty of Fort Laramie, which established that retired federal forts and unused land were to be returned to the

Indigenous people that they had been taken from. Since Alcatraz had been closed as a prison several years prior, the protesters felt that the island was due to be returned, thereby making it not an occupation but a reclamation. Lake (1983) offers a tribal standpoint—though many historians and journalists at the time viewed these movements as unsuccessful, Lake refers to them as successful failures because the support came from the tribes internally and showed multiple groups working together under a singular banner. Thus, I seek to apply Lake's (1983) description of how the Red Power movement is not a failure even though it didn't result in a significant legacy or policy change. The small changes Red Power inspired were impactful, as the group occupied a national stage, and the work of Red Power served as proof of concept for Native rights groups.

Furthermore, Red Power's rhetorical protests also established another critical difference between standard and Native American rhetoric. With Native rhetoric focusing more on the participation of the people rather than just results, the movement was significant because of the support of the Native masses. Native support also highlights how rhetoric can be viewed as successful or a failure, depending on the intended audience. Red Power is a crucial piece of historical Native American rhetoric and helped lay the groundwork for movements that came later, such as the Standing Rock Oil protest and the Navajo's struggle with the government about water. Diving into Red Power and the concept of Native support is quintessential in understanding the Navajo's case and reaction to the loss. By understanding the resistance movements of the past, it's easier to dissect and understand potential resistance in the present.

Theoretical Framework: Framing Analysis

I used framing as the basis of my analysis of the Navajo rhetoric in the fight for water and to help understand the structure of the arguments laid by the Navajo legal team. For example, the

same event can be framed in many ways, such as how the Navajo's loss in the Supreme Court case *Arizona v. Navajo Nation* can be framed as a new beginning or a crippling detriment to water rights. Similarly, the framing deployed by the Navajo legal team during the court proceedings told a story. To the Supreme Court, the opening remarks became more than just a debate on access and water usage. The Navajo legal team was able to utilize framing to create images of betrayal and use statistics to show just how ample the resource divide between the Navajo and the rest of the United States is. Finally, the way the Navajo described the aftermath of *Arizona v. Navajo Nation* allows for a full story to be told, with one chapter ending in the courts and a new one opening with the Navajo government.

I conducted a frame analysis to find the unique motivations and functions of the legal team of the tribal government in dealing with a crisis. Similar work has been done by Plec & Pettenger (2012) in their analysis of ExxonMobil's greenwashing tendencies in their energy solutions. At face value, the study of water, rhetoric, and greenwashing may seem separate. However, the study that was conducted used a structure that I thought would be useful in unpacking Navajo water rhetoric. Plec & Pettenger looked at each initiative, identified the key frames, and analyzed them from there. Like Plec and Pettenger, I used the classical definition of framing from the work of Erving Goffman. Goffman defined framing as selecting and highlighting some facets of events or issues and making connections among them to promote a particular interpretation, evaluation, or solution (Goffman, 1974).

Framing has not seen much use in published research about the Navajo water crisis or water colonialism in general; however, it has been used to some effect in the research on nuclear colonialism. As stated previously, Endres (2009) explains how the U.S. government employed framing as a means of maintaining resource colonialism during the Yucca Mountain debates.

After deciding to place nuclear waste there, the U.S. Department of Energy restricted the Paiute and Shoshone's use of the land and framed the tribe less as a sovereign nation and more as members of the United States public. Specifically, by declaring that the tribal nations could submit official and legitimate arguments against using the site only during a public commenting period, they framed the tribe's grievances as public complaints, which effectively framed them as part of the U.S. public instead of sovereign people. By controlling the ability to name things and frame them, one can structure debates and arguments, which offers a sense of control and power over the argument.

The power of framing can be contested as well and influenced by public opinion. The example of the Red Power movement's protests and reclamation of Alcatraz shows both sides; to the federal government and the public, Red Power's actions were viewed as an "occupation," but the protesters in the Red Power movement framed their actions as "reclaiming land" that was rightfully due to come back to them. The power of framing is the power to influence public opinion and create stories that in no way fit the original narrative or plan, depending on how it has been framed.

When examining the significance of artifacts like the *Arizona v. Navajo* decision and the profound impact it has had on the Navajo government, analyzing framing provides an insight into how the chosen nomenclature shapes the object's voice and presence within that group. For instance, the choice to frame a situation like the water crisis as a "fight for survival" versus the government framing it as a simple "dispute" creates unique frames and, in turn, narratives. The framing was integral to understanding and developing solid themes when analyzing the Navajo and their legal team, leading to the following research questions:

RQ1: How did the Navajo legal team frame their arguments in the 2023 Arizona v. Navajo Nation Supreme Court case?

RQ2: How did the Navajo Nation frame the results of the 2023 Arizona v. Navajo Nation Supreme Court case?

In the following section, I will apply a framing analysis to a data set consisting of two parts. The first will be the opening arguments of Navajo attorney Shay Dvoretzkey in the *Arizona et al. v. Navajo Nation* Supreme Court case. The other will be the reactions to the loss in the Supreme Court through articles and press releases centered on Navajo Nation leaders and the two factions they created. From this, I will develop the frames used in both data sets and explain the importance of each frame.

Chapter 2: Method and Analysis

My study was based on textual analysis, and the research was centered around crucial artifacts that come in the form of several documents. These documents included The *Arizona v. Navajo Nation* Supreme Court case from 2023, the 2023 State of the Navajo Nation address, several articles from the *Navajo Times*, and statements from the Navajo central government. The procedures and techniques that took place include qualitative coding analysis and implementation of frame analysis. Through qualitative coding, I developed my rhetorical analysis by identifying key codes and evolving them into themes. By utilizing frame analysis, as noted by Plec and Pettenger (2012), I was able to identify specific frames revolving around the water crisis and the Supreme Court case. As a result, I identified the critical frames as they relate to the *Arizona v. Navajo Nation* case and the effects they had on Navajo leadership.

Study Design

From these framing structures, I designed a frame analysis focusing on the legal and political interpretations of the Supreme Court case *Arizona v. Navajo Nation*, as well as the effects of the case on the Navajo leadership. This was done by utilizing textual analysis of the opening arguments of the case as well as statements and articles citing top Navajo officials. Next, I identified individual frames and used the timeline of the case and aftermath to show how these frames affected the communication and plans of the Navajo legal team and the Navajo government. The goal of the frame analysis was to interpret the framing deployed by both the Navajo legal team and the Navajo government, as well as understand better the connection between the loss and the development of factions within the Navajo Government.

Texts

I selected data that serve as critical public examples of framing in the context of the *Arizona v. Navajo Nation* and its effects. To select data, I looked at the Navajo legal team's

arguments by way of Shay Dvoretzky's opening arguments and found the ways in which the legal team chose to frame their case for the Supreme Court justices. For the Navajo government's response to the Supreme Court loss, I pulled three critical sources published before and directly after the decision was handed down, including a press releases from the tribal government, and a articles in the tribal newspaper (the *Navajo Times*), and a State of the Union-style speech from Navajo President Buu Nygren. These texts were used to build the tribal government lens for developing the frames and establishing tribal interpretations of the Supreme Court case and its aftermath.

The timeframe of the data I have collected ranges from two months before the decision to about a month after. The texts from before the decision show the optimism held by Navajo President Buu Nygren, even before the decision had been handed down, illustrate his preparation for a potential court loss, and highlight opportunities for the Navajo in the aftermath, regardless of the decision. The first source was President Nygren's State of the Navajo address from April 2023, roughly two months before the Supreme Court decision was handed down. He dedicates the end of the speech to discussing the water situation and various ideas for solutions. After the Supreme Court's decision was announced, Nygren issued a press release, and several members of his staff followed expressing both disappointment and optimism for the future. Finally, I used a news article that was published in the *Navajo Times* about a month after the court decision detailing interviews with several high-ranking Navajo officials, including former President Jonathan Nez. For this analysis, I will focus on direct quotations from various members of the Navajo government and the press. These quotations clarify how the two main frames described above were created.

Justification

By utilizing a mix of the classic theories of communication and the contemporary frame analysis for my thesis, I was able to analyze the *Arizona v. Navajo Nation* case and its related communication after the Supreme Court's decision. I chose to use Goffman's (1974) work as my base for framing as it is focused on impact. Additionally, the fact that the main goal of Goffman's work on framing is to promote a particular interpretation made it seem like utilizing Goffman's definition would make it more straightforward to find the various interpretations the Navajo used during and after the Supreme Court case.

Method of Analysis

To organize my thoughts while conducting my frame analysis, I employed open coding. Although my thesis is based on framing and analysis, when it comes to answering my research question, I decided that integrating some level of coding would be beneficial for the organization and, thereby, making my framing smoother and more concise. For my technique, I used iterative analysis, which "encourages reflection on the active interests, current literature, granted priorities, and various theories the researcher brings to the data" (Tracy, 2013, p. 184). As for the coding style, I used manual coding with hard copies of my data, highlighters, and pens. Doing this simplified the process, worked best with my style, and allowed me to stay on track and work towards theme creation. I used four colors in my primary cycle of coding. Orange represented the effects and conditions within the artifacts that could be labeled as problematic, including any points where either the legal side or government officials relayed some form of accusation or problem. Yellow identified the causes and reasons for the problems. These include examples of past effects or issues that led up to the problems being dealt with in the present day, such as previous Supreme Court cases. Pink was used to convey any points where moral judgment was conveyed. Moral judgment came from both the legal team, stating the importance of a promise, and the Navajo government diving into tradition and personal attacks. Finally, green represented

potential solutions and improvements that could be made. These included ideas like positive progress or most of the ideas stated by the opportunity frame. From this color-coding system, I developed at least five themes apiece, and then I condensed those themes down into the sub-frames and frames used in my analysis.

As I proceeded beyond the primary cycle of coding, I employed two organization strategies to keep my sub-themes and main themes concise and close to my research questions: typology and loose outlining. Typology allowed me to create categories to organize my codes and help structure them into themes. For example in my codebook as I analyzed both the Supreme Court case and the Navajo government documents I would take the themes I found and apply each one to my research question and then finally organize them into a basic grouping based on how well they applied and helped answer the questions. Next, at each stage beyond the primary cycle, I utilized loosely outlining by taking the codes that I had developed from each document and formatting them into codes by comparing them to my research questions and building them up from there. I ensured that each code showed why the information was necessary in answering my research questions.

Findings and Analysis

For the analysis section, two data sets were examined. The first was the legal framing, with the main actor being Navajo attorney Shay Dvoretzkey, and his opening remarks were made during the Supreme Court case *Arizona et al. v. Navajo Nation*. The other is coming from my collection of documents from the Navajo Nation themselves. These include the 2023 State of the Navajo Nation address by President Buu Nygren, the press release issued by the Navajo Nation immediately after the verdict for the Supreme Court case was handed down, and finally, an article from the *Navajo Times* that included interviews and opinions from several key Navajo

leaders. From the sources, I identified the key frames Dvoretzkey used in the Supreme Court case. These included framing the case as treaty-breaking, making it an issue of fairness, and finally pulling in morality and the importance of keeping promises. Along with that, I also identified key frames utilized by the Navajo government officials in creating sides in reaction to the case itself. The opportunity frame focused on the hidden opportunities that could come from the successful failure that was the Arizona et al. case. The loss frame is focused on the negative impacts and futility of future negotiations after the loss in the Supreme Court.

Analysis Part 1: Legal Framing by the Navajo

The Supreme Court decision in *Arizona v. Navajo Nation* (2023) was the culmination of decades of legal battles for the Navajo Nation over water rights. The Navajo argued that the United States government was responsible for determining the entitlements of the Navajo people regarding water usage on the Colorado River. The primary basis for the Navajo's argument was the 1868 treaty at Bosque Redondo that created the present Navajo reservation. In that treaty, there was specific wording related to affirmative duty in maintaining a permanent homeland, which, the Navajo asserted, meant water rights. Navajo head counsel, Shay Dvoretzkey, noting a specific clause in the treaty, argued that the government did, in fact, have a duty to the Navajo Nation. Unfortunately for the Navajo, the court sided with the State of Arizona in a 5–4 decision. The first analysis section will focus on Dvoretzkey's arguments to the court. As the Navajo's leading litigator, Dvoretzkey was tasked with persuading the courts that a treaty over 150 years old still held validity and should be respected. In doing this, he created three specific frames for the issue. He frames the government's actions as *treaty violations*, *fairness concerns*, and a *moral obligation* to ensure the well-being of its citizens.

Framing The Case as About “A Broken Treaty”

Dvoretzkey began his argument by highlighting that the US. The government made treaties with the Navajo that restored their homeland in 1868. He noted that the United States had promised access and usage of water in that treaty, as water is a critical but scarce resource in the Southwestern U.S. To Dvoretzkey, the treaty represented an official agreement to provide the Navajo Nation with water and to impose duties on the U.S. government to secure that water for the Navajo. (Dvoretzkey, 2023). The foundation of Dvoretzkey’s case is centered on treaties and the U.S. government's failure to uphold its obligations to the Navajo. He focused on the ideas “the senate ratified two treaties with the Navajo Nation”, and “Those treaties are specific sources of law that give the Nation Rights to water” (Dvoretzkey, 2023) The treaties promised the Navajo a permanent homeland and a permanent homeland requires the ability to survive there. He argued that water was necessary for a permanent homeland. Therefore, without adequate access to water, the treaty had been broken. Dvoretzkey framed this as an egregious oversight by noting that the treaties had been voted into law, and the need for water was clear. He maintained that the government now had a duty to live up to its word and provide, at the very least, an assessment of the Navajo’s current and future water needs.

Dvoretzkey referred to the treaties as “specific sources of law” (Dvoretzkey, 2023). Boosting the Navajo’s legitimacy in the court frames the actions of the United States as not only immoral but potentially illegal. The wording of the 1868 treaty that Dvoretzkey cited as specific sources of law includes giving the Navajo rights to water and imposing a duty on the government to secure water. All the points regarding the treaty boil down to a specific frame of law and order, and because the government chose not to follow the treaty language, the Navajo suffered in the United States.

Framing the Case as About Fairness

In Dvoretzkey's second frame, he positions the case as an issue of fairness. The theme of fairness reverberated throughout his entire case as he highlighted three key examples of fairness. The first example of unfairness was framed with a statistic about water consumption; Dvoretzkey recalled, "Today, the average person on the Navajo reservation uses seven gallons of water a day. The national average is 80 to 100 gallons," meaning the Navajo use just one-tenth of the water that the average U.S. citizen uses (Dvoretzkey, 2023). This quotation illuminates an intense discrepancy between the water used by the rest of the country and the water used by the Navajo. This discrepancy goes beyond mere usage since 30% of the population lacks access to reliable, clean water, and many lack indoor plumbing and must keep the water in plastic tanks. The differentiation in water usage makes more sense and shows how the unfairness of the situation expands beyond merely water usage and into infrastructure and basic access.

Second, Dvoretzkey focused on the actions the government has undertaken against the Navajo and framed those actions as unfair. These actions include recognizing rights but not backing them up with action. He starts by noting that "the United States acknowledges, on paper, that the nation has treaty rights to the water its people need. We're here because the United States says it doesn't have to do anything to secure the water promised" (Dvoretzkey, 2023). Dvoretzkey epitomizes the fairness issue by showing that, while the United States acknowledges that the Navajo have a legal right to water, they disregard their duty to secure access to that water.

Finally, Dvoretzkey frames fairness in a legal sense by way of the 1963 decision in *Arizona v. California*. *Arizona v. California* (1963) went through several different iterations occurring between 1931 and 2000, all based on revising the Colorado Compact. Dvoretzkey notes, "The United States also says it speaks for the Navajos as trustees of the nation's water

rights.” Thus, Dvoretzkey frames the United States as an overseer deciding what the Navajo have control over. Dvoretzkey claims that, because of the verdict, Arizona and the other states in the Colorado River basin are now saying, "The states say we are here to take their water behind their backs" (Dvoretzkey, 2023). But for Dvoretzkey, this is not the case. The legal maneuver of the U.S. in keeping the Navajo away from the negotiation table by way of the Supreme Court shows an inherent level of unfairness.

Framing the case as a Moral Duty

The final frame that Dvoretzkey utilizes in his arguments to the Supreme Court is a moral duty. Throughout the opening argument, Dvoretzkey laid out the problems and misdeeds that have been committed against the Navajo (2023). Whether it be an unfair allocation of water or broken promises and treaties, he shows how the Navajo have suffered and why they are now due for assistance. Dvoretzkey ends with an emotional appeal acknowledging the moral issues at hand and why now it's the "United States' duty to see that the [Navajo] Nation has the water it needs" (Dvoretzkey, 2023). Before this, Dvoretzkey had already mentioned that the government considers itself a trustee and an overseer of the Navajo and their water rights. But after pointing out that they have not fulfilled their obligations in this role, Dvoretzkey said, "The United States thinks it alone decides whether it has to make good on its promises, but that's not how promises work," encapsulating his argument regarding moral duty (Dvoretzkey, 2023). Finishing off his argument, Dvoretzkey focused on the idea of a promise and the importance of keeping a promise. He refers to the United States' promise to the Navajo as a "solemn duty" (Dvoretzkey, 2023). This wording was intentional, and he uses the word "duty" seven more times, showing that, at this point, it's not just an issue of fact or legal status. He frames it as a moral test for the

government of the United States, which he notes has a long track record of not keeping its promises to the Navajo.

Analysis Part 2: Navajo Government Framing

Following their loss in *Arizona v. Navajo Nation*, the Navajo government reacted in two distinct ways, forming two separate frames. Some members of the Navajo government expressed intense sadness and disappointment, framing the Supreme Court's decision as a loss of potentially the best opportunity to strengthen the water supply. Others framed it as an "opportunity," with small victories sprinkled in with the defeat and potential for new settlements. These two frames represent different reactions to the same problem; however, they do share some common ground as well, and both factions of Navajo leadership viewed the loss as a setback, even if they frame this setback differently. The section focuses on the main ideas and actors associated with these two frames. I also analyzed the differences and similarities between these two frames.

Analysis:

For the opportunity frame, two key subframes help in understanding how some Navajo leaders could look at a Supreme Court loss, which could have overarching detrimental effects, as a net positive. These frames include interpreting the situation as a minor setback and noting other solutions or actions that could be taken thanks to President Nygren's work on developing alternative plans to maintain the water supply. Additionally, there was a focus on seeing the case as not the end of the process but the beginning of the next step and finding the silver linings within the loss. Overarching, for the opportunity frame, there is a strong focus on finding new methods and staying optimistic in the face of defeat.

Framing the Loss as an Opportunity

For those who chose to frame the situation as one of opportunity, there was a distinct push towards highlighting other opportunities for water acquisition. One of the leaders in this frame is Navajo President Buu Nygren, who was always an optimist even before the judgment was passed down. He and his supporters maintained a backup plan. The Supreme Court's decision was framed as an opportunity in several ways. First, they framed the Supreme Court decision as a minor setback in a long process. Second, they note a silver lining in the court's decision and highlight small victories within the case that should be celebrated.

Opportunity Frame One: Case Is a Minor Setback

Starting with the frame that this case is merely a minor setback, we can look first at President Nygren's April 2023 State of the Navajo address, given before the Supreme Court had decided against the Navajos in *Arizona v. Navajo Nation*. In the address, Nygren discussed plans for future legal action related to water. While the impending Supreme Court case *Arizona v. Navajo Nation* was mentioned in his speech, Nygren instead focused on putting together a long-term plan. He stated, "We agreed that we need a negotiation settlement team to move forward negotiations. The water rights commission will appoint the team by the end of the month" (Nygren, 2023, p. A5). Providing planning information and commenting on a different court case revolving around the Little Colorado River shows the President was already preparing for alternatives. Even though he was optimistic about the Supreme Court case going the Navajo's way, he had multiple other avenues ready, which foreshadows his response to the Navajos' loss two months later.

Following the loss in the Supreme Court, the Navajo were forced to respond. In a press release from the Navajo Nation, President Nygren once again discussed his water rights

negotiation team. Although he expressed disappointment in the results of the case, he does state, “I am confident that we will be able to achieve a settlement promptly and ensure the health and safety of my people” (Navajo Nation, 2023). He also says it’s reassuring that the justices who voted for the Navajo understood their arguments. For the President, the case is not the end of the world; in fact, with all his other plans for settlements in the future, he frames the case as a minor setback, with many other projects ready to begin.

In an article published in the *Navajo Times* a week after the Supreme Court ruling was passed down, Tribal Councilwoman Nez Begay spoke out about the Navajo water situation and how it affects her constituents with livestock (Joe, 2023, p A1). Surprisingly, she was optimistic. For Begay, the issue is at the state level; she believes that if the Navajo Nation had water brought in by the state of Arizona, it would result in the state realizing the need and potentially prioritizing the Navajo. For Begay, opportunity comes as practical solutions. As she notes, if water were to be brought from outside sources to the Navajo Nation, “the tribe could get credit for needing water, and the state can see that the tribe does need water, rather than looking at the border towns” (Joe, 2023, p. A1). Begay hoped that with many members of the Navajo Nation being forced to utilize state resources, the state would concede to their needs and help them. Since it is already known that the Navajo are traveling across the nation to find access to water, such a solution could prove beneficial in the short term.

The *Navajo Times* article also reports that, at a press conference on the Supreme Court decision, Navajo Nation Attorney General Ethel Branch said that she and the other tribal leaders were “thankful the decision doesn’t infringe on the Navajo's water rights” (Joe, 2023, p. A1). Branch’s framing suggests that the Supreme Court decision validated the water rights of the Navajo based on the Winters Doctrine, even if it did not offer the assistance or assessment

requested by the Navajo. Of course, this constitutes a setback; however, since water rights were validated and multiple settlement cases are still going on, there is an opportunity to frame the situation as more than just a loss since the validation of the Navajo water rights could lead to future actions and new opportunities. This mindset falls in line with the successful failure's mentality mentioned by Lake (1983). With the case serving as a loss of course, but with great opportunity for growth and new opportunities. Branch's views are shared by Navajo Assistant Attorney General Michelle Brown-Yazzie, who notes that, when it comes to new settlements, she wants the settlements to come from all three states that the Navajo Nation encompasses: Arizona, New Mexico, and Utah. In the same press conference, the tribe's attorney in the Supreme Court, Shay Dvoretzkey, agreed, saying, "The Navajo Nation was denied an assessment and plan for the tribe's water, but wasn't denied water rights" (Joe, 2023, p. A1). It's clear that, for those using the opportunity frame, the case represents only a minor setback. With so many other opportunities being discussed and more plans for litigation on the way, they frame the fight for water as far from over.

Framing the Supreme Court loss as "Loss"

In contrast to Navajo leaders who viewed the Supreme Court decision as an opportunity, others framed the decision as a loss in hopes of pushing new policy in the right direction. The leader of this faction, former Navajo President Jonathan Nez, and his supporters view the decision as a resounding defeat with little good to be found in the situation. More specifically, former President Nez framed the loss as an incredibly disrespectful, futile moment for the Navajo rather than one marked by new beginnings. Although Nez and his supporters do concede that the Navajo must move past this loss, they frame the Supreme Court decision as a decisive loss with negative impacts felt throughout the Navajo Nation.

Subframe #1: This Is a Slap in the Face

For those who framed *Arizona v. Navajo* as a loss, the impact goes beyond litigation; it feels personal. Former President Jonathan Nez framed the decision as disrespecting the sovereignty of the Navajo and, with powerful wording, called the decision “a slap in the face” (Joe, 2023, p. A1). Nez also noted that this decision shows “the Supreme Court legislates off the bench” and that the White House may have had some impact on the decision (Joe, 2023, p. A1). Furthering this opinion, Nez claimed that the U.S. government has failed to carry out its duty. All these statements show that Nez framed the *Arizona v. Navajo Nation* decision as a loss because, to Nez, it is a personal attack on Navajo sovereignty, which he perceives as insulting.

Taking a similar stance as former President Nez in framing the Supreme Court decision as a loss is speaker of the Navajo council, Crystalline Curley, who points out the irony that the Supreme Court recently supported the Indian Child Welfare Act while voting against the Navajos’ request for water assessment. Essentially, for broad Native American issues, the court agreed that sovereignty mattered, but for the Navajo, it did not. Both Nez and Curley frame this loss as a slap in the face; Nez takes it a step further, bringing forward a personal touch and additional cynicism, while Curley focuses on the impacts on future generations. It’s clear that for many members of the Navajo Nation's government, *the Arizona v. Navajo* decision was, to many, a hopeless loss.

Subframe #2: Future Negotiations May Be Futile

In addition to framing the Supreme Court loss as a slap in the face, some Navajo leaders framed future negotiations as possibly futile due to climate change potentially decreasing the available water. Even with potential settlement on the Little Colorado River and the work of the Navajo water rights negotiation team, some Navajo leaders see a cynical outcome on the horizon.

Former President Jonathan Nez believes that, although it may seem like certain groups are open to negotiation, “it’s not the time to do so during a drought” (Joe, 2023, p. A1). Nez’s comments amplify the loss frame. A major portion of the opportunity frame has to do with future success in water negotiation and acquisition through things like settlements. However, for the loss frame, the solutions shown by the opportunity frame are presented as unobtainable, and the loss in the Supreme Court may feel like it may have been the last chance. Nez corroborates this observation by saying, “The U.S. Department of Justice and three states involved in keeping the water from the Colorado River for themselves, and were most likely celebrating even though the Winters doctrine recognizes the tribe, should have a seat at the table and water discussions” (Joe, 2023, p. A1). By examining this remark from the frame of loss, Nez’s cynicism is focused on the fact that the Supreme Court decision benefited everybody but the Navajo. The states no longer must worry about their rights being compromised; the government doesn't have to provide the assessment or assist the Navajo in any way, and, aside from future settlement plans, the only thing the Navajo gained was a reaffirmation of rights they were given 150 years ago. Due to this reaffirmation and the looming climate crisis, it’s clear in the loss frame that negotiation could be a futile task. With water supplies shrinking and the states reaffirming their water rights deals on the Colorado River, the Navajo are in for an uphill battle to make progress in future negotiations.

Speaker Curley also noted the potential futility of future negotiations. Curley said, "Our leaders long ago fought for our right to our precious homeland between our sacred mountains, and that included the right to water and the right to life. Through the sacrifices and prayers of our ancestors, we secured the right to have access to water based on our treaties, and our leaders negotiated the terms of our treaties in good faith with the federal government" (Navajo Nation, 2023). Although this statement may sound positive, it’s important to remember that what Curley

is referring to are the Navajo's treaty and Winter Doctrine rights, which were used in the Supreme Court to show the lack of action the government had undertaken, highlighting that the negotiations were in vain. Since the Supreme Court reaffirmed those 1868 rights without taking any action, it's clear to Curley this represents a betrayal. In the past, the Navajo had successfully made deals with the federal government, believing that their homeland and water rights would be taken care of, but with the loss in *Arizona v. Navajo Nation*, this assumption proved false, instead bolstering the loss frames mindset of unfairness and bad dealings.

Common Ground

For all the differences between these two mindsets, there are a few commonalities in the way that they framed the Supreme Court decision. All the people mentioned in these groups are Navajo politicians and leaders, so, at the end of the day, whether they believe the decision to be that of an opportunity or a loss, they share the goal of ensuring the Navajo will have enough water to survive and thrive. A couple of the commonalities between these two groups include “moving forward” and “fighting” to continue to garner water supplies for the nation. Showing that even when two groups have an intense disagreement regarding the framing of the Supreme Court decision, they can still find common ground through the shared goal of doing what they believe is best for their people.

Under the loss frame, even with all the negativities expressed, there is still a drive to move forward, although it is different from the opportunity frame of new plans and continued litigation. For those utilizing the loss frame, "moving forward" is framed more as a matter of life or death than an exciting opportunity. In the press release immediately following the *Arizona v. Navajo Nation* decision, Speaker Curley mentioned that “today’s ruling will not deter the Navajo Nation from securing the water that our ancestors sacrificed and fought for—our right to life and

the livelihood of future generations” (Navajo Nation, 2023). Calling for action focuses not on actual plans but only on survival. Loss framing is not pointing towards a specific solution but merely trying to get away from the problem. In doing so, loss framing differs significantly from opportunity framing. For example, President Nygren focused on optimism and plans for his various other opportunities.

Even former President Nez, who has expressed feeling attacked and believing not much could be done, says that if he were still in charge, he “would’ve already scheduled a meeting with Arizona governor Katie Hobbs to discuss possible decisions the U.S. government didn’t want” (Joe, 2023, p. A1). These decisions could've included one-on-one water deals or relief packages. Nez, too, agrees that the Navajo need to move forward. Still, much like Curley, he seems to disagree with the idea of continued litigation, preferring a more straightforward approach revolving around meeting with the governor of Arizona and trying to hammer out a decision instead of communicating through legal teams and potentially years of negotiation. Both sides agree that moving forward is the only option, but with different framings regarding optimism.

No matter how Navajo leadership framed the Supreme Court decision, there is common ground as both sides have the same overall goal, which is water for the Navajo people. We can see through the way President Nygren, throughout all his speeches, has a simple, quantifiable goal. “My job as President of the Navajo Nation is to represent and protect the Navajo People, our land, and our future, the only way to do that was to secure quantifiable water rights” (Navajo Nation, 2023). All his plans and contingencies operate under the same goal: to acquire as much water as possible for the Navajo and to help alleviate the water crisis. Former President Nez echoes the sentiments from his own experience as the leader of the Navajo Nation. It is noted

that when discussing water projects in New Mexico, “he is glad to see the new water projects happen there to get water to the Navajo people” (Joe, 2023, p. A1).

Chapter 3: Discussion and Implications

In this thesis, I examined how the Navajo legal team framed their arguments for the Supreme Court and how the Navajo government framed the results of the *2023 Arizona v. Navajo* Supreme Court case. The goal of my study was to identify and analyze the specific frames utilized by both groups in pursuit of winning the Supreme Court case and handling the loss, respectively. Through this goal, I identified key frames from both groups, examining how Shay Dvoretzkey, the Navajo counsel in the Supreme Court, utilized framing to create a four-part opening remark.

Dvoretzkey framed around the idea that the government has mistreated the Navajo for many years, and not given them the proper recognition or resources to survive, long-term. Dvoretzkey framed this with several key issues relating to broken treaties, fairness, and moral judgment. With his first frame, he focused on broken treaties and targeted the 1868 treaty that created the Navajo reservation. Second, he talks about fairness in several different ways, whether the Navajo use one-tenth of the water of the rest of the country or the United States agrees on paper as to what Navajo are entitled to, but not in practice. These actions kept the Navajo away from a Supreme Court case that could have stabilized their water supply 50 years ago. In the third frame, Dvoretzkey targeted moral duty. He focuses on the definition of a promise and argues that, as the trustee of the Navajo Nation's water rights, the United States has broken its promises. Despite his framing, the Supreme Court did not side with the Navajo and voted 5 to 4 in favor of the state of Arizona, causing the Navajo to have to decide how they would frame this loss and what would happen next. In this case, the verdict did not go in the Navajo's favor, which leads to examining how the Navajo government framed the decision.

The Navajo government framed the results of the case in two distinct ways, with one side believing the loss could be framed as an opportunity and the other believing the loss was just

that, a loss without room for opportunity or silver linings. My analysis revealed the opportunity frame was led by Navajo President Buu Nygren, who, even before the case was heard, had several backup plans ready in the event of a Navajo loss. For the loss frame, there is less focus on the opportunities of the future and more focus on the repercussions that will be felt for years to come. The *Arizona v. Navajo Nation* Supreme Court decision was incredibly impactful to the Navajo people. Whether that impact led to framing the decision as an opportunity for growth or significant loss depended on the leadership. It's important to remember that for the case, which took 20 years to get to the Supreme Court and had both sides winning at different levels of the appeal process, it was a long road to get there. Regardless of whether the aftermath of the decision was framed as an opportunity or loss, disappointment and some negative feelings are felt by both sides. With the ironic passing of the Indian Child Welfare Act within the same week, it's essential to understand tragedy and the different emotions. But with all the other cases and potential victories on the horizon, it's also understandable why many feel opportunistic and expect the water situation to improve.-By utilizing direct quotes and analysis from both the original Supreme Court transcript as well as direct sources from the Navajo government and Navajo community, I was able to answer these research questions.

As I was beginning to research and format the ideas of framing, I believed that I might see a more confrontational nature from the Navajo government in relation to the loss. I believed this due to past instances of tribal resistance occurring during times of strife, as well as the initial readings of the last frame, showing more cynical and emotion-driven language than that of the opportunity frame. This did not end up being the case, as the loss frame was closely allied and intermingled idealistically with the opportunity frame. However, with the chances of additional

confrontation being low, there is room for the lost frame to serve as the minority party and provide criticism towards the majority opportunity frame.

Implications

Effective and Ineffective Framing

The subject of framing has been the cornerstone of this entire project. There has been analysis into what framing is, and how it is utilized. Whether or not the framing utilized is effective is also an interesting implication that touches on public opinion, the media, and framers style. As a device, framing can be used for highlighting and selecting facets of events or issues, and making connections to promote a particular interpretation (Goffman, 1974). Deciding what to highlight can be a key factor in whether framing will be affective. For example, in the Supreme Court, Dvoretzkey utilized key facets of the Navajo Nations experience during the water crisis. By making connections between them, he was able to promote three interpretations that became his frames. Had Dvoretzkey chosen different events, or issues, his arguments, and therefore his frames could have been more or less effective. For example, if he had focused on the purely emotional aspects, without focusing on treaties or legal documents, his case might have fallen flat. Alongside this it's important to remember that Dvoretzkey did lose the case so had he made changes to his framing to focus on the legal precedent and focus on swaying the conservative members of the court the result may have been a Navajo victory and his framing could have been even more effective. These examples shows once again the importance of framing and how like any other rhetorical device, it is important to use it properly or else the results maybe negative. My specific framing analysis gives us a better understanding of both modern Native rhetoric and the importance of framing in legal cases. My contribution to the field

is showing the importance of studying native framing and examining which frames work and don't work regarding securing rights for the tribes.

Colonialism

Throughout this experience doing research, there were initially clear signs that there would be links between the Navajos' current situation and the ideas of water colonialism. Water colonialism can be caused by bureaucratic procedures and corruption, leading to a colonial power using its power to control water use and infrastructure. With the case being tried before the Supreme Court and allegations levied against the government that they had been, at the very least, ineffective in their role as the overseer of the Navajos' rights, I would've expected more mentions of colonialism. The concept of colonialism was not brought up by either the Navajo legal team or the government by name. Even so, it's important to acknowledge the colonialist undertones that existed throughout. Had the Navajo acknowledged this inherent colonialism there might have been a path to victory focusing on their own sovereignty and even potential for a human rights case to develop. This is important because of the historical significance of colonialism that others, including Danielle Endres, have used in their own Native studies. The implications of this serve to back what Dvoretseky said throughout his argument. He directly referred to the U.S. government as a treaty breaker. This treaty breaking shows disrespect for a document that was meant to serve as a link between the Navajo and the U.S. and establish a baseline level of control, with the United States serving as the controlling party. Or when the United States kept the Navajo away from the negotiating table. In *Arizona v. California* in 1963, which again shows the United States as the overseer or controlling party, stopping the Navajo from being able to get involved. Each of these issues shows clear threads of colonialism and the United States continuing to rule over the Navajo as if they were subject to them. The implication

of Dvoretzkey's arguments is that the Navajo are dealing with water colonialism, and with the loss in the Supreme Court, the U.S. government has continued to exude its control.

Policy Implications

Beyond the Navajo, there are several other tribes who call the southwestern United States home. These include the Paiute and Hopi, who are involved in water rights disputes of their own. My studies of the Navajo have shown the importance of using framing and how important it can be in the realm of public opinion and the media. For all groups involved in water rights settlements, it is important to make sure that the right issues are coming forward and that they are framed in such a way that they can have a positive impact on negotiations. Although Shay Dvoretzkey did not win the *Arizona v. Navajo* Supreme Court case, he did sway four justices to the side of the Navajo, including conservative justice Neil Gorsuch. The way he framed his case was persuasive and structured with a joint focus on appeasing the legal arguments of his opposing council as well as focusing on the morality associated with the case in a way that it would sway both the Supreme Court and the court of public opinion toward the Navajo. For future water disputes, whether it be for the Navajo or other tribes, dealing with water insecurity, or a lack of water infrastructure, a key implication of my research is the importance of utilizing framing to garner support and basing your arguments around the idea of framing. Doing so may not have worked directly for the Navajo, but with policy reform and constant changes within government, there's always a next time.

Water Disputes

After examining the usage of framing it is clear the importance it has within the Navajo water crisis, and the *Arizona v. Navajo Nation* Supreme Court case. Therefore, there are some

key takeaways that the use of framing can tell us about water disputes. The first of these is that water will provoke inherently emotionally driven framing due to water being a resource required to live. Also, this study indicates that the reaction to a loss in a water dispute will be stronger, and the framing that comes out of it has the potential to be provocative. Whether that be for its can-do attitude and ability to move forward, like the opportunity frame. Or the desperate language and overall morose imagery that is projected from the loss frame. Water disputes also seem to have long timelines. As was learned through the project water, disputes can last for decades with the original Navajo, Arizona dispute beginning in 2003 with aspects of it such as *Arizona v. California* still being worthy of context, after more than 60 years. In this light, the length and intensity of water rights disputes can have a great impact on framing choices. In this light, the length and intensity of water rights disputes can have a great impact on framing choices, and in turn puts a higher level of importance on getting the framing right.

Study Limitations

With a topic as overarching as Tribal water rights, there's no way to read everything. Even in the southwest, there are dozens of individual Tribes, each fighting for their fair share of the Colorado. In total, there are hundreds of tribes across the United States, and while each deserves to have their story told, it's not possible to note each Tribe's struggle in a singular project. Additionally, a multitude of Supreme Court cases have been filed about water rights. As mentioned, there have been multiple *Arizona v. California* cases over roughly an 80-year timeframe. Dissecting each part of each case for native links would take immense effort and time, which is not conducive to a master's thesis. I do believe such a task could be worthwhile, though, and do hope it could be undertaken at some point in the future.

Conclusion

Throughout this project, I had the opportunity and privilege to analyze and identify frames from texts and an overall subject that has yet to be studied rhetorically in a significant way. I believe that the work I have done of the Navajo Nation's water crisis will prove beneficial in opening new avenues of research into Navajo and overall Native American rhetoric and framing. By examining framing and showing how it is used in both a legal and political sense I have shown the importance of studying Native rhetoric. With climate change and future legislation regarding water there will be more opportunities to expand upon what I have done and to continue studying Native rhetoric and the importance of resistance. That resistance can be found in many forms, whether it be by building up on the research done by Endres on nuclear colonialism, or following my avenue of analyzing framing and the impacts of different frames in the battle for tribal water rights.

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