

7-29-1842

## Colonel Hitchcock -- Cherokee Indians.

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COLONEL HITCHCOCK—CHEROKEE INDIANS.

JULY 29, 1842.

Read, and morning hour elapsed.

Mr. COOPER, from the Committee on Indian Affairs, submitted the following

REPORT :

A communication from the Secretary of War, in reply to a resolution of the House of Representatives adopted on the 18th ultimo, was referred to the Committee on Indian Affairs. The communication itself contains all the facts necessary to a full understanding of the subject. It is in the following words:

WAR DEPARTMENT, June 1, 1842.

SIR: I received, the day after its passage, a copy of a resolution of the House of Representatives of the 18th ultimo, in the following words:

“Resolved, That the Secretary of War be required to communicate to this House the several reports lately made to the Department by Lieutenant Colonel Hitchcock, relative to the affairs of the Cherokee Indians, together with all information communicated by him, concerning the frauds which he was charged to investigate; also, all the facts in the possession of the Department, from any source, relating to the subject.”

The want of time, until recently, to examine some of the reports referred to, has prevented an earlier answer to the resolution.

The reports relating to the Cherokees contain information and suggestions in reference to the matters which it was supposed would become the subject of a negotiation between this Department and the delegates of the Cherokee nation, who have been appointed to settle their claims and all other matters of difference with the Government of the United States, and who have now arrived in this city. The nature and subject of the report, and the opinion of the President and of this Department, render its publication, at this time, inconsistent with the public interest.

The other report referred to in the resolution, relating to alleged frauds of Indian agents, contains such information as Lieutenant Colonel Hitchcock was enabled to obtain by *ex parte* inquiries of various persons, whose statements were necessarily without the sanction of an oath, and which the persons implicated have had no opportunity to contradict or explain. To promulgate these statements at this time would be grossly unjust to these persons, and would be calculated to defeat rather than promote the objects of the inquiry. Sufficient opportunity has not been given to the Department to pursue the investigation, or to call upon the parties affected for explanations, or to determine on the measures proper to be adopted.

It is hoped that these reasons will be satisfactory for not transmitting to the House at this time the reports referred to in its resolution.

I have the honor to be, sir, your obedient servant,

JOHN C. SPENCER.

HON. JOHN WHITE,

*Speaker of the House of Representatives.*

The committee have given to the grave questions involved in this communication the most careful attention. Regarding the decision of these questions as vitally important, and deeply affecting the privileges and powers of the House of Representatives as well as of the Executive, the committee have endeavored to perform their duty in such a manner as to preserve to this House all its just rights, while at the same time they have refrained from any encroachment upon the rights of the Executive department of the Government.

The House of Representatives, in the judgment of the committee, has a right to all the information in possession of the Executive, when such information relates to subjects over which its jurisdiction extends. It may be said that the powers of the House are defined by the Constitution, and that no power has been given to it to call upon the Executive for the information in his possession. It is true that the Constitution gives to the House no *express* power to do this; nor does it give to either House of Congress any *express* power to punish for contempts, except when committed by their own members; but in the case of Anderson, who was committed by order of the House of Representatives for a contempt, though neither a member nor officer of the House, the Supreme Court decided that the House had that power; that it was an implied power, and of vital importance to the safety, character, and dignity of the House. So in relation to the power of the House to call upon the Executive for information; it is not *express*, but implied in the duties which it is bound to perform. Full information is essential to sound legislation upon any subject. The mischief or grievance complained of should be distinctly perceived, or a remedy cannot be successfully applied. Information being requisite to the proper and intelligent exercise of its functions, the House possesses the power—implied in the nature of its duties—to call upon the Executive or any of the Departments for such information as it may need, upon any subject of its deliberation, when within the sphere of its duties. And the Constitution itself has given to Congress, and consequently to each House, the authority necessary for carrying into execution the powers expressly given.

The committee, therefore, after the most deliberate consideration which they have been capable of bestowing upon the subject of the communication referred to them, are of opinion that the reasons assigned by the Secretary of War for withholding the information required by the resolution of the House of the 13th ultimo are insufficient and unsatisfactory.

The information which the Secretary, as it appears, with the approbation of the President, has declined to communicate to the House, consists of two classes. The first relates "to matters which it was supposed would become the subject of a negotiation between the Department of War and the delegates of the Cherokee nation who have been appointed to settle their claims." The second relates "to alleged frauds of Indian agents," and was obtained "by *ex parte* inquiries of various persons, whose state-

ments were necessarily without the sanction of an oath, and which the persons implicated have had no opportunity to contradict or explain."

The committee presume that the first class of information, which relates "to the matters which it was supposed would become the subject of a negotiation between the Department of War and the delegates of the Cherokee nation," has been withheld by the Secretary, on the ground that the negotiation to which they relate is of the nature of a treaty with a foreign nation, over which the House of Representatives has no direct control. The committee will not stop to inquire what are the rights of the House in such a case. It is sufficient for their present purpose to show that there is scarcely a point of resemblance between the relations of this Government with an Indian tribe and a foreign independent nation. The Indian tribes are not regarded as foreign nations by the Constitution; for, amongst the enumeration of the powers of Congress by that instrument, there is one which gives it authority "to regulate commerce with foreign nations, and among the several States, *and with the Indian tribes.*" Our relations with these tribes, and the business of negotiating with them, is not intrusted to the Department of State, whose duty it is to conduct negotiations with foreign Governments. By the act of Congress which established the War Department, the execution of all duties relating to our Indian affairs was devolved upon it. The laws of the United States, for many purposes, extend over and are in force in the Indian territory. No person is permitted to trade in the Indian country without a license from the superintendent of Indian affairs. The President may prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, either by citizens of the United States, foreigners, or any other tribe. The whole of the country occupied by the tribes who have removed west of the Mississippi is annexed to the judicial districts of the United States to which it is contiguous. The jurisdiction of our courts extends to crimes committed in the Indian country; and Congress has always claimed to exercise the power of protecting the Indians. Indeed, the Indian tribes cannot, in any sense, be regarded as independent nations; the wardship exercised over them, by the Government of the United States, being entirely incompatible with their independence. There is no reason, therefore, for regarding our negotiations with them in the light and subject to the rules which prevail in relation to treaties negotiated with foreign nations.

But, in the present instance, the reports withheld by the Secretary of War do not contain facts relating to any pending treaty. They only "contain information and suggestions in reference to the matters which, it was supposed, would become the subject of a negotiation;" in relation to certain claims arising under former treaties. The committee can hardly conceive why this information should be withheld, even from the Indians themselves. Is it to conceal from them the extent of their rights, in order that they may be overreached in the "settlement of their claims?" Is the Government of the United States, in negotiating with these helpless and dependent people, about to resort to the tricks of diplomacy by which one civilized nation sometimes overreaches the other? Does the Executive hope to acquire credit for skill in negotiation, by reducing Indian claims below their just amount? The committee will not suppose any of these things; and, in the absence of them, they are unable to discover a single sufficient reason to justify the withholding from the House the information required.

The next class of information withheld from the House is embraced in a report, made to the War Department by Lieutenant Colonel Hitchcock, on the subject of alleged frauds of Indian agents, and contains such facts as he "was enabled to obtain, by *ex parte* inquiries, of various persons, whose statements were necessarily without the sanction of an oath, and which the persons implicated have had no opportunity to contradict or explain. To promulgate these statements at this time," the Secretary says, "would be grossly unjust to these persons, and would be calculated to defeat rather than promote the objects of the inquiry." It appears to the committee that the reason here given by the Secretary of War, for withholding from the House the information which it required, contains a strong argument in favor of pursuing the investigation into the alleged frauds with diligence and promptitude. Many persons are implicated. It has been publicly charged, by a high functionary of the Government, that "certain contractors have realized the most enormous profits, the greater portion of which is believed to have been the direct fruit of gross frauds upon the Government or the Indians, practised by bribing some of the subordinate instruments in the public employment." These frauds were located by the same officer in the Southwest, and all the agents and contractors in that part of the country are necessarily implicated. Not one of them can say, I am not the man to whom allusion is made. Besides, as the committee are informed, there have been specific charges made against many persons in the same district of country—and these not confidential ones, but such as were exhibited to various persons, in writing, before they were delivered to the Secretary of War.

Charges thus publicly and solemnly made demand investigation. The character of the persons implicated requires it; nor can Congress discharge its duty faithfully to the country without inquiring into the abuses which are alleged to exist.

But the Secretary of War thinks it would be unjust to the persons implicated to promulgate the information communicated by Col. Hitchcock. Is the fear of injuring the reputation of these persons to prevent investigation? If not, how is such investigation to be pursued; before what tribunal? Is it to be by indictment in the courts? This will not do. The reputation of the persons charged will be exposed to obloquy between the time of finding the bill and the trial. This, according to the reasoning of the Secretary, "would be grossly unjust to these persons," and, by putting them on their guard, "would be calculated to defeat rather than promote the objects of the inquiry."

But the Secretary is mistaken in supposing that the reputation of the persons against whom these charges have been made would not be as safe in the hands of the House, or one of its committees, as in his. The powers of the House to pursue the investigation are as ample as those of any other tribunal, and it is not to be presumed that its disposition to do justice is less. But the committee are at a loss to know in what manner the Executive can pursue the investigation with such a degree of tenderness to the persons implicated as will satisfy the sensibility of the Secretary. Is it to be by an inquisition whose acts are to be secret until its judgment is pronounced? Indeed, the committee might ask by what authority the Executive can pursue such an investigation at all, except by instituting proceedings in the courts, which, we have seen from the scope of the Secretary's reasoning, is incompatible with justice to the characters of the accused

The anxious care manifested by the Secretary of War for the reputation of the individuals implicated in these frauds may be very commendable, but it should not be permitted to defeat the ends of justice, nor to determine a question of such magnitude as the one involved in his refusal, adversely to every precedent in the history of the relations of Congress with the Executive. The injury to individuals, by promulgating the information called for by the House, admitting that injury might be done, would be infinitely small, in comparison with that which would result from a precedent so dangerous as that which will be established by the acquiescence of the House in the refusal of the Secretary to furnish the information required. If his own notions of expediency and propriety are to determine the Executive as to what information is proper for the House, there is an end of its power to investigate abuses. Corruption will thrive and grow rank in the secret recesses of the Government, which will be hereafter inaccessible to the representatives of the people. The responsibility of public officers will be at an end. Congress will have lost all power to bring them to account or to protect the public interests against the rapacity and extravagance which uncontrolled power is so sure to generate.

But the committee will not pursue the subject further; they deem it conclusive of the questions which have arisen between the House and the Executive, that in the fifty years of our past history there is no single precedent\* to justify the refusal to communicate the information required. Believing, therefore, that the House owes it to itself and the country to prevent the establishment of a precedent so full of mischievous consequences, they report the following resolutions, and recommend their adoption by the House.

*Resolved*, That the House of Representatives has a right to demand from the Executive such information as may be in his possession, relating to subjects of the deliberations of the House, and within the sphere of its legitimate powers.

*Resolved*, That the reports and facts called for by the House of Representatives, by its resolution of the 18th ultimo, related to subjects of its deliberations, and were within the sphere of its legitimate powers, and should have been communicated. Therefore,

*Resolved*, That the President of the United States be requested to cause to be communicated to this House "the several reports lately made to the Department" of War, by Lieutenant Colonel Hitchcock, relative to the affairs of the Cherokee Indians, together with all information communicated by him, concerning the frauds he was charged to investigate; also, all facts in the possession of the Executive, "from any source, relating to the subject."

\* For authorities touching the subject, see Jefferson's Memoirs, vol. 4, page 464, and Journal of the House of Representatives, 1793, 1797, page 499; see also Debates in the House of Commons, on the motion of Lord Limerick, to appoint a committee to inquire into the conduct of affairs at home and abroad for the last twenty years.—Debates in the Commons, 1741-'42, vol. 13.