

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-17-1890

Message from the President of the United States, transmitting a letter of the Secretary of the Interior relative to certain legislation in behalf of Indians on various reservations

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

S. Exec. Doc. No. 64, 51st Cong., 1st Sess. (1890)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A letter of the Secretary of the Interior relative to certain legislation in behalf of Indians on various reservations.

FEBRUARY 17, 1890.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives :

I transmit herewith a communication of 11th instant, from the Secretary of the Interior, submitting a copy of a report from the Commissioner of Indian Affairs and accompanying draught of a bill to amend the first section of an act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February 8, 1887.

The matter is presented for the consideration and action of Congress.

BENJ. HARRISON.

EXECUTIVE MANSION, *February 17, 1890.*

DEPARTMENT OF THE INTERIOR,
Washington, February 11, 1890.

The PRESIDENT :

I have the honor to submit herewith a report of 28th ultimo, from the Commissioner of Indian Affairs, inclosing with accompanying papers a draught of a bill prepared in his office to amend the first section of an act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes," approved February 8, 1887 (24 Stats. 338).

It is recommended that the matter be presented for the consideration and action of Congress.

I have the honor to be, very respectfully, your obedient servant,
JOHN W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 28, 1890.

SIR: In my annual report reference was made to certain difficulties encountered in the execution of the general allotment act (24 Stats., 388) and the opinion expressed that "the allotment of an equal quantity of the tribal landed estate to each member of the tribes occupying or interested in the reservation would remove the principal inequalities of the general allotment act, so strongly complained of, and there would be less hesitation on the part of many of the tribes to the taking of land in severalty."

When the annual report was prepared it was known that objections to the unequal distribution provided for in the allotment act existed on the part of certain Indians, as follows:

The United Peorias and Miamis, while the bill was under consideration in Congress, were strenuously opposed to the provision in question, and secured their exemption from the operations of the act.

They subsequently asked and secured the passage of an act authorizing the allotment of 200 acres to each member of the respective tribes. (25 Stats., 1013).

The Indians of the Devil's Lake Reservation, in North Dakota, had been understood for some years to be prepared and anxious for the allotment of their lands, but upon sending a special agent to them last summer for that purpose a most unexpected and determined opposition was developed, which the special agent and resident agent were unable to overcome. Their principal objection was the small quantity of land allowed to minor children.

In August last Special Agent Gordon held a council with the Sac and Fox Indians of Kansas and Nebraska for the purpose of obtaining their consent to the provisions of the act of March 3, 1885 (23 Stats. 351), as amended by the act of January 26, 1887 (24 Stats. 367), which acts provide for the allotment of their lands in severalty in the same quantities as provided in the general allotment act and the sale of the surplus. They unanimously refused to accept the provisions of said acts. Regarding their opposition, Special Agent Gordon reports as follows:

They do not think that the general allotment act, approved February 8, 1885, or the act approved March 3, 1885, as amended by the act approved January 26, 1887, in reference to the allotment of lands, is fair or equitable. They say where a man is the head of a family and has a wife he will receive 160 acres of land and she will receive nothing, and that in cases where a man repudiates his wife (as they sometimes do) and arbitrarily drives her from his hearth and home he keeps all the land and gives her nothing, and that if she gets any of his real estate under such circumstances it will be at the end of a long lawsuit, the expense of which she is unable to bear.

Again, they say that it does not seem fair and just to allot 80 acres of land to a single person over eighteen years of age and only 40 acres to those under that age.

Recently the Quapaw Indians, in the Indian Territory, have declined to take their allotments under the act of February 8, 1887, but have sent a delegation to this city to secure the passage of an act to give 200 acres to each member of the tribe.

An agreement has recently been negotiated with the Sisseton and Wahpeton Indians of the Lake Traverse Reservation in the Dakotas for the sale of their surplus lands, one of the conditions being that the allotments should first be equalized so as to give to each member of the band 160 acres.

Aside from the opposition of the Indians to the provisions of the act

as above set forth, frequent difficulties arise in its application. Owing to the loose state of the marriage relation as existing in many tribes, and the frequent divorces, which approach in number to those among the more civilized whites of this nation, but are generally without the forms of law, it is in many cases impossible to determine the exact status of certain women. The fact that a single woman is entitled to land while a married one is not is an inducement for the head of a family to discard his landless wife and take up with a single woman with 80 or a widow with 160 acres.

Thus his former wife is left without land, while he and his new wife control 240 or 320 acres. The only safeguard against such injustice is to give every woman a share of the tribal lands in her own name.

The hope of the ultimate civilization of the Indian race lies in the education and advancement of the younger generation, and to this generation we must principally look for the anticipated good results of the allotment policy. The older Indians (in most of the tribes at least) can not be impressed with the dignity of labor, and for the most part will make but little, if any, use of their land. It is certainly bad policy to give these older Indians four times as much land as is given the children, who with proper teaching are expected to become educated, intelligent, and industrious members of society.

Furthermore, such reservations, at least, as are established by treaty or act of Congress, are the common property of the tribe to which they are respectively assigned, and each member has an equal undivided share therein, and upon division has a legal right to the same quantity as every other member.

For these reasons I am thoroughly convinced that the act of February 8, 1887, should be amended so as to give all the members of a tribe an equal quantity of land. I have accordingly prepared the draught of such amendment and herewith submit the same with the recommendation that it be transmitted to Congress with request for early and favorable action.

I have fixed the amount of land to be allotted to each Indian, where the quantity of land in the reservation is sufficient, at 160 acres, believing it to be a fair and reasonable quantity, not incommensurate with the needs of Indians.

The draught also provides for the equalization of allotments already made in whole or in part, where there is sufficient land.

It also provides that where existing laws or agreements provide for allotments in quantity the same as provided in the general allotment act, the allotments may be made in quantity as proposed by the amendment, with the consent of the Indians interested.

I inclose extract from my annual report, and from Special Agent Gordon's report relative to his council with the Sacs and Foxes.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

The SECRETARY OF THE INTERIOR.

A BILL to amend the first section of an act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend

the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:

"That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or Executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon, one quarter of a section of land: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual in quantity as above provided, the lands in such reservation or reservations shall be allotted to each individual pro rata, as near as may be according to legal subdivisions: *Provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided: *Provided further*, That where existing agreements or laws provide for allotments in accordance with the provisions of said act of February eight, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantity as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: *And provided further*, That when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities.

SEC. 2. That where allotments have been made in whole or in part upon any reservation under the provisions of said act of February eight, eighteen hundred and eighty-seven, and the quantity of land in such reservation is sufficient to give each member of the tribe one hundred and sixty acres, such allotments shall be revised and equalized under the provisions of this act.

[Extract from report of Special Agent George W. Gordon, dated September 10, 1889, relative to proceedings of council with Sac and Fox Indians of Kansas and Nebraska.]

SAC AND FOX INDIAN RESERVATION,
Nebraska, September 10, 1889.

SIR: * * * They do not think that the general allotment act approved February 8, 1887, or the act approved March 3, 1885, as amended by the act approved January 26, 1887, in reference to the allotment of lands, is fair or equitable. They say where a man is a head of a family, and has a wife, he will receive 160 acres of land and she will receive nothing, and that in cases where a man repudiates his wife (as they sometimes do) and arbitrarily drives her from his hearth and home, he keeps all the land and gives her nothing, and that if she gets any of his estate under such circumstances it will be at the end of a long law suit, the expense of which she is unable to bear. Again, they say that it does not seem fair and just to allot 80 acres of land to a single person over eighteen years of age and only 40 acres to those under that age. Nor am I now, nor have I ever been, able to see the equity in this provision of the general allotment act, or of other acts embodying substantially the same provision. It is difficult to see the justice of such a distinction between persons one of whom may be a few days or weeks or months over the age of eighteen and the other only a few days or weeks or months under eighteen. This law not only seems to savor of the principle of primogeniture, but is in contravention of the general laws of the land on the subject of the descent and distribution of property. Why should one brother or sister, who is just eighteen years of age, have twice as much land allotted to them as one only eighteen to twenty months younger? It may be said that it was supposed by the legislators that a person of eighteen years of age would be better prepared and more competent to cultivate and manage a larger quantity of land than one under that age. Perhaps so, but does that effect what appears to be the inherent inequity of the provision? Suppose the parents should die intestate while some of the children were still in infancy, their estate under the general laws of the land would be inherited in equal shares by the children, and this would still leave the infant children at a disadvantage because they would have to be supported out of their own individual estates until they were large enough to be self-supporting. So it seems to me if any distinction should be made it should be made in favor of the younger children. But I think none should be made, and

that the general allotment law should be amended in this respect. The provision allowing 80 acres to orphan children, I think, is correct. They have neither personal assistance from parents nor prospect of inheritance therefrom.

I have alluded to these questions, namely, that of the husband, if the head of a family, owning all the land and the wife owning none, and that of children over eighteen years of age being allowed 80 acres and those under that age only 40 acres, as provided by the general allotment and other acts, because these Indians have incidentally made their objections thereto, and because there seems to be reason and force in their objections.

Very respectfully, your obedient servant,

GEORGE W. GORDON,
Special Indian Agent.

The COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

[Extracts from the report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1889.]

The work of carrying out the provisions of the general allotment act appears on the whole to be progressing as satisfactorily and as rapidly as a due regard to the condition of the Indians will permit. In the practical application of the act, however, many perplexing questions are constantly arising. The Indians on some reservations claim that an equal division of all the land should be made, alleging that as each individual owns an undivided interest in the whole this is but just and equitable. Others maintain that each individual, without regard to age, including married women, should secure the same quantity of land, instead of the differing amounts provided for the various classes in the general allotment act. Still others claim that allotments of equal area should be made and in larger quantities than are provided for in that act, and this plan was adopted in the case of the Miamis, Peorias, and affiliated bands by the act of March 2, 1889. (25 Stat., 1013.)

In my opinion, the first claim does not deserve much attention, especially as to reservations containing an area largely in excess of the amount necessary to fill the requirements of the general allotment act and entirely beyond the actual needs of the Indians. The plan might be adopted on smaller reservations, where an equal division would not give each individual more than, say, 200 acres.

The second claim seems just and equitable, and if the general allotment act should be amended so as to give each person, without regard to age or condition, including married women, an equal quantity, say 160 acres, it would prove satisfactory to a large majority of the Indians, and would avoid many of the difficulties which now stand in the way of inducing them to take their lands in severalty. The act provides for the allotment of different quantities of land to heads of families, single adults, orphans, and minors, while married women are not entitled to any. The looseness of the marriage relation among many of the tribes often renders it difficult to determine the exact status of the women, and there is danger that many who are living as wives at the time allotments are made will be discarded, and thus be landless, while their husbands, having the maximum quantity of land, will take as wives other women who have land. An Indian reservation is the common property of the tribe by which it is owned or for whose use it is assigned. Each member has an equal right therein, and upon division should receive an equal share. It does not seem just to divide this common property so as to give one member four times as much as another, and also to deprive a considerable number of all share in it.

The allotment of an equal quantity of the tribal landed estate to each member of the tribes occupying or interested in the reservation would remove the principal inequalities of the general allotment act, so strongly complained of, and there would be less hesitation on the part of many of the tribes to the taking of land in severalty.