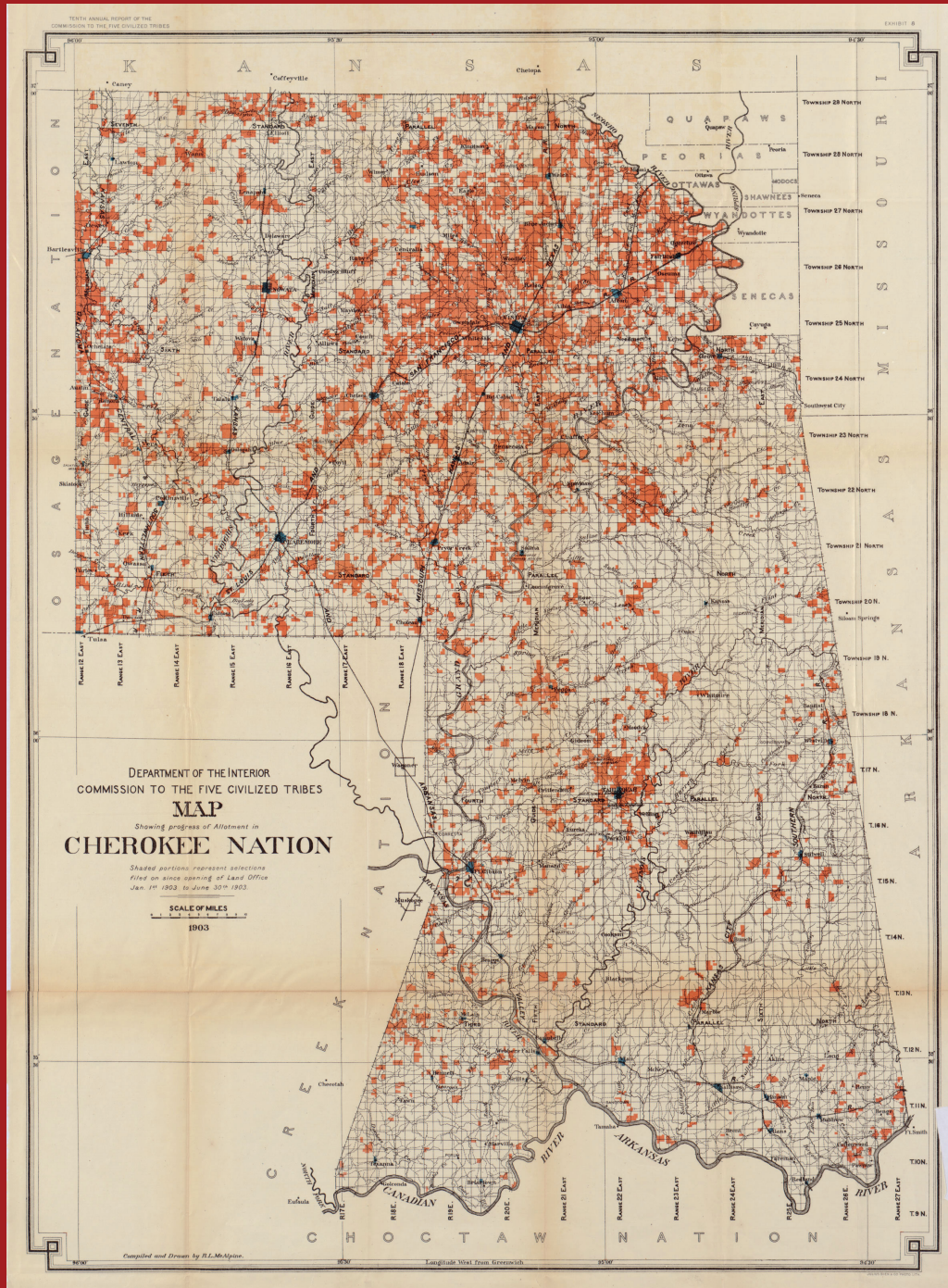


# Dawes to Burke to McGirt: Tribal Sovereignty, 1887–2020



Commission to the Five Civilized Tribes, Tenth Annual Report, Department of the Interior, Washington DC, 1903 (Library of Congress)

# Dawes to Burke to McGirt: Tribal Sovereignty, 1887–2020

by Rebecca Luebker

## UNIT OVERVIEW

This unit is one of the Gilder Lehrman Institute’s Teaching Literacy through History™ resources, designed to align with the Common Core State Standards. These units were developed to enable students to understand, summarize, and evaluate original materials of historical significance. Through a step-by-step process, students will acquire the skills to analyze, assess, and develop knowledgeable and well-reasoned viewpoints on primary sources.

As a result of the Dawes and Burke Acts, tribal land in Indian Country (deeded to American Indian tribes displaced from the southeastern United States in the 1830s) dwindled from 138 million acres in 1887 to 48 million acres by 1934 through the allotment system. Many US officials have been of the opinion that the allotment era put an end to the reservation system in some states, but in the *McGirt v. Oklahoma* (2020) decision, Justice Neil Gorsuch, who authored the majority opinion, stated that only the US Congress could terminate a reservation and that allotment policy never terminated reservations or treaty rights granted to Native nations. In these three lessons, students will examine primary source documents to understand the impact of the allotment system on Native American peoples and tribal sovereignty and demonstrate their comprehension through class discussions, the completion of activity sheets, and responses to exit ticket questions.

**INTENDED GRADE LEVELS:** 9–12

**NUMBER OF CLASSES:** 4

## OBJECTIVES

Students will be able to

- Use primary source documents and maps to understand the implications of the US allotment policies for Cherokee Nation citizens
- Identify the major claims in the Burke Act of 1906 using textual evidence
- Understand the consequences of the Burke Act of 1906 on Indigenous peoples
- Assess the effects of the Supreme Court decision in *McGirt v. Oklahoma* on tribal citizens today

## ESSENTIAL QUESTIONS FOR THE UNIT

- What was the impact of the US allotment policy on tribal nations?
- How is the allotment era still impacting Indian Country today?

## COMMON CORE STANDARDS

CCSS.ELA-LITERACY.RH.9-10.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

CCSS.ELA-LITERACY.RH.9-10.4: Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.

CCSS.ELA-LITERACY.RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.3: Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

## LESSON 1

### ALLOTMENT and the DAWES ACT

#### OVERVIEW

This lesson focuses on the Dawes Act of 1887 and the activity of the Dawes Commission established in 1893. The Dawes Commission set out to shift land in Indian Country from tribal ownership to individual ownership. Students will use land deeds and a map as well as excerpts from the Dawes Act of 1887 and the Cherokee Allotment Act of 1903 to investigate the impact of the Dawes Act on tribal sovereignty in the early twentieth century.

#### OBJECTIVE

Students will be able to

- Use primary source documents and maps to understand the implications of the US allotment policies for Cherokee Nation citizens

#### HISTORICAL BACKGROUND

##### The Historical Roots of Indigenous Sovereignty in the United States

by Kiara Vigil (Dakota/Apache Heritage), Amherst College

Tribal sovereignty may be the most important way of teaching about Native American history in the United States, perhaps because it helps underscore that Indigenous peoples regard themselves less in terms of race and ethnicity (although many also do) and more in terms of citizenship as a political category for identity. This being said, to understand what sovereignty means in terms of Indigenous definitions and how it has been defined and used by the US Supreme Court opens up a larger conversation that requires specific case studies and cultural contexts in order to fully grasp the ways in which Native peoples' sovereignty has been questioned, challenged, and at times recognized throughout American history.

Individual tribal nations have their own definitions of sovereignty, many of which are overlapping. Throughout the history of Indigenous struggle and resistance—against the British, French, and Spanish empires as well as the US colonization that followed the Revolutionary War—Native peoples contended with colonizers' repeated failures to adequately understand and recognize Indigenous forms of political organization. The Doctrine of Discovery that had guided many European interpretations of the world divided it into those people who were believed to be civilized because they were Christian and those who were not. Thus, those who were “savage,” and therefore not able to properly own or govern land, were the Indigenous people who did not convert to Christianity. This cultural logic sought to delegitimize any Indigenous claims to land ownership or occupancy, whether defined by the term sovereignty or not.

Moreover, this worldview set the stage for settler colonialism which, as scholar Patrick Wolfe and others have shown, required the “elimination of the Native” in order to fully take over all that was once theirs. Framed within US jurisprudence, examples from the Cherokee cases of the early nineteenth century seemed to acknowledge a uniquely American idea of “diminished sovereignty” (an oxymoron at best, and dangerous legal precedent at worst). In *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) the legal and political status of the Cherokee Nation as a sovereign state was rejected by the Supreme Court. The Cherokee argued that they were a distinct political society managing their own affairs and that the federal government negotiated treaties with them, which was evidence that they were regarded as sovereign: a foreign state like France or Great Britain. This notion was rejected by the Court and instead the Cherokee and other Native American tribes were deemed “domestic dependent nations.” This shifted the legal landscape for how tribal sovereignty would be interpreted going forward.

In 1904, the case of *Lone Wolf v. Hitchcock* set another precedent that further limited both the power of Native nations and the rights of Indigenous people as individuals. This case further weakened both tribal sovereignty and the sovereign rights of the individual by declaring that the “plenary power” of the US Congress gave it the authority to abrogate treaty obligations between the US and Native American tribes unilaterally. In essence, this decision further eroded any notion of diminished sovereignty that had been present in the Cherokee Cases. With *Lone Wolf* the Court did not recognize treaties as binding contracts between sovereign entities, and instead gave Congress the ultimate authority to void treaty obligations with Native American tribes based on a paternalistic view of the United States’ relationship to Native nations as wards of the state: “From their very weakness and helplessness, so largely due to the course of the dealing of the Federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power” (*Lone Wolf v. Hitchcock* 187 U.S. 553 [1903]).

The Court’s decision in *Lone Wolf* presumed the inferiority of Native Americans as a race, culture, and religion, because they were not Christian, bringing us back to the ideology of the Doctrine of Discovery, which had enabled European monarchies to colonize lands outside of Europe. In 1494, for example, the Treaty of Tordesillas declared that only non-Christian lands could be colonized under the Doctrine of Discovery. This concept remained a part of public international law, embraced by various justices sitting on the US Supreme Court from the nineteenth century up until today. In 2005, in *City of Sherrill v. Oneida Indian Nation of New York*, Justice Ruth Bader Ginsburg wrote the majority opinion, which included a footnote to a 1985 case that cited the Doctrine of Discovery: “fee title to the lands occupied by Indians when the colonists arrived became vested in the sovereign—first the discovering European nation and later the original States and the United States” (544 US 197 [2005]). Such an opinion, and the language of the final ruling, limited the rights of the Oneida Nation and argued that the proper way for the Oneida Nation to reassert its immunity over re-acquired lands was to place that land in US trust under the Department of the Interior, as authorized by the Indian Reorganization Act of 1934. This recommendation upheld US sovereignty rather than that of the Oneida.

*Kiara M. Vigil (Dakota/Apache heritage) is an associate professor of American studies at Amherst College. She is the author of Indigenous Intellectuals: Sovereignty, Citizenship, and the American Imagination, 1880–1930 (2015) and Natives in Transit: Indian Entertainment, Urban Life, and Activism (forthcoming).*

## MATERIALS

- Teacher’s Resource: The Margaret Polson Family Papers and the Evidence in Land Deeds
- Cherokee Nation Deed, n.d., The Margaret Polson Family Papers, Private Collection
- Department of the Interior Deed, 1907, The Margaret Polson Family Papers, Private Collection
- Excerpts from Sec. 1 and 2 of the Dawes Act, 1887, from *Our Documents: 100 Milestone Documents from the National Archives*, ourdocuments.gov/doc.php?flash=false&doc=50, with Important Phrases activity sheet
- “Map Showing Progress of Allotment in Cherokee Nation” by R. L. McAlpine and Commission to the Five Civilized Tribes, Tenth Annual Report, Department of the Interior, Washington DC, 1903, Library of Congress Geography and Map Division, loc.gov/item/2007627493/, with Critical Thinking Questions activity sheet
- Exit Ticket 1: The Dawes Act and the Allotment of Cherokee Lands

## PROCEDURE

- **Opening of the Lesson: Land Deeds from the Margaret Polson Family Papers**
  - In small groups no larger than four, students compare the two documents from the Margaret Polson Family Papers, the Cherokee Nation deed and the Department of the Interior deed. Their mission is to identify the connection between the two documents.
  - Share out each group's viewpoint on how the two documents connect. Do not reveal the actual connection until the Closure at the end of the lesson.
- **Direct Instruction: The Dawes Act and 1903 Map Showing the Progress of Allotment**
  - Distribute the Dawes Act and Important Phrases activity sheet.
  - "Share read" the excerpts from the Dawes Act.
    - Share reading is a method that is useful for students approaching complex text. Have the students follow along silently while you begin reading aloud, modeling appropriate rhythm and inflection. Ask the class to join in with the reading after a few sentences while you continue to serve as the model for the class. This technique will support struggling readers as well as English language learners (ELL).
  - Students identify three important phrases from the text of the introduction of the Dawes Act and why they chose those phrases.
    - You may choose whether to have the students work independently or divide the class into pairs or small groups of three or four. Group work will allow the students to negotiate responses.
    - Share out the responses with the whole class.
  - Project the [1903 Map Showing the Progress of Allotment](#) and distribute the map with the activity sheet.
    - In small groups, students will conjecture how the map connects to the Dawes Act. Within their groups, they should discuss, negotiate, and debate their responses to the questions.
  - Share out and discuss with the class the groups' responses.
    - Note: The Dawes Commission of the Five Tribes included the Choctaw, Chickasaw, Muscogee (Creek), Seminole, and Cherokee Nations. Allotment ended with the Indian Reorganization Act of 1934.
- **Closure: Connection to the Land Deeds**
  - Refer back to the two deeds shared at the beginning of the class, the Cherokee Nation deed and the Department of the Interior deed.
  - Discuss how the new knowledge of the Dawes Act and the analysis of the 1903 map could help solve the mystery of how the two deeds relate to each other.
    - Note: Draw students' attention to the fact that the issuer of the earlier deed was the Cherokee Nation. Prior to the Dawes Commission, tribal nations determined land ownership. In some cases, Cherokee citizens owned more than a thousand acres.
  - Reveal the history behind the two documents based on the Teacher's Resource: The Margaret Polson Family Papers. You may choose to read the background to the class or summarize the information for the students.
  - Exit Ticket 1: Students will summarize how the Dawes Act and allotment affected individual families, responding to the question
    - How did the Dawes Act personally affect individual families like Mary Hardy's?

## LESSON 2

### THE BURKE ACT

#### OVERVIEW

This lesson focuses on the Burke Act of 1906, which allowed the Secretary of the Interior to determine whether individual American Indians were “competent and capable,” and could therefore hold onto their land allotment. Through this measure and others in the act, much of the land originally deeded to the Five Tribes in Indian Country reverted to the US government and could be sold to individual White Americans and to corporations like the railroads and oil industry. Students will read, analyze, and interpret an excerpt from the Burke Act and three notices from newspapers to determine how the Burke Act impacted tribal sovereignty.

#### OBJECTIVES

Students will be able to

- Identify the major claims in the Burke Act of 1906 using textual evidence
- Understand the consequences of the Burke Act of 1906 for Indigenous peoples

#### MATERIALS

- Excerpt from the Burke Act of 1906, Statutes at Large, 34 Stat. 182, Law Library of Congress, [tile.loc.gov/storage-services/service/l1/lsl/l1sl-c59/l1sl-c59.pdf](http://tile.loc.gov/storage-services/service/l1/lsl/l1sl-c59/l1sl-c59.pdf)
- Oklahoma Newspaper Notices from 1914, 1916, and 1917 with Critical Thinking Questions activity sheet
  - “Indian Land for Sale; Red Moon Agency, *Hammon (OK) Advocate*, June 25, 1914, Oklahoma Historical Society via Gateway to Oklahoma History, [gateway.okhistory.org/ark:/67531/metadc1777275/](http://gateway.okhistory.org/ark:/67531/metadc1777275/)
  - “Legal Publications,” *Geary (OK) Journal*, June 8, 1916, Oklahoma Historical Society via Gateway to Oklahoma History, <https://gateway.okhistory.org/ark:/67531/metadc183750/>
  - “Fitzpatrick’s Indian Title Chart” and “Sale of Timber Lands and Other Unallotted Lands,” *Harlow’s Weekly* (Oklahoma City, OK), September 26, 1917 (Oklahoma History Society via Gateway to Oklahoma History)
- Exit Ticket 2: The Burke Act

#### PROCEDURE

- Opening of the Lesson: The Burke Act of 1906
  - Distribute the Burke Act with the Critical Thinking Questions. Share read the Burke Act of 1906 as described in Lesson 1.
  - Students in pairs or small groups will answer the following three questions using textual evidence from the Burke Act.
    - Who was power designated to in the Burke Act?
    - What powers were designated in the Burke Act?

- The Burke Act did not define “competent and capable.” How do you think the Secretary of the Interior deemed someone “competent and capable of managing his or her affairs”?
  - Note: This question does not require textual evidence. It requires students to discuss, negotiate, and conjecture about the meaning of “competent and capable” and how it could be interpreted.
- After student groups share their answers, lead a discussion about the real purpose of determining someone to be “competent and capable.”
  - Note: Oftentimes a blood quantum formula was used to determine competency. Someone who was considered less than one-half Native was more likely to be deemed competent, while those considered to be one-half to full-blood or indigent or orphaned were more likely to be deemed non-competent.
- **Direct Instruction: Newspaper Evidence of the Burke Act**
  - Distribute as a set the three notices about land sales from Oklahoma newspapers and the Critical Thinking Questions activity sheets.
  - In small groups of up to four, students analyze the three documents.
  - In a whole-class discussion, the small groups share out and discuss their answers to the questions.
- **Closure: The Most Powerful Document**
  - Distribute Exit Ticket 2: The Burke Act. The students respond to the question and support their opinion with evidence from the text:
    - Which of the three notices from Oklahoma newspapers do you think is the most powerful regarding the negative effects of the Burke Act on Native Americans in Oklahoma? Cite three phrases from the documents to support your opinion.



## LESSON 3

### *McGIRT V. OKLAHOMA*

#### OVERVIEW

The lesson focuses on the 2020 US Supreme Court decision in *McGirt v. Oklahoma*, in which the Supreme Court determined that the Muscogee (Creek) Nation, rather than the State of Oklahoma, had jurisdiction over a crime committed on reservation land. Students will analyze the majority and dissenting opinions in the case and evaluate the strength of the justices' arguments.

#### OBJECTIVES

Students will be able to

- Assess the effects of the US Supreme Court decision in *McGirt v. Oklahoma* on tribal citizens today

#### MATERIALS

- Who Has Jurisdiction?: *McGirt v. Oklahoma* activity sheet
- Excerpts from the US Supreme Court Majority and Dissenting Opinions in *McGirt v. Oklahoma*, 2020, Slip Opinion, US Supreme Court, [supremecourt.gov/opinions/19pdf/18-9526\\_9okb.pdf](https://supremecourt.gov/opinions/19pdf/18-9526_9okb.pdf)
- Exit Ticket 3: *McGirt v. Oklahoma*
- Optional Readings:
  - Julian Brave NoiseCat, "The McGirt Case Is a Historic Win for Tribes," *The Atlantic*, July 12, 2020, [theatlantic.com/ideas/archive/2020/07/mcgirt-case-historic-win-tribes/614071/](https://theatlantic.com/ideas/archive/2020/07/mcgirt-case-historic-win-tribes/614071/)
  - Hon. Jan W. Morris (Ret.), "McGirt v. Oklahoma: A Tribal Member and Tribal Judge's View," *NJC (National Judicial College) News*, July 24, 2020, [judges.org/news-and-info/mcgirt-v-oklahoma-a-tribal-member-and-tribal-judges-view/](https://judges.org/news-and-info/mcgirt-v-oklahoma-a-tribal-member-and-tribal-judges-view/)

#### PROCEDURE

- **Opening of the Lesson:** Introduction to *McGirt v. Oklahoma*
  - Distribute the Who Has Jurisdiction? activity sheet.
  - In small groups, students discuss and make an argument about whether Jimcy McGirt should be tried in state court or within the Muscogee (Creek) Nation court system.
  - After the small groups share out both sides of who will have jurisdiction in trying Jimcy McGirt, tell the students that the Supreme Court in a 5-4 decision decided that the Muscogee (Creek) Nation would have jurisdiction, not the State of Oklahoma.
- **Direct Instruction:** Majority and Dissenting Opinions on *McGirt v. Oklahoma*
  - Distribute the Majority and Dissenting Opinions in *McGirt v. Oklahoma* along with the Critical Thinking Questions.

- In small groups, students discuss and negotiate the opinions of the court on *McGirt v. Oklahoma*.
- Share out the groups' answers to the question.
- **Closure:** What is your opinion?
  - Distribute Exit Ticket 3: *McGirt v. Oklahoma*. The students respond to the question and support their opinion with evidence from the text:
    - Who do you think made the better argument, Justice Gorsuch or Chief Justice Roberts? Why?
  - You may choose to ask students to read the articles by Julian Brave NoiseCat and Jan W. Morris and discuss their own responses in light of the views of two Native American writers, a policy expert and a tribal judge.

## The Margaret Polson Family Papers and the Evidence in Land Deeds

Margaret Polson's great-grandfather was John Ridge, a lawyer, diplomat, politician, and slaveholder in the Cherokee Nation, pre-Removal. Ridge negotiated and signed the Treaty of New Echota in 1835 and would become known as a leader of the "Treaty Party." The Treaty of New Echota, which promised the Cherokee Nation seven million acres of land to the west, was used by the United States government to remove Cherokees to Indian Territory.

### Cherokee Nation Deed

After Removal to Indian Country in Oklahoma Territory, the Cherokee Nation worked diligently to organize their government, setting up a new capital to handle the day-to-day affairs of the nation. This deed is evidence of the buying and selling of land within the boundaries of the Cherokee Nation's territory. As the Polson family expanded, they bought land from fellow Cherokee Nation citizens. Before the Dawes Severalty Act of 1887, the Polson family owned hundreds of acres of land for farming and a mill. They had to go to their district clerk's office for land deed administration. This document describing a land sale in the Delaware District is an example of the deeds administered by the Cherokee Nation.

### Department of the Interior Deed

During the allotment era, Congress made specific agreements with each tribe in Indian Territory to determine the allotment process. This Department of the Interior land deed is specific to the Cherokee Nation. Per law, individual Cherokee Nation citizens\* were to be allotted up to 160 acres depending on how the land would be used (grazing, homestead, etc.). This allotment deed to Mary A. (Polson) Hardy included railroad access, which was more valuable than farmland. As a result, Mary once owned land in excess of the prescribed allotment. That excess land reverted to the control of the Department of the Interior and was usually sold to settlers moving in or to the railroad, oil companies, or other interests. At the time of allotment, the seven million acres of promised treaty land dwindled down to 4.4 million acres, and by the early 2000s, the Cherokee Nation held around 109,000 acres.

\*Cherokee Nation citizens include Cherokee by blood and Cherokee freedmen.

Cherokee Nation Deed, n.d.

Cherokee Nation  
Delaware District

Know all men by these presents that we G. W. Curry, Frances Curry, his wife, and and E. E. Prock, daughter of Andrew Prock deceased, of Cherokee Nation Del. Dist, for and in consideration of Two hundred and fifty dollars to us in hand paid by L. B. Smith of the said Delaware Dist C. N. the receipt of which is hereby acknowledged have granted bargained & sold & Conveyed and by these presents do grant, bargain, sell & convey unto the said L. B. Smith his heirs and assigns a certain place and improvement being on Cow Skin prairie Del. Dist. C. N. described as follows. Commencing at the North East corner of the farm now occupied by the said G. W. Curry Frances Curry, his wife, and E. E. Prock daughter of the said Andrew Prock deceased as aforesaid, running west as far as said Claim extends being over  $\frac{3}{4}$  of a mile, thence South with an agreed line between said place & the farm around by Ose Harlan to a point near the wall running from South West City to Congress Ferry, thence East to the west line of T. J. McGhee's farm, thence North to place of beginning including three hundred acres more or less. Together with all and singular the rights, members & appurtenances to the same in any manner belonging. To have and to hold the said bargained premises to him the said L. B. Smith his heirs & assigns forever. And we the said G. W. Curry Francis Curry his wife, and E. E. Prock daughter of Andrew Prock Dec. will and our heirs executors & Administrators

The Margaret Polson Family Papers (Private Collection)

Cherokee Nation  
Delaware District

Know all men by these presents that we G. W. Curry, Frances Curry, his wife, and and E. E. Prock, daughter of Andrew Prock deceased, of Cherokee Nation Del. Dist, for and in consideration of Two hundred and fifty dollars to us in hand paid by L. B. Smith of the said Delaware Dist C. N. the receipt of which is hereby acknowledged have granted bargained & sold & Conveyed and by these presents do grant, bargain, sell & convey unto the said L. B. Smith his heirs and assigns a certain place and improvement being on Cow Skin prairie Del. Dist. C. N. described as follows. Commencing at the North East corner of the farm now occupied by the said G. W. Curry Frances Curry, his wife, and E. E. Prock, daughter of the said Andrew Prock deceased as aforesaid, running west as far as said Claim extends being over  $\frac{3}{4}$  of a mile, thence South with an agreed line between said place & the farm around by Ose Harlan to a point near the wall, running from South West City to Congress Ferry. Thence East to the west line of T. J. McGhee's farm, thence North to place of beginning including three hundred acres more or less. Together with all and singular the rights, members & appurtenances to the farm in any manner belonging. To have and to hold the said bargained premises to him the said L. B. Smith his heirs & assigns forever. And we the said G. W. Curry Francis Curry his wife, and E. E. Prock daughter of the Andrew Prock Dec, will, and our heirs executors & Administrators

Department of the Interior Deed, 1907

ALLOTMENT DEED. 5101 (77) Cherokee Citizen ROLL No. 7426

**THE CHEROKEE NATION,  
INDIAN TERRITORY.**

To All To Whom These Presents Shall Come, Greeting:

WHEREAS, By the Act of Congress approved July 1, 1902 (32 Stat., 716), ratified by the Cherokee Nation August 7, 1902, it is provided that there shall be allotted by the Commission to the Five Civilized Tribes, to each citizen of the Cherokee Tribe, land equal in value to one hundred and ten acres of the average allottable lands of the Cherokee Nation, and,

WHEREAS, It was provided by said Act of Congress that each citizen shall designate or have designated and selected for him, at the time of his selection of allotment, out of his allotment, as a homestead, land equal in value to forty acres of the average allottable lands of the Cherokee Nation, as nearly as may be, for which he shall receive a separate certificate, and,

WHEREAS, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of \_\_\_\_\_

\_\_\_\_\_ Mary A. Hardy \_\_\_\_\_, a citizen of said tribe, as an allotment, exclusive of land equal in value to forty acres of the average allottable lands of the Cherokee Nation, selected as a homestead as aforesaid,

Now, THEREFORE, I, the undersigned Principal Chief of the Cherokee Nation, by virtue of the power and authority vested in me by aforesaid Act of the Congress of the United States, have granted and conveyed, and by these presents do grant and convey unto the said \_\_\_\_\_ Mary A. Hardy \_\_\_\_\_

all right, title and interest of the Cherokee Nation, and of all other citizens of said Nation, in and to the following described land, viz: The East Half of the North West Quarter of the South East Quarter and the North Half of the North East Quarter of the South East Quarter, less One and 8/100 (1.08) Acres occupied as Right of Way by the Arkansas and Oklahoma Rail Road, of Section Seven (7), and the South Half of the North West Quarter of the South East Quarter and the South East Quarter of the North East Quarter of the South West Quarter of Section Twenty (20), Township Twenty-four (24) North and Range Twenty-five (25) East

\_\_\_\_\_

of the Indian Base and Meridian in Indian Territory, containing \_\_\_\_\_


\_\_\_\_\_ Sixty-eight and 92/100 (68.92) \_\_\_\_\_

acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all the provisions of said Act of Congress.

IN WITNESS WHEREOF, I, the Principal Chief of the Cherokee Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 24th day of March A. D. 1905.

\_\_\_\_\_ W. B. Ragsdale \_\_\_\_\_  
Principal Chief of the Cherokee Nation.

Department of the Interior,  
Approved AUG 28 1907, 1907  
James Rudolph Garfield Secretary.  
By Oliver Phelps Clerk.



The Margaret Polson Family Papers (Private Collection)

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NAME	PERIOD	DATE
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### Sec. 1 and 2 of the Dawes Act, 1887 (Excerpts)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use . . . the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living... an allotment of the lands embraced in any reservation, one-sixteenth of a section:

Provided, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes . . . And provided further, That were the treaty or act of Congress setting apart such reservation provides the allotment of lands in severalty in quantities in excess of those herein provided, the President, . . . shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: And provided further, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

**Severalty:** the condition of being separate

Source: *Our Documents: 100 Milestone Documents from the National Archives*, ourdocuments.gov

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NAME PERIOD DATE

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### *Important Phrases: The Dawes Act*

Which phrases or sentences from the Dawes Act are most important or powerful? Choose three and give the reason for your choice.

Phrase 1:

Why is this phrase important or powerful?

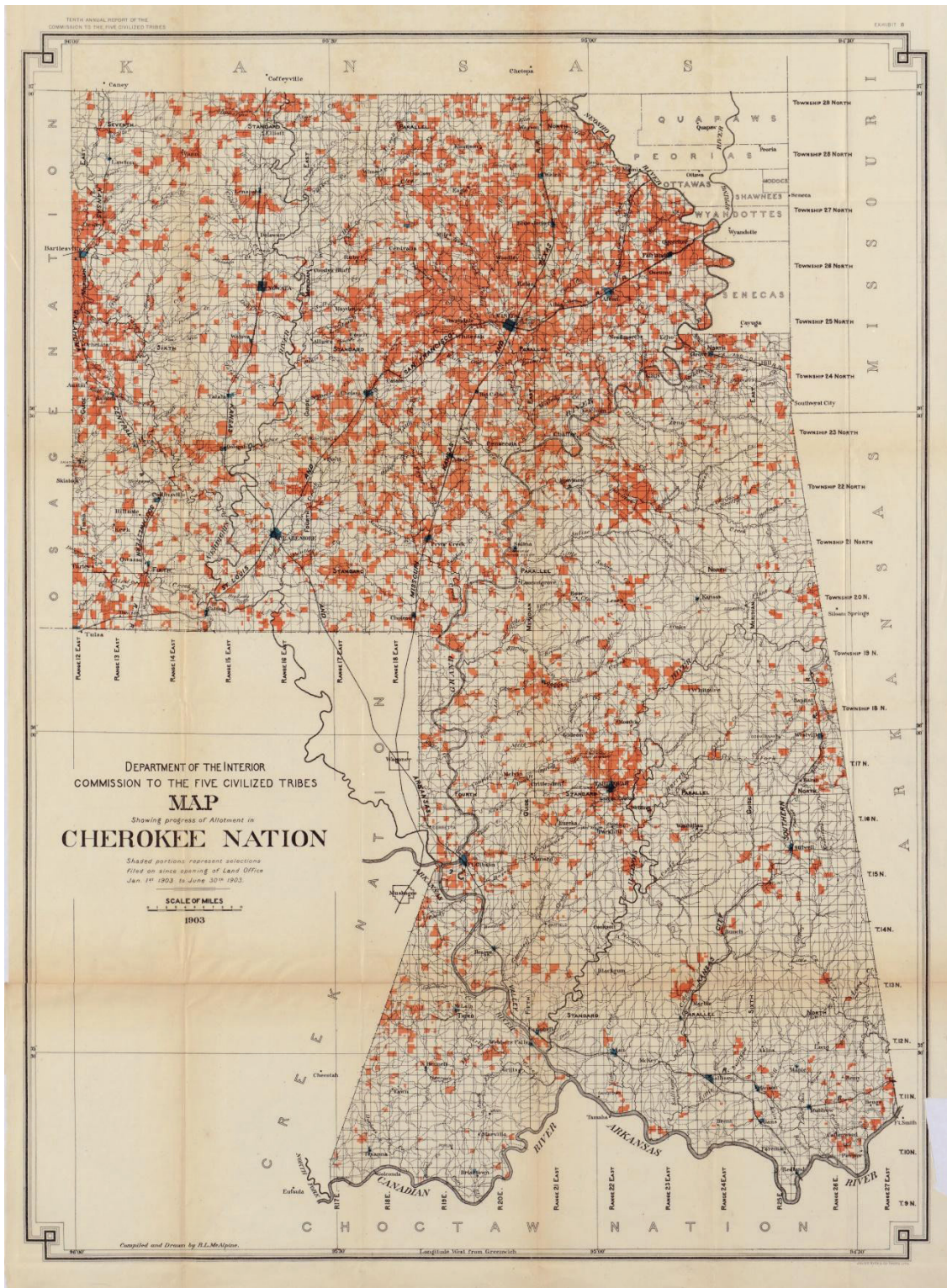
Phrase 2:

Why is this phrase important or powerful?

Phrase 3:

Why is this phrase important or powerful?

### Map of the Allotment for the Cherokee Nation,



(Library of Congress Geography and Map Division)



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NAME PERIOD DATE

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### *Critical Thinking Questions*

Directions: Answer these questions based on your reading of the Dawes Act and the Allotment Map from 1903.

1. Based on your understanding of the Dawes Act, how does this map relate to that act? Use textual evidence to support your response.
  
2. What problems do you foresee with the severalty (the condition of being separate) of reservation land held collectively and land being allotted to individuals?
  
3. What further questions do you have about this map from 1903?

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NAME PERIOD DATE

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**Exit Ticket 1: The Dawes Act and the Allotment of Cherokee Lands**

How did the Dawes Act personally affect individual families like Mary Hardy's?

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NAME PERIOD DATE

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**Exit Ticket 1: The Dawes Act and the Allotment of Cherokee Lands**

How did the Dawes Act personally affect individual families like Mary Hardy's?

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NAME	PERIOD	DATE
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### The Burke Act of 1906 (Excerpt)

. . . the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, **incumbrance**, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: *Provided further*, That until the **issuance** of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: *And provided further*, That the provisions of this Act shall not extend to any Indians in the former Indian Territory.

**Incumbrance:** any obstruction that impedes or is burdensome

**Issuance:** the action of supplying or distributing something, especially for official purposes

Source: Statutes at Large, 34 Stat. 175, Law Library of Congress

### *Critical Thinking Questions*

1. Who was power designated to in the Burke Act? Use textual evidence to support your response.
2. What powers were designated in the Burke Act? Use textual evidence to support your response.
3. The Burke Act did not define “competent and capable.” How do you think the Secretary of the Interior deemed someone “competent and capable of managing his or her affairs”?

Oklahoma Newspaper Notices, 1914, 1916, and 1917

# Indian Land For Sale

## Red Moon Agency.

**Cheyenne and Arapaho Reservation, Oklahoma.**  
Sealed bids will be received at the Red Moon Agency, Hammon, Oklahoma, on the following described lands, until 12 o'clock M., July 2, 1914.  
Each bid must be accompanied by a certified check made payable to W. E. Dunn, Supt. & S. D. A. on some solvent bank, for 10 per cent. of the amount bid, as a guarantee of the bidder's faithful performance of his proposition. If the bid shall be accepted and the successful bidder shall, within thirty days after due notice, fail to comply with the terms of his bid, such check will be forfeited to the use of owner of the land, less the cost of the advertising, etc. Checks of unsuccessful bidders will be returned as soon as possible. All bids shall be enclosed in a sealed envelope and must be marked by the bidder, "Bid on Indian Land," and state the date of the opening, but the description of the land shall not be noted on the envelope. No bids below the appraised value will be considered. The right is reserved to reject any, or all bids.

### Form of Bid

I hereby offer on the allotment of \_\_\_\_\_ of the \_\_\_\_\_ of Sec. \_\_\_\_\_ Tp \_\_\_\_\_ Range \_\_\_\_\_ containing \_\_\_\_\_ acres, \$ \_\_\_\_\_ Enclosed is a certified check for \$ \_\_\_\_\_ being 10 per cent of my bid. (Name in full) \_\_\_\_\_ (Address) \_\_\_\_\_ For further information address W. E. Dunn, Supt & S. D. A., Hammon, Oklahoma.

### NON-COMPETENT-TERMS: CASH

Name of Allottee	Description	Appraisal	Lease Expires
Red Feathers	NW 1/4-S. 17 T. 13 R. 22.	\$2,400	Dec. 31, 1914
Curious Horn	NE 1/4-S. 18 T. 13 R. 19.	\$2,000	Dec. 31, 1914

### INHERITED LAND-TERMS: CASH

Bear Woman	SW 1/4-S. 24 T. 13 R. 20.	\$2,000	Dec. 31, 1915
White Hair	NE 1/4(156.19a.) S. 30 T. 14 R. 20.	\$2,000	Dec. 31, 1914
Black Coyote	SE 1/4-S. 7 T. 13 R. 21.	\$3,100	Dec. 31, 1914

TO SELL AUGUST 3, 1914

Little Man Old Sioux	SW 1/4 S. 4 T. 13 R. 21.	\$3,000	Dec. 31, 1914
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(152.19 acres)

Hammon (OK) Advocate, June 25, 1914  
(Oklahoma Historical Society via Gateway to Oklahoma History)

## LEGAL PUBLICATIONS

### SALE OF NON-COMPETENT AND INHERITED INDIAN LANDS.

**CHEYENNE AND ARAPAHO AGENCY, CONCHO, OKLA.**  
Bids will be received on lands offered for sale and listed below up to and including 1 p. m. on the following dates:  
Each bid must show sale number, description of land, and be accompanied by a certified check or bank draft on any solvent bank, payable to the Supt. and Spl. Disb. agent, for not less than 10 per cent of bid. Successful bidders must remit balance of purchase price 30 days after he is notified his bid has been accepted.  
Each bid must be enclosed in a sealed envelope and marked "Bid on Indian Land, to be opened (give date)." For further information call on or write the undersigned.  
W. W. SCOTT, Supt.

### Bids to be opened July 6, 1916 CANADIAN COUNTY

- 749—Yellow Eyes, S 1/2 of the NW 1/4 of Sec. 8, T. 10, R. 20. Appraised at \$2400.00. Lease expires 6.30.17.
- 750—Black Whiteman, E 1/2 of the SW 1/4 of Sec. 14, T. 10, R. 20. Appraised at \$1700.00. Lease expires December 31st. 1917.

### BLAINE COUNTY

- 751—Little Heart, S 1/2 of the SW 1/4 of Sec. 4, T. 13, R. 20. Appraised at \$2000.00. Lease expires 12.31.17.
  - 752—Yellow Eyes, S 1/2 of NW 1/4, NW 1/4 of NW 1/4, Lot 9 in Sec. 35, T. 12, R. 19. Appraised at \$3600.00. Lease expires 6.30.17.
  - 753—Comchee Woman, NW 1/4 of Sec. 2, T. 13, R. 20. Appraised at \$2000.00. Lease expires 12.31.16.
  - 754—Wolf Robe, NE 1/4 of Sec. 19, T. 12, R. 20. Appraised at \$1000.00. Lease expires 6.30.17.
  - 755—Biddy Women, NW 1/4 of Sec. 1, T. 12, R. 20. Appraised at \$1700.00. Lease expires 12.31.16.
  - 756—Long Legs, NW 1/4 of Sec. 11, T. 13, R. 20. Appraised at \$1600.00. Lease expires 12.31.16.
  - 757—Mrs. Greany, SW 1/4 of Sec. 15, T. 13, R. 20. Appraised at \$2000.00. Lease expires 6.30.17.
  - 758—Wolf Mule, S 1/2 of the NW 1/4, Lots 3 and 4 of Sec. 4, T. 13, R. 20. Appraised at \$3600.00. Lease expires 12.31.16.
  - 759—Flying Out, SE 1/4 of Sec. 13, T. 12, R. 20. Appraised at \$3600.00. Lease expires 12.31.17.
  - 760—Arapaho Girl, SW 1/4 of Sec. 3, T. 16, R. 20. Appraised at \$1920.00. Lease expires 6.30.17.
  - 761—Washa Block, NW 1/4 of Sec. 15, T. 13, R. 20. Appraised at \$2880.00. Lease expires 12.31.16.
  - 762—Emma H. Wolf, SW 1/4 of Sec. 8, T. 13, R. 20. Appraised at \$2250.00. Lease expires 6.30.17.
- ### KINGFISHER COUNTY
- 763—Short Man, N 1/2 of SW 1/4 of Sec. 29, T. 13, R. 20. Appraised at \$2500.00. No lease of record.
  - 764—Cut Ears, S 1/2 of the NW 1/4 of Sec. 2, T. 13, R. 20. Appraised at \$3500.00. Lease expires 12.31.16.
- ### Bids to be opened August 3rd, 1916 CANADIAN COUNTY
- 765—Sarah Cloucheif, E 1/2 of NW 1/4 of Sec. 11, T. 13, R. 20. Appraised at \$1500.00. Lease expires 12.31.16.
  - 766—Good Thrower, E 1/2 of SW 1/4, Lots 8 and 9 of Sec. 6, T. 14, R. 20. Appraised at \$1700.00. Lease expires 6.30.17.
  - 767—Charles Shepherd, SE 1/4 of Sec. 17, T. 14, R. 20. Appraised at \$1800.00. Lease expires 12.31.16.
  - 768—Red Feathers, SW 1/4 of Sec. 17, T. 14, R. 20. Appraised at \$1900.00. Lease expires 12.31.16.
  - 769—Sock, NW 1/4 of Sec. 17, T. 14, R. 20. Appraised at \$1625.00. Lease expires 12.31.17.
  - 770—Moss Shell, SE 1/4 of Sec. 15, T. 13, R. 20. Appraised at \$3000.00. Lease expires 12.31.18.
  - 771—Smoking Slow, E 1/2 of NW 1/4, Lots 1 and 2 of Sec. 19, T. 14, R. 20. Appraised at \$7000.00. Lease expires 12.31.16.
  - 772—Anna Guerrier, E 1/2 of SW 1/4

- of Sec. 29, T. 13, R. 20. Appraised at \$1800.00. Lease expires 12.31.16.
  - 773—Red Woman, E 1/2 of SW 1/4, Lots 3 and 4 of Sec. 6, T. 12, R. 15. Appraised at \$9000.00. Lease expires 12.31.16.
  - 774—Pacing Woman, SE 1/4 of S. 1, T. 12, R. 15. Appraised at \$2000.00. Lease expires 6.30.17.
  - 775—Amy Hanser, E 1/2 of SW 1/4, Lots 3 and 4 of Sec. 18, T. 12, R. 15. Appraised at \$2800.00. Lease expires 12.31.16.
  - 776—Medicine Pipe, NW 1/4 of Sec. 14, T. 12, R. 15. Appraised at \$2600.00. Lease expires 12.31.16.
  - 777—White Man, W 1/2 of the NE 1/4 of Sec. 3, T. 14, R. 20. Appraised at \$1750.00. Lease expires 12.31.16.
  - 778—Mrs. Kubic Man, SE 1/4 of Sec. 17, T. 12, R. 15. Appraised at \$2000.00. Lease expires 12.31.16.
  - 779—Tony Pedro, W 1/2 of the NW 1/4 of Sec. 20, T. 13, R. 20. Appraised at \$1400.00. Lease expires 12.31.16.
  - 780—Benjamin F. Harrison, E 1/2 of NW 1/4, Lots 1 and 2 of Sec. 19, T. 13, R. 20. Appraised at \$1000.00. No lease of record. This land is cut up by creek.
  - 781—Coheny, SE 1/4 of Sec. 22, T. 13, R. 19. Appraised at \$2200.00. Lease expires 12.31.17.
- ### BLAINE COUNTY
- 782—Ella Pigeon, S 1/4 of Sec. 26, T. 12, R. 20. Appraised at \$1900.00. Lease expires 12.31.16.
  - 783—Neetha Sugar, Lots 3 and 4 of Sec. 19, T. 11, R. 20. Appraised at \$1800.00. Lease expires 6.30.17.
  - 784—Blackfeet Woman, E 1/2 of SW 1/4 of Sec. 6, T. 13, R. 20. Appraised at \$2400.00. Lease expires 6.30.17.
  - 785—Little Cup, E 1/2 of SW 1/4, Lots 3 and 4 of Sec. 19, T. 13, R. 19. Appraised at \$2550.00. Lease expires 12.31.17.
  - 786—Pueblo Woman, N 1/2 of SW 1/4 of Sec. 1, T. 15, R. 20. Appraised at \$1600.00. Lease expires 12.31.17.
  - 787—Yellow Hair, NW 1/4 of Sec. 32, T. 14, R. 20. Appraised at \$2450.00. No lease of record.
  - 788—Yellow Hair, S 1/2 of NW 1/4 of Sec. 17, T. 13, R. 20. Appraised at \$1400.00. Lease expires 12.31.16.
  - 789—Mrs. One Man, S 1/2 of NW 1/4, Lots 1 and 2 of Sec. 6, T. 14, R. 20. Appraised at \$2000.00. Lease expires 12.31.16.
  - 790—Turkey, N 1/2 of NW 1/4 of Sec. 2, T. 13, R. 20. Appraised at \$1750.00. Lease expires 12.31.16.
- ### Inherited Lands
- 791—Gun, SE 1/4 of Sec. 33, T. 12, R. 20. Appraised at \$4000.00. Lease expires 12.31.17.
  - 792—Russell Black, NE 1/4 of Sec. 11, T. 13, R. 20. Appraised at \$1800.00. Lease expires 12.31.17.
  - 793—Pacing Bear, SE 1/4 of Sec. 27, T. 13, R. 20. Appraised at \$1300.00. Lease expires 12.31.16.
  - 794—Running With Wolf, SE 1/4 of Sec. 15, T. 13, R. 20. Appraised at \$2500.00. Lease expires 6.30.17.
  - 795—Scabby Face, NW 1/4 of Sec. 10, T. 13, R. 20. Appraised at \$2400.00. Lease expires 6.30.17.
  - 796—Killing Ahead, SE 1/4 of Sec. 24, T. 13, R. 20. Appraised at \$2000.00. Lease expires 12.31.17.
  - 797—Fish Woman, SW 1/4 of Sec. 32, T. 14, R. 20. Appraised at \$2000.00. Lease expires 12.31.16.
  - 798—Ludv Forehead, S 1/2 of NE 1/4 of Sec. 9, T. 13, R. 20. Appraised at \$975.00. Lease expires 12.31.16.
  - 799—Legs Legs, Lots 3 and 4 of Sec. 34, T. 15, R. 20. Appraised at \$600.00. Lease expires 12.31.17.
  - 800—LOBE Legs, E 1/2 of SE 1/4 of Sec. 4, T. 11, R. 20. Appraised at \$1800.00. Lease expires 12.31.17.
  - 801—Pawnee Man, SW 1/4 of Sec. 28, T. 13, R. 20. Appraised at \$1880.00. Lease expires 12.31.16.
  - 802—HBA Murphy, NE 1/4 of Sec. 28, T. 13, R. 20. Appraised at \$4800.00. Lease expires 6.30.17.
  - 803—Raw Woman, SE 1/4 of Sec. 1, T. 12, R. 20. Appraised at \$9000.00. Lease expires 6.30.17.
  - 804—James Ensworth, NE 1/4 of Sec. 25, T. 13, R. 20. Appraised at \$2500.00. Lease expires 12.31.16.
  - 805—James Rouse, NE 1/4 of Sec. 20, T. 14, R. 20. Appraised at \$2000.00. Lease expires 12.31.16.
  - 810—Mrs. American Horse, SE 1/4 of Sec. 6, T. 13, R. 20. Appraised at \$1600.00. Lease expires 6.30.17.
- ### KINGFISHER COUNTY
- 806—Turtle Woman, E 1/2 of NE 1/4 of Sec. 23, T. 13, R. 20. Appraised at \$2400.00. Lease expires 6.30.17.
  - 806—Stacy Crow, NE 1/4 of Sec. 21, T. 16, R. 20. Appraised at \$4800.00. Lease expires 6.30.17.

Gary (OK) Journal, June 8, 1916 (Oklahoma Historical Society via Gateway to Oklahoma History)

## QUESTION:

Could a minor half blood heir of a Creek  
Indian alienate any of his land in 1907?

Can you answer this question off-hand? How long do you say it would take an attorney who does not KNOW this answer to look up the law on this question?

### *Fitzpatrick's Indian Title Chart*

will answer this and all similar questions in less time than it would take an attorney to get out half of the books necessary to arrive at the decision (assuming that he has them in his library) and the answer may be absolutely relied upon as being the correct one.

In addition it cites the statutes covering the point, with court decisions and text book references.

Fitzpatrick's Chart is not sold, but leased for individual use only; \$12.50, check to accompany order.

Harlow Publishing Company

OKLAHOMA CITY

#### SALE OF TIMBER LANDS AND OTHER UNALLOTTED LANDS AND SURFACE OF SEGREGATED COAL AND ASPHALT LANDS BELONGING TO THE CHOCTAW AND CHICKASAW INDIAN TRIBES IN EASTERN OKLAHOMA BY THE UNITED STATES GOVERNMENT.

There will be offered for sale at public auction at certain railroad points in eastern Oklahoma from October 15th, 1917, to October 31st, 1917 inclusive, approximately 400,800 acres of timber land, 50,200 acres of the surface of the segregated coal and asphalt land, and 500 acres of other unallotted land, all belonging to the Choctaw and Chickasaw Indian Nations in Oklahoma. The surface of the segregated coal and asphalt lands classified as suitable for townsite purposes, and the timber lands, will be offered for sale for not less than the appraised value. Land and timber will be sold together. The entire estate in the tribal timber lands and other unallotted lands will be sold except, however, that of the segregated coal and asphalt land area only the surface will be sold, the coal and asphalt therein or thereunder being reserved to the Choctaw and Chickasaw Nations, except where the descriptive circular specifically states that the coal and asphalt

will be sold with the surface. The tribal land will be offered in various sized tracts but no person will be permitted to purchase more than 160 acres classified as agricultural land nor more than 640 acres classified as grazing land. No limitation is placed on the acreage of timber land which may be purchased by one person. Residence on land not required. Bids may be submitted in person or by agent with power of attorney, or by mail. Terms of sale of surface of segregated coal and asphalt lands, classified as agricultural or grazing lands, shall be cash, the successful bidder being required to pay 25 per cent of purchase price at time of sale and the balance within 15 days thereafter, or in the case the successful bidder submitted his bid by mail, said balance must be paid within 15 days from date of notice. Terms of sale of surface of segregated coal and asphalt lands, classified as suitable for townsite purposes, shall be 25 per cent cash at time of sale, 25 per cent within one year, and balance within two years from date of sale. Terms of sale of tribal timber lands and other unallotted lands shall be 25 per cent cash at time of sale and balance in three equal annual installments of 25 per cent each, payable in one, two, and

three years, respectively, from date of sale; the purchasers of any of the above mentioned lands to pay 5 per cent interest per annum on all deferred payments. Bids by mail must be accompanied by certified checks or bank drafts for 25 per cent of the amount of bids. Where houses or other improvements are located on the timber lands, or on the surface of the segregated coal and asphalt lands, the same will be sold with the timber land or the surface of the segregated coal and asphalt lands as the case may be, said improvements to be paid for in full at time of sale, and except in case of the improvements within the segregated coal and asphalt area classified as agricultural or grazing land, shall not be sold for less than the appraised value. The right to reject any and all bids is reserved. Detailed information in regard to dates, places, conditions, and terms of sale, and including lists or circulars descriptive of the lands to be offered for sale, may be obtained free of cost from Mr. Gabe E. Parker, Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma. Maps and plats may also be obtained from said superintendent at a cost of from 25 cents to 50 cents each.

CATO SELLS  
Commissioners of Indian Affairs

Harlow's Weekly (Oklahoma City, OK), September 26, 1917 (Oklahoma History Society via Gateway to Oklahoma History)

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NAME PERIOD DATE

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### *Critical Thinking Questions*

Directions: Answer these questions based on your reading of the Oklahoma newspaper notices.

1. What do the three notices have in common?
2. What text in the three documents relates to the Burke Act of 1906?
3. Who are the “winners” in these transactions?
4. Who makes money in these transactions?
5. Who loses the most?
6. Are there phrases or terms that you do not understand or cannot figure out using clues in the text? What are they?

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NAME PERIOD DATE

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### Exit Ticket 2: The Burke Act

Which of the three notices from Oklahoma newspapers do you think is the most powerful regarding the negative effects of the Burke Act on Native Americans in Oklahoma? Cite three phrases from the documents to support your opinion.

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NAME PERIOD DATE

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### Exit Ticket 2: The Burke Act

Which of the three notices from Oklahoma newspapers do you think is the most powerful regarding the negative effects of the Burke Act on Native Americans in Oklahoma? Cite three phrases from the documents to support your opinion.

NAME \_\_\_\_\_ PERIOD \_\_\_\_\_ DATE \_\_\_\_\_

### Who Has Jurisdiction?: *McGirt v. Oklahoma*

#### The Case

Jimcy McGirt, a member of the Muscogee (Creek) Nation, was convicted of sex crimes against a child within the historical Creek Nation boundaries by the State of Oklahoma.

“Jurisdiction” refers to the official power to make legal decisions and judgments. The Muscogee (Creek) Nation lies within the borders of Oklahoma. Land reserved for the Muscogee (Creek) Nation since the nineteenth century remains “Indian country” under the Major Crimes Act (MCA), which is under federal jurisdiction.

Who should try Mr. McGirt, the State of Oklahoma or the Muscogee (Creek) Nation? Who has jurisdiction in this case?

Reasons why the State of Oklahoma should try Jimcy McGirt	Reasons why the Muscogee (Creek) Nation should try Jimcy McGirt

The decision of the US Supreme Court



## US Supreme Court Majority and Minority Opinions in *McGirt v. Oklahoma*, 2020 (Excerpts)

**Justice Neil Gorsuch: Majority Opinion (Supporting Justices: Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan, and Sonia Sotomayor)**

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding “all their land, East of the Mississippi river,” the U.S. government agreed by treaty that “[t]he Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians . . . permanent home to the whole Creek nation,” located in what is now Oklahoma. The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.”

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word. . . .

But because there exists no equivalent law terminating what remained, the Creek Reservation survived allotment. In saying this we say nothing new. For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected this argument. . . . Congress may have passed allotment laws to create the conditions for disestablishment. But to equate allotment with disestablishment would confuse the first step of a march with arrival at its destination. . . . About this, Oklahoma is at least candid. It admits the entire point of its reclassification exercise is to avoid *Solem’s* rule [*Solem v. Barlett*] that only Congress may disestablish a reservation. . . .

The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe’s authority. But Congress has never withdrawn the promised reservation. As a result, many of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right.

**Chief Justice John Roberts: Dissenting Opinion (Other Dissenting Justices: Samuel Alito, Brett Kavanaugh, and Clarence Thomas)**

A huge portion of Oklahoma is not a Creek Indian reservation. Congress disestablished any reservation in a series of statutes leading up to Oklahoma statehood at the turn of the 19th century. The Court reaches the opposite conclusion only by disregarding the “well settled” approach required by our precedents. . . .

A century of practice confirms that the Five Tribes’ prior domains were extinguished. The State has maintained unquestioned jurisdiction for more than 100 years . . . and until a few years ago the Creek Nation itself acknowledged that it no longer possessed the reservation the Court discovers today. . . . As the Tribes, the State, and Congress have recognized from the outset, those “reservations were destroyed” when “Oklahoma entered the Union.”

As the Creek, the State of Oklahoma, the United States, and our judicial predecessors have long agreed, Congress disestablished any Creek reservation more than 100 years ago. Oklahoma therefore had jurisdiction to prosecute *McGirt*. I respectfully dissent.

Source: *McGirt v. Oklahoma*, Slip Decision, US Supreme Court, [supremecourt.gov](https://supremecourt.gov)

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NAME PERIOD DATE

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### *Critical Thinking Questions*

Directions: Support your answers with evidence from the majority and dissenting opinions in *McGirt v. Oklahoma*.

1. How does Justice Gorsuch view the promise to the Muscogee (Creek) Nation?
2. What does Justice Gorsuch state may have been the intent of allotment?
3. According to Justice Gorsuch who has the power to disestablish reservations?
4. How does Justice Gorsuch explain the events that led to “rewarding wrong and failing those in the right”?
5. How does Chief Justice Roberts view the promise to the Muscogee (Creek) Nation?
6. How does Chief Justice Roberts view reservations?

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NAME PERIOD DATE

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**Exit Ticket 3: *McGirt v. Oklahoma***

Who do you think made the better argument, Justice Gorsuch or Chief Justice Roberts? Why? Support your opinion with evidence from the text.

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NAME PERIOD DATE

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**Exit Ticket 3: *McGirt v. Oklahoma***

Who do you think made the better argument Justice Gorsuch or Chief Justice Roberts? Why? Support your opinion with evidence from the text.