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# Did Alexander Hamilton Adopt the "New Political Science" Proposed by Charles de Montesquieu and David Hume?

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Alexander Hamilton is usually identified as an "enlightened" thinker because his views supposedly depend especially on those of David Hume, Charles de Montesquieu, and Adam Smith. This paper argues that he rather clearly continues the Aristotelian-Ciceronian-Christian tradition, although he occasionally cites Hume, Montesquieu, and Adams and follows aspects of their doctrines. This is possible because the tradition of liberal education, with its *trivium* and *quadrivium*, devised in Latin Christendom, was pervasive in the United States when Hamilton prepared for and attended college, as Carl Richard has established.[1] The following pages demonstrate that Hamilton's notion of political science reflects the influence of Aristotle or Cicero,[2] more than it does that of Hume or Montesquieu. Note that the study of Adam Smith and political economy is reserved for a future occasion.

This research matters, first, because Hamilton was the main framer of the original constitutional order of the United States;[3] second, because he was arguably the deepest thinker and the most

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consistent of the framers, including James Madison;[4] and third, because among all the framers, he was arguably the one in greatest continuity with the Western classical and Christian tradition. He is in large measure responsible for the perception of many today that the US constitutional order was originally more continuous with the political conceptions and practices of Latin Christendom than with the project of the French *philosophes*.[5]

Hamilton's works reveal several central subjects that he deals with in a way that is at odds with how Hume and Montesquieu conceived of science and political science but that is, instead, perfectly in step with classical and traditional Christian views. To completely understand the crucial points that divide Hamilton from the Europeans requires us to address (1) his understanding of political science and rationality and (2) his conception of the end goal of politics and juridical rationality.[6]

## Political Science and Rationality

One of the major eighteenth-century developments, embraced by both Montesquieu and Hume, was the attempt to construct a science of politics, aiming to produce a system to secure freedom and/or promote the general welfare without needing virtuous men at the helm of the ship of politics. Alexander Hamilton rejected this view of political rationality. He, like Plato and Aristotle, thought there is an *epistéme politiké* and even believed political knowledge had advanced since ancient times,[7] but he thought of it in clear continuity with the classics. Now let us consider the framer's views on this precise point compared with those of Charles de Montesquieu and David Hume.

### *Montesquieu*

Political liberty, according to Montesquieu in *The Spirit of the Laws*,

> is to be found only . . . when there is no abuse of power: but constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as

> far as it will go. . . . To prevent this abuse, it is necessary, *from the very nature of things, power should be a check to power*. A government may be so constituted that no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.[8]

The system that will necessarily exclude the oppression of freedom is only that where the three powers of government—executive, legislative, and judiciary—are perfectly separated and opposing each other, for "[w]here one power does not restrain another, there is despotism."[9]

For there to be political freedom, government must be so constituted such that no man need fear being oppressed by any other man. This fear can be dispelled only if the legislative, executive, and judicial powers are clearly separated.[10] Thus, for example, "there would be an end of every thing, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers."[11] Furthermore, "if there were no monarch, and the executive power should be committed to a certain number of persons, selected from the legislative body, there would be an end of liberty, by reason the two powers would be united."[12]

Undoubtedly similar to Hume's idea of political science,[13] these doctrines had a strong influence on the constitutional debates of the United States. They were discussed frequently in *The Federalist*. But if one reads these discussions carefully, one realizes that Hamilton, Madison, and John Jay, the authors of *The Federalist*, are animated by principles connected with the classical doctrine of the mixed regime rather than by Montesquieu's ultimate explanation of the principle of the separation of powers.[14]

Many of the objections to the projected US Constitution that *The Federalist* intended to answer were grounded on a supposed violation of Montesquieu's doctrines of the separation of powers. This circumstance forced the authors of *The Federalist* to earnestly and pitilessly reflect on such doctrines. Hamilton rejects the

conception of political science underlying Montesquieu's main doctrines. He makes some explicit critical comments on the specific doctrines, but he relies on Madison's previous contributions and directs the reader to Madison's critique.

Actually, Hamilton's position in *The Federalist* relies so heavily on some of Madison's contributions that this paper could have been focused on the positions of these two founders instead of Hamilton alone. But this paper is presented in its present form for three reasons: first, because Hamilton clearly endorses Madison's views, presented here;[15] second, because even in *The Federalist* contributions unconnected with the thread of this current paper, Madison is clearly more influenced by modern authors than is Hamilton;[16] and third—and perhaps more important—because to study Madison's positions would entail a vast debate concerning what his true opinions were and whether they substantially evolved when along with Thomas Jefferson he founded the opposition party against Hamilton's Federalists. Is Lance Banning right when he asserts that "the Madison who wrote the platform for an opposition party was not as inconsistent with the 'father of the Constitution' as is usually believed"?[17]

Hamilton, then, relying on Madison's contributions, stated:

> The first of these objections [against the court for the trial of impeachments] is, that the provision in question confounds legislative and judiciary authorities in the same body, in violation of that important and well established maxim, which requires a separation between the different departments of power. *The true meaning of this maxim 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 defence of the several members of the government, against each other.[18]

Neither Hamilton nor Madison dares to disagree with Montesquieu openly. Both claim to be just declaring the authentic meaning of his maxim. But actually, they substantially change the meaning by formulating a softer separation of powers. Now consider the texts by Madison on which Hamilton relies.

First, in *Federalist* No. 46, Madison appeals to experience to prove that contrary to the tenets of Montesquieu's new concept of political science, power does not always and necessarily tend toward enlargement. Contrary and stronger springs might prevent such growth. Second, in *Federalist* No. 47, Madison elaborates a systematic refutation of Montesquieu's doctrine of strict separation of powers, although he astutely starts by praising the French philosopher. Madison's first observation is that not even the British constitution complies with a complete separation of powers, and the British constitution was Montesquieu's model. There, "the executive magistrate forms an integral part of the legislative authority." Madison then finds it necessary to reinterpret Montesquieu's tenets, given the popularity of the *philosophe*'s views. When Montesquieu stated that "'if the power of judging, be not separated from the legislative and executive powers,' he did not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other," says Madison. Turning to experience, Madison continues:

> If we look into the constitutions of the several states, we find that, notwithstanding the emphatical, and in some instances, the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct. New Hampshire . . . has qualified the doctrine by declaring, "that the legislative, executive, and judiciary powers, ought to be kept as separate from, and independent of each other, *as the nature of a free government will admit; or as is consistent with that chain of connexion, that binds the whole fabric of the constitution in one indissoluble bond of unity and amity*."[19]

In New Hampshire, accordingly, "the executive head is himself eventually elective every year by the legislative department; and his council is every year chosen by and from the members of the same department." And, Madison continues, "[t]he constitution of New Jersey has blended the different powers of government more than any of the preceding." Madison then demonstrates the same kind of mixture of powers in several state constitutions, like those in Pennsylvania, Delaware, Maryland, Virginia, the two Carolinas, and Georgia. Experience is placed above the supposed political science. He concludes the passage with this sentence: "It is but too obvious that, in some instances, the fundamental principle under consideration, has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper." According to Montesquieu, then, in the United States in 1787, "freedom was at an end."

After showing this, Madison starts a new revision of Montesquieu's principle: As usual, he first apparently concedes Montesquieu's point: "[I]t will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it." However, Madison immediately clarifies that "experience assures us, that the efficacy of the provision [division of powers] has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful members of government." He then criticizes the "founders of our republics" because they forgot the dangers posed by legislative power. He explains, moreover, that in a direct democracy the executive poses the greatest danger as the source of tyranny, through manipulation of the passions of the mass; but in a "representative republic" the greatest danger comes from the legislative assembly, which is why it should be controlled by the executive and the judiciary by giving the latter two some power to intervene in the legislative process.[20]

As has been pointed out, besides tempering Montesquieu's division of powers and rejecting his deeper view on political science, *The Federalist* authors embrace the classical view of the

mixed constitution and so defend that the government (especially the judiciary) must be in virtuous and competent hands,[21] while at the same time confirming that the people must have powers of superintendence over the government.[22] To defend this view, Hamilton and Madison bring to the fore the classical critique of pure democracies and explicitly defend that the constitutional project is to establish not a democracy but a republic.[23] The intervention of the people through referenda or popular constitutional conventions will be severely limited,[24] the election of the president will be indirect,[25] the courts will represent law and justice (they will *not* represent the people),[26] the Senate (appointed indirectly by the people as well) will introduce moderation and stability,[27] and so on.

### *Hume*

Hamilton does cite David Hume and even praises him, and in some points there is certainly a Humean influence. However, Hamilton's fundamental stands are deeply different from Hume's. For example, according to Hume, institutions and laws must be promoted "by which liberty is secured, the public good consulted, and the avarice or ambition of particular men restrained and punished," thereby fostering a good and stable political system so that it can become our legacy "to the latest posterity." But since men are inherently corruptible, this system must be able to work even in the absence of virtue. To substantiate this paradoxical statement, Hume adduces some instances taken from past experience, such as this one: "The most illustrious period of Roman history, considered in a political view, is that between the beginning of the first and end of the last Punic war." Yet, those people 'whom in their histories we so much admire,' were supposedly utterly depraved in private life."[28] With examples like this, Hume aims at establishing his theses, which are that virtue is not the end goal of politics, but freedom and welfare are, and that in order to secure freedom what matters is a good system, and not virtue.

The supposed historical experience that Hume is adducing remains questionable. As Polybius has shown, in his time the Roman people were religious and valued virtue, though their

mores were decaying.[29] So, the greatness of the public achievements that Hume exalts is actually attributable to previous periods of the Roman polity when the people proved virtuous in their private as well as public life.

Paradoxically, according to Hume, the perfect system that secures liberty for the latest posterity must be sought "with the utmost zeal." In fact, "nothing does more honour to human nature, than to see it susceptible of so noble a passion; as nothing can be greater indication of meanness of heart in any man than to see him destitute of it." He then engages in one of his typical contradictions. He aims at destroying and replacing the traditional view according to which the end of politics is virtue and the only way to secure the common good is by having virtuous statesmen. However, the strength of this tradition remains strong, so he has to wink at it: "[A] man who is susceptible of friendship without public spirit, or regard to the community, is deficient in the most material part of virtue."[30] Consequently, Hume claims, his system is superior to the traditional view, even regarding virtue.[31]

Other Humean essays show us other aspects of his conception and make its presuppositions more explicit. In *On the Independence of Parliament*, for example, Hume holds that a good system of government must establish "checks and controuls," considering that

> every man ought to be supposed a knave, and to have no other end, in all his actions, than private interest.[32] By this interest we must govern him, and, by means of it, make him, notwithstanding his insatiable avarice and ambition, co-operate to public good. Without this, . . . we shall in vain boast of the advantages of any constitution, and shall find, in the end, that we have no security for our liberties or possessions, except the good-will of our rulers; that is, we shall have no security at all.[33]

Accordingly, "that every man ought to be supposed a knave" is why we must introduce a division of powers.[34] The point is that we must design a system in which virtue is unnecessary. But why is this?

This is because, according to Hume, reason follows the passions or sentiments and cannot rule over them: "There is implanted in the human mind a perception of pain and pleasure, as the chief spring and moving principle of all its actions."[35] It is the "several passions and inclinations, which actuate and govern me."[36] It is not reason and the will in the classical sense that move us;[37] it is, rather, the passions: "[R]eason is and ought only to be the slave of the passions."[38] He denies axiomatically the possibility that "human motivation" comes from a rational appetite,[39] although according to Hume we have innate feelings for our fellow human beings, so our passions are not all selfish, but some are sympathetic in a way that makes us experience other people's pleasure or pain. Thus, Hume is no utilitarian. However, as a sensualist he incurs a paradox analogous to that of the utilitarians: If human beings can act to achieve only their own pleasure (egotistical or not), and avoid their own pain, then how can a political order be established? The god-philosopher, the utilitarian or the Humean, must come down from Olympus and bring the right order to mortal men—namely, a perfect system designed by a reason that comes from the outside and is ruled, not by the common passions of men, but by a "divine passion for order and freedom";[40] it is a reason that opposes the particular interests of some men to the particular interests of others and so leaves a monument "to the latest posterity."

An evident contrast exists between this conception of political reason and the conception that inspires Hamilton's contributions to *The Federalist*. Hamilton's position actually falls within that kind of philosophy that David Hume explicitly rejects in his *Treatise of Human Nature*, as shown next.

We can start with Hamilton's central claim: "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint."[41] This observation is in perfect accord with Book X, chapter 9, of Aristotle's *Nicomachean Ethics*, on the reason why laws are needed. The goal of government is to subject our actions to reason despite the pressure of our passions. This passage, however, can be interpreted in a Humean way. Yet Hamilton's conception of reason and

its relationship with the passions is deeply at odds with Hume's, as the following three steps show.

First, note that Hamilton thinks there is a science of morality, whose axioms are known by reason but might be clouded by the passions as a result of obstinacy, perverseness, or disingenuity.[42]

Second, according to Hume, the people in a stable regime need not trust their rulers. Hamilton, however, perceived such mistrust as nothing less than a spiritual "disease."[43] Both Hamilton and Madison were confronted with this conception that postulates the total corruption of human nature and the need to establish unbreakable checks and balances, and both detected that such a perspective would preclude any actual political enterprise. Hamilton states that "a government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible; free from every other control but a regard to the public good and to the sense of the people."[44] If the framers of the Constitution refused to grant the requisite powers to the government, Hamilton adds, "the absurdity must continually stare us in the face, of confiding to a government the direction of the most essential national concerns, without daring to trust it with the authorities which are indispensable to their proper and efficient management."[45]

In *The Federalist* papers, which Hamilton coordinated, Madison states in turn that every good constitution aims at having in power virtuous and competent men with the wisdom to discern the common good and the virtue to pursue it,[46] though he agrees with Aristotle that government should be superintended. Madison, moreover, departs explicitly from the Hobbesian view that humankind is utterly corrupted. And this leads him (as it led Hamilton before him) to having trust in government, a view that is again at odds with Hume and in harmony with Aristotle.[47]

Given that according to Hamilton's text government is necessary to constrain the passions to obey reason, our third step is to examine one of Madison's contributions to the *Federalist*. In the mixed regime, the government should rationally rule the people,

yet at the same time government should depend on the people. When Madison argues against a frequent "recurrence to the people, as a provision in all cases for keeping the several departments of power within their constitutional limits," he states that if there were such frequent recurrence, "[t]he *passions*, . . . not the *reason*, of the public, would sit in judgment. But it is the reason of the public alone, that ought to control and regulate the government. The passions ought to be controlled and regulated by the government."[48]

Mindful of the previous disagreements that had troubled the republic, and having a more realistic conception of human nature and historical reality than Hume, *The Federalist* authors totally reject the idea that an everlasting system can be founded, a system to be inherited by the "latest posterity," as Hume stated. When Hamilton is discussing how the US Constitution could exclude possible future dissensions and internal strife, he clearly states that nobody can design a perfect system that could avoid always mortal feuds, revolutions, and dismemberments of empire: "It is in vain to hope to guard against events too mighty for human foresight or precaution."[49] This rejection of the possibility of a perfect system is a corollary of the noted difference concerning the conception of political rationality.

Having understood that virtue is necessary to have good government, Hamilton thought that virtue is required for the people's happiness and is intimately connected to the ultimate goal of politics. This understanding and his rejection of Hume's "perfect system" are sufficient to prove an important point: Contrary to what some scholars have claimed,[50] he did not think that private vices are public benefits.[51]

### The Ultimate Goal of Politics

The ultimate goal of politics that both Montesquieu and Hume had in mind (but especially Hume) contrasts with that of Alexander Hamilton, which is essentially classic. First, Hamilton embraces the idea that the common good is the happiness and security of the people. Then, this view is confirmed with a reflection on the

juridical rationality that he embraced, according to which the objective of justice is real and is an essential aspect of the ultimate goal of politics.

Recall that according to Hume, freedom and welfare (understood in a sensualist way) are the ends of politics. The origin of this view can be traced back to at least Thomas Hobbes, who took important steps when he adhered to Epicureanism and denied both that the will is a special power of the soul and that humankind is able to resist the pull of the passions. According to Hobbes, the will is but the passion that prevails and deliberation is but a tournament of passions.[52] On these points Locke followed Hobbes, as one can see in Locke's *Essays Concerning Human Understanding* (2.20 and 21).[53] Both of these authors denied that political authority received its meaning from an aim, the common good, that required a special knowledge (political science and law, both in the classical sense) and was actually the measure against which good or bad government could be discerned. According to them, instead, since no real common good existed in a classical sense, the legitimacy of government could be grounded only on the people's attempt to avoid a fearful evil—the loss of property and life at the hands of a fellow human being—doing so by consenting to obey the government. According to both authors, the courts are required to limit their decisions to the application of the laws passed by the authority that enjoys the consent of the people.[54] That the consent is based on the attempt to avoid the loss of property and life might be translated as the consent given for the protection of the rights of man. That is how, in the Lockean tradition, consent and rights came to be the foundation, end goal, and standard of government. In the works of Locke, however, one finds another seed of thought that Helvetius picked up:[55] Good is what originates pleasure, and evil is what originates pain. Therefore, the goal of government must be to increase pleasure and reduce pain.

Locke's ideas were received and cast into a more acceptable mold by Hume. He stated that government's goals include "freedom" (the protection of *rights* in the Lockean tradition) and "wellbeing," understood in sensualist terms, as explained earlier. He is too

sophisticated to hold that there is anything like an actual "social contract." Instead of that, in a subtly Epicurean way,[56] Hume held that "our sense of justice . . . [is] rooted in our awareness of the utility it provides to society." Justice consists in obedience to the legal rules, and its primary end is the protection of property, as much according to Hume as according to Locke. The Scottish author also emphasizes the importance of a legal "system that is stable and predictable."[57] Hume's view concerning the rise of the legal system and the reasons why people obey laws and rulers inspired H. L. A. Hart's positivistic views, as Hart himself acknowledges:[58] Authority emerges in difficult, violent situations; after this comes experience of the advantages of authority and rules; after this follows habituation and then a gradual refinement of the rules and new experiences of their utility. Although Hume is not a utilitarian, he would deny that actions are intrinsically just or intrinsically evil. He states that no objects or actions have any inherent moral importance; their relevance is given by some norms that are, unlike religious norms, useful to the well-being (in a sensualist sense) and liberty of society as a whole and are, therefore, authentic norms.[59] Of course, this implies that as with the utilitarian approach, there exist neither fixed rational-moral first principles nor natural law,[60] thereby implying that only some sort of human construction of the consequences of actions turns actions good or evil.

Hamilton's views contrast sharply with these tenets of the Lockean tradition as it was received by David Hume and, instead, clearly continue the Western classical and Christian tradition. In the first place, Hamilton holds that the end goal of political society is the common good, and he understands it in a way that is not sensualist but classical. So, neither Hume's understanding of the welfare of the commonwealth nor Hume's (or Montesquieu's, for that matter) understanding of "freedom" is received by Hamilton as the ultimate goal of political society. In the second place, Hamilton understands that law as an authoritative discipline and the judiciary as an organ of the law have as their aim justice and right in the objective sense. The courts must use their knowledge to attain decisions that are just, and in doing so they may use positive laws (including the laws of nations),

but they must also use natural laws and principles of reason. He understands, moreover, that such ends—the common good and justice—require political and juridical knowledge and therefore limit the popular element of the Constitution. It is true that Hamilton also introduces a popular element, but he does so using the classical tradition of the mixed regimes, discussed earlier. Although he declares, finally, that the people are the source of the Constitution, his understanding of "the people" here accords with the classical tradition, which in this legislative context understands by "the people" the community as a whole, not the set of those who are bound to obey government officials.

### *Happiness as the Common Good*

The texts that substantiate this aspect of Hamilton's thought—namely, that political society is directed toward the common good and that such is the ultimate goal of government—are abundant. Some texts, however, must be placed in the appropriate context if one wishes to understand the real core of Hamilton's thought.

First, Hamilton holds that the political community aims at fostering the happiness of the people.[61] This is clearly a non-Lockean understanding of politics: As Hamilton says in *Federalist* No. 26, "[E]nergy of government is essential to the welfare and prosperity of the community," and he places this in the context of having to balance "energy of government with the security of private rights." In a context heavily influenced by Locke, then, Hamilton maneuvers to introduce a more realist, classical understanding of politics. Proof of this view can be derived from his attitude toward the absence of a bill of rights in the text of the proposed constitution to be submitted for approval by the states. He thought that bills of rights typified a particular political regime—that is, a feudally organized monarchy. For this reason, he thought bills of rights unnecessary in a true republic.[62] He also held that the security of the *rights* of citizens, or the security of being guarded by justice, depended not so much on constitutional declarations as on the cultivation of the minds of the people, so that the people would be inclined to respect justice.[63]

I would go further to state that the formulas that Alexander Hamilton and James Madison use to express the end goals of government are probably influenced by William Blackstone, who along with them thinks that the purpose of government is the "safety and happiness" of the commonwealth.[64] Madison goes so far as to state that "the public good, the real welfare of the great body of the people, is the supreme object to be pursued" and declares that "no form of government whatever, has any other value, than as it may be fitted for the attainment of this object."[65] These assertions locate *The Federalist* almost entirely in the classical tradition. Hamilton, in turn, ratified these views in the third of his Tully letters to the American people: "It [government] is the power by which individuals in society are kept from doing injury to each other and are bro't to co-operate to a common end."[66]

Some scholars could dispute that "happiness" is being understood here in a "modern" way, in a proto-utilitarian, para-Humean way. But that is not the case. First, on the one hand, the utilitarian works had not yet been written;[67] on the other hand, as shown, Hamilton's conception of the relationship between the passions and reason is at odds with the Humean conception. Second, Blackstone understands "happiness" not in a utilitarian but in a classical way,[68] and it seems clear that Hamilton was influenced by Blackstone on this issue.[69] Third, although it is true that in *The Federalist* "happiness" seems to be used loosely, when forced to clarify his meaning Hamilton leans toward the classical and away from the vulgar, hedonist conception of happiness: "Religion and morality are essential props. In vain does that man claim the praise of patriotism who labours to subvert or undermine these great pillars of human happiness."[70] Besides, Hamilton's works show that he conceived of virtue as the end goal or at least as an essential aspect of the end goal of government and law.[71] Indeed, *The Federalist* states that the most important of political virtues, justice, "is the end of government" and "of civil society."[72] Moreover, Hamilton held that the law must defend the morals of the community,[73] as well as the order of families.[74] He also held that the United States must pay its debts because honor and justice require

it and, furthermore, because doing so will form the character of the nation as well as secure its prosperity and not only because it is expedient in order to enjoy credit.[75]

Let us follow this same line of thought further. The founding fathers understood that one virtue in particular, justice, was an important aspect of the end goal of the political community. On this point they clearly agree with Aristotle.[76] Hume stated that justice is the end goal of political society as well, in his essay "Of the Origin of Government," but his understanding of this is very different (5). Indeed, according to Hume, justice consists in obedience to positive rules (statutes or other rules) and is central to good government because it is useful and protects property.[77] The Humean rules for the acquisition and distribution of property, moreover, resemble those that John Locke establishes in the *Second Treatise of Government*.[78] This means, precisely, that justice is not really the objective of the political community but an important means. Moreover, in that very essay, Hume states that authority is necessary for the existence of rules and of order but that the perfection of society is freedom and therefore must be promoted with more diligence than mere authority. So, freedom and welfare are the real ends of society. The notions of justice and knowledge of the law are examined more carefully next.

### *Hamilton on the Science of Law*

One of the most impressive ideas of *The Federalist* is its conception of the juridical order.[79] The great difference between the French revolutionaries and their sources (the *philosophes*), on the one hand, and the founding fathers of the United States, on the other, is crystal clear in its light.

*The Federalist*'s explication of juridical order places Hamilton very far indeed from the fundamental Humean conception both of man and of political society. The distance is obvious: According to Hamilton, law is a rational discipline, whereas according to Hume, the judgments of jurists are acts of the imagination: "[M]any of the reasonings of lawyers are of this analogical nature and depend on very slight connections of the imagination."[80]

Hamilton knows that real judges are not representatives of the people. They are, instead, the guarantors of law and justice,[81] endowed with a knowledge that empowers them to *judge* and hand down their decisions on the conflicts between the different actors of political life.[82] But this knowledge of the law can rein in the passions and bring them to order. Moreover, through it an important aspect of the end goal of government, justice, may be realized. The judges are, however, dispossessed of any effective power other than the awe and respect that justice inspires in the other state entities. The judiciary has "neither Force nor Will, but merely judgment."[83]

Why, then, would the branches of government respect the decisions of the courts? Hamilton's answer is masterful: The integrity and moderation of the judiciary will command the esteem and respect of the virtuous and disinterested, who will protect "that temper in the courts; as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer to-day."[84]

To secure the independence of the courts, the founding fathers established that the federal judges would enjoy the tenure of "good behaviour"—that is, they could not be removed but due to faults.[85] Moreover, the justices of the Supreme Court would be appointed for life in a process ordered to ensuring their excellence as jurists. Furthermore, the US Constitution was established as a rigid constitution—"limited," says Hamilton[86]—so that the judges would be able to check the violations of law committed by the other branches of government, including the legislature.[87] All this differs *toto coelo* from the conceptions promoted by French revolutionaries and from those of Hobbes and Locke, especially as (1) Hamilton explicitly defended that ancient English law be established by the Constitution as law of the United States because it had always been applied there, first in the Colonies and later in the United States;[88] and, besides, (2) he held that principles of law are such because they are principles of reason, not because they have been established by any human authority.[89]

In addition to all this, Hamilton succeeded in interpreting the Treaty of Commerce with France (signed with Louis XVI after he so efficaciously helped the United States achieve independence) so as to steer the US ship of state away from helping the French revolutionaries wage war in France and against the world.[90] In declaring neutrality, Hamilton laid down sound rules for interpreting treaties—rules that are, of course, valid for juridical interpretation in general and for the courts in particular. So, for example, in *Pacificus* No. 1, he defended the claim that the government (the executive) must apply the laws of nature and of nations.[91] In *Pacificus* No. 2, he stated that "reason, the concurring opinion of writers and the practice of nations" are sources of law.[92] In the interpretation of treaties, moreover, one must consider "the nature of the case . . . , the fundamental maxims of Society . . . , the dictates of sound reason."[93]

Finally, Hamilton conceived the Constitution as a veritable law, the fundamental law, given directly by the whole of society and, therefore, limiting the power of the legislature and even of the people, which is subject to the Constitution until it is changed through the appropriate channels and forms established in it.[94] Therefore the law, including the statutes, is not predominantly an act of will, as Ockham, Hobbes, and Locke would have it; laws are acts of reason,[95] and they bind the will even of the majority of the people.

### Classical Conception of the US Constitution as a Law of the People

Although Hamilton uses language that *seems* to align with that of Locke and other authors in the Lockean tradition, regarding the people as the source of the US Constitution and of political power, the way in which he understood "the people" in such passages is thoroughly at odds with Locke and intimately connected to the classical tradition. In the first place, he understands "the people" to be the source of the laws and of political power, not as the "membership that is bound by the [government's] acts," but as the whole of the community.[96] This usage is ancient but became

explicit in the scholastic tradition. Aquinas, for example, states in *Summa theologiae* that

> [a] law, properly speaking, regards first and foremost the order to the common good. Now to order anything to the common good, belongs either to the whole people, or to someone who acts in place of the whole people. And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people: since in all other matters the directing of anything to the end concerns him to whom the end belongs.[97]

Precisely this usage appears in William Blackstone's *Commentaries*,[98] a usage adopted by Hamilton. This is evident in that Hamilton understood the Constitution as an act of reason to which the people (understood as the mentioned membership) remain subject because the Constitution is an authentic law that protects the minorities against the whims and passions of the majority. As an attorney Hamilton actually had to invoke the Constitution and the laws in order to protect minorities from the passions of the people.[99] But this usage is also evident in that Hamilton states that the legislature, even in its character as representative of the people, has no power to change the Constitution in ways other than those established for the purpose. Instead, the courts must interpret the laws, including the fundamental law that is the Constitution, and keep the legislature "within the limits assigned to their authority."[100]

The Constitution is a veritable law that emanates from the people understood as the whole republic and that binds the people understood as members of the body subject to the laws. "[It is not true that] the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing constitution, would, on that account, be justifiable in a violation of those provisions." The fundamental law must be applied until it is changed

through the appropriate forms or procedures, that is to say, by acts of the people as a whole.[101]

The founding fathers' juridical mind thus established a true chasm between the republic of the United States, on the one hand, and both John Locke's conception of democracy and the chaos of the French Revolution, on the other. Acknowledged in the United States was a dimension of justice and law over which the people were not sovereign.[102] In the *Second Treatise of Government*, John Locke, the main influence over the French Revolution (mediated by Voltaire, Montesquieu, D'Argenson, Helvetius, Beccaria, and Rousseau), stated that "[w]hen any number of men have so *consented to make one community or government*, they are thereby presently incorporated, and make *one body politic*, wherein the *majority* have a right to act and conclude the rest"(95). Moreover, "every one is bound by that consent to be concluded by the *majority*" (96). Locke knew what could be objected to these radically democratic statements: "To this perhaps it will be said, that the people being ignorant, and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin; and *no government will be able long to subsist*, if the people may set up a new legislative, whenever they take offence at the old one" (223). And he replied in a way that accepted that his meaning was really radically democratic: "To this I answer, Quite the contrary. People are not so easily got out of their old forms, as some are apt to suggest" (223). His conclusions were predicated on a particular English experience of a particular period in time. The fathers of the constitutional order of the United States were far wiser and far more prudent than Locke, since they consulted the general experience of humankind as much as they could, and they stayed faithful to the attachment not to "old forms" but to the reality of (natural) law.

A final important piece of evidence for Hamilton's classical view of political authorities as representatives of the republic as a whole is found in his *Pacificus* essays, specifically *Pacificus* No. 5. There he states that Louis XVI was the agent of the French nation when he aided the United States in the War of Independence (and

when he signed the Treaty of Cooperation). So, despite being a monarch, Louis XVI represented the French nation.[103] This view totally agrees with the classical-scholastic tradition and is probably the cause for which those who embraced the "enlightened" understanding of political authority (or lack thereof) misunderstood Hamilton as a "monarchist."[104]

## Conclusion

The main foundation of Hamilton's understanding of political science, we can conclude, remains very far indeed from the foundations that Hume or Montesquieu had in mind and, instead, aligns with the classical and Christian tradition. The examined evidence demonstrates that (1) Hamilton relies more on the classical conception of the mixed regime than on Montesquieu's separation of powers; (2) according to Hamilton, moreover, reason must direct the actions of all men and not just build a system in which some passions cancel other passions; (3) the ultimate goal of government is to safeguard our rights but also happiness understood in non-sensualist terms; (4) the end goal of government includes virtue and justice, where justice is understood, with Blackstone, in continuity with the classical tradition; and (5) the US Constitution is understood by Hamilton as a true law that limits the will of the majority and constitutes an act of reason.

## Notes

1. Carl Richard, *The Founders and the Classics* (Harvard University Press, 1994), 19–21, 26, 247–48n13.
2. Donald Lutz teaches that Aristotle influenced the founding fathers through Cicero and the Romans. See "Intellectual History and the American Founding," in *A Preface to American Political Theory*, ed. Donald Lutz (University Press of Kansas, 2021), 117.
3. In the actual writing of the US Constitution, Madison might have had a greater influence than Hamilton. But in the actual shape that the interpretation of the Constitution and the constitutional order took after the text was approved, it was Hamilton who had the greater influence. Many jurists such as Kate Elizabeth Brown, *Alexander Hamilton and the Development of American Law* (University Press of Kansas, 2017), 1,

agree on this. Darren Staloff, *Hamilton, Adams, Jefferson: The Politics of Enlightenment and the American Founding* (Hill & Wang, 2007), 60, 83, agrees as well.

4. Carson Holloway explicitly considers him more persuasive than Jefferson. See Holloway, *Hamilton Versus Jefferson in the Washington Administration* (Cambridge University Press, 2015), 4.
5. Hanna Arendt, *On Revolution* (Viking Press, 1973), 87, 91, 156, 303n31. See also 104, 146–48, 152, 163–64.
6. A potential third section would focus on Hamilton's conceptions of science and Christianity, which also distinguish him from Hume. Given space constraints, these issues are left for a future paper. In the meantime, see Douglass Adair and Marvin Harvey, "Was Alexander Hamilton a Christian Statesman?" *Quarterly* 12, no. 2 (1955): 308–29; and Douglass Adair, *Fame and the Founding Fathers* (Institute of Early American History and Culture, 1974).
7. Alexander Hamilton, James Madison, and John Jay, *The Federalist* (Liberty Fund, 2001), 38n9. (Hereafter cited by paper number.)
8. Charles de Montesquieu *The Spirit of the Laws*, in *The Complete Works of Montesquieu*, vol. 1 (London: Evans & Davis, 1777), Book XI, chap. 4, p. 197.
9. Montesquieu, *Spirit of the Laws*, Book V, chap. 14, p. 80.
10. Montesquieu, *Spirit of the Laws*, Book XI, chap. 6, pp. 198ff.
11. Montesquieu, 199.
12. Montesquieu, 205.
13. The transition from political philosophy toward "social science" found in Montesquieu was perceived by Emile Durkheim, *Montesquieu and Rousseau: Forerunners of Sociology* (University of Michigan Press, 1965), 51–57. Pierre Manent points out that Montesquieu was the first author to treat power as an inanimate thing. See Manent, *An Intellectual History of Liberalism* (Princeton University Press, 1994), 55. Eric Voegelin, in his study on Helvetius, characterizes this transition as follows: "[T]he growth of the soul which is nourished through communication with transcendental reality is replaced by the formation of conduct through external management." See Voegelin, *From Enlightenment to Revolution* (Duke University Press, 1975), 70.
14. On this the framers might have been following the footsteps of William Blackstone, who praises the mixed regimes, in turn following Cicero. See Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765), 1:50. However, I think that Hamilton achieved a better understanding of many subjects than did Blackstone. The origins of the idea of the mixed regime go back at least to the times of Solon, though

Aristotle articulated the idea more thoroughly, taking into account the new concept of Platonic *epistéme politiké* and correcting it. On this sense see Aristotle, *Politics*—my source is *Politica* (Leipzig: Teubner, 1894)—3.11, 1281b29–30, 1282a4–22; 4.12, 1296b15–17; 6.3,1320b26, 4, 1318b36–1319a1. Richard also discovers the influence of the classics in the version of the mixed regimes adopted by the Constitution (*Founders*, 8).

15. Notice that the points where Lance Banning, *The Sacred Fire of Liberty: James Madison and the Founding of the Federal Republic* (Cornell University Press, 1995), 396–402, finds *possible* disagreements do not touch the points where I assume here there was agreement.
16. The example that Thomas Pangle gives of how Montesquieu's conception of moderation influenced *The Federalist* is contained in *Federalist* No. 10, written by Madison. See Pangle, *The Spirit of Modern Republicanism* (University of Chicago Press, 1988), 94. Moreover, Mark Spencer's argumentation concerning the probable influence of Adam Smith and David Hume on Madison's conceptions of political factions and religious sects is plausible. See Spencer, *David Hume and Eighteenth-Century America* (University of Rochester Press, 2005), 154–87.
17. See Banning, *Sacred Fire*, 9.
18. *Federalist* No. 66 (italics mine). In a similar sense, see No. 75, on international treaties.
19. The italics are in Madison's text.
20. *Federalist* Nos. 47–48.
21. See *Federalis*t Nos. 10, 57, 78.
22. See *Federalis*t Nos. 10, 31, 57.
23. See *Federalist* Nos. 9, 10, 14, 48, 63. The founders had experienced the danger of mob rule in their own country as well. See John Lamberton Harper, *American Machiavelli* (Cambridge University Press, 2004), 34, 37.
24. See *Federalist* Nos. 49–50. One reason Madison gives is that "[frequent appeals to the people would] deprive the government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability" (No. 49, 261). According to Pangle, this kind of remark is a clear sign of classical rather than modern influence. See Pangle, *Modern Republicanism*, 94.
25. See *Federalist* No. 64.
26. See *Federalist* Nos. 51–78 and 81.
27. See *Federalist* No. 63.

28. All citations of this paragraph and the following are from David Hume, "That Politics Must Be Reduced to a Science," in *Essays: Moral, Political and Literary* (New York: Longmans Green, 1898), 105–7.
29. Polybius, *Histories*, vol. 1 (New York: MacMillan, 1889), Book XI, sects. 43–58. Eric Voegelin refers to these texts by Polybius in Voegelin, *Order and History*, vol. 4 (Louisiana State University Press, 1974), 126–33.
30. David Hume, "That Politics Must Be Reduced to a Science," in *Essays: Moral, Political and Literary*, vol. 1 (New York: Longmans Green, 1898), 105–7.
31. Although Hume's use of "virtue" generally agrees with the sense of that word, predominant in his time (and, by implication, with the classical and Christian tradition), he does try to bend the sense of this term to his sensualist philosophy. See David Hume, *Treatise of Human Nature* (Clarendon Press,1896), Book II, pt. 1, sec. 7. In classical philosophy, to have virtue was precisely to act and to feel in obedience to reason (and practical truth). See Aristotle, *Nicomachean Ethics* 1.7, 1098a3–18, and 13, 1102b14–1103a10; 2.6, 1106b36–1107a2; 6.5, 1140b4–6, and 13, 1144b6–1145a6. According to Hume, reason is not the master of the passions and feelings.
32. This idea Hume took directly from Mandeville, suggests Aaron Zubia, *The Political Thought of David Hume* (University of Notre Dame Press, 2024), 310n82 (see also 94). Staloff, *Hamilton, Adams, Jefferson*, 33, 55–57, claims that Hamilton adopted it. The strongest grounds for this claim are found both in the early work "The Farmer Refuted" and in Hamilton's "Remarks to the Constitutional Convention on June 22, 1787," Yates's version. The first instance is cited by Spencer, *David Hume*, 115–17, 233–34. The second instance is cited by Spencer, *David Hume*, 117, and by Staloff, *Hamilton, Adams, Jefferson*. It is doubtless that Hamilton cited Hume's essay "Of the Independence of Parliament" in the first instance to support the point that the British Parliament cannot have authority over the Colonies of North America. However, Hamilton never adopted Hume's full idea of political science, not even in this his most revolutionary and least classical early work. Clear evidence of the non-Humean character of this early Hamiltonian essay appears in the profoundly theistic metaphysics that undergirds its argumentation. See Hamilton, "The Farmer Refuted," in *Hamilton's Works*, vol. 2, ed. John Hamilton (New York: John F. Trow, 1850), 43. Regarding the second instance, we must not overblow the implications of this brief and indirect text. Its purpose was to oppose a constitutional norm establishing the ineligibility of members of the House of Representatives for other offices after their term in Congress. He objected (1) that one

cannot oppose so thoroughly the interests and passions of men when designing the institutions and (2) that a good legislator should use such interests and passions. To support his second point, he cites Hume. But actually, the whole Western tradition starting with Plato and going through Max Weber has held a similar opinion. The fact that in the very same document Hamilton acknowledges that some good patriots are not moved by their passions to serve the public good (along with his other points of view on political science highlighted later in the body of this paper) proves that his view remains very far indeed from the Humean conception of political science, though he receives Hume's influence in aspects not pertaining to the fundamental principles of political science. See Hamilton's remarks, Yates's version and Madison's version, in Alexander Hamilton, *The Papers of Alexander Hamilton*, vol. 4, January 1787–May 1788 (Columbia University Press, 1962), 216–17.

33. David Hume, "On the Independence of Parliament," in *Essays: Moral, Political and Literary*, vol. 1 (New York: Longmans Green, 1898), 117–18.
34. See Hume, "Independence of Parliament," 119; and Hume, "Of the Origin of Government," in *Essays: Moral, Political and Literary*, vol. 1 (New York: Longmans Green, 1898), 116.
35. Hume, *Treatise*, Book I, pt. 3, sec. 10.
36. Hume *Treatis*e, Book I, pt. 4, sec. 7.
37. Hume, 1896, book 2, part 3, section 3. Actually, according to Hume, the will is the passion that results from deliberation and deliberation is a contest between passions, in a Hobbesian way (Hobbes 1909, 1.6).
38. Hume, *Treatise*, Book II, pt. 3, sec. 3. Here Hume is merely stating explicitly what was implicit in the works by Hobbes and Locke (see, e.g., Hobbes, *Leviathan*, pt. 1, chap. 6). According to Locke, *good* means what causes pleasure; and *evil*, what causes pain, so we always act seeking to achieve pleasure or to avoid pain. See John Locke, *Essays Concerning Human Understanding*, in *The Works of John Locke in Nine Volumes*, vol. 1, 12th ed. (London: Rivington, 1824), Book II, chap. 20. But our will has freedom only of spontaneity, not of indifference (as Hume states in *Treatise*, Book II, pt. 1, sec. 10; pt. 3, sec. 1; Book III, pt. 3, sec. 4) because freedom means to be able to do what we will, but willing itself is not free. See Locke, *Essays Concerning Human Understanding*, Book II, chap. 21. So, our will is not a spiritual, reflective appetitive power but precisely a passion, as in Hobbes's works.
39. See Hume, *Treatise*, Book III, pt, 1, sec. 1, and the explanation of its meaning in John Finnis, *Natural Law and Natural Rights*, 2nd ed.

(Oxford University Press, 2011), chap. 2, sec. 5, pp. 37–38. See also David Hume, *Enquiry Concerning the Principles of Morals* (Open Court, 1946 repr. [1777]), sec. 1, pp. 4–5; appendix 2.

40. See Voegelin, *From Enlightenment to Revolution*, 50–51.
41. *Federalis*t No. 15. Also, Nos. 1, 8, 76, 78. Madison agrees almost totally with Hamilton on this point. See, e.g., *Federalist* Nos. 41, 48, 49, 50. In the latter paper Madison states that decisions must be presided over by reason. Hamilton and Madison might both have been influenced by Blackstone's *Commentaries*, 1:12, 40, 41, 70.
42. See *Federalist* No. 31.
43. See *Federalist* No. 28. See also Nos. 29 and 76. T. S. Eliot perceived the same spiritual disease: "They constantly try to escape / From the darkness outside and within / By dreaming of systems so perfect that no one will need to be good." Eliot, choruses from "The Rock," in *Collected Poems, 1909–1935* (Glasgow University Press, 1954 repr. [1936]), 6:170.
44. *Federalist* No. 31. Hamilton promoted a mixed constitution of the classical kind. He even uses the same words that Aristotle used. See *Politics*, Book VI, chap. 4, 1318b38–1319a1; and *Federalist* No. 31.
45. *Federalist* No. 23. See also No. 26.
46. *Federalist* No. 57.
47. *Federalist* No. 55. Compare with Aristotle, *Nicomachean Ethics*, Book X, chap. 9, 1179b7–1180a18. In similar sense concerning all the founders, not just Hamilton, see John Zvesper, "The American Founders and Classical Political Thought," *History of Political Thought* 10, no. 4 (Winter 1989): 705–7.
48. *Federalist* No. 49. This is what Hannah Arendt penetratingly observed, that the framers of the original US constitutional order construed "the rule of government over the governed according to the age-old model of the rule of reason over passions." See Arendt, *On Revolution*, 91.
49. *Federalist* No. 16. Madison holds a similar doctrine at No. 43.
50. Staloff, *Hamilton, Adams, Jefferson*, 33, 51, states that according to Hamilton, one of the three pillars of government is interest and another finances. David Epstein, with his elusive style, seems to hold the same thesis, that Hamilton thought that the government must be based on private passions, interest, pride, and the pursuit of gain. See David F. Epstein, *The Political Theory* of *"The Federalist"* (University of Chicago Press 1984), 30–33, 64. Of course, Hamilton knew that these elements must be taken into account in order to establish a constitutional order capable of securing the stability of the republic. However, he did not try to build a system based just on those material pillars.

51. Mark Spencer has argued that Hamilton's political conception is largely Humean. He bases his case on two instances in which Hamilton uses Humean reasoning. One instance has been referred to in a previous note. The second one has to do with the fact that Hamilton stated in several of his *Federalist* papers (Nos. 6, 7, 8, and 9) that the political union between the colonies would ameliorate the popular system of civil government, and Hume had proposed a similar argument in his essay "Idea of a Perfect Commonwealth," in *Essays: Moral, Political and Literary*, vol. 1 (New York: Longmans Green, 1898). However, that Hamilton uses an argument similar to that of Hume does not mean he took it from Hume. Hamilton's explicit reasons to consider a large republic as better than small republics are mostly classical, rather than Humean. More importantly, according to Spencer himself, American authors John Stevens Jr. and William Vans Murray had held this thesis, and Murray in particular had certainly been known and published in Philadelphia in a widely read political periodical (to which Hamilton and Madison subscribed) weeks before the relevant essays of *The Federalist* were written (see Spencer, *David Hume*, 233–47). It is probable, in my opinion, that Stevens and Murray simply articulated the experience of their own country.
52. See Hobbes, *Leviathan*, 1.6.
53. See Leo Strauss, *Natural Right and History* (University of Chicago Press, 1953), esp. 169–70, 227–28, 249–51. These pages read together suggest that Locke subscribed to a Hobbesian view of man and the origin of civil society. The main grounds for the anthropological thesis are that in chapter 21 of Book II of the *Essays* Locke states that the will is not free (see secs. 10, 14 20, 23, among others).
54. Concerning Locke, see his "Second Treatise of Government," in *The Two Treatises of Civil Government* (London: Hollis, 1689), sec. 136.
55. See Voegelin, *From Enlightenment to Revolution*, 36–42.
56. See Zubia, *Political Thought of Davide Hume*, 66, 109–10, 112, 121, 137.
57. Neil MacArthur "Hume and the Philosophy of Law," in *The Humean Mind*, ed. Angela Michelle Coventry and Alex Sager (Routledge, 2018), 349. These statements clearly derive from Hume, *Enquiry*, secs. 3 and 5 and appendix 3. David Hume does not explicitly stated that only positive laws and statutes may be applied by the courts in a system that protects freedom perhaps because he seems to have avoided building a complete and coherent system. However, it seems that such would be the only thesis consistent with his general views. If reason is powerless to move the will, and the passions pull the will wherever they go, then the judge

must be refrained by the fear of the laws from doing his will, since he is unable to know and follow what is just according to reason. In Hume, "Of the Rise and Progress of the Arts and Sciences," in *Essays: Moral, Political and Literary*, vol. 1 (New York: Longmans Green, 1898), 13, Hume articulates a very nearly Lockean interpretation of Roman legal history. Also in Hume, "Idea of a Perfect Commonwealth," all the laws seem to be passed by the county representatives, the senate, and the magistrates, so that there are no natural laws.

58. H. L. A. Hart confesses such influence in *The Concept of Law* (Oxford University Press, 2012), 193, 303; and in "Social Solidarity and the Enforcement of Morality," in *Essays on Jurisprudence and Philosophy* (Clarendon Press, 1983), 248–62. The influence of Hume on Hart can be felt clearly in Hart, *Concept of Law*, above all in 104–5, 109–10, 115–17, and 225–26, 230–32, 235. In these pages Hart exhibits a Kelsenian view of law, except that according to him, the basic norm, the "rule of recognition," is postulated not as a theoretical a priori but as a fact (110), and it need not lead to strange metaphysical interpretations of a mysterious quality that exists but can't be empirically identified (104–5).
59. See Hume *Enquiry*, sec. 3, pt. 2, pp. 31–35. Hume takes as the highest rule of justice that the existence of society must be preserved, and like Locke in his "Second Treatise of Government," chap. 13, sec. 158, he takes the principle *salus populi suprema lex* to mean just that. This is totally at odds with the classics, according to which, since all societies are going to die, the highest principle is the common good understood as the virtue of society while it exists. See Plato, *Laws*, in *Platonis Opera*, vol. 5 (Clarendon Press, 1900), 1.4.705c–707d.
60. See MacArthur, "Hume," 351–52, 354–55.
61. *Federalist* No. 15.
62. See *Federalist* No. 84, 445. See also Arendt, *On Revolution*, 104, 148. In Alexander Hamilton, *The Pacificus–Helvidius Debates*, ed. Morton Frisch (Liberty Fund, 2007), 30, he criticizes the use of the "Declaration of Rights of Man and the Citizen" as a pretext to wage war against all nations.
63. See *Federalist* No. 84, 446. Hamilton was one of the main defenders of the freedom of the press, understood in a way far more judicious than it is today. See Brown, *Development of American Law*, 191–205. In his first speech to the Ratifying Convention of New York (June 1788), Hamilton stated that even despotic governments depend on the opinion of people. Staloff sees in this insight a direct influence from Hume's theory of legitimacy of government (see Staloff, *Hamilton, Adams, Jefferson*, 51 and 243n62). But I do not see evidence of Humean influence here. That

governments depend on opinion is a very ancient insight. Plato's and Aristotle's care for the *paideia* of the people, and Aristotle's statement that concord is more necessary even than justice (*Nicomachean Ethics* 5.1) and that the society of human beings needs language (*Politics* 1.1, 1253a7–18) are connected with it. Moreover, Hamilton is not talking in this passage about government legitimacy.

64. In Hamilton et al., *The Federalist*, see Jay, *Federalist* No. 2; Hamilton, *Federalist* Nos. 15 and 30; and Madison, *Federalist* No. 43. See also Blackstone, *Commentaries*, 1:40, 41, 121. Concerning Hamilton, Gerald Stourzh states, "To recall Benjamin Rush's words, if Hamilton needed an 'oracle' on principles of government, it was Blackstone rather than Locke." See Stourzh, *Hamilton and the Idea of Republican Government* (Stanford University Press, 1970), 6. Paul Rahe states that Blackstone was a disciple of Hobbes and a Lockean (see Rahe, *Republics: Ancient and Modern*, vol. 3 [University of North Carolina Press, 1994], 42 and 259n22), but actually there is great difference between the philosophies of Blackstone, on the one hand, and Locke and Hobbes, on the other.
65. *Federalist* No. 45.
66. Alexander Hamilton, *The Papers of Alexander Hamilton*, vol. 17, August 1794–December 1794, ed. Harold C. Syrett (Columbia University Press, 1972), https://founders.archives.gov/documents/Hamilton/01-17-02-0130.
67. Helvetius published his book *De l'esprit* in 1758, but there is no proof Helvetius influenced Hamilton.
68. In Blackstone, *Commentaries*, 1:41, he holds that the real happiness of man lies in the fulfillment of "ethics or natural law," of his "natural duties" (see 54), and this by God's disposition. In the works of the utilitarians (written later than Blackstone's *Commentaries*), the pursuit of individual happiness might be at odds with virtue, so happiness and duty do not agree unless we are thoroughly conditioned by "education" to feel otherwise. See, e.g., John Stuart Mill, *Utilitarianism* (Batoche Books, 2001), 18, 37, 38, 40.
69. See Hamilton, "Report on Public Credit," in *Official Reports on Public Credit, National Bank, Manufactures and a Mint* (Philadelphia: William McKean, 1821), 4.
70. "Draft of George Washington's Farewell Address," 280 (PAH, 20:280, July 30 1796), cited in Ron Chernow, *Alexander Hamilton* (Penguin Books, 2004), 507. Similar insights animate Hamilton,"Defense of the President's Neutrality Proclamation, [May 1793]," in *The Papers of Alexander Hamilton*, vol. 14, February 1793–June 1793, ed. Harold C. Syrett (Columbia University Press, 1969), https://founders.archives.

gov/documents/Hamilton/01-14-02-0340. Also, see his letter to George Washington of March 8, 1794 (cited by Staloff, *Hamilton, Adams, Jefferson*, 73). They remind one very much of Thomas Reid's similar insights: "[A] State neglects one of its most essential Interests if it neglects Religion and leaves that altogether out of its Consideration." The phrase is taken from *On Practical Ethics*, cited by Zubia, *Political Thought of Davide Hume*, 255.

71. One can see the praise of virtue and the censure of vice in government in Hamilton's October–November 1778 Publius letters. See Alexander Hamilton, "Publius Letters," in *Hamilton's Works*, ed. John Hamilton, vol. 2 (New York: John F. Trow, 1850). In these letters Hamilton speaks of conversion as well, which might be a sign of his religiosity at this time.
72. See *Federalist* No. 51. Although it is written by Madison, it is clear that Hamilton agrees with this. "Civil society" is here understood as "political society," as the whole that encompasses government.
73. See, e.g., Hamilton, "Report on Public Credit," 43, on the tax of wine and spirits.
74. This was the common understanding of existing legal codes in the early United States, which had as punishable offenses fornication, adultery, rape, sexual assault, and similar crimes. See Michael Meranze, "Penality and the Colonial Project: Crime, Punishment, and the Regulation of Morals in Early America," In *Cambridge History of Law in America*, ed. Michael Grossberg and Christopher Tomlins (Cambridge University Press, 2008), 191, 195, 198, 199. The state legislature of New York, e.g., enacted on February 14, 1787, a law that condemned with death crimes such as sodomy, bestiality, and seduction of young children (understood as rape). See State of New York, *Laws of New York, 1777–1789*, vol. 2, comp. Jones & Varick (New York: Hugh Gaine, 1789), 45–47, chap. 21. A similar conception is found in Blackstone, who counts juridical science among the scientific disciplines that must be cultivated in the highest level: "[E]thics are confessedly a branch of academical learning, and Aristotle himself has said speaking of the laws of his own country, that jurisprudence or the knowledge of those laws is the principal and most perfect branch of ethics." It is "a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science, which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community" (Blackstone, *Commentaries*, 1:27).

75. See Hamilton, "Report on Public Credit," 1, 3, 4, 6, 10, 16, 20, 28, 50–51, 57; in 4 Hamilton explicitly states that justice has more weight than expediency.
76. See *Nicomachean Ethics* 5.1.
77. See Hume, *Enquiry*, 3.1. This view is similar to that of Epicurus and is at odds with the classical view that Hamilton follows (not all ancients are classical, of course). The deep difference can best be perceived when one considers that according to Hume, to violate the rules of justice when that is advantageous is a rational decision (see "Of the Origin of Government," 114). Other instances where the deep difference can be appreciated are that Hume thinks that (a) in extraordinary situations such as war there is no justice (see Hume, *Enquiry*, 3.1), whereas Hamilton thinks otherwise and, e.g., protected the enemies in the war of independence from irrational and unjust reprisals; and (b) there cannot be justice among rational beings if one part of them is much stronger than another (ibid., 23). More generally, Hume states that all morality derives from the concept of utility (Hume, *Enquiry*, 5.1, 47ff.).
78. See Hume, *Enquiry*, 3.2, 28; and Locke 1689, chaps. 5, secs. 27ff.; 6, secs. 72–73; and 8, sec. 116.
79. On the issue of the science of the law, the main influence over the three authors of *The Federalist* was William Blackstone. Ron Chernow highlights this influence in *Alexander Hamilton*, 168.
80. Hume, *Enquiry*, 3.2, 29.
81. See *Federalist* No. 51 (by Madison) and Nos. 78 and 81.
82. Staloff equates with the revolutionary *philosophes* any person with sound knowledge, but this view seems to be far from Hamilton's mind, where the legal profession has rather Ciceronian overtones inherited mainly from Blackstone. See Blackstone, *Commentaries*, 57–58. Indeed, Carson Holloway demonstrates the loathing that Hamilton felt for the French *philosophes*. See Holloway, *Hamilton Versus Jefferson*, 209.
83. *Federalis*t No. 78, 402; see No. 81, 420.
84. *Federalist* No. 78, 406.
85. See *Federalist* Nos. 78, 79, 81.
86. See *Federalist* No. 78.
87. See *Federalist* No. 78.
88. See *Federalist* No. 84.
89. *Federalist* No. 78, on the principle *lex posterior derogat priori*; and *Federalist* No. 81, on the principle that the legislature may not and cannot reverse judicial determinations once made in a particular case.

90. See Hamilton, *Pacificus–Helvidius Debates*, 29–31. It is *Pacificus* No. 4. Darren Staloff describes the impact on public opinion of Hamilton's essays in defense of neutrality as "staggering," See Staloff, *Hamilton, Adams, Jefferson*, 72.
91. See Hamilton, *Pacificus–Helvidius Debates*, 14; see also 20, 23–25 (*Pacificus* No. 2). The *Pacificus* essays allow us to state that in international law, Hamilton very much follows Roman conceptions and principles; he depends more on Vattel than on Grotius, Hobbes, or Locke. *Pacificus* No. 5 states that gratitude among nations differs from gratitude among individuals (35–37). But it also states that a nation must seek justice, magnanimity, its own honor, and its own rights even above its own survival (see 48, *Pacificus* No. 6; also 90, *Americanus* No. 2), contrary to what the editor of *The Pacificus–Helvidius Debates* states in the introductory notes to *Pacificus* No. 4 and *Pacificus* No. 6 (see 35 and 42, respectively).
92. See Hamilton, *Pacificus–Helvidius Debates*, 27.
93. Hamilton, *Pacificus–Helvidius Debates*, 39. It is *Pacificus* No. 5. In light of this text and its wording, one can confirm that Hamilton thought law is a rational discipline whereas Hume thought that the judgments of jurists are acts of the imagination.
94. See *Federalist* No. 78, 405–6.
95. In conformity with *Nicomachean Ethics*, Book X, chap. 9.
96. See this distinction in Voegelin, *The New Science of Politics* (Chicago University Press, 1987), 39–40, applied to the famous Lincoln definition of "democracy." Voegelin demonstrates that in the Magna Carta, "people" was used as equivalent to "the realm." The phrase in quotation marks comes from Voegelin's text.
97. Thomas Aquinas, *Summa theologiae* (Benziger Brothers, 1947), I–II, q. 90, a. 3, c.
98. William Blackstone also understood that laws are given by the political community as a whole. See Blackstone, *Commentaries*, 48.
99. See Chernow, *Alexander Hamilton*, 186, 194–99; and Brown, *Development of American Law*, 187–91. See also Hamilton, "Phocion Letters," in *Hamilton's Works*, vol. 2, ed. John Hamilton (New York: John F. Trow, 1850).
100. *Federalist* No. 78, 403–4. The language is admittedly apparently Lockean, but the meaning is not.
101. *Federalist* No. 78, 406.

102. This is why it was explicitly stated by the founders that the people are not infallible but could be driven by irrational passions. See, e.g., *Federalist* No. 49, 264, written by Madison.
103. See Hamilton, *Pacificus–Helvidius Debates*, 40.
104. The view is present, though latent, across the *Pacificus* essays. It surfaces clearly again in *Pacificus* No. 7, regarding the President of the United States (Hamilton, *Pacificus–Helvidius Debates*, 50). Thomas Jefferson in a private letter asked Madison to reply to Hamilton and accused the latter of incurring "striking heresies."