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Five Civilized Tribes of Indians

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IN THE SENATE OF THE UNITED STATES.

MAY 7, 1894.—Ordered to be printed.
MAY 12, 1894.—Ordered to be reprinted.

Mr. TELLER, from the Select Committee on the Five Civilized Tribes of Indians, submitted the following

REPORT:

The Senate on the 29th of March, 1894, adopted the following resolution:

Resolved, That the Committee on the Five Civilized Tribes of Indians, or any subcommittee thereof appointed by its chairman, is hereby instructed to inquire into the present condition of the Five Civilized Tribes of Indians, and of the white citizens dwelling among them, and the legislation required and appropriate to meet the needs and welfare of such Indians; and for that purpose to visit Indian Territory, to take testimony, have power to send for persons and papers, to administer oaths, and examine witnesses under oath; and shall report the result of such inquiry, with recommendations for legislation; the actual expenses of such inquiry to be paid on approval of the chairman out of the contingent fund of the Senate.

In pursuance to this resolution three of the members of the Committee on the Five Civilized Tribes of Indians, viz, Messrs. Teller, Platt, and Roach, visited Indian Territory, arriving at Muscogee on the 8th of April, and after conferring with representatives of the Indians, the white citizens, and white residents who have no right of citizenship, and also with representatives of the colored race residing in the Territory, left the Territory on the 17th of April.

Without deeming it necessary to give a detailed account of the proceedings of the committee in the Territory or elsewhere, we submit herewith a statement of the facts ascertained and the conclusions drawn therefrom.

The Indian Territory contains an area of 19,785,781 acres, and is occupied by the five civilized tribes of Indians, consisting of the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. Each tribe occupies a separate and distinct part, except that the Choctaws and Chickasaws, though occupying separately, have a common ownership of that part known as the Choctaw and Chickasaw territory, with rights and interests as recognized in their treaties as follows: The Choctaws, three-fourths, and the Chickasaws, one-fourth.

The character of their title, the area of each tribe, together with the population and an epitome of the legislation concerning these Indians during the last sixty-five years, is shown by the report of the Committee on Indian Affairs, submitted to the Senate on the 26th day of July, 1892, and we insert so much of said report as touches on the points above mentioned.

With reference to the present relations between the U. S. Government and the five civilized tribes, and the advantages to be derived by the Indians as well as the United States by the surrender of such governments and their incorporation into our system, the committee submits the following summary:

(1) *Cherokees*.—In the preamble to the treaty of May 6, 1828, the United States guarantees the Cherokee Nation, in their lands west of the Mississippi, a permanent home "that shall never, in all future time, be embarrassed by having extended

around it the lines, or placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State." (7 Stats., p. 311.) By the fifth article of the treaty of December 29, 1835, the United States agreed that the lands ceded to the Cherokees by that treaty should, in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they should secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they might deem necessary for the government and protection of the persons and property within their own country belonging to their people, or such persons as had connected themselves with them, if not inconsistent with the Constitution of the United States and such acts of Congress as had been or might be passed, regulating trade and intercourse with the Indians. (7 Stats., p. 481.) By the seventh article of said treaty it is stipulated that the Cherokee Nation "shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the same" (p. 482).

By the second article of the treaty of August 6, 1846, it is provided that "laws shall be passed for equal protection, and for the security of life, liberty, and property; and full authority shall be given by law to all or any portion of the Cherokee people, peaceably to assemble and petition their own government, or the Government of the United States, for the redress of grievances, and to discuss their rights." (9 Stats., p. 872.) The laws provided in this article, it is presumed, are such as were thereafter to be enacted by the Cherokee council.

The fourth and fifth articles of the treaty of 1866 contain stipulations concerning Cherokees, freed persons, and free negroes who may elect to reside in a specified district within the Cherokee domain, and the sixth article provides as follows:

"The inhabitants of the said district hereinbefore described shall be entitled to representation according to the number in the national council, and all laws of the Cherokee Nation shall be uniform throughout said nation; and should any such law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly or injuriously in said district, he is hereby authorized and empowered to correct such evil, and to adopt the means necessary to secure the impartial administration of justice as well as fair and equitable application and expenditure of the national funds as between the people of this and every other district in said nation." (14 Stats., 800.)

In article 12 the Cherokees give their consent to a general council consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, to be annually convened in said Territory, with powers as therein prescribed. The sixth subdivision of this article reads as follows:

"The members of said council shall be paid by the United States the sum of four dollars per diem during the term actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessarily traveled by them in going from and returning to their homes, respectively, from said council, to be certified by the secretary and president of the said council." (*Ibid.*, 803.)

The twenty-second article provides for the survey and allotment of their lands whenever the national council shall request it. (*Ibid.*, 803.)

By the twenty-sixth article the Cherokees are guaranteed peaceable possession of their country and protection against domestic feuds, insurrections, hostile tribes, and intrusion from all unauthorized citizens of the United States; and by the thirty-first article thereof it is expressly stipulated that nothing therein contained shall be construed as a relinquishment by the Cherokee Nation of any claims or demands under the guaranties of former treaties, except as therein expressly provided (p. 805).

(2) *Chickasaws*.—By the second article of the treaty of May 24, 1834, the United States consented to protect and defend them in their home west of the Mississippi, when selected, against the inroads of any other tribe of Indians, and from whites, and agreed to keep them without the limits of any State or Territory. (7 Stats., p. 450.)

By the seventh article of the joint treaty of April 28, 1866, with the Choctaws, the Chickasaws and Choctaws agreed to such legislation as Congress and the President of the United States might deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, That such legislation should not in anywise interfere with or annul their present respective legislatures or judiciaries or the rights, laws, privileges, or customs of said nations, respectively. (14 Stats., p. 771.)

This eighth article provided for a national council of the various tribes of Indian Territory, and the ninth clause thereof stipulates that "whenever Congress shall authorize the appointment of a delegate from said Territory it shall be the province of said council to select one from among the nations represented in said council" (p. 773).

The eleventh article provides for the survey and allotment of their lands, whenever their national councils should request it (p. 774). The Chickasaws did, by their legislative council, give said assent, but the Choctaw council has never agreed

thereto, the tenure of the lands being such as to require joint and concurrent action of the two bodies.

(3) *Choctaws*.—The fourth article of the treaty of September 27, 1830, granted the Choctaw Nation of Indians exclusive jurisdiction and self-government over the persons and property of the nation, so that no Territory or State should ever have a right to pass laws for the government of that nation and their descendants; and that no part of the land granted them should ever be embraced in any Territory or State, and further would secure forever said nation from and against all laws except such as from time to time might be enacted in their own national council, not inconsistent with the Constitution, treaties, and laws of the United States and except such as might be enacted by Congress in exercising legislation over Indian affairs as required by the Constitution. (7 Stats., p. 333.)

By the fifth article the United States guarantees protection to said Indians from domestic strife and foreign enemies on the same principles that the citizens of the United States are protected (p. 334), and by the twenty-second article the Choctaws express "a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them (p. 338).

By the seventh article of the joint treaty of April 28, 1866, they agree with the Chickasaws to the legislation hereinbefore recited under the head "Chickasaw." Provision for a Delegate to Congress is set forth in the eighth article, and for survey and allotment of lands in the eleventh article of said joint treaty. (See Chickasaw.)

(4) *Creeks*.—By the fourteenth article of the treaty of March 24, 1832, the Creek Nation of Indians are guaranteed a patent for their lands west of the Mississippi agreeably to the third section of the act of Congress of May 2 (28), 1830; also that no State or Territory should ever have a right to pass laws for the government of said Indians, but that they should be allowed to govern themselves, so far as might be compatible with the general jurisdiction which Congress might think proper to exercise over them. (7 Stats., p. 368.)

The fourth article of the joint treaty of August 7, 1856, with the Creek and Seminole Indians provides that no State or Territory shall pass laws for said tribes, and no portion of their lands defined in said treaty shall ever be embraced or included within or annexed to any Territory or State, nor shall either or any part of either ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same. (1 Stats., p. 700.)

The fifteenth article of said treaty secures the unrestricted right of self-government and full jurisdiction over person and property within their respective limits, excepting all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe, so far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof regulating trade and intercourse with the Indian tribes (p. 703).

The eighteenth article provides for the protection of said tribes of Indians from domestic strife, hostile invasion, and aggression by other Indians or white persons not subject to their jurisdiction and law (p. 704).

By the tenth article of the treaty of June 14, 1866, the Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however*, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 788.)

(5) *Seminoles*.—By the seventh article of the treaty of March 21, 1866, the Seminoles agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided*, That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 Stats., p. 758.)

Neither the Creeks nor Seminoles in any joint treaty, nor by this treaty of 1866, express any desire or wish upon the subject of a Delegate to Congress.

The Creeks having, on the 10th of July, 1861; the Choctaws and Chickasaws on the 12th of July, 1861; the Seminoles on the 1st of August, 1861, and the Cherokees on the 7th of October, 1861, made treaties, respectively, with the Confederate States, the President, by the Indian appropriation act of July 5, 1862 (12 Stats., p. 528), was authorized by proclamation to declare all treaties existing between the United States and said tribes to be abrogated, if, in his opinion, it could be done consistently with good faith and legal and national obligations. (See R. S., 2080.)

Not desiring to take advantage of or to enforce the penalties therein authorized, the President, in September, 1865, appointed a commission empowered to make new treaties with the tribes residing in the Indian Territory upon a basis containing seven propositions, the sixth of which was that "it is the policy of the Government, unless other arrangements be made, that all the nations and tribes in the Indian Territory be formed into one consolidated government after the plan proposed by the Senate of the United States in a bill for organizing the Indian Territory."

The representatives of the various tribes were assembled at Fort Smith and signed what is known as the Fort Smith treaty—made preliminary to the subsequent treaties of 1866.

The Cherokees held that "the consolidation of all the nations and tribes in the Indian Territory into one government is open to serious objection. There are so many, and in some instances antagonistic, grades of tastes, customs, and enlightenment that to throw the whole into one heterogeneous government would be productive of inextricable confusion; the plan proposed by the U. S. Senate may obviate the difficulties which now appear so patent to us." (See Annual Report of Commissioner of Indian Affairs for 1865, p. 306.)

The Chickasaws reported, "We thought the Government would first make a treaty of peace with us all. Indians are different from whites. They are vindictive; hatred lasts long with them. Not so with whites. The Government must settle the difficulty; the Indians can not. That done, let us be centralized, and a government established in the Indian Territory (p. 317)."

The Creeks reported that: "As to a Territorial form of government, we have to say that we know but little, but prefer our tribal condition (p. 341)."

The loyal Creeks signified to the Commissioner their entire assent to most of the propositions, including Territorial government (p. 341).

The Seminoles consented to the sixth proposition, then afterwards rescinded their action and asked that the question stand open for future consideration (p. 351).

In the subsequent treaties made in 1866 the Choctaws and Chickasaws by the seventh article, the Creeks by the tenth article, and the Seminoles by the seventh article, agreed, "to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs."

Under the provision of these treaties the Indians have agreed that Congress may legislate for the better administration of justice and the protection of the rights of property and person within the limits of the present Indian Territory so far as it relates to the Choctaw, Chickasaw, Creek, and Seminole Indians.

Census Bulletin No. 25 gives the population of the Five Civilized Tribes, including colored Indian citizens and claimants, as 66,289, as follows:

Cherokee Indians	25,357	Colored.....	4,242	Total.....	29,599
Chickasaw Indians.....	3,464	do	3,718	do	7,182
Choctaw Indians.....	9,996	do	4,401	do	14,397
Creek Indians.....	9,296	do	5,341	do	14,632
Seminole Indians.....	2,539	do	22	do	2,561
					68,371
Deduct number of colored persons probably not members of tribes (estimated).....					3,500
					64,871
Indians other than Chickasaws in that nation.....					1,161
Indians other than Choctaws in that nation.....					257
Population of the Five Civilized Tribes:					
Indians.....					52,065
Colored Indian citizens and claimants.....					14,224
Total.....					66,289
The same bulletin discloses the fact that there are white and colored persons not Indians or recognized as members of the Indian nations within the limits of the Five Civilized Tribes, as follows:					
White persons in—					
Cherokee Nation.....					27,176
Chickasaw Nation.....					49,444
Choctaw Nation.....					27,991
Creek Nation.....					3,280
Seminole Nation.....					96
					107,989
Colored persons in the Five Civilized Tribes probably not members of the tribes (estimated).....					3,500
Chinese in the Chickasaw Nation.....					6
Total.....					111,493

The following table shows the amount of land to which each man, woman, and child would be entitled if the lands were divided in severalty:

Statement showing per capita distribution of the whole reservation among the people of the respective tribes.

Tribe.	Area of the reservation.	If to persons of Indian blood only.		If to persons of Indian blood and to the colored persons claiming rights in the respective tribes, as set out in Census Bulletin No. 25.	
		Population.	Acres to each.	Population.	Acres to each.
Cherokees.....	5,031,351	25,357	198.4	29,559	170
Chickasaws.....	*4,650,935	3,464	1,342.6	7,182	647.5
Choctaws.....	*6,688,000	9,996	669	14,397	464.4
Creeks.....	3,049,495	9,291	327.3	14,632	207.7
Seminoles.....	375,000	2,539	147.7	2,561	146.4

*The lands held by the Choctaw and Chickasaw Indians are held by them in common with rights and interests as recognized in their treaties as follows: The Choctaws, three-fourths; the Chickasaws, one-fourth.

At the breaking out of the rebellion the Five Civilized Tribes entered into treaties with the Confederate States, so called, and it was claimed had forfeited treaty rights.

But by the new treaties, however, former treaty rights, not inconsistent with the treaties of 1866, were restored and guaranteed by the United States.

At this time it seemed to be the policy of the Government to make an exclusive Indian Territory, to which should be removed other Indians, so that the whole Territory should become filled with Indian tribes alone. This policy of the Government seems to have included the idea of a Territorial Government, in which all of the tribes which might occupy the Indian Territory, as well as the Five Civilized Nations, should have representation after the manner of other Territorial organizations.

The territory which was to be thus organized into what might be called a distinctly Indian government was, until the organization of the Territory of Oklahoma, marked upon our maps and known as the Indian Territory, deriving that name from the plan of the Territorial organization already alluded to.

An article was inserted in each of the treaties made with the Five Civilized Tribes in 1866, by which they consented to become members of such Indian Territorial government. This article in the Cherokee treaty is article 12, and is identical with similar articles found in the other treaties. The president of the legislative council was to be designated by the Secretary of the Interior."

The plan thus proposed was never carried into execution; and a large part of the lands (probably more than one-half) which, under the policy then mapped out, were to have been occupied by Indian tribes and consolidated into one Territorial government, has been opened for settlement, and now comprises the Territory of Oklahoma. It is essential to bear in mind this policy of the Government, and the consent of the Five Civilized Tribes, as expressed in said treaties, for a thorough and correct understanding of many of the provisions found in those treaties.

In the report of the Committee on Indian Affairs, mentioned above, the Indian population is given as 58,331. The corrected census report for 1890, gives the Indian population at 50,055, and is given as follows:

Five Civilized Tribes, Indians living in the tribes.....	45,494
Other Indians including some Five Civilized Tribes Indians.....	4,561
Total Indians.....	50,055

But in addition to this 50,055 Indians there are large numbers of claimants to Indian citizenship who may or may not be Indians, within the provision of our treatise. These are put down as 18,636, and include the colored people whose rights of Indian citizenship are admitted as well as a large number who are not recognized by the Indian authorities as entitled to the rights of Indian citizenship, but who claim to be legally Indian citizens.

According to the census report, then, the population is as follows: Indians, 50,055; colored Indians, colored claimants to Indian citizenship, freedmen, and colored, wholly or in part, 18,636; Chinese, 13; whites, 109,393. Whites and colored on military reservation, 804; population of Quapaw Agency, 1,281, or a total of 180,182.

Since the taking of the census of 1890, there has been a large accession to the population of whites who make no claim to Indian citizenship, and who are residing in the Indian Territory with the approval of the Indian authorities. It is difficult to say what the number of this class is, but it can not be less than 250,000, and it is estimated by many well-informed men as much larger than that number, and as high as 300,000.

It is said that in and about McAlester there are about 5,000 white coal miners, and at Lehigh, about 6,000. In many sections the country is thickly settled with white farmers who farm the lands occupied by them under lease granted to them by individual Indians, or as the employés of Indians. To such an extent has this character of settlement and occupation gone, that in some agricultural sections the whites outnumber the Indians ten to one; this is especially true in the section occupied by the Chickasaws, who number only about 3,500, while the white population is variously estimated at from 50,000 to 70,000.

Flourishing towns have grown up along the lines of the railroads, composed wholly of white people. The town of Ardmore, in the Chickasaw country is said to contain 5,000 white people and not to exceed 25 Indians. Duncan and Purcell contain a population of from 1,000 to 1,500, composed of white people. The town of Muscogee, in the Creek country, contains a population of from 1,200 to 1,500 white people, and many other towns of from 500 to 1,500 people are known as "white towns." It is rare to see an Indian in any of these towns, except as they come in from their farms to dispose of their produce or purchase goods of the white trader.

Outside of the Cherokee country there are no laws for the organization of municipal governments for these growing towns, and no means by which the population of these towns can establish and maintain streets and sidewalks or organize and maintain a constabulary, such as has been found indispensable in urban communities.

The entire Indian Territory is well watered, with considerable forest and, in some sections, very excellent timber lands. Coal is found in nearly all parts of the Territory, and especially in the Choctaw and Chickasaw countries, and it is of an excellent character. The climate is good, the winters are mild, the soil productive, and the natural wealth very great. It is believed that the hilly country, sometimes called the mountain region, contains valuable minerals. It is certainly capable of maintaining a large population in independence and comfort.

This section of country was set apart to the Indian with the avowed purpose of maintaining an Indian community beyond and away from the influence of white people. We stipulated that they should have unrestricted self-government and full jurisdiction over persons and property within their respected limits, and that we would protect them against intrusion of white people, and that we would not incorporate them in a political organization without their consent. Every treaty, from 1828 to and including the treaty of 1866 was based on this idea of exclusion of the Indians from the whites and nonparticipation by the whites in their political and industrial affairs. We made it possible for the Indians of that section of country to maintain their tribal relations and their Indian polity, laws, and civilization if they wished so

to do. And, if now, the isolation and exclusiveness sought to be given to them by our solemn treaties is destroyed, and they are overrun by a population of strangers five times in number to their own, it is not the fault of the Government of the United States, but comes from their own acts in admitting whites to citizenship under their laws and by inviting white people to come within their jurisdiction, to become traders, farmers, and to follow professional pursuits.

It must be assumed in considering this question that the Indians themselves have determined to abandon the policy of exclusiveness, and to freely admit white people within the Indian Territory, for it can not be possible that they can intend to demand the removal of the white people either by the Government of the United States or their own. They must have realized that when their policy of maintaining an Indian community isolated from the whites was abandoned for a time, it was abandoned forever.

We did not hear from any Indian the suggestion that the white people there, with the consent of the Indian, should be removed.

We do not overlook the fact that there is a class of white people denominated by the Indians as intruders, who are not there with the approval of the Indians, but the number of this class is so small as compared with the white population not claiming rights of citizenship that they may not be considered in this connection. The United States was bound by its treaties to remove such whites as made an unauthorized settlement in the Indian Territory, and is now taking measures to remove from the Cherokee country a large band of such intruders. These intruders claim to be Indian citizens, and that they were invited by the Cherokee authorities to reside within the Territory, but the Cherokee authorities hold that they are not Cherokees. We believe there has been but little complaint in other sections of the Indian Territory of intruders.

The Indians of the Indian Territory maintain an Indian government, have legislative bodies and executive and judicial officers. All controversies between Indian citizens are disposed of in these local courts; controversies between white people and Indians can not be settled in these courts, but must be taken into the court of the Territory established by the United States. This court was established in accordance with the provision of the treaties with the Choctaws, Chickasaws, Creeks, and Seminoles, but no such provision seems to have been made in the treaty with the Cherokees. We think it must be admitted that there is just cause of complaint among the Indians as to the character of their own courts, and a good deal of dissatisfaction has been expressed as to the course of procedure and final determination of matters submitted to these courts. The determination of these courts are final, and, so far, the Government of the United States has not directly interfered with their determinations. Perhaps we should except the recent case where the Secretary of the Interior thought it his duty to intervene to prevent the execution of a number of Choctaw citizens.

As the Indian courts established within the limits of the Five Civilized Tribes had jurisdiction only of matters civil or criminal arising between members of the same tribe, it became necessary to provide courts with jurisdiction over criminal and civil matters arising between Indians of different tribes, and between white citizens and Indian citizens. Accordingly, by the act of January 31, 1877, the "country lying west of Missouri and Arkansas, known as the Indian Territory," was attached to the western district of Arkansas.

The Indian Territory at that time included what is now the territory of the Five Civilized Tribes, together with the territory now embraced within the limits of Oklahoma. Very few white people were then residents within the Indian Territory, but as the practice of the Indians to admit white citizens into their Territory increased, it was found that the jurisdiction conferred upon the U. S. court in the State of Arkansas did not meet the requirements of the situation.

Persons committing offenses within the Territory, not punishable in the Indian courts, were taken, in some instances, a distance of nearly 600 miles to the court at Fort Smith; and parties having civil controversies were not able to maintain their rights on account of the distance to be traveled and the expense entailed by proceedings in the Fort Smith court. So, by the act of January 6, 1883, that part of the Indian Territory lying north of the Canadian River and east of Texas and the one hundredth meridian not occupied by the Creek, Cherokee, and Seminole tribes, was annexed to and made part of the district of Kansas, and the U. S. district courts at Wichita and Fort Scott were given original and exclusive jurisdiction over all offenses committed within that territory against any of the laws of the United States. By the same act that part of the Indian Territory not annexed to the district of Kansas, and not set apart and occupied by Cherokee, Creek, Choctaw, Chickasaw, and Seminole tribes, was annexed to the northern district of Texas, and jurisdiction was given to that court over all offenses committed within the limits of the territory last named.

Prior to March 1, 1889, there was no court whatever in the Territory, except the Indian courts. But Congress, by act of that date, established a "U. S. court in the Indian Territory," extending over the entire Territory, including the present limits of Oklahoma and the Five Civilized Tribes, with exclusive jurisdiction over all offenses against the laws of the United States committed within the Indian Territory not punishable by death or imprisonment at hard labor, and jurisdiction in civil cases arising between citizens of the United States, residents of the Indian Territory, when the value of the thing in controversy or damages claimed amounted to not more than \$100; and also jurisdiction over all controversies arising out of mining leases or contracts for mining coal made by the Indians. Two terms of said court were to be held each year at Muscogee, in the Indian Territory.

By section 17 of the same act the land embraced within the Chickasaw Nation and a portion of the Choctaw Nation, and all the part of the Indian Territory not theretofore annexed to the district of Kansas, was annexed to the eastern district of Texas. This left the land embraced within the Cherokee Nation and a portion of the Choctaw Nation attached to the western district of Kansas, and a portion of the Indian Territory lying north of the Canadian River attached to the judicial district of Kansas. Thus the U. S. courts at Paris, Tex., Fort Smith, Ark., and Fort Scott, Kans., retained jurisdiction, respectively, over all offenses punishable by death or imprisonment at hard labor arising within the Indian Territory, as then existing, except matters arising between Indians of the same tribe, which were still punishable only in the Indian courts.

By act of May 2, 1890, all that portion of the Indian Territory except that occupied by the Five Civilized Tribes and by the Indian tribes within the Quapaw Agency was included within the boundaries of the Territory of Oklahoma; but the Cherokee Outlet and the Public Land Strip and the Indian reservations included within said boundaries were not to become fully a part of said Territory until the proclamation of

the President should be made to that effect, and in case of the Cherokee Outlet and the Indian reservations not until the title of the Indians should be extinguished.

By the same act a new Indian Territory was created, consisting of all that portion of the Indian Territory as it had formerly existed not then included within the boundaries of the Territory of Oklahoma; and the same was divided into three divisions for the purpose of holding the terms of the court established at Muscogee by the act of March 1, 1889. The places for holding said court were fixed at Muscogee in the Creek country, at South MacAlester in the Choctaw country, and at Ardmore in the Chickasaw country. The jurisdiction of the country was further defined, and certain general laws of the State of Arkansas were made applicable to the Indian Territory, except as to causes, civil and criminal, in which members of the respective Indian tribes, by nativity or adoption, were the only parties.

The act of May 2, 1890, authorized the appointment of three commissioners within each of the divisions of the U. S. court in the Indian Territory, who, in addition to the powers of commissioners of the circuit court, should be ex-officio notaries public and have power to solemnize marriages, and were given the powers of justices of the peace of the State of Arkansas, but limited in their jurisdiction in civil suits to \$100, with an appeal from their judgment.

It is estimated that at the present time there are between 250,000 and 300,000 white people, not citizens of the Indian nations by marriage or adoption, residing within the Indian Territory. They are not and can not be subject to the laws of the Indian nations, and can not obtain or enforce their rights in the Indian courts. These courts have no jurisdiction over them, either civil or criminal. All jurisdiction, therefore, over matters arising between white citizens in the Indian Territory and between white citizens and Indians, and between Indians of different tribes, is thus vested partly in the U. S. courts at Fort Smith, Ark.; Paris, Tex., and partly in the U. S. court established in the Indian Territory. This latter court has no jurisdiction of felonies, and no other court has final jurisdiction over misdemeanors, the powers of the commissioners in misdemeanors being merely those of an examining magistrate.

There is much conflict of jurisdiction in matters other than felonies between the U. S. courts and the courts at Fort Smith, Paris, and the Indian court within the Indian Territory. New statutes have been passed relating to offenses in the Indian Territory, and the statutes of Arkansas, which have been extended over the Territory, raise frequent and difficult questions of jurisdiction. The distances which parties are required to travel in cases where jurisdiction is claimed by the courts at Fort Smith and Paris are great, and the expense of deciding causes in those courts, by reason of the distance to be traveled and the time necessarily spent in their determination, is enormous. The court established for the Indian Territory, having cognizance of all minor offenses and of the smallest civil controversies, becomes the only court having police powers within the Territory, so that parties charged with the smallest misdemeanors are often taken over 200 miles to court for trial, and in civil controversies involving the smallest amounts may be compelled to resort to a court 200 or 300 miles distant. And this court is so burdened with business that prompt disposition of its cases, either criminal or civil, is utterly impossible. It is absolutely the only court of final jurisdiction administering justice in matters

large or small in a Territory as large as the State of Indiana, for a people numbering now at least 250,000 and rapidly increasing.

The conditions set forth result in a practical denial of justice in the Indian Territory, except in matters of paramount importance, and in these only after much delay. The criminal business of the Territory is transacted at enormous expense. Cases of the smallest importance, like ordinary assaults, often cost the Government from \$200 to \$500 each, by reason of the distance traveled by the deputy marshals in taking the prisoner charged to court and the fees of witnesses for travel and attendance. The temptation to arrest persons for trivial offenses under such conditions, where the deputy marshals receive such unusual fees, is very great, and complaint of the misuse of power in arrests and prosecutions is frequent. The expense of prosecuting crimes and maintaining courts in the Indian Territory amounts to about one-seventh of the judicial expense of the United States, and this not because crime is more prevalent in the Indian Territory than is usual in new and unsettled countries, but because of the system under which justice is supposed to be administered therein. Such glaring and unbearable evils can not be fully remedied until the question of political and judicial jurisdiction shall be finally changed and a Territorial or State government established.

A partial remedy, however, may in the opinion of the committee be applied at the present time. One judge can not dispose of the criminal and civil matters arising among 250,000 people with justice to the parties and reasonable dispatch of business. Moreover, misdemeanors and civil suits of limited amount should be disposed of mainly in the immediate locality where the offenses are committed or where the cause of action arises. The committee is of opinion that two additional judges for the court should be appointed, thus making one judge for each division, and that additional commissioners should be appointed by the court, and that such commissioners should have within their districts, to be limited and defined, final jurisdiction in misdemeanors where the punishment does not exceed a fine of \$50 or imprisonment for six months, or both, with a right of appeal to the U. S. court in the Indian Territory, and should have final jurisdiction of civil suits arising within their respective jurisdictions where the value of the matter in controversy or damages claimed shall not exceed the sum of \$300, with the right of appeal to said court; that the jurisdiction now conferred upon the U. S. district courts at Fort Smith and Paris should be taken away, and jurisdiction in all matters not punishable by said U. S. courts in Arkansas and Texas should be conferred upon the U. S. court in the Indian Territory.

The reason urged against this transfer of jurisdiction from the courts in Arkansas and Texas to the U. S. court in the Indian Territory no longer exists. It was first conferred because there was no court in the Indian Territory. It has been continued since the establishment of a court there because of the claim that it was impossible to secure proper juries to serve in the Indian Territory. However potent that reason may have been in the past, it can no longer be successfully maintained that jurors can not be found and are not found in the Indian Territory equally competent to try causes of the highest importance with those obtained in the adjoining States of Arkansas, Texas, and Kansas. The white people of the Indian Territory will compare favorably with the people of the adjoining States, and jurors selected from among such population may as safely be trusted to do justice. The change in the judicial system of the Territory thus out-

lined will, in the opinion of the committee, result in a great reduction of expense to the Government and a far better administration of justice than now exists. The present system is intolerable.

The Indians maintain schools for their own children. The Choctaws, Cherokees, and Creeks maintain schools for the children of recognized colored citizens, but the Chickasaws have denied to these freedmen not only the right of suffrage, especially provided for in the treaty of 1866, but have also denied to the children of freedmen the right to participate in their schools. We find in the Chickasaw country a freedmen population somewhat in excess of that of the Indian population, not only deprived of citizenship, but denied the privilege of schools, so that the children of that class are growing up in ignorance except in a few cases where schools have been maintained by individual means for the education of the freedmen children. This is in plain and open violation of the treaty of 1866.

The large white population of the Indian Territory are without the means of maintaining schools, except by means of rate bills. We believe there is nowhere else in the United States a population so large that has not the benefit of the truly American system of education—the public schools. No public schools are possible for this class of our citizens while the present condition of affairs continues in the Indian Territory.

It may be said that these people went to the Indian Territory with the knowledge that the education of their children would be left to their individual efforts, and therefore they ought not to complain. We do not stop to inquire whether the parents of these children complain or not—the nation at large has the right to protest against a condition that deprives the children of 200,000 or 300,000 white and several thousand colored people of the opportunity to acquire an education that will fit them for the discharge of the duties of citizenship, which they have the right to exercise in other parts of the country if they have not in the Indian Territory. It is not the concern of the parents alone, nor of the children alone, but of all the people of the United States, and it is a matter of concern to the citizens of those States contiguous to the Indian Territory. Common humanity demands that we take steps to secure to the people the advantages of education, even if they do not appreciate such advantages.

The theory of the Government was when it made title to the lands in the Indian Territory to the Indian tribes as bodies politic that the title was held for all of the Indians of such tribe. All were to be the equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe, frequently not Indians by blood but by intermarriage, have in fact become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe—theoretically for all, yet in fact the great body of the tribe derives no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri.

According to Indian law (doubtless the work of the most of the enterprising class we have named) an Indian citizen may appropriate any of the unoccupied public domain that he chooses to cultivate. In practice he does not cultivate it, but secures a white man to do so, who takes the land on lease of the Indian for one or more years according to the provision of the law of the tribe where taken. The white man breaks the ground, fences it, builds on it, and occupies it as the tenant of the Indian and pays rental either in part of the crop or in cash, as he may agree with his landlord.

Instances came to our notice of Indians who had as high as 100 tenants, and we heard of one case where it was said the Indian citizen, a citizen by marriage, had 400 holdings, amounting to about 20,000 acres of farm land. We believe that may be an exceptional case, but that individual Indians have large numbers of tenants on land not subdued and put into cultivation by the Indian, but by his white tenant, and that these holdings are not for the benefit of the whole people but of the few enterprising ones, is admitted by all. The monopoly is so great that in the most wealthy and progressive tribe your committee were told that 100 persons had appropriated fully one-half of the best land. This class of citizens take the very best agricultural lands and leave the poorer land to the less enterprising citizens, who in many instances farm only a few acres in the districts farthest removed from the railroads and the civilized centers.

As we have said, the title to these lands is held by the tribe in trust for the people. We have shown that this trust is not being properly executed, nor will it be if left to the Indians, and the question arises what is the duty of the Government of the United States with reference to this trust? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their property and personal rights.

In the treaty with the Cherokees, made in 1846, we stipulated that they should pass laws for equal protection, and for the security of life, liberty, and property. If the tribe fails to administer its trust properly by securing to all the people of the tribe equitable participation in the common property of the tribe, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such trust.

Is it possible because the Government has lodged the title in the tribe in trust that it is without power to compel the execution of the trust in accordance with the plain provisions of the treaty concerning such trust? Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses; notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

If the determination of the question whether the trust is or is not being properly executed is one for the courts and not for the legislative department of the Government then Congress can provide by law how such question shall be determined and how such trust shall be administered, if it is determined that it is not now being properly administered.

It is apparent to all who are conversant with the present condition in the Indian Territory that their system of government can not continue. It is not only non-American, but it is radically wrong, and a change is imperatively demanded in the interest of the Indian and whites alike, and such change can not be much longer delayed. The situation grows worse and will continue to grow worse. There can be no modification of the system. It can not be reformed. It must be abandoned and a better one substituted. That it will be difficult to do your committee freely admit, but because it is a difficult task is no reason why Congress should not at the earliest possible moment address itself to this question.

We do not care to at this time suggest what, in our judgment, will be the proper step for Congress to take on this matter, for the commis-

sion created by an act of Congress, and commonly known as the Dawes Commission, is now in the Indian Territory with the purpose of submitting to the several tribes of that Territory some proposition for the change in the present very unsatisfactory condition of that country. We prefer to wait and see whether this difficult and delicate subject may not be disposed of by an agreement with the several tribes of that Territory. But if the Indians decline to treat with that commission and decline to consider any change in the present condition of their titles and government the United States must, without their aid and without waiting for their approval, settle this question of the character and condition of their land tenures and establish a government over whites and Indians of that Territory in accordance with the principles of our constitution and laws.

As the matters submitted are so complicated and of such grave importance, the committee has thought proper to submit this preliminary report, and hopes, upon further investigation, to be able to make such further and more specific recommendation as to necessary legislation as will lead to a satisfactory solution of this difficult question.

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