

Excerpts from Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote*. Cambridge University Press, 2007, pp. 1-20.

“From Vanishing American to Voter: The Enfranchisement of American Indians”

From Citizenship to Suffrage

The 1924 Indian Citizenship Act granted citizenship to Indians at the federal level, with the implication that they would also be considered citizens at the state and local levels. The 1934 Indian Reorganization Act recognized the legitimacy of tribal governments and permitted limited self-rule on reservations. Thus, Indians held a unique status of citizenship at four levels of government.

Some states, however, were not willing to accept Indians as equals, especially when it came to political rights. This was evidenced by numerous constitutional provisions, state laws, and court cases. In 1936 the attorney general of Colorado opined that Indians had no right to vote because they were not citizens of the state (Cohen 1942, 158). According to Peterson, as late as 1938, seven states “still refused to let Indians go to the polls” (Peterson 1957, 121). This situation finally began to change, along with many other dramatic social changes, because of World War II. (...)

The passage of the Fifteenth Amendment in 1870 barred states from limiting voting on account of race, so states had to find other ways to limit Indian voting. The following section examines six rationales used by states to prevent Indians from voting.

Residency

Despite the passage of the Indian Citizenship Act (1924), some states still argued that Indians were not residents (i.e., citizens) of the state in which they resided. The state of New Mexico so argued in 1948 (Trujillo v. Garley, 1948...). Perhaps the best-known residency case was brought in Utah, Allen v. Merrell, in 1956....

Self-Termination

Much of the debate concerning Indian residency was caught up in the controversy over termination – the legal process whereby Indian tribes lost their federal trust status. Some states attempted to tie Indian voting rights to a process that could be described as “self-termination” – the act of abandoning tribal ties in order to vote. ... Once again, Indians were being given the choice between being Indian and being allowed to vote. This choice is reflected in a second method of preventing Indians from voting; some states required Indians to give up their cultural identity and tribal affiliation in order to qualify to vote. The North Dakota constitutional provision ... is an example. In 1903 South Dakota passed a law stipulating that Indians “cannot vote or hold office” while “maintaining tribal relations.”

Taxation

Numerous states, mimicking the language in the U.S. Constitution, withheld the franchise from “Indians not taxed.” A compendium of state voting laws compiled in 1940 by the Council of State Governments found that five states (Idaho, Maine, Mississippi, New Mexico, and Washington) excluded “Indians not taxed” from the voting booth ...

New Mexico’s constitutional provision regarding Indians not taxed was litigated in the case of *Trujillo v. Garley* (1948). Miguel Trujillo was from Isleta Pueblo. He volunteered for the Marines in 1942 and served until the end of the war. He then became a teacher at the Laguna Pueblo day school. When he attempted to register to vote in 1948, the county clerk refused because he was an “Indian not taxed.” Mr. Trujillo pointed out that although he did not pay property taxes, he did pay federal income tax, gasoline taxes, and sales taxes, as well as paying for a state motor vehicle license. Still, he was denied the right to vote. Thus, to the state of New Mexico, the relevant phrase was construed to apply to Indians who did not pay certain taxes, even though they might pay other taxes. ...

Guardianship

Nearly every state in the Union limits voting to sane, competent individuals. In most cases the relevant statutes refer to the “insane,” or “idiots” and “incompetents,” or use the Latin equivalent, “non compos mentis.” Fourteen

states withhold voting privileges from persons “under guardianship,” a phrase that “applies to people who are legally under the supervision and control of a person or agency designated by the Court” (Smith 1960, 23).

The applicability of the guardianship clause in the North Dakota constitution was litigated in 1920 in *Swift v. Leach*. Sioux Indians from the Standing Rock Indian Reservation had voted in a referendum to relocate the county seat. All of the Indians who voted in the election were trust-patent Indians, meaning that they had followed the procedures established in the Dawes and Burke Acts to settle on allotted lands. But non-Indians on the county board sued to prevent the Indian votes from being counted on the basis of two arguments. The first one, that the Indians had not given up tribal relations, has already been discussed. The second argument was that the Indians were under federal guardianship and therefore did not qualify as electors, and that this guardianship “negatives the right to recognize such Indians as civilized persons” (*Swift v. Leach* 1920, 441).

The court held in favor of the Indians, noting that their abandonment of Indian ways was indicative of their competence to vote and that their participation in state elections “discloses no interference with this federal policy of wardship” (443).

The outcome was quite different when a similar case arose in Arizona. A guardianship clause became a rationale for Arizona to deny Indians the right to vote in the case of *Porter v. Hall* (1928). The Arizona Constitution provides that “No person under guardianship, non compos mentis or insane, shall be qualified to vote at any election . . .” (Art. 7, Sec. 2). This clearly refers to the mental condition of an individual, but when two Pima Indian men from the Gila River Reservation tried to register to vote in Pinal County, they were refused on the grounds that they were persons under guardianship and thus ineligible.

This case was important because it occurred during the first full presidential election campaign after the passage of the Indian Citizenship Act, and thus served as a test case to probe the link between citizenship and suffrage. Both sides in the *Porter* case stipulated that “there are many other Indians besides plaintiffs whose right to vote at the coming general election will be

determined by this case” (Porter v. Hall 1928, 413). The state of Arizona made two arguments against the plaintiffs: that Indian reservations in Arizona were not within the political and governmental boundaries of the state and that the guardianship clause prevented Indians from voting. For the latter, they cited Chief Justice John Marshall’s language in *Cherokee Nation v. Georgia*: “Their relation to the United States resembles that of a ward to his guardian” (1831, 17). ...

Literacy

According to the Council of State Governments’ 1940 survey of election laws, eighteen states prohibited illiterates from voting; among those were six western states with substantial Indian populations. ... In the mid-twentieth century, there were still thousands of Indians who spoke only their native tongue. And due to the inadequacies of reservation schools, many Indians were still illiterate. Thus, literacy tests dramatically reduced the number of Indians eligible to vote. This problem was especially severe on the Navajo Reservation, where traditional language and culture remained strong.

Source: Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote*. Cambridge University Press, 2007, pp. 1-20.