

# How Tribal Governments and Indigenous Political Theories Impacted the Founding Fathers and the U.S. Constitution

© Professor Robert J. Miller (*Eastern Shawnee*)  
Sandra Day O'Connor College of Law, Arizona State U.  
Director, Rosette LLP Am. Ind. Eco. Devo. Program  
Willard H. Pedrick Distinguished Research Scholar  
Chief Justice, Pascua Yaqui Tribe Court of Appeals

# Commerce Clause

## Art. I, Section 8

“The Congress shall have Power . . . to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes . . . .”

# Congressional Representation

## Article 1

“Representatives and direct Taxes shall be apportioned among the several States . . . according to their respective Numbers, . . . excluding Indians not taxed, three fifths of all other Persons.”

# Treaties

## Article VI

“This Constitution, and the Laws of the United States . . . and all Treaties made, or which shall be made . . . shall be the supreme Law of the Land”

# 14th Amendment (1868)

“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.”

# Historian Bernard De Voto 1957

- “Most American history has been written as if history were a function solely of white culture - in spite of the fact that well into the nineteenth century the Indians were one of the principal determinants of historical events.”
- Colin Calloway, *“The Indian World of George Washington”* (2018) (Washington lived in an Indian world but his biographies erased native peoples).
- Graeber & Wengrow, *“The Dawn of Everything”* 35-77 (2021). Indigenous intellectuals and native political systems in North America taught Jesuit priests and French officials about liberty, equality, and democracy.
- 72-volume set the “Jesuit Relations of New France” (1632-1673) influenced academics and political leaders.
- Indigenous teachings and governmental structures influenced the development of the French Enlightenment.

# Other recent scholarship

- Ablavsky & Allread, “*We the (Native) People*,” *Columbia L. Rev* (2023). The Constitution was the end phase of a pre-revolutionary “diplomatic constitution,” a working relationship Indian nations created with colonial governments and Congress.
- Mary Sarah Bilder, “*Without Doors: Native Nations and the Convention*,” *Fordham L. Rev.* (2021). Four deputies of three Indian nations were in Philadelphia June 1787 - met with GW, Framers, Congress members, Sec. War Knox and state governors.
- Bilder - changed the Constitution and the relationship of Indian nations and United States.

# Indigenous political theories

- Constitutions – organized governments - formal and informal.
- Confederacies. *E.g.*, Iroquois, Creek, Shawnee, Cherokee - a form of federalism?
- Separation of powers - civil and military leadership and duties.
- Communal “unanimous” decision-making.
- Individual rights - liberty and freedom.
- Recall (Iroquois clan mothers).
- Important leadership roles for women.



# Historians & scholars recognize?

- Indian and English interactions “began to shape the nature of the English experiment [in America] . . . .” Bruce Catton
- Vol. 15 Smithsonian Institution - Iroquois Confederacy “most profoundly influenced history in the seventeenth and eighteenth centuries.”
- “American Indian confederacies figured importantly in the evolution of democratic thought.”

# Historians

- Julian Boyd - “In the realm of political thought the Indian probably had a greater influence over civilized society than any other savage race.”
- Colonials learned about cooperation and union from the Iroquois and Chief Pontiac’s alliance.
- Indians “set the stage for [American] nationalism”).

# continued

- Vine Deloria (“the first written constitution drafted in North America . . . written on the sacred wampum belts made of sea shells”)
- Frank Speck 1940 - “self-government of the Iroquois has impressed [historians] as embodying surprisingly modern conceptions of democratic rule. . . . the Iroquois were, and still are, a decidedly democratic people.”)
- “There is some historical evidence . . . the league influenced the colonies in their first efforts to form a confederacy and later to write a constitution.”
- Congressional Resolution 1988

# Iroquois leader Canasatego

- 1744 advised colonial reps from Pa., Vir, Md.
- “we, the Six Nations, heartily recommend union and a good agreement between you . . . . Our wise Forefathers established Union and Amity between the Five Nations; this has made us formidable; this has given us great Weight and Authority . . . . We are a powerful Confederacy; and, by your observing the same Methods our wise Forefathers have taken, you will acquire fresh Strength and Power . . . .”
- Franklin published. [Sec. Pa. Colony certified]

# Benjamin Franklin printer & GF

- Letter 1751: “It would be a very strange Thing, if six Nations of ignorant Savages should be capable of forming a Scheme for such an Union, and be able to execute it in such a Manner as that it has subsisted Ages, and appears indissoluble; and yet a like Union should be impracticable for ten or a Dozen English Colonies”
- Gordon Wood on B.F. - “If the Iroquois could unite, why couldn’t the colonists?”
- B.F. was called “the philosopher as savage.”

# Franklin's Albany Plan of 1754

- First, or one of, to call 13 colonies to unite
- Scholars state Franklin “admired the Iroquois confederation, and plainly had it in mind in his earliest discussion of the need of union among the colonies.”
- Julian Boyd - Franklin “found his materials [the Albany plan] in the great confederacy of the Iroquois.”
- Many scholars say F.'s Plan led to Const.

# August 25, 1775

- Commissioners Indian Affairs, Continental Congress, quoted Canasatego's 1744 speech back to Iroquois leaders:
- "Our forefathers [said Canasatego's] advice was good" and his "words sunk deep into their hearts" and they would "take their counsel, and teach our children to follow it."
- At least FIVE Founding Fathers were representatives at this conference

# Thomas Jefferson

- TJ/Franklin worked on Decl Independence
- TJ studied tribal governments - “freely acknowledged his debt to Indian teachers.”
- He incorrectly thought Indian legal systems had “no law” but were “preferable” to “too much law, as among civilized Europeans”
- 1787 to a Convention member writing Const: “the only condition on earth to be compared with our’s is that of the Indians, where they still have less law than we.”



# Jefferson

- Tribal governments “only controls are their manners, and the moral sense of right and wrong.”
- 1787 Jefferson wrote that Native American societies “enjoy, in their general mass an infinitely greater degree of happiness than those who live under European governments”
- Aug. 1787 - to John Rutledge [FF], the “effect of kingly government . . . produce[s] the wanton sacrifice . . . of the people.” The only condition to compare with Americans was “that of the Indians, where they have still less law than we. The European, are governments of kites over pidgeons [sic].”
- Matthews, (1984) - “the American Indian . . . provides the empirical model for [Jefferson's] political vision.”

# James Wilson Pa. Const Signer

- Const Convention June 7, 1787 “the British government cannot be our model.”
- 1776 Wilson discussed in Congress the idea of confederation and stated that “Indians know the striking benefits of Confederation [they] have an example of it in the Union of the Six Nations.”
- 1788 Charles Pinckney South Carolina Convention delegate stated that Convention was skeptical of European governments since “from the European world no precedents are to be drawn for people who think they are capable of governing themselves.”

# Pres. & VP - John Adams

- 1787 treatise “Defence of the Constitutions” demonstrated some knowledge of tribal governments and noted them for separation of powers: “[t]he sovereignty is in the nation . . . the three powers are strong in every tribe”
- “an accurate investigation of the form of government of the ancient Germans and modern Indians” would be worthwhile “in both, the . . . three divisions of power is marked with a precision that excludes all controversy.”

# John Adams

- Mohawk Nation had “complete individual independence” and tribal “sachems [deliberated] national affairs” in councils and put major decisions to “national assembly.”
- In native gov’ts “[t]he democratical branch, especially, is so determined, that the real sovereignty resided in the body of the people”
- An anti-Federalist wrote: “with [Indians] the whole authority of government is vested in the whole tribe. . . . Their government is genuinely democratic.”

# James Madison [father of Const]

- County v. Oneida Indian Nation, 470 U.S. 226, 234 n.4 (1985) (“Madison cited the National Government's inability to control trade with the Indians as one of the key deficiencies of the Articles of Confederation, and urged adoption of the Indian Commerce Clause”).
- To J. Monroe 1784 provision on Indian policy in the Articles “taken in its full latitude, it must destroy the authority of Congress altogether”
- Indian treaty clause and Indian commerce cl.

# Indian nations “positive” effects on U.S. Constitution

- Positive effects.
- 1936 – SOME scholars claim Indian political theories influenced Americans and Founding Fathers, and even international philosophers – Thomas More’s *Utopia*, John Locke, Hobbes, Montesquieu, Rousseau, Marx.
- some scholars vigorously disagree.

# “Negative” effects on U.S. Const

- US weak, bankrupt after Revolutionary War.
- Articles of Confederation could not control states and Indian affairs.
- Threat of Indian nations. GW. Art. Congress, Franklin, Hamilton, Madison.
- Need a strong fed gov't & taxation.
- Standing army and frontier forts because of Indians. The Federalist No. 24 (Hamilton).
- Hamilton also wrote “important objects . . . of a national government” was to “protect . . . your western frontier against the savages.”