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Article Summary: In the early twentieth century progressive attempts to make the Indians independent failed. When the government forced land ownership on Omaha Indians who still needed protection and support, land speculators rushed to take advantage of the situation.

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Photographs / Images: home of Jacob Parker, Omaha Indian, 1911; home of Noah Walker, Omaha Indian, 1911; a well-to-do Omaha farmer and his family

Land Policy on the Omaha Reservation: Competency Commissions and Forced Fee Patents

BY JANET A. McDONNELL

In the first decades of the 20th century, the primary goal of federal Indian policy was to make Indians independent, self-sufficient citizens. The government struggled to terminate its trust responsibility toward the Indians. As part of this effort, in 1910 the Commissioner of Indian Affairs Robert G. Valentine established a special commission to determine which Indians on the Omaha Reservation were competent to manage their own affairs and give them unrestricted title to their land in the form of fee patents. The commissioner's naively well-intentioned policy of using the commission to promote self-support and the productive use of Indian land was poorly implemented and ultimately led to poverty and land loss. Moreover, to issue fee patents on the basis of the commission's recommendations before the Indians were capable of self-support, without their application or consent, was unethical and illegal.

Under the Dawes Severalty Act of February 8, 1887, the government had divided Indian reservations into individual allotments, but it held the title to that land in trust for 25 years, tax-free, to protect the allottees while they learned to support themselves on their land. The allottees could not lease, mortgage, or sell their land without government approval. At the end of the trust period, the government issued a fee patent, a deed of ownership, to the allottee and released him from guardianship. The Burke Act of May 8, 1906, amended the Dawes Act to allow the secretary of the Interior Department to issue fee patents to allottees before the trust period expired but only in those narrow and specific cases where he considered them capable of managing their own affairs. An Indian who wanted a fee patent submitted an application to the

superintendent of his reservation, who in turn would send that application on to the Indian Office along with his own report about the competency of the applicant. The Burke Act did not expressly stipulate that the allottee must apply for or consent to the fee patent, but it implied it. The law was intended to protect the incompetent allottee by keeping him under federal supervision as long as it was deemed necessary. At the same time, however, it created a dangerous situation; an Indian could be released from restriction before he was able to support himself.¹

When Valentine, a former newspaperman and clerk in the Indian Office, became commissioner in 1909, he encouraged competent Indians to apply for fee patents. His concern with issuing fee patents stemmed from his progressive principles. Forcing individuals to "stand on their own two feet" was a prominent progressive principle, and Valentine believed the best way to make Indians independent was to give them unrestricted control over their land. He was also convinced that by issuing fee patents, he would promote economy, self-sufficiency, and the efficient use of land.² The progressive solution to the problem of Indian dependency, then, was to "free" the Indians by giving them fee patents. The results of this solution, however, were both bad and good. Once given unrestricted title to their land, some Indians would indeed become independent, productive members of mainstream white society, but many more would become homeless and impoverished. The commissioner concluded that the potential benefits of his policy for the Indian race and for society in general outweighed the suffering it might cause individuals.

The commissioner was so confident that issuing fee patents to competent Indians would solve the "Indian problem" that he looked for a faster, more efficient way of doing so. He argued that the reservation superintendents could not be objective in recommending Indians for fee patents; they were too busy with day-to-day activities to concern themselves with broader matters. Rather than wait for the Indian to apply for his fee patent or to rely upon the superintendent for a recommendation, Valentine decided to adopt another approach. He would use special commissions that would visit the Indians personally in order to determine their competency. He made plans to establish such commissions on the Kiowa Reservation

in southwestern Oklahoma, the Yakima Reservation in Washington, and the Umatilla and Santee reservations.³

Valentine created the first commission, however, on the Omaha Reservation in northeastern Nebraska. The Omaha Indians were considered the most competent of their race, and the commissioner believed the government should give them fee patents so that they could become truly independent. Since the first allotments on the reservations had been made in 1884, the allottees had had almost 25 years in which to assimilate and to learn farming skills from the white citizens of Nebraska who surrounded them. Over 75 percent of the able-bodied, adult males were engaged in subsistence farming.⁴

Although Valentine established the commission primarily to promote Indian progress, he was also anxious to satisfy white land hunger and make Indian land taxable. Situated along the Missouri River, the Omaha Reservation included a succession of rolling hills, threaded with rather deep valleys. It contained some of the best farmland on the Plains, worth easily \$75 to \$85 an acre. The clay loam soil was rich enough to produce good crops even on the highest hills.⁵

Local whites were pressuring the Indian Office to release the reservation's rich farmland from trust status. Indeed, they were already looking forward to the termination of the trust period for the original Omaha allotments, which was due on July 10, 1909. Some whites wanted the Omaha land removed from trust status because the Omaha, along with their neighbors the Winnebago, held 240,000 of the 260,000 acres in Thurston County, Nebraska, and most of this land was in trust and could not be taxed. The Indians used the county's roads, schools, and bridges but contributed nothing to the county's revenue, and the county found it harder and harder to meet its expenses. Other whites in the area wanted the land released so that they would have an opportunity to purchase it. They realized that at least some of the Indians who received their fee patents would opt to sell their land to speculators or to the whites who were currently renting it. "Eventually," the *Pender Times* observed, "all this desirable farm land, as good as the best in northeastern Nebraska, will fall into the hands of whites who have awaited the move."⁶

The prediction was quickly proven. As the date of the trust termination approached, speculators descended on the reser-

vation and maneuvered the Indians into fraudulent land transactions, sometimes plying them with liquor to secure their signatures on deeds. When the superintendent of the Omaha Agency, John Commons, tried to prevent it, speculators complained to the Indian Office that he was not releasing Indian money and land from restriction fast enough. The commissioner removed Commons from his job in response to their complaints. In addition, local whites formed a syndicate to purchase Indian land as soon as the trust period expired. William F. Estill, William F. Springer, Lewellyn C. Brownrigg, Garry P. Meyers, Hiram Chase, and other men from nearby Pender accumulated large amounts of currency so that they could begin buying Omaha land at midnight July 11. Estill and his partner, Springer, made roughly 45 contracts for Omaha land and had nearly \$20,000 of their own money and \$15,000 of borrowed funds tied up in the arrangements. Therefore, it was not surprising that these men opposed any extension of the trust period. Commons, however, warned the Indian Office that unless the trust was extended, the Indians would be victimized by "grafters and land grabbers."⁷

Land fraud was so blatant that on July 3, 1909, at the request of the Indian Office, the President granted a 10-year extension of the trust period on all but 24 of the original allotments. He made the extension with the understanding that the Indian Office would attempt to identify individual allottees who were competent and release them from restriction. Speculators such as Estill, who had made contracts to purchase Omaha lands as soon as the trust period ended, suffered heavy financial losses because of the extension. To minimize their losses they began encouraging restricted Indians to apply for fee patents. The Indian Office sympathized with the whites who wanted the opportunity to acquire Omaha land, and it was anxious to place more land on the Thurston County tax rolls and relieve the county of some of its burden. The Indian Office quickly assured local whites that despite the extension it would continue its efforts to remove the restrictions on land belonging to competent Indians.⁸

To appease the angry whites, the Indian Office appointed a friendly commission made up of the agent in charge of the Omaha Agency, Andrew G. Pollock; a special agent in the Interior Department, William H. McConihe; and one of



Home of Jacob Parker, Omaha Indian, 1911. . . . (Below) Home of Noah Walker, Omaha Indian, 1911.



Thurston County's leading citizens, H. P. Marble. The group began its work on October 10, 1909, by preparing a card with 75 questions that would help it judge competency. The questions included: Do you want a fee patent: why or why not? Do you farm or lease your land? Have you any debts? Do you use mescal bean or alcohol? Are you in good physical condition? Are you self-supporting? How much education do you have? There were also places on the examination form for the names of two businessmen who could attest to the allottee's competency and for the comments of the commissioners. The commissioners decided to require every adult Indian and every minor 18 or over to appear and reply to the printed questions. By February 1, 1910, they had examined 605 persons.⁹

On the basis of these examinations, the commissioners divided the Omaha Indians into three classes: class I, which was made up of wholly competent Indians who were qualified to receive fee patents; class II, which consisted of partially competent Indians who could lease their land and control their money without any government interference but whose land should remain in trust; and class III, which was made up of wholly incompetent Indians who should remain under the government's control and be unable to manage their own leases and money. They then submitted the names of the class I Indians to the Indian Office, and the General Land Office in turn issued the patents. The Omaha agent posted the lists of the class I Indians at the agency office to give all prospective buyers an equal chance if an allottee decided to sell his land after he received his patent. Valentine warned, however, that he would regard as void any contract to convey land that was made before the fee patent was recorded in the General Land Office.¹⁰

The commission finished its work in March, 1910, listing 294 Indians as competent and 135 as incompetent. The lists were rushed through the Indian Office, and 244 fee patents were issued on March 17, 1910, all in one day, covering 20,199.23 acres.¹¹

During their months on the Omaha reservation, the commissioners abused their authority and violated their responsibilities. Although the minimum criteria for competency were knowledge of English and the ability to support one's self, the commissioners recommended allottees for fee patents who

could not read, write, or speak English and who were clearly incapable of managing their own affairs. They recommended some allottees, moreover, without ever seeing them or checking their references.¹²

The irresponsible commissioners were implementing a policy that was inherently coercive. The government issued fee patents on the basis of the commission's recommendation without any application or consent from the individual involved and sometimes over his protests. It issued fee patents to 107 Omaha allottees who specifically said that they did not want them. The commissioners—not the allottees—filled out the examination forms. Nor was there any place on the form for the allottee's signature, an essential expression of consent. Some allottees, in fact, pleaded with the commission not to foist fee patents on them because they did not believe that they were responsible enough to manage their own affairs and were afraid that they would lose their land. Even if the allottee told the commission that he wanted a fee patent, he probably did not understand the full implications of his action. The commissioners ignored Indian objections apparently because they believed, as Valentine did, that if the Indians would not accept their freedom voluntarily, they must be forced to do so. The Indian Office simply notified the Indians that the General Land Office was issuing the patents.¹³

Despite Valentine's earlier warning, local whites contracted for reservation land before the government issued the patents. Indians on the class I list with unsold land became prime targets for the machinations of land grabbers. Within two or three days, 50 deeds and mortgages were recorded in the Thurston County courthouse that purported to convey land belonging to class I Indians before they had received their fee patents.¹⁴

Many of the Omaha Indians did not yet understand a credit economy. Bankers and local merchants extended credit before the Indian warranted it in hopes of acquiring his land when he received a fee patent. The Indian bought horses, implements, and other items on credit and eventually mortgaged his land or signed it away before the superintendent even knew that the patent had been issued.¹⁵ The case of Mrs. Nazaenza Blackbird, a 65-year-old Omaha fullblood, was just one example. Although Mrs. Blackbird could not speak, read, or write

English, the commission issued her a fee patent for 80 acres of farmland, worth conservatively \$10,000. A merchant from Walthill induced Mrs. Blackbird to convey the deed to her 80 acres for \$1.00. She owed the merchant \$926.56 for goods that she had purchased in his store, and at his urging signed a paper that she thought would cover the amount of her indebtedness. Since she could not read the document, she did not discover until later that she had in fact signed away her land. To issue a fee patent to this "poor old ignorant fullblood," an Indian Office inspector later conceded, had been "extremely unwise."¹⁶

Mrs. Blackbird was just one of the many Omaha patentees who were induced to convey their land. In 1910, 60 to 75 percent of the fee patented land was sold, and half of the patentees squandered the proceeds from the sale. "Money in the pocket of an Indian," the superintendent moaned, "is like water in a leaky bucket, it soon runs out and no one knows where it is [has] gone." Yet, the superintendent also observed that patentees who lost their land and money were forced to go to work and to become self-sufficient.¹⁷

Even though the Omaha patentees were already losing their land, in September, 1910, Valentine organized another competency commission to work on the Santee Reservation, just 60 miles to the northwest of the Omaha Reservation. The Indians on the Santee Reservation, like the Omaha, were settled farmers who had been surrounded by the white citizens of Nebraska for years and were nearing the end of their trust period. Soon after establishing the commission, however, Valentine began to question the effectiveness of competency commission work. "I am not satisfied," he conceded, "that our competency commissioners are doing the kind of work I had in mind in appointing them."¹⁸ He was particularly disturbed by reports that the commissioners were relying on affidavits from character witnesses rather than visiting the Indians in their homes. As grim reports continued to filter in from the Omaha reservation, Valentine sadly concluded that the competency work had failed and gave up plans for any more commissions. In addition the Indian Office ignored the report from the Santee competency commission and returned to the old procedure of requiring and carefully scrutinizing applications from every allottee who wanted a fee patent.¹⁹

The commissioner was disillusioned not only with the com-

petency commission work, but also with the whole practice of issuing fee patents. "In the face of existing evidences of carelessness and incompetence," he warned, "any liberal policy of granting patents in fee would be utterly at cross purposes with other efforts of the government to encourage industry, thrift, and independence."²⁰ Valentine was so concerned that in April, 1912, he asked the superintendents to report on the status and effects of fee patenting. Specifically, he wanted to know what percentage of the patentees had sold their land because he was afraid that too much of it was falling into the hands of non-Indians.²¹

Although Valentine returned to a more cautious policy, the Omaha continued to suffer from the effect of the commission's visit. In 1912, 90 percent of the competency commission patentees disposed of their land, 8 percent mortgaged it, and only 2 percent demonstrated their competency by keeping it. In a masterpiece of understatement, an Indian Office inspector concluded, "The work of the (1910) commission was not a success." He blamed the land sharks who had urged the Indians to apply for fee patents in order to get hold of their land.²²

Although the effects of issuing fee patents on the Omaha Reservation were clearly devastating, after Valentine left the Indian Office, it turned to a more liberal fee patenting policy. With the election of President Woodrow Wilson in 1913, progressivism peaked and humanitarian concerns were all but forgotten. The Wilson administration concluded that Indians who seemed competent should be forced to manage their own affairs. The issuance of fee patents proceeded at an unprecedented rate, even though at least one official in the Indian Office questioned the legality and morality of forcing fee patents on Indians before their trust period expired. The Indians, he argued, had been given their trust patents with the implied promise that they would be permitted to hold their lands in trust for 25 years, free from taxation, and that the government would protect them in their ownership of that land. As part of its liberal policy, the Indian Office established new competency commissions to visit various reservations, including the Omaha Reservation. By 1920 the government had issued over 17,000 patents.²³

The liberal policy of the Wilson administration made it even



A well-to-do Omaha farmer and his family. From Twenty-Seventh Annual Report of the Bureau of American Ethnology (Washington, Government Printing Office, 1901), 641.

easier for land speculators to enrich themselves on the Omaha Reservation. They secured secret deeds and contracts against Indian allotments and filed them in the Thurston County courthouse before the government issued the fee patents. Through a leak in the Indian Office, speculators knew in advance when the patents would be issued and to whom. Thus, almost every time the government issued a patent, someone grabbed the patentee's land within two or three days, long before the local agent received word that it had been issued. One real estate dealer from Sioux City, Iowa, used whiskey, women, and "other nefarious practices" to induce the Indians to sign over their allotments. Occasionally, when whites heard that an Indian was about to receive a fee patent, they took him to Sioux City or Kansas City, got him drunk, kept him there until the government issued a patent, and then persuaded him to convey the deed for little or nothing. Many of the patentees did not know that under the law they did not have to convey the deeds to their land or take mortgages in order to repay debts that they might have contracted before they received their fee patents.²⁴ Under the Dawes Act land was to be conveyed to the allottees at the end of the trust period free from all encumbrances.

Gradually, there was a reaction against the liberal fee patenting policy. The courts later held that pre-patent conveyances were illegal and void, and they concluded that fee patents issued without the consent or application of the allottee were illegal. In 1927 Congress passed legislation authorizing the cancellation of such patents, but the court decision and the 1927 law did not help the Omaha patentees who had already sold or mortgaged their land. The government cancelled only seven Omaha fee patents, covering 703.96 acres.²⁵

The progressive solution of freeing the Indians from government restriction so that they could become independent, self-supporting citizens was a failure. The failure was especially striking because the Omaha were one of the most acculturated tribes in the country. Yet by 1936 there were only 26,625 acres of allotted land in trust and 4,000 in tribal ownership, while whites owned 108,870 acres of former reservation land. By that year three-fourths of the Omaha Indians were landless.²⁶ Clearly the Indians could not be "freed" successfully without adequate preparation, protection, and support. Yet, the Dawes idea of protecting the Indians in their land ownership had been cast aside in the name of efficiency, order, and progress. At least for a brief time, the government was willing to use unethical and illegal methods to bring progressive reform to the reservation. It was so anxious to promote Indian progress, satisfy white land hunger, and relieve the white tax burden that it forced fee patents on incompetent Indians. The results were tragic. The policy that the government claimed was in the best interest of the Indians led to poverty and land loss on the Omaha Reservation.

NOTES

1. *U. S. Statutes at Large*, Vol. 24, 388; *Ibid.*, Vol. 34, 182; U. S. Office of Indian Affairs, *Rules and Regulations Relating to the Issuance of Patents in Fee and Certificates of Competency and the Sale of Allotted and Inherited Lands*, October 12, 1910 (Washington: Government Printing Office, 1910), 5-7.

2. Circular 320, Robert G. Valentine to all superintendents and agents, July 19, 1909, Central Classified Files, Santee, 78527-09-127, Records of the Bureau of Indian Affairs, Record Group 75, National Archives (hereafter cited as BIA-CCF, RG 75, NA); *Report of the Annual Meeting of the Lake Mohonk Conference of Friends of the Indians*, 1909, 9 (the full series of the Lake Mohonk proceedings, 1883-1916, 1929, in microfilm, Clearwater Publishing Company of New York).

3. Valentine, "Making Good Indians," *Sunset*, 24 (1910): 600-601, 611;

Cato Sells to Franklin Lane, May 19, 1915, BIA-CCF, General Services, 55961-15-312, RG 75, NA.

4. Valentine to Congressman L. B. Hanna, March 29, 1911, BIA-CCF, General Services, 27593-11-127, RG 75, NA; Sells to Lane, May 19, 1915; Superintendents' Annual Narrative Reports, Winnebago and Omaha Agencies, 1910, 5, Records of the Bureau of Indian Affairs, RG 75, NA, microfilm ed. (reel 128). Under Act of August 7, 1882, 963 allotments were made on the Omaha reservation; they were approved on July 11, 1884.

5. J. C. Hart to the commissioner of Indian Affairs, May 14, 1919, BIA-CCF, Omaha, 41742-19-150, RG 75, NA; E. B. Linnen and E. M. Sweet, Report on the Omaha Reservation, March 31, 1915, BIA-CCF, Omaha, 150, RG 75, NA.

6. Pender (Nebraska) *Times*, June 11, 1909; U. S. Senate, Committee on Indian Affairs, *Taxation of Omaha Lands in Nebraska*, S. Rept. to accompany S. 4490, 61st Cong., 2d sess., 1910, serial 5583.

7. Susan La Flesche Picotte to Valentine, July 13, 1909, BIA-CCF, Omaha, 55028-09-150, RG 75, NA; Picotte to the secretary of Interior, June 28, 1909, *ibid.*; John Commons to Valentine, July 16, 1909, *ibid.*

8. U. S. Department of Interior, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior*, 1910 (Washington: Government Printing Office, 1911), 48; Commons to Valentine, July 16, 1909, BIA-CCF, Omaha, 55028-09-150, RG 75, NA; Memorandum by F. H. Abbott, "Problem of the Omahas," July 29, 1909, BIA-CCF, Omaha, 61671-09-127, RG 75, NA; *Pender Times*, August 13, 1909, October 15, 1909.

9. William McConihe and H. P. Marble to commissioner of Indian Affairs, February 18, 1910, BIA-CCF, Omaha, 61671-09-127; McConihe to Marble, February 12, 1910, *ibid.*; S. Rept. 397, *Taxation of Omaha Lands in Nebraska*.

10. File BIA-CCF, Omaha, 61671-09-127, RG 75, NA, contains copies of the competency commission lists and of form letters the General Land Office sent to the prospective patentees; McConihe and Marble to the commissioner of Indian Affairs, February 12, 1910, *ibid.*; McConihe and Marble to commissioner of Indian Affairs, February 11, 1910, *ibid.*; Valentine to A. H. Kneale, March 18, 1910, *ibid.*; Abbott to the secretary of Interior, February 24, 1910, *ibid.*

11. McConihe to Abbott, March 10, 1910, BIA-CCF, Omaha, 114127-14-127, RG 75, NA; *Pender Times*, March 4, 1910. The figures on the number of fee patents issued come from the Omaha tract book in the Bureau of Indian Affairs, Aberdeen, South Dakota Area Office, and from the competency commission examination forms at the Winnebago Agency, Winnebago, Nebraska.

12. This information comes from the allotment and estate files at the Winnebago Agency; see also McConihe and Marble to the commissioner of Indian Affairs, January 15, 1910, Omaha, 61671-09-127, RG 75, NA; E. B. Linnen, Report on the Omaha Agency, October 24, 1916, BIA-CCF, Omaha, 150, RG 75, NA.

13. McConihe and Marble to the commissioner of Indian Affairs, February 18, 1910, BIA-CCF, 61671-09-127, RG 75, NA; see also, the series of form letters from the Chief of the Land Division in the Indian Office to the prospective patentees, *ibid.*; the information on how the allottees responded to the commission comes from the individual competency commission examination forms at the Winnebago Agency and the allotment and estate files.

14. *Pender Times*, April 8, 1910.
15. Axel Johnson to Cato Sells, Report on the Omaha Reservation, January 1, 1915, Major James McLaughlin Papers, Assumption Abbey Archives, Richardton, North Dakota, microfilm ed. (reel 6, frame 9).
16. E. B. Linnen, Report on the Omaha Agency, October 24, 1916, BIA-CCF, Omaha, 150, RG 75, NA.
17. Superintendents' Annual Narrative Reports, Winnebago and Omaha Agencies, 1910, 36-37, Records of the Bureau of Indian Affairs, RG 75, NA, microfilm ed. (reel 128).
18. Marble, Andrew Pollock, and Frank McIntyre to the commissioner of Indian Affairs, September 30, 1910, BIA-CCF, Santee, 70731-10-127, RG 75, NA; Valentine to E. P. Holcombe, November 30, 1910, BIA-CCF, 34939-11-127, RG 75, NA.
19. E. F. Hauke to Marble, McIntyre, and Pollock, March 23, 1911, BIA-CCF, Santee, 24448-11-127, RG 75, NA; Hauke to McIntyre, June 20, 1911, *ibid.*
20. *Annual Report of the Commissioner of Indian Affairs*, 1911, 23.
21. Abbott to H. G. Wilson, January 13, 1911, BIA-CCF, General Services, 70942-10-312, RG 75, NA; Hauke to Marble, McIntyre, and Pollock, March 23, 1911, BIA-CCF, Santee, 24448-11-127, RG 75, NA; Hauke to McIntyre, June 20, 1911, *ibid.*; circular 619, Valentine to all superintendents, April 8, 1912, Records of the Bureau of Indian Affairs, Numbered Circulars, RG 75, NA.
22. S. A. M. Young, Report on the Omaha Agency, November 25-26, 29-30, 1912; BIA-CCF, Omaha, 126946-12-150, RG ' 5, NA.
23. *Annual Report of the Commissioner of Indian Affairs*, 1917, 3-5; *ibid.*, 1920, 48-49; Edgar Meritt, Memorandum for the commissioner, December 1, 1913, BIA-CCF, General Services, 152466-13-312, RG 75, NA.
24. Arthur Mullen to the commissioner of Indian Affairs, August 14, 1919, BIA-CCF, General Services, 85492-19-312, RG 75, NA; H. S. Traylor to Sells, April 8, 1919, BIA-CCF, Omaha, 31768-19-150, RG 75, NA; John F. Farley to Sells, March 26, 1919, BIA-CCF, Omaha, 27231-19-127, RG 75, NA.
25. *U. S. v. County of Benewah, Idaho*, 290 Fed. 628; *U. S. Statutes at Large*, V. 45, 1247; *Glacier County v. Frisbee*, 164 P 2d 171 (Mont. 1945).
26. Addison E. Sheldon, *Land Systems and Land Policies* (Lincoln: Nebraska Historical Society, 1936), 20-22, 333.