

Teacher's Guide: American Indian Voting History

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"The relationship between the federal government and the Indians is complex. It has always been complex, and generations of thinkers have tried to give permanent shape and substance to it and have failed." -- Vine Deloria, Jr.

"It has been said that democracy is the worst form of government except all the others that have been tried." -- Sir Winston Churchill

INTRODUCTION:

This Teacher's Guide to American Indian Voting History is not intended to be allinclusive. It is a basic outline to the development of Indian citizenship and voting rights in U.S. federal elections, with some comparisons with state and tribal elections.

While this topic requires references to the structure of the U.S. political system and comparisons with Indian practices, it is not a comprehensive guide to the development of Western civilization; Indian sovereignty; federal, state, or tribal governments vs. traditional societies; suffrage; civil rights; constitutional law; treaty histories; or many other overlapping subjects.

This guide also does not attempt to be politically correct in distinguishing American Indian Nations from tribes, particularly in historical contexts and when discussing federal laws that reference "tribes." Please correct the semantics if you feel the necessity.

Web links are provided for further information in many of these areas. As with any scholarly works, the facts and conclusions may be disputed; the links are not intended to provide all viewpoints. Most of them have further links and notes that may lead to opposing views, or at least to topics that can be used as search words. The National Student/Parent Mock Election has not reviewed every page of the links and references, and is not responsible for their content: caviat emptor.

PREREQUISITE:

Make sure students understand the differences among various forms of government, including:

Democracy

Monarchy Oligarchy Theocracy Federalism

Who is able to "vote" in each? How are non-voters able to influence decision Teachers and schools can reproduce in any quantity desired. Hint: for definitions, type "define: xxxx" in Google (no quotes; xxxx = a word or phrase)

HISTORY, PART 1: Democracy in American Indian Societies

Any generalization about American Indian societies will have glaring exceptions, since they ranged from the absolute monarchies of the Inca and Aztecs, to feudal cultures on the Northwest Coast of North America, to the councils of many Plains Indians, to the federalism of the Iroquois, etc. Many had no written language until recently, and records of how decisions were made do not exist; in some cases the people themselves no longer exist.

In addition, the information or the interpretations of it that we do have may be biased. History is usually written by the victors about heroes, not by the losers about ordinary people. For example, it is easy to read the story of how Peter Minuet "bought" Manhattan from the Indians for trinkets; what is often lost is that he probably paid the Canarsee Indians of what is now Brooklyn, but Manhattan was inhabited by the Weckquaesgeek or Manhattoes, who later battled the Dutch and were virtually exterminated. In any case, the concept of land ownership was alien to those Indian cultures, and we have no idea of what they thought the transaction involved, as opposed to the Dutch.

Another problem is that there is more information about some cultures than others, and some were more influential in affecting our modern societies. The Iroquois, for example, controlled most of what would become the Northeastern U.S. by the time of the American Revolution, and were familiar to some "founding fathers" like Franklin, Jefferson, and Adams. The enemies of the Iroquois, which they had evicted, often had different forms of government, which were less familiar to the colonists.

U.S. history at the elementary and secondary levels often concentrates on cultures that are local or well-known (think Hollywood), and ignores others. Extinct cultures, such as the Aliches, Alughquagas, Kaloosas, Mannahoaks, Palaches, or Waterees are left to specialists. Precontact civilizations like the Anasazi may be mentioned, but cultures without written languages did not leave many artifacts of their social and political systems, and we can only infer what they may have been like. There is a continuing tendency to oversimplify "American Indian" as opposed to "Western" society, when each has many variations.

The following generalizations therefore have many exceptions; you may wish to concentrate on the different philosophies involved rather than trying to qualify every comparison.

DISCUSSION

Explain how the following concepts apply to the respective governments:

US Federal and State Governments:

Representative Majority rule Minority rights Secular Partisan/Adversarial Hierarchal/Authoritarian Male dominated/Paternalistic Protective of individual rights, property, and economic growth

Many Traditional American Indian Cultures:

Participation by all adults Leaders as servants, not authorities Deliberation, not debate Spiritual significance Consensus -- advice and persuasion; not compulsion Respect for elders Respect for the opinions of women Protective of tribal culture and traditions

What were the experiences of European immigrants and American colonists that lead them to develop the social and political systems we now use? How did these differ from the native inhabitants of North America? Why were the English and French approaches to indian society so different, and why did the English attitudes eventually prevail?

How were the Europeans and American colonists influenced by the works of Rousseau and Locke in their views of Indians as "noble savages" or in a "state of nature?" How did this affect their understanding of Indian societies? Why did they look first to the society of Ancient Greece after rejecting a monarchy as a basis for American government?

How is the term "vote" a misnomer in societies run by consensus? Find examples of what happened when there were unresolved differences: a move by a segment of a society, extermination of a faction, anarchy, etc.

Cultural clashes with "Western" civilization sometimes created these types of conflicts within American Indian cultures. Why were they less able to deal with it than clashes with other Indians? What Indian cultures and subcultures today retain a more "traditional" society?

FURTHER INFORMATION ON THE INTERNET:

http://www.allacademic.com/meta/p64950_index.html Sachs, Stephen. "Acknowledging the Circle: The Impact of American Indian Tradition Upon Western Political Thought and Its Contemporary Relevance."

http://www.airpi.org/research/tdlead.html http://www.airpi.org/research/tdcompare.html American Indian Policy Center -- Traditional American Indian Leadership: A Comparison with U.S. Governance. (See links) =====

HISTORY, PART 2: American Indian Influenced Democracy in Colonial and Revolutionary American Societies

It was not until 1987 that the U.S. Senate finally passed a resolution stating that the U.S. Constitution had been modeled on American Indian democracy. Many authors give much of the credit to Benjamin Franklin, who frequently printed booklets of treaties between the British and various Indians, and was familiar with the Iroquois Great Council.

The King of England sent Franklin to Albany NY in 1754 to negotiate an alliance with the Iroquois against the French. Franklin also tried to negotiate a union of the colonies, which he had been trying to do with great difficulty for years, and had remarked in 1751: "It would be a strange thing . . . if Six Nations of Ignorant savages should be capable of forming such an union and be able to execute it in such a manner that it has subsisted for ages and appears indissoluble, and yet that a like union should be impractical for ten or a dozen English colonies, to whom it is more necessary and must be more advantageous, and who cannot be supposed to want an equal understanding of their interest."

The influence of the Iroquois on the emerging United States political system has been wellnoted, particularly by Bruce E. Johansen and his co-authors. The Iroquois Confederation was an unusual example of federalism among North American tribal societies, and it can be argued that is was a highly successful one -- for the Iroquois. Their enemies, who they displaced, were not likely to share that opinion.

DISCUSSION

Examine the similarities and differences among Iroquois nations and their enemies, such as the Illinois, the Cherokee, the Adirondacks, or the Abenaki. For example, why were the Iroquois willing to ally with the British, when the Abenaki sachems refused to sign such a treaty on the grounds that they had no control over their people?

Why were the colonies unwilling to cede political power to create a federation? What powers did the colonies have, as opposed to the powers reserved for the King? How did colonial governments compare with Indian councils and other Indian deliberative bodies? Some Indians also negotiated with quasi-governmental authorities like the Hudson's Bay Company. Who represented each side in such negotiations, how were they chosen, and what authority did they have?

Tuscarora Anthropologist J.N.B. Hewitt generalized the opposing philosophies: "There are two radically distinct methods of regimentation of people found extant in the world . . . these two methods are known as the tribal system and the national system. The tribal system organizes solely on the basis of blood kinship, real or by legal fiction. The national system organizes solely on the basis of territorial units. So that kinship groups or units are found in tribal society, territorial units in national society."

Why were the colonists not interested in a kinship government? After the revolution, when the U.S. Constitution was drafted, some members of the Continental Congress were familiar with American Indian cultures. For example, William Livingston of New Jersey had lived among the Mohawks as a teenager, and John Adams wrote about Mohawk independence in his "Defence of the Constitutions of . . . Government in the United States." What parts of the Iroquois system interested the Congress? Why did they not accept the Indian consensus model, and instead opt for our current system of checks and balances? Where was Benjamin Franklin at the time the U.S. Constitution was written? How were his ideas promulgated by Jefferson, Adams, and others?

Jefferson wrote of the Indians: "Public opinion is in the place of law, and restrains morals as powerfully as laws ever did anywhere...." In contrast, he wrote of Europe: "Under presence of governing, they have divided their nations into two classes, wolves and sheep. I do not exaggerate."

Why did public opinion serve as law in kinship societies in America, but not for those more concerned with property and than propriety? How does the question of propriety vs. legality persist in modern American culture -- should rude behavior be illegal? Who decides what social norms are? At what point does a democracy decide to restrict free expression?

U.S. state legislatures and the U.S. Congress also differs from many British Commonwealth countries in required protocol during a debate. You can listen to Congressional vs. Parliamentary debates online. Why are the latter often far more raucous, with frequent interruptions from the opposition? Why did the Americans choose to follow the Indian example that only one person speaks at a time? Why did they originally not follow the Iroquois example of giving women a voice?

The British, U.S., and Iroquois systems all recognized elite groups with special privileges: the U.S. Senate, the House of Lords, and the Fifty Families respectively. What privileges were hereditary, and how could they be overridden in each body? How were members of each body chosen by election or appointment who did not have hereditary status? The Iroquois, in article 35 of their Constitution (when it was finally written down), provided a mechanism for choosing "Pine Tree Chiefs." Why could they not be impeached?

Why did the Iroquois tradition of tolerance of opposing viewpoints not extend to other Indian cultures? How is lack of tolerance of cultural differences a problem in the U.S. and the world today?

FURTHER INFORMATION ON THE INTERNET:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1160479 .pdf file (requires cookies enabled)

American Indian Influence on the United States Constitution and its Framers by Robert J. Miller

How Benjamin Franklin's 1754 Albany Plan of Union was based on the Iroquois League, Jefferson, Adams, etc.

Bruce E. Johansen has written several works on Iroquois influence on U.S. Democracy:

http://www.ratical.org/many_worlds/6Nations/FF.html
Forgotten Founders: How the American Indian Helped Shape Democracy. 1987.

http://www.ratical.org/many_worlds/6Nations/EoL/
Exemplar of Liberty: Native America and the Evolution of Democracy 1991 (with Donald A. Grinde, Jr.) Complete book online.

http://www.ratical.org/many_worlds/6Nations/grassroots.html
Reaching the Grassroots: The World-wide Diffusion of Iroquois Democratic Traditions 2002.

http://www.fordham.edu/halsall/mod/iroquois.html http://www.indigenouspeople.net/iroqcon.htm The Constitution of the Iroquois Confederacy.

http://www.ipoaa.com/iroquois_constitution_united_states.htm The Effect of the Iroquois Constitution on the United States Constitution by Janet L. Daly Fitchburg State College (1997).

http://books.google.com/books?id=5usNAAAAIAAJ League of the Ho-dé-no-sau-nee Or Iroquois By Lewis Henry Morgan An online version of the classic work in anthropology.

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HISTORY, PART 3: Democracy and American Indian Participation in U.S. and State Governments

United States Constitution:

* 14th Amendment (1868): "Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed...."

* 15th Amendment (1870): "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

* 19th Amendment (1920): "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

DISCUSSION

Can people be made citizens of any state or nation without their consent? Can they have multiple citizenships or nationalities and still maintain allegiance to all of them?

Chief Justice John Marshall and the U.S. Supreme Court ruled in Cherokee Nation v. the State of Georgia in 1831 that Indian tribes that had treaties with the U.S. were "domestic dependent nations" who did not have the same standing to appear before the court as a state or a foreign nation. The Constitution gave Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Tribes were therefore neither foreign nations nor states; by extension, Indians were citizens of their tribes, not the United States or individual states. Has the status of Indian tribes changed since 1831? Why are U.S. relations with the Vatican, with a population of less than 1000, handled by the State Department, but relations with the Navajo Nation, with a population of over 250,000, handled by the Interior Department?

After ratification of the 14th amendment, why were Indians living on reservations in the nineteenth and early twentieth century still not considered to be citizens? Where did Indians who were U.S and state citizens live? What did they have to do to qualify for citizenship at the time? Why did many states object to the idea that Indians were also state citizens? Why was representation denied to "Indians not taxed?"

In order to negotiate treaties, the U.S. Government had sometimes lumped together independent bands of linguistically related Indians as a "tribe," and sometimes appointed "chiefs" to represent them, although these concepts may have been foreign to those groups. Enemies were settled on the same reservation and dealt with as a single administrative unit by the U.S. government bureaucracy. Where does this situation persist today? In contrast, how does the government of Canada deal with First Nations "Bands" as opposed to Indian "tribes?" What other differences are there in the way Canada and Mexico deal with cultures like the Mohawk (Kaniengehaga) or Tohono O'odham who live on both sides of a U.S. border?

American Indians were given the right to vote when the U.S. Congress passed the Indian Citizenship Act of 1924, 54 years after African-American men were enfranchised in 1870, and four years after women could vote (1920). Why does the U.S. Constitution say almost nothing about voting procedures? Why were states, who controlled voting procedures, reluctant to let Indians vote despite the 1924 law? Which Indians formally accepted U.S. citizenship? Are the descendants of those who never agreed to citizenship now U.S. citizens, or are they only citizens of their tribe or Nation? The Nationality Act of 1940 reaffirmed the citizenship of all Indians living on or off reservations in the United States, partly so the U.S. could draft them for World War II. How can Indians or anyone else reject U.S. citizenship if they do not agree with these laws?

Four major arguments were used by the states to deny Indians voting rights: reservation Indians were under federal guardianship, residents of their reservations and not states, paid no state taxes, and not sufficiently "civilized" to have allegiance to the states rather than their tribes. These arguments were eventually denied by the courts, but often not for decades. Trace the history of court decisions in your state about Indian citizenship and voting rights.

The 14th Amendment denied representation to "Indians not taxed." Why? How did the states use this language to deny voting rights? The Solicitor General of the U.S. issued an opinion in 1940 that the phrase "Indians not taxed" means Indians not subject to taxation, rather than whether or not they actually paid taxes, and that "Since all Indians are today subject to taxation by the Federal Government (Superintendent v. Commissioner, 295 U.S. 418), there are no longer Indians not subject to taxation."

The argument that voters had to pay taxes did not end until the adoption of the 24th Amendment in 1964: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." What other barriers, such as English literacy tests, remained at the time?

What other laws have been passed to remove barriers to Indian voting? Investigate the provisions of the following:

The Voting Rights Act of 1965 (VRA). prohibits any voting law or practice that "results" in discrimination on account of race, color, or language.

The National Voter Registration Act of 1993 (NVRA) requires Departments of Motor Vehicles to register citizens to vote, and allows citizens to mail in voter registration forms.

The Help America Vote Act (HAVA) of 2002 requires upgraded voting technology, the establishment of the Election Assistance Commission, "provisional" ballots for voters, and the centralization of state voter registration systems. However, it also contains new ID requirements for first-time voters.

FURTHER INFORMATION ON THE INTERNET:

http://www.nativevote.org

The 2008 Native Vote Campaign web site of the National Congress of American Indians.

http://www.narf.org/nill/index.htm Native American Rights Fund -- National Indian Law Library.

http://www.narf.org/nill/bulletins/ilb.htm Native American Rights Fund -- Indian Law Bulletins.

http://forum.americanindiantribe.com/viewtopic.php?t=9439&sid=69952217fa56ffff46e4102122 dc14ba

A time line of Indians' voting rights in Arizona.

http://www.mtholyoke.edu/acad/intrel/cherokee.htm Cherokee Nation v. the State of Georgia, 1831. http://www.cwis.org/fwdp/Americas/itsg-cit.txt (Center for World Indigenous Studies) A Separate People -- Tribal People's Citizenship Within the U.S.

http://thorpe.ou.edu/sol_opinions/p976-1000.html "Indians not taxed" OPINIONS OF THE SOLICITOR NOVEMBER 22, 1940 see pp. 990 - 1000.

http://supreme.justia.com/us/295/418/case.html U.S. Supreme Court Indian taxation Superintendent of Five Civilized Tribes v. Commissioner, 295 U.S. 418 (1935).

http://unews.utah.edu/p/?r=052207-2 Book review of "Native Vote" published by the Cambridge University Press. A comprehensive study of 70-plus court cases in Indian Country that were based on the Voting Rights Act.

http://www.foxnews.com/story/0,2933,317548,00.html Lakota Indians Withdraw From Treaties Signed With U.S. 150 Years Ago.

HISTORY, PART 4: Democracy in Modern America -- American Indian Nations and Tribal Governments

"As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority. Thus, in Talton v. Mayes, 163 U.S. 376, 16 S.Ct. 986, 41 L.Ed. 196 (1896), this Court held that the Fifth Amendment did not 'operat[e] upon' 'the powers of local self-government enjoyed' by the tribes. Id., at 384, 16 S.Ct. at 989. In ensuing years the lower federal courts have extended the holding of Talton to other provisions of the Bill of Rights, as well as to the Fourteenth Amendment." -- Santa Clara Pueblo et al. v. Julia MARTINEZ et al.; No. 76-682, Supreme Court of the United States

DISCUSSION

The 1934 Indian Reorganization Act (IRA) allowed tribes to establish tribal governments following to the European-American model, with a governing board (tribal council) elected by majority vote. Traditional Indian leadership was not recognized. Some tribal members voted to accept or reject the IRA, but "abstentions" (i.e. nonvoters) were presumed to favor the IRA. Why did many Indians oppose the imposed political system? What groups opposed any type of formal government, elected or traditional?

How did this create conflicts within the tribes that were federally recognized at the time? Could tribes that were not federally recognized create tribal governments? What powers did they have? How did this law compound the problems of previously created "tribes" of unaffiliated groups?

The IRA required that tribal constitutions be approved by the Secretary of the Interior, who provided models for the governmental structures that were to be created. How did this limit

traditional leadership?

Were all those who opposed tribal governments traditionalists? How do traditional and elected tribal governments coexist or conflict today? Give examples from different Indian nations. How do tribal councils or legislatures recognize traditional leadership and values? Compare tribal governments with state, federal, and foreign governments. What are the advantages and disadvantages of each system?

The language of many of the first ten amendments to the U.S. Constitution limits their application to the state and federal governments. For example, in Native American Church v. Navajo Tribal Council in 1959, a federal Court of Appeals held that the First Amendment does not apply to tribes because "Indian tribes are not states. They have a status higher than that of states." What parts of the U.S Constitution do not apply to Indian Country?

The U.S. Congress passed the Indian Civil Rights act of 1968 in an attempt to impose most provisions of the Bill of Rights on tribes; Federal courts have limited the applicability of this law through cases such as Santa Clara Pueblo v. Martinez. When can state or federal courts interfere with tribal governments?

Intrinsic to voting for Indian governments or other governments is membership or citizenship in a tribe, state, nation, etc. How is this determined by different tribes or nations, both Indian and otherwise? How and when does a person gain voting rights? Why has this become a controversial issue in some tribes, particularly those with large revenues? Can traditional values coexist with modern economic pressures?

FURTHER INFORMATION ON THE INTERNET:

http://www.airpi.org/research/tdcontemp.html (American Indian Policy Center) The Formation of Contemporary American Indian Tribal Governments.

Links to tribal constitutions, laws, etc:

http://www.tribal-institute.org/LISTS/constitutions.htm http://www.tribal-institute.org/lists/codes.htm http://www.tribalresourcecenter.org/tribalcourts/codes/default.asp http://www.judicare.org/triballaw.html

CURRENT OBSTACLES TO INDIAN VOTING IN U.S. STATE AND FEDERAL ELECTIONS

"[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.' It must be remembered that 'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.' Reynolds v. Sims, 377 U.S. 533, 555 (1964)." -- Bush v. Gore, U.S. Supreme Court 531 U.S. 98 (2000)

DISCUSSION

Voting procedures are the responsibility of the states. As everyone saw in the 2000 presidential election fiasco, the procedures are not foolproof, and many people can be disenfranchised, votes may be counted incorrectly, ballots may be poorly designed, and an election outcome can be decided by the votes of nine people -- the Supreme Court. In addition to human and mechanical error, there can be deliberate efforts to "fix" an election, as is often seen in other countries. There is nothing unusual about election mischief in American politics, affecting Indians and everyone else.

The U.S. Supreme Court ruled in Bush v. Gore that "The individual citizen has no federal constitutional right to vote for electors for the President of the United States...." Who does?

The infamous political corruption of Tammany Hall was a classic American example of election chicanery; ironically the organization itself was named after Tamanend, a Delaware Chief, the trustees were "sachems," and the building was called a wigwam. If any real American Indians were involved, they didn't leave many traces. Boss Tweed used his machine to intimidate the opposition and reward supporters, with kickbacks for himself and his cronies.

Idaho, Minnesota, North Dakota, and South Dakota at one time required Indians to renounce tribal allegiances in order to vote. New Mexico barred Indians from voting until 1962. The Voting Rights Act of 1965 barred literacy tests and required multilingual ballots and translators, but some states are still being sued for not providing them to American Indians and others.

In what states can the Indian vote make the most difference in the result? Is voter apathy among American Indians any different than that of other Americans? Why do some Indians still feel that voting in national and state elections is a betrayal of their Indian identity? Can one vote or a few hundred make a difference? How many voters could have changed the result of the 2000 presidential election?

What tactics and problems still minimize the impact of American Indian votes? Cite examples of each of the following:

Vote dilution: Gerrymandering voting districts, at-large and multi-member districts, reapportionment, and staggered terms of office.

Voter challenges: Voter registration challenges, including proof of residency in a particular district.

Identification requirements: Refusal to accept a tribal ID card.

Language barriers: Some members of native communities are not fluent in English, and language assistance or bilingual ballots may not be provided, despite federal law.

Poll locations: Limited public transportation, long distances between communities, high gas prices, poor roads, bad weather in November, and unfamiliarity with absentee voting and

registration.

Cultural attitudes: ignorance and apathy; which is worse? "I don't know and I don't care." If you don't play the game, you don't make the rules.

How can American Indians overcome these obstacles to provide an example to the rest of America, as was once done by the Iroquois?

FURTHER INFORMATION ON THE INTERNET:

http://democrats.senate.gov/dpc/dpc-new.cfm?doc_name=sr-108-2-283 The American Indian Vote: Celebrating 80 Years of U.S. Citizenship.

ACTIVITIES

Have students visit a meeting of your local, state, or tribal governing body. Observe whether your representatives are accurately representing your views. If not, discuss your opinions with them. If they disagree, are their positions based on practical considerations or politics?

Have students interview local officials and traditional leaders, or ask them to speak to your classes. How are their philosophies similar and different? What objectives do they share, and how do they agree or disagree on how to achieve them? Is voting always the best way to decide contentious issues? How do you determine when other methods such as mediation are appropriate?

Conduct mock legislative or tribal council meetings after mock votes to choose representatives. Pick local issues to consider, and see if your mock sessions can suggest real answers.

Have students debate the strengths and weaknesses of traditional Indian leadership versus elected representatives. How does each system fit modern society? What can each learn form the other?

FURTHER INFORMATION ON THE INTERNET:

http://ap.google.com/article/ALeqM5glorPeYbVNfQ7Si2wvXl0nIAOapQD91THI4O0 Young Native Americans mull Obama, McCain at event.