2-7-1893

[Opening of the Cherokee Outlet for Settlement]

52D CONGRESS, 2d Session. } SENATE. { MIS. DOC. No. 43.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1893.—Referred to the Committee on Indian Affairs and ordered to be printed.

Mr. COCKRELL presented the following

RESOLUTIONS ADOPTED AT A MEETING HELD AT GUTHRIE, OKLAHOMA TERRITORY, JANUARY 18, 1893, PRAYING FOR THE RATIFICATION OF THE TREATY PROVIDING FOR THE OPENING UP OF THE CHEROKEE OUTLET FOR SETTLEMENT.

To the President and to the Senate and House of Representatives:

Acting under instructions from a convention held at Guthrie, Okla., January 18, 1893, which was composed of more than 700 delegates, representing commercial organizations, other business associations, and the leading professions from Kansas, Missouri, Arkansas, Texas, Oklahoma Territory, and the five civilized tribes, I have the honor to present the following resolutions adopted by that body, and to submit therewith some of the reasons which support them:

Whereas in view of the fact that it is reasonably estimated that there are now nearly 20,000 homeseekers temporarily living on the borders of the outlet; and

Whereas the government of the Cherokee Nation has expressed its entire willingness to accede to and comply with the treaty made with them in the year 1891; and

Whereas the people of the United States are anxious for their government to consummate said treaty and throw open the purchased land to settlement by citizens of the United States: Therefore,

Resolved, That this convention does hereby respectfully ask that Congress at once ratify said treaty in regard to the land known as the Cherokee outlet in such manner as may be deemed best by that body so as to admit of settlement as early as possible in the year 1893.

Resolved, That we also urge upon Congress the pressing necessity of ratifying the existing treaty made with the Wichitas and affiliated tribes of Indians for the surplus land of the reservation occupied by them, and that the surplus lands so acquired and the Kickapoo reservation be thrown open to settlement without delay.

Resolved, That all other Indian reservations in the Territory not yet having treaties, or having treaties not yet ratified, may be promptly acquired as public domain and thrown open to settlement at earliest date.

In view of the anomalous condition maintained by the existence of five distinct and separate Indian governments within the heart of the United States: Therefore,

Be it resolved, That in the opinion of the convention it would be far better for both Indians and whites that steps be taken toward statehood for Oklahoma and the Indian Territory.

Resolved, In behalf of the people of the five civilized tribes, we ask that full jurisdiction be given to the United States court in the Indian Territory, with such increased facilities as will enable them to enjoy the benefits of law and order, to the end that their rights as American citizens be secured, and the Government of the United States be saved the enormous expense of maintaining a complicated system of jurisprudence now become worse than useless, an intolerable burden upon the people it was originally designed to protect.

It will be observed that the resolutions ask of the legislative authority of the United States certain specific reforms: the acquisition of the

Indian title to a certain exclusive right of ingress and egress upon the land known as the Cherokee strip or outlet and an opening of that land to settlement; purchase of the claims of the Witchitas and other tribes to their reservations and the opening of those lands to settlement; the inauguration of statehood for Oklahoma and the Indian Territory; extension of the jurisdiction of United States courts over the affairs of the people inhabiting the country of the five civilized tribes.

The first two reforms are directly in the line of the policy begun by Congress with the opening of Oklahoma proper in 1889. The third—statehood for the entire tract formerly known as the Indian Territory—is a logical step in the policy of organizing the nation which has been in progress since the adoption of the Constitution a century ago. The fourth comes as a request from the public opinion of the five civilized tribes and from the commercial centers which have business relations with them.

This fourth request, representing the views of the civilized tribes themselves, is one of the most forcible arguments in favor of the plea for statehood. It admits that the Indian laws and courts are inadequate for the protection of the rights of life, liberty, and the pursuit of happiness.

I beg leave to call attention to the powers of the United States Government in dealing with such conditions as exist in the Indian Territory and to insist upon the sovereignty which may impose whatever regulations are deemed necessary, without waiting upon the consent of Indian tribes. To wait upon that consent implies either a voluntary generosity of the Federal Government or an indefeasible and independent sovereignty in each of the tribes. The latter assumption is intolerable, and I hold that every treaty or agreement must be construed as subject to the sovereign jurisdiction of the United States.

The constitution confers on Congress full power to make laws respecting the Territory belonging to the Nation and not yet formed into States. If it did not specifically confer such power, the power would still exist as an incident of sovereignty. The Indians of the five tribes are only inhabitants of the United States with the private property rights which belong to other inhabitants and with no independent privileges as organizations which are denied to citizens of the United States living upon other Territory not yet formed into States.

There need be no confusion between the private rights of Indians and the governmental rights of the United States as the exclusive sovereign authority over unorganized territory. Like the people of any other territory, the Indians have civil rights and are entitled to all the civil guaranties which affect property and safety, but they do not possess extraordinary political privileges and have no power to govern themselves except as that power is permitted by the General Government. The power of local government inheres only in the citizens of a State. Elsewhere it is the free gift of the General Government and may be curtailed or withdrawn altogether in the discretion of Congress. As Dr. Von Holst says, Congress can "at any moment subject the general organization of the Territories to any change it sees fit."

That precisely the doctrine which relates to the other Territories applies to that part occupied by the five civilized tribes or by any other tribe, and that the five tribes have no powers which do not belong to every other tribe—*i. e.*, no political powers at all—the whole course of the Government in dealing with them shows. The Federal courts exercise criminal jurisdiction and the Muskogee court has civil jurisdiction over matters involving different tribes. The armies of the United States

freely pass into the territory of the five tribes. The officers of the Federal courts traverse that territory, make arrests, and serve process. The sovereignty is understood, admitted, and enforced as far the Government pleases.

Therefore all treaties, agreements, and laws diminishing in any degree the political sovereignty of the United States are subject "at any moment" to review, repeal, or change in Congress.

A full statement of this undoubted principle seems to necessarily precede consideration of the specific matter of the resolutions, since most of the objections urged against prompt opening of the strip and other lands, and against steps toward statehood, rest upon confusion as to the powers of Indian tribes.

The Cherokee strip or outlet is a body of unoccupied land. The welfare of southern Kansas and the commercial interests of the whole Southwest—leaving out of the question the wants of home-seeking settlers—demand its opening. It is evident from the doctrine above stated that the United States Government can—especially since under repeated decisions and under the policy long proclaimed by the Executive Department the Cherokees have no title in the soil—open the land to settlement and refer the easement claim of the Cherokees to such form of appraisement as may seem proper. If this governmental power were distinctly announced and acted upon, there is little doubt that the Cherokees would be glad to accept any terms of payment the Government might fix in a ratification of the preliminary agreement made between a United States commission and their representatives. The price is liberal and the other guaranties of the agreement are more than the Government should have undertaken or than the Cherokees would have asked if the true doctrine of their political status had been firmly insisted upon from the first.

The contrast between the condition of the five tribes and of that part of Oklahoma which has been settled by whites should dispose immediately of misty visions of injustice to Indians. To proceed at once as the resolutions of the Guthrie convention request would be the highest justice toward the population of the tribes. Under present conditions the five tribes and the reservation Indians suffer disadvantages, though the latter are more thoroughly protected than the former. The pretense of local government in the five tribes prevents a stringent exercise of Federal jurisdiction, and the consequence is lawlessness, corruption, and strife. The force of white encroachment can not be stopped by laws or policies. Surrounded on all sides by white settlement and penetrated by railroads, every square mile of the old Indian Territory is under the domination of the aggressive white. The whites and shrewd mixed bloods monopolize the productive capacity of the soil, and the choice is between general settlement under equal laws and the rough rule of a few monopolists. In each of the five tribes the condition is really feudal, and the full-blood Indian, being the least capable of competition, is being reduced to practical nullity. If justice to Indian blood and care for Indian rights be the consideration, the sooner the Indian is surrounded with the guardianship of laws which protect the weak, the better for him and for the public conscience of the United States.

Material questions are involved which come home to the East as well as to the Southwest. The industries of the East are dependent upon the consuming capacity of the West. The potential consuming capacity of Oklahoma and the Indian Territory is not to be measured by the condition of an older State of equal area. Not only does the meas-

urement of time disappear in a settlement already preceded by railroads and surrounded with a large and pushing population, but the more active spirit of a new settlement, the smaller subdivisions of fresh land, and the extra supplies required for the first few years create demands far greater than a population of similar numbers exhibit in an older State. Oklahoma proper is now better cultivated, further advanced in commerce, and more alive to the progress of the day than most agricultural districts in States east of the Mississippi. A settlement in the Indian Territory has all the advantages of modern development without the disadvantages of ancient and provincial habits.

Every branch of financial and industrial business in the East would feel perceptibly the increase of markets which an opening of the Cherokee outlet would afford; and a wise provision for early statehood would in a few years be followed by the creation of a new commonwealth which in population, activity, and productiveness could be in advance of many States largely represented in the Congress of the United States. Its progress is not to be judged by that of recently admitted States or that of remaining Territories. If the entire Territory could be organized and opened to severalty settlement at once, it is safe to predict that before the close of the century it would contain 1,000,000 progressive people, be well up among the States in agricultural products, and at the head of all Western States, except Missouri, in lead, coal, and other staple mineral outputs.

It should be remembered that the wealth of the Indians who have wealth has come always from the sales of their lands. The full-blood Osage and the full-blood Chickasaw are upon the same footing—both incapable of sustained exertion and both inclined toward that great solvent of race problems, amalgamation. Sell Osage lands and hold the money in trust for them as Congress has done before. Then the problem takes care of itself. The Osage would be more secure than when on a reservation. Arrange for the sale of all lands to settlers, and a distribution of money among all the tribe members, and there is no more use for an Indian Bureau, whose powers are partly regulated by law, partly discretionary paternalism, and partly a traffic in supplies. The five civilized tribes are as much wards of the Government as the Osages or Comanches. The difference is in degree of behavior, not in relations to the Government. The Osage is a little better behaved than the Comanche, the Chickasaw a little better than the Osage, and the Cherokee a little better than the Chickasaw. Take the controlling white man and white blood out of the five tribes, and the degrees of behavior would not be so far different.

If it is desired that fuller information concerning conditions in Oklahoma and the five tribes be furnished, I shall be glad to submit it. I assume, however, that sufficient data on that point are already available. I might add, also, many resolutions from commercial bodies in the Southwest, but I think the sentiment of the best citizens of the section is familiar. In discharging the duty of presenting the resolutions passed by the convention at Guthrie, I have appended only those general reasons which seem most urgently to demand and justify prompt and comprehensive measures on the part of the General Government.

As a systematic method of applying a controlling principle, I am convinced that the Federal Congress might take up each tribe of blanket or wild Indians, estimate the compensation for occupancy, hold the money for the individual Indians, and open the lands, all without the tedious formality of negotiating with the Indians. Their sense of justice would

be as well satisfied, since very few of them comprehend the logic of property negotiation, and all of them have more respect for a force decisively and benignly asserted. In cases where the Indians own the land, as in the home tracts of the five civilized tribes, and where patents have issued conveying the title, the long demonstrated inability to govern themselves is sufficient warrant for the United States to peremptorily order a change of political organization. And it is within the power of the Government to take cognizance of the fact that tenancy in common—nationalization of the land—works injustice to the masses of the tribe for whose benefit the patent was issued, and to notify the tribe that if a severalty system is not voluntarily adopted, a review of the whole method of tenure will be ordered by Congress.

I insist on the complete authority of Congress and upon the urgent and increasing need that the authority be vigorously exercised for the good of the Indians, the whites, and the Government.

The theory of a consistent direction of Indian affairs must be this: The Government has entire and exclusive power, and that power implies an obligation. Whenever in a tract of territory a condition exists which is plainly productive of injustice and evil to both whites and Indians, it is the duty of the Government to intervene with corrective measures, irrespective of what the apparent or real demur of Indians may be. As to the injury and evil of the present condition there is no affectation of doubt. It seems to the people whom I represent that the time has arrived for an assertion of the power of the United States Government in a comprehensive reconstruction of the whole Indian Territory and Oklahoma.

Respectfully,

WITTEN MCDONALD.

WASHINGTON, D. C., *February 7, 1893.*

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