An American Tragedy of the Commons:

Land and Labor in the Cherokee Nation, 1870–1900

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One of American history's most interesting experiments in public land policy was set in motion in 1838, when the Cherokee Indians were torn from their southern Appalachian homeland and relocated to the far side of the Ozarks via the infamous "Trail of Tears." Formally, they took possession of their new territory as joint tenants, with equal interest and right of occupation to all. Among themselves, they practiced a rough-hewn system of private property in which individual rights to land were based on actual use. At first this arrangement was well suited to the realities of homesteading an open frontier. As time passed and circumstances changed, the Cherokee gleaned some hard lessons from their hybrid property system. They learned that private control of land was mainly valuable for the control it brought over the labor of those less lucky. And they learned that political interference with that fact was far more effective at spreading confusion than spreading benefits.

The agrarian economy of the Cherokees underwent the transition from subsistence to commercial at an early date, and they identified and debated the troubles of that transition with considerable insight and eloquence. Literate in English to a great extent and with a vigorous public discourse, they left an abundance of written records whereby the history of their predicament can be traced.

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Although the Cherokees had lost the bitter struggle to retain their ancestral domain in the East, their resistance won them 4.5 million acres of well-watered, well-wooded country in the northeastern corner of present-day Oklahoma. Moreover, their negotiators had seen to it that nothing was tentative or uncertain about the character of their land grant. A formal survey delimited the tract, and a perfect fee-simple title from the United States covered it. The treaty of removal accorded the tribe a high degree of self-government in this new realm, and the resilient Cherokees set about rebuilding the national structures begun back in Georgia. They founded a new capital city at Tahlequah, established the National Council, a bicameral legislature, and provided for the principal chief, a separate executive official. They established nine districts corresponding more or less to counties in adjoining states.[1]

Largely tailoring their political institutions along Anglo-American lines, the Cherokees stitched in one major embellishment that had no parallel in the federal or state constitutions. This provision assured that the underlying title to the land of the nation would remain "common property," with access implicitly free and open to all citizens, while it allowed actual improvements to the land—clearings, buildings, betterments of any kind—to be the "exclusive and indefeasible property" of individual citizens. The first article of the first Cherokee constitution written at New Echota, Georgia, in 1827 had enshrined this principle, and the new constitution adopted at Tahlequah in 1839 reaffirmed it. The fee-simple title remained vested or entailed in the nation, but individual citizens fully enjoyed heritable usufructuary rights to their plots. Investment of labor was the defining criterion of individual prop-

1. Morris L. Wardell, *A Political History of the Cherokee Nation, 1838–1906* (Norman: University of Oklahoma Press, 1934); William G. McLoughlin, *After the Trail of Tears: The Cherokees' Struggle for Sovereignty, 1839–1880* (Chapel Hill: University of North Carolina Press, 1993). The total area ceded to the Cherokee was in fact much greater. The area referred to here was that which was actually districted and opened to settlement by the tribal government. In 1867, the tribe sold back to the United States 1.5 million acres west of the Caney River for resettlement of the Osage people of Missouri and Kansas. This left an isolated reserve of some 6 million acres—the famous "Cherokee Strip"—which was leased for a time to a consortium of Texas cattlemen, then finally sold in 1891 to the U.S. government and opened two years later to white settlers. See William W. Savage Jr., *The Cherokee Strip Live Stock Association: Federal Regulation and the Cattleman's Last Frontier* (Columbia: University of Missouri Press, 1973).

erty in land, on the simple principle that what a person had created by his industry was his by right. If anything, the Cherokee concept of real estate would seem to have been a fairly pure embodiment of John Locke's natural-right doctrine of private property: "He hath mixed his labour with it, and joined it to something that is his own, and thereby makes it his property. It being by him removed from the common state that Nature placed it in, it hath by this labour something annexed to it that excludes the common right of other men."[2]

Although Locke's general philosophy of law and social organization is said to have carried considerable weight with the framers of the U.S. Constitution, the supposedly alien and unconformable nature of the Cherokees land system remained a sticking point in relations with the federal government as long as the Cherokees retained any measure of home rule. John Phillip Reid has commented, "Of no other Cherokee legal institution was so much made and so little understood." According to Reid's analysis, Cherokee law in both its primitive and modern phases fully recognized personal ownership of land; the community basis of title was emphasized only as the tribal domain began to be threatened with dissipation by private transfers to English and American interlopers. "Communal in principle but private in practice," was how Reid summed up the arrangement. "The nation owned the lands, they owned rights in the nation, but as individuals they owned individual rights to the improvements which they made in the land they occupied, they merely could not alienate the soil." Calling the resulting system "communal" would be about as inaccurate as saying homesteaders proving up their claims on the public domain of the United States held their lands "in common."[3]

Yet throughout the nineteenth century—its permitted span of life—the Cherokee institution of lands-in-common was consistently misconstrued or

2. *The Constitution and Laws of the Cherokee Nation, Passed at Tahlequah, Cherokee Nation, 1839–51* (Tahlequah: Cherokee Advocate, 1852), 5–6; John Locke, *Concerning Civil Government, Second Essay,* Great Books edition (Chicago: Encyclopedia Britannica, 1952), 30. Largely following the lead of the Cherokee legislature, the Creek, Choctaw, and other nations of the so-called Indian Territory enacted similar land programs; these are outlined (with some misunderstandings on the author's part) in Norman Arthur Graebner, "The Public Land Policy of the Five Civilized Tribes," *Chronicles of Oklahoma* 23 (Summer 1945): 107–18.

3. John Phillip Reid, *A Law of Blood: The Primitive Law of the Cherokee Nation* (New York: New York University Press, 1970), 130–33. See also *Cherokee Advocate* (Tahlequah), 4 July 1877.

misrepresented by unsympathetic American lawyers and politicians who decried it as "Communism" or derided it as "Henry George's system." Touring the Indian Territory in 1894, Senator Henry Dawes of Massachusetts lamented that it was "out of joint and harmony" with American social and commercial norms—"so different from the rest in all its ways." His colleague Archibald McKennon of Arkansas was even more severe, calling the Cherokee property system "wholly incompatible" with the "great and powerful" commonwealth that surrounded it. McKennon went so far as to liken it to a splinter festering in the national cuticle: "Like the flesh about a foreign substance, it will not heal over."[4]

In fact, the Cherokee system had a nearly exact analog in the landholding regulations that sprang up in the gold fields of California and other western states and territories. Stephen Field of the U.S. Supreme Court summarized the latter: "They all recognized discovery, followed by appropriation, as the foundation of the possessor's title, and development by working as the condition of its retention. And they were so framed as to secure to all comers, within practicable limits, absolute equality of right and privilege in working the mines." Justice Field lauded the impromptu land system of the western miners as a testament to "the love of order and system and of fair dealing which are the prominent characteristics of our people." Charles Howard Shinn celebrated it as a monument to the American genius for self-government, a healthy reversion to the first principles of the race, "a stanza in the political epic of the Germanic peoples to which we belong." Ironically, one Cherokee citizen believed that "the Irish, Scotch, English, and German peasantry among our fathers, remembering the evils in the old country, had much to do with the shaping of our present system of land holding."[5]

As a kind of glorified squatter-right, the Cherokee farmer's individual tenure might, in technical respects, have fallen short of the ironclad fee title most contemporary Americans would have envisioned as "private property." But in practical respects, the casual property system that took shape in the Cherokee Nation under the umbrella of common title replicated virtually all

4. *Cherokee Advocate,* 14 February 1894.

5. *Jennison v Kirk,* 98 US 453 (1878), 457; Charles Howard Shinn, *Mining Camps: A Study in American Frontier Government* (New York: Knopf, 1948), 221–24; *Indian Chieftain* (Vinita), 25 August 1892.

the working features of real estate ownership in surrounding states. Far from being communally ordered or controlled, an almost perfectly free trade in land prevailed, unhampered even by the need to survey the land, record deeds, or pay property taxes. The Cherokee landholder could sell his possessory interest in a farm anytime to any fellow citizen; a scribbled bill of sale or quitclaim answered the same purpose as a formally executed warranty deed in Kansas, Missouri, or Arkansas. More often than not, a simple oral agreement was enough to secure transfer of possession. When he died, the place descended to his heirs according to the rules of Anglo-American common law. He might even borrow money against his improvement, much as the holder of an entailed estate in England did, by conveying to his lender the right to control the income off the place on agreed terms for a given period of time.[6]

"Once and for all, let it be understood that the Cherokees are not what are termed Communists," wrote the editor of the *Cherokee Advocate*. "In the sense that one man has as much right as another to get a decent and happy living for himself and family by the sweat of his brow, and in that sense and no other, is the land of the Cherokee Nation *common property*. Keeping that fact constantly in view, a man's home, a man's improvements, a man's property of all descriptions are as inviolably his, and as rigidly secured to him by the laws of this nation, as the same kind of property is to anybody else in the world, under any other government."[7]

The Cherokee National Council imposed no substantial abridgments on the system over the years, though at times it was called upon to pass laws clarifying the ground rules. The constitution approved at Tahlequah in 1839 had given the council "power to adopt such laws and regulations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with the view of speculation." An 1842 statute declared that any improvement left unoccupied for more than two consecutive crop-years reverted to the public domain. American lawyers might have had trouble recognizing it as such, but this was simply a more stringent version of famil-

6. Sequoyah District Clerk, "Record of Improvements, 1877–1898," vol. 190, Cherokee National Records, Archives and Manuscripts Division, Oklahoma Historical Society, Oklahoma City, Okla.

7. *Cherokee Advocate,* 23 January 1889.

iar common-law doctrine regarding the escheat of abandoned property. It served to keep the courts free of controversies arising from derelict holdings and the public domain clear of empty claims staked out for purposes of petty speculation. In 1870, the council reduced the time limit on vacant landholdings to one year and specified that a minimum of fifty dollars had to be spent on actual improvements to qualify any new holding as lawful private property. In 1882, the maximum amount of uncultivated pasture that any citizen could fence and hold as an "improvement" was fixed by law at fifty acres. The holding of improvements in land was never made subject to taxation of any kind, however.[8]

"The lands of the Cherokee Nation," one critic aptly observed, "are very nearly in the condition of an unsettled estate of a deceased person, where a known quantity of land is left to an unknown number of contending heirs." But in an isolated rural society with a surplus of land and few incentives to take up commercial farming, the lands-in-common system appears to have served the Cherokee people well despite its looseness and simplicity. The implicit constitutional guarantee of open access to tribal land by all citizens and the explicit statutory requirement of actual occupation and cultivation by a claimant virtually nullified the problem of land speculation and monopoly. Excessive engrossment of land was curbed simply because the labor of no individual or family could subdue and keep in cultivation more than a small portion of the public domain. Just as a citizen had an exclusive and indefeasible right to all the ground in which he invested his labor, he had no power to appropriate more than he could actually farm. Generally speaking, property in land was worth only the cost of the labor that had to be expended to fit it for the plow; no one would have had a motive taking up more than he could work. To quote Locke again: "What portion a man carved to himself was easily seen, and it was useless, as well as dishonest, to carve himself too much."[9]

The equilibrium inherent in the system was exposed remotely to distur-

8. *Laws of the Cherokee Nation, Passed during the Years 1839–1867* (St. Louis: Missouri Democrat Press, 1868), 75–76; *Constitution and Laws of the Cherokee Nation* (St. Louis: R. & T. A. Ennis, 1875), 257–58; *Laws and Joint Resolutions of the Cherokee Nation Enacted during the Regular and Special Sessions of the Years 1881–2–3* (Tahlequah: Advocate Printing, 1884), 56–57.

9. *Indian Chieftain,* 8 September 1892; Locke, *Civil Government*, 36.

bance from natural population increase and directly from the importation of stand-in cultivators from outside the nation. The National Council recognized the latter danger as early as 1859, when it passed a law that prohibited the leasing of land to noncitizens as a logical extension of the constitutional ban on selling land to them. Fines and flogging were the penalties prescribed. Although this law was never repealed nor its principle officially forsaken, the temptation to dodge or defy it waxed especially sore during the 1870s. The general disorganization of rural society in the postbellum South, aggravated by the onset of a nation-wide business recession, was shaking loose a steady stream of poor whites "just lookin' for a home." The construction of several railroad lines through Indian Territory presented an easy lift in for those displaced varlets of King Cotton, and a ready lift out for any crops they might raise. The opportunities latent in the situation were too great to ignore. An assortment of heavy issues confronted the Cherokees during these years, but this perhaps was topmost. Political divisions within the tribe quickly realigned. Those who favored and fostered the employment of noncitizen farm labor were designated "progressives"; those who resented and resisted the trend were called "conservatives."[10]

With his property already bought for him, as it were, and his taxes already paid, the ambitious Cherokee planter had an immense advantage in start-up costs over his counterparts in surrounding states. But land alone, even furnished gratis by the tribe, was no inducement to farming on a grander scale without the extra hands necessary to work it. A dependent and dependable labor force could not be raised among his fellow citizens, dispersed as they were on their own small holdings. The same free land that beckoned the

10. *Laws of the Cherokee Nation,* 24; Wardell, *Political History of the Cherokee Nation,* 271–75. For a broader context on farm labor in the region, see Sheila Manes, "Pioneers and Survivors: Oklahoma's Landless Farmers," in *Oklahoma: New Views of the Forty-Sixth State,* ed. Anne H. Morgan and H. Wayne Morgan (Norman: University of Oklahoma Press, 1982), 93–132; also see Carey McWilliams's essay, "The Joads at Home," in *Ill Fares the Land: Migrants and Migratory Labor in the United States* (Boston: Little & Brown, 1942), 187–207. Lest I oversimplify the nature of the progressive/conservative split, I should point out that it extended to such questions as town sites, timber and mineral exploitations, railroad rights-of-way, grazing licenses, and retail licenses. The best introduction to these related matters is H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in the Indian Territory, 1866–1907* (Columbia: University of Missouri Press, 1976). Considering the amount of official and newspaper correspondence devoted to it, the agricultural land and labor question was by far the leading concern to people of the time.

prospective commercial farmer forestalled the existence of a class of laborers for hire. Even as Karl Marx polished the third edition of *Capital,* nascent capitalists among the Cherokees were discovering his "secret of primitive accumulation" on their own.[11]

William Boudinot of the *Cherokee Advocate* frankly discussed the progressive farmer's dilemma in an 1877 editorial: "He *can't* hire native labor, because each native is a land-holder and if he is of any account to work, he will work for himself. If any one is hired, that person must be from abroad, and glad we ought to be that such is the case, for if it were not so, and we had a class of laborers at home, it would show that some were owners of land and others not, whereas *all* are on an equal footing in that respect as the fact stands. . . . What sensible man, then, we ask, wants to exclude labor altogether from the country? What foolish man would think of trying?"

If one assumed—as Boudinot reasoned in the same editorial—that twenty-five acres was about all an able-bodied man could thoroughly cultivate by himself, the Cherokee Nation clearly did not have the manpower to farm more than a small portion of its stock of arable land. Labor had to be introduced from outside the nation; otherwise the tribe's rich surplus would be consigned to "absolute waste" for the foreseeable future, "like the gold which a miser buries in the earth." It left the Cherokee open to accusations that they did not use and therefore did not need so much land, and "of all treasures the miser's store is most exposed to covetousness and attempts at robbery." Furthermore, excluding labor from abroad meant preventing many entitled citizens—the nation's women and elderly, its sick and disabled—from realizing any return on their rightful share of the tribal estate, keeping them in a state of perpetual dependence on the working fraction of the population. Dangers and abuses certainly lurked in the hiring of outside labor, Boudinot allowed, but they need only be watched for and headed off by "intelligent legislation." "But because we expect evils is no more reason why labor should not be introduced than that corn should not be planted out of

11. *Cherokee Advocate,* 3 August and 11 October 1873, 17 November 1877. Compare Karl Marx, *Capital,* Great Books edition (Chicago: Encyclopedia Britannica, 1952), 354; Peter Burroughs, *Britain and Australia, 1831–1855: A Study in Imperial Relations and Colonial Crown Land Administration* (Oxford: Clarendon Press, 1967), 19, 50.

apprehension of weeds." The task of keeping down weeds would not be so easy.[12]

With tens of thousands of landless farm workers in surrounding states, the pool of employable hands was virtually unlimited. The process of creating a paying improvement was quite simple and straightforward. An aspiring landlord would assign one of those wandering have-nots to a likely patch of wild land and would negotiate the terms of occupancy to suit the circumstances. Sometimes, if the landlord had a little capital, it was to his advantage to pay for the initial clearing. Mainly, though, it was done at the expense of the tenant, who was allowed free use of the place and all the crops he could raise while sprouts and brambles were suppressed, fences strung, and sheds and cabins erected. After some years of effort and outlay, the tract would take shape as a rental farm. Unemployed hands from over the border were never in short supply, and the competition for improved places quickly pushed rents up to the level obtained in surrounding states. One-quarter of the cotton and one-third of the corn and hay crops was the typical deal when the land was let on shares, the most common arrangement. "Large wealth is being accumulated in tilling the soil," J. B. Mayes, a conservative, observed of this practice. Chief Mayes thought it a strange and shameful state of affairs when canny citizens could collect valuable properties and live idly on the rents without ever having invested "a dollar of their own." Of course, there was really nothing anomalous about this situation; it was inherent in the landlord-tenant relationship the world over, as Adam Smith had explained more than a century before. And the position of the Cherokee citizen exercising his peculiar franchise in the common estate of the tribe was really no different, in relation to the disentitled noncitizen, from that of the Shetland laird holding his estate under absolute personal title, in relation to the hapless crofter.[13]

The noncitizen who was party to such bargains found himself on a rather

12. *Cherokee Advocate,* 12 September 1877. On the editorial history of the *Advocate,* see Daniel F. Littlefield Jr. and James W. Parins, *American Indian and Alaska Native Newspapers and Periodicals, 1826–1924* (Westport: Greenwood Press, 1984), 63–75.

13. See testimony in *King v Bell* (1885), 36–50, *Newton v Perdue* (1892), 62–71, *Hicks v Gunter* (1895), 271–88, and various other trials, in Sequoyah District Circuit Court, "Register of Civil Cases," vol. 191, Cherokee National Records, Oklahoma Historical Society; *Cherokee Advocate,* 30 November 1890; Adam Smith, *The Wealth of Nations,* Great Books edition (Chicago: Encyclopedia Britannica, 1952), 62.

precarious footing. Any form of rental agreement was in plain violation of the 1859 tribal statute against leases to noncitizens and so tended to put the tenant at the mercy of his citizen patron, against whom he could claim no enforceable rights as a party to a lawful contract. In an 1880 case, for example, one James Scott, a U.S. Citizen, was turned out by his Cherokee landlord before the agreed time, forcing him to leave behind more than $1,000 in improvements, including a house and thirty-three acres of cleared land. The Office of Indian Affairs declined to intervene, deciding such action would be tantamount to enforcing secret contracts that were contrary to tribal law and thereby "fill up the whole Indian territory with settlers in a short time."[14]

In 1886, about the time Gladstone's program of tenant rights was being implemented in far-off Ireland, Principal Chief D. W. Bushyhead asked the Cherokee National Council to formulate legislation that would "protect either party to a labor contract against its denial or violation by the other." His proposal got nowhere. Progressives obviously saw nothing in it for them, while conservatives were unwilling to take any steps to validate a practice they thought larger public interest should suppress altogether. The legal plight of noncitizen renters was not relieved until 1889, when Congress extended the civil jurisdiction of the federal court system over U.S. citizens in Indian Territory. The federal judges adopted an equitable attitude toward controversies arising over land-improvement contracts. They held that while a lease of land was void under tribal law, to the extent that it embodied an agreement for furnishing services in lieu of wages, the tenant could not be evicted without remuneration for his improvements. Concerning these cases, one judge remarked, "They were the development of strange conditions and of stranger laws and land tenures."[15]

Yet the chance of being defrauded was evidently not strong enough to deter hundreds of noncitizens from becoming tenants. Dishonestly identified as common laborers instead of farm tenants, they were admitted under permits

14. J. Tufts to Commissioner of Indian Affairs, 5 July 1880, Office of Indian Affairs, Union Agency Letters Received #T877, RG 75, National Archives Branch Depository, Suitland, Md. (hereafter NARG 75).

15. *Cherokee Advocate,* 3 November 1886; *White v Brown,* 1 *Indian Territory Reports* 99 (1896), 106, and *Wilson v Owens,* 1 *Indian Territory Reports* 163 (1897), 169.

issued at the request of their citizen patrons. Nobody was really fooled by this circumvention, and the National Council made several attempts during the 1870s to control the practice by hiking the charge for labor permits. Conservatives clearly saw that the influx of noncitizen renters was reaching levels that threatened the national dikes. "We do not like too much rain; it is the precursor of floods," cried one. "The invasion of this toneless, untutored class of persons will soon constitute an overwhelming majority." The Cherokee Nation was fast becoming a vagrants' paradise, he warned, and the problem originated with the citizens themselves—a wily minority counting on a witless majority to keep still until the better part of the common domain had passed irretrievably into the hands of the few.[16]

On a groundswell of such "anti-white-labor" feeling, candidates of the conservative faction—mostly small farmers—rode into office in tribal elections in 1877, fully resolved to fight the devil with fire. In December 1878, the National Council passed a bill which the principal chief immediately signed into law, significantly entitled, "An act for the protection of the public domain." It boosted the labor permit fee to twenty-five dollars per hand per month to be paid by the employer under penalty of fine and jail. The fee was intended to be prohibitive, amounting to more, in fact, than farm workers in the region got in wages at the time. "While in some respects it may appear *rigid,* it has become a necessity," Principal Chief Charles Thompson assured the U.S. commissioner of Indian Affairs.[17]

A "howl of disapprobation" immediately arose from self-styled progressives. "The prosperity we were just beginning to feel" was sure to backslide, they forecast. Productive fields would revert to brush and weeds; trusty, law-abiding workers would be driven off, leaving behind only arrant squatters and scalawags. "That blind permit law breaks the backbone of Cherokee agriculture," protested one "Granger Farmer" to the tribal newspaper. If it were revoked and replaced with a more "enlightened and liberal" policy that allowed progressive farmers to grasp fully and "vitalize" their

16. *Cherokee Advocate,* 16 January 1875, 21 March 1877, 26 March 1879.

17. Nancy Hope Sober, *The Intruders: The Illegal Residents of the Cherokee Nation, 1866–1907* (Ponca City, Okla.: Cherokee Books, 1991), 28–30; McLoughlin, *After the Trail of Tears*, 296–97; C. Thompson to E. A. Hoyt, 14 February 1879, Office of Indian Affairs, Union Agency Letters Received #T46, NARG 75.

unique privilege of free untaxed land, the Cherokee Nation would once more be "aglow with well-directed activity." Many of these protestants of progress appear to have been "galvanized" citizens, who had acquired their rights in the tribal estate through marriage to native-born women. In this controversy, they stood on their dual rights as U.S. citizens and asked federal authorities to intervene. "This law in effect *confiscates* every farm more or less extensive than can be worked by one man," complained Joseph Alexander, master of 400 acres in Sequoyah District. This unconstitutional tax on labor and restriction of the right of contract would sink them financially and "kill off all enterprise in this country," complained one of his neighbors, who held 200 acres. Undoubtedly, the tough new law threatened genuine hardship to a few. "Am wholly unable to do my own labor being sorely afflicted with piles," was the protest of one down-to-earth forty-acre farmer in Sequoyah District to Secretary of the Interior Carl Schurz.[18]

An editor in Fort Smith predicted dire consequences, even bloodshed: "Firm and prompt action is needed." But petitioners were duly informed that the federal government did "not feel called upon to decide as to the legality of the Act referred to—though no doubt oppressive in its character—but to leave the question to be settled by the citizens of the Nation who are so widely and seriously affected by it." Tribal elections that summer brought back a compliant administration which promptly slashed the permit fee to five dollars a month. Within a few years it was reduced to just fifty cents, and nearly all of that reportedly went uncollected. By turning back the twenty-five dollar permit law of 1878, the emerging Cherokee gentry had defeated

18. *Cherokee Advocate,* 30 April 1879; W. E. Whitsett to C. Schurz, 12 December 1878, Office of Indian Affairs, Union Agency Letters Received #W33; J. H. Alexander to C. Schurz, 29 January 1879, Office of Indian Affairs, Union Agency Letters Received #A89; V. Dell to C. Schurz, 26 February 1879, Office of Indian Affairs, Union Agency Letters Received #D253, NARG 75. Some early "progressives" among the Cherokees kept slaves in Georgia and brought their chattels with them to Oklahoma. Presumably this would have raised the same questions and presented the same challenges to the community land system. Theda Perdue touched on this important point but failed to explore it fully. Yet employment of black slave labor never attained the dimensions nor posed the threat that employment of free white labor would in later years. The reason was simple: a heavy outlay of personal capital was necessary to purchase, equip, organize, and maintain slave labor, whereas tenant labor came free of carrying costs, and usually furnished its own tools. See Theda Perdue, *Slavery and the Evolution of Cherokee Society, 1540–1866* (Knoxville: University of Tennessee Press, 1979), 71–72.

their only serious internal challenge. Their ascendancy continued during the following decade with no new legislation to hamper them. Tribal politicians repeatedly called notice to the "tendency to abuse" under existing arrangements, urged an end to the indulgence of land monopolists, and pressed local officers to strictly enforce the standing law against renting tribal land to noncitizens. Yet they remained loath to tamper with the status quo in any serious way. Even under the much relaxed labor-permit policy, indictments were few, and convictions, practically unheard of. After all, fellow-sinners could hardly be expected to make zealous prosecutors. Joseph Alexander, who served as the elected clerk of Sequoyah District at the time of the permit controversy, had accumulated 800 acres by 1890, while his successor in office, C. O. Frye, claimed 1,000. By 1890, Thomas Blair and G. W. Baldridge, who occupied the office of sheriff in Sequoyah District during the 1880s, held 250 and 600 acres, respectively.[19]

In Sequoyah District, Cherokee citizens had taken a total of 26,857 acres in improvements by 1890, a four-fold increase since 1880, nine-tenths of which was accounted for by ownerships of one hundred acres or more. The average holding of those employing noncitizen labor had grown from 70 acres to 154, and the average number of workers they employed had risen from two to five. Noncitizen farm-workers had increased seven-fold in Sequoyah District; with their families, they now totaled over 3,000, outnumbering the citizen population of the district two to one. Holders of 100 acres or more employed four-fifths of them. There had been an eight-fold increase in the number of such holdings, and a nine-fold increase in the amount of land so held. Just one holding as large as 400 acres existed in 1880; by 1890, there were fifteen, engrossing 36 percent of the district's land in improvements. Joseph Alexander had doubled his holdings during the decade and now possessed 800 acres, all cultivated, much of it in cotton. At the 1890 tribal census, he valued his real property at $40,000, or fifty dollars per acre, presumably reflecting the capitalized value of his rental income. The better class of farms across the border in Arkansas fetched no more. At the time, Alexander spon-

19. E. J. Broder to J. H. Alexander, 14 March 1879, Office of Indian Affairs, Letters Sent, 1879, 125, NARG 75; *Cherokee Advocate,* 26 November 1879, 7 January 1880; Manuscript schedules, series 1, for Sequoyah District, 1890 Cherokee Census, RG 48, National Archives-Southwest Region, Fort Worth, Tex. (hereafter NARG 48).

sored a force of thirty-four noncitizen tenants and laborers—some under lawful permit, but not most—and like others of his type, not only waxed prosperous on his rents but had established himself as a furnishing merchant in southern plantation style. When Alexander's family of seven is contrasted with the 145 dependents who were brought in by his workers, the tremendous demographic implications of such estate-building become apparent—so too the reason for apprehension on the part of Cherokee conservatives.[20]

Resentment toward white labor and land monopoly rankled among the Cherokee electorate at large, but reform initiatives were spasmodic and faltering, time and again mired in tribal politics. "It was evident that no law could satisfy a majority for any great length of time," comments Morris Wardell. "This was due to the general Cherokee political situation, which was in a state of almost continual turmoil, and to the demand for white labor which could not be controlled." The natural constituency for serious land and labor reform was in obvious decline throughout these years, and the general trajectory of affairs was abundantly clear. In Sequoyah District, those farmers who employed noncitizen laborers had grown to a 55 percent majority by 1890. In 1884, Principal Chief Bushyhead asked the National Council for a "well-digested act to prevent monopoly, while leaving ample room for the exercise of industry." The council surprised him with a radical bill flatly prohibiting employment of noncitizen labor. Bushyhead promptly vetoed the measure. "It would have set the Cherokee Nation back at least twenty years," progressives contended. In his annual message for 1886, Bushyhead advocated a creative and complete overhaul of the land and labor system. He proposed that the hiring of noncitizens be freed from restrictions altogether, and that the decrepit labor-permit system be replaced with an excess-use tax on the acreage held by any citizen beyond his pro-rata share. In effect, the big lessors would become lessees of the nation. The National Council declined to respond to this promising direction for reform. Progressives naturally resisted any check on their activities, while conservatives sensed that the business of establishing a "just proportion" of land for each citizen foreshadowed division in severalty of the tribal estate. However poorly they fared in the shuffle

20. Cross-referenced from manuscript schedules, series 1, 5, and 6, for Sequoyah District, 1880 and 1890 Cherokee censuses, NARG 48.

for public land, the conservatives still tended to see "one title undivided" as their best guarantee of perpetual home and subsistence. The Cherokee Nation remained, in their eyes, a happy little island in an increasingly expropriated world, where foreclosures, tax liens, and demands to pay rent or quit were unknown.[21]

The unresolved difficulties of the lands-in-common system were ruthlessly caricatured in reports by impatient federal officials already committed to breaking up the tribal title and allotting the lands in severalty. President Grover Cleveland's new commissioner of Indian Affairs fired the first blast in 1886: "Already the rich and choice lands are appropriated by those most enterprising and self-seeking," wolfish monopolists who kept their naive compatriots in a "condition of semi-slavery." The burden of subsequent reports was the same, characterizing impasse and confusion as rank corruption, telling how a set of aristocrats manipulated their privilege as owners-in-common of the tribal soil, while the poor, slow-footed, and unsophisticated majority was steadily driven to the wall—"left destitute and crowded out upon the barren and unproductive land," according to the Dawes Commission. The country's popular press concentrated public sentiment for an eventual forced conversion. Savage write-ups in civilized publications, such as *Harper's,* dissected the "iniquitous system of landlordism" that had sprung from community landholding in the Indian Territory. To the applause of the U.S. House of Representatives, border Congressman John Little demanded that "the strong arm of the law take those land barons and monopolists by the throat, who are now holding that country under fraudulent levies." Historian Angie Debo has properly commented that such invectives held the Indians to "abstract and ideal rather than comparative standards," and came with "especially bad grace" from the leaders and opinion-makers of a society that took its own enormous disparities in land ownership for granted. To be sure, the enclosures of Cherokee "land barons and monopolists" were dolls' dowries compared to many tenant-operated estates that could have been found at that same time all over the Middle West and Far West.[22]

21. Wardell, *Political History of the Cherokee Nation,* 274; *Indian Chieftain,* 13, 20, and 27 November 1884; *Cherokee Advocate,* 16 May 1884, and 3 November 1886.

22. "Annual Report of Commissioner of Indian Affairs," in U.S. Secretary of Interior, Report for 1886, vol. 1, U.S. Serial Set 2467 (Washington, D.C.: Government Printing Office, 1887), 82–84; J. P.

Cherokee idealists replied in kind, extolling theirs as "the only system of government and society in the world which makes poverty impossible to any man who is willing to work." It was the only form of society where each and every citizen was automatically endowed at birth as a proprietor of land with an equal chance to make a home and living for himself by his own effort, independent of the frown or favor of others. It was the living embodiment of the "supreme practical truth" glimpsed by Thomas Jefferson, that the natural basis of human liberty is free land for self-employment. So declared William Boudinot in the *Cherokee Advocate* in 1889: "That form of government is therefore defective that will allow one person to have a great deal of land, while others, for that reason, have to go without. The English and American governments allow this. The Cherokee government does not. Therefore we have a right to say that the difference in that respect is in favor of the Cherokee government." He continued, "It follows that unlimited ease or enormous or disproportionate wealth among them is impossible, and it is equally true that the dreadful concomitants of the riches, idleness, and luxury of the few—namely, the poverty, or ill-paid or excessive labor, or enforced idleness of the unregarded many—are impossible also among the Cherokees. Thus is the Cherokee government shunning a rock upon which all other governments have been, or are being wrecked. It has for its first object the exaltation of the moral, benevolent, and patriotic sense of the whole community by practically imposing upon each member the highest truth of civilization; namely, that every other member has the same right to live and live happily that he has, and that this right can be permanently secured to no one, if the gift of the earth as a field of labor is suffered by the government which represents all to be monopolized by any."[23]

In Fort Smith, Arkansas, at the very threshold of the Indian Territory, U.S.

Kinney, *A Continent Lost—A Civilization Won: Indian Land Tenure in America* (Baltimore: Johns Hopkins Press, 1937), 163–213; Rezin W. McAdam, "An Indian Commonwealth," *Harper's New Monthly Magazine* 87 (November 1893), 884–97; J. S. Little, remarks on Indian Appropriation Bill, 53rd Cong., 3d sess., H.R. 8479, *Congressional Record,* 1895, 27, pt. 2: 1003; Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton: Princeton University Press, 1940), 25. For a comparative perspective, see Homer E. Socolofsky, *Landlord William Scully* (Lawrence: Regents Press of Kansas, 1979); Khaled Bloom, "Pioneer Land Speculation in California's San Joaquin Valley," *Agricultural History* 57 (July 1983): 297–307.

23. *Cherokee Advocate,* 23 January 1889.

census records show that 70 percent of the city's people did not own their homes in 1890, and that 54 percent of farms in the surrounding county were occupied by renters. Sequoyah District was just over the border from Fort Smith. It was, as already indicated, one of the districts most affected by the hiring of noncitizen labor and aggressive estate-building under the tribe's common title. In 1880, Sequoyah District farms that did not employ noncitizen labor averaged fifteen acres in size and accounted for 76 percent of all landholdings. By 1890, the number of such farms had declined from 168 to 123 and represented only 45 percent of landholdings in the district. Yet nothing suggests that subsistence holdings were being squeezed out or that their proprietors were sinking to the condition of renters or landless laborers. The acreage encompassed in such holdings had actually increased, their average size having grown to twenty-six acres by 1890. Many former subsistence farmers had joined the prevailing trend and become landlords: William Seabolt, for example, who reported just ten acres in 1880 but was in more comfortable circumstances by 1890 with 35 acres and a white renter. Of 268 adult males in Sequoyah District identified as farmers in the 1890 Cherokee census schedules, only sixteen were without land, and all appear to have been sons dwelling with landowning parents.[24]

A fair-minded editor of one of the Fort Smith newspapers offered some perspective on the condition of the Cherokee smallholders: "As to the condition of the poor classes in the Indian country, we are prepared to say, without fear of contradiction, that they are much better off in every respect than the poor people of our own state. They have dollars where the poorer classes of Arkansas have dimes; they meet their obligations more promptly, being in a better condition to do so; and in all our travels in the past ten years in the Indian Territory, we have never heard any complaints from these 'poor Indians' as to their condition. . . . This class of Indians would not utilize fifty acres if they had a million. They are happy in the possession of their small farms, their cattle, hogs, and ponies. There are no paupers among them."[25]

24. George K. Holmes and John S. Lord, *Report on Farms and Homes: Proprietorship and Indebtedness in the United States at the Eleventh Census, 1890* (Washington, D.C.: Government Printing Office, 1896), 248, 347; Manuscript schedules, series 1, for Sequoyah District, 1880 and 1890 Cherokee censuses, NARG 48.

25. *Weekly Elevator* (Fort Smith), 8 February 1895.

Ironically but perhaps not coincidentally, official condemnation of the distributive justice of the Cherokee institution of lands-in-common reached a crescendo at the same time property relations in the United States were coming under fundamental and widespread criticism. At its 1894 convention, the American Federation of Labor entertained a syndicalist resolution that demanded "abolition of the land monopoly system, and substitution therefore of titles of occupancy and use only." Memorials to Congress by single-tax leagues and other land reform organizations called attention to "a growing belief that the present economic condition of society tends toward the concentration of wealth in the hands of the few to the detriment of the many." Such concerns prompted the directors of the 1890 U.S. Census to commission a special study of farm and home proprietorship and mortgage indebtedness in the United States. The final report, published in 1896, revealed that of the nation's 7.9 million nonfarm families, 63 percent did not own the homes in which they lived. Of 4.7 million farm families, 34 percent were outright tenants and another 19 percent were virtually so as holders of farms clamped by mortgages, often paying much more than a rent in interest. The young republic's farm tenancy rate actually exceeded that of some of the old kingdoms of Europe. From data gathered in this inquiry, statistician G. K. Holmes calculated that 9 percent of the people controlled 71 percent of the country's landed wealth, while 52 percent of them owned only 5 percent of its real property. "Primarily, tenancy is a matter of the want of wealth," Holmes concluded.[26]

For a country barely out of the squatting era, with some public lands still available, it was a disturbing revelation. "Where, then, is all our boast about the advantage our toiler has under free institutions?" asked U.S. Senator Richard Pettigrew. "Such are the inevitable results growing out of titles in sev-

26. Richard T. Ely, *Property and Contract in Their Relations to the Distribution of Wealth* (New York: Macmillan, 1914), 1:130; Arthur Nichols Young, *The Single Tax Movement in the United States* (Princeton: Princeton University Press, 1916), 108–62; Holmes and Lord, *Report on Farms and Homes,* 4, 40–46. Concerning the long tradition of criticism of land distribution in the U.S., see William B. Scott, *In Pursuit of Happiness: American Conceptions of Property from the Seventeenth to the Twentieth Century* (Bloomington: Indiana University Press, 1977), and an interesting contemporary tome by a Kansas congressman who was sporadically the attorney for the Cherokee Nation: William A. Phillips, *Labor, Land, and Law: A Search for the Missing Wealth of the Working Poor* (New York: C. Scribner's Sons, 1886).

eralty to land," warned Cherokee educator Walter Duncan. "Land in severalty has filled the world with homeless men, women, and children." The thousands of pauper laborers unloaded every day by immigrant ships on U.S. shores bore mute witness to the final outcome of that system. Meanwhile, the same results were unfolding within the United States as titles to land, through sales and foreclosures, steadily fell into the hands of the rich, while increasing multitudes did not own a single acre. If millions of whites could not control their destinies under the land-in-severalty system even after centuries of experience with it, Reverend Duncan admonished, it would shortly happen as well to the Cherokee people if they flung themselves into the same dead-end game. The land-monopoly sickness would not, he emphasized, be healed by a conversion from common to individual title, just palliated for perhaps a generation or two, only to reappear in an incurable form.[27]

Cherokee optimists gladly scooped up the word without seriously assimilating the spirit. "The Cherokee system breeds no millionaires, no land syndicates, no mortgage sharks," C. J. Harris said in one of his addresses as principal chief. "Land is not degraded to the level of speculation. Every citizen, however poor or humble, with a little energy, and by a little physical labor, can have a home of his own. He is not ever looking for a place to rest and to exist." The land-in-severalty system had secured no such benefits to the people of the United States, he pointed out. On the contrary, the wealth and power of a few grew ever more concentrated and enormous, while the landlessness and poverty of many became more widespread and dangerous by the year: "In the light of recent statistics, their system has proven a failure so far as providing homes for the majority of the people is concerned, and its wisdom is being questioned by some of the best thinkers of the times. The people of the United States have no Year of Jubilee to look forward to, when there will be a redistribution of the lands, but when the lands shall be accumulated in the hands of the rich, when the rentals shall be increased until the laborer can eke out only a miserable existence, and when the grievous burden can be borne no longer, their system will be wiped out in revolution."[28]

27. R. F. Pettigrew, remarks on War Revenue Bill, *Congressional Record,* 55th Cong., 2d sess., 1898, 31, pt. 6:5743–44; *Cherokee Advocate,* 21 February and 15 August 1894, 27 April 1901.

28. *Indian Chieftain,* 11 November 1892.

An increasing number of Cherokee citizens, however, regarded such pronouncements as fatuous and unrealistic. Popular dissatisfaction with the traditional land system was undeniably on the rise. "A relic of barbarism," concluded one disgruntled citizen; another called it "a system of fraud practiced on the common people by our leading men." "Under this communistic system," muttered still another, "have been generated and nourished swarms of vampires and flocks of cormorants, who have secretly absorbed or openly devoured our substance until but little remains of our original heritage." Maybe these dissidents had seen one or another of the fashionable subscription histories, in which the well-tended farms and spacious houses of the Indian Territory's first families were proudly advertised, with no mention of how they had acquired their lands or who performed the work. According to an editorial in the Vinita *Indian Chieftain,* "Our system breeds, multiplies, and builds up just such characters." "If the rising generation of Cherokee citizens, our boys and girls, ever get homes in a land in which they are equally interested, they will have to go to the courts and wrestle for them." An equal division of the land and conversion to a system of individual titles was, in the opposition paper's view, the only practical way to eradicate monopoly, provide the people security and equity in their landed estate, and let the dispossessed claim what was theirs. The longer the Cherokee Nation procrastinated on this matter, it said, the more complex and difficult the final resolution would be.[29]

The resurgence of the conservative faction in the 1887 elections brought renewed attention to the land-tenure question in the Cherokee Nation. In successive annual messages, Principal Chief J. B. Mayes deplored the steady drift to monopoly and called for stricter administration of existing land and labor laws as well as for new legislation to protect the "great family estate" from absorption and domination by "the strong, energetic, and wealthy class of our citizens." He reminded the National Council that the right to have and hold improvements on the common domain was never intended to be unlim-

29. Ibid., 15 August, 27 October, 3 and 30 November 1892; D. C. Gideon, *Indian Territory: Descriptive, Biographical, Genealogical: Including the Landed Estates, County Seats, etc.* (Chicago: Lewis Publishing, 1901), 278, 711, 880. On the editorial history of the *Chieftain,* see Littlefield and Parins, *American Indian and Alaska Native Newspapers,* 390–95.

ited and urged that some way be discovered to curb present abuses. The legislature's efforts were only half-hearted, however. In 1890, a proposal to limit hired labor to one improvement per citizen was never brought to a vote. The 1891 session entertained one bill that would have imposed a tax of five dollars on every acre in excess of 320 claimed by any citizen; another that would have forbidden anyone to employ noncitizen labor on more than 200 acres. Both measures were defeated by the opposition. In language brave with optimism, indeed sprinkled with chauvinism, Chief Mayes reaffirmed the tribal leadership's commitment to the lands-in-common doctrine: "There is no doubt but this is the true system of government for the protection of the poor and helpless, hence we have no paupers. . . . This no doubt is the best form of government, not only for the Indian, but the best government for all mankind."[30]

By 1892 the sense of impending crisis was high, and the Cherokee body politic came as close as it ever would to mustering the resolve necessary to undertake a definitive overhaul of the land system. The previous year's sale to the United States of the six-million-acre Cherokee Strip—the last of the tribe's undistricted, unappropriated surplus—undoubtedly helped to focus and inflame public consciousness of the situation. "The temper of the nation resembles that of a man who has long suffered from a dangerous malady but has at length made up his mind to submit to the surgeon's knife," wrote one observer. All that summer and fall the newspapers were full of discussion about the "Monopoly Elephant" and what to do about it. Everyone recognized that a limit to the use and occupancy of the common lands had to be fixed. Everyone feared that festering resentment over the monopolists' inroads under the present dispensation would soon lead to the breakup of the tribal government and title and division of lands in severalty. Yet by now the hiring of agricultural labor from outside the nation seemed something that might be discouraged, but never entirely dispensed with. "To require every citizen to work his own 'truck patch' is undoubtedly the most effective way to put an end to monopoly of lands. But can we afford to do such a thing?" asked Cherokee legislator John Adair. "Not by a good deal, unless we would drive out civilization and crawfish back to the conditions of a century ago."

30. *Indian Chieftain,* 22 November 1888, 20 November 1890, 12 and 26 November 1891.

After all, Adair teasingly added, "This is an easy way to live, much after the manner of an English Lord holding an estate in Ireland."[31]

To man an acreage-limitation statute seemed to be the most direct and effective solution. Initially, it seemed a simple proposition to approximate as nearly as possible each citizen's pro-rata share of the public domain and then confine him to that portion. Adair drafted such a bill and submitted it to the newspapers for comment. In its final form, this proposal would have restricted each head of a family to 160 acres with an additional 40 acres for each dependent. Adair was sensitive to criticism that any such enactment might lead to an ultimate division of lands in severalty. He carefully inserted a clause declaring that his new bill "shall not be so construed as to interfere with the constitutional provision that 'the lands of this nation shall remain common property,' or as fixing permanently the disposition of lands."[32]

Cherokee newspaperman William Boudinot foresaw other problems. National wealth was bound to backslide, he pointed out, since many of the humbler citizens could not or would not use the full share of land reserved for them. Then again, he predicted, the majority might find the law operating to its detriment in unintended ways. Unless preceded by a detailed survey and classification of lands, the policy would fail to take into account vital differences in quality of soil and convenience of location. In the "unseemly grab-game" that would ensue, "the strong, the ready, the able, the selfish" would seize the choicest spots and more than their fair share of common benefits. The hilly, rocky, and far-remote places would be left to those the law sought to protect—"the weaker, more modest, less greedy, less so-called enterprising, and by far the most deserving." Still, Boudinot favored Adair's proposal despite its flaws, acknowledging that any kind of check on present tendencies was better than letting the land-monopoly sickness "run its rapid and fatal course."[33]

William Rasmus, another Tahlequah editor, argued that the privately held estates had already become vested interests that would have to be indemnified before they could be reduced or revoked. He warned that any attempt to

31. *Cherokee Advocate,* 31 August 1892.
32. *Indian Chieftain,* 8 August 1892.
33. *Cherokee Advocate,* 21 September 1892.

divest the big landholders without a fair money settlement would conflict with specific sections of the tribal constitution that forbade the taking of individual property without just compensation and the passing of retroactive laws and laws that impaired the obligations of standing contracts. However unfair or counterproductive they might seem from the present vantage point, the big landholdings were legitimate in origin, having been acquired in conformity with the help-yourself policy that had governed up to then. Rasmus forecast that any corrective scheme that smacked of confiscation or expropriation was certain to provoke challenges in both tribal and federal courts, which could only be settled after ruinous annoyance and expense to the Cherokee public.[34]

Adair took particular exception to that last objection. He replied that the problem of interpreting common rights and adjusting common benefits had always been known to be a perennial one, and the Cherokee people were bound to undertake it at times as best they could without doing unnecessary violence to what might be considered "exclusive and indefeasible" individual property. Paramount was the National Council's constitutional obligation to control land monopoly and secure an abiding place for all citizens. As demand for land increased with population, said Adair, it was unavoidable that "other places must be arranged at the common table for their accommodation." He argued, "Primogeniture cuts no figure in a community of interests like ours, nor can prior occupancy stand in the way of equal benefits when he who is entitled to them, and is without them, demands them." Adair insisted that the land had not been, and fundamentally never could be, alienated from the community as a whole; it remained subject to society's call and the same tribal authority that had conferred the privilege of individual usufruct could subsequently impose restrictions on it. In fact, that was the position of the U.S. Supreme Court six years later when it upheld the equal division in severalty of Cherokee lands with no compensation to quondam landlords for their asserted right of property in excess holdings. The lands in question had been the public property of the tribe all along, Justice Fuller would write, and an action by sovereign government to redistribute control of

34. Ibid., 26 October 1892.

the lands could not be assailed on the grounds that any vested rights of individuals were being impaired or destroyed.[35]

Various other approaches to the land-monopoly problem were broached and ventilated, but the debate over acreage limitation sufficiently illustrates the complications and vexations Cherokee leaders faced as they groped for a way to renovate the lands-in-common system, stop the separation of classes, and restore substantial equality of opportunity in the public domain. When the National Council finally convened in November 1892, the members were still "puzzled to know exactly what is best." Principal Chief C. J. Harris, veto power in hand, took a hard line against any radical tampering with the status quo. He remarked that "it too often happens that in our zeal to reform abuses, the remedy proposed is worse than the evil complained of." Adair's bill was believed to enjoy considerable support, but it quickly died for the usual reasons: The progressive faction resented its leveling tendencies, while conservative small farmers viewed it as a dangerous first step toward allotment in severalty. At least six other land reform measures were drawn up and presented but also stalled. After a few weeks of stalemate, cynics predicted that the session would conclude without doing anything to rescue the public domain. One disgusted native saw the Cherokee ship of state "rolling over the breakers of corruption, drifting we know not where."[36]

Chief Harris contended that monopoly of lands stemmed entirely from abuse of the nation's labor-permit policy. If noncitizen labor could only be confined to its "reasonable and legitimate" use, the monopoly problem would "die out in a short time" without recourse to any ill-digested changes in the tribe's landholding customs. He requested a law that would restrict the employment of noncitizen labor to a given number of improvements per adult, at the same time cautioning that "the honest enterprise of our farmers must be respected and protected." At the end of the session, a compromise bill was finally passed prohibiting employment of noncitizen labor on more than two improvements and prescribing imprisonment of one to five years for violators. The law was severe in penalty but fuzzy in meaning, perhaps intentionally so. It made no distinction between an "improvement" of ten or ten thou-

35. Ibid.; *Stevens v Cherokee Nation,* 174 US 445 (1898), 448.

36. *Indian Chieftain,* 3, 10, 17, and 24 November 1892.

sand acres, and critics forecast that the tribal courts would have a hopeless task construing its intent. "Instead of obstructing the monopolists it protects them," the *Indian Chieftain* scoffed. Progressives were distressed a little at first, but soon settled down to an attitude of blithe indifference. A year later, citizens complained that no one paid any attention to the new statute, and monopolists were annexing more land, bringing in more renters, and swelling their estates unabatedly. Chief Harris admitted as much in his opening address to the legislature of 1893.[37]

Another anti-monopoly proposal introduced in the 1893 session provided that no citizen would be allowed to claim more than 200 acres under any circumstances. Again it was snuffed by the opposition. Some fancied Chief Bushyhead's old idea of an offsetting tax on excessive holdings. There was talk of a renewed movement to outlaw noncitizen labor altogether, but by now the legislature seemed completely incapable of any decisive action. Learned Cherokees were reminded of the history of the Licinian and Sempronian laws of ancient Rome—another agrarian republic's losing struggle to curb monopolistic inroads on its common lands. "I do not think the evil of monopoly so formidable as to defy the National Council. All that is necessary is the *will,*" wrote Walter Duncan. "But is Council disposed to do anything to remedy the evil?" asked another exasperated voter. "Ah! There's the rub!" Other quandaries loomed besides. One citizen asked how a modern network of roads could ever be constructed until a systematic cadastral survey was in place. Duncan himself wondered how a growing public budget could ever be serviced unless titles to land were somehow formalized and a property tax imposed. Many sensed that agitation over the land-reform question had already reached a point where further economic progress would be stumped and stymied by uncertainty over the final status of titles to land.[38]

"The spirit of speculation and disregard of the rights of others has become so reckless of consequences that nothing but determined proceedings under

37. Ibid., 1 and 8 December 1892, 9 November 1893.

38. *Cherokee Advocate,* 8 July and 26 August 1893; *Indian Chieftain,* 16 November 1893, 8 November 1894; compare Emile de Laveleye, *Primitive Property,* trans. G. R. L. Marriott (London: Macmillan, 1878), 163–74.

laws enacted for that purpose can possibly avail against such abuse," Chief Harris despaired in his address before the 1894 session. "Lands in common is common interest, and common interest implies equal benefits. Room in the common home of the nation must be provided for all." Such platitudes were fast losing their appeal to the rank-and-file. The lands-in-common system was protecting neither present nor future generations, insisted D. M. Marrs of the Vinita *Chieftain;* only those abusing it were well served by the tribal title. The corrupted system was drawing in mobs of noncitizens and stationing them on the most fertile places, while native-born citizens were steadily relegated to the hills. The communal features of the system had failed and only a final division in severalty of the land could salvage the interest of the many from the rapacity of the few.[39]

Cherokee public opinion was clearly shifting in favor of converting the common title to titles in severalty, relentlessly prodded in that direction by the federal government. "A change will come," the Dawes Commission sternly forecast on an 1894 visit, "and the only question is, will you make this change yourselves, or will you have our government do it?" Returning to Washington after a second tour, the commissioners advised that the situation "is of a nature that inevitably grows worse, and has in itself no power of regeneration. There is no alternative left to the United States but to assume the responsibility for future conditions in that territory." President William McKinley confirmed their diagnosis and prescription in his State of the Union message for 1897. Invoking its power of eminent domain, Congress delivered a series of blows to Cherokee home rule and the patent on which it was grounded. The Curtis Act of March 1898 effectively voided the authority of the tribal government. A Cherokee referendum the following January secured a popular vote of 68 percent in favor of the federal government's plan for allotment in severalty. "The tendency, and overwhelmingly, is very decidedly toward a popular individual system of land tenure," remarked Principal Chief T. M. Buffington in 1900. A complete division of the national estate, undertaken in 1902–1906, yielded 110 acres of "average" land for each qualified individual. After various adjustments were made for the appraised

39. *Cherokee Advocate,* 7 November 1894; *Indian Chieftain,* 30 November and 14 December 1893.

value of specific tracts, the allotments that were finally distributed ranged in size from 50 to 650 acres.[40]

In the end, neither the virtues nor the vices of the lands-in-common system had time to develop fully. The very problem was that the Cherokees might have settled matters if left alone can only be conjectured. The Cherokee Nation was not an isolated state, politically, culturally, or economically. Following Debo, historians have tended to view the passing of the Indian republic and its peculiar land system as imperial melodrama, a clear-cut story of federal obtrusion and duress on the one hand, and local resistance and subordination on the other. More accurately, the Cherokee land use system was less tidy. It had internal contradictions, and it could not adjust fast enough to a rapidly modernizing agricultural economy. Without foreign labor, Cherokee farmers found themselves unable to capitalize on the abundance of free land available to them. But when foreign labor was introduced, the innate checks and controls of the old usufructuary system dissolved, and unequal privatization of land brought tensions and conflicts the Cherokee government could not resolve. Attempts to restore balance to the system artificially, through statutes restricting the individual citizen's use of land or labor, proved unpassable or unenforceable. By the time the federal government intervened with its program of compulsory allotment, the situation seemed profoundly demoralized, practically ungovernable, and possibly beyond repair. However harshly we judge the motives, methods, and results of the subsequent division of the Cherokee estate, it can not be said that the federal government meddled in a happy and harmonious household.

40. *Report of the Commission Appointed to Negotiate with the Five Civilized Tribes of Indians, also Known as the Dawes Commission,* U.S. Serial Set 3347 (Washington, D.C.: Government Printing Office, 1895), 19; "Annual Message of the President," *Papers Relating to the Foreign Relations of the United States, 1897,* U.S. Serial Set 3629 (Washington, D.C.: Government Printing Office, 1898), xxx; Wardell, *Political History of the Cherokee Nation,* 312–34; *Cherokee Advocate,* 10 November 1900; Marcia Larson Odell, "Divide and Conquer: Allotment among the Cherokee" (Ph.D. diss., Cornell University, 1975), 84. The number of abstainers from the 1899 plebiscite was never determined; it might have been considerable.