

of view some of them are very precious acquisitions. The curious gingko-tree, which has a beauty all its own, is now largely planted in the streets of Washington and is perfectly hardy as far north as Massachusetts. The paulownia, so interesting in form, so valuable for shade, and so splendid in its spring bloom, thrives in all the cities of the Middle States; and its masses of purple flowers appearing every now and then in the wild woods of Maryland show that there at least it has made itself perfectly at home. Of the ailantus it is hardly necessary to speak. Despite the disagreeable odor of its blossoms, it is one of the most valuable of all trees for city planting—growing very rapidly, affording a wide expanse of shade, being free from insects, and keeping the freshness of its foliage uninjured through the heats and dusts of summer.

But it is not our present aim to weigh the evidence for and against this tree or that. What we desire is simply to show that such evidence has already been collected in a considerable body; that it is the duty of every experienced planter still further to inform the public; and that it is for the interest of every intend-

ing planter that he should consider carefully before he buys his stock. Yet we feel justified in adding to these general statements a word of strong recommendation in favor of native as against foreign, or at least as against European, trees. At the best the latter are uncertain in almost every case, while the former have an inborn and a well-proved title to be trusted. The most successful ornamental planting that has ever been done in America shows its results in the streets of such towns as Stockbridge, Great Barrington, Salem, and New Haven, and was the work of men who went to the forest and not to the nursery for their infant elms and maples. Certainly our more recently planted parks offer small promise of a like maturity of beauty, with their European oaks and ashes, their Scotch and Austrian pines, in almost as deplorable a state as their Norway spruces. When not ornamental but economic plantations are in question, past experience tells very strongly against European trees, while the evidence of recent experiment with native trees—as in the plantations of indigenous conifers in eastern Massachusetts—is of the most encouraging kind.

## OPEN LETTERS.

### Centennial Considerations.

#### Two Views of the Relation between the State and the General Government.

##### I. GOVERNMENT BY THE PEOPLE.

**I**F a small community can govern itself, and do it better than others can govern it, a larger community composed of like individuals can do the same, and so any still larger community of like individuals, even to the largest.

There is no reason why a government by the people, through their representatives, should not wisely and well govern the inhabitants of a whole continent, provided the people are sufficiently civilized to enable those occupying the various parts of it to govern themselves.

This will appear more clearly the more accurately we distinguish what are the proper functions of government, and all that is necessary for it to do.

The only warrant for the existence of government of any kind is, that it makes possible for the people a greater degree of happiness than would be possible without it. In the earlier stages of civilization, war is the chief business of the government, and success in war is the chief good, and to it all else is made subservient. When civilization has advanced somewhat, it is found that in some degree each individual should be protected from aggression by other individuals, and then the power of government is, to some extent, exerted for that purpose; and as civilization progresses, this purpose increases in importance as compared with the other, and could we imagine wars entirely to cease, it would be the only necessary function of government.

From our position in relation to other nations, and from our strength as compared with those on this continent, the danger from aggressions by other nations is exceedingly small, and the probability of any resort to arms, unless we are the aggressors, is very remote, so that the preventing of aggressions by other nations

has come to be with us of comparatively small importance. Our government should every year become less military and more industrial; that is, less occupied with the duty of preventing foreign aggressions, and more occupied with preventing the aggressions of individuals on each other, and promptly and sufficiently repressing the wrongs done by such aggressions.

This, the paramount duty of government, has been very imperfectly performed in the past, and there is little reason to hope that it will be better done in the near future. Much of this imperfection is due to the low standard of the average morality of the people. But is not more of this imperfection the result of our governmental machinery not being adapted to the performance of this duty? Can it be performed efficiently so long as the national and State governments coexist, and each is expected to perform undefined and undefinable parts of this duty?

When our national government was formed, slavery existed in most of the States, and presented an insuperable objection to any arrangement by which the people of the whole country could be intrusted with unlimited power over any part of it. The part of the people among whom slavery existed, and who intended to retain it, would not, and could not, consent that the part among whom it did not exist should regulate the relations between master and slave. Where these relations existed, laws were required which would not have been tolerated elsewhere, and it was only by the agency of the State governments that slavery could be continued.

For the repression of crime and for dealing with the criminal class, the single agency of the nation would be more efficient than the one compounded of the nation and the several States, each acting separately. There are as many criminal codes defining crimes and the mode of dealing with them, and with the criminal class, as there are States, and to them is added the code of the nation.

Whatever is properly a criminal act in one locality

should be so in every place in the nation, and the criminal laws with the mode of enforcing them which would be the best possible in any subdivision would be the best in every subdivision. How to prevent the ingress of paupers from abroad, and how to deal with those here, would be problems more easily solved through the single than through the complex agency.

There are many matters which in the near future will need regulation. Among these may be mentioned the relation of employers and employees; gambling in stocks, grain, etc.; the extent to which accumulations of wealth in the hands of individuals or corporations shall be permitted; what restraints shall be imposed on monopolies of every kind; whether there should be a limit, and what one, upon the right to acquire and hold lands. With these and like questions the State governments are incompetent to deal, for if one State legislated effectually as to any such matters, its only effect would be to drive from its territory those who regarded themselves as injuriously affected by such action, and they would seek a State where there had been no such legislation.

As to matters with which each of the civil codes of the States deal. Why should there be different land tenures, why different rules of descent and distribution of decedents' estates, different laws as to wills, as to marriage and divorce, as to parent and child, as to guardian and ward, as to contracts, as to corporations, etc., etc.? Why should there be as many different modes of administering justice? Why should that be held to be just in the courts of a State which is held unjust in the courts of the nation, or in the courts of other States? why a right enforced, if claimed against a citizen of the same State as the claimant, and denied as against a citizen of another State?

If there was but one code of laws and one judiciary, that of the nation, justice would be the same in every locality, and the rights and duties of the individual and all aggregates of individuals would be alike everywhere within the national limits. Is there any reason why this should not be?

The tendency has been in the direction of the exercise of larger powers by the nation and restrictions on the power of the States. Except as to a few matters, this has not been the result of changes in written constitutions, or conscious action on the part of the people. The nation, through its courts, from time to time, has asserted jurisdiction not given by the Constitution, as understood at and soon after its adoption. As instances may be mentioned the rulings of the Supreme Court of the United States in 1806, that the courts of the nation had no jurisdiction of a controversy between a citizen of one State and a corporation of another State, if any of the stockholders of the corporation were not citizens of the last State. This ruling was repeatedly followed; but in 1844 the court overruled all these cases, and asserted the jurisdiction over all such con-

troversies, without reference to the citizenship of the stockholders. It is under this later ruling that the courts have assumed jurisdiction over all matters in which the railroad, telegraph, and other great corporations are interested. The same court, in 1825, ruled that courts of the nation had no jurisdiction over any navigable waters except where the tide ebbed and flowed, and repeatedly so decided until 1851, when it asserted jurisdiction over the great lakes, and in 1857 extended it over all navigable rivers. Now Congress has but to declare any locality navigable water, and legislate in regard to it, and the courts of the nation hold that Congress has not exceeded its powers.

Congress has assumed a supervision of elections, it has declared certain promises to pay to be money and a legal tender, and the courts of the nation affirm its power. It is unnecessary to multiply instances. As to no matter has the nation exercised a doubtful or prohibited power, but in a short time such power has been recognized as belonging to it, and a new reading given to the Constitution as the proper warrant for it.\*

The small powers still exercised by the States over railroads and telegraph lines will probably soon be taken from them and absolute control of them be assumed by the nation, and this with the approval of the people. For they feel that it is almost intolerable that the rights of these great corporations should change with the passage from State to State; and this feeling will grow until it finds expression in legislation by the nation, and its assumption of entire control.

The nation has assumed the power to make regulations for the preservation of the health of the people, and for the extirpation and prevention of cattle-plagues, etc., and there is no limit to the powers it will exercise for such purposes whenever it is deemed proper by the people.

Public education is likely soon to be declared a matter of national concern, and if the people so wish, the nation will take charge of it and exclude the States. This will probably be, in the future, the history of every matter which equally interests and affects the whole people.

Why should it not be so? Why should not all law-making be done by the nation? Why should not all general laws operate alike everywhere within the nation, making the rights and duties of each individual, and of all aggregates of individuals, the same in all places?

It may be asked, How can the nation deal with the matters which are of interest only in particular localities? The answer is that, under proper general regulations and restraints, all such matters should be placed within the control of minor subdivisions. Each county, each city, or other subdivision, should be given full power over whatever affects only the people of the subdivisions. If the State governments should cease to exist, the only class which would suffer would be the office-holders. Almost, if not quite, half of the great army of office-holders could be disbanded, and a

\* Without any desire to inject counter-arguments into the article, an exception may be taken to this very essential portion of it. Four "instances of the exercise of doubtful or prohibited powers" are here assigned, but at least three of them are quite irrelevant. (1) Admiralty law, like equity, is "judge-made law": the Constitution merely gives Federal courts "Admiralty jurisdiction," leaving the judges to work out the jurisdiction for themselves. The change of ruling in 1851 was therefore clearly provided for, and made possible by, the Constitution itself. (2) The power to pass a general election law is explicitly given to Con-

gress by the Constitution, within well defined limits, and those limits have been carefully respected. (3) The Supreme Court's decision in favor of the *constitutionality* of legal-tender paper currency has not been received with unanimous or enthusiastic applause. At best it is but *permissive*, and the decision of but one branch of the government. When we shall have a Congress which will *issue* legal-tender paper in time of peace, and a President who will not veto the act, the "instance" will be a fair one; until then, *nil dicimus*.—EDITOR.

like part of the great sum now yearly paid to this army would be saved to the people.

Is there a single duty performed by the State governments, or any of them, which could not be done as well, or better, by the government of the nation? If not, why should the State governments continue to exist? Why not dispense with them, erase the State lines, make of the whole population one people, governed by one code of laws, and have in reality a government "of the people, by the people, for the people"?

LAFAYETTE, IND.

Robert Jones.

## II. THE FEDERAL BALANCE.

ON the deck of a westward-bound Atlantic steamer, one breezy September day, some years ago, I was asked by a distinguished gentleman, who had indeed been an English cabinet minister, to recommend some book from which he might get a rudimentary knowledge of the system of government in the United States. "For," said he, "we don't understand you. We cannot see why your vast size does not lessen cohesion and make you fall apart; nor do we understand why you will not go to pieces in the dangerous process of electing a chief magistrate." Of course I pointed out to him the fact that the President had neither the power nor the responsibility of an English prime-minister, and, in short, that ours was not a parliamentary government. This surprised him, and he replied with frankness: "Ah! we do not understand you."

But on thinking over the words of this right honorable and very intelligent gentleman, I have to confess that one of the dangers that he pointed out was a real one. So long as a hope of party advantage prevents the legislature of the country from agreeing upon some authoritative board of arbitration in case of a difference regarding an electoral count between the two Houses of Congress, the national peace will be threatened whenever we have to pass the ordeal of electing a chief ruler.

Against the danger from incohesion I urged the good fortune of our Federal system — that the central government was relieved of severe strain by the localization of a great part of our legislative work. Massachusetts, with her Puritan history, regulates all matters pertaining to morals and manners — all matters that have to do with the degree and character of civilization — by her local legislature. Louisiana, with her French antecedents, is allowed to respect her traditions and those sentiments that are the slow growth of generations, and to evolve a civilization on her own soil, in her own way. The danger which this English statesman saw in the vast extent of our country and the heterogeneity of its people would be a real one, if it were possible for a body of Pennsylvania Presbyterians and Massachusetts Puritans to organize a party to make Sunday laws for New Orleans. It would be real if reformers could not pass a law regulating the liquor traffic in Maine without consulting the representatives from Nevada, Arkansas, and the Bourbon district of Kentucky.

This notion of a lack of stability in the American government from the heterogeneity of its people is an old one with Englishmen. In 1759, not to mention any earlier example, there came to this country the Rev. Andrew Burnaby, afterward Archdeacon of Leicester, who entered the colonies by way of York River and journeyed to the northward as far as the

Piscataqua. When the American opposition to English schemes for taxing the colonies had raised the whirlwind, he published in 1773 his "Travels Through the Middle Settlements in North America." In this he ventures to make some forecasts. He does not think that the colonies can ever be voluntarily associated in one government, "for fire and water," says he, "are not more heterogeneous than the different colonies in North America. Nothing can exceed the jealousy and emulation which they possess in regard to each other." "Indeed," he says in another place, "it appears to me a doubtful point, even supposing all the colonies of America were to be united under one head, whether it would be possible to keep in due order and government so wide and extended an empire."

The trouble with Burnaby's forecast is a trouble with all such predictions. It is impossible to take into account beforehand all the elements of a complex problem. Among a good many elements here which he did not foresee is the Federal system, which is more the offspring of fortunate accident than of wise statesmanship. The centrifugal jealousy of the several colonies, with their separate histories, local sentiments, and particular interests, offered resistance to the centralizing theories of statesmen; the result was not a perfect balance between central and local governments, but an adjustment that has proved itself to be most useful and truly conservative. Railroads, newspapers, telegraphs, and the abolition of slavery have made us much more homogeneous than we were. But differences of climate and productions, of inland and sea-coast location, of mountain and plain, of local history, derivation, and traditional sentiment, will happily intervene to prevent our falling into a flat uniformity of character. And society will advance more rapidly and more safely if each State is allowed to work out its own destiny by the attrition of the forces that make up its life. Among these forces history and tradition are everywhere of the strongest. To all time New England will show traces of the town-community, independent-church, and common-land systems of her infancy; Virginia must on the other hand grow by counties, for there every county has its traditions of the ancestors who administered justice on the bench of magistrates in the county court, and who now and then maintained the old notions of gentlemanliness by notifying royal governors of their unwillingness to sit with a man, no matter how high in court favor, who was of doubtful integrity. Louisiana again will cast her history into the mold of a territory checkered off into parishes, as that of Delaware is into hundreds.

I do not discuss the Federal system with any apprehension of danger that in any proximate time a serious attempt will be made to change the skeleton of the government. Any arguments for or against a radical change in our system can have only an academic interest. It is hard to abolish organized history by enactment. Political *vis inertiae* is too great. Even among an idealistic people like the French, so great a change could be wrought only by the devastations of some great social upheaval. Our danger is of a different sort. The Federal system offers a barrier to many respectable movements for social reform, where reforms seek the aid of law, and there is always a temptation to take a short cut by appealing to Congress. There are temperance reformers, for example, who think that if they can