

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era – Equality/Native Americans

Lone Wolf v. Hitchcock, 187 U.S. 553 (1903)

On October 6, 1892, the United States signed an agreement with the Kiowa, Comanche, and Apache tribes in which the tribes promised to convey approximately 2,000,000 acres of their lands to the federal government for \$2,000,000. The tribes almost immediately claimed that had been defrauded by federal commissioners and agents. Congress made some adjustments to the agreement, but that did not satisfy tribal leaders. In 1910, Lone Wolf, the chief of the Kiowas, filed a lawsuit against Ethan Hitchcock, the Secretary of the Interior. The lawsuit claimed that the federal decision to execute a fraudulent agreement violated the property rights of the Native American tribes. Both a federal district court and the Court of Appeals of the District of Columbia rejected this claim. Lone Wolf appealed those decisions to the Supreme Court of the United States.

The Supreme Court of the United States unanimously declared that the contested land belonged to the federal government. Justice White's majority opinion ruled that because the United States was the ultimate proprietors of lands occupied by Native Americans, Congress could dispose of that land as Congress saw fit. How did Justice White reach that conclusion? Is that conclusion correct? Suppose the United States conceded that the commissions defrauded the tribes. Would the decision have been different?

JUSTICE WHITE delivered the opinion of the court:

...
[I]t is true that in decisions of this court, the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created, has been stated to be sacred, or, as sometimes expressed, as sacred as the fee of the United States in the same lands. But in none of these cases was there involved a controversy between Indians and the government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected states or individuals. . . .

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, the legislative power might pass laws in conflict with treaties made with the Indians.

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians.

...

In view of the legislative power possessed by Congress over treaties with the Indians and Indian tribal property, we may not specially consider the contentions pressed upon our notice that the signing by the Indians of the agreement of October 6, 1892, was obtained by fraudulent misrepresentations, and concealment, that the requisite three fourths of adult male Indians had not signed, as required by the twelfth article of the treaty of 1867, and that the treaty as signed had been amended by Congress without submitting such amendments to the action of the Indians since all these matters, in any event, were solely within the domain of the legislative authority, and its action is conclusive upon the courts.

We must presume that Congress acted in perfect good faith in the dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation. If injury was occasioned, which we do not wish to be understood as implying, by the use made by Congress of its power, relief must be sought by an appeal to that body for redress, and not to the courts. The legislation in question was constitutional, and the demurrer to the bill was therefore rightly sustained.

JUSTICE HARLAN concurs in the result.



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