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The Constitutional Crisis of Indian Removal

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Introduction

Cited as the foundational document which establishes the structure of the government of the United States of America, the United States Constitution enacts the supreme law of the land. As American citizens, we are taught to revere and understand our country through its lens. Often we teach this reverence in order to create a sense of patriotism in our students, but the patriotic narrative can be limiting when full perspective is not offered. Historically, our Constitution has not protected all of the people it presided over. Often it was used as a tool of suppression and oppression of those groups. Students need to understand both sides of our Constitution: the living and breathing beautifully written document that governs American society, and the self-serving purposefully murkily constructed law of the land.

The following curriculum unit focuses on the hypocrisy laden in the federal government's dealings with Indian Nations and tribal removal, given the five fundamental political principles that inform the US Constitution. It is a complex topic to relay to middle schoolers, but the lesson of investigating how the theory of a concept (the five fundamental political principles) relates to its real-life application (Indian Removal) is an essential one to understanding the historic functions of government. Living in a society increasingly at odds with itself, it is essential that students understand the limitations of our democratic republic, and how the interpretation of the Constitution has at times been at the whim of whoever is reading it.

Through examining Andrew Jackson's Indian Removal Act, the associated Supreme Court cases, and the resulting action (the Trail of Tears, etc.), students will be invited to assess whether or not the theorized fundamental political principles are actually applicable to the Constitution. Likewise, students will be invited to investigate contemporary American Indian Nations and tribal lands and determine whether or not the Constitution has been used to rectify its previous shortcomings. American Indians are also contemporary American citizens and it will be useful to illuminate their historic experiences alongside their contemporary experiences. The American Indian experience parallels other experiences, and students should be able to determine whether or not they are afforded the same rights as the foundational political principles of the Constitution declare they receive.

Rationale and Background Information

Many students, particularly students who have already felt the effects of poverty and social marginalization, are passionate about justice-based topics. Low-income students of color, such as the students that I teach, are aching for resources to help create change in their own communities and others; this is where education loses those students. Telling politically correct and revisionist histories of the past, while often not featuring the perspectives and stories of people of color (or other subjugated persons) as central characters, only emboldens the meritocracy narrative that urban students already recognize as false. Teaching students narratives that are often contrary to their lived realities is to lose their interest, set them up for failure, and prevent them from thinking critically about ways to create impactful solutions. This curriculum unit is designed to retain their interest, while validating their understandings that often the government, and by default, the Constitution are complicit in the disparagement of American peoples.

Middle schoolers are on the cusp of understanding their place in society, and as such are often interested in lessons that stab at the ideal of America as the proverbial “city on the hill.” Often in teaching the concepts laden in the Civics and Economics Virginia 8th grade course, there is an inclination to relay the information as fact and remove the complexities behind them.¹ Such instruction means covering the fundamental political principles which are credited with shaping the Constitution of the United States of America (limited government, rule of law, consent of the governed, democracy, and representative government) as consistent approaches to governing American society throughout time. Presenting the Virginia objectives as such is contrary to my commitment of educating inner-city children of color. My ultimate goal as a teacher is to build politically well-informed and self-aware change agents, who realistically approach societal ills without cynicism.

As such, students experience the impacts of the Constitution on their lives every day, and yet still do not understand the Constitution as a living breathing foundational document. However, all the same, students need to be introduced to the Constitution as just that: a document. Often times, the branches of government betray the commitments bestowed upon them by the Constitution, so the document itself cannot rectify injustices, but rather the players entrusted to uphold it.

The fundamental political principles of American governance were not and are not applied to everyone equally. However, as middle schoolers, their concepts of injustice are often self-indulgent and ill-researched. In order to instill positive citizenship based characteristics, it is important to share that their respective populations are not alone in their quest for a subjective freedom. Integrating discussion and research on the treatment of contemporary American Indians, as allowed by the United States government, will show students that contemporary sister movements for justice also exist. Although problematic, this lapse in knowledge is understandable, given that required instruction regarding American Indians in Virginia middle schools ends with their attainment of citizenship in 1924.

Despite middle school history content extending to the present day, there is no mention of American Indians past the granting of federal citizenship or the brief highlight of the Navajo Codetalkers. Upon being asked, “Ms. Greene, aren’t all Native Americans dead?” by one of my students, I realized that this lapse in information has led my students down two routes of thinking: 1) after citizenship attainment, the problems faced by American Indians are nonexistent, or 2) American Indians, as an entire people, have ceased to exist altogether. Both thought processes, while reasonable for a 13 year old given current Virginia curriculum, are

detrimental and exemplify the level of erasure contemporary American Indians face in society.² Civics and Economics is a subject that is not mutually exclusive from contemporary American Indian history, but rather inextricably linked. The curriculum unit that follows juxtaposes the fundamental political principles of the Constitution (as well as the concept of checks and balances), and the realities of Federal Indian law and policy. Students, especially those from systematically oppressed and suppressed populations, must not merely be taught foundations of American government, but also to think critically about how well the country is living up to its claims.

Objectives

“Everyone now judges the westward removal of eastern Indians as one of the great injustices in United States history.”³

Through engagement with this curriculum unit, the students will fulfill several learning objectives. The curriculum unit is to be integrated within the 8th grade Civics and Economics course, as provided by the Virginia Department of Education. Likewise, the unit will have heavy influences from English, media, and technology.

Students will think critically about the continuing impact of US Supreme Court decisions, specifically upon present day American Indians. Not only will my students be introduced to American Indians as a contemporary people, but students will analyze the hypocrisy of fundamental political principles as applied to American Indians. The unit will also be designed to introduce the Constitution as the composite of fundamental political principles, but also the product of human beings with biases. Students will reconcile the concept of American Indian nations as “domestic, dependent nations.”

Ultimately, students will investigate and analyze the manner in which American Indians are governed to determine whether this minority group’s rights were and are currently protected under the Constitution. Students will analyze in-depth whether or not the system of checks and balances set up by the US Constitution, given President Jackson’s abuse of power, is effective and sustainable. Students will be charged with speaking out and engaging in civil action to fight injustice. Students will question whether the actual document of the Constitution is the source of injustice or whether it is the people who are carrying it out that are the problem. Finally, students will be able to answer the following questions: 1) What are the constitutional origins of Federal Indian law and policy? 2) How did Andrew Jackson’s Indian Removal Act and Marshall’s Indian Law Trilogy landmark cases shape Indian Land law? 3) If recognized as distinct according to the Constitution and by Marshall, how does the United States’ presently deal with Indian Nations? The students will write a culminating essay answering the questions of “Are the fundamental political principles, on which our Constitution was founded, afforded to American Indians in the United States? Why or why not? What does it for further American Indian/US relations? Create possible legislative solutions that could help solve our broken relationship?”

Content

What are the fundamental political principles that define and shape American constitutional government?

There are five foundational political principles that defined and shaped American constitutional government at the birth of its constitution. The five principles are the following:

- Consent of the governed: the people are the source of any and all governmental power
- Limited government: government is not all-powerful and may only do the things the people have given it the power to do
- Rule of Law: the government and those who govern are bound by the law, as are those who are governed
- Democracy: a system of government where the people rule
- Representative government: the people elect public officeholders to make laws and conduct government on the people's behalf.⁴

The US Constitution derives influences from all of the above fundamental political principles, and as such, those principles are to be extended to all persons underneath of the jurisdiction of the United States of America.

What are the Constitutional origins of Federal Indian law and policy?

The Constitution of the United States establishes the structures and responsibilities of the United States' government. The final version (excluding amendments) was completed in September of 1787, and it is often understood to have solidified American nationhood. However, this narrative excludes the presence of the millions of indigenous people civilly living in what became the United States hundreds of years prior to Christopher Columbus. The United States Constitution, however, does acknowledge the presence of Indian nations in 1787, and this acknowledgement has borne the responsibility of shaping the constitutional origins of Federal Indian law and policy. Article 1, Section 8 of the Constitution, also known as the "commerce clause" reads as follows:

*The Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes...*⁵

Although short in nature, the commerce clause of the Constitution is heavily loaded, particularly in relation to the development of Indian-related law. First, the definition of "commerce" begs assessment. While the present-day definition of commerce is as follows: "the activity of buying and selling," a more dated definition lists commerce as meaning, "social dealings between people." Thereby, Article 1, Section 8 not only gives Congress the power to oversee all financial transactions, but also all social dealings between itself and other recognized governments. Within Section 8, there are three recognized governments listed that Congress is given the power to preside over: foreign nations, the states, and Indian Tribes.

There is a deliberateness embedded in the distinction of Indian Tribes as non-foreign entities, and alongside statehood. It is in this division of governmental bodies that the United States Constitution offers its woolly definition of distinctions of tribal nations within the United States, and from where all Federal Indian law and policy seeps.

How did Andrew Jackson's Indian Removal Act and John Marshall's Indian Law Trilogy Shape Indian Tribal Lands?

Andrew Jackson

Andrew Jackson became the 7th President of the United States in 1829. He catalyzed the eventual constitutional debate surrounding tribal lands and the mass displacement of American Indians. However, even prior to tenure in the presidency, Andrew Jackson had a largely controversial relationship with the natives of the United States. Often referred to as 'Sharp Knife' by the Red Sticks people of the Creek Nation, Jackson implored John Quincy Adams to support removal of all American Indians east of the Mississippi River.⁶

As previously noted, once Jackson reached the presidency, he continued his assault on American Indians. The same year that Andrew Jackson became the presidential-elect of the United States (1828), gold was discovered in the hills of the state of Georgia. Understanding the history of Jackson's disposition towards American Indians as both a former general, senator, and governor, the Georgian state legislature passed legislation that allowed acquisition of the gold. Jackson purposefully sat idly by while Georgians began a legislatively backed campaign of intimidation and persecution of the native Cherokee Nation in an attempt to encourage them to retreat from the land.⁷ Cherokees were banned from mining gold on their own lands, classified as colored free peoples prohibited from holding titles to property, and their acreage was inserted into a land lottery with the intention of redistribution to white Georgians. Jackson merely advocated for payment to Indians for the improvements they made to the land and their livestock, while warning that, "it would be worse... to refuse either option, because in that case the government would do nothing to prevent states from simply confiscating Indian lands."⁸

It is understood that Jackson's driving sentiment was that if American Indians were not "properly" utilizing their lands, then the American government was justified in confiscating those lands.⁹ The problem resided in the culturally different understandings of what constituted properly making use of land. However, he presented his advocacy of Indian removal publicly. In his first annual message to Congress, given on December 8th, 1829, for example, Jackson attempted to use humanitarian based dialect press upon the legislature the immediate necessity of Indian removal of all lands east of the Mississippi:

The condition and ulterior destiny of the Indian tribes within the limits of some of our States have become objects of much interest and importance. It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life...

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for a while their once terrible names. Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity.¹⁰

Jackson placed their inability to be "civilized" in direct contrast to previous governmental attempts to

assimilate them to white values. However, the tone of his words was geared towards giving the impression of having a deep concern for the well-being of Natives: "It has long been the policy of government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life." He disregarded the fact that eastern Natives were not living a "wandering life," because they were no more nomadic than he was.¹¹ Likewise, Jackson invoked previously decimated tribes like the Mohegan to give visual to the fate awaiting the tribes of the Southeast if there was no intervention taken on behalf of Congress. He continued to play on the savior complex of his listeners by questioning the humanity and national honor of any person who did not agree.

Most importantly, in his first Annual Speech made to Congress, he set his position for the future constitutional debate on whether Indians had claim to the lands he desired to move them from:

It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of new States, whose limits they could control. That step cannot be retraced. A State cannot be dismembered by Congress or restricted in the exercise of her constitutional power.¹²

According to Jackson, the lands previously taken could not be given back, and it was counterproductive to harp on their acquisition. Likewise, once the bounds of a state were established, Congress was required to respect the exertion of powers as extended by the Constitution. Therefore, tribal nations residing within the bounds of a federally recognized state were given to the whims of the state legislature.

Jackson wasted no time pushing the agenda of Indian removal within his first Annual speech to Congress. He asked for the money needed to accomplish the uprooting of Indian tribes, and in 1830 would seek to have his plan approved by the federal legislature.

1830: Removal Act

Shortly after his First Annual Speech to Congress, the floor opened for debate on his proposed Indian Removal Act. The act was a bill to remove Indians east of the Mississippi River to west of the Mississippi River, under the guise that Indian nations were not independent of one another and the recently removed tribes would live in harmony separated from the oppressive influences of whites. In 1830, The Removal Act was passed by a small margin in both the House of Representatives and the Senate.¹³ With the allocation of \$500,000 by Congress to help facilitate the transportation of native tribes west of the Mississippi, Andrew Jackson helped to usher in the most aggressive removal public policy of Indian removal to date.¹⁴

However, Jackson's plan was met with serious opposition at the time of its proposal. American Indians, and their sympathizers, argued against the notion that it was for the best to uproot entire nations of people and transport them to an entirely new area. The lines drawn in the legislature were largely regional, as the vast majority of representatives who voted against the act came from north of the Mason-Dixon Line.¹⁵ However, the resistance of people like William Penn, an abolitionist, would largely fall on deaf ears as Jackson's sympathizers were quick to assert that the removal of Indians would only happen on a voluntary basis:

Jackson's supporters in Congress also assured doubters that the administration did not intend to force a single Indian to move against his or her will... Senator Robert Adams of Mississippi denied that the legislation Jackson requested would give the president any power "to drive those unfortunate present abode." Indian relocation, the senator insisted, would remain "free and voluntary."¹⁶

Ironically, there was no other way that Jackson and supporters of mass Indian removal could present their intentions. The actual provisions of the Indian Removal Act did not actually authorize the forced relocation of the Southeastern Indians, but instead asked for funding to continue to issue land west of the Mississippi to those Indians interested in releasing their tribal lands. At most, the Indian Removal Act permitted the president to exchange lands, not seize desired lands. Also, the act specifically included a clause stating, "Nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes."¹⁷ By continuing to lend a blind eye to the intimidation and harassment of American Indians by violent squatters on their lands, Jackson non-verbally signaled that he understood that any American Indians refusing removal would not have the full protection of state laws extended to them.¹⁸ History shows that Jackson, in a blatant abuse of presidential power, explicitly violated the legislation he fought to pass.

John Marshall's Indian Policy

Understanding that Jackson's public words did not match his private (or also public) ambitions and that the legislature had sided with his agenda, with the passage of the Indian Removal Act, American Indians could only turn to the Supreme Court for reprieve. Prior to the Jacksonian era, the Supreme Court, under the tutelage of Chief Justice John Marshall, had ruled on an Indian land title case (*Johnson v. M'Intosh*). In Marshall's decision, he declared that Indian rights to create independent nations east of the Mississippi River had been extinguished, in an attempt to validate the United States' government's title over land in America.¹⁹ However, Marshall reluctantly issued this judgement, and when *Cherokee Nation v. Georgia* was brought before the court in resistance to the Indian Removal Act in 1831, all eyes were on the Supreme Court.

In his decision, Marshall described the case as the following:

*"This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force."*²⁰

Marshall acknowledged the argument that the Cherokee nation feared that state laws, as issued by the state of Georgia, supported by the Indian Removal Act, and ignored by Andrew Jackson, were threatening their very existence. However, instead of ruling in the case, Marshall sidestepped the constitutional question of whether the state of Georgia can forcibly decimate the Cherokee Nation, and instead asked whether or not the Supreme Court had the jurisdiction to decide the case.²¹ Marshall questioned if the Cherokee Nation could bring forth the suit, given the classification of Indian nations as described by the Constitution: distinct from both foreign nations and states. Marshall ruled that the suit could not be considered because of that distinction, and clarifies the status of tribal nations within the United States:

They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.... Yet, it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations... Their

*relationship to the United States resembles that of a ward to his guardian.*²²

According to the *General Principles of Federal Indian Law*, the designation that Marshall bestowed upon Indian nations, “domestic dependent nations” must be broken down into varying layers. Tribes are considered domestic, because their lands exist within the United States, and are considered nations, because they have sovereignty over their members and other activities that affect them. The key word in Marshall’s decision is “dependent.” In declaring tribal nations dependent, Marshall subjected Natives to being the responsibility of the federal government, and thereby subject to the federal government’s power. This ruling set in motion the precedent for the relationship of Indian lands and the US federal government. Indian nations are regarded as domestic dependent nations subject to the power of the federal government, but their people have no representation in the government that they are subjected to. American Indians do not obtain citizenship status until 1924, and many states bar them from voting until as late as 1957.²³

In 1831, the saga of protest against the Indian Removal Act continued in the Supreme Court case *Worcester v. Georgia*. Upon being notified that the Cherokee Nation did not have jurisdiction to fight the forced removal of Indians within the United States’ court system, white allies of the tribes immediately filed suit on their behalf. Samuel Worcester, a U.S. citizen, sued the state of Georgia regarding a series of statutes that he claimed violated the U.S. Constitution, as well as other treaties formerly made with the Cherokee Nation. This time, Chief Justice John Marshall did not disappoint American Indian sympathizers, and issued a decision that concluded that Georgia did not have the jurisdiction to extend its oppressive laws over the Cherokee Nation. Finally, laws like those that prohibited Cherokees the ability to testify in court, but placed them at the whims of Georgia law, where they were the victims of “legalized theft of their property, brutalization of their persons, and intimidation...” were struck down.²⁴ All were laws created to drown out the Cherokee and other indigenous people in an effort to guide their acquiescence to giving up their lands to the white settlers. President Jackson wanted to inhabit them instead.

*The Cherokee nation, then is a distinct community occupying its own territory, with no boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.*²⁵

Unfortunately, while Chief Justice John Marshall had interpreted the law of the Constitution to be on the side of its domestic dependent nations, it was the responsibility of President Andrew Jackson to execute that judgement. Marshall’s ruling on behalf of the Cherokee plight had regulated the conflict to one between the federal government and Georgia.²⁶ The state of Georgia ultimately ignored the judgement of Chief Justice John Marshall and continued with their attempts to harass American Indians to “voluntarily” cede their lands to the federal government as supported by the Indian Removal Act. Andrew Jackson at no point lifted a finger to force the state of Georgia to submit to the court’s decision.²⁷ As a result, more than sixty tribes were deported to lands west of the Mississippi, particularly settling in Oklahoma, over the course of several years.²⁸ The brutal removal process, most specifically the Trail of Tears, resulted in the genocide of several thousand Cherokee and other indigenous peoples.²⁹ Though posting a valiant resistance, American Indians ultimately lost the rights to their lands, and the precedent of abuse of presidential power in relation to dealing with Indian nations set by Andrew Jackson would continue to dictate federal dealings with tribes.

Activities

Learning through Questioning Strategies

Teachers should be in the business of guiding student learning, not pouring random facts and opinions into them. When students are permitted to be investigative and are encouraged to determine truths for themselves, their retention and understanding of the material increases. This unit, *The Constitutional Crisis of Indian Removal*, is dependent on forcing students to develop their own understanding of very dense material. Given that the material is dense, students who are simply fed information are likely to disengage out of boredom. Teachers should not attempt to give students the answers to the major questions in this unit out of fear of lack of understanding, but instead have the students navigate the material themselves. While dense, the material is controversial and has implications on present day society; allowing students to wade through it all (materials should be scaffolded, however) will allow them to realize this and will peak their interest.

The basis of this unit is to have students begin to think critically about how the five fundamental political principles are or are not applied to different groups of people under our Constitution. Critical thinking does not happen through supplying answers, but through questioning. There are many different teaching methods that employ teaching through guiding questions: the Socratic Method, pinwheels, etc. Pick whichever is most comfortable for each individual classroom, but be sure to push the limits of students.

Close Text Readings and Pictorial Representations Strategies

Lower or varied reading levels should not be a deterrent from engaging in close reading activities involving higher level texts. Dense material is difficult for all readers, especially primary sources that employ speech that students are not ordinarily exposed to. However, students need to be encouraged to engage with texts that are difficult for them, especially given the high level reading they will have to do for future tests, like the SATs.

Even still, it is important not to overwhelm lower level readers with too much too fast. For this unit, it would be best to give the students small portions of text (like a paragraph) at a time first. Giving students more than they can handle can result in reader fatigue and refusal to work. For this unit, especially to understand the dubiousness of Andrew Jackson, students must actually read and take apart his words. Therefore, it is an important component to scaffold the readings the students are engaging with as much as possible without summarizing the text for them; less is more. Also, much of the language they will be reading will be from the 1800s, and will take them time to navigate. Students will especially struggle if they do not possess the necessary vocabulary knowledge to comprehend what they are reading. When close reading texts, particularly the first time it is done in the classroom, it would be beneficial to have the students identify unfamiliar words first, and then define them as a group. This way when the students are asked to summarize the portions of text they have been assigned, they are using simpler vocabulary to help them navigate the reading.

Also, when working with dense primary source material, it is important to constantly be checking for understanding. Children who are struggling learners will try to hide their inability to comprehend. A way to determine whether the students have fully grasped what they have read is to ask them to manipulate what they have learned. A great tactic for this is to have the students turn dense text into pictorial representations. Students can create one large scene, comic strips, political cartoons, etc. Often a cursory glance at their representation will allow the teacher to determine if they fully understand what the text conveyed.

Transformations from text to pictures can be done individually or in group settings. Likewise, students who might not have originally grasped the content can often work their way to understanding through drawing and/or mapping out the text. Likewise, students who are more artistically inclined can express their understanding through a different medium. What is most important is having the students closely read the primary sources, and then comprehend what they have read.

Close Text Readings and Pictorial Representation Activities

The backbone of this unit is having the students understand the way that American Indians are recognized by the Constitution. For middle schoolers, understanding the Constitution is a daunting task, but not impossible. The best way to understand the provisions of the Constitution, or any other document, is to have students engage in close readings of the text. However, for the purposes of the content related to this subject matter, the only portion of the Constitution that needs to be read is Article 1, Section 8 (the commerce clause, see Appendix A). Students should define keywords individually, and then in pairs put the commerce clause into their own words. After reworking that vital portion of the Constitution in kid-friendly terms, the students should be asked why they think “states, foreign nations, and Indian nations” are all separated in the Constitution. There might be a series of follow-up questions, such as: “Why are Indian nations considered to be neither states nor foreign nations?”; “In your opinion are American Indian nations closer to statehood or more like foreign nations? Explain”; “Are Indians citizens of the United States?”; “Why do we learn the 50 states, but not the Indian nations that exist?” After allowing the students to openly muse, it is time to explain to them that the Constitution’s lack of clarity on the status of Indian nations has resulted in problems with Indian relations for several hundred years. It is important here to leave the students’ questions regarding the Constitution and Indian nations unanswered.

Next, the students will continue to stretch their close reading techniques, and read segments of Andrew Jackson’s 1st Annual Address to Congress regarding Indian removal (see Appendix B). After defining keywords individually, as with the Constitution, students should be placed in pairs to summarize what Andrew Jackson’s requests of Congress were. Since the reading is probably quite dense, in order to gauge whether or not all students understand the content, the pairs of students should be made into groups of four. In each group, have the students consolidate their Jackson request lists, and then have them take their lists and create a picture. Groups should be instructed that their pictures (drawn preferably on large paper) should be drawn as though they are Andrew Jackson, and, instead of giving a speech, he must express his requests and intentions through visual representation. Students should be showing the American Indians leaving their lands in exchange for payment (but happy about it), while white settlers (also happy) take over their territory. There should be the impression that the lands acquired by President Andrew Jackson were fairly won, as that was the dubious image he sought to portray.

Following this, the final close text reading activity will feature the students’ introduction to the five fundamental political principles of American constitutional government: consent of the governed, limited government, rule of law, democracy, and representative government (see Appendix C). It should be made clear that since those fundamental political principles are foundational to the US Constitution, all laws passed within the United States should uphold those ideals. Using their previous pictorial creations, students should return to the 1st Annual Address of Andrew Jackson, and begin to identify where Jackson’s plan of Indian Removal shows examples of those freedoms. Have the students write a journal response to the following question: “Does the Indian Removal Act that Andrew Jackson proposes embody the five fundamental political principles? Why or why not?” Most students will declare that the Removal Act does indeed uphold the principles, so following the completion of their response another question should be asked: “What if what

Andrew Jackson said happened did not actually happen? What if the American Indians were forced off of their lands, does your answer to the previous question change? Why or why not?"

Podcasting Strategies

Students need space to express their thoughts, feelings, and frustrations over content matter that is controversial. Most students are unaware of the mistreatment of American Indians by the federal government, and it will take some time for them to process that information. A useful way for students to begin answering their own critical questions is by having them talk through what bothers or is of interest to them. There are many ways to draw this conversation, such as a Think-Pair-Share, but often those methods are low-risk and students are more tempted to get off track by talking about other things. Another method includes presentations or whole classroom discussions; however, for particularly shy students the idea of participating in such public displays of their opinions is a terrifying experience. One method that is particularly useful for ensuring students adequately prepare for the conversation, remain on task, and provides more comfort for quieter students is podcasting.

Often podcast teams can be made up of 2-4 students and can be downloaded after recording for replay or reuse in other classrooms. Likewise, for beginning podcasters, the creation of the podcast will help them develop several skills, such as speaking assertively and clearly, solving problems in group contexts, the ability to think quickly when asked a question by a peer researching, and script writing. Students can record in a separate room, and use the medium to deliver their thoughts and opinions to their classmates. Also, many students are auditory learners, so listening to their classmates' thoughts without distraction might help them negotiate their own understanding of learned content.

Lastly, students simply like podcasting. It allows them to be inventive, imaginative, and creative, while giving them the opportunity to engage in 21st century learning techniques.

Podcasting Activities

Personal discovery is truly important in having students' develop ownership over their own learning process. A short research paper should be assigned on the Trail of Tears. Research papers should be scaffolded to the skill level of the students (see endnote for examples).³⁰ However, the purpose of the research paper should be for the students to discover the actual implications of the Indian Removal Act; this should be done close in timetable to the Andrew Jackson 1st Annual Address to Congress. Students should discover the true implications of the Indian Removal Act and its consequences. Undoubtedly, they will have questions. The question in response to their questions (as it is important to guide the students' learning, not give them easy answers) should be the following: "If the Constitution was shaped by the five fundamental political principles, how could something like the Trail of Tears have happened in the United States?"; "Which fundamental political principles were violated by the Trail of Tears and why?"; "Is the United States required to protect American Indians according to the US Constitution?". The expectation is that (with only guidance), students will begin to develop an understanding of hypocrisy relating to contemporary American Indian treatment by the federal government.

The discoveries made by the research paper (of whatever size, as dictated by the instructor), will leave the students questioning the validity of the five fundamental political principles and what the United States' obligations to native peoples are. Students should be provided a space to air out their concerns with their classmates, and podcasting is a phenomenal assignment to help them do so. Working in groups of no more than four, but no less than two, students should map out a draft of discussion topics they want to cover during

their podcast. It is essential that they are told that they should be reflecting and commenting on the status of American Indian nations according to the Constitution, the dubious nature of Andrew Jackson's 1st Annual Address to Congress as related to the actual events of the Trail of Tears, and relating all of it back to whether or not the five fundamental political principle are applied to the American Indian experience. Students should be encouraged question what the implications are if the five fundamental political principles are flexible in their application to certain groups of people. Here the method of the podcast should not matter: news report, interview, storytelling, etc. What matters is ensuring the students are vocalizing their concerns over the apparent hypocrisy laden in American Indian relations with the United States' government. Appendices D and E feature examples of generic podcast (or multimedia video) project instructions, as well as an example research paper grading rubric.

Moot Court Strategies

Students must understand the Constitutional origins of Federal Indian law and policy first, as well as the actual actions taken by the US government relating to American Indian land confiscation. Once students have developed opinions on whether or not the five fundamental principles of the US Constitution were applied to American Indians by the Indian Removal Act and the Trail of Tears, they are ready to begin investigating how it all was permitted to happen. In order to comprehend how the previously mentioned treatment of American Indian Nations was allowed, the students need to understand how tribal nations are treated as both distinct and subordinate entities, as related to federal law. The designation of tribal nations as "domestic dependent nations" was created by the Supreme Court of the time, and alongside Article 1, Section of the Constitution, has shaped Federal Indian law for centuries.

In order for students to grasp the gravity of the American Indian law decisions made by John Marshall's court, it would be beneficial for the students to step into the shoes of those making the decisions. Mock trial activities are often long, arduous, and are less easily scaffolded. On the contrary, moot courts are shorter more easily scaffolded simulations of court hearings, involving all major players of the Supreme Court. For middle schoolers or lower leveled learners, moot courts help students grasp concepts related to the details of trial work and procedures. Likewise, when participating in moot courts, students will also develop the following skills: strategic thinking, questioning, listening, and oral presentation skills, extemporaneous argumentation, critical analysis of problems, and preparation/organization of needed materials.³¹

Moot courts also provide the opportunity for students to "discuss the strengths and flaws of the judicial system and the importance of the third branch of government..."³² So instead of simply learning about the functions of the judicial branch, students can investigate the process of legal proceedings for themselves. They can be taught in conjunction with learning the three branches of government, the principles of fairness, equality, and authority, criminal and civil cases, and/or argument examination.

Moot Court Activities

Prior to beginning this activity, students should have already been introduced to the case of *Marbury v. Madison* and the concept of judicial review. Without understanding of the role of the judicial branch, the students will not be able to grasp the gravity of the Indian Trilogy cases, and Jackson's subsequent undermining of them.

Students should be told of the Indian Law Trilogy arguments placed before the Marshall Supreme Court (if they did not already discover them during their research paper writing). However, under no circumstances should the students be given the decision of the final case (*Worcester v. Georgia*). Students should develop

ideas of what should have been decided first, and then be presented with the actual occurrences, in order to encourage critical thinking about how our judicial system works. Moot courts are a fun and interactive way to have students develop those opinions. Students engaging in the moot court activity should be told to do so while keeping their prior knowledge of the fundamental political principles, the Indian Removal Act, and the Constitutional origins of Federal Indian law in mind.

After presenting the students with the facts of the case of *Worcester v. Georgia*, students should work in pairs to fill out a case overview sheet. This will provide a great way to check for understanding of the case presented, prior to beginning the moot court; class wide review of this under a document camera would prove highly beneficial. Then students should be notified that they are now charged with arguing the viewpoints of the represented parties and/or think through the case through the eyes of the then justices, and act out/predict the outcome of *Worcester v. Georgia*. Students should not be permitted to choose the role they are to act out or the position they want to take. Moot courts are about getting the students to think outside of the box, work cooperatively with teammates, and problem solving; to allow them to pick their roles is counterproductive to achieving those goals.

An odd number of judges should be designated as the Supreme Court. Justices should review both sides of the case in detail and prepare no less than 7 questions to ask either side in order to make a decision on the case. Students portraying judges should be reminded that regardless of their personal feelings about how the case should result are to be placed aside and judgments should be made based on the facts presented by the litigation. Next, the remaining students should be split into two teams. One team will represent Worcester, and the other will represent Georgia. Each team should understand that they are litigators charged with convincing the Justices of their viewpoint, and should elect two students from their ranks to present the case to the court. Each team should be prepared to present answers to the following questions: “What does each party want?”; “What are the arguments in favor of and against each side?”; “Which arguments are the most persuasive from the opposing side? Why?”; “What might be the possible benefits and consequences of the justices ruling in favor of each particular side?”; “Why should their party win?”³³ For students who are lower-level learners and might be inclined to sit back during large group activities, other roles might be assigned to them to increase their individual participation, such as a justice or clerk (for more information – visit *Street Law’s Classroom Guide to Mock Trials and Moot Courts*). It is advised that students should be permitted to watch portions of a moot court (cursory YouTube search), in order to prep them for how the flow of the court should go.

After the moot court exercise, the real court decisions should be offered, and explained.³⁴ Then the concept of “precedent” should be explained, allowing students to understand that *Worcester v. Georgia* decision and Jackson’s counter actions have impacted present day recognition of American Indians. To help students make sense of the implications of the moot court, it might help to have a pinwheel discussion to draw parallels between the decisions, Jackson’s counter actions, and the present day recognition and treatment of American Indian Nations. Immediately following the discussions, the students will write a culminating essay answering the questions of “Are the fundamental political principles, on which our Constitution was founded, afforded to American Indians in the United States? Why or why not? What does it for further American Indian/US relations? Create possible legislative solutions that could help solve our broken relationship?”

Appendix A

Constitutional Commerce Clause

Article 1, Section 8

The Congress shall have Power:

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the Supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the

Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

—And to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Appendix B

(Selected Sections of) Andrew Jackson's 1st Annual Address to Congress

Fellow Citizens of the Senate and of the House of Representatives:

The condition and ulterior destiny of the Indian tribes within the limits of some of our States have become objects of much interest and importance. It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditures upon the subject, Government has constantly defeated its own policy, and the Indians in general, receding farther and farther to the west, have retained their savage habits. A portion, however, of the Southern tribes, having mingled much with the whites and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the only sovereigns within their territories, extended their laws over the Indians, which induced the latter to call upon the United States for protection.

Under these circumstances the question presented was whether the General Government had a right to sustain those people in their pretensions. The Constitution declares that "no new State shall be formed or erected within the jurisdiction of any other State" without the consent of its legislature. If the General Government is not permitted to tolerate the erection of a confederate State within the territory of one of the members of this Union against her consent, much less could it allow a foreign and independent government to establish itself there?

Georgia became a member of the Confederacy which eventuated in our Federal Union as a sovereign State, always asserting her claim to certain limits, which, having been originally defined in her colonial charter and subsequently recognized in the treaty of peace, she has ever since continued to enjoy, except as they have been circumscribed by her own voluntary transfer of a portion of her territory to the United States in the articles of cession of 1802. Alabama was admitted into the Union on the same footing with the original States, with boundaries which were prescribed by Congress.

There is no constitutional, conventional, or legal provision which allows them less power over the Indians within their borders than is possessed by Maine or New York. Would the people of Maine permit the Penobscot tribe to erect an independent government within their State? And unless they did, would it not be the duty of the General Government to support them in resisting such a measure? Would the people of New York permit each remnant of the six Nations within her borders to declare itself an independent people under the protection of the United States? Could the Indians establish a separate republic on each of their reservations in Ohio? And if they were so disposed would it be the duty of this Government to protect them in the attempt? If the principle involved in the obvious answer to these questions be abandoned, it will follow that the objects of this Government are reversed, and that it has become a part of its duty to aid in destroying the States which it was established to protect.

Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those States.

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for a while their once terrible names. Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast over-taking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of new States, whose limits they could control. That step cannot be retraced. A State cannot be dismembered by Congress or restricted in the exercise of her constitutional power. But the people of those States and of every State, actuated by feelings of justice and a regard for our national honor, submit to you the interesting question whether something cannot be done, consistently with the rights of the States, to preserve this much-injured race.

As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this Government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws. In return for their obedience as individuals they will without doubt be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that in this state of things claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the States, and

receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population.

ANDREW JACKSON

Appendix C

Implementing District Standards

Virginia Standards of Learning

Civics and Economics

Standard CE.2a

Fundamental political principles define and shape American constitutional government.

What are the fundamental political principles that have shaped government in the United States?

- Consent of the governed: The people are the source of any and all governmental power.
- Limited government: Government is not all-powerful and may do only those things the people have given it the power to do.
- Rule of law: The government and those who govern are bound by the law, as are those who are governed.
- Democracy: In a democratic system of government, the people rule.
- Representative government: In a representative system of government, the people elect public officeholders to make laws and conduct government on the people's behalf.

Through examining Andrew Jackson's Indian Removal Act, the associated Supreme Court cases, and the resulting action, students will assess whether the theorized fundamental political principles are actually applicable to the Constitution. Likewise, students will investigate contemporary American Indian Nations and tribal lands to determine whether the Constitution has been used to rectify its previous shortcomings. American Indians are American citizens and it is useful to illuminate their historic experiences alongside their contemporary experiences. Students should determine whether or not American Indians are afforded the same rights as the foundational political principles of the Constitution declare they receive. It is in that determination where the students will use the school district academic standards that the unit implements in a significant and exploratory way.

Appendix D

Multimedia Project - 8th Grade Civics & Economics

Dear 8th Grade Student,

You will be required to complete an original media project for the 4th Nine Weeks. This project will count as **TWO test grades**. You may choose from one of the following topics and project formats, or you may come up with a project idea of your own. If you create your own project you **MUST** have your idea approved by your teacher prior to starting on your project.

Possible Topics

- Andrew Jackson's relationship with American Indians
- The Trail of Tears
- American Indian Reactions/Resistance to Indian Removal
- Congressional Response to Indian Removal
- Present-day battles over Indian territory
- John Marshall and his Indian Trilogy Supreme Court Decisions

Possible Formats

- Podcast - Interview
- Podcast - Storytelling
- Podcast - News Report
- Podcast - Public Service Announcement
- Video - Interview
- Video - Round Table (i.e. The Talk or the View)
- Video - Film Trailer
- Video - Commercial
- Video - News Segment
- Video - Original Song and Music Video

Project Requirements

- 2-4 members per group. NO exceptions.
- Students will turn in the following components on the appropriate due dates:
 - 1) Notecards _____
 - 2) One page group Research Paper _____
 - 3) Original Media Project _____
 - 4) Bibliography _____
- All media projects must be between 4-6 minutes, or else they will not be graded.

Appendix E

Research Process Rubric

Category	Exemplary	Proficient	Partially Proficient	Unsatisfactory	Points
Research Paper	Wrote a thoughtful, creative, well-worded 1page research paper that was relevant to the assigned topic. Was written in the students' own words.	Wrote a well-worded 1 page research paper that was relevant to the assigned topic. There was an absence of creative thought. Was written in the students' own words.	Wrote a 1 page research paper which lacked focus, was poorly organized, and was not entirely relevant to the assigned topic. Some components were copied directly from the original source.	Wrote a 1 page research paper which lacked a specific focus, was poorly stated, and was not relevant to the assigned topic	_____/30

Selection of Sources	Identified highly appropriate sources in a variety of formats (books, journals, electronic sources, podcasts, etc.)	Identified mostly appropriate sources in a variety of formats (books, journals, electronic sources, podcasts, etc.)	Identified a few appropriate sources, but made little attempt to balance format types.	Identified no appropriate sources in any format.	_____/15
Note-taking & Notecards	Notecards were properly formatted. Extracted relevant information from sources. Wrote notes including succinct key facts, which directly provided source material for the research paper and media production. Were written in the students' own words.	Notecards were mostly properly formatted. Extracted mostly relevant information. Wrote notes that included key facts that were mostly helpful in the production of the research paper and media source. Were written in the students' own words	Notecards were largely improperly formatted. Extracted a lot of information which wasn't relevant. Wrote notes which included irrelevant facts to their assigned topic. Some notes were copied directly from the original source.	Notecards were improperly formatted. Extracted irrelevant information. Wrote notes which included a majority of facts which did not answer the research questions. Most or all notes were copied word-for-word from the original source.	_____/20
Organization & Synthesis	Presented content clearly and concisely with a logical progression of ideas and effective supporting evidence	Presented most of the content with a logical progression of ideas and supporting evidence.	Presented content which failed to maintain a consistent focus, showed minimal effort and organization, and lacked an adequate amount of supporting evidence.	Presented content which was unfocused, poorly organized, showed little thought or effort and lacked supporting evidence	_____/20
Citations/ Documentation	Cited all sources of information accurately. Used information ethically all of the time.	Cited most sources of information in proper format and documented sources. Used information ethically most of the time.	Cited most sources of information improperly and provided little or no supporting documentation to check accuracy. Failed to use information ethically some of the time.	Created citations which were incomplete or inaccurate. Provided little to no way to check the validity of the information gathered. Failed to use the information ethically.	_____/15

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