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Election of a delegate from the Indian Territory.

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Recommended Citation

H.R. Rep. No. 807 Pt. 2, 45th Cong., 2nd Sess. (1878)

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DELEGATE FROM THE INDIAN TERRITORY.

MAY 20, 1878.—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. BOONE, from the Committee on Indian Affairs, submitted the following as the

VIEWS OF THE MINORITY:

[To accompany bill H. R. 4868.]

The Committee on Indian Affairs, to whom has been referred bill H. R. 4868 as a substitute for bill H. R. 979, "to authorize the election of a Delegate to Congress from the Indian Territory," having by a majority of said committee agreed to recommend to the House for its passage a substitute bill for the same purpose, entitled "A bill to authorize the appointment of a Delegate to the House of Representatives by the council of the Indian tribes resident in the Indian Territory," the undersigned, as a minority of said committee, beg leave to present, as they now do, their views to the House *adverse* to the passage of said bill, which they ask to be printed and considered by the House, and which are substantially as follows:

1st. The Indian nations and tribes to be affected by the passage of this bill comprise about thirty-three tribes, embracing the Cherokees, Creeks, Seminoles, Choctaws, Chickasaws, Pawnees, Keechies, Confederated Peorias, Eastern Shawnees, Absentee Shawnees, Black Bob Shawnees, Ottawas, Modocs, Sacs and Foxes, Mexican Kickapoos, Witchitas, Iowas, Wacoos, Comanches, Tawaconies, Caddoes, Andarcos, Delawares, Kaws, Osages, Pottawatomies, Cheyennes, Arapahoes, Wyandotts, Quapaws, Senecas, Mandans, &c., and aggregate a population of about 70,000 souls, and occupy a country of about 44,154,240 acres immediately west of Arkansas and south of Kansas, and outside of the limits of any State or Territory of the United States. It is not an organized Territory of the United States, but embraces a region set apart by the act of Congress of May 28, 1830 (United States Statutes, volume 4, page 411), and the Indian treaties as a home for such tribes as are now there, or as shall hereafter be located thereon by the government. This country is sometimes referred to by our statutes and treaties as the "Indian country" and the "Indian Territory," and the tribes inhabiting the same have been recognized by the government as having distinct tribal organizations—some of which are written and republican in form, not unlike those of our States. The bill in question, without the consent of the majority of these tribes, provides for a Delegate to represent them in Congress, the same as the Delegate from New Mexico represents that Territory, and also contains the further provision that such Delegate (after the same is provided for) shall be appointed by the Indian council of the tribes, according only to the treaty of 1866 between the government and two of the tribes—the Choctaws and Chickasaws—and ignores the treaties of the other thirty-

one tribes in the country; and this, if it becomes a law, will work a radical change in the existing relations of the tribes to be affected and the government. As this change in the relations of the Indians will be to them of a grave character, a fair investigation of it necessarily involves the question: *Have the Indian nations and tribes of the Indian country or territory given their consent to such change?* We maintain that such consent of the tribes has not been granted by them as will authorize Congress to pass the bill referred to, and that the consent of the tribes should be a *condition precedent* to the passage of the bill.

It cannot be successfully denied that these tribes all have treaties of protection with the government, executed by the executive department and by acts of Congress as binding obligations. Of the thirty-three tribes to be affected by the bill, only three, the Cherokees, Choctaws, and Chickasaws, have ever given their implied or expressed consent by treaty stipulations to be represented by a Delegate in Congress, while the treaties with the other thirty tribes have no such provisions. The Cherokees have made two treaties, the last one in 1836, under which they were entitled to the privilege, if they accepted it, of sending a Delegate to Congress whenever Congress should make provision for the purpose (Revision Indian Treaties, p. 70). But this treaty of 1836 only had reference to the Cherokees, who alone made it, and certainly ought not to be applied to the other thirty-two tribes of the Indian Territories who were not represented. But it is respectfully submitted that even this treaty provision of the Cherokees has been suspended by their subsequent treaty of 1846 (Revision Indian Treaties, p. 80), which secures to the Cherokee people the privilege of "petition" to and discussion before the Government of the United States, in the maintenance of their rights, on the passage by them (the Cherokees) of laws for these purposes. And no act of Congress is therefore necessary to enable the Cherokees to be represented before the government. In pursuance of this special treaty provision, which is but an acknowledgment of an inherent right that naturally belongs to all the tribes, the Cherokee Nation, through its national council or legislature, has enacted, and may continue to enact if it chooses, laws sending delegates before the government to present the petitions and discuss the rights of the Cherokee Nation and people at their own expense and at no expense to the government.

Such delegates have been and may continue to be received and admitted by the President, by the departments, as well as by the committees of Congress, and their petitions and discussions are properly admissible before the President, the departments, and Congress.

Indeed, many of these delegates have negotiated treaties of the highest order with the government.

As regards the treaty of 1866 of the Choctaws and Chickasaws (Revised Indian Treaties, p. 291) that provides for the election of a Delegate to Congress from the Indian Territory, and to which alone the bill under consideration refers, we suggest that the same principle applies to it that we have applied to the Cherokee treaty alluded to, viz: that it only binds the two tribes that made it, the Choctaws and Chickasaws, and places no obligations upon the other thirty-one tribes that are not parties to it. This treaty of the Choctaws and Chickasaws provides that "whenever Congress shall authorize the appointment of a Delegate from said (Indian) Territory, it shall be the province of said (Indian) council to elect one from among the nations represented in said council."

The "Indian council" referred to above is provided for by article 8 of the Choctaw and Chickasaw, article 12 of the Cherokee, article 10

of the Creek, article 7 of the Seminole treaties of 1866 (Revision Indian Treaties, pp. 90, 119, 289, 815), and was organized in 1869 by the executive department of the government and the Indian tribes under these treaty provisions, and none of these treaty stipulations, except those with the Choctaws and Chickasaws, authorize a Delegate to Congress. This Indian council is a legislative body or "congress" of the Indians, and was *legitimized* by Congress in 1870 by an act of that date (United States Stats., vol. 16, p. 359), which made appropriations for its expense, as provided for by the treaties, and since that time every succeeding Congress have made the legitimate appropriations to defray the expenses of the council, and which is, in view of our treaties, a regularly organized Indian legislature.

Besides the Choctaws and Chickasaws, whose treaty provides for a Delegate to Congress, the other thirty-one tribes (including the Cherokees, Creeks, and Seminoles) are also represented in this Indian council, but *their* treaties, as before stated, do not authorize the Delegate provided for in the bill now under review. It would, therefore, be manifestly unjust to apply the terms of the Choctaw and Chickasaw treaty to all the rest of the tribes in the Territory, *without their consent*, and in the face of their protests that have been filed before Congress in writing. Besides, the most of the tribes that have not given their assent to be represented in Congress by one Delegate, and who have the right to send their own respective Delegate before the government, are sufficiently intelligent to know and appreciate their rights, and as human beings it is but natural to suppose that they, like the white race, are sensitive as to these rights. They also have governments of their own which they love and respect, and which they have been inclined to believe our own government will respect. For these reasons, if for no other, the dictates of ordinary justice and prudence would seem to indicate that these tribes should at least be consulted as to their wishes with regard to their being represented in Congress by one joint Delegate to attend to their interests, which are not confined to Congress but also extend to the departments. The majority of the committee, in acknowledgment that the consent of all the tribes is a *condition precedent* to the passage of the bill under discussion, evidently have endeavored to frame the bill so as to comply with the Indian treaties and thus obviate the difficulty by having a provision in the bill that the Delegate may be elected by the Indian council. But it will be seen that this effort is a failure, as none of the treaties authorize such Delegate, nor authorize his election by the council, except that of the Choctaws and Chickasaws, to which alone the bill refers.

2d. Having shown, as we believe successfully, that the passage by Congress of the bill in question is not warranted by the relations existing between the tribes to be affected and the government, we further object to it because we believe it unnecessary, impolitic, and that it will entail additional expense to the government, and that the passage would be unwise, in that it might disturb the present quiet and prosperous condition of the tribes, by stirring up strife and dissatisfaction among them and between them and the government and its citizens. We have already shown, in the case of the Cherokees, that this bill is not *necessary* to enable the Indian tribes to send their delegates or representatives before the government to secure their rights. This is a privilege they always have had and still have, and under it the tribes present their petitions and discuss their rights before the departments, the President, and Congress, as before stated. The passage of the bill providing for one general Delegate to Congress will not in any manner

abridge the right of the tribes to send their tribal delegates before the government. So that, if the bill becomes a law, these tribes may, as they doubtless will, continue to send their tribal delegates before the government at their own expense. The bill is not in the interest of economy, because it will not prevent the expenditure by the tribes of their own funds on their respective representatives before the government. Besides, these funds are due the tribes, and must be paid annually to them, if we keep faith with them under our treaties, by appropriations from Congress. On the other hand, the bill will impose an additional tax on the government, to the extent of the expense that will attach to the Delegate provided for.

The trust imposed upon the government as the guardian of the Indians is as important to the Indians as it is responsible to the government. It is the desire and hope of the government, as it is its obligation to the Indians, to encourage their civilization, and no wise statesman, in the light of experience, will doubt that the civilization and preservation of the Indians center in cordiality and friendship among themselves, and a friendly, social feeling toward and confidence in the white race. We therefore think it would be unwise to pass an act like the one under consideration without the consent of the tribes interested and contrary to their solemn protests, and which, under the most charitable construction, will be liable to breed discord among the Indians and create distrust, if not antagonism and open rupture of peace, toward the government and its citizens.

From the reports of the Indian Bureau and the Board of Indian Commissioners, the tribes of the Indian Territory are at perfect peace with the government, are increasing in wealth and population, and are rapidly advancing in education, agriculture, and all the acquirements of a civilized people. Any legislation that might possibly tend to a fatal interference with this hopeful condition of our wards we think should be carefully avoided.

For the general reasons indicated, the undersigned, as a minority of the Committee on Indian Affairs, recommend that the bill as reported by the majority of said committee be not passed by the House, and further recommend the passage of the following resolution:

Resolved by the House of Representatives, That the Committee on Indian Affairs appoint a subcommittee of three of its members to proceed, as soon as convenient after the adjournment of the present session of Congress, to the Indian Territory, and ascertain whether or not the Indian nations and tribes therein desire Congress to legislate for the purpose of enabling them to have representation in Congress through a Delegate to be elected by them; and also whether said tribes, or the majority of the members thereof, desire any change of government over them through the legislation of Congress.

A. R. BOONE.
A. M. SCALES.