

2012

# The Allotment Plot

Nicole Tonkovich

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# The Allotment Plot



NICOLE TONKOVICH

# The Allotment Plot

Alice C. Fletcher, E. Jane Gay,  
and Nez Perce Survivance

University of Nebraska Press    Lincoln & London

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Library of Congress Cataloging-in-Publication  
Data

Tonkovich, Nicole.

The allotment plot: Alice C. Fletcher, E. Jane Gay,  
and Nez Perce survivance / Nicole Tonkovich.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-8032-7137-1 (cloth: alk. paper)

1. Nez Percé Indians—Land tenure. 2. Nez  
Percé Indians—History—19th century. 3. Nez  
Percé Indians—Government relations. 4. Indian  
allotments—Idaho—Nez Percé Indian Reserva-  
tion—History—19th century. 5. Allotment of  
land—Idaho—Nez Percé Indian Reservation—  
History—19th century. 6. Fletcher, Alice C. (Alice  
Cunningham), 1838-1923—Correspondence.  
7. Gay, E. Jane, 1830-1919—Photograph  
collections. 8. Nez Percé Indian Reservation  
(Idaho) I. Title.

E99.N5T66 2012

979.5004'974124—dc23

2012011621

Set in Sabon.

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# Preface

Since the early eighteenth century the federal government of the United States of America has exercised a unilateral and presumptive right to manage the sovereign Native groups classified by the Marshall Supreme Court in 1831 as “domestic dependent nations.”<sup>1</sup> Since the nineteenth century the secretary of the interior has served as the trustee of record and has exercised the right to manage monies derived from Indian lands but has not, until relatively recently, been held legally liable for failing to produce a formal accounting for the management of those funds. In fact, not until 1987 was the Department of the Interior required by statute to “audit and reconcile” its tribal accounts and to report the results of its trust fund management to its Indian clients.<sup>2</sup>

By that time the task of fully reconciling nearly two hundred years of inaccurate and incomplete records had become utterly daunting, and the department temporized.

Seven years later, in 1994, Congress passed the American Indian Trust Fund Management Reform Act to force compliance, but the Bureau of Indian Affairs “admitted that it was incapable of complying with the [congressional] mandates” and hired a professional accounting firm, Arthur Andersen, to perform the task. After an initial survey Andersen reported that to prepare the “full and complete historical accountings, audits, and reconciliations” would cost

\$280 million. Unsurprisingly, Andersen and the government reached a compromise: Andersen audited the accounts for a twenty-year period (1972–1992), at a cost of \$21 million (a price tag that was nearly double their initial estimate for that twenty-year year audit).<sup>3</sup>

In the face of these egregious failures on the part of the BIA, Native activist Eloise Cobell filed a historic lawsuit in 1996. *Cobell v. Salazar* charged the federal government with breach of trust and demanded acknowledgment, action, and financial redress on behalf of nearly three hundred thousand individual Indian money account holders. Recognizing that the fiduciary responsibility could be astronomical should Cobell win the lawsuit, the federal government quickly moved to establish a date — 31 December 2006 — beyond which lawsuits could no longer be brought in these matters. On 28 December 2006, just three days before the date that would limit federal liability, the Nez Perce Tribe filed a class-action lawsuit conjointly with eleven other tribes to demand a “full and complete [accounting] from the federal government for hundreds of tribal trust fund accounts worth billions of dollars.”<sup>4</sup> *Nez Perce Tribe, et al. v. Kempthorne, et al.* joined hundreds of similar suits, all seeking to hold a paternalistic federal entity to fair and just standards.

These cases have their roots in a succession of disastrous policies by which the federal government has attempted to manage its relationship with Native peoples. Chief among these infamous policies was the Dawes General Allotment Act of 1887. The Nez Percés were among the first to be subjected to that law. The Dawes Act intended to expropriate Natives of their lands, extinguish tribal governments, and transform tribal cultures into disaggregated, atomized, individual citizens. Funds related to the sale and transfer of lands under Dawes were, of course, to be held in trust by federal guardians on the presumption that Natives would be incompetent managers of their properties and would be unable to keep track of where and how their monies had been invested and disbursed. The irony is too apparent to require comment.

The ironic mode, in fact, seems the appropriate voice in which to analyze the events associated with the application of the Dawes Act on the Nez Perce Reservation that are the subject of this book.

Here I have sought to bring together the topics of Native sovereignty, which has its roots in land, citizenship, and control of cultural property; the bungled federal attempts to erase that sovereign identity; the archive of records of that interaction; and the historical accounts drawn from those archives that have narrated the encounter.

Because the matter of federal attempts to manage Indian tribes and monies antedated the Dawes Act, this book begins *in medias res*. Although the federal government attempted to close the issue at the end of 2006, lawsuits such as *Nez Perce v. Kempthorne* insisted that such a closure was premature. Even should *Cobell v. Salazar* reach a settlement, these supplementary suits, which intend to pursue a full accounting and a full settlement, will keep the matter open. Hence, this book lacks a formal ending. In place of a tidy narrative resolution, I have offered after-words and after-images, in the anticipation that here, as in the lawsuits currently active, the Nez Percés will have—and should have—the final word(s).



# Acknowledgments

This book owes its existence to a network of generous researchers, archivists, and friends. Three deserve special thanks, for they shared with me large numbers of primary sources that they had gathered and processed. At the very beginning of this undertaking, while I was still thinking of this book simply as a study of Jane Gay's photographs, Elizabeth Jacox loaned me four boxes of files she had amassed over several years of researching Gay's biography. Later, as Alice Fletcher entered the picture, Caroline Carley shared with me her notes and transcriptions of Fletcher's nearly illegible field diaries, and these became the foundation of my further forays into the little books collected in series 10, box 12A at the National Anthropological Archives. As I began to try to locate Nez Perce-authored documents in the archive, Dennis Baird furnished many letters and documents that he had gathered in his own research expeditions. To him I owe special thanks, for he is a superb researcher, archivist, and activist.

From early on, Joanna Scherer has been a gracious mentor and colleague. Our acquaintance began as I worked as a visiting senior scholar at the National Museum of Natural History under her sponsorship. During that icy Washington DC winter, she also housed and fed me and drove me to and from the archives, and in the process of our conversations, she taught me a great deal about the politics and



processes of photographic collection and conservation. Since that time she has several times furnished crucial missing pieces of documentary evidence upon which my arguments have depended. Her student interns Marie Wisecup, Kayleigh Stack, and Abigail Yerxa have searched out and copied several key documents for my use.

A network of archivists and librarians deserve thanks for their wisdom and patience. Among the many others, I want to name several who exemplified the ideal balance between protecting their collections and guiding curious scholars through them. The librarians at the University of Idaho special collections located dozens of obscure records, almost as if by magic. Carolyn Bowler, who was the photographic curator of the Idaho State Historical Society during most of the time I worked on this project, was immensely helpful in contributing her expert knowledge about the Jane Gay photographic collection. At the Peabody Museum, Susan Haskell and Pat Kervick were wise guides; and as I was finishing the documentation of the book, Pat Kervick generously helped me with citational forms. At the National Archives in Seattle, Patty McNamee's guidance and expertise were invaluable. At the National Anthropological Archives, Jeannie Sklar, Vyrtil Thomas, and Stephanie Christensen also provided wise guidance. At the University of Washington, Nicolette Bromberg was a valuable interlocutor about northwest-area photographs and photographers.

Under the auspices of the federal Sabbatical in the Parks Program, I was able to spend several months living and working in the Spalding area at the Nez Perce National Historical Park Archives. The hospitality and warmth of the staff there are remarkable, and I am especially grateful to Marc Blackburn, then-director Gary Somers, and Jason Lyon for welcoming me into their work spaces and patiently answering my questions. It would be difficult for me to find enough ways to thank Robert Applegate for his friendship, his wisdom, his patience, his local knowledge, and his generous help. Robert allowed me to learn by doing: under his guidance I prepared the catalog for a new accession to the park that contained hundreds of records pertinent to this study. Douglas Nash, the donor of that collection, has

kindly given me permission to reproduce and quote from some of these materials, although access to the collection is still restricted.

As I worked at the park, I became friends with many Nez Perce tribal members. Two of them — scholars and archivists — have been especially central to this book. Diane Mallickan's commitment to recovering the history of Nez Percés is well demonstrated in her publications and in her work with the Northwest Historical Manuscripts Series; Diane was and is also a generous friend who has shared with me her family collections, her photographs, and her understanding of Starr Maxwell and James Stuart. Nakia Williamson-Cloud has an artist's eye and a historian's encyclopedic knowledge. His mental archive of Native photographs left me in awe and repeatedly brought me back to him for advice, for identifications, and for good conversation. He, too, was willing to share with me his own family's photographic archive; many of these images have enriched the book.

Other Idaho friends contributed the significant resources of friendship, hospitality, and insightful conversation: Louise Barber, another appreciator of Jane Gay's work, and Lynn N. Baird, librarian and archivist extraordinaire, deserve special mention. Other friends inhabit the virtual world but have nevertheless been marvelous interlocutors: Gene Eastman, a cartographer and scholar, and Dick Storch, photo historian and collector, added invaluable last-minute materials to this work.

Closer to my academic home, at a particularly difficult time in my conceiving how to unite the various threads of this study, Maureen Konkle served as a most helpful interlocutor. Her work inspired me, and she directed me to several foundational studies. Lisa Logan likewise offered humor and warm support. I have been particularly fortunate to have advised dozens of talented graduate students over the years I have worked on this book, and several of them have cut their archival teeth by helping me transcribe Fletcher's very bad handwriting. For aid in this regard I thank Deborah Tokars, Melisa Klimaszewski, and Jason Homer. Jake Mattox got to know the *Christian Register* better than he could have imagined. Ben Chapin managed my bibliography with good humor and great professionalism. Special

thanks go to Lisa M. Thomas, advisee, friend, editor, and scholar, who copyedited and proofed this book.

Working with the University of Nebraska Press on this book has been a pleasure. Matt Bokovoy and Elisabeth Chretien patiently and promptly responded to my e-mail questions, Sabrina Stellrecht shepherded the project through the production process, and Sally Antrobus edited the manuscript with a clear eye, a marvelous sense of humor, and a solid understanding of alterations that would make the text more reader-friendly.

Funding to support this research came from a number of generous grants from academic senate funds of the University of California, San Diego, and from the Schlesinger Library on the History of Women in America, the National Park Service's Sabbatical in the Parks Program, and the National Endowment for the Humanities.

As always, members of my own family became part of the dense network of emotional and intellectual support upon which I have always depended. Jennifer Hoffman was a constant voice of rationality and was always happy to try to track down the most arcane sources. Ashley Hoffman and Amy Hoffman, both visual artists, were my travel companions and research assistants. Ashley's photographic skills and Amy's eye for the landscape have informed every page of this book. Gary Hoffman, my fellow traveler, map guru, guide, and patient partner, read drafts, wrangled computer programs, took photographs, asked questions, and, at the end, patiently and uncomplainingly delinked footnotes. He is my North Star.