

CHAPTER
11

Restrictions and Renewals, 1887-1928

As the Indians were confined on reservations, federal officials and reformers who saw themselves as "friends of the Indian" sought to assimilate native peoples into the larger American society. Private property, Christianity, the English language, and the opportunity to farm or learn a useful trade were considered central to American values and success. The General Allotment Act of 1887, popularly called the Dawes Act, followed the model of the Homestead Act of 1862. The Dawes Act broke up communally held reservation lands and allotted parcels of land to individual families. Any unallotted land could be sold by the government, with the proceeds made available for Indian schools. These schools provided instruction in English and attempted to inculcate white values. Not all reservations were allotted, and not all Indian children attended school, but the overall assimilationist policy during these decades had a major impact in Indian country. The Five Tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole) in Indian Territory were exempted from the Dawes Act, but in the 1890s a commission headed by Henry Dawes called for the allotment of their lands and the end of tribal authority. Cherokee delegates, headed by Principal Chief S. H. Mayes, protested against the division of lands and the usurpation of Native authority. They called attention to the impressive institutions established by the Cherokees following their removal to Indian Territory. Even given these and other achievements, the Five Tribes were all forced to submit to allotment; by 1907, the dream of separate statehood had vanished with Indian Territory swallowed by the new state of Oklahoma. Under the rapidly changing circumstances of the period, did federal policymakers have other choices? Was the course they chose the only pragmatic one?

Even with all the difficulties that attended this period, it is important not to portray the era solely in bleak terms. On the national level, Indians created new organizations, including the Native American Church and the Society of American Indians, that offered significant responses to this new age. Within different Indian communities, people faced compelling questions. They made far-reaching decisions about the nature of leadership, the kind of economy that could be developed, and the focus of the education their children should receive. Largely unnoticed, individuals and families weathered the trying period and in many instances built foundations for further revitalization in the years to come.

DOCUMENTS

The General Allotment Act of 1887, also called the Dawes Act after its congressional sponsor, Henry Dawes of Massachusetts, is generally portrayed today as ill advised, although most non-Indians of the nineteenth century thought it a good idea. For those reservations that came under its provisions and were also affected by subsequent policies designed to further reduce Native landholdings, the results usually were disastrous. Indians in the area that later comprised the lower forty-eight states lost two of every three acres that they held prior to 1887. A reading of the Act, which is excerpted in Document 1, gives a firsthand sense of the federal objectives in the era.

Although the Cherokees and the other Five Tribes had been exempted from the provisions of the General Allotment Act, they had only a temporary respite. Non-Indian intruders in Indian Territory continued to demand the division of the tribal estate. In 1893 Congress created a commission, chaired by former senator Henry Dawes, to negotiate with these Indian nations. The Cherokees knew their lands and institutions were imperiled. As Document 2 reveals, they defended themselves with great eloquence. But it would be to no avail. The Dawes Commission soon began to allot Cherokee land.

One of the key questions confronting all Westerners in the early twentieth century concerned the allocation of a precious resource: water. Indians won an important legal victory in 1908, when the U.S. Supreme Court decided that the Gros Ventres and Assiniboines of the Fort Belknap reservation in northern Montana were entitled to sufficient water to allow them to carve out a living on their land. This decision, excerpted in Document 3, became known as the Winters Doctrine, and it embodied the concept that Indians had particular rights to water, regardless of their record of prior use of it.

Another important legal issue of the time revolved around the ritual use of peyote by Indians who had become members of the Native American Church. At congressional hearings in 1918, reprinted in Document 4, ethnologist James Mooney and his associate Francis La Flesch (Omaha) testified in favor of peyote's use by church members. To the present day, the consumption of this substance remains controversial, because peyote is considered a drug. Nevertheless, the Native American church became the most important national Indian religious organization in this century.

Indians participated in the first world war, even though many Native peoples had not yet been accorded full citizenship in the United States. Their distinguished record in the war added more fuel to the fire for universal citizenship. Carlos Montezuma, M.D. (Yavapai) addressed these matters in one of his editorials in his newsletter, *Wassaja*, included here as Document 5.

1. The General Allotment Act (Dawes Act), 1887

An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and

General Allotment Act, February 8, 1887, U.S. Statutes at Large 24: 366-391.

he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Sec. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which election shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

Sec. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office. . . .

Sec. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the

allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, of his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. . . .

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian both within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner, impairing or otherwise affecting the right of any such Indian to tribal or other property. . . .

Sec. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order. . . .

2. Cherokee Delegates Defend Their Land and Institutions, 1895

To the Senate
And House of Representatives
of the United States Congress:

. . . These are times of imminent danger to those institutions of government and tenure of property that the Cherokees have brought with them from the darkness of time immemorial, modified somewhat by the enlightened influences of your great constitution but distinctive still as Cherokee institutions. The Cherokees are fully alive to the situation, and they know that unless in some way congress shall become acquainted rapidly with their true condition, all that they hold dear of country and