

152
51

ORACLE AT WEEHAWKEN: ALEXANDER HAMILTON
AND DEVELOPMENT OF THE ADMINISTRATIVE STATE

by

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ABSTRACT

This dissertation analyzes the major role that Alexander Hamilton's ideas and innovations played in the development of the American administrative state during and subsequent to the Federalist era. Secondly, it contrasts the richness of Hamilton's prudential theory of public administration with the sterile scientific theories of administration advanced in the twentieth century.

Though modern American public administration is usually thought of as a product of the early twentieth century reform era, many ideas articulated during the founding period were ingrained in our legal, political, and administrative thought. Of those founding ideas,

Hamilton's are the most numerous and significant.

Hamilton's administrative thought and innovations are traced in the historical development of the American administrative state in terms of three topics central to public administrative development. These are finance, military/foreign affairs, and the nature of public office. The final chapter summarizes Hamilton's contributions, and then challenges our acceptance of Woodrow Wilson as founder of American public administrative thought. Alexander Hamilton is far more appropriate as founder of both the thought and practice of American public administration.

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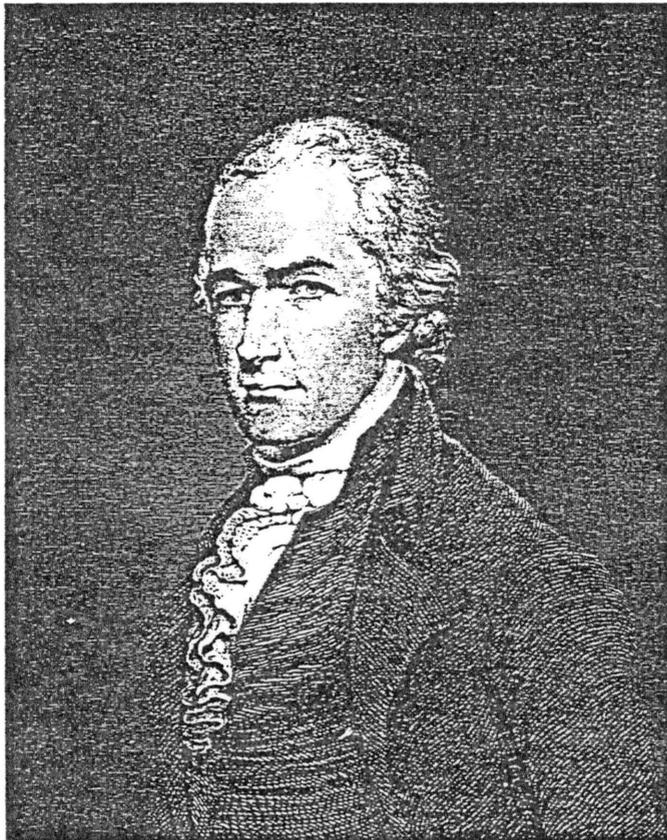
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Alexander Hamilton, *circa* 1790. Engraved by E. Prud'homme
from the original miniature by Archibald Robertson.

TABLE OF CONTENTS

| | |
|---|-----|
| ABSTRACT | iii |
| ACKNOWLEDGEMENTS | iv |
| Chapter | |
| I. INTRODUCTION | 1 |
| About the Title | |
| Oracle at Weehawken | |
| Development of the Administrative State | |
| Methodology and Structure | |
| Chapter Organization | |
| Literature Review | |
| A Short History of Hamilton | |
| The Character of Hamilton | |
| Notes to Chapter I | |
| II. THE ROOTS OF AMERICAN PUBLIC ADMINISTRATION . . . | 62 |
| Hamilton's Administrative Theory of Governance | |
| The Nature of Republican Government | |
| The Nature of Public Administration | |
| Energetic Government as Adequate Means to | |
| Republican Ends | |
| The Structure of Safe, Powerful, Republican | |
| Government | |
| Federalism and Separation of Powers | |
| Passion and Power in Public Administration | |
| Notes to Chapter II | |
| III. THE ENERGETIC EXECUTIVE AND THE PUBLIC | |
| ADMINISTRATION: INTEGRATING PRINCIPLES WITH | |
| PRACTICE | 140 |
| Hamiltonian Praxis | |
| Praxis and Hamiltonian Science | |
| Praxis and Policy | |
| Notes to Chapter III | |

| | |
|---|-----|
| IV. PUBLIC ADMINISTRATION AND LAW: REDISCOVERING THE FOUNDATIONS OF GOVERNANCE | 185 |
| Praxis and Public Law: Hamiltonian Jurisprudence Hamilton's Enabling Doctrines and Their Preservation Enabling Doctrines Preservation of Enabling Doctrines Notes to Chapter IV | |
| V. PUBLIC FINANCE: A FRAMEWORK FOR PUBLIC CONFIDENCE | 238 |
| The History of Hamilton's Financial System The United States Bank The Sinking Fund Tariff Policy, Taxation, and the "American System" Hamilton's Treasury Organization Notes to Chapter V | |
| VI. FOREIGN AFFAIRS ADMINISTRATION: GUARDING NATIONAL INTEREST | 330 |
| Military Power War Department Administration Developing the Military Establishment Hamilton's Military Ideas in History Foreign Policy National Interest & The Balance of Power Hamiltonian Realism in American Foreign Policy Conclusion Notes to Chapter VI | |
| VII. PUBLIC OFFICE: PURSUING ADMINISTRATIVE RESPONSIBILITY | 392 |
| Executive Energy and the Public Service Administrative Responsibility Superior/Subordinate Relations Obedience and Independent Discretion Responsible Leadership in the Administrative Republic Historical Contributions to the Public Service Notes to Chapter VII | |

| | |
|----------------------------|-----|
| VIII. CONCLUSION | 451 |
|----------------------------|-----|

- Hamilton's Constitutional Administration
 - Human Nature and Administrative Structure
- Theory and Practice in Administration
 - Praxis and Administrative Policy
 - Praxis and Public Law: Jurisprudential Administration
- Policy and Administrative Development:
 - Hamiltonian Contributions
 - Public Finance
 - Military and Foreign Affairs
 - Personnel
 - A Brief Synopsis
- Hamilton as Founder of American Public Administration
 - Contributions to a New Foundation
 - Challenging Conventional Administrative Wisdom
- Notes to Chapter VIII

| | |
|------------------------|-----|
| BIBLIOGRAPHY | 515 |
|------------------------|-----|

CHAPTER I

INTRODUCTION

The main trouble with United States public administration these last 50 to 100 years is that we have neglected historical perspective and, hence, failed to develop our connection with general philosophical theory as closely as we need to.

Marshall E. Dimock, 1983

This dissertation takes Marshal Dimock's complaint seriously. It addresses the neglected historical perspective in public administration, and its connection with general philosophical theory. The ideas, strategies and institutions established by Alexander Hamilton anticipated considerably the developments of modern American public administration. Nevertheless, his contributions have not been adequately examined by the field.

In the field of public administration we have commonly referred to Woodrow Wilson as the founder of American public administrative thought. We also attribute the birth

of the modern administrative state to the progressive era of which Wilson was a part. There is no doubt that the thinkers of this era spurred a proliferation of "self aware" administrative thought and organization in response to an increasingly complex and changing society. The foundations for such an expansion, however, had already been laid one hundred years earlier at the time of the nation's founding. The chief architect of that foundation was Alexander Hamilton. Hamilton envisioned and strove for the development of a powerful, complex, and systematic public administration somewhat along the lines of what actually arose during the twentieth century.

Consequently, our references to Wilson as founder of American public administrative thought require at least some qualification, if not outright rejection. I am not alone in this assertion. Recently, Paul Van Riper argued that "if anyone deserves a title as the founder of the American administrative state, in terms of both theory and practice, it is not Wilson, Eaton, or Ely but Alexander Hamilton" ¹ Van Riper asserts that the United States has twice in its history had a flourishing administrative state. The first began during the founding period primarily under the auspices of Alexander Hamilton, and then withered under the Jacksonians. The second was the

resurgence that began in the late nineteenth century, reaching its apex in the post World War II era. In the first administrative state, Hamilton played a central role in terms of both theory and practice. Wilson apparently had little if any influence during the resurgence one hundred years later.

Van Riper's claim concerning Hamilton's role in our first administrative state is well founded. Biographers and historians of the founding period generally agree that Hamilton was the administrative genius of the period even though many of them otherwise cast an aristocratic shadow over his career. The combination of Hamilton's great reports, letters, pamphlets, legal opinions, and of course his Federalist Papers, comprise the philosophical, constitutional/legal and technical foundations for "energetic" public administration. Leonard D. White indicated that it was Hamilton "who first defined the term [public administration] in its modern usage² and who first worked out a philosophy of public administration. His contribution was original, . . ."³ Clinton Rossiter argued Hamilton had done more than any other founder to shape and give life to the Constitution, and that he had done this primarily through his idea and practice of energetic administration. Rossiter addressed Hamilton's

constitutional interpretations as an enduring legacy, one that continues to influence our society, our government and our plans for change.

Following the lead of Van Riper, White, and Rossiter, this dissertation has two general purposes. First, it seeks to identify the major role Hamilton's ideas and innovations played in the development of public administration subsequent to the Federalist era. Second, it seeks to highlight some significant insights in Hamilton's writings that are relevant in a critical sense to modern public administration, but which have not had a major role in its development.

Van Riper and White have much to say about Hamilton's influence during his own time, but they say little if anything about the role of his ideas and innovations subsequent to that period. Rossiter has argued that, despite his lack of recognition, Hamilton's ideas continue to have contemporary value. However, Rossiter's focus is so broadly constitutional that it obscures Hamilton's more specific role in the history of American administrative development, and the relevance of his ideas for modern public administration.

In accordance with the first purpose of this study, I

will focus on how constitutional and historical developments preserved Hamilton's compelling arguments for an energetic American public administration. To determine in a precise way the extent of Hamilton's direct influence upon subsequent generations is not possible. As Rossiter pointed out, he has not been a popular founder. Therefore, his influence has seldom been acknowledged by subsequent leaders. His reputation has suffered in the light of our glorification of his political opponent, Thomas Jefferson.

Since Jefferson and Hamilton were the fiercest of opponents in the formative years of the Republic, and since it is convenient to write about an episode in history (and amusing to read about it) as a clash between giant antagonists, the intellectual and emotional decision to be kind to Jefferson has forced most Americans to be harsh to Hamilton.[5]

Consequently, I will attempt to identify the substance of Hamilton's ideas and achievements as they have been used in the development of the administrative state. Wherever possible, direct acknowledgements of Hamilton's influence will be cited as additional support for the thesis. Hamiltonian ideas have shaped our country in many ways, and his concept of energetic public administration has been among the most compelling.

The second purpose of this dissertation is to

demonstrate the richness of Hamilton's conception of public administration. There is considerable wisdom in the writings and actions of Hamilton that has not been an enduring influence, but which should be brought to our attention. For example, Hamilton in many ways epitomized praxis. His words and deeds on the art of judgment or decision in public administration are instructive at least for those who like to think of themselves as practical idealists. Broadus Mitchell, author of the most complete and balanced biography of Hamilton, characterizes Hamilton's praxis in the following way.

His career had been at the center of action--at military headquarters, in the old Congress, in the national administration. He had abundant reason to know realities, as against parchment systems. He relied on the practice of other countries; he concluded that his own could not prosper unless it possessed such tested resources. His desire was positive for a mighty future for America. He well knew that decisions impended in reconciling policy with principle. In this conflict the guide of statesmen must be discretion, conscientious, not capricious. [6]

Hamilton had the ability to blend principle with practice. He integrated abstract notions such as justice, equity, and right with administrative feasibility. As we shall see, he was particularly adept at this in establishing public confidence in government through an equitable and stable system of public credit.

Another, and much more significant, example of Hamiltonian wisdom in need of study today lies in his acceptance and advocacy of the structure of government provided for in the Constitution. Though he, like Eaton, Wilson, Goodnow and others, looked to other nations for tried and true techniques of administration, he borrowed only what could be shaped anew to fit American constitutional government. He did not try to change American constitutional structure. Rather, he sought to exploit its potential for energetic public administration, and he realized this potential to a great extent during his career. This effort has subsequently been ignored or too casually dismissed as administrative machinations of a simpler and therefore irrelevant era.

We cannot continue to ignore or to pass over lightly a founding father whose substantial contributions were oriented to the development of public administration. Hamilton provided a visionary constitutional theory of public administration in the sense that he intended it to suit a much larger and more complex political society than actually existed at the time. He anticipated what America would become, and framed his administrative theory accordingly. His theory is therefore worthy of closer examination. In the following chapters, that theory will

be described fully, and applied critically to theories and practices of public administration in the twentieth century.

About the Title

Oracle at Weehawken

My title requires some explanation. The more I studied Hamilton's papers and biographies, the more aware I became of the oracular or prophetic quality of his ideas and vision. In his knowledge, actions, and advocacy he anticipated many future developments. For example, Hamilton envisioned and strove for a mixed and stable economy with industrial development leading the way toward prosperity. One need only read his "Report on Manufactures" to see his prescience in this area. He also warned of the dangers that often accompany such prosperity. It could bring about "insolence, an inordinate ambition, a vicious luxury, licentiousness of morals, and all those vices which corrupt government, enslave the people, and precipitate the ruin of a nation." ⁸ Concerns about these dangers are still expressed by many people today.

More importantly for our purposes, he anticipated the development of an expansive and powerful public administration. Hamilton's public administration was to maintain fiscal integrity and stability through financial administration in much the same way that John Maynard Keynes would advocate one hundred and fifty years later. He anticipated the creation of regulatory agencies overseeing the production of quality agricultural and manufactured products. He anticipated the work of the Federal Trade Commission in calling for measures designed to "prevent frauds upon consumers at home and exporters to foreign countries."

Furthermore, the public administration was to maintain a sound and respectable foreign policy based upon the protection and interplay of national interests (economic and political). The principles he laid down for this policy shaped a good deal of nineteenth century American foreign policy, and anticipated twentieth century foreign policy as espoused by E.H. Carr, Walter Lippmann, George Kennan, Hans Morganthau, and others of the so called "realist" and "nationalist" schools of diplomacy.

In his actions, Hamilton also anticipated the concern for efficiency and what he called "system" in public administration. He wanted rational order established at

all levels of the administration. He concerned himself with even the most technical detail. For example, during his years as Inspector General in the Adams administration he personally conducted time and motion studies of the military-march step in an attempt to identify optimum step lengths at various speeds to increase infantry marching effectiveness. He thus anticipated "scientific management" by at least a century. Furthermore, in his advocacy of system and study toward the improvement of public administration, Hamilton anticipated the rise of a science of public administration.¹¹

Hamilton predicted the rise of a military dictator (who turned out to be Napoleon) in France, given the volatile character and behavior of its revolutionaries.¹² He also anticipated the danger in popularly governed societies of public authority not being sufficiently respected, particularly during its formative period.¹³ Our continued attachment to "rugged individualism," and the re-occurring anti-governmental mood indicates that the problem persists.

Finally, he predicted great difficulty for the national government in maintaining administrative control if economic development and expansion of the large territories to the west occurred too rapidly. The problems

of the national government during the nineteenth century confirm his prescience.

These examples, and others, have led me to believe, as Richard Morris and Clinton Rossiter did, that in many ways Hamilton "anticipated America."¹⁴ It is primarily in this sense that I use the term "oracle" in the title to describe Hamilton.¹⁵ However, there is also a secondary sense in which the term is used here. An oracle can also be a shrine dedicated to a venerable person, prophet or prophetic god. In this country we have many "shrines" dedicated to great figures in our past, particularly founding fathers. Ironically, for Hamilton, who contributed so much to the nation as a founder, there are very few shrines, and most of those are in obscure places.¹⁶ At Weehawken, New Jersey, there stands a small bust of Hamilton on the Palisades overlooking the spot where he fell in a duel with Aaron Burr. I refer to Hamilton as "Oracle at Weehawken" because his controversial death there symbolizes in many ways the kind of life he led. His was a life of controversy from birth (he was a bastard child) to death. He was continually thrusting himself into the middle of one problem or another for what he believed to be the public interest. It is fitting that the subject of his life's work, American public

administration, should do the same, and continue in controversy well beyond his time.

Development of the Administrative State

The term "administrative state" also requires some explanation. Although the term is commonly used, it is seldom defined.¹⁷ Furthermore, when definitions are given, they are usually weak or inadequate. Many authors commit the error of using the term to be defined (or part of it) as part of the definition itself.¹⁸ The tendency to do this is indicative of the difficulty in specifying in any precise way what we mean by "administrative" or by "state." Both concepts are slippery, vague, and abstract because they encompass so many things, so many aspects of life. This is reflected in the existence of extensive literature on each concept. Unfortunately very little attention has been given to integrating this literature, or to analyzing the literature on one concept in terms of the other.

In a recent article in Public Administration Review, Paul Van Riper identified several characteristics of an administrative state that must be included in any comprehensive definition. Briefly, these are:

- (1) a workable organization in the classical hierarchic sense;
- (2) the recruitment of expertise by merit;
- (3) rational decision making;
- (4) the rule of law, with an emphasis on equality before the law;
- (5) written procedures and records;
- (6) money economy and sufficient public funds to support a complex administrative apparatus;
- (7) a base in quantitative data and technique;
- (8) adequate supporting technology, especially pertaining to records, communications, and numeracy;
- (9) the enforcement of responsibility and ethical standards;
- (10) all of the above in at least a moderately developed and mutually supporting arrangement. [19]

Van Riper derived these characteristics from the writings of Weber and Morstein Marx concerning administrative or bureaucratic organization. Clearly these criteria contribute to the definition of an administrative state. However, they address only the increasing administrative orientation of a state. They do not address other salient features of a state that impinge upon, if not determine, the character and extent of its administration. One such feature is the political theory or theories presumed by the existence of a state. Such theories guide founders in the design and/or adoption of a form of government, and subsequently shape the character of its administration. Political theory and administration are thus intertwined.

To illustrate this point, consider the ninth criteria listed above. The enforcement of responsibility and ethical standards can only come about if we have some idea or theory of what constitutes responsibility in administration. This theory is normative, and its

20

application is political. In constitutional states such as ours we express important and deeply held values through law. (The law instructs as well as commands.) By consent the people established a legal system of governance for the protection and advancement of "regime values," and they bind their governing officers by oath to uphold (or in the case of the President, "to preserve and protect") what they have constituted. Therefore, those who govern are involved in a fiduciary relationship or public trust with the governed. This trust forms the foundation for ethical standards and responsibility in the public administration. It follows, then, that an "administrative state" should have among its definitional criteria a normative theory of state which provides a foundation for responsible conduct by officials, and gives its administrative arrangements a distinctive and legitimate character.

21

Another salient feature of a state that determines the character and extent of its administration is the degree of "integration" required between political and economic spheres. The significant but largely forgotten work of Joseph Rosenfarb demonstrates the centrality of political-economic integration to the development of administrative states. The increasing division and specialization of labor in a society requires increasing

22

administrative coordination and control. The state must have some control over this development because great power is involved. Hence, the state and the economy require increasing degrees of integration. The structure of that integration is regime specific. However, a leading characteristic common to highly integrated, commercial states is the prominence of executive power and organization.

It is quite clear that Van Riper's criteria presume the existence of this political-economic integration. However, explication rather than presumption is required at this level, if an adequate definition of "administrative state" is to be achieved.

These and other characteristics of the state need to be incorporated in any comprehensive definition. It is not my intention to offer a comprehensive definition here. That requires major study along the path already cleared by Rosenfarb. I wish only to call attention to the weaknesses in the existing definitions, to argue for the appropriateness of the concept despite those weaknesses, and to point to its European origins in the mercantilist period. This is where the Hamiltonian administrative state finds its origins (see discussion below).

The lack of a clear and comprehensive definition of administrative state also leaves the concept open to a variety of connotations, some of which are not appropriate to this study.

First, the notion of a strict politics/administration dichotomy, and the corollary idea that administration supplants politics in the administrative state, are not a part of the perspective offered here. In the Hamiltonian view put forth here, public administration adds another dimension or aspect to political behavior and structure. There is, therefore, administrative politics in addition to
 23
 elective, judicial and special interest politics.

Second, I wish to avoid the connotation that the administrative state exists to the detriment of republican/democratic government. Several theorists have in recent years argued that administrative values conflict
 24
 with, and eventually stifle democratic values. As will be demonstrated in the first few chapters, Hamilton's theory of public administration presumes the necessity of a strong, efficient, administratively oriented, popular government to protect individuals rights. American democratic government requires energetic administration.

Third, it is commonly thought that the administrative

state is a phenomenon of the late nineteenth and twentieth centuries. For example, James Q. Wilson argues the American "bureaucratic state" has its origins in the rise of regulatory agencies, such as the ICC. Administrative organization gradually comes to dominate both public and private sectors, and the administrative state matures (to the detriment of democratic government). More recently, Steven Skowronek also looked to this period for the origins of the American administrative state. ²⁵ However, several authors have argued that the origins of modern administrative states go back to the seventeenth and eighteenth centuries with the maturation of mercantilist political economies in Europe. Morstein Marx saw the beginnings of the modern administrative state in seventeenth century Prussia where centralized administration, staffed with experts, controlled a considerable empire. Joseph Rosenfarb looked to the same period for administrative states. The necessity of administratively integrating increasingly complex political and economic spheres became prominent throughout Europe during this period due to mercantilist and early capitalist development. James O. Freedman also attributes the rise of administrative states to this period. ²⁶ As stated earlier, Van Riper sees basic elements of an administrative state established in the Federalist period of American

government.

This dissertation shares the view that administrative states arose during the mercantilist period, and that the Federalist administration, under the aegis of Washington and the brilliance of Hamilton, established a nascent administrative state in America. That twentieth century administrative states have become more complex and pervasive is obvious, but its basic framework was established in the 1780's and 1790's. One might argue that the America of the founding period was incapable of being or sustaining an administrative state because of its primitive, agrarian condition. However, though it was primarily agrarian, it already had all the elements and tendencies of a more complex political-economy, and the potential to become a wealthy, commercial empire run by a complex administrative state. Hamilton saw this potential, and he designed a framework of policy to realize it.

Furthermore, he did not develop this framework in a vacuum. His vision of an American administrative state was greatly enhanced by the existence of more developed administrative states such as existed in England. Consequently, I suggest that what James Wilson describes as the rise of the bureaucratic state in the late 1800's is really a resurgence of an administrative orientation

established under Hamilton. In fact, I argue we have spent much of our time, from 1801 to the present day, relearning and rediscovering many of the lessons in policy Hamilton advocated from 1776 to 1800.

The same criticism applies to Skowronek's historical work. The irony of Skowronek's work is that he premises change (or failure to change) in states on "political struggles rooted in and mediated by preestablished institutional arrangements." Yet he generally ignores the founding period in which these arrangements have their origin! He writes off Hamilton's accomplishments as largely a contribution to party development, with little development in organizational design. But what of Hamilton's financial innovations, and his organization of the Treasury Department? At the least his contributions in this area deserve attention. There is no allusion to Hamilton the "administrative architect" in Skowronek's work. Furthermore, Skowronek misunderstands or ignores the achievements of Hamilton and other framers in constituting the government when he says "the path that had been traveled in the development of early American government did not anticipate the need for a strong national administrative arm." A major purpose of the new government of 1789 was to establish and secure executive and

administrative power, thereby avoiding the embarrassing inadequacies of government experienced under the Articles of Confederation.²⁷ To be sure, many forgot or disagreed with this orientation during the nineteenth century. But, as shall be seen, they continually returned to Hamiltonian logic and methods when crises arose and strategic policies were needed. Skowronek's otherwise insightful book bears this out.

Despite the vagueness, lack of definition, and susceptibility to diverse connotations, I use the term "administrative state" in the title and text because it captures so much. It points to the importance of public administration in modern governance, and yet houses public administration in the normative and institutional context of the state. The American state has its own unique and important characteristics, and these should be reflected in its public administration. Hamilton envisioned the development of a great American administrative state. That vision gave birth to his theory of public administration, which in turn spurred him into action.

Methodology and Structure

This dissertation employs literary interpretation combined with historical and critical analysis in a method roughly analogous to Popper's process of conjecture and refutation. The method differs from Popper's in the sense that it cannot offer continual testing of validity (the "invalidation" process) by way of experimentation. Rather, "the test of an interpretive hypothesis is further interpretation." For example, in this study, an interpretation (set of hypotheses) of Hamilton's actions and ideas is offered that combines (1) my own intuitive interpretation based upon immersion in the literature of and about him; (2) the corroboration or testing of this interpretation with those of Hamiltonian biographers, historians, and thematic analysts; and (3) the use of such works as the Oxford English Dictionary, Dr. Samuel Johnson's Dictionary, and William Winslow Crosskey's Politics and the Constitution that provide the meaning of terms as employed in Hamilton's era.

Hamilton's theory of public administration is presented first. Then his ideas and achievements are traced historically through influential writings, documents, and public officials in order to demonstrate the

pervasiveness of their use, and their importance to the rise of the twentieth century administrative state. His ideas are also analyzed for their relevance and value as guiding principles for modern public administration. In this context, they are also used to criticize some twentieth century theories of public administration.

Hamilton's ideas will also be traced and analyzed in terms of their legal orientation. Hamilton's concept of law provides a legitimating foundation from which all his administrative ideas and achievements emanate. Accordingly, this analysis occurs in conjunction with my presentation of Hamilton's basic theory of public administration.

Hamilton's contributions to three broad categories central to public administration theory and practice are analyzed. These are Finance, Foreign Affairs, and Personnel. The categories of Finance and Personnel are not treated in the narrow, technical sense generally used today. Rather, they are conceived of in terms of broader concepts to which they were inextricably linked in Hamilton's vision of a great American political society. For example, the category of Finance is linked to Hamilton's theory of political economy and the role of public administration within that context. It is only in

this context that his financial ideas and achievements are fully understood. The category of Personnel, a term not used in Hamilton's day, is linked to Hamilton's broader theories of leadership and public office that he deemed appropriate to republican democracy. His theory of leadership involves a normative context largely ignored by modern theories of leadership.

An understanding of the broader contexts of these categories will restore a sense of the moral connotations that Hamilton and other founders associated with the categories themselves. This will throw into relief the barrenness of our current, "scientifically neutral" definitions of and orientations to these concepts.

Chapter Organization

The chapters of this dissertation are organized in the following manner. As is already evident, Chapter I introduces the reader to the central theses of the dissertation; explains the title; briefly reviews the literature relevant to the study; discusses the methodology and structure of the work; and briefly introduces the character and history of Alexander Hamilton.

Chapters II, III, and IV present Hamilton's overall theory of public administration. It starts with his basic concept of a viable administrative republic and continues through his idea of energetic public administration. It ends with a description of his jurisprudential orientation, and a brief historical analysis of his legal doctrines concerning public administration.

Chapter V analyzes Hamilton's ideas and achievements in financial administration and policy as a logical extension of his vision of a mixed and integrated political economy in the United States. It then traces their usage in nineteenth and twentieth century administrative development.

Chapter VI analyzes Hamilton's ideas and achievements in foreign affairs administration and policy. These are related to his vision of great national character and reputation among nations, as well as to his theory of political-economy, and then their usage is traced into the twentieth century.

Chapter VII analyzes Hamilton's ideas and achievements in personnel administration and policy, and those concerning his theory of republican leadership. These are traced into twentieth century usage.

Chapter VIII summarizes the findings of the earlier chapters. It then argues that Woodrow Wilson should be replaced by Hamilton as the principal founder of American public administrative thought. Hamilton is the most appropriate choice for founder of both theory and practice in American public administration.

Literature Review

In order to achieve the purposes of this study, a rather extensive and wide-ranging body of literature will be analyzed. Obviously, a major portion of the literature has to do with Hamilton's ideas, beliefs, and vision concerning the nation and its governance via the public administration. The rest of the literature consists of influential legal cases and commentaries; papers, biographies and analyses of some great American statesmen who used Hamiltonian ideas to shape public policy and public institutions; and historical works on public institutions and policies.

The literature on Hamilton relevant to this study consists primarily of Hamilton's papers, various biographies, and thematic studies of his ideas. Hamilton's papers have been collected, edited and published in

twenty-six volumes by Harold Syrett and Jacob E. Cooke. Prior to the completion of this work in the late 1970's, the only published papers of Hamilton were those collected and edited by John C. Hamilton (son of Alexander Hamilton) in 1850 (7 vols.), and by Henry Cabot Lodge in 1904 (12 vols.). This study will rely primarily upon the Syrett and Cooke papers due to their extensiveness and generally fine editing. In addition to these papers, this study will also make use of a collection of Hamilton's papers pertaining to his law practice. These have been edited and organized by subject matter, with commentary, by Julius Goebel, Jr. and ³⁰ Joseph Smith.

Four comprehensive biographies will be relied upon most for information on Hamilton's life and accomplishments relevant to this study. One is Broadus Mitchell's two volume work. The second is by Louis M. Hacker, the third by John C. Miller, and the fourth by Robert Hendrickson ³¹ (two volumes). Mitchell's biography is by far the most cited, and is generally considered the most complete and objective study of Hamilton. The Hacker and Miller biographies provide well researched descriptions of Hamilton's efforts to establish a strong central government. The Hendrickson biography is more recent (making extensive use of the recently completed Syrett &

Cooke collection) and offers an indepth study of Hamilton's personality, as well as excellent analysis of his contributions to the founding and subsequent development of the nation.

Finally, there are several thematic studies of Hamilton's ideas and achievements that are of particular importance to this study. Lynton Caldwell's book on the administrative theories of Hamilton and Jefferson provides a general framework for this study's portrayal of Hamilton's administrative philosophy and accomplishments. It is the only work devoted specifically to Hamilton's concept of public administration.³² Works by Gerald Stourzh, Harvey Flaumenhaft, and Gilbert Lycan on Hamilton's concept of republican government greatly augment³³ and enrich various aspects of that general framework. Clinton Rossiter's book on Hamilton and the Constitution adds greatly to the framework as well, and is the only well documented and substantial work tracing Hamilton's reputation and his relevance to constitutional interpretation from the founding period.³⁴ Rossiter's extensive literature review and notes therefore served as a valuable guide to the present inquiry.

In conjunction with specific works on Hamilton's thought, I have used general studies of the thought of the

founding period to substantiate and highlight his general orientation to American government. Primary among these works are Martin Diamond's The Founding of the Democratic Republic (Itasca, Ill.: F.E. Peacock Publishers, Inc., 1981), Herbert J. Storing's, What the Anti-Federalists were FOR, David Epstein's The Political Theory of the Federalist, and Forrest McDonald's Novus Ordo Seclorum: The Intellectual Origins of the Constitution.

35

As stated earlier, the major focus of this dissertation is on how constitutional and historical developments preserved Hamilton's compelling arguments for energetic public administration. The dissertation traces Hamiltonian ideas and innovations relating to three general categories of administrative development in our national government. It also traces the influence of his legal doctrines which provide a legitimating foundation for these other categories of administrative development.

Accordingly, Leonard D. White's four volume study in administrative history serves as a major reference point for nineteenth century administrative development. In addition, some more recent historical analyses of specific historical periods are used. Among these are Stephen Skowronek's Building a New American State and Matthew Crenson's The Federal Machine. To this are added many

36

historical works that chronicle developments in finance/political economy, foreign and military affairs administration, and personnel. For example, Paul P. Van Riper's History of the United States Civil Service, Bray Hammond's Banks and Politics in America, Lawrence Friedman's A History of American Law, and Bernardo and Bacon's American Military Policy describe events that show the mark of Hamiltonian thought.

37

Legal commentaries by Kent, Story, Rawle, Dane, Pomeroy, Bauer, and others were examined for Hamiltonian ideas because they have been highly influential educational instruments in law. Law as a profession has been common and very important for statesmen in our history. The commentaries of Kent and Story are perhaps the most authoritative of all the commentaries, and they openly advocate Hamiltonian doctrines, many of which pertain to public administration.

38

Finally, papers and biographies of certain key statesmen such as Marshall, Clay, Webster, Jackson, Lincoln, Theodore Roosevelt, Franklin D. Roosevelt and others are used wherever possible to document the promotion and use of Hamiltonian ideas. In some cases, such as with Theodore Roosevelt, Hamilton has had a direct influence, but in most cases only the substance of his ideas held

sway.

A Short History of Hamilton

Before moving on to the next chapter to discuss Alexander Hamilton's theory of public administration, a brief summary of his career and a description of his character is in order. Hamilton spent his boyhood in the British West Indies. ³⁹ There he received only informal education, and he worked as a clerk for his mother and then in a countinghouse. His countinghouse experience gave him some early expertise in business finance and trading. His informal education was in philosophy, religion, and history. He was quickly recognized by his teacher, Reverend Hugh Knox, as having genius and noble ambitions. Provision was made for him to travel to the American colonies in 1772 in order to provide him with formal education.

Hamilton attended a preparatory school in Elizabethtown, New Jersey, and then applied to Princeton. He was turned down because the school would not comply with his request for a program of accelerated study. He then entered Kings College (later to become Columbia University) in New York. Though he excelled in all his studies, they

were cut short by the Revolutionary War.

Hamilton had closely followed the events leading to the Revolutionary War, and had become an ardent supporter for independence and union. His first political tracts and ⁴⁰ speeches were produced at this time. He joined a militia company (the Hearts of Oak) in 1774. He shaped the company into one of the finest artillery companies in New York. He attracted the attention of several military leaders, and in 1777 was promoted to rank of lieutenant colonel and appointed aide-de-camp to General George Washington. He became Washington's most trusted aide, taking on a great number of administrative responsibilities. Many of Washington's memoranda, field instructions, and exhortations to Congress came from Hamilton's hand, with ⁴¹ Washington's approving signature. This position became the experiential learning ground for Hamilton on leadership and administration of foreign relations and diplomacy, finance, and public service. It was this experience that convinced Hamilton of the grave inadequacies of colonial government under the Articles of Confederation. Accordingly he joined many other founders in the search for a more ⁴² effective structure for popular government.

During the long, slow winters of the war, Hamilton educated himself further in political philosophy, history,

and finance. He corresponded with Robert Morris and other financial experts, and served as Washington's liaison with Congress on financial and organizational matters. By 1781 he was urging the development of executive organization and financial reforms, and was publishing political tracts in support of empowering the congress to run a national government free of state interference. His "Continentalist" essays of 1781 and 1782 elaborated the foundation for all his subsequent efforts at establishing "energetic" government.

Shortly before the end of the war Hamilton left Washington's side for a field command. He participated heroically at the battle of Yorktown, and shortly thereafter, in 1782, retired from active military duty to study law and serve as Continental receiver of taxes for New York. He urged the New York legislature to pass a resolution calling for a general convention of the states to amend the Articles of Confederation. He also became a delegate to the Continental Congress. From 1782 to 1786 he continued to urge reform of the Articles, practice law, write legal and political essays, and develop financial skills. Then, as a member of the New York assembly, he managed to get himself named one of six commissioners to meet at Annapolis to frame trade regulations in the general

interest of all the states. Hamilton played a central role in transforming what looked to be a futile exercise into a call for a constitutional convention. He did this by looking beyond "commercial arrangements" to the general condition of the nation. What was needed was a new federal government with powers adequate to the "exigencies of the union."⁴⁴

Hamilton attended the Constitutional Convention in 1787, but his contribution was modest given his talents. His only substantial speech before the committee of the whole occurred on June 18th just before the vote on the Virginia and New Jersey plans. It was the longest speech delivered at the Convention. In it Hamilton offered an extremely nationalistic plan of government, but one that was also greatly misunderstood in its presentation. This speech generated many distorted rumors and accusations that Hamilton sought complete abolition of the states in favor of a completely national and monarchical government. Hamilton was indeed candid (because he assumed the secrecy of the debates would be maintained) about his affinity for the British system, and about his doubts concerning republican government. But he was talking hypothetically as well. That is, he was describing what he desired under the most ideal conditions. Needless to say, those

conditions did not exist, and he stated as much. ⁴⁵ He was neither advocating a monarchy for the United States nor ⁴⁶abolition of the states.

What Hamilton intended was to call attention to the defects of the New Jersey and Virginia plans in providing "for the exigencies of the Union" by highlighting the strengths of the British system, namely its capacity for "uniting public strength with individual security" through energetic public administration. A stable and permanent national union could not share sovereignty with state governments in national matters. State sovereignty would have to be confined to more local matters, and a strong national executive power established. This executive power was more analogous to monarchy than anything presented in the other two plans. And yet it was not a monarchy. The plan he presented was calculated, by its extreme character, to move the center of attention from more extreme democratic doctrines to more moderate ones that would accommodate the stability and efficiency of centralized executive power. ⁴⁷ He sought what he called a "high toned" ⁴⁸republic.

Shortly after the convention, Hamilton began publishing the "The Federalist" in cooperation with Jay and Madison, and in 1788 led the fight for ratification of the

Constitution in New York. His speeches and notes at the Poughkeepsie convention are an important supplement to the Federalist Papers. They receive much attention in this study.

In 1789 Hamilton aspired to and won appointment as Secretary of the Treasury in the new government. Washington was urged by Robert Morris, the Superintendent of Finance under the Articles of Confederation, James Madison, and others to appoint Hamilton. Washington informed Hamilton of his intention to appoint him to the office shortly after his inauguration. Hamilton sought this position because it would hold great power. It also provided the best match of his abilities with his desire to "promote the welfare of the country." So much did he believe this that he turned down exhortations from friends to seek more distinguished and less perilous positions. ⁴⁹ Playing an important role in framing the organic act ⁵⁰ establishing the Treasury, Hamilton proceeded in the next six years to formulate and implement plans for the development of the American administrative state.

Hamilton was unique among the founders for his preoccupation with matters of administration.

He was, indeed, the first American political

thinker to insist upon the importance of sound administration to the success of popular government. At a time when other first-rate minds were concerned with the problem of how much power should be granted and where it should be located and how it should be checked, his first-rate mind had gone on to wonder how power could be most effectively and systematically wielded. [51]

He was America's administrative pioneer. He explored the potential of efficiency, system, detail, planning, coordination, and timing for public policy. Furthermore, he realized, as others did, that the stature, organization, and policy of the national administration could be affected, even controlled, through the Treasury Department. Next to the office of President, the Secretary of the Treasury could be the most powerful position in the administration. It was while he remained in office.

During his tenure as Secretary of the Treasury (1789-1795), Hamilton organized the greater part of the national administration, articulated an administratively oriented method of constitutional interpretation, and drafted and implemented plans for secure and stable finances, public credit, monetary supply and minting. He also drafted plans for economic development, industrial policy and foreign policy. In short, Hamilton almost singlehandedly established an administrative orientation

for the new government. His establishment of sound public credit and finance created confidence in observers in America and abroad. He put the young national government on a firm footing politically, administratively, and financially. And he laid plans for its role in subsequent political and economic development.

Hamilton was successful in much that he did as Secretary of the Treasury. His talents, combined with the aegis of George Washington, guaranteed success for at least a short while. Resistance to Hamilton's programs began to mount, however, which began to express itself as part of⁵³ the development of political parties. As his tenure wore on, Jefferson and his Republican followers did everything they could to stop Hamilton's "Federalist" plans. They had a quite different view of the role of the national government, and therefore fiercely opposed Hamilton's measures. Hamilton became the center of controversy. A "host within himself," as Jefferson characterized him, Hamilton nevertheless tired of his embattled position and resigned in 1795 to resume legal practice and to work⁵⁴ behind the scenes politically.

Despite his resignation, Hamilton remained a major force in Washington's cabinet. Washington continued to consult him, the Federalists were led by him, and his

political writings increased in number. He remained a major force well into the Adams administration. There, however, he meddled too much.

Hamilton disliked Adams' habit of leaving the seat of government for his private retreat. He believed the President should be accessible, particularly when political opposition was growing stronger by the day. Because Adams failed in this regard, Hamilton, quietly ran the government through his friends in the cabinet. When Adams finally realized what was happening, he cut Hamilton's influence out entirely by replacing most of the cabinet. The ensuing controversy resulted in a divided Federalist party, and led eventually to the party's demise.

During the period from 1798 to 1800, Hamilton also served as Inspector General of the army. He tried to prepare the United States for what appeared to be an impending war with France. During this period he worked on plans for the development of military academies, a munitions industry, and a vastly improved infantry and cavalry. He was largely frustrated in these efforts for lack of funding and commitment by Congress and the Adams administration.

From 1801 until his death in 1804, Hamilton resumed

55

his law practice and continued to work politically against the new Republican administration under Jefferson. Ironically, he was forced to support his longtime enemy, Jefferson, in the election of 1801 against Burr whom Hamilton viewed as an unprincipled demagogue. His machinations against Burr in subsequent New York state politics resulted in the duel at Weehawken that ended his life.

In conclusion, if there is any one best way to characterize Hamilton's life, it is that he was above all else a partisan of American union. All of his pursuits appeared to be integrated by the intense desire for America to form a strong national character, and to develop for it an great and honorable reputation among the nations of the world. He believed that only in this way could liberty and justice for individuals be secured over long periods of time in an extended republic.

In one sense, Hamilton's nationalism was stronger than that of other founders because he had no real state loyalties to distract him. "Though he had a keen concern in New York politics, this was chiefly as elections and other actions in his own strategically situated state and city bore on the national fortunes. . . . To a singular degree he was a national figure." Born and raised in the

West Indies, he had no occasion upon coming to America to develop state loyalties in the manner of a Washington, Jefferson, Madison, or Adams. This does not in any way diminish their patriotism, but it helps to explain Hamilton's overwhelming zeal for American union. It was fitting that Hamilton phrased the following passage for Washington's Farewell Address:

The name of American must always gratify and exalt the just pride of patriotism more than any denomination which can be derived from local discriminations. [57]

The Character of Hamilton

Despite some valiant and well-researched efforts to the contrary, the character of Alexander Hamilton remains tarnished with unfair, pejorative generalizations that seem impossible to dispel. It is still common to hear him described as an arrogant aristocrat, a monarchist, an elitist, a defender of the interests of the wealthy class, a financial wizard for the rich, a man who disdained common folk, the enemy of Jefferson, etc. As one who accepted many of these generalizations before ever really studying his career, I understand quite well the uphill battle that Hamiltonians continue to fight.

I would hesitate to join such a difficult battle were it not for the importance of Hamilton's ideas and achievements in the founding and development of the nation. And when one studies these ideas and achievements, one is inevitably drawn by curiosity into more of his life and writings. What is revealed is a much nobler and more admirable Hamilton than one would ever expect. Many of his contributions are worthy of recognition and renewed contemplation, and so too is the value of his character to our democratic regime.

Hamilton is most often accused of being an aristocrat, an elitist, one who disdains common folk. However, there is a positive as well as a pejorative connotation attributable to the term aristocrat. The negative connotation has to do with distinctions of birth, and privileges and attitudes arising therefrom. Arrogance and disdain for lower classes was and is generally associated with this kind of aristocracy. In America this has always been unpopular, and rightly so. But there was a positive and much older description of aristocracy advocated by⁵⁸ Jefferson and Adams, called the "natural aristocracy." These were people with ability, wisdom, virtue, and noble ambition. These were, in more modern terms, "the best and the brightest." These people came from no particular

class. Circumstances of birth made no difference. This is the aristocracy that Hamilton, Jefferson, Adams, Washington, Madison, and most other Founders admired, well-born or not. Hamilton epitomized this kind of aristocrat. He was born a poor bastard, and he gained notice because of his raw genius, talent, noble ambition and good character. He was born to lead, and lead he did.

In this connection, Hamilton is also styled an elitist. In the sense that he thought the best people, the natural aristocracy, should govern, this is unquestionably true. But this was true of most of the founders, and of most subsequent leaders in our history, whether they be progressive reformers looking for the "best men" or "New Frontiersmen" looking for the "best and the brightest." If this elitism is a bad thing, then Hamilton shares the blame with many of our greatest leaders.

We have already discussed the charge that Hamilton was a monarchist. Suffice it to say that he refused to become a dogmatist about forms of government. He knew that no form of monarchy could ever be established in America, and never advocated its establishment. But this did not stop him from admiring the advantages of monarchy. It had been all too successful, particularly in England, not to be admired. His only real mistake was in frankly revealing

his admiration for the English monarchy in the supposedly secret proceedings of the Constitutional Convention.

It has also been charged that Hamilton was the great defender of the interests of the wealthy. That his policies favored the wealthy in many ways cannot be disputed. But even Charles Beard acknowledged that Hamilton

was swayed throughout the period of the formation of the Constitution by large policies of government--not by any of the personal interests so often ascribed to him He saw that by identifying their [the wealthy class's] interests with those of the new government, the latter would be secure; they would not desert the ship in which they were all afloat. [59]

Hamilton looked upon the rich as an important, useful asset for a newly established nation with little public wealth and few developed resources. He would use them for public benefit, never joining them in schemes calculated purely for their own interest. As Broadus Mitchell said, Hamilton's "only client was the whole country."⁶⁰

Finally, there is the charge that Hamilton disdained common folk, the masses. Hamilton believed that the greatest source of abuse in a popular government lay in its ultimate source of power, the people themselves. He feared the people would be easily aroused and confused into

dangerous actions by flattering demagogues. Furthermore, he feared and detested unruly mobs. The fact is, he deplored any situation where people's passions were stirred, and the moderating effects of reason and reflection were diminished. Hamilton, Madison and others hoped the Constitution they had designed would mitigate this tendency and encourage reason and deliberation. But this in no way implies a view of the people as being completely incapable of reason and deliberation. If this were so, Hamilton would have advocated an arbitrary and absolute form of rule rather than the "free" and popular government established in the Constitution. It was his view that the American people had refined manners and habits sufficient to support a republican government. But he wisely sought conditions that would limit the excesses and abuses of the democratic spirit. Most other founders joined him in this concern.

In conclusion, it is clear that Hamilton deserves more respect and admiration than he has received. The charge of monarchism and of disdain for the people, combined with impulsiveness and intensity that sometimes gave way to cutting invective, especially against the ever popular Jefferson, gives Hamilton the appearance of being arrogant and "un-American." Even when we dispel these half-truths,

he still appears arrogant, and therefore distasteful to the American palate.

It is understandable why he was not so popular in his own time. For the most part, Hamilton came with wise but unpopular ideas, and he advocated them straightforwardly and, some would say, arrogantly. Most often in his short career he strove against the popular current. For example, he reminded people of the necessity of government when, in revolutionary zeal, they tended to ignore or denigrate it. He advocated big, strong government to lead the way, when many wanted the opposite. He advocated a mixed and complex economy when many wanted a simple agrarian economy. He defended the rights of a hated minority (British loyalists after the war) lest the rights of others eventually be trammelled as well. He sought to avoid war when popular passions were blindly aroused in favor of it. He fought fanatical zeal with cool, hard rhetoric. He advocated collectivist values when individualist values predominated. He tried to shape future events when most were preoccupied with the events of the day.

Though these actions were wise, they hurt his popularity. But Hamilton did not seek popularity. He sought a more enduring fame, a recognition by wise and good people of future generations for having governed wisely, in

advancement of the public interest. To Hamilton, one gained this by following a guardianship or stewardship approach to leadership and governance that weathered sudden storms of passion in the people. It was with a more reasoned and longer term commitment that he viewed their interests. Hamilton's optimism about the people lay in his belief that they would eventually see the wisdom of this approach, and put their confidence in it. This is an approach that deserves respect and admiration in our society, even if it is accompanied by a distasteful arrogance. Arrogance is a small pill to swallow when it is backed by farsightedness and a noble devotion to the public good. It is his wisdom, devotion to the public good, and his foresight that I hope to capture in the following chapters.

Notes to Chapter I

1. Paul P. Van Riper, "The American Administrative State: Wilson and the Founders--An Unorthodox View," Public Administration Review, No. 6 (November/December, 1983): 480.

2. See Alexander Hamilton, James Madison, John Jay, The Federalist Papers, Clinton Rossiter, ed. (New York: The New American Library, 1961), no. 72, pp. 435-436. This work hereinafter short titled as Rossiter, Federalist.

3. Leonard D. White, The Federalists: A Study in Administrative History (Westport, Conn.: Greenwood Press, 1948), p. 478.

4. See Clinton Rossiter, Hamilton and the Constitution (New York: Harcourt, Brace & World, 1964), p. 254.

5. Ibid., p. 227.

6. Broadus Mitchell, Alexander Hamilton: The National Adventure, 1788-1804 (New York: The Macmillan Company, 1962), pp. 103-4.

7. It is at once ironic and instructive that Hamilton thought the British monarchical government to be the best system in the world of his day, but nevertheless accepted the American scheme as the most appropriate given the norms and habits of the American people, while later theorists such as Eaton, Ely, Wilson, and Goodnow sought to change the American scheme to fit the emerging parliamentary system in Britain, ignoring the norms and habits of the American people. Further discussion of this matter follows in the final chapter.

8. Hamilton to Robert Morris, April 30, 1781, The Papers of Alexander Hamilton, Vol. 2, Harold C. Syrett and Jacob E. Cooke, eds. (New York: Columbia University Press, 1961), pp.617-18. Hereinafter, all references to these papers (26 volumes total) will be referred to as Hamilton, Papers, Vol. #, pp.

9. See Hamilton's "Contenentalist No. IV," Papers, Vol. II, 669-674; "Report on Manufactures," Papers, Vol. X, 230-340. For a good summary of Hamilton's predictions in concerning economic and regulatory policy, see Lynton Caldwell, The Administrative Theories of Hamilton & Jefferson (New York: Russell & Russell, 1964), pp. 63-79.

10. Each of these topics will receive much greater attention and full citations in following chapters.

11. Clinton Rossiter claims Hamilton warned that "the American political system would crash in ruins. . . if a science of administration did not come in time to replace the 'very vague and confined notions of the practical business of government'" Rossiter, Hamilton and the Constitution, p. 174. Caldwell says "Hamilton anticipated an objective 'science of administration.'" Caldwell, Administrative Theories. . . , p. 3. It should be noted, however, that I can find no record of Hamilton calling specifically for a "science of administration." Neither Rossiter nor Caldwell give cites in which such an explicit call is made. Rather, they cite material which may be construed as a call for the science of administration. I support their claims for Hamilton on this matter. Hamilton called for further study of all aspects of government, and was adamant about the need for innovation, system, consistency, and stability brought about by contributions from the arts and sciences. It is also worth noting, as Caldwell does (Ibid., p. 23), that Chancellor James Kent, a long time friend and student of Hamilton's, claimed Hamilton intended to make a "full investigation of the history and science of civil government and the practical results of various modifications of it upon the freedom and happiness of mankind. . . and to have the subject treated in reference to past experience and upon principles of Lord Bacon's inductive philosophy, and to engage the assistance of others in the enterprise." Sadly, his early death precluded such an investigation. William Kent, Memoirs and Letters of James Kent (Boston: Little Brown & Co., 1898), pp. 327-28.

12. ". . . that if by the energy of the national character and the intrinsic difficulty of the enterprise the enemies of France shall be compelled to leave her to herself, this era may only prove the commencement of greater misfortunes: that after wading through seas of blood, in a furious and sanguinary civil war, France may find herself at length the slave of some victorious Scylla or Marius or Caesar:..." Hamilton, Americanus No. I, January 31, 1794, Papers, Vol. 15, p. 671.

13. See letter to John Dickinson, Sept. 25, 1783, Hamilton Papers, Vol. III, pp. 451-452.

14. Richard B. Morris, Basic Ideas of Hamilton (New York: 1957), p. xix; Clinton Rossiter (quoting Morris) Alexander Hamilton and the Constitution (New York:

Harcourt, Brace & World, 1964), p. 10.

15. The American Heritage Dictionary gives various definitions for the term "oracle," among them being "any person or agency considered to be a source of wise counsel or prophetic opinions." The American Heritage Dictionary, William Morris, ed. (Boston: American Heritage Publishing Co., Inc. and Houghton Mifflin Co., 1973)

16. Even in Washington, D.C. there are few and very insignificant mementos of Hamilton. There is only one statue of Hamilton that I know of in the capitol city, and that is located at the rear of the Treasury building. Albert Gallatin's statue stands in front of the Treasury building. It is a sad irony that Hamilton, who had so much to do with the establishment of the national government, and with the location of its central offices, should lack the recognition so generously bestowed on other founding fathers whose contributions were either matched or exceeded by him. In his biography of Hamilton, Robert Hendrickson calls attention to this lack of recognition. Clinton Rossiter has also lamented this fact. See Robert Hendrickson, Hamilton I & II (New York: Mason/Charter, 1976), Introduction, Vol. I; Rossiter, Hamilton and the Constitution, Chapter 7. I am thankful to Gary Wamsley for calling attention to the placement of Hamilton's statue behind the Treasury building.

17. In a review of approximately sixty textbooks and readers in Public Administration, I found the term used fairly often and usually in quotes, but no definitions or sources were given. Very few of these works listed the term in their indexes, and no textbook or reader used it in the title. The term is most commonly used in thematic works such as Dwight Waldo's The Administrative State. Here, again, very few definitions are offered. Furthermore, no published dictionary (specializing in public administration or otherwise) offers a definition of the term.

18. For example, Marshall Dimock offers the following definition:

By this term [administrative state], which has recently come into wide use, is meant the political state when it has taken on heavy responsibilities for operating the common affairs of the community, and especially those that deal with economic life. The administrative state is

the civil service state. It has been given so much to do that administration threatens to overshadow policy-making and politics. It is an interventionist state, a state that owns and operates many diverse activities. [Emphasis mine]

Fritz Morstein Marx defines it ". . . as a state in which administrative organization operations are particularly prominent, at least in their quantitative aspects." [Emphasis mine] Emmette Redford defines "administrative state" as ". . . a political-administrative system which focuses its controls and renders its services through administrative structures but includes also the interaction of political structures through which these are sustained, directed, and limited." [Emphasis mine] Finally, James O. Freedman offers the following. "The distinguishing quality of the modern administrative state is its reliance upon the administrative process as a principal instrumentality for the achievement of national policies." [Emphasis mine]

Marshall Dimock, Free Enterprise and the Administrative State (University, Alabama: Un. of Alabama Press., 1951), pp. viii-ix; Fritz Morstein Marx, The Administrative State: An Introduction to Bureaucracy (Chicago: Un. of Chicago Press, 1957), p. 2; Emmette S. Redford, Democracy in the Administrative State (New York: Oxford Un. Press, 1969), p. 4; James O. Freedman, Crisis and Legitimacy: The Administrative Process and American Government (Cambridge: Cambridge Un. Press, 1978), p. 3.

19. Van Riper, "The American Administrative State: . . ." pp. 477-478.

20. Any theory of responsibility in administration is political in the sense that it aids those administrators who are imbued with discretionary authority in determining the priority of certain values in decisionmaking. This clearly is "authoritative allocation of values."

21. A caveat must be added to this point. A regime's normative theory and its administrative arrangements can develop a clashing dissonance resulting from ignorance of or discontent with either or both the existing administrative arrangements and normative theory. "Reforms" that are based upon an alternative normative theory and/or administrative structure will clash with prevailing institutions, and politically stable relationships will be upset. I would argue that much of

our twentieth century budgeting and personnel reforms have suffered from such dissonance. John Rohr has addressed this problem on a broad constitutional level in a recent book. See John A. Rohr, To Run a Constitution: The Legitimacy of the Administrative State (Lawrence: University Press of Kansas, 1986).

22. Anyone attempting to develop a comprehensive definition of "administrative state" will be greatly aided by the work of Joseph Rosenfarb. His book Freedom and the Administrative State (New York: Harper & Bros., 1948) is seldom cited in public administration literature, but it is the only attempt at a comprehensive definition and study of the development of the administrative state. The book is full of helpful, fascinating insights and definitional criteria. His definition of the state as society's power system comprehends boundaries that extend beyond government per se, but it does not equate the state with society. This distinction is important in light of subsequent studies of elite power systems and policy subsystems whose boundaries extend beyond government institutions, but not to all of political society. Rosenfarb's book is also valuable in that it integrates the administrative state with both politics and economics. His major thesis is "that the interplay of man's quest for power with the need for integration arising from social division of labor must eventuate into state integration of the economy, for the state is the all-encompassing system of power." (pp. 44-45) His work is thus an important contribution to the literature on political-economy; any major study on the administrative state would be.

The only significant problems I have with Rosenfarb's analysis are in the conclusions he reaches concerning the reorganization of the national administrative system, and with his preoccupation with power as the sole animating force of politics.

Like many other thinkers of the New Deal period, Rosenfarb strove to adopt the British parliamentary system for this nation thinking it was far superior to ours in accommodating the needs of public administration. Hamilton, on the other hand, made a good case for the adequacy of our constitution in producing good administration. I believe we should exploit the potential of our constitution for producing good administration before adopting new forms of government. I would argue first that the energy required to change our system to a parliamentary one is far in excess of what it would take to reform our existing system, and second, that even if such a

change could be made, the parliamentary system would be ill adapted to the characteristics of our political society. The result would be more chaos and confusion, and less system, order, and planning.

Finally, Rosenfarb's preoccupation with power as the animating force of politics and the state leads to an inadequate treatment of a significant body of theory which espouses a "rights theory of politics." This body of theory stems primarily from theorists such as Hobbes, Locke, and Hegel, and underlies most varieties of Western constitutionalism. It uses concepts such as right, obligation, authority, law and justice to explain political arrangements. In contrast, Rosenfarb's orientation is more in line with Weberian or Marxian power theories of state. Social or economic relations determine political arrangements. State power is monopolized, legitimate violence or coercion (framed in positive law) over a given territory. Though this is not the place for an extended discussion on this matter, it is nevertheless important that this distinction be acknowledged here.

The rights theory was predominant during the founding period. The founders' concept of law, right, authority, obligation, etc. were rich in moral implication and content. Power was considered legitimate if exercised within the reasoned boundaries of law, right, authority, and so on. If power was exercised outside this context it was arbitrary and capricious. In the power theories that developed in the nineteenth century, positivist scientific doctrine stripped away the moral context of authority, law, right, etc. and identified their most tangible, and therefore measurable, element--coercion. Coercion then became the essential rather than an extreme element of law, authority, and state. This is, in my view, a harmful distortion because it ignores the much larger moral and persuasive context of governance--of public administration. Unfortunately, most of our administrative concepts are most heavily affected by this positivistic influence, and have lost or never had the moral content implicit in administrative concepts used by Hamilton and other founders. In the following chapters, this will be illustrated in regard to the use of some key terms.

23. Since the 1940's, a great number of authors have effectively criticized the theory of a politics/administration dichotomy, generally advancing a bureaucratic politics model in its place. However, It should be noted that the idea of a politics/administration dichotomy is not entirely useless. Though administration

adds a dimension to political behavior and structure, it also involves routine and ministerial actions which flow from political decisions and strategies. These are largely non-political in nature because there is little or no discretion involved, or the stakes involved in one's discretion have no political impact.

It should also be noted that most definitions of "administrative state" do not accept or espouse a politics/administration dichotomy. Only Marshall Dimock's definition assumes such a dichotomy, and the corollary idea that administration supplants politics in such a state.

24. For example, see Douglas Yates, Bureaucratic Democracy: The Search for Democracy and Efficiency in American Government (Cambridge, Mass.: Harvard Un. Press, 1982)

25. See James Q. Wilson, "The Rise of the Bureaucratic State," The Public Interest, no. 4, 1978; Stephen Skowronek, Building a New American State: The Expansion of National Administrative Capacities, 1877 - 1920 (London: Cambridge Un. Press, 1982)

26. Morstein Marx, The Administrative State, p. 14; Rosenfarb, Freedom and the Administrative State, Chapters I-VI; Van Riper, "The American Administrative State," PAR, pp. 477-480; Freedman, Crisis and Legitimacy, p. 4. Also see Reinhold August Dorwart, The Prussian Welfare State before 1740, Cambridge, Mass: Harvard Un. Press, 1971); and Charles Tilly, ed., The Formation of National States in Western Europe (Princeton, N.J.: Princeton Un. Press, 1975).

27. See Skowronek, Building a New American State, pp. ix, 4, and 20-23.

28. Karl Popper, Conjectures and Refutations: The Growth of Scientific Knowledge (New York: Basic Books, 1962).

29. Jay D. White, "Action Theory and Literary Interpretation," Administration and Society, forthcoming.

30. Harold C. Syrett, Editor, and Jacob E. Cooke, Associate Editor, The Papers of Alexander Hamilton (New York: Columbia University Press, 1961-1979); John C. Hamilton, ed., The Works of Alexander Hamilton (New York: 1851). These papers were buttressed by John C. Hamilton's other works, Life of Alexander Hamilton, Vol. I (New York:

Halsted & Voorhies, 1834; Vol. 2 (Philadelphia: Appleton, 1840), and A History of the Republic of the United States of America . . . As Traced in the Writings of Alexander Hamilton and of his Contemporaries, 7 vols. (New York: Appleton, 1857-1864); Henry Cabot Lodge, eds, The Works of Alexander Hamilton, "Constitutional Edition," (New York: The Knickerbocker Press, 1904); Julius Goebel, Jr., and Joseph H. Smith, eds., The Law Practice of Alexander Hamilton: Documents and Commentary, 5 vols., (New York: Columbia University Press, 1980).

31. Broadus Mitchell, Alexander Hamilton: Youth to Maturity, 1755-1788 (New York: The Macmillan Co., 1957), and Alexander Hamilton: The National Adventure, 1788-1804 (New York: The Macmillan Co., 1957); Louis M. Hacker, Alexander Hamilton and the American Tradition (New York: 1957); John C. Miller, Alexander Hamilton: Portrait in Paradox (New York: Harper & Row, 1959); Robert Hendrickson, Hamilton I & II, 2 vols. (New York: Mason/Charter, 1976).

32. Lynton K. Caldwell, The Administrative Theories of Hamilton and Jefferson: Their Contribution to Thought on Public Administration (New York: Russell & Russell, 1964).

33. Gerald Stourzh, Alexander Hamilton and the Idea of Republican Government (Stanford: Stanford University Press, 1970); Harvy Flaumenhaft, "Alexander Hamilton on the Foundation of Good Government," The Political Science Reviewer, VI (Fall, 1976), 143-214; Idem, "Hamilton's Administrative Republic and the American Presidency," in The Presidency in the Constitutional Order, Joseph M. Bessette and Jeffrey Tulis, eds. (Baton Rouge: Louisiana State Un. Press, 1981), 65-114; Idem, Review of Stourzh in APSR, Vol. LXVII, No. 2, June 1973, pp. 637-39; and Gilbert Lycan, Alexander Hamilton & American Foreign Policy: A Design for Greatness (Norman, OK: University of Oklahoma Press, 1970). Flaumenhaft's review of Stourzh provides an excellent critique of Stourzh's preoccupation with Hamilton's foreign policy as central to his whole concept of American governance. Because I use Stourzh rather extensively in my analysis, I must emphasize that I agree with Flaumenhaft's argument that Hamilton's attention was focused primarily upon the needs of American public administration, and only secondarily upon foreign policy. Foreign affairs administration was only one aspect of Hamilton's vision of the American administrative republic. Stourzh's analysis is otherwise solid and insightful.

34. Rossiter, Hamilton and the Constitution. Rossiter devotes the last chapter of the book to this subject,

Nevis Island. There is some dispute concerning the date of his birth. Many biographers and historians believe he was born January 11, 1755 which accords with the extremely meager documentation of 18th century records on Nevis Island (no birth certificates, baptismal or other records have been found). However, Hamilton claimed he was born in 1757. Some authors accept this date. Robert Hendrickson makes a credible case for 1757, challenging the reliability of the record at Nevis (a probate document dated 1768), and accepting Hamilton's (and his family's) word on the matter. See Robert Hendrickson, Hamilton I: 1757-1789 (New York: Mason/Charter, 1976), pp. 1-5.

40. Hamilton made his famous "Speech in the Fields" in New York City, July 6, 1774, where he impressed several leaders of the independence movement. His first pamphlet "A Full Vindication of the Measures of the Continental Congress," replying to "Free Thoughts on Congress" by A. W. Farmer (Samuel Seabury) was published December 15th, 1774. Soon thereafter he published "The Farmer Refuted" in response to Seabury's "A View of the Controversy" (Feb. 1775), and "Remarks on the Quebec Bill, Parts One and Two" (June, 1775).

41. For an indepth investigation of Hamilton's role as Washington's aid-de-camp, see Broadus Mitchell, Alexander Hamilton, Youth to Maturity: 1755-1788 (New York: The Macmillan Co., 1957), Chapters 8-14.

42. The term "popular government" was a term frequently used by founding statesmen. It should be noted that I use this term interchangeably with "republican government" and "republic," and that all of these terms are considered "democratic" in character. I believe, with Martin Diamond, that the founders sought out and established a theory of government "which seeks to render a democratic regime compatible with the protection of liberty and the requisites of competent government." They sought a democratic form of government that would be stable and just, one that would protect liberty against tyranny. A simple democracy, whether representative or direct, was not viewed as a sufficient protection against a particularly pernicious brand of tyranny -- tyranny by the majority. This is democracy without limit, an extreme which too easily ignores the dictates of justice and natural right. The founders (of "Federalist" persuasion primarily) therefore wisely sought and developed a more complex democratic form of government. One intended, through institutional arrangements of power, to limit the excesses and inadequacies of democracy, without destroying its

principle. See Martin Diamond, The Founding of the Democratic Republic (Itasca, Ill.: F.E. Peacock Publishers, Inc., 1981), Chapter 1. Also see David F. Epstein, The Political Theory of the Federalist (Chicago: University of Chicago Press, 1984), Chapter 4, for an excellent discussion on Publius' definition of "Republican government." Hamilton's definition of republican government will be explained in a subsequent section of this chapter.

43. For example, in 1784 Hamilton published his "Phocion" papers criticizing the New York legislature's violation of certain articles, of the newly established peace treaty with Britain, having to do with confiscation of loyalist property. In his law practice he argued the famous case of Rutgers v. Waddington concerning questions of supremacy of U.S. law and treaties over state law. He also wrote the constitution, charter and incorporation papers for the first New York bank.

44. Hamilton wrote the Address of the Annapolis Convention (Sept. 14, 1786) that called for a general convention. The address was unanimously supported by the convention. See Hamilton, Papers, Vol. III, pp. 686-690.

45. Hamilton was not dogmatic about forms of government. He believed as Montesquieu did that forms must be fit to the character of a country in much the same way a coat is fit to a person. Also, every form has its strengths and weaknesses. Furthermore, the penchant for a republican form of government in America did not arise fully until the independence movement of the 1770s. Before that, most colonial leaders were loyal to the King against Parliament. Parliament had been the chief oppressor. This explains Hamilton's early remark that the British parliament would "be a more intolerable and excessive species of despotism than an absolute monarchy." Before republicanism arose, colonial leaders advocated "free government," which is to be distinguished from arbitrary government, or government by will. In free government, "man is governed by laws to which he has given consent, either in person, or by his representatives." By this logic, many forms of government, including monarchies, may be deemed "free." However, in revolutionary America, the absolute power of a monarch came to be equated with arbitrary power. Monarchy was therefore no longer viewed as a free form of government. Paine's "Common Sense" pamphlet solidified this view. Hamilton opposed this view, refusing to be so dogmatic. See "A Full Vindication," pp. 47-48, and "A Farmer Refuted," pp. 99-100, in Hamilton,

Papers, Vol. I. Stourzh, in Hamilton and the Idea of Republican Government, pp. 40-44, provides an indepth analysis of this historical development.

46. The charge that Hamilton was a monarchist was used very effectively by his opponents (Jefferson especially) as a political weapon. However the charge has been more than adequately refuted by Hamilton as well as by later historians, biographers, and analysts of the founding period. For example, see Mitchell, Hamilton: Youth to Maturity, pp. 393-403 for an indepth analysis of Hamilton's speech as recorded by Madison, King, Yates, Lansing, and as recorded in Hamilton's own notes and outlines. A careful reading of Hamilton's speech and subsequent comments (particularly those of June 19th) is in itself sufficient to see that he was not calling for a monarchy, or for abolition of the states. See James Madison, Notes of Debates in the Federal Convention of 1787, Adrienne Koch, ed. (Athens, Ohio: Ohio Un. Press, 1966), pp. 129-139, 152-153; and Hamilton, Papers, Vol. IV, pp. 178-223. These pages of Hamilton's Papers contain all five versions of his speech, with some very helpful editing and footnoting by Syrett and Cooke. Also see Hamilton Papers, Vol. XXV, pp. 536-39; and Vol. XXVI, pp. 147-49 for specific rebuttals by Hamilton concerning monarchism. Also see Louise Dunbar, A Study of Monarchical Tendencies in the United States from 1776-1801 (Urbana, 1922), pp. 82-98 & 124-26 for a defense of Hamilton against charges of being a monarchist. Finally, see Rossiter, Hamilton and the Constitution, p. 314, fn. 1.

47. This view of Hamilton's strategy is supported by Broadus Mitchell as well as many other biographers and historians. For example, see Mitchell, Hamilton: Youth to Maturity, p. 392; and John C. Miller, Alexander Hamilton: Portrait in Paradox (New York: Harper & Row, Publishers, 1959), pp. 162-169.

48. Hamilton's desire to retain "the excellencies of republican government," and to have its "imperfections lessened or avoided," is later reiterated in Federalist #9. See Alexander Hamilton, James Madison, & John Jay, The Federalist Papers, Clinton Rossiter, ed. (New York: The New American Library, 1961), pp. 71-76. Subsequent references to this work will be short titled as Rossiter, Federalist. Further, and conclusive, evidence that Hamilton was not seeking to abolish the states is found in his notes and speeches to the New York Ratifying Convention. Hamilton Papers, Vol. V, pp. 70-71, 100-103, 138-139. In his June 28th speech, Hamilton, with the help of Robert Yates (whose

notes were involved in the controversy) rebutted certain accusers (John Lansing, Jr. in particular) directly on his supposed remarks at the Constitutional Convention concerning the states.

It should also be noted that Hamilton was not advocating a "mixed regime" wherein various permanent classes or interests are represented. This is the scheme of British parliamentary government. Hamilton, along with other nationalist thinkers, were advancing a new kind of balanced government, one in which powers were loosely divided and apportioned by a Constitutional/legal framework designed to "provide a more faithful and regular administration, and to prevent a union of governmental power, with all its dangers for the people." See Herbert J. Storing, What the Anti-Federalists Were For: The Political Thought of the Opponents of the Constitution (Chicago: Un. of Chicago Press, 1981), Chapter 7, pp. 53-63 for a lucid analysis of this vital distinction between the mixed government of Britain and the balanced government of the American Federalists.

49. See Hendrickson, Hamilton I, Chapter 24; and Mitchell, Hamilton: The National Adventure, Chapter 2.

50. Ibid., There is no conclusive proof that Hamilton authored the Treasury Act of 1789. However, the evidence of his influence shows convincingly in the language of the act itself, and in the circumstances of its passage.

51. Rossiter, Hamilton and the Constitution, p. 174.

52. Others in the newly established government were aware of the potential of a powerful Treasury department. The first Congress was particularly aware of this. They were understandably jealous of their power over the purse. This led to heated debate over the substance of the Treasury Act. Many in Congress new Hamilton was going to be appointed, and feared his genius, ambition, and rhetorical skill. Much of the debate thus turned on the Secretary's powers, i.e., whether or not the treasury should be run by a board or single head, how and what he should "report" or "prepare" for Congress' deliberations, how his accountability to Congress could be insured and balanced with his accountability to the President, and so on. Fortunately, the friends of an energetic administration prevailed under the leadership of Madison and Boudinot, and a powerful (though also accountable) Treasury Department was established. See Debates and Proceedings in Congress of U.S. (Gales and Seaton, 1834), pp. 592-607, 611-615 for

a record of this debate. For a discussion of the affect of Hamilton's presence on these debates, see references in note 10 above.

53. Particularly hurtful to Hamilton was the defection of Madison to the Republican ranks. Though Madison's defection is not completely understood, it came very quickly in 1790 with Hamilton's handling of the assumption issue and with his policies on public credit generally. For evidence of Hamilton's surprise and of his appraisal of Madison in general, see "Conversation with George Beckwith," October 1789, in Hamilton Papers, Vol. V, p. 488; and letter to Edward Carrington, May 26, 1792, Papers, Vol. XI, pp. 426-444. Also see the discussion of Hamilton's praxis later in this chapter.

54. It should also be noted that Hamilton was paid a meager salary (\$3500/year) as Secretary of the Treasury. Because of his public spiritedness he seldom made much money. He had the ability and opportunity as a lawyer and financier to become extremely wealthy. He ignored these opportunities in pursuit of public life and accomplishment. Were it not for the wealth of the Schuyler family (his in-laws) and the generosity of his friends, he probably would have been insolvent most of his life. As it was, he left his family insolvent upon his death.

55. Though much of Hamilton's law practice involved routine but sometimes lucrative matters, he also engaged himself in some politically and legally significant cases. Where a particular case involved some principle or principles of public interest to which Hamilton was particularly attached, he often rendered telling arguments. For example, in the test case Rutgers v. Waddington, (Ms. Mayor's Ct. Mins. 1784-85, 15 sub Feb 24, 1784) Hamilton laid much groundwork for the doctrine of judicial review, arguing the unconstitutionality of the New York Trespass Act of 1783 designed to abrogate the property rights of loyalists. In Hylton v. U.S., (3 Dallas, U.S. Reports, 171-183 (1796)), Hamilton, serving as counsel for the United States, defended the constitutionality of a Carriage tax, thereby strengthening the national government's hand. In the People v. Crosswell (1804) (no official account of proceedings found), Hamilton fashioned modern American libel law from a crude British legal tradition, and simultaneously lent much greater strength to our Constitutional freedom of press. For elaboration of these and other important cases in which Hamilton took part, see Julius Goebel Jr., Ed., The Law Practice of Alexander Hamilton: Documents and Commentary, 5

Vols., 1964-81.

56. Mitchell, Hamilton: Youth to Maturity, p. 379.

57. Hamilton, Papers, Vol. XX, p. 270; Victor Hugo Paltsits, ed., Washington's Farewell Address (New York: New York Public Library, 1935), p. 143.

58. Both John Adams and Thomas Jefferson used this term. For example, see Jefferson's letter to John Adams, October 28, 1813, in Lester J. Cappon, ed., The Adams-Jefferson Letters, 2 vols. (Chapel Hill, 1959), Vol. II, pp. 388, 391.

59. Charles A. Beard, An Economic Interpretation of the Constitution (New York: Macmillan, 1935 ed.), pp. 100-101, 114. Also see Vernon Parrington, Main Currents in American Thought (New York: 1930), Vol. I, pp. 292-304 for the same view.

60. Mitchell, Hamilton: Youth to Maturity, p. xii. There is a passage in Hume's enquiry on morals (that Hamilton no doubt had read) that I think accurately describes his disposition.

A man who has cured himself of all ridiculous prepossessions, and is fully, sincerely, and steadily convinced, from experience as well as philosophy, that the difference of fortune makes less difference in happiness than is vulgarly imagined; such a one does not measure out degrees of esteem according to the rent-rolls of his acquaintance. He may, indeed, externally pay a superior deference to the great lord above the vassal; because riches are the most convenient, being the most fixed and determinate, source of distinction. But his internal sentiments are more regulated by the personal characters of men, than by the accidental and capricious favours of fortune.

Dauid Hume, Enquiries Concerning Human Understanding and Concerning the Principles of Morals, L.A. Selby-Bigge & P.H. Nidditch, eds. (Oxford: Clarendon Press, 1975), p. 248.

61. As will be explained later, during the founding period, the term "free" government had a specific connotation of rule by law or reason.

CHAPTER II

THE ROOTS OF AMERICAN PUBLIC ADMINISTRATION

Though we cannot acquiesce in the political heresy of the poet who says:

"For forms of government let fools
contest--
That which is best administered is
best,"--

yet we may safely pronounce that the true test of a good government is its aptitude and tendency to produce a good administration.

Alexander Hamilton, Federalist no. 68

. . . alone among the statesmen and political thinkers of his generation (and indeed of several generations after his death), he understood the importance of administration to the success of popular government.

Clinton Rossiter, 1964

Hamilton's Administrative Theory of Governance

The Nature of Republican Government

The concept of republican government is by no means a

clear one. This was as true during the founding period as it is today. Madison pointed out in Federalist 39 the many and confused uses of the term. Hamilton did the same during the New York State Ratifying Convention, and later in defending himself against charges of being a monarchist. ¹ The founders' use of a variety of terms to describe the government they were constituting added to the confusion. They frequently used terms such as "popular government," "republican government," and "republic," and less frequently the terms "democratical government," "elective government," and "representative government." These terms were used synonymously for the most part. Hamilton may have been the first to use the then novel term "representative democracy" to describe American government most precisely, ² but he used "republican" and "popular" government most often.

Hamilton's concept of republican government is probably best understood by examining his brief but thoughtful analysis of it in a letter to the New York Evening Post in 1802.

The truth seems to be, that all Governments have been deemed Republics, in which a large portion of the sovereignty has been vested in the whole, or in a considerable body of the people; and that none have been deemed Monarchies as contrasted with the Republican standard, in which

there has not been an hereditary Chief Magistrate.

Were we to attempt a correct definition of a Republican Government, we should say, "That is a Republican Government, in which both the Executive and Legislative organs are appointed by a popular Election, and hold their offices upon a responsible and defeasible tenure." [3]

Hamilton was playing to the then popular notion of a republic, but he also betrayed his own notion, which differs somewhat. There are five elements expressed or implied in the above quote that comprise a republic in Hamilton's view.

First, when Hamilton said republics have been deemed to have "a large portion of the sovereignty . . . vested in the whole, or in a considerable body of the people," he really meant a "large portion" as distinguished from total possession of sovereignty. To the extent that the people were a source of the Constitution, they were sovereign. Now it might seem that nothing else but living, breathing people could be the source of a constitution, but to many founders, and Hamilton in particular, there were other considerations. These involved natural law and the divisibility of sovereignty. Natural law was rationally and intuitively apprehendable. It was obligatory to individuals, but existed outside or beyond them.

Good and wise men, in all ages, have embraced a dissimilar theory [dissimilar from Hobbes' theory]. They have supposed, that the deity, from the relations we stand in, to himself and to each other, has constituted an eternal and immutable law, which is, indispensibly, obligatory upon all mankind, prior to any human institution whatever.

Hence, all constitutions created by men are also subject to the dictates of natural law. A positive law that violates natural law is void.

No human laws are of any validity, if contrary to this [natural law]; and such of them as are valid, derive all their authority, mediately, or immediately, from this original. . . . When human laws contradict or discountenance the means, which are necessary to preserve the essential rights of any society, they defeat the proper end of all laws, and so become null and void." [4]

For example, bills of attainder or ex-post-facto laws would probably be considered invalid even if not expressly prohibited. Natural law, therefore, provides limits and structure for sovereign power that extend beyond the people of a specific regime. In this sense natural law is a source of sovereignty. This is confusing usage given Jean Bodin's formulation of the concept of sovereignty. But Hamilton's use of the concept differed substantially from Bodin's original formulation.

In its original sense sovereign power existed outside

or above positive law, and was indivisible. Furthermore, a sovereign was considered accountable only to God. In effect, this conferred absolute and unquestionable power in one person--the king. The king could ignore or abrogate even the natural law, answering to no one but God. This released him from the control of popes or any others who would interfere with his affairs. In this context sovereignty could be used to thwart natural law. However, by Hamilton's day, the concept was significantly modified. The idea of popular sovereignty arose out of the natural law principle that governments were to be formed by the consent of the people. Distinctions were made between absolute and arbitrary power. Absolute power could be justified before the people, arbitrary power could not. To act arbitrarily was to act outside the bounds of natural law. Absolute power was to be exercised within the bounds of natural law.

In addition, Hamilton and many of his contemporaries thought sovereignty was divisible among various ruling powers. The people could extend sovereign power to any ruling institutions they established among themselves. Hence, positive, constitutional powers vested in a governing institution could be sovereign as well. By dividing sovereignty in this way the people were limiting

their own ruling powers. By their own consent, they have only a "portion" of sovereignty.

It is worth noting that the founders' concept of sovereignty had thus come to mean something entirely different than as originally defined. A much more appropriate term for describing the kind of power the founders spoke of would be "plenary power." This is power "complete in all its aspects or essentials." For example, when speaking of executive power as being plenary, this means the executive has all those powers deemed essential or requisite to the performance of executive functions. This is easily distinguished from having all conceivable power, which is more in the spirit of Jean Bodin's original concept of sovereignty. Hamilton used the term "pleanary power" at least as often as "sovereignty," and quite clearly in the sense defined here. He also used the term "requisite powers" in the same sense. In his opinion on the constitutionality of the bank he uses "requisite" in direct reference to sovereignty.

Now it appears to the Secretary of the Treasury, that this general principle is inherent in the very definition of Government and essential to every step of the progress to be made by that of the United States; namely--that every power vested in a Government is in its nature sovereign, and includes by force of the term, a right to employ all the means requisite,

and fairly applicable to the attainment of the ends of such power; and which are not precluded by restrictions & exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society.
[emphasis original][5]

Clearly, the terms "sovereignty" and "requisite" are synonymous with "plenary" in this passage.

In Hamilton's mind, then, there were two significant limitations on the people's sovereignty. The first was natural law. In Federalist 78, Hamilton emphasizes the popular portion of sovereignty for rhetorical purposes, but in other places, such as his Phocion letters, he emphasizes the "dictate of natural justice, and a fundamental principle of law and liberty," the "dictates of reason and equity," and "many other maxims, never to be forgotten in any but tyrannical governments."
6

The second limitation is self-imposed through constitutional government. The people of the United States limit their own sovereign power by extending some to legislative, executive and judicial institutions. Hamilton frequently referred to these institutional powers as sovereign.

This view of sovereignty is significant for two related reasons. First, Hamilton is tying republican government to rule by law rather than by force or will.

"Government is frequently and aptly classed under two descriptions--a government of FORCE, and government of LAWS; the first is the definition of despotism--the last, ⁷ of liberty." Republican government must be reasonable rather than arbitrary and capricious in its actions if the people are to be free. The rule of law, if respected, ensures that reason prevails over arbitrary will (by rulers and ruled) in governance. The Constitution, as the fundamental positive law of the nation, subjects rulers and ruled to its precepts, and hopefully embodies the consent of the people and the principles of natural law and justice that transcend it. In a sense it is the embodiment and expression of sovereignty. Indeed, some argue Hamilton ⁸ considered the Constitution itself to be sovereign.

Second, this view of sovereignty conditioned Hamilton's view of the public good. Natural law embodies timeless moral principles, many of which find expression as regime values (life, liberty, property, due process, accountability, etc.) in our Constitution and laws. These values are central to the structure of the government and the society. They contribute to a view of what it means for individuals, for groups, and for the nation to be virtuous, noble or good. There is a collective as well as individual moral character to be maintained. For Hamilton,

the pursuit of happiness, prosperity, welfare (general or individual), and security was to take place within the bounds of these principles. He and many other nationalist founders presumed the citizenry would continue to revere these principles, and select enlightened, public spirited officials most capable of preserving, protecting and enhancing those values in the pursuit of the public interest.⁹

The second element contributing to republican government is the lack of any hereditary offices. Though Hamilton proposed tenure during good behavior for the President and the Senate in his plan at the Federal Convention, he never advocated hereditary office. In fact, the idea of hereditary office went very much against Hamilton's preoccupation with merit in appointment to office, whether for the office of President or for a mere clerkship.

As to my own Political Creed, I give it to you with the utmost sincerity. I am affectionately attached to the Republican Theory. I desire above all things to see equality of political rights exclusive of all hereditary distinctions firmly established by a practical demonstration of its being consistent with the order and happiness of society.[10]

Given Hamilton's own origins, it is unlikely that

considerations of birth would have much sway over him in any matters, much less those concerning public office.

Third, Hamilton's reference to "Executive and Legislative organs" presupposes a separation or partitioning of power in republican government. This is one way of preserving the rule of law, and, as shall be seen later, of providing safety for the people and energy in the administration.

The fourth element involves popular election and the idea of representation. It was essential in a republic that the "principal organs of the executive and legislative departments be elected directly or indirectly by the people." A "representative democracy" is a republic with "representatives chosen by them [the people] either mediately or immediately and legally accountable to ¹¹ them."

The fifth and final element has to do with responsibility and accountability. All officers of government were responsible to the law and ultimately to the people, and defeasible tenure was an important way of insuring their accountability. Defeasible tenure was particularly important in relation to the Presidency. Because the President was roughly analogous to a monarch,

there was great concern in the Federal Convention about the power to impeach him if he overstepped his bounds. Every officer of government was to be subjected to the operation of law.

In summary, Hamilton's notion of republican government included (1) the rule of law with sovereignty emanating from the people in accordance with the law of nature; (2) no hereditary office; (3) separation of powers; (4) popular elections when governance is carried out by representatives; and (5) responsibility and defeasible tenure. It is significant that, within the framework of these criteria, there is a lot of room for variation in form. This was important to Hamilton because some forms were more conducive to energy and stability than others. To Hamilton, considerations of form or structure must take place within the context of the ends entrusted to the government. It made no sense to him to allow form to cripple the ability of government to achieve those ends, and he continually had to remind opponents of the new Constitution of this point. He believed the ends of American government required an energetic and stable administration. The "aptitude and tendency" of the form of government to produce good administration was his central concern.

The Nature of Public Administration

In Federalist 72, Hamilton gives us his basic definition of public administration.

The administration of government, in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary; but in its most usual and perhaps in its most precise signification, it is limited to executive details, and falls peculiarly within the province of the executive department. The actual conduct of foreign negotiations, the preparatory plans of finance, the application and disbursement of the public moneys in conformity to the general appropriations of the legislature, the arrangement of the army and navy, the direction of the operations of war--these, and other matters of a like nature, constitute what seems to be most properly understood by the administration of government. [12]

In this definition, Hamilton sees public administration first as the process or operation of the whole government. In short, public administration is "governance." Second, he sees it in a narrower and more precise sense as the formulation and implementation of plans and policies. In this more precise sense, public administration "falls peculiarly [or especially] within the province of the executive department" or branch. There is in Hamilton's definition, then, a theory of differing levels and foci of administration. It proceeds from the

level of general governance where the three powers of government are partially separated, to levels of "executive detail" where the three powers are necessarily integrated, but limited by specific foci.

In this context, Hamilton is concerned with form to the extent that it encourages the operations of the government as a whole to contribute to a safe, wise, stable and energetic implementation by the executive. The actions of the executive branch are going to reflect the operations of the entire government. Indeed, for Hamilton, the executive administration is the focal point of governance. All powers would be manifested in executive operations where the ends of government are realized. Therefore, all branches would participate in distinctive ways in the controlled improvement of executive administration. This implies politically dynamic and reciprocal relationships between the three branches that percolate through the levels of the executive administration.

Because the executive was to be the focus of administration, Hamilton saw executive administration not only as implementation, but as the primary policy formulation process. The executive branch would necessarily be most familiar with the intricacies of complex operations and problems. Well-formed systematic

plans should therefore be generated in the executive branch and submitted for consideration by Congress. The executive would not only be the focus, but the leader in administration.

In conclusion, Hamilton viewed public administration as a government wide enterprise. It is governance. All the branches interpret the Constitution and ends therein established. If their interpretations are to prove useful, they will focus them upon the operations of executive administration, for this is where intentions are applied, and where application educates intentions. The executive administration, therefore, plays a leading role in policy formulation and implementation. The ends of government are as much its concern as are the means. Hamilton argued this in his writings and speeches, and demonstrated it in his practice as Secretary of the Treasury. Accordingly, we must consider Hamilton's view of the ends of government if we are to understand the logic of his means.

The Ends of Republican Government:

Hamilton's administrative theory of governance cannot be understood outside of its relation to the basic ends or objects of government. Hamilton wanted an "energetic"

administration as an effective means to general ends. David Epstein, in his analysis of the Federalist Papers, identified two broad objects of government under which all other ends could be classed. They are "justice" and the "public good." As Epstein points out, justice is the more fundamental object, and is characterized by its "negative merit." That is, government is concerned with establishing and preserving justice, i.e., avoiding, refraining from, or preventing abuse of private rights. Government must keep itself and others from committing injustice. It must protect rights. "But while private rights must be respected by government, it is the public good which is to be 'pursued' by government." Hence, the public good involves "positive merit." It requires "the more active attention of a 'good government.'" It is, as Madison said, "the supreme object to be pursued," though not at the expense of individual rights.

15

For Hamilton, the public good was "sacred." It consisted of several elements which he discusses in Federalist 23, and subsequently pursued as an administrator.

The principle purposes to be answered by union are these--the common defense of the members; the preservation of public peace, as well against internal convulsions as external

attacks; the regulation of commerce with other nations and between the States; the superintendence of our intercourse, political and commercial, with foreign countries. [16]

The common defense and preservation of public peace contribute to general security and order for the union, while regulation of commerce and foreign relations are intended to increase national prosperity. To Hamilton, prosperity through commerce was already an end-mean relation firmly established in America, and had "already excited uneasy sensations in several maritime powers of Europe."¹⁷ The general welfare of the people would be guaranteed in large part by a prosperity gained through "active commerce." Contrary to the Anti-Federalists, Hamilton saw as much good coming from commercial prosperity as bad. Commercial pursuits could blend, interweave and pacify the interests of the people; justly reward their exertions; and "be the most useful as well as the most productive source of national wealth."¹⁸ Accordingly, government should promote and regulate commerce to the benefit of the nation as a whole. In this connection, Hamilton demonstrated a brilliant grasp of the intricacies of fiscal policy and political economy. Such knowledge could be used by the public administration to win the confidence of the people and restore the nation's integrity abroad.

While security, order and prosperity benefit individuals, they also win the confidence and trust of the people (citizens and foreigners) in the nation and its government. This contributes to what Hamilton referred to variously as national honor, character, dignity and reputation.¹⁹ For Hamilton, the nation had some characteristics of personality, and it had interests apart from the aggregate of private interests. The national interest or public good doesn't arise solely from the interplay of private interests. The nation, as a community, has distinct interests that form around a common good that presupposes the moral and philosophical tenets of natural law, as well as the approbation of the people. Such tenets morally bind the community and provide guidance in the development of specific groups or interests in society. The common good is a common standard shaped by an overarching morality. Ideally, pursuit of the common good moderates specific interests and integrates them into a whole community.

The distinction between public and aggregate interest is alluded to in Federalist 31 where Hamilton argues government ought to be "free from every other control but a regard to the public good and to the sense of the people." The two were not always the same, though both were

20

considered very important in a republic. Indeed, as stated earlier, they formed the basis of sovereignty.

That the nation had a character of its own to be maintained was central to Hamilton's vision of greatness or glory for America. In order that any nation preserve and protect private rights and pursue the public good, i.e. ". . . establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty. . ." it must look upon itself as a whole community amidst a world of communities. Our relationships with, and standing among, other communities or nations determines in part our ability to meet those great ends. It was Hamilton's earnest desire to maintain stable, moral (and therefore also less equivocal) relationships with other nations. ²¹ A nation's best interests were served by maintaining a respectable, dignified, and honorable character. In Hamilton's words, "the interests of the nation, when well understood, will be ²² found to coincide with their moral duties."

It is evident, then, that Hamilton wanted the government to have a well developed sense of national moral character, and to be ever watchful and conscious of the effects of policy upon that character. ²³ Furthermore, he believed the moral relationships established between

nations differed in some respects from those between individuals. For example, in *Pacificus*, Hamilton warns against the dangers of making official decisions on the basis of good feelings or gratitude toward foreign countries rather than on the basis of coolly reasoned national interests.

Between individuals, occasion is not infrequently given for the exercise of gratitude. Instances of conferring benefits, from kind and benevolent dispositions or feelings toward the person benefitted, without any other interest on the part of the person, who confers the benefit, than the pleasure of doing a good action, occur every day among individuals. But among nations they perhaps never occur. It may be affirmed as a general principle, that the predominant motive of good offices from one nation to another is the interest or advantage of the Nation, which performs them.

Indeed, the rule of morality is in this respect not exactly the same between Nations as between individuals. The duty of making its own welfare the guide of its actions is much stronger upon the former than upon the latter; in proportion to the greater magnitude and importance of national compared with individual happiness, to the greater permanency of the effects of national than of individual conduct. Existing millions and for the most part future generations are concerned in the present measures of a government: While the consequences of the private actions of an individual, for the most part, terminate with himself or are circumscribed within a narrow compass. [24]

Hamilton is not here advocating a policy "absolutely selfish or interested in nations." He is advocating a

policy of pursuing the national interest "as far as justice²⁵
and good faith permit[emphasis mine]." The officers of
the nation may not abrogate justice or good faith with
other nations or persons in favor of the national
interest. But neither must they ignore the national
interest because, at the time, there are good (or bad)
feelings existing between people from each nation. People²⁶
have feelings, nations do not and must not. Public
officers must steer a middle course between the interests
and obligations of other nations and their own, being
always mindful that their first obligation is to their own
people. In the same essay cited above, Hamilton calls this
to mind.

. . . under every form of government, Rulers
are only Trustees for the happiness and interest
of their nation, and cannot, consistently with
their trust, follow the suggestions of kindness
or humanity towards others, to the prejudice of
their constituent. [27]

We see, then, that Hamilton was committed to a
community united by a central government that exhibited
strength, efficiency, good faith, dignity, and devotion to
liberty.²⁸ The ends sought by republican government were to
be noble and morally sound, and to be constantly heeded in
the formulation of law and policy. These were
prerequisites for good government and honorable national

character, and they are fully understood only when one's
gaze is fixed strategically beyond national boundaries.²⁹

Energetic Government as Adequate Means to Republican Ends:

If the ends of government are to be achieved, even to a modest degree, then governmental means must be granted in proportion to the ends, power must be made requisite with responsibility. To Hamilton, this was one of the "most obvious rules of prudence and propriety," and he reiterated this throughout his writings and speeches, and especially in the Federalist.³⁰ The advantage of representative democracy is that government can work for the people, freeing them from the complex burdens of governance to pursue their own interests, and yet not stifling any "honorable determination" to strive for office or participate in the political process.³¹ However, if government is to work efficiently and effectively for the people, it must have power. It was a principal argument of Publius that the ends sought by the American people demanded union and sufficient concentration of power to achieve "energetic government." It was the principal purpose of Publius and of the supporters of the new Constitution to convince them of this. As Hamilton states in the first Federalist essay,

it will be equally forgotten that the vigor of government is essential to the security of liberty; that, in the contemplation of a sound and well-informed judgment, their interests can never be separated; and that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government. [32]

The context of this quote is all-important in understanding the significance of our Constitution to public administration. At the beginning of the Revolutionary War, the states had joined ranks under hastily formed Articles of Confederation. From its inception, the government under the Articles was weak and extremely inefficient. It could not generate its own revenues, it had no "property" of its own. It relied entirely upon the states for its resources. Furthermore, those powers possessed by the national government were lodged totally within the Congress. All aspects of administration were run by Congressional boards or committees. The results were quite predictable. The States often failed to comply with Congressional demands for resources, and the Congressional boards were slow to act. When they did act, they seldom did so with any consistency or "system." Hence, as Hamilton chronicled in his *Continentalist Papers* of 1781,

our whole system is in disorder, our currency depreciated, till in many places it will hardly obtain a circulation at all, public credit at its lowest ebb, our army deficient in numbers, and unprovided with every thing, the government, in its present condition, unable to command the means to pay, clothe, or feed their troops, the enemy making an alarming progress in the southern states, lately in complete possession of two of them, though now in part rescued by the genius and exertions of a General without an army, a force under Cornwallis still formidable to Virginia. [33]

Hamilton, as aide-de-camp to General Washington, was in a place to experience the weaknesses of this system of government. He knew the country had willingness, resources, men, and foreign aid sufficient to defeat the much smaller British forces quickly. But the war dragged on for years because of poor organization and management. "As in the explanation of our embarrassments nothing can be alledged to the disaffection of the people, we must have recourse to the other cause of IMPOLICY and MISMANAGEMENT
34
in their RULERS."

After the war, the Confederation operated in much the same way, perpetuating if not exacerbating the conditions established during the war. It was this lack of power and organization in the national government, with accompanying political and economic crises, that led many to advocate the establishment of a new government, a government capable

of stable and systematic public administration. From this followed the Anapolis and Philadelphia conventions, and the framing of the Constitution in 1787.

The poor organization and management of the national government under the Articles of Confederation were due in large part to an over reaction on the side of caution by state government leaders. There was, understandably, a great fear and loathing of arbitrary and capricious government such as was experienced under British rule. Hence, governmental accountability was of primary importance. However, in the course of the war, many leaders (Hamilton among them) realized that an excess of fear and caution about government could cripple it beyond
35
all usefulness. A middle course of "safety for the people and energy in the administration" was required. Good government lay as the mean between despotic tyranny on the one hand and chaotic anarchy on the other. As Hamilton stated in the New York Ratifying Convention:

There are two objects in forming systems of government--Safety for the people and energy in the administration. When these two objects are united, the certain tendency of the system will be to the public welfare. If the latter object be neglected, the people's security will be as certainly sacrificed, as by disregarding the former. Good constitutions are formed upon a comparison of the liberty of the individual with the strength of government: If the tone of either

be too high, the other will be weakened too much. [36]

Herbert Storing pointed out that the Federalists had to remind Americans "that the true principle of the Revolution was not hostility to government, but hostility to tyrannical government. They sought to recover the balance that Americans had lost in the zeal of revolution ³⁷ [emphasis mine]." Energetic government was necessary if rights were to be preserved. At the New York Ratifying Convention Hamilton voiced this argument in a summary of our experience under the Articles of Confederation.

In the commencement of a revolution which received its birth from the usurpations of tyranny, nothing was more natural than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our Confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention; but, sir, there is another object, equally important, and which our enthusiasm rendered us little capable of regarding: I mean a principle of strength and stability in the organization of our government, and vigor in its operations. [38]

In concert with the general hostility of the people towards government was the general distrust of power. This radical Whig attitude is best described by Lord Acton's

assertion that "power corrupts, absolute power corrupts absolutely." Such political pessimism was prevalent during the founding period, finding its most effective expression in Thomas Jefferson, a man generally considered to be a political optimist. The basic conviction of Anti-Federalists and their "intellectual heirs," the Jeffersonians, was "that the people's delegation of power is an evil in itself, that consequently the abuse of power mounts in proportion with the power delegated." In Hamilton's view, this pessimism led to all kinds of perversions in the creation of government. Preoccupation with distrust of power would lead to the same problems incurred under the Articles of Confederation, i.e., crippled administration. This would lead to disenchantment, rebellion, anarchy, and then despotism. So Hamilton attacked this distrust head on:

[W]e are told it is dangerous to trust power anywhere; that Power is liable to abuse, with a variety of trite maxims of the same kind. General propositions of this nature are easily framed, the truth of which cannot be denied, but they rarely convey any precise idea. To these we might oppose other propositions equally true and equally indefinite. It might be said that too little power is as dangerous as too much, that it leads to anarchy, and from anarchy to despotism. But the question still recurs, what is this too much or too little? Where is the measure or standard to ascertain the happy mean?

Powers must be granted, or civil Society

cannot exist; the possibility of abuse is no argument against the thing. This possibility is incident to every species of power however placed or modified. [41]

Not only must we have government, but it must be powerful if it is to administer effectively. The problems attendant with power in government must be dealt with given this presumption. If not, we are led "to withdraw all confidence from our fellow citizens, and discard the chimerical idea of government."⁴²

It was, then, the concern of Hamilton and other nationalist founders first to convince the people of the necessity of stable, powerful government; second, to argue for a new structure of government, given the fatal weaknesses of the old; and third, to persuade the people that the new constitution combined safety with energy in republican form, thereby establishing good government. For Hamilton especially, good government necessarily involved stable, powerful and systematic public administration. The arguments of Publius and other nationalist writers were structured around these concerns.

The Structure of Safe, Powerful, Republican Government:

Accepting Hamilton's presumption that we must have powerful government if we are to have good government, we

are led next to deal with precautions against abuse of power without crippling its use. Government must be "modeled in such a manner as to admit of its being safely vested with requisite powers." ⁴³ Rather than limiting the powers of government, Hamilton (and other nationalists) would first structure the use of power in the arrangement of institutions and offices. This structuring would provide for competence and efficiency by way of specialization, and for safety by way of mutual checks. Separation of powers and checks and balances, combined with a portion of power for the state governments, provide this structure. Second, Hamilton relied upon an insightful psychological relationship between power and human passions as an inducement to the exercise of a positive responsibility in office. Hamilton's arrangement and use of these two elements are distinguishing factors in his contribution to public administration.

Federalism and Separation of Powers:

In Federalist 51, Madison refers to the "double security" that arises on account of separation of powers and the maintenance of "two distinct governments," national and state. The "two distinct governments" share concurrent taxing power, and divide spheres of administration between general and particular objects. "[T]he supreme legislature

has only general powers, and the civil and domestic concerns of the people are regulated by the laws of the several states." ⁴⁴ Furthermore, the partition between national and state governments creates competition for the affections of the people. As Hamilton points out, the nearness of state governments to the people provides the advantage of natural affection and local bias. On the other hand, such bias is mitigated by confidence in the national government if it provides "a much better administration." Thus, the quality of administration ultimately determines the political superiority of the respective governments, but neither is threatened with extinction. That Hamilton hoped and believed the national government would gain political superiority by better administration is clear, but the states would provide "indispensable support, a necessary aid in executing the laws, and conveying the influence of government to the ⁴⁵ doors of the people."

The competition between national and state governments assures a level of suspicion conducive to vigilance and, therefore, to safety against unjust and illegal usurpations of power and jurisdiction. More importantly, the ultimate power and right of the people to unite as a whole in revolt against an oppressive national government is maintained in

the combined bulwark of administrations and militias of the
⁴⁶
 several states. In this manner, federalism provides one
 side of the "double security" alluded to by Madison.
 Separation of powers, and its attendant principle of checks
 and balances, provide the second security, as well as a
 basis for energetic government.

In forming a Constitution with separated powers, the
 object of the framers was to strengthen the national
 government's capacity for "a more faithful and regular
 administration," and to prevent a union of governmental
⁴⁷
 power, with all its dangers for the people." Given the
 characteristics of the American people and their country,
 this combination required a unique and complex structure.
 The proposed model was difficult to explain and justify at
 the time because the dominant models for comparison were
 the mixed or balanced government of the British, and the
⁴⁸
 simpler governments of small republics. Obviously, our
 Constitution did not create a simple government, but a
 complex one. However, it differed from the complex British
 model in confusing ways. The British model based
 representation upon certain longstanding divisions (King,
 Lords and Commons) in English society, and it separated and
 balanced the power of those divisions in a sovereign
 legislative body. Executive power resides in and flows

forth from that body.

On the other hand, given the lack of any firm social divisions, the American model treats powers more abstractly. It loosely separates and balances the general powers inherent in any government, regardless of social divisions. The legislature is no longer sovereign, but finds its powers in the written Constitution, behind which stand the people. Legislators represent all the people, regardless of social divisions. The executive and judicial powers are established in the same manner, and, therefore, do not reside in or under the legislature, but as legally (but not necessarily politically) equal partners in government.
49

The framers sought this structure out of fear of a legislative vortex that would swallow up all powers in a manner similar to what happened under the Articles of Confederation. The result would again be a crippled and inefficient executive. Their intention was to establish a balance of legally constructed powers wherein any one branch could stave off the encroachments of the others, thereby enabling government to control itself as well as the people. Thus, the executive and judicial powers needed separation from total control by the legislature, and given protections of their own (i.e., checks and balances)

against future encroachment.

These protections were established through bi-cameral division of legislative power, and through the partial sharing of power and responsibility among the branches. In other words, the three powers were not entirely separated. Madison, in Federalist 47 to 49, argued insightfully for this partial blending, referring to it as "partial agency." It is only "where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted." ⁵¹ In order to protect themselves and, ultimately, the people, each branch required a share in, but not total control of, the power of the others. Hamilton impatiently reiterates and defends the necessity of this partial mixing in Federalist 66.

The true meaning of this maxim [separation of powers] has been discussed and ascertained in another place and has been shown to be entirely compatible with a partial intermixture of those departments for special purposes, preserving them in the main distinct and unconnected. This partial intermixture is even in some cases not only proper, but necessary to the mutual defense of the several members of the government against each other. [52]

Years later (1801), in defense of the Judiciary, he

gave a more elaborate summary of the separation of powers doctrine, and how partial agency contributes to departmental independence.

The means held out as proper to be employed, for enabling the several departments to keep each other in their proper places, are: 1. To give to each such an organization as will render them essentially independent of one another. 2. To secure to each a support which shall not be at the discretionary disposal of any other. 3. To establish between them such mutual relations of authority as will make one a check upon another, and enable them reciprocally to resist encroachments, and confine one another within their proper spheres.

To accomplish the first end, it is deemed material that they should have as little agency as possible in the appointment of one another, and should all emanate directly from the same fountain of authority--the people: And that it being expedient to relax the principle, in respect to the Judiciary Department, with a view to a more select choice of its organs; this defect in the creation ought to be remedied by a permanent tenure of office. . . . The second of the proposed ends, is designed to be effected by the provisions for fixing the compensations of the Executive and Judicial Departments--The third, by the qualified negative of the Executive, or the acts of the two houses of Congress; by the right of one of these houses to accuse; of the other to try and punish the Executive and Judicial officers; and lastly, by the right of Judges, as interpreters of the laws, to pronounce unconstitutional acts void. [53]

Quite clearly, Hamilton is concerned with avoiding consuming encroachments by one branch (the legislature primarily), or by a combination of branches against

another, "preserving them in the main distinct and unconnected." They were to be "essentially independent," allowing for both specialization and safety. This independence was obviously of primary importance in establishing a safe and energetic executive as "a leading character in the definition of good government." ⁵⁴ However, the principle of partial agency as used by Hamilton, Madison, and other founders enabled them to do three other important things. First, it allowed them to give more permanence and stability to the government as a whole, thereby buttressing the operations of the Executive. Second, it allowed them to coordinate each branch's specialized competence and power in the practice of administration. Third, it allowed them to integrate all three powers in individual governmental organizations for specific purposes. The framers wanted powers shared where it was proper to insure "a more faithful and regular administration."

Permanence and stability in the various branches of government contribute to efficiency, consistency, firmness, and wisdom in administration. For the sake of brevity, I shall refer to the combination of these qualities in the same way Hamilton sometimes did--as "tone." In the debates at the Philadelphia Convention and then at the state

ratifying conventions, there was constant consideration of, and argument over, the degree to which various blendings of the three powers would give tone, as well as provide safety. What emerged was a scheme in which the Senate and Judiciary were designed to strengthen the Executive, and check the House of Representatives. Furthermore, giving tone to the government implied that separated powers needed coordination in administration. Thus, at least a modicum of cooperation was required wherein the branches could coordinate the use of their power. Hamilton believed cooperation, characterized by "close, direct working relationships," within the framework of divided powers, was essential. ⁵⁵ The decisions of one branch necessarily affect the responsibilities of the others. Each branch has a type of responsibility that must be paid attention to and respected by the other branches because of their interdependence. Finally, performance of responsibility in one branch may require exercise of the powers of other branches, not only for protection, but for effectiveness. At times, all three powers need integration in one branch for specific purposes.

[Hamilton] knew that the executive must sometimes legislate, that the legislature might best perform the high judicial function of impeachment, and that the duties of judges might require them occasionally to act in an executive

character. [56]

The blending of power in the Senate provides an excellent example of how tone, cooperation and integration were to be encouraged, and how they operated with safety as different sides of the same coin.

Contrary to our current view of the Senate as simply another legislative body of Congress, most framers viewed it as one of the "more permanent branches" ⁵⁷ designed to moderate the "sudden impulses" and fluctuations of the popular assembly, and, in doing so, to work closely with the executive, particularly on matters of appointment to office and foreign affairs. Though the Senate has the ability to check the executive, ultimately through impeachment trial (a judicial function), much more attention was given to its contribution to wisdom and stability in more regular administrative matters. It was viewed primarily as a cooperative partner to the executive, and, at the same time, as a check on the House of ⁵⁸ Representatives. The Senate, therefore, required a complex integration of all three powers, with primary emphasis upon legislative and executive power.

At the New York Ratifying Convention (1788), Hamilton addressed the proper role of the Senate in relation to its congressional partner.

There are few positions more demonstrable than that there should be in every republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly. It is evident that a body instituted for these purposes must be so formed as to exclude as much as possible from its own character, those infirmities, and that mutability which it is designed to remedy. It is therefore necessary that it should be small, that it should hold its authority during a considerable period, and that it should have such an independence in the exercise of its powers, as will divest it as much as possible of local prejudices. It should be so formed as to be the center of political knowledge, to pursue always a steady line of conduct, and to reduce every irregular propensity to system. Without this establishment, we make experiments without end, but shall never have an efficient government. [59]

The Senate, though a part of Congress, was intended to operate by "opposite and rival principle," muting the fluctuations of the popular assembly, and thereby preserving balance and tone in Congress. Furthermore, the qualities used to check the House of Representatives simultaneously strengthens executive power. As listed by Hamilton, the characteristics of smallness, duration, independence from local prejudice, center of political knowledge, consistency, and systematizing influence, make the Senate more a national executive partner than a legislative one. Indeed, all three authors of the Federalist contribute essays (62 through 65) in defense of

the Senate's executive role against Anti-federalist fear⁶⁰ and suspicion of a Senate/Executive conspiracy. In subsequent practice, Hamilton again emphasized the cooperative role of the Senate by advising President Washington to extend a "right of individual access on matters relative to the public administration" because

[t]he Senate are coupled with the President in certain executive functions; treaties and appointments. This makes them in a degree his constitutional counsellors and gives them a peculiar claim to the right of access. [emphasis original] [61]

Executive power was to be enhanced by the high toned cooperation of the Senate.

To the extent that the Senate augments and shares in Executive power, mutual cooperation is required to assure consistency and system in administration. For Hamilton, this went beyond the tenure of specific presidents. In Federalist 77, he asserted that "the cooperation of the Senate" lent itself to "stability in the administration" because its consent "would be necessary to displace as well as to appoint" subordinate officers [emphasis added]. That the power to displace subsequently fell to the President alone did not deter Hamilton and others from the

expectation that subordinate officers (including department heads) would retain their posts long beyond the appointing President's term.

The judicial branch was also considered to be one of the more permanent and specialized branches of administration. It would lend tone by virtue of an independence born of permanent tenure. It would dampen the effects of change and innovation by "invalidat[ing] new laws which violate the oldest law." It would mitigate the severity and confine the operation of "unjust and partial laws." The fluctuations of the popular assembly are thus further muted, and their authority confined within Constitutional limits. The operations of the executive are held to the law, and individual rights are protected by individual appeal and impartial judgment.

The Judiciary was intended by Hamilton and others to cooperate with the Executive (and vice-versa) in matters of law and policy. In the Philadelphia Convention, Madison proposed a "Council of Revision" consisting of "a convenient number" of the Judiciary and the President. The council would participate in the review of all proposed laws and would have the power of rejecting them if required. Though this measure failed in the end, the idea of judicial cooperation in executive matters was vindicated

in practice during the Washington administration. President Washington formally requested their insight and advice, and Hamilton, as Secretary of the Treasury, proposed and won the Chief Justice's formal participation⁶⁵ in the operation of the sinking fund. The Judiciary's powers were to enhance executive power by cooperation with, and integration in, executive administration for specific purposes. Close mutual cooperation and coordination between executive and judicial branches in the administration of justice has been fully demonstrated in subsequent history.

It is evident, then, that Hamilton and other nationalists tried to use partial agency not only for institutional independence, but also for adding to the tone of those institutions and for providing a means of cooperation and integration. Through partial agency, the "more permanent branches" would moderate and temper any attempted legal changes and innovations in the House of Representatives with wisdom, insight and firmness born of independence, experience and a more general perspective.

The House of Representatives was viewed by Hamilton as a body most fit for deliberation and investigation in matters concerning law and its administration. In 1780, he briefly described to James Duane what he thought the proper

role of a popular assembly should be.

Congress is properly a deliberative corps . . . They would have to inspect the conduct of their ministers [executive department heads], deliberate upon their plans, originate others for the public good--only observing this rule that they ought to consult their ministers, and get all the information and advice they could from them, before they entered into any new measures or made changes in the old. [66]

The House was to have "sensibility" to the interaction
67
of general interests in society, and was to deliberate on the plans of the executive branch relative to those interests and the public good. Furthermore, where executive plans were needed but lacking, they should initiate them for the public good, subject of course to the input of the executive branch. In all cases, the executive was to play a leading role in policy formulation, and the popular assembly was to respond with deliberations resulting in appropriate legislation.

This relationship he felt essential to insure an energetic unity of administrative action. Accordingly, he believed that the administration must supply the leadership which effective legislative procedure requires but does not always possess. By administrative guidance Hamilton hoped to insure a legislature friendly toward administration objectives. Administration policies could be defended directly in the legislative chambers by the ministers who possessed the fullest knowledge of proposed measures. Opposition would have the opportunity

for pointed and constructive criticism and questioning. Administrative responsibility could be publicly defined by the administrators themselves rather than indirectly by legislative spokesmen for the administration who could readily be repudiated if public reaction to particular policy should prove embarrassing.[68]

In certain respects, this was the way the relationship began early in the Washington administration. The Congress called for reports and plans on a variety of topics from the executive departments. Hamilton, as Secretary of the Treasury, submitted many such reports, most of them subsequently becoming law. The Executive was to lead, the Congress was to deliberate and empower.⁶⁹ However, Hamilton and other subordinate administrators were never allowed to address Congress in its chambers, largely for fear that Hamilton's rhetorical powers were too great and domineering. This foreshadowed the rise of Congressional dominance that would peak in the next century.

For Hamilton, the overall scheme described above comprised the superstructure of the public administration. Public administration, "in its largest sense, comprehends all the operations of the body politic, whether legislative, executive, or judiciary." All three powers, with their attendant specializations, interact in administration. Public administration is therefore equated with governance as a whole, not simply with executive

power.

This conception of public administration has important implications in light of subsequent administrative thought. First, in the twentieth century we have tried to equate administration solely with executive power. Beginning with the Progressive era we have attempted to transform the presidency and the public administration into a Barnardian monolith. The attempt has been largely successful. Furthermore, we have fundamentally changed the character of executive power and administration by applying sterile business management concepts. Instead of viewing the public administration as a participant in the governance of the nation, twentieth century public administration is visualized as a management team devoted to efficient product improvement. Instead of emphasizing prudence and foresight rooted in constitutional principles, we emphasize profit efficiency and technological innovation.

Another implication of Hamilton's conception is that, to the extent that governance is political, public administration is political. ⁷⁰ Hamilton saw no distinction between politics and administration per se. The three branches of the administration have to negotiate politically with each other over ends and means. However,

this does not mean administrative politics was equated with electoral and special interest politics, where arbitrary and parochial policy preferences can be established through raw economic and political influence. If anything, the intent of the framers (and Hamilton especially) was to bring more impartial and flexible reasoning to bear upon the policy process in all the branches, in order to encourage a regard to the public interest rather than to narrower interests. Administrative politics was to be characterized by the interplay of reasoned rhetoric, wherein evidence is combined in argument to shed further light upon the wisest courses of governmental action. Given the lack of a comprehensive rationality, impartial analysis and reasoned persuasion are still political, though not in the same sense as electoral and special interest politics.

Administrative politics ideally lacks the intemperate loyalty and dogmatic adherence so often found in party and special interest politics. Administrative politicians must display a flexibility which tries to accommodate parties and special interests without compromising the benefit to the public interest. If the public interest is threatened by special interests, the administrative politician must thwart or coopt the special interest.

Hamilton was a prime example of an administrative politician. He had little taste or talent for the more arbitrary methods of electoral politics. He generally avoided judicial politics, and he clearly disdained special interest politics. For him, administrative politics was more effective, more capable of reasoned analysis and planning, more capable of lasting achievement, and adequately accountable. Administrative politics was essential to a "free" and popular government.

In an important sense, the powers of government were separated in the superstructure to encourage and protect impartiality and reasonableness in administration. Though there is the capacity for conflict as a defense against arbitrary and unwise usurpations, the norm is to cooperate in the controlled and reasoned improvement of administration. The extent of conflict between the branches over applications of their powers is generally moderated by the combination of uncertain boundaries of power⁷¹ and the threat of legally established checks and balances. The branches "usually evince a tactful disposition not to push the assertion of their rights to abusive extremes."⁷² Cooperation through "moral agreement"⁷³ is thus encouraged. The form of the government, then, lends itself to "a certain quality of rule." One which is

"intended to contribute to an aptitude and tendency toward
 energy and stability[,]" with safety. ⁷⁴ It is in this
 connection that Hamilton, in Federalist 68, modifies Pope's
 maxim:

Though we cannot acquiesce in the political
 heresy of the poet who says:

"For forms of government let fools
 contest--
 That which is best administered is
 best,"--

yet we may safely pronounce that the true
 test of a good government is its aptitude and
 tendency to produce a good administration. [75]

In other words, a good form of government is one which
 encourages and conduces to wise and energetic
 administration. A bad form of government may possibly have
 good administration, but it is not encouraged or supported
 by its form. Nor is there anything in its form to deter it
 from becoming crippled or tyrannical in the future.

In Hamilton's mind, the American Constitution had all
 the safeguards against tryanny that it needed, and he
 believed it had the "aptitude and tendency to produce a
 good administration." But that aptitude and tendency
 needed demonstration and fulfillment in practice. Though

fostered by institutional arrangements, they did not produce a guarantee of good administration. That was to some degree still a matter of motive and will in its human members.

The interaction of motive and will with power was, as mentioned earlier, a central concern of the founders. The radical Whig/Jeffersonian doctrine was that power perverts motive and will to tyrannical ends. Where power increases, virtuous motives decline. ⁷⁶ Hamilton argued that this logic spelled doom for all government. Instead, he argued "[t]he institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence. And experience ⁷⁷ justifies the theory." Accordingly, he sought to "connect virtue with interest" in public office as a further inducement to good government. He saw a way to do this by increasing power in certain places (primarily in the Executive branch) rather than decreasing it. Hamilton's insight on this matter has been somewhat obscured in favor of the Jeffersonian view, but it is of central importance to the design of the Executive, and to the success of American Constitutional administration.

Passion and Power in Public Administration:

It is generally believed that Hamilton held a very negative view of human nature. A casual reading of his Federalist papers and other writings tends to confirm this belief. For example, his Federalist papers are replete with references to the depravity, cruelty, dishonesty, hypocrisy, avarice, bellecosity, vice, treachery, fallibility, laziness and frailty in human beings. In conjunction with this view, it is clear that Hamilton believed people were ruled more by their passions than by reason, and that those passions were often directed to self-serving ends.

Nothing is more fallacious than to expect to produce any valuable results in political projects by relying merely on the reason of men. Men are rather reasoning than reasonable animals, for the most part governed by the impulse of passion.

Has it not . . . invariably been found that momentary passions, and immediate interests, have a more active and imperious control over human conduct than general or remote considerations of policy, utility, or justice?"[79]

It is with this negative view of human nature in mind that he says in Federalist 15 that governments are instituted "because the passions of men will not conform to the dictates of reason and justice without constraint." However, in spite of this very negative tone in much of his writing, it is certain that Hamilton held a much more

complex and balanced view of human nature. Though people are often avaricious, dishonest, and so on, they are also capable of public spiritedness. His preoccupation with the negative side of human nature is due to the context of much of his writing--the framing of a government. In this context, Hamilton's chief instructor was David Hume. In an essay entitled "Of the Independence of Parliament," which Hamilton often quoted from, Hume asserted as an established and "just political maxim" that,

in contriving any system of government, and fixing the several checks and controuls of the constitution, every man ought to be supposed a knave; and to have no other end in all his actions, but private interest. By this interest, we must govern him, and by means of it, make him, notwithstanding his insatiable avarice and ambition, cooperate to public good. [81]

Hume goes on to say that this maxim is true in politics but "false in fact." It is a maxim adopted by both Hume and Hamilton as a precaution against imprudence in designing government, rather than as a matter of empirical truth. "To prepare for the worst, was to err, on the side of prudence." ⁸² In matters of general governmental policy which go beyond establishing a government, Hamilton exhorts statesmen to regard empirical truth. The "true politician takes human nature (and human society its aggregate) as he finds it, a compound of good and ill

tendencies--enbued with powers and actuated by passions and propensities which blend enjoyment with suffering and make the causes of welfare the causes of misfortune." ⁸³ Thus, Hamilton made a distinction between designing a government and running one, and his assumptions concerning human nature varied accordingly.

Even when designing a government, however, Hamilton's view of human nature was not as negative as is often thought. Even if one assumes (as many did and many still do) that people are entirely self-interested, Hamilton saw how to blend or "connect" a person's interests with public virtue, in public office. In the context of public office, if this can be done, it is much easier to connect a person's interests "with the constitutional rights of the place," as Madison says, and to "make them cooperate to the public good," as Hume says. ⁸⁴ Hamilton saw that certain kinds of passions could spur people to perform laudable actions. Total self-interestedness need not imply the total venality or depravity of those interests. Indeed, He says in Federalist 76:

The supposition of universal venality in human nature is little less an error in political reasoning than the supposition of universal rectitude. The institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable

foundation of confidence.

Hamilton (and Madison, for that matter) can say this even while adhering to Hume's political maxim concerning the design of government.⁸⁵

Historians such as Gerald Stourzh, Maynard Smith, and Douglass Adair have called attention to theories of the passions that were prevalent in seventeenth and eighteenth century thought.⁸⁶ The dominant theme was, of course, the primacy of the passions, and, in thoughts on politics and government, the passion for power and its corrupting tendencies were becoming the primary focus, particularly among radical Whig thinkers. As stated earlier, Hamilton shared the belief in the primacy of the passions, but he differed from many other founders concerning passion for power as the primary focus. Again, he adhered more closely to the insights of Hume on this matter. In an essay on the "Dignity or Meanness of Human Nature," Hume implies the existence of a normative hierarchy of passions in which the love of glory or fame becomes indistinguishable from a love of virtue.

Where avarice or revenge enters into any seemingly virtuous action, it is difficult for us to determine how far it enters, and it is natural to suppose it the sole actuating principle. But vanity is so closely allied to virtue, and to love the fame of laudable actions approaches so

near the love of laudable actions for their own sake, that these passions are more capable of mixture, than any other kinds of affection; and it is almost impossible to have the latter without some degree of the former. Accordingly we find, that this passion for glory is always warped and varied according to the particular taste or disposition of the mind on which it falls. Nero had the same vanity in driving a chariot, that Trajan had in governing the empire with justice and ability. To love the glory of virtuous deeds is a sure proof of the love of virtue. [87]

Hamilton thought it necessary to try to structure the government in such a manner that persons with a "particular taste or disposition" to govern a nation "with justice and ability" would be selected to high offices. In this matter, the Executive and its subordinate offices were of primary concern. ⁸⁸ Persons who seek office, and "love the fame of laudable actions," could be entrusted with great powers for long periods of time to the benefit of all, because their most passionate interests connect with their virtue, and coincide with the duties of office. Thus, in Hamilton's mind, the executive branch could be made energetic and yet safe. It should be structured to accommodate and encourage these characteristics. There should be "unity, duration, adequate provision for support, and competent powers." If these elements of "energy" are lacking, the interest of the person in the duties of the office are frustrated, and irresponsibility is encouraged. Hamilton summarizes this reasoning as it relates to

duration in Federalist 72.

One ill effect of the exclusion [excluding President from re-eligibility] would be a diminution of the inducements to good behavior. There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantage of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of obtaining, by meriting, a continuance of them. This position will not be disputed so long as it is admitted that the desire of reward is one of the strongest incentives of human conduct; or that the best security for the fidelity of mankind is to make their interest coincide with their duty. Even the love of fame, the ruling passion of the noblest minds, which would prompt a man to plan and undertake extensive and arduous enterprises for the public benefit, requiring considerable time to mature and perfect them, if he could flatter himself with the prospect of being allowed to finish what he had begun, would, on the contrary, deter him from the undertaking, when he foresaw that he must quit the scene before he could accomplish the work, and must commit that, together with his own reputation, to hands which might be unequal or unfriendly to the task. The most to be expected from the generality of men, in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good. [89]

For Hamilton, fame was the noblest of the passions. It was the passion most fit for the Presidency. Knowing this, and knowing George Washington's "ruling passion" was fame, he appealed to it in a letter exhorting him to run for the office.

This view of the subject, if I mistake not my dear Sir will suggest to your mind greater hazard to that fame, which must be and ought to be dear to you, in refusing your future aid to the system than in affording it. I will only add that in my estimate of the matter that aid is indispensable. [90]

There were other "social passions" such as benevolence and honor that would lead to a "regard to reputation" sufficient for public office,⁹¹ but the passion for fame was paramount for Hamilton. It was the passion that spurred him and many of his contemporaries. However, though many of them were spurred by fame, few saw the link between it and power, and how it could be used in the design of a safe and powerful government. Hamilton distinguished himself in this matter.

The high value attributed to these passions by men like Hamilton and Hume stemmed from the apparent conviction that they encourage adherence to moral principles, and cultivation of "virtue" or, as we would say today, "excellence." This is an excellence born of discipline, training and habit, and it applies to character as much as to skill in certain activities. Hence, these are passions that provide their own checks through the regard to reputation. They unite ambition and interest with principle and habit to form a more wholistic conception of moral human character than we tend to conceive of today.

As Gerald Stourzh indicates, we have today "a deeply rooted disposition to see things in black and white--to apply to morals and politics a simplified scale of standards. One is either selfish or unselfish; either egoistic or altruistic; either interested or disinterested." Hamilton defied this tendency, largely because of his mature view of human nature.

There were, to be sure, people who had "ambition unchecked by principle." For Hamilton, Aaron Burr epitomized this kind of person. "Mr. Burr has never appeared solicitous for fame, and that great ambition, unchecked by principle or the love of glory, is an unruly tyrant, which never can keep long in a course which good men will approve." Hamilton believed Burr sought popularity and power without any guiding vision and principle. He "flattered the momentary passions of the people," without regard to their true interests. This was nothing but "demagoguery." For this reason, Hamilton supported his long time foe Jefferson over Burr for the Presidency in 1801. Jefferson was solicitous for fame, Burr was not.

The concept of fame is important for understanding Hamilton's view of the nature of executive responsibility. Fame, as understood by the founders in general, did not

mean popularity. For Hamilton, catering to popularity was
 94
 the hated device of demagogues. Rather, fame is a
 positive moral desire that incites one "to act before [an]
 audience of the wise and the good in the future--that part
 of posterity that can discriminate between virtue and
 vice--that audience that can recognize egotism transmuted
 gloriously into public service." It "encourages a man to
 make history, to leave the mark of his deeds and ideals on
 the world; it incites a man to refuse to be the victim of
 events and to become an 'event-making' personality . . .

95

." Hamilton's attraction to the words of Demosthenes are
 significant in this regard.

As a general marches at the head of his
 troops, so ought wise politicians, if I dare use
 the expression, to march at the head of affairs;
 insomuch that they ought not to wait the event,
 to know what measures to take; but the measures
 which they have taken, ought to produce the
 event. [96]

This kind of leadership entails a guiding vision based
 on realistic assessments of the potential of human nature
 (singly and socially), political affairs, natural resources
 and geographic characteristics. Such leadership attempts
 to "canalize the existing conflict of passions into
 97
 generally acceptable policy." It involves prospective
 policymaking that may at times have to ignore popular

biases and attachments. In Hamilton's time this meant advocating adequate governmental powers, banks, credit, the growth of manufactures, a mint, and other institutions and policies not popular in a simple and largely agrarian society.

This kind of leadership also involves guardianship over rights and interests. This too has its unpopular moments such as when defending the rights of unpopular groups and policies. Hamilton's defense of the rights of British loyalists after the war, and his defense of the nation's interest in neutrality during the commotion of the French Revolution and subsequent European war are good examples. This kind of leadership acts upon the sobering truth that governments must control the fluctuating passions of the people if rights are to be protected and prosperity encouraged. It must "place impediments in the way of sudden passions, temporary delusions, and persistent prejudices, so that right reasoning may prevail in the choice of means." It is with this Hamiltonian thought in mind that Harvey Flaumenhaft observes:

Republican leadership is government that is itself governed by the deliberate sense of the community; but to be governed by the deliberate sense of the community is not to be governed by transient popular impulses excited by the flattering arts and deceptive artifices of

cowardly or mean-spirited men who prefer to rule by manipulating popular inclinations, rather than by insisting upon arrangements that give the people time and opportunity for more sedate reflection. To avoid temporarily attractive but eventually fatal courses, the people must be led. [98]

The republican government that Hamilton sought would, as much as possible, institutionalize leadership; make it "administrative" in character; make it accountable to the people through constitutional structure that encourages reasoned reflection, reasoned persuasion, and open legitimation. Hamilton was a master of accountability in this sense. All of his proposed policies were buttressed with extensive and well reasoned justifications. He almost always appealed to the deliberative faculties of others rather than to their immediate passions, and he avoided even the appearance of arbitrary action. "Hamilton counsels self-restraint and reliance on professional judgment over exercises of force or independent will." ⁹⁹ The kind of leadership advocated by Hamilton is therefore best understood in the language of public accountability. Being accountable means subjecting one's ideas and beliefs to the light of reason, open debate, and established processes of legitimation. It presupposes a "faith in the soundness of [the people's] ultimate judgment." ₁₀₀ Attention to this kind of accountability is prevalent in Publius. Leadership outside of this context is undemocratic

and innappropriate. It tends toward demagoguery. That is
101
the leadership Publius rails against.

Given this perspective, let us turn our attention to Hamilton's views on Executive administration, where the three branches find their powers focused upon "executive details."

Notes to Chapter II

1. For Madison, see Rossiter, Federalist 39, pp. 240-41. Madison there defines a republic as

a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior.

For Hamilton, see Papers, Vol. V, pp. 149-152; and Vol. XXV, pp. 536-337.

2. He first used this term in 1777 in reference to the state of New York. See letter to Gouverneur Morris, May 19, 1777, Hamilton, Papers, Vol. I, p. 255.

3. Ibid., Vol. XXV, p. 537.

4. "Farmer Refuted," Feb. 23, 1775, Hamilton Papers, Vol. I, pp. 87 and 136. Hamilton rejected Hobbes' view of the state of nature and natural law. According to Hamilton, Hobbes believed moral obligation was "derived from the introduction of civil society; and there is no virtue, but what is purely artificial, the mere contrivance of politicians, for the maintenance of social intercourse." Hamilton argued to the contrary that the existence of God, "the final judge of the universe," necessitates a quite different view of moral obligation and natural law, one more in line with the descriptions of Grotius, Puffendorf, Locke and others who ascribed moral obligation ultimately to the reason and/or will of God. Natural law therefore antedates and transcends specific regimes. In these passages, Hamilton quotes Blackstone's Commentaries extensively for additional support. We can also presume that Hamilton disagreed with Hume's attack on natural law in his Treatise of Human Nature.

It should be noted that, as the concept of natural law is ancient, it was, by the founding period, overlaid with many maxims, customary and common laws, and positive laws generated by centuries of application and reinterpretation. In this great bulwark of "higher law" existed the law of nations (international law) and the

foundations for municipal law (law of the polity). (Before Francisco Suarez and Hugo Grotius (16th-17th centuries) the Law of Nations encompassed both municipal and international law. It was law common to all nations, within and between them.) For a good description of the "general jurisprudence" of the period, see Edward S. Corwin, The "Higher Law" Background of American Constitutional Law (Ithaca: Cornell Un. Press, 1928); William Winslow Crosskey, Politics and the Constitution in the History of the United States (Chicago: Un. of Chicago Press, 1953), Vol. I, Chapters XVIII and XIX; James Kent, Commentaries on American Law, Vol. I, pp. 1-169; and Stourzh, Hamilton and the Idea of Republican Government, pp. 11-24. For a brief review of the origins and development of natural law, see Paul E. Sigmund, Natural Law in Political Thought (Cambridge, Mass.: Winthrop Publishing, 1971).

5. Hamilton, Papers, Vol. VIII, p. 98. As originally formulated by Jean Bodin, the concept of sovereignty applied to the King of France as having perpetual and absolute power of the state. The King was the source of positive law, and therefore loosed or freed from the law, "Suprema potestas legibus soluta." In England, during the Tudor reformation (a la Sir Thomas Smith), this concept became confined by the advice and consent of Parliament. Subsequent contentions between divine right theorists (the Stuarts primarily) and Parliamentary opponents led eventually to the subjection of the king to natural and positive law. Natural law theorists such as Biel and Grotius developed distinctions between absolute and arbitrary power that contributed further to the watering down of Bodin's original concept. By Hamilton's time, "sovereignty" could be associated with almost any source and type of governmental power, including the people, i.e., popular sovereignty. And it presumed subjection to the dictates of natural law if not to its own positive law.

The definition of "plenary power" is taken from the American Heritage and Oxford English Dictionaries. For an excellent analysis of the original meaning of sovereignty by a leading natural law theorist, see Jacques Maritain, Man and the State (Chicago: University of Chicago Press, 1951), Chapter II, pp. 28-53.

6. See First and Second Letters From Phocion, Hamilton Papers, Vol. III, pp. 485, 548-49. The second letter is especially valuable for seeing the relation of positive law and government to principles of natural law and justice. The analysis presented here generally follows that of Stourzh, Hamilton and the Idea of Republican Government,

Chapter II, pp. 38-75, but makes use of additional papers of Hamilton's not cited by Stourzh. Also see *People v. Crosswell*, 3 Johns. 337 (N.Y. 1804) where Hamilton argues the common law's foundation is in natural law, thus enhancing its adaptability to American democratic institutions. Finally, note that the concept of royal sovereignty as formulated by Bodin came rather late in history. Prior to the seventeenth century, all kings, including Old Testament kings, were considered subject to law.

7. "Tully No. III," Hamilton, Papers, Vol. XVII, p. 160. To be sure, governments based upon law are sometimes forceful, but such force is based upon legitimating reasons established in natural and/or positive law.

8. See Stourzh, Hamilton and the Idea of Republican Government, pp. 58-61, and Ernest Barker, Traditions of Civility (Cambridge, 1948), p. 341. I agree with this argument in general because it accommodates many of Hamilton's confounding uses of the term sovereignty. Holding the Constitution as sovereign allows for flexibility and ambiguity in the use of the concept because so many elements of political society come together in the Constitution. For example, Hamilton often inferred that the three branches of the national government, and the state governments, shared sovereign power to the extent that the Constitution conferred it (expressly or by default). (See his discussion of state sovereignty in the New York Ratifying Convention.) In order to accommodate this to popular sovereignty one must say that the sovereignty of the people (and natural law) emanates or flows to the Constitution, which subsequently restricts the people's role in sovereign power and apportions significant amounts of it to the branches and the states. Stourzh presumes this emanation theory when he asks "whence does the Constitution derive its sovereign character?" (p. 60) This also accommodates Hamilton's assertion in 1787 that we became a united nation possessing full sovereignty at the point of declaring independence (1776). At that time we constituted a nation without a written Constitution. See Hamilton, Papers IV, p. 77. Finally, Hamilton never actually stated the Constitution is sovereign, but it is implied in his assertion in Federalist 78 that the Constitution is the source of all delegated authority, including legislative authority.

9. Herbert Storing points out legitimate concern and criticism on the part of many Anti-Federalists about this presumption. They were very concerned about the tendency

of the proposed Constitution to undermine civic virtue over time. The promotion of prosperity and commerce would "beget luxury, the parent of inequality, the foe to virtue, and the enemy of restraint," and would eventually corrupt rulers and ruled, the end being tyranny and despotism. See Storing, What the Antifederalists were FOR, pp. 72-76.

Hamilton answered these arguments saying the nation had already entered upon the commercial course and there was no way to stop it. Furthermore, he thought it absurd to "forego every advantage which we are fitted to enjoy," and that the Anti-Federalist arguments were based "upon the abuses of a thing intrinsically good."

A prosperous state of agriculture, commerce and manufactures nourishes and begets opulence, resource, and strength. These by inspiring a consciousness of power never fail to beget in the councils of nations under whatever form of Government a sentiment of superiority, pride, ambition, insolence. . . . Shall we therefore reprobate and reject improvements in agriculture, commerce and manufactures?

Again: Science, learning, and knowledge promote those inventions, discoveries and improvements which accelerate the progress of labour and industry and with it the accumulation of that opulence which is the parent of so many pleasures and pains, so many blessings and calamities. Shall we therefore on this account explode Science, Learning and Knowledge?

Hamilton would seek, through public policy and national leadership, to promote the positive aspects of commerce and prosperity while controlling for the negative. Though he succeeded in doing this to some extent in the Washington administration, subsequent events led to minimized national leadership and to the realization of many Anti-federalist fears. Hamilton, Papers, Vol. XIX, pp. 52-60; and Vol. V, pp. 67-68.

10. "Letter to Edward Carrington," May 26, 1792, Ibid., Vol. XI, p. 443. Hamilton's preoccupation with merit over birth and patronage was demonstrated early in his military career. As a young Captain in charge of an artillery company, he proposed to the New York Congress that promotion from the ranks be instituted to avoid inconvenience and to bolster morale and confidence. The

proposal was accepted, and contributed in part to the democratization of the military. See Mitchel, Youth to Maturity, pp. 83-84. 11. Hamilton, Papers, Vol. XXVI, p. 148; and "Notes for Speech of July 12, 1788," New York Ratifying Convention, Vol. V, pp. 149-151.

12. Rossiter, Federalist pp. 435-36.

13. Epstein, Political Theory of the Federalist, pp. 162-165. In the Federalist Papers, both Hamilton and Madison contribute to the discussion of ends. See Federalist 23, 37, 45, 51, and 62.

14. Ibid., p. 163.

15. Letter to Henry Lee, march 7, 1800, Hamilton, Papers, Vol. XXIV, p. 299.

16. Rossiter, Federalist 23, p. 153. Even these ends could be interpreted as means to the highest end of liberal government--the promotion and protection of rights.

17. Ibid., 11, p. 85.

18. Ibid., 12, p. 91.

19. For example, see Hamilton, Papers, I, 440-441; III, 91, 305, 447, 486, 492, 556; VII, 49, 231; XI, 437; XIV, 386-387, 457; XV, 76-77; XVI, 14; XIX, 71, 95, 170-171; XX, 113; Rossiter, Hamilton and the Constitution, pp. 8-9, 171-175; and Gerald Stourzh, Alexander Hamilton and the Idea of Republican Government (Stanford: Stanford Un. Press, 1970), Chapter V.

20. Rossiter, Federalist 31, p. 194. Also see Hamilton's notes for the Constitutional Convention (Papers, Vol. IV, p. 185) wherein he says "there ought to be a principle in government capable of resisting the popular current"; and Federalist 71 where he speaks of the importance of rulers in republican government heeding the "deliberate sense of the community; but [this] does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests." (Rossiter, Federalist 71, p. 432.)

21. The idea that stable, moral relationships reduce equivocality suggests an instrumental aspect in the relationship between morality and public policy. This

accords with Hume's assertion that utility is the foundation of the chief part of morals. Hamilton speaks of utility in much the same manner, and was probably influenced most by Hume in this matter. See David Hume, Enquiries Concerning Human Understanding, and Concerning the Principles of Morals, L.A. Selby-Bigge & P.H. Nidditch, eds., (Oxford: Clarendon Press, 1985 [1777]), p. 188.

22. Henry Cabot Lodge, ed., The Works of Alexander Hamilton, "Constitutional Edition," 12 vols. (New York: Knickerbocker Press, 1904), V, p. 266-267 and VIII, p. 106. This work hereinafter short titled as Lodge, Works.

23. It should be stressed that this consciousness was not to be limited to a department of foreign affairs only. Many domestic, particularly economic, policies would also be of interest to other nations. To Hamilton, all high administrative officials should be aware of potential external effects of departmental policies, with due regard to national reputation.

24. Hamilton Papers, XV, 85.

25. Ibid., p. 86

26. Hamilton said as much in a letter to William Loughton Smith, April 10, 1797, when feelings toward France had suddenly turned from strong favor to a rage of disapprobation and shouts for war.

In such a state of things law and dispassionate views are indispensable. Neither the suggestions of pride nor timidity ought to guide. There ought to be much cool calculation, much calm fortitude. The Government ought to be all intellect while the people ought to be all feeling. (Hamilton, Papers, XXI, 33.)

27. Hamilton Papers, XV, 85.

28. See Rossiter, Hamilton and the Constitution, pp. 172-176 for an elaboration on these elements of good government.

29. Whenever Hamilton referred to national character, dignity, honor, etc., it was in the context of relations with other nations.

A qualification needs to be added to Hamilton's view

of the "noble" ends to be pursued by government. As a student of modern liberal ideas, he viewed protection of rights and encouragement of peace and prosperity through commerce as noble ends. An opulent and just nation is a noble one. Ancient and medieval thinkers would have looked askance at such ends.

Finally, the significance of Hamilton's concept of national character is borne out by Graham Allison's classic study of the Cuban Missile Crisis. The conceptual model implicit in most foreign policy analysis is the "Rational Policy Model" wherein "analysts attempt to understand happenings as the more or less purposive acts of unified national governments." That is, nations are looked upon as actors that think coherently or rationally for themselves. Though Allison is pointing out the importance of considering other conceptual schemes as well, the fact that nations are still generally viewed (even evaluated) as unified actors makes the concept of national character as relevant today as it was in Hamilton's time. See Graham Allison, "Conceptual Models and the Cuban Missile Crisis," American Political Science Review, Vol. LXIII, no. 3, Sept. 1969, pp. 689-692.

30. For example, see Rossiter, Federalist 23, p. 155; 30, p. 190; and 31, p. 193.

31. See Epstein, Political Theory of the Federalist, chapter 4 and Conclusion, for an elaboration of the concept of "honorable determination." Basically it is the acknowledgement and respect by republican government of man's "honorable insistence on their faculty of opining" (p.125) The people won't be neutral, they'll be partisan. Hamilton did not place as much emphasis upon this as Madison. In fact, he believed commerce would distract or mitigate the severity of their partisanship, "absorb[ing them] in the pursuits of gain" (Federalist 8), and thereby lessening interference in the operations of the government. However, this lack of interest in politics would also feed the fires of demagogues who would "pay obsequious court to the people," and end as tyrants (Federalist 1). To Hamilton, this was among the chief dangers to republics.

Also, recall that Hamilton and other nationalist founders (and most "anti-federalists" too, for that matter) believed simple and direct democracy, where all the people participate in governmental decisions, to be completely impractical and unwise. It is unwise in the sense that it tends to undermine itself by excess of its own principle

(an Aristotelian insight). During times of peace, the fluctuations of the community create so much internal dissension that the existence of the whole order is continually threatened. The people did not "possess the discernment and stability necessary for systematic government." Only war brought consensus and union in such governments, but it also tended to bring military despotism. Historically this was known to be the case. Thus, Hamilton and others saw popular representation as an important improvement for modern republics over ancient ones.

Hamilton saw further hope for modern republics in the shift from preoccupation with displays of honor and glory in ancient regimes to preoccupation with agriculture and commerce. The former was actuated more by military action, the latter more by economic action. Hence, the ancient republics were really "nations of soldiers," while modern states had separated the military from the citizenry. Where territorial conditions provided some insularity from other states (such as with England, China and a united America), the necessity of a large, domineering standing army was diminished. So, then, was the danger of military dictatorship diminished. Therefore, the possibility of a prosperous and peaceful commercial republic arose if the American states could unite and dispel territorial controversies amongst themselves by the intervention of a strong national government. This was what Hamilton envisioned and strove for. For an elaboration on these points, see Harvey Flaumenhaft, "Alexander Hamilton on the Foundation of Good Government," The Political Science Reviewer, VI (Fall, 1976), 143-214; Idem, "Hamilton's Administrative Republic and the American Presidency," in The Presidency in the Constitutional Order, Joseph M. Bessette and Jeffrey Tulis, eds. (Baton Rouge: Louisiana State Un. Press, 1981): 65-114; Idem, Review of Stourzh in APSR, Vol. LXVII, No. 2, June 1973, pp. 637-39; Hamilton, Papers, New York Ratifying Convention, June 1788, Vol. V, pp. 68-69; and Rossiter, Federalist 8, 66-71; and 9, 71-76. Also see David Hume's essay on "The Rise and Progress of Arts and Sciences," for a similar analysis, one that no doubt influenced Hamilton's thought. Hume Philosophical Works, Vol. III, Part I, p. 131, fn.

32. Ibid., p. 35.

33. Hamilton Papers, Vol. II, p. 662.

34. Ibid., p. 663.

35. See "Letter to James Duane," Sept. 3, 1780, and "The Continentalist No. I," July 12, 1781, Hamilton Papers, Vol. II, pp. 401-418 and 649-652 for Hamilton's summary of the weaknesses in the existing government.

36. Ibid., Vol. V, p. 81.

37. Storing, What the Anti-Federalists Were For, p. 71.

38. Hamilton, Papers, Vol. V, p. 68. Storing alludes to this same quote in conjunction with his abovementioned remarks. Ibid.

39. Stourzh, Hamilton and the Idea of Republican Government, p. 184.

40. Recall that fear of rebellion was very high in this period. Shay's rebellion had a great influence on the participants of the Philadelphia Convention. There was a general conviction that significant improvements in government were needed to quell rebellious sentiments.

41. Hamilton, Papers, Vol. IV, p. 11.

42. Ibid., Vol. V, pp. 57 and 60.

43. Rossiter, Federalist 23, p. 156. The reader should notice that the concept of "safety" in republican government was used in two senses by Hamilton. In the sense used here, "being safely vested with requisite powers" refers to safety against governmental tyranny. In the other sense, safety means government protecting the rights and liberties of individuals from the tyranny of others. At times Hamilton seems to have applied the term with both senses implied.

44. Hamilton, "New York Ratifying Convention," Papers, Vol. V, p. 100. Hamilton addresses the necessity of state governments to the American republic in Federalist nos. 17 and 27, and in his speeches to the New York Ratifying Convention Papers, Vol. V, pp. 100-104 and 116-117. His only real concern about the states was the potential influence of the larger ones in the national councils. Because of this, he would have preferred that all the states be small and relatively equal in size. See Letters to Edward Carrington and Jonathan Dayton in Hamilton, Papers, Vol. XI, pp. 443-44 and XXIII, p. 604; and Caldwell, Administrative Theories of Hamilton and Jefferson, p. 33.

45. Ibid., Vol. V, p. 100. For an elaboration of Publius' treatment of the partition of state and local governments, and his bias in favor of the national government, see Epstein, Political Theory of the Federalist, pp. 51-58.

46. Ibid.

47. Storing (quoting James Monroe) What the Anti-Federalists Were FOR, p. 59.

48. On the problem of confusions between the British and American models, Hamilton, at the New York Ratifying convention, warned that "many mistakes have arisen from fallacious comparisons between our government and theirs." Hamilton, Papers, Vol. V, p. 54. A perusal of just about any part of Madison's notes on the debates at Philadelphia will reveal the great extent to which the British model influenced and confused various framers' thoughts on American government, despite James Wilson's and Charles Pinckney's early admonishments against applying the British model to our situation. See Madison, Debates, p. 85 for Wilson's comments, pp. 186-187 for Pinckney's.

49. For an in-depth discussion of the confusion about and misunderstanding of the proposed constitution in relation to the more commonly understood systems of government, see Storing's chapter on "Complex Government." Ibid., pp. 53-63. Concerning the lack of political equality in the branches, recall that Hamilton, in Federalist 78 (Rossiter, p. 465) asserts that the Judicial branch, "from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in capacity to annoy or injure them." Furthermore, it was generally feared the legislative branch would be a vortex of political power, dominating if not consuming the executive and judicial branches. In his Lucius Crassus essays of 1802, Hamilton reiterates that, in a republic, the legislative power tends to be politically superior, the executive to be second in power, and the judicial branch the least powerful. Though this be the natural tendency in republics, we shall see that Hamilton was determined to bring the executive into ascendancy via separation of powers and the establishment of a stable public administration. See Hamilton, "The Examination," Nos. XIV & XV, Papers, Vol. XXV, pp. 550-557.

50. Hamilton's understanding of a "limited

Constitution" involved specified exceptions to legislative authority rather than express enumerations of powers (Federalist 78). Judicial review of legislative acts is therefore a crucial link in the chain of checks and balances because it precludes any legislative attempts to usurp the powers of other departments, or otherwise infringe upon political rights, through passage of unconstitutional laws.

51. Rossiter, Federalist 47, pp. 302-303.

52. Rossiter, Federalist 66, pp. 401-402.

53. Hamilton, "The Examination No. XV," Papers, Vol. XXV, pp. 555-556.

54. Rossiter, Federalist 70, p. 423.

55. See Caldwell, Administrative Theories of Hamilton and Jefferson, p. 35. Caldwell also cites Woodrow Wilson as characterising Hamilton's theory of government as "an affair of cooperative and harmonious forces," contrasting with Madison's theory of coordinate and coequal powers, observing the danger of the latter arrangement leading to a deadlock between Executive and Legislative branches." Caldwell is also careful to stress that Hamilton saw the Executive as the leader in the relationship. I agree with Caldwell on this point. See discussion below.

56. Ibid.

57. Rossiter, Federalist 52, p. 330.

58. A review of Madison's record of the debates is indicative of this point. For example, see Koch, Debates, the remarks of Hamilton, pp. 135, 608; Wilson, pp. 197-98, 588, 601; Madison, pp. 68, 83, 92, 110-111, 193-195, 228, 433, 535, 601; Morris, pp. 255-56, 302, 487; Randolph, pp. 110, 113-14, 527; Franklin, p. 62; Sherman, pp. 60, 316; Elseworth, p. 481; Pinckney, p. 487; Dickenson, p. 77; and Gerry, p. 46.

59. Hamilton, Papers, Vol. V, p. 68. Hamilton's entire speech of June 24, 1788 was devoted to rebutting an amendment proposed by Gilbert Livingston concerning election and qualification of Senators. See Elliot, Debates, II, 289.

60. The writings of James Monroe, Luther Martin, Cato, and other Anti-federalists on this matter are contained in

Herbert Storing, The Complete Anti-federalist, 7 vols. (Chicago: University of Chicago Press, 1981). For an indepth discussion of the Senate as an "Executive Establishment," see Rohr, To Run a Constitution, Chapter Three.

61. Letter to George Washington, May 5, 1789, Hamilton, Papers, Vol. V, p. 337. It should also be noted that Hamilton was distinguishing the Senate from the House of Representatives concerning the right of individual access to the President. Representatives were not to be accorded this right because they had no special Constitutional claim to it.

62. Epstein, Political Theory of Federalist, p. 191.

63. Rossiter, Federalist 78, pp. 467.

64. See Koch, Debates, p. 32. For general discussion on this proposal by Madison, Wilson, Franklin, Mason, and others, see pp. 46, 61-64, 79-81, 336-343, and 461-462.

65. See letter of President Washington to the "Chief Justice and the Associate Justices of the Supreme Court of the United States:" April 3, 1790, John Jay's Correspondence and Public Papers III, p. 396; and "Report on the Public Credit," Jan. 9, 1790, Hamilton, Papers, Vol. VI, pp. 106-107.

66. "Letter to James Duane," Sept. 3, 1780, Hamilton, Papers, Vol. II, p. 404-405. Though this was directed at the Continental Congress, Hamilton seems to have held to this view under the new Constitution as well. The House of Representatives was most closely analogous to the Continental Congress in character.

67. See Rossiter, Federalist 35, pp. 214-216 for Hamilton's discussion of the nature and manner of representation desired for the popular assembly. Not every group or class was to be directly represented. Representatives need only to be sensible of general interests such as commerce and agriculture, which bind various classes together.

68. Caldwell, Administrative Theories of Hamilton & Jefferson, pp. 35-36. The language of Article II, sec. 3 of the Constitution supports this view. "He [President] shall from time to time give to the Congress information on the state of the union, and recommend to their consideration such measures as he shall judge necessary and

expedient;..." It appears that Hamilton never commented on this section in any detail. It seems he took this power for granted, observing that "no objection has been made to this class of authorities; nor could they [anti-federalists] possibly admit of any." See Rossiter, Federalist 77, p. 463.

69. Later in the Washington administration, Hamilton became dismayed that the executive was not initiating and developing more general plans and policies in the face of current dilemmas and future prospects. This was particularly true in matters of foreign policy where the threat of war was almost constant. See letter to Washington, March 8, 1794, Hamilton Papers, Vol. XVI, pp. 130-36; letter to Timothy Pickering, March 22, 1797, Papers, Vol. XX, pp. 545-546; and letter to James McHenry, June 27, 1799, Papers Vol. XXIII, pp. 227-228.

70. It is conceivable that governance is not entirely political. In organization theory, some authors have distinguished between the political and the economic dimensions of organization. The heart of this distinction has to do with a the variable of "routineness." Non-routine activity is generally political, routine activity generally economic. Routine activity reflects consensus, acceptance, or possibly even ignorance, to a point of non-interference and non-agitation. As interference occurs and increases, routine activity becomes more and more political. In this sense, there may be a political-economy of governance wherein certain spheres of administration are routinized or economic. However, those spheres of routinized activity are always premised upon political decisions that could at any subsequent time be brought into question. See Gary L. Wamsley & Mayer N. Zald, The Political Economy of Public Organizations (Lexington, KY: Lexington Books, 1973); Lawrence F. Keller, "The Political Economy of Public Management: An Interorganizational Perspective," Administration & Society, Vol. 15, no. 4, February 1984, pp. 455-75.

71. See Rossiter, Federalist 37, pp. 224-231, where Madison readily admits that "no skill in the science of government has yet been able to discriminate and define with sufficient certainty, its three great provinces--the legislative, executive, and judiciary." His comment still applies. The creation of ambiguity and uncertainty in formal arrangements of power creates a tension which can be relieved by formal restructuring, i.e. constitutional changes, or reduced by informal accommodation through moral agreements or understandings. As the framers found safety

and energy in an organizational structure that creates such tension, they emphasized informal accommodation. Recent research indicates that informal accommodation is still, and must remain, the mainstay in American governmental decisionmaking. However, much of current management theory and practice ignores this fundamental point. See Donald W. Crowley, "Selection Tests and Equal Opportunity: The Court and the EEOC," Administration & Society, Vol. 17, no. 3/November 1985, pp. 362, 380; James D. Carroll, A. Lee Fritschler, and Bruce L. R. Smith, "Supply-Side Management in the Reagan Administration," Public Administration Review, Vol. 45, no. 6, November/December 1985; Fisher, Presidential Spending, 1975.

72. J. W. Bishop, "Executive Right to Privacy: An Unresolved Constitutional Question," Yale Law Journal, LXVI (1957), 477. Bishop was referring specifically to the relations between Congress and the President, but his comment applies to all the branches. Also see Gary J. Schmitt, "Executive Privilege: Presidential Power to Withhold Information from Congress," in Bessette & Tulis, The Presidency in the Constitutional Order, pp. 154-194.

73. The concept of "moral agreement" is derived from Louis Fisher's description of the "moral understandings" or "gentlemen's agreements" he saw existing between Congress and the Executive administration. See Louis Fisher, Presidential Spending Power (Princeton, NJ: Princeton Un. Press, 1975), pp. 73-75.

74. Epstein, Political Theory of the Federalist, p. 156.

75. Rossiter, Federalist 68, p. 414.

76. This explains in part Jefferson's love for agricultural society and cottage industry. He believed the frugality and simplicity of such a culture would keep the people virtuous. In such a world, government supposedly can play a minimal role and remain close and accountable to the people. As mentioned earlier, Hamilton believed the nation had already developed a commercial character, and would have to pursue commerce actively if it was to rebuff the encroachments of the European nations.

77. Rossiter Federalist 76, p. 458.

78. For example see Rossiter, Federalist, pp. 34, 54, 57, 59, 92, 108, 160, 175, 208, 216, 426, 432, 437-38, 451, 455, 458, 471, and 523.

79. The first paragraph of this quote comes from a letter to James Bayard, April 1802, Hamilton, Papers, Vol. XXV, p. 605; the second paragraph is from Federalist 6, p. 56.

80. Ibid., p. 110.

81. David Hume, Philosophical Works, Vol. III (Boston: Little, Brown and Co., 1854) pp. 39-41. This volume contains his "Essays, Moral, Political, and Literary," many of which were quoted or copied at length by Hamilton throughout his writings. Though Hamilton's (and Madison's) Federalist papers seldom quote Hume, substantial portions of those essays contain passages taken directly from Hume's works. On the influence of Hume upon Hamilton see Rossiter Hamilton and the Constitution, pp. 115, 120-26, 130, 138-139, 148, 174, and 182-183; Stourzh, Hamilton and the Idea of Republican Government, pp. 21, 30, 40, 42-43, 71, 92, 101, 117-19, 232 and n117. For a good discussion of the political theories and theorists that informed Hamilton and the founders in general, see Forrest McDonald Novus Ordo Seclorum: The Intellectual Origins of the Constitution (Lawrence: University Press of Kansas, 1985).

82. McDonald, Ibid., p. 189. In his political tract "The Farmer Refuted," Hamilton quotes Hume's essay extensively. Papers Vol. I, pp. 94-95.

83. This quote related to Hamilton's defense of his financial policies instituted while Secretary of the Treasury, i.e., while he was helping to run the government. See "The Defence of the Funding System," July 1795, Ibid., Vol. XIX, p. 59. Also see Hamilton's eloquent remarks at the New York Ratifying Convention, June 27, 1788, Ibid., Vol. V, pp. 94-95. That Hamilton often asserted there was more than sufficient grounds for confidence and the entrustment of great power in government once its design was "perfected," tends further to confirm the belief that he made this distinction in his view of human nature.

It is also worth noting that authors such as Mitchell, Miller, Caldwell and Rossiter acknowledge Hamilton's ambivalence toward human nature. That they tend to stress more his negative view of man is due, I suggest, to the fact that Hamilton spent much of his time writing on the design of government. For example, see Rossiter, Hamilton and the Constitution, pp. 145-47.

84. During the New York Ratifying convention, Hamilton speaks of "strongly connect[ing] the virtue of your rulers with their interest." See Hamilton Papers, Vol. V, p. 95. For Madison's quote, see Rossiter, Federalist 51, p. 322.

85. *Ibid.*, #76, p. 458. Madison, in Federalist 55, shares this view with Hamilton: "As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature which justify a certain portion of esteem and confidence (p. 346)." People can be "self-interested" and yet win esteem and confidence by their other regarding behavior. This is "self-interest rightly understood."

86. See Gerald Stourzh "Alexander Hamilton--The Theory of Empire Building," delivered at the American Historical Association meeting in New York, Dec. 30, 1957; *Idem*, Hamilton and the idea of Republican Government, Chapter III; Maynard Smith, "Reason, Passion and Political Freedom in THE FEDERALIST," The Journal of Politics, XXII (1960), pp. 525-44; Douglass Adair, Fame and the Founding Fathers, Trevor Colbourn, ed. (New York: W.W. Norton & Co., 1974), pp. 3-27.

87. Hume, Philosophical Works, III, p. 93. Hume appears to use the terms vanity, fame, honor and glory synonymously in this essay. Douglass Adair has pointed out that these terms have slightly different meanings, but writers of this period do not appear to follow these distinctions closely or consistently. *Ibid.*

88. Hamilton speaks of subordinate officers as having a regard to reputation as well. For example, he speaks of financial officers seeking fame and reputation in their wise financial measures, and also that such passion, directed to narrower subjects, produces biases which necessarily weaken the ability to forthrightly consider other kinds of policy.

I know not, if it would not be a good plan to let the Financier be President of the Board of trade; but he should only have a casting voice in determining questions there. There is a connection between trade and finance, which ought to make the director of one acquainted with the other; but the Financier should not direct the affairs of trade, because for the sake of acquiring reputation by increasing the revenues, he might adopt measures that would depress

trade. In what relates to finance he should be alone. "To James Duane," September 1780, Hamilton, Papers, Vol. II, p. 409.

This point, linked to fame, suggests that the public interest is served by pursuing, integrating and balancing "agency perspectives." The concept of "agency perspective" is being developed by Gary L. Wamsley in a forthcoming book.

89. Rossiter, Federalist 72, p. 437.

90. Hamilton Papers, Vol. V, pp. 221-22.

91. For example, David Epstein observed that "virtue could be grounded on the passion for salvation and eternal life (one of Locke's arguments); or on passions which attach us to the happiness of others which were variously described by David Hume (humanity), Adam Smith (sympathy), and Francis Hutcheson and Madison's Hutchesonian professor at Princeton, John Witherspoon (moral sense); or on the passion for reputation and glory. In any of these cases, reason would merely compare the pleasures of and calculate the means to the objects of desire." Epstein, Political Theory of the Federalist, p. 70.

92. Stourzh, Hamilton and Idea of Republican Government, p. 105.

93. "Letter to James Bayard," January 16, 1801, Hamilton Papers, Vol. XXV, p. 319.

94. Clinton Rossiter made an important point on Hamilton's dislike of demagogues. He disliked them because they exploit weakness. The major weakness in Republics is faction and strife, i.e., catering to the momentary whims and passions of people. The demagogue influences the passions of the people to no good but his or her own. This greatly hampers the cultivation of trust and confidence in government, which then leads to more dissension and faction. Rossiter, Hamilton and the Constitution, p. 163.

95. Adair, Fame and the Founding Fathers, pp. 11-12. More recently, David K. Hart has called attention to the importance of fame and fameworthiness to the founders, and argues for its consideration in current day public administration. See David K. Hart and Paul Smith, Administration and Society forthcoming.

96. "Pay Book," Hamilton, Papers, Vol. I, p. 390.

97. On the potential of human nature, it must be noted that Hamilton's realism did not recognize the idea of emergent evolution or the perfectibility of man over time. As Lynton Caldwell said, "Hamilton's political doctrines concerned what might be done by man as he was, not what might be done by man in the course of his moral and intellectual growth." Hamilton assumed "that men would behave in the future much as they had in the past." Hence, human passions would continue to require "canalizing . . . into generally acceptable policy." Gerald Stourzh notes that this view of man reflected "the last glowing of the Renaissance tradition of political philosophy that regarded decay and corruption as the basic rule of historical change. Before the idea of social perfectibility started its Icarian flight of a century and a half, the deepest concern of political thinkers was the purging of those poisons which forever crept into the body politic to threaten corruption and disintegration." Hamilton quite clearly was part of the Renaissance tradition. Accordingly, he would have been quite skeptical of the optimism and dogma arising from the merging of science with the idea of progressive evolution by Comte and subsequent theorists. He would have been even more alarmed that these ideas would shape in large part the "science of administration" in the twentieth century. See Caldwell, Administrative Theories of Hamilton and Jefferson, p. 8; and Stourzh, Hamilton and the Idea of Republican Government, pp. 35-36.

98. Flaumenhaft, "Hamilton's Administrative Republic," in Bessette & Tulis, Presidency in the Constitutional Order, pp. 95-96. Also see Rossiter, Federalist 71, p. 432, where Hamilton explains the guardian theory of leadership appropriate to democratic republics. Also see Chapter V below.

99. David E. Marion, "The Federal Bureaucracy and Separation of Powers: A View From the Founding," Administration & Society, Vol. 18, no. 3/November 1986, pp. 291-314.

100. Mitchell, Hamilton: The National Adventure, p. 676, fn.1. Implicit in this view of leadership are two important assumptions. First, political leaders must distinguish between the people's momentary passions and their true interests. Second, political leaders must educate and persuade the people of their true interests, and act for those interests despite momentary popular sentiments to the contrary. At times, public opinion must

be "seized and carried" by public officials "in the confidence that [they] will derive from the virtue and good sense of the people, constitutionally exerted, eventual & effectual support." Public opinion is thus viewed as being mutable, impressionable. People are more volitional than decidedly preferential in such matters. Hamilton is a true republican in the sense that he relies upon "the soundness of their ultimate judgement." In this he shows faith in the positive side of human nature. "Letter to Rufus King," April 15, 1796, Hamilton, Papers, Vol. XX, p. 113.

101. For example, see Rossiter, Federalist 71, p. 432. Hamilton rails against demagoguery throughout his political and governmental writings.

CHAPTER III

THE ENERGETIC EXECUTIVE AND THE PUBLIC ADMINISTRATION: INTEGRATING PRINCIPLES WITH PRACTICE

Energy in the executive is the leading character in the definition of good government.

A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.

Hamilton, Federalist 70

It has been shown that Hamilton sought to structure the government in ways conducive to both safety and energy. In his designs, the executive played an essential part because "a feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government." An energetic executive

is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the

enterprises and assaults of ambition, of faction, and of anarchy. [1]

In short, if the government is going to provide the kind of leadership described above, and achieve the ends entrusted to it, it must have an energetic executive. For Hamilton, the elements of energy consist of unity, duration, adequate provision for support, and competent powers. We have seen how these elements contribute to a positive responsibility in office by interesting the nobler human passions. These elements, in combination, also provide for vigor, activity, decision, secrecy, dispatch, firmness and stability in the administration.

Unity refers to the "exercise of power by a single hand." It implies unified command and centralized organization. It is conducive to "decision, activity, secrecy and dispatch." It centers broad responsibilities in a single person, thereby avoiding confusion, allowing for fame, and insuring accountability. Whereas the legislative body benefits from its numbers in the promotion of deliberation and wisdom, the executive is most effective when run by a single person.

Duration refers to length of tenure in office. Duration "is necessary to give to the officer himself the inclination and the resolution to act his part well, and to

the community time and leisure to observe the tendency of his measures, and thence to form an experimental estimate of their merits." A substantial duration thus encourages firmness, stability, and a regard to reputation in executive administration. It is evident that Hamilton would have preferred a tenure longer than four years for the President. His proposal of tenure during good behavior for the President in the Constitutional Convention was more truly in line with his sentiments. Nevertheless, the combination of re-eligibility of the President for office and much longer tenures for subordinate officers gave him hope of sufficient energy and stability in the administration.

Adequate provision for support refers more specifically to the protections afforded the President from legislative encroachment via his compensation. "In the main it will be found that a power over a man's support is a power over his will." Hence, the Constitution protects his salary from congressional manipulation. This protects his independence and promotes vigor in office.

Competent powers refers first to the President's veto power (Federalist 73). This is a legislative power that enables him to resist the encroachments of the legislative body, and to guard "against enactment of improper laws." It

"increases the chances in favor of the community against the passing of bad laws, through haste, inadvertence, or design." It protects against mutability and inconstancy in the laws. Thus, this shared power provides for both safety and stability in administration.

Additionally, the President is the "Commander in Chief of the Army and Navy," and has the power of "directing and employing the common strength . . . [which] forms a usual and essential part in the definition of executive authority (Federalist 74)." He may consult with his principal officers and require their opinions in writing; he may "grant reprieves and pardons" (except in cases of impeachment) in the spirit of "humanity and good policy" without which at times "justice would wear a countenance too sanguinary and cruel," or work against restoration of "the tranquility of the commonwealth" during "seasons of insurrection or rebellion."

The President is also to have power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur." Treaty making power "does not seem strictly to fall within the definition of either" the legislative or executive branches. "It relates neither to the execution of subsisting laws nor to the enactment of new ones; and still

less to an exertion of the common strength. Its objects are contracts with foreign nations which have the force of law, but derive it from the obligations of good faith." ³ It is advantageous, therefore, that both branches share in the power. However, only the Senatorial branch of the legislature should be involved as it is designed to enhance the stability and wisdom of the administration. "The fluctuating . . . multitudinous composition" of the House of Representatives "forbid us to expect in it those qualities which are essential to the proper execution of such a trust. Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, secrecy, and dispatch, are incompatible with the genius of a body so variable and numerous." Furthermore, the Senate must not be so powerful as to dictate to the executive the terms of such agreements. The President must be independent and powerful enough to "enjoy the confidence and respect of foreign powers" as a "constitutional representative of the nation." Therefore, the Senate can only advise and give consent.

Finally, in Federalist 76 and 77, Hamilton deals with appointment power and all remaining powers which are

important but deemed non-controversial, and therefore require little discussion. The appointment power is extremely important to the President because it will determine in large part "the character of its administration." This power is most closely related to Hamilton's earlier observation "that the true test of a good government is its aptitude and tendency to produce a good administration." The President has the power

to nominate, and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for in the Constitution. But the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, or in the courts of law, or in the heads of departments.

In addition to the power of staffing the Judicial branch, the Constitution here provides for the staffing of the levels of the public administration which are subordinate to the governing superstructure of the three branches. The President plays a central role in this power. He alone has the power to nominate ambassadors, other public ministers and consuls, and all officers whose appointments are not otherwise provided for in the Constitution. According to Hamilton, the President has this power because he will generally be "a man of abilities"

who, as "one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices than a body of men of equal or perhaps even of superior discernment."

The sole and undivided responsibility of one man will naturally beget a livelier sense of duty and a more exact regard to reputation. He will, on this account, feel himself under stronger obligations, and more interested to investigate with care the qualities requisite to the stations to be filled, and to prefer with impartiality the persons who may have the fairest pretensions to them. He will have fewer personal attachments to gratify than a body of men who may each be supposed to have an equal number.

With this power, the President could select personnel well suited to building and maintaining effective, systematic, stable, and consistent administration and policy.

The cooperation of the Senate is required as a potential check on the President against "the spirit of favoritism, . . . and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the administration." In general, this power should have "a silent operation." That is, the President, knowing the Senate has this power, will

seldom risk their opposition, and instead seek to fill the administration with persons who can think for themselves and act in the interests of the nation. Hamilton's disdain for appointments of "persons whose chief merit is their implicit devotion to [their superior's] will and to the support of a despicable and dangerous system of personal influence . . ." demonstrates his concern that subordinate public administrators think for themselves about the interests of the nation in the area of policy to which they are assigned.

The President's subordinates were intended by Hamilton to be somewhat independent of the President. Not only were they to hold office beyond the tenure of specific Presidents, they were to be faithful to the government as a whole. They were beholden by oath to "the People through the Government."

It is remarkable that the Constitution has everywhere used the language "Officers of the United States," as if to denote the relation between the officer and the sovereignty; as if to exclude the dangerous pretension that he is the mere creature of the Executive; accordingly, he is to take an oath "to support the Constitution," that is, an oath of fidelity to the Government; but no oath of any kind to the President. [4]

Though this is not to deter what Lynton Caldwell called "a working unanimity among the members of an

administrative family," it forbids blind obedience or loyalty to a specific President, to the "sacrifice of conscience and judgment" and "of the higher duty . . . to the community." To be sure, energetic administration "must materially depend on the union and mutual deference, which subsist between the members of . . . department[s], and the conformity of their conduct with the views of the executive chief." But this does not mean subordinates cannot maintain "a firm and virtuous independence" born of devotion to the community and its Constitution. ⁵ Appointed public administrators are legitimate officers of the government too.

The balance of the President's powers consist in

giving information to Congress on the state of the Union; in recommending to their consideration such measures as he shall judge expedient; in convening them, or either branch, upon extraordinary occasions; in adjourning them when they cannot themselves agree upon the time of adjournment; in receiving ambassadors and other public ministers; in faithfully executing the laws; and in commissioning the officers of the United States.

Though Hamilton seldom discusses these powers, their importance to the executive cannot be overstated. Without them, the executive would be totally crippled, if not non-existent. One can almost detect a sense of relief in

Hamilton when he stated that "no objection has been made to this class of authorities; nor could they possibly admit of any (Federalist 77)."

All the powers described above contribute to a degree of independence and power in the Executive sufficient for an energetic administration. They allow the executive to act quickly, to capitalize on timing, experience, expediency, and necessity. A single executive with substantial duration, adequate support and competent powers can deliberate quickly and enforce vigorously, with consistency. Furthermore, he can form plans, bring system to policy, and guard against improper laws. With a relatively unified hierarchy of subordinate officers, the executive is most capable of attending to the polycentric "details" of public administration.

The powers and elements of energy that strengthen the President also obviously energize the executive administration. Subordinate officers share in executive power by delegation, legislative empowerment and/or court order. As explained earlier, high administrative officials (department and agency heads for example) would have substantial opportunities for fame through the responsible exercise of broad discretionary powers. They too would make systematic plans and policies of major significance

6
and national scope. Subordinate offices with substantial discretionary powers should possess as many elements of energy as possible. For example, with regard to unity, he argued that "a single man [head] in each department of the administration would be greatly preferable. It would give us a chance of more knowledge, more activity, more responsibility, and, of course, more zeal and attention." 7
By his own example, Hamilton provides us with proof of the contention.

In this connection Hamilton also saw the necessity of establishing independent and quasi-public organizations such as the U.S. Bank, boards of trade and agriculture with regulatory powers, a national university, military academies, and public manufactories to perform special functions. 8
The existence and range of authority of these organizations would be controlled by Congress, but their personnel and operations would be largely independent of all the branches, including the executive. Energetic administration sometimes requires independence even from the formally designated Executive.

Having said all this, it must again be emphasized that Hamilton did not intend the Executive and his subordinates to be completely independent. They would share powers with the other branches for purposes of safety, specialization

and stability. They would share interest and power with the Senate in personnel appointments and foreign policy. They would share interest and power with the House of Representatives in financial management and policy. They would share interest and power with the Judiciary in the constitutionality of various laws, actions and policies. Quite clearly, the three branches were to be linked through interdependence to form the superstructure of the Public Administration. It is also clear this superstructure would have vital interests in the administration of its affairs, even at the level of executive detail. As stated earlier, all powers would be manifested in executive operations. Therefore, all branches would participate in distinctive ways in the controlled improvement of executive administration. The integration of their powers necessarily occurs in execution or implementation. As Lynton Caldwell described:

The executive function [is] active, contrasting with the relatively inactive functions of deliberation and adjudication. The executive among other responsibilities, must translate the decisions of courts and legislature into concrete action and must accordingly be vested with powers adequate to the duties which he might be obliged to perform. [10]

At times, members of different branches would participate directly in executive administration. For

example, the Congress had a special interest in overseeing the operations of the Treasury Department, and so, in the establishment of the organic act, made special reporting provisions, and argued over the degree of managerial and planning control they should accord to the Secretary and hold for themselves. Upon comparing the organic acts establishing the three great departments, one finds much greater detail concerning congressional control in the Treasury Act. In fact, the Treasury Department was not designated as an "Executive Department" in the law as the others were. However, in a subsequent law fixing salaries, the Secretary of the Treasury was designated as an "Executive Officer." Though more detailed, the Treasury Act was still quite ambiguous about the extent of control by one branch or the other.¹¹ Hamilton considered it to be an Executive department, but took full advantage of the ambiguity in the law to make use of both legislative and executive power.¹²

Another pertinent example has to do with the establishment of the Sinking Fund for reduction of the public debt. In Hamilton's Report on the Public Credit, he proposed that the Sinking Fund be directed by a board of Commissioners consisting of the President of the Senate, the Chief Justice, the Speaker of the House, the Attorney

General, and the Secretary of the Treasury.¹³ This, perhaps the first "agency" within a Department, is strongly indicative of Hamilton's espousal of legislative and judicial participation in executive administration. The three branches were here involved in real executive detail.

At other times, administrators would have executive, legislative and/or judicial powers that were, if not explicit, inherent in statutory authority, but confined to a narrow field of policy. Hamilton, as Secretary of the Treasury, had extensive rulemaking, and some adjudicative authority over the many financial/customs operations of the Treasury. The Comptroller of the Treasury had great discretion and quasi-judicial authority over the drawing of funds from the Treasury pursuant to law.¹⁴

In conclusion, Hamilton's theory of public administration encompassed government as a whole. The administrative superstructure embraces all three branches. Legislative, Executive and Judicial powers are separated at this level for specialization, and to prevent their being gathered entirely into one set of hands. Efficiency is enhanced, tyranny is prevented. However, their separation is not and cannot be total. Each branch shares some power with the other branches for protection, stability, coordination, and integration in the active process of

execution.

Hamilton was especially concerned with the executive branch because most of the subordinate administrative apparatus would exist within it. The true test of the operations of all the branches, in terms of justice, benevolence, public good, and efficiency lay in the quality of their execution. The necessity of energy, stability and wisdom in execution then becomes wholly apparant. Why Hamilton wanted the Executive to lead the government also becomes apparant.

Hamilton's preoccupation with execution reveals a unique quality in his approach to government. He was, more than any other founder, aware of the practical necessities of governance. Analytic theories and moral principles, if they were to be of any use, required application in practice. Highly refined systems of theory and morals are great salves for soothing philosophical and political minds, but they are a limited balm to governmental minds. What is analyzed abstractly in political theory must be re-integrated in governance. For example, executive power is more easily distinguished in the mind than in practice. In practice, it must often make use of legislative and judicial powers as well. The American Constitution was formed by men who realized the difficulties and necessities

of praxis in varying degrees. What was constituted in theory and on parchment must find its way into practice or be left behind. In the following section, I shall examine Hamilton's unique orientation to this problem.

Hamiltonian Praxis

In his opening "Continentalist" essay of July 1781, Hamilton alluded to the "very vague and confined notions of the practical business of government" that existed in the United States during the Revolutionary War.

To the greater part of us it was a novelty: Of those, who under the former constitution had had opportunities of acquiring experience, a large proportion adhered to the opposite side, and the remainder can only be supposed to have possessed ideas adapted to the narrow colonial sphere, in which they had been accustomed to move, not of that enlarged kind suited to the government of an INDEPENDENT NATION. . . . [T]here have been many false steps, many chimerical projects and utopian speculations, in the management of our civil as well as of our military affairs. [15]

As mentioned earlier, Hamilton was in a position, as Aide de Camp to Washington, to witness first hand the ill effects of those projects and speculations. What looked good in theory often led to disaster in application. Consequently, consideration of how objectives could be

achieved by government became almost as important as what objectives were to be achieved and why. In fact, to Hamilton, it was as morally reprehensible to ignore administrative feasibility as it was to ignore moral principles and scientific theories.

In pursuing too far the idea of absolute perfection in the plan to be proposed, unaccommodated to circumstances, the chance of an absolutely bad issue was infinitely enhanced, and of the evils connected with it.

Was it not more fit by accomodation to circumstances within our limits to pursue a better chance of public good at the risk of an imputation that complete theoretic perfection had not been adhered to?[16]

It was the task of political science to find the proper blend of moral principle, empirical knowledge, and feasibility in order to provide safe and effective public administration. Moral principles and theories of government abounded, but governmental experience, "the parent of wisdom," was in short supply.

In the years following the war, when the need for a new form of national government with increased power and resources had become obvious and compelling, Hamilton became impatient with all the abstract and overly refined arguments about the appropriate form and reach of government. So many of these debates reflected either an

unrealistic and forestalling disdain for government altogether, or the continuing ignorance of many concerning the administrative feasibility and actual effects of their proposals. Even the adopted Constitution would have to face judgment in its application. Broadus Mitchell nicely summarized Hamilton's administrative orientation in this regard.

Hamilton always urged that the goodness or badness of a government would consist quite as much in the actual conduct of it as in its ideal construction. The Constitution and laws would be tested, for acceptance or disagreement, by the wisdom of day-to-day administration. This lesson resulted from the loose management of the colonies, of the Revolution, and the period of the Confederation. Hamilton was impatient, during the Constitutional Convention and afterward, with much declamation about principles, important as these were, to the neglect of practice which was to be the proof of the pudding. He knew that what was put down on paper, after much dispute, remained to be brought to life by energy and fairness of enforcement, or left a dead letter. . . . The whole diversified area of public administration and administrative law which illustrate the executive function owes much to Hamilton's early example. [17]

It would be gross exaggeration to say that Hamilton was alone in trying to relate theory to practice. All the founding fathers exhibited the same general concern, but in varying degrees. For the most part they were neither ideological purists nor pessimistic obscurantists. They were all eclectic, though not incoherent. Most had

integrative ideas and principles with which to weave their systems of government together. But Hamilton was unique in taking his praxis further than any other founder. The other founders limited themselves mainly to developing the superstructure of governance. Only Hamilton attended with any thoroughness to the details of administration.

Hamilton was as interested in the operational, technical and economic details of government as he was in the broader political/administrative superstructure. For him, government consisted of more than politics. It also dealt routinely with material resources, with arrangements of labor and capital, with military and financial institutions, and with geographic and demographic characteristics. Long before the Constitution of 1787 was adopted, Hamilton was developing plans and strategies for stabilizing and stimulating the economy through taxation systems, and monetary and public credit institutions (Banks, Mints, Sinking Funds, etc.). He wanted to diversify the economy through the promotion of manufactures and other commercial enterprises; build military strength; enhance the transportation system, and so on. Certainly these are the subjects of politics, some of the most controversial politics at that, but they are not solely political.

Moreover, Hamilton believed these things necessary regardless of the form of government. This is not to say form has no effect upon their operation. Quite to the contrary, form can support or undermine these operations. In Hamilton's mind, any form of government that can support these and other operations efficiently and effectively to the public benefit is worthy of consideration. This explains why he was not dogmatic about a particular form. Rather, he agreed with Hume and Montesquieu "that a government must be fitted to a nation, as much as a coat to the individual; and consequently, that what may be good at Philadelphia may be bad at Paris, and ridiculous at Petersburg." ¹⁸

Hamilton believed the United States, in its circumstances, would "endure nothing but republican government;" that, given the "actual situation of the country, it was in itself right and proper that the republican theory should have a fair and full trial;" and, most significantly, "that to such a trial it was essential that the government should be so constructed as to give all the energy and stability reconcilable with the principles of that theory." ¹⁹ Hamilton was "affectionately attached to the Republican theory," but he would judge it more in terms of its utility to the people and the nation than as part of

any particular constitutional ideal or theory. "It is yet to be determined by experience whether it be consistent with that stability and order in Government which are essential to public strength and private security and happiness." ²⁰ In this he differed substantially from Madison and the Republicans. I suspect this difference explains much about the split between Hamilton and Madison in 1790, and highlights the difference in their praxiological approaches.

Both men made sincere, anguished and somewhat revealing remarks about their rapidly developing opposition to each other's measures. Madison remarked that he "deserted Col. Hamilton, or rather Col. Hamilton deserted me; in a word, the divergence between us took place from his wishing . . . to administer the Government, into what he thought it ought to be; while on my part I endeavored to make it conform to the Constitution as understood by the Convention that produced and recommended it, and particularly by the State conventions that adopted it." ²¹

In Lynton Caldwell's words,

Constitutional and administrative aspects of politics were inseparably intertwined in Hamilton's theory, but the needs of effective administration dictated the constitutional arrangements which he proposed, whereas Madison and the Virginia school of politics inclined to

conform administrative machinery to a preconceived ideal. [22]

For Madison, fidelity to the framers' and ratifiers' intent, and to the coherent constitutional theory he saw as implicit in that intent, was the only legitimate principle to follow, regardless of circumstances. For Hamilton, the framers' and ratifiers' intent was by no means so clear, unanimous or coherent.²³ The meaning of the Constitution was, therefore, subject to interpretation, and its coherence was to be worked out subject to the demands of administrative feasibility and utility. Indeed, if there was any prevailing sense with which Hamilton and many other delegates came away from the Federal Convention, it was that the new Constitution was framed in general terms and with general powers in order that it accommodate future circumstances.²⁴ Feasibility and utility were among the chief considerations in its framing. Hamilton (agreeing with Hume) asserted that "utility is the prime end of all laws."

This does not mean Hamilton made whatever he wanted out of the constitution. This was the fear of some of his opponents, Jefferson and Madison especially. Jefferson feared Hamilton would establish a monarchy by degrees. But Hamilton sought only to give the Constitution the flexibility and powers that were (1) compatible with a

commonsense reading of its provisions; (2) necessary to accommodate the complexities of day-to-day administration in pursuit of established ends; and (3) sufficient to secure its hegemony over the states. This meant construing the clauses of the Constitution "liberally" or broadly "in advancement of the public good," not abrogating them. His interpretations were always plausible if not compelling.

To be sure, his constitutional theory differed somewhat from Madison's and Jefferson's. The Constitution was capable of being interpreted in more ways than one. What mattered to Hamilton was that it enable the government to achieve the ends entrusted to it for as long as possible.

With this view in mind, Hamilton's remarks about Madison are also revealing. In a conversation with George Beckwith (an unofficial Minister of the British Government in the U.S.), Hamilton joined with Beckwith in surprise at Madison's hostile position towards England and other related matters. He then said of Madison, "[t]he truth is, that although this gentleman is a clever man, he is very little acquainted with the world. That he is uncorrupted and incorruptible I have not a doubt; he has the same End in view that I have, and so have those gentlemen, who act with him, but their mode of attaining it is very

different."²⁵

Hamilton is accusing Madison of being bookish. For the founder who was most scholarly and academically oriented this may not be an inappropriate criticism. It would be a natural defect of his virtues. In any case, Hamilton felt Madison ignored too much the demands of administrative feasibility and thereby sacrificed greater utility to the demands of abstract principle. This became glaringly true in Hamilton's mind when Madison subsequently opposed him on the "discrimination" issue involving public credit and the ravages of enterprising speculators.²⁶ Madison supported discrimination between first and subsequent holders of debt, while Hamilton, on well thought out grounds of feasibility, opposed it. Madison "was too scrupulous to surrender abstract equity to the demands of feasibility. The latter seemed to him unworthy, when actually, under the circumstances, economic and legal, expediency was the higher virtue."²⁷ Expediency and feasibility have moral implications as well, and Hamilton realized this more than any other founder. Again, this was primarily because of his attention to executive detail.

Hamilton's emphasis on feasibility and utility is indicative of his awareness that the policies of a national government operate on a broad and grand scale.

Accordingly, the goodness or badness of a policy must be judged according to its more general tendency.

It is too much characteristic of our national temper to be ingenious in finding out and magnifying the minutest disadvantages, and to reject measures of evident utility, even of necessity, to avoid trivial and sometimes imaginary evils. We seem not to reflect, that in human society, there is scarcely any plan, however salutary to the whole and to every part, by the share each has in the common prosperity, but in one way or another, and under particular circumstances, will operate more to the benefit of some parts, than of others. Unless we can overcome this narrow disposition and learn to estimate measures, by their general tendency, we shall never be a great or a happy people, if we remain a people at all. [28]

Even when a policy is well accommodated to circumstances, it may at times benefit some groups in society more than others. But as long as its general effect is to the benefit of all, it is worthy of consideration.

For Hamilton, then, circumstances play an important part in determining administrative arrangements, and the combination of the two modifies or conditions the operation of scientific theory and moral principle. It is necessary to accommodate theory and principle to practice whenever possible, but, as Hamilton once admonished Wolcott, one may at times have to "relax in theory so as to accomplish as

much as may be practicable." Feasibility and general utility were important guides to effective policy.

Hamilton was also quite aware of the dangers of having no fixed or general principles and theories. With that predisposition, emphasis upon expediency and feasibility would eventually swallow up everything, including individual rights and security, and lead rapidly to tyranny. In a letter to James Bayard, he provides a critique of Aaron Burr that speaks to this point.

The truth is, that Burr is a man of very subtle imagination, and a mind of this make is rarely free from ingenious whimsies. Yet I admit that he has no fixed theory, and that his peculiar notions will easily give way to his interest. But is it a recommendation to have no theory? Can that man be a systematic or able statesman who has none? I believe not. No general principles will hardly work much better than erroneous ones.[30]

People in politics must adhere to principles and theories lest their narrower interests and ambitions lead them to play the demagogue, "to mount the hobby horse of popularity . . . to raise a ferment--and then 'ride in the Whirlwind and direct the Storm.'" Theories must be adopted. They shouldn't be overly refined, but must be coherently related. They must be accommodated as best possible to circumstances, but, on occasion, relaxed to

admit of exceptions and limitations.

Praxis and Hamiltonian Science

Though Hamilton often used the term "science," he never offered any explicit definition of it. Nevertheless, it is quite clear that he used it in the broadest and most traditional sense--as "knowledge acquired by study; acquaintance with or mastery of any department of learning, or trained skill in any art or craft." He referred to the science of broad topics such as ethics, morals, philosophy, human nature, politics, law and policy. He also referred to the science of narrower and more technical topics such as finance, military, foreign affairs, medicine, agriculture, manufactures, etc.

In this view of science, Hamilton was empirically oriented, seeking to discover general maxims from particular observations. In doing so, he relied not only on his own observation, but on the observations of others past and present. The study of history was as much a science as was astronomy to him, the former obviously being much more important to the study of political and social phenomena than the latter.

Care must be taken not to impose subsequently

developed epistemological categories upon Hamilton. For example, he was not a hardcore "positivist" in his epistemology. Though positivism was being given coherent foundation in the work of Hume, much of its development remained for Comte, Durkheim, Austin and other nineteenth century philosophers. It did not dominate inquiry in Hamilton's time. Accordingly, there was as yet no distinction between, say, positivism and interpretivism. The knowledge and efficacy of ideas were as important as the knowledge of behavior. One can only say that Hamilton was an empiricist in the broadest sense of the term. He may have followed Hume's epistemology more closely than others, though clearly not to the point of Hume's skeptical agnosticism and unabashed naturalism. As expressed in his "Enquiry concerning Human Understanding," Hume's epistemology has interpretivist as well as positivist concepts.

That there was as yet no generally accepted distinction made between fact and value is also of importance in understanding Hamilton's science. He was as concerned about the quality, wisdom or goodness of ideas, intentions and behavior as he was about understanding and explaining them. He made no hard and fast distinction between scientific theory and moral principle. Philosophy

37

and science were unified. Is and ought existed together as necessary parts of the same puzzle. Values conditioned facts and vice versa. Methodologically, Hamilton used moral principle and normative vision as guides to empirical studies, and then intuitively fashioned the results into an operational political theory. Political theory was in turn judged by the quality of its operation through a structure of governance, i.e., the extent to which the government realized the public good as defined in that theory. There was, then, a moral or critical theory implicit in Hamilton's praxis that deterred him from blind acceptance of the status quo.

38

Hamilton's science was also pragmatic or technologically oriented. He seldom if ever sought knowledge for its own sake. His studies were focused by his interest in and concern for effective governance. In other words, he would bring science to bear upon the many problems and facets of governance. He was a proponent of what we now call applied science. One significant example of this orientation has to do with Hamilton's personal involvement in the advancement of military science.

Though Hamilton had great respect for "European precedents in a Science which has been so much studied and practiced," he became puzzled by different fixed measures

applied by different European nations to military march steps. With the use of pendulums that oscillated at various speeds, he had experiments conducted to determine "scientifically" the appropriate march step. He found that fixed measures were appropriate only for a certain velocity. The length of the step naturally increased as velocity increased. He therefore abandoned a fixed step standard and had the study continued to develop standards for march steps at varying speeds. He deemed it essential that American infantrymen be the fastest and most efficient in the world, and this required the tools of what would later be called "scientific management." Hamilton anticipated the time and motion studies of Taylor and Gilbreth by more than a century.

This example is significant not only because it shows Hamilton anticipated scientific management. It is also indicative of the great range of concerns and depth of detail that he involved himself in to bring science and system to public administration. He involved himself in the study of finance, political-economy, military and foreign affairs, psychology, law, and so on, and at many different levels of analysis.

For Hamilton, then, science was a part of a larger vocation. He was not a scientist by modern day standards.

He was a practitioner, an administrator, but he was a
"reflective" or scholarly practitioner.⁴⁰ He was constantly
integrating theory and principle with practice in the
development and refinement of administration.

Praxis and Policy

An excellent way of showing Hamilton's praxiological
adeptness is to examine his approach to public policy.⁴¹
There were principles of policy to be discovered and
applied to both the formation and management of the
government.

It is our duty to draw from nature, from
reason, from examples, the justest principles of
policy, and to pursue and apply them in the
formation of our government. We should
contemplate and compare the systems, which, in
this examination, come under our view,
distinguish, with a careful eye, the defects and
excellencies of each, and discarding the former,
incorporate the latter, as far as circumstances
will admit, into our constitution. [42]

In this eclectic approach, Hamilton (and many other
founders) tried to weave elements of various systems into a
form of government that would cohere around "the justest
principles of policy." Such principles contain three basic
elements. First, they contain a normative element. That
is, they involve striving for some notion of goodness

and/or justice. The elements of the public interest and of justice, as described earlier, are prime examples.

Second, there is an ontological assumption or set of assumptions about human nature that guide the application of the normative element. As stated earlier, Hamilton assumed human nature to be depraved for purposes of designing government, and he modified this assumption in accordance with empirical evidence for purposes of running government. He also viewed human beings as creatures of habit, and as more socially than economically rational. Their social nature tends to inflame individual passions further through association, and this encourages faction and prejudice.

43

Third, there is an intuitive/empirical element which presupposes and reinforces the ontological assumptions about human nature, and involves exploration and development of substantive policy areas that are believed to contribute to the realization of regime values--the normative element. Three of these basic policy areas, and Hamilton's enduring contributions to them, are subjects of subsequent chapters. What is described here is a basic policy principle that contains all three basic elements, and that Hamilton applied to all substantive policy formulation. Most importantly for our purposes, this

principle indicates how closely Hamilton related administrative concerns to policy concerns.

In his "Defence of the Funding System" (1795), Hamilton summarizes this basic principle.

The true politician . . . takes human nature (and human society its aggregate) as he finds it, a compound of good and ill qualities, of good and ill tendencies--imbued with powers and actuated by passions and propensities which blend enjoyment with suffering and make the causes of welfare the causes of misfortune.

With this view of human nature he will not attempt to warp or distort it from its natural direction--he will not attempt to promote its happiness by means to which it is not suited, he will not reject the employment of the means which constitute its bliss because they necessarily involve alloy and danger; but [with respect to man] he will seek to promote his action according to the bias of his nature, to lead him to the development of his energies according to the scope of his passions, and erecting the social organization on this basis, he will favour all those institutions and plans which tend to make men happy according to their natural bent, which multiply the sources of individual enjoyment and increase those of national resource and strength--taking care to infuse in each case all the ingredients which can be devised as preventives or correctives of the evil which is the eternal concomitant of temporal blessing.[44]

Hamilton here provided a moral rationale for an administrative system that integrated promotional and regulatory policy designed to enhance the material prosperity of, and the security of rights for, the nation

and the people. It is based upon a dualistic conception of human nature that sees almost every good thing alloyed with evil. "Tis the portion of man assigned to him by the eternal allotment of Providence that every good he enjoys, shall be alloyed with ills, that every source of his bliss shall be a source of his affliction." ⁴⁵ However, it is better for a government to promote material wealth, liberty and happiness, than to quash all in order to avoid the concomitant dangers. "Shall we substitute the unmingled misery of a gloomy and destructive despotism to the ⁴⁶ alternate sunshine and storms of Liberty?" Consequently, on one hand, government should seek to promote advancements in all those technical "sciences" which promote industry, prosperity, happiness, etc. Hamilton's promotion of public credit, banking, manufactures, commerce, agriculture, arms manufactures, military preparedness, and various kinds of educational institutions, are easily understood in this light.

On the other hand, Hamilton's dualistic view of human nature, combined with the normative element, also provides the moral basis for regulatory administration. The public administration must devise in each case the "preventives and correctives of the evil which is the eternal concomitant of temporal blessing." Each promotional policy

will create opportunities for abuse and exploitation that, if left unchecked, would ultimately overshadow the public benefits of the policy. Human action and behavior must be channelled into courses productive and beneficial to the public interest by regulative diversions based upon sanctions and rewards. Hence, we see in Hamilton's policies regulatory measures designed to channel and control the development and use of credit, manufactures, agriculture, shipping, etc., by private parties to the public benefit. ⁴⁷ Though he would have wanted regulatory administration to be well developed much sooner, its rise in the twentieth century would certainly have been welcomed by him. However, it must be emphasized that his regulatory policy would differ from twentieth century U.S. regulatory policy in that his would be guided by an integrative vision and theory of public interest that transcends the pluralistic conflict of narrower interests. As stated earlier, this is a normative vision that presupposed a concept of noble human and national character as an ideal to be striven for individually and collectively. In this process, the national government would maintain more centralized administrative authority and control over the economy than twentieth century pluralist doctrine allows.

In Hamilton's approach to policy, then, we see an

integration of regime values (the normative element) with ontological assumptions about human nature. This integration leads empirical inquiries into specific policy areas wherein a combination of promotive and regulative strategies and administrative arrangements contribute to the realization of the nation's values. Hamilton not only led all others of his time in conceptualizing detailed policies and administrative organizations in accordance with this principle, he did everything he could to implement them as well. For these reasons, he went far beyond other founders in developing American public policy and administration. In doing so, he also went further than any other founder in developing American praxis.

Notes to Chapter III

1. Ibid., #70, p. 423.

2. Ibid., p. 424. The discussion of these elements continues through Federalist 77. All subsequent quotes in this section, relating to these elements, are taken from these essays.

3. Federalist 75. Obligations of good faith flow from natural moral relations and agreements between sovereign parties, not from the will of the people. This distinction harkens back to Hamilton's concept of sovereignty as involving more than just the consent or will of the people.

4. "Lucius Crassus, The Examination No. XVII," Hamilton Papers, Vol. XXV, pp. 570-571. Also see "Treasury Circular," July 20, 1792, Papers, Vol. XII, pp. 59-62 for an interesting discussion of the oath of subordinate officers in relation to unified direction in the departmental administration of public business.

5. See Caldwell, Administrative Theories of Hamilton and Jefferson, p. 96-97; "Catullus," No. III, Sept. 29, 1792, Hamilton, Papers, Vol XII, p. 499; and "Metellus," October 24, 1792, Papers, Vol. XII, pp. 614-616. On pages 614-615, Hamilton presents his standards for a "firm and virtuous independence of character, guided by a just and necessary sense of decorum" necessary for people (Jefferson in this case) who disagree with the policies of an administration they are a part of.

A member of the administration, in one department, ought only to aid those measures of another, which he approves--where he disapproves, if called upon to act officially, he ought to manifest his disapprobation, and avow his opposition; but out of an official line he ought not to interfere, as long as he thinks fit to continue a part of the administration.

6. This point was discussed and debated at length in early congressional debates, particularly in relation to the formation of the Treasury Department. Despite some

vehement opposition on separation of powers grounds to empowering the Treasury Secretary "to digest and report plans for the improvement and management of the revenue and the support of the public credit," most congressmen (and especially Madison) acknowledged that the Secretary must be an important and powerful office, and that they would and should rely upon the Secretary's "well-formed and digested plans," and his expertise, in the development of fiscal legislation and financial policy. See Gales and Seaton, Debates and Proceedings in Congress of U.S., Vol. I, pp. 384-396, 592-607.

7. Letter to James Duane, Sept. 3, 1780, Hamilton, Papers, Vol. II, pp. 404-405.

8. In Hamilton's Papers see "Continentalist No. IV," Vol. II, pp. 669-674; "Report on Public Credit," Vol. VI, pp. 51-168; "Report on the Bank," Vol. VII, pp. 305-342; "Report on Manufactures," Vol. X, pp. 230-340; and "Letter to George Washington" accompanied by a draft of "GW's Eighth Annual Address to Congress," Vol. XX, pp. 381-388. For a good summary of some of Hamilton's measures of this type, see Caldwell, Administrative Theories of Hamilton and Jefferson, Chapter V, pp. 51-79.

9. For purposes of clarity, I shall hereafter use "executive" (lower case) to connote execution in general, whether or not it falls within the province of the Executive branch of government. Where "Executive" (upper case) occurs, I am referring to the formal branch of government.

10. Caldwell, Administrative Theories of Hamilton & Jefferson, p. 39.

11. See I Statute 65, Chap. XII. "An Act to establish the Treasury Department," Sept. 2, 1789, Public Statutes at Large of the United States of America, Vol. I, pp. 65-67. The Acts establishing the Departments of War and Foreign Affairs are in the same Volume at pp. 49-50 and 28-29. The Act fixing salaries is at pp. 67-69 (1 Stat. 67).

12. Hamilton's position on the Treasury Department as an Executive department is most clearly set forth in a memo "To the Select Committee Appointed to Examine the Treasury Department," March 24, 1794, Hamilton, Papers, Vol. XVI, pp. 193-194. In regard to Hamilton's exploitation of the ambiguous statutory language, Jefferson alleged Hamilton "endeavored to place himself subject to the house when the Executive should propose what he did not like, and subject

to the Executive when the house should propose anything disagreeable."

13. Hamilton, Papers, Vol. VI, pp. 106-107. It is interesting that the act, as passed, substituted the Secretary of State for the Speaker of the House (I Stat. 186, Chap XLVII, August 12, 1790) I have not been able to establish the reasons for this change. Quite clearly there were significant political ramifications in the change.

14. See White, The Federalists, pp. 52, 116-128, 450, and 488-460. The discretionary powers of the Secretary of the Treasury were necessarily great, and they were watched very carefully by Congress. Some Congressmen were strongly against giving so much power to the Secretary, arguing his "rules of office" would take precedence over and eventually contravene statutory laws. William B. Giles of Virginia was particularly adamant about this, and opposed Hamilton's active role in the Treasury to the point of drawing impeachment resolutions against him for abusing his discretionary powers. Hamilton was eventually vindicated of any wrong doing, and administrative rulemaking and adjudication have flourished, especially in the twentieth century. For a specific example of Hamilton's defense and use of administrative adjudication, see "Treasury Circular," July 20, 1792, Vol. XII, pp. 57-62.

15. Hamilton, Papers, Vol. II, pp. 649-50.

16. "Defense of the Funding System," July, 1795, Ibid., Vol. XIX, p. 6.

17. Mitchell, Hamilton: The National Adventure, p. 25.

18. Letter to Marquis de Lafayette, Jan. 6, 1799, Hamilton, Papers, Vol. XXII, p. 404. Hamilton proved his fidelity to this maxim when he provided Timothy Pickering with a rough sketch of a government he deemed appropriate for Santo Domingo. "No regular system of Liberty will at present suit St Domingo. The Government if independent must be military--partaking of the feudal system." Hamilton apparently believed the people of Santo Domingo were not yet disciplined and refined enough to support a republic or other free government. Ibid., pp. 492-3.

19. Letter to Timothy Pickering, Sept. 16, 1803, Ibid., Vol. XXVI, pp. 148-149.

20. These points follow closely the line of reasoning

employed by Lynton Caldwell in The Administrative Theories of Hamilton & Jefferson, p. 34. The quotations are from a letter to Edward Carrington, May 26, 1792, Hamilton, Papers, Vol. XI, p. 444. This letter is also of interest regarding Hamilton's surprise and dismay at Madison's defection from what he considered a close alliance. Hamilton claimed this alliance was so important that it was a major consideration in his taking the Treasury post in the first place. He claimed Madison had voiced full approval and support of his ideas in private discussions prior to taking office. As stated earlier, the reasons for this defection are not entirely clear. One significant reason will be discussed in the following paragraphs.

21. Henry S. Randall, The Life of Thomas Jefferson (New York: Derby & Jackson, 1858), Vol. III, pp. 594-95.

22. Caldwell, Administrative Theories of Hamilton & Jefferson, p. 34.

23. For example, see Hamilton's analysis of the Framers' intent concerning the power of incorporation in his opinion on the constitutionality of the United States Bank, Papers, Vol. VIII, p. 111. There were many differing views on the scope and propriety of this power. Hamilton thus argued, "In this state of the matter, no inference whatever can be drawn from it [framers intent]." Furthermore, he went on to argue that "Nothing is more common than for laws to express and effect more or less than was intended," and that such "intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Framers intent, if it is to be used at all, must be subjected to the common sense reading of the law as written.

24. In his detailed and rigorous study of the Constitution, William Winslow Crosskey lends great support to this argument. Though often grossly overstated, Crosskey's study of the eighteenth century meaning and context of the terms in the Constitution concludes that the Constitution as drafted was intended to be a most general grant of powers to the national government (and to Congress in particular) as the supreme or "sovereign" power that creates or "reserves" all subordinate powers, including those of the states. He argues that, subsequent to the Convention, personal, political and patriotic considerations led James Madison into deliberate misinterpretations of the Constitution along Jeffersonian lines, in favor of the states. Though Crosskey's arguments are often compelling, there is a malicious cast to many of

his remarks about Madison that seem unwarranted. He seems too certain about motives that by their very nature must remain obscure. This tone of certainty carries over into the rest of the work generally, and, therefore, has caused what is otherwise a work of superb and important scholarship to become obscure and forgotten. See William Winslow Crosskey, Politics and the Constitution in the History of the United States, 2 vols. (Chicago: The University of Chicago Press, 1953); and William Winslow Crosskey and William Jeffrey, Jr., Politics and the Constitution in the History of the United States, vol. III (Chicago: University of Chicago Press, 1980). For an excellent critical review of Crosskey's work, see Robert G. McCloskey's book review in The American Political Science Review, Vol. 50, No. 4, 1956, pp. 1152-58.

25. Hamilton Papers, Vol. V, p. 488. By 1792, Hamilton even began to question Madison's character and motives in his sudden opposition. But Hamilton's anguish and surprise probably unduly influenced his thoughts at this point. See letter to Edward Carrington, May 26, 1792, Hamilton Papers, Vol. XI, pp. 426-444.

26. Some of these enterprising speculators were Hamilton's friends and associates. One of Hamilton's greatest mistakes was failing to see the lack of devotion to the public interest in some of these people, William Duer particularly. It may be, as Robert Hendrickson described, that Hamilton too easily projected "his own nature on his cronies, [thus seeing] a reversed image of many of them." Robert Hendrickson, Hamilton II, p. 10.

27. Mitchell, Hamilton: The National Adventure, p. 67.

28. "Continentalist No. V, April 18, 1782, Hamilton Papers, Vol. III, p. 82.

29. Letter to Oliver Wolcott, June 8, 1797, Hamilton Papers, Vol. XXI, pp. 103-4.

30. January 16, 1801, Hamilton, Papers, Vol. XXV, p. 321.

31. Letter to Edward Carrington, May 26, 1792, Ibid., Vol. XI, p. 444.

32. In his "Defence of the Funding System," Hamilton said, "I grant that the idea of accommodation was not to be carried so far as to sacrifice to it any essential

principle. This is never justifiable. But with the restriction of not sacrificing principle was it not right and advisable so to shape the course as to secure the best prospect of effecting the greatest possible good? To me this appeared the path of policy and duty and I acted under the influence of that impression." Ibid., July, 1795, Vol. XIX, p. 7. This would appear to contradict his advice to Wolcott two years later except that he modifies this earlier statement on principle with the term "essential." The implication is that there are essential principles, probably involving good faith, honor, justice, etc. and less essential ones such as uniformity, consistency, efficiency, firmness, etc. For example, in the case involving Wolcott, uniformity and consistency principles generally related to forming equitable taxation schemes were involved. But these principles sometime fail to achieve their intended results, in which case, the wiser and more equitable course may be to make an exception to the general principle. However, even the essential principles are subject to limitations in application due to feasibility. The "discrimination" issue faced the dilemma of perfect mass justice being humanly impossible to obtain.

33. See "Science" and "Man of Science," OED, 1970 ed. These usages were common in the seventeenth and eighteenth centuries. It should also be noted that during that period "philosophy" and "science" were often used interchangeably.

34. Though there is no explicit proof, I am certain Hamilton would have rejected Hume's agnostic naturalism as sophistry. Hamilton clearly believed in a transcendent and supernatural God. Like many of his time, he often described God in abstract metaphysical terms (such as "the supreme intelligence," the "superintending principle, who is the governor, . . . and final judge of the universe"), but, in various periods of his life he also exhibited devotion to the God of the Judeo/Christian tradition. On this basis, he would also have rejected Hume's attacks on the natural law tradition in the same manner he rejected Hobbes' naturalistic reformulation of it. For example, see "The Farmer Refuted," Hamilton Papers, Vol. I, pp. 86-88.

35. See David Hume, Enquiries concerning Human Understanding and Concerning the Principles of Morals, L.A. Selby-Bigge, P.H Nidditch, eds., (Oxford: Clarendon Press, 1985, Reprinted from 1777 edition), pp. 5-164. At certain points in his "Enquiry concerning Human Understanding," Hume's epistemology involves terms and concepts amazingly

like those expressed much later in the works of Shutz, and Berger and Luckman. Of course he also sets the standards for the behavioral sciences of the twentieth century (see especially pp. 164-165). Hume and Hamilton were thus empiricists in the broadest sense. Hamilton was no doubt influenced by Bacon as well. He is reported to have told his friend James Kent that he planned to write a treatise on government employing Bacon's inductive method. See footnote 11 in Chapter I.

36. Hume was probably the first to call attention to this distinction in criticizing the science of the time, but it was not yet the cornerstone of modern science or ethics. See David Hume, "Of Morals," Treatise of Human Nature, book III, pt. I, Sec. 1.

37. For a discussion of the meanings and connotations of the terms "philosophy" and "science" during the founding period, see Douglass Adair, Fame and the Founding Fathers, pp. 93-95. "The synonym of 'Philosophy' in 1783 then was 'Science'; the synonym of 'Philosopher' would be our modern word (not coined until 1840) 'Scientist,' 'a man deep in knowledge, either moral or natural.'" (p. 94)

38. The following observation by Clinton Rossiter is relevant to this discussion.

[I]t should be noted that he [Hamilton] often used "political science" and "moral science"--even "ethics" and "politics"--as interchangeable terms. The "great improvement" in the science of politics that had taken place in the seventeenth and eighteenth centuries was essentially the result of an advance in men's capacity to discriminate between right and wrong.

Rossiter, Hamilton and the Constitution, pp. 123-4. Also see "Phocion," Hamilton, Papers, Vol. III, p. 495; and Rossiter, Federalist 31, pp. 193-194. Rather than trying to distinguish fact and value, Hamilton was concerned about detecting and avoiding sophistry. Plausible but misleading arguments most often occurred when intellect was divorced (consciously or unconsciously) from experience and/or morality, or when prejudice blinded the interaction of reason and experience. He disliked "ideologues," "empirics" and "obscurantists" because their schemes were either utopian, cynical or narrowly self-interested, and they always ended in tyranny.

I must also emphasize the importance of Hamilton's "critical theory." In recent social science literature on organizations there has been a trend toward identifying critical theory with the radical critique of Marx and neo-Marxists. In the sociological literature this is associated with the "radical humanist" and "radical structuralist" paradigms. Though these paradigms offer valuable insights, they have no monopoly on critical insight. The application of any political theory or philosophy to what is understood empirically can result in valuable critique. Furthermore, the less radical the critique, the more often there is room for constructive improvements in the status quo. One fundamental criticism of neo-Marxist thought is that it fails in the area of constructive prescriptions. See Gibson Burrell & Gareth Morgan, Sociological Paradigms and Organizational Analysis (London: Heinemann, 1979); and Richard Bernstein, The Restructuring of Social and Political Theory (Philadelphia: Philadelphia University of Pennsylvania Press, 1978).

39. Letter to Vicomte de Noailles, May 5, 1800. Also see letter to John F. Hamtramck, May 27, 1800, Papers, Vol. XXIV, pp. 460 and 531.

40. The concept of "reflectiveness" is taken from Donald A. Schon, The Reflective Practitioner (New York: Basic Books, 1983).

41. The term "policy" had a number of broad meanings in Hamilton's day, some of which are rarely used if at all today. In relation to matters of government and politics, "policy" could have been used to refer to (1) "an organized and established system or form of government or administration; a constitution, polity;" (2) "government, administration, the conduct of public affairs; political science;" (3) "political sagacity; prudence, skill, or consideration of expediency in the conduct of public affairs; statecraft; diplomacy; in a bad sense, political cunning;" and (4) "a course of action adopted and pursued by a government, party, ruler, statesman, etc." OED, 1970 ed., s.v. "Policy."

The last definition has survived as the "chief living sense" of the term. Hamilton appears to have used the term in all these senses at various times, but his most common usage of it concurs generally with the last definition. I am assuming this definition as the primary meaning of the term for purposes of this discussion. However, before proceeding on, note that none of these definitions distinguish policy from administration. Indeed, the gist

of these definitions appears to equate policy with administration-in-action, or as governance. This accords with Hamilton's usage and the examples of usage given in the OED.

42. June 24, 1788, Hamilton, Papers, Vol. V, p. 67.

43. These assumptions will be discussed further, with citations, in the chapters on Finance and Public Office.

44. Hamilton, Papers, Vol. XIX, pp. 59-60.

45. Ibid., p. 52. Also see Letter to Robert Morris, April 30, 1781, Vol. II, pp. 618-19; Letter to Rufus King, July 8, 1791, Vol. VIII, p. 531. Hamilton held closely to this belief throughout his life.

46. Ibid., p. 53. Madison shares this same basic approach in his discussion of faction in Federalist 10.

47. See Caldwell, Administrative Theories of Hamilton and Jefferson, pp. 59-79 for a brief summary of some of these regulatory measures. The bulk of these proposals are found in Hamilton's "Report on Manufactures," Dec. 5, 1791, Papers, Vol. X, pp. 230-340. It should also be noted here that Hamilton did not view the government as the be-all and end-all of social improvement. Other aspects of and institutions in society shared very important roles in this process. For example, he considered religion to be an indispensable support to political society and government. Religion should therefore be encouraged, though certainly not "established" by government. See Hamilton's "Views on the French Revolution" in Morton J. Frisch, ed., Selected Writings and Speeches of Alexander Hamilton (Washington D.C.: American Enterprise Inst., 1985); Hamilton Papers, Vol. XVII, pp. 585-88; and "Draft of Washington's Farewell Address," Papers, Vol. XX, pp. 280-81.

CHAPTER IV

PUBLIC ADMINISTRATION AND LAW:

REDISCOVERING THE FOUNDATIONS OF GOVERNANCE

The general drift of authority and responsibility to the President over the past two centuries is understandable. This trend by itself should not be cause for alarm. More threatening is executive authority cut loose from legislative moorings and constitutional restrictions--presidential action no longer tethered by law.

Louis Fisher, 1978

Under the jurisprudence of John Marshall, Hamilton's administrative theory was in large measure embodied in American constitutional law.

Lynton Caldwell, 1964

Praxis and Public Law: Hamiltonian Jurisprudence

For Hamilton, the relationship between theory and practice in public administration was grounded in law. As discussed earlier, his belief in natural law provided a source of moral and political principles that shaped his view of the Constitution and of legitimate governance.

This view encompassed the "notion of a well-mounted, energetic, guiding government." Furthermore, law (positive and natural) brought reasoned inquiry to bear upon the political process, this being the element distinguishing "free" governments from tyrannical ones. This necessarily gives some legitimacy and authority to rhetoric and expertise (scientific or otherwise) because of the intrinsic norm that knowledge derived from reason should prevail over arbitrary will. ¹ Hamilton was "a firm advocate of the double-barrelled principle that the governors of men should think, explain, and bargain in making, administering, and enforcing public policy. The government . . . was to be decisive but not arbitrary, energetic but not oppressive"

Finally, positive law was viewed by Hamilton as an instrument for achieving the ends of government. Therefore, it was an instrument for political purposes. His "overriding purpose was to build the foundations of a new empire rather than to tend the campfires of an old confederation." Thus, he "looked upon the fundamental law as a launching pad rather than a roadblock." ² The legal process, then, constituted a legitimating focal point for moral and political philosophy, empirical inquiry and reasoned persuasion, in governance. Legal reasoning based

upon natural and positive law provided the milieu for public praxis.

In order for law to function effectively as the foundation for the theory and practice of government over time, it must be constructed in general terms and construed "liberally." In his famous opinion on the constitutionality of the United States Bank Hamilton summarized this general principle of construction.

. . . the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defence, &c ought to be construed liberally, in advancement of the public good. This rule does not depend on the particular form of a government or on the particular demarkation of the boundaries of its powers, but on the nature and objects of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent and complexity, that there must, of necessity, be great latitude of discretion in the selection and application of those means. Hence consequently, the necessity & propriety of exercising the authorities intrusted to a government on principles of liberal construction. [3]

In this language, Hamilton is providing the enabling rationale for discretionary public administration. To be effective, the government must have the "right to employ all the means requisite, and fairly applicable to the attainment of the ends of such power; and which are not

precluded by restrictions & exceptions specified in the constitution; or not immoral, or not contrary to the essential ends of political society." The guides to the use of such discretion are "the general principles and general ends of government." Therefore, "the only question must be, . . . whether the mean to be employed, . . . has a natural relation to any of the acknowledged objects or lawful ends of the government."⁴

Hamilton's elaboration of the implied and resulting powers doctrines follows logically from these rules of construction.⁵ Specific means suited to specific circumstances are, by implication, constitutional if they can be shown to have a natural relation to lawful ends. They do not have to be literally expressed in the Constitution. Indeed, literally specifying such means would only fetter the Constitution, decreasing its capability of accommodating future circumstances. Furthermore, even where there are no enumerated powers from which to derive implied powers, the government may still be entitled to act as a result of "the whole mass of the powers of the government & from the nature of political society." Hamilton's "resulting powers" doctrine alludes to the important idea that government has by its nature certain objects it must pursue. In this sense, the United States

government is no different than any other national government. That is why he argued liberal construction "does not depend on the particular form of a government or on the particular demarkation of the boundaries of its powers, but on the nature and objects of government itself."

This brief and rather off-hand remark concerning "resulting powers" reveals Hamilton's conviction that the national government required the powers of a consolidated government even though it may not be one. These powers were also necessary to the full realization of his vision of a great commercial empire. His illustrative application of these powers to territorial conquests bears this out.

And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated resulting powers. It will not be doubted that if the United States should make a conquest of any of the territories of its neighbors, they would possess sovereign jurisdiction over the conquered territory. This would rather be a result from the whole mass of the powers of the government and from the nature of political society, than a consequence of either of the powers specially enumerated. [6]

But such power would also move the national government beyond the realm of delegated powers. Given the mood of the time, he prudently avoided any public advocacy of such

a controversial doctrine, and left it to Washington and posterity to ponder.

The advantage of Hamilton's rules of construction is that they encourage reasoned reflection and persuasion about the relation of means to lawful ends, while avoiding the pitfalls of legalism.⁷ Hamilton readily admitted that this approach also increases the chance for error and abuse.

"And yet an adherence to the letter of its [constitutional] powers would at once arrest the motions of the government. It is not only agreed on all hands, that the exercise of constructive powers is indispensable, but every act which has been passed is more or less an exemplification of it." [8]

Statutory laws and policies are derived more by implication than by literal interpretation of the Constitution.

Hamilton's rules of construction, then, involve liberality and reasonableness, thereby encouraging action, energy and creativity in administration. He would avoid narrow or rigid interpretations that unnecessarily hamper government in pursuit of established ends. And yet all his policies were rationally related to the language and values of the Constitution.

This flexible, adaptive view of law also encourages stability in league with change. Legal reasoning and process can slow radical changes in society and government. This marks a fundamental difference in the approach to law between Hamilton and Jefferson. Jefferson believed it to be a healthy, even though sometimes violent, practice to resort to "first principles" via revolution and/or establishment of a new constitution every twenty years or so. For this reason he tended to construe the Constitution more rigidly and literally, and was therefore more apt to act outside the law. Hamilton and Madison thought this a dangerous philosophy. Such basic and radical changes almost always resulted in periods of anarchy which then lead to despotism and tyranny. The American revolution was a bright and unusual exception to this historical trend, and Hamilton, among other founders, was not enthusiastic about taking further chances. Revolutions and other fundamental changes in political society that required extra-legal action were to be embarked upon only in the direst circumstances. In the Hamiltonian scheme, philosophical and political controversies should, as much as possible, be framed within legal processes, and therefore subjected to the calming, civilizing powers of reason. Fifty years later, Alexis de Tocqueville would comment on the ability of Americans to do

11
just that.

As an enabling rationale for national administrative expansion and development, Hamilton's legal doctrines (i.e. liberal construction, implied powers, etc.) have survived largely intact. How this occurred is the subject of the rest of this chapter. Before commencing this historical analysis, however, it is extremely important to point out that not all of Hamilton's jurisprudential perspective has survived in use.

For a number of reasons, the praxiological/natural law orientation that pervades Hamilton's jurisprudence has been largely forgotten or ignored in twentieth century administrative thought. A major reason is that legal and scientific positivism, combined with an optimism about the perfectability of man and social life through increased knowledge, displaced the older, rationalistic and rhetorical natural law tradition with its religious and metaphysical buttresses. Leonard D. White's prefatory statement in 1926 is indicative of the change in orientation to public administration that had occurred.

12
the study of administration should start from the base of management rather than the foundation of law, and is therefore more absorbed in the affairs of the American Management Association than in the decisions of the courts.

It assumes that administration is still primarily an art but attaches importance to the significant tendency to transform it into a science. [13]

By the late nineteenth century, law had come to be viewed as a rather sterile and technical body of commands subject to political manipulation, and incapable of articulating moral premises or structuring moral thought. Law, "as an expression of will backed by force," replaced law as a praxiological tool that brought philosophy, religion and science to bear upon administration. This undercut the foundational nature of law as an "ordinance of reason," and therefore destroyed its centrality to the concept of "free government" as understood by the founders. Positivism, willingly or not, accomodated law to arbitrary rule and manipulation. As Lawrence Friedman said,

Tradition had lost its magic, and the legal order was no longer supported by any supernatural grace, . . . [i.e.,] a kind of natural law aura. This meant that levers of power were fair game for anybody who could grab them and make them do his bidding. [15]

Simultaneously, a new orientation was being developed for administration. It took on the aura of an engineering science where discreet and precise bits of information could be scientifically discovered and systematically assembled to determine the most efficient, business-like

16
 policies. By the beginning of the twentieth century, both
 concepts (law and management) had been divorced from their
 moral context, and were separated as academic fields of
 study. 17
 An ostensibly amoral, scientific praxis had been
 substituted for jurisprudential praxis in public
 administration.

We have since learned from Waldo, Gaus, Appleby, and
 others that all theories of public administration
 necessarily presume some kind of political and moral theory
 whether it is acknowledged or not. But we have not yet
 housed our scientific praxis in a legitimating moral
 context in the sense that Hamilton's jurisprudential praxis
 did. Hamilton's concept of law provides a legitimating
 ethos and rationale for public administration. Our modern
 scientific theories fail in this regard. 18
 Accordingly,
 Hamilton's jurisprudential theory is worthy of
 reconsideration.

Hamilton's Enabling Doctrines and Their Preservation

Enabling Doctrines

Hamilton was the leading advocate of liberal
 constitutional interpretation. He, more than any other

person, enunciated the legal rationale for energetic national administration in the future. This did not mean he attended to the executive power exclusively. As has been shown, he sought to strengthen the entire administrative superstructure (i.e., the three branches) of American national government, with the executive branch leading. Accordingly, his application of liberal construction to specific clauses of the Constitution addressed the powers of all three branches, presuming the executive's leadership. Clinton Rossiter's elaborate description of Hamilton's constitutional thought confirms this. Rossiter identified four basic constitutional "problems" to which Hamilton directed most of his energies as constitutional theorist. These were:

- 1) the division of authority between the nation and the states, 2) the nature and reach of the powers of Congress, 3) the nature and reach of the power of the President, and 4) the role of the courts as guardians of the fundamental law. [19]

The legal doctrines that Hamilton applied to these four problems were calculated to enhance or strengthen dramatically the administrative capacity of the nation. They provide important legal and normative justifications for vast administrative powers over society. In this sense, they are enabling doctrines for the public

administration. The rest of this chapter provides a brief explanation of these doctrines, and then shows how they were preserved as an integral part of our governance structure.

Hamilton clearly sought a greater portion of authority for the national government. His construction of the supremacy clause in Federalist 33 and in his Lucius Crassus papers provides the best public statements of his position.²⁰ The continued survival and prosperity of the nation and the states depended on the supremacy of the national government and its laws. The Union, created by the people, not the states, coexisted with independence in 1776. The states were at best "artificial beings," and the Articles of Confederation amounted to an unfortunate "abridgement" of "original sovereignty."²¹ The new Constitution was much better suited to the needs of the Union. However, as indicated in Federalist 17, "It will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the State authorities."²² Only by "much better administration" could the national government win the support and affection of the people necessary to maintain its supremacy over the states.

Maintaining national supremacy by improving the national administration required liberal interpretations of other specific constitutional clauses, namely those addressing Congress, the President, and the Courts. In Article I, section 8, Hamilton applied liberal construction to the taxing and general welfare powers, commerce power, war powers, and the necessary and proper clause in an effort to establish as general a legislative authority for Congress as possible. ²³ In such works as Federalist 22 and 30-35, his addresses at the Poughkeepsie Convention, the Report on Public Credit, the Opinion on the Constitutionality of the Bank, the Report on Manufactures, and his brief in Hylton v. U.S. (1795), Hamilton deals with the taxing, general welfare and commerce powers. Federalist 23 deals thoroughly with the War powers, and his Opinion on the Bank deals conclusively with the necessary ²⁴ and proper clause.

Hamilton applied to each of these clauses his basic standard of providing means adequate to support the ends for which the national government may be responsible. For example, Congress should have broad powers of taxation because:

A constitution cannot set bounds to a nation's wants; it ought not therefore to set

bounds to its resources. Unexpected invasions, long and ruinous wars, may demand all the possible abilities of the country. Shall not your government have power to call these abilities into action? The contingencies of society are not reducible to calculations; they cannot be fixed or bounded, even in imagination. [25]

Hamilton was prepared to sanction almost any kind of tax imaginable, depending on the "abilities" and "contingencies" of society. ²⁶ Furthermore, as Rossiter stated, he "took a large view of the power of Congress to tax because he took a large view of its power to spend." ²⁷ In his Report on Manufactures, he said:

. . . the power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts, and the providing for the common defense and general welfare. The terms "general welfare" were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. [28]

Congress should, therefore, have the discretion "to pronounce, upon the objects, which concern the general Welfare, and for which under that description, an appropriation of money is requisite and proper." This meant discretion to promote and regulate commerce, manufactures, agriculture, education, and so on. Hence, we see in Hamilton's construction the rationale for a large,

domestic, national budget designed to support a service-oriented bureaucracy.

Hamilton applied the same basic logic of contingency to the War powers.

These powers ought to exist without limitation, because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them

It must be admitted as a necessary consequence that there can be no limitation of the authority which is to provide for the common defense and protection of the community in any matter essential to its efficacy--that is, in any matter essential to the formation, direction, or support of the national forces. [29]

This reasoning justifies the power "to levy troops; to build and equip fleets; and to raise the revenues which will be required for the formation and support of an army and navy in the customary and ordinary modes practiced in other governments." In short, through Congressional powers alone, Hamilton provides the rationale for an extensive military and foreign affairs establishment.

In regard to Presidential powers, Hamilton again takes the same approach. We have already reviewed his emphasis upon energy in Federalist 70-77. He is to make "well digested plans," leading in policy formulation as well as

execution. In terms of the Constitution, he would "claim the exercise of implied powers [for the Executive] as well as the Legislative. In a word there is no public function which does not include the exercise of implied as well as express authority." ³⁰ Accordingly, he advocated active use of the veto to proposed laws the President "deems contrary to the public interest." He argued the President had power to "direct the common strength" in times of war as Commander-in-Chief, and to engage in hostilities when a state of war has been established "in fact," though without a formal declaration. Furthermore, he thought the President had power "to proclaim [without approval from Congress] temporary suspensions of hostilities. Generals of Armies have a right ex officio to make truces. Why not the Constitutional Commander in Chief!" He also asserted broad discretion for the Executive concerning the spending ³¹ of public funds.

Hamilton gave his strongest defense of broad executive power in his *Pacificus* essays. These essays addressed the specific issue of whether or not the President could proclaim neutrality. In the first essay he established the Executive "as the organ of intercourse between the Nation and foreign Nations--as the interpreter of the National Treaties in those cases in which the Judiciary is not

competent" In doing so, he also voiced "the general doctrine of our constitution, that the Executive Power of the Nation is vested in the President; subject only to the exceptions and qualifications which are expressed in the instrument."

It would not consist with the rules of sound construction to consider this enumeration of particular authorities as derogating from the more comprehensive grant contained in the general clause, further than as it may be coupled with express restrictions or qualifications; as in regard to the cooperation of the Senate in the appointment of officers and the making of treaties; which are qualifications of the general executive powers of appointing officers and making treaties: Because the difficulty of a complete and perfect specification of all the cases of Executive authority would naturally dictate the use of general terms--and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution in regard to the two powers the Legislative and the Executive serves to confirm this inference. In the article which grants the legislative powers of the Government, the expressions are--"All Legislative powers herein granted shall be vested in a Congress of the UStates;" in that which grants the Executive Power the expressions are . . . "The Executive Power shall be vested in a President of the UStates of America."

The enumeration ought rather therefore to be considered as intended by way of greater caution, to specify and regulate the principal articles implied in the definition of Executive Power; leaving the rest to flow from the general grant of that power, interpreted in conformity to other parts of the constitution and the the principles of free government. [32]

Out of the "vesting clause," Hamilton created broad Presidential authority. In the same essay, he buttressed this grant of power with the power to "take care that the laws be faithfully executed," and the power of "command and disposition of the public force." Furthermore, he asserted the President's role as the leading partner in treaty administration and, therefore, in foreign affairs generally. "[T]hough treaties can only be made by the President and Senate, their activity may be continued or suspended by the President alone." [emphasis added] The President, then, holds the executive power with only some specific restrictions--the participation of the Senate in treaties and appointments, and the power of Congress to declare war, grant letters of marque and reprisal, etc. Because these are restrictions, as opposed to grants, of a general power "they are to be construed strictly--and ought to be extended no further than is essential to their execution." ³³

Finally, Hamilton would grant the Executive broad emergency powers. As stated earlier, he would give Congress broad taxing powers to support spending for incalculable contingencies. The same rationale applied to war powers. In Hamilton's scheme, the Executive provides the essential energy and system required to direct these

resources and powers, i.e., "the common strength."

Therefore, in times of emergency, his powers ought to be sufficient to provide for any contingency. If "the means to be employed must be proportioned to the extent of the mischief," then the government must be capable of resolving the worst calamities.

And as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security. [34]

Hamilton admitted that such power increases the risk of abuse. But the "possibility of abuse is no argument against the thing." Emergencies must be dealt with nonetheless. Paradoxically, under the rule of constitutional law, restrictions on such power tend only to weaken the law and the government it establishes. Hamilton explained why in Federalist 25:

Wise politicians will be cautious about fettering the government with restrictions that cannot be observed, because they know that every breach of fundamental laws, though dictated by necessity, impairs that sacred reverence which ought to be maintained in the breast of rulers towards the constitution of a country, and forms a precedent for other breaches where the same plea of necessity does not exist at all, or is

less urgent and palpable. [35]

In times of emergency, then, the President is to have broad discretionary powers. And whenever possible, these powers should, for prudential reasons, be construed within
36
the bounds of laws framed in general terms.

The fourth and final constitutional "problem" Hamilton dealt with concerns the courts. For Hamilton, the judicial power functioned as the "cement of Union." The court's independent judgment upon the constitutionality of both state and federal laws provided a crucial "bulwark" against the legislative vortex and the usurpations of the states. Judicial review was essential to preserving not only the rights of individuals, but also the supremacy of the
37
national government over the states. The courts were to construe the powers of the national government liberally, and uphold the supremacy clause faithfully. Judicial review was also essential to the protection of the constitutional division of powers, which, for Hamilton, meant protection of the Executive's leadership against Congressional usurpation. This did not mean the courts should construe Congressional powers strictly. To the contrary, Hamilton's "doctrine of judicial review must always be read in conjunction with his interpretation of Article I, section 8 as a bestowal of "general legislative

38
authority." Instead, the courts were to insure that the broad powers of Congress were used to support rather than stifle the energetic executive.

Though there is no express constitutional provision for judicial review, Hamilton deduced, expounded and defended it as an integral part of a limited constitution.

By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. [39]

In Hamilton's mind, then, judicial review was an important enabling doctrine for national public administration. As Clinton Rossiter summarized, "The courts anticipated in Article III . . . were to interpret the laws of Congress, support the exertions of the President, and police the boundaries of the federal system in such manner as to strengthen the Union upon which the 'salvation' of America rested."⁴⁰

Preservation of Enabling Doctrines

With the ascendance of Jefferson and the Republicans to power in 1801, Hamilton feared his efforts at nation building were in vain. Certainly much of what would occur in the new century would have dismayed him. However, even before his death, there were signs that not all was lost. One very significant sign was John Adams' appointment of John Marshall to the Supreme Court. As Chief Justice, Marshall converted many of Hamilton's enabling doctrines into powerful constitutional precedents.

For example, in Marbury v. Madison, Marshall asserted judicial review over acts of Congress. His decision followed Hamilton's compelling logic in Federalist 78 through 82.⁴¹ Because "the powers of the legislature are defined and limited" by a "superior paramount law," the court, as the ultimate judicial power, is obliged to review the constitutionality of legislative acts. Marshall accepted Hamilton's theory of a limited constitution, and the role of judicial review implicit in it. Through his assertion of judicial review, Marshall established in fact what Hamilton asserted in theory. The court's independence was thereby secured.

It is also significant that, in the same case, Marshall acknowledged the broad political powers of the Executive.

By the constitution, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience.

The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion.

These executive powers relate to the affairs of the nation, not to individual rights. Therefore, the courts should exercise restraint in these matters, implicitly "supporting the exertions of the President," as advocated by Hamilton. Marshall later reiterated the necessity of judicial deference to the executive in his official capacity in the Burr case.⁴²

The establishment of a strong, independent judiciary by way of judicial review became generally accepted within a few years of the Marbury case. This acceptance "prepared the way for a series of major Supreme Court decisions in the next two decades. These decisions established the basic principles of American constitutional law," within which public administration would develop.⁴³

With independence of the judicial branch firmly established, the Marshall court proceeded to secure the

national government's authority over the states in a manner that would have pleased Hamilton immensely. In U.S. v. Peters (1809),⁴⁴ Marshall denied the power of the states to annul judgements of national courts. In Fletcher v. Peck,⁴⁵ Marshall held Georgia's rescission of Yazoo land grants in violation of the contract clause. This was the first instance of the court invalidating a state law for being contrary to the Constitution rather than to federal law or treaty. Julius Goebel nicely summarizes Hamilton's influence in the decision.

Marshall's analysis of the issues followed almost exactly Hamilton's reasoning in his 1796 opinion for Constable. Like Hamilton, Marshall did not rely solely on the contract clause of the Constitution. . . . Marshall also discussed at great length Hamilton's expressed belief that "the rights of third persons, who are purchasers without notice, for a valuable consideration, cannot be disregarded." Marshall then followed Hamilton's proposition that a grant is "virtually a contract." Although Marshall made reference to Blackstone in support of his statement, it was Hamilton, not Blackstone, who really drove the point home. Quite clearly, before the contract clause could be invoked, it first had to be established that a grant is a contract, and additionally that it is binding on states as well as on individuals. Blackstone only mentioned the idea parenthetically; it was Hamilton who enlarged upon it and expressed it as a viable theory. Hamilton was the initiator of the idea, Marshall the one who brought it to fruition in a case that was to affect the United States for many years thereafter. [46]

This case had ramifications for national economic

policy as well as for vested property rights and national supremacy. It served as precedent for a number of cases in which the court extended the application of the contract
47
clause to corporate charters. In doing so, the Supreme Court was promoting national economic growth and development in connection with national supremacy and
48
nationalist loyalty. (The corporate charter was becoming a common tool in commerce at this time.) Thus, the Marshall Court had a much more dynamic view of property and contract than is often attributed to it. More importantly, this view was completely supportive of Hamilton's national, mercantilist, economic policy.

That Marshall supported Hamilton's economic policy is also borne out in his interpretation of the commerce clause. In Gibbons v. Ogden (1824), Marshall gave broad
49
definition to the term "commerce." Furthermore, as Hamilton had done, he interpreted the commerce power as plenary for Congress, thus reasserting liberal construction. However, it must also be noted that Marshall acquiesced somewhat to states-rights advocates in his definition of "commerce among the states." He tentatively admitted that the power of the national government to regulate "may very properly be restricted to that commerce which concerns more states than one." It is doubtful that

Hamilton would have allowed this distinction to fetter congressional power to regulate any commerce that affects "general political arrangements concerning trade."⁵⁰ Though Marshall's distinction has become established constitutional doctrine, its interpretation in the twentieth century has accommodated Hamilton's view, thereby further enhancing the development of national economic policy.

In terms of securing the national government's authority, these cases were buttressed by the important appellate jurisdiction controversies framed in Martin v. Hunter's Lessee (1816) and Cohens v. Virginia (1821).⁵¹ In the Cohens case, Marshall again relied directly on Hamilton's reasoning. "[H]e made extended use of Hamilton's argument [in Federalist 80 and 82] for the appellate jurisdiction of the Court over the state courts in all the enumerated cases of federal cognizance."⁵² In doing so, he followed Hamilton's lead in restricting state sovereignty, and according more to the national government exclusively. The national government's capacity for checking and controlling the actions of the states was thereby clearly established.

In conjunction with judicial independence and national supremacy, Marshall was also instrumental in sustaining

Hamilton's principles of constitutional interpretation. In McCulloch v. Maryland (1819), Marshall forcefully reiterated Hamilton's doctrines of liberal construction and implied powers. In several places Marshall essentially paraphrased Hamilton's Opinion on the Constitutionality of the Bank, and even added strength to some points. On implied powers, Marshall restated Hamilton's principle of construction:

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

Like Hamilton, he applied this reasoning to a variety of enumerated powers in support of the United States Bank specifically and the incorporation power generally.

Although, among the enumerated powers of government, we do not find the word "bank," or "incorporation," we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct war; and to raise and support armies and navies It may, with great reason be contended that a government, intrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be intrusted with ample means for their execution.

Marshall also followed Hamilton closely on the broad

grant of power inherent in the "necessary and proper" clause. His discussion of the meaning of the term "necessary" so resembles Hamilton's discussion that they are almost indistinguishable.

Furthermore, Marshall again tied the national government's sovereign powers to the people, this time circumventing dependence on the states.⁵⁴ He recognized, as Hamilton did, that sovereignty was to be shared between the state and national governments. But they both strove to give the national government the dominant share lest it be swallowed up by the states in the same manner as occurred under the Articles of Confederation. Both argued that the national government, "though limited in its powers, is supreme within its sphere of action." And that sphere of action was to be very broad. Adhering closely to Hamilton's entire argument, Marshall opened the door for Hamilton's energetic administration.

The interpretations upheld in these cases have been refined and revised somewhat in subsequent history.⁵⁵ However, with the exception of the contract clause, their essential nature has remained largely intact. A perusal of almost any constitutional history book will show how, at crucial times, these doctrines have been reasserted to support an expanding national administration.⁵⁶ Most of

these histories attribute the enduring quality of these doctrines to the brilliant leadership of John Marshall. However, we have seen how Hamilton's ideas formed the bases of many of his opinions. Few constitutional histories acknowledge this fact. There are, however, some notable exceptions.⁵⁷ For example, E.S. Corwin said the "modern theory of presidential power is the contribution primarily of Alexander Hamilton." Benjamin Wright said Hamilton "dominated the thinking of John Marshall." And Kelly, Harbison and Belz point to Hamilton's influence in the McCulloch case.

Clinton Rossiter indicated the lack of any "direct and conclusive evidence" on Hamilton's influence over Marshall. Only a few letters of correspondence between them have been found. From these it is evident they worked together on political projects and shared similar political views.⁵⁸ Hamilton and Marshall wintered together at Valley Forge where they probably first became friends. Both worked directly for Washington during the war and no doubt had many occasions to get to know one another. They were both committed to Washington's leadership, and remained so throughout their lives. It is known that Hamilton placed Marshall "among the number of [his] friends," and that Marshall held Hamilton second only to Washington in esteem

59
and respect. Both were Federalists. Both were devoted to union and appalled at the experience under the Articles of Confederation. And yet, in matters concerning specific constitutional interpretations and arguments, Marshall never refers directly to Hamilton.

Marshall had access to Washington's papers by 1801, and was astonished at the quality and quantity of Hamilton's letters included in them. 60 Marshall was therefore also totally familiar with Hamilton's constitutional and political opinions. This is confirmed in his biography of George Washington wherein he summarizes the criticism of Hamilton's measures, and then summarizes and defends those measures against the criticism. His portrayal of Hamilton's measures and opinions follows exactly the rhetorical structure in which Hamilton proposed them. Despite Marshall's non-committal, impersonal tone throughout this work, his support of the Hamiltonian view is quite evident. Still, he never directly acknowledges 61 Hamilton's influence upon himself or upon Washington.

Marshall's refusal to acknowledge Hamilton's influence is partly explainable on grounds of political prudence. Hamilton was very unpopular during the first few decades of the nineteenth century. Marshall would have been foolish to openly pay homage to him. It was difficult enough for

Marshall, as a staunch Federalist, to ply his judicial policy before a Republican dominated government, without further aggravating things by allying himself with Hamilton.

Regardless of the lack of any direct acknowledgement of Hamilton's influence, the evidence discussed above is sufficient to indicate Marshall's indebtedness to him. Most of Marshall's significant opinions show the mark of Hamilton. Many other writers share this conviction. For example, Oliver Wendell Holmes once said "I should feel a greater doubt whether, after Hamilton and the Constitution itself, Marshall's work proved more than a strong intellect, a good style, personal ascendancy in his court, courage, justice and the convictions of his party." He went on to say that:

The setting aside of this day of honor of a great judge may stand to a Virginian for the glory of his glorious State; to a patriot for the fact that time has been on Marshall's side, and that what the theory for which Hamilton argued, and he decided, and Webster spoke, and Grant fought, and Lincoln died, is now our corner-stone. [62]

Benjamin Wright said Hamilton "exercised an almost dominant influence upon the thinking of Marshall." Alpheus Thomas Mason said "It remained for Chief Justice Marshall

to spell out Hamilton's ideas and give them official gloss." Beryl H. Levy called Hamilton, "together with Webster, Marshall's intellectual guide." A statement by Clinton Rossiter perhaps best summarizes the sentiments of most writers:

Almost everyone seems to agree that Hamilton was first into the field with most of the principles and methods of constitutional interpretation to which Marshall turned in his notable decisions, and that Marshall's mind had absorbed completely the logic and even the phrasing of Hamilton's writings on the Constitution. [63]

Hamilton's influence upon Marshall was not the only significant factor in preserving the enabling doctrines of American public administration. Hamilton heavily influenced the entire legal and judicial community as it took shape in the early nineteenth century. Perry Miller described the importance of this community and its debt to Hamilton:

A phenomenon of fundamental importance for both the social and intellectual history of America is the amazing rise, within three or four decades, of the legal profession from its chaotic condition of around 1790 to a position of political and intellectual domination. . . . [The rise of the profession] was expressed through a massive philosophical formulation, culminating in the voluminous commentaries of Hoffman, Kent, and Story. Progressively unfolded in the wide-ranging opinions of such judges as

Marshall and Shaw, hammered out before the bench in the classic arguments of famous lawyers, . . . the formation of American law in this era embraces a mental adventure of heroic proportions.

[And] there was a legend to inspire the profession: the one man who pointed toward the glorious fulfillment was Alexander Hamilton. His pleadings remained the loadstar of subsequent aspirants Our jurisprudence was a "blank" until Hamilton began to pour light and learning upon it. [64]

Though others such as John Adams and James Wilson made important contributions to the development of American jurisprudence, Hamilton inspired the great legal community that developed in the early nineteenth century. Among the leaders of this community were such men as James Kent, Joseph Story, David Hoffman, John Marshall, Daniel Webster, Nathaniel Chipman, Joseph Hopkinson, William Pinckney, Nathan Dane, William Rawle, Lemuel Shaw and Timothy Walker. Almost all of them acknowledged Hamilton as their intellectual guide.

As these men shaped the legal profession in America, they also shaped much of the political and administrative leadership of the nation. Not only were they lawyers and judges, they were leading politicians, administrators and educators. They espoused the principles of national union, energetic government, and positive law founded upon natural law. Their "massive philosophic formulation" was derived

principally from western legal and political thought, and from the integrative and exemplary work of Hamilton. One of the best indicators of this is found in the highly influential commentaries of Kent and Story.⁶⁵

James Kent and Joseph Story are commonly acknowledged as the pre-eminent legal scholars, educators and leaders of the period.⁶⁶ Kent was, by his own admission, a devout student as well as friend of Hamilton. He received much of his education from Hamilton as a judge in New York state, and as observer of many legislative sessions. Hamilton's arguments and oratory before his court and the New York legislature were the finest he had ever witnessed.

Story never knew Hamilton, and was allied with the Jeffersonian Republicans in his early life. But as a Supreme Court Justice, he "became the most Hamiltonian of judges." In private he acknowledged Hamilton as "one of the greatest men of the age" to whom with John Adams "we are mainly indebted for the Constitution of the United States."⁶⁷

These men made their commentaries "a repository of Hamiltonian principles of order and justice, and generations of lawyers who barely knew Hamilton's name were led subtly into the paths he had trod."⁶⁸ They

institutionalized Hamiltonian thought. Kent begins his Commentaries with a discussion of the Law of Nations and natural law as the foundation of the American Constitution. Following this, he discusses the history and structure of American government. This discussion follows Hamilton's perspective completely, starting with the coincidence of union and independence, and continuing through the broad but limited powers of Congress, the leadership of the Executive, and the independence of the courts. The enabling doctrines of liberal construction, implied powers, judicial review, vested executive power, national supremacy, and so on, are an integral part of the whole work. The work often refers to the Federalist papers, concentrating mainly upon Hamilton's essays.⁶⁹

Joseph Story's Commentaries may aptly be described as an elaboration of the Federalist Papers, of Hamilton's legal opinions as Secretary of the Treasury, and of Marshall's legal opinions. He dedicated the work to John Marshall who "stands without rival" in the field of Constitutional law. Then, in the Preface, he acknowledges the "two greatest sources" of his work--The Federalist, and the Opinions of C.J. Marshall.⁷⁰ Finally, in the work itself, he cites or uses Hamilton's Federalist essays and other writings throughout. Clinton Rossiter surveyed the

work and found that "fully half of the fifteen hundred pages" contained cites, quotes or paraphrases of Hamilton's ideas.⁷¹ These works clearly reveal the huge intellectual and philosophical debt that both Story and Kent owed to Hamilton.

These commentaries are representative of the type of education received by many lawyers, including Lincoln, in the early nineteenth century. This was an education of classic proportions and emphasis. The well-trained lawyer of that day was well read in the classics of political and legal philosophy. He was immersed in the classic legal treatises and common law of western Europe. He was well versed in the art and forms of pleading, and he was wedded to discovery of moral, legal and political principles in the laws. This kind of training was to be distinguished from training exclusively in the techniques of legal practice. It distinguished jurist from pettifogger. In short, the early community of American lawyers were schooled in the same jurisprudential school as Hamilton and his contemporaries. And they were heavily influenced by the Hamiltonian formulation of that tradition.

This outlook would fade away by the mid to late nineteenth century, and devolve into legal specialism. However, before this occurred, the lawyers of this "grand

tradition" would infuse Hamiltonian principles deep into the legal and intellectual structure of American political society. They did this through their actions as judges, lawyers, politicians, teachers, and writers of legal commentaries.⁷²

This infusion was very significant for the future of American public administration. Many of the legal doctrines and much of the legal thought employed in subsequent eras to justify or enable vast administrative expansion were borrowed from the Hamiltonian formulation made common by this early community of lawyers.

The importance of this legal community to the American state of the early nineteenth century has been ably described by Stephen Skowronek. He found that the "American courts provided the essential counterpoise to the all-consuming electoral machines of America's party state."

Courts complemented parties in binding the legal apparatus of government. Ultimately, the Constitution and the prerogatives of governmental elites came to be what the Supreme Court said they were. As the final arbiter in institutional and jurisdictional disputes, the Court shaped the boundaries of intergovernmental relations. It defined the legitimate forms of interaction between states, between state and national governments, and within the national government itself. In the evolution of the constitutional

law, the fragmented system of governmental authority became malleable and responsive.

The judiciary not only helped define the terms of internal governmental activity, it also helped define relations between state and society. It fell to the courts at each level of government to nurture, protect, interpret, and invoke the state's prerogatives over economy and society as expressed in law. [73]

The internal relations of the American state, and its prerogatives over economy and society, were defined for the courts in large part by Hamiltonian interpretations.

The "early American State," as Skowronek described it, was comprised chiefly of courts and parties. The parties gave expression to disparate political ideologies with the general effect of strengthening state governments and dissipating the energy of the national government. The courts eventually came to reflect this bias, but not before instilling such principles as national supremacy, economic nationalism, and energetic administration in the legal thought and structure of the country. Though the jurist would change gradually from the classical, patrician leader of 1820 to the politically neutral legal specialist of 1870, he served as a vital intellectual link between the Federalist era and the age of reform. The leading intellect of the Federalist era was, of course, Hamilton. His enabling doctrines defined a large part of the

governance structure of American society.

For the most part, these principles remained latent until the emergence of the national reform movement in the late nineteenth and early twentieth centuries. As Skowronek chronicles so well, the counterpoised structure of the early American state preceded the development of this progressive era, and influenced it in myriad ways. Hamiltonian principles, as an integral part of the nation's intellectual and legal foundations, had a great share in this influence. The development of our modern American administrative state owes a great deal to the jurisprudence of Alexander Hamilton.

Notes to Chapter IV

1. I use the term "rhetoric" in its old, non-pejorative connotation of persuasion by reasoned argument.
2. All quotes in this paragraph are taken from Rossiter, Hamilton and the Constitution, pp. 186, 188, and 190.
3. February 1791, Hamilton, Papers, Vol. VIII, pp. 104-5.
4. Ibid., pp. 98-101.
5. As early as 1781 Hamilton, Madison and Wilson had advocated the implied powers doctrine in an attempt to bolster the authority of the old Congress. However, as Clinton Rossiter states, "It was left to Hamilton to convert it into a fortress of logic from which John Marshall was able to beat off the assault of the strict constructionists in McCulloch v. Maryland." See Hamilton, Papers, Vol. II, pp. 245, 400-2; Irving Brant, James Madison (Indianapolis, 1948-56), Vol. II, 108 fn., 119-20, 217; Andrews, Works of James Wilson, Vol. I, 556 fn.; Rossiter, Hamilton and the Constitution, p. 200.

Hamilton's doctrine of "resulting powers" has never enjoyed much application, primarily because his "implied powers" doctrine has been more than sufficient for national government purposes. When the "resulting powers" doctrine has been used, it was applied to matters of foreign affairs and territorial expansion. For examples of its use, see American Insurance Co. v. Canter, 1 Peters 511, 542-43 (1828); and U.S. v. Curtiss-Wright Export Corp., 299 U.S. 304, 316-17 (1936). Also see W.W. Willoughby, The Constitutional Law of the United States (New York, 1910), I, 65-66; Story, Commentaries, sec. 1256; and Edward S. Corwin, ed., The Constitution of the United States of America: Analysis and Interpretation, (U.S. GPO, 1953).
6. Hamilton, Papers, Vol. VIII, p. 100.
7. I would argue that this marks the ideal character of high or strategic administrative politics. Ideal administrative politics should be distinguished by a

preponderance of jurisprudential thought. That is, creative and coherent relations between means and ends are worked out in a rhetorical, legal context. This rhetorical model of politics follows the Aristotelian strategy of "observing in any given case the available means of persuasion," and acting accordingly. This involves more than syllogistic reasoning offered as reasonable proof. As Bower Aly (summarizing Aristotle) indicates:

since audiences are not perfect, the public speaker must employ other means of persuasion as well, of which there are two: emotional proof, the creating of a favorable disposition in the hearers; and ethical proof, the securing of a favorable attitude toward the speaker.

In a world of limited knowledge or "bounded rationality," other means of persuasion are required in addition to syllogistic reason based upon empirical evidence. Therefore, political bargaining, cajoling, and manipulation also take place, but with reference to maintaining coherence in; and support for, well planned and enunciated policies that are rationally related to ends given in law. Thus, ideally, administrative politics involves preparation and presentation of reasoned arguments based upon evidence (empirical knowledge) in a rhetorical and legal setting. Furthermore, this is politics that structures the use of discretion (in the sense described by Kenneth C. Davis) in a legally reasonable and, therefore, responsible manner. Bower Aly, The Rhetoric of Alexander Hamilton (New York: Russell & Russell, 1965), pp. 31-32; Kenneth C. Davis, Discretionary Justice, (Baton Rouge, La: Louisiana State Un. Press, 1969).

8. Hamilton, Papers, Vol. VIII, p. 106. Hamilton was quite aware that the structure of American government increased the potential for constitutional struggles over power. In the next paragraph he stated:

The truth is that difficulties on this point are inherent in the nature of the federal constitution. They result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the National Government; others clearly without its power; and a third class, which will leave room for controversy & difference of opinion, & concerning

which a reasonable latitude of judgement must be allowed.

9. Jefferson's decision concerning the Louisiana Purchase exemplifies the necessity of acting outside the law when interpreting it rigidly. One might retort that Hamilton once suggested acting outside the law as well, despite his philosophy of liberal construction. This occurred just prior to the election of 1801. Hamilton proposed to Jay that New York electors be chosen in such a way as to ensure Federalists would be selected. However, there is an important difference between these examples. Hamilton was certain that the ascendancy of Jefferson and the Republicans would bring an end to the new nation. Remember that partisan politics was just rising to prominence at this point, and its impact could only be speculated upon. Many Federalists were convinced that Jefferson's party would dismantle the government and constitution, leading to anarchy and ultimately to despotism.

Hamilton, therefore, viewed the scheme as "a proceeding out of the common course, but warranted by the particular nature of the crisis and the great cause of social order." The scheme was "justified by the unequivocal reasons of public safety." In Jefferson's case, the Louisiana Purchase involved no such immediate threat. That his decision was momentous and strategically important to the U.S. is obvious, but it could have been achieved within reasonable bounds of existing law, thereby upholding jurisprudential decision making in all but the most extraordinary occasions. Whenever Jefferson acted outside the law, it was due mainly to his rigid interpretation of law. Hamilton had an articulated and principled philosophy justifying actions beyond or outside the law. They were justified only for the sake of saving the nation and its laws in extreme circumstances. Hamilton's stand on war powers is directly related to this philosophy. See letter to John Jay, Hamilton, Papers, Vol. XXIV, pp. 464-66; and "The Examination," (Lucius Crassus), Hamilton, Papers, Vol. XXV, pp. 444-520.

10. See Madison's 49th Federalist. Both Madison and Hamilton were conservatives on matters of fundamental and radical societal change.

11. Alexis de Tocqueville, Democracy in America, Vol. 1, Henry Reeve, trans. (New York: Colonial Press, 1900), pp. 251-257.

12. Edward S. Corwin described this nineteenth century change in orientation in terms relevant to this discussion.

"Natural Law" in the sense of "the observed order of phenomena" has tended in recent years to crowd the earlier rationalistic conception to the wall, thus aiding the triumph of the idea of human and governmental law as an expression solely of will backed by force. The nineteenth century was no stranger to the idea that there are factors of human behavior which are obdurate to advantageous political control; only such factors are ordinarily represented as of a non-rational nature and as having no necessary tendency to produce human justice. Savigny's apotheosis of custom was an appeal to a natural law of this sub-rational or scientific type. So also were the confident pronouncements of the classical economists regarding the "laws of Political Economy." So again were the characteristic preachments of Herbert Spencer concerning the proper field of governmental intervention, wherein is linked up, with an altogether shameless illogic, the notion of an automatic industrial organism to a revived theory of natural rights. Professor Duguit would also have us regard his "social solidarity" as a scientific datum. In fact, all these theories are only endeavors to drag science into the service of some variety or other of Utopism.

See Corwin, "Higher Law" Background, pp. 59-60, fn. 59. Also, for an excellent philosophical critique of nineteenth and twentieth century science, see Etienne Gilson, The Unity of Philosophical Experience, (Westminster, MD: Christian Classics, 1982).

13. Leonard D. White, Introduction to the Study of Public Administration, Revised Edition (New York: The Macmillan Co., 1939), p. ix; the relevant passages (from the Preface) are contained in all editions.

14. It is readily admitted that the positivistic theories espoused by Bentham, Austin, Somlo, Kelsen, Hart and other European scholars have never been accepted whole cloth in the United States. However, I agree with Ronald Dworkin, Lon Fuller and others who argue that the basic positivist definition of law as command has become the

generally accepted doctrine of twentieth century jurisprudence in America and abroad. The legal realism of a Holmes or a Frank presumes the same definition of law as the rule formalism of an Austin or a Kelsen. Furthermore, the advent of C.C. Langdell's "pure" scientific method of legal study (now called the "case method") at Harvard (1870's) led to wholesale changes along rule formalist lines in American legal thought. As Karl Llewellyn described it, this "formal style" substituted logic and order for the already declining "grand style" (of Hamilton, Marshall, Kent, Story, Hoffman, Gibson, etc.) that sought for "wisdom-in-result." The general effect of this movement was to cater to specialization in areas of the common law, completing the separation of legal study from the study of philosophy, ethics and government. Departments of Political Science began to spring up to fill the void, but this progress was slow and eventually stalled with the advent of the behavioral revolution in the twentieth century. Karl N. Llewellyn, "Remarks on the Theory of Appellate Decision and the Rules or Canons about how Statutes are to be Construed," 3 Vanderbilt L.R. 395, 396 (1950); Idem, The Common Law Tradition: Deciding Appeals (1960), pp. 35-39. For a general review of these developments in legal study, see Lawrence Friedman, A History of American Law (New York: Simon & Schuster, 1973), Part III, Chapter XI, pp. 525-546; and Perry Miller, The Life of the Mind in America: From the Revolution to the Civil War (New York: Harcourt, Brace & World, 1965). For general discussions of the influence of positivism in relation to natural law theory see Robert Paul Wolff, ed., The Rule of Law (New York: Simon and Schuster, 1971); and M. P. Golding, ed., The Nature of Law: Readings in Legal Philosophy (New York: Random House, 1966).

15. Friedman, A History of American Law, p. 385.

16. One need only review Taylor's or Gilbreth's work on "scientific management," the early research of Mayo, or the search for universal principles of administration by Gulick and Urwick to sense this optimistic and value-neutral engineering orientation.

17. Chester Newland has recently pointed out that the advent of Sociological Jurisprudence (a richer, more expansive concept of law than Analytic Jurisprudence) in the 1920's and 1930's was "lost to much of public administration . . . because some academicians in the field attempted to cut PA off from legal theory and related developments in the humanities in the 20's and the late Golden Era. In light of the strictures of the Analytical

Jurisprudence which still dominated American law during public administration's Founding Years and what many thought to be the promise of positivist science, the attempted divorce is understandable." See Chester A. Newland, "Public Administration and Community: Realism in the Practice of Ideals," Public Administration Service (McLean, VA: PAS, November 1984), p. 41.

18. Our realism, as expressed in the bureaucratic politics literature, has for the most part remained too skeptical to broach legitimating normative theories of public administration. The descriptive emphases in organizational sociology and the policy sciences, and the technical orientation of management science, also conveniently avoid conscious ventures into normative theory. For excellent critique of some of these areas of study and their failure to grasp certain important dimensions of social and political life, see Herbert J. Storing, Essays on the Scientific Study of Politics (New York: Holt, Rinehart & Winston, 1962); and Frank J. Marini, Toward a New Public Administration: The Minnowbrook Perspective (San Francisco: Chandler Publishing, 1971).

19. Rossiter, Hamilton and the Constitution, pp. 193-4. The subsequent discussion generally follows Rossiter's analysis in his Chapter six, "Hamilton's Constitutional Law and Theory," pp. 185-225.

20. Rossiter, Federalist, pp. 201-5; Hamilton, Papers, Vol. XXV, esp. essay no. 9, pp. 500-506. Also see letter to Theodore Sedgewick, Feb. 2, 1799, Vol. XXII, pp. 452-4, and letter to Jonathan Dayton, October 1799, Vol. XXIII, pp. 599-604 for Hamilton's proposals for defending national supremacy in the face of the Virginia and Kentucky resolutions.

21. See Hamilton, Papers, Vol. IV, pp. 77-79, and 222.

22. Rossiter, Federalist, pp. 118-122.

23. In the Constitutional Convention, Hamilton first proposed that the national legislature have the "power to pass all laws whatsoever." He later qualified this sweeping language somewhat, proposing that it "have power to pass all laws which they shall judge necessary to the common defense and safety and to the general welfare of the Union." In Federalist 83 he acknowledged that the "specification of particular powers evidently excludes all pretension to a general legislative authority." However,

this did not deter him from giving enumerated powers as broad a definition as possible, given the ends to be met. Hamilton Papers, Vol. IV, pp. 207, 268; Rossiter, Federalist, p. 497.

24. Rossiter, Federalist no. 22, pp. 143-45; nos. 30-35, passim; no. 23, pp. 152-157; Poughkeepsie, June 27, 1788, Hamilton Papers, Vol. V, pp. 97-98; Report on Public Credit, Papers, Vol. VI, pp. 51-168, passim; Opinion on the Bank, Papers, Vol. VIII, pp. 97-108; Report on Manufactures, Papers, Vol. X, pp. 302-304, 311-313, 337. For an excellent, in-depth analysis of Hamilton's position on each of these powers see Rossiter, Hamilton and the Constitution, pp. 200-225.

25. Poughkeepsie, Ibid.

26. Given the general circumstances of his time, Hamilton favored certain kinds of taxes above others. He particularly liked any tax that promoted industry, improvements in agriculture, etc. Indirect "luxury" taxes such as the carriage tax he proposed and subsequently defended in Hylton v. U.S. were thus favored over direct taxes. He looked askance at taxes that hampered such activity or "operated unequally, and injuriously to the industrious poor." It must be emphasized, however, that Hamilton was not doctrinaire about specific types of taxation. As a contingency theorist in such matters, different circumstances could warrant a change in taxation schemes wherein even poll or capitation taxes would be used. See his discussion on taxes appropriate to eighteenth and nineteenth century American circumstances in "Report on Manufactures," pp. 311-313. For a review of the Hylton case see Goebel, Law Practice of Hamilton, Vol. IV, pp. 297-353.

27. Rossiter, Hamilton and the Constitution, p. 203.

28. Papers, Vol. X, p. 303.

29. Rossiter, Federalist 23, pp. 153-4.

30. Letter to James McHenry, March 21, 1800, Hamilton Papers, Vol. XXIV, p. 350.

31. Ibid., Vol. XVI, p. 277, and Rossiter Federalist 73, pp. 442-47; Federalist 74, p. 447; "The Examination, no. 1," Papers, Vol. XXV, pp. 454-6, and Vol. XXI, pp. 461-2; Letter to John Marshall, Papers, Vol. XXV, pp. 130-9; Papers, Vol., XXIV, pp. 349-50, and Lodge, Works, Vol.

VIII, 304-12, and White, The Federalists, Chapter 26, passim.

32. June 29, 1793, Hamilton, Papers, Vol. XV, p. 39. On war and treaty making powers generally, and in relation to the "War Powers Resolution," see Robert Scigliano, "The War Powers Resolution and the War Powers," in Bessette and Tulis, The Presidency in the Constitutional Order, pp. 115-153.

33. Ibid., p. 42. See letter to George Washington, March 26, 1796, Papers, Vol. XX, pp. 86-103 for an elaboration of the President's treaty powers relative to negotiations and private papers, and of Hamilton's assertion that Congress should follow the President's leadership in treaty-making with requisite appropriations. Also see letter to George Washington, July 9, 1795, Papers, Vol. XVIII, p. 428, in which Hamilton argues the primacy of treaty making powers over existing laws (local, state or federal) so long as constitutional provisions are not violated.

A Treaty cannot be made which alters the constitutions of the country or which infringes any express exceptions to the power in the constitution of the United States. But it is difficult to assign any other bounds to the power. It may certainly alter the provisions of the statute and municipal laws and modify the rules of property.

34. Rossiter, Federalist 36, p. 223.

35. Ibid., #25, p. 167.

36. For general references, by Hamilton, to the necessity of giving the government powers adequate to deal with emergencies, see Rossiter, Federalist 22, p. 148; 25, p. 167; 28, p. 178; 36, p. 223; 70, p. 423; 72, p. 439; 73, p. 446; Hamilton Papers, Vol. I, pp. 48-51; III, pp. 173, 540, 549; IV, pp. 131-2; and VI, p. 436.

37. See "The Examination," nos. XII-XVII, by "Lucius Crassus," Hamilton Papers, pp. 529-76.

38. Rossiter, Hamilton and the Constitution, p. 224.

39. Rossiter, Federalist 78, p. 466.

40. Rossiter, Hamilton and the Constitution, p. 221.

41. Marshall had first asserted the power of judicial review on June 20, 1788 in the Virginia ratifying convention. In his speech he used language from Federalist 78 through 82. If he had forgotten this language by 1803, he was reminded of it by Charles Lee, Marbury's counsel. Jonathan Elliot, ed., The Debates in the Several State Conventions on the Adoption of the Federal Constitution, 2nd ed., (Philadelphia, 1876), Vol. III, p. 553; 1 Cranch 137, (1803). Also see Samuel J. Konefsky, John Marshall and Alexander Hamilton: Architects of the American Constitution (New York: MacMillan Co., 1964), pp. 81-85, for further analysis of Hamilton's and Marshall's agreement on the theory of a limited constitution.

42. U.S. v. Burr, 25 Fed. Cas. 187 (1807). Marshall sat as a trial judge in this case.

43. Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, The American Constitution Its Origins and Development, 6th ed. (New York: W.W. Norton & Co., 1983), p. 184. Hereafter shorttitled Kelly, et.al., The American Constitution.

44. 5 Cranch 115.

45. 6 Cranch 87.

46. Hamilton's views were put before the court by Robert Goodloe Harper, counsel for the purchasers. Hamilton's views were also published in pamphlet form. Goebel, Law Practice of Alexander Hamilton, pp. 420-421. Also see Benjamin F. Wright, The Contract Clause of the Constitution (Cambridge: Harvard Un. Press, 1938) pp. 14, 21-22, 26, 29, 244; Rossiter, Hamilton and the Constitution, p. 240; and Konefsky, John Marshall and Alexander Hamilton, p. 123.

47. For example see Terrett v. Taylor, 9 Cranch 43 (1815), and Dartmouth College v. Woodward, 4 Wheaton 518 (1819).

48. Albert Beveridge made an important observation on the effect of the Dartmouth case that relates to Hamilton's and Marshall's designs for the nation:

One result of his opinion was, for the period, of even higher value than the

encouragement it gave to private enterprise and the steadiness it brought to business generally; it aligned on the side of Nationalism all powerful economic forces operating through corporate organization.

Here was a clear repetition of Hamilton's efforts to win the loyalty of powerful economic interests for the national government. Albert J. Beveridge, The Life of John Marshall (Boston: Houghton Mifflin Co., 1916-19), IV, 276.

49. 9 Wheaton 1 (1824).

50. In his Opinion on the United States Bank, Hamilton states that the regulative power of the national government is "directed to general political arrangements concerning trade on which its aggregate interests depend, rather than to the details of buying and selling. Accordingly such only are the regulations to be found in the laws of the United States; whose objects are to give encouragement to the enterprise of our own merchants, and to advance our navigation and manufactures." Though he recognizes areas of commerce more suitable to state and local regulation, he would no doubt extend Federal regulation to the internal commerce of a state if it were found to affect "general political arrangements concerning trade." For a comprehensive discussion and criticism of Marshall's views on the commerce clause in relation to framers' intent, see Crosskey, Politics and the Constitution, Vol. I, part I.

51. 1 Wheaton 304; 6 Wheaton 264.

52. Rossiter, Hamilton and the Constitution, p. 241. Also see Konefsky, John Marshall and Alexander Hamilton, pp. 105-8.

53. 17 U.S. (4 Wheat) 316, 4 L.Ed. 579. For example, in Marshall's discussion on the meaning of the term "necessary" in the "necessary and proper" clause, he lends strength to Hamilton's discussion by comparing the term to Article I, sec. 10 which prohibits a state from laying "imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws. For reasons unknown, Hamilton never alluded to this express distinction.

54. Recall that in justifying judicial review of acts of Congress, Hamilton (in Federalist 78) and Marshall (in Marbury v. Madison) link sovereignty to the people. The Supreme Court is an "intermediate body" responsible for

protecting the people from an oppressive Congress. In *McCulloch v. Maryland*, the national government's sovereignty is again tied to the people, and is asserted to be "supreme within its sphere of action." Thus, the states cannot control the Federal government in its sphere of action. The Federal government is protected from the usurpations of the states.

55. See Benjamin Wright, The Contract Clause of the Constitution (Harvard Un. Press, 1938). Wright says the vital functions served during most of the nineteenth century by Marshall's interpretation of the contract clause were taken over by the due process clauses. The concerns expressed by Hamilton and Marshall vis-a-vis the contract clause still survive, but are now more often expressed in due process cases. Hamilton refers only once to due process in all his papers, and he construes it rather narrowly and technically. However, his zeal for individual rights and protections, especially for oppressed and unpopular minorities, is exemplified in his defense of the rights of British loyalists after the Revolutionary War. Here is a classic example of Hamilton's ability to combine an interest in individual rights with national interests. Hamilton knew that by protecting the rights of loyalists, he might endear them to the new government, and gain the respect of England and Europe for it as well. See Goebel, Law Practice of Hamilton, Vol. I, Chapter III, "The War Cases."

56. This is particularly true in the twentieth century. For example, in the area of judicial supremacy over states see *Nelson v. Pennsylvania*, 350 U.S. 497 (1956); *Griffin v. Illinois*, 352 U.S. 12 (1956); *Moore v. Michigan*, 355 U.S. 155 (1957).

In the area of national supremacy generally, see *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937); *U.S. v. Darby*, 312 U.S. 100 (1941); *Wickard v. Filburn*, 317 U.S. 111 (1942); *Case v. Bowles*, 327 U.S. 92 (1946); *Brown v. Board of Education*, 349 U.S. 294 (1954); *Griffin v. Illinois*, 351 U.S. 12 (1956); and *Baker v. Carr*, 369 U.S. 186 (1962). These are representative of the many cases decided in favor of broad national administrative power after 1937.

For Hamiltonian views on Congressional power to tax and spend for the general welfare, see *U.S. v. Butler*, 297 U.S. 1 (1936); *Steward Machine Co. v. Davis*, and *Helvering*

v. Davis, 301 U.S. 619 (1937). In *Helvering*, Justice Cardozo said "The conception of the spending power advocated by Hamilton and strongly reinforced by Story has prevailed over that of Madison" Also see Merlo J. Pusey's, Charles Evans Hughes (New York: MacMillan Co., 1951) Vol. I, p. 387, Vol. II, pp. 743-4, for an account of how Hughes achieved a general acceptance by the court of Hamilton's liberal interpretation of the "general welfare" clause. Finally, see Corwin's summary of Hamiltonian influence on the general welfare clause in E.S. Corwin, The Twilight of the Supreme Court: A History of our Constitutional Theory (Archon Books, 1970), pp. 177-184.

In the area of executive power, see Justice Brewer's remarks in *Kansas v. Colorado*, 206 U.S. 46 (1907); Holmes' opinion in *Missouri v. Holland*, 252 U.S. 416; Taft's use of *Pacificus* in *Myers v. U.S.* (1926); *U.S. v. Curtiss-Wright*, 299 U.S. 304 (1936); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, (1952) Justice Frankfurter's and Justice Clark's concurring opinions especially; Edward S. Corwin, "The Steel Seizure Case: A Judicial Brick without a Straw, 53 Columbia Law Review (1953), pp. 64-66; *U.S. v. Belmont*, 301 U.S. 324; *U.S. v. Pink*, 315 U.S. 203; *C&S Air Lines v. Waterman Steamship Corp.*, 333 U.S. 103 (1948); *U.S. v. Reynolds*, 345 U.S. 1, (1952); and *U.S. v. Nixon*, 418 U.S. 683 (1974).

For an exhaustive review of cases in which Hamilton is cited, primarily as Publius, see Rossiter, Hamilton and the Constitution, pp. 345-47, fn. 95.

57. See Rossiter, Hamilton and the Constitution, chapter 7, for an extensive literature review showing the lack of recognition of Hamilton's role in constitutional history. Corwin, Constitution Annotated, p. 381; Wright, Contract Clause, p. 21; Kelly, et.al., American Constitution, pp. 190-3.

58. One letter indicates Marshall served as an agent for Hamilton's political exertions concerning the Jay Treaty, Another letter indicates Hamilton had exhorted Marshall to support Jefferson as opposed to Burr in 1801. Though Marshall had not the stomach to support Jefferson, it is clear he shared Hamilton's political views and supported his strategies generally. See William Stinchcombe, Charles Cullen, Leslie Tobias, eds., The Papers of John Marshall (Chapel Hill: Un. of North Carolina Press, 1979), Vol. III, Jan. 1796 - Dec. 1798, p. 24; John E. Oster, The Political and Economic Doctrines of John

Marshall (New York: Burt Franklin, 1914) pp. 90-92. For Rossiter's review of the literature on the Hamilton-Marshall relationship, see Hamilton and the Constitution, pp. 240-3, 340-2.

59. Hamilton to Marshall, Oct. 2, 1800, Papers, Vol. XXV, p. 131; and Pickering Papers, Massachussetts Historical Society, Feb. 13, 1811.

60. Ibid.

61. John Marshall, The Life of George Washington, 5 Vols., (Fredericksburg, Va.: Citizen's Guild, 1926), Vol. IV, pp. 321-3, 439-44, 390-7; and Vol. V, pp. 198-205.

62. John F. Dillon, ed., John Marshall: Life, Character and Judicial Services as Portrayed in . . . Addresses and Proceedings . . . on Marshall Day, 1901, 3 Vols. (Chicago, 1903), 1: 204-208.

63. Wright, Contract Clause of the Constitution, p. 244; Alpheus Thomas Mason, The Supreme Court from Taft to Warren (Baton Rouge: Louisiana State Un. Press, 1968), p. 11; Beryl H. Levy, Our Constitution: Tool or Testament? (Port Washington, N.Y.: Kennikat Press, Inc., 1965), p. 7; Rossiter, Hamilton and the Constitution, p. 240.

64. Perry Miller, The Life of the Mind in America From the Revolution to the Civil War (New York: Harcourt, Brace & World, Inc., 1965), pp. 109-110.

65. It should be noted that the English legal system and its jurists (Coke, Mansfield, Blackstone, etc.) are, of course, the source of most of the early American legal system. The "massive philosophical formulation" adopted by many American jurists was also very much a part of the English system. Hamilton did not create a new philosophical basis for American law and politics. But he did borrow, integrate and adapt philosophical tenets for a distinctly American formulation. Perfect examples of his work can be seen in some of his legal briefs, opinions and notes, where he borrows principles from English law and the Law of Nations, and adapts them to American situations and values. These are the sources from which Kent, Hoffman, Chipman and others found career guiding inspiration. See Goebel, The Law Practice of Alexander Hamilton.

66. The lectures and institutes of David Hoffman were also highly influential during this period, but in subsequent history have been eclipsed by the commentaries

of Kent and Story. See Miller, Life of the Mind, pp. 135-145. Also see Perry Miller, ed., The Legal Mind in America From Independence to the Civil War (Ithaca, N.Y.: Cornell Un. Press, 1962), pp. 83-92; and Friedman, History of American Law, pp. 278-292.

67. Rossiter, Hamilton and the Constitution, pp. 243-4; W.W. Story, ed., Life and Letters of Joseph Story (Boston, 1851), Vol. I, 144, 195-6; Vol. II, 258, 420.

68. Rossiter, Ibid., p. 243.

69. James Kent, Commentaries on American Law 2 Vols. (New York: Da Capo Press, 1971). Kent's lectures in Volume I, Part II relate most directly and obviously to Hamilton's thought. However, the whole work presumes the jurisprudential outlook of Hamilton. This is especially true of Part I on the Law of Nations. Hamilton articulated many of the principles discussed in this section in his marine insurance and prize cases, as well in those cases where he defended the rights of loyalists against the predations of New York and other states shortly after the Revolutionary War. See Goebel, Law Practice of Alexander Hamilton, Vols. I, II, & V.

70. Joseph Story, Commentaries on the Constitution of the United States, 2nd ed., 2 Vols. (Boston: Charles C. Little and James Brown, 1851).

71. Rossiter, Hamilton and the Constitution, p. 343, fn. 89.

72. These commentaries were influential throughout the nineteenth century. Story's last edition was published by Oliver Wendell Holmes in 1898.

73. Stephen Skowronek, Building the New American State: The Expansion of National Administrative Capacities, 1877-1920 (New York: Cambridge Un. Press, 1982), p. 27-8.