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## The Forgotten Voters: An Examination of Native American Voting Rights

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# The Forgotten Voters: An Examination of Native American Voting Rights

*Victoria Guillemard*

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Imagine your loved one is having a heart attack. Your first instinct is to dial 911 and await an ambulance. The time it takes for the ambulance to arrive feels like hours, but in reality you know that in only a matter of minutes help will arrive and your loved one will be whisked away to receive life-saving medical care. The expectation of the ambulance's prompt arrival is based upon a trust in your local government. You trust that politicians and policy makers not only value your health and safety but that they will prioritize it. You trust that wherever there are needs, such as improved public health measures that allow for prompt ambulance response times, politicians are taking the time to properly address them by listening to their constituents. But that is not always the case.

Imagine that same scenario except you do not expect the ambulance to be reliable. It takes over an hour to arrive. The ambulance response time has been that long for years. In San Juan County, Utah, this was the reality for many members of the Navajo Nation, and had been a critical issue within their community since the early 2000's. The San Juan County ambulances had an average response time of an hour to calls from Navajo Nation land, and the members of the local government ignored this problem, putting the health of people at risk for a decade.<sup>1</sup>

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<sup>1</sup> Krista Langlois, "How a Utah County Silenced Native American Voters — and How Navajos Are Fighting Back," 13

According to many tribe members, local government officials intentionally undermined efforts to reduce the dangerously delayed ambulance response time in Native American communities. This is a critical public health care system failure that should be easily addressed through policy changes that respond to community-voiced concerns. By allowing Native Americans to express their opinions through the voting process and addressing the pressing issues such as ambulance response times, local politicians could have prevented the unnecessary deaths of community members. What allowed the Navajo Nation members of San Juan County to be ignored for so long?

The root cause of this particular health care crisis stems from the larger national problem of voter suppression and disenfranchisement of Native Americans. In the United States, Native American voters are silenced and excluded from the political process, restricting their ability to create and advocate for change in their communities. Native voters are marginalized from the political process by means of racial gerrymandering, voter dilution, voter suppression, and disenfranchisement. The example of the public health crisis in San Juan County is just one negative manifestation of

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June 13 2016,  
<http://www.hcn.org/issues/48.10/how-a-utah-county-silenced-native-american-voters-and-how-navajos-are-fighting-back>.

racial gerrymandering and voter dilution. In this paper I explore how these four methods of voter exclusion lead to crises within reservations that are ignored and forgotten within the broader political realm. I argue that voter suppression, voter dilution, racial gerrymandering, and disenfranchisement of Native Americans serve as tools of continual colonial oppression and marginalization.

### **Native American Voting Rights**

The political act of voting is a necessary tool used to make voices heard and recognized by a government. In the United States, voting is restricted to those who have citizenship. Citizenship status is therefore often a privilege that is sought by non-citizens in order for their voices and interests to be represented in elections.

Citizenship, however, can also be a tool of oppression and erasure. American Indian tribes in the United States have been the victims of colonialism since white settlers first landed on their shores. Their recognition as sovereign nations on indigenous land was in direct opposition to the goals of the U.S. government. The opposition to Native sovereignty was most visibly expressed by state governments, which felt they had the right to govern the people on tribal lands under state jurisdiction and law. In Georgia, this led to the Supreme Court hearing *Worcester v. Georgia* when the state imprisoned Samuel Worcester for preaching on Cherokee land without a license.<sup>2</sup> The

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<sup>2</sup> Tim Garrison, "Worcester v. Georgia (1832)," New Georgia Encyclopedia, April 27, 2004, <http://www.georgiaencyclopedia.org/articles/government-politics/worcester-v-georgia-1832>.

court decided in favor of the Cherokees, reaffirming Native tribes as sovereign nations under federal jurisdiction.<sup>3</sup> Chief Justice John Marshall read his decision on the case stating, "tribes possess a nationhood status and retain inherent powers of self-government."<sup>4</sup>

Despite Chief Justice Marshall's decision to reinforce tribal sovereignty, many states continued to infringe upon tribal rights as sovereign nations. The United States government, on both a federal and state level, did not respect tribes as nations. Rather, Native tribes were viewed as obstacles in the way of westward expansion. The most logical next step was to determine a way in which the U.S. government, including states, could have a say in the lives of Native Americans living on tribal land.

In 1924, Congress granted citizenship to all Native Americans who were born in the United States by passing the Indian Citizenship Act.<sup>5</sup> The act gave Native Americans the status of "citizen" on a national level; however, their rights were severely limited. They were not allowed to vote in elections, and states could still refuse to recognize them as residents. The declaration of Native citizenship is additionally complicated by the status of Native Americans as members of their own sovereign nations. Their United States citizenship status was forced upon them without consent from the

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<sup>3</sup> Tim Garrison.

<sup>4</sup> "Frequently Asked Questions | Indian Affairs," accessed April 5, 2018, <https://www.bia.gov/frequently-asked-questions>.

<sup>5</sup> "On This Day, All Indians Made United States Citizens - National Constitution Center," National Constitution Center - constitutioncenter.org, accessed April 5, 2018, <https://constitutioncenter.org/blog/on-this-day-in-1924-all-indians-made-united-states-citizens>.

independent indigenous Native nations, demonstrating the pervasive nature of colonialism.<sup>6</sup> By claiming Native Americans as citizens, the United States government attempted to invalidate tribal governments and erase native sovereignty.

Despite being citizens, they were still distinguished from non-native Americans by their inability to vote. It wasn't until 1965, when the Voting Rights Act was passed, that Native Americans were given the right to fully participate in all elections: local, state, and federal.<sup>7</sup> This act allows Native American voters to access the political system in the United States while still maintaining their tribal citizenship.

As necessary as the Voting Rights Act is to Native communities, it also shows the progression of colonialism. Whereas Native Americans were once citizens without rights, they now share just as many voting rights as non-native citizens. They were politically assimilated into the voting process by the U.S. as though they were always there.

However, the legal right to vote does not imply universal access. Since 1965, national, state, and local governments have developed new ways to silence Native voters. Their rights as citizens are questioned, challenged, and blocked both illegally and through legal means of voter suppression, voter dilution, racial gerrymandering, and

felon disenfranchisement. In this paper I have chosen to focus on the four main ways in which Native American voters are silenced and marginalized. These methods of voter suppression do not operate individually, but rather intersect to create a system that prevents Native American voters' voices from being recognized and addressed.

### **Racial Gerrymandering and Voter Dilution**

An ambulance in San Juan County, Utah takes over an hour to respond to a medical emergency on the Navajo Nation Reservation as a direct result of improperly drawn districts purposely designed to silence Native voters. This practice, commonly referred to as "racial gerrymandering," occurs when districts are drawn in a way that distributes targeted voters disproportionately in order to prevent them from having the majority vote. In San Juan County, racial gerrymandering targeting Navajo Nation members resulted in two of the three districts having predominantly white voters. This was accomplished despite the county as a whole being composed of more than 50% Navajo Nation members.<sup>8</sup>

Voter dilution is often the primary goal of racial gerrymandering. If a majority Native county has properly drawn districts, each district should have an appropriately proportional number of Native Americans within it. In San Juan, the districts were drawn so that the two districts, which were left with

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<sup>6</sup> David E. Wilkins, "Dismembering Natives: The Violence Done by Citizenship Fights," *Indian Country Media Network* (blog), May 16, 2014, <https://indiancountrymedianetwork.com/news/opinions/dismembering-natives-the-violence-done-by-citizenship-fights/>.

<sup>7</sup> "Voting Rights Act," *The Leadership Conference on Civil and Human Rights*, accessed December 12, 2016, <http://www.civilrights.org/voting-rights/vra/>.

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<sup>8</sup> Mike Lakusiak et al., "Native Americans Still Fight for Voting Equality," *Voting Wars: Rights | Power | Privilege*, August 20, 2016, <https://votingwars.news21.com/native-americans-still-fight-for-voting-equality/>.

majority white voters, were able to elect the officials that represented their interests over Native interests. This led to the election of two white commissioners and one Native commissioner, and prevented the proportionally dominant Navajo Nation voters' voices from being acknowledged in the election. The "dilution" of the Native vote means that even if every Native voter voted, they are still improperly represented within their district.

Voter dilution accomplished through racial gerrymandering is illegal under the 1965 Voting Rights Act. Despite this, San Juan County operated in this way for decades. Non-native county commissioners often blocked and ignored the Navajos' interests whenever Native issues were brought before them. It took a federal ruling to change the way in which San Juan districts were drawn. In February 2016, U.S. District Court Judge Robert J. Shelby ruled that the way in which the districts were divided violated the 14<sup>th</sup> and 15<sup>th</sup> Amendments. He stated: "keeping an election district in place for decades without regular reconsideration is unusual in any context, but when the asserted justification for this inertia is a racial classification, it offends basic democratic principles."<sup>9</sup>

The damage that had been done by silencing the Native American voters in San Juan County had already set in. If the Navajo Nation had been properly represented through elections of county commissioners,

they may have been able to pass policies that could have addressed ambulance response times. Instead, the tribe had to work within their community to gather enough money to allow the Utah Navajo Health System to hire EMS volunteers and purchase the necessary vehicles for medical transport. This cost fell on the tribe and the federal government when, traditionally, county funds and staff provide adequate services.<sup>10</sup>

### **Voter Suppression and Disenfranchisement**

Besides racial gerrymandering through voter dilution, voter suppression has also been prominent within Native communities. Voter suppression constitutes any regulation, law, or system that makes voting more difficult or impossible for a certain group of people. At the Pine Ridge Reservation in South Dakota, tribal citizens had to travel, on average, twice as far as white district members in order to access a polling site. If they were unable to travel to the polling site, they were required to submit an affidavit to prove their identity before sending an absentee ballot. The county required this extra step because tribal ID cards were considered insufficient forms of identification by the state.<sup>11</sup>

These barriers to access suppressed many Native Americans' ability to vote, as the process of filing an affidavit can be long and difficult. In response to the voter suppression

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<sup>9</sup> Michael McFall, "After Navajo Nation Sues, Judge Orders San Juan County to Redraw Lines," *The Salt Lake Tribune*, February 22, 2016, <http://www.sltrib.com/home/3568518-155/after-navajo-nation-sues-judge-orders>.

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<sup>10</sup> Langlois, "How a Utah County Silenced Native American Voters — and How Navajos Are Fighting Back."

<sup>11</sup> Edwin Rios, "Native Americans Are Taking the Fight for Voting Rights to Court," *Mother Jones*, accessed December 12, 2016, <http://www.motherjones.com/politics/2016/03/native-american-voting-rights-lawsuits>.

they were experiencing, members of the tribe filed a lawsuit against the county in 2014. They demanded equal access to voting, and suggested that voting be allowed over satellite to reduce the number of absentee voters. They argued that because of the higher rates of poverty, prevalence of illiteracy, inability to read English, and the location of the reservation, the conditions in which they were expected to vote prevented them from reasonably accessing their right to vote.<sup>12</sup>

A similar case occurred in North Dakota when the Turtle Mountain Band of Chippewa learned that they would be denied their right to vote because of a new voter I.D. law. The form of identification distributed by reservation governments is typically an acceptable alternative method of identification for most legal matters. In accordance with the new voter I.D. law, the specifications for valid forms of I.D. only allowed for forms of identification that the United States distributes which include a “911 address.” A “911 address” has a house number and street name, and this method of identifying residence is not always known or recognized by reservations.<sup>13</sup> The Bureau of Indian Affairs does not require residential addresses to be listed on official tribe I.D.’s, so the reservations were always in compliance with regulations for proper forms of identification. The only instance in which their identification was rendered invalid was

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<sup>12</sup> “Poor Bear v. Jackson County,” Lawyers’ Committee for Civil Rights Under Law, accessed December 15, 2016, <https://lawyerscommittee.org/project/voting-rights-project/litigation/poor-bear-v-jackson-county/>.

<sup>13</sup> “Brakebill, et Al. v. Jaeger,” Native American Rights Fund, accessed December 15, 2016, <http://www.narf.org/cases/3057/>.

for voter registration. Unlike in South Dakota, the tribe members were not even allowed to file an affidavit in order to vote. In response, they filed a lawsuit, *Brakebill v. Jaeger*, in which they claim that the state disproportionately disenfranchised Native American voters who were previously qualified to vote.

These are just two examples of instances in which Native communities have been left out of the voting pool through means of voter suppression. In 2016 alone, Native American and Alaskan Natives have identified seventeen states that infringe upon their voting rights.<sup>14</sup>

The federal and state governments achieve Native American voter suppression in many ways, but perhaps the most well-disguised method is through felon disenfranchisement:

Native American men are incarcerated at four times the rate of white men. In the past five years alone, the number of Native Americans incarcerated in federal prisons has increased by 27%. In South Dakota, the state with the fourth highest percentage of Native American residents, Native Americans compose 60% of the federal caseload, but only 8.5% of the total population.<sup>15</sup>

In the majority of states, a person convicted of a felony does not regain their right to vote until after they finish parole or probation. This means there are community members who

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<sup>14</sup> Rios, “Native Americans Are Taking the Fight for Voting Rights to Court.”

<sup>15</sup> Jake Flanagan, “Native Americans Are the Unseen Victims of a Broken US Justice System,” *Quartz* (blog), accessed December 16, 2016, <http://qz.com/392342/native-americans-are-the-unseen-victims-of-a-broken-us-justice-system/>.

are excluded from participating in their local, state, and federal elections even if they are out of prison and living in their communities.

In recent years, voting rights restoration efforts have gained momentum in the United States, but one thing remains true: Native Americans are frequently left out of the conversation when it concerns felon disenfranchisement. Several factors contribute to this. One of the most obvious causes is relative population size. In most states the Native American population is small, meaning data is overlooked without regards to proportionality. Black males comprise the largest prison population, but Native American men are incarcerated at the highest rate proportionately.<sup>16</sup> This data is rarely discussed, in part because of our society's eagerness to forget the United States' role in Native American marginalization. Recognizing the high rates of incarceration of Native Americans requires acknowledgment of our continual colonization and disrespect of indigenous rights.

### **Conclusion**

Efforts to silence Native American voters continue to grow through legal and political endeavors. However, as the efforts to silence Native American voices continue, the methods of resistance and indigenous activism evolve and expand. Current efforts to regain voting rights within Native communities can be found across the U.S. Often change is sought through legal actions

originating from within reservations, such as *Brakebill v. Jaeger*.

There is also important work being done through community education and liberation. Take, for instance, the community organizing occurring within the Sisseton Wahpeton Oyate reservation: there, members of the reservation volunteer within their community to register voters and assist in reaching tribe members who might otherwise be inactive voters. Grassroots organization ensures that Sisseton Wahpeton members recognize just how important their votes are, teaching them to use it as a tool of political power. One volunteer says she explains the importance of voting by comparing "the vote" to buffalo in that it can provide everything they need to survive and thrive. Community organizing and education such as this must be recognized as a critical political movement, as it provides the tools of change to those who are most marginalized. If the federal and state governments will not recognize the rights of their citizens, then the citizens can organize and demand recognition by educating themselves.

The movements that seek to make positive changes face formidable roadblocks to success—the most tangible being money. Filing lawsuits, hiring lawyers, and establishing community activist groups requires continual funds, and reservations are not always able to meet these costs. Redirecting resources towards fighting for indigenous rights in the United States is vital. Support for non-profit voting rights activist groups can be the difference between easily

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<sup>16</sup> Flanagin.

accessible and severely restricted voting polls on a reservation.

Another major obstacle for Native American voting rights is memory. Remembering the Native vote as being valid, important, and critical to the United States' political process is necessary. It reasserts the presence of Native Americans in this country and recognizes their continued presence within our political system. If we remember their presence as citizens, then we make visible in our own minds their modern role as participatory members of the political process who have valid needs and beliefs.

Native Americans are the forgotten voters. The government that colonized their land and continues to occupy their territory declares their status as U.S. citizens, while continually denying them the rights granted by that status. Citizenship is used as a tool of erasure in order to suppress Native sovereignty and force political assimilation. Today, federal and state governments continually restrict the Native vote through means of voter suppression, voter dilution, racial gerrymandering, and felon disenfranchisement. These methods of voting rights infringement are not unique to Native Americans; however, the political and social movements that drive positive political change have yet to recognize the silencing of Native Americans.

American Indian activists and small social movements have accomplished the work thus far to establish laws and regulations which protect the Native vote across the country. For those who work directly with tribes, the Native vote is not forgotten. The

damage done to Native communities who have been silenced is tangible and enduring. Nonetheless, moving forward with positive change is possible. That which is forgotten can always be remembered, and Native American voters will make that possible.



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