

**A BRIEF VIEW OF THE INFLUENCES
THAT MOVED IN THE ADOPTION OF
THE FEDERAL CONSTITUTION BY THE
STATE OF NEW HAMPSHIRE. ANNUAL
ADDRESS, JANUARY 27, 1899, BERLIN**

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ALBERT STILLMAN BATCHELLOR

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ANNUAL ADDRESS

BEFORE THE

GRAFTON AND COÖS COUNTIES (N. H.)
BAR ASSOCIATION

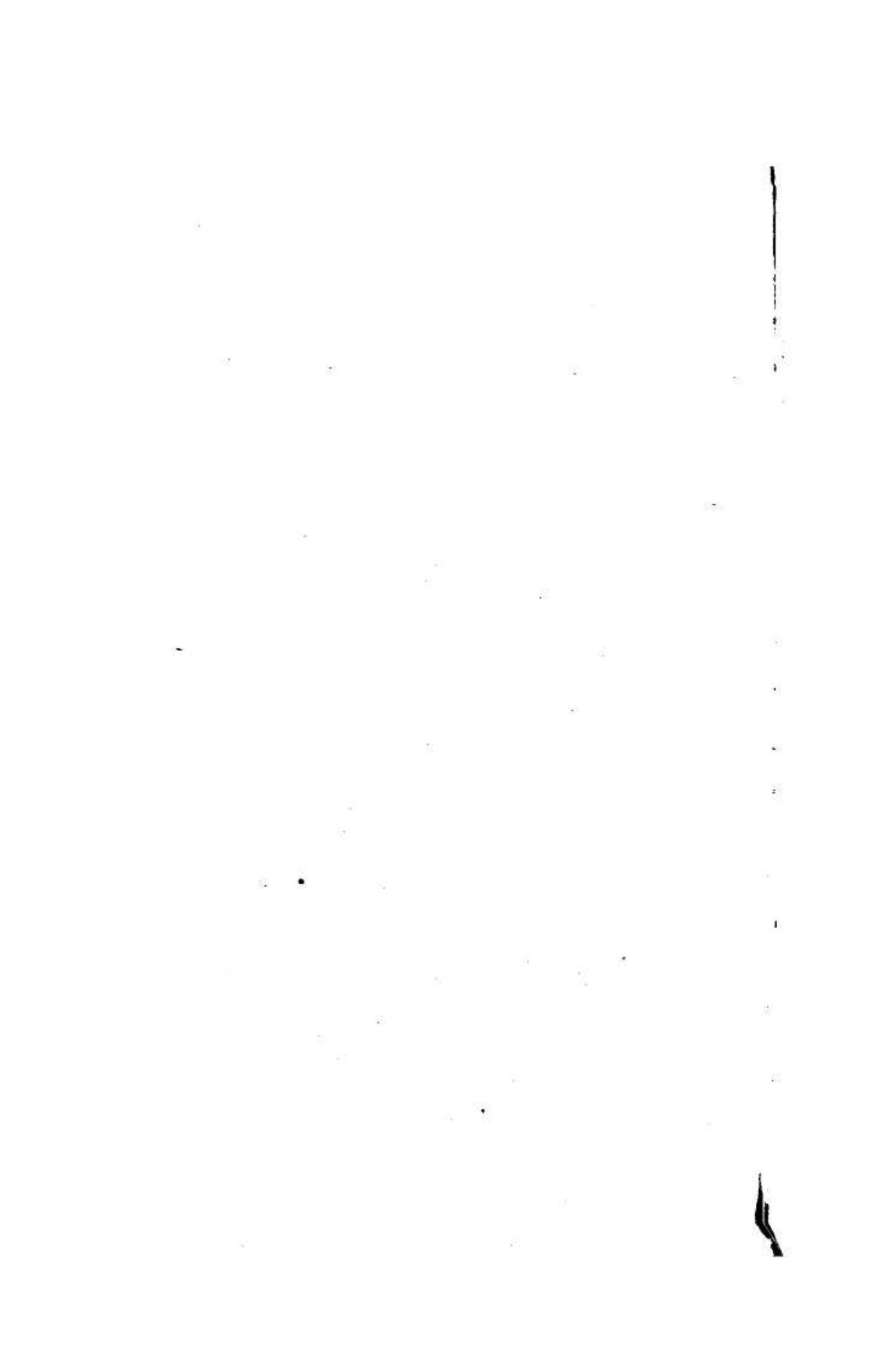
BY

ALBERT STILLMAN BATCHELLOR,

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PREFATORY NOTE.

THE original text of this paper was delivered before the Grafton and Coos Counties (New Hampshire) Bar Association as the annual address at the city of Berlin. It is published by order of the New Hampshire Bar Association in an appendix to its proceedings for 1900. This imprint is from the same type. The notes of authorities and supplemental suggestions appearing in the margin have been added for the convenience of students who may not find the sources of information as to the period and the state which afford the material for the review elsewhere equally accessible.

A. S. B.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

A BRIEF VIEW OF THE INFLUENCES WHICH
MOVED IN THE ADOPTION OF THE FEDERAL
CONSTITUTION BY THE STATE OF
NEW HAMPSHIRE.

The genesis of the constitution of the United States is a subject of perpetual and increasing interest. In its broader aspects it has commanded the profound and exhaustive investigation of statesmen and jurists.¹ As time passes its organism is made effective upon new conditions. Territory is added. Alien peoples are assimilated or brought within the operation of the governmental agencies of our federal union. Social, political, and industrial forces are augmented and made more complex. Although the language of the instrument is remarkably perspicuous,² there is necessity for frequent recourse to the antecedent and contemporary conditions which constituted the environment of the fathers and which serve to explain and illustrate the powers, limitations, and reservations that were created, conceded, and distributed under the written provisions of the constitution, or are to be treated by fair and reasonable implication as within its effectuated purposes.³ It has been the province of history to exhibit

¹ Sources of the Constitution of the United States Considered in Relation to Colonial and English History, by C. Ellis Stevens (of Edinburgh), 1894; Constitutional Studies, by James Schouler, 1897; The Evolution of the Constitution of the United States, by Sidney George Fisher, 1897.

² The Growth of the Constitution in the Federal Convention of 1787, by William M. Meigs (1900), p. 23.

³ The opinion of Chief Justice Jay in *Chisholm v. Georgia*, 2 Dallas 419; that of Chief Justice Taney in *Scott v. Sandford*, 19 Howard 383 (Dred Scott case);

the political and social condition of the people whose representatives formulated this great charter.¹ The diverse interests of different sections of the limited area, which the original thirteen colonies occupied, have also been studied, disclosed, and placed under consideration, as factors controlling popular sentiment and the attitude of statesmen. The adjustment of the provisions of any proposed form of government by reasonable compromises so as to evolve a practical scheme out of the antagonism of sections manifested between the larger states and the smaller states, the southern or slave states and the northern or free states, the commercial states and the agricultural states, and the conflict of ideas developed among those who joined issue over the question whether the government should be founded upon the states, or upon the people of the United States, whether it should be a compact, a league between sovereign states, as was the confederation, or a single national government, extending beyond and within the political boundaries of the chartered states, reposing upon the American people and operating immediately upon individuals, gave rise to the great questions with which the fathers of the American Constitution were compelled to grapple.²

and the opinions in the legal tender cases, 8 Wallace 504, 12 Wallace 557, 522 and 110 U. S. 421 (with many others that might be cited), afford conspicuous illustration of the utility of the historical method in ascertaining what antecedent, local, and circumstantial considerations were in the minds of the framers of the constitution, and, therefore, to be recognized and given effect in the disposition of issues of construction subsequently arising. This test is also constantly invoked outside the courts, and was effectively applied in the notable argument of George Bancroft, 1836, title, "A Plea for the Constitution." A part of the contributions of Madison in the *Federalist* also follow this method.

¹ McMaster, *History of the People of the United States*; Fiske, *Critical Period of American History*; Rolles, *Financial History of the United States, 1774-1789*; Wheedon, *Economic and Social History of New England*; Thorpe, *Constitutional History of the American People*; Winsor, *Narrative and Critical History of America*; Bryce, *The American Commonwealth*; Schouler, *History of the United States under the Constitution*.

² The following note is quoted from the bibliography appended in the latter part of Mr. John Fiske's *Critical Period of American History*, p. 358: "See also Story's *Commentaries on the Constitution*, 4th ed., 3 vols., Boston, 1873; the works of Daniel Webster, 6 vols., Boston, 1851; Hurd's *Theory of our*

Mr. Gladstone once observed that "just as the British constitution is the most subtle organism which has proceeded from progressive history, so the American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."¹

National Existence, Boston, 1881. The above works expound the constitution as not a league between sovereign states, but a fundamental law ordained by the people of the United States. The opposite view is presented in *The Republic of Republics*, by P. C. Cents (Plain Common Sense, pseudonym of B. J. Sage of New Orleans), Boston, 1881; the works of Calhoun, 5 vols., N. Y., 1863-'55; A. H. Stephens' *War Between the States*, 2 vols., Phila., 1868; Jefferson Davis's *Rise and Fall of the Confederate Government*, 2 vols., N. Y., 1881."

Mr. Tucker, in his recent work on the Constitution of the United States (1899), vol. 1, p. 278, directs particular attention to one of the articles of amendment proposed by the New Hampshire convention of 1788 in connection with the act of ratification.

The article was as follows: "That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid constitution are reserved by the several states to be by them exercised."

Compare this recommendation with Art. X of the amendments, finally ratified Dec. 15, 1791.

See, also, Art. 7 of the bill of rights of the New Hampshire constitution.

The most interesting instance of antagonism between the state court of New Hampshire and the courts of the United States on a question of state rights was that in which adverse opinions were held by Chief Justice Parker and Judge Story in connection with the cases of *Ex parte Foster*, 2 Story, 131 (1813); *Kittredge v. Warren*, 14 N. H., 67 (1844); *Kittredge v. Emerson*, 15 N. H., 227 (1844); *in re Christy*, 3 Howard, 392 (1845); *Peck v. Jenness*, 7 Howard, 612 (1849). An account of this interesting episode of judicial history is given by Geo. S. Hilliard in his biography of Judge Parker, 10 *Am. Law Review*, 1876, 241.

A recent review of the doctrine of state rights in some of its historical aspects may be consulted in Mr. Thorpe's *Constitutional History of the American People*, vol. 2, chap. vi.

The Dartmouth College case (more accurately described as the Dartmouth College cases) is still an interesting and conspicuous leading case in the federal jurisprudence. It remains specially attractive to New Hampshire students, both on account of the college and its great advocate.

Treatment of the history of the case and of its status as an authority is of frequent occurrence in constitutional law and constitutional history, but special mention in this connection should be made of *The Dartmouth College Causes and the Supreme Court of the United States*, by John M. Shtrely (St. Louis), 1879; *A New View of the Dartmouth College Case*, by Charles Doe, *Harvard Law Review*, 1892, vol. 6, Nov. and Dec. numbers, pp. 161 and 213; his opinion in 67 N. H., 3 and 27-67; *Status and Tendencies of the Dartmouth College Case*, by Alfred Russell, Annual Address, 3 Proceedings of Grafton and Coös (N. H.) Bar Association, 13 (1895); *id.* 30 *Am. Law Review*, 331 (May-June, 1896).

¹ Fiske, *The Critical Period of American History*, p. 228; Bryce, *The American Commonwealth*, vol. 1, p. 23; Prof. Alex. Johnston, article in *New Princeton Review*, 1887, pp. 175-190; Thorpe, *Constitutional History of the American People*, vol. 1, p. 37.