44TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 82.

# THE TERRITORY OF OKLAHOMA.

JANUARY 10, 1877.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. SOUTHARD, from the Committee on the Territories, by unanimous consent, submitted the following

## REPORT:

[To accompany bill H. R. 3922.]

*The Committee on the Territories, having had under consideration House bill No. 943, beg leave to report an amendment in the nature of a substitute (H. R. 3922) for the same to the House, with the recommendation upon the part of a majority of said committee that it do pass:*

The Territory proposed to be organized by this bill is bounded on the north by Kansas and Colorado, on the south by Texas, on the east by Missouri and Arkansas, and on the west by Texas and the Territory of New Mexico. It contains about 70,000 square miles, which is an area larger than the six New England States. It is situated in the very heart of the continent; its soil is of unsurpassed fertility; it is rich in mineral resources, and is blessed with a mild and genial climate. This territory is occupied by thirty-one Indian tribes, who number in the aggregate about 75,000 souls. The principal of these tribes are what are known as the five civilized tribes, viz, the Cherokee, the Creek, the Choctaw, the Chickasaw, and the Seminole. They, with other small fragmentary tribes of civilized Indians, number about 55,000 souls, the different tribes containing a population as follows:

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| Cherokees, about | 16,000 |
| Choctaws, about | 16,000 |
| Creeks, about | 13,000 |
| Chickasaws, about | 4,500 |
| Seminoles, about | 2,500 |
| Total | 52,000 |

It should be remembered, however, that several thousands of these 52,000 comprising these tribes are rather Indians in law than Indians in fact. By the laws of these tribes any white man who marries a woman of Indian blood becomes entitled to all the rights to the lands and moneys of the tribe to which his wife may belong, to the same extent as though he were a native-born Indian. So also is the condition of the negroes who were formerly the slaves of these tribes. They were made free by the treaties of 1866 with these tribes. In addition to these two classes there is another called the "mixed-bloods," who, though possessing some Indian blood, are in all other respects, and to all intents and purposes, white men.

From the best sources of information accessible to your committee the classes of Indians constituting the five civilized tribes mentioned above may be enumerated as follows:

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| Full-blood Indians | 20,000 |
| Mixed bloods | 18,000 |
| Negroes | 10,000 |
| White citizens by marriage | 4,000 |
| Total | 52,000 |

The small tribes referred to are the confederated Peorias, Absentee Shawnees, Black-Bob Shawnees, Ottawas, Kaws, Delawares, Pottawatomies, Wyandotts, Quapaws, and Senecas. These number about 3,000, making in the aggregate 55,000 so-called civilized Indians in this Territory. The wild and uncivilized tribes are the Sacs and Foxes, Wichitas, Wacoes, Comanches, Tawacarroes, Caddoes, Anadorkoes, Osages, Cheyennes, Arapahoes, Modocs, Mexican Kickapoos, Kiowas, Ionies, and a few other smaller tribes, numbering in all about 20,000.

Of these thirty-one tribes occupying this Territory, but four, viz, the Cherokee, Choctaw, Creek, and Chickasaw have any constitutional form of government or written code of laws; and they are separate and distinct from each other, and have no relation to any persons other than members of their respective tribes.

Upon an examination of the treaties of 1866 with the Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles, your committee are of opinion that they all, with, perhaps, the Cherokee treaty excepted, which involves the question in doubt, authorize the establishment of a territorial government, and consequently their consent (if that is a prerequisite, which we deny) has been obtained.

This bill proposes merely to organize such a government as is clearly authorized by the above treaties, with, perhaps, the exception named, and does not in any manner interfere with the landed interests of the tribes. To show the consent of these tribes to the organization by Congress of a territorial government over them, your committee submit the following extracts from their treaties of 1866:

The first section of the eighth article of the Choctaw and Chickasaw treaty of eighteen hundred and sixty-six, with the United States, declares that a council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian Territory, may be annually convened in said Territory, to be organized as follows:

After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said assembly, a census of each tribe lawfully resident in said Territory shall be taken, under the direction of the superintendent of Indian affairs, by competent persons, to be appointed by him, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

It is provided in the second section of the eighth article of said treaty that said council shall consist of one member from each tribe or nation whose population shall exceed five hundred, and an additional member for each one thousand Indians, native or adopted, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said Territory, and shall be selected by the tribes or nations, respectively, who may assent to the establishment of said general assembly; and if none should be thus formally selected by any nation or tribe, it shall be represented in said general assembly by the chief or chiefs and headmen of said tribes, to be taken in the order of their rank as recognized in tribal usage, in the number and proportions above indicated.

It is provided in the third section of the eighth article of said treaty that "after the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article; and the persons so to represent the said tribes shall meet at such time and place as he shall designate, but thereafter the time and place of the sessions of the general assembly shall be determined by itself: *Provided*, That no session in any one year shall exceed the term of

thirty days: *And provided*, That the special sessions may be called whenever, in the judgment of the Secretary of the Interior, the interest of said tribes shall require it."

It is also stipulated in the fourth section of said article that "the general assembly shall have power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said Territory, the arrest and extradition of criminals escaping from one tribe to another, the administration of justice between members of the several tribes of the said Territory, and persons other than Indians, and members of said tribes or nations, the construction of works of internal improvement, and the common defense and safety of the nations of the said Territory. All laws enacted by said council shall take effect at the times therein provided, unless suspended by the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty-stipulations with the United States; nor shall said council legislate upon matters pertaining to the legislative, judicial, or other organization, laws, or customs of the several tribes or nations, except as herein provided for."

The fifth, sixth, and seventh sections of the eighth article of the Choctaw and Chickasaw treaty of eighteen hundred and sixty-six read as follows, namely:

"Fifth. Said council shall be presided over by the superintendent of Indian affairs; or, in case of his absence from any cause, the duties of the superintendent, enumerated in this article, shall be performed by such person as the Secretary of the Interior shall indicate.

"Sixth. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all the proceedings of said council, and to transmit a true copy thereof, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior, immediately after the session of said council shall terminate. He shall be paid five hundred dollars as an annual salary by the United States.

"Seventh. The members of said council shall be paid by the United States four dollars per diem while in actual attendance thereon, and four dollars mileage for every twenty miles going and returning therefrom by the most direct route, to be certified by the secretary of said council and the presiding officer."

The remaining sections of said eighth article of said Choctaw and Chickasaw treaty stipulate that—

"Eighth. The Choctaws and Chickasaws also agree that a court or courts may be established in said Territory, with such jurisdiction and organization as Congress may prescribe: *Provided*, That the same shall not interfere with the local judiciary of either of said nations.

"Ninth. Whenever Congress shall authorize the appointment of a Delegate from said Territory, it shall be the province of said council to elect one from among the nations represented in said council.

"Tenth. And it is further agreed that the superintendent of Indian affairs shall be the executive of the said Territory, with the title of 'governor of the Territory of Oklahoma,' and that there shall be a secretary of the said Territory, to be appointed by the said superintendent; that the duty of the said governor, in addition to those already imposed on the superintendent of Indian affairs, shall be such as properly belong to an executive officer charged with the execution of the laws which the said council is authorized to enact under the provisions of this treaty; and that for this purpose he shall have authority to appoint a marshal of said Territory, and an interpreter; the said marshal to appoint such deputies, to be paid by fees, as may be required to aid him in the execution of his proper functions, and be the marshal of the principal court of said Territory that may be established under the provisions of this treaty.

"Eleventh. And the said marshal and the said secretary shall each be entitled to a salary of five hundred dollars per annum, to be paid by the United States, and such fees in addition thereto as shall be established by said governor, with the approbation of the Secretary of the Interior; it being understood that the said fee-lists may at any time be corrected and altered by the Secretary of the Interior, as the experience of the system proposed herein to be established shall show to be necessary, and shall in no case exceed the fees paid to marshals of the United States for similar services. The salary of the interpreter shall be five hundred dollars, to be paid in like manner by the United States.

"Twelfth. And the United States agree that, in the appointment of marshals and deputies, preference, qualifications being equal, shall be given to competent members of the said nations; the object being to create a laudable ambition to acquire the experience necessary for political offices of importance in the respective nations."

The seventh article of said treaty stipulates that "the Choctaws and Chickasaws 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 persons and property within the Indian Territory: *Provided, however*, Such legislation shall not in any wise interfere with or annul their present tribal organization or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively."

The seventh article of the Seminole treaty of eighteen hundred and sixty-six stipulates that "the Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration 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."

The tenth article of the Creek treaty of eighteen hundred and sixty-six stipulates that "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."

The thirteenth article of the Cherokee treaty of July nineteenth, eighteen hundred and sixty-six, stipulates that "the Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: *Provided*, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only parties, or where the cause of action shall arise in the Cherokee Nation, except as otherwise provided in this treaty."

The seventh section of the tenth article of the Creek treaty of eighteen hundred and sixty-six stipulates that "the Creeks also agree that a court or courts may be established in said Territory, with such jurisdiction and organized in such manner as Congress may by law provide."

The seventh section of article seven of the Seminole treaty of eighteen hundred and sixty-six stipulates that "the Seminoles also agree that a court or courts may be established in said Territory, with such jurisdiction and organized in such manner as Congress may by law provide."

Hence it will be seen that these treaties make provision for the organization of United States courts, a legislative assembly, and a governor of the Territory, being the essential parts of a territorial government.

Your committee do not believe that the provisions of this bill substantially conflict with the above-named treaties. But, although the right of Congress to organize a territorial government is expressly declared by these treaties, your committee do not base the right to legislate upon any treaty or treaties we have made, for we hold that Congress has the legal and constitutional right to legislate as it pleases for the regulation and protection of the Indians.

The main argument heretofore urged against the organization of a territorial government over this Territory is that the conditional land-grants made by Congress to the Missouri, Kansas and Texas, and the Atlantic and Pacific Railroads, would necessarily attach upon such organization. This your committee are satisfied would not follow; but to prevent any possibility of such result, the seventeenth section of the bill is agreed upon, which reads as follows:

SEC. 17. That all acts granting lands in said Territory of Oklahoma to railroads, conditioned upon the extinguishment of the Indian title, or otherwise, be, and the same are hereby, repealed; and that the lands in any Indian reservation in said Territory shall remain the common property of all the Indians rightfully occupying the same until such time as said lands shall be selected as homesteads or allotted in severalty.

Your committee upon examination find that there are thousands of citizens of the United States legally resident in this Territory, owning property of great value, who are without the protection of local law. The United States court for the western district of Arkansas has criminal jurisdiction over this Territory under the act of 1834, commonly known as the "intercourse act," but such court has no civil jurisdiction over the Territory. Much the greater portion of land in cultivation in this Territory is cultivated by white men and negroes who reside in the several Indian nations by permits granted by authority of the tribes or the United States agent.

By authority of the Government and the consent of the Indians, prop-

erty of immense value, owned by non-residents, is located in this Territory. Congress authorized the building of two great lines of railway through this Territory, and in pursuance of such authority the Missouri, Kansas, and Texas Railway has been built through the entire Territory, from its northern to its southern limit, a distance of 243 miles. The Atlantic and Pacific Railroad has been constructed a distance of forty miles in the northeastern portion of the Territory. This immense property, estimated to be worth more than ten millions of dollars, is without adequate protection of law.

It must be apparent to all, upon a proper examination of this question, that a better government is required in this Territory than now exists there; and Congress should not for a moment hesitate to deal with this important question as the emergency demands.

The Commissioner of Indian Affairs, in his last report, uses the following language in reference to the anomalous form of government now existing in this Territory:

> The anomalous form of government, if government it can be called, at present existing in the Indian Territory, must soon be changed. In some shape or other those Indians must be brought under law and the jurisdiction of the courts. The idea that that Territory is to consist forever of a collection of little independent or semi-independent nationalities is preposterous. If thirty or fifty thousand white men remove and settle in any part of the West, the United States extends over them its laws, and establishes a territorial government, preparatory to its admission into the Union as a State; and it can neither be a hardship nor an injustice to the tribes in the Indian Territory if, recognizing their rights to ample compensation for the surrender of lands which they do not need, we place them on a par with white men before the law.

This bill does not ask the Indians to surrender their lands, it leaves their titles untouched, leaves them where the treaties and the law place them, and does not in any manner infringe upon the property-rights of any member of any of the tribes inhabiting this Territory. We are of opinion that great national interests demand the passage of this bill; that its passage would inflict no injustice upon the Indians, and would be of incalculable benefit to the entire country.

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Mr. G. L. FORT submitted the following as the

## VIEWS OF THE MINORITY.

The undersigned individual members of the Committee on Territories, which report and recommend the passage of the bill (No. 3285) to provide for the organization of the Territory of Oklahoma, and for the better protection of the Indian tribes therein, desire to present some reasons why we think the bill ought not to pass.

Two leading considerations present themselves in connection with the general proposition to organize the country lying between Kansas and Texas on the north and south, and between Arkansas on the east, and Texas and New Mexico on the west, into a Territory of the United States, and these are as to the right and expediency of such legislation. In arriving at a conclusion on these points it will be proper to inquire into the laws and treaties of the United States which bear upon the subject, and into the present condition of that country and its inhabitants.

"The Indian problem" seems to have been a difficult one from an early period in the history of our Government. The presence of an Indian population in the midst of a white one has been a source of anx-

iety and difficulty at all times. Its solution heretofore has been found in the enforced removal of the Indians to unoccupied or less desirable portions of the public domain. As a consequence, all the Indians who resided in the older settled portions of the United States were removed by degrees farther west, as public sentiment demanded, until they were relieved entirely of the presence of this seemingly incompatible element in their midst. However doubtful the wisdom of this policy may now appear, it was carried into effect less than a half a century ago by the eminent statesmen who then controlled the Government. Indeed, at an earlier period than that indicated this "remedial policy" of removing the native population of the country as it was pressed upon by our own increasing and rapidly-expanding numbers was adopted. President Monroe, in 1828, recommended the setting apart of a portion of the unoccupied and unorganized territory of the United States for the *permanent homes* of the Indians within the limits of the States and organized Territories of the United States. President Jackson, in 1829, urging the adoption of the same measure, recommended that the country thus set apart should "be *guaranteed* to the Indian tribes as long as they should occupy it, each tribe having a distinct control over the portion designed for its use, and where they may be secured in governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes."

President Van Buren, in his message of 1838, renewed these recommendations in even more forcible terms, on account of the evils resulting from a mixed occupancy of the same country by whites and Indians. Whether these views were correct is now too late to inquire. They were adopted by Congress and enacted into law May 28, 1840. Two sections of this act are worthy of repetition in this connection, and are as follows:

*Be it enacted, &c.*, That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States west of the Mississippi River not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts for the reception of such tribes or nations as may choose to exchange the lands where they now reside and remove there; and to cause each of said districts to be described by natural or artificial marks, as to be distinguished from every other.

SEC. 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them and their heirs and successors the country so exchanged with them; and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same.

The authority of Congress to pass this act will be found in those provisions of the Constitution which empower it to regulate trade and intercourse with the Indian tribes, and to dispose of and make all needful rules and regulations respecting the territory of the United States. The power of Congress to dispose of the country to be affected by the proposed legislation, and a part of which has been conveyed by patent to the Indians, has been adjudicated by the Supreme Court of the United States, so far as the Cherokees are concerned, in the case of Holden *vs.* Jay, in which it is affirmed that, "Possessed as the United States were of the fee-simple title to the neutral land discharged and of the right of occupancy by the Osage Indians, it was clearly competent for the proper authorities of the United States to convey the same to the Cherokee Nation. Subsequent acts of the United States show that these stipulations, covenants, and agreements of the treaty in question were

regarded by all the departments of the Government as creating binding obligations, as fully appears from the fact that they all concurred in carrying the provisions into full effect." A repetition of these pledges, however tedious, will not be improper, in view of the magnitude of the question involved, as they may affect the honor and integrity of this Government and the rights of the Indians. Those which go to the good faith of the Government will be determined by reviewing their character. To do this, it is not necessary to quote from those treaties which were negotiated with the Cherokees, the Creeks, and the Choctaws, and Chickasaws in the earlier days of the republic, when they were regarded as possessing power sufficient to command, to some extent, the consideration of our Government, and to be recognized and treated as allies, but at a later period, when principles of humanity and justice may be supposed to have most largely entered into their essence.

The guarantees in these later treaties to the Cherokees are as follows: By article 1, treaty of 1833, the United States agree to possess the Cherokees, and to guarantee it to them forever, and that guarantee is hereby solemnly pledged, of seven millions of acres of land, &c. The third article of the treaty of 1835 provides that all the lands of the Cherokees shall be included in one patent, executed to the Cherokee Nation of Indians by the President of the United States, according to the provisions of the act of May 28, 1830, before quoted. Article 1, treaty of 1846, declares that the lands occupied by the Cherokee Nation shall be secured to the Cherokee people, and a patent issued for the same. The twenty-sixth article of the treaty of 1866 guarantees to the people of the Cherokee Nation the quiet and peaceable possession of their country, protection against interruptions or intrusions from all unauthorized citizens of the United States. When the Cherokee national council shall request it, their lands are to be surveyed at the expense of the Government, and allotted among them in severalty. The treaty of 1828 expressly stipulates that the permanent home of the Cherokees, which was set apart to them, should never be embarrassed by having extended around it the lines or placed over it the jurisdiction of a State or Territory, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State.

The fourth article of the treaty of 1835 renewed these guarantees, and pledged the faith of the Government to secure to the Cherokee Nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their own people and such persons as have connected themselves with them, not inconsistent with the Constitution and acts regulating trade and intercourse between the United States and Indian tribes. In the authority conferred by the thirteenth article of the treaty of 1866, to establish courts in the Indian Territory, it is expressly provided that their jurisdiction shall not extend to cases arising between members of the Cherokee Nation within their limits. Similar guarantees are to be found in existing treaties with the Creeks, as may be seen by referring to the third article of the treaty of 1833, where the United States promises a patent in fee-simple to the Creek Nation of Indians for their lands; and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a nation and continue to occupy them. By the third article of the treaty of 1856 "the United States solemnly agree and bind themselves that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country

defined in the first and second articles of this agreement 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 tribes owning the same." "The unrestricted right of self-government" is secured to these Indians by the same treaty so far as may be consistent with the Constitution of the United States and the laws made in pursuance thereof to regulate trade and intercourse with the Indian tribes. It gives them jurisdiction over all persons and property within their limits who are citizens by birth or adoption, and requires the removal of all other persons not legally within their limits, aided if necessary by the military of the United States for that purpose.

The United States, by the third article of the treaty of 1866, guarantees these tribes the quiet possession of their country, while the third article forever sets apart a portion of their present country for their homes. This treaty also re-affirms and re-assumes all prior treaty obligations not inconsistent with its provisions, and by its tenth article expressly prohibits the United States from any legislation that shall in any manner interfere with or annul their present tribal organizations, rights, laws, privileges, and customs. The guarantees to the Choctaws, Chickasaws, and Seminoles, of their lands and right of self-government are equally strong and clear, and were made in the execution of the "remedial policy" before referred to when inducing these Indians to leave the homes of their forefathers in States east of the Mississippi. And the same remark is applicable to the Senecas and other tribes who own and occupy their reservations in the "Indian Territory." The treaties by which these Indians enjoy their rights have been negotiated by the President and ratified by the Senate, and their provisions carried out by appropriations of money and other requisite legislation by Congress in the same manner as treaties with any foreign power. And their provisions then in force were all re-affirmed by the legislation of March 3, 1871. The adjudications under these treaties by the Supreme Court of the United States have placed them on the same footing with other treaties of the United States, and have also affirmed the fee-simple title of the Cherokees to their lands, holding, as they do, not an Indian title so called of occupancy or possession, but the title of the United States, who had divested the Indian title and conveyed their own. Those decisions may be seen by reference to the cases of the Cherokee Nation *vs.* The State of Georgia; Worcester *vs.* the Same, 5 Peters, 17, and 6 Peters, 534; Holden *vs.* Joy, 360, 1871 Wallace.

There can be no doubt, therefore, of the nature of these obligations, and the simple proposition which now presents itself to our minds is, how far they are to be regarded as binding upon this Government, and whether there is any sufficient cause to justify legislation which will be in direct conflict with them. There can be no doubt of the power of this Government to cancel the provisions of treaties made with any people, but in so doing it assumes whatever of moral or political responsibility may attach to such procedure. So far as political consequences might follow from the adoption of the bill now under consideration, no grave importance can be attached to them. The day has long gone by when sound policy made it expedient to regard the Indians as nations, and to enter into treaties of friendship and alliance with them. Their power has kept no pace with the rapid and gigantic growth of the United States. As we have become strong, they, the Indians, have become weak; until they present no formidable resistance to encroachments upon their rights. But while this view of the situation has lost all sig-

nificance, those of a moral nature have correspondingly increased; the United States may do these things, but not without pausing to reflect how far they would be compatible with honor and justice. The obligations resting upon the Government have been briefly set forth, and it only remains to inquire what will be the fruits of this bill, and whether any considerations of public interest demand or justify its passage.

At the close of the late war the leading tribes who inhabit the Indian Territory were virtually at the mercy of our Government. If their condition was anomalous and incongruous, then was the opportune time presented for a change. Then was the favorable moment to have indicated and put into practice a new line of policy that would have placed them in proper relations to the great bulk of population within the United States. But no such policy was adopted. It is true these Indians were induced to make important concessions. But the guarantees of protection, of self-government, and inviolability of their soil were not only not required to be surrendered, but were strengthened by renewed pledges on the part of the Government. The Indians have clearly met and fulfilled in good faith everything required of them by the treaties of 1866, which closed to them the fearful and bloody record of a war in which they had been, by circumstances, forced to participate. It is well known that President Lincoln declined to exercise the authority conferred upon him by law to declare these Indians in rebellion against the United States. With the situation they have been content. They have sought no changes in their relations toward our people.

It certainly will not be claimed that these Indians should be punished because a portion of them gave adhesion to and rendered service in the late war with those at war with the United States. Certainly not, when it will be remembered that many of said Indians joined and bravely fought in the Union armies. They now respectfully protest against any change in their relations with our Government, and there is every reason to believe that they do not desire any change. Their condition is hopeful. They have not disturbed the peace among themselves, nor with our people, and are living in quiet and peace, gradually meeting the design of the policy of our statesmen fathers, which placed them where they are thus advancing in civilization. That such is the case no candid mind will deny. Their advancement in industry and education is fully attested by the number of their farms, the size of their herds and flocks, their cultivated orchards, their numerous schools and churches, organized governments, and adoption of the laws, the manners, and the customs of civilized life. They impose no expense upon the Government of the United States. They sustain themselves, and simply ask on our part a compliance with our obligations which have been voluntarily assumed as the only guarantee they can have for further quiet, continued prosperity, and prolonged existence. Our Government has received and enjoyed the fruits and profits of the treaties heretofore referred to. Our Government has occupied the lands surrendered by these Indians east of the Mississippi River, and is now in honor bound to abide by the contract in good faith, and not only permit but religiously guard these Indians in the quiet and peaceable possession of their lands and country forever, or so long as their tribal organizations may continue. In view of this state of the case, is there any wise public policy that will justify a change which can be only made by breaking our contracts, and thus ruining the hopes and prospects of the Indians, and jeopardizing the public peace, and hastening, perhaps, their extinction. If there be such exigency in the Indian policy of this Government, the minority of the committee have been unable to discover

it, and do not believe that it exists. That the internal civilization of these people is constantly keeping pace with the increase of knowledge among them, there is no cause to doubt. If other evils exist, as they do, perhaps, the remedy, in our judgment, is not to be sought in doing injustice to the Indians, but in amending our laws regulating trade and intercourse, and, if need be, in establishing such judicial tribunals in the Territory as are authorized by treaty, and as will insure a more efficient enforcement of law against offenders, which is contemplated and provided for by the amendment offered to the bill of the majority of the committee, in the form of a substitute, which provides for the establishment of United States courts and such a territorial government as seems to be contemplated by the treaties, and which, in our judgment, ought to be passed, if any law at all is deemed to be necessary and proper. It has been contended that the treaties of 1866, the last ones of importance entered into by the leading tribes now in the Indian Territory, confer authority upon Congress to legislate in the manner proposed by the original bill, but we have searched them in vain to find it. It is not to be found in the provisions common to all the treaties of that year, which authorize Congress to create a court or courts in the Indian Territory. For while the jurisdiction which it may confer upon such courts is of an enlarged character, it is expressly stipulated that it shall not interfere with the local tribunals of the tribes in cases arising within their own country and among their own people, nor with their laws, manners, and customs. For corroboration of this statement, reference is made to article 13 of the Cherokee treaty, July 19, 1866; the seventh section of the tenth article of the Creek treaty; the eighth section of the eighth article of the Choctaw and Chickasaw treaty of that year. Nor will it be found in those articles of the treaties of that year which relate to the establishment of a general council for the Indian Territory, as may be seen by referring to the tenth article of the Creek treaty, the eighth article of the Choctaw and Chickasaw treaty, the seventh article of the Seminole treaty, and the twelfth article of the Cherokee treaty. The argument in the Cherokee treaty is that a general council, consisting of delegates elected by each nation or tribe lawfully residing within the Indian Territory, may be annually convened in said Territory, which council shall be organized in such manner and possess such powers as by their treaties above prescribed. The powers conferred are enumerated in the same treaty, as follows:

> Said general council shall have power to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and nations and colonies of freedmen resident in said Territory, and the arrest and extradition of criminals and offenders escaping from one tribe to another or into any community of freedmen; the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes and nations, and the common defense and safety of the nations of said Territory.

The general council is prohibited from legislating upon other subjects than those indicated by these treaties, and its powers can be enlarged only with the approval of the President of the United States and by the consent of the national council of each nation or tribe consenting to its establishment. The representation in said council is required to be members of tribes lawfully resident in said Territory, and selected by the tribes respectively. In these provisions there is no authority conferred on Congress to legislate for these tribes, nor to establish the usual territorial government of the United States over them. On the contrary, the purpose seems to have been to prevent such legislation, and to leave the

general interests of these nations to their own management after obtaining their consent to the establishment of judicial tribunals, as have been indicated. It was clearly never intended that Congress should consolidate them at pleasure, regardless of their tribal organizations, and commit their interests and destiny to the voice of every adventurer who may be found in their country. But the reverse of this seems to have been the purpose after keeping in view the original design in establishing the Indian Territory. It was clearly set apart by the Government of the United States for a permanent home for the Indians removed from the States and Territories. For nearly a half century there has been no departure from that policy and no indication of that purpose by either the Government or the Indians, and, instead of now seeking to overthrow them, there are cogent reasons why it should be adhered to inflexibly. The diminished number of the Indians, the unparalleled increase and spread of our population, and their occupancy of almost the entire area of the United States, leaving scarcely an inhabitable spot for the Indian, should not be forgotten. It is there, if anywhere, that the remains of our Indian population are to enjoy homes where they can sustain themselves, and no consideration of cupidity should allow it to be overrun. Especially is this the case when we bear in mind that it is open now to the reception of other Indians, and that those now there have been required to relinquish a portion of their lands for their location, and that no antipathies of race or color interpose a barrier to their safe, speedy, advantageous, and satisfactory establishment there.

This view of the case is sustained by a reference to the treaties before quoted, to the removal from Kansas of her entire Indian population, and to the urgent recommendation of the commissioners who recently negotiated with the Dacotahs. And it must be remembered that the civilized Indians, who are the owners of this entire Indian country, make no objection to the settlement of any and all the wild tribes; but, on the contrary, they welcome all their wild brethren, and seem to earnestly desire to take them to their country and do all they can to lead them in the paths of peaceful civilization; and it seems to us that the solution of the Indian problem may be found in the Indian country, through the medium of these peaceful Indians now resident there.

We must not be unmindful of the pleas of trade put up for the opening of the Indian Territory to settlement, nor of the numerous arguments brought forward in its support by those who have persistently sought legislation that would effect this end for years at the hands of Congress. Without admitting or rejecting all that has been advanced in support or in opposition to these movements, there are certain facts which are believed to be beyond controversy, which bear upon the question under consideration.

All are mindful of the circumstances which placed these Indians where they now are, and in almost every instance against their remonstrances, and in some only by a resort to superior physical power. There can be no doubt as to the guarantees solemnly given them as inducements for removal; nor can there be any doubt of evidences of their substantial advancement in knowledge, and progress in the arts and manners of civilized life. These facts are all fully attested by our own records. The nations to be most affected by the sweeping legislation recommended by the majority of the committee all have regularly-organized governments, under written constitutions and laws, with officers necessary for their execution; and, while there may be a lack of more or less intelligence and efficiency in the administration of their affairs, there has been

a rapid advance from the hunter state and habits, and there is now a wide remove from the nomadic habits of their ancestors. If they could be trusted with the right of regulating their tribal affairs, as they have been during the century of our existence as a nation, and as they did before that from time immemorial, I see no cause to apprehend any doubt that there has been corresponding progress in their perception of right and wrong, a full appreciation of the benefits of law and order, and corresponding vigilance in their enforcement for the protection of life and property. The statistics of our own officials furnish evidence of the material prosperity of these people, and their moral and intellectual advancement.

Complaint is made of the extent of lands unoccupied in the Territory, in view of the fact that the Indians now there hold it by conveyance from this Government; but, considering that other Indians are to be corraled there, that objection affords no decent pretext for interference with their rights. This is especially the case when we compare it with the large expanse of our own States and Territories which remain unoccupied, and which even fall below it in population, wealth, and production. Of the nine Territories of the United States, it is more than 600,000 acres less in area than Washington, which is the smallest, and 52,000,000 acres, or more than twice, less than the largest, Dakota. Its population is now only less than that of New Mexico and Utah, and largely in excess of all the others, while in other evidences of wealth it ranks among the foremost and far outstrips many. This last remark is particularly applicable to the means available and expended in the cause of education, while some of the Territories are reported as having no public schools at all. Utah alone surpasses it in number of schools, and only equals it in the character of the institutions. There are upward of one hundred and eighty public schools in the Indian country, besides a few boarding-schools of acknowledged respectability, with an aggregate attendance of not less than six thousand children, a church membership exceeding eight thousand communicants, and almost $8,000,000 held in trust by the Secretary of the Interior for the benefit of schools as the proceeds of the sales of their lands; yes, lands sold at low rates, which have always been and are now enjoyed by our citizens. These statistics apply largely to the so-called civilized tribes, which reside chiefly in the eastern part of the Territory. The Comanches, Kiowas, Cheyennes, Arapahoes, and some others, recently-reclaimed nomads of the plains, reside in the western part of the Territory. Very many of them are earnestly turning their attention to the pursuits of civilized life, building cabins, cultivating the soil, exchanging horses for cattle and hogs, and sending their children to schools established among them, where they are learning the English language and acquiring those habits and thoughts of training which will remove them and their descendants from the depths of barbarism and place them, it is to be hoped, upon the plane of civilization.

Without entering minutely into the details of the particular measure under consideration, we cannot refrain from stating that it is not in conformity with our treaties, and that it is not sought by the Indians who are to be affected by its provisions, or any portion of them. Whatever may be its purpose, its effect will be to overwhelm by white men the Indian population of the country, so hopeful at present; and to deprive them of any voice in controlling their affairs, and forever break up their existence as communities. We should not be unmindful of the provision of treaties which excludes the assembly from interfering with the primary disposal of the soil, most of which they own in fee-simple

by a patent from the President of the United States; nor yet do we forget that the tenure by which these Indians hold their lands is said by some to depend upon their continuation as tribal communities. No one can doubt but what the lands and invested funds of these people, as well as their individual interests, would become a speedy prey to the avaricious and unprincipled men whom they are inundated by—a population foreign to them in education, thrift, and sympathy—when they will be a feeble and unorganized minority; and when the executive, judicial, and legislative branches of the government of the Territory of Oklahoma have passed, as pass they would and must in a brief period of time, into the hands and control of strangers amenable to them in no way, and when they are left as helpless individuals to contend against oppressions which they can scarcely resist as communities now under the protecting arm of our Government.

As members of the committee, we can see no great public exigency, no great want of our own people, no paramount requirement of intercourse or commerce, that impel a change in the condition of that country. It was set apart, as before shown, as a permanent home for the red man and his children forever, and every sentiment of justice, probity, and humanity require that we shall commit no violation of faith, but that the Indians now there, and other Indians soon to be placed there, shall be allowed one spot on this continent, once theirs, upon which to dwell unmolested, and to solve, as solve they will in due time, the problem of Indian elevation and civilization, or Indian degradation and extinction.

Respectfully submitted.

G. L. FORT.
CHAPMAN FREEMAN.
GEO. A. BAGLEY.
WM. P. CALDWELL.
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