

CONTENTS

<i>Foreword by Amanda Cobb-Greetham</i>	ix
<i>Preface</i>	xxxix
I The Indians' Country	3
II The White Man's Land System	31
III The White Man's Guardianship	61
IV The "Grafter's" Share	92
V The Voice of the Indian Territory	126
VI The Price of Statehood	159
VII Protection by the State	181
VIII A Tangle of Litigation	203
IX The Fight Between Despoilers and Defenders	230
X Federal Administration within the State	258
XI The Indian's Place in Oklahoma	291
XII The Battle for Spoils	318
XIII The New Trend	351
XIV The Present Situation	379
<i>Thirty-Two Years After: Postscript to the 1973 Edition</i>	396
<i>Bibliography</i>	416
<i>Index</i>	425

MAPS

Counties Comprising the Five Civilized Tribes	<i>opposite page 181</i>
Oil Fields of the Five Civilized Tribes	<i>opposite page 286</i>

CHAPTER I

The Indians' Country

EVERY American of middle age can remember when his school geography showed to the south of Kansas a large unmarred expanse of map designated as the Indian Territory. While never a territory in the political sense, it was owned and ruled by the five autonomous Indian republics known as the Cherokee, Choctaw, Chickasaw, Creek or Muskogee, and Seminole nations.

Although they were fiercely and passionately devoted to their homes, these Indians had only recently settled in the West. Their ancestors when discovered by De Soto were living east of the Mississippi in the Gulf and southern Appalachian region. When first visited by Europeans they were an agricultural people, raising corn, beans, squashes, and tobacco; but they also depended largely upon hunting and fishing. They soon began trading with the English settled along the Atlantic seaboard, the Spanish in Florida, and the French in Louisiana; and they learned to plant European grains and garden vegetables, and to raise horses, cattle, hogs, and barnyard fowls.

When the United States succeeded to European colonial influence in the Gulf region, the new government followed a custom established by its predecessors of making alliances and treaties with the Indian tribes, but from 1800 on a new problem arose through the encroachments of its advancing settlements. One important result of this closer intercourse was the rapidity with which the Indians, especially the Cherokees and Choctaws, began to adopt the white man's institutions. They invited Christian missionaries to their country and established churches and schools, they adopted constitutions and legal codes, and some of their leaders began to operate plantations

worked by Negro slaves. The progress of the Cherokees was especially rapid at this time, because Sequoyah, one of the greatest geniuses ever produced by any race, invented a phonetic alphabet that enabled the whole tribe to become within a few months a literate people.

But this advancement in civilization served only to provoke the frontiersmen to increased hostility, because it enabled the Indians to contest their encroachments more effectively. The United States, to relieve its Western settlers, began to purchase outlying portions of the Indians' territory in exchange for money and annuities and wild tracts of land beyond the Mississippi. A gradual emigration took place to these new lands, but it was apparent that most of the Indians were determined to strengthen their institutions and remain in their ancestral homes. The period of forcible removal began when Andrew Jackson became President in 1829. His policy was embodied in the Indian Removal Act of 1830, which expressed the settled purpose of the Government to locate the Eastern tribes beyond the frontier.¹

At the same time there was a feverish and speculative development of the rich Gulf cotton lands, and reports of gold discovery in the Cherokee country in Georgia caused prospectors to rush in, tearing down the Indians' fences and destroying their crops. The states began to pass laws breaking down the tribal autonomy of these unwelcome independent communities that were obstructing their settlement. In 1829 Mississippi extended her state laws over Choctaw and Chickasaw lands joining organized counties, and in 1830 the Indians were made citizens of Mississippi and forbidden under penalty of fine and imprisonment to hold any tribal office. Georgia also extended her jurisdiction over the Cherokee country, forbade the tribal legislature to meet except for the purpose of ratifying land cessions, and invited her citizens to rob and plunder their Indian neighbors at will by making it illegal for an Indian to bring suit or testify against a white man. When President

¹ *Statutes at Large of the United States of America* (Boston, Washington, 1854-1934), IV, 411-12, May 28, 1830.

THE INDIANS' COUNTRY

5

Jackson began to negotiate with the Indians under authority of the Indian Removal Act, he pointed to the inability of the Federal Government to prevent this extension of state sovereignty, and held out a guarantee of perpetual autonomy in the West as the strongest incentive to emigration.

By a combination of bribery, trickery, and intimidation the Federal agents induced all five tribes during the 1830's to cede the remainder of their Eastern lands to the United States and to agree to migrate beyond the Mississippi. All these removal treaties contained the most solemn guarantees that the Indians' titles to these new lands should be perpetual and that no territorial or state government should ever be erected over them without their consent. Some of the treaties also contained provisions by which individual Indians might accept allotments in the land they had ceded and hold them under the white man's laws.

The tragic suffering of the exiles on the "Trail of Tears" is familiar to all students of American history. It is matched only by the saturnalia of exploitation to which they were subjected by land speculators who crowded them from their homes before the time fixed for their emigration, and who possessed themselves of their individual allotments by every possible combination of violence and fraud.² The Indians emerged from this experience with the most invincible determination to maintain their tribal autonomy in the West against the encroachments of territorial or state government, and to guard their tribal holdings against the white man's system of land tenure, when history should begin to repeat itself upon their new frontier.

As soon as they were settled in their new homes these Indians made such remarkable social and political progress that they soon became known as the Five Civilized Tribes to distinguish them from their wild neighbors of the plains.³ At first they owned all of the present state of Oklahoma except the "Pan-

² Grant Foreman, *Indian Removal* (Norman, Oklahoma, 1932).

³ *Idem*, *The Five Civilized Tribes* (Norman, Oklahoma, 1934).

handle," but they made alliances with the Confederacy at the outbreak of the Civil War, and when they resumed treaty relations with the United States they were compelled to surrender the western half of their territory as a penalty for their "rebellion."⁴ Part of this ceded land was used by the Federal Government for the settlement of other Indian tribes, and the remainder by a series of "Openings" from 1889 on was thrown open to white homesteaders and became the Territory of Oklahoma.

The land retained by the Five Civilized Tribes continued to be known as the Indian Territory. It consisted of 19,525,966 acres divided as follows: the Choctaws controlled 6,953,048 acres in the southeastern part; the Chickasaws exercised jurisdiction over 4,707,903 acres west of the Choctaws; the Cherokees owned 4,420,068 acres in the northeast; the Creeks owned a 3,079,095-acre tract southwest of the Cherokees; and the Seminoles were settled on 365,852 acres which they had purchased from their near kinsmen, the Creeks. The Choctaws and Chickasaws, who are very closely related, owned their lands jointly, but their settlements were fairly distinct and each tribe exercised complete jurisdiction over its own district.⁵

In spite of the losses and spoliations which they had sustained, the Indians still owned a princely domain. Larger than several of the Atlantic states, the Indian Territory was approximately the size of South Carolina, and almost as large as Indiana. The Creek and Chickasaw nations contained some of the best agricultural land of the present state of Oklahoma; much of the Choctaw country was covered with valuable timber, and extensive coal fields were opened soon after the Civil War; and the Cherokee, Creek, Chickasaw, and Seminole lands were destined to produce a large share of that flowing gold that was to make Oklahoma famous for its fantastic wealth.

⁴ Annie Heloise Abel, *The American Indian as Slaveholder and Secessionist* (Cleveland, Ohio, 1915); *The American Indian as Participant in the Civil War* (Cleveland, Ohio, 1919); *The American Indian under Reconstruction* (Cleveland, Ohio, 1925).

⁵ Department of the Interior, *Annual Report*, 1919, II, 342.

THE INDIANS' COUNTRY

7

Each tribe also owned a large sum of money derived from the sale of its Eastern lands and held in trust by the United States. The income formed a considerable part of the revenue of the tribes and was appropriated by their legislatures for the support of their governments and schools. These trust funds in 1894 were:⁶

Cherokee	\$2,716,979.98
Choctaw	975,258.91
Chickasaw	1,206,695.66
Creek	2,275,168.00
Seminole	2,070,000.00

Each tribe formed an intensely nationalistic small republic with distinctive customs and institutions. The Creeks and Seminoles were conservative, but the other three tribes were eagerly receptive of any custom which they considered superior to their own.

The conversion of all the tribes to Christianity had been effected rapidly after the Removal. There was some brief hostility especially among the Creeks to the work of the missionaries, but upon the whole the new religion was readily and gladly accepted. Naturally a devout people with deep mystical feeling and a strong sense of moral obligation and family and group solidarity, they found Christian teachings fitted to their own way of thought. Every remote settlement had its Presbyterian, Methodist, or Baptist church, and the Indians combined their religious zeal with their love for community gatherings in the brush arbor camp meeting with its all-day services. A few missionaries continued to work among them, but most of their preachers were Indians, often college trained.⁷

Each tribe maintained a complete school system under its own administrative officials. Elementary education was carried on in the neighborhood schools, which in their irregular at-

⁶ Commissioner of Indian Affairs, *Annual Report*, 1894, pp. 475-78.

⁷ *Report of the Select Committee to Investigate Matters Connected with Affairs in the Indian Territory* (*Senate Reports*, 59 Cong. 2 Sess., No. 5013), I, 690-91, 696; Angie Debo, *The Rise and Fall of the Choctaw Republic* (Norman, Oklahoma, 1934), pp. 63-65, 229-32.

tendance and inadequate instruction, corresponded to the rural schools of the adjoining states. Each tribe also maintained several boarding schools with highly qualified faculties, and at least one tribe paid the expenses of a selected group of young people in the great universities of the country. As a result of this boarding school and college training there was a larger proportion of educated people among the Cherokees, Choctaws, and Chickasaws than among the white people of the neighboring states. Some of the children, however, failed to profit from these educational opportunities, and there was considerable illiteracy so far as knowledge of English is concerned.⁸

It is apparent that with the possible exception of the Seminoles, about whom little is known, practically all the Indians were accustomed to reading books and newspapers in their own language.⁹ The Presbyterian missionaries, who began their work among the Choctaws in Mississippi in 1818, began to translate books into Choctaw and to hold native language schools for the adult Indians. Later, although their spoken dialect differs somewhat from the Choctaw, the Chickasaws were able to use this same written language. After the Removal, the missionaries reduced the Creek-Seminole language to a simple written form. As a result of Sequoyah's great invention the Cherokees established a national newspaper in 1828. Under the name of the *Cherokee Phoenix* and the *Cherokee Advocate* this paper continued through most of the tribal period, and served to keep even the most conservative fullbloods well informed on all public questions. The Choctaws and the Creeks also made some attempt to maintain national newspapers, but in general they were not successful.¹⁰ Of the privately owned papers a few were owned and edited by Indian citizens, but the great majority were published by white residents and advocated a policy inimical to Indian interests. Even these foreign

⁸ *Select Committee*, I, 1051; II, 1169, 1172; Debo, *op. cit.*, pp. 42-45, 60-63, 236-43; Commissioner of Indian Affairs, *Annual Report*, 1893, pp. 146-48.

⁹ *Select Committee*, I, 318, 690-91.

¹⁰ Debo, *op. cit.*, pp. 226-28; Carolyn Thomas Foreman, *Oklahoma Imprints* (Norman, Oklahoma, 1936), pp. 55, 76-85, 190-94.

THE INDIANS' COUNTRY

9

publications, however, usually carried columns in the local Indian language.

The United States maintained a protectorate over these Indian republics. The rights of each were based upon an elaborate system of treaties extending from the beginning of the American Government to the agreements negotiated at the close of the Civil War; and although it had long been a recognized principle of law that Congress had the legal right to abrogate a treaty by statute, the Federal officials up to 1890 showed some decent hesitation about breaking the pledges to the Five Civilized Tribes. The Indian leaders quoted the treaties with such skill and fluency that they invariably outdebated their white opponents, and even the most conservative fullbloods knew their terms and insisted upon their fulfilment.

The United States maintained a representative to the tribes, known as the Union Agent with offices at Muskogee, in the Creek Nation. He was assisted by two clerks, and he used a small force of Indian police, citizens of the various nations, as enforcement officers. His duties were purely diplomatic and advisory, and few men who held the office made a serious attempt to inform themselves regarding the internal affairs of the tribes.¹¹

Each of the tribes had a constitutional government with a Principal Chief (Chickasaw Governor) and other executive officers; a General Council, bicameral except for the Seminole; and a system of courts. The ancient Creek "town" and the Seminole "band" still formed the local governing unit for these two tribes, but the political divisions of the other three were largely artificial and geographical.¹²

The Indians had a natural genius for politics. Trained through countless generations in the proud democracy of primitive councils, they found their borrowed Anglo-American institutions in perfect harmony with their native development.

¹¹ This is shown in the agent's annual reports. The Choctaws, for instance, took a periodic census, but the reports are filled with the wildest guesses regarding population and economic statistics; for example, Debo, *op. cit.*, pp. 111n., 114n., 221-22.

¹² Department of the Interior, *Annual Report*, 1900, pp. 85, 118-20, 145-46; Debo, *op. cit.*, pp. 151-63, 236.

Their parliamentary assemblies were models of decorum, and their orators spoke with the disciplined eloquence of a restrained but passionate race. In a political unit so small that it was possible for every voter to have a personal knowledge of candidates and issues, the elections and inaugural ceremonies and the deliberations of the legislatures furnished recreation and excitement for the entire populace. Few communities have ever equalled these small Indian republics in political skill.

But the Indians were noticeably deficient in practical judgment and in business ability, and they showed a tendency to settle every question by making an eloquent speech, adopting a well-worded resolution, or passing a law; and their law enforcement did not correspond with their legal ability or with their elaborate system of courts.

Their legal codes show a curious mixture of primitive custom and Anglo-Saxon law. The punishments were fine, whipping, or death by shooting or hanging. The enforcement officers consisted of sheriffs and a special group of hardy mounted Indians known as lighthorsemen.¹³

The jurisdiction of the courts and participation in the government was limited to citizens. Citizens by blood consisted mainly of those Indians and their descendants who had settled in the Indian Territory at the time of the Removal and had lived there continuously ever since. People of recognized Indian descent who had remained behind or who had been living as white citizens of various states occasionally came to the Territory and were admitted to citizenship by special act of the tribal governments.

The Cherokees, Creeks, and Seminoles had been induced to grant full citizenship to their former slaves at the close of the Civil War. The Choctaws and Chickasaws had secured an optional provision in their peace treaty, and the United States agreed to remove the freedmen within two years and colonize them elsewhere if the Indians should decide against adoption.

¹³ Debò, *op. cit.*, pp. 175-78.

Both tribes promptly voted for their removal, but the United States failed to take action. Finally, after twenty years, the Choctaws adopted their freedmen and gave them the limited economic, educational, and political privileges permissible under the treaty; but the Chickasaws, except for a temporary weakening in 1873, continued to petition for the fulfilment of the treaty during the remainder of the tribal period.¹⁴

The Cherokees, Choctaws, and Chickasaws also admitted intermarried whites to citizenship. There had been considerable admixture of white blood in all the tribes before the Removal, but for a time after the settlement in the West white influence almost disappeared. After the Civil War, with the construction of the first railroads across the Indian Territory and the rapid settlement of the Western frontier, this immigration and intermarriage began again.

The Chickasaws had been recklessly generous to their intermarried citizens, and as a result these white men monopolized the best agricultural lands in the Nation. In 1890 the Indians attempted to protect themselves by enacting a law providing that intermarried citizenship should confer no property or political rights, but the white men held meetings and defiantly resolved that if any attempt were made to dispossess them they would "exterminate every member of this council from the chief down."¹⁵ The Choctaws began to regulate intermarried citizenship before it assumed such serious proportions. They required the applicant to furnish a certificate of good moral character signed by ten Choctaw citizens, to pay a license fee of one hundred dollars, and to renounce the protection of the laws and courts of the United States.¹⁶ The Cherokees conferred no property rights upon those citizens who intermarried after 1877.¹⁷

There was a certain amount of overlapping settlement beyond the borders of the various tribes and of intermarriage

¹⁴ *Ibid.*, pp. 99-109; *United States Supreme Court Reports* (Lawyers' Edition, Rochester, New York, 1904), XLVIII, 640-45.

¹⁵ *Report of the Commission Appointed to Negotiate with the Five Civilized Tribes of Indians, Known as the Dawes Commission* (Senate Docs., 54 Cong., 1 Sess., No. 12), 1895, p. 59. Law enacted October 1, 1890.

¹⁶ Debo, *op. cit.*, pp. 106, 179-80.

¹⁷ *Supreme Court Reports*, LI, 96-105.

between their citizens. This condition was especially noticeable between the Choctaws and Chickasaws and the Creeks and Seminoles. A considerable number of Cherokees and a few Creeks who had been driven from their homes by Northern armies during the Civil War settled in the Choctaw country and made permanent homes there. There was also some exchange of tribal populations across the Creek-Cherokee border.

This intermingling of tribes seldom caused any difficulty. The Choctaws and Chickasaws had a treaty by which the members of either tribe were entitled to all the privileges of citizenship in the other when residing within its jurisdiction. Citizenship in the other tribes was regulated largely by mutual tolerance, but an intertribal code was drawn up in 1859. This agreement provided for the requisition of escaped criminals, made Indians living under a foreign jurisdiction subject to the local courts and laws, and provided for naturalization. It appears from contemporary records that a considerable amount of this naturalization took place.¹⁸

A more serious problem than white or intertribal citizenship was the non-citizen white immigration, which began to trickle into the Indian Territory soon after the Civil War and became a deluge that engulfed the Indian settlements by the close of the century. A large number of Negroes also came in as laborers in the mines or as tenants on the Indians' farms. Many of the white immigrants were intruders, who had entered the country in defiance of tribal law and had fastened themselves upon the Indians' possessions with a grip that it seemed impossible to break. The most troublesome of the intruders were those who had advanced some fantastic claim to citizenship, and who loudly demanded every privilege enjoyed by the Indians in spite of repeated denials of their claims by the tribal authorities. A large number of the immigrants, however, were legal residents, who conformed to the tribal laws, and whose productive labor was wanted by the Indians. But regardless of status the non-citizens came in such hordes that they soon out-

¹⁸ Debo, *op. cit.*, pp. 66, 71.

THE INDIANS' COUNTRY

13

numbered the Indians, and the tribal communities as minority governments found it increasingly difficult to maintain their authority.

The first United States census of the Indian Territory, which was made in 1890, shows the approximate racial composition. It classed the inhabitants according to physical appearance without regard to citizenship, but it reveals in a startling way how the Indians were crowded in their last refuge by the pressure of other races. The statistics are as follows:¹⁹

NATION	WHITES	NEGROES	INDIANS	TOTAL	PERCENTAGE
					OF INDIANS
Cherokee	29,166	5,127	22,015	56,309	39.1
Choctaw	28,345	4,406	11,057	43,808	25.24
Chickasaw	48,421	3,676	5,223	57,329	9.11
Creek	3,287	4,621	9,999	17,912	55.82
Seminole	172	806	1,761	2,739	64.29
TOTAL	109,393	18,636	50,055	178,097	28.11

Pleasant Porter, the great and wise Chief of the Creeks, more than any other man of his generation attempted in a detached and philosophic way to analyze the problems of his people. Speaking before a Senatorial committee visiting the Indian Territory in 1906, the old man told of the idyllic conditions of the untroubled life he had known in his boyhood and of their disappearance under the pressure of the new invasion. The unwelcome immigrants "got pretty smart and they wanted taxes and big lots of cattle—they wanted everything that way, and if we didn't do it we were in the soup anyway . . . but we wouldn't listen to them at first, but took them and turned them loose up here on the borders of Kansas and Missouri, but they would come back, and others would come, and we could not keep them out, so they would flow all over us. . . . We have striven in our own way for our elevation and uplifting, and for a time it seemed that we were actually going to evolve a sort of civilization that would suit our temperament; and we prob-

¹⁹ Bureau of the Census, *Extra Census Bulletin, The Five Civilized Tribes of the Indian Territory* (Washington, 1894), pp. 3-5.

ably would if it had not been for this white and black invasion.’²⁰

According to ancient Indian custom the land was held in all the tribes under communal tenure. Any citizen might cultivate as much land as he wanted and the tribal laws protected him in his right of occupancy and in the possession of his improvements, but as soon as he ceased to use it the title reverted to the Nation. With a natural gift for collective enterprise the Indians were contented and prosperous under a system that seemed actually sacrilegious to the individualistic and acquisitive white man. Pleasant Porter’s description presents an accurate picture of the simple but sufficient economic life of the old Indian country, and the way in which it broke down before the restless energy of the invading whites.

“In those days they always raised enough to eat, and that was all we wanted. We had little farms, and we raised patches of corn and potatoes, and poultry and pigs, horses and cattle, and a little of everything, and the country was prosperous. In fact in my early life I don’t know that I ever knew of an Indian family that were paupers. There is plenty of them now; there was none then. They were all prosperous and happy and contented in their way, and what more could they want? I say I don’t know of an Indian family in my early life that were paupers. In those days the ones that would be paupers if they lived now stayed with their kin folks and they made them work. Now, back of that the custom of the Creeks was that everybody had to work or live on the town, and the town had taskmasters who took care of him and saw that he worked. There was not a skulker or one who shirked amongst us then; quite different from what it is now. We had a kind of an Arcadian government then. If anyone was sick or unable to work, the neighbors came in and planted his crop, and they took care of it—saw that the fences were all right—and the women took care of the garden, and wood was got for him, and so on. In fact, everything was done under the care of the people—they

²⁰ *Select Committee*, I, 624-25.



1. Dwelling of Creek Fullblood. "We had little farms, and we raised patches of corn and potatoes, and poultry and pigs, horses and cattle."

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did everything and looked after the welfare of everything. The Creek had that much knowledge, that they cared for each other in that way; and while they used to live in towns [in Alabama], out here in this peaceful country they had scattered out just like white men, and each one had gone to his farm, . . .

"... In those days, you know, a hog ran wild in the woods—went just where he liked—only they would be fed regularly a little corn or something to keep them kind of tame and domesticated; but now you have to keep him under fence, you can't leave him out now like then. He is just as unsafe outside to-day as a squirrel is."²¹

By 1890 ranching had changed the character of the Creek country. Under the grazing law of 1889 any Creek head of a family could enclose one square mile of the public domain for pasture purposes without making any payment to the tribe. Then, under the theory that fencing the land along the frontier would keep out the cattle from adjoining tribes, the law contained express provisions for large enclosures there. The citizen who wanted to secure control of a large pasture was required to present a petition to the judge of the district, who would then call an election and submit the question to the voters. If he was successful in this referendum, the enterprising Creek then secured the land under a three-year lease, with the privilege of renewal. He was required to fence it and to pay the Nation an annual rental of five cents an acre. He would then sub-lease it to cattlemen, usually from Texas, and make considerable profit on the transaction.²²

Under this law most of the prominent Creek families acquired holdings of from thirty thousand to sixty-eight thousand acres. A study made of the leasing situation in 1896 gave a list of sixty-one individual citizens or companies of citizens whose holdings totaled 1,072,215 acres—approximately one-third of

²¹ *Ibid.*, I, 23, 624-25. Miss Alice M. Robertson, who had a lifelong familiarity with Creek life, also testified regarding neighborhood cooperation and the cultivation of the "town" farms (*ibid.*, I, 688, 693-96). For Choctaw economic life see Debo, *op. cit.*, pp. 110-15.

²² *Muskogee Times-Democrat*, July 9, 1909; *Muskogee Phoenix*, January 19, 1919.

the entire area of the Creek Nation. The Perryman family received an annual rental of \$25,000 for their pastures, and the firm of Turner and Porter (Pleasant Porter and Clarence W. Turner, a white man married to a Creek citizen)²³ was next with an income of \$16,000.²⁴

Among the Cherokees also, large tracts of land were monopolized by a few citizens, usually mixed bloods, for farming or ranching purposes. The same study showed a list of twenty-three Cherokees who controlled a total of 174,000 acres. The eight citizens whose names were at the head of the list each held from ten thousand to twenty thousand acres.²⁵ But the Cherokees' greatest difficulty was with the intruders, who seized their land, erected improvements, and proved impossible to dislodge. Since they were not recognized as citizens, they were outside tribal jurisdiction, and the Cherokees were unable to secure their expulsion by the Federal authorities.

The Chickasaw tribe, with its small population and its rich agricultural land, had the most serious problem of all. Nearly all the best land was held by intermarried white men or leased to white non-citizens. About 1867 the Nation had tried to prevent this condition by enacting a law, with severe penalties, forbidding a Chickasaw to lease land to a non-citizen for a longer period than a year; but the law was generally evaded by secret agreements between the parties, and although many Chickasaw citizens were indicted for its violation, the practice was so common that it was virtually impossible to find a jury that would convict. As a result, land was leased all over the country for agricultural purposes for terms of from two to fifteen years, and in a few instances even for the lifetime of the parties.²⁶

The Choctaws regulated their immigration and the use of their land and natural resources more successfully. It was

²³ *Muskogee Phoenix*, *loc. cit.*

²⁴ *Senate Docs.*, 54 Cong., 1 Sess., No. 182, pp. 27-31, testimony of Archibald S. McKennon of the Dawes Commission before the Committee on Indian Affairs.

²⁵ *Ibid.*, p. 8.

²⁶ *Ibid.*, p. 38; Overton Love to Dawes Commission, Dawes Commission, *Report*, 1896, pp. 112-13.

THE INDIANS' COUNTRY

17

made illegal in 1870 to lease the public domain for grazing purposes and in 1877, for agricultural purposes; and in 1880 non-citizens were forbidden to own livestock except a limited number under permit for family use. In 1880 the size of a pasture that could be enclosed by a citizen was limited to one square mile, but two citizens who already held larger pastures continued to use them. These laws were evaded to a certain extent, but the Choctaw country was never monopolized by non-citizen farmers or cattlemen.²⁷

The Choctaws were usually classed as the best business men of the Five Tribes, and some of their wealthiest citizens belonged to fullblood or nearly fullblood families. The richest Choctaw, Wilson N. Jones, was said to hold 17,600 acres under fence, of which 550 acres was under cultivation, and to own 5,000 cattle, 75 horses, several coal mines, a store, and a cotton gin. It was not illegal for a citizen to lease his personal holdings to non-citizens, and most of the labor on these great farms was performed by white or Negro tenants.²⁸

The rich coal mines, of course, belonged to the Nation, but Choctaw law recognized the right of a citizen to stake out a mining claim that covered a radius of one mile from the point of discovery. The canny Choctaws often employed mining experts to assist them in discovering coal veins, and most of the well-to-do citizens owned mines. A tribal official, the National Agent, leased these mines to operators under strict public regulation, and collected the royalties, which were divided equally between the Nation and the citizen who owned the mine. In 1890 the National Treasurer's report showed that \$57,839.49 in royalty had been turned into the tribal treasury that year. Timber sales also were placed exclusively under the control of the National Agent, and, as the lumbering industry developed, these royalties became another important source of public revenue.²⁹

²⁷ *Senate Docs.*, 54 Cong., 1 Sess., No. 182, p. 39; Debo, *op. cit.*, pp. 110-11, 144-45.

²⁸ Debo, *op. cit.*, pp. 110-11.

²⁹ *Ibid.*, pp. 128, 134-39, 145.

All the tribes except the Seminole secured additional revenue by taxing non-citizens through their right to control immigration. There was a tax on business conducted by non-citizens, a per caput annual permit fee to be paid by all employers for their non-citizen laborers, and an annual license fee to be paid by skilled laborers and professional men.³⁰

The presence of this alien population and the consequent industrial development caused thriving white men's towns to grow up throughout the Indian Territory, except in the Seminole Nation where there were only a few trading stations owned by the wealthy mixed-blood Brown family. These towns were important shipping centers for coal, timber, cattle, and agricultural products, but only the Cherokees provided for their incorporation. As a result the physical appearance of Indian Territory towns presented a shocking contrast to their real prosperity. There were no city taxes except in the Cherokee Nation, hence no schools except voluntary subscription schools, no police or fire protection, and no sewers, city lighting, or paving; and no title could be secured to the lots upon which the business houses and dwellings were erected.³¹

This enterprising non-citizen life was carried on almost without legal protection or restraint, for the tribal governments had no authority over United States citizens and Federal courts were created very slowly. The United States Court for the Western District of Arkansas at Fort Smith had criminal jurisdiction, but there was no civil jurisdiction of any kind until the first Indian Territory court was established at Muskogee in 1889. After this the Federal courts were rapidly extended, and in 1895 three judicial districts were created, with a court of appeals sitting at McAlester, in the Choctaw

³⁰ Debo, *op. cit.*, pp. 140-43, 145-46; Department of the Interior, *Annual Report*, 1891, pp. 83-84; 1899, I, 107, 118-19; 1900, pp. 93, 95, 106-7, 141-42, 180-86; 1901, I, 226-27; Cherokee Papers (Phillips Collection, University of Oklahoma), Reply of Cherokee Delegation to Ex. Doc. No. 86, Washington, March 8, 1884; Lee Mills, Personal Interview (Pryor, Oklahoma, September 27, 1935).

³¹ Debo, *op. cit.*, pp. 222-23; Department of the Interior, *Annual Report*, 1899, I, 128, 197; 1901, I, 226; Mills, Personal Interview; Cherokee Papers, handbill dated Tahlequah, March 7, 1872, advertising the sale of occupancy titles to town lots in stations along the Atlantic and Pacific Railroad.

Nation. These courts now had complete civil and criminal jurisdiction over United States citizens and over tribal citizens in mixed cases where United States citizens were involved. The laws of Arkansas were placed in effect by the acts of Congress creating these courts.

Because of the limited application of Federal law during most of the period, crime flourished in the Indian Territory. Judge Isaac C. Parker, who presided over the Fort Smith court from 1875 to 1896, established a record of 172 sentenced to death and 88 actually hanged, nearly all of whom were Indian Territory "bad men." Little attempt was made to arrest any but the most depraved criminals against whom the evidence was overwhelming. Less spectacular than the frequent commission of serious crimes, but more annoying to the hundred thousand white residents of the Indian Territory was the complete absence of civil law. There was no way of enforcing the payment of debts, and people who had a dispute over property had no recourse except to "shoot it out," or to refer it to the arbitration of the Indian Agent.³²

In other respects also the large white population was living under conditions never before encountered by any considerable body of United States citizens. Thousands of children were growing up with no educational opportunities of any kind, a large body of tenants were cultivating land to which they could never secure title, and the proud and self-assertive white Americans were paying taxes to support a government in which they had no voice and a school system from which they received no benefits. The inhabitants of this fierce frontier did not even consider the fact that the Indian tenure rested upon the most solemn commitments by the Federal Government, and that by settling in the Indian Territory they had voluntarily subjected themselves to these conditions; and they set up a constant clamor for the abolition of the tribal govern-

³² S. W. Harman, *Hell on the Border* (Fort Smith, Arkansas, 1898); Debo, *op. cit.*, pp. 184-91; *Statutes at Large*, XXVI, 93-100; Commissioner of Indian Affairs, *Annual Report*, 1895, pp. 445-50; Secretary of the Interior, *Annual Report*, 1896, II, 151.

ments and the establishment of a system representative of the entire population, and for the breaking up of the communal holdings into an individual tenure that would pass easily into the hands of the whites. This demand was echoed by the people of the neighboring states, who were distressed by the spectacle of rich agricultural land that had never felt the plow, and towns that could not anticipate in the very near future the erection of skyscrapers.

From the date of the Removal the Indians had been confronted with these proposals, the treaties signed at the close of the Civil War contained optional provisions for allotment and territorial organization, and during the following generation Congress had been deluged with bills for the forcible abolition of the tribal tenure.³³ By the opening of Oklahoma in 1889 and the creation of its territorial government a year later, a new and lusty voice was added to the popular clamor. Although the Indians managed to defeat this legislation through the extraordinary diplomatic skill and legal ability of their leaders and the determined opposition of their entire citizenship, it became apparent by 1890 that the treaties would not be allowed much longer to block the path of "progress."

The Indian Office opposed in principle the communal land tenure, and the Union agents—with the single exception of Robert L. Owen, a Virginian of Cherokee descent who had been admitted to tribal citizenship—filled their annual reports with condemnation of the system. For a time the Indian Office depended upon persuasion, but in 1886 the Commissioner of Indian Affairs recommended the forcible allotment of a quarter-section to each citizen and the purchase of the remainder for white settlement. In 1890 the *Special Census Bulletin* for the Indian Territory departed from its statistical impartiality to advocate a similar policy.³⁴

³³ Annie Heloise Abel, "Proposals for an Indian State," *Annual Report of the American Historical Association*, 1907, I, 95-100; Grant Foreman, *Advancing the Frontier* (Norman, Oklahoma, 1933), pp. 180-94; Debo, *op. cit.*, pp. 212-17.

³⁴ *Extra Census Bulletin*, pp. 23-24, 32-33; Commissioner of Indian Affairs, *Annual Report*, 1886, pp. v, viii, x-xii.

At the same time Eastern philanthropic friends of the Indians added their dignified voices to the clamor of the turbulent frontiersmen. For some time these theorists had professed an almost mystical faith in the value of private ownership and its power to transform the nature of any Indian who could be persuaded or forced to accept it.

The Board of Indian Commissioners was created in 1869. It was supposed to be made up of distinguished philanthropists, who were to serve without pay, and whose reports would operate as a check upon vicious legislation or administration. After a year of study this board made its first report, recommending, as a general Indian policy, allotment with restrictions on alienation of the land, and specifically that members of the Five Tribes should be made United States citizens and taxed as soon as possible. From that time on the Board commonly regarded the extent of allotment as the measure of progress in Indian advancement.³⁵

In 1883 a small group of Eastern humanitarians began to meet annually at Lake Mohonk, where with an agreeable background of natural beauty, congenial companionship, and crusading motive, they discussed the Indian problem. At their third meeting Senator Henry L. Dawes of Massachusetts, a distinguished Indian theorist, gave a glowing description of a visit of inspection he had recently made to the Indian Territory. The most partisan Indian would hardly have painted such an idealized picture of his people's happiness and prosperity and culture, but, illogically, the Senator advocated a change in this perfect society because it held the wrong principles of property ownership. Speaking apparently of the Cherokees, he said: "The head chief told us that there was not a family in that whole nation that had not a home of its own. There was not a pauper in that nation, and the nation did not owe a dollar. It built its own capitol, in which we had this examination, and it built its schools and its hospitals.

³⁵ Board of Indian Commissioners, *Annual Report*, 1902, pp. 3-7.

Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. 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 more progress."³⁶

The Conference accepted this viewpoint, and continued to advocate "reform" with all the earnestness of a moral crusade. Like Senator Dawes, the members based their opposition purely upon theoretical belief in the sanctity of private ownership rather than upon any understanding of the Indian nature or any investigation of actual conditions. With regard to Indians in general, their program in 1903 comprised: the abolition of the Indian Bureau and all Indian agencies, and the extension of state authority over all Indian tribes; the extinction of tribal governments and the granting of full United States citizenship with its privileges and obligations; and the division of the communal holdings among the individual Indians, to be held under the same conditions of taxation and freedom to alienate as the white man's farm.³⁷

With these respectable groups influencing public opinion it is not strange that the articles about the Indian Territory appearing in the serious magazines were almost unanimous in their condemnation of tribal control. These accounts were widely divergent, and most of them were grossly inaccurate; but whether the writers described an impossibly utopian society and sought a method to improve perfection, or whether they slandered the Indians' character and achievements and urged a remedy for an intolerable condition, they united in demanding abolition of the tribal tenure. Only the National Indian Defense Association, formed at Washington in 1885, opposed

³⁶ *Ibid.*, 1885, pp. 90-91.

³⁷ *Ibid.*, 1900, pp. 25-32; Lake Mohonk Conference, *Report*, 1904, pp. 5-6; Department of the Interior, *Annual Report*, 1900, pp. 655-735.

the change, and its warning was hardly heard in the general clamor.³⁸

In response to this faith in private ownership, Congress passed the Dawes Severalty Act in 1887. It provided that Indian reservations should be allotted in 160-acre tracts to heads of families, 80 acres to unmarried adults, and 40 acres to children; and that the remainder should be purchased by the Government and thrown open to homestead entry.³⁹ The Five Tribes were exempted from its provisions, but they rightly interpreted it as an expression of public policy dangerous to their institutions.

Every session of Congress in the early Nineties was charged with menace, but when the dreaded legislation was enacted, March 3, 1893, it provided only for negotiation. The President was authorized to appoint three commissioners who should have great discretionary power in making agreements with the Indians for the extinction of their communal titles and the eventual creation of a state.⁴⁰ Fortunately for the Indians Grover Cleveland came into office the following day. Like nearly all white men of his time he believed in allotment, but he was one of the three or four Presidents of the United States most conspicuously friendly to Indian aspirations.⁴¹

Dawes, who had retired from the Senate, became chairman of the Commission, and Meredith H. Kidd of Indiana and Archibald S. McKennon of Arkansas were appointed as the other members. It was officially designated as the Commission to the Five Civilized Tribes, but so great was the prestige of the venerable chairman in Indian affairs that it was universally known as the Dawes Commission.

Soon after their appointment the members proceeded to the Indian Territory and invited the tribes to negotiate. They were deeply incensed at the concerted resistance they encountered,

³⁸ Anna Laurens Dawes, "An Unknown Nation," *Harper's Magazine*, LXXVI (1888); Rezin W. McAdam, "An Indian Commonwealth," *Harper's Magazine*, LXXXVII (1893).

³⁹ *Statutes at Large*, XXIV, 388-91.

⁴⁰ Commissioner of Indian Affairs, *Annual Report*, 1893, pp. 512-13.

⁴¹ Dawes Commission, *Report*, 1895, pp. 60-61.

and they advised Congress to disregard the treaties and abolish the tribal status without waiting for the Indians' consent. But Congress authorized them to continue the negotiation, and after three years of patient effort they persuaded the first tribe—the Choctaws—to treat with them. During the entire period they published annual reports, appeared before committees of Congress, and made speeches before various public gatherings describing the conditions they found in the Indian Territory and pointing out the necessity for a change.

These statements were naturally accepted by Congress and the country at large as authentic, and are still generally quoted uncritically by even the most careful students of Indian history; but they are no more objective than the manifestoes issued by the average government before entering upon a war of conquest. Unquestionably land hunger was the real motive behind most of the agitation to terminate the tribal régime, and a fairly good case could have been made out in the name of "manifest destiny," or the right of the strong to dispossess seventy thousand easy-going Indians in favor of a million white people who could occupy and develop their rich holdings; but civilized men have seldom been willing to state their motives so baldly. The reports of the Dawes Commission, therefore, are couched in a high moral tone often rising to impassioned eloquence condemning the exploitation of the fullblood Indians under the existing régime and painting glowing descriptions of the deliverance awaiting them.

They portrayed the inconveniences suffered by the white residents, the appalling number of crimes of violence, and the great natural resources of the Indian Territory, which were lying undeveloped. These were the white man's arguments, and in all this they told the truth. But they presented a completely unfair picture of the poor Indian crowded back in the hills and living in abject poverty while the rich leaders of the tribe monopolized the productive land that belonged equally to all. Thirty-nine Choctaws, they said, had collected \$65,000 in coal royalties in 1894, and with great moral indignation they condemned these selfish individuals for thus seizing the

common property. It is evident that in this argument they were attempting to hold the Indians to abstract and ideal rather than comparative standards, for certainly the poor Indian had a better chance to become a prosperous farmer than the landless member of the white man's society; such public attempts to regulate the size of holdings as the Choctaw pasture limitation and the Creek referendum on proposed enclosures went further in preventing land monopoly than any law ever passed by an American state; and a garbled misrepresentation of the Choctaws' system of public control of natural resources came with especially bad grace from the members of a race that in the short space of a century had seen the greatest natural wealth in the possession of any people pass into private and often rapacious hands. They characterized the Indian governments as hopelessly venal. It is true that some Indian politicians were corrupt, but no serious student of the tribal governments familiar with subsequent developments in Oklahoma would contend that they were any more dishonest than the state government that supplanted them, or that official corruption was any more general than it was at that very time in the surrounding states. The Commissioners constantly asserted that only the greedy monopolists resisted the allotment of the communal holdings and that only the dishonest officials opposed the dissolution of the tribal governments. No doubt they were sincere in these misstatements, but the sequel was to show that the tribal leaders finally submitted to the inevitable while the ignorant fullbloods clung to their institutions with a despairing tenacity that refused to accept the logic of events. No such charitable allowance can be made regarding their statements about the freedmen. They condemned the Choctaws for the limited citizenship granted their Negroes, and asserted that the United States was "bound by solemn treaty" to place the Chickasaw freedmen "securely in the enjoyment of their rights as Chickasaw citizens, and cannot with honor ignore the obligation." The Choctaws had been most generous in extending favors to their freedmen beyond the stipulations of the Treaty of 1866, and for thirty years the United States, with or without honor,

had “ignored the obligation” of that treaty to remove these unwelcome residents from the Chickasaw country. This misinformation was apparently obtained from attorneys who were trying to secure for the freedmen equal shares of the tribal property, but for the members of the Dawes Commission, who were paid an adequate salary to devote their entire time to an important public assignment, ignorance in such a matter is as inexcusable as intentional falsehood.⁴²

A speech made by Chairman Dawes at the Lake Mohonk Conference in 1896 furnishes an example of the influence of such irresponsible statements. Seventy-seven years old at the time of his appointment and afflicted by an increasing deafness, which had troubled him during his last months in the Senate,⁴³ he had not been active in the work of the Commission. But apparently he had conferred with the other members or had read their reports, for his description of the hopeless misery of the fullblood Indians crowded out of their heritage sounds strangely different from the ideal conditions which he had found in the Indian Territory eleven years before. Referring, of course, to Judge Parker’s 172 death sentences in 21 years, he said, “One judge who has been there ten or fifteen years has sentenced something like 1,000 men to be hanged for crimes committed in that Territory.” Such vague charges may have satisfied his audience; one must examine the court records to find that he had requested exact statistics and that the court clerk had sent him a carefully compiled list of the death sentences for each year since 1875. In the same speech he also said that the treaties of 1866 had provided for allotment and the creation of a territorial government, but he neglected to state that those provisions had been optional, and that the tribes had overwhelmingly rejected them.⁴⁴

⁴² Dawes Commission, *Report*, 1894, pp. 15-19, 23-53, 82, 88; 1895, pp. 55-63; 1896, pp. 8, 28-30, 38-40; 1899, p. 7.

⁴³ *Dictionary of American Biography*.

⁴⁴ Charles F. Meserve, *The Dawes Commission and the Five Civilized Tribes of the Indian Territory* (Philadelphia, 1896), pp. 41-44; Fort Smith Papers, United States Court and Indian Territory (Phillips Collection, University of Oklahoma), Vol. II, Nos. 1 and 2.

As head of the Commission, Dawes was naturally accepted as an authority on Indian Territory conditions, and these naïve misstatements had a most mischievous effect. The Indian Rights Association sent Charles F. Meserve, the president of Shaw University, to the Indian Territory to investigate. His report, which was a terrible indictment of the Indian régime and an unqualified endorsement of the Dawes Commission, contained this misleading speech in full.⁴⁵

Subject to the clamor of an irresistible white immigration and deserted by public sentiment, the situation of the Indians was indeed hopeless. A letter written to Chief Mayes by the Cherokee delegation in Washington in 1895 presents such an accurate and comprehensive and yet restrained analysis of conditions that it deserves to be quoted at length. The delegates said that the Dawes Commission had just presented the written report of the fruitless negotiations with the Indians, and had also made an oral argument before a joint meeting of the Committee on Territories and the Judiciary Committee of the House of Representatives. The Cherokees also had been invited to appear and make a refutation, which they hoped had made an impression.

"Yet, in the struggle to shield our country from the calamities which the scheme contemplated by the friends of the Dawes report would certainly bring upon it, we had to labor under great disadvantages. It did seem as if the world was about to rise in arms against us. We saw that even the press had been largely subsidized in favor of the dissolution of our government and the invasion of our rights. Before the committee on territories of the House, in order to make the impression on members of Congress that the people of the several tribes were in favor of a territorial government, it was stated by lobbyists sent from Ardmore that there were fifty-five newspapers in Indian Territory, and that all of them excepting five were in favor of a territorial government. But care was taken not to let it be known that all these papers favoring a territorial government had been

⁴⁵ Meserve, *The Dawes Commission*, *loc. cit.* See also *Senate Reports*, 53 Cong., 2 Sess., No. 377.

mounted[?] in the Indian Territory either by intruders or non-citizen white men for the express purpose of subverting the governments of the Indians and turning the country over into the hands of speculators and inferior politicians, who imagine that, in event of such change as they contemplate for the Indian country, they would be importuned to fill the territorial offices, and possibly to represent the dear people in the halls of Congress. Nevertheless, these papers have their influence. They are circulated at Washington as well as throughout the country at large. We met with some of them in the Department of Justice, where officers of the Government appeared to have formed their opinions in reference to our country from the stories told in their columns. . . . While we on our side of the great debate between the United States and the Cherokee Nation, have, for the most part, supinely rested in the belief that all was peace and safety, they with a zeal which knew no pause, have been sapping the very foundations of our government.

“Furthermore, many of the great dailies that a few years ago pleaded so persistently for the liberation of the slaves, are now insisting upon ‘opening’ our country for the settlement and occupancy of the whites. Still further, as an evidence of the influence which the press has against us, even benevolent associations which were organized a few year[s] ago to urge Congress to keep the treaties which had been made with Indian tribes, are now advising the erection of a territorial government in our country and allotment of our lands in violation of our treaties and without our consent. It is worthy of remark, too, as indicating the course of public sentiment in relation to our country, that even the pulpit, which some time ago, was so exuberant of love for the slave has no good word to speak in behalf of the Indians of Indian Territory. No church assembly now passes resolutions against a violation of our treaties, the abrogation of our government and an invasion of our right of property. . . .

“Under these circumstances, we cannot refrain from the indulgence of a reflection. The history of human affairs convinces us that it is always a misfortune to hold the position of a weaker

party. East of the Mississippi we were a happy people. The United States wanted our country there; reluctantly we parted with it, and to this day have not received all that was promised us for it. The Government wanted the six million acres of our strip lands;⁴⁶ we agreed to part with those lands, but the terms of the agreement entered into at Tahlequah and ratified by act of the National Council, were changed by act of Congress without our consent, and yet, after changing those terms to its own liking, the Government has not complied with them. And now, they want us to enter into another agreement—an agreement with the Dawes Commission. But what assurance have we, even if we were disposed to come to an agreement with that Commission, that the terms of such agreement would not be swept aside and others, to which we could never assent, imposed upon us? We think it would be but fair on [the] part of the Government to comply with the agreements already made with our people, before asking us to enter into others of a nature more serious in their character than any hitherto proposed.

“... [With regard to the failure of the United States to carry out a recent pledge to remove the intruders—] The newspapers, too, are interesting themselves in the matter. The question has been raised as to where the intruders can go, if they are to be removed from our country, as if their were no space on the continent outside of our lands, where even millions can find homes, if they only have a desire to do so. . . . We opine, however, that the same energy which they have displayed in their efforts to wrest from us a large portion of our property, will enable them to acquire homes even amongst the most astute of their fellow citizens. But there seems to be a sinister motive for keeping the intruders in our country. It was the contents of the wooden horse emptied inside the walls of Troy, that enabled the Greeks to take that ancient city.

“... [In view of the great potential wealth of the Indian Territory the real motive of the plan is to secure the Indians' property.] It is seen by the keen eye of speculation, that, if our country were revolutionized as contemplated in the scheme

⁴⁶ Lands in Oklahoma Territory opened to white settlement in 1893.

of the Dawes Commission, it would become easy for capitalists and monied men of less degree to soon become the owners of millions. But what about the other side? What about our people, who are, now, the legal owners and sovereigns of these lands? Why the question is [e]asy of answer. Crushed to earth under the hoofs of business greed, they would soon become a homeless throng, more scoffed at and abused than a Coxey's army. No territorial or state legislation can protect the Indian in his rights. Business has no moral consciousness; when a statute comes in its way, it will invoke the aid of a 'higher law' and grasp the Indian's property anyhow.

". . . It is wonderful, too, to see with what unanimity the papers exclaim that '*Carthage must be destroye[d]*.' . . . Even the heavy Quarterlies, such as the *North American Review*, are being operated in the interests of our enemies. . . .

". . . As far as the Indian people are concerned, the present are days to try men's souls; and he who is made of stuff so lofty of nature, as to rise superior to all selfish considerations, and, in face of the popular clamor of the times, boldly speak out in favor of the rights and freedom of the Indians, becomes an object worthy to be venerated by the good and great in all lands."⁴⁷

This report, written hastily by hand, was but an informal letter from the delegates to their friend, the Chief; but it shows an insight strangely lacking in the voluminous publications of white writers and Government officials. It has an even more uncanny accuracy as a prophecy of the future.

⁴⁷ Cherokee Papers, Report of S. W. Gray, Roach Young, and J. F. Thompson to Hon. S. H. Mayes, 1895.

INDEX

- Adair County, 232, 379; land transactions in, 227-9
Adair County Republican, 228
 Adams, John Quincy, 121
 Adams, Samuel, 122
 Adams, Spencer B., 39
 Agency employees, number, 9, 63; characterization of, 201, 278-80, 394.
 See also Federal employees, Spoils, Union Agency
 Agreements, negotiation of, 23-4, 32-5;
 Atoka, 24, 33, 35, 64, 65, 85, 97, 387;
 Seminole, 32, 35, 64, 85, 211; Creek
 33-4, 64, 75, 86-7, 121; Cherokee, 34-5,
 64, 85, 87; Choctaw-Chickasaw Sup-
 plemental, 35, 39, 41, 51, 79-80, 210,
 261; Creek Supplemental, 35, 85, 87,
 88-9, 134, 208-9, 211; restrictions in,
 90; tax exemption in, 164; abrogation
 of, 283-4, 298; interpretation of, 301.
 See also Treaties
 Agricultural land, 6, 11, 16, 95, 98, 114
 Agriculture, Indian, in tribal days, 3,
 14-15; Indian, after allotment, 51,
 127-30, 279, 380-2; training in, 278-9,
 375
 Alabama, 155
 Alexander, M. L., 189, 237
 Allen, J. Weston, 239
 Allen, R. C., 251-3, 256
 Allotment, in East, 5, 42; agitation for,
 by whites, 19-30; Seminole, 48-9;
 Creek, 49-50, 273-6; Cherokee, 50,
 98-9; Choctaw and Chickasaw, 50-1,
 95-8; contests, 52; refusal to accept,
 53-8, 127-30, 152-6; Mississippi Choc-
 taws, 97-8; assistance of real estate
 dealers, 94-9; freedmen, 98; to chil-
 dren, 103-4; feeling of Indians toward,
 127-31; attempt to cancel Creek, 273-6
 Allotments, status of, 36, 90-91
 American Indian Defense Association,
 22-3, 327-30, 336-7, 345, 353
 Appraisal of land, 41, 47-8, 260
 Ardmore, 27, 93, 98, 107, 112, 131, 143,
 149, 204, 244, 269, 286, 319, 392
Ardmore Statesman, 211
 Arkansas, 134, 138, 267
 Arkansas law, 19, 117, 301-2
 Asp, Henry, 141
 Asphalt, 35, 65, 79-82. *See also* coal land
 Atkins, Tommy, 274
 Atoka, 50, 77, 95
 Attorneys, of Choctaw and Chickasaw
 freedmen, 26, 42, 151, 269; of tribes,
 38-41, 63, 100, 112-13, 124, 196, 226,
 232-7, 241, 246, 249, 251-3, 259, 269,
 321, 386, 389; of Mississippi Choc-
 taws, 43-4; of citizenship claimants,
 45, 269; of Four Mothers, 54, 297; of
 individual allottees, 115-16; of guard-
 ians, 191, 242-7, 305 ff.; of claimants
 to oil land, 275-6; of Treaty Rights
 Association, 297-8; of Barnett claim-
 ants, 342, 349; of Exie Fife, 343-4,
 346. *See also* Probate attorneys, Bar
 associations
 Automobiles, 288, 320, 322, 328, 384-5
 Autonomy, 5, 161-2. *See also* Govern-
 ment, tribal; State Government
 Bacone College, 137, 325-6, 341-2, 346-7
 Bailey, Elmer, 342, 347
 Baker, William A., 198-9, 232, 246-7
 Ballinger, Richard A., 264
 Baptists, 7, 137, 325-6, 337-9, 341, 346-7
 Bar associations, 137, 226, 243, 329, 337
 Barnard, Kate, 222, 231, 246, 308, 310,
 311; defense of Indian children,
 184-92; McCurtain County investiga-
 tion, 225-7; hostility to, 238; speech
 at Lake Mohonk, 240; recommenda-
 tions regarding probate attorneys, 248;
 creation of people's lobby, 254-6; re-
 tirement, 257
 Barnes, Cassius M., 141
 Barnett, Jackson, 294, 336, 338-42,
 346-50, 365, 384
 Barnett, Jeanetta, 365
 Barnett, Mrs. Jackson, 338-42, 346-9
 Bartlesville, 87, 111, 131, 206
 Bassett, Mabel, 308

- Benedict, John D., 66-75
 Bennett, Leo E., 55-6
 Bixby, Tams, 31, 81, 96, 119, 122, 140-1, 165, 169, 204
 Board of Indian Commissioners, opposition to tribal régime, 21; opposition to exploitation of Indians, 239-40; attempt to increase Federal supervision, 257; opposition to McMurray contracts, 264; investigation of Wallen, 345; reversal of allotment policy, 353; agitation to extend restrictions, 358; belief in trust estates, 365
 Bokchito, 137
 Bonaparte, Charles J., 99
 Bonaparte Investigation, 99, 118-19, 136
 Bonnin, Gertrude, 327, 329-30, 336-7
 "Boosters," agitation for opening of Indian Territory, 19-20; philosophy, 93-4, 133; speculative schemes, 117-20; agitation for statehood, 159 ff.; excursion train to East, 177. *See also* Removal of restrictions
 Boston Indian Citizenship Committee, 239
 Boycotts against wholesalers, 139-40, 173
 Brandegee, Frank B., 141 ff., 157
 Brosius, S. M., 117, 253, 264
 Brown family, 18
 Brown, John F., 64, 162, 258
 Bruner, Richmond, 340-1
 Bryan County, 308
 Buildings, tribal, 77, 260
 Bureaucratic government, 88, 133
 Burgess family, 384-5
 Burgess, Jeanetta Tiger, 384-5
 Burgess, John, 283
 Burke, Charles S., 239, 322, 323, 340; fight for district agents, 231; fight against guardianship abuses, 234; appointment as Commissioner of Indian Affairs, 320; approval of Indian donations, 326; attempt to increase Federal supervision, 327-30, 337; action in Barnett case, 341-2; opposition to, 343 ff.; favored trust estates, 365; willingness to adjudicate Indian claims, 386
 Business ability of Indians, 93 ff., 126-8
 Byrd, Edward, 86
 Cahill, L. E., 235
 Canard, Roley, 377
 Cannon, Joseph G., 66, 230, 232
 "Carpetbaggers," 133, 168, 195, 220, 252
 Carter, Charles D., 239, 246, 248; ancestry, 148-9; attitude towards restrictions, 149; election to Congress, 169; statements regarding Chickasaw literacy, 176; praise of Kate Barnard, 191; opposition to Thirty Thousand Land Suits, 208, 213; opposition to district agents, 231-2; reaction to Mott Report, 234-5; opposition to McMurray contracts, 264; opposition to citizenship claimants, 270-1; support of competency commission, 282; support of partition law, 302; influence in Indian affairs, 315-16; argument for Federal supervision 323-4, 330; attempt to extend restrictions, 358-9; defeat, 359-60
 Carter County, 211, 327-8
 Carter Seminary, 392
 Cartwright, Wilburn, 359-60, 362-4
 Catoosa, 137
 Census, of 1890, 13, 92-3; of 1900, 92-3; of 1907, 92-3, 133, 170; educational statistics, 277-8; Indians by Department, 354-5, 358; of 1930, 379
 Chambers of Commerce, 101, 134 ff. *See also* Commercial Clubs
 Chandler, O. K., 343
 Chandler, T. A., 320, 323, 324, 343
 Chelsea, 86-7
Cherokee Advocate, 8
Cherokee Phoenix, 8
 Children, plundering of, 103-13. *See also* Guardianships
 Chilocco, 277, 392
 Chitto Harjo, 54-5, 135, 154-6, 290, 294-6
 Choctaw-Chickasaw Protective League, 378
 Choctaw-Chickasaw Treaty Rights Association, 298, 378
 Choctaw County, 200, 272, 380
 Choctaws and Chickasaws, joint ownership, 6, 41-2, 50-1, 270-1, 387-8
 Christianity, 3, 7, 151-6, 325-6. *See also* Churches
 Churches, 137-8, 244, 247, 251, 277, 325-6, 341-2, 369, 392-3. *See* Christianity, Baptists, Methodists, Presbyterians, Roman Catholics
 Cimarron River, oil under, 275
 Citizenship court, 39-41

INDEX

427

- Citizenship, tribal, under Indian régime, 10-12; claimants to, 12, 45-6, 95, 113, 267-71, 388-9. *See also* Non-citizens
- Citizenship, United States, conferred on Indians, 102, 175
- Civil War, 6, 20, 98
- Claims against United States, 82-3, 386-7. *See also* Court of Claims
- Claremore, 374
- Clark, Clarence D., 141 ff., 157, 168
- Clark, William A., 141 ff., 157
- Cleveland, Grover, 23
- Coal, under tribal law, 6, 17, 24-5; under allotment, 32, 35, 79-82, 261-3, 357, 387-8; royalties, 65, 262; tax exemption, 299
- Cobb, T. S., 222-3
- Coffeyville, Kansas, 339, 341
- Coker, Emma, 274-5
- Collier, John, opposition to Indian Office, 345; appointment as Commissioner of Indian Affairs, 353-4; policy regarding trust estates, 366; reversal of allotment policy, 367 ff.; revival of Indian governments, 376-7
- Commercial Clubs, 78, 137 ff., 142-3. *See also* Chambers of Commerce
- Commission to the Five Civilized Tribes, *see* Dawes Commission
- Commissioner of Charities and Corrections, probate work, 184-92, 225-7; legislation regarding, 184, 186-7, 190-1, 237-8, 256; abandonment of probate work, 308-10. *See also* Barnard, Kate; Huson, H.; Matthews, William D.; Stolper, J. H.
- Commissioner to the Five Civilized Tribes, 31, 253-4
- Competency commissions, 281-4, 367
- Congressional delegation, insistence upon accounting by Department, 84, 265, 386; efforts for removal of restrictions, 174, 176-80, 194, 282 ff.; attempt to secure compensation for tax exemption, 174, 298-9, 360; influence upon Indian legislation, 176, 315-16, 391; claims regarding state protection of allottees, 191-2, 312; influence in appointments to Indian service, 193, 240-1, 247, 253-4, 319-24, 346, 352-3; opposition to townsites prosecutions, 204; opposition to Thirty Thousand Land Suits, 206-8, 212-13; elimination of district agents, 231-2; reaction to Mott Report, 234-6, 238-9; attitude toward probate attorneys, 241, 249, 334-5; hostility to M. L. Mott, 250-1; insistence upon division of tribal property, 260-2; opposition to McMurray contracts, 264-5; opposition to reopening tribal rolls, 270; law to deposit money in local banks, 272; fight to protect contested oil allotments, 275; passage of partition law, 302-3; removal of protection from unrestricted allottees, 310; attempt to give Agency final authority, 315; fight against extension of Federal control, 330, 333-4, 336-7; gradual acceptance of restrictions policy, 357-60, 362-4; trust estates, 362, 365-6; opposition to Wheeler-Howard Act, 368-70; policy regarding Oklahoma Indian Welfare Act, 370-3
- Congressional investigations, 80-1, 141 ff., 316, 333-6, 347-8, 355-6, 365, 389, 391
- Constitutional Convention, 166-8, 184, 254, 261
- Coody's Bluff, 87
- Coolidge, Calvin, 344, 348
- Cooperative associations, 372-4
- Cordell, John, 221
- Cosa, George, 150
- Counties, 181, 183
- County judges, attitude toward district agents, 195-6; toward Commissioner of Charities and Corrections, 187; cooperation with Mott, 242; adoption of probate rules, 244-5, 249-50; policy regarding unenrolled heirs, 363. *See also* Fullblood conveyances, Probate attorneys
- "Court citizens," 38-41, 267-71, 388
- Court of Claims, cases decided by, 44, 75, 82-3, 265, 386-7
- Courts, tribal, 10, 65, 166-7; creation of Federal, 18-19, 65; land dealings of officials, 118; probate supervision by Federal, 104-13, 235
- Coweta Realty Company, 252-3
- Craig County, 308
- Cramton, Louis C., 352, 359
- Crazy Snake, *see* Chitto Harjo
- Creager, Charles E., 208, 264
- Creek County, 243, 273-6, 306, 312-13, 327-9
- Creek "towns," 9, 14-15, 372-4, 377

INDEX

- Cruce, Lee, 186-7, 189, 190, 225, 226, 234-5, 244, 256
- Curtis Act, 32-3, 61, 65, 84-5, 86, 98-9, 120, 121
- Curtis, Charles, 230
- Cushing field, 273-6, 286, 294, 304, 312, 338
- Daily Oklahoman*, 222
- Daugherty, Harry M., 319, 321
- Davenport, James S., election to Congress, 170; statement regarding Cherokee literacy, 176; opposition to district agents, 231-2; reaction to Mott Report, 234, 239; opposition to R. C. Allen, 253; defense of spoils system, 243-4
- Davis, Jeff, 267
- Davis, Mollie, 365
- Dawes Commission, 99, 133, 338, 351, 378, 388, 393; creation, 23; members, 23, 31; negotiation with tribes, 23-4, 32-5; reports, 23-30; Cherokee rebuttal of, 27-30; importance of work, 31; making of tribal rolls, 37-47; enrolment of Mississippi Choctaws, 34-44; appraisal of land, 47-8; allotment of land, 48-52; employees, 63; supervision of townsites, 75-6; attitude toward allottees, 99; land dealings of members and employees, 117-20; validity of rolls by, 274-5, 349
- Dawes, Henry L., 21-2, 23, 26-7, 31
- Dawes Severalty Act, 23, 353
- "Dead claims," 113, 211, 213-14
- Delawares, 47
- Deming Investment Company case, 211
- Democrats, 203, 213, 252, 352; election of 1907, 168-70; attitude toward guardianship abuses, 186; resentment over Republican patronage, 230 ff.; spoils after election of 1912, 241, 243-4, 253-4; defeat in 1920, 318-19; peace with Republican administration, 323-4; patronage after 1932, 352
- Department of Justice, 205-17, 224, 346-50, 366-7
- Dewey, 87
- Disney, L. G., 320
- Disney, Wesley E., 363-4
- District agents, 179-80, 192-6, 218-27, 231-2, 246, 284, 287
- Douglas, Clarence B., 141
- Durant, 237, 356
- Durant, Edith, 294
- Durant, W. A., 270, 377
- Dwight, Ben, 369
- Eaton, Walter R., 203-5
- Education, *see* Schools
- Elections, of 1907, 168-70; of 1910, 185-6; of 1912, 213, 240-1, 314; of 1920, 318-19
- Ellis, C. L., 357
- Emigration project, 58-60, 139
- Enabling Act, 81, 165-6
- English, Albert Z., 121-3, 203-5
- English influence, 3, 156
- Enrolment, *see* Rolls
- Equalization, Creek, 273-6
- Euchee Boarding School, 393
- Euchees, 47, 373
- Eufaula, 160-1, 392
- Eufaula Boarding School, 392
- Eufaula Harjo, 54, 57, 71, 128-9, 152-3
- Evans, 137, 163, 291
- Extension of restrictions, 90, 358-64, 370-1
- Fabens, Charles H., 327 ff.
- Fall, Albert B., 320, 341-2, 347
- Farmers, white, as lessees of land dealers, 100, 143, 335
- Farming, *see* Agriculture
- Federal control, *see* Enabling Act, Invested funds, Land sales, Leasing, Money, Oil, Per caput payments, Removal of restrictions, Royalties
- Federal courts, *see* Courts
- Federal employees, land dealings, 117-20. *See also* Agency employees, Dawes Commission, Indian Inspector, Spoils
- Ferris, Scott, election to Congress, 170; reaction to Mott Report, 234, 239; fight against citizenship claimants, 270-1
- Field clerks, 232, 234, 287-8, 338, 363
- Fife, Exie, 336, 343-6
- Finances, tribal, control by Indians, 7, 17-18; Federal control of, 65-6, 72-4, 82-5, 265, 276, 362, 386-7
- Five Civilized Tribes, origin of name, 5
- Five Tribes Act, 64-5, 66, 69, 75, 77, 84, 85, 90, 140-1, 165, 209, 211, 218, 260
- Fixico, Katie, 294
- Folk, Minnie, 274
- Foreman, Grant, 182, 239
- Forest reserve project, 77-9, 96, 260-1
- Forgery, 198-9, 223-4, 226-9, 266, 312, 335-6, 374

INDEX

429

- Foote, Henry S., 39
 Fort Gibson, 123, 137, 295, 316
 Foulke, William Dudley, 124-5
 Four Mothers Society, 54, 142, 151 ff., 202, 295-6
 Francis, D. R., 172
 Frantz, Frank, 141
 Frazier, Lynn J., 356
 Freedmen, under tribal law, 10-11, 25, 26; enrolment, 41-2, 45, 47-8, 267-71; allotments, 70, 98; attitude of whites toward, 126, 134-6; attitude of Indians toward, 128, 135, 149, 151; removal of restrictions, 89-90, 114, 136, 157, 179-80, 211; loss of land, 182, 211, 213-14, 217-24; exploitation of children, 195, 200; assistants to land dealers, 222-3; probate work for, 249, 310; right to purchase Choctaw-Chickasaw land, 260; attempt to obtain oil allotments for, 275-6; oil wealth, 294; guardianships of wealthy, 313-14, 325, 328, 333
 French influence, 3, 156
 Friends of the Indians, 21-30, 239, 255, 353. *See also* American Indian Defense Association, Boston Indian Citizenship Committee, Eastern Association of Indian Affairs, General Federation of Women's Clubs, Indian Rights Association, Lake Mohonk Conference
 Frost, A. N., 214-16, 221
 Frye, Bill, 331
 Frye, E. M., 320, 331-2
 Fullblood conveyances, 180, 245, 256-7, 303-4, 310-11, 327, 334, 336-7, 357, 363-4
 Fullblood settlements, 294-5, 356, 375, 391-2
 Fullbloods, loss of land, 381-2
 Fulton, Elmer L., 170

 Garber, Milton C., 333 ff.
 Garfield, James R., 176-7, 194, 206-7, 219, 281, 284
 Garvin County, 231, 246 ff.
 Gas, *see* Oil
 General Federation of Women's Clubs, 327, 329-30, 336-7, 352
 Georgia, Indians in, 4
 German, W. P. Z., 302
 Gifts, by Indians, 325-6, 338-9, 341-2, 346-50
 Glenn Pool, 87, 200, 286, 294
 Glenn-Tucker family, 269

 Goat case, 211, 213-14
 Goat, John R., 163
 Godfrey, J. H., 213
 Goodall, John A., 228-9, 232
 Goodland, 369, 377
 Gore, Thomas P., 169, 171, 204, 234, 264-5, 270-1, 318-19, 352
 Government, tribal, 3, 7, 9-10, 25, 63-5, 141, 160, 163, 258-9, 270, 331, 377, 389
 Grafting, use of term, 92; justification of, 93-4; attitude of Indians toward, 94; by Indians, 94; during allotment, 94-9, 108; tribal attempts to prevent, 96-7, 101, 103, 112; through leases, 99-102, 357-8; through powers of attorney, 102, 116-17, 215; through illegal deeds, 102-3; by plundering children, 103-13; by purchase of "dead claims," 113; through wills, 113-14; by legal purchase, 114-15; by securing removal of restrictions, 115-17; by allottees, 199-200; public support of, 219
 Gresham, James E., 221-4, 232, 259, 266
 Guardians, laws governing, 104-6, 182-3; during Federal control, 104-13, 235; Indian opposition to, 112-13, 153-4, 330-1; after statehood, 182 ff., 196; in Seminole County, 218-24; in McCurtain County, 225-7; in Adair County, 227-9; Mott Report regarding, 232-6; Garvin County, 246-8; per caput payments to, 271-2; use of oil royalties, 287; of oil-rich adults, 305-8, 327-50, 363-4; difficulty of convicting for embezzlement, 312-14; refusal of Federal officials to turn funds over to, 314, 334, 340-2, 344; rivalries between, 322, 324-5; bill regarding, in 1935, 371-2. *See also* Commissioner of Charities and Corrections, District agents, Probate attorneys, Probate rules
 Guthrie, 139, 167-8, 171

 Hamon, Jake, 204, 264-5, 319, 320, 323
 Hamon, Mrs. Jake, 319-20
 Harding, Warren G., 283, 318-20, 322
 Harrel, John W., 318-19, 344
 Harris, James A., 319, 323, 325
 Harrison, Byron P., 267-71
 Hartshorne, 392
 Haskell, Charles N., 171, 173, 180, 186, 218, 264; opposition to restrictions, 137; part in Sequoyah Convention, 163; recommendations regarding pro-

- tection to minors, 178; recommendations regarding marriage of minors, 197; prosecution in town lot transactions, 203-5; inaugural address, 292
- Haskell, non-reservation boarding school, 277, 392
- Hastings, W. W., Adair County investigation, 228-9; probate work, 232; support of partition law, 302; removal of probate protection for unrestricted allottees, 310; influence upon Indian legislation, 315-16; defeat in 1920, 320; argument for Federal supervision of Indians, 323-4, 330; in guardianship investigation, 333 ff., 354; efforts to protect fullblood heirs, 336-7; opposition to political tenure of Superintendent, 352; efforts to extend restrictions, 362-4; opposition to Wheeler-Howard Act, 368-9; efforts in behalf of Indian day schools, 391
- Haynes, Samuel J., 143
- Healdton field, 286
- Health, 279-80, 357, 374-5. *See also* Hospitals
- Heckman-Owen case, 210
- Henry Kendall College, 137, 204
- Henryetta, 338-9, 342
- Hill, E. P., 196, 226, 232, 236-8, 242
- Hill, Jesse, 203-5
- Hitchcock, Ethan Allen, characterization of policy, 61; appointment of Creek attorney, 63; enforcement of tribal taxes, 66; plan for forest reserve, 77-9, 96; policy regarding coal land, 81, 263; policy regarding tribal funds, 84; order against land transactions of Federal employees, 119; opposition to, 134, 139-40, 156-7, 167-8, 175; retirement from office, 176
- Holdenville, 123, 198-9, 221, 232, 339
- Hoover, Herbert, 352-3
- Hospitals, 279, 339, 374-5. *See also* Health
- Howard, Everett B., 324, 343, 352, 360
- Hughes County, 198
- Hulbutta Micco, 64
- Humanitarians, *see* Friends of the Indians
- Humphrey, Thomas C., 227
- Hurley, Patrick J., 269-70
- Huson, H., 192, 238
- Hutchings, William T., 137, 203-5
- Ickes, Harold L., 366 ff., 370
- Idabel, 225-7, 356
- Illegal conveyances, 98-9, 101-3, 176-7, 179, 217-24. *See also* Thirty Thousand Land Suits
- Indian Inspector, 61-2, 64, 75, 97, 101, 133. *See also* Wright, J. George
- Indian Land and Trust Company, 104-5, 206
- Indian Office, opposed communal tenure, 20; favored removal of restrictions, 176, 281-3; accounting methods, 265; reduced the Indians' holdings, 284-5; approved partition law, 302; favored Indian donations, 326; attempted to remove Indians from local control, 327 ff.; fought with guardians, 338 ff.; attempted to extend restrictions, 358 ff.; new policy, 351 ff., 367 ff.
- Indian Reorganization Act, 368-70
- Indian Rights Association, investigation of tribal régime, 27; charges regarding Federal employees' land dealings, 117-18; protest against repeal of tax exemption, 178; opposition to R. C. Allen, 253; investigation of guardianships, 327, 329-30, 336-7; opposition to tenure of Superintendent, 352
- Indian Territory Commercial League, 139
- Inherited land, 90, 180, 209-11, 218, 224-7, 300-5, 381-2. *See also* "Dead Claims," Fullblood conveyances, Un-enrolled heirs
- Institute for Government Research, 355, 374
- Intermarriage between tribes, 11-12, 301. *See also* Mixed bloods
- Intermarried whites, 11, 39, 46, 47, 88-90, 95, 114, 157, 214, 300
- Intruders, 12, 16, 29
- Invested funds, 7, 83-5, 266, 272, 276
- Investigations, *see* Bonaparte investigation, Friends of the Indians, Congressional investigations
- Isparhecher, 121
- Jackson, Andrew, 4
- Jackson, Jacob B., 59-60, 167
- Jenks, 198
- Johnson, W. B., 112
- Johnson, William, 144
- Johnston, Douglas H., office as Governor, 64; attitude towards restrictions, 103, 140; attitude toward Sequoyah Con-

INDEX

431

- vention, 162-3; death, 258, 377; attitude towards McMurray contracts, 264-5; chairman of Treaty Rights Association, 298
- Jones Academy, 392
- Jones, George, 377
- Jones, William A., 67
- Jones, Wilson, *see* Chitto Harjo
- Jones, Wilson N., 17
- Kansas, 215, 277
- Kansas City, 139-40, 173
- Kansas City Star-Times*, 173
- Kee-too-wahs, 54, 142, 148, 163, 259, 337, 369, 373, 378
- Kelsey, Dana H., 196, 229, 249, 279, 280, 336; appointed Union agent, 62; duties, 193; policy regarding removal of restrictions, 147-8, 284-5; policy towards unrestricted children, 195; consent to dismiss land suits, 214; McCurtain County investigation, 225-7; recommendations regarding probate attorneys, 241, 243; abolition of office, 253-4; withholding of funds from guardians, 314
- Ketch, Frank, 319
- Ketcham, William Henry, 264
- Kidd, Meredith H., 23
- Kidnaping, 197-8, 305
- Kight, H. Tom, 250, 257
- Knox, Philander C., 118
- Konawa, 220, 384
- Lake Mohonk Conference, 21-2, 136, 240
- Land holdings, 6, 51, 76-7, 379-80, 387-8. *See also* Allotments, Appraisal, Survey
- Land sales, 88-91, 138-9, 181-2 and ff., 281-5, 363. *See also* Removal of restrictions, Unallotted land
- Land tenure, 5, 14-17, 20-30, 353-4, 367-74. *See also* Allotments
- Landman, Adrian M., 352, 363, 376, 382-3, 385-6
- Lane, Franklin K., 213, 240, 251-3, 281, 285
- Larrabee, C. F., 207
- Larter Mekko, 56
- Latham, Thomas B., 232
- Law, tribal, 10; Federal during tribal period, 18-19; conflicting, 301-2
- Lawhead, Don, 219-20
- Lawton, 170
- Leasing, agricultural, provisions of agreements, 85; supervision by Agency, 85-6, 194, 232; with contract to sell, 99-102; of children's land, 104-13; by guardians, 105-6; law of 1908, 179, 280-1; Five Tribes Act, 141; attempts to increase Federal control, 212-13, 337; monopoly by lease grafters, 335-6, 357-8; placed under Federal supervision, 374
- Leasing, oil and gas, 86-8, 241, 245-6, 304-5, 314, 383
- Leasing, under tribal law, 12, 16-17, 95
- LeFlore County, 380
- Legislature of Oklahoma, 174, 178-9, 185-7, 221-2, 235-8, 255-7, 261, 305, 311, 319-20, 362, 371-2
- Lena, Hettie, 274-5
- Leslie, Samuel, 129
- Leupp, Francis E., 81, 140
- Lewis, John, 306-9
- Lewis, Mannie, 306-9
- Linebaugh, J. Haden, 213-15, 253
- Linnen, E. B., 73, 279
- Literacy, 4, 8, 277-8
- Little, 220
- Little, John Sebastian, 138
- Livestock, 3, 14-15, 127-8, 285, 380. *See also* Ranching
- Locke, Victor M., 320-3, 330, 340
- Long, Chester I., 141 ff., 155
- Lyon, Cecil A., 263
- Magazines, 22-3, 30, 240
- Mann, James R., 234, 239
- Mansfield, McMurray and Cornish, 39-42, 263
- Manuel, Luther, 294
- Marchie Tiger case, 208-10, 252-3
- Marriage of minors, 197
- Marshall, Benjamin F., 121
- Marshall, John A., 204
- Matthews, William D., 308-10
- Maxey, J. H., 237-8, 247, 255
- Mayes, S. H., 27
- Maytubby, Floyd E., 377
- McAlester, 18, 131, 160, 204, 244, 270, 359
- McAlester Daily News*, 205-6
- McCoy, Nelson H., 107-11
- McCumber Amendment, 90, 98, 102-3, 115, 141, 148, 149, 151, 157, 170, 174, 206, 208-10, 252, 358

- McCurtain County, 200, 224-8, 237, 272, 380
 McCurtain, D. C., 112-13, 196, 226, 232, 270
 McCurtain, Green, 57, 64, 80, 160, 162, 258, 263-5
 McGraw, J. J., 319, 323
 McGugin, Harold, 341
 McGuire, Bird, 141, 170, 177, 193
 McIntosh County, 295-6, 309
 McIntosh, J. T., 237, 247
 McKellop, A. P., 137
 McKennon, Archibald S., 3, 100
 McKeown, Tom D., 224, 362
 McKinley, William, 56
 McLaughlin, James, 269
 McMurray, J. M., 262-5, 297-8
 Merchants, 115-16, 139, 322, 336
 Meritt, Edgar B., 351-2, 367
 Merrick, Edward, 327
 Meserve, Charles F., 27
 Methodists, 7
 Mexico, emigration project to, 58-60, 139
 Millerton, 392
 Minerals, allotted with land, 35, 85. *See also* Coal, Oil
 Mississippi, 4, 267-71, 386
 Mississippi Choctaws, 42-4, 47, 97-8, 113-14, 267-71, 386, 388
 Missouri, 175, 215
 Missouri, Kansas, and Texas Railroad, 52-3, 78, 134, 141
 Mitchell, W. B. M., 231, 246-8
 Mixed bloods, of mixed tribal descent, 11-12, 47, 198, 214; number, 47; Chiefs, 64; agitation to remove restrictions from, 140 ff., 168 ff.; participation in state affairs, 166-7, 254, 270, 291-4, 315, 320-1, 368; law of 1908, 179, 283; loss of land, 181-2, 218-24; land cases dropped, 214-15, probate work for, 249, 310; tax exemption, 300
 Money, individual, 89, 285-90, 322, 362-4, 382-3. For tribal money, *see* Invested funds
 Montgomery, Frank L., 238, 248
 Moorehead, Warren K., 182, 239-40, 251
 Mott, M. L., prosecution of town lot frauds, 124, 203-5; estimate of Indians, 131; defense of restrictions, 150-1; *Marchie Tiger* case, 209; probate work, 232-7, 242-50; loss of position, 250-2, 312; influence on Indian policy, 252, 341; suit to uphold tax exemption, 298; representing claimants to oil land, 275; *Barnett* case, 341
 Mott Report, 232-6, 242, 250, 327, 341
 Motter, E. C., 319-21
 Mudd, Maud Lee, 336, 342-3
 Muldrow, 137
 Mullen-Jansen case, 210-11, 213-14
 Murder, 200
 Murphy, A. P., 63, 124, 141
 Murphy, Hugh L., 340-1
 Murray, William H., 163, 167-8, 247-8
 Murray State School of Agriculture, 392-3
 Murrow, J. S., 106, 131, 145-6
 Muskogee, 131, 134, 143, 182, 208, 209, 215, 237, 238, 240, 251, 272, 306, 312, 315, 320, 325; seat of Union Agency, 9; court established there, 18; opening of Creek land office, 49; influence in negotiating Creek Supplemental Agreement, 101, 134-5; land sales in, 115; town lot frauds, 120-3, 203-5, 387; population, 133; opposition to restrictions, 134-5, 137; visit of Senatorial Committee to, 141; *Sequoyah* Convention, 162-3; *Trans-Mississippi Commercial Congress*, 171-4; celebration over law of 1908, 180; visit of Cato Sells, 243-4, 250; visit of Kate Barnard, 255; visit of House Committee, 316; visit of Hubert Work, 322; Indians driven from, 332-3; *Barnetts* settled in, 339-40; hearings of Senate Committee, 356
 Muskogee County, 200, 313, 316, 327-8
Muskogee Phoenix, 169, 173
Muskogee Times, 137
Muskogee Times-Democrat, 332-3
 National Indian Defense Association, 22, 327, 329, 345, 352, 353
 Negroes, non-citizen, 12-14; population, 13, 133; need of schools, 70; attitude towards restrictions, 151; segregation of, 292; *Snake Uprising*, 295. *See also* Freedmen
 "Newborns," 49-50, 87, 98
 Newspapers, tribal, 8; agitation for white settlement, 8-9, 27-8; agitation for removal of restrictions, 138, 139, 169, 173; attitude regarding *Seminole County* guardianships, 219-22; attitude in *McCurtain County* investigation, 226; attitude in *Adair County* investi-

INDEX

433

- gation, 228-9; silence regarding Indian exploitation, 240; attitude in Garvin County investigation, 247-8; attitude in Wagoner County investigation, 251; hostility to Kate Barnard, 255-6; articles about Indians, 292-4; accounts of Snake Uprising, 295; publishers appeal for pardon for guardian, 313; editorial regarding guardianships, 332-3; opposition to Wheeler-Howard Act, 369, 370, 372
- Nighthawks, 54, 57, 202, 259, 295-7
- Noble, John W., 171
- Non-citizens, during tribal régime, 12-13, 18-20; creation of schools for, 71-4
- Norman, James A., 162
- North Carolina, emigration project to, 139
- Notaries, 226, 312
- O'Hornett, Carl J., 338 ff., 347
- Oil, 6, 81-2, 199, 261, 266, 309, 332, 356-7, 380, 387; allotment contests over, 52; refusal of Snakes to accept, 58; development of the industry, 86-8, 286-7; loss by removal of restrictions, 166 ff.; kidnaping and murder, 198, 200; magnitude of wealth in hands of guardians, 243, 245-6, 250, 286-9, 305-8, 312-13, 322, 363; attempt to cancel Creek allotments, 273-6; effect of wealth on Indians, 286-90, 294, 336-50, 376, 384-6; tax exemption, 299, 360; income and accumulated royalties at present, 382. *See also* Guardians, Leasing, oil and gas
- Okemah, 306, 339
- Okfuskee County, 306-7, 327-8
- Oklahoma, 291-4. *See also* Mixed bloods, Legislature of Oklahoma
- Oklahoma City, 168, 170, 184, 244, 255, 256
- Oklahoma Indian Welfare Act, 372-4
- Oklahoma Society of Indians, 331, 337, 344
- Oklahoma Territory, 6, 20, 139, 141, 160 ff., 291-2, 301-2, 387
- Okmulgee, 123, 137-9, 356, 377, 384
- Okmulgee County, 324, 327-9, 338, 340, 341
- Old Hickory Stomp Ground, 53-6, 295-6
- Orphans, *see* Guardians, Commissioner of Charities and Corrections
- Orr, J. W., 164
- Osages, 316, 323-4, 330
- Oskison, John M., 240
- Owen, Owen, 250
- Owen, Robert L., 20, 204, 213, 237, 240, 315; contract with Mississippi Choctaws, 43-4; secured statement of tribal funds, 84; land dealings, 98-9, 104-5, 206-7, 210, 213, 215-16; opposition to restrictions, 141, 172-6; in Sequoyah Convention, 163; election to Senate, 169, 213; at Trans-Mississippi Congress, 171-3; policy regarding tax exemption, 174-5; appointment to Committee on Indian Affairs, 176; attitude towards illegal conveyances, 177, 206-7; reaction to Mott Report, 234-6; opposition to citizenship claimants, 270-1; opposition to probate attorneys for unrestricted allottees, 310; retirement, 324
- Page, Charles, 274
- Parker, Gabe E., 316, 341; appointment as Superintendent, 254; per caput payments, 272-3, 314; social work and leasing, 280; removal of restrictions, 282-3, 285; state seal, 291; gifts by Indians, 326, 339
- Parker, Isaac C., 19, 26
- Partition proceedings, 302, 310-14, 334, 357, 371-2
- Pauls Valley, 163, 239, 247
- Pauls Valley Free Lance*, 248
- Penrose, Boies, 230
- "People's Lobby," 255, 257
- Per caput payments, 82-3, 266-73
- Perryman family, 16
- Philanthropists, *see* Friends of the Indians
- Pine, W. B., hostility to Indian Office, 324, 346-9, charges against Burke presented to, 344; supported political tenure of Superintendent, 352; on Senatorial investigating committee, 356
- Pitman, Lucinda, 294
- Pittsburg County, 238
- Platt, Orville Hitchcock, 121
- Political patronage, *see* Spoils system
- Ponca City, 344
- Population, *see* Census
- Porter, Osway, 129, 154
- Porter, Pleasant, 64, 157, 377; description of Creek life, 13-15; pasture, 16, 121-3; reasons for surrender to United

- States, 33-4; reported trouble with Snakes, 55; nomination of Creek attorney, 63; analysis of Indian grafters, 94; attempts to cancel illegal conveyances, 103; dealings in town lots, 121-3, 203; attitude toward freedmen, 136; analysis of Indian problem, 131-2, 146-7; opinion regarding statehood, 147, 167; Sequoyah Convention, 162-3; opposition to removal of restrictions, 170; death, 170, 258
- Posey, Alexander, 137
- Prairie Oil and Gas Company, 254
- Presbyterians, 7-8, 137, 204, 326, 392-3
- Press, *see* Magazines, Newspapers
- Probate attorneys, creation of, 241-50; spoils system in appointing, 241, 246-8, 254, 321, 334-5, 352; work for unrestricted allottees, 249, 310; recognition by courts, 310, 334, 357, 364; inactivity, 334-5, 355; serving as guardians, 343; attempt to protect unenrolled heirs, 361, 363
- Probate courts, 179-80, 182 ff. *See also* Guardians
- Probate rules, 244-50, 311, 364
- Prohibition, 160-1, 166, 169, 272
- Property, tribal, 387-8. *See also* Invested funds, Land holdings
- Pryor Creek, 116-17
- Public buildings, sale of, 260
- Pushmataha, 292
- Pushmataha County, 272, 380
- Quakers, 353
- Quapaw Agency, 343, 390
- Railroads, 11. *See also* Missouri, Kansas, and Texas Railroad
- Ramona, 117
- Ranching, 15-17, 99. *See also* Livestock
- Raymond, Charles W., 104-5
- Rector, Sarah, 294
- Red Fork, 86-7
- Red Tape, *see* Bureaucratic government
- Redd, D. F., 68
- Relief, 375-6
- Removal from East, 4-5, 42, 155
- Removal of restrictions, from townsites, 76; under laws and agreements, 88-90, 114-15; act of 1904, 89, 138-9, 151, 211; by Department, 115-16, 194, 281-6, 367; by special laws, 116-17; attitude of various classes toward, 134-51; agitation for, 136-40, 314-15; statehood in terms of, 164-70, 177-8; attitude of Indians toward, 165, 170-1, 178, 283; Trans-Mississippi Commercial Congress, 173-4; attitude of Federal officials, 176-7; act of 1908, 176-80, 216, 281-6; requests by Oklahoma Congressmen, 194. *See also* Restrictions
- Republicans, 133, 138, 203-4, 243-4, 250, 254, 344, 352; spoils of territorial offices, 62-3, 66-7; election of 1907, 168-70; spoils after statehood, 193, 230 ff.; ignoring of guardianship abuses, 186; battle for spoils after victory of 1920, 318-23
- Restrictions, proposed by Dawes Commission, 32, 34; provisions of agreements, 36, 90-1; on land purchased in lieu of allotment, 50, 212-13; act of 1904, 89-90; status in 1907, 90-1; Indian attitude toward, 103, 140, 143, 148-51, 361; expiration of, 114-15, attitude of Senatorial committee toward, 157; extension of, 358-64; on trust estates, 366; bill in Congress regarding, 370-2. *See also* McCumber Amendment, Removal of restrictions
- Revenues, tribal, *see* Finances, tribal; Royalties, coal; Taxes, tribal
- Rhoads, Charles J., 352-3, 362, 365
- Rich Indians, during tribal period, 17; after allotment, *see* Oil
- Richards, Eastman, 294, 304, 365
- Roach, Sid C., 333 ff.
- Robertson, Alice M., 320, 323
- Robertson, J. B. A., 313
- Rogers County, 250, 309
- Rogers, W. C., 64, 162, 258
- Rogers, Will, Cherokee humorist, 293
- Rogers, Will, member of Congress, 370
- Rolls, authorized by Congress, 32; provisions of agreements regarding, 36-7; "newborns," 36-8, 46-7; not a census, 37, 354; tribal, 37-8; making of by Dawes Commission, 37-47; conclusive as to quantum of blood, 90; completion of, 267; agitation to reopen, 267-71, 388-9; integrity of upheld by courts, 273-6, 349. *See also* Unenrolled children
- Roman Catholics, 392-3
- Roosevelt, Franklin D., 352-3, 376
- Roosevelt, Theodore, 39, 63, 162, 170, 176, 177, 193, 203, 263

INDEX

435

- Royalties, coal, during tribal period, 17;
under Federal control, 81-2, 262, 388;
set apart for education, 84. *See also*
Coal
- Royalties, oil, amount, 87-8, 286-7, 383;
control by Department, 88, 285-90,
304-5, 364-5; from contested allot-
ments, 274-5
- Sallisaw, 331
- Sand Springs, 274
- Sapulpa, 123, 342, 392
- Scattergood, Joseph Henry, 352-3
- Schools, tribal, 3, 7-8, 67-8, 277, 381; ab-
sence of for non-citizens, 18; pro-
visions in agreements regarding, 35;
under Federal control, 66-75, 276-8,
355-6, 368, 381-2, 390-3
- Scott, J. H., 137
- Seawell, William L., 306-7
- Sells, Cato, appointment, 240-1; probate
work, 243-50, 259, 310-12; caution re-
garding local politics, 249-50, 256;
attitude toward spoilsmen, 253-4; ap-
proval of Indian gifts, 338-9, 341;
policy regarding removal of restric-
tions, 281-5
- Seminole, 219-20
- Seminole Capital*, 219
- Seminole County, 181-2, 215, 217-24, 272
- Seminole County News*, 219
- Seminole Indian Protective Association,
357
- Seminole oil field, 286
- Semple, W. M. F., 232
- Sequoyah, 4, 8, 292
- Sequoyah Convention, 162-4
- Sequoyah Orphan Training School, 392
- Severs, Frederick B., 121-3, 203-5
- Shaw, Walter W., 250
- Shoenfelt, J. Blair, 62, 141
- Simms, William, 343
- Smith, Redbird, 45, 54, 153
- Smith, Thomas P., 101, 134-5, 240
- Snakes, resistance to allotment, 53-8, 151-
6, 174, 295-7; "Uprisings," 54, 57,
295; oil wealth, 87, 98, 286, 294, 338;
opposition to removal of restrictions,
170; opposition to state control, 202
- Sniffen, Matthew K., 327, 329-30, 336-7
- Snyder, Homer P., 333 ff.
- Social work, 278-80, 288, 355, 357, 375
- Socialists, condemnation of guardianship
abuses, 186
- South America, emigration project to,
58-60
- Spanish influence, 3, 156
- Special Census Bulletin*, 20
- Spoils, by Northern Republicans, 62-3,
66-7, 121, 230 ff.; local desire for, 133,
193-4, 230 ff.; in awarding guardian-
ships, 183, 306, 324-35; by local Demo-
crats, 240-4, 246-8, 253-4; fight for by
local Republicans, 319-23, 334-5, 344-
6; importance of in Indian policy, 394.
See also District agents, Probate at-
torneys, Superintendent for Five Civil-
ized Tribes
- St. Louis, 139
- Standard-Sentinel*, 228
- State Government, guarantees against, 4-
5, 161-2; Murrow's warning against,
145-6; attitude of Indians toward, 147,
166-7; agitation for by whites, 159 ff.;
Indians' project for separate, 160-3;
Enabling Act, 165-6; inauguration of,
166-70, 291-2
- State of Oklahoma, *see* Oklahoma
- "State of Sequoyah," 162-4
- States' Rights, 157, 168, 173-4, 358, 362.
See also Bureaucratic government, Dis-
trict agents, Guardians, Probate at-
torneys, Removal of restrictions
- Stephens County, 327-8
- Stephens, John H., 141, 208, 234, 267
- Stilwell, 228, 373
- Stolper, J. H., appointment, 186; inter-
vention in orphan cases, 187 ff., 195;
characterization of, 188-9; claims made
to Congress, 191-2, 231; McCurtain
County investigation, 225-7; resigna-
tion of, 237-8
- Sulphur, 137
- Superintendent for the Five Civilized
Tribes, creation of office, 254; political
tenure of, 254, 315, 320-3, 344-6, 351-
2; final authority to, 315; notice to in
land suits, 337. *See also* Parker, Gabe
E.; Locke, Victor M.; Wallen, Shade;
Landman, Adrian M.
- Supreme Court, Oklahoma, wills, 114;
guardian's sale, 117; marriage of mi-
nors, 197; Goat case, 211; Deming
Investment Company case, 211; Mar-
chie Tiger case, 209; deeds validating
illegal conveyances, 216; Seminole land
cases, 221-3; probate rules, 246, 250,
257; conflicting land laws, 300-2; par-

INDEX

- tition, 303; rights of probate attorneys, 310; fullblood conveyances, 310-11; disbarment of attorneys, 313-14
- Supreme Court, United States, 224, 276; right of Dawes Commission to make rolls, 36; Cherokee citizenship laws, 46; enrolment of "newborns," 47; Cherokee freedmen, 47; railroad land grant, 53; wills, 114; marriage of minors, 197; McCumber Amendment, 208-10; Heckman-Owen case, 210; Mullen-Jansen case, 210-11; Goat case, 211; Deming Investment Company case, 211; Creek allotment cases, 274-5; mining tax and oil tax, 299; conflicting land laws, 200-2; fullblood heirs, 304; unenrolled heirs, 305
- Survey, of land, 32
- Surveys, of Indians, questionnaire regarding unrestricted Indians, 284, 367; regarding general living conditions, 354-5; by institute for Government Research, 355, 374; influence of, 358; enumeration by Agency, 379; by Civil Works Administration, 380-2
- Swank, Fletcher B., 360, 363
- Taft, William H., 204, 264
- Tahlequah, 374, 392
- Talihina, 279, 374
- Tax exemption, on land purchased for Indians, 50, 212, 364; tuition because of, 74, 277, 298-9, 390; provisions of agreements, 164; loss to the state, 165, 277, 298-300, 317, 393; Owen's opinion regarding, 174-5; attempt of Indians to uphold, 178, 297-8; protest by Indian Rights Association against repeal, 178; law of 1908, 178-80, 298; upheld by Supreme Court, 298; interpretation of, 299-300; feeling of whites toward, 300, 335; law of 1928, 360; law of 1933, 364; extent of at present, 393
- Taxes, tribal, 18, 66, 139
- Teller, Henry M., 131 ff., 145-6, 157
- Territorial government, guarantees against, 5; clamor for, 19-20; Indian opposition to, 28. *See also* State government
- Territory of Oklahoma, *see* Oklahoma Territory
- Texas, 138, 141, 208, 241, 267
- Thirty Thousand Land Suits, 205-17, 221, 223-4, 253
- Thlocco, Barney, 274
- Thomas, Elmer, attitude in Barnett case, 347; survey of Oklahoma Indians, 356; defeat of restriction bill, 362; advocacy of trust estates, 356-66; opposition to Wheeler-Howard Act, 370; introduction of Oklahoma Indian Welfare Act, 370
- Thomas, John R., 56, 136
- Thompson, Joseph B., 239, 247
- Tiger, Marchie, 208
- Tiger, Moty, appointment as Chief, 170; opposition to removal of restrictions, 170-1, 178; speech at Trans-Mississippi Congress, 172; support of M. L. Mott, 251; opposition to R. C. Allen, 253
- Timber, extent of, 6; under Choctaw law, 17; appraisal, 48; forest reserve project, 78-9, 96, 260-1; loss of by allottees, 96, 105-6, 196, 224-7, 379-80; attempt to regulate sales, 211-13
- Tishomingo, 50, 95-6
- Toby, Willis F., 153-4
- Town lot frauds, *see* Townsites
- Town lots, now owned by Indians, 387-8
- "Towns," Creek, *see* Creek "towns"
- Towns, under tribal law, 18; incorporation and public improvements, 76. *See also* Townsites
- Townsend, Hosea, 114
- Townsites, reservation of, 32, 48; platting and sale, 75-6; on allotted land, 76, 116, 119; per caput distribution of proceeds, 83, 97, 266-7; frauds, 120-5, 203-5
- Tracoma, 279-80
- "Trail of Tears," 292. *See also* Removal
- Trans-Mississippi Commercial Congress, 171-4
- Treaties, of land cession, 4-5, 7, 32, 388; of Removal, 5, 152-6; Indian devotion to, 5, 9, 46, 55-6, 129-30, 151-6; of 1866, 6, 10, 25-7, 41-2, 135, 291; decision of the United States to abrogate, 9, 19-20, 23-4, 32-3. *See also* Agreements
- Tribal governments, *see* Government, tribal
- Trust estates, created by Department, 325-6, 341-2, 365; invalidation of Barnett trust, 346-50; bill to authorize,

INDEX

437

- 362; law authorizing, 365-6; suits to cancel, 366-7
- Tuberculosis, 279-80. *See also* Hospitals
- Tuition, *see* Tax exemption
- Tulsa, 177, 200, 313, 319, 324, 364; oil development, 87; town lot frauds, 123-5, 203-5, 387; population, 133; Senatorial hearing in, 141, 154-6; Republican State Convention at, 168-9; meeting of Indians in, 330-1
- Tulsa County, 199, 314
- Turner, Clarence W., 16, 121-3, 203-5
- Tuttle, Dwight W., 121
- Unallotted land, 51, 76-9, 260-2, 387-8
- Unenrolled children, 180, 292-3, 305, 361-2, 364
- Union agency, 9, 62-3, 133, 201. *See also* Superintendent for the Five Civilized Tribes; Shoenfelt, J. Blair; Kelsey, Dana H.
- Unrestricted allottees, *see* Freedmen, Inter-married whites, Mixed bloods
- Valentine, Robert G., 281, 285
- Vardaman, James K., 268-71
- Vaux, George, Jr., 239
- Veasey, James A., 111
- Vinita, 37, 131, 137, 164, 309, 320
- Wagoner, 123, 188, 319
- Wagoner County, 235, 250-1, 313, 325
- Wallace, W. M., 380
- Wallace, W. R., 246-8, 256
- Wallen Report, 327-30, 344
- Wallen, Shade, 320, 324; appointment as Superintendent, 322; submission of report, 328-9; Exie Fife case, 343-4; suspension, 345-6
- Wealthy Indians, *see* Oil, Rich Indians
- Weaver, Claude, 247
- Weaver, Walter L., 39
- Welch, 138
- West, Charles, 218-22, 247
- Wetumka, 123
- Wewoka, 48-9, 182, 210-11, 217-24, 356
- Wewoka Democrat*, 218-20
- Wheeler, Burton K., 356, 385
- Wheeler-Howard Act, 368-70
- Wheelock Academy, 392
- White immigration, 11-14. *See also* Inter-married whites, Intruders, Non-citizens
- Wholesale dealers, *see* Boycotts
- Wilbur, Ray Lyman, 361
- Williams, John Sharp, 43-4, 268-71
- Williams, Robert L., 247, 256, 349
- Wills, 113-14, 180, 200-1, 245, 371-2
- Wilson, Enos, 384
- Wilson, Woodrow, 213, 215, 234, 240-1, 248, 275-6, 281, 283, 319
- Winton, Charles F., 43-4
- Wisdom, Dew M., 137
- Wise, John R., 282-4
- Work, Hubert, 322, 344, 345
- Wright, J. George, Commissioner to the Five Civilized Tribes, 31, 193, 263; Indian Inspector, 61, 119; supervision of tribal governments, 64; approval of Muskogee appraisal, 122; recommendations regarding restrictions, 140-1, 284-5; investigation of land sales, 116-17; report of illegal conveyances, 176; recommendations regarding probate attorneys, 241; abolition of office, 253; sale of tribal property, 260
- Wyand, J. E., 238, 255
- Zevely, J. W., 97, 101, 141