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Taxing the Omaha and Winnebago Trust Lands, 1910–1971: An Infringement of the Tax-Immune Status of Indian Country

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Congress exercised its plenary power over the Omaha and Winnebago tribes in 1910 and 1916 by passing legislation which authorized Thurston County, Nebraska leaders to assess a real estate tax against trust allotments on the Omaha and Winnebago reservations. Congress' tax direction to Thurston County violated a fundamental principle governing relations between the Indian tribes and the United States: that Indian country, which included trust land, was immune from state taxes. A result of this infringement of inherent tribal sovereignty was the eventual loss of Omaha and Winnebago lands through sale. Those who managed to save their lands paid land taxes to the country from 1910 until 1971. An ironic corollary to this unfortunate episode was that tax-paying tribal members did not receive state services because local leaders considered Indians to be wards of the federal government and therefore a federal responsibility. The local taxation of Indian allotments in Thurston County also demonstrated that the United States was unwilling to accept its trust responsibility to individual Indians or to protect tribal integrity.[1]

Even though the Omaha Treaty of 1854 specified a formula for the future allotment of Omaha lands, Congress authorized the first actual land allotments on either the Omaha or Winnebago

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reservations to select Winnebagos in 1871. These eighty-acre allotments were called "Leaming allotments," named after the agent who issued them. Congress controlled these individual tracts and prevented local taxation through the instrument of a restricted fee instead of a trust patent. With a restricted fee, the Indian owned title to the land, but the United States imposed certain restrictions to protect the land against alienation. This differs from a trust patent where the United States owned the land but held it in trust for the individual Indian. Because these initial allotments made on the Winnebago reservation were exempt from future land taxes, the Leaming allotments were not important in the tax issue. Instead, individual trust allotments carried the eventual burden of local land taxes because the 1910 and 1916 laws specified that only trust lands would be taxed.[2]

Trust allotments were not made to the Omahas until a decade later. In 1882, a small group of Omahas broke from the central village and began farming separate tracts of land. They feared losing their farms and improvements because the United States had not issued patents to them securing title to these Omaha homesteads. With help from Alice C. Fletcher from the Peabody Ethnological Institute in Cambridge, Massachusetts, who was living with the Omahas at the time, fifty-three tribal members signed and sent a petition to Congress asking for the passage of an allotment act to protect their farms. Congress complied with their request and in the summer of 1882 authorized the issuance of trust allotments to the homesteading Omahas. Fletcher conducted the allotment process and maintained the allotment schedule; 954 allotments covering 75,931 acres were issued to 1,194 individuals. In 1884, the United States issued trust patents for these allotments, known as the "old" Omaha allotments. The twenty-five year trust period would expire in 1909. The remaining Omaha and Winnebago people took allotments in 1893 under the provisions of the General Allotment Act of 1887; the trust period on these "new" land allotments would terminate in 1918. Ironically, Congress initially protected these lands against taxation to enable the Indians to build and preserve their homes, but then exposed some of the lands to the full force of local taxing authority.[3]

Eventually settlers living on the unorganized lands west of the two reservations began working to create a county. Local leaders

successfully petitioned the Nebraska state legislature in 1889 to organize a new county named Thurston in honor of John M. Thurston, prominent local Nebraska politician. Pender, located in the southwest corner of the new county, became the county seat. Thurston was one of the last counties organized in Nebraska and nearly all of the Omaha and Winnebago reservation lands were inside its borders.[4]

The organization of Thurston County provided local non-Indian leaders an opportunity to develop their own community, but in order to do so, they had to raise revenues. That could be accomplished primarily through land taxes. Nebraska law gave county officials the power to assess real property within the county and to collect taxes levied against the land, and the right to take any land from a landowner for failure to pay land taxes. Through tax revenues, local officials paid for the construction of farm-to-market roads, bridges, and schools. Because the United States held most of the land in Thurston County in trust, it was tax-exempt; therefore, this land provided no income for the county. County leaders realized that the region's prosperity depended upon the removal of restrictions prohibiting the taxation of Indian lands. Like other whites throughout the county, officials of Thurston County believed that Indians had to pay their fair share of the county's expenses if they were going to assimilate into the general society.[5]

Thurston County residents held the same opinion of the Omaha and Winnebago tribes that other non-Indian communities held about their Indian neighbors: that Indians hindered local development because their lands were tax-exempt, but Thurston's plight was not unusual. Any non-Indian community established on or near a reservation experienced funding problems because Indian lands were exempt from local taxes. The tax-exempt status of Indian property often became an emotional issue because communities were separated into taxpaying and non-taxpaying factions synonymous with whites and Indians. Local governments, in the absence of Congressional authority, developed unsuccessful strategies to circumvent the tax-exempt status of Indian land and collect revenues from Indian people. By the early twentieth century, tax collection practices that some local governments attempted to implement included the assessment of the improvements that an allottee made on his or her

land and the taxation of an Indian's personal property while his or her land remained in trust. Indians resisted this outside encroachment into tribal affairs, particularly because the tribal people did not vote in local or state elections. Federal courts, in the absence of specific federal authorization, eliminated these attempts to circumvent the principle of tax immunity.[6]

Instead of following other governments' failures, Thurston County did not attempt to levy any taxes against either Indian lands or personal property, but asked Congress for monetary relief. County officials, who understood the fundamental relationship between the United States and tribes, entered into a contract with a local businessman, William A. Peebles, in April, 1892. Peebles went to Washington, D.C. for help, because Congress possessed the plenary power to remove restrictions placed against Indian lands. He hoped to secure passage of an act to help the county; for his efforts, he would receive ten percent of any appropriation that Congress made for county relief.[7]

On September 6, 1893, Nebraska Representative George D. Meiklejohn introduced a bill in the House of Representatives titled "extending relief to Indian citizens, and for other purposes."[8] The other purposes included the taxation of Indian lands in Thurston County. Commissioner of Indian Affairs Daniel M. Browning opposed the bill, claiming that an Indian's trust property should not be subject to the full force of local taxation. Browning particularly objected to the bill because it proposed that Indian land taxes be paid from existing tribal trust funds. The Commissioner labeled that proposed method of payment taxation without consent because Congress would turn trust money over to the county without Indian approval. Meiklejohn's bill did not pass, but it illustrated the emerging conflict between local governments and tribes: instead of military campaigns being waged for ownership of tribal land, local government fought tribes for the control of land. Officials in Thurston County and elsewhere struggled to tax Indian land in order to obtain fiscal resources that the lands had the potential to produce. The effect of these confrontations was that local governments entrusted to provide services to all citizens blamed a cultural minority for their own problems, and that attitude created prejudice.[9]

Congress' reluctance to pass any special tax legislation for Thurston County in 1893 left local officials with no other recourse

than to wait for the trust period to expire on the individual Indian trust allotments. In defense of the county, it should be noted that the revenue problems were real. In 1900, slightly more than seven percent of the land in the entire county was taxable and over ninety-two percent of the land was non-taxable Indian land under the jurisdiction of the United States.[10]

The wait ended in 1909. In that year, the trust period expired on the "old" Omaha land allotments; thus, a large block of Indian land lost its tax-exempt status. The non-Indians were jubilant because additional lands would be placed on the Thurston County tax rolls. The editor of *The Pender Times* wrote that 150,000 acres of trust land would be taxable and that these taxes would greatly increase the county's revenue. The editor proclaimed "that eventually, all this desirable farm land, as good as the best in Northeastern Nebraska, will fall into the hands of the whites, who have awaited this move."[11] Besides removing trust restrictions from old Omaha allotments, which would provide additional tax revenues for the local government, the opportunity also existed for non-Indians to gain possession of patented Indian land through eventual tax deeds, mortgage foreclosures, and land sales.

The county residents' happiness quickly soured when President William Howard Taft extended the trust period on the "old" Omaha allotment lands for an additional ten-year period. The extension was not made for any benevolent or humanitarian reasons; it simply granted the Office of Indian Affairs additional time to determine the competency of the individual Omaha Indians to manage their own affairs. Because these lands represented one of the first large blocks of allotments to reach the twenty-five-year expiration date, the Office of Indian Affairs preferred to demonstrate caution instead of blindly allowing the trust period to expire. Government officials wanted to determine which Omaha Indians were ready to own unrestricted lands and handle their own affairs and which Omahas were not.

The determination of who was a competent Indian was a subjective decision originating with the guardian-ward relationship between tribes and the United States. The concept was embodied partly in the General Allotment Act of 1887 which placed the twenty-five-year trust restriction against Indian lands. The idea of competency was reinforced in the Burke Act of 1906 which stated that an Indian must demonstrate his "civic competency"

in order to have any restrictions removed from his land before the expiration of the twenty-five-year period of trust.[12]

In order to release competent Indians from their ward status, government officials created a competency commission which examined each individual who held an "old" Omaha land allotment and decided his or her competency. For the Office of Indian Affairs the commission represented a compromise between fulfilling or discharging the nation's trust obligation to the Omahas, who could not manage their own affairs, and responding to pressure from non-Indians to remove Indian lands from trust status and put them onto the tax rolls.

The competency commission included Andrew G. Pollack, the Indian agent for the Omaha; William H. McConihe, a special agent from the Office of Indian Affairs; and H. P. Marble, a leading citizen from Thurston County. The commission began work in 1909, and in early 1910 divided the "old" Omaha allottees into three classes. In class one, the commission placed all the competent Omahas. These people were freed from all government restrictions and received a fee patent to their land, which the county promptly taxed. Indians placed in class two were judged partially competent and were not released from government supervision. Their lands remained in trust but they were permitted to enter into land lease agreements with outsiders without any government supervision; they also controlled their own monies which were deposited at the agency in Individual Indian Money accounts, also known as IIM accounts. Despite the removal of some restrictions, the land of class two Indians remained in trust. The class three Omaha Indians were described as noncompetents; this group included the old and the young and the physically and mentally disabled, as well as minor Indian students attending school. They remained under the reservation superintendent's discretionary power.[13]

The Thurston County citizens disapproved of the ten-year extension and the government's plan to give only competent Omaha Indians fee patents to their lands. Whenever possible, the Thurston County state's attorney appeared at the competency commission hearings and defended the county's interests, claiming that more taxable lands were needed in order to increase the county's operating revenues. When the commission completed its work in 1910, nearly 17,000 acres of Indian land, instead of the potential of 75,931 acres, were removed from government con-

trol. As far as county leaders were concerned, the commission's decision did not place enough new Indian lands on the tax rolls, and they demanded the power to tax Indian trust lands. County officials began to correspond with state and national leaders attempting to secure authority to tax the remaining trust lands in the county.[14]

County leaders argued that the Omaha and Winnebago Indians should pay land taxes to support county construction projects because the Indians used these facilities. Some officials from the Office of Indian Affairs supported Thurston County's argument. In 1909, John N. Common, the Omaha agent, stated that the Indians benefited from the construction of roads and bridges; therefore, Indians should bear the responsibility of paying taxes. It should be noted that by 1910 a large percentage of the individual Omaha allotments were leased to non-Indians who benefited more than the Indians from the construction of farm-to-market road and bridges that tied distant allotments to local markets. Albert Kneale, the Winnebago agent, urged the county to begin prosecuting Indian offenders who committed crimes because he believed that it was in the best interest of the non-Indians to look after their Indian neighbors since "Indian lands will not become subject to taxation until the Indians themselves are reasonably industrious and sober."[15]

Local leaders persuaded Nebraska Senator Norris Brown that the county's inability to tax trust lands was unfair, particularly after the competency commission released very few acres of land from trust status. Therefore, Norris introduced a bill in the Senate authorizing the county to levy a land tax against the "old" Omaha allotments that still remained in trust. The bill proposed that only allotments made to Omaha Indians before 1885 would be subject to real estate taxes. The county treasurer would inform the superintendent of the Omaha reservation which Indian had not paid his county land taxes and then the Secretary of the Interior would have the authority to pay the Indian's land taxes from any trust funds that the government held for the Indian, including money received from land rentals. If no funds were available, the taxes for that year would be dropped. The bill prohibited the initiation of any foreclosure proceedings on trust land if the Indian did not pay the taxes.[16]

The Department of the Interior supported Senator Brown's bill. Speaking for the Department, Secretary of the Interior Richard

A. Ballinger said it was unfair to expect non-Indian residents of Thurston County to shoulder the entire tax burden for all the residents of the county, including Indians. As Ballinger noted, the tax-exempt status of Indian lands had prevented the county from building a courthouse or obtaining funds to prosecute criminals. He considered the Brown bill a very fair trade; the county received additional lands to tax, thereby raising local revenues, and the Indian's land increased in value as the county obtained funds to build roads and bridges. In short, he believed that the increasing value of the Indians' land would offset any tax payment that the Indians would make.[17]

With this strong support from the Department of the Interior, the bill encountered little opposition in Congress. In the House of Representatives, Charles Burke from South Dakota defended the bill. He claimed that the proposed law was fair, particularly in light of the fact that the Omaha Indians owned a large percentage of the land in the county. According to Burke, these Indians shared public facilities, but they did not pay any land taxes; there was no danger of the Indians losing their land because "if these allottees failed to pay taxes that may be levied on these lands the list will be certified to the Department of Interior and paid from any funds that may be due to the individual owning the land." Burke added that "if there is any rental money, it will be used to pay the taxes," and no foreclosures would be permitted. Burke's defense was the same simplistic argument local leaders put forth.[18]

Several congressmen disagreed with Burke. They believed that Senator Brown's tax bill was a major piece of legislation that would affect longstanding relations between tribes and the United States because it had the potential to change the tax status of all Indian trust lands in the country. Some members of the House believed that any extensions of the trust period also carried a blanket tax immunity; the Brown bill changed that principle with the "old" Omaha allotments and it altered the relationship between tribes and the United States. Despite the strong arguments against the bill, it became law, thus giving the state of Nebraska and Thurston County the power to assess and collect taxes on pre-1885 Omaha allotments that remained in trust.[19]

Prior to passage of the Omaha tax bill, individual lands were protected from state taxes. Treaties signed with the Omahas in

1854 and 1865 prohibited Nebraska from assessing tribal lands until Congress altered the immune status in 1910. The 1886 Supreme Court decision in *United States v. Kagama* noted that the United States can enforce its laws in Indian country, and in 1903 the Court ruled in the Lone Wolf case that Congress can abrogate treaty provisions when it would be in the best interest of the Indians and the country. These decisions reflected Congress' contemporary vision of the nation's relationships with tribes, but such a view was not without its problems. The 1910 Omaha tax bill created a conflict between the nation's exercise of power over tribes and its trust responsibility to the tribes; the ward paid land taxes to the guardian's citizens.[20]

This infringement upon Omaha lands did not prevent a county celebration. The editor of *The Pender Times* proclaimed "All Omaha Lands are Taxable."[21] No whites opposed the tax bill as the county obtained tax revenues from the Indians without assuming any of the obligations to them; the United States provided for the restricted Omaha's education, health, and social needs. The Omaha, on the other hand, disapproved of the new law. Hiram Chase, a member of the Omaha Tribe and a citizen who held the positions of county attorney and county judge in Thurston, echoed the tribe's dissatisfaction with the 1910 law as another example of the government "continually doing things without the consent of the Indian." Like Chase, restricted Omahas disapproved of the tax law because their rent payments would decrease, making their often-lucrative leasing arrangements less attractive. Another reason for their disapproval was that county authorities would control income from trust property by circumventing the tax-immune status of Indian country.[22]

The development of a tax collection program was a problem for the county. Local leaders believed the best way to collect the real estate tax assessed against the "old" allotments was to take as many tax dollars as possible directly from individual Omaha land leases. Many Omaha Indians and non-Indian lessees completed lease arrangements at local banking institutions. County leaders wanted the lessee to write two checks, one to the bank for payment of the year's taxes and another to the lessor for the balance of the rent payment. If no money was available to pay, the tax was canceled for that year because tax foreclosures were not permitted. Tax collection through Indian land leases pleased an assistant cashier of the First National Bank of Pender, who noted

that, "It is very gratifying to us to know that the tax on Indian land will hereafter be paid out of the rents as the tax problem is the one drawback to this country."[23]

Five years after the passage of the Omaha tax bill, Commissioner of Indian Affairs Cato Sells proudly proclaimed that the tax imposed no hardships on the Omaha Indians. Their lands had been free from taxation for twenty-five years and now they "should bear the burden of taxation as they are enjoying the privileges of citizenship and the protection of state laws."[24] Another official from the Office of Indian Affairs, Inspector E. B. Linnen, disagreed and wrote that taxing Omaha lands held in trust was unconstitutional. In addition, he reported that the Indians complained of lessees withholding monies from their rents in order to pay Indian land taxes. Linnen also noted that the law discouraged economy and thrift because the Omahas withdrew their money on deposit at the agency and spent it to avoid paying county land taxes. It was the non-competent Indians, who had no control over their funds, who ultimately paid the county land taxes. The Brown Bill did not encourage an atmosphere of mutual respect between tribal people and county residents, nor did it encourage Indian assimilation; instead the Omahas tried to remain outside the authority of county government even more than they had before the bill's passage.[25]

From 1910 to 1915, nearly 30,000 acres of Omaha and Winnebago lands left trust status in Thurston County. This acreage included lands of deceased Indians that the living heirs decided to sell; lands disposed of by individuals who applied for a fee patent; and non-competent Indians' lands which were held in trust for Indian people who could not manage their own affairs and then sold. Of the 30,000 acres that went out of trust status, nearly 18,000 acres were "old" Omaha allotments that were already taxed. The remaining lands included approximately 10,000 acres of "new" Omaha allotments and only 2,000 acres of Winnebago allotments. These sales figures demonstrated that after the first five years of taxing "old" Omaha allotments, a trend began; the Indians sold their taxed allotments more quickly than allotments that were not taxed (see Fig. 1). This disposal of their allotments to escape paying land taxes only made conditions worse for the Indians as they sold their economic future.

The locals had no sympathy toward the Indians; they supported the taxation of Omaha lands because of the benefits they

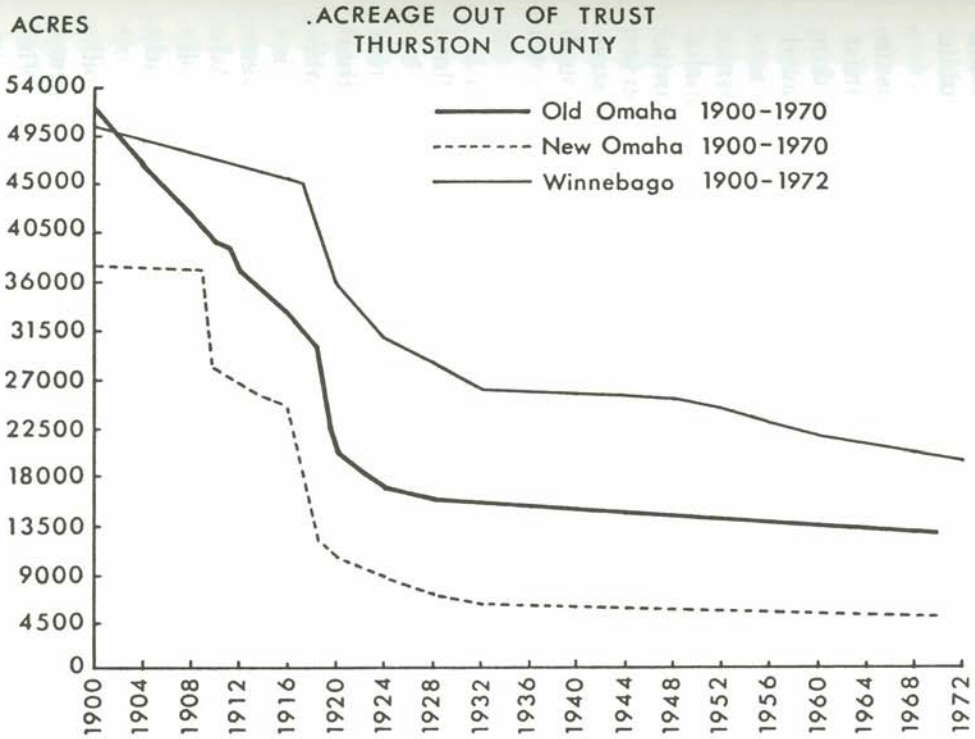

FIGURE 1. Clearly visible on this graph are the decreases in "Old" Omaha, "New" Omaha, and Winnebago trust lands following the passage of the 1910 and 1916 tax laws. Graph composed from data compiled at the Thurston County Courthouse, Pender, Nebraska.

received. Guy T. Graves, a Thurston resident, rationalized the situation by arguing that non-Indians, who were less able than Indians to pay taxes, did so; therefore, the Indians should not be exempt from this act of citizenship. Many residents beyond Thurston County shared Graves's view, believing that Indians should pay taxes, but should not vote or enjoy the local public improvements.[26]

By 1915 less than fifty percent of the land in the county was on the tax rolls, but this was a sizeable reduction of the Indian trust lands that in 1900 had made ninety-two percent of the land in Thurston County non-taxable. Taxation of trust property played an important part in this reduction. Despite the increase in taxable property, the county continued to have fiscal problems; to increase revenues, local officials wanted to tax the "new" Omaha and Winnebago allotments. To initiate new taxing authority, county leaders went to the Nebraska congressional delegation for aid. Fearful of losing their case before Congress, Thurston County Commissioners retained Charles J. Kappler, a noted Washington, D.C. lawyer who specialized in Indian issues, to lobby for them.[27]

In 1916, Senator Norris Brown and Representative Dan V. Stephens introduced legislation to tax the remaining trust allotments in Thurston County. Brown defended the new bill by claiming that non-Indians paid taxes and Indians received the benefits. Stephens concluded that "there are few, if any, either white or Indian who are opposed to its passage." Representative Stephens was either misinformed on the extent of Indian dissatisfaction with the bill or he knew that the Indian people were upset and he did not want to jeopardize the bill's passage. Admittedly, some Omaha people actually supported the second bill, believing that their current land taxes would decline when additional trust lands were placed on the county tax rolls.[28]

Under Stephen's guidance, the House approved the 1916 bill. Likewise, the Senate passed it with little debate. Early in December, President Woodrow Wilson signed the bill into law. The 1916 statute specified that the county could not collect a real estate tax on either the "new" Omaha or Winnebago trust allotments until the first twenty-five-year period of trust expired. That would occur in 1918. The 1916 law, like the 1910 act, passed without Indian consent.[29]

In early January of 1917, the Office of Indian Affairs informed

Omar L. Babcock, superintendent of the Winnebago school, that the Winnebago would pay land taxes. The Thurston County treasurer asked Babcock for help in collecting taxes assessed against Winnebago lands, but the superintendent replied that his office had no jurisdiction to enforce tax payments and that he would not act as a collection agency for the county. Some agency officials were hostile to the taxation laws because they knew the effects the legislation had on Indian progress.[30]

The Omaha accepted the new law with few complaints and protests; a large part of their lands was already taxed, a fact which made acceptance of the 1916 law easier. The Winnebago, however, protested. In late January, 1917, a Winnebago delegation travelled to Washington, D.C., hoping to exempt their tribe from the law. They met Assistant Commissioner of Indian Affairs Edgar B. Merritt on January 23rd, but he would not discuss any constitutional questions that pertained to the tax law of 1916. According to Merritt, such questions were the responsibility of the courts. Merritt told the Winnebago he would "do everything in my power to help protect your people, and to see that they are not unjustly treated under this legislation."[31]

Merritt's plea for fairness did not alter the fact that the 1916 tax law was unfair to both tribes. The Winnebago, poorer and less acculturated than the Omaha, were at a greater disadvantage; the Winnebago were less able to pay taxes and unable to comprehend the law's provisions. Because the taxation of Indian trust allotments negated the tribal people's quest for self-sufficiency, Isaac Greyhair, a Winnebago, told Merritt they perceived the tax as another non-Indian effort to control more Indian land. In view of the increased loss of "old" Omaha allotments, Greyhair's observation was correct. Ranking administrators defended Congress's decision to change the principle of tribal tax immunity from local government for the Omaha and Winnebago.[33] On the other hand, F. T. Mann, the superintendent of the Winnebago agency, disapproved of the new tax law because it divided Winnebago Indians, like the Omaha, into tax paying and non-tax paying groups.[33]

The "new" Omaha and the Winnebago allottees paid their first local taxes in 1919. As more restricted Indians began paying taxes, Thurston leaders developed a comprehensive tax collection program based on the 1910 and 1916 laws and prior experience. Both laws contained a provision that "if the taxes are

not paid within one year after they become due . . . the Secretary of the Interior . . . is authorized to pay the same from any funds belonging to the Indian allottees arising from the rental of their lands or [any other funds] under his control.'' When no funds were available, the county released the land from any taxes for that year.[34]

Experience revealed that the ''old'' Omaha allottees would not voluntarily pay taxes; therefore, the county encouraged continued tax collection directly from land rents. From 1910 through 1918, the lessee either paid the land tax directly to the county and then reimbursed the Indian lessee the balance of the rent or paid the rent to the Indian agency. When the lessor paid the entire rent payment to the agency, the county requested the superintendent to withhold the tax payment from the lease money. The lessee's failure to pay taxes was reason for the superintendent to cancel the lease, which deprived the allottee of all rent income. To ensure that the lessee paid the taxes, a tax clause was inserted into the lease agreements beginning in 1919, when the large number of trust lands were taxed. The tax clause specified that taxes levied against the property would be taken from the rent payments that the Indian would receive; the lessee had to pay the allotment land taxes before the first day of May for the year the lease was in operation. The taxes were not added to the negotiated lease price, but were subtracted from the lease price. As a result, the allottees received less than fair market rent value for renting their lands.[35]

Taxing leased trust lands decreased the allottee's unearned income and made lucrative lease agreements less attractive because tax-paying allottees paid a very high tax when compared to their overall income. In 1928, the Meriam Report reported that the annual per capita income on the Omaha reservation, including both tribal and individual sources, was $354.00. In that same year, Lydia Thomas paid $214.43 in county taxes on her 160 acre trust allotment. Based on these figures, Thomas spent sixty percent of her income to satisfy county real estate taxes, leaving her a spendable income from her land of only $140 for the year. It was difficult to raise lease rates since the Office of Indian Affairs used appraised fair market rent values to determine rates and the taxes paid to the county were subtracted from the lease rent, not added to the appraised value. The assessment and collection of taxes from Indian land lease payments tarnished a long stand-

ing lease relationship between the Omaha, and later the Winnebago, and their white neighbors. Many tribal people had found leasing an advantageous opportunity to make money, but when most of the Indians' lease payment went to pay county land taxes, they resented the farmers who leased the allotments. Even Charles Burke, Commissioner of Indian Affairs, stated in his 1927 Annual Report that the acts of 1910 and 1916 not only embarrassed the Indian people but created a financial hardship for them. Burke supported the 1910 law in Congress but when he discovered that the land leases yielded only enough income to pay the assessed taxes he advocated corrective legislation.[36]

From 1919 to 1929, allottees paid $398,131.78 in taxes to the county. During this same period, over 24,000 acres of Indian land on both the Omaha and Winnebago reservations passed out of trust status (see Fig. 1). An illustration of Thurston's dependence upon the Indian's land was revealed on July 12, 1929, when the United States Senate subcommittee on Indian affairs held hearings at the two reservations as part of the Senate's survey of conditions of Indian affairs. Cecil R. Bougher, attorney for Thurston County, testified that the county was poor and the tax clauses inserted into Indian land lease agreements were necessary to support the county's day-to-day operations. In counter-testimony, several Omahas claimed that most of their rent money went to pay county land taxes. They received $3.00 to $4.00 in rent per acre but paid a minimum assessment of $1.00 per acre to the county. With at least one third of their rent income paying local taxes, many Indian people sold their land in order to escape county taxation. Because of the high land values of the 1920s, it was more attractive for the Omaha people to sell their allotments than to pay the land taxes.[37]

The Winnebago told members of the Senate subcommittee that they objected to the old people paying county land taxes when land rents were their only source of income. Taxation created a real economic hardship because the Winnebagos had an annual per capita income of only $195.00 in 1928. They argued that the 1916 law had not given the Office of Indian Affairs authority to insert tax clauses into Indian land lease agreements and they wanted the practice stopped.[38]

Besides presenting testimony from the Senate survey, the *Meriam Report* of 1928 examined the effect of taxing Indian lands. The *Report* stated that any attempt to tax Indian people should

be done gradually, allowing them time to assume the burden of taxation as their financial position improved because land was more valuable to the Indians than tax revenues were to the county. Instead of a land tax, the authors of the report recommended that an income tax should be levied against Indian people. Such a tax reflected an individual's potential to pay, instead of having the Indian people immediately bear the full burden of real estate tax that did not take into account a person's financial assets.[39]

Despite the recommendation of the *Meriam Report* and the tribal protests against trust assessments, Indians continued to pay land taxes to Thurston County. The general pattern from 1910 until 1944 was that non-Indian lessees paid the taxes to the county. In 1940, Commissioner of Indian Affairs John Collier requested that the method of payment change in order for the Office of Indian Affairs to maintain a better accounting of each Indian's money. Winnebago superintendent Gabe Parker altered the collection and payment procedure in 1944. The new regulations required lessees to pay the full land rental price at the Winnebago agency; then the agent wrote a check to the county for the land taxes assessed against each allotment. The last change in the tax collection procedure occurred in 1965 when some rent monies were deposited in Special Deposit Accounts established for the sole purpose of paying taxes to Thurston County. After taxes were paid from the Special Deposit Account, the remaining rent monies were deposited in the Individual Indian Money accounts. These accounting changes did not diminish land taxes. In 1955, the lone heir to the James Keech allotment of 160 acres of land received $428.00 annual rent after land taxes were paid. In that same year, thirteen heirs divided $182.00 after taxes, from an 80-acre tract.[40]

As years passed, the allottees or their heirs not only continued to pay a high percentage of their lease income for taxes, but also paid higher taxes than necessary because of their lack of knowledge of tax assessment procedures. This was particularly true in the area of improvements. The Omaha and Winnebago constructed their property improvements at the turn of the century; over time, the improvements deteriorated or were destroyed. Non-Indian farmers leasing Indian lands encouraged the abandonment of out-buildings because they did not want to move farm equipment around improvements. Although a build-

ing declined in value, the county continued to assess property at the higher value because the Indian owner failed to notify the county assessor that a building was destroyed. Because of social dynamics that maintained distance between Indians and whites, the assessor did not examine Indian property.[41]

The allottees or their heirs paid taxes to the county until 1971. In that year, the Omaha and Winnebago tribal councils requested the Bureau of Indian Affairs to stop making tax payments, and after that year, no more land taxes were paid. Attempting to maintain the flow of Indian tax dollars, the county filed suit in federal district court seeking to recover back taxes and to obtain a court order forcing the Secretary of the Interior to collect future land taxes. The court ruled that both the 1910 and the 1916 tax acts were only indirect measures that imposed a limited liability upon the allottee, and as a result the county could not collect a tax assessed against Indian lands without the consent of the allottees or their heirs. For the Omaha and the Winnebago tribes, the court's decision reflected the nation's return to the principle of tax immunity for the tribes from outside local governments.[42]

The years that the county collected taxes were costly to the Omaha and Winnebago. During that period, the tribal members resented paying taxes to the county, but they were unable to stop all payments because the United States government controlled tribal and individual funds. In all, tribal members paid $1,918,813.03 in taxes to Thurston County, representing a large percentage of their unearned rent income (see Fig. 2). This in turn created suffering as Indian people, who were already poor, saw their spendable income decrease further. On the other hand, the county's non–Indian residents believed that the local Indian population had an obligation to pay taxes and no white people supported the Indians' view. The end result was that tribal members went through the motions of being tax-paying citizens, but in reality remained separate from the rest of the county's population.

Fortunately the tax-paying experience of the Omahas and Winnebagos was not repeated elsewhere. Even during the termination era of the 1950s when Congress passed Public Law 280 granting select states civil and criminal jurisdiction over Indians, the law prohibited the states from taxing trust lands, thus maintaining the principle of Indian country's tax-immune status. But during the sixty years of taxation in Thurston County, tribal

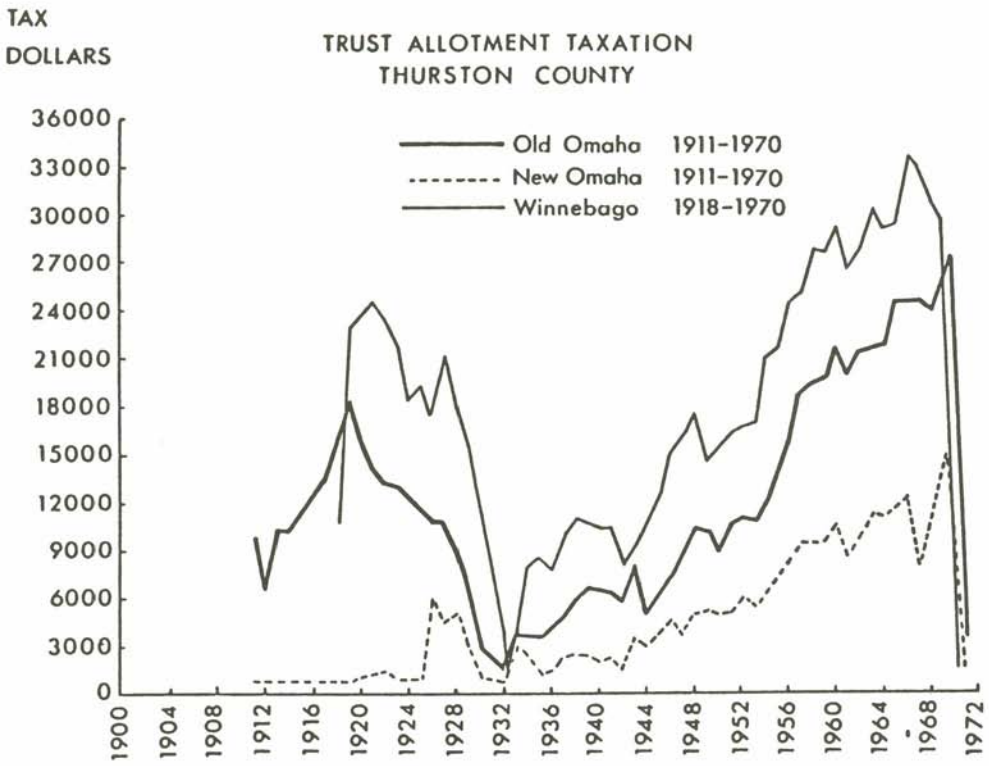

FIGURE 2. The "Old" Omaha, "New" Omaha, and Winnebago trust lands all generated tax dollars for Thurston County. Graph composed from data compiled at the Thurston County Courthouse, Pender, Nebraska.

people sold trust lands to eliminate tax payments. Land sales that were completed to avoid immediate assessments decreased the future assets of Omaha and Winnebago Indians. Hardships aside, the tribal people of Thurston County did not willingly pay local assessments as county or congressional members had envisioned because the Omaha and Winnebago people believed in the tax-exempt status of Indian country.

NOTES

1. Monroe E. Price and Gary D. Weatherford, "Indian Water Rights in Theory and Practice: Navajo Experience in the Colorado River Basin," *Law and Contemporary Problems*, Vol. 40, No. 1 (Winter 1976): 98. See also Jay Vincent White, *Taxing Those They Found Here: An Examination of the Tax Exempt Status of the American Indian* (Albuquerque: The Institute for the Development of Indian Law, University of New Mexico, 1972), 4; Treaty with the Omahas, 1854, U.S., *Statutes at Large*, Vol. 10, 1043–1045, see in particular Article 6, U.S., *Statutes at Large*, Vol. 24, 388–391, see in particular Section 5; James R. McCurdy, "Federal Income Taxation and the Great Sioux Nation," *South Dakota Law Review*, Vol. 22, No. 2, Spring 1977, 300.

2. U.S., *Statutes at Large*, Vol. 12, 658; F. Cohen, *Handbook of Federal Indian Law* (Charlottesville, Virginia: Michie, Bobbs-Merrill, 1982), 615–616.

3. Omaha Winnebago Land Allotment Schedules, Bureau of Indian Affairs, Realty Branch, Area Office, Aberdeen, South Dakota; U.S., *Statutes at Large*, Vol. 22, 341. *Annual Report of the Commissioner of Indian Affairs* (1883), 163; *Annual Report of the Commissioner of Indian Affairs* (1884), 162. For the Omaha petition to Congress see U.S. Congress, Senate, *Congressional Record*, (1893), 13, pt. 1, 342; *Annual Report of the Commissioner of Indian Affairs* (1893), 194; Omaha-Winnebago Land Allotment Schedules, Bureau of Indian Affairs, Realty Branch, Area Office, Aberdeen, South Dakota. For the provisions against alienation see the General Allotment Act, U.S., *Statutes at Large*, Vol. 10, 389, Section 5.

4. J. Sterling Morton, *Illustrated History of Nebraska*, 3 vols. (Lincoln: Jacob North & Company, 1905), 1: 52–53f; Proclamation Organizing the County, Thurston County Nebraska Supervisors Records, Vol. I, 1889–1903, Nebraska State Historical Society, Lincoln, Nebraska; Archive Records Accession Lists, Thurston County, Nebraska, Nebraska State Historical Society, Lincoln, Nebraska.

5. The levying of a local land tax against non-trust property is a basic right reserved to the individual states; *The Pender* (Nebraska) *Times*, February 27, 1903.

6. See the 1882 Omaha Allotment Act, U.S., *Statutes at Large*, Vol. 22, 342, Section 6 where the United States held these lands in trust; also, the General

Allotment Act, U.S., *Statutes at Large*, Vol. 24, 389, Section 5 where at the expiration of the twenty-five-year period of trust, a fee patent would be issued and the United States "discharged of said trust and [the land would be] free of all charge or incumbrance whatsoever." Also note general statements prohibiting state taxation of trust allotments in William H. Brophy and Sophie D. Aberle, compilers, *The Indian: America's Unfinished Business; Report of the Commission on the Rights, Liberties, and Responsibilities of the American Indian* (Norman: University of Oklahoma Press, 1966), 22-23, 71; *United States v. Rickert*, 188 U.S. 432 (1903); *Dewey County v. United States*, 26 F, 2d 434 (8th Cir.), cert. denied, 278 U.S. 649 (1928); *United States v. Pearson*, 231 F. 270 (D.S.D. 1916). For a brief account of the Southern Cheyennes' and Arapahoes' opposition to personal property tax, see Donald J. Berthrong, *The Cheyenne and Arapahoe Ordeal: Reservation and Agency Life in the Indian Territory, 1875-1907* (Norman: University of Oklahoma Press, 1976), 193-197; for a study of American Indian-hating, see Richard Drinnon, *Facing West: The Metaphysics of Indian-Hating and Empire-Building* (Minneapolis: University of Minnesota Press, 1980). While whites generally led the movement to assess Indian assets, some tribes invoked their sovereign rights to tax outsiders doing business in Indian country. The Five Civilized Tribes in 1879 levied a tribal tax against outsiders who grazed cattle in Indian territory. See H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865-1907* (Columbia: University of Missouri Press, 1976), 119-120.

7. Thurston County Nebraska Supervisors Records, Vol. I (1889-1903), 155, Nebraska State Historical Society.

8. U.S. Congress, House, *Congressional Record* (1893), 25, pt. 1: 1274.

9. Daniel M. Browning to William Beck, October 31, 1893, Letters Sent, Bureau of Indian Affairs, RG 75, NARS.

10. *The Pender* (Nebraska) *Times*, A Supplement, March 2, 1900.

11. *The Pender* (Nebraska) *Times*, June 11, 1909.

12. U.S. Congress, House, Committee on Indian Affairs, *Allotment of Lands in Severalty to Certain Indians: Report to Accompany H.R. 11946*, 59th Cong., 1st sess. (1906), H. Rept. 1558, 1-4; *Annual Report of the Commissioner of Indian Affairs* (1910), 48. See also the Burke Act, U.S., *Statutes at Large*, Vol. 34, 184.

13. *The Pender* (Nebraska) *Times*, October 15, 1909; *The Pender* (Nebraska) *Times*, March 4, 1910; for a more detailed study of the 1910 Omaha competency commission see Janet McDonnell, "Land Policy on the Omaha Reservation: Competency Commissions and Forced Fee Patents," *Nebraska History*, Vol. 63, No. 3 (Fall), 1982: 399-411.

14. *Ibid.*

15. *Annual Report of the Commissioner of Indian Affairs* (1909), 42, 45.

16. U.S. Congress, Senate, Committee on Indian Affairs, *Taxation of Lands of Omaha Indians in Nebraska: Report of Accompany S. 4490*, 61st Cong., 2nd sess., (1910), S. Rept. 367, 1-3.

17. *Ibid.*

18. U.S. Congress, House, *Congressional Record*, April 27, 1910, 45, pt. 5: 5449–5454.

19. *Ibid.*; U.S., *Statutes at Large*, Vol. 36, 348.

20. U.S., *Statutes at Large*, Vol. 14, 667–669; U.S., *Statutes at Large*, Vol. 10, 1043–1045; *United States v. Kagama*, 118 U.S. 375 (1886); *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

21. *The Pender* (Nebraska) *Times*, May 13, 1910.

22. *The Pender* (Nebraska) *Times*, November 18, 1910.

23. H. D. Hancock to John S. Spear, July 18, 1913, Winnebago Indian Agency, Miscellaneous, A–108, RG 75, NARS, Kansas City Regional Archives.

24. Cato Sells to Alex Johnson, February 15, 1915, Letters Sent, Bureau of Indian Affairs, RG 75, NARS.

25. Report to E. B. Linnen, Chief Inspector, and E. M. Sweet, Jr., Inspector on the Omaha Reservation, Nebraska, March 31, 1915, 993655–14–150, Bureau of Indian Affairs, RG 75, NARS.

26. Guy T. Graves to the Committee, November 23, 1915, Winnebago Agency, Land–Legal, A–105, RG 75, NARS, Kansas City Regional Archives.

27. *Ibid.*; Charles J. Kappler to Dan V. Stephens, August 18, 1916, Dan V. Stephens Papers, Nebraska State Historical Society; U.S. Congress, Senate, *Taxation of Winnebago and Omaha Indian Lands, Nebraska: Report to Accompany S. 6116*, 64 Cong., 1st sess. (1916), S. Rpt. 491, 1–3.

28. *Ibid.*; Dan V. Stephens to Senator G. M. Hitchcock, (copy), May 17, 1916, Dan V. Stephens Papers, Nebraska State Historical Society.

29. U.S., *Statutes at Large*, Vol. 39, 865.

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32. *Ibid.*, pp. 2–8.

33. F. T. Mann to Commissioner of Indian Affairs, nd, Land Sales, Amended Circular, No. 1894, Winnebago Agency, Land–Legal, A–105, RG 75, NARS, Kansas City Regional Archives.

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37. *Survey of Conditions on the Indians of the United States, Hearings before a Subcommittee on Indian Affairs United States Senate, 71 Cong., 1st Sess., pursuant to S.R. 79 and S.R. 308, Part 5, July 8, 10, 11, 12, and 17, 1929.* (United States Government Printing Office: Washington, D.C., 1930), 2136–2140, 2155–2157, 2166.

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39. *The Problem of Indian Administration*, 43–44, 94–97.

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42. *County of Thurston, State of Nebraska v. Andrus*, 586 F. 2d 1212 (1978).