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A Revisionist's History of the Dawes Act & Native American Success

Public policy surrounding Native American tribes, reservations, and cultures has been horrendously uninformed and destructive since the founding of the United States. As Armen H. Merjian says in his article "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," along with slavery, the treatment of Native Americans in the United States is "one of the greatest stains on the history of human rights." While there is a plethora of bad policies that have been made in this realm, one notable one is The Dawes Act of 1887. This piece of legislation enabled the U.S. president, Grover Cleveland at the time, to divide pre-existing Native American reservations into smaller plots of lands for individual family units.² The general goal of this allocation was to encourage Native populations to become farmers and be self-sufficient.³ While this seems like a well-intended proposition, the impacts of the Dawes Act were devastating on Native populations across the United States. In short, the Dawes Act was unsuccessful in fostering Native American economic or social success and caused further harm to these groups of people than a world without this legislation would have.

¹ Armen H. Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (Gonzaga Law Review, 2010-2011), 610.

² History.com Editors, *Indian Reservations* (A&E Television Networks, March 18, 2019), https://www.history.com/topics/native-american-history/indian-reservations.

³ History.com Editors, *Indian Reservations* (March 18, 2019).

In order to understand why the Dawes Act was passed when and in the way it was, it is necessary to have some background information about Native culture and their customs. Native tribes operate in "kinship" systems, where families are divided into clans and there is a socially organized procedure for the distribution of goods and resources.⁴ Due to the structure of shared living, the land of each tribe is also owned communally, instead of by individuals or families.⁵ The concept of private ownership of land and goods, or the idea that individual families would live together and supporting only themselves, was foreign to the Native people at this time. Family structures were also quite different from Western ideas of what constituted a family. It was common for multiple Native American families to live together, and for the distinctions between individual families to be less clear.⁶ The families tended to be more fluid; marriages were typically monogamous, but it was not uncommon for an adult to change partners throughout their life. There was more change and turnover in family compositions, which was a suitable complement for the communal living of Native tribes.⁸ The Native means for survival also looked different from Westerners. Most Native American tribes were traditionally huntergatherer, though a few were more agricultural, like the Cherokee. However, in the years following up to the Dawes Act, many tribes had begun making small strides in their agricultural sectors. 10 The yearly growth of annual output was rising year to year, though in marginal

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⁴ Rose Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (Journal of Family History, July 1, 2005), 266.

⁵ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 615.

⁶ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 267.

⁷ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 267.

⁸ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 267.

⁹ Terry L. Anderson, *Property Rights and Indian Economies* (Rowman & Littlefield, 1992), 68.

¹⁰ Leonard A. Carlson, "Land Allotment and the Decline of American Indian Farming," (Explorations in Economic History, April 1, 1981), 141.

amounts.¹¹ There were also certain tribes, like the Sioux, that viewed farming as culturally unacceptable.¹²

From the perspective of white lawmakers at this time, these customs such as kindship systems, communal land ownership, and hunter-gathering practices were all inhibiting the assimilation of Native Americans into American society. They were uncomfortable with the contrasting culture of the Native Americans compared to themselves, and believed that the state of communalism Native people lived in forced them into a constant state of homelessness and economic struggle. These reformers sought to help make the Native Americans self-sufficient peoples, and viewed farming as the sole way to accomplish this. There were of course other motivations behind the Dawes Act that paint lawmakers in an even less positive light. There was an overwhelming appetite for land from Native American territories at this time, and the government wanted to satisfy this appetite and provide white settlers opportunities to develop their economic potential. Reformers disliked the informality of marriages in Native cultures, and hoped that by allotting individual families plots of land these unions would resemble more traditional Western marriages. At the end of the day, the Dawes Act came into existence due to ethnocentrism; non-Natives and notably Christopher Columbus viewed their communal culture

¹¹ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 141.

¹² Anderson, Property Rights and Indian Economies (1992), 68.

¹³ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 265-66.

¹⁴ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 275.

¹⁵ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 268.

¹⁶ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 613.

¹⁷ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 273.

as inferior to European/white culture, ¹⁸ and believed that assimilation was the only thing that could prevent natural Native extermination. ¹⁹

Prior to the passage of the Dawes Act, Native American land was managed with the U.S. government through a series of treaties. Treaties were the only constitutionally sanctioned means for the government to take land from Indian Nations.²⁰ However, the government was not satisfied with the amount of land they had from the Native Americans, and "in order to keep taking land, the government needed to circumvent the treaty-making process."²¹ These treaty agreements viewed the Native Americans and the U.S. government both as sovereign nations,²² but the Native Americans subsequently were legally classified as racially inferior.²³ Outside of this being a clearly racist legal decision, it also meant that the government could establish the Native population as their beneficiaries, and the Native Americans would be unable to challenge any of the government's policies in court.²⁴ This is the legal groundwork that allowed for the Dawes Act to develop and be passed, despite it being unconstitutional.²⁵

The Dawes Act was exceptionally wide-reaching as far as its specified provisions go. The Act, also referred to as the General Allotment Act, sought to push Native Americans into farming and ranching.²⁶ This piece of legislation accomplished this by allotting specified amounts of land, usually around 160-acres, to individual family units and holding these

¹⁸ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 268.

¹⁹ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 269.

²⁰ Mary K. Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (Tulsa Law Review, 2012-2013), 63.

²¹ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 63.

²² Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 67.

²³ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 65.

²⁴ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 65.

²⁵ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 90-

²⁶ Henry E. Fritz, "An American Dilemma: Administration of the Indian Estate under the Dawes Act and Amendments," (Journal of the Southwest, 1995), 123.

allotments under trust patents, which would be under federal guardianship for a period of twenty-five years.²⁷ By shifting the land distribution of Natives from communal ownership to private ownership, it opened up large amounts of land that were unalloted—that the government could make available to outside settlers.²⁸ The government would give Native Americans the "poorest" land—bug-infested, rocky, and overall unsuited for farming—and keep the best land as surplus for outsiders to acquire.²⁹ The Act was compulsory, so tribes were unable to opt out of the allotment.³⁰ However, there are a number of tribes that strongly opposed the legislation, and a handful were successful in postponing the application of it to their tribes or avoiding allotment all together. These were the lucky ones in retrospect, as the impacts of this law were absolutely devastating for Native Americans across the country.

Between 1887 and 1934, the timeframe in which the Dawes Act was law, Native Americans lost ninety million acres of land—equivalent to 65% of their land.³¹ As private land ownership was a novel concept for Natives, the payment of taxes was also foreign. The U.S. government did nothing to assist these populations in understanding how taxes worked, and so tax foreclosures were rampant.³² This shrunk the amount of land in Native American hands even more. The map below shows how drastic this change was between 1880 and 1890, when the Dawes Act was passed.

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²⁷ Fritz, "An American Dilemma: Administration of the Indian Estate under the Dawes Act and Amendments," (1995), 123.

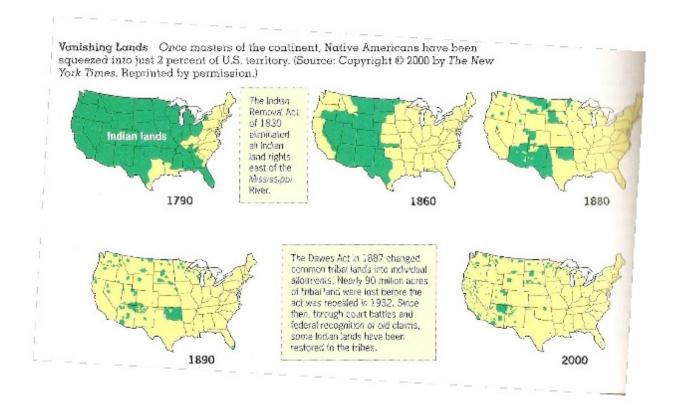
²⁸ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 615.

²⁹ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 617.

³⁰ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 129.

³¹ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 618.

³² Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 618.



Vanishing Lands of Native Americans in the United States³³

Though the goal of the Dawes Act was to enable and encourage tribes to engage in farming and ranching, it was wildly unsuccessful in this. Many Native Americans were unable to afford the materials they would need to reap a substantial harvest.³⁴ The introduction of farming to many Native cultures messed with the preexisting gender roles in place. Whereas before, women would do more farming and the gathering of food while men hunted, now the men were

³³Timothy J. Graham, "Wounded Knee, Ghost Dance, Dawes Act, Assimilation" (December 17, 2013), https://www.slideshare.net/timothyjgraham/wounded-knee-ghost-dance-dawes-act-assimilation-29296548

³⁴ History.com Editors, *Indian Reservations* (March 18, 2019).

in charge of farming and women were left with domestic roles.³⁵ Ultimately, Native Americans did not become farmers; instead, they lost significant portions of their land base that they could have used for development and other purposes in the future.³⁶ As agriculture was proving unsuccessful for Natives, they turned to another provision of the Dawes Act to survive. Native Americans were able to lease their land to non-Natives and make a decent profit.³⁷ Though land was the primary resource Native Americans had, they continued to lease their land to outsiders in order to relieve the economic hardships that were facing their families as a result of the other provisions of the Dawes Act.³⁸ By November of 1909, 22% of the land allotments Native Americans had received were sold, and land leasing had become extensive.³⁹ Thirty four years after the Dawes Act was passed, over half of the people in tribes that were impacted by the Act were "landless, rural, and economically devastated."⁴⁰ This was further exacerbated by the postwar depression of the 1920s, when those Native Americans who had made marginal progress in their farming were soon faced with an economy where farming was an unviable livelihood.⁴¹

There were more than just economic repercussions too. The allotment of tribal land to individual family units meant that Native Nations lost their jurisdiction over their tribal members and police power they had to protect their people's life, liberty and property.⁴² Through

³⁵ History.com Editors, *Indian Reservations* (March 18, 2019).

³⁶ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 128.

³⁷ Donald J. Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (Arizona and the West, 1979), 339.

³⁸ Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (1979), 342-3.

³⁹ Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (1979), 345.

⁴⁰ Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (1979), 336.

⁴¹ Fritz, "An American Dilemma: Administration of the Indian Estate under the Dawes Act and Amendments," (1995), 124.

⁴² Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 73-74.

allotment, many Native families' land was now under state civil and criminal jurisdiction.⁴³ This was a drastic change in the governing of Native populations, who had previously been free to have sovereign government within their tribes. Additionally, there was the issue with placing Native land in trust with the U.S. government. These trust accounts were largely undistributed from generation to generation.⁴⁴ It is estimated that even today, the government holds around 2,900 trust accounts for over 250 Native American tribes.⁴⁵ This demonstrates how the negative repercussions of the Dawes Act are still being felt by many Native Americans today.

Hindsight is obviously 20-20 and makes it easy to see why the Dawes Act was such an awful policy decision on the part of the United States government. It is important to discuss what the detrimental impacts of this legislation was, but perhaps even more critical to analyze how this option was decided to be the best alternative by the lawmakers at the time. The beginning of this paper highlighted some of the fundamental misunderstandings lawmakers at the time held about Native American culture. These misunderstandings contributed to the misinformed and problematic lawmaking. Zachary Shore, in his book *Blunder: Why Smart People Make Bad Decisions*, offers one explanation for the faulty decision making in the case of the Dawes Act—Cure-Allism.⁴⁶ Shore describes Cure-Allism as "a dogmatic belief that a successful theory can be applied indiscriminately." Cure-Allism explains why lawmakers in this particular instance felt that encouraging (forcing) Native Americans to farm, own private property, develop rigid family structures, and assimilate into majority society was the only way to ensure their success and survival. The lawmakers viewed labor as the only way people can be successful—and they did

⁴³ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 73-74.

⁴⁴ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 618.

⁴⁵ Nagle, "Nothing to Trust: The Unconstitutional Origins of the Post-Dawes Act Trust Doctrine," (2012-2013), 92.

⁴⁶ Zachary Shore, *Blunder: Why Smart People Make Bad Decisions* (New York: Bloomsbury USA, 2008), 101.

⁴⁷ Shore, Blunder: Why Smart People Make Bad Decisions (2008), 106.

not view the work Native Americans were already doing, like hunting and fishing, as hard work, but as hobbies. 48 Senator Dawes, who was one of the primary supporters of the Act, is quoted saying about the Native population: "Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much progress."49 It is clear that lawmakers viewed the components of their own livelihoods that had made them successful as the only way to be successful, and that they would have "universal applicability."50 The Native American culture, with its communal living, traditional hunting and gathering, fluid communities, and segregated reservations, was so different from what settlers knew and understood at this time. Non-Natives came to view Native American culture as inferior and associated it with savagery.⁵¹ The ideals of Christian reformers in the nineteenth century were having an overwhelming impact on Native American policy.⁵² The reformers believed that through the Dawes Act, they were giving the Native Americans the best gift of all civilization.⁵³ All of this goes to show that lawmakers did have mostly good intentions with the creation of the Dawes Act, and it was their ethnocentrism, cultural ignorance, and lack of accurate information that inhibited their ability to see what the Native populations truly needed. As Shore describes, when believers of Cure-Allism "insist on their theory's universal applicability, the damage can be monumental."⁵⁴ Though the lawmakers had some good intentions, they were also motivated by greed for reservation land and a belief that Native

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⁴⁸ Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (1979), 341.

⁴⁹ Anderson, *Property Rights and Indian Economies* (1992), 67.

⁵⁰ Shore, Blunder: Why Smart People Make Bad Decisions (2008), 106.

⁵¹ Merjian, "An Unbroken Chain of Injustice: The Dawes Act, Native American Trusts, and Cobell v. Salazar," (2010-2011), 617.

⁵² Berthrong, "Legacies of the Dawes Act: Bureaucrats and Land Thieves at the Cheyenne-Arapaho Agencies of Oklahoma," (1979), 335.

⁵³ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 268.

⁵⁴ Shore, Blunder: Why Smart People Make Bad Decisions (2008), 107.

Americans are an inferior race. These motivations are abhorrent and should never underlie reformed legislation again.

After breaking down all that went into the passing and execution of the Dawes Act, it is worthwhile to look at what other options the U.S. government could have taken at that time. Leonard A. Carlson proposes one such alternative in his article "Land Allotment and the Decline of American Indian Farming." He suggests that the U.S. should have placed Native American reservation land in the control of a corporation.⁵⁵ This corporation then would designate land to individual Native Americans and assign them property rights of that land.⁵⁶ There are several benefits to this policy alternative. This type of structure would avoid the extensive land leasing and selling that became prominent during the land allotment period.⁵⁷ This would have preserved a land base that the Native Americans could have had later for their own development purposes.⁵⁸ Additionally, it could have opened up opportunities for programs to develop that actually suited the needs of Native American farmers,⁵⁹ like perhaps helping them obtain tools for farming and education about how to work in agriculture. This concept is similar to the policy that eventually developed in 1934, after the U.S. government realized the Dawes Act had failed.⁶⁰ This structure mirrors what groups like the Amish and other religious minorities have been able to cultivate for their communities—a communal social organization that operates within a greater market economy.⁶¹ It is argued that the reason lawmaker chose not to follow this course of action is simply because they feared it would allow for Native American culture to

⁵⁵ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

⁵⁶ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

⁵⁷ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

 ⁵⁸ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.
⁵⁹ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

⁶⁰ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

⁶¹ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

persist, something they wanted to avoid.⁶² This alternative could have given the Native populations a better chance at being successful in agriculture and allowed them to retain a greater amount of their land.

Another policy alternative to the Dawes Act would have been developing a microloan process. Lawmakers at the time were determined to force civilized life on Native Americans and thought the only way to do that was through farming. A different route they could have taken would be to stimulate small businesses within the Native populations. Native Americans had a variety of items they could sell, including homemade hunting weapons, jewelry, dinnerware, instruments, clothing, blankets, etc. Additionally, prior to the Dawes Act, some tribes had begun to farm and ranch. This was a slow process, since most tribes had been hunter-gatherers for centuries before, but marginal gains were being made every year. 63 Agricultural products were thus also an option for creating small businesses. Instead of forcing Native Americans into one specific sector as the government did, they instead could have invested in a diverse array of sectors through small business micro-loans. This would have made the Native economy even stronger, since they would not be completely reliant on farming, which can be a turbulent and unreliable sector. If the U.S. government could have chosen to work with the Native cultural traditions already centuries at work instead of against them, perhaps today Native Americans would be meaningfully participating in the market economy more than they currently are (and not just with casinos).

A final policy alternative to the Dawes Act would have for the government simply to do nothing. They could have left reservation land as it was, designated based on mutually agreed upon treaties. Some Native populations had naturally been moving towards agricultural

⁶² Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 152.

⁶³ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 132.

practices, and a system had emerged for assigning individuals plots of land for farming and livestock. ⁶⁴ The transition to a more agriculturally based economy was going to be slow-moving. Allowing the Native Americans time to figure out how it would best work for them would undoubtedly have made them more successful in the end. The tribes that have cultural taboos towards farming were doing well with their hunting and gathering practices. Native land is a precious commodity for tribes and giving them the authority to decide how best to use it for their purposes would have been more effective. If the U.S. government had avoided legislation like the Dawes Act, then Native populations today would have more land and stronger economies. The interaction between Native Americans and the U.S. government could resemble Amish communities' practices—relative autonomy and the ability to choose how to engage with a capitalist economy on their own terms.

The best policy alternative in this case would have been for the U.S. government to do nothing. The impacts of the Dawes Act were devastating on Native communities. They did not become successful farmers, nor did they assimilate into "white" culture faster. The only true beneficiaries of the Dawes Act were the non-Natives who acquired reservation land. The government should have allowed Native Americans to self-govern and progress at their own rate. Not only would this have made Native Americans more successful in the long run, but it would have improved relations between tribes and the government.

Based on this analysis, it is clear that the problems with the Dawes Act are countless. It was written based on inaccurate information and a superiority complex that inhibited lawmakers from seeing what the impacts of the legislation would be. It shattered many Native American tribes' social and economic livelihood. It further marginalized an already vulnerable population.

⁶⁴ Carlson, "Land Allotment and the Decline of American Indian Farming," (April 1, 1981), 132.

The stakeholders in this situation would have been better off without any legislation or alternative to the Dawes Act, and without U.S. government interference. While the government sought to sever the tribal bonds inherent to Native American culture, it was in fact only the communalism of their cultures which allowed them to survive the poverty and loss of land inflicted upon them by the Dawes Act.⁶⁵ The Dawes Act was just one of many policies of cultural genocide against the Native Americans, many of which also should have never been passed. It can be depressing to reflect on how different contemporary life might be for Native populations had their land and livelihoods not been taken from them in this way. In the end, we can only commend Native Americans for their persistence, and vow to do better going forward.

⁶⁵ Stremlau, "To Domesticate and Civilize Wild Indians: Allotment and the Campaign to Reform Indian Families, 1875-1887," (July 1, 2005), 281.

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