LECTURE X.

OF THE HISTORY OF THE AMERICAN UNION.

1. *How and for what purpose was the government of the United States erected?*—201.

It was erected by the free voice and joint will of the people of America, for their common defense and general welfare.

2. *To what do its powers apply?*—201.

They apply to those great interests which relate to this country in its national capacity, and which depend, for their stability and protection, on the consolidation of the Union. It is clothed with the principal attributes of political sovereignty, and it is justly deemed the guardian of our best rights, the source of our highest civil and political duties, and the sure means of national greatness.

3. *When did the association of the American people into one body politic take place?*—201.

While they were colonies of the British empire, and owed allegiance to the British crown.

4. *What early confederacy may be considered the foundation of a series of efforts for a more extensive and more perfect union of the colonies?*—202.

That of the New England colonies in 1643.

5. *After the dissolution of this earliest league, what other precedents are there of association of the people of this country for their safety?*—203–208.

There are other instructive precedents: a congress of governors and commissioners from other colonies, as well as from New England, was occasionally held, to make arrangements for the more effectual protection of an interior frontier, and we have an instance of one of these assemblies at Albany, in 1722. But a much more interesting Congress was held in the year 1754, which consisted of commissioners from New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania

and Maryland, and was called at the instance of the lords commissioners for trade and the plantations, to take into consideration the best means of defending America, in case of war with France, which was then impending. The object of the English administration in calling this convention, was in reference to the treaties of friendship with the Indian tribes; but the colonies had more enlarged views. One of the colonies (Massachusetts) expressly instructed her delegates to enter into articles of union and confederation with the other colonies, for their general security in peace as well as in war. The convention unanimously resolved that a union of the colonies was absolutely necessary for their preservation.

Soon after the unfriendly attempt upon our chartered privileges, by the statute for raising a revenue in the colonies by means of a stamp duty, a congress of delegates from nine colonies was assembled in New York, in October, 1765, upon the recommendation of Massachusetts, and they digested a bill of rights, in which the sole power of taxation was declared to reside in their own colonial legislatures.

This was preparatory to a more extensive and general association of the colonies, which took place in September, 1774, and laid the foundations of our independence and permanent glory. This, the first Continental Congress, whose names and proceedings are still familiar to the present age, took into consideration the afflicted state of their country; asserted, by a number of declaratory resolutions, what they deemed to be the inalienable rights of English freemen;* pointed out to their constituents the system of violence which was preparing against those rights; and bound them by the most sacred of all ties, the ties of honor and of their country, to renounce commerce with Great Britain, as being the most salutary means to avert that violence and to secure those rights. These resolutions received prompt and universal obedience, and the union, being thus auspiciously formed, was continued by a succession of delegates in Congress.

* The most material of these declaratory resolutions was the one which stated that, as the colonies were not and could not properly be represented in the British Parliament, they were entitled "to a free and exclusive power of legislation in their several provincial legislatures in all cases of taxation and internal polity, subject only to the negative of their sovereign."

6. *When was the confederacy of the thirteen colonies completed?*—208.

By the accession of Georgia, in 1775.

7. *Were articles of confederation adopted?*—210, 211.

On the 11th of June, 1776, Congress undertook to digest and prepare articles of confederation.* It was not until the 11th of November, 1777, that they could so far unite the discordant interests and prejudices of thirteen distinct communities, as to agree to these articles. Most of the legislatures ratified them promptly; but Delaware did not accede to them until the year 1779. Maryland at first explicitly rejected them, but assented to them on the 1st of March, 1781, upward of three years from their first promulgation; and thus the articles of confederation received the unanimous approbation of the United States.†

8. *When, and by whom, was the Constitution of the United States formed?*—218, 219.

By the general convention of 1787,‡ composed of delegates from all the States, except Rhode Island, assembled at Philadelphia. After several months of tranquil deliberation, that convention agreed on the plan of government which now forms the Constitution of the United States.

9. *When was government organized under that Constitution?*—219.

On the 4th of March, 1789, the government was duly organized and put into operation under it.

* The instructions given to the delegates to the Continental Congress, by the several colonial congresses, conventions and assemblies, in 1776, and prior to the declaration of independence, contained an express reservation to each colony of the sole and exclusive regulation of its own internal government, police and concerns.

† The government of the Union is considered to have been revolutionary in its nature, from its first institution by the people of the colonies, in 1774, down to the first ratification of the articles of confederation, in 1781, and to have possessed powers adequate to every national emergency, and coëxtensive with the object to be obtained. Story's Com. on the Constitution, vol. i., pp. 186–191.

‡ Though the proximate origin of the federal convention of 1787 was the proposition from Virginia, in 1786, yet the necessity of a national convention, with full authority to amend and reorganize the government, was first suggested, and fully shown, by Colonel Hamilton, in 1780, while he was an aid to General Washington, in his masterly letter to James Duane, a member of the then Congress from New York.

10. *When had the Constitution received the unanimous ratification of the respective conventions of the people in every State?*—219.

In June, 1790.

LECTURE XI.

OF CONGRESS.

1. *What are the constituent parts of Congress?*—222.

Congress consists of a Senate and House of Representatives.

2. *What is one chief object of this separation of the Legislature into two Houses, acting separately, and with coördinate powers?*—222.

To destroy the evil effects of sudden and strong excitement, and of precipitate measures, springing from passion, caprice, prejudice, personal influence and party intrigue, which have been found, by sad experience, to exercise a potent and dangerous sway in single assemblies.*

3. *How is the Senate of the United States composed?*—224, 225.

It is composed of two senators from each State, chosen by the Legislature thereof, for six years, and each senator has one vote.

4. *If vacancies in the Senate happen by resignation, or otherwise, how are they filled?*—225.

If they happen during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall fill such vacancies.†

* Adams's Defense of the American Constitution, vol. iii., p. 502.

† The Executive must wait until the vacancy has actually occurred, before he can constitutionally appoint. This was settled by the Senate of the United States, in 1825.

5. *What qualifications are requisite in a senator?*—228.

The Constitution requires that each senator shall be thirty years of age, and nine years a citizen of the United States, and, at the time of his election, an inhabitant of the State for which he is chosen.

6. *How is the House of Representatives composed?*—228.

It is composed of members chosen every second year by the people of the several States, who are qualified electors of the most numerous branch of the Legislature of the State to which they belong.*

7. *What are the requisite qualifications of a representative?*—228, 229.

No person can be a representative until he has attained the age of twenty-five years, and who has not been seven years a citizen of the United States, and who is not, at the time of his election, an inhabitant of the State in which he is chosen. But the Constitution requires no evidence of property in the representative, nor any declaration of religious belief. He is only required to be a citizen of the requisite age, and free from any undue bias or dependence, by not holding any office under the United States.

8. *How are the representatives directed to be apportioned among the States?*—230.

According to numbers, which is determined by adding to the whole number of free persons, including those bound to service for a term of years, and exclusive of Indians not taxed, three fifths of all other persons.† The number of representatives can not exceed one for every thirty thousand, but each State is entitled to have at least one representative. The actual enumeration or census of the inhabitants of the United States is to be made every ten years, and the representatives newly apportioned upon the same, under a new ratio, according to the relative increase of the population of the States.

* In almost all the States no property qualification whatever, not even paying taxes, or serving in the militia, or being assessed for and working on the public highway, is requisite for the exercise of the right of suffrage.

† Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. Amendments to Constitution, art. XIV, sec. 2.

9. *To what objection is this rule of apportionment exposed?*—230.

To the objection that three fifths of the slaves in the southern States are computed in establishing the apportionment of the representation. But the rule was the result of necessity, and grew out of the fact of the existence of domestic slavery in a portion of our country.*

10. *May the United States, in their improvements upon the exercise of the rights of representation, claim preëminence over other governments, ancient and modern?*—231.

They may. Our elections are held at stated seasons, established by law. The people generally vote by ballot,† in small districts, and public officers preside over the elections, and receive the votes, and maintain order and fairness.

11. *What are the privileges of the two Houses of Congress?*—234.

Each House is made the sole judge of the election, return and qualifications of its members. A majority of each House constitutes a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide. Each House, likewise, determines the rules of its proceedings, and can punish its members for disorderly behavior; and, with concurrence of two thirds, expel a member. Each House is likewise bound to keep a journal of its proceedings, and, from time to time, publish such parts as do not require secresy, and to enter the yeas and nays on the journal, on any question, when desired by one fifth of the members present. The members of both Houses are likewise privileged from arrest during their attendance on Congress, and in going to and returning‡ from the same, except in cases of treason, felony, and breach of the peace. No member can be questioned out of the House for any speech or debate therein. There is no power expressly given

* The objectionable part of the rule has since been abrogated. Amendments to Constitution, art. XIV, sec. 2.

† Voting by ballot was introduced into the province of Massachusetts, in 1634. In New York, the people voted *vivâ voce* until after the Revolution, and then voting by ballot was constitutionally established.

‡ This privilege is confined to the members, and does not extend to their servants; and it applies as well to arrests on execution as to arrests on mesne process.

to either House of Congress to punish for contempts, except when committed by their own members ; but the Supreme Court has decided that they had that power, and that it was an implied power, and of vital importance to their safety, character and dignity.*

12. *What exclusive rights has the House of Representatives?* —236.

That of originating all bills for raising revenue.

13. *To what subjects do the powers of Congress extend?*—236.

Generally to all subjects of a national nature.

14. *For what was the qualified negative of the President, upon the formation of laws, principally intended?*—240.

To give to him a constitutional weapon to defend the executive department, as well as the just balance of the Constitution, against the usurpations of the legislative power.

LECTURE XII.

OF JUDICIAL CONSTRUCTIONS OF THE POWERS OF CONGRESS.

1. *What judicial constructions are there of the acts of Congress declaring that the United States were entitled to priority of payment over private creditors in cases of insolvency, and in the distribution of the estates of deceased debtors?*—243, 247.†

The Supreme Court has decided‡ that the acts of Congress,

* 6 Wheaton's R., 204.

† As to the rules of interpretation applicable to the Constitution, the instrument itself furnishes essentially the means of its own interpretation. It is, at the same time, just and true, that "the most unexceptionable source of *collateral* interpretation is from the practical exposition of the government itself, in its various departments, upon particular questions discussed, and settled upon their own intrinsic merits." In the questions and answers founded upon this lecture, however, we confine ourselves to "judicial constructions."

‡ *Fisher* v. *Blight*, 2 Cranch's R., 358.

giving that general priority to the United States, were constitutional. It was a power founded on the authority to make all laws which should be necessary and proper to carry into effect the powers vested by the Constitution in the government of the United States. Where the end was within the lawful powers of the government, Congress possessed the choice of the means, and was empowered to use any means which were in fact conducive to the exercise of the powers granted. The government is to pay the debts of the Union, and must be authorized to use the means most eligible to effect that object. It has a right to make remittances by bills or otherwise, and to take those precautions which will render these transactions safe. The principle settled was, that the United States are entitled to secure themselves the exclusive privilege of being preferred as creditors to private citizens and even to State authorities, in all cases of the insolvency or bankruptcy of their debtor. It was, however, subsequently held,* that the priority, to which the United States were entitled, did not partake of the character of a lien on the property of public debtors. The priority only applied to cases where the debtor had become actually and notoriously insolvent, and, being unable to pay his debts, had made a voluntary assignment of all his property, or having absconded or absented himself, his property had been attached by process of law. A *bona fide* conveyance of part of the property of the debtor, not for the fraudulent purpose of evading the law, but to secure a fair creditor, is not a case within the act of Congress giving priority.

Afterwards, it was held† that, in the distribution of a bankrupt's effects, the United States were entitled to their preference, although the debt was contracted by a foreigner in a foreign country, and the United States had proved their debt under a commission of bankruptcy. Though the law of the place where the contract is made be, generally speaking, the law of the contract, yet the right of priority forms no part of the contract. The insolvency which was to entitle the United States to a preference was declared‡ to mean a legal and known insolvency,

* *United States* v. *Hooe*, 3 Cranch's R., 73.

† *Harrison* v. *Sterry*, 5 Cranch's R., 289.

‡ *Prince* v. *Bartlett*, 8 Cranch's R., 431; *United States* v. *Canal Bank*, 3 Story's R., 79.

manifested by some notorious act of the debtor, pursuant to law. Nor will the lien of a judgment creditor, duly perfected, be displaced by mere priority of the United States.* The word insolvency, in the acts of Congress of 1790, 1797, and 1799, means a legal insolvency; and a mere state of insolvency, or inability in a debtor to pay all his debts, gives no right of preference to the United States, unless it be accompanied by a voluntary assignment of all his property for the benefit of creditors, or by some legal act of insolvency.

2. *In what cases, according to those decisions, have the United States a preference as creditors, to the extent therein declared?*—247.

In four cases: 1. In the case of the death of the debtor without sufficient assets; 2. Bankruptcy, or legal insolvency, manifested by some act pursuant to law; 3. A voluntary assignment by the insolvent of all his property to pay his debts; 4. In the case of an absent, concealed, or absconding debtor, whose effects are attached by process of law.

3. *What has been held as to the fiscal lien of the United States?*—248.

It was held† that the government had a lien on goods imported, for the payment of duties accruing on them, and not secured by bond; and that the United States were entitled to the custody of the goods until the duties were paid or secured, and any attachment of the goods under State process, during such custody, was void. On the other hand, it was held that the government had no general lien on the goods of the importer, for duties due by him upon other importations.

4. *What judicial construction is there as to the implied power of Congress to incorporate a bank?*—248–254.

It was held that the law creating the Bank of the United States was one made in pursuance of the Constitution; and that the branches of the National Bank, proceeding from the same stock and being conducive to the complete accomplishment of

* *United States* v. *Canal Bank*, 3 Story's R., 79.
† *Harris* v. *Dennie*, 3 Peters's U. S. R., 292.

the object, were equally constitutional.* The Supreme Court was afterwards led in some degree to review this decision, and to admit that Congress could not create a corporation for its own sake or for private purposes.† The whole opinion in the case of *McCulloch* v. *The State of Maryland* was founded on, and sustained by, the idea, that the bank was an instrument which was necessary and proper for carrying into effect the powers vested in the government. It was created for national purposes only, though it was undoubtedly capable of transacting private as well as public business.

5. *What construction has been given to the powers of Congress relative to taxation?*—255–257.

It was decided‡ by the Supreme Court that a general power was given to Congress to lay and collect taxes of every kind and nature, without any restraint. That they had plenary power over every species of taxable property except exports. But there were two rules prescribed for their government: the rule of uniformity and the rule of apportionment. Three kinds of taxes, viz., duties, imposts and excises, were to be laid by the first rule; and capitation, and other direct taxes, by the second rule. The Court subsequently held§ that Congress are not bound to, though they may in their discretion, extend a direct tax to all the Territories as well as to the States. A direct tax, if laid at all, must be laid on every State conformably to the census, and therefore Congress have no power to exempt any State from its due share of the burden. But it was understood that Congress were under no necessity of extending a tax to the unrepresented District of Columbia, and to the Territories; though if they be taxed, then the Constitution gives the rule of assessment.

6. *What is decided as to the national right of domain?*—257, 258.

That Congress have the exclusive right of preëmption to all

* *McCulloch* v. *The State of Maryland*, 4 Wheat. R., 316.
† *Osborn* v. *The United States*, 9 Wheat. R., 859, 860.
‡ *Hylton* v. *The United States*, 3 Dal. R., 171.
§ *Loughborough* v. *Blake*, 5 Wheat. R., 317.

Indian lands lying within the territories of the United States. The United States own the soil, as well as the jurisdiction of the immense tracts of unpatented lands included within their territories, and of all the productive funds which those lands may hereafter create. The title is in the United States by the treaty of peace with Great Britain, and by subsequent cessions from France and Spain, and by cessions from the individual States; and the Indians have only a right of occupancy, and the United States possess the legal title, subject to that occupancy, and with an absolute and exclusive right to extinguish the Indian title of occupancy either by conquest or purchase.*

7. *Upon what was founded the title of Great Britain, France and Spain, which passed to the United States?*—258.

Upon discovery and conquest; and, by the European customary law of nations, prior discovery gave this title to the soil, subject to the possessory rights of the natives, and which occupancy was all the right that European conquerors and discoverers, and which the United States, as succeeding to their title, would admit to reside in the native Indians. The principle is, that the Indians are to be considered merely as occupants, to be protected while in peace in the possession of their lands, but to be deemed incapable of transferring the absolute title to any other than the sovereign of the country.

8. *How arose the title of the United States to the unpatented lands within the States of Ohio, Indiana, Illinois, Michigan, and the Territory of Wisconsin?*—259.

By cessions from the States of Virginia, Massachusetts, Connecticut and New York, before the adoption of the present Constitution of the United States.

9. *Were such cessions made by any other States?*—259.

Yes; North Carolina, South Carolina and Georgia made similar cessions of their unpatented lands, and which now compose the States of Tennessee, Alabama and Mississippi.

* *Johnson* v. *McIntosh*, 8 Wheat. R., 543; *Fletcher* v. *Peck*, 6 Cranch's R., 142, 143.

10. *How were the lands thus ceded regarded?*—259.

They were intended to be, and were considered, as constituting a common fund for the benefit of the Union; and when the States in which the lands are situated were admitted into the Union, the proprietary right of the United States to these unimproved and unsold lands was recognized.

11. *Has the title of the United States to the unappropriated lands, lying within the limits of the separate States, been seriously questioned?*—259.

It has, by some of the States, as by Mississippi, Illinois and Indiana.

12. *Wherefore, and upon what basis, were the cessions of the territorial claims of the separate States to the western country made?*—259.

They were called for by the resolutions of Congress of the 6th September and 10th October, 1780, and were made upon the basis that they were to be "disposed of for the common benefit of the United States."*

13. *What was stipulated upon the subject by Congress?*—259.

Not only that the lands to be ceded should be disposed of for the common benefit, but that they should be settled and formed into distinct republican States, with a suitable extent of territory, become members of the American Union, and have the same rights of sovereignty, freedom, and independence, as the other States.

14. *What was provided by the ordinance of July 13th, 1787, for the government of the territory of the United States north-west of the Ohio river?*—260.

That the legislatures of the districts, or new States to be erected therein, should "never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchaser."

* Journals of Continental Congress.

15. *What effect is given to the public acts, records and judicial proceedings of every State in every other State?*—260.

In pursuance of the Constitution, Congress, by the act of May 26th, 1790, provided the mode by which records and judicial proceedings should be authenticated, and then declared that they should have such faith and credit given to them in every court within the United States, as they had by law or usage in the courts of the State from whence the records were taken. Under this act it has been decided* that if a judgment, duly authenticated, had, in the State court from whence it was taken, the faith and credit of the highest nature, viz., record evidence, it must have the same faith and credit in every other court. A judgment is, therefore, conclusive in every other State, if a court of the particular State where it was rendered would hold it conclusive.†

16. *What power have Congress over the militia?*—262.

Congress have authority to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; and to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. The President of the United States is to be the commander of the militia, when called into actual service.

17. *To whom does it belong to judge when the exigency arises in which the President has authority, under the Constitution, to call forth the militia?*—265.

The Supreme Court has decided and settled* that it belongs exclusively to the President to judge when the exigency arises, in which he has authority under the Constitution to call forth the militia, and that his discretion is conclusive upon all other persons.

18. *When are militia, called into the service of the United States, not to be considered as national militia?*—266.

The Supreme Court decided† that the militia, when called into the service of the United States, were not to be considered as being in that service, or in the character of national militia, until they were mustered at the place of rendezvous, and that until then, the State retained a right, concurrent with the government of the United States, to punish their delinquency.

19. *Has the authority of Congress to appropriate public moneys for internal improvements been brought under judicial consideration?*—267.

The point has been much discussed on public occasions, and between the legislative and executive branches of the government; but it has never been brought under judicial consideration.

* *Mills* v. *Duryee*, 7 Cranch's R., 481.

† But the defendant must have had due notice to appear, or be subject to the jurisdiction of the court, or, if a foreigner or non-resident, he must have actually appeared to the suit, or the judgment of another State will not be deemed of any validity. The notice must be such as the State giving it is competent to direct; mere knowledge of the pendency of the suit is not sufficient. The doctrine in *Mill* v. *Duryee* (7 Cranch, 481) is to be taken with the qualification, that in all instances the jurisdiction of the court rendering the judgment may be inquired into, and the plea of *nil debet* will allow the defendant to show that the court had no jurisdiction over his person. The court must have had jurisdiction, not only of *the cause*, but of *the parties*, and in that case the judgment is final and conclusive.

LECTURE XIII.

OF THE PRESIDENT.

1. *In whom is the executive power of the United States vested?*—271.

It is ordained by the Constitution that the executive power shall be vested in a President.‡

* *Martin* v. *Mott*, 12 Wheat. R., 19.

† *Houston* v. *Moore*, 5 Wheat. R., 1.

‡ The executive branch of the government of the United States is organized under