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## Indigenous Voices and American Politics

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# Indigenous voices and American politics

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## ABSTRACT (ABSTRACT)

President [Bush], in a convoluted response to a question on the meaning of tribal sovereignty (essentially the inherent right of indigenous nations to self-governance) posed by a minority journalist on Aug. 6, told the 7,500 assembled journalists that "tribal sovereignty means that it's sovereign. You're a - you've been given sovereignty and you're viewed as a sovereign entity. And therefore the relationship between the federal government and tribes is one between sovereign entities."

Nevertheless, these two statements by the leading presidential candidates are big deals for Indian nations. They provide a measure of overt national political recognition for several of the most potent symbols, doctrines and historical realities that affirm the unique status of Native nations - recognition of the value of tribal sovereignty, acknowledgment of the importance of ratified treaties, reassurance of the unique trust relationship. The U.S. and tribal nations have a unique moral relationship with the U.S. acting as a protector of Native lands, resources, and essential rights - and an implicit nod towards the permanence of tribal territories (a.k.a. "reservations").

Instead of vague homilies about tribal sovereignty, the sanctity of Indian treaties, and the "unique" relationship between tribal nations and the U.S., Native leaders should instead call for, at a minimum, a four-pronged constitutional amendment that would 1) entrench ratified treaty rights and authorize a new round of treaties with tribal nations; 2) provide explicit language to tribal governments that, like states in the U.S. constitution, they, too, have a "guaranteed" right to exist and to be protected from unlawful and unwarranted intrusions by federal or state officials without tribal consent; 3) would formally disavow the doctrine of congressional "plenary" power that allows the Congress or its delegates to act largely without restraint insofar as tribal lands or rights are concerned; and 4) would send notice to state governments that under the Constitution they have limited powers inside Indian country since the relationship between the U.S. and Native nations was federalized from the birth of the nation.

## FULL TEXT

As a polarized American electorate uneasily traverses the time between the recently concluded Democratic National Convention and the pending Republican bash, one small yet extremely diversified segment of the American electorate - the 562 federally-recognized American Indian and Alaskan Native nations - find that their governments and their citizens may play an important, if minor, role in the 2004 presidential election.

This despite the fact that Native nations are not an integral part of the U.S. constitutional order since that document only addresses the federal and state governments and mentions Indian tribes only tangentially. Interestingly, since tribes were not involved in the U.S. Constitution's creation, they are generally exempt from its major provisions and also are denied the protections that states enjoy. Stranger still, individual tribal citizens were unilaterally enfranchised by federal law in 1924 and, like other Americans, enjoy basic constitutional rights and privileges.

In recent days, in fact, American Indians have been prominently mentioned by both Senator John Kerry and President Bush. Kerry, in a speech on Indian health care on Aug. 8 before 5,000 people in Gallup, N.M. pledged that as president he would "uphold the law of the land, and that includes treaties and the special relationship that exists between the United States and the Indian nations."

President Bush, in a convoluted response to a question on the meaning of tribal sovereignty (essentially the inherent right of indigenous nations to self-governance) posed by a minority journalist on Aug. 6, told the 7,500 assembled journalists that "tribal sovereignty means that it's sovereign. You're a - you've been given sovereignty and you're viewed as a sovereign entity. And therefore the relationship between the federal government and tribes is one between sovereign entities."

Native nations, in reality, have existed in the western hemisphere for millennia and were never "given" sovereignty, certainly not by governments that are themselves less than three centuries old.

Nevertheless, these two statements by the leading presidential candidates are big deals for Indian nations. They provide a measure of overt national political recognition for several of the most potent symbols, doctrines and historical realities that affirm the unique status of Native nations - recognition of the value of tribal sovereignty, acknowledgment of the importance of ratified treaties, reassurance of the unique trust relationship. The U.S. and tribal nations have a unique moral relationship with the U.S. acting as a protector of Native lands, resources, and essential rights - and an implicit nod towards the permanence of tribal territories (a.k.a. "reservations").

Tribal sovereignty, treaties, trust, and territory, or the four "T's" if you will, underscore the distinctive qualities of indigenous nations that fundamentally separate them from other racial and ethnic groups.

For Native peoples, the four "T's" are sufficient to warrant express recognition and political and economic action by their junior sovereign partners, the U.S. and state governments, who, as the latter-day governments lack the moral or lawful authority that tribes have based on their longevity on the hemisphere and in explicit recognition in hundreds of ratified treaties and agreements.

But tribal leaders are keenly aware that while these forces have been in evidence for the better part of two centuries, it was not until the advent of the Indian gaming phenomenon, which has spawned a much more politically active Indian electorate, that indigenous peoples and their distinctive and shared issues began to attract the concentrated attention of state and federal officials vying for their votes and campaign dollars.

The Indian vote, even when gaming is not a defining factor, was critical in the defeat of Senator Slade Gorton of Washington in 2000. Native voters also figured prominently in Tim Johnson's 2002 defeat of Representative John Thune for one of the Senate seats in South Dakota. Tom Daschle, the Senate Minority leader, is also in a close re-election campaign and is spending a fair amount of time in Indian country. The Indian vote may also prove to be important in state and national elections in Arizona and New Mexico as well.

Of course, a number of state legislatures and governors are trying to squeeze additional gaming revenue from tribal governments, claiming that they are entitled to an increased share of Indian proceeds when, in fact, there is nothing in the 1988 federal law that established the programmatic context for Indian gaming that gives the state or the federal government, for that matter, any authority to claim a greater share of what is, after all, Indian money.

Tribal nations today find themselves situated in a unique, if precarious position vis-a-vis the state and federal governments. It is unique in that tribes and their citizens are being wooed in ways never seen before, and they have

opportunities to more fully engage in American electoral politics in an effort to effect positive changes for their citizens, who also happen to be American citizens.

It is precarious, however, because Native nations are still not an organic part of the U.S. constitutional system and their reserved treaty rights, trust opportunities, and separate territorial homelands may still be vanquished or circumscribed at virtually anytime by state or federal policies that take advantage of the extra-constitutional character of Native nations.

While the number of Indian voters in non-Indian elections continues to ratchet up, with many tribal leaders expressing the view that the only way to protect their remaining sovereign powers is to become more actively engaged in state and national elections, some commentators wonder what the long-term impact of such electoral participation will be on tribal sovereignty.

If tribal peoples continue to insist on functioning in this manner, then they should at least be more demanding of both national political parties regarding what it is they expect in return for their votes and tribal dollars.

Instead of vague homilies about tribal sovereignty, the sanctity of Indian treaties, and the "unique" relationship between tribal nations and the U.S., Native leaders should instead call for, at a minimum, a four-pronged constitutional amendment that would 1) entrench ratified treaty rights and authorize a new round of treaties with tribal nations; 2) provide explicit language to tribal governments that, like states in the U.S. constitution, they, too, have a "guaranteed" right to exist and to be protected from unlawful and unwarranted intrusions by federal or state officials without tribal consent; 3) would formally disavow the doctrine of congressional "plenary" power that allows the Congress or its delegates to act largely without restraint insofar as tribal lands or rights are concerned; and 4) would send notice to state governments that under the Constitution they have limited powers inside Indian country since the relationship between the U.S. and Native nations was federalized from the birth of the nation.

If the presidential candidates would agree to back such an amendment, and if U.S. and state officials would then seriously engage in the hard discussions and actions that might culminate in such an amendment, then Native nations would have a genuine reason to even more actively participate in the American political process. This level of participation would be about much more than merely protecting the at-risk tribal gaming operations from avaricious state lawmakers. It would indicate that the U.S. had fully returned to the more cooperative period of diplomacy and multicultural democracy that was sometimes evident in the early years of Native/white relations.

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