THE INDIAN QUESTION.

From the Mississippian.

Few decisions have been made by the Supreme Court of the United States of more intrinsic importance than the one recently rendered in the case of the *Cherokee Missionaries*. Believing that decision to be erroneous, and that any attempt to enforce it would be an act of high-handed oppression and injustice, and attended with the most deplorable consequences, we deeply lament that the Federal Judiciary has felt constrained to pronounce such an opinion as we are noticing, and trust that no farther measures will be adopted for carrying it into effect. "An examination of the Cherokee Question," as it is styled, has been lately published in the Washington papers, supposed to be from the pen of the present Secretary of War, Governor Cass, which occupies twelve columns of the Globe, and which, but for its great length, we should have transferred into our paper; for seldom, in our estimation, has been furnished an exposition of a complex political question, so eminently marked with ability as this "Examination."—From the intimate acquaintance which Governor Cass possesses with the peculiar characteristics of the Indians of North America, their present condition, and capability of providing for their own wants, and from his high reputation for literary and legal attainments, it was reasonable to suppose him remarkably qualified for the task which he has performed. But we confess that we were not prepared for so triumphant a refutation as he has furnished, of the views put forth by a judicial tribunal so justly celebrated for learning and ability as the Supreme Court of the United States. We propose to give a brief sketch of the "Examination."

Governor Cass, after expressing his satisfaction that there is a sanatory influence in our institutions, which, if it cannot prevent, can heal without difficulty or danger those maladies, to which all public bodies are from time to time liable," and giving a passing notice to the many political questions which have from time to time agitated the Republic, declares the solicitude which he feels that "the doubtful and difficult questions" which have arisen for discussion in the present day, will be examined "in a spirit of mutual forbearance and arranged in a spirit of mutual accommodation."

Our national motto should remind us, that we have become *one from many*; and if the example and the blessings, which this Union has produced, are to be perpetuated, we must seek, in a sense of interest and safety, and in a feeling of patriotism, the true power of cohesion.

Upon the virtue and intelligence of the people we must rely, in our seasons of danger.—They have thus far been the ark of safety. It were presumptuous to doubt, that they will be most efficacious when they may be most wanted.

He then introduces the "Cherokee question" which he propounds in general terms as follows: "Has the State of Georgia a right to extend her laws over the Cherokee lands within her limits?"

The following view of the question of *jurisdiction* upon the abstract ground of justice and reason is then given.

When the Europeans landed upon this continent they found it inhabited by numerous

tribes of savages, independent of one another, and generally engaged in hostilities. These men were in the rudest state of barbarism, thinly scattered over an immense region, subsisting principally by the chase and by fishing, destitute of arts and sciences, ignorant of the true principles of religion and morality, acknowledging no law but the law of force, and taught from their infancy, by precept and example, that war was the great business of their lives, and its dangers and glories the great object of pursuit. Such were the Indians then, and such are they now, wherever their contact with the white man has not changed their primitive character.

The new race of men destined, in the course of ages, to produce such deplorable effects upon the fortunes of these people, were influenced by other motives, and governed by other principles. We will not here inquire, whether, in taking possession of the country, in reclaiming it from a state of nature, and in laying the foundation of that invaluable heritage, which has come down to us, they were right or wrong. We shall endeavor hereafter to show that the great command, to be fruitful and multiply, to replenish the earth and subdue it, has been considered as one of universal obligation; that a civilized community has a right to go forth and take possession of unoccupied and uncultivated regions; that the hunting migrations of nomadic tribes, do not constitute such an occupancy, as ought to give them an exclusive title to more territory, than is necessary for their comfortable subsistence, in the mode to which they have been accustomed; that Vattel, the great expounder of the law of nations, was right, and so were his associates in this investigation right, when they maintained, 'that the cultivation of the soil was an obligation imposed by nature upon mankind, and that the human race could not well subsist or greatly multiply, if rude tribes, which had not advanced from the hunter state, entitled to claim and retain all the boundless forests, through which they might wander. If such people will usurp more territory than they can subdue and cultivate, they have no right to complain, if a nation of cultivators puts in a claim for a part.' This is the received doctrine on this subject, and has been maintained by Vattel, by Locke, by Montesquieu, by Smith, by Martens, and by many others. Principles sanctioned by these names, can be neither unreasonable in themselves, nor unjust in their consequences, however they may be jeered at as 'shameless and shallow.'

These two races of men, under circumstances so different, and with objects so irreconcileable, are, in the progress of events, brought into contact with one another. They cannot exist in independent attitudes. The effort of the one is to subdue the earth, to extend over it the blessings of cultivation and civilization, and to provide a permanent residence for themselves and their posterity. The effort of the other is to repel the invader who comes among them. To commence and continue a series of wars, in which barbarous trophies of victory may be obtained, and barbarous glory acquired; in which warriors may go forth to plunder, to devastation, to death, and return to exhibit their spoils and recount their feats— return to *strike the post* in their native village, and tell the deeds, which have spread ruin over the land of the white man —to stimulate themselves and others to fresh exertions, by the applause of the surrounding multitude, always more generous as the work of the spoiler is more cruel.

It must not be forgotten, that abstract speculations upon topics like these, seldom promote the cause of truth. The investigations are eminently practical, depending, for their solution, upon the common sense of mankind, applied to the relative situation of the parties. Principles, carried to their extreme, will be found inconsistent with the best established regulations of society, and have, in fact, misled many enthusiastic men, who, with more zeal than judgment, have entered upon their examination.

What, then, in the position in which these parties are placed, is to be done? If the barbarian acquire the ascendancy, his rival is not merely conquered, but destroyed. If, on the contrary, the civilized man assert and maintain the superiority, due by physical to moral force, both parties may be preserved. And even if one must fall, the law of self-defence gives to either the right of conquest.

It follows, therefore, that the new communities, springing up in the heart of a boundless wilderness, had a right to assume such a jurisdiction over the barbarous people around and among them, as was necessary to the safety of both; and to assume this peaceably or forcibly, as the course of events might require. The great object would be, to impress upon the uncivilized party the conviction of their inferiority; to teach them their own existence required that their passions should be restrained, their warlike propensities subdued, and the peaceful duties of life encouraged and promoted. A peace to-day and a war to-morrow, and the establishment of mutual independence, would never effect this. Nor would promises, and professions, and conventional obligations, Feeble indeed would be such barriers against the tide of Indian power, impelled by Indian passions.

Under such circumstances, jurisdiction is well assumed, and its extent must depend upon the opinion of the dominant party. The doctrine is well stated by the Supreme Court. 'The United States,' says Chief Justice Marshall, 'maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or conquest, and gave them, also, a right to such a degree of sovereignty, as the circumstances of the people would allow them to exercise.

What that degree of sovereignty is, must be determined by the civilized, and not by the savage communities. The latter are incapable of weighing the circumstances, and of appreciating their importance. And the very necessity of assuming jurisdiction, so inconsistent with the ordinary principles of public intercourse, is founded upon the moral incapacity of one of the parties.

'I know of no half-way doctrine on this subject,' says Judge Spencer. 'We have either an exclusive jurisdiction, pervading every part of the State, including the territory held by the Indians, or we have no jurisdiction over them, while acting within their reservations.' There is no principle short of this, which will stand the test of examination. Nor is it necessarily

harsh in its application. The nature of the intercourse already described, would lead to the inevitable destruction of the weaker power, unless its operations were stayed by the intervention of other considerations. Every thing, short of this ultimate resort, is so much gained for the cause of humanity. If the safety of one party would justify the complete subjugation or destruction of the other, were there no intermediate measures which would obviate such a necessity, the adoption of a measure that can alone accomplish this object, is not only proper but just. What that is, has already been stated, and in its exercise every independent, civilized community is responsible to God, as it is responsible for all its other acts of sovereignty, and to no human tribunal. To contend that the right of general jurisdiction does not exist, because it may be abused, is to adopt one of the most common fallacies of superficial reasoners. As much political and personal freedom should be left to these savage people, as may be compatible with the great objects of restraint and security, and necessary to their happiness. This may vary, as time and circumstances vary. As the civilized border approaches the uncivilized region, the relations of the parties undergo a change. At first the Indian knows little of the white man. He hears of him, indeed; but he sees and feels him not. By degrees they approach, and the precautions, dictated by reason and approved by experience, become necessary. Jurisdiction must be assumed, but it is one to restrain, not to govern. The Indian is not then prepared for government. He is ignorant of the institutions which the stranger has brought, and it would be unjust at once to subject him to them. Gradually, however, he acquires a knowledge of their obligation. He finds that they protect life and property; that injuries are not redressed by blood, nor are strength and weakness the measures of right and wrong. He feels that they are just, and understands them sufficiently to claim their protection, and to render obedience. Their shield may then be cast over him—the wall of separation may be broken down, and entire jurisdiction assumed. He will then be subject to equal laws, which have here, and in the 'Father land,' been the boast of ages, and the safe-guard of millions of human beings. He will be freed from the danger of turbulent passions, and from the arbitrary sway of leading men—from decrees, which pronounce the punishment of death upon any one, proposing to transfer his rights, and to escape from an oppressive thraldom, to a country which offers every prospect of comfort and improvement.

It is observed by Mr. Justice McLean, "that the exercise of this independent power, 'referring to the right of the Indians to maintain separate governments,) surely does not become more objectionable, as it assumes the basis of justice, and the forms of civilization. Would it not be a singular argument to admit, that so long as the Indians govern themselves by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed, as soon as it shall be administered upon the enlightened principles of reason and justice."

On the contrary, we think no course of things can be more natural. While the Indian is in the rude condition alluded to, he is as ignorant of the principles of just laws, as he is unfit to be the subject of their operation. How could he be punished for crimes, of whose moral turpitude he has never heard? How could he be prosecuted for debts who is ignorant of any obligations which these impose, except to pay if he pleases? How could the whole legal machinery of civilized life operate upon one whose house is a piece of bark, whose subsistence is the spontaneous gift of natue, who has lived without restraint, and who has never looked upon himself, nor outwards, farther than to follow the game, and to destroy his enemies.

But as soon as he comprehends "the enlightened principles of reason and justice," he is fitted for our laws, unless these, indeed, are founded upon other principles. His "rifle and tomahawk" may be converted into a "ploughshare and pruning-hook;" or in other words, he becomes a civilized man. We speak here of the process, and the reason of it. We have already considered its abstract justice.

The "examination" then enters into an elaborate investigation of the question so far as it may be considered to rest upon *authority;* and explains, the general doctrine which prevailed on this subject among the first discoverers of America, which he says was this:

The discoverer of a country not previously known to any of the civilized nations of the old world, had a right to take possession, and to establish some token of sovereignty. He then became, *ipso facto*, the rightful owner of all the land within a certain distance of this point.—What that distance was is doubtful, and perhaps it never was uniform. In the earlier English charters it is two hundred leagues.

When the country became known, boundaries were prescribed, more or less definite, as the knowledge of it was more or less accurate. That these boundaries were barriers against the approach of rival discoverers, has always been agreed. That within them an absolute jurisdiction was assumed, over all persons and property, has never been questioned, till recently. An examination of the subject will probably show, that the mode of peaceably extinguishing Indian title by voluntary arrangement, which is supposed to be a practical disclaimer of the rights of jurisdiction and property, has not resulted from any doubts of the original principles, nor of the power to apply them, but has been owing partly to political considerations, and to a conviction, that to acquire Indian title without the consent of the occupants, could only be done at "an expense," as Gen. Knox said in his report, in 1789, "greatly exceeding the value of the object;" and partly to advancing opinions of the age, more and more desirous of meliorating the condition of this helpless and hopeless race; and consequently to be respected as an indication of correct feelings, and to be followed as an example, in its proper application. Limiting it, as has heretofore been limited, to personal and private, but not extending to political rights.

Did the European nations assume the general powers which have been stated, or did they assume merely "the exclusive right of purchas-

seil;" and were their charters, agreeably to the opinion of the Supreme Court, "considered as blank paper, so far as the rights of the natives were concerned?" The question is at present, an historical one. As such, it may be examined, without reference to any moral duties it may be supposed to involve.

And as a preliminary observation, it may be well to remark that if all the grants of European sovereigns were intended to convey only a right to purchase from those who had a right to sell, their phraseology is the most unfortunate of any documents upon record. And beside, upon this construction or rather suggestion, why have the elementary writers entered into any investigations of the relative rights of barbarous and civilized nations? The right to buy, no one could doubt. But that is not the question which was presented to the great tribunal of public opinion upon the discovery of America, and which has been so often investigated and decided. Which the most able jurists have discussed, and traced to its first principles. That question is a far different one. It involves conflicting interests and inquires which shall yield. The eminent men whose opinions have been quoted, connected the discovery of America, and the pretensions and conduct of the adventurers, with the rights of the barbarous people then first made known to Christendom, and decided that the latter had yielded, and justly yielded to the former. But their speculations would have been as unworthy of them, as of the subject itself, if the whole question were merely, who should buy and fairly buy the property of the Indians. Were they correct in their opinions, that the charters involved far more momentous consequences? Let these instruments decide. That which was granted to Columbus, are going, by our command, to discover and conquer, &c. certain Islands and mainland, &c. and it is hoped, with the assistance of God, that some of the aforesaid islands and mainland in the said ocean will be discovered and conquered, through your labor and industry, &c."

"And in order that in the said islands and mainland, which are discovered, and shall be discovered hereafter in said ocean, in the parts mentioned of the Indies, the inhabitants of all that country may be better *governed*, we give you such power and *civil and criminal jurisdiction*, high and low, &c."

A copious citation of authorities is then made of *charters* of settlement, opinions of learned writers upon national law, Vattel, Grotius, &c. various political productions, legislative enactments of the colonies before the revolution, judicial decisions of the states subsequent to that event, acts of Congress, &c. &c. whereby it is made clearly manifest that the uniform opinion of both sides of the Atlantic has constantly been that civilized communities "have an unquestionable right of jurisdiction over barbarous tribes in contact with them." The Examiner then continues as follows:

The romance of Indian history has produced impressions not less injurious than erroneous. Zealous but enthusiastic men, have surveyed the condition of the Indians, and have depicted it as it never did exist, and never can exist, while the integrity of their institutions is preserved. Their life is essentially one of exposure, of want, and of suffering. When the veil, that had covered them for ages, was withdrawn, and they became known to the civilized nations of the world, they were found broken into petty communities, and in a state of perpetual hostilities. War was their business and their passion;—not to subdue but to exterminate;—not to assert claims rejected, nor to procure satisfaction for injuries committed—but to gratify that thirst for blood, which seems implanted in every Indian breast. There was no point of union between them and the strangers arriving among them. Their habits, feelings, and opinions, and all that constitute moral and physical varieties in the human race, were essentially different, and, after the lapse of two centuries, are yet different. There were no seeds of improvement sown, which could vegetate. No elements of civilization were in existence, to be moved and combined by some master spirit. A vast region of country, fitted to support millions of human beings, was unoccupied, or only occupied by solitary hunters and warriors, who pursued their game or their enemies, over districts now crowded with inhabitants, and abounding with all that renders life desirable.

The remarks of Chief Justice Marshal upon this subject, in the case of Johnson and McIntosh already cited are so just and justly expressed, that they cannot be considered out of place in this discussion.

"Although we do not mean to engage in the defence of those principles, which Europeans have applied to Indian title, they may, we think, find some excuse in the character and habits of the people, whose rights have been wrested from them."

We may here observe, that if the doctrine laid down by the Supreme Court, at their last term, in the Cherokee case, that all that was claimed by the British government was "the exclusive right of purchasing such lands as the natives were willing to sell," be correct, the "principle" needs no defence; nor could any rights be wrested from the Indians by its practical assertion.

"The title by conquest," continues the Chief Justice, "is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually, they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the destination between them is gradually lost, and they make one people.—When this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old; and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers.

When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public sentiment, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame and hazard to his power.

But the tribes of Indians, inhabiting this country, were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly

from the forest. To leave them in possession of their country was to leave the country a wilderness; to govern them as a distinct people was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

What was the inevitable consequence of this state of things? The Europeans were under the necessity either of abandoning the country, and relinquishing their pompous claims to it, or enforcing those claims by the sword, and by the adoption of principles adapted to the condition of a people, with whom it was impossible to mix, and who could not be governed as a distinct society; or of remaining in their neighborhood, and exposing themselves and their families to the perpetual hazard of being massacred.

'Frequent and bloody wars, in which the whites were not always the aggressors, unavoidably ensued. European policy, numbers, and skill, prevailed. As the white population advanced, that of the Indians necessarily receded. The country in the immediate neighborhood of agriculturalists became unfit for them. The game fled into thicker and more unbroken forests, and the Indians followed. The soil, to which the Crown originally claimed title, being no longer occupied by its ancient inhabitants, was parcelled out, according to the will of the sovereign power, and taken possession of by persons who claimed immediately of the crown, or mediately through its grantees or deputies.

'The law which regulates, and ought to regulate in general, the relation between the conqueror and the conquered, was incapable of application to a people under such circumstances. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. Every rule, which can be suggested, will be found to be attended with great difficulty.'

This quotation contains a candid and able summary of the circumstances, in which these parties were placed, and of the causes which led to the new system of intercommunication that was adopted. There are here no speculations upon abstract rights, but the question is considered as a practical one, in the investigation of which new circumstances required new principles of action. The case is fairly put. Were the Europeans to abandon their enterprise and return, or were they to remain, and *subdue the earth*, and establish the lasting foundations of happiness for themselves and their posterity?—History has recorded their choice, and the prosperity of the new world attests its wisdom. But if they were to remain, there was no medium between their own destruction, and the entire subjugation of the aboriginal race. They did as all others would have done, with similar circumstances. They acquired an ascendency which has continued to the present day, and must continue till these races are amalgamated, or till they become co-equals in arts and intelligence.

To justify all the scenes of cruelty and oppression, which have marked the progress of the Europeans and their descendants, in this hemisphere, is equally uncalled for by humanity and justice, and the defence of the principles which they assumed and too often abused,—Still he, who regards human nature as it is, and looks abroad upon all that intelligence and industry have done and are doing, will scarcely regret the great change which has been effected, nor wish that the right of ignorance and oppression yet rested upon all this fair prospect: that the Genoese navigator had yielded to the importunities and menaces of his crew, and left one half of the world unknown to the other.

From this general review of the doctrine, the commentaries, and the practice, these conclusions may be deduced.

1. That civilized communities have a right to take possession of a country inhabited by barbarous tribes, to assume jurisdiction over them, and 'to combine within narrow limits,' or, in other words, to appropriate to their own use such portions of the territory as they think proper.

2. That, in the exercise of this right, such communities are the judges of the extent of the jurisdiction to be assumed, and of territory to be acquired.

The "political superiority" of the whites over the Indians is then more *specially* asserted, and the question is examined whether "the general controlling authority over the Indians is vested in the General Government, or in the States?" It is declared as a preliminary proposition that this attribute of authority once belonged to the several states, and still belongs to them unless they have ceded it to the General Government." The Federal constitution is then examined, and the only "three provisions having the remotest connection with this subject," are particularly noticed. The *first* is the clause conveying "power to dispose of and make all needful rules and regulations respecting the Territory or other property of the United States," The *second* is the article which gives the power to regulate commerce *with* foreign nations, and *among* the several states, and *with* the Indian Tribes."—The *third* is the clause which confers power "to declare war and make peace." It is conclusively proved that the *right of jurisdiction* could not be conveyed by either of these clauses. The authority of the general government to provide for the "common defence," by assuming a temporary control of the Indians for that purpose, is thus remarked upon:"

As a necessary incident to the power of "defence" is the right to make peace, bringing into action the treaty-making authority and a special jurisdiction over all matters fairly connected therewith, as far as they are actually required for the purposes of safety, and as long as the General Government is responsible for that safety; that is, till the various tribes are so reduced in strength, or so improved in morals and habits, that the respective States may assume jurisdiction over them, without calling upon Congress to "provide for the common defence." When the *possee comitatus* may be substituted for a military force, and when citizens venturing to engage in hostilities will become traitors.

This is the only real and visible foundation, upon which the power of the General Government to conclude a treaty with any Indian tribe, living within the boundaries of a State, can rest. Except so far as the process may be thought expedient in the purchase of their possessory right by the United States, and where the United States have the *ultimate domain*, and

consequently, the right to make "needful rules and regulations respecting" it. And also, in the "regulation of commerce" with the Indians, if it is necessary and proper that this regulation should be made by conventional arrangements. And, in either case, the extent of power must be limited by the objects to be attained. Neither of these have any connexion with civil or criminal jurisdiction, and can therefore neither confer it upon the Indians, if they have it not: nor take it from the States, if it is vested in them.

The following remarks upon the treaty-making power in relation to the right of the general government to exercise jurisdiction over the Cherokees, will be found particularly interesting:

Having endeavored to show the general nature of the jurisdiction over the Indian tribes, and that, in the United States, that jurisdiction belongs to the several State governments, whensoever, and howsoever they may choose to exercise it, it is necessary now to inquire how far the exercise of this right by the State of Georgia is controlled or prohibited by any Conventional arrangements, made with the Cherokee Indians. If the General Government have entered into engagements inconsistent with this right, and if such engagements were within the scope of its legitimate authority, nothing remains but to regret these stipulations and to execute them; even if they perpetuate the inconveniences, which must attend the permanent establishment of the Indians in their present places of residence. If, on the other hand, the U. S. have contracted obligations which they cannot fulfil without a violation of preceding and paramount duties, they must then compensate the Indians, who are the injured party, to their full satisfaction, unlss their demand is, upon the face of it, exorbitant and unreasonable. If it is, the commutation should be measured by the party, thus involved in contradictory obligations, in a spirit of liberality, and tendered with a full explanation of the circumstances. We think, however, it will be found, that neither of these alternatives, is before us; but that all the compacts made with the Indians may be executed fairly and in good faith, and consistently with the jurisdictional authority of the State of Georgia.

The extension of the laws of the respective States over the Indians involves their personal and political rights. The former, under any state of things, will no doubt be amply secured, and all proper rights and remedies extended to them. How far they shall participate in political privileges, must depend on their advancement in improvement and knowledge. While passing through that probationary situation, which their previous habits and circumstances have rendered necessary, they must remain in the state of "pupilage," described by Judge Kent. And without suffering the question to be influenced by pre-conceived notions, not applicable to the relations of the parties, nor by those romantic delineations of Indian character and condition, more creditable to the heart than the judgment which have misled many worthy men, let us inquire what must be the actual effect of subjecting to the ordinary jurisdiction of the laws those tribes, which have already commenced the great career of improvement, and made, as is represented, such progress, as to qualify them for the task of self-government. To one who is ignorant of the controversy, which has recently arisen out of this subject, the answer will appear disproportioned to the fearful consequences which, it is apprehended or alleged, will result from this change. *These half civilized Indians will become subject to the common law of England*, with such temporary disabilities as the respective State Legislatures may impose, till they are prepared by education and habits for its full enjoyment. And is not this preferable to their present system of policy?—All history teaches that no free government can exist among half civilized people. It must become a despotism, ruled by one or a few. And, if we are not wholly misinformed, the experience of our own Indian tribes confirms the general lesson. If the southern Indians have made those advances in improvement, which many so confidently assert and believe, they cannot be injured by the operation of just laws. If they have not, they are unfit for the task of self-government, and to become the founders of an independent State.

The various treaties with the Cherokees are then minutely examined, and it is clearly demonstrated that there are no stipulations in any of them "incompatible with the exercise of jurisdiction by the state of Georgia over these Indians."

The examination concludes as follows:

"There is another view which may be taken of this subject, and has been frequently taken and recently and very ably in the American Quarterly Review. If the State of Georgia has no right to exercise jurisdiction over the Cherokees, it follows that these people constitute, by virtue of their natural rights, or by the recognition of the United States, a separate political community with the power of self-government. And that in fact, a government, independent of Georgia, has been permanently established within the boundaries of the State. Mr. Justice McLean, indeed, observes, that 'the exercise of the power of self-government by the Indians within a State, is undoubtedly contemplated to be temporary.' But by whom is it so contemplated? Certainly not by the Cherokees; for they avow their determination never to remove. And as to the United States and Georgia, their 'contemplation' of the subject is out of the question. The former, upon the doctrines advocated, have parted with their right to interfere, and the latter never had any. How this state of things can be terminated, so as to render the government 'temporary,' is not very obvious.

"This subject, however, it is not necessary to examine, if the United States have not granted nor guaranteed to the Cherokees political rights, independent of Georgia. That they have not, we have endeavored to show. And in doing this, we have extended our remarks to such a length as to prevent us from entering upon the other question. And

we are the less inclined to undertake it, as we feel unequal to the task, and are confident it will be fully and ably investigated by others. It goes to the very foundation of our government; and if the President and two-thirds of the Senate can, by an exercise of the treaty-making power, plant or continue separate communities among us, independent of the respective States, they hold in their hands a tremendous power, to be wielded for good or evil. A power, whose extent and consequences cannot be foreseen.

"And besides we shall have a new code of natural or of municipal law, or of neither to establish, (for we are really at a loss to apply the proper epithet,) by which all these new relations, growing out of an unexpected state of things, may be regulated. By which the third wheel in our form of government may be attached to the other machinery.—But those speculations we leave to others.

"In the previous discussion we have confined ourselves to the question of right, avoiding all those considerations, which render it expedient that these Indians should remove to the country, west of the Mississippi, assigned for their permanent residence. No false philanthropy should induce us to wish their continuance in the station they now occupy. The decree has gone forth; it is irreversible, that the white and the red man cannot live together. He who runs may read. He may read it in the past and in the present, and he may discern it in the signs of the future. Without attempting to investigate the causes, moral and physical, which have *enacted* this law of stern necessity, it is enough for the present purpose to know that it exists, and to feel that its penalty is destruction to one of these parties, a penalty only to be avoided by their migration beyond the sphere of its influence. The longer this salutary measure is delayed, the greater will be the injury to them. Their state of excitement and uneasiness will continue, the collisions and difficulties with their white neighbors will multiply, and surrounded, as they must be, with disheartening troubles, their habits and prospects may be wrecked in this hopeless conflict. Had they not better go, and speedily? Go to a climate, which is known to be salubrious; to a country fertile and extensive; beyond their wants now, and for generations to come; and to a home, which promises comfort and permanence.

"Can they expect to maintain their present position? To establish an independent government, having undefined and undefinable relations with the State of Georgia? To add another *imperium in imperio* to our complicated system? Such an expectation appears to us vain and illusory. Practically unattainable; and fraught with their destruction, if it could be attained.—They would be exposed to the operation of all those evils, which have swept over their race, as the fatal Simoom, the blast of death, sweeps over the desert."