THE PUBLIC LAND POLICY OF THE FIVE CIVILIZED TRIBES

*By Norman Arthur Graebner**

Although for many centuries the concept of private property has been almost universally accepted by civilized peoples, occasionally there have been communal forms of rural life in the history of the United States. One such attempt was the Virginia colony, during the first decade of its existence[1]; another was the famous Brook Farm experiment of George Ripley,[2] Nathaniel Hawthorne, Charles Dana, and other intellectuals in Massachusetts a century ago. Neither of these, however, can be considered successful, for they were never widely adopted, comprised only small areas, and were of short duration. Perhaps the most singular and most successful experiment in public ownership was that of the Five Civilized Tribes. Residing in what is today eastern Oklahoma, and occupying an area larger than the state of Indiana, they employed a system of communal land ownership which was not relinquished until the turn of the present century.

These Indians, driven westward by the irresistible force of American expansion, immigrated into their new homeland west of the Mississippi during the 1820's and 1830's. Culturally and politically the most advanced of all American Indians, they brought with them their old tradition of communal landholding. Upon their arrival in the West they were agreeably surprised over the advantages and the extent of their new domain. The fertile valleys and uplands, when cleared and cultivated, produced better crops than had the fields of their former homes. Luxuriant grass on the prairies provided rich pasturage for livestock, while the woods yielded an ample supply of fuel and lumber. Besides an abundance of land for agricultural needs there were huge unoccupied tracts which were reserved for the use of all citizens. This land was the public domain held as communal property.

Aided by such ample resources, the communal system of landholding soon dominated again the life of the Five Civilized Tribes. It not only influenced greatly the manner of life in Indian Territory, which was decidedly rural, but created a demand for legis-

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[1] John Esteen Cook, *Virginia: A History of the People*, Chapter III, "The Oldest American Charter" (Boston: Houghton Mifflin Company, 1889), pp. 15-16.—Ed.

[2] *Encyclopaedia Britannica*, 11th Edition, Vol. IV, pp. 645-6; *Dictionary of American Biography*, life of George Ripley, Vol. XV.—Ed.

lation to control the use of the public lands as well. Each Indian was permitted to occupy as much land as he wished to cultivate or use for grazing. Improvements were his, but the title to all land was reserved by the tribal governments. The people of these five small Indian republics, moreover, were not citizens of the United States, but of their own individual nations, and were only partially subject to the laws of the Federal Government. Although they were dependent upon the U. S. Congress for appropriations of money due them by treaty, they were independent in action. Regulations concerning agriculture and landholding, therefore, were of their own enactment.

Immediately upon their arrival in the West the Five Tribes needed some restrictions to govern their settlement on their new public lands. Perhaps the best examples are the Cherokee law and the Choctaw law of 1839 which provided that no person could settle within a quarter mile of the house or other improvements of another citizen without the latter's permission. If, however, a settler's holding extended a half mile or more from his residence and a spring or running water was available, another citizen was permitted to settle a hundred yards from such a field.[3] This law continued to remain on the Cherokee statute books, and was copied later by other tribes.[4] Such rules guaranteed a measure of freedom to those Indians who were first to settle in a new area, secured for each farmer an easy access to the open range, and attempted, though in vain, to maintain a rural economy among the five nations.

One naturally assumes that under a system of governmental ownership the tracts of land held by individuals will tend toward uniformity in area. This need not be true; it was not the case in Indian Territory. From the very inception of the system in the West some citizens of each tribe held small acreages, while others controlled large farms, plantations, or ranches, usually in the most fertile regions.[5] This tendency resulted in distinct classes of landholders long before the Civil War, and reached its height in the following half century. By 1890 the Cherokee census showed farm acreages in that Nation to vary from one and one-half to over a thousand acres. Only among the Seminoles did this wide variation not exist. Their holdings were uniformly small.

Essentially the reason for the great diversity in the area of farms lay in the inherent psychology of the two leading classes of Indian farmers. It is true that each citizen was permitted as much land as he wished to improve; but some were contented with a life of little labor and small return, while the more progressive sought

[3] *Constitution and Laws of the Cherokee Nation,* 1839, 91 (and, also, *Constitution and Laws of the Choctaw Nation,* Session VI, 1839.—Ed.)

[4] *Constitution and Laws of the Cherokee Nation,* 1875, 249; *Constitution and Laws of the Choctaw Nation,* 1894, 247.

[5] See Joseph B. Thoburn, *A Standard History of Oklahoma* (1916), I, 260.

the accumulation of capital and the adoption of the Anglo-American way of life. This latter group was aided not only by the vast extent of the public domain, but also by the frequent reversion of vacated lands to public control, which often enabled a landholder to expand and perhaps consolidate his holdings. The Creek Nation reclaimed for public use land vacated for five years,[6] while the Cherokees had previously fixed the time limit for possession of land not actually in use at two years.[7]

The small farmer was usually a full-blood, was out of sympathy with the hurry and competition of the white man's civilization, and lived in isolated communities, close to water but away from any frequently travelled road. Here, living in a log cabin surrounded by crude outbuildings and small hand-cultivated fields, he held little livestock, while his crops were hardly sufficient to eke out a meager subsistence. It was only through the sale of a few bushels of corn, a few pelts, a pony, or a cow that he received a little cash. Consequently, such luxuries as flour, coffee, and sugar might grace his table only on Sundays.[8]

While the farmers of Indian Territory tended roughly to fall into two extreme groups, not every citizen belonged definitely to one or the other. Actually all gradations could be found, and many full bloods combined self-sufficiency with various attempts at commercial farming.[9] In addition to raising all of their food and owning some livestock, they might produce several bales of cotton and some corn, wheat, or oats for market. Yet the holdings of this group were rarely large, as may be seen from a statement made in 1893: "It is a rare thing to find a full-blood in the Indian Territory who is living comfortably on as much as a quarter section of land under cultivation."[10] The full blood farmers in the Flint District of the Cherokee Nation, whose farms scarcely averaged ten acres, prove the truth of this statement.[11]

On the partially timbered prairies and the fertile river bottoms lived the commercial farmers, the pride of the Indian apologists who pointed to them as proofs of the thrift and enterprise to which the Indians might attain. Although even the homes and acreages of this class showed considerable variation, they, as a group, lived well and in no small degree of luxury.[12] These wealthy farmers often

[6] *Constitution and Laws of the Muskogee Nation*, 1892, 57.

[7] *Constitution and Laws of the Cherokee Nation*, 1875, 249.

[8] "Interview with Lewie Felihkatubbe, Antlers, Oklahoma, August 5, 1937." *W. P. A. Indian-Pioneer Project for Oklahoma*, Frank Phillips Collection, University of Oklahoma.

[9] See Angie Debo, *The Rise and Fall of the Choctaw Republic*, 113.

[10] R. W. McAdam, "An Indian Commonwealth," *Harper's New Monthly Magazine*, LXXXVII (November, 1893), 890-891.

[11] "Interview with Zeke Acorn, October 4, 1937." *W. P. A. Indian-Pioneer Project*, Frank Phillips Collection.

[12] McAdam, *loc. cit.*, 890.

displayed great energy and were worthy of praise, but it must be remembered that few of them were fullblood Indians. Most of them were mixed bloods and some were intermarried white citizens. Many of them were renowned political and economic leaders of the Five Tribes. Two notable representatives of early Cherokee aristocracy were John Ross and Joseph Vann. Not far from the mission station of Park Hill, John Ross, the principal chief of the Cherokees from 1827 to 1866, built his home, "Rose Cottage," on a holding of over a thousand acres, while Joseph Vann controlled a large cotton plantation near Webbers Falls. Captain R. M. Jones, a Choctaw, though known chiefly for his commercial activities, held five plantations.[13] In the Chickasaw Nation, Colonel Pittman Colbert in 1838 cultivated almost four hundred acres of cotton besides enough corn for the needs of his huge household. Roly McIntosh typifies the early Creek aristocracy.

Toward the end of the century Lee Smith, an adopted white citizen of the Cherokee Nation, cultivated a thousand-acre farm.[14] Albert Morris, who farmed eight hundred acres, and Mary Halderman, with fifteen hundred acres, were unusual native Cherokees who had also attained the "big business" status in agriculture.[15] But the great landholders were not all Cherokees. George Perryman was a Creek cattle king with over one thousand acres of land under cultivation to provide feed for his livestock.[16] Nelson Chigley, a Chickasaw baron, began with a small farm in 1884, but by energy and perseverance had increased his holdings to two thousand acres by 1890.[17] A Choctaw, Charles Bilbo, during the late 1880's rapidly increased his holdings until he held three farms totaling seven hundred and fifty acres, and a pasture three times as large.[18] Thus there continued until the end of the century what might be termed a landed aristocracy in Indian Territory, although actually there was no private ownership of land.

Such extremes in economic status among the citizens of Indian Territory and the resulting variety in demands on the unoccupied lands made a consistent policy governing the public domain almost impossible. Had all citizens of the Five Tribes held the outlook of the typical fullblood, the public lands would have presented no problem. The Seminole Indians, one of the Five Tribes, illustrate this fact quite clearly. Over half of their lands in the West were hilly, broken, and well timbered, although the bottom lands and

[13] Muriel H. Wright, "Early Navigation and Commerce Along the Arkansas and Red Rivers in Oklahoma," *Chronicles of Oklahoma*, VIII (March, 1930), 82.
[14] *Cherokee Census of* 1890, Delaware District.
[15] *Ibid.*, Cooweescoowee District.
[16] John Bartlett Meserve, "The Perrymans," *Chronicles of Oklahoma*, XV (June, 1937), 182-183.
[17] H. F. O'Beirne, *Leaders and Leading Men of Indian Territory*, 274.
[18] *Ibid.*, 40.

prairies had excellent soil. The farms, however, remained small, mere patches of cotton and corn, one contemporary states; and even to the end of the century these Indians were carrying their produce to mill and market in sacks slung either over their saddles or over their backs.[19] Consequently this Nation required and had few regulations governing the use of its unoccupied lands. In the other nations, however, the presence of beckoning prairies plus the spirit of economic expansion made the encroachments on the public domain increasingly greater. The Indian governments faced this problem squarely. They saw no need in attempting to confine the Indians, for this would have rendered the public lands useless. Instead, they fostered its use, but tempered it with regulations. These, quite naturally, were largely experimental, and resulted in almost constant revision, fluctuating policies, and a great deal of imitation among the tribal governments. It was a problem of making the communal land system work in the face of ever-changing commercial demands. Only by recognizing the extremes of economic ambition held by the citizenry of Indian Territory can one understand the regulations pertaining to the Indian public land policy.

It was more, however, than the mere differences in attitude toward the public domain that made restrictions necessary. Had Indian Territory been a desert, or had it been free of marketable resources over and above the products of cultivation, few tribal regulations of the public lands would have been needed. This, however, was not the case. The existence of oil reserves in eastern Oklahoma was known but oil was not discovered in commercial quantities until about the time of the breaking up of the tribal governments. There was great commercial wealth in the form of lumber and prairie hay. Even as pasture land the public domain could yield undue profits. Obviously, the unlimited use of the surplus lands demanded early restrictions to safeguard the rights of all.

With the cross-timbers of Oklahoma stretching over their lands, the Indians found wood for buildings and fuel in great abundance. The unrestricted removal of timber, however, could not long continue, for the supply was soon being depleted through wanton destruction. The Cherokees, as a conservation measure, decided to impose a fine, or imprisonment as long as sixty days, on any person who cut pecan, walnut, hickory, or other nut tree on the public domain, unless the timber was designated for some useful purpose or its removal was necessary for the improvement of the farm.[20]

Unscrupulous persons took advantage of the generosity of Indian law to make the disposal of lumber a commercial enterprise. This presented an even greater problem to the tribal governments,

[19] Julian Ralph, "The Unique Plight of the Five Nations," *Harpers Weekly*, XL (January 4, 1896), 12.

[20] *Constitution and Laws of the Cherokee Nation*, 1875, 143.

since the demand for choice lumber was great. A citizen of a state as distant as Michigan wrote to Chief D. W. Bushyhead of the Cherokees seeking to buy lumber in his Nation.[21] Great quantities of valuable lumber were soon being shipped from Indian Territory. As this lumber was being sawed from timber on public property, such shipments could not be tolerated. The Cherokee Nation began to restrict this traffic by requiring a license for sales of sawed lumber to United States citizens. In addition, the lumbermen were forced to file a bond for five thousand dollars and pay to the national treasurer semi-annually fifteen per cent of the amount of their sales.[22] When these restrictions proved inadequate to stop the already extensive lumber trade of the seventies, a law of 1878 prohibited the transporting of timber outside the National limits after the present supply of logs had been shipped.[23] But the sale of Indian lumber continued nevertheless.

Word came one day during the summer of 1881 that logs were being cut and rafted down the Verdigris River. A sheriff hurried to the site and attached 500,000 feet of lumber. The party of woodcutters included white men and some adopted citizens who were probably unaware of the illegality of their work. Another man was found having a "boom" under construction for the ostensible purpose of using it to catch logs which were then banked, but it was plainly an attempt to evade the law.[24] Some non-citizens, believing that the law did not apply to them, continued to ship lumber out of the Nation.[25] Owners of sawmills were required to have permits, yet in 1881 United States citizens were operating a sawmill in the Cherokee Nation near Fort Smith without any authorization.[26]

Of particular difficulty was the traffic in railroad ties and walnut logs before it was legalized by the Cherokee National Council in the early nineties.[27] In the year 1887, J. A. Mare had a contract to furnish the Missouri, Kansas, and Texas Railroad 125,000

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[21] W. E. Rogers, Alpena, Michigan, to Chief D. W. Bushyhead, June 26, 1882. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 58, Frank Phillips Collection.

[22] *Constitution and Laws of the Cherokee Nation*, 1875, 255.

[23] Charles Thompson, Principal Chief, to Mr. James Oates, Cincinnatti, Arkansas, February 20, 1878. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 30, Frank Phillips Collection.

[24] Jesse Cochran, Sheriff of Cooweescoowee District, to D. W. Bushyhead, August 23, 1881. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 51, Frank Phillips Collection.

[25] J. H. Alexander, Camp Creek, to D. W. Bushyhead, January 4, 1881. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 46, Frank Phillips Collection.

[26] United States Indian Agent John Q. Tufts to D. W. Bushyhead, June 13, 1881. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 49, Frank Phillips Collection.

[27] *Cherokee Advocate*, May 22, 1897.

ties and a half million feet of bridge lumber,[28] a contract which would naturally be a tremendous drain on the timber resources of the Indians. To engage in the lucrative trade in walnut, D. W. Hays endeavored to evade the law by converting his lumber into manufactured articles such as furniture, gun stocks, and table legs. Other sawmill proprietors claimed it lawful to ship timber which they had received in partial payment for services rendered.[29] Although the demand for lumber continued, Chief Bushyhead continued to uphold the principle that the timber was for the use of citizens only, and attempted to enforce the laws restricting lumber sales.[30] The frequency of legislation dealing with the sale of timber illustrates clearly the magnitude of this problem.

The sale of walnut timber was actually permitted in 1890, with the provision that the timber must be cut on the citizen's own claim, and only if its removal was necessary to aid cultivation. In addition, a permit had to be procured from the district clerk, and five dollars paid to him for each one thousand feet of timber sold.[31] Citizens owning sawmills could, after a payment of one dollar on every thousand feet sawed, ship pine lumber anywhere they wished. All non-citizens were barred from the lumber trade entirely.[32] After 1895 any non-citizen caught in the timber traffic was subject to arrest and seizure of his team.[33] One year later the trade in timber for railway use, which had been permitted in 1892, or its sale to any citizen of the United States, became punishable by a fine of five hundred dollars or six months imprisonment.[34] Thus a brief period of legalized commercial lumbering in the Cherokee Nation came to an end, and all cutting of timber on the public domain had to be for domestic use only.

The story of timber regulation in the other of the Five Tribes closely parallels that of the Cherokees. Citizens of the Creek Nation were not permitted to sell walnut or other lumber outside their territory, but the Chickasaws allowed their National Agent to contract for shipments beyond the Nation's borders at a royalty of

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[28] George W. Sroemmer to D. W. Bushyhead, May 11, 1887. *Cherokee Letter Press Books*, I,No. 87, Frank Phillips Collection.

[29] R. E. Blackstone to D. W. Bushyhead, May 18, 1885. D .W. Bushyhead Correspondence, *Cherokee National Files*, XXV, No. 76, Frank Phillips Collection.

[30] See abstract of reply to letter of W. E. Rogers, Alpena, Michigan, to Chief D. W. Bushyhead, June 26, 1882. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXIV, No. 58, Frank Phillips Collection.

[31] In 1895 this sum was raised to ten dollars for every thousand feet. See Acts of the Cherokee Council, December 17, 1895, *Cherokee National Files*, XXIII, No. 324, Frank Phillips Collection.

[32] *Constitution and Laws of the Cherokee Nation*, 1893. 375-376.

[33] Acts of the Cherokee Council, December 17, 1895, *Cherokee National Files*, XXIII, No. 324, Frank Phillips Collection.

[34] *Cherokee Advocate*, May 22, 1897.

eight dollars per thousand feet.[35] With a law in 1870 prohibiting non-citizens from cutting timber on the public domain, the Choctaws also began a policy of protecting their lumber resources.[36] In the following year a National Agent was appointed to approve the sale of timber by citizens. A fine of one thousand dollars was appended for failure to seek such approval. The agent alone was empowered to contract for lumber sales to the railroads.[37] A complete schedule of royalties was prepared in the early eighties, covering all types of lumber, telegraph poles, piling, railroad cross ties and switch ties, cord wood, and shingles.[38] Since the Agent was at times defrauded in his dealings with merchants outside the Nation, a uniform scale of measurement was adopted in 1883.[39] A decade later all rafting or floating of timber within the limits of the Choctaw Nation was prohibited.[40]

Negroes, excluded from equal rights on the public lands by the treaty of 1866, had been allowed only such timber as was necessary for their own use.[41] Near the close of the century, with the exception of lumber for mining purposes, this restriction was extended to all citizens of the Nation, permitting shipment of timber for home use only.[42] Shortly thereafter the allotment of lands in Indian Territory ended all problems of timber conservation for the five Indian nations.

Prairie grass was another product of the Indian public domain which needed legal regulation to guarantee its conservation. Because of possible destruction by fire, the burning off of prairie grass was limited by law to specified periods each spring.[43] Prairie hay constituted a public wealth and was to be used freely by the Indian citizenry for its livestock. Again it was the demand of farmers and stockmen outside Indian Territory that offered temptation for commercial enterprise. The Indians had reserved the right to sell hay to other citizens or laborers under a legal permit, but soon intruders could be found edging into the Indian domain, baling

[35] *Constitution and Laws of the Muskogee Nation*, 1892, 60; *Constitution, Treaties, and Laws of the Chickasaw Nation*, 1890, 165.

[36] Acts of the Choctaw Nation, I (1869-1871), No. 53, Frank Phillips Collection.

[37] Acts of the Choctaw Nation, I (1869-1871), No. 114, Frank Phillips Collection.

[38] Acts of the Choctaw Nation, II (1882-1884), No. 70, Frank Phillips Collection.

[39] Acts of the Choctaw Nation, VI (1883-1884), No. 13, Frank Phillips Collection.

[40] *Constitution and Laws of the Choctaw Nation*, 1894, 338.

[41] Acts of the Choctaw Nation, IV (1877-1880), No. 33, Frank Phillips Collection.

[42] Acts of the Choctaw Nation, XV (1898), Book II, No. 46, Frank Phillips Collection.

[43] *Constitution and Laws of the Cherokee Nation*, 1875, 141; Acts of the Choctaw Nation, VII (1885-1886), No. 34, Frank Phillips Collection.

hay and shipping it to surrounding states. Legal restrictions were inevitable. The Cherokees attempted to keep the intruders away by making illegal all cutting or baling of prairie hay for shipment outside the Nation. Such hay was subject to seizure by the local sheriff.[44] G. E. Garetson, a United States citizen who decided to disregard the law, was found in July, 1885, baling hay near Chelsea and shipping it out of the Cherokee country. He was summarily arrested and his hay and machinery confiscated. The hay was advertised for public sale, but the disposal of the machinery required additional consultation, for no special provision had been made for it.[45] In the same month a complaint was made to Chief Bushyhead that a white man who had married an Indian girl was cutting hay on the public domain and having his brothers help him haul it to Chetopa, Kansas. The author of the complaint said that when she was uptown she "seen 2 loads going to Chetopa and selling it." Evidently many other United States citizens in the vicinity were doing the same thing, for she added: "Will you pleas to have the officers attend to business here in this end of The Nation or the white renters will soone take this part of the Nation and run the citizens out of the country. We have know [sic] protection whatever from our Sherriff or Solicitor."[46]

Some men among the Cherokees proposed to evade the law by declaring prairie hay a farm product, and as such exempt from marketing restrictions. Chief J. B. Mayes, however, ruled that prairie hay, being a spontaneous growth of the country, could not be transformed into a cultivated product merely by stretching a few wires around it.[47] Finally during the nineties the Cherokees were permitted to sell small quantities of hay to travellers or to persons bearing proper permits. Anyone wanting to ship prairie hay could do so by obtaining a permit and paying the district clerk a royalty of twenty cents per ton, with the promise that he would not cut hay within a quarter mile of the improvements of another citizen.[48]

Also with regard to hay and its use by all citizens the policy was similar in the other tribes of Indian Territory. The Chickasaws were quite lenient until the eighties, but then made it unlawful for any person to cut hay for shipment outside the Nation. To assure compliance, a heavy fine or a jail sentence of thirty days

[44] Acts of the Cherokee Council, January 30, 1888, to March 3, 1888, *Cherokee National Files*, XXII, No. 256, Frank Phillips Collection.

[45] Jesse Cochran, Sheriff of Cooweescoowee District, to Chief D. W. Bushyhead, July 18, 1885. D. W. Bushyhead Correspondence, 1885-1890, *Cherokee National Files*, XXV, No. 78, Frank Phillips Collection.

[46] Mrs. Ira Williams to D. W. Bushyhead, July 8, 1885. D. W. Bushyhead Correspondence, *Cherokee National Files*, XXV, No. 90, Frank Phillips Collection.

[47] J. B. Mayes to W. B. Goodman, July 1, 1889. *Cherokee Letter Press Books*, XIV, No. 92, Frank Phillips Collection.

[48] *Constitution and Laws of the Cherokee Nation*, 1893, 205-206.

was imposed upon offenders.[49] Until 1887 the Choctaws allowed non-citizens under a legal permit to cut and ship prairie grass from the public domain. Thereafter those with permits were compelled to purchase their hay, and only for personal use, from tribal members. In addition, a royalty of fifty cents per ton had to be paid on all shipments,[50] increased three years later to one dollar per ton.[51] Citizens could continue to cut prairie hay for their own use.

During the early history of the Five Civilized Tribes in the West the public domain seemed so extensive that each Indian was allowed as large a pasture as he desired. After the Civil War, however, due to the growth of the cattle industry, some citizens had holdings eight to ten miles square, which barred many citizens from the use of the public lands.[52] It soon became evident that the unlimited use of the rich prairie lands could be preserved only by legal means. The basic reason for these huge pastures, moreover, lay not in the great size of Indian herds, though many Indian herds did number into the thousands, but rather in the practice of leasing grazing land to intruding cattlemen. Indian law stipulated that no white person could lease grazing land or hold cattle in Indian Territory,[53] but the lure of sizeable returns from Texas cattlemen stimulated the lease system enormously. By the eighties huge pastures could be found in the Chickasaw, Creek, Cherokee, and Choctaw nations.

The tribal governments, recognizing the injustice of this commercialism, sought during the following years to limit the size of pastures. A Cherokee law finally held the size of pastures in that Nation to fifty acres,[54] while the Creeks and Chickasaws limited their enclosed prairies to one square mile of public domain.[55] The Creek law, passed in 1892, provided that additional land could be rented from the tribal government at five cents an acre, but restricted the large pastures to a region within ten miles of the Nation's borders, and required stockmen to secure the consent of all settlers within one half mile of the proposed enclosure.[56] The Choctaws ordered a corridor of twenty-five feet between all enclosures in order to prevent the merging of several pastures into one.[57]

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[49] *Constitution and Laws of the Chickasaw Nation*, 1899, 215.

[50] *Constitution and Laws of the Choctaw Nation*, 1894, 245, 311.

[51] Acts of the Choctaw Nation, X (1890-1891), No. 17, Frank Phillips Collection.

[52] *Annual Report of the Commissioner of Indian Affairs*, 1887, 111.

[53] *Constitution and Laws of the Chickasaw Nation*, 1899, 134; *Constitution and Laws of the Choctaw Nation*, 1894, 248, 281.

[54] *Constitution and Laws of the Cherokee Nation*, 1893, 384.

[55] *Constitution and Laws of the Muskogee Nation*, 1893, 115; Joe T. Roff, "Reminiscenses of Early Days in the Chickasaw Nation," *Chronicles of Oklahoma*, XIII (June, 1935), 179.

[56] *Constitution and Laws of the Muskogee Nation*, 1893, 116-119.

[57] *Constitution and Laws of the Choctaw Nation*, 1894, 271.

But all these laws had little effect in reducing the size of the extensive holdings. In 1890 twenty Chickasaw citizens were said to control ninety per cent of the arable lands of the Nation.[58] The Honorable H. L. Dawes, in a speech delivered in 1895, reported that in the previous year he had taken from the Creek records the names of sixty-one individuals and companies who controlled over one million of the three million acres of the Nation's lands, and had sublet much of these lands to Texas cattlemen for twenty-five cents to a dollar and a half an acre.[59] Although the tax of five cents an acre was very low, the Creek Indian Agent complained that it was seldom collected. The Cherokee tax was levied on cattle instead of acreage, but the Cherokee Nation also received little compensation from its pasture lands.[60] These large holdings of cattlemen tended to aggravate the already great inequality in the size of farms in Indian Territory.

Whether a more equitable distribution of lands under the communal landholding system could have saved the Indian domain is doubtful, for the encroachment of homesteaders after the disappearance of the American frontier in 1890 could not have been halted until every available acre of marginal farming land in Indian Territory had been occupied. Nevertheless the extremes in economic status caused the Indian land policy to become the major point of attack in the allotment struggle. Many citizens of the surrounding states could not forget that in Indian Territory were farms and pastures whose fences a horseman could not encompass "from sun to sun" and which were held by mixed bloods and adopted white citizens. Men of avaricious bent, they felt, had taken advantage of the system of land tenure to satisfy their own greed, and deprived the more reticent full blood of his just inheritance. Others argued that the more enterprising Indian created wealth for the community and thus contributed to progress and a higher standard of civilization, and that the poor Indian could defend his rights at the polls as his class was in the majority.

Strangely enough, neither the fullbloods nor the commercial farmers, around whom the heated discussion revolved, took active part in the controversy. Both seemed quite content with conditions as they were. The explanation of the problem lay not in the Indian land policy. This policy had but one objective, namely, to guarantee the rights of all tribal citizens to the benefits of the public domain. This it sought to do in the face of constant opposition from the citizens of surrounding states. Rather the explana-

[58] W. D. Crawford, "Oklahoma and Indian Territory," *New England Magazine*, XV (June, 1890), 456.

[59] Thirteenth Mohonk Indian Conference *Proceedings*, *Annual Report of the Board of Indian Commissioners*, 1895, 73.

[60] *Annual Report of the Commissioner of Indian Affairs*, 1892, 248.

tion lay in the inherent differences between the economic philosophy of the Indian and the white man, and, even more, in the landhunger of the American pioneer farmer.

The public domain was the frontier of Indian Territory. It offered the possibilities of economic expansion and provided the Indians with many of their wants. The rich grass lands were vital to their grazing industry. While the Five Tribes were aware of their dependence upon the unoccupied lands, they often permitted their leasing, either for the purpose of easy money or as the only means of stemming the steady pressure of the whites. With the loss of Indian control over the public domain and the allotment of land in severalty at the turn of the century, the communal land system disappeared. The old agricultural economy of Indian Territory was forced to yield to progress, and to the American system of private ownership.