

History of Allotment

from Indian LAND TENURE HISTORY Foundation

Key factors that have shaped U.S. Indian policy and led to the fractured state of Indian land tenure in Indian Country today include countless federal laws and legislative acts. Perhaps the single most devastating federal policy was the General Allotment Act of 1887, also called the Dawes Act after Senator Henry Dawes, the Act's lead proponent.

History of Allotment

The U.S. federal government began the policy of allotting Indian land as early as 1798. Several treaties with Indian tribes included provisions that stated land would be divided among their individual members. After 1871, however, Congress declared that no further treaties would be made and all future dealings with Indians would be conducted through legislation.

Why Allotment?

There were several reasons that allotment proponents supported the policy. First, many of them considered the Indian way of life and collective use of land to be communistic and backwards. They also saw the individual ownership of private property as an essential part of civilization that would give Indian people a reason to stay in one place, cultivate land, disregard the cohesiveness of the tribe, and adopt the habits, practices and interests of the American settler population. Furthermore, many thought that Indian people had too much land and they were eager to see Indian lands opened up for settlement as well as for railroads, mining, forestry and other industries.

General Allotment Act of 1887 (Dawes Act)

The Allotment advocates eventually succeeded in convincing the federal government to adopt the policy nationally. In 1887, Congress passed the General Allotment Act, which authorized the president (at the time Grover Cleveland) to survey Indian tribal land and divide the area into allotments for individual Indians and families. The Allotment Act (also known as the Dawes Act, named for Senator Henry Dawes of Massachusetts, the Act's lead proponent) was applied to reservations whenever, in the president's opinion, it was advantageous for particular Indian nations. Members of the selected tribe or reservation were either given permission to select pieces of land – usually around 40 to 160 acres in size – for themselves and their children, or the tracts were assigned by the agency superintendent. If the amount of reservation land exceeded the amount needed for allotment, the federal government could negotiate to purchase the land from the tribes and sell it to non-Indian settlers. As a result, 60 million acres were either ceded outright or sold to the government for non-Indian homesteaders and corporations as "surplus lands."

Although the General Allotment Act was the first major piece of legislation designed to allot Indian reservations across the U.S., many tribes were

allotted under special legislation that was unique to their tribe or reservation. These acts usually are similar to the General Allotment Act but often contain special provisions.



Origins of the Trust Relationship

Under the policy of allotment, Indian land ownership was not the same as land ownership for other homesteaders. Non-Indian settlers could sell or alienate their land because they had complete fee simple ownership. Under the General Allotment Act, Indian allottees were declared "incompetent" to handle their land affairs and the United States would retain legal title to the land as trustee for the allottee; Indian allottees only had beneficial or usufruct title. In other words, as long as the allotment was held in trust by the federal government, the Indian landholder could use the land but not sell it or lease it without the federal government's approval. However, the Act stated that 25 years after the allotment was issued, Indian allottees would be given complete, fee simple ownership of the land. At that point, the landowner could sell or lease it to anyone.

Despite the original safeguards in place to help Indian people retain their land, the General Allotment Act caused Indian land holdings to plunge from 138 million acres in 1887 to 48 million acres by 1934 when allotment ended. This happened for several reasons. First, during the allotment of many reservations, the most productive land was identified as "surplus to Indian needs" and sold off to white settlers or business interests. In addition, many Indian people did not become the farmers the U.S. government wanted them to be. The General Allotment Act did not provide for agricultural education or farming equipment. In addition, the allotted land was often inappropriate for agriculture, and for some Indian groups,

intensive agriculture was culturally unacceptable. Cut off from their livelihoods and their previous ways of survival, some Indian people sold their land after the 25-year trust period because they had no means of supporting themselves and had nothing else to sell.

Amendments to the General Allotment Act also made it easier for Indian land to pass into non-Indian hands. For example, in 1902 legislation known as the "Dead Indian Act" was passed that allowed Indian landowners to sell lands they inherited even if they were still in trust. In 1906, the Burke Act was passed, which authorized the secretary of the interior to decide whether an Indian person was "competent" to manage his or her lands. If the Indian person was deemed "competent," the secretary could take the land out of trust and the land would become taxable. The secretary of the interior was authorized to do this with or without the knowledge and/or against the wishes of the allottee. Thus, many Indian people ended up having their land sold in tax foreclosure auctions because they owed taxes on land they thought was in trust. With the Act of May 29, 1908, the secretary of the interior was also given power to sell the allotments of deceased Indian landowners if he deemed the heirs incompetent. In the end, 27 million acres of Indian land were lost as a result of these acts.

So much Indian land was passing out of Indian hands that even the U.S. government became alarmed. In 1928, a government report entitled "The Problem of Indian Administration" (also known as the "Merriam Report") sharply criticized the policy of allotment and the U.S. Indian Service in general. The report provided undeniable evidence of the destructiveness of federal Indian policy and spurred significant changes in the federal administration of Indian affairs.

Allotment Ends, Challenges Remain

In 1934, the Wheeler-Howard Act (also known as the Indian Reorganization Act) was passed ending the process of allotment on Indian lands in the contiguous United States. and ensuring that all remaining trust allotments would stay in trust indefinitely. It did not, however, prevent land from passing out of trust when it was inherited by a non-Indian heir or when an allotment owner petitioned the secretary to terminate the trust status of the allotment or remove restrictions upon alienation. Furthermore, the Act did not change some parts of the General Allotment Act that had made the use of allotments increasingly difficult among Indian people:

- Probates still increased fractionation with growing numbers of common interest holders in each allotment
- The trust system still kept decision-making authority over the land in the Bureau of Indian Affairs as a distant and paternalistic landlord
- Large percentages of reservation land were now held by non-Indians
- The inherent sovereignty of Indian nations was limited to those lands held in trust

Allotment not only caused 90 million acres of Indian land to be removed from Indian ownership and control, its impact continues to have serious consequences, such as the increasingly fractionated ownership of Indian land title, checkerboard ownership patterns on many reservations and loss of access to important sacred sites, to name just a few.

The allotment of American Indian reservations was a policy put into effect by many pieces of legislation. This section provides brief summaries of and links to all general allotment legislation, including the General Allotment Act of 1887, its amendments and other related legislation. In addition to legislation that allotted land, also listed is legislation touching on a multitude of issues arising from allotment, such as leasing, the determination of heirs and disposal of allotment lands, the powers of the secretary of the interior over allotment lands, and the determination of Indian "competency."

Source: <http://iltf.org/land-issues/history/>
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