

# HESPERIAN STUDENT.

VOL. 5.

University of Nebraska.

NO 1.

JANUARY,

Qui non Proflit, Defleit.

1876.

## The Centennial Year.

Many good things have been said in praise of the achievements of the Republic during its first century of existence. But in the midst of this glorification of our material progress there is little said of other matters which lie more nearly to the foundations of our perpetuity and real grandeur as a nation.

The glamour of riches; the affluence of conveniences and comforts; the brilliant applications of scientific truths to the arts, in this country, have in a measure dazzled the vision, so that the most vital principles, which make all these achievements possible, are in danger of being overlooked and neglected.

It will be well to turn aside for a moment from the beaten path of our material progress, and consider whether we are making progress in those things which are the real glory and stability of a republican state. It was said not long since by a writer in the Westminster Review, that the American Republic is on trial. Not, certainly, whether it can amass wealth, build cities, rail-roads, steam-ships and bridges, tunnel mountains, open mines and make witty inventions, and in fine develop an amazing prodigiousness and versatility in all its secular life.

The trial to which this nation is now subjected is, whether all the faith, toil, and self-sacrifice which attended the birth and rebirth of our nation shall have an outcome in a more rational freedom, a loftier patriotism, unsullied national honor, universal education and a loftier conception of the dignity of American citizenship and by such moral forces make the nation imperishable; or shall our beneficent form of government be degraded to the uses of the public plunderer, to unrebuked political corruption, and an utter debauchery of the public conscience until neither the forms nor the ends of our Republic shall be longer possible. In this way our country is on trial, and the most thoughtful minds in our nation, while participating in the general joy, are yet oppressed with a sense of imminent danger to the integrity of our form of government.

1st. One of the most dangerous errors into which the average American citizen has fallen is, that there is a potency and almost a necessity in the form of our government to assure its own success and perpetuity.

To many the form is a fetish, endued with an inexplicable and almost irresistible force, which is a guarantee of care for the government and of everybody who comes within its jurisdiction. It is believed to have infolded a germ that must, per force, be unfolded into a noble national life, securing liberty and happiness as naturally as the oak is developed from the acorn.

In opposition to this view, it is high time to inculcate a more wholesome philosophy, a juster view, that our government will be no better, no worse than the average citizen; that if it have excellencies

they will be only the reflected excellencies of the people who constitute the state.

In that peerless dedicatory address of Abraham Lincoln at Gettysburg, we have portrayed the entire theory and fact of our political system. Said he, it is *of* the people, *by* the people and *for* the people.

It sprang from the heroism, patriotism and sacrifices of the fathers, a hundred years ago, and must be perpetuated by the same spirit in their descendents; it is administered *by* the people, who all of every rank and condition are concerned in the creation and operation of the machinery of State; and it is *for* the people, to provide the highest physical, intellectual and moral development of every individual citizen.

It is not a persistent force that is imperishable, evolving by a law of its nature, liberty and happiness, but rather a tender exotic to be laboriously and continuously cultivated; not in itself an end but a means for securing freedom and human development.

2. Another danger that manifestly imperils our national life, and puts it on trial for existence, is political corruption.

It is not believed that any party justifies plundering the public, but all more or less palliate it. Indeed the gutter politician, who reluctantly rises to make a speech, is most vociferous in his denunciation of administrative corruption, and most eloquent in praise of the purity of the ballot, and incorruptibility in office. To such a blatant patriot the words of Carlyle have often a pertinent application, "Reform thyself and then you may be sure there one less rascal in the world."

It is painfully notorious that even among our best public men, that they have one standard of moral action in private life, and quite another for their political actions. In their corporate or aggregate capacity, they do what in private life would be accounted villainous. Now no government can long subsist on such a basis. The virus will spread until every part will become infected; the public conscience will become debauched and the fair fabric of the government will fall.

3. It is *by* the people, but a danger arises because our nice, respectable, ease-loving, money-making people have no taste or time for making their government. We have the anomaly, fast growing into alarming proportions, of a sovereign without a crown, "a poor despised Lear." How did our sovereign come to such a pitiful pass? Simply by pretending to be something when he is nothing. He claims to have sovereign power, but is too lazy, selfish or cowardly to use it. If a sovereign, it is every man's duty to act the sovereign. "If Alexander wishes to be a god let him act the god."

Nor can this sovereignty be properly exercised by spasmodic spurts, when some colossal crime is to be overthrown. It must be constant as the Caucasus, unintermittant and vigilant as Argus. It may not accord with the nice tastes and private pursuits of some men to be elbowed in the primaries, and to confront brazen im-

udence at the polls, and yet this may be the price we must all pay for good government.

The young men, especially the educated ones of the land, should seriously ponder their responsibility in this regard, and not flinch from the most strenuous efforts, and if need be, from the most disagreeable tasks, to compel the selection of wise legislators, and the framing of wholesome laws.

Ex Governor Dix, in a recent address, deplored the neglect of political affairs by many of the best men of the nation, and proposed to disfranchise every citizen who voluntarily neglected the right of voting for two consecutive years. It is a shame that this implied censure is too much deserved; but the abstention of large masses of our best citizens from public affairs is a shame and a crime, and some penalty would be timely as it is urgent.

Among the Greeks the word *idiot* signified one who was so much engrossed in private affairs that he neglected public duties. As we have the word *fool*, which is nearly synonymous with it, would it not be well to appropriate the word *idiot* exclusively to that man who is so devoid of public spirit as to neglect entirely the public duties he owes to the state? Nor need the word lose its meaning of utter stupidity when applied to this class, who when they ought to be sovereigns are political non-entities. This might be a mode of punishment, perhaps but little less effective for reforming the negligent than the proposed disfranchisement. A. R. B.

## The Trial by Jury.

The origin of this institution of common law is lost in the dark and gloomy period of the middle ages. Antiquarians have traced it back into the early days of English history, and consequently it must have existed, in an exceedingly crude form, among the earliest Saxon colonies. But as to the true origin, we can only conjecture. It is argued by some, and believed to be a settled fact, that this mode of trial was invented or founded by Alfred the Great who, on account of his superior genius and ability, and his achievements in regard to other pieces of judicial polity, it may be probable that the honor is due him. But we are inclined to think not. It was the custom of ancient Greece to bestow upon her own Hercules whatever achievement was performed, far superior, and beyond the power of mankind. Blackstone, who has so ably written the commentaries on the English law, says that the institution was universally established among all the northern nations, and so interwoven in their constitution that the earliest accounts of the one also give us some traces of the other. And it is almost universally agreed that this system of trial was in existence long before the time of Alfred. At what time it was introduced into England is not known, but it is supposed to have been adopted immediately after the trial by bat-

tle was abolished (which was the mode of trial then used by the Normans.) To the burdened and down-trodden people of those days, the trial by jury was a great blessing, although it existed in an exceedingly barbarous form, it was pronounced the principal bulwark of their liberties. And to day the constitution of our country guarantees the trial by jury in most all cases, excepting upon impeachments, and where the subject matter of the controversy does not exceed twenty dollars. Also, the majority of our States have asserted in their constitutions the right to such a trial. But on account of the universality of its adoption, we should not stop and think that this system had attained the highest degree of perfection. But we find, after a careful investigation, that the trial by jury is neither suitable to ordinary nor to political occurrences, and neither does it merit the panegyrics commonly lavished upon it. And as some writer has boldly affirmed, it is time that the public mind was aroused to its many deficiencies and to the greater claim on its confidence of a trained judge. The principle objection found against our present jury system is that a class of men are placed upon the jury who are entirely destitute of even a common school education, whose minds are easily prejudiced, and who are influenced to an alarming extent by public sentiment, or by the eloquence of the lawyers. And it can be no slight trial to the feelings of a humane judge, who may know that by his summing up, the momentous decision will be greatly influenced.

It is exceedingly hard to assume the black cap and solemnly adjure the felon to seek from heaven the mercy he cannot expect from man. But this, indeed, must be the duty of the learned judge before an American jury. They who are influenced by the eloquence of the lawyer, and who retire into their room bearing only the arguments and eloquence of the last speaker upon their minds. As an illustration, a learned lawyer once said, "In a criminal case, give the criminal the testimony and me the last speech, and I will insure a verdict for the plaintiff, from an American jury."

Another serious objection is their inability to concur in a verdict. As an example of this, we refer to the Beecher-Tilton trial. After weeks and months had been spent, and immense sums of money had been used, the jury came into court with the tidings that they could not agree. This is only one case among many. Does this not arouse us and tell us there is a great deficiency?

Again, we rely too much upon the jury. The unanimous concurrence of twelve men we are to believe as strong evidence of a correct result. But this unanimity puts on a very different aspect, and becomes far more insignificant, when we remember the probability that an impatient minority may have yielded—as surely they have often done—their consciences and their opinions to an equally impatient majority.

We have no wish to press too far the ar-