The Forum.

MAY, 1891.

STATE RIGHTS AND FOREIGN RELATIONS.

"*Polonius*—My Lord, I will use them according to their desert.

"*Hamlet*—God's bodykins, man, better; use every man after his desert, and who should scape whipping? Use them after your own honor and dignity; the less they deserve, the more merit is in your bounty."

To the people of the United States and their government has been committed the great charge of maintaining peace and order over a vast domain, and to-day the mass of human interests in our land and the responsibility for their proper care and conduct are not exceeded, if equaled, in any other empire on earth.

The unit of our system is the individual man, and to preserve him in the possession of absolute civil and religious liberty we have adopted a system of government which, by limiting and distributing its powers, prevents their consolidation and the growth of tyranny. Ours is a government of laws, and to quote from the golden opinion delivered by the late Mr. Justice Miller —*clarum et venerabile nomen*—in the Arlington case:

"No man in this country is so high that he is above the law; no officer of the law can set that law at defiance with impunity; all the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who, by accepting office, participates in its functions, is only the more strongly bound to submit to that supremacy and to

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observe the limitations which it imposes upon the exercise of the authority which it gives. Courts of justice are established not only to decide upon the controverted rights of the citizens as against each other, but also upon rights in controversy between them and the government, and the docket of this court is crowded with controversies of the latter class."

One of the chief and enduring purposes for which the Constitution of the United States was ordained is the establishment of justice. Indeed, this was the great end of the system as organized, and if it should ever fail the system would perish. All persons within the territory of the United States under the sanction of admitted public law owe it allegiance: the citizens owe it permanent allegiance, the resident foreigners owe it temporary allegiance. All alike are subject to its laws and all alike are entitled to the protection of those laws. It is believed that this great function of administering justice has on the whole been honorably and fairly executed by the officials into whose hands the duty has been committed. Our courts of justice have been open to all. No discrimination by reason of nationality, or race, or condition of fortune, can be found upon our statute books or is indicated by the recorded judgments of our courts. With or without treaty stipulation, no case can be found of denial of justice, either by administration or by color of the statute, against a foreigner; on the contrary, no more patient, laborious, and learned decisions upon the rights of person and property can be adduced than those in which foreigners have been interested parties.

I am aware of no case until the present time in which indemnity for personal injuries inflicted upon a foreigner within our jurisdiction has been demanded by a foreign government from the United States by reason of the failure of justice in its judicial courts. Of the case in which indemnity is stated to have been demanded very lately by Italy of the United States for the killing of possibly two alleged Italian subjects in the city of New Orleans, I intend to say nothing at present, as the matter is pending in negotiation and is still undergoing the usual and proper investigation by the Executive Department. I desire to discuss, upon principle, the measure of our liabilities for injuries inflicted upon individuals by other individuals within our juris-

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diction, and I shall not refer to the New Orleans case or to the unduly excited and unprecedented action of the Italian government in relation to it as an illustration of the law to which the American people intend to adhere.

I shall draw attention to the two cases in which, and in which alone, an attempt has been made to substitute for the remedies and redress always obtainable by an appeal to our local courts of justice, a demand upon the government of the United States for pecuniary compensation in the class of cases alluded to—one by Great Britain in 1878, and the other by the Chinese government in 1885. The answer of the government of the United States in both cases was the same; and it may be proper to note that in the English demand no reference was made to the existence of treaty stipulation for reciprocal protection and security, as set forth in the treaty of 1815, which is still in force between the two countries, while in the case of the Chinese demand, the claim was based expressly on the stipulations of treaties between the two countries.

A score or more instances can be found, in existing treaties between the United States and foreign nations, of stipulations for securing to citizens of each nation, residing within the territory of the other, the enjoyment of all the privileges of the most favored nation and perfect equality with the natives. These stipulations, while varying somewhat in form, are in substance equivalent, and in none of them is a greater degree of care, diligence, and active protection required of the government of the United States than is bestowed by it upon its own citizens. The grant of assured protection is almost invariably accompanied by the condition that the individuals so protected shall submit themselves to the conditions imposed upon the natives, or, in the phraseology of our treaty with Italy, that they shall receive protection "upon the same terms as the natives of the country, *submitting themselves to the laws there established.*"

In no case is a separate or special tribunal stipulated for on either side; the same laws that control the natives, and the same courts of justice that administer those laws and are resorted to by the natives, alone are mentioned. I except, of course, those oriental countries in which extra-territorial jurisdiction is con-

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ceded to our consular and diplomatic officers in all cases where our citizens in those countries are concerned. When, therefore, in the United States, an injury to person or property has been sustained by an alien here resident, his treaty rights, or his rights under international law and the usage of civilized nations, are the same as those that are available to any citizen of the United States. No treaty was ever entered into by the United States with any nation which stipulated for the enforcement of laws discriminating in favor of the subjects of any foreign government residing in the United States, or entitling them to any other or any greater protection than is accorded to the citizens of the most favored nation, or to our own citizens.

As one result of the untrammeled migration and intermingling of the different populations of the world, facilitated by the cheapness and freedom of locomotion of the present day, we find unhappily that immigrants to the United States not infrequently bring with them the personal, social, political, and sectarian issues and differences which agitate the countries from which they come. In this freedom of intercourse and in the very easy acquisition of American citizenship, we can discover evidences that our domestic policies, as well as our foreign policies, are liable to be improperly colored and influenced by considerations, prejudices, and sympathies with which, as a nation or internationally, we should have nothing to do; which are invasive, if not destructive, of that national independence and autonomy essential to the character, honor, and welfare of the United States of America; and which cannot fail to impair our reputation for disinterestedness and our consequent weight in the council of nations. It becomes, therefore, manifestly our duty as citizens of a constitutional republic to recur frequently to those principles of our Constitution which are essential for the preservation of our national polity, and to estimate at their proper value the duties and responsibilities inherent in American citizenship.

To this end there must be united insistance that our national polity should not be obscured or displaced in the mind of any official charged with the duty of representing this government, but that the keeping of it clearly in view should be regarded as the prime duty of all agents of the American people. Fortu-

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nately and wisely, we have thus far steered clear of "entangling alliances," with the single and limited exception of our treaty of 1846 with New Granada respecting the transit of the Isthmus of Panama; and by thus following the policy of careful abstention from all interference in the domestic questions and local issues of other nations, we are enabled more consistently to check and repel any impertinent or pragmatical attempt by foreigners to intermeddle with our domestic policies or to dictate alterations in our carefully-arranged distribution of powers. It may as well be understood that, desirous as we are of pursuing policies of peace, comity, and reciprocal advantage with all nations, we will never so lower the standard of our independence as to change the form and principles of our government to accommodate strangers who come among us voluntarily and in pursuit of their individual tastes and fortunes.

The establishment of the treaty power under the Constitution is clear and explicit. No State can enter into any treaty, alliance, or federation; and the President has power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur. To the President also is given power to nominate, and, by and with the advice and consent of the Senate, to appoint ambassadors and other public ministers and consuls. He receives ambassadors and other public ministers and takes care that the laws are faithfully executed. The judicial power extends to all cases in law and equity arising under the Constitution, the laws of the United States, and the treaties that are made under their authority; and in all cases affecting ambassadors and other public ministers and consuls, the Supreme Court has original jurisdiction. In their foreign relations the United States are thus to be exclusively represented by the executive branch of the government.

A treaty is a compact between independent nations, and depends, for the enforcement of its provisions, on the interests and honor of the governments which are parties to it. With this, however, the judicial courts have nothing to do, and they can give no redress; but the treaty may contain provisions conferring upon those citizens or subjects of one of the nations that reside in the territorial limits of the other, rights which are capable of enforce-

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ment, as between private parties, in the courts of the country. Under our system of separation and distribution of powers between the departments of the government, the Executive cannot justly exercise powers assigned to the Judiciary, nor the Judiciary powers belonging to the Executive.

The control of the foreign intercourse of the country has thus undoubtedly been conferred exclusively upon the federal government, and the sixth article of the Constitution, to exclude all possibility of obstruction, by States or their officers, to the execution of treaties, expressly states:

> "All treaties made or which shall be made under the authority of the United States shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding; and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution."

The recital of these express mandates of the Constitution, binding equally the judges of the State courts as well as those of the United States courts to support, under oath, the execution of treaties, indicates unmistakably the intention to employ State tribunals equally with those of the United States to compel obedience by citizens everywhere in the United States to the compacts so made with foreign nations. It permits no doubt to remain that the avenues of public justice everywhere in the United States are equally open to all persons, and that resident aliens are to be treated precisely like our own citizens.

Treaties and acts of Congress passed in pursuance of the Constitution are named together as the paramount law of the land. No superiority is, in terms, assigned to one or the other, but every power can be exercised only under the limitations and modes prescribed by the Constitution, and in conformity with those limitations. A treaty is no more the supreme law of the land than is an act of Congress, as is shown when the act of Congress vacates *pro tanto* an inconsistent prior treaty. Whenever, therefore, an act of Congress would be unconstitutional, as invading the reserved rights of a State, a treaty to the same effect would be unconstitutional. The extent of treaty powers, as expressed in the Constitution, is unlimited in terms, except by

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those restrictions which are found in that instrument against the acts of the government or of any of its departments, and against those arising from the nature of the government itself and that of the States. It would not be contended that the treaty power extends so far as to authorize what the Constitution forbids, or any changes in the character of the national government or in that of the States. A departure from the structure of our institutions, by subjecting the State governments to the control of Congress in the exercise of ordinary and fundamental powers heretofore universally conceded to them, would be as unwarranted if it were sought to be accomplished under the form of a treaty as if it were sought under an act of Congress.

Immediately after the promulgation of the last three amendments to the Constitution, Congress proceeded to legislate for their enforcement, but in the then prevalent sectionalism which controlled the two Houses, the class of laws called "reconstruction measures" were so colored by the desire to extend their power beyond the just limits of the amendments on which they were professed to be founded, that the Supreme Court, by a series of decisions, declared the greater part of such legislation to be invalid because it is unwarranted by the Constitution and destructive of the symmetry of our government. Under these decisions, while recognizing fully certain prohibitions against the action of the States, the courts have repeatedly decided that Congress cannot confer jurisdiction over offenses committed by individuals against other individuals without warrant of law or in violation of law. In the case of Cruikshank, Mr. Justice Bradley, referring to that part of the Constitution under discussion, said:

"It is a guarantee against the exertion of arbitrary and tyrannical power on the part of the government and legislature of the State, not a guarantee against the commission of individual offenses; and the power of Congress, whether express or implied, to legislate for the enforcement of such a guarantee, does not extend to the passage of laws for the suppression of crime in a State."

The Supreme Court took the same view in considering the same case, and said:

"This provision does not add anything to the rights of one citizen as against another. The duty of protecting all its citizens in the enjoyment

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of an equality of rights was originally assumed by the States, and it remains there."

In 1886 one Baldwin, together with others, was charged with a conspiracy illegally to deprive certain Chinese subjects of equal privileges and immunities secured to them under existing treaties with China, and the case came before the Supreme Court under a writ of *habeas corpus*. The court sustained its ruling in the case of the United States against Harris (one of the series referred to, decided in 1882), saying that that case had been carefully considered at the time and that subsequent reflection had not changed its opinion as therein expressed. The court decided in the case before it that "the offense of the defendants was exerted against the Chinese people, and not against the government in its efforts to protect them." In his dissenting opinion Mr. Justice Field deplored, as the result of the decision, that "no national law exists which can be invoked for the protection of the subjects of China in their right to reside and do business in this country, and that the same result must follow with reference to similar rights and privileges of the subjects or citizens of other nations with which we have like treaty stipulations," and declared that "the only protection against any forcible resistance to the execution of these treaty stipulations in their favor is to be found in the laws of the different States." But the fact remains that the treaties are made expressly binding by the Constitution upon all State judges, anything in the Constitution or laws of any State to the contrary notwithstanding; and when absolute failure of justice can be shown to have arisen from the action or non-action of the State tribunals, then, and not until then, it will be proper for the Executive to consider whether Congress should not indemnify the injured parties by reason of the failure of this government to execute, substantially and in good faith, the compact entered into with a foreign nation. As the measure of justice and protection stipulated for in the treaty is to be the same in the case of foreigners as in the case of citizens and natives of this country, it is difficult to see a cause of complaint when the cases of both are submitted to the same tribunals for decision.

The principles of law and justice, as administered in the

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courts of the United States and in the courts of the several States, are derived from the same sources, and both are founded upon those rules of justice which are recognized in all civilized countries. The decisions of those courts are mutually cited as authority in either and in both. It may be said of the judges who preside over them and of the juries who try in them, in the words of Chief Justice Taney in the case of Crandall against Nevada: "For all the great purposes for which the federal government was established, they are one people, with one common country; they are all citizens of the United States."

The federal judges not infrequently have distinguished themselves by prior service in the State courts; the *personnel* of the bar is the same in both jurisdictions; the juries are drawn at large from the same communities, possess the same qualifications, and not uncommonly serve alternately in either court. The foreigner in our country who seeks redress for his private injuries has the advantage over our native citizen of electing in which jurisdiction—State or federal—he will pursue his remedy. It is difficult, therefore, tried by any test or fact or law, to discover wherein there is any defect in the execution by the United States of its stipulations with foreign nations to give to their citizens or subjects the equality of rights and privileges secured to our own citizens.

I have referred to the case of Tunstall, the correspondence in regard to which was closed by a letter addressed in June, 1885, by the Secretary of State to the British Minister at Washington. J. P. Tunstall was a British subject domiciled in New Mexico, where he was carrying on business. He was murdered in the year 1878, and an investigation by a special agent of the Department of Justice disclosed that three persons witnessed the murder, and that two of the three committed it. Two of these three were afterward killed, and there was no knowledge that the survivor had ever been brought to justice for his complicity. In 1880 Sir Edward Thornton presented, under instruction of his government, a claim on behalf of the father of Mr. Tunstall for such compensation as, upon examination of the injury and losses, should be found to meet the justice of the case. The liability of the United States was not admitted by Mr. Evarts, then Secre-

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tary of State, nor by Mr. Blaine, his successor, nor by Mr. Frelinghuysen; but the last-named secretary suggested to the British Minister, in 1882, to refer the claim of Tunstall, under the authorization of Congress, to the Court of Claims or other judicial resort. The suggestion was rejected by Her Majesty's government because the proposed adjudication would not be based upon a prior admission of the liability of the United States in the premises, subject to an establishment of the facts after judicial inquiry. Upon a revival of the demand in April, 1885, the position of the United States in respect to such claims was fully stated by the Secretary of State, and it will be found at length in the volume of "Foreign Relations" for that year. The similarity of our institutions and laws with those of Great Britain was stated with numerous illustrations, and the annals of English jurisprudence were referred to as thoroughly sustaining the position taken on behalf of the government of the United States.

I can do no better than to transcribe from that correspondence the following paragraphs:

"Appealing to principles acknowledged in common in England and in the United States, it is maintained that in countries subject to the English common law, where there is the opportunity given of a prompt trial by a jury of the vicinage, damages inflicted on foreigners on the soil of such countries must be redressed through the instrumentality of courts of justice and are not the subject of diplomatic intervention of the sovereign of the injured party. . . . Prior to the occurrences now under consideration, there must have been many cases in which British subjects supposed that they had suffered loss through the negligence or the malice of subordinate officers of the different States and Territories composing this Union, but no record can be found, at least on the files of this department, of cases in which, when redress could be had by appeal to local courts of justice, an attempt has been made to substitute for such redress a demand upon the government of the United States for pecuniary compensation. The same may be said of the many cases in which citizens of the United States may have suffered, or claim to have suffered, injury in Great Britain from the conduct of British officials. When such injury was inflicted upon the high seas, or in foreign uncivilized lands, and especially if inflicted by the armed military or naval power directly emanating from the sovereign executive, then it was properly regarded as the subject of diplomatic intervention; but a careful search in the records of this department discloses no diplomatic appeal for pecuniary compensation for injuries claimed to have been inflicted on American citizens when on the soil of Great Britain."

"The practical result of this fair dealing is even more marked in this

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country than in England. There are reported in our books multitudes of cases in which local officers of justice have been sued by foreigners in our courts for false imprisonment, or for malicious prosecution, or for assault, and this must needs be the case in communities like ours, in which a large proportion of the population consists of foreigners unfamiliar with our laws. In not one of these cases, however, has it ever been maintained that the foreign plaintiff had not at least the same privileges awarded to him as he would have had if he had been a native citizen, nor can the most jealous scrutiny of the proceedings show in a single case any misstatement of law to his disfavor. The first instance, in fact, in which, instead of an appeal to the courts thus open, diplomatic intervention through a sovereign is urged, is that which we now have to discuss."

"To accept the position of the British government in this matter would, moreover, lead to utter confusion in the constituted arrangements of our system, which, like that of England, sedulously maintains the executive, judicial, and legislative departments distinct from each other. The claim now put forward, if allowed, would usurp judicial functions by the executive and legislative branches, and would substitute a government of will for a government of law. Private loss and injury ensue from temporary disorders and breaches of the peace under any government."

In 1878, 3,000 loaded railway cars were destroyed by a mob at Pittsburg, Pennsylvania. This property must have belonged to a variety of persons, probably of different nationalities, but no one who lost his property nor the relatives of any who lost his life (and many lives were lost) ever pretended to hold the United States government responsible.

In March, 1884, the city of Cincinnati was for three days the scene of arson, pillage, and bloodshed. In the riot forty-five persons were killed and a greater number were wounded. The county court-house and the valuable records it contained were burned, the jail was wrecked, and a government of laws was temporarily laid prostrate. That among those killed were foreigners is well ascertained, yet no suggestion of indemnity was ever made by a foreign government. To quote again from the correspondence:

"Under no aspect of the case is there any right under our law to redress such injuries as Mr. Tunstall suffered which is not as open to a foreigner lawfully within the United States as to any one of our own citizens. There is no discrimination between them. . . . 'The state,' says Sir R. Phillimore ('International Law,' II., 4) 'must be satisfied that its citizen has exhausted the means of legal redress offered by the tribunals of the country in which he has been injured. If these tribunals are unable or unwilling to

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enter energetically upon his grievence, the ground for interference is properly laid; but it behooves the interfering state to take the utmost care—first, that the commission of the wrong be clearly established; secondly, that the denial of the local tribunals to decide the question at issue be not less clearly established. It is only after these propositions have been irrefragably proven that the state of a foreigner can demand reparation at the hands of the government of his country.'"

And this position, as was pointed out, was sustained by Chief Justice Waite in the case of New Hampshire against Louisiana as follows:*

"No principle of international law makes it the duty of a nation to assume the collection of the claims of its citizens against another nation if the citizens themselves have ample means of redress without the intervention of their government. Indeed, Sir Robert Phillimore says in his 'Commentaries on International Law,' Vol. II., page 12, 'As a general rule the proposition of Martens seems to be correct, that the foreigner can only claim to be put on the same footing as the native creditor of the state.'"

Finally, upon a full review, the liability of the United States, either directly toward the representatives of the murdered man or internationally toward Her Majesty's government, was denied.

In the case that gave rise to the Chinese demand, 28 of their countrymen were killed outright, 15 wounded, and many more driven from their homes, which were pillaged or destroyed by a band of riotous individuals at Rock Springs, in Wyoming Territory. An article of the Chinese treaty provides that "Chinese subjects, visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation." To this demand, reply was made that it had been ascertained that the assailants consisted of a lawless band of armed men—discontented mining laborers who had previously sought to induce the Chinese to join with them in a concerted strike for higher wages, and who had become angered by the rejection of their overtures. This was the only motive discernable for the assault, or alleged in the reported evidence. On neither side, among assailants or assailed, was there any representative of the government of China, or of that of the United States, or of that of the Territory of Wyoming. There was,

*108 U. S. Reports, page 90.

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therefore, no official insult or wrong, as there could not be. Whatever occurred was between private individuals. It was, moreover, absolutely without national character. The domestic element of an ordinary civil disturbance was wanting. The assailants, equally with the assailed, were strangers in our land. In strict truth, the hospitality of a friendly country, no less than the rights of peaceable sojourners therein, may be said to have been outraged by a body of aliens, who, being permitted by the generosity of our laws to enter our borders and roam unchecked and at will throughout our jurisdiction, freely and profitably selecting their places of abode and finding occupation therein, abused the privileges thus accorded to them and committed gross breaches of the public peace, suddenly, and doubtless with the knowledge that nowhere within summons could any police organization be found in sufficient force to stay their criminal hands.

The volume of "Foreign Relations" for 1886 contains the full history of this demand for indemnity and the reasons for its rejection. In that correspondence with the Chinese Minister, the same principles were laid down as had been cited in the reply to the British Minister in Tunstall's case. It was said:

"To the judiciary branch is committed the administration of remedies for all wrongs, and its courts are open, with every aid they can devise, to secure publicity and impartiality in the administration of justice to every human being found within their jurisdiction. Providing thus a remedy for all individuals, whether many or few, rich or poor, and of whatever age, sex, race, or nationality, the question of liability for reparation or indemnity for losses to individuals, occurring in any way, must be settled by the judgments of the judicial branch, unless the act complained of has been committed under official authority in pursuance of governmental orders to that end. The government of the United States recognizes in the fullest sense the honorable obligation of its treaty stipulations, the duties of international amity, and the potentiality of justice and equity, not trammeled by technical rulings nor limited by statute. But among such obligations are not the reparation of injuries or the satisfaction by indemnity of wrongs inflicted by individuals upon other individuals in violation of the law of the land. Such remedies must be pursued in the proper quarter and through the avenues of justice marked out for the reparation of such wrongs. . . . I should fail in my duty as representing the well-founded principles upon which rests the relation of this government to its citizens, as well as to those who are not its citizens and yet are permitted to come and go freely

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within its jurisdiction, did I not deny emphatically all liability to indemnify individuals, of whatever race or country, for loss growing out of violations of our public law, and declare with equal emphasis that just and ample opportunity is given to all who suffer wrong and seek reparation through the channels of justice as conducted by the judicial branch of our government."

There were certain features in the case which appealed strongly to the sense of humanity, and which were communicated by the President to Congress, with a recommendation that compensation for the loss of the property destroyed should be given in a benevolent spirit; and this was done by Congress, which subsequently, in 1888, made a still larger appropriation in compensation for similar losses suffered by Chinese on the Pacific coast; but in each case the award was expressly stated to have been made *ex gratiâ*, and was accompanied by the most distinct denial of all legal liability, under international law or treaty, to make good losses so caused.

The importance of establishing a correct principle, and the everlasting and increasing injury of consenting to an evil principle, invest this question with gravity, for it is very evident that if the government of the United States shall admit that it is liable to indemnify individuals directly, or a foreign government acting in their behalf, for injuries inflicted upon citizens or subjects of such foreign government within the United States and in violation of its laws, and that such claimants are absolved from all efforts to obtain redress in the judicial courts, which are as open to the foreigner as to our own citizens, and where justice is administered with an equal hand to either and to both, it will create a precedent which will not merely be prolific of international dissensions, but which will impair the structure of our government, seriously disarrange the system of checks and balances under our State and federal systems, and confuse and destroy the essential boundary between executive and judicial powers which is one of the most important features in the Constitution of our government.

There is a manifest and dangerous tendency in our institutions toward centralization and consolidation of power. No remedy, therefore, for alleged evils or inconveniences should be accepted that increases this tendency, for it is in the strict enforcement of

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limitations upon power and its decentralization that the best hopes, and even the possibility, of free institutions of human government can be found. If, therefore, the principles of law and the arrangements for their exercise declared by our courts to be consonant with the provisions of the Constitution and essential to the preservation of individual liberty, cannot be peaceably possessed and enjoyed by our citizens, and be acknowledged and recognized as the basis of our government, because of the presence within our borders of alien subjects and citizens of foreign powers whose personal wrongs may not be remedied to their satisfaction or to that of their government without the impairment and disorder of our system, then the time has arrived when the unquestionable and sovereign right of the United States to determine by positive law who shall be permitted to enter our gates and who shall be excluded must be exercised.

Let us ascertain our full and honorable measure of international duty, and perform it faithfully in a dignified spirit of self-respect, not yielding to compulsion, but walking steadily in the path of self-imposed obligation.

THOMAS F. BAYARD.

APRIL 13.

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THE COMMONWEALTH OF AUSTRALIA.

WHAT significance has the formation of the new Commonwealth of Australia? Among the advantages claimed for it by its founders are national influence; national credit; defense against an aggressive foe; the development and protection of the coast fisheries; the prevention of the influx of foreign criminals and of aliens of inferior races, Chinese or Asiatics; a "higher stature before the world"; a grander name; and a scheme of empire such as isolated colonies could not hope to carry out. These benefits, it is claimed, will be secured by the adoption of a Constitution framed after those of the United States and Canada, but avoiding the undesirable features of both and providing for a federal Court of Appeal, a Privy Council, and a Parliament consisting of a Senate and a House of Commons.

Beyond all this, it is the firm belief of many that this magnificent territory, with 8,000 miles of coast line inclosing 3,000,000 square miles, and with a present population of 4,000,000, is destined to control the Pacific and, in the near future, by the increase of its manufactures, to command the trade of all that part of the world in which it lies.

It is true that there have been men of brilliant ability opposed to federation, among others the Hon. I. E. Salomons, a Queen's counsel, who on June 4, 1890, delivered in the Legislative Council of New South Wales, of which he is a member, a brilliant speech in which he opposed federation as premature, unnecessary, and full of great and critical dangers. "As to those who see in it an instrument of independence," he said, "I regret that I know nothing in the way of argument that would affect them; but I would pray this chamber, and humbly through it the whole colony, to defer as long as may be the breaking of the link that binds us to the old country." He reminded his hearers that England is the home of freedom, that her Constitution has served as a model for every independent state, and that she laid

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