

## INDIVIDUAL RIGHTS IN REAL PROPERTY

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The process of allotment shifted the rights of individual Indians in real property from the rights of participation in tribal

<sup>1</sup> See Chapter 9. Also see Chapter 2, secs. 2B, 2C, 2D.

property, already discussed,<sup>1</sup> to rights of ownership in individual tracts.

## SECTION 1. BACKGROUND OF THE ALLOTMENT SYSTEM

The background, the inception, and the operation of this system are set forth with a wealth of detail in J. P. Kinney's study, *A Continent Lost—A Civilization Won* (1937) and, more briefly, in a "History of the Allotment Policy" by D. S. Otis, which, presented in hearings<sup>2</sup> leading to the enactment of the Act of June 18, 1934,<sup>3</sup> provided the chief factual basis for the termination of the allotment system by that act.

## A. EARLY DEVELOPMENT OF THE ALLOTMENT SYSTEM

The origins of the allotment system, as of every other important legal institution in the field of Indian affairs, are to be found in Indian treaties. As early as 1798 tribal lands were allotted to individuals or families.<sup>4</sup> Allotment was then, as it has been generally ever since, an incident in the transfer of Indian lands to white ownership. Chiefs and councils might cede vast areas over which a tribe claimed ownership, but when it came to ceding a plot of land which some member of the tribe had improved and on which he lived, a different situation was presented. In this situation many treaties provided that there should be "reserved" from the cession tracts of land for the use, or occupancy, or ownership, of designated individuals or families.<sup>5</sup> These early allotments were commonly known as reservations. Various forms of tenure were imposed upon

these reservations. In some cases lands were held in trust for the individual.<sup>6</sup> In other cases the Indian acquired title either

**Treaty of September 29, 1817, with the Wyandot, Seneca, and other tribes.** 7 Stat. 160; **Treaty of October 2, 1818, with the Potawatamie Nation.** 7 Stat. 185; **Treaty of October 2, 1818, with the Wea Tribe.** 7 Stat. 186; **Treaty of October 3, 1818, with the Delaware Nation.** 7 Stat. 188; **Treaty of October 6, 1818, with the Miami Nation.** 7 Stat. 189; **Treaty of February 27, 1819, with the Cherokee Nation.** 7 Stat. 195; **Treaty of August 29, 1821, with the Ottawa, Chippewa, and Pottawatamie Nations.** 7 Stat. 218; **Treaty of June 2, 1825, with the Great and Little Osage Tribes.** 7 Stat. 240 (reservations for "half-breeds"); **Treaty of June 3, 1825, with the Kansas Nation.** 7 Stat. 244 (reservations for "half-breeds"); **Treaty of October 16, 1826, with the Potawatamie Tribe.** 7 Stat. 295; **Treaty of October 23, 1826, with the Miami Tribe.** 7 Stat. 300; **Treaty of July 29, 1829, with the United Nations of Chippewa, Ottawa, and Potawatamie Indians.** 7 Stat. 320; **Treaty of August 1, 1829, with the Winnebago Nation.** 7 Stat. 323; **Treaty of September 27, 1830, with the Choctaw Nation.** 7 Stat. 333; **Treaty of August 30, 1831, with the Ottoway Indians.** 7 Stat. 359; **Treaty of March 24, 1832, with the Creek Tribe.** 7 Stat. 366; **Treaty of September 15, 1832, with the Winnebago Nation.** 7 Stat. 370; **Treaty of October 20, 1832, with the Potawatamie Tribe.** 7 Stat. 378; **Treaty of October 20, 1832, with the Chickasaw Nation.** 7 Stat. 381; **Treaty of October 27, 1832, with the Potawatamies.** 7 Stat. 399; **Treaty of October 27, 1832, with the Kaskaskia Tribe.** 7 Stat. 403; **Treaty of February 18, 1833, with the Ottawas.** 7 Stat. 420; **Treaty of September 26, 1833, with the United Nation of Chippewa, Ottawa, and Potawatamie Indians.** 7 Stat. 431; **Treaty of May 24, 1834, with the Chickasaw Nation.** 7 Stat. 450; **Treaty of October 23, 1834, with the Miami Tribe.** 7 Stat. 458; **Treaty of December 29, 1835, with the Cherokee Tribe.** 7 Stat. 478; **Treaty of April 23, 1836, with the Wyandot Tribe.** 7 Stat. 502; **Treaty of November 6, 1838, with the Miami Tribe.** 7 Stat. 569.

<sup>2</sup>Hearings, Committee on Ind. Aff., 73d Cong., 2d sess., on H. R. 7902, 1934, pt. 9, pp. 428 et. seq.

<sup>3</sup>48 Stat. 984, 25 U. S. C. 461 et seq.

<sup>4</sup>Treaty of June 1, 1798, with the Oneida Nation, unpublished treaty, Archives No. 28.

<sup>5</sup>Treaty of September 20, 1816, with the Chickasaw Nation. 7 Stat. 150; Treaty of July 8, 1817, with the Cherokee Nation. 7 Stat. 156;

<sup>6</sup>Treaty of June 1, 1798, with the Oneida Nation, unpublished treaty, Archives No. 28; Treaty of September 20, 1816, with the Chickasaw Nation. 7 Stat. 150.

under a restriction against alienation without the consent of the President,<sup>7</sup> or in fee Simple.<sup>8</sup>

Somewhat later allotment came to be used as an instrument for terminating tribal existence. Allottees surrendered their interest in the tribal estate and became citizens.<sup>9</sup>

During the 1850's, this break-up of tribal lands and tribal existence through allotment assumed a standard pattern.<sup>10</sup>

During the last years of the treaty-making period, and for two decades thereafter, the treaty provisions on allotment served as models for legislation.

The legislative development leading up to the General Allotment Act, and the purposes and background of that act are analyzed in Otis' study from which the following excerpts are taken:

In the 1870's the Government's policy of general allotment of Indian lands in severalty gradually took form. \* \* \* By 1885 the Government had, under various treaties and laws issued over 11,000 patents to individual Indians and 1,296 certificates of allotment. The fact that 8,595 of these patents and 1,195 of these certificates were issued under laws passed and treaties ratified during the period 1859-69 suggests that the forces which produced the General Allotment Act of 1887 were coming to life in the mid-century. In 1862 Congress saw fit to pass a law for the special protection of the Indian allottee in the enjoyment and use of his land.<sup>4</sup> And in 1875 Congress gave further momentum to the whole lands-in-severalty movement by extending to the Indian homesteading privileges. (18 Stat. L. 420.)

<sup>4</sup> Commissioner of Indian Affairs (1885), 320, 321.

<sup>5</sup> H. Rep. No. 1576, May 28, 1880, 46th Cong., 2d sess., 7.

In the meantime, the Indian Administration was gravitating steadily to the position of supporting allotment as a general principle. \* \* \*

\* \* \* In 1877 Secretary Schurz recommended allotment to heads of families on all reservations, "the enjoyment and pride of the individual ownership of property being one of the most effective civilizing agencies."<sup>5</sup> From that date onward the Service as a whole worked for the speeding up of allotment under previous acts and treaties and the passage of a general law. \* \* \*

<sup>15</sup> Report of the Secretary of the Interior, 1877, xi.

#### LEGISLATION

In the late seventies there was a growing public opinion in support of the allotment movement. The Commissioner in 1878 declared,

"It [allotment] is a measure correspondent with the progressive age in which we live, and is endorsed by

<sup>7</sup> Treaty of October 2, 1818, with the Potawatamie Nation, 7 Stat. 185; Treaty of October 2, 1818, with the Wea Tribe, 7 Stat. 186; Treaty of October 3, 1818, with the Delaware Nation, 7 Stat. 188; Treaty of October 16, 1826, with the Potawatamie Tribe, 7 Stat. 295; Treaty of October 23, 1826, with the Miami Tribe, 7 Stat. 300; Treaty of July 29, 1829, with the United Nations of Chippewa, Ottawa, and Potawatamie Indians, 7 Stat. 320; Treaty of August 1, 1829, with the Winnebago Nation, 7 Stat. 323.

<sup>8</sup> Treaty of September 29, 1817, with the Wyandot, Seneca, and other tribes, 7 Stat. 160; Treaty of October 6, 1818, with the Miami Nation, 7 Stat. 189; Treaty of August 29, 1821, with the Ottawa, Chippewa, and Potawatamie Nations, 7 Stat. 218; Treaty of June 2, 1825, with the Great and Little Osage Tribes, 7 Stat. 240 (reservations for "half-breeds"); Treaty of June 3, 1825, with the Kansas Nation, 7 Stat. 244 (reservations for "half-breeds"); Treaty of September 15, 1832, with the Winnebago Nation, 7 Stat. 370.

<sup>9</sup> Treaty of November 24, 1848, with the Stockbridge Tribe, 9 Stat. 955 (division of tribe into "citizen" party and "Indian" party); Treaty of April 1, 1850, with the Wyandot, 9 Stat. 987. Cf., Treaty of August 5, 1826, with the Chippewa Tribe, 7 Stat. 290, providing for allotments to half-breeds; Treaty of September 27, 1830, with the Choctaw Nation, 7 Stat. 333; Treaty of December 29, 1835, with the Cherokee Tribe, 7 Stat. 478; Treaty of July 8, 1817, with the Cherokee Nation, 7 Stat., 156.

<sup>10</sup> See Chapter 3, sec. 4G.

all true friends of the Indian, as is evidenced by the numerous petitions to this effect presented to Congress from citizens of the various States."<sup>6</sup>

<sup>6</sup> Commissioner of Indian Affairs (1880), xvii.

Early the following year a joint committee of Congress, appointed to consider the matter of transferring the Indian Bureau to the War Department, reported a decision adverse to the change and proceeded to make recommendations of measures to civilize the Indians. One of their proposals was a general allotment law providing for a title in fee with a 25-year restriction upon alienation.<sup>21</sup> That same day, January 31, 1879, Chairman Scales of the House Committee on Indian Affairs reported a general allotment bill.<sup>22</sup> In the next Congress various bills were introduced to the same effect.<sup>23</sup> The House committee on May 28, 1880, reported favorably an allotment bill and accompanied it with statements of the majority and minority views.<sup>24</sup> In the Senate the measure which was to be known for the next few years as the "Coke bill" was introduced.<sup>25</sup>

<sup>21</sup> H. Rep. No. 93, Jan. 31, 1879, 45th Cong., 3d sess., 3-20.

<sup>22</sup> Congressional Record, Jan. 31, 1879, 864. (See also H. Rep., Mar. 3, 1879, 45th Cong., 3d sess.).

<sup>23</sup> Congressional Record, Jan. 12, 1880, 274; Mar. 8, 1880, 1394; May 19, 1880, 3507.

<sup>24</sup> H. Rep. No. 1576, May 28, 1880, 46th Cong., 2d sess.

<sup>25</sup> Congressional Record, May 19, 1880, 3507.

#### B. THE GENERAL ALLOTMENT ACT

The circumstances surrounding the enactment of the General Allotment Act are thus summarized in Dr. Otis' study:

Senator Dawes in 1885 credited Carl Schurz with having Originated the bill.<sup>26</sup> Its provisions were substantially the same as those of the ultimate Dawes Act, except that the Indian was not thereby declared a citizen.<sup>27</sup> The Coke bill passed the Senate in 1884 and in 1885 and in this latter year was favorably reported in the House.<sup>28</sup> In the meantime certain tribes by special laws were given the privilege of allotments in severalty—the Crows on April 11, 1882 (22 Stat. L. 42), the Omahas on August 7, 1882 (22 Stat. L. 341), and the Umatillas on March 3, 1885 (23 Stat. L. 340). These acts applied to specific reservations the principles of the Coke bill.

<sup>26</sup> Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian (1885) in Miscellaneous Document, XIII, 1013.

<sup>27</sup> Congressional Record, Jan. 20, 1881, 778, 779. For debate on the question of amending the bill to extend citizenship to the Indian, see Congressional Record, Jan. 24, 1881, 875-882.

<sup>28</sup> Reports of the Commissioner of Indian Affairs (1884), xiii; Reports of the Commissioner of Indian Affairs (1885), xv; H. Rept. No. 2247, Jan. 9, 1885, 48th Cong., 2d sess.

The allotment movement seemed rapidly to be gaining strength in 1886. President Cleveland in his annual messages in 1885 and 1886 advocated the policy.<sup>29</sup> In 1886 General Sheridan, reporting as lieutenant general of the Army to the Secretary of War, likewise urged an allotment scheme.<sup>30</sup> Finally, Congress acted early in the following year and the President signed the Dawes Act on February 8, 1887 (24 Stat. L. 388).<sup>31</sup> The chief provisions of the act were:

(1) a grant of 160 acres to each family head, of 80 acres to each single person over 18 years of age

<sup>29</sup> George F. Parker (ed.), The Writings and Speeches of Grover Cleveland (New York, 1892, 410-415).

<sup>30</sup> In Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XV, 11660-11663.

<sup>31</sup> The writer regrets that time has not permitted a careful study of the Government documents, especially of the Congressional Record, relating to the Dawes bill. Such a study might by implication throw some light on the forces at work to secure its passage. There is a well-founded suspicion that all the motives of the legislators were not concerned merely with the Indian's welfare. The study would at least show the drift of opinion. In 1887 President Quinton told the Women's National Indian Association that passage of the Dawes bill 8 years previously would have been "an absolute impossibility." She said that the women's petition with 100,000 signatures, which was presented to Congress in 1882, met with "dense ignorance," "prejudice," and the influence of the "Indian Ring." Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XV, 11968, 11969. In its last stages the bill met with no opposition at all. Debate dealt only with details.

and to each orphan under 18, and of 40 acres to each other single person under eighteen ;<sup>22</sup>

<sup>23</sup> Certain tribes were exempted from the provisions of the act, viz. the Five Civilized Tribes, the Osages, Miami and Peorias, Sacs and Foxes, in Indian Territory the Senecas in New York State, and the inhabitants of the strip south of the Sioux in Nebraska (sec. 8).

(2) a patent in fee to be issued to every allottee but to be held in trust by the Government for 25 years, during which time the land could not be alienated or encumbered;

(3) a period of 4 years to be allowed the Indians in which they should make their selections after allotment should be applied to any tribe-failure of the Indians to do so should result in selection for them at the order of the Secretary of the Interior ;

(4) citizenship to be conferred upon allottees and upon any other Indians who had abandoned their tribes and adopted "the habits of civilized life." \* . .

#### AIMS AND MOTIVES OF THE ALLOTMENT MOVEMENT

That the leading proponents of allotment were inspired by the highest motives seems conclusively true. A Member of Congress, speaking on the Dawes bill in 1886 said, "It has \* . . \* the endorsement of the Indian rights associations throughout the country, and of the best sentiment of the land." \* . . \*

<sup>24</sup> Congressional Record, Dec. 15, 1886, 196.

The supreme aim of the friends of the Indian was to substitute white civilization for his tribal culture, and they shrewdly sensed that the difference in the concepts of property was fundamental in the contrast between the two ways of life. That the white man's way was good and the Indian's way was bad, all agreed. So, on the one hand, allotment was counted on to break up tribal life. This blessing was dwelt upon at length. The agent for the Yankton Sioux wrote in 1877 :<sup>25</sup>

"As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies, and dances, constant visiting-these will continue as long as the people live together in close neighborhoods and villages . . . I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress."

<sup>26</sup> Reports of the Commissioner of Indian Affairs (1877), 75, 76. (See also Reports of the Commissioner of Indian Affairs (1879), 25 (1885), 21 (1886), ix. x.)

On the other hand, the allotment system was to enable the Indian to acquire the benefits of civilization. The Indian agents of the period made no effort to conceal their disgust for tribal economy. . . \*

But voices of doubt were here and there raised about allotment as a wholesale civilizing program. "Barbarism" was not without its defenders. Especially were the Five Civilized Tribes held up as an example of felicity under a communal system in contrast to the deplorable condition of certain Indians upon whom allotment had been tried. A minority report of the House Committee on Indian Affairs in 1890 went so far as to state that Indians had made progress only under communism.<sup>27</sup> At this point it is worth remarking that friends and enemies of allotment alike showed no clear understanding of Indian agricultural economy. Both were prone to use the word "communism" in a loose sense, in describing Indian enterprise. It was in the main an inaccurate term. Gen. O. O. Howard told the Lake Mohonk Conference in 1889 about a band of Spokane Indians who worked their lands in common in the latter part of the 1870's, "but certainly in the vast majority of cases Indian economic pursuits were carried on directly with individual rewards in view. This was primarily true even of such essentially group activities as the Omahas' annual buffalo hunt." Agriculture was certainly but rarely a communal undertaking. The Pueblos, who had probably the oldest and most established agricultural economy, were individualistic in farming and pooled their efforts only in the care of the irrigation system. What the allotment debaters meant by

communism was that the title to land invariably vested to the tribe and the actual holding of the land was dependent on its use and occupancy. They also meant vaguely the cooperativeness and clannishness-the strong communal sense-of barbaric life, which allotment was calculated to disrupt.

<sup>28</sup> Memorial to Congress from Cherokee Nation in Congressional Record, January 20, 1881, 781.

<sup>29</sup> H. Rept. No. 2376, May 28, 1880, 46th Cong., 2d sess., 10.

<sup>30</sup> Twenty-first Reports to the Board of Indian Commissioners (1889), 111.

<sup>31</sup> Alice C. Fletcher and Francis La Flesche, the Omaha Tribe, in Twenty-seventh Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1905-6 (Washington, 1911), 273-275.

<sup>32</sup> Reports of the Commissioner of Indian Affairs (1864); 332.

In any event, the doubters were skeptical as to whether this allotment method of civilizing would work. They placed much emphasis upon the fact that Indian life was bound up with the communal holding of land. In 1881 Senator Teller quoted a chief's explanation why the Nez Percés went on the warpath:

"They asked us to divide the land, to divide our mother upon whose bosom we had been born, upon whose lap we had been reared." \* . . \*

<sup>33</sup> Congressional Record, January 20, 1881, 781, 782. (See also H. Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 7-10.)

\* . . \* The minority of the House Committee on Indian Affairs doubted whether private property would transform the Indian. The minority report said: \*

"However much we may differ with the humanitarians who are riding this hobby, we are certain that they will agree with us in the proposition that it does not make a farmer out of an Indian to give him a quarter-section of land. There are hundreds of thousands of white men, rich with the experiences of centuries of Anglo-Saxon civilization, who cannot be transformed into cultivators of the land by any such gift."

<sup>34</sup> H. Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 8.

The believers in allotment had another philanthropic aim, which was to protect the Indian in his present land holding. They were confident that if every Indian had his own strip of land, guaranteed by a patent from the Government, he would enjoy a security which no tribal possession could afford him. If the Indians possession was further safeguarded by a restriction upon his right to sell it they believed that the system would be fool-proof. . . \*

It must also be noted that while the advocates of allotment were primarily and sincerely concerned with the advancement of the Indian they at the same time regarded the scheme as promoting the best interest of the whites as well. For one thing, it was fondly but erroneously hoped that setting the Indian on his own feet would relieve the Government of a great expense. In 1879 the Indian Commissioner, in recommending an allotment bill to Secretary Schurz, wrote, "The evidently growing feeling in the country against the continued appropriations for the care and comfort of the Indians indicates the necessity for a radical change of policy in affairs connected with their lands."<sup>35</sup> Speaking in favor of the Dawes bill, a member of Congress said in 1886, "What shall be his future status? Shall he remain a pauper savage, blocking the pathway of civilization, an increasing burden upon the people? Or shall he be converted into a civilized taxpayer, contributing toward the support of the Government and adding to the material prosperity of the country? . . . We desire, I say, that the latter shall be his destiny."<sup>36</sup>

<sup>37</sup> Commissioner to Secretary Schurz in H. Rept. No. 165, March 3, 1879, 45th Cong., 3d sess., 3. (See also Reports of the Commissioner of Indian Affairs (1881), xliii.)

<sup>38</sup> Congressional Record, December 15, 1886, 190.

The chief advantages that the new system was to bring to the country as a whole were to be found in the opening up of surplus lands on the reservations and in the attendant march of progress and civilization westward. In his report of 1880, Secretary Schurz wrote: \*

"(Allotment] will eventually open to settlement by white men the large tracts of land now belonging to the reservations, but not used by the Indians. It will thus put the relations between the Indians and their white neighbors in the western country upon a new basis, by gradually doing away with the system of large reservations, which has so frequently provoked those encroachments which in the past have led to so much cruel injustice and so many disastrous collisions."

<sup>61</sup> Report of the Secretary of the Interior, 1880, 12.

It must be reported that the using of these lands which the Indians did not "need" for the advancement of civilization was a logical part of a whole and sincerely idealistic philosophy. The civilizing policy was in the long run to benefit Indian and white man alike. But doubters of the allotment system could see nothing in the policy but dire consequences for the Indian. Senator Teller in 1881 called the Coke bill "a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth."<sup>64</sup>

<sup>64</sup> Congressional Record, January 26, 1881, 934.

At another time he said,<sup>65</sup>

"If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when 30 or 40 years shall have passed and these Indians shall have parted with their title, they will curse the hand that was-raised professedly in their defense to secure this kind of legislation and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian morals; and Indian religion, they would not be here clamoring for this at all."

<sup>65</sup> *Ibid.*, January 20, 1881, 783.

\* \* \* Senator Teller had charged that allotment was in the interests of the land-grabbing speculators,<sup>67</sup> but the minority report of the House Indian Affairs Committee in 1880 had gone even further in its accusations. It said:

"The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them \* \* \*. If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse."

<sup>67</sup> Congressional Record, January 20, 1881, 783.

<sup>68</sup> H. Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 10.

It is probably true that the most powerful force motivating the allotment policy was the pressure of the land-hungry western settlers. A very able prize thesis written at Harvard by Samuel Taylor puts forth this theory. The author copiously and convincingly cites evidence to show the cupidity of the westerners for the Indian's lands and their unrestrained zeal in acquiring them.\* \* \*

\* \* \* "Samuel Taylor, The Origins of the Dawes Act of 1887 (unpublished manuscript, Philip Washburn Prize Thesis, Harvard 1927), 25-42.

A special enterprise which undoubtedly affected the establishing and working out of the allotment program was the railroads. It must again be remembered that the 1880's were a time of feverish railroad building.\* \* \*

\* \* \* It is interesting that the same session of the same Congress that passed the Dawes Act went in for grants of railroad rights-of-way through Indian lands on a new and enlarged scale. Of 9 Indian bills that became law, 6 were railroad grants.<sup>69</sup> Of the remaining 3, 1 was the Dawes Act, 1 was the appropriation act, and the third was an amendment to the land-sales law. In September 1887 the Indian Commissioner remarked in his report, "The past year has been one of unusual activity

in the projection and building of numerous additional railroads through Indian lands."

<sup>69</sup> Reports of the Commissioner of Indian Affairs (1887), 272-285.

\* \* \* \* \*  
It is significant that one of the foremost of these empire builders was discovering that under the old reservation system the way of the railroaders was hard. The biographer of James J. Hill tells of the difficulties which the builder of the St. Paul, Minneapolis & Manitoba Railroad experienced in Securing a right-of-way across the Fort Berthold and Blackfeet Reservations in 1886 and 1887.<sup>70</sup> Eventually the railroad got its grant (24 Stat. L. 402), but the way was paved for acquiring more easily a second grant, extending the right-of-way westward, by the Blackfeet agreement of 1888.<sup>71</sup> This agreement (25 Stat. L. 113) cut the reservation up into several smaller ones (art. I), allowed the sale of the surplus land, provided for allotment in severalty (art. VI), and stipulated that rights-of-way might be granted through any of the separate reservations "whenever in the opinion of the President the public interests require the construction of railroads, or other highways, or telegraph lines \* \* \* ." (art. VIII). Again, the writer of this paper has no evidence to show that the railroad was active in promoting this agreement. But a later comment of James J. Hill indicates that he had been well aware of the disadvantages of the old reservations for railroading. He said :<sup>72</sup>

"When we built into northern Montana, and I want to tell you that it took faith to do it, from the eastern boundary of the State to Fort Benton was unceded Indian land ; no white man had a right to put two logs one on top of the other. If he undertook to remain too long in passing through the country, he was told to more on. Even when cattle crossed the Missouri River during the first years to come to our trains, the Indians asked \$50 a head for walking across the land a distance of 3 miles, and they wanted an additional amount per head, I don't remember what it was, for the water they drank in crossing the Missouri."

<sup>70</sup> Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N. Y., 1917), I, 384.

<sup>71</sup> Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N. Y., 1917), I, 386.

<sup>72</sup> Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N. Y., 1917), I, 385: 336.

#### INDIAN ATTITUDES AND CAPACITIES

\* \* \* In 1831 the Commissioner, in a letter to Senator Hill, listed the particular tribes that had petitioned for allotment and -concluded by saying, "\* \* \* It may truthfully be said that there are at this time but few tribes of Indians, outside of the Five Civilized Tribes in the Indian Territory, who are not ready for this movement."<sup>73</sup> As early as 1876 agents were reporting Indian sentiment in favor of allotment and presenting Indian petitions and this activity increased up to 1887.<sup>74</sup> \* \* \*

<sup>73</sup> Congressional Record, Jan. 20, 1881.

<sup>74</sup> See agents' reports. Reports of the Commissioner of Indian Affairs (1876), *passim*; *ibid.*, (1878), 142 (1880), 25, 50, 87, 171, (1881), 22, 25, 132, 177; especially agents' reports. *Ibid.* (1882) and (1883).

\* \* \* \* \*  
From the repeated statements of those Indians who favored allotment it is clear that what was first and foremost in their minds was a hope that patents in fee would protect them against white inroads upon their lands and against the danger of removal by the Government. A comment as early as 1876 from the Siletz agent in Oregon as to his charges' desire for allotment is typical. He said: "Nothing gives them so much uneasiness as the constant efforts of some white men to have them removed to some other country."<sup>75</sup> There seems to have been little understanding of or desire for a new agricultural economy on the part of the Indians. This was quite as true of the Omahas who at the time were regarded by white proponents of allotment as especially enlightened.

<sup>75</sup> *Ibid.* [Reports of the Commissioner of Indian Affairs] (1876), 124; see also Miscellaneous Documents relating to Indian Affairs (collected in Indian Office library), IX, 7553-7553, Reports of the Commissioner of Indian Affairs (1880), 25.

One of the 55 members of the tribe who asked for allotment expressed his sense of the changing order but concluded his statement (as nearly all the fifty-five did) with the usual argument. He said:

"The road our fathers walked is gone; the game is gone; the white people are all about us. There is no use in any Indian thinking of the old ways: he must now go to work as the white man does. We want titles to our lands, that the land may be secure to our children."<sup>4</sup>

<sup>4</sup> Fletcher and La Flesche, 636, 637: see also Reports of the Commissioner of Indian Affairs (1882), 112.

There were many expressions of Indian opposition to allotment in the early 1880's. The minority report of the House Committee on Indian Affairs in 1880 noted that since the act of 1862 provided for special protection of allottees in their holdings it was "passing strange" that so few had availed themselves of their privileges.<sup>5</sup> The Senecas and the Creeks made bold to memorialize Congress against disrupting with allotment their systems of common holding. Realizing that they were opposing the trend of official policy the Creeks remarked:

"In opposing the change of Indian land titles from the tenure in common to the tenure in severalty your memorialists are aware that they differ from nearly every one of note holding office under the Government in connection with Indian affairs, and with the great body of philanthropists whose desire to promote the welfare of the Indian cannot be questioned." . . . .<sup>6</sup>

<sup>5</sup> H. Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 7.

<sup>6</sup> H. Ex. Doc., No. 83, Mar. 1, 1882, 47th Cong., 1st sess.

<sup>6</sup> Ibid., 26.

Certain tribes had specific objections to allotment. A memorial from the Creeks, Choctaws, and Cherokees in 1881 read:

"The change to an individual title would throw the whole of our domain in a few years into the hands of a few persons."<sup>7</sup>

<sup>7</sup> Congressional Record, Jan. 20, 1881, 781.

. . . . There is a final fact which must be taken into consideration in interpreting reports of Indian sentiments and of the results of allotment experiments, namely, that allotment had become an official policy. As Senator Teller maintained with probable accuracy there would be a tendency on the part of agents and subordinate officials to be influenced in their estimates consciously or unconsciously by the knowledge that allotment was the program to be furthered.<sup>8</sup>

<sup>8</sup> Congressional Record, Jan. 20, 1881, 783.

What can be said from this survey is that there was no apparent widespread demand from the Indians for allotment.

### C. CONSEQUENCES OF THE ALLOTMENT SYSTEM

The General Allotment Act proved to be the cornerstone of a system which involved a considerable amount of legislation that supplemented and amended the terms of that act. The working out of the allotment system in its early years is sketched in Part II of Dr. Otis' study, from which the following quotations are taken:

There was no doubt in the minds of the proponents of the allotment system that they were on the road to the complete solution of the Indian problem. . . . Senator Dawes went so far as to say that the general allotment law had obviated the need for tinkering with the Organization of the [Indian] service. He said:

"It seems to me that this is a self-acting machine that we have set going, and if we only run it on the track it will work itself all out, and all these difficulties that have troubled my friend will pass away like snow in the spring time, and we will never know when they go; we will only know they are gone."

<sup>9</sup> Nineteenth Report of the Board of Indian Commissioners (1887), 54.

Indeed this "self-acting machine" would finally render obsolete all Government machinery whatever. Senator Dawes went on to express a prediction of which an echo has been heard in discussions of the present proposed policy:<sup>4</sup>

"Suppose these Indians become citizens of the United States with this 160 acres of land to their sole use, what becomes of the Indian reservations, what becomes of the Indian Bureau, what becomes of all this machinery, what becomes of the six commissioners appointed for life? Their occupation is gone; they have all vanished; the work for which they have been created . . . is all gone, while you are making them citizens . . . That is why I don't trouble-myself at all about how to change it [the machinery of administration]."

Dr. Lyman Abbot said:

"The Indian is no longer to be cared for by the executive department of the Government; he is coming under the general protection under which we all live, namely, the protection of the courts."<sup>5</sup>

<sup>4</sup> Ibid. (1887), 55.

<sup>5</sup> Ibid. (1887), 53.

### THE APPLICATION OF ALLOTMENT

The application of allotment to the reservations was above all characterized by extreme haste.

In September 1887--7 months after the passage of the Dawes Act--the author of the measure told the Lake Mohonk Conference how President Cleveland had remarked when signing the bill that he intended to apply it to one reservation at first, and then gradually to others. Senator Dawes went on to say:

"But you see he has been led to apply it to half a dozen. The bill provides for capitalizing the remainder of the land for the benefit of the Indian, but the greed of the landgrabber is such as to press the application of this bill to the utmost . . . There is no danger but this will come most rapidly, too rapidly, I think; the greed and hunger and thirst of the white man for the Indian's land is almost equal to his 'hunger and thirst for righteousness.'"

<sup>10</sup> Nineteenth Report of the Board of Indian Commissioners (1887), 88.

In 1890 the Commissioner reported,

"In numerous instances, where clearly desirable, Congress has by special legislation authorized negotiations with the Indians for portions of their reservations without waiting for the slower process of the general allotment law."<sup>11</sup>

<sup>11</sup> Ibid. [Report of the Commissioner of Indian Affairs] (1890), xxxviii.

In 1888 Congress had ratified five agreements with different Indian tribes providing for allotment and for the sale of surplus lands.<sup>12</sup> The following year Congress passed eight such laws.<sup>13</sup> A member of the Board of Indian Commissioners in 1891 estimated that the 104,314,349 acres of Indian reservations in 1889 had been reduced by 12,000,000 acres in 1890 and by 8,000,000 acres in the first 9 months of 1891.<sup>14</sup> . . . .

<sup>12</sup> Ibid. (1888), 294, 302, 320, 322, 335-336, 340-344.

<sup>13</sup> Ibid. (1889), 421, 432, 438, 440, 447, 449, 460, 463, 464.

<sup>14</sup> Twenty third Report of the Board of Indian Commissioners (1891), 51.

In the meantime, the work of applying allotment was pushed rapidly forward. . . . In 1888 the Commissioner had reported that 3,349 allotments had been approved since the passage of the Dawes Act.<sup>15</sup> There were 1,958 allotments approved in 1890, 2,830 in 1891, 8,704 in 1892; and in this last year Commissioner Morgan reported that since February 1887 the Indian Office had given its approval to 21,274 allotments.<sup>16</sup> In this same year, 1892, he told the Mohonk Conference that the allotments which were about to be made would bring the grand total of all the allotments which the Government had made to over

50,000. He concluded it was time to slow down.<sup>4</sup> His successors seem to have acted upon his advice until the opening of the new century, as the following figures show:

Allotments approved 1893-1900

Years:	Number	Year:	Number
1893	4,561	1897	3,229
1894	3,061	1898	2,015
1895	4,851	1899	1,011
1896	4,414	1900	8,752

<sup>2</sup>Table in Report of the Commissioner of Indian Affairs (1916), 94.

<sup>3</sup>Ibid. (1892), 184.

<sup>4</sup>Twenty-fourth Report of the Board of Indian Commissioners (1892), 37.

<sup>5</sup>Report of the Commissioner of Indian Affairs (1893), 23 (1894), 20 (1895), 19 (1896), 25 (1897), 21 (1898), 40 (1899), 43 (1900), 53, 54:

In the years prior to 1887 the Government had approved 7,463 allotments with a total acreage of 548,423; from 1887 through 1900 it approved a total of 53,168 with an acreage of nearly 5,000,000.\* \* \*

<sup>6</sup>Ibid. (1916), 93, 94.

\* \* \* So satisfactory was the speed of allotment to Board of Indian Commissioners that in 1891 it was contemplating a very early disappearance of Government supervision over the Indian. The Board's report stated in that year:

"\* \* \* When patents have been issued and homesteads secured, when Indians are declared and acknowledged citizens, and are actually self-supporting, the supervision of the Government and the arbitrary rule of the agent may be safely withdrawn.\* \* \*

This faith that the allotment system would mean an early decline of Government supervision and placing the Indian on his own responsibility continued to be expressed by the friends of the Indian through the 1890's. But the hope was not realized. In 1900 there were in existence 61 agencies-3 more than in 1890.<sup>10</sup> But while the maintenance of the agency system was in large measure dependent upon the needs of the service, it was apparently even more dependent on the needs of the agents. The Indian Rights Association reported in 1900 that Commissioner Jones had recommended to Congress the discontinuing of 15 agencies but that the agents had been able to bring such pressure through their friends at the Capitol that Congress had agreed to the eliminating of only one.<sup>11</sup>

<sup>9</sup>Twenty-second Report of the Board of Indian Commissioners (1890), 9.

<sup>10</sup>Report of the Commissioner of Indian Affairs (1890), 512-514; Ibid. (1900), 743-745.

<sup>11</sup>Eighteenth Annual Report Indian Rights Association (1900), 57. This report lists the agencies as 56 in 1900 but Report of the Commissioner of Indian Affairs (1900) lists 61. See pp. 743-745.

There is no doubt that the idea of allotment was making headway with the Indians, but there is considerable doubt that its progress was the result of a spontaneous and wide-spread interest of the Indians in becoming hard-working American farmers.\* \* \* In that same year [1888] the Yankton agent wrote about a determined opposition to allotment which was led by the old chiefs and which was successfully overcome by two companies of soldiers from Fort Randall.

The agent concluded by remarking that when the survey was finished there was not one Indian on the reservation who did not want his allotment.<sup>15</sup> \* \* \*

<sup>15</sup> Ibid. [Report of the Commissioner of Indian Affairs] (1888), 70, 208.

There is considerable testimony to the fact that the Indians knew pretty well what the white man's system had meant for their race. One of the members of the Board of Indian Commissioners reported in 1890:

"The Osages as a tribe are almost unanimously opposed to taking their land in severalty. Eighteen years ago they purchased this reservation of the Cherokees for a home, and as such they want it to be. They argue that the time for such action has not yet come; that they are not prepared in any way to have white settlers for neighbors, and especially that variety of white men with whom it has been their misfortune to come in contact. About 250,000 acres of an area of over 1,500,000 is tillable land, the other is only suitable for grazing, and this they contend is no more than is needed for themselves and children."

<sup>20</sup> Ibid. [Twenty-first Report of the Board of Indian Commissioners] (1890), 27. The Osage population was about 1,500 in 1890, which would allow for an average of about 166 acres of arable land per capita.

This refrain is repeated in the reports of various agents.\* \* \*

\* \* \* In that year [1887] the International Council of Indian Territory, to which 19 tribes sent 57 representatives, voted unanimously against allotment and the granting of railroad rights-of-way through their lands. The council's resolution on the allotment-question, which was sent to the President of the United States, cited these tribes' "sad experience" with allotment and assailed the policy as one which would "engulf all of the nations and tribes of the territory in one common catastrophe, to the enrichment of land monopolists." \* \*

<sup>20</sup> Report of the Commissioner of Indian Affairs (1887), 116, 117.

\* \* \* there is a compelling ring to the appeal of the International Council of 1887:<sup>34</sup>

"Like other people, the Indian needs at least the germ of political identity, some governmental organization of his own, however crude, to which his pride and manhood may cling and claim allegiance, in order to make true progress in the affairs of life. This peculiarity in the Indian character is elsewhere called patriotism, the wise and patient fashioning and guidance of which alone will successfully solve the question of civilization. Preclude him from this and he has little else to live for. The law to which objection is urged does this by enabling any member of a tribe to become a member of some other body politic by electing and taking to himself a quantity of land which at the present time is the common property of all."

<sup>34</sup> Ibid. [Report of the Commissioner of Indian Affairs] (1887), 117.

The following year the agent to the Five Tribes observed that the half-breeds were becoming favorably inclined toward allotment but, he said,

"The full-bloods are against it, as a rule, as they fear it will destroy their present government, to which they appear attached."<sup>35</sup>

<sup>35</sup> Ibid. (1888), 135.

This same cleavage which characterized Indian opinion before the passage of the Dawes Act is apparent all through the nineties.<sup>36</sup> This cleavage expresses the fundamental fact that the allotment controversy was a struggle between two cultures. With the irresistible penetration of the white civilization, the conflict within the tribes crystallized into two factions, the half-breeds and the full-bloods, the young and the old, the "progressives" and the "conservatives", the sheep and the goats.

<sup>36</sup> See miscellaneous documents relating to Indian Affairs (collected in Indian Office library), xvii, 14066; Report of the Commissioner of Indian Affairs (1888), 93 (1889), 182, 230 (1890), 31 (1892), 294, 457 (1895), 255 (1900), 233, 381.

ADMINISTRATION AND CHANGES IN POLICY: LEASING

Those who were dissatisfied with the results achieved by the Dawes Act saw various causes of failure. For one thing, the whole emphasis of the allotment policy was laid upon farming, and critics from time to time pointed out

that large sections of the Indians' lands were not suitable for agriculture. . . .

For another thing, the Government was continuing a policy which was a cause, as well as an index, of allotment's failure. A speaker at the 1890 Mohonk Conference described at length the evil consequences of the rationing system. He showed how it had pauperized the Izzdizzz and now deterred them from farming, since they feared if they raised crops the Government would cut down their allowances.<sup>64</sup>

<sup>64</sup> *Ibid.* [Twenty-second Report of the Board of Indian Commissioners] (1890), 142.

Many friends of the Indian who believed that the allotment system was not accomplishing all that it should were inclined to hold the Government responsible because of its failure to give adequate aid to the allottees. . . . It was not true that the Government made no efforts whatever to equip the Indians for farming. But it made very slight efforts. The appropriation act passed in 1888 provided for the allocation of \$30,000 to the purchase of seed farming implements, and other things "necessary for the commencement of farming" (25 Stat. L. 234). In 1888 alone 3,568 allotments had been made.<sup>65</sup> The appropriation, therefore, granted less than \$10 to every new allottee setting out on his farming career. There is, furthermore, no way of knowing how much of this money was expended for this purpose. \* \* \*

<sup>65</sup> Report of the Commissioner of Indian Affairs (1888), 444

The following year the same amount was provided (25 Stat. L. 998) but in 1890 no such appropriation was made. In 1891 Congress raised \$15,000 for the purpose (26 Stat. L. 1007) and this sum was continued through the next 2 years (27 Stat. L. 137, 630). After 1893 the appropriation acts up to 1900 included no such items.

• • • The Omaha treaties of 1854 (10 Stat. L. 1043) and of 1868 (14 Stat. L. 667), which provided for a form of allotment, required the Government to furnish the Indians with implements, stock, and milling services. Yet these promises were never carried out.<sup>66</sup> One of the Indians who signed the petition for the Omaha allotment bill in 1881 said:

"Three times I have cut wood to build a house. Each time the agent told me the Government wished to build me a house. Every time my wood has lain and rotted, and now I feel ashamed when I hear an agent telling me such things."<sup>67</sup>

<sup>66</sup> Fletcher and La Flesche, 623, 624.

<sup>67</sup> *Ibid.*, 637.

Defects in the system which . . . occupied the attention of the friends of the Indian were those resulting from the fact that allotted lands must be free from State taxation. The Dawes Act, providing for the 25-year Federal trust period during which time the land might not be encumbered (24 Stat. L. 359), meant, it was clear, that no State could tax the allottee's holdings. As a result, the friends of the Indian were noting in 1889, States were refusing to assume any responsibilities for Indian communities and were withholding such services as the upkeep of schools and roads. It was also apparent that this situation was a source of great hostility to Indians on the part of white neighbors.<sup>68</sup> . . .

<sup>68</sup> Twenty-first Report of the Board of Indian Commissioners (1889), 107-109.

\* \* \* the most enthusiastic supporters of the allotment policy felt that its first results showed that it needed important revision, itself. In his report for 1889 the Commissioner observed that Indians were asking for equal allotments to all individuals, and he recommended that the law should be so amended. He noted that there was a special need to protect the married women whom the Dawes Act had excluded from allotment benefits. • • • <sup>69</sup> The Board of Indian Commissioners that same year urged upon Congress the equalization of allotments.<sup>69</sup>

<sup>69</sup> Report of the Commissioner of Indian Affairs (1889), 17.

<sup>70</sup> *Ibid.* [Twenty-first Report of the Board of Indian Commissioners] (1889), 9.

This proposed change was, significantly, bound up with another and still more important change which most friends of the Indian came to demand. . . . The Mohonk Conference that year heard some talk about the leasing of Indian lands and the freeing of the Indian from bondage. Justice Strong, previously associate Justice of the United States Supreme Court, said:

"But on one subject I am perfectly convinced; namely, that the Government has not the shadow of a right to interfere with an Indian's having an allotment, either with the use of his property or with the manner in which he shall educate his children. . . ."

<sup>80</sup> *Idem.* (*Ibid.* (1889), 105-109].

But especially the point was emphasized that leasing part of his land would bring the Indian the wherewithal to cultivate the rest.<sup>81</sup> Other arguments from time to time were brought forward by Indian sympathizers to show how leasing would help him.

<sup>81</sup> *Ibid.* (1889), 110, 112.

The decision to allow the Indian to lease his land was fraught with grave consequences for the whole allotment system. Probably it was the most important decision as to Indian policy that was made after the passage of the Dawes Act. Yet, interestingly enough, the significance of the leasing question seemed to be dwarfed in the eyes of contemporaries by the pressing matter of equal allotments. It is true that after the Attorney General ruled in 1885 that tribal grazing leases were illegal, the Commissioner of Indian Affairs recommended annually until 1889 a law permitting such leases.<sup>82</sup> But he made no proposal of leasing allotments.

<sup>82</sup> Report of the Commissioner of Indian Affairs (1888), xxxix.

And no doubt his advocating of grazing leases was looked at with suspicion by the friends of the Indian, as were most of his official acts.<sup>83</sup> The question of leasing allotments had been raised at the 1889 Mohonk Conference,<sup>84</sup> but the Indian Office took no stand on the question in that year. As has been said, Commissioner Morgan was interested in the question of granting equal allotments to Indians of all ages and both sexes.<sup>85</sup> In January 1890 he wrote a letter to the Secretary of the Interior enclosing a bill providing for the granting of 160 acres to every Indian-man, woman, and child. The following month the President transmitted the bill, together with Commissioner Morgan's letter to the Senate Committee on Indian Affairs.<sup>86</sup> The Commissioner mentioned several tribes which had opposed allotment because they disliked the system of unequal grants to the different classifications and he thought that if 160 acres were given each Indian "there would be less hesitation on the part of many of the tribes to the taking of land in severalty."<sup>87</sup> He also stressed the predicament of cast-off Indian wives under the existing system and the importance of dealing more liberally with the young Indians who were the future hope of the race.<sup>88</sup>

<sup>89</sup> The criticism directed at the Commissioner especially by the Indian Rights Association was claimed by that organization to be the cause of the Commissioner's dismissal and of the appointment of J. H. Oberly in his place. Seventh Annual Report Executive Commissioner Indian Rights Association (1889), 9, 10.

<sup>90</sup> See above p. 101.

<sup>91</sup> *Ibid.* p. 100.

<sup>92</sup> S. Ex. Doc. No. 64, February 17, 1890, 51st Cong., 1st sess., 1-4.

<sup>93</sup> *Ibid.* 2.

<sup>94</sup> *Ibid.*, 3.

Accordingly, on March 10, 1890, Senator Dawes introduced in the Senate a bill to "amend and further extend the benefits" of the Dawes Act.<sup>95</sup> Section 1 of the bill provided for the granting of 160 acres to every Indian. The previous agitation of this question by the official and unofficial friends of the Indian furnished an adequate introduction to this legislative proposal. But section 2 of the bill seems to have come almost unheralded from Senator Dawes, the man who a few months earlier publicly expressed his misgivings about the leasing policy.<sup>96</sup> Section 2 of the Senator's bill read:<sup>97</sup>

"That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act or any other act or treaty cannot personally and with benefit to himself occupy or improve his allotment, or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by said Secretary, for a term not exceeding 3 years for farming or grazing, or 10 years for mining purposes."

<sup>16</sup> Congressional Record, March 10, 1890, 2068.

<sup>17</sup> See above, p. 102.

<sup>18</sup> Copy of bill in Senate Document Room files.

\* \* \* a conference committee reached a compromise which was accepted by both Senate and House on February 23, 1891. Eighty acres were to go to each Indian, but an Indian could rent his land only when unable to work it "by reason of age or other disability." The Indian must apply for a lease to the Secretary of the Interior directly and not to the agent; and farming and grazing leases of allotted lands could be for no longer than 3 years.<sup>19</sup> In other words, there was to be something in the way of restraint exercised upon Indian leasing. The President signed the bill on February 28, 1891 (26 Stat. L. 794).

The Indian administration set out at a very cautious gait to apply the leasing provision to allotments. The

<sup>19</sup> Ibid. [Congressional Record], Feb. 23, 1891, 3118, 8152.

<sup>20</sup> Sec. 3, 26 Stat. L. 794.

Commissioner in his report for 1892 said:

"Agents are expressly directed that it is not intended to authorize the making of any lease by an allottee who possesses the necessary physical and mental qualifications to enable him to cultivate his allotment, either personally or by hired help."<sup>21</sup>

<sup>21</sup> Ibid. [Report of the Commissioner of Indian Affairs] (1892), 71.

He said that but two allotment leases had thus far been approved by him. The next year the Commissioner promulgated a set of rules for the making of leases. The rules were primarily concerned with defining the terms in the phrase, "by reason of age or other disability." "Age" applied to all Indians under 18 and all those disabled by senility. "Other disability" applied to all unmarried Indian women, married women whose husband or sons were, unable to work the land, widows without able-bodied sons, all Indians with chronic sickness or incurable physical defect, and those with "native defect of mind or permanent incurable mental disease."<sup>22</sup> The Commissioner reported that four allotment leases had been allowed that year.<sup>23</sup> \* \* \*

<sup>22</sup> Ibid. (1892), 72.

<sup>23</sup> Ibid. (1893), 477, 476.

<sup>24</sup> Ibid. (1893), 27.

The Senator [Dawes] had secured an amendment to the House bill taking away from the agents the power of recommending leases and requiring the Indians to apply directly to the Secretary of the Interior.<sup>25</sup> But in 1893 the Commissioner wrote:

"The matter of leasing allotted lands has been placed largely in the hands of Indian agents in charge of the agencies where allotments in severalty have been made."

<sup>25</sup> Congressional Record, Feb. 23, 1891, 3118.

He went on to say that all leases must be approved by the Secretary after recommendation by the agent.<sup>26</sup> How much this administrative ruling was in itself responsible for the subsequent speeding up of leasing cannot be said for at that point a most important change was made in the law. \* \* \*

<sup>26</sup> Report of the Commissioner of Indian Affairs (1893), 27.

\* \* \* the general Indian appropriation act which became law August 15, 1894, contained a provision which changed the critical phrase in the act of 1891 to read "by reason of age, disability or inability", extended the term of agricultural and grazing leases to 5 years and permitted 10-year leases for business as well as mining purposes (28 Stat. L. 305). Nevertheless, the Commissioner said in his report that year:

"It has been repeatedly stated that it was not the intent of the law nor the policy of the office to allow indiscriminate leasing of allotted lands \* \* \*. If an allottee has physical or mental ability to cultivate an allotment by personal labor or by hired help, the leasing of such allotment should not be permitted."<sup>27</sup>

<sup>27</sup> Ibid. [Report of the Commissioner of Indian Affairs] (1894), 32, 33.

But a new rule which the Commissioner added to those defining "age" and "disability" read:

"The term 'inability' as used in said amended act, cannot be specifically defined as the other terms have been. Any allottee not embraced in any of the foregoing classes who for any reason other than those stated is unable to cultivate his lands or a portion of them, and desires to lease same may make application therefor to the proper Indian agent."<sup>28</sup>

\* \* \* the Indian Appropriation Act of 1897 changed the leasing system back to its original form. Indeed in one respect the provisions were even more restrictive than were those of the 1891 law. The maximum term for mining and business leases was fixed at 5 years. The term for farming and grazing leases was changed back to 3 years, and the word "inability" was dropped so that "age or other disability" became the only legal grounds for permitting leases (30 Stat. L. 85). The Commissioner's report for 1897 commented on the fact that the leasing periods had been changed by the Indian appropriation act but, interestingly enough, he made no mention of the dropping of the word "inability."<sup>29</sup> \* \* \* The Commissioner approved 1,185 allotment leases in 1899 and 2,590 in 1900.<sup>30</sup> In this latter year, the system was again changed by the Indian appropriation act. "Inability" was restored as a reason for permitting allotment leases, and the maximum period of leasing for farming purposes was extended once more to 5 years (31 Stat. L. 229). \* \* \* Apparently the change in policy had not been the doing of the Commissioner. He wrote in his report for 1900:<sup>31</sup>

"The better to assist them the allottees should be divided into small communities, each to be put in charge of persons who by precept and example would teach them how to work and how to live.

"This is the theory. The practice is very different. The Indian is allotted and then allowed to turn over his land to the whites and go on his aimless way. This pernicious practice is the direct growth of vicious legislation. The first law on the subject was passed in 1891. \* \* \*

"It is conceded that where an Indian allottee is incapacitated by physical disability or decrepitude of age from occupying and working his allotment, it is proper to permit him to lease it, and it was to meet such cases as this that the law referred to was made \* \* \*. But "inability" has opened the door for leasing in general, until on some of the reservations leasing is the rule and not the exception, while on others the practice is growing.

"To the thoughtful mind it is apparent that the effect of the general leasing of allotments is bad. Like the gratuitous issue of rations and the periodical distribution of money it fosters indolence with its train of attendant ills. By taking away the incentive to labor it defeats the very object for which the allotment system was devised, which was, by giving the



Indian something tangible that he could call his own, to incite him to personal effort in his own behalf."

<sup>28</sup> *Ibid.* (1894), 421.

<sup>29</sup> Report of the Commissioner of Indian Affairs (1897), 40-43.

<sup>30</sup> *Ibid.* [Report of the Commissioner of Indian Affairs] (1899), 60-78.

<sup>31</sup> Report of the Commissioner of Indian Affairs (1900), 13.

Thus it seems that the leasing policy had been pushed much further than the friends of the Indian desired. As to who had been pushing it there one can only guess. It is apparent that white settlers and promoters had found leasing a new and effective technique for exploiting Indian lands. So had Indian agents-according to the Indian Rights Association. The association's report for 1900 described the evil consequences of the leasing system under the new law and set forth grave charges.

<sup>40</sup> Eighteenth Annual Report of the Executive Committee Indian Rights Association (1900), 58.

#### RESULTS OF ALLOTMENT TO 1900

Analysis of the achievements of the allotment system requires first some appraisal of the leasing practice which vitally affected allotment results. There were defenders of the leasing system all through the 1890's. It had certain immediate consequences which recommended it to friends of the Indian who were sincere if lacking in vision. There was the simple fact of allotted lands lying idle which the Indians either could not or would not cultivate. Such waste seemed wicked to a generation that was coming increasingly to set store by efficiency. How much better it was for the lands to be used and the Indians to be deriving an income from them. In 1890, before the passage of the leasing act, a member of the Board of Indian Commissioners regretted that the Government had ousted white share workers from the Kiowa, Comanche, and Apache Reservations. He said :

"Farms that could only be worked in this way, owing to peculiar circumstances, are now lying tenantless and abandoned."<sup>41</sup>

<sup>41</sup> Twenty-second Report of the Board of Indian Commissioners (1890), 31.

In 1895 various agents expressed their approval of the way leasing was working since it was bringing in to the Indians a sizeable revenue.<sup>42</sup> \* \* \*

<sup>42</sup> Report of the Commissioner of Indian Affairs (1895), 260, 262, 335.

But for the most part, the agents who expressed their approval of allotment leasing saw it as productive of practical results. It took care of minors, women, and the old folks,<sup>43</sup> and it was economically profitable. One agent said the Indians got more out of the leased lands than if they worked them themselves.\* \* \* Leasing was undoubtedly a spur to the taking of allotments. But it seems hardly to have been a spur to the Indian becoming a farmer. \* \* \*

<sup>43</sup> Thirtieth Report of the Board of Indian Commissioners (1898), 14.

<sup>44</sup> *Ibid.* (1898) 18; See also p. 15, and Report of the Commissioner of Indian Affairs (1900), 361.

Perhaps the most flagrant example of the corrosive influence of leasing was that of the Omahas and Winnebagoes, in Nebraska. The Omahas were the great hope of the allotment enthusiasts. But in 1893 the agent wrote that leasing had gone far among the Omahas and Winnebagoes and that the former were renting their lands without the consent of the agent or Government.<sup>45</sup> In 1894 \* \* \* Professor Painter told the Mohonk conference of his bitter disappointment in the Omahas especially, about whom he had been satisfied and enthusiastic as they had started out under the allotment system. He had recently visited the two reservations and found most of the land in white hands. Real-estate syndicates had leased lands even before the allotment was completed. One company had rented 47,000 acres from the Winnebagoes

at from 8 to 10 cents an acre and sublet to white farmers for \$1 to \$2 an acre. The Winnebagoes got enough income from these lands to stay drunk part of the time. But the Omahas got much more.<sup>46</sup>

<sup>45</sup> *Ibid.* (Report of the Commissioner of Indian Affairs) (1893), 193-195; see also (1892), 186.

<sup>46</sup> Twenty-sixth Report of the Board of Indian Commissioners (1894), 120.

The illegal leasing of allotments had apparently gone to great lengths on these two reservations." In 1894 the agent thought that the Indians were anxious to recover their lands and till some portion of them.<sup>47</sup> The following year this fighting agent set out to a vain effort to bring to heel a powerful land company. The Government ultimately furnished him with 50 extra police and 70 rifles as the local authorities rallied to the support of the land company and were reported to be arming a hundred deputies. Confronted by an injunction in the State courts restraining him from evicting the company's tenants, the agent at last gave in.<sup>48</sup> In 1894 the agent had written,

"The settlers would almost unanimously prefer to lease under the rules and regulations of the Department; but are held, pecuniarily, by the lawless corporations and individuals who have subleased to them."<sup>49</sup>

<sup>49</sup> Report of the Commissioner of Indian Affairs (1895), 37, 38.

<sup>50</sup> *Ibid.* (1894), 187, 188.

<sup>51</sup> Report of the Commissioner of Indian Affairs (1895), 37-41.

<sup>52</sup> *Ibid.* (1894), 188.

In 1895 the Commissioner explained the effective technique of this particular land company which had been able to flout the Federal authority. His explanation suggests very clearly why this outlaw corporation received the community's support. In many instances the company accepted notes from their subtenants in place of money rent. These notes in turn came into the hands of local bankers. As a result all of the powerful interests in the community were galvanized in opposition to the Government in its attempt to force evictions or collect legal rents.<sup>53</sup>

<sup>53</sup> *Ibid.* (1895), 41.

Whatever progress the Omahas, especially, might have made under the original allotment system it is clear that the leasing policy doomed their efforts to failure and themselves to demoralization. \* \* \*

The passionate denunciation of leasing by the Omaha and Winnebago agent in 1898 perhaps says the last word on the matter. He wrote that out of 140,000 acres allotted on the two reservations, 112,000 acres had been leased. He then wrote: <sup>54</sup>

"Leasing of allotted agricultural lands should never be permitted. The Indians should be compelled to live upon their allotments and support themselves by cultivating the land. They can do it, but will not unless compelled to. Not 1 acre of allotted agricultural land should be leased to a white man, and it would be far better to burn the grass on the allotted lands than to lease them for pastures to the white man. \* \* \*"

<sup>54</sup> Thirtieth [R]eport of the Board of Indian Commissioners (1898), 25.

\* \* \* the allotment policy began and continued as an act of faith. So it was possible for an agent to report that allotment was working well on his reservation and at the same time submit figures which showed that the greater portion of the Indian lands were leased to white men. Indeed, the testimony which comes even from the friends of the Indian as to the dire results of the leasing policy toward the end of the century makes it seem improbable that the allotment system in the main was working well.

The writer's scepticism as to the real success of the allotment system in the period of the 1890's is based not alone on inference and deduction. The following table contains figures that are pertinent to the question whether or not allotment was producing results:

Land and crop statistics

[Unless otherwise indicated the figures are taken from the current volume of the Annual Reports of the Commissioner of Indian Affairs. The figures in parentheses are page references]

Date	Total number of allotments to date	Total number of leases to date	Number of families living on and cultivating allotments	Number of acres cultivated by Indians	Indian agricultural production (in bushels)				Page
					Wheat	Oats and barley	Corn	Vegetables	
1890	15,166	-----	5,554	238,613	881,419	545,822	1,330,207	482,500	(480)
1891	17,996	-----	5,883	-----	1,318,218	793,001	1,830,704	541,974	(106)
1892	26,700	2	7,302	-----	1,825,715	875,634	1,515,464	558,162	(816)
1893	31,261	6	7,579	-----	1,722,656	883,170	1,373,230	462,871	(723)
1894	34,322	301	8,359	-----	887,809	653,631	911,655	396,133	(598)
1895	39,173	631	8,366	369,974	1,016,754	875,349	2,226,944	476,272	(594)
1896	43,887	1,564	10,045	-----	753,577	731,806	2,100,316	542,538	(551)
1897	46,816	2,851	10,659	-----	788,192	805,466	1,123,260	703,770	(510)
1898	48,831	3,799	11,789	-----	664,930	599,665	1,339,444	494,509	(630)
1899	49,842	4,984	10,704	-----	932,120	850,337	1,396,977	445,935	(597)
1900	58,594	7,574	10,835	343,351	935,731	722,925	1,655,504	396,067	(677)

<sup>1</sup> Over 850,000 bushels of wheat raised by white lessees on Umatilla Reservation.  
<sup>2</sup> Unspecified amount of wheat, oats, barley, and corn raised by white lessees on Indian lands.  
 Note: Allotment and leasing totals, 1891-1900 taken from figures given above pp. 81, 111-113.

The figures given above, while by no means conclusive, indicate that the allotment system was not producing the results which the originators of the policy hoped for. In comparing the number of allotments with the number of families living and working on them, one must bear in mind that several allotments might be made to one family. The act of 1891 which granted 80 acres to every Indian made it possible for one family to possess an even greater number of allotments than before. It is unfortunate that there is no way of knowing the number of specific families allotted and the average number of allotments to each. But the above figures show that the number of families cultivating their allotments was by no means keeping pace with the allotment figures. The number of allotments per family grew from 2.7 in 1890 to 5.4 in 1900. Since it may be supposed that when Indians accepted allotments the family took as many as they could get, and since the only change in the law after 1890 which affected the question of eligibility for allotment was the extension of the privilege to married women, this increasing ratio of allotments to families cultivating them suggests a decline of Indian husbandry. Or at least it suggests a failure to reach the goal envisaged by the friends of the Indian. Even more disquieting are the statistics of Indian agriculture. The above figures show an increase in acreage of Indian farming from 1890 to 1895 which was far from proportionate to the number of allotments made in those years. Then from 1895 to 1900, although more than 19,000 allotments were made, the area of the land tilled by Indians actually decreased by over 26,000 acres. Not if one takes the figures of crop production for what they are worth, can one observe the progress in Indian agriculture during these 10 years which the friends of allotment expected. \* \* \*

\* \* \* If the allotment system were to have succeeded the Indian would, culturally, have had to be made over. The significance of this fact was never fully grasped by the philanthropists and the Government. \* \* \* So the Indian hopefully if not enthusiastically went unprepared, out upon his allotment, as an unarmed man would go unwittingly into a forest of wild beasts.

For if white land seekers and business promoters did not create the allotment system, they at least turned it to their own good use. \* \* \*

Besides the lands that were thrown open to settlement, white men were interested in tribal lands that remained. This was especially true of the cattlemen. \* \* \*

When it came to the actual designation of allotments, white influence was also busy. General Whittlesey, of the Board of Indian Commissioners, said to the Mohonk Conference in 1891, "Another hindrance [to the allotting of lands] is the influence brought to bear by surrounding white settlers, who are waiting to get possession of the lands that may be reserved after allotments are completed. If there are valuable tracts of land, they try to prevent those lands from being allotted, and to prevent Indians from selecting them, by bribery and by other means." \* \* \*

<sup>7</sup> Ibid. [Report of the Board of Indian Commissioners] (1891), 96.

\* \* \* In 1890, General Whittlesey reported that there was a growing demand for the Government to distribute among the Indians on a per capita basis tribal funds that had been so heavily swelled by sales of surplus lands. He said, "That is their own desire, and the desire of many of those who surround them, who know how soon such money disappears." The Umatilla agent who found agriculture languishing on his reservation in 1894—especially among the full bloods—wrote:

"The few mixed bloods who farm their allotments do so with stock, machinery, and provisions furnished by merchants or bankers, who take a mortgage on the crop, afterwards taking all the crop."<sup>2</sup>

<sup>1</sup> Ibid. [Report of the Board of Indian Commissioners] (1890), 129.  
<sup>2</sup> Report of the Commissioner of Indian Affairs (1894), 269.

And there was a long story of flagrant corruption and exploitation in the activities of lumbering companies who manipulated the allotment system to their great profit, on up into the twentieth century.<sup>3</sup>

\* See W. K. Moorehead, The American Indian in the United States (Andover, Mass., 1914), 59, 62, 71 ff.

By the middle of the 1890's the friends of the Indian began to express dismay at the course their humanitarian policy had taken in the hands of persons who were not always humanitarians. \* \* \*

In 1895 the Commissioner showed himself well aware of the forces that were crippling Indian development. He made a shrewd comment on his times and a significant forecast. He said:

"The whites in some sections of the country seem to have very little respect for the rights of Indians who have segregated themselves from their tribes and sought to avail themselves of the benefits of the Indian homestead and allotment laws enacted expressly for them by Congress, and I apprehend that the opposition to them will increase as the public domain grows less and less."<sup>7</sup>

<sup>7</sup> Report of the Commissioner of Indian Affairs (1895), 22.

\* \* \* One student of the allotment movement believes that the act of 1891 was the most important step toward ruin. This came by granting the Indian the right to lease and at the same time allotting to each member of the family-to babies and octogenarians-an equal amount of land developed in the Indian idleness and avarice. Children ceased to be a responsibility and became indirectly a source of revenue through their leased allotments. As a result the family was disrupted as a producing unit and the Indian's interest became pecuniary instead of industrial.<sup>8</sup> The present writer agrees with this analysis, but he is inclined to think that basically the leasing policy in almost any form would have meant ultimate defeat for the allotment system.

<sup>8</sup> Flora Warren Seymour, Story of the Red Man (New York, 1929), 376; letter from Mrs. Seymour to the writer.

D. APPRAISAL OF THE ALLOTMENT SYSTEM

A critical appraisal of the consequences of the allotment system is found in a memorandum submitted to the Senate and House Committees on Indian Affairs by Commissioner Collier