LETTER

TO THE PRESIDENT,

TOUCHING STATEHOOD FOR INDIAN TERRITORY.

BY

WALTER A. DUNCAN,

DELEGATE OF CHEROKEE NATION.

RESPECTFULLY SUBMITTED.

SECOND EDITION.

WASHINGTON, D. C.:
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Status of the Five Civilized Tribes.

NATIONAL HOTEL,
WASHINGTON, D. C., *August* 6, 1894.

SIR:

1. The chief object of government is the happiness of the people. Vattel says: "The desire of happiness is the powerful spring that puts man in motion; felicity is the end they all have in view, and it ought to be the grand object of the public will. It is then the duty of those who form this public will, or those who represent it—the rulers of the nation—to labor for the happiness of the people, to watch continually over it, and to promote it to the utmost of their power."

2. But the change in the governmental relations of the Indians in Indian Territory, which is now so persistently demanded at the hands of Congress by the advocates of a territorial government for the Indian country, would be the most direct method to defeat the ends of government, so far as the Indians are concerned. The truth of this statement may be clearly seen from a bare inspection of history touching the American tribes. Whenever Indians have essayed the experiment of citizenship in the midst of a white population, the consequences have been ruinous to themselves.

3. The Indians discovered America before the Europeans. They were in possession of the country when Columbus landed on the continent. As to the political

character of the Indians at that time, the Supreme Court has spoken in very plain language. In reference to the Cherokees it says: "Beyond doubt, the Cherokees were the owners and occupants of the territory where they resided before the first approach of civilized man to the western continent, deriving their title, as they claimed, from the Great Spirit, to whom the whole earth belongs; and they were unquestionably the sole and exclusive masters of the territory and claimed the right to govern themselves by their own laws, usages, and customs."

4. Early in colonial times a question arose amongst the sovereigns of Europe, whose subjects were making discoveries on the continent, as to what power should have precedence in the acquisition of lands from the Indians, when it was agreed by them that the sovereign of the discoverer should have the right over all others to acquire from the Indians the title to the lands so discovered. But discovery of lands occupied by the Indians gave such sovereign no title to the lands so discovered. It is said by the Supreme Court that this agreement between the sovereigns of Europe had no effect whatever as to the Indians' title to their lands and their right of self-government; it only became a rule to regulate the conduct of those sovereigns between themselves in the matter of procuring lands from the Indians.

5. It is evident from history that the Europeans and American Indians first met as sovereign nations, and on this basis political relations were established between Great Britain and the Cherokee Nation and maintained until the war of the revolution, during which time, as we learn from James Adair, an old English author, as well as from official records of the period, contained in the American State Papers, the Indians were considered "allies" of Great Britain but not "subjects." In 1783

the treaty of peace was made between the United States and Great Britain, and the United States became an independent nation. Two years later, in 1785, the United States sent commissioners to make a treaty of peace also with the Cherokees who had lately been the "allies" of Great Britain. The lofty style employed, as well as the subject-matters treated in those negotiations, shows the political character attaching to the Cherokees at that time: "The commissioners plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions," and so on. The chief effect of this treaty was to transfer the alliance of the Cherokees from the crown of Great Britain to the United States, the United States entering into the same relations with the Cherokees as had been sustained to them by Great Britain. The Supreme Court, speaking upon this point, says: "The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt as far as known has been made to enlarge it." Hence the Cherokee Nation was no less a sovereign power after it had entered into an alliance with the United States than when it sustained the same relation to Great Britain. It lost nothing by this transfer of its faith and friendship, but carried with it whatever of political character it had possessed as the ally of Great Britain. What that character was acknowledged to be by the United States may be seen from the following utterance of the Supreme Court: "Indian tribes are States in a certain sense, though not foreign States, or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens

of another State, between citizens of different States, and between States and the citizens thereof and foreign States, citizens, or subjects. They are not States within the meaning of any one of those clauses of the Constitution, and yet in a certain domestic sense, and for certain municipal purposes, they are States, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individuals of their community."

"Indeed treaties have been made by the United States with the Indian tribes ever since the Union was formed, of which numerous examples are to be found in the seventh volume of the public statutes." "Laws have been enacted by Congress in the spirit of those treaties, and the acts of our Government, both in the executive and legislative departments, plainly recognize such tribes or nations as States, and the courts of the United States are bound by those acts."

6. Nor has the political character of the Cherokee Nation been impaired either by the lapse of time or change of circumstances. The truth of this statement is verified by the late opinion of the Supreme Court of the District of Columbia. In the recent case of Edwin D. Chadick against Walter A. Duncan *et al.*, and which is herewith submitted as part of this argument, the court says: "The first question that suggests itself relates to the status of the Cherokee Nation as a party to the litigation. Going back very far we find that the Constitution of the United States confers upon Congress the power to regulate commerce with foreign nations among the States and with the

Indian tribes. This is a sort of recognition of the separate tribal existence of these Indians even at that early time. We find further that Congress entered into negotiations from time to time with these people, and made six or seven treaties—one in 1785, one in 1791, one in 1819, one in 1828, one in 1835, one in 1846, and one in 1866—in all of which they are described as the Cherokee Nation.

"The first expression of opinion we have from the Supreme Court with regard to the status of this people is found in the case of the Cherokee Nation against Georgia. (5th Peters, page 1.) It is a matter of history that the State of Georgia undertook to break up that nation and to drive it out of its own territory and to appropriate its lands. This bill was filed by the Nation in the Supreme Court of the United States, as a case of original jurisdiction, against the State of Georgia to prohibit that alleged grievance.

"Chief Justice Marshall, on page 16, delivering the opinion of the court, says:

"'Is the Cherokee Nation a foreign State in the sense in which that term is used in the Constitution?

"'The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a State—as a distinct political society separated from others—capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as States from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political

character for any violation of their engagements, or for any aggression on the citizens of the United States by any individuals of their community. Laws have been enacted in the spirit of these treaties. The acts of our Government plainly recognize the Cherokee Nation as a State, and the courts are bound by these acts.

"'A question of much more difficulty remains: Do the Cherokees constitute a foreign State in the sense of the Constitution?'

"The conclusion of the majority of the court was that they did not, so as to bring them within the description of parties who might sue and be sued in the federal courts as a foreign nation.

"Even on that question there was a dissent by Justices Thompson and Story, they holding that the Cherokee Nation was a foreign nation in the sense of the Constitution, and capable of maintaining its suit. Judge Thompson says:

"'I do not understand that it is denied by a majority of the court that the Cherokee Indians form a sovereign State according to the doctrine of the laws of nations; but that, although a sovereign State, they are not considered a foreign State within the meaning of the Constitution.'

"In the case of Worcester against the State of Georgia (6 Peters, 515), the Supreme Court remarks that 'The Indian nations had always been considered as distinct, independent communities,' etc. * * * The very term 'nation,' so generally applied to them, means a 'people distinct from others.'" Thus far Judge Cox.

7. In further proof of the continued vitality of treaties with the Five Civilized Tribes, reference may be had to the late opinion enunciated by the Honorable Secretary of the Interior, and likewise to the position lately held by Senator Platt in legislative debate.

A question touching the ejectment of subjects of Great Britain, France, Italy, and Belgium from the Choctaw Nation had been put before the State Department by the representatives of those governments, and in his reply the Secretary of the Interior said: "Under the provisions of the treaty between the United States and the Choctaw and Chickasaw Nations, the unrestricted right of self-government and full jurisdiction is accorded these nations over persons and property within their respective limits, excepting all persons, with their property, who are not by birth or adoption members of either nation."

A bill had been introduced in the Senate to divert a portion of the Chickasaw trust fund to pay some debt claimed by a citizen of Texas against the Chickasaw Nation, when Mr. Platt said: "The point I wish to make with reference to the provisions of the bill which I wish to strike out is that Congress has no power or right to take anything from the interest of the Chickasaw trust fund for any purpose whatever; that it is under treaty obligation to pay the interest of that trust fund to the Indians, and it cannot divert any portion of it for the purpose of paying any supposed debt which the Chickasaw Nation or any person in the Chickasaw Nation may owe or be supposed to owe. * * *" He then read from the treaties with the Chickasaws, and proceeded: "In three treaties and by one statute we are bound to pay this interest to the Chickasaw Nation, and by the decision of the Supreme Court we are just as much bound to keep our obligations with the Indians as we would be to keep our obligations with Great Britain."

8. Such is the political character of the Cherokee Nation as described in the various opinions of the courts of the country. But since the Cherokee Nation, in the sense of the Constitution, is neither a State of the Union nor a

foreign State, the question arises as to the extent of its sovereignty. Ever since the treaty of 1785 was made with the Cherokees the United States have recognized the Cherokee Nation as of sufficient political dignity to enter into and maintain treaty relations with it. This fact is witnessed by the existence of numerous treaties made with the Cherokees, as well as by many acts of Congress, in pursuance of those treaties. And what if the Cherokee Nation is a weaker power and the United States a greater one? It is neither numbers nor power that gives character to a body politic. It is dignity or political rights that give to a nation the attributes of sovereignty and entitle it to a place among the treaty-making powers of the earth. This principle is acknowledged to be the correct one by eminent doctors of international law. Vattel says: "Every nation that governs itself under what form soever is a sovereign State. Its rights are naturally the same as those of any other State." Such was clearly the condition of the Cherokees at the time of the discovery. But in the establishment of political relations between the United States and the Cherokee Nation the Cherokee Nation parted with a portion of its sovereignty, for which the United States agreed to return an equivalent compensation. The Cherokees consented to put themselves under the protection of the United States of America, to enter into treaty relations with no foreign power, nor hold any treaty with any individual State, nor with individuals of any State, and that the United States might have the exclusive right to regulate their trade. On the other hand, the United States agreed to protect the Cherokees from all outside enemies, to secure them in the peaceable possession of their lands, and in the exercise of their own government, in accordance with their own laws, customs, and usages.

9. Such were the terms of alliance entered into by the United States and the Cherokee Nation—a fair exchange of political values, and which has uniformly been the bases of political intercourse between the two parties for more than a century.

10. Whatever of sovereignty was not surrendered to the United States by the Cherokee Nation in establishing the political relations between the two as just described, of course still remains in its fullness in the Cherokee Nation. The same author above quoted says: "When a nation is not capable of protecting herself from insult and oppression, she may procure the protection of a more powerful State. If she obtain this by only engaging to perform certain articles * * * it is simply a treaty of protection, that does not at all derogate from her sovereignty." * * * And again: "As a State that has put herself under the protection of another has not on that account forfeited her character of sovereignty, she may make treaties and contract alliances, unless she has, in the treaty of protection, expressly renounced that right." But the Cherokees, in their treaty of protection with the United States, did expressly renounce that right, and, from the nature of the case, it would seem the United States should feel itself more sacredly bound to respect the residuary sovereignty of the Cherokee Nation. Considerations of honor as well as justice become the grounds of such expectation on part of the weaker party.

11. In further elucidation of the relations of the Cherokee Nation and the United States as they now exist, reference may be had to what the court says in regard to the Oneidas as applicable to the Cherokees. In the case of Jackson *v.* Goodell, the court says, Kent delivering the opinion: "The Oneidas, the tribes composing the Six Nations, were originally free, independent

nations, and it is for the counsel who contend that they have now ceased to be a distinct people and become completely incorporated with us to point out the time when that event took place. In my view they have never been regarded as citizens or members of our body politic. * * * Throughout the whole course of our colonial history those Indians were considered dependent allies. The colonial authorities uniformly negotiated with them, and made and observed treaties with them as sovereign communities exercising the right of free deliberation and action; but in consideration of protection, owing a qualified subjection, in a national capacity, to the British crown. No argument can be drawn against the sovereignty of these Indian nations from the fact of their having put themselves and their lands under the protection of the British crown. Such a fact is of frequent occurrence between independent nations. One community may be bound to another by a very unequal alliance and still be a sovereign State." * * *

12. The Cherokee Nation has never surrendered its sovereignty further than has been shown above by reference to authorities, nor has that sovereignty been wrested from it by conquest.

13. Nor does the act of March 3, 1871, providing that no more treaties shall be made with Indian tribes, affect the status of the Cherokee Nation. Hon. John S. Noble, speaking as Secretary of the Interior and in relation to the effects of this law, said: "No treaty obligations were to be impaired by the enactment itself." Justice Cox, of the Supreme Court of the District of Columbia, in the case above cited, speaking of the political status of the Cherokee Nation, and with his mind upon the effects of the act under consideration, said: "Now, though it has been determined by the United States not to hereafter deal with

them through treaties, but through laws and statutes, the status of the people has not been changed thereby. They still are allowed to preserve their autonomy. They have their political organization; their legislature; their congress; and exclusive dominion over their own land, so far as the States are concerned; in fact they are a tribe or sovereign nation with one exception or limitation."

14. Hence, in view of the preceding induction of facts and references to authorities, if Congress should pass an act abrogating its treaties with the Cherokees, the legal effect would be to dissolve all obligations which have hitherto bound the Cherokee Nation, and, under the authority of international law, the Cherokees would be free, were it possible to do so, to enter into treaties of protection and alliance with other foreign powers.

15. As to the power of Congress to abrogate its treaties, much discussion has been had and diversity of opinion entertained. It was the opinion of Mr. Jefferson that "a treaty made by the President, with the concurrence of two-thirds of the Senate, was a law of the land and a law of superior order, because it not only repeals past laws, but cannot itself be repealed by future ones," and of this opinion Chief Justice Marshall, in his Life of Washington, says: "There is no reason to suppose that any member of the Cabinet dissented" from it.

16. In a debate in the House of Representatives relating to the "Jay Treaty," which took place in 1796, Mr. Gallatin held that a law cannot repeal a treaty, "because a treaty is made with the concurrence of another party, a foreign nation, that has no participation in framing the law." * * * "It is a sound maxim in government that it requires the same power to repeal a law that enacted it."

17. Mr. Smith, of South Carolina, said: "It was not pretended that the Constitution made any distinction be-

tween treaties with foreign nations and Indian tribes; and the clause which gives Congress the power to regulate commerce with foreign nations, and on which the modern doctrine is founded, includes as well Indian tribes as foreign nations."

18. But as to the power of Congress to abrogate treaties the true doctrine appears to have been formulated in 1798, when the question as to the revocation of treaties with France was under discussion in the House of Representatives. France had already violated her treaties with the United States when the following declaration was enacted: "The United States are of right freed and exonerated from the stipulations of treaties heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally binding on the Government or citizens of the United States." France had first violated those treaties to the detriment of the United States, and, of course, the United States was no longer bound to observe their requirements.

19. The Cherokee "Tobacco Case" is often cited to show that a treaty may be set aside by an act of Congress. But the history of this case will show that the opinion of the court in that instance can by no means be taken as establishing a universal rule in the premises, as to the relative sanctity of treaties and acts of Congress. A conflict had occurred between the revenue laws and the treaty of 1866, and the question was as to which should be made to give way to the other. The court decided that the revenue laws should rise superior to the treaty. This was done for a purely political reason—the reason that revenue was absolutely necessary to the existence of the Government. To allow the revenue laws to fall to the ground for any cause whatever would be to destroy the very foundations of the republic, and as with individuals,

so with States, the law of self-preservation is of paramount importance. It seems to be a principle lying at the foundation of all government that the political power may do anything possible which may be necessary to the existence of the body politic; or, in other words, a government, for sufficient political reasons, may declare a treaty void.

20. But no reason exists for the abrogation of treaties with the Cherokees. Those treaties have never been violated on part of the Cherokees; nor has anything arose to threaten the existence of the United States, or to hinder its prosperity and comfort. Nor has the lapse of time had any effect to diminish the validity of those treaties. When those treaties were entered into the entire future was before the minds of the contracting parties. They were to be binding "forever." Many of the terms used in describing the provisions of those treaties clearly signify that the contracting parties understood themselves as entering into a contract which should stand good throughout all time.

21. It is but puerile for the papers to insist that the treaties made with the Cherokees have served the purposes for which they were entered into, and that therefore they should either pass into desuetude or be annulled by an act of Congress. Such reasoning, if applied to all contracts or obligations, both individual and national, would unsettle the civilization of the world, and lead to universal anarchy among mankind. Old contracts and covenants are to-day the very foundation-stones upon which the business, prosperity, and happiness of the American people are built. No one ever thinks of going back to remove those foundation-stones. It is held that no change of circumstances can justify a course of that sort. And why apply such unjust and mercenary reasoning to our treaties?

22. It is still more childish, not to say barbarous, for the papers to be continually proclaiming that Congress has the power and can annul a treaty just whenever it wants to do so. Congress has no power outside the purview of the Constitution; nor is Congress inspired by a wild ambition to transcend the golden barriers placed around it by the provisions of that sterling instrument. And there could scarcely be a plainer desecration of the Constitution than for Congress to violate the faith which has been so solemnly pledged the Cherokee Nation, and, by mere force, break up the Cherokee government, in the enjoyment of which it has covenanted to protect the Cherokees forever.

23. The advocates of a treaty-breaking policy on part of the Government surely do not comprehend themselves. He who would counsel his neighbor to forfeit his word and break a contract with his fellow-man could scarcely be considered a man of honor. He who would urge his government into the practice of "Punic faith" even with weaker parties most certainly fails to be a lover of his country.

24. No one is disposed to deny the existence of crime in Indian Territory. But that crime is more abundant or of greater turpitude in that country than elsewhere can scarcely be demonstrated by an induction of facts. Senate Report No. 377, present session of Congress, throws much light upon this question. The subcommittee of the Select Committee on the Five Civilized Tribes recently visited Indian Territory for the express purpose of witnessing the state of things in that country. On their return, under date of May 12, they submitted their report to the Senate. Speaking of the expense of the Federal courts in that country, they say: "The expense of prosecuting crime and maintaining courts in the Indian Territory amounts to one-seventh of the judicial expense of the United States,

and this not because crime is more prevalent in Indian Territory than is usual in new and unsettled countries, but because of the system under which justice is supposed to be administered therein." Here is testimony, which cannot be set aside, to the effect that crime is not unusually prevalent in Indian Territory.

No one is better informed as to crime in Indian Territory than Judge I. C. Parker, of Western District of Arkansas. His letter on the subject should be quoted in full:

"UNITED STATES COURTS, AT CHAMBERS,
"(I. C. PARKER, District Judge,)
"FORT SMITH, ARK., *March* 16, 1894.

"Hon. W. A. DUNCAN,
"*Cherokee Delegate.*

"MY DEAR SIR: In answer to your letter of the first instant I send you a tabulated statement of the criminal business in my court for the last ten years. It is given to you by years, and on the right-hand side of it you will see the amount of business which came to the court from the State. You will notice further that from the year 1888 there has in the aggregate been a gradual increase in cases. This is not so much of the higher crimes as in offences of less grade, such as violating the internal revenue law by selling liquor and introducing liquor into the Indian country. This increase of crime of the character named is accounted for by the fact that since that time there has been a large influx of the reckless element of the different States of the Union into the Indian country, a great majority of whom were criminals before they got there. This is a class that the Government for sixty years has stood pledged to keep out of the Indian country, yet, I am sorry to say, that pledge has never been redeemed, and this is a fruitful cause of the amount of crime in that country. If such a state of case did not exist the Indian country would not have the per cent. of crime to be found in any Western State. You may take the Indian population of that country and there is not even now, with all

the adverse surroundings, as high a per cent. of crime committed by them as there is by the same number of white people in any of the Western or Southern States. This whole evil could have been remedied, and could be remedied now, by the simple performance of this great duty which rests upon the Government to protect the rightful owners of the soil and the rightful inhabitants of the country from the immoral, criminal, and debasing influences thrown around them by the refugee criminal intruder class who have been permitted to go into that country undisturbed, as far as the executive arm of the Government is concerned. No power has ever been exerted, except as it is exerted here through the court, and through the court at Paris, Texas, and at Wichita, Kans., to secure the removal of any portion of that class from the Indian country. The solution of the whole trouble is of the simplest character.

I desire to say that, of the crimes coming to my court as set out in the tabulated statement I have furnished you, about 10 per cent. of the higher offences, such as murder and assaults with intent to kill, were committed by Indians; about 20 per cent. of those crimes of less grade were committed by them.

You may rely upon this statement as being substantially correct, it being prepared here by the clerk from the records.

I am sorry that I have not furnished this sooner, but we have all been very busy and have not been able to hunt it up until this time.

Hoping you may meet with the greatest success in all of your efforts to impress the good people of Congress that your rights should be protected and that you should be let alone to develop that civilization that the Government said sixty years ago you were capable of developing, when it recognized your autonomy and considered that your local laws were sufficient to promote intelligence and finally bring you to that state of civilization that, in my judgment, you have arrived at now, you will believe me, as ever, most truly,

Your friend,

I. C. PARKER.

Dictated.

Cases disposed of in U. S. Circuit and District Courts, Western District Arkansas, from Jan. 1, 1884, to Jan. 1, 1894.

Charge.	1884.	1885.	1886.	1887.	1888.	1889.	1890.	1891.	1892.	1893.	Aggregate	State.
Murder	21	30	22	15	27	46	39	7	21	26	254	.....
Rape	1	0	1	0	5	6	1	1	1	1	11	.....
Manslaughter	7	3	0	2	5	2	0	1	0	2	22	.....
Assault with intent to kill	39	42	25	39	33	50	39	29	41	73	410	.....
Robbery	0	0	0	0	0	1	7	3	5	15	31	.....
Larceny	72	116	87	119	145	130	140	120	114	131	1,174	.....
Retail liquor dealer	133	135	71	78	99	153	217	258	283	232	1,659	414
Introducing liquor into Indian country	195	202	164	97	106	254	352	277	445	411	2,503	.....
Violating internal revenue laws	1	7	2	0	2	0	0	8	41	42	103	103
Cutting timber on Government land	8	0	1	2	0	1	3	6	5	30	56	45
Resisting process	5	2	1	3	1	2	1	0	6	5	23	.....
Violating postal laws	2	1	2	1	5	4	3	2	4	18	47	30
Giving liquor to Indians	2	3	2	4	5	3	0	1	1	0	14	10
Illicit distilling	2	3	0	0	2	5	18	21	10	0	61	61
Arson	1	0	0	5	3	1	5	3	0	3	21	.....
Counterfeiting	3	1	1	0	6	4	6	12	6	9	42	39
Bribery	2	0	0	1	6	1	0	1	0	0	5	5
Perjury	1	2	2	0	6	1	5	7	14	10	42	40
Embezzlement	0	3	1	1	0	0	0	1	1	0	7	4
Selling liquor to Indians	0	8	1	3	0	8	26	1	2	4	53	50
Personating an officer	0	3	0	0	4	1	2	2	0	1	7	.....
Bigamy	0	1	0	2	3	5	7	2	3	1	32	.....
Conspiracy	0	0	0	3	3	5	0	0	0	3	15	5
Forgery	0	0	0	0	0	1	0	1	1	0	3	3
Intimidating a witness	0	0	0	1	0	0	0	0	0	0	1	1
Burglary	0	0	0	0	3	0	0	0	1	0	5	.....
Making false claims against Government	0	0	0	0	1	0	0	0	1	3	5	5
Maiming	0	0	0	0	0	0	0	0	0	0	1	.....
Adultery	0	0	0	0	1	0	15	17	12	14	59	.....
Fornication	0	0	0	0	0	0	1	0	0	4	5	.....
Dealer in oleomargarine	0	0	0	0	0	1	0	0	0	0	1	1
Failing to perform Government contract	0	0	0	0	0	0	0	0	1	0	1	1
Extortion	0	0	0	0	0	0	0	1	0	1	2	.....
Incest	0	0	0	0	0	0	1	0	1	3	5	.....
Obstructing homestead entry	0	0	0	0	0	0	0	0	1	0	1	1
Total	494	563	390	374	445	682	886	780	1,022	1,042	6,678	800

To the same effect is the subjoined extract taken from the proceedings of the Democratic Executive Committee which were published in *Muscogee Phœnix* of February 2, 1894:

"Whereas Wm. M. Fishback addressed an open letter to the President recently and caused the same to be published in the press, a letter which, on account of the exalted position he occupies as governor of the State of Arkansas, will be accepted as wholly true by many who are not familiar with the existing conditions in the Territory; and

"Whereas said letter contained statements with regard to the character of the citizens of the Indian Territory and the condition of affairs in this Territory which are very largely unfounded, and therefore unfair and unjust; and

"Whereas the Honorable Isaac C. Parker, judge of the United States court at Fort Smith, has frequently publicly denounced the introduction of liquor into the Indian Territory as the great source of crime, and we know from observation and information that a very large proportion of the cases in which parties are convicted at Fort Smith and at Paris for the introduction of intoxicating liquor into the Indian Territory are those of persons who have been taken to these places under process of those courts, as witnesses, thus being given the opportunity of procuring the liquor which without such opportunity they would never 'introduce:' Therefore, be it

"*Resolved*, That while we do not believe that the Hon. Wm. M. Fishback was actuated by any disposition to injure or malign the people of the Territory, yet we do feel that he has used language much more sweeping with reference to the people of this Territory than the true facts warrant; and believe that he was actuated by an honest desire to advance the interests of both the Indian Territory and surrounding States; yet we must condemn his designating this Territory as an asylum for criminals and a school for crime without excepting the many thousand Indians and the many more thousand whites who are as honest, upright, industrious, and law-abiding citizens as are to be found in Arkansas or any other State in the Union."

25. It has been charged before the honorable committee in advocacy of the McRae bill that in Indian Territory the strong are devouring the weak; that a few of the citizens are monopolizing all the best lands and turning the greater portion of the people out without homes, to suffer the hardships of pauperism. To palliate the rigor of this extreme accusation a few statements may be offered.

The Chickasaw country being small in area and much overrun by a white population, it may be substantially true that in that part of the Territory a small portion of the citizens are in possession of most of the choice lands, while the masses of the people are, to some extent, crowded for want of room. But in the Choctaw and Creek countries, notwithstanding the large districts occupied for grazing and farming purposes, there is no scarcity of unoccupied tracts upon which any citizen who has no home, if there be such there, can locate and make himself a home. So in the Cherokee Nation, while we have some large farms and other large inclosures which have been erected for grazing purposes, there is yet enough of other lands to supply all the people with abundant room for home purposes. It is a false use of the term "homeless" and "homeseekers," to apply them to anybody in the Cherokee Nation. Those terms having been borrowed from Oklahoma newspapers, are used in speaking about the condition of things in Indian Territory. In the Cherokee Nation we have no homeless people in a proper sense of the term. Here the ownership of the land is vested equally in every man, woman, and child. Every one is a landlord, being proprietor of lands,

with the title so secured in him that he cannot be divested of it, nor can he so alienate the title as to place the land beyond the reach of his descendants. Hence there is not a pauper, in a true sense of the word, in the Cherokee Nation. Here a man may be poor as to the possession of personal property; but as to the land, the most valuable of all estates, he is rich. Under these conditions it is clearly seen that if a person has no home—that is to say, a house and farm and such things—it is his own fault. He can go to work and have one.

26. Under the system by which the Cherokees hold their land, a monopoly of lands, in the proper sense of the term, is utterly impossible. The Constitution provides that the land of the Cherokee Nation shall remain the common property of the Cherokee people. There may be a monopoly in the use or occupancy of lands for agricultural and grazing purposes; but the title to the lands cannot be taken from the ownership of the people, and the National Council has power to enact laws to prohibit monopolies even in the use or occupancy of lands, and to regulate the distribution of its uses amongst the people. But hitherto, although some large inclosures exist in the Cherokee Nation, there is plenty of good, unoccupied lands to make homes for all.

27. As to the principle of allotment of lands amongst the Indians, it may well be apprehended that it would accomplish little less than ruin for them. The system of land in severalty has been practised for ages by the most intelligent nations of the world; but no measure of intelligence or patriotism has been adequate to protect the interests of the weak and improvident against the cupidity of their more daring and cunning fellow-citizens. In some countries, as in England, to be no further tedious in citing examples, a few of the people own all the land, and

the millions of the rest are homeless, as far as land is necessary to the making of a home, and are really but "hewers of wood and drawers of water" for their more fortunate countrymen. And here in America we are presented with a startling object lesson. While the soil, which God intended as the source of bread to all, is fast drifting into the hands of a few, the millions of the landless are clamoring at the very doors of the Capitol for redress of their hunger. And, if all white men under the American system of land in severalty, and with their superior intelligence and an experience of centuries in the competitions of business, are not able to own land and homes, how can it be presumed that the Indians could long hold the ownership of lands that might be set off to them in severalty?

28. But it is claimed a safeguard may be placed round the Indian who takes his allotment of land and becomes a citizen of the United States. It is proposed to make his land inalienable for a certain period of time. Yet there are serious objections to this theory. To make an Indian a citizen of the United States, and not allow him to exercise the rights and privileges of an American citizen—the right to control his own property—would be to place him in an "anomalous" position, indeed. Certainly if he be a freeman, as a citizen of the United States, no law can be passed to inhibit him from disposing of whatever interest he may have in his allotment of land; and the very fact that his title has been placed under an incumbrance would have the effect to depreciate the value of that interest, and the prospective owner of such allotment of land in many cases would be induced to part with his claim for a mere trifle. Furthermore, as a precedent, a bill has been presented before the present Congress to authorize Indians who have taken allotment in

accordance with the method above mentioned to convey title to the very lands which had been made inalienable for a number of years. Hence it follows that if large bodies of land should be individualized by an act of Congress under this scheme, the probabilities are that Congress would be importuned in a few years to pass an act undoing its previous one so as to open the way for speculators to gain access to the Indian allotted land.

The process of allotting lands to Indians now going on is but another experiment, and is destined to effect the ruin of many of them in the end. Already it is said of some of those recent allottees, American citizens, in Oklahoma, that they do not even know where their "land lies." Already is Congress urged to remove restrictions so that Indian allottees can immediately sell their lands. At best this recent allotment policy being carried out is but an experiment, and the prospects are that it will prove hurtful to the Indians who are subjected to its operations.

29. To secure the control of the contemplated Territory or State in the hands of the Indians, it is said that it may be provided by law so that none but Indian citizens can hold office or exercise the ballot. This notion, if carried into effect, would give rise to another "anomaly" more grotesque than the one above. It is claimed that at the present time there are two hundred thousand non-citizens in Indian Territory. All this great population of freemen would be expected to live in the Territory, subject to its laws, helping to bear the expenses of its government, without any voice or vote in controlling its affairs. Is it not evident that such a state of things could not exist? A Territory or State with one portion of its citizens not allowed to exercise control of their own property, and another portion not allowed to vote or hold office, would certainly be not only contrary to the Constitution of the

United States, which requires a republican form of government for all the States and Territories, but it would constitute an "anomaly" far more uncouth than that which is now said to exist in connection with the Indian governments in Indian Territory.

As to Citizenship for the Indians.

30. It is a proud thing, when one is adapted to its conditions, to be a citizen of the United States. But by no means would it be a proud thing for the Indians. It is not true that, in all cases, what is good for a white man is also good for an Indian. They both, being amenable to the same physical laws, might flourish alike on the same food, air, and sunshine; but when it comes to such conditions as require a struggle for "survival of the fittest," the white man would transcend the Indian out of sight. In fact, citizenship is not equally good for the entire Caucasian stock. It is patent to all that while some under the ægis of citizenship are piling up gold by millions, others in throngs of thousands are clamoring for bread to defeat the grave of its prey.

31. The policy of making citizens of Indians was first conceived under the administration of President Madison. Mr. Crawford, who at that time was Secretary of War, advised that they be constituted as such, with individual title to their lands. But, as shown by official records, no attempt was made in execution of this policy until some time after its inception.

Under provision of the treaty of 1817, a portion of the Cherokees undertook to become citizens in Georgia. Three hundred and six of them took land in severalty, while the balance of the land surrounding them was sold to the Government and settled by the whites. The results which

followed were, some of them were so annoyed by their white neighbors—"*fellow-citizens*"—that they sold their homes for mere trifles in order to get away from trouble, while others were forcibly dispossessed of their houses and lands by combinations of white people.

32. Under their treaty of 1830, thirteen hundred and forty-nine Choctaws took reservations of homesteads in the State of Mississippi. In the negotiations connected with that treaty most flattering terms were used in reference to the prospects held out to that people; but, as subsequent events proved, it was vain for the Choctaws to attempt to become citizens of the State. It was not long after the consummation of that treaty when troubles for them set in, which never ended until almost the last one of them was despoiled of his property, and the tribe had to seek an asylum west of the Mississippi river.

33. In 1832 the Creeks entered into a treaty with the Government providing for allotment of their lands and citizenship for themselves in Alabama. But this dubious effort on their part to become American citizens only proved disastrous to their fondest expectations. It is stated in official documents that the proceedings in the House of Representatives of 1836 brought to view the fact of immense frauds imposed upon these people in connection with their reserved homesteads. In fact they became exasperated into a state of hostility in consequence of these frauds. A commission was appointed by the President to investigate the matter, but the results of their labors were never made public. As every one knows, the Creeks were forced, at last, to leave their homes and take up the line of march towards the setting sun.

34. In 1854 Commissioner Manypenny made treaties with a number of other tribes, all embodying the principle of allotment of lands and citizenship of the Indians.

As may be seen by consulting reports of various officers of the Indian service, all these arrangements proved disastrous to the Indians, excepting the little band of Brothertown, up in Wisconsin, and probably some few others. The Commissioner of Indian Affairs, himself, attests the truth of this statement. In his report for 1856 he says: "The rage for speculation and the wonderful desire to obtain choice lands cause those who go in our new Territories to lose sight of and entirely overlook the rights of aboriginal inhabitants. The most dishonorable expedients have in many cases been made use of to dispossess the Indian, and demoralizing means employed to obtain his property." Speaking of the Indians in Kansas, he says: "Trespasses of every conceivable kind have been committed on the Indians. They have been personally maltreated, their property stolen, their timber destroyed, their possessions encroached upon, and divers other wrongs and injuries done them." In this paragraph, quoting official papers, it may be added: "That in this respect history was simply repeating itself is shown by the account given twenty years ago by Col. J. J. Albert, of the United States Army, of his observations among the Creeks, to whom he had been sent on a special mission by the War Department in May, 1833, three years after the laws of Alabama had been extended over them, and thirteen months after the ratification of the treaty assigning a portion of their lands to each family. 'You can form no adequate idea of the deterioration which these Indians have undergone during the last two or three years from a general state of comparative plenty to that of unqualified wretchedness and want. * * * The free ingress into the nation of the whites, encroachment upon their lands, even upon their cultivated fields; abuses of their persons and property; hosts of traders who, like locusts, have devoured their substance, and have inun-

dated their homes with whiskey, have destroyed what little disposition to cultivation they once had. * * * They are browbeaten, cowed, and imposed upon and depressed with feeling that they have no adequate protection in the United States, and no capacity of self-protection in themselves.'" It was said by a committee of Congress that "These two accounts, one of Indians in Alabama in 1833, the other of Indians in Kansas in 1856, so strikingly alike in their tenor, come from gentlemen of high character." Such are the charms held out in citizenship and land in severalty to the Indians.

35. To be no further tedious, official history tells a similar story as to the fortunes of the Delawares, Sac and Fox, Pottawotamies, Kickapoos, Wyandotts, Ottawas, Peorias and Miamies, Chippewas, Winnebagoes, the Sioux, and others. The official records in the Indian Office tell but the one story in regard to the Indians, allotment and citizenship for them. Hon. Enoch Hoag, for some time in charge of the Southern Indian Superintendency, tells the United States Government in one of his official reports that "The policy of allowing Indians to become citizens in the midst of a white population is ruinous to the former and should be abandoned." He then proceeds to portray the many wicked devices adopted by unscrupulous persons to corrupt the Indians and to cheat them out of their property.

36. It is claimed that Indian Territory stands in the way of commerce. But in what sense is it that Indian Territory stands in the way of commerce? The term commerce in this connection is used on purpose to deceive the less reflective, and incite prejudice against the existence of Indian Territory. If we take into thought the general traffic of the United States, even though Indian Territory were surrounded by a real "Chinese

wall," it would not affect that traffic any more than a pebble would the flowing of the sea. In no way does Indian Territory offer any obstruction to the commerce of the age further than to hold its lands so as to keep them from falling into the hands of speculators, and prevent the introduction, sale, and use of ardent spirits.

The Indian Territory holds its doors open for the introduction of all kinds of merchandise and articles of traffic, excepting ardent spirits. It has thrown open its rich mines and thus furnished employment for railroads and thousands of laborers. In fact, it has opened the way for traffic in everything excepting its lands and ardent spirit from the adjoining States. From the circumstances of the case, therefore, is it not clear that this complaint against Indian Territory must come from those who are anxious to speculate in Indian lands, and such as desire to open a market for the sale of intoxicating drinks?

As to the strenuous efforts made by whiskey dealers to break through all legal restraints and flood the Indian country with their destructive merchandise, only turn to the annual report of Hon. Leo. E. Bennett, United States Indian agent of Union Agency, for the year 1892. Judge Bryant, of the eastern district of Texas, had rendered a decision which seemed to open the way for the introduction of ardent spirits into the Indian country. The agent says: "Under the impetus which Judge Bryant's decision gave, the nefarious traffic was inaugurated by the establishment of numerous lager-beer dives all over the Chickasaw Nation in the months of July and August, 1891." He then proceeds to recite the trouble which had to be encountered in order to counteract the whiskey power. And to-day, when it is loudly proclaimed that Indian Territory stands in the way of commerce, the meaning is simply that the lands which legally belong to the Indians

are placed beyond the reach of the speculator, and the Indian country cannot be made a great market for the introduction and sale of ardent spirits.

37. The Cherokee government is not a tribal government any more than that of France, Spain, or Mexico is a tribal government. The Cherokee government is a State, as it has been repeatedly declared by the Supreme Court. The Cherokee Nation is the owner of the soil within its boundaries. This ownership is not simply the holding of the Indian titles; it is the white man's title, acquired in a fair business transaction from the United States, and witnessed by issuance of a patent by President Van Buren in 1838. It has a written government—constitution, legislature, laws, courts, churches, schools, colleges, industries and commerce. Its sovereignty as above described has been as decidedly acknowledged by the United States as has been that of the United States by France, Spain, and the rest of the great powers. And the United States is just as solemnly pledged to protect the Cherokees in the enjoyment of their own government, laws, and customs as it is to conform to treaty stipulations with Great Britain or Germany.

38. The following are some of the reasons assigned by the advocates of "single statehood" for Oklahoma as contemplated by the McRae bill: "Oklahoma itself is not ready for statehood." "Nor would it ever be more than a third-rate State if confined to its present bounds." "If the two Territories were combined in the formation of a State, the State would quickly take a front rank among the trans-Mississippi States." "The tax question is sufficient argument for single statehood." "It would be folly to admit Oklahoma alone at this session." "The great bulk of the territorial lands are not yet taxable, and its towns bear all they can well stand." "If statehood

could be effected jointly with Indian Territory by the Fifty-third Congress, there would be no question as to the infant State to take care of itself." All this is taken from the reasoning of Mr. McAdam.

39. But is it not clear that all this talk is perfectly one-sided? In it nothing is held in view but the aggrandizement of Oklahoma at a sacrifice of the rights and welfare of Indian Territory. It all implies the humiliating concession that Oklahoma is either too poor or improvident to exist without raiding on Indian Territory. Is Indian Territory to be sacrificed on the altars of a people who can put up no well-founded right to such costly devotion? Why not cut off a part of Texas or some other State and throw it into the hungry jaws of the "infant State"? This reasoning, if reasoning it can be called, fails to point out a single advantage that would accrue to the Indians who are the owners of Indian Territory. Says nothing about what a national sin it would be to break treaties, force the Indians to sell half their property at prices to be fixed by others, and turn a million or so of foreigners loose in the Territory to plough under and destroy the Indians, as has been done in other instances. Says nothing about the vandalism of tearing down the lawful governments of the Indians, breaking up their schools, colleges, and churches; and, in fact, destroying the civilizations which the Indians have been a century in building up. Says nothing about the antipathy of race, which would never cease its strife until the weaker party had been destroyed—and of course that would be the Indian—as all will know, if they do not desire.

40. As to the Legal Aspect of the Case.

1. The Cherokee Nation is not a "tribal" government; it is a State as defined by the Supreme Court.

2. Its sovereignty as above described has always been acknowledged by the United States.

3. It is the owner of the lands within its boundaries; its title thereto is not merely the Indian title, but it is the white man's title, purchased from the United States and witnessed by issuance of patent by President Van Buren in 1838.

4. The United States stands pledged in treaties to "forever secure and guarantee" to the Cherokees "and their heirs and successors" the lands which they now occupy.

5. "The United States hereby [treaty 1835] covenant and agree that the lands ceded to the Cherokee Nation in the foregoing articles shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee Nation the rights by their National Council to make and carry into effect all such laws as they may deem necessary for the government and protection of persons and property within their own country belonging to their people or such persons as have connected themselves with them," &c.

6. It is not true that, because some changes have taken place in the circumstances of the Cherokees since the making of treaties with the Government, those treaties have ceased to be binding on the United States.

7. Congress has no power to annul a treaty made with a second party without a sufficient—*i. e.*, a political—reason, and no such reason exists for annulling treaties made with the Cherokees. If Congress should annul its treaties with the Cherokees, the logical effect would be to reinvest the Cherokees with the title to the lands east of the Mississippi which were ceded and conveyed to the United States under provision of those treaties.

ASPECT OF EXPEDIENCY.

8. The amount of crime committed in Indian Territory will not justify the abolishment of the Indian governments by an act of Congress in violation of all treaty obligations.

9. The Indian governments have been sufficient for control of the Indian people, under which they have advanced in civilization about as rapidly as has been usual with nations.

11. If the Federal laws in the Territory were faithfully administered, the commission of crime by the whites could be greatly abated.

12. There is no reason why Federal laws and the laws of the Indian governments should not operate in the same territory, just as Federal laws and the laws of the States operate in the same territory. There is no "*imperium imperio*," in the proper sense of the term, as applied to the Indian Territory. As well apply that term to a State because it occupies territory covered by United States laws.

13. Statehood and allotment would be damaging to the Indians, while it would be a rich harvest for the whites who would crowd into the country.

14. If to protect the title of allotted lands in the person of the Indians the title were made inalienable for a series of years men would go to Congress and have the law changed so the Indian could sell his land.

15. If the title to the lands in Indian Territory were individualized it would open the way for a genuine monopoly of lands. Speculators would want no better opportunity to acquire title to lands.

16. Friends of the Indians should not be in so great a hurry to make citizens out of them. Time is a very im-

portant element in the transition of a people from a lower to a higher measure of civilization. Hon. Mr. Reed, in the House of Representatives, expressed the true philosophy of the question. Speaking of the education of the Indians, he said: "But when you come to take a tribe which cannot be separated and distributed, and the question is about the education of the tribe, it is the same with those people as it was with us. They must pass over the same road we passed over. We did not arrive at our present condition of civilization by leaps and bounds. On the contrary, we went at a snail's pace, because we had to lift everybody all the time."

WALTER A. DUNCAN,
Delegate of Cherokee Nation.

THE PRESIDENT,
Executive Mansion,
Washington, D. C.