

Hidden Citizens: The Courts and Native American Voting Rights in the Southwest

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The Indian Citizenship Act of 1924 was a landmark piece of legislation, finally recognizing the importance and contributions of Native Americans to the fabric of the United States. But the act did not do all that it could have. Even after its passage, a number of states continued to block Native Americans from voting. This was most apparent in the Southwest, where Arizona, New Mexico, and Utah all used different means to deny many Indians the ballot. Only through consistent activism and legal action did Native Americans succeed in breaking down these egregious barriers to voting in the Southwest. These victories were important, if often overlooked, events in the civil rights movement.

Attorney and civil rights activist Jeanette Wolfley notes in her article “Jim Crow, Indian Style: The Disenfranchisement of Native Americans”: “Indeed, the history of Indian disenfranchisement reflects a panoply of shifting majority attitudes, policies, and laws toward Indians.” This panoply began with John Marshall. The two landmark cases from the Marshall court, *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), established the legal relationship between Native Americans and both federal and state governments. The precedents from these decisions had wide-ranging implications for the legal standing of Native Americans for more than a century, not least including the right to vote. In *Cherokee Nation v. Georgia*, the chief justice wrote:

Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States

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can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father.¹

Having established that Native Americans were unable to manage their own affairs, the following year Marshall declared that only the federal government could exercise authority on lands reserved to Indians. The issue at hand was a Georgia law requiring all whites to obtain licenses from the state to live on Indian lands. Several missionaries, including Samuel Worcester, refused and received prison sentences. The convicted men appealed to the Supreme Court, claiming that the state had no authority over Native American affairs. In vacating the convictions, Marshall wrote,

The Cherokee nation, then, is a distinct community occupying its own territory, with 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....

They [Georgia officials] interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, is committed exclusively to the government of the union.²

Wolfley states that Marshall's decision that tribes were sovereign entities "has since raised questions of dual citizenship, wardship and competency."³ In the years to come some states used Marshall's argument that Native Americans were "wards" to deny them the franchise. In other cases, states claimed that since state law had no authority on reservations, Indians were not residents of that state and could not vote.

When Utah became a state in 1896, the legislature passed a law laying out the requirements for residency. Among other provisions, the statute stipulated that, “Any person living upon any Indian or military reservation shall not be deemed a resident of Utah within the meaning of this chapter, unless such person had acquired a residence in some county in Utah prior to taking up his residence upon such Indian or military reservation.” New Mexico specifically excluded “Indians not taxed” from voting by writing the prohibition into the state constitution upon admission to the union in 1912. That same year, Arizona gained statehood and included a constitutional provision stating, “No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election”.... State officials considered those “under guardianship” to include Native Americans, based on Marshall’s ruling and subsequent court decisions. These restrictions were not unique; many states placed limitations on the rights of Native Americans to vote.⁴

In 1884, the U.S. Supreme Court ruled in *Elk v. Wilkins* that, because Congress considered tribes to be separate but dependent political entities, individual Native Americans could not become citizens without a specific act of Congress. The 1887 Dawes Act provided a path to citizenship for those Native Americans who accepted land allotments, but legal confusion continued. In 1917, the Minnesota Supreme Court determined in *Opsahl v. Johnson* that because Indians living on reservations were not subject to laws outside the reservation, they should not be allowed to vote in elections outside those lands. Three years later, the North Dakota Supreme Court ruled in *Swift v. Leach* that Native Americans who had accepted allotments, even on reservations, were citizens and entitled to vote. All of these legal developments had implications for the voting rights of Native Americans in the Southwest.⁵

The Indian Citizenship Act removed the question of whether Native Americans were citizens, but in the Southwest, the legal status of Indians living on reservations became the focus of controversy. In 1928 two Pima Indians, Peter Porter and Rudolph Johnson, registered to vote in Pinal County, Arizona. A deputy registrar in the city of Casa Grande accepted the registrations, believing that the Indian Citizenship Act mandated such action. However, when Porter and Johnson presented themselves to vote in the primary election, they learned that the county recorder, Mattie M. Hall, had expunged their names from the roll. Pima Reservation Superintendent B. P. Six assisted Porter and Johnson in bringing suit against Hall. Pending a hearing, the state supreme court ordered Hall to reinstate the registrations. In its final decision, the Arizona

Supreme Court considered two arguments from the state: First, that Native American reservations were not part of the state of Arizona and thus residents were not citizens of the state, and second, that even if Indians were residents, they were wards of the federal government and ineligible to vote under Section 7, Article 2, of the state constitution that prohibited any person under guardianship of another, *non compos mentis*, or insane from voting.⁶

On the first issue, the court examined a variety of precedents relating to the status of Indians on reservations within states:

In the absence of treaty or other express exclusion, the reservation becomes a part of the territory, subject, however, to the power of the general government to make regulations respecting the Indians, etc. There is nothing to show, nor does the court know judicially or otherwise, that there ever was any treaty between the government and the Indian tribe or tribes on the reservation.

We have no hesitancy in holding, therefore, that all Indian reservations in Arizona are within the political and governmental, as well as geographical boundaries of the state, and that the exception set forth in our Enabling Act applies to the Indian lands considered as property, and not as a territorial area withdrawn from the sovereignty of the state of Arizona. Plaintiffs, therefore, under the stipulation of facts, are residents of the state of Arizona, within the meaning of section 2, article 7, *supra*.⁷

On the second issue, a split court cited more than a dozen cases in concluding that, “It is the undisputed law, laid down by the Supreme Court of the United States innumerable times...that all Indians are wards of the federal government and as such are entitled to the care and protection due from a guardian to his ward.” But this was only part of the ruling, as Justices Lockwood and McAlister declared that Native Americans who had emancipated themselves from federal guardianship were eligible to vote under the state constitution. So the court had to examine the specific circumstances of Porter and Johnson. The majority found,

Plaintiffs have always resided on the Gila River Indian Reservation, and are subject to all the laws, rules, and regulations of the federal government, enacted by Congress and by the Department of Indian Affairs, regulating the Pima Indians living on said reservation, and subject to the jurisdiction of a special Court of Indian Offenses, created by the rules of the said department, except so far as the

law confers jurisdiction of the federal district court. This court, of course, takes judicial notice of the federal statutes. These statutes provide that Indians of the class to which plaintiffs belong, in case they commit a crime while on such reservation, are subject, not to the laws of the state of Arizona, but to the laws of the United States, and their own customs.

Lockwood and McAlister disagreed with the North Dakota Supreme Court's ruling in *Swift v. Leach*:

It would seem to us that the Indians granted suffrage by the Dakota Constitution had been fully emancipated under the decision of *Re Heff, supra*. If so, they of course were no longer under guardianship. But if the court meant that Indians still unemancipated and under the control of the federal government, as plaintiffs are in this case, were not "under guardianship," for the reasons set forth hereinbefore we decline to agree with such a conclusion.

Thus, the court ruled,

But so long as the federal government insists that, notwithstanding their citizenship, their responsibility under our law differs from that of the ordinary citizen, and that they are, or may be, regulated by that government, by virtue of its guardianship, in any manner different from that which may be used in the regulation of white citizens, they are, within the meaning of our constitutional provision, "persons under guardianship," and not entitled to vote.⁸

Chief Justice Ross dissented, offering alternative interpretations of both *Cherokee Nation v. Georgia* and *Swift v. Leach*. Ross pointed out Marshall's statement that "Their [Native Americans'] relation to the United States resembles that of a ward to his guardian." Keying in on the word "resembles," Ross claimed that Marshall's description did not meet the standard of guardianship set forth in the state constitution. Such a situation, he wrote, "is not a status that 'resembles' guardianship, but legal guardianship, authorized by law." In regards to *Swift v. Leach*, Ross sided with the North Dakota Supreme Court's decision. He quoted the court's statement that the state's constitutional provision regarding legal guardianship "has no application to this federal status of the Indian." Ross concluded, "It may be that these plaintiffs, and others in their situation, should not, as a matter of public policy, be granted the franchise, since they are not entirely emancipated from federal control, nor amenable

while on the reservation to the state laws; but as the laws are now written it seems to me they are entitled to register and to vote.”⁹

In 1936, the solicitor general of the Department of the Interior conducted a study of voting rights for Native Americans and concluded that seven states actively denied the franchise to Indians. Arizona was the only state to use the guardianship argument, while New Mexico, Idaho, and Washington all had constitutional prohibitions against “Indians not taxed” voting. Of the three, only New Mexico enforced the ban statewide. Utah’s state law denying Native Americans residency was included in the seven, though in 1940 the state attorney general issued an opinion, to be discussed in more detail later, declaring that the statute was no longer relevant. Colorado’s attorney general issued an erroneous opinion stating that Native Americans were not citizens, but this seems not to have been enforced. In North Carolina, election officials fell back on that old standby, the literacy test, to disenfranchise Indians as well as blacks. One judge told a Cherokee with a master’s from the University of North Carolina, “You couldn’t read or write to my satisfaction if you stayed here all day.” Following *Porter v. Hall*, no one challenged these restrictions until after World War II.¹⁰

The Second World War set many Americans thinking about why they were fighting for others to enjoy rights they could not enjoy at home. During the war, a Navajo soldier, Ralph Anderson, wrote to Navajo superintendent James Stewart and tribal leaders in 1943 wondering why he and his fellow Native Americans in uniform could be drafted but not vote. “We all know Congress granted the Indians citizenship in 1924 but we still have no privileges to vote. We do not understand what kind of citizenship you would call that. We feel that we should be recognized as a full citizen [of the] United States of America.” Commissioner of Indian Affairs John Collier wondered the same thing. Collier reminded white Americans that Indians had a 99 percent draft registration rate and many thousands were serving overseas. He singled out states that denied Native Americans the right to vote, in particular New Mexico and Arizona, which provided large numbers of Indian soldiers. “These states should do the American thing and grant the Indians the franchise,” Collier demanded. “All over the world we are preaching democracy and should grant a little more of it at home.” Collier and his bureau’s policies were sometimes unpopular among Native Americans but they did agree with him on this issue.¹¹

Rather than wait for Congress to act, Native Americans in Arizona took the fight for voting into their own hands. In 1944, Pima and Tohono

O'odham leaders asked Congress to address the issue, but federal officials declined on the grounds that voter registration was a state issue. Two years later, Navajo veterans appeared before Congress demanding recognition of their rights, especially in view of the patriotic sacrifices Native Americans made during the war. Though Congress still refused to act, the presentation got the attention of President Truman's civil rights commission. In their final report, commissioners refuted arguments that Indians living on reservations could be prevented from voting because they were exempt from property taxes. "The constitutionality of these lands is being tested. It has been pointed out that the concept of 'Indians not taxed' is no longer meaningful; it is a vestige of the days when most Indians were not citizens and had not become part of the community of the people of the United States." The report concluded, "Protest against these legal bans on Indian suffrage in the Southwest have gained force with the return of Indian veterans to those states." Albert Sandoval Jr., a Native American veteran, echoed these sentiments. "Mexicans who own no land can vote, Negroes who own no land can vote, white people who own no land can vote, rich people, poor people, and sick people who own no land can vote. But Indians cannot vote unless they own land and pay taxes off the reservation."¹²

Native Americans in Arizona did not wait for governmental action, but chipped away at voting restrictions on their own. Several Navajo tried to register in 1946, but Apache County officials refused to accept the applications. White Arizonans began to take greater notice of the injustice, including Levi S. Udall, a candidate for the state supreme court in 1946. Looking for an opportunity to overturn the *Hall* precedent, Native American activists got their opportunity following Maricopa County's refusal to allow two Yavapais, Frank Harrison and Harry Austin, to register. While a county court supported the decision, the state supreme court, including new justice Udall, overturned the decision in *Harrison v. Laveen*. The court determined that the interpretation of guardianship in *Hall* was erroneous. In terms of the ruling that the state constitution disenfranchised those under guardianship, Udall wrote, "We have no quarrel with this conclusion but deem it nonsequitur to hold that reservation Indians, as a class, can be properly so characterized." The court then turned to justifying that conclusion. If Porter and Johnson had been wards, then "the court could have speedily disposed of the case by determining that the action had not been brought by the real party in interest, namely Porter's guardian, section 21-501, A.C.A. 1939, whoever that might be." Udall noted:

The statutes of Arizona prescribe only two reasons for the appointment of a guardian-general, special or ad litem—and they are that the ward (a) is not of age, section 42-101 to 42-134, A.C.A. 1939, (b) is not capable of taking care of himself or managing his property. Section 42-135 to 42-143, A.C.A. 1939. Yet neither of these grounds were urged, as to the individual plaintiffs, in either the Porter case or in the instant case.¹³

The court further determined that Native Americans living on reservations did not meet the definition of wards of the state because the federal government did not exercise control over the actions or decisions of individual Native Americans.

It is axiomatic that if a person is under guardianship he must have a guardian. If an Indian, living on a reservation, is under guardianship the United States presumably must be his guardian. Yet in the instant case the United States is appearing specially in this litigation as *amicus curiae* to disclaim any intention to treat the plaintiffs as “persons under guardianship.” Certainly the state courts cannot make the United States a guardian against its will. Nor do we believe that the “guardianship” referred to in the Arizona constitution, section 2, article 7, was of the type that could be dissolved by merely stepping across an imaginary line—the boundary of an Indian reservation. Furthermore, to ascribe to all Indians residing on reservations the quality of being “incapable of handling their own affairs in an ordinary manner” would be a grave injustice. For amongst them are educated persons as fully capable of handling their affairs as their white neighbors. This leads us to the conclusion that the framers of the constitution had in mind situations where disabilities are established on an individual rather than a tribal basis.¹⁴

Based on this finding, Udall wrote, “We hold that the term ‘persons under guardianship’ has no application to the plaintiffs or to the Federal status of Indians in Arizona as a class. This conclusion makes it unnecessary to consider the Federal constitutional question heretofore stated. The majority opinion in the case of *Porter v. Hall*, *supra*, is expressly overruled in so far as it conflicts with our present holding.” State Representative Richard Harless, campaigning for the Democratic gubernatorial nomination, praised the decision, saying, “The supreme court’s decision is a major achievement for Arizona’s Indian population and places them in a position which they should have held for many years.”¹⁵

In New Mexico, the effort to win voting rights for Native Americans was more complicated. Many Pueblo groups, especially the Zuni, wanted to remain isolated from white culture, and that included participating in elections. During World War II, Zuni leaders applied for deferments for many young men by claiming that they were religious leaders. Those Zuni who did join the service found wariness and sometimes hostility when they returned. Elders insisted upon a cleansing ceremony to protect tribal culture from outside influences. One mother picked up her returning son in Gallup but refused to touch him, even for a welcoming hug, until he had been ritually purified. Tribal leaders and gossip convinced most veterans not to attend meetings at an American Legion post in Zuni. Another veteran discovered the same attitude when he showed up in a double-breasted suit. Others in the community derided him for “trying to be a big shot, trying to act like a white man.” These examples revealed how deeply the Zuni feared behavior that placed the individual above the group. Such actions attracted witches, many believed. For a tribal member to challenge New Mexico’s voting laws meant fighting not just the established power structure, but his own elders as well.¹⁶

While Indians agreed on the unfairness of the situation, many tribal elders in New Mexico worried that winning the right to vote would give the state the power to tax their reservations and generally increase governmental control of their lives. The superintendent of the United Pueblos Agency, John G. Evans, attempted to calm concerns by pointing out that the franchise would allow Indians to vote for candidates who would serve their interests. He also reassured tribal governors that their property would not be taxed and that the state would not be allowed a greater say in Pueblo affairs as a result of winning the ballot. Nonetheless, many remained fearful. In 1947, four Native Americans filed a pair of lawsuits challenging New Mexico’s law. The state responded that it was under no obligation to grant Indians living on reservations the vote because that land belonged to the federal government. The plaintiffs argued that they paid a variety of state taxes, but admitted that their property was not taxed. District courts upheld the state’s position in both cases, whereupon the plaintiffs appealed to the state supreme court.¹⁷

William Truswell, who represented three of the plaintiffs, was working on the appeal when he received letters from two of his Zuni clients asking that he “withhold any further action in this matter until you hear from us through the officers of the Zuni pueblo.” Truswell immediately recognized that the old fears among Pueblo leaders that voting would give the state power over tribal affairs remained strong. And it soon

became clear that they had reason to fear. State Representative A. M. Fernandez filed a brief with the state supreme court claiming that the state was justified in withholding the franchise “until Congress enacts laws making reservation Indians subject to state laws....” Fernandez argued that the federal government placed reservations outside the legal authority of states and also relieved Indians from “the duty of contributing to the support of the state government.” Fernandez stated, “[I]t is high time the Indians be given the full rights of citizenship with the corresponding rights, privileges and obligations as members of the society of the state and that they be permitted to be and become full-fledged members of that society,” but that this would have consequences. “[T]he granting of suffrage to the Indians means the organization of precincts within the reservation and the assertion of state jurisdiction over their activities in exercising right of franchise.” These arguments spooked Zuni leaders, who saw complete isolation from the political process as their only protection. If the state should exercise authority in establishing precincts and other enforcing election laws on the reservations, other encroachments would follow. Mason Harker, a Zuni Indian who owned property in Valencia County, withdrew his registration under pressure from tribal authorities. While other tribes did want to vote, the Pueblo Indians’ resistance to the franchise provided ammunition to opponents who claimed that Native Americans did not want to be part of the electoral process.¹⁸

Despite Fernandez’s claims that he believed it was time for the state’s Native Americans to receive full rights of citizenship, there were practical reasons for politicians in New Mexico to oppose the move. “It is thought that comparatively few of them would care to work for the state, and even if they did, the job patronage is spread pretty thinly already.... The Indians...generally are an independent lot. Giving them the vote might complicate matters for the partisans.” The *Albuquerque Journal* noted that Congress was considering legislation to specifically enfranchise all Native Americans in Arizona and New Mexico. “But privately, the politicians had just as soon leave the Indians as they are, in this regard.”¹⁹

In 1948, activists decided to try a different tactic. Rather than go through state courts that had repeatedly ruled in favor of the state’s position, they decided to go to federal court. Miguel H. Trujillo filed suit in U.S. District Court claiming the state’s refusal to register reservation Indians was unconstitutional. Trujillo was an Isleta Indian who had graduated from the Haskell Institute and the University of New Mexico. He was also a former Marine. At the time he filed his suit,

Trujillo was working on his master's at the University of New Mexico. Trujillo's education and life experience made him unwilling to accept limits on his freedoms, whether imposed by the state or tribal leaders. On August 3, 1948, the court ruled that New Mexico's law preventing "Indians not taxed" violated both the Fourteenth and Fifteenth Amendments. In the oral opinion Justice Orie Phillips held:

It [the New Mexico Constitution] says that "Indians not taxed" may not vote, although they possess every other qualification. We are unable to escape the conclusion that, under the Fourteenth and Fifteenth Amendments, that constitutes a discrimination on the ground of race. Any other citizen, regardless of race, in the State of New Mexico who has not paid one cent of tax of any kind or character, if he possesses the other qualifications, may vote. An Indian, and only an Indian, in order to meet the qualifications of a voter, must have paid a tax. How you can escape the conclusion that that makes a requirement with respect to an Indian as a qualification to exercise the elective franchise and does not make that requirement with respect to the member of any other race is beyond me. I just feel like the conclusion is inescapable.

The court further noted, "It is perhaps not pertinent to the question here, but we all know that these New Mexico Indians have responded to the needs of the country in time of war. Why should they be deprived of their rights to vote now because they are favored by the federal government in exempting their lands from taxation?" Phillips continued this line of reasoning and tied it back into the issue of taxation. "I don't know whether it is still on the statute books, but when I was in the Legislature, back in 1921, we passed a statute giving an ex-serviceman an exemption of two thousand dollars from taxation.... Would it have been constitutional for New Mexico to have then said this class that enjoys the two thousand dollar tax exemption shall not be permitted to vote?" Using this logic, the court unanimously struck down New Mexico's law.²⁰

Observers praised the decision as a step forward for Native Americans. "We do not see how the court could have reached any other decision.... The shame is that it has been so long delayed," wrote the *New York Times*. The National Congress of American Indians called the ruling a "smashing victory for civil rights of our oldest national minority," and "a prelude to further advances of the forgotten men of our great Southwest."²¹

State officials declined to appeal the verdict. Attorney General C. C. McCulloh pointed out that the decision specifically applied only to Pueblo Indians and believed that it left open the question of whether Navajos living on federal land could vote. He noted that the residency of employees of the federal nuclear facility at Los Alamos was under review by the New Mexico Supreme Court. In the end, McCulloh concluded that the ruling applied to all Indians and that there was no point in appealing to the U.S. Supreme Court. But he was not pleased at the precedent. "It's still quite a problem. The federal government is primarily responsible for these people. If they throw them into our laps all at once to educate, give relief to and otherwise, I don't know what we're going to do."²²

The state legislature had a solution to that dilemma, however. The following year lawmakers tried to pass a bill to deny voting rights to any person without "fixed abodes" and not subject to civil and criminal law in New Mexico. Despite the earlier court battles, legislators somehow believed that the measure might pass constitutional muster. After an initial defeat, the legislature approved the measure on March 12 as part of an eleventh-hour session prior to adjournment. Many state newspapers called the bill a "hot potato" dumped in the lap of Governor Thomas J. Mabry. The public made clear their displeasure, flooding the governor's office with messages to veto the measure. Because the legislature had adjourned, Mabry could use his pocket veto instead of confronting the issue directly. In private, the governor disapproved of the "hurried" manner in which the legislature passed the bill, but remained silent on the inherent merits. Regardless, the measure died and never resurfaced, which saved the state much embarrassment and money in court battles.²³

Even after these legal victories in Arizona and New Mexico, Utah refused to allow Indians living on reservations in the state to vote. According to state law anyone residing on federal land could not vote in state elections. In 1940, state attorney general Grover A. Giles issued an opinion on the law stemming from ongoing disagreements over whether residents of the Uintah Indian reservation should be allowed to vote. The federal government had restored considerable amounts of land originally reserved to public domain over the years and both whites and Native Americans held title to land that was within the boundaries of the reservation but not under tribal control. In the process, the issue of who should be allowed to vote became confused. "I understand that with the recurrence of each election this matter has been a serious bone of contention among the people of Uintah County," the attorney general wrote.²⁴

Giles determined that “the statute in question contemplated a closed reservation,” which, he concluded, was no longer the case with the Uintah reservation. Since the federal government opened the unallotted lands to sale, residents had been paying a variety of taxes as well as voting in several precincts. The attorney general declared that “...when the reservation was thrown open to homestead settlers it is entirely reasonable to assume that the reason for segregating that territory from Uintah County for election purposes no longer persisted.” He further noted that “the attitude of the Government towards the Indians themselves with relation to voting privileges has changed materially since the Utah statute in question was created.” Drawing upon these findings, as well as the Indian Citizenship Act and the Fifteenth Amendment, Giles concluded that Indians who were of legal age and met all other criteria for voting in Utah should not be prohibited from casting ballots in their local precinct, even if that precinct was on the Uintah reservation. The attorney general did add that “...if there is doubt of the correctness of my conclusions, the remedy lies with the Legislature.” He suggested that the state legislature might want to examine the statute in order to bring the matter to a final decision. But until that time, Giles wrote, “the doubt should be resolved in favor of granting the franchise to the citizens residing on the Uintah Reservation rather than denying the same.”²⁵

But the legislature never did revisit the statute. It remained on the books, unenforced, until in 1956, responding to a request from Utah’s secretary of state, Attorney General E. R. Callister declared that, “Indians who live on the reservations are not entitled to vote in Utah...Indians living off the reservation, may, of course, register and vote in the voting district in which they reside, the same as any other citizen.” Assistant Attorney General K. Roge Bean defended the statute by claiming that it pertained to all Utahans, regardless of race. To be fair, the attorney general’s office made clear that this interpretation applied to all federal property, not just Indian reservations. In response to an inquiry from Tooele County, the office determined that any person living on the federal Dugway Proving Ground would first have to establish residence outside the facility before being allowed to vote in Utah.²⁶

In September, Preston Allen, a resident of the Uintah and Ouray reservation, applied for an absentee ballot. Duchesne County clerk Porter L. Merrell denied the application, based on the attorney general’s ruling. Allen then filed suit challenging the law. One of Allen’s attorneys, Robert V. Barker, argued, “Reservations are definitely a part of the state, Indians are paying taxes to cities, counties and school districts on their lands and

are entitled to a voice in selecting Congressional representatives and other officers.” The Utah Supreme Court determined that the case hinged on three issues:

1. That most persons residing on reservations are members of Indian tribes which have a considerable degree of sovereignty independent of state government;
2. That the Federal Government maintains a high degree of interest in and responsibility for their welfare and thus has potentially a substantial amount of influence and control over them; and
3. That they are much less concerned with paying taxes and otherwise being involved with state government and its local units, and are much less interested in it than are citizens generally.

The justices explained that, “The possibility of influence and control over persons residing on military and Indian reservations by the federal officials appears to have been an important factor motivating the passage of the questioned statute originally. That potential yet exists to a considerable extent.” Furthermore, “allowing them [reservation Indians] to vote might place substantial control of the county government and the expenditures of its funds in a group of citizens, who, as a class, had an extremely limited interest in its function and very little responsibility in providing the financial support thereof.” The court noted that while the state was working toward integrating Native Americans in conjunction with the federal government’s termination policy, “it cannot realistically be claimed that it has been attained, even in theory, much less so in fact. To assume it accomplished because we might wish it so, would be to blind ourselves to reality.”²⁷

The justices expressed doubt that Indians could make informed political decisions.

It is not subject to dispute that Indians living on reservations are extremely limited in their contact with state government and its units and, for this reason also, have much less interest in or concern with it than do other citizens. It is a matter of common knowledge that all except a minimal percentage of reservation Indians live, not in communities, but in individual dwellings or hogans remotely isolated from others and from contact with the outside world.

Based on these assumptions, the court decided,

Under such conditions it is but natural that they are neither acquainted with the processes of government, nor conversant with activities of the outside world generally. Inasmuch as most governmental services are furnished them, it is patent that they would not have much concern with services and regulations pertaining to sanitation, business, licensing, school facilities, law enforcement and other functions carried on by the county and state governments. This is more especially so because they are not obliged to pay most of the taxes which support such governmental functions.²⁸

The justices, in a unanimous opinion, concluded their ruling by stating,

From the considerations hereinabove discussed, it is obvious that reservation Indians, as a class, occupy a distinctly different status in their relationship to government than do other citizens. This conclusion is based upon their remaining tribal sovereignty; the influence and control, actual and potential, of the Federal Government over them; the fact that they enjoy the benefits of governmental services without bearing commensurate tax burden, and are not as conversant with nor as interested in government as other citizens. . . . Consequently, we do not see how it can be said with any degree of certainty that the statute is a denial of the right to vote on account of race, nor that it is so unreasonable or arbitrary that it is in clear conflict with the nondiscrimination and equal protection clauses of the Federal Constitution or of the Constitution of this state.²⁹

Most observers believed that the court's decision was in error, especially after the rulings in Arizona and New Mexico a few years earlier. The *Denver Post*, in an editorial reprinted in the *Ogden Standard-Examiner*, wrote, "There can be no question about Indians being citizens. . . . It may be that many of the Indians are not interested in voting. But that is no reason for denying this privilege to any one who wants to vote. And it was the government which settled the Indians on reservations." Allen appealed the court's decision to the U.S. Supreme Court, which immediately agreed to hear the case. An article for the *Utah Law Review* pointed out an obvious flaw in the court's logic. In determining what groups should be covered by the residency requirement, "...the statute could not have been designed to apply to Indians as such, since they were not generally at that time citizens of the United States and only citizens were entitled to vote under the Constitution of Utah adopted

in the same year as the statute.” Based on the legal record and the history of the law, the journal concluded, “...the reasons for the court’s decision do not justify the retention of the statute and the situation should be corrected by legislative enactment.” The Utah legislature, having been advised that the state stood no chance of prevailing before the court of Earl Warren, took the *Utah Law Review*’s advice and changed the law to allow reservation Indians to vote early in 1957.³⁰

Native Americans in the Southwest have faced a variety of challenges to exercising their political rights, and overcoming these obstacles required persistence. Not only did Native Americans have to battle entrenched discrimination, but in some cases, the fears of their own people. The court cases involved in the march to full voting rights reveal how the American legal system was viewed by Native Americans, and, by extension, other minorities, changed over time. The battles of Native Americans to secure their voting rights in the Southwest provide an informative example of the complexities of life for Native Americans in the region, and were important victories in America’s civil rights movement. ❖

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NOTES

1. Jeanette Wolfley, “Jim Crow, Indian Style: The Disenfranchisement of Native Americans,” *American Indian Law Review* 16 (1991): 167; *The Cherokee Nation v. The State of Georgia*, 30 U.S. 1 (1831). Wolfley’s article should not be confused with Orlan J. Svingen, “Jim Crow, Indian Style,” *American Indian Quarterly* 11 no. 4 (Autumn 1987): 275–286. In addition to Wolfley, the reader interested in the court cases discussed in this article may wish to consult Willard Hughes Rollings, “Citizenship and Suffrage: The Native American Struggle for Civil Rights in the American West, 1830–1965,” *Nevada Law Journal* 5 no. 126 (Fall 2004): 126–140.

2. *Worcester v. Georgia*, 31 U.S. 515 (1832). See also Francis G. Hutchins, *Tribes and the American Constitution* (Brookline, MA: Amarta, 2000); Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Norman: University of Oklahoma Press, 2003); and Robert Williams

Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990) for more on John Marshall and the importance of these cases to the legal status of Native Americans in the United States.

3. Wolfley, 169.

4. *The Revised Statutes of Utah in Force January 1, 1898; Constitution of the State of New Mexico*, Article VII, Sec. 1; *Constitution of the State of Arizona*, Article VII, Sec. 2. The U.S. Constitution excluded “Indians not taxed” from the apportionment formula for the House of Representatives in Article I, Sec. 2.

5. *Elk v. Wilkins*, 112 U.S. 94 (1884); *Opsahl v. Johnson*, 138 Minn. 42 163 N.W. 988 (1917); *Swift v. Leach*, 45 N.D. 437 178 N.W. 437 (1920). See also *Matter of Heff*, 197 U.S. 488 (1905), and *United States v. Nice*, 241 U.S. 591, 598 (1916), for additional cases on Native American citizenship and Theodore H. Haas, “The Legal Aspects of Indian Affairs from 1887 to 1957,” *Annals of the American Academy of Political Science* 311 (May 1957): 12–22, for a broad discussion of the position of Native Americans under the law in this era.

6. Daniel McCool, “Indian Voting,” in *American Indian Policy in the Twentieth Century*, Vine DeLoria, ed. (Norman: University of Oklahoma Press, 1985), 109; *Casa Grande Dispatch*, September 21, 1928.

7. *Porter v. Hall*, 34 Ariz. 308 (1928). For a contemporary discussion of the issues raised by *Porter v. Hall*, see N. D. Houghton, “The Legal Status of Indian Suffrage,” *California Law Review* 19 no. 5 (July 1931): 507–520.

8. *Porter v. Hall*.

9. *Ibid.*

10. *Opinions of the Solicitor General of the Department of the Interior Relating to Indian Affairs* (Washington, D.C.: GPO), 777–783; Jere Franco, “Empowering the World War II Native American Veteran: Postwar Civil Rights,” *Wicazo Sa Review* 9 no. 1 (Spring 1993): 33. The solicitor general’s report makes clear that some Native Americans voted without interference in states with constitutional prohibitions. The record is unclear on how the attorney general’s opinion in Colorado was handled, but there are no additional pieces of correspondence between the solicitor general and the attorney general in the collected volume.

11. Ralph W. Anderson letter to J. M. Stewart, April 30, 1943 in Peter Iverson, ed., “*For Our Navajo People*”: *Dine Letters, Speeches and Petitions, 1900–1960* (Albuquerque: University of New Mexico Press, 2002), 144; Franco, 34. For general works on Native Americans in World War II see Alison R. Bernstein, *American Indians and World War II: Toward a New Era in Indian Affairs* (Norman: University of Oklahoma Press, 1999); Kenneth William Townsend, *World War II and the American Indian* (Albuquerque: University of New Mexico Press, 2002); and Jere Franco, *Crossing the Pond: The Native American Effort in World War II* (Denton: University of North Texas Press, 1999).

12. “To Secure These Rights: The Report of the President’s Committee on Civil Rights,” <http://www.trumanlibrary.org/civilrights/srights2.htm#40>;

Albert Sandoval Jr., "Right to Vote," *Indian Truth* 23 (March–August 1946): 2–3, quoted in Carol A. Venturini, "The Fight for Indian Voting Rights in New Mexico" (M.A. thesis, University of New Mexico, 1993), 159–164.

13. McCool, 110; *Harrison v. Laveen*, 67 Ariz. 337 (1948).

14. Ibid.

15. Ibid.; *Arizona Republic*, July 16, 1948. For information on electoral issues that Native Americans faced in Arizona after *Harrison v. Laveen* see Glenn A. Phelps, "Representation without Taxation: Citizenship and Suffrage in Indian Country," *American Indian Quarterly* 9 no. 2 (Spring 1985): 135–148, and James Thomas Tucker et al., "Voting Rights in Arizona: 1982–2006," *Review of Law and Social Justice* 17 no. 2 (2008): 283–365.

16. John Adair and Evon Vogt, "Navaho and Zuni Veterans: A Study of Contrasting Modes of Culture Change," *American Anthropologist* 51 no. 4 (Oct.–Dec. 1949): 553–554.

17. Venturini, 137–138, 143.

18. *Albuquerque Journal*, January 10, 1948; *ibid.*, 154, 156.

19. *Albuquerque Journal*, February 6, 1948.

20. Ibid., 159–161, 164; McCool, 111–112; *Gallup Independent*, August 3, 1948; *Trujillo v. Garley* (1948).

21. Henry Christman, "Southwestern Indians Win the Vote," *American Indian* 4 (1948): 10.

22. *Gallup Independent*, August 13, 1948.

23. *Gallup Independent*, March 12, 1949; *Las Cruces Sun News*, March 12, 1949; *Clovis News-Journal*, March 18, 1949.

24. *Biennial Report of the Attorney General to the Governor of the State of Utah for the Biennial Period Ending June 30, 1942* (Salt Lake City: Office of the Attorney General, 1942), 272.

25. Ibid., 272–274.

26. Daniel McCool, Susan M. Olson, and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act and the Right to Vote* (New York: Cambridge University Press, 2007), 96; *Provo Daily Herald*, March 25, 1956; *New York Times*, October 14, 1956; *Deseret News*, June 2, 1956.

27. *Deseret News*, September 11, 1956; McCool et. al., 96; *New York Times*, October 14, 1956; *Ogden Standard-Examiner*, December 16, 1956; *Allen v. Merrell*, 6 Utah 2d 32 (1956).

28. *Allen v. Merrell*.

29. Ibid.

30. "Voteless Redmen," *Denver Post* editorial reprinted in *Ogden Standard-Examiner*, April 20, 1957; *New York Times*, November 6, 1956; John H. Allen, "Denial of Voting Rights to Reservation Indians," *Utah Law Review* 5 no. 2 (Fall 1956): 248, 256.