

ABSTRACT

Title of Dissertation: THE REPUBLIC AND ITS PROBLEMS:
ALEXANDER HAMILTON AND JAMES
MADISON ON THE 18TH CENTURY
CRITIQUE OF REPUBLICS

Michael C. Evans, Doctor of Philosophy, 2009

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This study offers a new interpretation of the theoretical basis of the political alliance and rupture between Alexander Hamilton and James Madison. The central thesis is that Madison was correct that his and Hamilton's disagreement was rooted in their different orientations toward republican versus monarchical governments. Although for the past century scholars have rejected Madison's claim that Hamilton harbored monarchical principles and intentions, this study argues that the textual record suggests that he did. More specifically, it is demonstrated that there is no evidence that Hamilton had a genuine principled commitment to republican government. Moreover, the evidence does indicate that he always believed America would be better served by emulating the British mixed regime, complete with a hereditary monarch, and that he sought to put the United States on a developmental path toward such a regime. This difference between Hamilton and Madison was

based on both disparate political principles and differences in their prudential judgments about the possibility that the Americans could overcome what this study calls the “18th century critique of republics.” This powerful tenet of Enlightenment political science claimed that two sociopolitical processes tended to transform republics into despotic or, at best, limited monarchical regimes. One of these processes, “the republican violent death,” was thought to naturally lead republics into anarchy and eventually monarchy or despotism. The other process, “the republican security dilemma,” consisted of several pressures placed on regimes by their external security environment to adopt policies and establish institutions that undermined the domestic requisites for republican liberty. The most salient implication of the 18th century critique of republics was that the British balanced constitution presented the best model for durable liberty under modern conditions. This study argues that Madison and Hamilton were united in taking this critique seriously and that they both believed the two processes could have led to despotic regimes throughout North America if something had not been done to curb what they perceived as the excessive democracy and sovereign pretensions of the State governments. Their principal prudential difference was that Madison, unlike Hamilton, believed he had found republican cures for these republican diseases.

THE REPUBLIC AND ITS PROBLEMS: ALEXANDER HAMILTON AND
JAMES MADISON ON THE 18TH CENTURY CRITIQUE OF REPUBLICS

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Dedication

This dissertation is dedicated in loving memory to Jo Ann Evans, my mother, mentor, and friend.

Acknowledgements

The completion of this study would not have been possible without the assistance, mentorship, support, and significant sacrifices of many professors, colleagues, and family members. If this dissertation can be considered a success, it is due to their valuable contributions. Its numerous shortcomings are solely my responsibility.

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Chapter 1: Introduction

In my private opinion, I have no scruple in declaring, supported as I am by the opinion of so many of the wise and good, that the British government is the best in the world; and that I doubt much whether anything short of it will do in America.

- Alexander Hamilton (1787)¹

Is it not the glory of the people of America, that whilst they have paid a decent regard to the opinions of former times and other nations, they have not suffered a blind veneration for antiquity, for custom, or for names, to over-rule the suggestions of their own good sense, the knowledge of their own situation, and the lessons of their own experience?

- James Madison (1788)²

In 1818, retired at Monticello, Thomas Jefferson decided to publish a compilation of notes and papers from his years in public office. The “loose scraps,” as he referred to them, were accompanied by a preface wherein he offered his understanding of the nature of the decision at the Constitutional Convention and of the political dispute between his and James Madison’s Republican Party and Alexander Hamilton’s Federalists that had ravaged the fledgling federal republic throughout the 1790s. He began by noting that most individuals at the time of the Convention were in fundamental agreement that continuance under the Articles of

¹ Hamilton, “Speech at Federal Convention” (Madison’s Notes). For this study, I relied on the collected works from the early 20th century that have been made freely and publicly accessible in a variety of digital formats by the Liberty Fund’s Online Library of Liberty. For Hamilton, this is the collection edited by Lodge (1904) (12 volumes / 1090 documents), while for Madison, this is the collection edited by Hunt (1900) (9 volumes / 830 documents.) I also acquired and made use of the Jefferson collection edited by Ford (1904) (12 volumes / 2019 documents.) All references to the works of each author are from those edited volumes. Since the digitized volumes do not have page numbers, references to these primary sources are cited through footnotes (rather than imbedded parenthetical citations) that give the author, title, and date. This seems to be the best way to facilitate cross-referencing.

² Madison, “Federalist # 14”

Confederation would threaten anarchy between the States, which would lead them, “like the petty States of Greece,” to “be eternally at war with each other, & ... at length the mere partisans & satellites of the leading powers of Europe.”³ Nearly everyone, therefore, “looked forward to some further bond of union, which would ensure internal peace, and a political system of our own, independent of that of Europe.” Amid this agreement, the debate between the delegates at Philadelphia was, according to Jefferson, quite obviously over two fundamental questions:

Whether all should be consolidated into a single government, or each remain independent as to internal matters, and the whole form a single nation as to what was foreign only, and whether that national government should be a monarchy or republic, would of course divide opinions according to the constitutions, the habits, and the circumstances of each individual.⁴

In his view, moreover, that debate, and the political “contests” that ensued throughout the next decade were at root “contests of principle, between the advocates of republican, and those of kingly government.” As nothing less was at stake in those years, Jefferson claimed further that the regime owed its continued conformity with genuine republican principles in 1818 to the Republican opposition to the Federalists in the 1790s. “[H]ad not the former made the efforts they did,” he argued, “our government would have been, even at this early day, a very different thing from what the successful issue of those efforts have made it.”⁵

Although scholars of the founding era continue to debate the true nature, and role, of the political beliefs and ideas of leading members of the founding generation, they are united in rejecting two of the three elements of this Jeffersonian account. All

³ Jefferson, “Annas: Explanation,” February 4, 1818

⁴ Ibid.

⁵ Ibid.

scholars recognize the significance of the debate over consolidation and federalism, but nearly as many ignore or actively deny that the founders genuinely believed there was a realistic threat of civil war and other political evils emanating from disunion in the 1780s and 1790s, and no one today claims that any prominent members of the founding generation, including the iconoclastic Hamilton, seriously envisaged leading the American regime away from republicanism and toward any form of monarchical government. As is discussed and explained in greater detail below, the leading schools all tend to assume relative stability of the union and to emphasize that American public opinion and social conditions rendered hereditary monarchy or aristocracy out of the question. Claims by these founders to the contrary are simply dismissed as propaganda. For example, the central thrust of Madison's and Hamilton's argument in *Federalists 6-36*—that not only was the union necessary for the basic goods most Americans wanted (security from foreign war; internal security from violent rebellion, usurpation, and civil war; prosperity through favorable trade relations; and the preservation of free government), but also that a central government at least equally as strong as the one proposed was necessary for preventing disunion—is generally viewed as at best an exaggeration. Likewise, Jefferson's attribution of monarchism to the Federalist Party's policies and actions is viewed as ideological delusion if not deliberate partisan distortion.

Operating from this set of assumptions, debates about the nature of the founding era have revolved around the relative importance of ideas and interests, and, among those emphasizing the former, whether their ideas were essentially “nationalist,” “federalist,” “liberal,” “republican,” “democratic,” “(non-hereditary)

aristocratic,” “ancient,” “modern,” or some variant or combination thereof.

“Monarchical” has not been a category of analysis.

These assumptions have informed the leading perspectives on the central historical issue addressed in this study: What was the theoretical basis of Madison’s and Hamilton’s political rupture that ensued shortly after their collaboration on the *Federalist*? Although Madison, like Jefferson, always claimed his disagreement with Hamilton and other Federalists was fundamentally over republican vs. monarchical principles, leading interpretations of the 20th century have emphasized other bases of contention, such as their relative trust of national power, theories of constitutional interpretation, and/or different theories of republicanism. Though some claim that Madison may have genuinely believed that Hamilton’s principles were at root monarchical, no one today argues that Madison and Jefferson may have been right about Hamilton.

Summary of Thesis

Although I do not deny that many of the other issues emphasized by scholars were relevant to Hamilton’s and Madison’s disagreement, in this study I present the case that, not only did Madison and Jefferson genuinely believe that their disagreement with Hamilton and the Federalists was primarily a question of republicanism vs. monarchism, but also that they were essentially correct about Hamilton’s monarchical intentions. That is, I argue that Hamilton never had a genuine principled commitment to republican government and that not only did he believe America would be better served by emulating the British balanced constitution, complete with a hereditary monarch, but also that he sought to lead the

American regime away from republicanism and toward such a constitution. Madison, by contrast, did have a principled commitment to republican government and understood himself to be seeking to save America's republican experiment, not only from Hamilton's program, but also from what Hamilton and Madison both believed to be inherent deficiencies of republican regimes.

Perhaps the most important part of my argument lies in my attempt to explain both their points of agreement and their disagreements as emanating from their different approaches to a common fear. Amid their differences, they agreed that the survival of republican government in North America was far from a forgone conclusion *and* that a return to the British constitution was not the worst possible outcome of the failure of their republican experiment. Both evidenced a fear that military despotism could develop in North America if something was not done to curb what they perceived to be the excessive democracy and sovereign pretensions of the State governments. Although we continue to debate the alternatives presented by Madison in *Federalist #10*—Anti-Federalist participatory “democracy” practiced within maximally autonomous State or sub-state units vs. representative “republicanism” projected over a large sphere—I demonstrate that neither of them thought localized participatory democracy was a realistic *outcome* of American political development. If such a regime were pursued along the lines advocated for by the Anti-Federalists, they believed that some form of military despotism would be the most likely result. If forced to choose between military despotism and the British balanced constitution, Madison, and most anyone in the 18th century, would have chosen the latter. What most distinguished these two founders was that Hamilton,

unlike Madison, was convinced that the Americans faced such a choice and had no principled objection to the introduction of limited monarchy in America. Madison, on the other hand, had principled and prudential objections to monarchy and believed that the federal republic presented a superior middle path between Anti-Federalist republicanism, which would lead to despotism, and the British balanced constitution, which he believed was incompatible with the principles of the Revolution and was less conducive than the federal republic to reconciling durable liberty with external security.

Their mutual belief that Anti-Federalist republicanism would lead to despotism was based, I argue, on two additional points of agreement. First, they both agreed that disunion was a realistic possibility. Second, they both took seriously what I call the 18th century critiques of republicans, which had hitherto led most Enlightenment-era political theorists to doubt the feasibility of sustaining popular forms under modern conditions. That critique was based on the belief that two developmental processes tended to naturally lead republican regimes toward despotism. I refer to these as the “republican violent death” and “the republican security dilemma.”

Republican Violent Death

A widely-believed tenet of Enlightenment political science held that modern regimes were susceptible to a process analogous to the classical cycles emphasized by Aristotle and Polybius. All regimes were thought to exist on a continuum ranging from pure republics to absolute despotisms, and all were thought to be naturally in motion toward one extreme or the other. Moreover, leading authorities, such as Montesquieu, Hume, and de Lolme, emphasized that, particularly under modern

commercial conditions, if a regime became republican, it would quickly fall into to anarchy, violence, and, from there, move into despotism. It is this idea that I refer to as the “republican violent death.” Montesquieu argued that only widespread civic virtue could prevent such a fate, but he also emphasized that modern commercial nations generally lacked such virtue. Conventional European wisdom held that the British constitution, as a modern analog to Aristotle’s mixed regime, presented a proven solution for preserving the essential modern liberal republican aspiration of individual liberty from either path to despotism. That is, its balance among the social estates and separation of powers sustained the rule of law without the need for a virtuous citizenry.

Hamilton and Madison, I argue, both believed that the republican violent death was at risk of manifesting in the States in 1787-88. One of the sources of their theoretical rupture, I argue, is that Madison believed the federal republican constitution had resolved this problem at both the State and national level, while Hamilton did not. Indeed, Hamilton seems to have continued to believe that nothing short of the British monarch was likely to preserve the national government from degeneration into anarchy and then despotism. This was one reason that he, unlike Madison, believed the preservation of liberty in America required giving the national executive as much power as possible.

Republican Security Dilemma

The other process, which I call the “the republican security dilemma,” suggested that physically contiguous regimes in anarchy with one another will tend to create institutions and pursue policies for their external security that have the effect of undermining the domestic requisites of free government. In this dissertation I discuss

several manifestations of this problem, but two are the most salient. First, it was widely held that regimes needed to have moderately sized territories to be externally secure, but republican governments needed to be small if they were to sustain the civic virtue necessary for avoiding the republican violent death. Montesquieu argued that there were just two forms of political association that had proven capable of resolving this problem: confederacies and the British balanced constitution. The former allowed republics to remain small while creating an external defensive force equivalent to that provided by monarchy. The latter, as already discussed, sustained the rule of law equivalent to that provided (less durably) by republics and also enjoyed the external force provided by its literal inclusion of monarchy in its constitution.

The other most salient manifestation of the republican security dilemma emanated from the interrelationship between modern warfare and modern state development. Most political thinkers at the time believed that the advent of standing armies had created a vicious cycle of warfare and monarchical power aggrandizement that had resulted in military despotisms across the European continent. With neighboring states raising standing armies of their own, and some demonstrating apparent ambitions to create a “universal empire,” European monarchs had reasonable justification for keeping up standing armies for external defense. As modern armies and warfare were an expensive enterprise, they had to raise revenue, which was funded through borrowing and taxation. However, the standing armies and ability to borrow became the means by which monarchs could obtain revenue without gaining consent through legislative processes. Consequently, security needs,

genuine or exaggerated, became the means by which monarchs monopolized the power of the purse and the sword, thus undermining rule of law. At the time, it was widely believed that the British constitution had avoided this fate largely because of Britain's insular position, which allowed them to rely principally on a navy for pursuing their foreign policy. With the monarch unable to use external security as a pretense for raising a standing army to dominate the Lords and Commons, the balanced constitution, and thus rule of law, was preserved in Britain.

Madison's and Hamilton's orientations toward the republican security dilemma also help to explain their points of agreement and disagreement. They both agreed that disunion would place the States in the republican security dilemma in their relations with each other. Thus, over the long-run, disunion ran the risk of resulting in military despotisms across the North American continent. What was worse, they believed disunion would enable, and thus invite, existing European despotisms to intervene and intensify the despotism-creating developmental process that would already naturally emanate from anarchy among the States. This set of fears is one reason why Madison and Hamilton converged on the need for a strong national government. They both agreed that a government at least as strong as that provided for by the federal constitution was necessary to prevent disunion and thus the advent of military despotism in North America.

However, their different perceptions of the republican security dilemma were a source of three disagreements. First, as is well known, Madison reversed the logic of size, arguing that larger republics would be more, not less, stable than small republics. However, Hamilton disagreed with Madison on this. In his view, small

and large republics were equally susceptible to the republican violent death. Thus, he did not think the dilemma was averted.

Second, I suggest that one reason Madison became supportive of States' rights is that he came to believe in the early 1790s that a moderate degree of State autonomy was necessary for making the promise of the extended sphere work in practice.

Madison came to view the States as not only useful for preventing arbitrary power by the national government, but also for sustaining citizen engagement and mobilizing support in times of war. This revelation meant the sphere could be extended further than he had believed possible in 1787-1788. Moreover, Madison agreed with Jefferson that extending the sphere was necessary for prolonging the agrarian stage of development (and thus avoiding the class conflict that could ignite the violent death) and for ridding the continent of European powers (avoiding the republican security dilemma). Thus, in Madison's thinking, the States became vital for preserving republican government from both the violent death and the republican security dilemma.

Hamilton, by contrast, believed that subordinating the States under a much stronger—ideally monarchical—national executive was necessary to preserve and govern the union. He consequently thought of territory size in terms of the degree of national executive power necessary for administration. Fearing despotism, he believed America should not expand west of the Mississippi. But his statements suggest that he believed governance of even that contracted sphere would require executive power at least as great as that of the British monarch.

Third, the logic of the republican security dilemma, coupled with that of the republican violent death, provide two reasons for believing Hamilton's foreign policy of "American greatness" required, at a minimum, that he lack an aversion to the development of constitutional monarchy in North America. First, as his policy required an economic program that would significantly alter American property relations, it would exacerbate the class conflict that he had already argued was in need of monarchical superintendence to prevent the republican violent death. Second, as his foreign policy would not rely exclusively on a navy, and as he favored creating a modern system of credit that would potentially enhance effectual executive unilateral warmaking power, his policy would predictably have the consequence of allowing for significant executive aggrandizement of power. Moreover, the broad construal of Presidential formal authority in foreign affairs that he sought to construct in his *Pacificus* essays would exacerbate the latter tendency.

It is well known that Madison claimed each of these things would tend to lead the regime toward monarchy. I attempt to demonstrate that, given the tenets of Enlightenment political science that Hamilton and Madison both believed, and the principles Hamilton articulated both in public and in private, Madison was justified in believing that his opposition to Hamilton was a fight on behalf of the Americans' revolutionary repudiation of monarchy. However, my intention is not to villainize Hamilton, but rather to explain why he thought monarchy was necessary to preserve American liberty, something for which he always claimed to be "as zealous an advocate ... as any man whatever, and ... as willing a martyr to it."⁶ My larger

⁶ Hamilton, "Speech at Federal Convention" (Madison's Notes) June 22, 1787

purpose in making this argument is to construct a more realistic view of how these founders went about applying Enlightenment political science to secure valued human ends in a world that they believed placed considerable limits on human opportunities to, as Hamilton famously put it, establish “good government from reflection and choice” rather than “accident and force.”⁷

Literature Review: Scholarly Consensus and Dissensus on Hamilton vs. Madison

The rupture between Madison and Hamilton after the ratification of the Constitution is one of the most momentous events in American political history. Though the reasons for Madison’s break from Hamilton are widely debated, the essential facts are well known. Madison and Hamilton had frequently allied as members of the Continental Congress in the early 1780s, worked together to bring about the Constitutional Convention in 1787, had been among the most “nationalistic” members of that Convention, and had collaborated together on the *Federalist* to win ratification of the new Constitution. Soon after ratification, Madison (as member of the first House of Representatives) joined forces with Jefferson (who was Secretary of State) during the Washington Administration to rally opposition to Treasury Secretary Hamilton’s financial program, the Jay Treaty, and eventually over the proper strategic response to the outbreak of war between France and England. Moreover, Madison made a noticeable departure during this time in his stance toward the appropriate balance between national power and States’ rights.

Before and during the Convention, Madison was among the severest critics of the States and most outspoken proponents of their subordination to a supreme

⁷ Hamilton, “Federalist #1”

national authority. Writing to Jefferson soon after the Convention, Madison expressed pessimism about the proposed Constitution. In his view, it retained too much State independence, and, thus, had left the system, as it was under the Articles, with “the evil of *imperia in imperio*.”⁸ In the 1790s, however, Madison would not only oppose Hamilton’s policies, but, on two issues, Hamilton’s proposed National Bank and defense of Washington’s Neutrality Proclamation in his *Pacificus* essays, Madison would also debate him on constitutional grounds. His departure from “nationalism” would reach its highest pitch with the drafting of the Virginia Resolutions in 1798 in which he defended the right of States to interpose on behalf of the people to contest the constitutionality of the policies of the national government.

For his part, Hamilton claimed to be surprised by this apparent change in Madison, and initially attributed it to “personal and political animosity.”⁹ Later, however, Hamilton would decide that their disagreement was “indeed a war of principles.” Though denying it was “a war between ... monarchy and republicanism,” he would suggest that it was between radical French-style republicanism, the “tyranny of Jacobinism,” and “the mild reign” of traditional Anglo-American-style “rational liberty, which rests on the basis of an efficient and well-balanced government, and through the medium of stable laws shelters and protects the life, the reputation, the civil and religious rights of every member of the community.”¹⁰ Madison, however, like Jefferson, would consistently affirm that his

⁸ “Madison to Jefferson,” October 24, 1787

⁹ “Hamilton To Colonel Edward Carrington,” May 26, 1792

¹⁰ Hamilton, “Address To The Electors Of The State Of New York,” 1801

disagreement with Hamilton was fundamentally about the principles of republican vs. monarchical government.

Recent Scholarship: Consensus and Dissensus

Recent studies have offered a variety of accounts for the dispute between Madison and Hamilton. Two issues divide the leading interpretations. One debate is over the substance of their disagreement. Was it simply a quantitative question over how much power the national government should exercise over the States, or were other more fundamental factors involved? The other point of contention is over whether, or to what extent, Madison actually changed over time. These studies are united, however, in denying that Madison's claim of monarchical vs. republican principles provides a plausible explanation.

Jack Rakove's view, which is by far the most common, is that Madison started as a "radical nationalist in the late 1780s" (1990, 91) and, in the immediate aftermath of the Convention, "differed little" from Hamilton in his "judgment of the defects of the Constitution" (Rakove 1996, 196). Where they did diverge initially was not over the republican structure of the national government, but rather in their "understanding of exactly how 'subordinate' or 'inferior' a jurisdiction the states should retain" (ibid. pp. 197-198). That is, Hamilton initially preferred a greater level of State subordination than did Madison, and that explains Madison's initial break. This difference would become more pronounced over time, moreover, as Madison became more convinced of the propriety of States' rights. Forrest McDonald (1982, p. 108-113), agreeing with this general assessment, has suggested that this difference of trust over national power was fundamentally rooted "in the innermost recesses of the psyche where each man's soul resides alone." "At that level," he speculated,

“Hamilton trusted Hamilton, and Madison did not trust Madison.” Thus, for McDonald, psychology, rather than core differences of theory or principle, may have induced Madison to rethink his earlier positions once it appeared to him that Hamilton was promoting too much national power.

Richard Matthews (1995) also holds that that their essential disagreement was over trust in national power, and that Madison’s position on this altered over time. However, his explanation, unlike McDonald’s, is that it was rooted in Madison’s character as a liberal statesman who was always prepared to wield the sword of reason against the onslaught of (always potentially violent) human passions. As a “constant liberal prince,” Madison would unscrupulously alter his political positions whenever he thought rights were endangered by “changes in the sociopolitical environment.” (p. 24).

Only one scholar, Colleen Sheehan (2004), has argued that Madison changed over time and that his increased opposition to Hamilton was fundamentally based on differences in republican principles. However, she sees them as different theorists within the republican camp. Their disagreement in the 1790s, she argues, “was propelled by a fundamental philosophic disagreement over the nature and role of public opinion in a republic” (405-406). In her judgment, Hamilton is best characterized as “the chief American theorist of the modern commercial republic,” while Madison should be seen as “the philosophic architect of the politics of public participation and republican self-government” (p. 422). A virtue of Sheehan’s interpretation of Madison is that she gives a plausible justification for believing Madison’s political changes were rooted in his evolving understanding of republican

theory. As she has demonstrated, Madison's changing views on the States coincided with his intensive study of modern and classical political theory in 1791 and 1792. Her persuasive reading of the product of those studies, a 100 page booklet entitled "Notes on Government," gives strong reason to believe Madison became convinced that the States were essential for facilitating the process of enlightened opinion formation that became a core element in his republican vision (Sheehan 1992). She also rightly argues that Madison became increasingly critical of the theory of the British constitution in the 1790s as he became convinced that the federal republic was the best constitutional structure yet devised for reconciling stability and security with the essential principles of free government and human equality. Though I think she goes too far in downplaying the primacy of "safety"—i.e. comprehensive security of rights and liberty by and from government—in Madison's project, I am much indebted to her reinterpretation of his republican thought. However, I think her characterization of Hamilton's views and intentions as "republican" is inaccurate.

Read (2000), Rosen (1999), and Banning (1998) have all argued that Madison was more consistent than most scholars have claimed. They all point to Hamilton's and Madison's different orientations toward constitutional theory, but they tend to emphasize issues of national power and, like Sheehan, stop short of claiming Hamilton's constitutionalism departed from republican principles. Read (2000, 25-88) and Rosen (1999, 126-155) both detect a consistent principled difference over constitutional interpretation, and argue Madison, unlike Hamilton, embraced the Americans' "revolution in the practice of the world," which replaced the European idea of "charters of liberty ... granted by power" with that of "charters of power

granted by liberty.”¹¹ Believing in the Lockean social compact principle of consent, Madison held that constitutions should be construed according to the original understanding of the parties of the compact. This led Madison, they argue, to favor a greater level of States’ rights than he formerly endorsed because that was what constitutional fidelity, and thus liberty, required. Hamilton, by contrast, was generally dismissive of the idea that enumerated powers were a means of restricting government. He instead advocated something akin to Lockean prerogative: with the government limited, not by its formally specified powers, but by natural limits placed on the means requisite for promoting and securing “the essential ends of political society.”¹² For these scholars, Madison’s strict construction and Hamilton’s broad construal of national power were rooted in a theoretical difference over this revolutionary change in constitutionalism, rather than McDonald’s subconscious motives or Matthews’ flexibly applicable liberalism. However, they view this constitutional debate, like Rakove, as essentially over national vs. State power, rather than over the long-term consequences of Hamilton’s construction for the nature and structure of the executive viz. a viz. the people and other branches of government. They do not entertain the possibility that Hamilton envisioned, and sought to induce, a developmental path whereby the effectual distribution of powers of the national government would evolve to become increasingly reflective of the British constitution and, thus, unreflective of the parchment powers written in the founding charter.

¹¹ Madison, “Charters,” January 19, 1792

¹² Hamilton, “Opinion on the Constitutionality of an Act to Establish a Bank,” February 23, 1791. For an excellent treatment of Hamilton’s views on prerogative power, see Fatovic (2004).

Banning (1998), while also emphasizing Madison's consistent principled commitment to strict constructionism, has argued that an additional source of disagreement was that "Hamilton's most cherished object was to build a modern nation state," while Madison's priority was "to nurture and defend a revolutionary order of society and politics, which he regarded as profoundly inconsistent" with Hamilton's "economic nationalist" program (p. 297). Gordon Wood (2006), though denying that Madison did not significantly alter his specific constitutional ideas over time, has recently endorsed Banning's contention that orientation toward the modern state was the core difference between Hamilton and Madison. Wood cites Max Edling's (2003) groundbreaking argument that the Federalists (including Madison and Hamilton, whose views Edling made no effort to distinguish) were engaged in the early modern process of state building as provoking his "thinking about Madison anew" (Wood 2006, n. 38). Wood has argued, as does this study¹³, that Edling was mistaken in lumping Hamilton and Madison together as partners in modern state building. While Hamilton did indeed seek to create "a modern war-making state," Madison's vision was inherently pacific. Whereas Hamilton's modern state would be designed primarily to employ the fiscal-military powers necessary for projecting strength in the international state system, Madison envisioned a national government

¹³ My thinking was also inspired by Edling's work. My interpretation goes much further than Wood's, however, largely because I am willing to entertain two possibilities that his assumptions preclude. First, he does not entertain the possibility that Hamilton's "energetic" executive is best described as a "monarchical" executive and that Hamilton believed the American presidency would need to evolve into hereditary monarchy to fulfill his full vision of "modern" state building. Second, as is discussed in the next paragraph, Wood seems unwilling to abandon his nationalist assumption that disunion was a real threat and that Madison and Hamilton were equally concerned about preventing the process of modern state building among the States.

that would be a “disinterested judge, a dispassionate umpire, adjudicating among the various interests in the society.”

This emphasis by Banning, Edling, and Wood on modern state building is important to my discussion of the republican security dilemma. But they all differ from my treatment in two crucial respects. First, by ignoring these founders’ fears of the consequences of disunion, none of them note Hamilton’s and Madison’s mutual commitment to *preventing* this process of modern state development among the States of North America. Second, they do not consider that Hamilton’s embrace of the process of modern state development at the national center would have required a lack of aversion to the development of monarchy in North America.

Karl Walling’s (1999) work stands-out for self-consciously seeking to break away of prevalent analytical constructs. Walling proposes placing “two modern conceptions of political virtue, vigilance and responsibility” at the heart of the philosophical difference between Hamilton, on one hand, and Jefferson (and, by implication, Madison), on the other (p. 10). Jefferson and Madison, as partisans of “vigilance,” placed a prime importance on the need for popular control over those wielding political power. Hamilton, as a partisan of responsibility, believed it was vital for statesman to have the power to act on behalf of the public interest and to check excessive popular jealousy. Walling’s stated intention was to move beyond the “Manichean terms” of the debate by providing a framework that “enables us to give each side its due” and “explain why each side believed its motives were just and honorable” (ibid.). However, Walling seems to think that this requires giving Hamilton the title of “republican,” which Hamilton, in his more candid moments, was

reluctant to accept. This leads to the biggest shortcoming of Walling's otherwise impressive work, which is that he fails to notice that Madison and Hamilton both saw the need for mixing vigilance and responsibility in the regime, and their principal difference was in how they thought the virtues should be reconciled constitutionally. Hamilton believed it should be accomplished through the British constitutional strategy, with vigilance and responsibility confined to separate branches of the government. Madison, on the other hand, believed vigilance and responsibility should be mixed within each office of government. Hamilton's ideal was to channel democratic vigilance into a single popular chamber of the legislature and externally balance it with separate chambers based on aristocratic and monarchical responsibility. Madison's ideal was for all officials to be ultimately accountable to the vigilant citizenry *and* to provide insulation, albeit to different degrees in different branches, for allowing them to develop, and act on, their own judgment of the public interest.

Most of these scholars ignore the question of Hamilton's monarchism, but those who do address it are dismissive of Jefferson's and Madison's view. The biggest challenge for these scholars is what to make of Hamilton's statements at the convention, where he expressed admiration for the British constitution, especially its hereditary monarch, and claimed that he doubted "much whether anything short of it will do in America."¹⁴ Chernow's (2004) explanation was that it was a fleeting moment: Hamilton, being "headstrong," "loose-tongued," and "laboring under some compulsion to express his inmost thoughts," simply "blundered" into his

¹⁴ Hamilton, "Speech at Federal Convention" (Madison's Notes), June 18, 1787

controversial statements and then “never again uttered a kind word for monarchy” (232-235.) However, as I point out in subsequent chapters, it was certainly not the case that Hamilton did not subsequently express kind words for monarchy. Others emphasize that Hamilton himself admitted that he did not think the American people were ready to accept a return to monarchy. Gerald Stourzh (1970, 45), for example, thought it was decisive that Hamilton did not “seriously envisage or think possible the introduction of hereditary elements into the Constitution of the United States.” But this ignores the possibility that Hamilton sought, over the long run, to put the regime on a developmental path toward monarchy.

James Read is among the most adamant in denying the possibility that Hamilton favored the adoption of the British balanced constitution. He argues that Hamilton would not have sought to give the government stability with his economic program if Jefferson was right about his monarchical principles (2000, 59-61). Moreover, he cites the fact that Hamilton fought the same Revolution that Jefferson fought as *prima facie* evidence that Hamilton would not oppose the anti-monarchical aspirations of the Revolution (p. 158). I demonstrate, however, that there is no evidence that Hamilton ever accepted the Thomas Paine-inspired anti-monarchical meaning of the Revolution and that pursuing his economic program was perfectly compatible with his seeking to put the regime on a developmental path toward monarchy.

These and other (McDonald 1982, 103; Rahe 1994, 112-113; Karl-Friedrich Walling 1999, 99-100; Harper 2004, 37) active denials of Hamilton’s monarchism have largely come from Hamiltonian scholars. However, this tendency by Hamilton

specialists has done little to dissuade scholars of Madison, Jefferson, and the founding era in general from dismissing the Virginians' accusations of Hamilton's monarchical principles as exaggerated if not delusional. Bailey (2007, viii), for example, while noting that, contrary to conventional wisdom, Jefferson seems to have agreed with Hamilton on the need for a strong unitary executive, with their difference being primarily over how popular it should be, nevertheless felt obliged to say "Hamilton's reputation as an opponent of democracy is perhaps undeserved." Elkins and McKittrick (1993, 270) argue that Madison was deluded by ideology. His challenge to Hamilton's anti-republican principles in his *Gazette Essays* (1792), they write, "had little to do with theory," but rather were "undiluted polemic uttered by James Madison" a "partisan" who was nevertheless "unquestionably" sincere in believing that Hamilton favored monarchy. And even Banning (1998), who committed 543 pages to refuting the claim that Madison had abandoned his earlier political commitments by moving to oppose Hamilton in the 1790s, refrained from stating that Madison may have actually been right about Hamilton.

The Progressive Origins of the Current Scholarly Consensus

There are a variety of possible explanations for the current scholarly rejection of the possibility of monarchy during the founding era, but one likely reason is the enduring legacy of the Progressive historians of the early twentieth century. The leading interpretive paradigms prominent among scholars today—pluralist, consensus, and republican synthesis—all are indebted to concepts and assumptions that were first introduced by those historians. And these preconceptions have made it difficult to believe Hamilton sought to put the American regime on a developmental path toward monarchy.

One important influence is Charles Beard's *Economic Interpretation of the Constitution of the United States*. Although no scholar today endorses Beard's crude economic determinist account—that the debate over the Constitution was reducible to bifurcated property conflict—two of his assumptions are still widely influential.

First, prior to Beard, no one had considered Madison's *Federalist #10* to be reflective of the major impetus behind the founding of the Constitution. Although it is fairly well established now that the essay's reasoning at the time was in fact not influential (Kramer 1999; Gibson 2008), the essay, in conjunction with #51, continues to be the central focus of scholarly debate on the nature of the American founding, especially among political scientists. Indeed, political scientists still often approach the essay through the terms of debate set by such scholars as Dahl (1956), Schattschneider (1942), and Diamond (1959) in the middle of the 20th century. Their debate, and ours, centers around how democratic (as opposed to aristocratic) Madison was, and by implication, how democratic the Constitution is. For the most part, his other writings are ignored and the full role of the essay's reasoning in his attempt to preserve popular government from succumbing to the republican violent death is widely misunderstood. Most importantly, it has obscured the fact that Hamilton and Madison both tended to think of the federal republic as an alternative to the British model as well as small direct democracies.

Second, with few exceptions (Hendrickson 2003; Graber 2006; Deudney 2007; P. S. Onuf 1983), most political scientists have not returned to the late 19th century understanding of the Constitution as originating amid a genuine crisis of the union, where failure to ratify could have resulted in the emergence of multiple

section-based confederacies. The prevailing belief still is that the Federalist's warnings about disunion, and thus the thrust of the argument in the first 36 *Federalist* essays—asserting that a government at least as energetic as the one proposed was necessary to prevent disunion—were just clever propaganda. Beard was responsible for this by shifting attention away from the *Federalist's* emphasis on relations between the States and toward class conflict.¹⁵

In general, Beard's most enduring legacy was to emphasize the constraining role played by social conditions on the events of the era. Hartz's influential thesis (1991) explaining America's consensus liberal tradition as due to a lack of experience with hereditary orders, is an obvious example of this. Also, the pluralist's (e.g. McDonald 1958; Dahl 1956) emphasis on interest group conflict is simply a debate with Beard on his own terms. But even those scholars who have emphasized the role of political culture and ideas have not escaped Beard's influence. Gordon Wood explicitly acknowledged his debt to the Progressives, especially Beard, for providing the framework by which he developed his conclusion that the Constitution "was in some sense an aristocratic document designed to curb the democratic excesses of the Revolution" (Wood 1969, 626). His work made no mention of the threat of disunion, and thus the republican security dilemma, and interpreted Madison as being alarmed by "democratic despotism," which Wood claimed was a "new political phenomenon unfolding in American experience that made nonsense of the traditional conception of politics" (p. 403). He did not detect Madison's many statements that indicated he was

¹⁵ For an excellent bibliographic essay that describes and explains the widespread scholarly neglect, if not explicit rejection, of the "unionist paradigm" that views the original Constitution as a "peace pact" among deeply divided sections, see Hendrickson (2003, 281-297).

actually alarmed that excessive democracy would lead to a traditional form of despotism. Underlying his interpretation, in other words, was the suspicion that Madison and other reformers were really driven by class interest, albeit one much more refined and intellectually sophisticated than Beard would have allowed. This, in turn, would seem to make an aspiration for monarchy unlikely, given America's existing social structures.

One other Progressive-era work seems to have been influential in shaping subsequent interpretations of Hamilton: Herbert Croly's *The Promise of American Life* (1909). Croly was the first to hold Hamilton up as a founder whose ideas were worthy of emulation. In the 19th century, no one had claimed to be an heir to Hamilton; instead, all parties claimed to be upholders of true Jeffersonian principles. This was due in no small part to Hamilton's reputation for being more monarchical than democratic, a reputation owing, albeit, to the triumph of the Jeffersonian Republicans in 1800. Croly was convinced that the Americans needed a model for his vision of Progressive democratic nationalism, and he decided to hold Hamilton up as his model. In so doing, however, he attempted to portray him as democrat as possible. Though he criticized Hamilton for entrusting economic elites more than the will of the people, he praised him for his commitment to nationalism. Jefferson represented the necessary democratic faith, but his democracy was too individualistic and local. Croly's ideal was a new synthesis based on the premise that

The American Union was a novel and promising political creation, not because it was a democracy, for there had been plenty of previous democracies, and not because it was a nation, for there had been plenty of previous nations, but precisely and entirely because it was a democratic nation – a nation committed by its institutions and aspirations to realize the democratic idea. (p. 41)

A closer look at Croly's argument reveals many of the assumptions upon which current scholarship is predicated. First, Croly's criticism of Hamilton's antidemocratic tendencies was limited to Hamilton's attempt to build stability through the privileging of the wealthy few. Notably lacking was a criticism of Hamilton's monarchical ideas regarding the constitution of executive power. In fact, his only mention of Hamilton's monarchical reputation was to assert that Jefferson's attribution of a "monarchic tendency [in] Hamilton's" policies was "unjust" (p. 42).

Second, though Croly detected an aristocratic streak in Hamilton, he explained it as largely due to his nationalist agenda. Hamilton erred in seeking to give the union strength through the "interested motives of a minority of well-to-do citizens" (p. 41)—or a "strong special interest" (p. 40)—when instead "he would have been far wiser to have frankly trusted its welfare to the good will of the whole people" (p. 41). So long as Hamilton's ideas were purged of his ill guided attempt to risk plutocracy rather than ground American politics on the will of the people, he was a model statesman for modern Progressive politics.

But Croly did not stop there. Hamilton's democratic deficiency was not rooted in his approach to democratic leadership. His plutocratic policy was objectionable, but his elite style in office was sounder than Jefferson's "meager, narrow, ... self-contradictory," and "inadequate" theory of democratic leadership (p. 43.) Croly spoke highly of government according to the will of the people, but he then went on to suggest that Jefferson misunderstood what this entailed. For Croly, Jeffersonian democracy was to be "a government of and by the people, not a government for the people by popular but responsible leaders" (p. 46). While

Hamilton, who held to “a high conception of the duties of leadership,” was “not afraid to incur unpopularity for pursuing what he believed to be a wise public policy,” Jefferson was an “equally impressive example of the statesman who assiduously and intentionally courted popular favor” (p. 45). Croly, and essentially everyone who has followed, assumed that Hamilton was an advocate for “popular but responsible” government, looking perhaps at *Federalist* #72 rather than #71. However, the latter, I will demonstrate, reflected Hamilton’s genuine view, which Madison and Jefferson correctly identified as inherently monarchical.

The upshot is that the assumptions behind these schools generally ignore the relevant factors that could make monarchy seem like a feasible option. My interpretation differs because I operate from a set of assumptions that suggest Hamilton would have had plausible reason to believe monarchy was *necessary* in North America and that, in the long-run, it was *achievable*. Those assumptions include: (1) these founders believed regimes naturally tend toward anarchy or despotism and, due to the theory of the republican violent death, if regimes tended too much toward anarchy, despotism would be the likely result; (2) for 18th century Anglo-Americans, including Madison and Hamilton, a primary question of political science was whether anarchy and despotism could be avoided through a regime type other than the British balanced constitution; (3) the success of the British imperial constitution at preventing anarchy between the colonies of North America and the apparent inability of the Articles of Confederation to prevent it between the States raised the additional political scientific question of whether monarchy was necessary to cement the union; and (4) they took a long-term view and believed, on that time

horizon, regime direction could be (partly) controlled by institutional design, policy decisions, and opinion leadership.

Interpretive Approach

The argument developed in this dissertation is based in part on an original interpretation of these founders' writings. One reason this interpretation differs from previous readings is that it pays particular attention to their statements and arguments on the interrelated concepts and themes discussed above: monarchy, executive power, republicanism, the republican violent death, the republican security dilemma, and the problem of preserving the union. To gain an accurate view of how they converged and differed on these topics, it is best to take into account their complete corpus of writings. However, reading through their complete works would be impracticable for a dissertation-length project. To overcome this practical limitation, I acquired their digitized collections¹⁶, imported them into digital text analysis software, and used a variety of search techniques to identify text segments related to the topics and themes pertinent to my inquiry. This proved extremely useful for gaining insights on relevant similarities and differences in their use of terminology, which in turn stimulated "hypotheses" about different values, priorities, conceptualizations, and/or possible rhetorical strategies. Those hypotheses were then "tested" by probing deeper into the text to see if the terminological differences did indeed reflect something of underlying substantive significance.

This approach, as with all methods, admittedly has certain disadvantages. One potential problem with a search-based approach is that it could encourage

¹⁶ See footnote 1 for a description of the collections used in this study.

reading passages out of context. However, I did not commit this error. I always read pertinent passages in their full context, not only to interpret their meaning, but also in an attempt to discover additional relevant passages that may have been missed by the search expression. I did the latter, however, to address a more problematic shortcoming of relying on a search-based method: the problem of false-negatives. This problem emanates from the possibility that search expressions do not perfectly reflect a targeted concept. Unless one can be certain that a search expression is perfect, there is always the possibility that one has missed a pertinent passage that disconfirms an important premise of the argument.

Although the risk of false-negatives is admittedly a potential shortcoming of the method, two considerations may assuage concerns about its validity. First, I did not rely exclusively on targeted search. As was just mentioned, for passages discovered by search, I read the remainder of the document. Also, I read the documents from the abridged Library of America collections of Hamilton's and Madison's writings (Hamilton and Freeman 2001; Madison and Rakove 1999). Area specialists have determined that these are among their most representative writings. Finally, I of course read all the passages quoted in the secondary literature. Since many of these secondary works were written by scholars who did read the full Madison or Hamilton collections, this further reduced the probability that I missed disconfirming evidence.

The second consideration is that reading the full corpus runs its own risks of false-negatives, while targeted searching actually avoids those particular risks. Unless a scholar knows from the outset exactly what themes and concepts she would

like to examine, it is quite possible she could develop a thesis from reading the full corpus having forgotten disconfirming evidence read months or years before. Indeed, the well-known problem of “intra-coder reliability” in systematic content analysis suggests that such lapses should be prevalent in large scale unsystematic interpretive studies (Given 2008, 445-446). On the other hand, an advantage of the search-based approach is that it allows the scholar to go back and confirm/disconfirm a new hypothesis/theory that one develops at a relatively late stage of research. In this respect, therefore, the search based approach actually avoids one source of false-negatives while enhancing the capacity for systematic theory-building.

Overview of Chapters

Chapter 2 discusses the 18th century critique of republican governments presented by such leading political thinkers as Montesquieu, Hume, de Lolme, Rousseau, and Vattel. This critique, as was discussed above, consisted of two distinct but closely interrelated problems: “the republican violent death” and the “republican security dilemma.” When combined, these concepts seemed to suggest that the British constitution presented the model of government most fit for durable liberty under modern conditions. This chapter lays the groundwork for better understanding the theoretical basis of Hamilton’s and Madison’s political alliance and rupture.

The heaviest burden of my argument is to establish, against scholarly consensus, that Hamilton believed the American regime needed to be set on a developmental path toward a replica of the British constitution and that his actions seem to have been directed toward that objective. Consequently, Hamilton is the central focus of two chapters. Chapter 3 interprets Hamilton’s writings through the

lenses of the republican violent death and republican security dilemma. It demonstrates both why Madison was right about Hamilton's monarchical principles and intentions and why this has eluded modern scholars. Hamilton's fears of disunion and anarchy, emanating from his fear of despotism, led him to believe both that the Americans needed a monarchical executive *and* that it was dangerous to speak about this publicly. Consequently, Hamilton did not often admit to his monarchical views. This, I suggest, is why his monarchism has been easy for scholars to downplay or ignore. However, Hamilton also expressed hope that public opinion would change to reflect his way of thinking. Consequently, I argue that a proper interpretation of his writings requires paying careful attention to his fears of anarchy/disunion and his hopes that the public may come to accept a return to the British constitution. At times, his fears would lead him to downplay his belief in the necessity of a monarchical executive. At other times, his hope that public opinion could change led him to gently suggest that the Americans needed to adopt the British model of constitutionalism. The analysis in Chapter 3 is based on my interpretation of his statements made at the Constitutional Convention and of passages discovered by targeted searching of his complete works. As a basis of comparison, I also consider passages from Madison's writings.

Chapter 4 provides further evidence that the nature of Madison's and Hamilton's disagreement was over monarchical vs. republican principles. The focus of this chapter is their views on the proper structure and purpose of executive power. Since Madison's views on executive power seem to have conformed closely to Jefferson's, and since Jefferson committed much more of his thoughts on executive

power to writing, the chapter also compares Hamilton's views to those of Jefferson. The chapter is structured as a commentary on Hamilton's *Federalist* essays (#68-77) on executive power, but Jefferson's and Madison's views are juxtaposed throughout. Moreover, Hamilton's arguments in that essay are contrasted to his statements at the Convention in order to develop an account of Hamilton's rhetorical strategy.

The analysis in this chapter contributes to the thesis of this dissertation in two ways. First, it demonstrates that Hamilton's theory of the structure and purpose of executive power is best described as monarchical. Unlike Jefferson's and Madison's executive, Hamilton viewed executive power through the lens of the British constitution. That is, he believed a primary function of the executive was to serve as an external counterpoise to factional conflict and thereby prevent the republican violent death and uphold the public interest. Hamilton's ideal executive would be completely insulated from popular electoral control. Jefferson's and Madison's executive, by contrast, would balance the republican imperative of popular electoral accountability with the regime's need for energetic executive power. Second, the chapter provides evidence that Hamilton did indeed engage in opinion leadership with the hope of convincing Americans to accept the necessity of the British monarchical executive. This is based on my interpretation of *Federalist* #71, which offers a much more persuasive case for the British model than that provided in the proposed Constitution. Given Hamilton's fears of failure to ratify and his proven capacity to write insincerely throughout the *Federalist*, I argue that this essay was a risky but deliberate attempt at long-term opinion leadership.

Chapter 5 provides the final piece of this dissertation's puzzle. Even if Madison was right about Hamilton's monarchical principles and intentions, that does not explain why Madison thought the federal republic provided an answer to the 18th century critique of republics. The chapter thus considers how Madison sought and discovered mutually reinforcing "republican solutions" to the republican security dilemma and republican violent death. Moreover, it explains his changing views on the States as emanating from this analysis. Madison came to see the States not only as the principal republican disease to be remedied, but also as an integral part of his multifaceted republican cure.

Chapter 6 concludes with a brief summary of the dissertation and an overview of how the deeper understanding of Madison's and Hamilton's prudential reasoning gained in this study can help us to better understand our present condition. More specifically, it demonstrates ways that their ideas do and do not apply as we face three potential threats to republican government today: bifurcated class structure, American imperialism, and the age of terrorism.

Chapter 2: The Eighteenth Century Critique of Republics

The American Revolution began with an assertion of the natural rights of human beings. When bound under a government that insufficiently protected their natural rights to life, liberty, and the pursuit of happiness, men had the right “to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.” Though the *Declaration* affirmed certain principles on which government would need to be founded in order to “effect” the “Safety and Happiness” of the people, it was silent on the critical question of *how* to organize “its Powers in such Form” that would promote and secure those fundamental human aspirations. But the potential answers to this question of course, did not exist in an historical vacuum. Prior to the Revolution, 18th century Enlightenment political science had been nearly unanimous in its answer to this core question: the British balanced constitution. In Montesquieu’s (1752) judgment, the British nation was the only one “in the world that [had] for the direct end of its constitution political liberty,” and under that constitution “liberty [had] appeared in its highest perfection” (III:XI:VI).

The Revolution, therefore, commenced not only with an affirmation of first principles, but also a negation of the conventional wisdom of modern political science. If Jefferson’s *Declaration* was the official justification of the Americans’ break with England, Thomas Paine’s *Common Sense* (1776), published earlier in the same year, represented the unofficial aspiration of the Revolution: the Americans

would dispense with monarchy and adopt governments of their own as dictated by “the simple voice of nature and reason.”

According to Paine, that voice clearly revealed that, as matter of both principle and prudence, “there is something exceedingly ridiculous in the composition of Monarchy.” With respect to the principles of natural right, the distinction between “KINGS and SUBJECTS,” is “against the equal rights of nature.” From the standpoint of prudential constitutional design, Paine not only rejected the idea that the British monarch was essential for remedying the diseases incident to pure aristocracies or democracies, he also asserted that monarchy is the source of nearly every disease. If it was true that “when Republican virtue fails, slavery ensues,” it was also true that monarchy was to blame for the loss of virtue: “Why is the constitution of England sickly, but because monarchy hath poisoned the Republic?” Indeed, “The nearer any government approaches to a Republic, the less business there is for a King.” And, if it was true that monarchs were better at waging wars, it was also true that before there were kings, “there were no wars,” for it is only “the pride of kings which throws mankind into confusion.”

For our purposes, Paine’s specific judgments about monarchy are less important than the manner in which he reasoned about republican constitutional design. For Paine, there was essentially no tension between abstract principles of natural right, on the one hand, and the human capacity to create and preserve popular political orders, on the other. Good government was always within human reach. If we suffer “*miseria by a government*,” then “our calamity is heightened by reflecting that we furnish the means by which we suffer.” Paine did not perceive natural

processes, or exogenous conditions, that limited or enabled the creation and maintenance of republics. If only mankind would adopt simple popular governments, they would live secure in their natural rights because they would have rid themselves of the real cause of degeneracy—monarchy—and therefore would enjoy governments that are “less liable ... to be disordered.”

This is what most distinguished Paine’s analysis from that of the European writers who defended the British constitution. Their case for the British constitution was based on precisely the opposite assumptions. Monarchy was not the source of despotism, but rather part of the remedy. Indeed, in this concept of political dynamics, both monarchy *and* popular governments would lead naturally to despotism. The genius of the British constitution, they argued, was that it mixed popular government with monarchy so that each would prevent the other from leading the regime into despotism.

At that time, the conclusion that popular governments would lead to tyranny was common. 18th century Enlightenment political thinkers pointed to two natural processes that seemed to render republican governments likely to succumb to despotism. I refer to the first process as the “republican violent death” and the other as the “republican security dilemma.” The first resulted from what was argued to be the natural internal cycle of regimes: absent monarchical control, republican governments would spark violent factional strife, degenerate into anarchy and then move quickly into despotism (“death”).¹⁷ The second emanated from the harsh

¹⁷ This was essentially a modernized conception of Polybius’ *anacyclosis*. It differed from the latter in two respects. First, the corruption of “the many” was seen as instantaneous (or pre-existent) rather

reality that the factors requisite for domestic republican liberty—such as decentralized executive power and a virtuous citizenry—can be undermined by the policies required for providing external security in international anarchy.

Since Hamilton and Madison were united in accepting, contra Paine, that a fundamental purpose of constitutional design is to prevent these natural processes from subverting liberty, it is important to consider what their European teachers—Montesquieu, Hume, de Lolme, Rousseau, Vattel, and others—had instructed. Only then can we comprehend why Hamilton and Madison feared America’s experiment in republican government was at risk of degenerating into despotism, and why Hamilton could have believed monarchy was necessary for preserving liberty in North America. It also will allow us to better appreciate the innovations Madison made to conventional republican theory.

This Chapter is divided into three sections. In Section 1, I review the basic theory of the British constitution and the idea of the “republican violent death” as it pertained to the defenses of the British monarchy presented by Montesquieu, Hume, and De Lolme. Section 2 is divided into two sub-sections. I begin by reviewing the idea of the republican security dilemma. Then I consider its role in the 18th century British Court-Country Party divide, which had a profound influence on American ideologies at the time of the Revolution and founding. Finally, in the last section, I present the two problems as combining to form a set of specific trade-offs and dilemmas. This serves as a guide in subsequent chapters for gauging how Hamilton’s

than taking a generation to develop. Second, and similarly, there was no kingship stage. The regime would go straight from republicanism to anarchy to despotism.

and Madison's ideas both converged and deviated from conventional European wisdom about the sustainability of republics under modern conditions.

The British Constitution and the Republican Violent Death

The original theory of the British balanced constitution was drafted by Falkland and Colepeper on June 21, 1642 in an attempt to convince Charles I to declare England's a mixed government in order to prevent civil war. As Pocock (1975) has noted, although the theory of the balanced English constitution would be "endlessly celebrated throughout the eighteenth century," their memo was "less to offer a new and generally acceptable theory of the constitution than to warn Englishman that nothing but the balance of the three estates stood between them and anarchy" (p. 364). Falkland and Colepeper argued that each social order possessed a "good" and an "ill" tendency. The ills, they suggested, threatened to deliver either anarchy or despotism. The ills of the few (faction and division) and the many (tumults, violence, and licentiousness) were associated with the state of anarchy. Too much influence by either (or both) of those elements would run the risk of falling into that condition and, thus, civil war. The ill of the monarch (tyranny), conversely, corresponded to the other extreme of despotism. The theory held that by mixing the constitution with each element, the whole would gain from the good tendencies of each while neutralizing their deficiencies. From the monarch the community received unification of the "nation under one head to resist invasion from abroad and insurrection at home;" from the aristocracy they received "conjunction of counsel in the ablest persons of a state for the public benefit;" and as the people's inclusion in

the constitution secured their "liberty," the community gained from "the courage and industry which liberty begets."

Montesquieu is best known for attributing the liberty of the British constitution to its separation of functional powers, which he delineated as executive, legislative, and judicial. "There would be an end of everything," he wrote, "were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals" (1752, III:XI:VI). In his view, the British constitution, achieved this superbly.

Here then is the fundamental constitution of the government we are treating of. The legislative body being composed of two parts, they check one another by the mutual privilege of rejecting. They are both restrained by the executive power, as the executive is by the legislative (Ibid.).

This separation of powers element was the part of Montesquieu's explanation for British liberty most emphasized by Madison and Hamilton in the *Federalist*, and is consequently the best known. However, part of Montesquieu's case for British liberty that is less well known was based on the contention that while republics have admirable qualities, and may in a strict sense be considered the freest form of government, their inherent tendency was to move into a state of anarchy and then, from there, quickly into despotism. Consequently, his defense of the British constitution centered on three elements. The first two were the mutual checks of power exercised by the Commons' and Lords' ability to prevent the monarch from becoming despotic and the monarch's ability to prevent the violence of anarchy. But critically, his argument was also informed by the monarch's responsibility for (ironically) preventing the despotism that would inevitably ensue from anarchy.

Montesquieu's case for the stabilizing role of the monarchy was somewhat subtle, and was strongly associated with his famous claim that "Virtue is the spirit of republics." While apparently a compliment to republics, the effect of his argument was to highlight their inherent instability. Republics are animated by virtue, he argued, because they *require* it to avoid falling into anarchy. "[I]n a popular state," he wrote, "one spring more is necessary, namely, virtue." When there is a "corruption of the republic" and "virtue is lost" then there is effectively a "suspension of the laws," leading to "the ruin of the state" (I:III:III).

Elsewhere Montesquieu made it clear that he thought the virtue necessary for republics was possible only in a small, homogeneous community. This effectively excluded republics as a modern alternative since, as will be discussed below, Montesquieu emphasized the necessity of moderate size for states to be secure from foreign threats. Madison alluded to this in *Federalist 14*, arguing that the tactic of "celebrated authors" who "confined [republics] to a small spot" was to highlight the evils of ancient democracies and ignore the alternative of modern representative republics in order to make monarchy appear more attractive. However, Montesquieu's argument was actually nearly the opposite. He actually held up the necessity of virtue for the successes of those ancient examples in order to suggest that purely popular government (whether direct or representative) could not survive in large, modern, heterogeneous societies. His favorite example, like Hume, of the dangers posed by republics was not the ancient republics, but rather the British experience under Cromwell:

A very droll spectacle it was in the last century to behold the impotent efforts of the English towards the establishment of democracy. As

their ambition was inflamed by the success of the most daring of their members; as the prevailing parties were successively animated by the spirit of faction, the government was continually changing: the people, amazed at so many revolutions, in vain attempted to erect a commonwealth. At length, when the country had undergone the most violent shocks, they were obliged to have recourse to the very government which they had so wantonly proscribed. (ibid.)

But the thrust of his argument in *Spirit of the Laws* was that this was a relatively happy outcome for the British, compared to what might have happened given their circumstances. His most devastating critique was in the implication that the people would end up, not with a restored constitutional monarchy, but, rather, in a state of despotism.¹⁸ “In a republic,” he wrote, “the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy” (I:II:II). In a monarchy, he continued, “the laws have provided for, or in some measure adapted themselves to, the constitution; and the principle of government checks the monarch” (ibid.). However, “in a republic, where a private citizen has obtained an exorbitant power, the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it” (ibid.) The conclusion to be drawn, therefore, was that freedom’s middle ground between the extremes of anarchy and despotism could be secured only in properly constituted monarchy.

In his *Constitution of England*, De Lolme (1771) made essentially the same point. It is “a peculiarity of the English Government, as a free Government,” that it has “a King” (II:I). But, he argued, this fact actually had the effect of securing liberty: “by making one great, very great Man, in the State, has an effectual check

¹⁸ By Montesquieu’s typology of regimes, republics were contrasted with “monarchies” and “despotisms,” with the former being those that have established rule of law and the latter being the more traditional definition of arbitrary rule by one.

been put to the pretensions of those who otherwise would strive to become such, and disorders have been prevented, which, in all Republics, ever brought on the ruin of liberty, and before it was lost, obstructed the enjoyment of it” (ibid.) After citing ancient examples of usurpation (Pisistratus, Megacles, Marius, Sylla, Caesar and Pompey) and Machiavelli’s analysis of the factional strife that had subverted liberty in Florence, he argued that “The English Constitution has prevented the possibility of misfortunes of this kind” (ibid.) Liberty was secure “by diminishing the power, or rather the *actual exercise* of the power, of the People, and making them share in the Legislature only by their Representatives” (ibid.) By this design, “the irresistible violence has been avoided of those numerous and general Assemblies, which, on whatever side they throw their weight, bear down every thing” (ibid.) But, “as the power of the People, when they have any kind of power, and know how to use it, is at all times really formidable, the Constitution has set a counterpoise to it; and the Royal authority is this counterpoise” (ibid.)

Hume’s analysis in *Whether The British Government Inclines More To Absolute Monarchy, Or To A Republic* (1752, 50-56) offered a more instructive lesson for constitutional leaders like Hamilton and Madison. Here he spoke not of the virtue of the British constitution (for that was assumed), but of what kind of “death” to that constitution was least undesirable. On balance, he proclaimed, “though liberty be preferable to slavery, in almost every case; yet I should rather wish to see an absolute monarch than a republic in this island” (ibid.) Importantly, he made it clear that this was due to “the kind of republic [the English] have reason to expect,” not to the impossibility, under different conditions, of there being “a popular government ...

more perfect than absolute monarchy, or even than [the British] constitution” (ibid.) Indeed, as is well known, he sketched such a government in his *Idea of a Perfect Commonwealth* (1752, 561-579), which Adair (1974) demonstrated was clearly a major influence on Madison’s idea about the extended republic. Hume doubted, however, that his perfect Commonwealth, or any republican design, could in practice be realized in Britain because such an event would require a lawgiver, and “any single person [with] power enough to take our constitution to pieces, and put it up anew, ... is really an absolute monarch” (1752, 51). Moreover, the British had learned from Cromwell the fact that “such a person will never resign his power, or establish any free government” (ibid.) Not being able to rely on a lawgiver, the British would have to let nature take its course, and either direction would culminate in absolute monarchy. If the regime moved toward a republic, meaning if the balance of power tipped decisively toward the Commons, then the British would “suffer all the tyranny of a faction, subdivided into new factions” (1752, 55). Finally, since “such a violent government cannot long subsist,” they would “after many convulsions, and civil wars, find repose in absolute monarchy” (1752, 56). Since it “would have been happier ... to have established [absolute monarchy] peaceably from the beginning,” tending more in that direction would lead to “the easiest death, the true Euthanasia of the BRITISH constitution” (ibid.)

This image of republics tending toward anarchy and then despotism was behind Hamilton’s claims in the *Federalist* that “vigour of government is essential to the security of liberty”¹⁹ and, more specifically, that “Energy in the executive is ...

¹⁹ “Federalist #1”

essential to ... the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy."²⁰ It was also behind Madison's statement to Jefferson that "[p]ower when it has attained a certain degree of energy and independence goes on generally to further degrees. But when below that degree, the direct tendency is to further degrees of relaxation, until the abuses of liberty beget a *sudden transition* to an undue degree of power."²¹ One of their principal tasks was to find a cure for this liberty-destroying process, but they would differ fundamentally over whether Montesquieu, Hume, and de Lolme were correct that this required an institution like the British hereditary monarch.

Republican Security Dilemma

The perception that republican government would lead inevitably to tyranny without the balance of a monarchy was not the only critique of republican government strongly held in European political thought. The second major critique was the republican security dilemma. By the phrase "republican security dilemma," I mean to capture a variety of problems emanating from international relations that also led 18th century thinkers to believe republics were unsustainable under modern conditions. Whereas the previous problem had to do with the susceptibility of republics to falling into anarchy and then monarchy or despotism, the republican security dilemma had to do with the pressures toward monarchy or despotism created by the condition of *interstate anarchy*. In that condition, a republic must tend to its own security, not only in the sense of providing security from physical harm, but in the higher sense of avoiding becoming subject to the arbitrary will (domination) of

²⁰ "Federalist #70"

²¹ "Madison to Jefferson," October 17, 1788, *emphasis added*

another state. 18th century writers would often use the phrases “give law” or “receive law” to express the loss of autonomy (literally giving law to oneself) that could result from living under the domination (enslavement) of another state, even if the dominating state did not engage in hostilities. In other words, a primary concern for a republic was that its neo-Roman liberty could be lost from an imbalance of power among states in international anarchy.

The fundamental idea behind the republican security dilemma is that the means regimes used to secure external liberty could threaten the bases—institutional, socioeconomic, and/or moral—of domestic liberty. For our purposes, the most important of these problems was that the constitutive structures required for preventing domination from other states—those that enable the state to extract and refine the resources (e.g. revenue, weapons, soldiers) needed for waging war and to engage in effective strategic interaction (e.g. “secrecy and dispatch”)—could be antithetical to the constitutive structures required for assuring a condition of non-domination domestically. Executive insulation from foreign or popular control, for example, might be strategically optimal for certain sorts of functions necessary for securing external non-domination. For example, the tools of effective bargaining (and thus secrecy and fast-track authority) and/or the credible threat of quickly deploying military forces (and thus minimal procedural impediments to ordering the use of force) might be in tension with popular government. An executive with such discretion might also be able to arbitrarily implement policies that undermine the rights and vital interests of citizens of the regime, and thus would (by definition) stand in a position of domination over them.

The republican security dilemma preoccupied Rousseau in his two major works on foreign affairs. In his *Plan for Perpetual Peace* (1761), Rousseau captured the tragedy of the dilemma:

No man can have thought long upon the means of bringing any Government to perfection without realizing a host of difficulties and obstacles which flow less from its inherent nature than from its relation to its neighbors. The result of this is that the care which ought to be given to its internal welfare has to be largely spent upon its outward security; and we are compelled to think more of providing for its defense against others than of making it as good as may be in itself.

In his *State of War* (1758), he explained the problem as emanating from the “mixed state” of the human condition. Human beings are, he said, simultaneously in two conditions: a civil state and a state of nature. As individuals, persons (whether perceived or not – or, more likely, *because* it is not commonly perceived) are constantly stretched and strained between the contradictory imperatives of these two conditions:

The first thing I notice in looking at the state of mankind is a palpable contradiction which makes all stability impossible. As individuals, we live in the civil state, under the control of the Law; as nations, each is in the state of nature. And it is this which makes our position worse than if such distinctions were unknown. For, living as we do at once in the civil order and in the state of nature, we find ourselves exposed to the evils of both conditions, without winning the security we need in either.

Two examples of the subversion of liberty emanating from foreign policy were prominent at the time. One was the widely-held view (espoused by Machiavelli and Montesquieu) that Rome’s imperial overstretch ultimately undermined the virtues and loyalties necessary for its republican constitution, opening the door finally to Caesar’s usurpation. The other, and that which Rousseau clearly had in mind, was that the balance of power policies of 17th and 18th century European states, sustained

by the institutions of what historians now call the “fiscal-military state”²²—the most important being peacetime military establishments—had given monarchs the pretext for aggrandizing power at home. This byproduct of international relations allowed them to rule by force and fear according to their own arbitrary will. Madison referenced both examples in *Federalist 41*:

It is in vain to oppose constitutional barriers to the impulse of self-preservation....If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions....The veteran legions of Rome were an overmatch for the undisciplined valor of all other nations, and rendered her the mistress of the world. / Not the less true is it, that the liberties of Rome proved the final victim to her military triumphs; and that the liberties of Europe, as far as they ever existed, have, with few exceptions, been the price of her military establishments. A standing force, therefore, is a dangerous, at the same time that it may be a necessary, provision.

If it was widely held that these forces drove Europe into despotism, the British were thought to have escaped this fate, in part, due to their fortunate insular geographic position. However, the British people themselves were divided about the extent to which their constitution had truly been unscathed by foreign affairs. Division on this issue was central to the dispute between Court and Country Parties in 18th century Britain that had such a profound ideological impact on the American Revolution and founding. Let us consider more closely how these Parties, and European observers, perceived “the republican security dilemma” as it pertained to

²² See Edling (2003) for a very helpful interpretation of the American founding as a part of the process of modern state building. Edling unfortunately ignores, however, the argument made occasionally by Hamilton and repeatedly by Madison that a principal purpose of the union was to prevent the *States* of North America from falling into this republic-subverting developmental process.

the liberty of Britain, provided by its balanced constitution, and the liberty of Europe, maintained, in part, by Britain's role in the European balance of power.

Country vs. Court on the Balanced Constitution vs. Balance of Power

As several historians (esp. Pocock 1975; Wood 1969; Banning 1998; Elkins and McKittrick 1993) have demonstrated, the galvanizing ideology of the American revolution was a brand of “republicanism” (due to its commitment to the neo-roman theory of liberty) associated with the Commonwealthmen of the late seventeenth century, and the “Country party” of early- to mid-eighteenth century, England. The set of ideas associated with the Country party were articulated by such writers as John Trenchard, Thomas Gordon, and Bolingbroke as they opposed what they saw as the corrupting effects of the policies and practices of Walpole's “Court Party”. The central issue dividing the Court and Country parties was what impact they thought several recent developments—the birth of the Bank of England, the rise of an elaborate new system of finance, the vast expansion of the bureaucracy, the increased power of the executive branch over the Parliament, the increased need for internal taxation (mostly to pay war debt), and the advent of a standing army—would have on the balance of England's constitution.

The spokesmen for the Country party argued that the balance was tipping perilously toward the crown and “the men in the City whose wealth was based not on the real value inherent in land but on the ephemeral values of paper and credit” (Elkins and McKittrick 1993, 15). While these men of the city were profiting from the financial system that was both leading the country into more wars and increasing the need for tax revenue, the basis of Parliament's function “as the guardian of liberty

and virtue”—“landed property and freehold tenure”—“was being sapped by the power of money” (ibid.). It was clear that the “unsleeping vigilance, virtue, and will” necessary for safeguarding liberty were in the process of subversion by the “disregard, luxury, and sloth” that historically led people to allow “their liberties to be plucked away and themselves brought under the rod of tyranny” (Elkins and McKittrick 1993, 6).

The Court supporters, while conceding that these were all valid matters of concern, mainly relied upon arguments from foreign policy necessity to justify the direction in which the regime was heading. They were, as Elkins and McKittrick put it, “as ready as anyone to deplore the burdens of war, to admit the possibility of the debt getting out of hand, to acknowledge that standing armies needed watching, or to concede that money, commerce, and virtue did not always go together” (p. 17). However, the manner in which their state was developing was a necessary consequence of the exigencies of the broader global power struggle in which they were inexorably embroiled:

A far-flung network of overseas trade, a colonial empire, and a due weight in the power relations of Europe all required an active foreign policy and a professional military and naval establishment for giving effect to it. Moreover, such commitments and responsibilities would scarcely even be thinkable without a dependable system of public finance to support them. (ibid.)

The discovery of the prominence of this Country Party “civic-humanist republican” tradition in the early years of the federal republic has served as the central argument against the Hartzian (1991) claim of a consensus liberal tradition in American history (Bailyn 1992; Pocock 1975; Wood 1969). Less appreciated (but see P. S. Onuf and N. G. Onuf 1993) is the fact that another manifestation of

republican thought would also permeate the thinking of the founding generation, and that its disposition was more favorable to the Court's perspective than that of the Country's.

In the 18th century, the republican thinker and prominent theorist of international relations, Emmerich de Vattel, would argue in his *Law of Nations* (1760) that England had indeed exerted “a due weight in the power relations of Europe” by ratcheting-up monarchical power and joining the grand alliance in order (initially) to check French ambitions. Justice, Vattel argued, allowed states to follow the dictates of prudence and act preemptively when a neighboring state aggrandized power. Since “predominating powers seldom fail to molest their neighbors, to oppress them, and even totally subjugate them, whenever an opportunity occurs, and they can do it with impunity,” it is justifiable, even required, for states to prevent such a preponderance either by force of arms or, if possible, by forming “a confederacy of the less powerful sovereigns, who, by this coalition of strength, become able to hold the balance against that potentate whose power excites their alarms” (III:III:45-46). It is noteworthy that Vattel argued that the balance of power was instrumental to the republican liberty of Europe as a whole:

The continual attention of sovereigns to every occurrence, the constant residence of ministers, and the perpetual negotiations, make of modern Europe a kind of republic, of which the members — each independent, but all linked together by the ties of common interest — unite for the maintenance of order and liberty. Hence arose that famous scheme of the political balance, or the equilibrium of power; by which is understood such a disposition of things, as that no one potentate be able absolutely to predominate, and prescribe laws to the others. (III:III:47)

An implication of all this is that both the Country Party and the Court Party had strong *republican* reasons to support their positions. (At least from the standpoint

of the neo-Roman theory of liberty associated with “republicanism.”) In the British context, the problem was how to reconcile the balanced constitution needed for domestic neo-Roman liberty with the balance of power required for liberty within the anarchical society of sovereign European states. The Country Party saw clearly a change in the balance of the English constitution brought on by the military revolution. The Court Party saw with equal clarity the threat to English liberty that would be presented by an unchecked preponderance of French, Spanish, or any other state’s power. And the most high minded among them would hope that the balance of power in Europe would sustain the conditions for a quasi-republican European regime.

Interestingly, the two sides seemingly agreed at the conceptual level about the nature of this dilemma, and neither denied the importance of “maintaining balance” in both senses. Their differences were mostly a matter of emphasis; and where they stood in this respect was conditioned by where they sat. In his *Wealth of Nations* (1776) Adam Smith posited that Court supporters were too insulated from the financial burdens of England’s foreign exploits, and too easily amused by reading about them, to perceive the true cost of England’s foreign policy to its constitution and long-term prosperity. In other words, they had little incentive to perceive the domestic consequences of pursuing their foreign policy objectives. Similarly, for Bolingbroke and other Country critics, the problem was that England was over-extended and making insufficient strategic use of their “detached” and “insular” position off the shore of the continental mainland. He and other Country critics held that England could contribute to the European balance without undermining its own

by diminishing its continental commitments and relying principally upon naval supremacy.

In the judgment of Vattel (and Montesquieu), by contrast, the balance of England's constitution—which they assessed not in relation to an ideal (or historical) standard of balance, but rather in comparison to the much more highly centralized, autocratic, and militarized states on the continent—was still intact precisely because England's insular position had allowed it to do as Bolingbroke apparently thought they had not sufficiently done. Vattel argued that the liberties of the continental European states were the victims of what I've called the republican security dilemma, while the liberty of England, due to its location offshore, had escaped its snare relatively unscathed:

It is true, however, that, if a sovereign continues to keep up a powerful army in profound peace, his neighbours must not suffer their vigilance to be entirely lulled to sleep by his bare word; and prudence requires that they should keep themselves on their guard. However certain they may be of the good faith of that prince, unforeseen differences may intervene; and shall they leave him the advantage of being provided, at that juncture, with a numerous and well disciplined army, while they themselves will have only new levies to oppose it? Unquestionably no. This would be leaving themselves almost wholly at his discretion. They are, therefore, under the necessity of following his example, and keeping, as he does, a numerous army on foot: and what a burden is this to a state! ... The constant maintenance of numerous armies deprives the soil of its cultivators, checks the progress of population, and can only serve to destroy the liberties of the nation by whom they are maintained. *Happy England! whose situation exempts it from any considerable charge in supporting the instruments of despotism* (Vattel 1760, III:III:50, italics added).

The upshot is that observers at the time understood that the bite of the republican security dilemma was contingent upon geographic context. Though the Court and Country Parties, as well as European observers, would disagree about the extent of Britain's immunity from those forces, there was a consensus that geographic

insularity was one reason Britain had not returned to absolute monarchy. This would be one basis of agreement between Hamilton and Madison: they believed, all things being otherwise equal, that the republican security dilemma would be in fuller force between the States in the event of disunion than it would be for the national government in its relations with European powers. The States would be at risk of military despotism, whereas the national government might remain a republic (Madison) or limited monarchy (Hamilton).

Summary of Major Dilemmas and Trade-Offs

The critiques of republican government described here—the inevitable descent into tyranny caused by factional strife and the collapse of republicanism under the weight of external security threats—were not considered on a stand alone basis. Although the two political processes represented in these critiques were thought to exert independent influences on regime development, they were often analyzed as interacting dynamically. Taken together, these forces can be seen as creating a set of dilemmas and trade-offs that structured and limited the realistic options available to prudent statesmen. In this last section, I briefly summarize those dilemmas and trade-offs.

Territory Size

In *Federalist 9* Hamilton quoted Montesquieu's argument that "If a republic be small, it is destroyed by a foreign force; if it be large, it is ruined by an internal imperfection" (Montesquieu, Cohler, B. C. Miller, and Stone 1752, I:IX:I). As mentioned above, Montesquieu thought a republic could not survive in a large sphere for two reasons. First, the larger the state, the more heterogeneous and pluralistic it

would be, thus increasing the potential for conflict while reducing the likelihood of a strong virtue among the citizenry that would be required, absent monarchical superintendence, to keep that conflict from degenerating into anarchy and then despotism. Second, increase in territory would lead to the threat of military usurpation due to a loss of loyalty by the generals/army and diminished capacity for monitoring the military by the civil authority. Montesquieu explicitly proposed one solution to this problem: “a confederate republic,” which “has all the internal advantages of a republican, together with the external force of a monarchical government” (ibid.) In his judgment, if this form had not been invented, “It is very probable that mankind would have been obliged, at length, to live constantly under the government of a single person” (ibid.) Of course, the British constitution also presented a model for how to combine republican liberty with monarchical strength. It is not unlikely that Montesquieu preferred the latter to the former.

It is important to note that Montesquieu also thought there was a limit placed on the extent of monarchies. The natural limit on state size was based on how long it would take any army to move from one border to another. Therefore, he counseled: “To preserve a state in its due force,” it should have “a moderate extent, proportioned to the degree of velocity that nature has given to man, to enable him to move from one place to another” (I:IX:VI). As a model, he argued that “France and Spain are exactly of a proper extent” (ibid.) Larger states would run the risk of becoming despotic and/or externally insecure.

For his part, Hume made an important distinction between the fitness of a regime to circumstances, on the one hand, and the circumstances that make a type of

regime more or less likely to be founded, on the other. In his *Idea of a Perfect Commonwealth* (1752, 561-579), he argued that the reason monarchies were typically found in large states was not because monarchy was the best fit for such conditions, but, rather, because it was more difficult to *found* a republic in a large state. He actually thought his planned commonwealth would be more fit (i.e. stable) than a monarchical regime for a moderate sized territory. It would overcome Montesquieu's problem of virtue because it would manipulate passions and interests in manner akin to *Federalist 10*, rather than be dependent upon a restrained citizenry. Therefore, if a virtuous founder could arise (Hume doubted one would), then the problem of large size diluting virtue to a breaking point could be overcome. However, one of the only weaknesses he saw with his Commonwealth was that it would suffer the fate of Rome: that it would be too successful, be tempted into over-expansion, and then fall to military subversion.

Institutions Conducive for External Strength vs. Institution's Pernicious to Republican Liberty

Intrinsic Strength of Monarchs

For the problem of size, monarchies were considered to have "external strength" because monarchies were most fit for a moderate sized territory that was itself conducive to strength. However, it was also held that monarchies by their very nature were stronger, and that, therefore, republics would need to trade-off some external strength to remain a republic. The reasons given typically had to do with the advantages of speed and decision monarchs enjoyed on account of being unitary actors. Montesquieu argued that the powers of war and peace "ought to be in the hands of a monarch, because this branch of government, having need of despatch, is

better administered by one than by many: on the other hand, whatever depends on the legislative power is oftentimes better regulated by many than by a single person” (1752, II:XI:VI).

There was also an older idea that (as I argue in Chapter 5) seems to have engaged Madison’s attention. This was the case made by Thucydides in *Peloponnesian War* (400 B.C.) that popular governments actually have several advantages in foreign affairs emanating largely from their propensity to fight only wars that the people were willing to make sacrifices to win (1:140-1:145.) However, he also noted that the people could become inflamed by passion, especially avarice, and consequently blunder into ruinous wars (e.g. Book 6). So, by this account, it was an open question whether the mistakes of the people were greater than the potential for the monarchs to pursue wars for glory and honor at the ruin of the state.

Financial Systems and Standing Armies

As we have seen, the financial and military revolutions of the 17th and 18th century had made the creation of modern systems of war finance (funded debt, national banks, and extensive internal taxation) and standing armies imperatives for the external security of states on the European continent. These institutions, however, had the effect of increasing executive power, thus threatening to change republics into monarchies and monarchies into despotisms.

Conclusion

This chapter has discussed two distinct sociopolitical processes that European Enlightenment theorists argued could, if not properly tended to, lead regimes into despotism. I refer to these as the republican violent death and the republican security dilemma. The first suggested that regimes were susceptible to despotism, not only

from direct executive aggrandizement, but also from excessive democracy leading to anarchy and violence. This violence would lead the people, as Hume put it, to seek “repose in absolute monarchy.” The second problem emanated from the developmental pressures exerted on regimes by their geophysical context. The fundamental problem was that the means used to secure external liberty could threaten the bases of domestic liberty. Increasing territory size, raising standing armies, and adopting modern system of war finance could all eventually lead to executive domination by turning the military tools of external security on the practice of domestic governance. Yet, under conditions with acute external security threats, regimes could face the harsh choice of adopting such policies or else becoming subject to the domination of external states. It was widely believed in the 18th century that this structural logic was largely responsible for the advent of absolute monarchies and despotic governments throughout Europe.

A belief in these processes would inform both Hamilton and Madison as they contributed to the Americans’ effort to create “good government from reflection and choice.” This common belief, and their mutual fear of despotism, would be the basis of their agreement on the need for a national government strong enough to prevent anarchy between the States and excessive democracy within them, and thereby preventing despotism. They were united, in other words, in accepting the findings of European political science that Paine dismissed. But Madison, unlike Hamilton, agreed with Paine in rejecting monarchy out of principle. Madison’s project was, as he said in *Federalist #10*, all about finding “a republican remedy for the diseases most incident to republican government.” Hamilton, though sharing a heartfelt hope

that America's republican experiment would work, never expressed support for the anti-monarchical purpose attributed to the Revolution by Paine, and always looked for an executive cure for the diseases of popular government. His model was the British constitution and his writings and actions suggest that he never wavered from his "private opinion," expressed in 1787, that nothing "short of it will do in America."²³ The following chapters make the case that this difference, at the level of principle and prudence, was the basis of Madison's and Hamilton's political rupture.

²³ Hamilton, "Speech at Federal Convention," June 18, 1787

Chapter 3: Hamilton, the Critique of Republics, and the Old Constitutionalism: The Necessity and Propriety of the British Form

In early 1802, just two and half years before his untimely death and fourteen years after struggling for the ratification of the Constitution in 1788, a despondent Hamilton complained to a trusted friend that “Perhaps no man in the United States has sacrificed or done more for the present Constitution than myself; and contrary to all my anticipations of its fate, as you know from the very beginning, I am still laboring to prop the frail and worthless fabric.”²⁴ This statement captures well one of the most interesting and puzzling aspects of Hamilton’s constitutional leadership: the fact that he *did* labor so much to “prop” the Constitution that he thought in many ways woefully inadequate. Hamilton, after all, had been instrumental in bringing about the Constitutional Convention; was the only delegate from New York who voted for final passage of the Constitution; worked tirelessly to secure ratification, both by giving impassioned speeches at the New York Ratifying Convention, and by authoring a majority of the *Federalist* essays; and then, as the first Treasury Secretary and *de facto* leader of the Federalist Party in the 1790s, he had sought to give the new national government strength and respectability by providing it with a modern system of finance, forging better trade relations Britain and other European states, and building a national army and navy. Even when he was out of office and politically defeated in his last years of life, he continued to promote the Federalist policies he believed were necessary for “propping” the American constitutional order. Yet,

²⁴ “Hamilton to Gouverneur Morris,” Feb. 27, 1802.

despite all these efforts, he was always critical of the Constitution. Before casting his vote at the Convention, he gave a short speech urging others to do so as well, but added “No man's ideas were more remote from the plan than his own were known to be.”²⁵ And in the last years of his life he belittled the Constitution as a “frail and worthless fabric.” Clearly this founding father did not revere the Constitution he helped to establish.

This raises several questions that must be answered if we are to understand the nature of Madison’s and Hamilton’s alliance and rupture. After all, Madison, after also harboring reservations prior to the ratification campaign, would become an outspoken advocate for Constitutional “veneration.”²⁶ Why did Hamilton seek to prop the Constitution that he did not revere? To what end did he do this? Was he only concerned with the power of the national government or was he, as he once claimed, “as zealous an advocate of liberty as any man whatever, and ... as willing a martyr to it...”²⁷ If so, why did he think propping the constitution was necessary for liberty? Finally, what did he mean by “propping” the constitution and what did he think was necessary for adequately achieving this?

Previous scholars have clearly demonstrated that an important element in any response to these questions must center on Hamilton’s commitment to building a strong national government²⁸. That is, one of his objections to the Constitution was

²⁵ “Hamilton Speech at Federal Convention,” Sept. 17, 1787 (Madison’s notes)

²⁶ See Rosen (1999, 126-155) for a detailed discussion of Madison’s novel theory of constitutional “veneration” as a civic virtue.

²⁷ Speech, June 22, 1787. (Madison’s Transcript.)

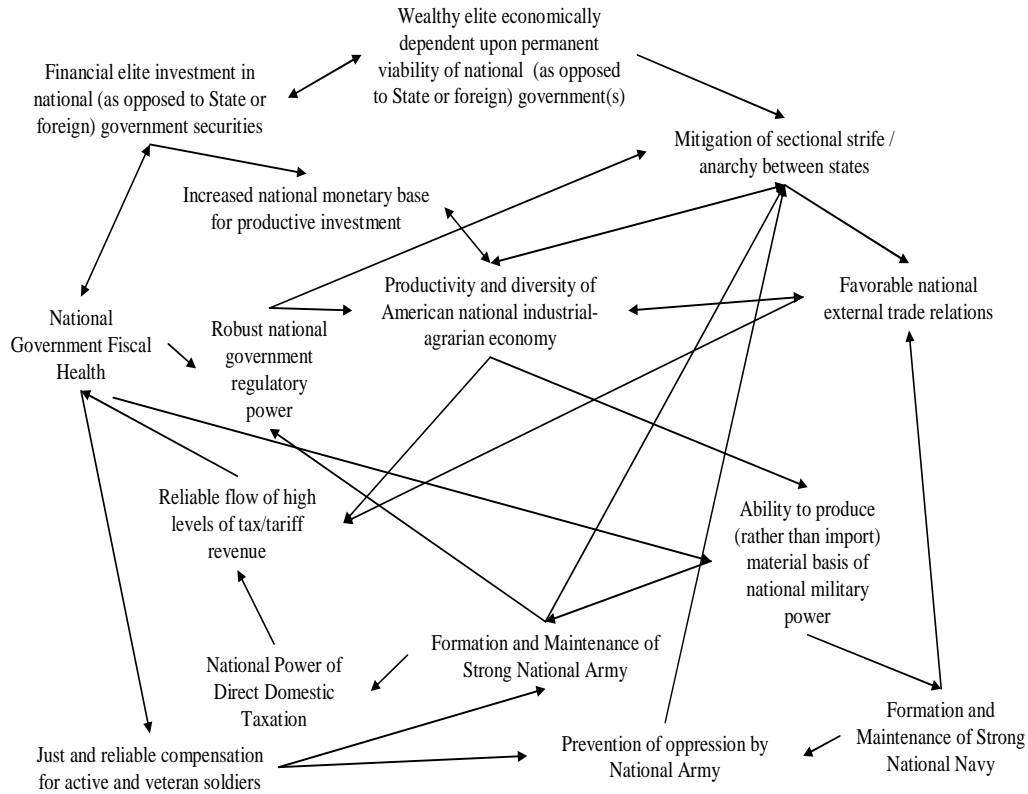
²⁸ The secondary literature on Hamilton is vast and growing. For this study, I benefited most from the following works, each of which acknowledges the centrality of nationalism to Hamilton’s project: Stourzh (1970), McDonald (1982, 1985), Flaumenhaft (1992), Walling (1995; 1999), Read (2000, 55-88), Harper (2004), Sheehan (2004), and Chan (2006).

that it left too much power to the States, and this undermined his aspiration of building a modern nation state with the fiscal-military powers he believed necessary for avoiding imminent financial collapse and for putting the country on a course to one day become a “great nation” that would “dictate the terms of the connexion between the old and the new world!”²⁹ There is little question, therefore, that by “propping” the Constitution, part of what Hamilton had in mind was his effort as Treasury Secretary to endow the national government with these extra-constitutional fiscal-military powers. As Forrest McDonald has demonstrated, Hamilton was highly influenced by Jacques Neckar’s teaching that in modern times an exceptional individual who covets the everlasting fame attendant upon founding or maintaining a great state should rely as much, if not more, on the tools of modern finance than on institutional design (McDonald 1982, 84-86). The brilliance of Hamilton’s financial program cannot be overstated. Diagram 1 summarizes the multifaceted set of nationalist objectives that Hamilton’s plans for the national bank and debt assumption sought to address.³⁰

²⁹ Hamilton, “Federalist 11”

³⁰ The diagram is based on my readings of Hamilton’s trio of “State Papers” (“Report on National Bank,” “Report on Public Credit,” and “Report on Manufactures”) and the helpful discussions by (Chan 2006; Sheehan 2004; McDonald 1982).

Diagram 1: Hamilton's "Superstructure of American Greatness"



Scholars are less united on the question of whether Hamilton was also a “zealous ... advocate of liberty.” McDonald’s (1985) view is the most common. He thinks Hamilton’s overriding concern was with the power of the national government and that it was essentially “a matter of indifference to him how ... the government’s powers should be organized or what forms they should take” (p. 205). In other words, Hamilton was a zealous advocate of power but not liberty.³¹ Two scholars, however, have gone much further and suggested Hamilton was actually an opponent

³¹ This view is endorsed implicitly by scholars such as Stourzh (1970) and Harper (2004) who emphasize the primacy of foreign policy in Hamilton’s thought (but are silent on the consequences of his foreign policy views for structures of domestic liberty) and Flaumenhaft (1992) who emphasize Hamilton’s commitment to public administration.

of liberty. John C. Miller (1959) argues that Hamilton's proposal for an executive with life tenure at the Constitutional Convention proved that he had rejected the idea of "protecting the individual against the exercise of arbitrary power" (p. 161). According to Harold Kohn (1975), "Hamilton was the personification of American militarism" who throughout his career "exploited armies for political gain, ... eagerly using force in the 1790s to enforce the law ... and finally using the army as a vehicle to advance his own power" (pp. 272-273). In his judgment, Hamilton, and other "militarist" Federalists, preferred to rule by "fear" and "force alone," rather than by consent or "public opinion" (pp. 194-195). In the view of these authors, in other words, Hamilton was an advocate for modern (Hobbesian) despotism.

Two recent studies, however, have argued persuasively that Hamilton was indeed a committed advocate for liberty. James Read (Read 2000, 55-88) points out that Hamilton always claimed to seek a constitutional balance between *individual* liberty and government power. Much confusion has ensued, he demonstrates, from failing to recognize that Hamilton thought the States were both unnecessary and dangerous for the preservation of individual liberty and that much of his embrace of national power was directed at subordinating the States rather than individuals. Moreover, Hamilton always supported broad popular representation in the (national) legislature and was committed to trial by jury and other traditional civil rights and liberties.

Karl Walling's (1999) study demonstrates that Kohn's charge of Hobbesian militarism is far off the mark. Hamilton went to extraordinary lengths to find ways to prevent the national military from becoming a source of arbitrary rule. Among other

things, his experience at Valley Forge had impressed upon how civil control over the military could be threatened by fiscally poor governments that inadequately clothe and feed armies (pp. 37-39). This was his original impetus for learning about modern finance and a leading motive throughout his career for promoting economic prosperity. Hamilton even went so far as to invent a new model of military professionalism that was deliberately designed to reconcile the need for a knowledgeable and competent officer corps with the libertarian imperative of primary reliance on a non-professional militia (pp. 66-69). Finally, although he believed a standing army was necessary for security on the Western border, and potentially for repressing unlawful rebellions by individuals or States, Hamilton endorsed the use of force, both internationally and domestically, only as a last resort and always with the stated objective of upholding rule of law (pp. 147-152-; 160-170; 212-221).

Read and Walling have offered an important contribution to our understanding of Hamilton, but they, like all contemporary scholars, have offered an unsatisfactory answer to the question of central importance to this study: If Hamilton was an advocate for liberty and a strong national government, then what was the theoretical basis of his and Madison's political rupture? After all, everyone knows that Madison also initially supported a strong national government, and no one denies that he was committed to some form of republican liberty. If Madison changed his mind about the States, then why did not Hamilton? As we have seen, all contemporary scholars deny that Madison's explanation for their disagreement—that Hamilton and the Federalists stood for monarchical principles—was an accurate portrayal of Hamilton's views and intentions. In Chapter Five I address the question of why

Madison changed his mind about the States, while Hamilton did not. But since my answer centers on the premise that Madison's and Hamilton's disagreement was fundamentally over monarchical vs. republican principles, I must first defend that premise. In the next two chapters, therefore, I present the case that Madison was right, and all contemporary scholars have been mistaken, about Hamilton's monarchical principles and intentions. That is, I argue that Hamilton was convinced America would be better off adopting the British balanced constitution, complete with a hereditary monarch; never believed the Revolution was about republican principles; and, moreover, that his actions suggest he sought to put the regime on a monarchical path.

This chapter asserts and defends five interrelated propositions about Hamilton's constitutional project. First, I argue that he genuinely believed America needed to pursue a developmental trajectory that would lead toward approximating, as close as possible, the British balanced constitution. Second, he nowhere evidenced support for the anti-monarchical meaning of the Revolution provided by Thomas Paine. Third, he analyzed America's political situation through orthodox understandings of the republican security dilemma and the republican violent death. Fourth, this helps explain why he believed such a regime was necessary for preserving liberty in North America. And, finally, fifth, this also helps explain why he was reluctant to admit this belief publicly, why he thought the Constitution was fundamentally flawed, and why he nevertheless supported ratifying and "propping" the Constitution.

This is a difficult argument to make because the elements of the argument are interdependent. I must interpret his writings to describe what he believed, but my explanation for why he believed those things also has implications for how one should interpret his writings. More specifically, I argue that Hamilton favored monarchy because he feared without it, anarchy would ensue and trigger the republican violent death and or disunion (and, therefore, the republican security dilemma); but I present evidence that he believed admitting that he favored monarchy in public also ran the risk of raising alarm, igniting disorder, and thus also triggering anarchy or disunion. This means that there should be little obvious evidence of his monarchical beliefs because he would have been unlikely to write or utter many statements admitting this to be the case. It might even lead him to disavow his statements from the Convention where he did claim to believe nothing short of the British constitution would do in America. Thus, my argument relies in part on a careful reading of his statements that takes into account his admitted fear that complete candor could lead the republic toward his greatest fear: despotism.

To develop this argument (amid these hermeneutical difficulties), I proceed in the following way. First, I begin by reviewing with what he said in the privacy of the Constitutional Convention. I argue that this is a reliable indicator of his genuine beliefs at the time since he had no incentive to be insincere in that context. Then, I point to shortcomings of previous scholars' attempts to deny that Hamilton harbored monarchical intentions. In general, I argue that scholars have paid insufficient attention to Hamilton's views about regime dynamics, and the interpretive implications of those views. Finally, in the last section, I discuss the major trends and

patterns in his and Madison's statements about free government, monarchies, republics, and the republican violent death as revealed by targeted searches of their complete works. The immediate purpose of comparing with Madison is to provide a standard of comparison for assessing Hamilton's views. However, it also contributes to this dissertation's larger purpose of explaining the theoretical basis of Hamilton's and Madison's political alliance and rupture.

Hamilton's Republican Credentials: A Critique of the Scholarly Consensus

No one disputes that Hamilton explicitly declared himself a proponent of the British constitution through several statements over a four day period at the Constitutional Convention. During that time he "acknowledged himself not to think favorably of republican government"³² and professed to believe "the British government is the best in the world; and that [he doubted] much whether anything short of it will do in America."³³ In this, as with most important topics, Hamilton was careful to define his terms. Unlike John Adams, whose unorthodox definitions allowed him to classify the British constitution as no less republican than those of the American States, Hamilton made it clear that he thought the key difference between republican and non-republican governments was the presence or absence of hereditary succession of office holders.³⁴ His proposal at the Convention for an

³² Speech at the Federal Convention, June 22, 1787. (Madison's Notes.)

³³ Ibid.

³⁴ He would eventually settle on this pithy definition for a republic: "a perfect equality of rights among citizens, exclusive of hereditary distinctions" ("Catullus to Aristides #3," September 29, 1792; he repeated close versions of this definition several times after 1792). In his *Defenses* (1787), Adams argued that the dividing line between republics and non-republics is whether or not they seek a balance among the classic social orders: the one, the few, and the many. Oddly, he praised the American constitutions for doing just this, whereas, as Gordon Wood points out, most Americans were proud of their constitutions precisely because they rejected the idea of social orders in favor of purely popular

executive with life tenure therefore pushed the outer limit of what “republican principles will admit.”³⁵ However, he also made a point of stating that he thought even an executive with life tenure “would have, in fact, but little of the power and independence that might be necessary” for fulfilling its necessary purposes.³⁶ He admitted to believing that, with respect to executive power,

[t]he English model was the only good one on this subject. The hereditary interest of the king was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad, and, at the same time, was both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home.³⁷

These and many similar statements at the Convention present the best evidence of Hamilton’s belief in the superiority of the British constitution. To support the case that Hamilton was a committed republican, scholars have had to ignore or downplay their relevance. In this section I argue that these statements are a reliable indication of Hamilton’s genuine views and that scholars have erred by not considering closely what they reveal about Hamilton’s long-term regime vision.

As was discussed in the introductory chapter, the current scholarly consensus that Hamilton was a committed republican is probably traceable to Herbert Croly’s *Promise of American Life* (1909). However, in recent years, scholars have routinely

forms (1998, 567-592). Hamilton was like Adams in continuing to praise the British constitution, but departed from him by asserting the more orthodox view that the presence or absence of hereditary distinctions is what distinguishes republics from non-republics, and therefore the U.S. from Britain. In his judgment, the Americans had created a wholly popular “representative democracy:” one giant House of Commons with a separation of functional powers. Indeed, he thought this was precisely what was wrong with it. One can only wonder what Hamilton must have thought of Adams’ argument. Not only was it politically disadvantageous for Adams, but also (in Hamilton’s view) theoretically flawed; two sins Hamilton worked diligently to avoid (albeit with mixed success). I also wonder if Hamilton was so explicit at the Convention in part because he thought Adams’ influential work had created undue definitional / theoretical confusion.

³⁵ Speech at the Federal Convention, June 18, 1787. (Madison’s Notes.)

³⁶ Ibid.

³⁷ Ibid.

cited Gerald Stourzh's (1970) *Alexander Hamilton and the Idea of Republican Government* as presenting an authoritative case for Hamilton's republican credentials. Stourzh's argument was actually quite nuanced, much more so than most of what has followed, and despite his conclusion that Hamilton was in fact a republican (38-75), he would also admit later in his book that Hamilton held certain "obsolete" ideas that led to his "favoring monarchy" and having a negative "appraisal of republican regimes" (107-108). This leads one to wonder if even Stourzh himself truly believes Hamilton to be a friend of republican government. Nevertheless, since his conclusion affirming Hamilton's republicanism has been so influential, we should begin by reviewing the case he made.

Based upon his vast knowledge of the history of political thought and of the writings of the founding generation in general, Stourzh laid-out six criteria for defining republican government: lack of heredity, plurality of voters, majority rule, representation³⁸, rule of law, and government informed by the principle of virtue. Of these, Stourzh argued that the first is the most undeniable criterion: "From the rise of medieval communes and city-states to the present day, the absence of a hereditary monarchy has been regarded as one, if not the single, distinguishing feature of republican government" (45). For assessing Hamilton's republican conviction based upon this criterion, Stourzh made a three part argument. First, he acknowledged that, especially at the Convention, Hamilton evidenced an "attachment to Great Britain's mixed government, including its hereditary components, King and Lords." Second,

³⁸ Stourzh (55-56) added this simply because it was a highly influential (if insincere) claim made by Madison in *Federalist 10*, although Stourzh noted that he, like John Adams, did not think the assertion was justifiable. Indeed, Madison himself understood well conventional definitions. Prior to writing *Federalist 10*, in a letter to Jefferson he spoke of "democracies, or pure republics."

by implication, he suggested that it matters not what Hamilton's professed convictions may have been; all that matters is that he did not "seriously envisage or think possible the introduction of hereditary elements into the Constitution of the United States." Third, as evidence supporting the second premise, he noted that the closest thing to the British mixed constitution that Hamilton ever proposed—a "sketch of a 'high toned' government including life tenure for the President as well as for the Senate"—was "put forward in the secrecy of the Federal Convention;" did not (even in Hamilton's estimation) "have any real chance of being adopted;" and, by excluding hereditary elements, was, strictly speaking, republican (46).

Considering how many subsequent scholars have deferred to this conclusion, it is somewhat surprising how thin the argument actually is. I accept the first premise and reject the reasoning of the second and third. The main reason to accept the first premise is that, as discussed above, Hamilton clearly stated this to be the case at the Federal Convention. I'll discuss further reasons for believing it below, but first we should turn to Stourzh's second premise, which is the crucial part of his argument.

The second and most essential premise of Stourzh's argument is that we should not pay attention to Hamilton's sincerest preference, but, rather, should consider only that which he thought was politically possible. It seems to me that this is a mistaken starting point. When characterizing a person's constitutional vision, it makes little difference what she thinks is possible to achieve politically. That Hamilton did not think it possible to introduce hereditary elements into the U.S. Constitution in 1787-88 does not mean he did not think it desirable or even necessary. Indeed, he made it clear that he not only thought "the British government is the best

in the world,” but also that he “doubt[ed] much whether anything short of it will do in America.”³⁹ That he thought it both necessary and politically impossible did indeed complicate things for him, but I see no reason to privilege the latter fact over the former.

This is the case especially if we consider that he seemed to think that it would someday be politically possible to Anglicize the American constitution. This is supported by a statement he made a few moments later in the same speech. Here he suggested that public opinion was slowly moving closer to his way of seeing things and that, by implication, he might one day be able to see his true preference come to fruition:

I hope gentlemen of different opinions will bear with me in this, and beg them to recollect the change of opinion on this subject which has taken place, and is still going on The members most tenacious of republicanism are as loud as any in declaiming against the vices of democracy. This progress of the public mind leads me to anticipate the time when others as well as myself will join in the praise bestowed by Mr. Neckar on the British constitution, namely, that “it is the only government in the world which unites public strength with individual security.”

If Hamilton thought something close to the British constitution would one day be politically achievable in America, then we should not dismiss his admission that he thought this would be a welcome development. It suggests, in fact, that we should entertain the possibility that Hamilton understood his task as a constitutional leader to require both saving America’s republican “experiment” from degeneration into democracy and anarchy while laying the groundwork—institutionally, socio-economically, and culturally—for its eventual transition into something (he thought

³⁹ Speech at the Federal Convention, June 18, 1787. (Madison’s Notes).

to be) much better. If this is true, then Hamilton's speech, far from being a "eulogy" of the British constitution, as Rahe argued (1994, 112-113), was in fact an attempt to sway elite opinion toward supporting his longer term objective of reviving the old constitution in America.

It is for this reason that I also find the third prong of Stourzh's argument unconvincing. To point out that Hamilton's proposal conformed to republican principles is merely to acknowledge that Hamilton faced insurmountable political obstacles to implementing hereditary monarchy in 1787-88. Again, if we think sincere preferences are the most relevant consideration in characterizing a person's constitutional commitments, then we should pay particular attention to that which he said and wrote in the secrecy of the Convention. It is difficult to imagine a situation more likely to reveal true preferences. His audience, after all, while not likely to be predisposed to think his vision wise, either in the ideal or political sense, was also not likely to use his statements to kindle fear and distrust of the Convention's objectives and thereby undermine the constitutional reform that most of the delegates supported. Hamilton knew well that there were limits to what the Convention could seriously consider. Whatever they drafted would need to be acceptable to the great mass of citizens. They could not "shock the public opinion," as he put it, and face the possibility of failing to ratify and thus remaining in the much worse status quo.

It is important to consider that Hamilton believed a failure to ratify would have disastrous consequences. For our purposes, the most important anticipated consequence of failing to ratify was running the risk of disunion and therefore

sparkling the republican security dilemma. For example, in a private memo⁴⁰ he wrote to himself just prior to the ratification campaign, he stated that failure to ratify might “produce civil war” and “[s]hould this happen, whatever parties prevail, it is probable governments very different from the present in their principles will be established.” Even without civil war, a “dismemberment of the Union” would be likely and this would lead to “monarchies in different portions of it.” In interpreting Hamilton, it is important to note that, with his peculiar terminology, by “monarchy” he normally meant pure monarchies or despotisms rather than a mixed regime like Great Britain’s. So, the implication here was that disunion would bring about the republican security dilemma, which would transform the States from republics to despotisms.

A final problem with Stourzh’s argument is that he claimed not only that Hamilton’s proposal was for an executive to serve merely “on good behavior,” but also that “hereditary succession was not in his mind (Stourzh 1970, 52).” The record shows, to the contrary, that hereditary monarchy clearly was on Hamilton’s mind. In the speech he gave in proposing his plan, for example, he was full of praise for the institution. Quite telling was this statement:

As to the Executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good Executive? The English model was the only good one on this subject. The hereditary interest of the king was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad, and, at the same time, was both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home.⁴¹

⁴⁰ “Impressions as to the New Constitution” (September, 1787)

⁴¹ “Speech at the Federal Convention, June 18, 1787.” (Madison’s Notes).

Even more telling is that in his notes for the part of his speech where he discussed his actual plan, he wrote (although refrained from actually saying aloud) that the executive “ought to be hereditary, and to have so much power, that it will not be his interest to risk much to acquire more.”⁴²

Skeptical and Critical, But Not Subversive

To be clear, I am not suggesting that Hamilton sought to subvert America’s experiment with the self-limiting republic—in the sense of conspiring to install a monarch or stage a coup—or even that he wanted to see it fail. Many of his defenders seem to think this is the only alternative to affirming his republican faith. Read’s (2000, 59-61) defense of Hamilton’s republicanism, for example, seems to be predicated upon the assumption that Hamilton had to be either a committed republican who supported America’s republican constitution or a monarchist who hoped for the republics’ failure:

The fact that Hamilton had greater doubts than most of his contemporaries about the future prospects of republican government does not mean he wanted it to fail. (Had he wanted it to fail, his efforts as treasury secretary to give a fledgling republican government secure fiscal foundations would have been counterproductive.) (ibid. 59)

The problem with this is that it ignores the possibility that Hamilton both feared that the republican government would fail *and* hoped (or thought necessary) that it could eventually become a constitutional monarchy. If such is the case, it would be quite possible that he would pursue measures he thought would simultaneously help to prevent what he feared and promote, or at least not impede, the development of what he believed was most necessary. His fiscal policies, to use

⁴² “Hamilton’s Notes for Convention Speech of 6/18/87”

Read's example, would have the effect of increasing both national and executive power at the expense of the States, the Congress, and (indirectly) the people. This, in his view, would both compensate for problems with pure federalism and republicanism and place the regime on a road to greater future augmentations of relative power by the national executive. Moreover, he predicted that his policies would create a bifurcation in society between the few (rich and wellborn) and the many. As he put it most forcefully at the New York Ratifying Convention:

As riches increase and accumulate in few hands, as luxury prevails in society, virtue will be in a greater degree considered as only a graceful appendage of wealth, and the tendency of things will be to depart from the republican standard. This is the real disposition of human nature ... It is a common misfortune that awaits our State constitution, as well as all others.⁴³

In his notes at the Constitution Convention he indicated that this would lead to the need, in order to prevent the republican violent death, for not only a bicameral legislature, with the few permanently separated (i.e. insulated by hereditary succession) from the many, but also “a mutual check.” This check, he wrote, “is a monarch.”⁴⁴ In other words, he thought his policies were not only about propping the republic; he also thought that, in the long run, they would heighten the need for a non-republican mixed constitution.

Another way to put this is that Hamilton accepted the orthodox view of Hume and Montesquieu, that all regimes are in motion toward either the extreme of purer republicanism—and thus the threat of anarchy and then despotism—or toward absolute monarchy. The question, then, was in which direction along the continuum

⁴³ “Hamilton Speech at New York Ratifying Convention, June 21, 1788.

⁴⁴ “Hamilton's Notes for Convention Speech of 6/18/87”

America was to move. If Hamilton accepted Hume's and Montesquieu's assessment that the British constitution was the best model of durable liberty, then he would have good reason to seek to push the regime in that direction, especially if bought into the idea of the republican violent death. By this reasoning, Hamilton would have had a clear sense that the Constitution of 1788 represented movement in the right direction—away from pure republican and toward the mixed constitution—by introducing much-needed proto-monarchical/aristocratical elements in the form of the President, Senate, and Supreme Court. However, in his judgment, it was far from complete. The Constitution was still wholly popular and, thus, excessively democratic and deficiently aristocratic and monarchical. The Constitution was still out of balance. Although he thought there was much progress to be made, he certainly did not want to risk moving in the opposite direction, which, in his view, was the likely result of the failure of the republican Constitution.

Hamilton's Problematic Disavowals

Another reason to trust Hamilton's statements from the Convention is that his disavowals after the fact often included demonstrable falsehoods, thus calling into question his sincerity and indicating he knew he had something to hide; were actually quite modest in their endorsement of republicanism; and were silent on the demerits of the British constitution. It is important to note that Hamilton had public spirited reasons for being less than genuine in his disavowals. One of his overriding fears, even after ratification, was that insufficient energy in the national government would create anarchy or disunion. If Jefferson's account can be trusted, Hamilton allegedly told him in the early 1790s that "I own it is my own opinion, though I do not publish it in Dan & Bersheba, that the present government is not that which will answer the

ends of society, by giving stability & protection to it's rights, and that it will probably be found expedient to go into the British form."⁴⁵ He said this as he was explaining why he disapproved of John Adams' publication of *Discourses on Davila*, which lauded certain aspects of the British constitution. Hamilton criticized Adams' decision to publish the work because it might undermine the Americans' attempt to demonstrate that republican government "can be obtained consistently with order." Consequently, "whoever by his writings disturbs the present order of things, is really blameable, however pure his intentions may be." In other words, Hamilton thought it was irresponsible to publicly express admiration for the British constitution because it could incite the disorder (1) to which he suspected all republican governments were susceptible and (2) that he privately suspected only the British constitution provided an adequate remedy. Thus, Hamilton's fears of the republican security dilemma and of the republican violent death both led him to believe the British constitution was necessary for preserving American liberty and to be unwilling to publicly express that belief! This is one reason why he would have felt justified distorting the record from the Convention.

In five surviving documents—two private letters, an internal governmental memo, and two party paper essays—Hamilton defended his republican credentials against charges that he and perhaps the Federalist Party sought to lead the new republic toward the British form of government.⁴⁶ Some of his responses were simply fallacious, such as when he wrote in the "Amicus" essay (1792) that the claim

⁴⁵ Jefferson, *Annas*, August 13, 1791

⁴⁶ "Objections and Answers Respecting the Administration of the Government," 1792; "Letter to Edward Carrington," May 26, 1792; "Catullus to Aristides No. 3," September 29, 1792; "Amicus," September 11, 1792; "Letter to Timothy Pickering," September 18, 1803.

that he “*opposed* the Constitution in the Grand Convention, because it was too *republican*, and advocated the *British monarchy as the perfect standard*” was “a gross misrepresentation” since he, after all, was “the only member from the State to which he belonged who signed the Constitution.” All the evidence, of course, from his notes and the transcripts by both Madison and Yates, suggests that the accusation was in fact accurate, except for the relatively minor point that he “supported the Constitution” in the sense of voting for it. As was discussed above, however, that he voted for (and wished well the success of) the Constitution is perfectly compatible with his having thought it fell well short of “the perfect standard.”

Also unpersuasive were his arguments that he “never made a proposition to the Convention which was not conformable to the republican theory” and that “the highest-toned of any of the propositions made by him was actually voted for by the representation of several States.”⁴⁷ The problem with this is that his “highest toned” statements on behalf of the Anglican and against the proposed Constitution were not part of his formal proposal. So while it is technically true that he did not officially propose anything inconsistent with “the republican theory,” it does not mean he didn’t make many statements denouncing that theory nor, indeed, that he did not admit “himself not to think favorably of republican government.”

Hamilton offered a more subtle distortion in his letter to Timothy Pickering of September 18, 1803. Here he argued that his proposed plan

was predicated upon these bases: 1. That the political principles of the people of this country would endure nothing but republican government. 2. That in the actual situation of the country, it was in

⁴⁷ “Amicus,” 1792. Here he was referring to his proposed amendments that the Senate and President serve on “good behavior.”

itself right and proper that the republican theory should have a fair and full trial. 3. 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.

The first assertion is merely a restatement of what we have already established: Hamilton well understood that any proposal that deviated from republican principles could not be ratified. The second assertion, however, insofar as by “in itself right and proper” he meant “desirable or necessary” for America, contradicts the thrust of what he actually said at the Convention. There he argued plainly and vehemently that while the people were too prejudiced against monarchy to accept anything other than a republican constitution, he himself “doubt[ed] much whether anything short of [the British constitution] will do in America.” More importantly, it is noteworthy that in this statement he does not claim that *his* political principles will “endure nothing but republican government.”

In fact, the second and third propositions reflect a common theme in all of his statements wherein he disavowed his alleged anti-republican views. Hamilton consistently spoke of republicanism as a metaphorical defendant on trial and/or a theory or hypothesis to be tested in the laboratory of North America.⁴⁸ His attitude was not exactly that of a detached observer, but rather more that of either a judge maintaining order and procedural fairness in the court or a scientist attempting to carefully control the conditions of experimentation. Like a good judge upholding the due process rights of the accused, or a good scientist employing the Cartesian method of methodological doubt, Hamilton withheld judgment about republican government

⁴⁸ On one occasion he offered a third metaphor: the republic as a person for whom the status of his immortal soul was in question, thus leading Hamilton to “fear that it may not justify itself by its fruits.” (Letter to Edward Carrington, May 26, 1792.)

until all the facts were in. “Whatever might be his theoretic doubts,” he wrote of himself anonymously in the third person in 1792, he believed republican government “merited his best efforts to give success to it in practice ... [and] that hitherto, from an incompetent structure of the government, it had not had a fair trial, and that the endeavor ought then to be to secure to it a better chance of success by a government more capable of energy and order.”⁴⁹

This skeptical, scientific, juridical posture—however sincere it may have actually been—helped Hamilton to turn the tides against his opponents and claim he was the best friend of republican government in America (without disavowing support for the British constitution) while the self-proclaimed “Republicans” were its true enemies. It just so happened that, as the last quote above hints toward, the factors required for giving republican government a fair trial (or properly controlled experiment) were the very factors neglected by the Americans’ insufficient inclusion of aristocratic and monarchical elements in their Constitution: energy, order, stability, firmness, durability, efficiency, permanence, and wisdom. As he told Pickering, a “fair trial” for the “republican theory” would be one where the “government [is] so constructed as to give all the energy and stability reconcilable with the principles of that theory.” The great thing about this, of course, is that is failsafe for someone who favors the balanced constitution: If the republic fails under these controlled conditions, the good news is that those very conditions (strength and independence in the President, Senate, and Judiciary) are a step in the right direction toward a constitutional monarchy.

⁴⁹ Hamilton, “Objections and Answers Respecting the Administration of the Government,” 1792.

If there is any doubt that Hamilton continued to hold the Anglican constitution up as his yardstick of good government, one should take notice of the language he used when admitting to Carrington that he harbored doubts about the future success of the “republican theory:”

I said that I was affectionately attached to the republican theory. This is the real language of my heart, which I open to you in the sincerity of friendship; and I add that I have strong hopes of the success of that theory; but, in candor, I ought also to add that I am far from being without doubts. I consider its success as yet a problem. 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.⁵⁰

The trial of the republic, in other words, was a question of whether it would meet the high standard of Neckar’s assessment of the British government that Hamilton quoted at the Convention: that “it is the only government in the world which unites public strength with individual security.”

The flipside of this was that those who threatened to disrupt order by rallying public fear against the policies of the government, or whose policies were intended to diminish the constitutional energy and firmness of the government, were standing in the way of a fair trial for republican government. “The truth unquestionably is,” he wrote in a memo,

that the only path to a subversion of the republican system of the country is by flattering the prejudices of the people, and exciting their jealousies and apprehensions, to throw affairs into confusion, and bring on civil commotion. Tired at length of anarchy or want of government, they may take shelter in the arms of monarchy for repose and security.⁵¹

Similarly, to Carrington he wrote:

⁵⁰ Hamilton to Edward Carrington, May 26, 1792.

⁵¹ Hamilton, “Objections and Answers Respecting the Administration of the Government,” 1792.

On the whole, the only enemy which Republicanism has to fear in this country is in the spirit of faction and anarchy. If this will not permit the ends of government to be attained under it, if it engenders disorders in the community, all regular and orderly minds will wish for a change, and the demagogues who have produced the disorder will make it for their own aggrandizement. This is the old story. If I were disposed to promote monarchy and overthrow State governments, I would mount the hobby-horse of popularity; I would cry out "usurpation," "danger to liberty," etc., etc.; I would endeavor to prostrate the national government, raise a ferment, and then "ride in the whirlwind, and direct the storm."⁵²

In other words, Hamilton assessed the politics of the 1790s through an orthodox understanding of the republican violent death. Criticizing the Washington Administration ran the risk of undermining the authority of the national government, which could disenable that government from preventing the regime from slipping into anarchy, disorder, and, eventually, "monarchy."⁵³ This should not be dismissed as a mere rationalization for purely partisan motives. As the discussion above of his condemnation of John Adam's *Discourses on Davila* suggests, Hamilton was capable of criticizing members of his own party for making public statements that could alarm the people and potentially ignite the republican violent death.

Comparison with Madison Based on Passages Discovered Through Targeted Searching of their Complete Works

So far this revisionist interpretation of Hamilton's constitutional ideas and intentions has been based on applying different assumptions toward the interpretation of a relatively small collection of documents. In this section I report the most relevant results from my effort to apply those assumptions toward a large set of textual passages discovered through targeted searching of Hamilton's and Madison's

⁵² Hamilton to Edward Carrington, May 26, 1792.

⁵³ As was discussed above, Hamilton often used "monarchy" and "despotism" interchangeably. He made a clear distinction between the British "mixed regime" and "monarchies."

complete works. Four findings in particular are highlighted: (1) key differences in how they discussed and proposed resolving the republican violent death; (2) Hamilton's propensity to distinguish between "free" and "republican" governments, which suggests (a) that he held to the older (pre-Revolutionary) idea that monarchical governments can be free *and* that (b) he sought to subtly lead public opinion back to the older way of thinking; (3) the fact that Hamilton, unlike Madison, apparently did not associate republicanism with the principles of the Revolution; and, finally, (4) opposite propensities between the two in statements they made pertaining to the relative superiority of republican vs. monarchical governments.

The Cure for The Anarchy – Violent Death Problem

Madison: Non-Executive Cures

One of the most interesting and pertinent differences between Hamilton and Madison was in how they discussed and proposed resolving the republican "violent death" problem. Both of them incessantly repeated their fear that both too much and too little "power" will eventually lead to despotism. However, Madison, unlike Hamilton, always spoke of this need for "power" in the context of arguing for a firm *Senate*, not a firm executive. This statement, for example, is representative of his general tendency::

A Senate for six years will not be dangerous to liberty, on the contrary it will be one of its best guardians. By correcting the infirmities of popular Government, it will prevent that disgust agst that form which may otherwise produce a sudden transition to some very different one. It is no secret to any attentive & dispassionate observer of ye pol: situation of ye U. S., that the real danger to republican liberty has lurked in that cause.⁵⁴

⁵⁴ "Observations on the draught of a constitution for Virginia, 1788"

Moreover, in the many other instances when he spoke of the danger of faction leading to despotism, he sought the cure, not in “power” but in his well-known endorsement of the complementing mechanisms of an extended sphere (muffling the violence of faction) and the natural aristocratic “filter” of representation. Overall, his emphasis was upon *preventing* factional violence by preventing unjust, mutable, and imprudent legislation. This was intended to prevent the need for coercion to repress the threat that the spirited group conflicts that are a necessary consequence of liberty (see *Federalist 10 and 51*) will degenerate into violence, anarchy, and then despotism.

Madison on the “Energy” vs. “Stability” Distinction

This tendency corresponded with a distinction he consistently made between “energy” and “stability.” Madison associated “energy” with the executive and “stability” with legislation. When he spoke of instability threatening anarchy and then despotism, he thus looked for a preventive cure through stability in legislation.

Madison’s tendency to distinguish energy in the executive from stability in the legislature was evident in *Federalist 41*, where he stated “Among the difficulties encountered by the convention, a very important one must have lain in combining the requisite stability and energy in government, with the inviolable attention due to liberty and to the republican form.” Then when he specified the (apparent) requisites for liberty and republicanism (popular control, short duration, and plurality in the executive), he specified the requisites of “stability” and “energy” in the following way:

Stability ... requires that the hands in which power is lodged should continue for a length of time the same. A frequent change of men will result from a frequent return of elections; and a frequent change of

measures from a frequent change of men: whilst energy in government requires not only a certain duration of power, but the execution of it by a single hand.

In a letter to Jefferson describing the work of the Convention, he made this association explicit: “This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive, and a proper stability in the Legislative departments, with the essential characters of Republican Government.”⁵⁵

When the First Congress debated the removal power, Madison made it clear that stability in the executive branch was antithetical to a proper functioning republican government. Requiring Senate approval for removal, would, he argued,

give a stability to the Executive department ... which is more incompatible with the genius of republican Governments in general, and this Constitution in particular, than any doctrine which has yet been proposed. The danger to liberty, the danger of mal-administration, has not yet been found to lie so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of the public trust. If it is said that an officer once appointed shall not be displaced without the formality required by impeachment, I shall be glad to know what security we have for the faithful administration of the Government? Every individual, in the long chain which extends from the highest to the lowest link of the Executive Magistracy, would find a security in his situation which would relax his fidelity and promptitude in the discharge of his duty.⁵⁶

It should be added that, when he spoke of the “highest” vs. “lowest” link, he specified later that it was “the people” that he thought of as the ultimate authority:

Vest this power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the Executive department, which was intended for the security of liberty and the public good. If the President should possess alone the power of

⁵⁵ “Madison to Jefferson, 10/24/1787”

⁵⁶ Speech in First Congress, June 17, 1789.

removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community. The chain of dependence therefore terminates in the supreme body, namely, in the people, who will possess, besides, in aid of their original power, the decisive engine of impeachment.⁵⁷

Hamilton: The Executive Cure

Hamilton, by contrast, while also favoring “stability” in legislation as part of the cure for the problem of republican violent death, typically considered this as a secondary measure to the primary need for “energy” and “stability” in the *executive*. Indeed, throughout his writings Hamilton evidenced a belief that the principal cure for the threat of faction in a free government was executive “counterpoise” (to use De Lolme’s phrase). As we saw above, for example, one of Hamilton’s most common arguments was that the republican “experiment” could be given a “fair trial” only if given “a better chance of success by a government more capable of energy and order.”⁵⁸

Most famously, in *Federalist 1*, for example, he argued

that a dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people, than under the forbidding appearances of zeal for the firmness and efficiency of government. History will teach us, that the former has been found a much more certain road to the introduction of despotism, than the latter.

Similarly, in one of his anonymous pamphlet defenses in the 1790s, he wrote,

I mistake him, if his [i.e. Hamilton’s] measures proceeding upon the ground of a liberal and efficient exercise of the powers of the national government, have had any other object than to give it stability and duration: *the only solid and rational expedient for preserving republican government in the United States*. It has been pertinently

⁵⁷ Ibid.

⁵⁸ Hamilton, “Objections and Answers Respecting the Administration of the Government,” 1792.

remarked by a judicious writer, that *Caesar*, who *overturned* the republic, was the Whig, Cato, who *died* for it, the Tory, of Rome.

Most important of all, however, was this famous statement in #70:

Energy in the 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. Every man, the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals, who aspired to the tyranny, and the seditions of whole classes of the community, whose conduct threatened the existence of all government, as against the invasions of external enemies, who menaced the conquest and destruction of Rome.

The relevance of this passage is not that he was promoting the Roman dictatorship. Hamilton never expressed admiration for that institution, and for understandable reasons. Ever since Locke's (1689) defense of the prerogative power, the conventional understanding had been that the institution most fit for the emergency function was the British monarch. As will be noted in the next chapter, this was a shrewd rhetorical move by Hamilton. After all, the standard treatises on government typically associated this list of functions with the British monarch, and so his reader would have been expecting a different example at that point in the paragraph. This explains the awkwardness of the paragraph. Why else would he employ the dictator when the beginning of the paragraph made a point of highlighting the "steady administration of the laws," which seemed like a different connotation for "energy" than Madison had implied in #41, was associated with the administrative apparatus of the British court, and was not a part of the dictatorial function?

“Not Only Republican, but All Free Governments”

Another pertinent discovery from my distant reading was that Hamilton often made a point of distinguishing between, on the one hand, “free government” or “the principles of civil liberty,” and “republican government,” on the other, at times where it was not in his narrow political self-interest to do so. I take this as evidence of his effort at long-term opinion leadership. Consider, for example, his draft for Washington’s Farewell Address where he wrote

T is essentially true that virtue or morality is a main and necessary spring of *popular or republican governments*. The rule, indeed, extends with more or less force to all free governments. Who that is a prudent and sincere friend to *them*, can look with indifference on the ravages which are making in the foundation of the fabric...? (emphasis added)

Washington was wise enough to alter this statement so that it did not imply he was contrasting “republican governments” to the leading alternative model of the day:

It is substantially true that virtue or morality is a necessary spring of *popular government*. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to *it* can look with indifference upon attempts to shake the foundation of the fabric? (emphasis added)

Also, in *Federalist 9*, he subtly nodded to the conventional wisdom that the British model was superior to republics for securing durable liberty. There he wrote:

From the disorders that disfigure the annals of those republics, the advocates of despotism have drawn arguments, not only against the forms of republican government, but against the very principles of civil liberty. They have decried all free government, as inconsistent with the order of society, and have indulged themselves in malicious exultation over its friends and partisans. Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have in a few glorious instances refuted their gloomy sophisms.

Whereas Madison would attempt to distinguish “republican” from “democratic” governments in the next essay, in this one Hamilton followed Montesquieu (whom he quoted extensively in that essay) in distinguishing between republics, other “free governments,” and despotism.

The Principles of the Revolution

I noticed in my distant reading that Madison frequently insisted that abolishing monarchy was a core principle of the revolution. This prompted me to search all paragraphs where “principle*” and “revolution*” co-occurred. I found that Madison never implied otherwise, that Hamilton never implied that it did, and that at least once he implied that it was *not* about the abolition of monarchy.

Madison’s best known statement espousing this view was in *Federalist 39*, where he wrote:

The first question that offers itself is, whether the general form and aspect of the government be strictly republican? It is evident that no other form would be reconcileable with the genius of the people of America; with the fundamental principles of the revolution; or with that honourable determination which animates every votary of freedom, to rest all our political experiments on the capacity of mankind for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible.

Of course, Hamilton poured cold water on this claim in #70 by stating:

There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope, that the supposition is destitute of foundation; since they can never admit its truth, without, at the same time, admitting the condemnation of their own principles. . . . 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.

It is also important to compare Madison's statement to Hamilton's disavowals discussed above. Hamilton's typical refrain was that the his proposed plan

was predicated upon these bases: 1. That the political principles of the people of this country would endure nothing but republican government. 2. That in the actual situation of the country, it was in itself right and proper that the republican theory should have a fair and full trial. 3. 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.

The people's political principles, not *his* would only endure republican government.

While he often declared himself a well-wisher of republican government, Hamilton never went so far as to declare it as one of his *principles*, nor as the true principle fought for in the Revolution.

Hamilton was not unlike the other members of his generation when, in a pre-1776 pre-revolutionary essay, he felt compelled to defend himself against the charge that his espoused principle that receiving law without representation violated his natural right to liberty was a *republican* principle (and thus treasonous). "I am a warm advocate for limited monarchy," he declared in *The Farmer Refuted* (1775), "and an unfeigned well-wisher to the present Royal Family." Going further, he wrote:

You are mistaken when you confine arbitrary government to a monarchy. It is not the supreme power being placed in one, instead of many, that discriminates an arbitrary from a free government. When any people are ruled by laws, in framing which they have no part, that are to bind them, to all intents and purposes, without, in the same manner, binding the legislators themselves, they are, in the strictest sense, slaves; and the government, with respect to them, is despotic. Great Britain is itself a free country, but it is only so because its inhabitants have a share in the legislature. If they were once divested of that they would cease to be free. So that, if its jurisdiction be extended over other countries that have no actual share in its legislature, it becomes arbitrary to them, because they are destitute of

those checks and controls which constitute that moral security which is the very essence of civil liberty.

However, as was discussed in the previous chapter, the publication of Paine's *Common Sense* and Jefferson's "Declaration" firmly established in the minds of most Americans that the Revolution was a republican revolution. It is therefore noteworthy that in one of his few statements post-war where he discussed the principles of the revolution, he declared precisely the same principle he had argued in 1775 (note: the italics are *his*, not mine):

A share in the sovereignty of the State ... is that right by which we exist a free people; and it certainly, therefore, will never be admitted, that less ceremony ought to be used in divesting any citizen of that right than in depriving him of his property. Such a doctrine would ill suit the principles of the Revolution, which taught the inhabitants of this country to risk their lives and fortunes in asserting their *liberty*; or, in other words, their *right to a share* in the government.⁵⁹

The upshot is that there is no evidence that he ever accepted the anti-monarchical meaning of the revolution provided by Thomas Paine.

Prudential Arguments on the Relative Superiority of Republican vs. Monarchical Governments

A final bit of evidence supporting this thesis is a stark asymmetry in the types of prudential arguments Hamilton and Madison made regarding the relative advantages of republics vs. monarchical governments. One salient finding is that Hamilton never gave an explicit reason for believing republics are inherently more just than monarchies, while Madison often repeated various versions of the following claim:

The difference so far as it relates to the superiority of republics over monarchies, lies in the less degree of probability that interest may

⁵⁹ "Letter from Phocion #2, 1784"

prompt more abuses of power in the former than in the latter; and in the security in the former agst an oppression of more than the smaller part of the Society, whereas in [monarchies] it may be extended in a manner to the whole.⁶⁰

Similarly, as will be discussed further in Chapter 5, Madison came to believe that the extended federal republic was not only more conducive to liberty and justice than monarchies, but also that it facilitated better governance due to its capacity to mobilize information. This quote is his most concise statement representing that belief:

In monarchies there is a two-fold danger—1st, That the eyes of a good prince cannot see all that he ought to know—2d, That the hands of a bad one will not be tied by the fear of combinations against him. Both of these evils increase with the extent of dominion; and prove, contrary to the received opinion, that monarchy is even more unfit for a great state, than for a small one, notwithstanding the greater tendency in the former to that species of government.⁶¹

For his part, Hamilton exhibited precisely the opposite tendency. For example, he frequently offered reasons to believe monarchies (of the British mold) facilitate free government by creating a balanced tension monarchical power and vigilant party opposition. Consider, for example, this statement from his draft of Washington's Farewell Address:

There is an opinion that parties in free countries are salutary checks upon the administration of the government, and serve to invigorate the spirit of liberty. This, within certain limits, is true; and in governments of a monarchical character or bias, patriotism may look with some favor on the spirit of party. But in those of the popular kind, in those purely elective, it is a spirit not to be fostered or encouraged.⁶²

⁶⁰ Madison to Jefferson, 10/17/178.

⁶¹ Madison, "Government," January 2, 1792

⁶² Hamilton, "Draft of Washington's Farewell Address, August, 1796

This, of course, was essentially an admission that he believed the British balanced constitution was proven model for preserving durable liberty from succumbing to the republican violent death.

Also unlike Madison, Hamilton expressed the belief that a monarchical national government would be superior for cementing the union.

No man, I believe, but will think it probable, however disadvantageous the change in other respects, that a monarchical government, from its superior force, would ensure more effectually than our present form our permanent unity as a nation...⁶³

In addition to this, his most frequent criticism of republics was that they are more susceptible than monarchies to foreign corruption. This statement is representative of what appears to have been one of Hamilton's gravest worries:

"Foreign influence is truly the Grecian horse to a republic. We cannot be too careful to exclude its entrance."⁶⁴

Conclusion

Hamilton has been aptly described as "America's most elusive founding father" (Ambrose and Martin 2006). In this chapter, I have argued that the reasons Hamilton believed the Americans needed a hereditary executive in order to preserve liberty—his fears of the republican violent death and the republican security dilemma—also help explain why the centrality of this belief to Hamilton's political views has eluded contemporary scholars. I have presented evidence that suggests Hamilton feared inadequate national executive authority could result in disunion (and thus the republican security dilemma between the States) and/or an outbreak of

⁶³ Hamilton, "Americanus: No. 2," February 8, 1794

⁶⁴ Hamilton, "Pacificus: No. 6," July 17, 1793

factional violence that would lead to anarchy (and thus the republican violent death.) Since Hamilton was, as he once claimed, “as zealous an advocate of liberty as any man whatever,”⁶⁵ he feared that each process would result in despotic, as opposed to limited and balanced, monarchical power. Hamilton, unlike Madison, always looked to strong executive power to prevent disunion and the degeneration of the republic into anarchy. At various times, moreover, he explicitly admitted that he thought only a hereditary executive could provide adequate preventive medicine for those republican diseases. However, he also admitted that he was reluctant to speak publicly about this belief because he feared doing so *also* could spark anarchy and disunion by inflaming the citizens’ fears and hatreds of monarchy and by undermining their confidence in the national government. Therefore, Hamilton’s fears of the republican security dilemma and republican violent death also explain why his monarchism has eluded scholars: he was careful not to explicitly admit this belief in his public writings and speeches.

Nevertheless, he apparently did not always resist the temptation to speak candidly about his belief in monarchism and thus statements scattered throughout his collected writings provide the evidence upon which I have based this revisionist interpretation. The argument developed in this chapter was supported in part by defending the assumption that his statements in the privacy of the Federal Convention are a more reliable indicator of his genuine views than contradictory statements he made later. I also supplemented a careful reading of those statements with a comparative interpretation of pertinent text passages discovered through targeted

⁶⁵ Speech, June 22, 1787. (Madison’s Transcript.)

searches of Hamilton's and Madison's digitized collected writings. Paying close attention to this evidence suggests that Madison was certainly justified in believing Hamilton harbored monarchical principles and intentions. Not only did he believe, unlike Madison, that monarchy was necessary for preventing the republican security dilemma and republican violent death, he also apparently did not share Madison's belief that the Revolution was based on a principled rejection of monarchy. Moreover, Hamilton's Convention statements reveal that he believed monarchy would become increasingly necessary as the United States developed into the modern industrial fiscal-military power he would seek to build as Treasury Secretary. Finally, and perhaps most importantly, at the Convention and elsewhere he expressed the hopeful belief that public opinion was becoming more accepting of a return to the British constitution.

The latter point deserves special emphasis, for it is a critical element in my argument that Hamilton actively sought to lead the regime toward a monarchical executive. The fact that he expressed a hope that the people could one day agree with his way of thinking would have given Hamilton reason to seek to gently nudge public opinion in that direction. This chapter provided preliminary evidence that Hamilton did indeed engage in this form of opinion leadership. At times, it will be recalled, he seems to have gone out of his way to draw a clear distinction between "free" and "republican" governments as though he was seeking to remind his audience that, contra Paine, the British model was also conducive to liberty. The next chapter argues that Hamilton used his *Federalist* essays on executive power not only to win ratification, but also to persuade his audience that the British model of executive

power was superior to the republican model proposed in the Constitution. It also reinforces the argument developed in this chapter, which is that Madison was correct that his and Hamilton's primary basis of disagreement was over monarchical vs. republican principles.

Chapter 4: Selling the Monarchical Executive: A Reinterpretation of Hamilton's Theory of Executive Power and *Federalist Essays* on the Presidency, Considered in Contrast to Madison's and Jefferson's Theory of the Energetic Republican Executive

To fully assess Madison's belief that his and Hamilton's disagreement was fundamentally over monarchical vs. republican principles and intentions, it is necessary to closely consider their respective views on the proper structure and purpose of executive power. After all, the British constitution placed the executive power firmly in the hands of the monarch, and the leading justifications for that constitution argued that a strong monarchical executive was essential for preserving liberty amid the twin threats of the republican security dilemma and republican violent death. Although we have already encountered strong evidence that indicates Hamilton agreed with, and Madison rejected, this conventional wisdom of 18th century political science, we have not fully established the theoretical basis of this difference between the two founders. More specifically, we have not determined why Hamilton believed a hereditary monarch was structurally superior to a republican executive and we have not considered the role and structure Madison envisaged for this vital function of the constitution. Finally, the case has not yet been fully developed that Hamilton engaged in opinion leadership to lead the regime on a developmental path toward monarchy. This chapter fills-in these missing pieces of the Madison vs. Hamilton puzzle.

This chapter is structured as a commentary on Hamilton's *Federalist* essays on the Presidency (#67-77), but it differs from previous readings⁶⁶ in three respects. First, the commentary is framed to focus on how Hamilton's views on the proper structure of executive power compared and contrasted with those of Madison and Jefferson. Jefferson is brought into this discussion for three reasons. First, Jefferson simply wrote more about executive power than did Madison. Second, since Madison seems to have agreed with the essential elements of Jefferson's theory of executive power, we can safely infer Madison's unstated positions by looking to Jefferson. Finally, bringing Jefferson into the discussion allows us to complete the revisionist work recently begun by Jeremy Bailey (2007). Bailey has argued persuasively that Jefferson, contrary to conventional opinion, favored a strong unitary executive. This study is indebted to Bailey's interpretation, but it seeks to answer an important question that Bailey's work leaves unresolved. If Jefferson and Madison, like Hamilton, favored a strong unitary executive, then what distinguished their views on executive power from Hamilton's?

The second reason this commentary differs from previous ones is that it seeks to give an account of Hamilton's genuine views on executive power as distinguished from that which he might have wrote in the *Federalist* for rhetorical reasons. I do this by comparing his arguments in the *Federalist* with the arguments he made in other contexts, especially the Federal Convention, where he was more likely to express his

⁶⁶ I have benefited greatly from several previous interpretations of these essays, especially those by (Bailey 2007; Rakove 1996; Cronin 1989; McDonald 1982, 1995; Nichols 1994; Thach, Jr. 2007; Epstein 2007; Stourzh 1970; Flaumenhaft 1992; Chernow 2004; Mansfield 1993; Karl-Friedrich Walling 1999).

genuine views. In this respect, this commentary builds upon the foundation laid in the previous chapter.

Finally, third, I seek to demonstrate that Hamilton's "rhetoric" was intended for something more than merely winning ratification. I try to establish that the deviations between what he wrote in these essays and what I argue to be his genuine views are best explained as part of his long-term effort to lead the regime in a more monarchical rather than more republican direction. He sought to do this in two ways. First, he offered arguments that strongly implied that the proposed President was dangerous rather than conducive to liberty and the public good because it was much too popular in constitution. He had to be subtle about this, however, because he did not want to play into the Anti-Federalist's hands and thereby risk failure at ratification. His second tact was much more failsafe because it involved flattering the republican prejudice of his audience in order to imbue one of the least republican elements of the Constitution, the perpetual re-eligibility of the President, with a republican justification. I base this judgment on the facts that the tone and thrust of his argument for re-eligibility (#72) contradicted that of his previous essay (#71), and that the latter, rather than the former, conformed to the views expressed elsewhere that I take to be more reflective of his genuine beliefs. Moreover, prevailing (Whig) theory at the time, as expressed by Jefferson, suggested that re-eligibility, whatever its merits (especially when in the hands of Washington), ran the risk of the office evolving into a hereditary institution (once Washington retired.) This strategy was "failsafe," not only because it assisted rather than jeopardized ratification, but also because it offered an exhortation to the people and future officeholders to expect high

standards of conduct by the officeholder, which Hamilton certainly hoped, though doubted, would be the case before the more reliable hereditary alternative evolved.

This chapter is thus also a response to Epstein (2007), who, in his excellent study of the *Federalist*, argued that the work

seems to doubt the feasibility and even the desirability of quieting men's political impulses. *The Federalist* rejects Hobbesian absolute monarchy, but it also departs from other liberal predecessors who defined limited or mixed monarchy. Even if Locke and Montesquieu were correct in thinking that a mixed government like England's could secure men's safety and protect men's interests, such a government offends the spirit of political self-assertion which the *Federalist* recognizes and even admires. *The Federalist's* attachment to 'wholly popular' government, even if a bow to prejudice, is a theoretically self-conscious bow; that is, the popular prejudice for popular government is not a circumstance which prevents action according to theory, but is a manifestation of a fact of political life which theory can understand. (p 7)

I argue, to the contrary, that Hamilton's essays are only a limited bow to prejudice. His arguments logically push toward acceptance of the British balanced constitution as well as toward the proposed Constitution. Needing ratification, he bowed a bit to prejudice, but as his long-term aspiration was for the constitution to become more monarchical, he took the *Federalist* as an opportunity to lead public opinion gently toward greater acceptance of the British model. Madison's essays may be a different story, but that will have to wait for another project.

Defending the Republican Character of the Proposed Executive: #67& 69

Hamilton began his defense of the Presidency in *Federalist* #67 by lambasting its critics who sought to manipulate "the aversion of the people to monarchy" and mislead them into viewing the institution "not merely as the embryo, but as the full-grown progeny, of that detested parent." Notably, he did not refer to monarchy as

“detestable,” but only something “detested” by “the people.” And he did not express indignation at the suggestion that the Convention might have liked to propose a monarchy; his outrage was only at the Anti-federalist’s demagogic practice of dishonestly stirring-up the people’s (not his) jealous disdain for monarchy to attain their objectives.

It is not clear, from this passage alone, whether Hamilton thought or hoped the proposed executive would be “an embryo” of monarchy, but he did make it clear that he believed it was far from being the “full-grown progeny.” In #69 he explained exactly why this is. The “real character of the proposed executive” consisted in its being popular and limited and thus republican and constitutional. It was significantly more limited in formal power than the British monarch and, unlike that detested institution, the proposed President would be held accountable to the people through regular election, subject to impeachment, and, afterward, “liable to prosecution and punishment in the ordinary course of law.” Of course, only the popular electoral element rendered the executive republican. The limitations on the executive’s formal powers, and his liability to impeachment and arrest, could at least in principle be incorporated within a constitutional monarchical framework. They were nevertheless conducive to the security from arbitrary executive power that republicans seek.

The net effect of these two essays was to establish, as a matter of taxonomy, that the proposed president was in fact republican and much more limited in its constitutional powers, privileges, and immunities than the British monarch. Notably lacking were positive arguments affirming the merits of a republican, as opposed to

monarchical executive, and negative arguments denouncing the intrinsic worth of a monarchical alternative.

Why the Electoral College was an “Excellent” Mode of Selection: #68

The first opportunity for this came in the middle essay, # 68, where he made the mode of electing the president his topic of focus. Although he praised this aspect of the institution’s design—“If the manner of it be not perfect, it is at least excellent”—his analysis was hardly amounted to a ringing endorsement of the republican element in the procedure for executive selection. While stating that “It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided,” he did not say why this was desirable—desirable for the regime? or desirable for assuring ratification?—and he demonstrated no embarrassment over the fact that “the sense of the people” would operate only in the selection of other “men most capable of analyzing the qualities adapted to the station.” (As will be made clear from the discussion below, Hamilton will imply later that a hereditary magistrate would be preferable.) His *formal* proposal at the Convention, however, was similar to the Electoral College of 1788, which suggested that he found something intrinsically, not just politically, worthy, about the latter, even if it was not the best in his view. Just like the proposed President, the chief magistrate under Hamilton’s Convention proposal would not be selected by the national legislature. His proposal differed only in that there would be two, rather than one, set of electors, and he would have mandated property requirements for suffrage, rather than leaving such questions to the discretion of State

legislatures. However, on the crucial issue of popular vs. legislative selection, Hamilton's plan was in agreement with the Constitution's.

Jefferson and Madison also preferred some form of "popular" election to dependence upon the national legislature. Madison's Virginia Plan had actually called for a unitary executive selected by the Senate and limited to a single seven year term. However, this was not the product of serious reflection: he admitted to Washington soon before the Convention that the executive was one institution to which he had put little thought.⁶⁷ Especially after the Great Compromise turned the Senate into something very different from what he had envisioned, Madison became a proponent for direct election (eventually the Electoral College) rather than dependence on the Congress. However, the Virginians differed from Hamilton on how popular they thought it should be. Although they would not object to the Electoral College in 1787-88—for it was more conducive to the functional separation of powers than *legislative* selection—they would come to champion the 12th Amendment for allowing the President to be more directly selected by a national majority. As we saw in the previous chapter, Madison endorsed the idea of a chain of accountability running from the community at the top, to the community's executive agent (the President), on down to the President's appointed officers. Jefferson, moreover, championed a view of the executive that had a special role in the national government on account of his "seeing the whole ground," as he put it in his First Inaugural. However, this was within the framework, as we shall see below, of an

⁶⁷ Madison to Washington, April 16, 1787: "A National Executive must also be provided. I have scarcely ventured as yet to form my own opinion either of the manner in which it ought to be constituted or of the authorities with which it ought to be clothed."

executive who would constantly need to gain his legitimacy and energy from the judgment of the people.

In general, Hamilton's praise for the Electoral College in this essay was directed at its tendency to overcome the problems he associated with direct popular elections. One desirable counter-popular tendency of the Electoral College was that it would allow the President to be selected by electors with greater "information and discernment" than "the general mass." Moreover, by only allowing the people to choose electors, and by confining deliberations among electors to separate States, the republic would escape the "tumult and disorder" that should be expected if the "heats and ferments" of the people were focused directly on the choice of the magistrate. Furthermore, "this detached and divided situation" of the electors would combine with "their transient existence" to immunize the Electoral College from the "most deadly adversaries of republican government": the "cabal, intrigue, and corruption" that are "expected to make their approaches from more than one quarter, but chiefly from ... foreign powers." Finally, Hamilton praised the Electoral College for its tendency to fill the office of the Presidency with "characters pre-eminent for ability and virtue" rather than those with "talents for low intrigue, and the little arts of popularity." The latter, of course, would be expected under a more popularly elected magistrate.

Thus, in the first essay to evaluate the merits of this principal republican element, popular accountability, of the proposed Presidency, Hamilton refrained from stating why the republican principle of popular control was preferable to life tenure and/or hereditary succession, and he overwhelmingly emphasized that the mode of

selection was beneficial because it would overcome what he thought were several shortcomings of popular control. Of course, Hamilton would be preaching to the choir by explaining why popular control was desirable. Remarkably, however, Hamilton nowhere in his *Federalist* essays gave a positive argument for the intrinsic merit of popular control of the executive, but he did, as we shall see, defend life tenure and hereditary succession both explicitly and implicitly.

The Bad, the Good, and the Best Regime

Although Hamilton refrained from offering a direct argument justifying the Convention's choice of a republican as opposed to monarchical executive, he did conclude #68 by offering an independent standard against which to judge forms of government. While he would not endorse the "heresy" that the *best* form of government was "[t]hat which is *best* administered," Hamilton did think it is safe to say "that the true test of a *good* government is its aptitude and tendency to produce a *good* administration" (emphasis added.) Hamilton did not say what distinguished the merely good from the best regime. He only offered that a necessary and sufficient condition for a regime to be considered good (rather than bad) was its "aptitude and tendency to produce a good administration." We have to look at his other writings to infer what he had in mind by the best versus the good.

As was discussed in the last chapter, Hamilton thought the best form of government, or at least the best in the world in his day, was the British balanced constitution.⁶⁸ However, we also know that he was an admirer and student of the

⁶⁸ "In my private opinion, I have no scruple in declaring, supported as I am by the opinion of so many of the wise and good, that the British government is the best in the world; and that I doubt much whether anything short of it will do in America." Madison Papers, 6/18/1787

systems of administration created by the autocratic European states (see esp. Flaumenhaft 1992). Perhaps the difference between the merely good and the best was that which distinguished the continental monarchies from the British constitutional monarchy: the liberty of subjects? Another possibility is that Hamilton thought a republican regime, even if poorly executed, is still good because it is at least directly committed to liberty. However, as if to assure readers that this was not his intended meaning, he would repeat his claim in *Federalist #70* (substituting “good execution” for “good administration”), but this time stating explicitly that a republic must meet the standard of good administration/execution to be considered merely good. The “enlightened well wishers” of republican government had better hope it is untrue that “a vigorous executive is inconsistent with the genius of republican government,” he argued, because “a government ill executed, whatever it may be in theory, must be, in practice, a bad government.”

This ordering of emphasis should not be surprising. After all, in *Federalist #1* Hamilton argued that “vigour [or “firmness and efficiency”] of government is essential to the security of liberty.” Moreover, in his explanation of *Federalist* principles in 1801, Hamilton argued that “the mild reign of rational liberty” is predicated upon “an efficient and well-balanced government” and achieved “through the medium of stable laws.”⁶⁹ This implies that “liberty” requires “executive energy” in the form of a “steady administration of the laws.” Although security of liberty was necessary for a government to be the best, good execution was necessary, among other things, to secure liberty, and so one could not have the former (and thus the

⁶⁹ “Address To The Electors Of The State Of New York, 1801.”

best) without the latter (which is sufficient for mere goodness). Crucial premises of Hamilton's constitutional judgment, therefore, were his contentions made at the convention that "you cannot have a good Executive upon a democratic plan" and that the "British Executive ... is placed above temptation[,]... can have no distinct interests from the public welfare [and that] ... nothing short of such an executive can be efficient."⁷⁰ Taken together, these statement suggested that Hamilton thought that (1) a republic is not good in itself, but, rather, must be well executed if it is to be considered good; (2) a republic probably cannot be well executed and therefore probably cannot be good (let alone the best); (3) a well administered absolute monarchy should be considered a good (but not the best) regime; and (4) the best regime, exemplified by the British balanced constitution, is one that is well executed (and thus monarchical) and provides for the individual security traditionally associated with republics (and therefore is balanced, limited, and constitutional).

This means that, with respect to the crucial question of executive power, Hamilton thought security of liberty, but not republicanism, could survive the fundamental problem of liberal republican constitutionalism. It was for this reason, as we saw in the previous chapter, that he thought the Constitution was highly inadequate. Nevertheless, since the Constitution was at least a right step in the counter-republican direction, his primary task with the *Federalist* had to be to win ratification. On this assumption, I interpret his major essays (#70, 71, 72) as his attempt to explain how the proposed Constitution would overcome the inherent tendency of republics to be poorly executed, and therefore to be incapable of

⁷⁰ Speech at Federal Convention, Yates Notes, 6/18/1787."

achieving one of their principal aspirations: securing liberty. However, as we shall see, despite the fact that his immediate audience feared that the proposed executive was inadequately republican, Hamilton would barely conceal the fact that he thought the Constitution was, as he said 16 years later, “frail and worthless” precisely because it was wholly popular and thus improperly balanced for providing the executive energy essential to any good regime. It seems, therefore, that Hamilton’s ambition with these essays was not merely to win ratification, but also to begin (re-)convincing his republican revolutionary audience that their rights and interests would be better secured by a mixed and balanced, rather than wholly popular, regime. And by introducing “good execution,” rather than conformity to republican principles, as *the* standard of good government (which was the opposite of the tact taken by Madison in #41), he had laid the groundwork for that argument.

The Meaning of “Executive Energy” and “Safety in the Republican Sense”

In #70, Hamilton seemingly acknowledged the tensions of liberal republican constitutionalism by juxtaposing the constitutional “ingredients” required for an “energetic executive” with those ingredients required for “safety in the republican sense.” The constitutional ingredients necessary for executive energy were “unity; duration; an adequate provision for its support; [and] competent powers,” while the constitution of “safety in the republican sense” consisted of “due dependence on the people; [and] a due responsibility.” He then prodded the reader to ask whether those ingredients are compatible and, if so, whether they are combined adequately within the proposed Constitution.

Before considering this aspect of his arguments, it is important to consider what he meant by “executive energy” and “safety in the republican sense.” Although both phrases present considerable ambiguity, commentators have offered little analysis of the meaning of the “energetic executive”⁷¹ while paying almost no attention to the intended meaning of “safety in the republican sense.” As the lawyerly Hamilton was perfectly capable of precision when he wanted his meaning to be clearly understood, it is important to consider closely what meanings he implicitly associated with these crucial but inherently nebulous phrases.

The Multiple (Conflicting?) Meanings of Executive Energy

Hamilton did not offer a direct definition of “energetic execution,” but he did use it interchangeably with “vigorous execution” and contrasted it with a “feeble execution” which, he claimed, “is but another phrase for a bad execution.” Elsewhere, moreover, he associated it with “firmness” and “efficiency.” The former had a specific meaning in the *Federalist*: the fortitude to stand against popular opinion. However, throughout his essays on the executive he spoke of several values that are not reducible to mere strength, firmness, or efficiency. As Mansfield (1993) has noted, although “energy” is a term from Newtonian physics, it most certainly was not value-neutral (p. 267).

Hamilton’s meaning is best inferred by considering what he thought to be the executive’s necessary functions, and what qualities of character were necessary for fulfilling their purposes. He provided a list of necessary functions in the first paragraph of #70. “Energy in the executive,” he stated,

⁷¹ The best discussion is by Mansfield (1993).

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. Every man, the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man, under the formidable title of dictator, as well against the intrigues of ambitious individuals, who aspired to the tyranny, and the seditions of whole classes of the community, whose conduct threatened the existence of all government, as against the invasions of external enemies, who menaced the conquest and destruction of Rome.

The executive, therefore, was essential for protecting the tranquility and liberty of the regime both in normal times—administering and enforcing the laws—and in times of domestic and international emergency. As was noted in the previous chapter, this marked a deviation from both Madison’s implied meaning in #37 and the traditional functions associated with the Roman dictator. We will discuss Madison’s and Jefferson’s views on “energy” below, but it is important to reiterate that Hamilton’s rhetorical strategy here seems to have been to find a way to bring “steady administration” into the definition of the executive’s function without creating alarm in his audience that he envisioned a robust replica of the British monarch. Shocking them with the dictator was safer rhetorically because it was at least recognized as a republican institution. He will move more gradually toward making the case for a non-republican executive in later essays.

Energy in the Executive as Essential for Foreign Affairs

By saying that the executive, like the emergency Roman dictator, was “essential,” first and foremost, “to the protection of the community against foreign attacks,” Hamilton followed Montesquieu in collapsing Locke’s federative, executive, and prerogative powers into the single category of “executive.” Few would contest

that the federative power is an essential function for a regime. As long as a regime is in anarchy in its relations with other regimes, and geophysical or other fortuitous circumstances do not render it immune from conquest, it must meet this purpose, depend on the (uncontrolled) protection of another regime, or stand at risk of harm if not annihilation. Hamilton implicitly assumed the regime was not immune to attack and chose “self-help” over vulnerability or subservience. Moreover, he took it for granted that this was an “executive” function.

What is the “energy” required for performing this function? Put another way, what qualities must the executive have to fulfill this purpose? Part of the answer must include the capacity to effectively and skillfully command the military and act strategically when attacks are immanent, including “decision, activity, secrecy, and dispatch” (# 70). However, even the Machiavellian statesman, Hamilton undoubtedly also meant the capacity to proactively shape events to the regime’s strategic advantage. As astute scholars of Hamilton have emphasized, a key insight into Hamilton’s outlook was provided by a quote by Demosthenes that he copied onto the cover his school notebook: “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*.” (Karl Walling 1995; Harper 2004; Stourzh 1970)

Throughout the essays he also emphasized the importance of sound and uncorrupted judgment about the public interest. So “energy” here also included the virtue, or its modern moral psychological substitute, of the office holder, as well as a

proper level of independence from corrupting domestic and foreign influences. Indeed, this was one way that he found liberty to be at one with “energy.” As he would write in his draft of Washington’s Farewell Address, foreign corruption was a threat to the liberty of the people as it can cause “the true policy and interest of our own country to be made subservient to the policy and interest of one and another foreign nation, sometimes enslaving our own government to the will of a foreign government” (August, 1796). So, when, in #75, he would suggest that the president had an inadequate level of the “duration” ingredient of “energy” to be reliably incorruptible from foreign powers, he had in mind that “energy” as insulation from foreign corruption, and thus as virtue, is also necessary for liberty.

Here it is important to note that Jefferson and Madison were equally appreciative of the importance of “energy” in the form of fast, decisive, and (when necessary) secretive action, as well as concerned about the susceptibility of republics to foreign corruption. However, Hamilton in his *Pacificus* (1793) essay would articulate a vision of executive independence quite different from Jefferson’s and Madison’s. His aim in that essay was to *legalize* by constitutional construction extensive Presidential independent authority in foreign affairs, thus bringing the President as close as the written text would allow to the legal authorities of the British monarch. For Jefferson⁷², any federative actions deemed necessary for the fundamental liberal republican public interest by the President, even if constitutionally questionable, should be taken by the executive. In justifying his

⁷² I have not been able to discern Madison’s full views on this, but he was certainly closer to Jefferson than Hamilton on the *desirability* of regularized—that is legalized—executive independence in foreign affairs. See his Helvidius essays in response to Hamilton (1793).

unilateral action in the Louisiana Purchase, for example, Jefferson thought it was “absurd” to think fidelity to the Constitution overrides actions necessary for the public interest:

A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.⁷³

However, for both Jefferson and Madison it was imperative that any such actions be fully admitted as illegal by the President, and that he then “throw himself” upon the people for their judgment.⁷⁴ Hamilton, on the other hand, argued against this on the grounds that it was dangerous to openly legitimate extra-constitutional action. The logic of his position, however, ran the danger of legitimizing actions that ran counter to the principles of propriety held by the people. He was well aware of this, but a hallmark Hamiltonian constitutional interpretation was the principle that where a power *could* be necessary, and especially where it appeared the extant balance of structural power militated against its effective use, it was better to stretch its legal authority as far as possible rather than err on the side of too much (additional) constraint on its effectual power.⁷⁵

⁷³ Jefferson to John B. Colvin (September 20, 1810)

⁷⁴ Ibid. “An officer is bound to obey orders; yet he would be a bad one who should do it in cases for which they were not intended, and which involved the most important consequences. The line of discrimination between cases may be difficult; but the good officer is bound to draw it at his own peril, and throw himself on the justice of his country and the rectitude of his motives.”

⁷⁵ Hamilton admitted that his reason for favoring a “liberal construction of the powers of the national government,” insofar as it was “consistent with constitutional propriety,” was due to his judgment that the extant balance of power between the States and national government heavily favored the former. (Hamilton to Colonel Edward Carrington, May 26, 1792.) A similar calculus was apparently involved in his construction of the President’s federative power viz. a viz. Congress. For an excellent analysis of Hamilton’s vs. Jefferson’s views on prerogative, see Fatovic (2004)

As for foreign corruption, my distant reading revealed that this was the problem with republics of which Hamilton most frequently spoke. Although he always addressed it in reference to the advantages of monarch's permanence, he vacillated throughout his life between trusting the greater duration of the Senate or the unity of the (and potentially future more monarchical) President. Madison never articulated a solution for this, but Jefferson raised it as one of his objections to the re-eligibility of the President. In his view, a President without perpetual re-eligibility for reelection would not be a likely target for foreign intrigue.

In addition to the need for unrestrained action in times of war or crisis, Hamilton, although he would not emphasize it in this essay, would elsewhere discuss the importance of the executive for conducting and maintaining regular relations with other regimes, particularly in the area of treaty negotiations and interpretation (#75, *Pacificus*). Here again, the virtue and incorruptibility of the executive was important, but the particular qualities required for fulfilling this function were different. Unlike the qualities necessary for being an effective commander in chief of the military in times of war, here "energy" in the executive consisted of the credibility and trustworthiness necessary for inspiring the confidence and respect of foreign power in the good faith of the regime as a contractual partner. Put another way, he pointed to the necessity that the executive assure foreign powers that the regime has the character becoming of an upright member of international society.

Energy in the Executive as Essential for Domestic Governance

Beyond the federative responsibilities of the executive, Hamilton pointed to essential domestic purposes. Although he introduced the Roman dictator as a model, this obscures the fact that he spoke not only of the domestic emergency functions

(prerogative) of the executive, but also of functions needed in normal times. For example, the “steady administration of the laws” implied that “energy” included stability and consistency. Here, “energy” was the opposite of “ruinous mutability” (# 72). This is quite different from the extraordinary and temporary office of the dictator, which, as we saw in the previous chapter, was something Madison implicitly acknowledged by speaking of “energy” and “stability” as two different desiderata of government in *Federalist* # 37. Yet, according to Hamilton, the executive must perform the crisis-resolving functions of the Roman dictator as well. That is, he must suppress insurrections (“those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice”) and protect liberty from domination or anarchy ignited by “ambitious individuals, who aspired to the tyranny” or “the seditions of whole classes of the community.” This means that “energy” required the ability and inclination to act swiftly, boldly, and skillfully to preserve a condition liberty. This would require discernment, political cunning, well-timed acts of repression or mercy, and, ultimately (if not to be self-defeating) self-restraint.

In *Federalist* #72, Hamilton mentioned a final purpose that is related to but distinct from both steady administration and flexible crisis management: to “plan and undertake extensive and arduous enterprises for the public benefit.” Like the function of steady administration, this was not necessarily a response to crisis and, indeed, would often be directed at preventing crisis. But, like crisis management, the “energy” required for this executive purpose consisted of extraordinary skill and dedicated exertion directed at promoting the public interest. And it was here that Hamilton referred to *the* moral quality—that manifestation of “energy”—that he was

most concerned to harness for the public interest: “fame, the ruling passion of the noblest minds.” As Douglas Adair (1974) has noted, perspectives on this passion defined the political orientation of the statesmen of the day. For our purposes, it is important to note what Adair said about Jefferson and Hamilton, but also what he failed to notice about Madison’s views on this passion with respect to the executive power. Adair emphasized the dinner debate between Jefferson and Hamilton, where the former argued, following Voltaire’s hierarchy, that Newton, Bacon, and Locke were the greatest men (most deserving of fame) who had ever lived, while the latter, following Bacon’s hierarchy, considered Julius Caesar the greatest. Adair rightly noted that this reflected a Hamilton’s deeper, and more classical, valuation of great political deeds than Jefferson. Stourzh (1970) and McDonald (1982), in turn, connected this to his vision of the constitutional need for heroic political leadership. But none have noticed Madison’s statement in the fourth Helvidius, where he, in his implied hierarchy of values, advocated subordinating all the “strongest passions and most dangerous weaknesses of the human breast,” including “the honourable or venial love of fame,” to the “desire and duty of peace.” Madison, it seems, was willing to construct a regime with a little less honor in order to avoid not only venality, but also the wars that the “noble minds” might wage. We will consider this further in the next chapter.

So, for Hamilton, “executive energy” seemed to consist of several distinct abilities and virtues that (1) the good regime requires for self-preservation, advantageous and just external relations, steady administration, general obedience of the governed to the law, and the carrying-out of great public works projects that

improve the general welfare and increase the regime's future capacity to meet contingencies, and (2) the best regime requires for maintaining its essential character as defined by its definitive commitment to liberty. We see here the enormous responsibility that would fall upon the shoulders of Hamilton's executive, and the "energy" he would require to fulfill these responsibilities, but this emphasis on energy did not fully address how the best regime—one that is not merely secure, orderly, stable, and well administered, but that is also committed to durable individual liberty—can be safe from an imperious executive office that is captured by a faction or individual that seeks to use it for ruling according to their own arbitrary will. As we shall see, his association of executive virtue and incorruptibility with "energy" addressed this problem, but this alone did not fully address how the two "republican necessities," whose antagonistic relationship constitute the fundamental problem of liberal republican constitutionalism, could simultaneously be resolved through the constitution of the executive.

The Meanings of "Safety in the Republican Sense"

Hamilton entered this terrain by invoking the notion of "safety in the republican sense." By this he seems to have meant institutional mechanisms intended to enable the people to exert control over, and thereby keep themselves safe from, the executive. It is therefore both an aspiration (security from executive oppression) and a mechanism (institutionalized popular accountability.) This is made clear by the only paragraph (the final paragraph) in the remaining seven essays in which he explicitly addressed the question of whether the Constitution adequately provided for "republican safety." (This was a not-so-subtle indication of the priority he placed on that problem.) In that essay he listed three specific mechanisms (the same elements

held-up as most distinguishing the proposed Presidency from the British monarch in #69) by which “safety in the republican sense” would be promoted: “...the election of the president once in four years by persons immediately chosen by the people for that purpose; his liability, at all times, to impeachment, trial, dismissal from office, incapacity to serve in any other, and to the forfeiture of life and estate by subsequent prosecution in the common course of law” (#77).

As we shall see, this is not all he had to say on the question of constraints on the executive power, but it makes his general meaning clear. However, it is not clear what he meant to imply by associating negative control over the executive with the phrase “safety in the republican sense.” To what other “sense” of “safety” was he contrasting that which was distinctively “republican”? Was he referring to a distinctively republican conception of “danger” or to a distinctively republican approach to attaining safety from that danger? More specifically, did he mean to imply republicans are indifferent or blind to threats to their safety other than that of unchecked executive power? That is, was he suggesting that republicans do not understand that executive energy is necessary to keep them safe from internal and external threats to their rights, interests, and liberty? Or was he suggesting that there are different, perhaps even better, mechanisms, other than popular control, such as those provided in the British balanced constitution, by which the people can be kept safe in this narrow sense of protection from arbitrary executive rule? There is evidence that he had a combination of both meanings in mind.

At times he seems to have meant “republican” strictly in an aspirational sense: the republican *end* of protecting the people from arbitrary executive power. The best

evidence for this is the fact that he included “due responsibility” with “due dependence on the people” to his list of ingredients necessary for “republican safety.” By the latter he seems to have meant electoral control, whereas by the former he meant control by other branches of government. Strictly speaking, only control through election is necessarily a republican mechanism since, in principle, an aristocratic legislature or judiciary could be the sole source of “due responsibility” for the executive. This means two of the three elements of the Constitution that he held-up in #77 as provisions that provide republican safety—liability to impeachment and, thereafter, criminal conviction and punishment—could be achieved, in principle, through a constitutional monarchical framework.

Another example illustrating that he meant to specify a particular aspiration, as opposed to mechanism, by speaking of “republican safety” are the statements he made pertaining to the susceptibility of republics to foreign corruption. Consider, for example, this statement he made in *Federalist* #75:

However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years' duration. It has been remarked, upon another occasion, and the remark is unquestionably just, that an hereditary monarch, though often the oppressor of his people, has personally too much stake in the government to be in any material danger of being corrupted by foreign powers.

Here, the “safety” aspired for was different from safety *from* the executive, and thus, presumably, was safety in a *non-republican* sense. Foreign corruption threatens the regime, and thereby its citizens, by jeopardizing its autonomy (*de facto* political independence) and making it more vulnerable to foreign attack. This was one reason, as we saw above, that he considered incorruptibility from foreign power

to be an essential element of “executive energy,” *and* that he saw energy as necessary for liberty. However, this argument suggests that the danger of foreign corruption could be avoided best by having an hereditary monarch. Yet this solution, he fully admitted, would actually diminish the people’s protection from executive abuse since “an hereditary monarch ... [is] often the oppressor of his people” (# 75).

Consequently, this suggests not only that he thought “republican safety” was distinct from other forms of “safety,” but also that the constitutional means of providing for the two forms of safety could stand in pure conflict with one another.

At other times, however, he seemed to suggest that the people can simultaneously enjoy the security provided by an executive while living secure from arbitrary executive coercion insofar as they live under a balanced constitutional monarchy of the British mold. In other words, by qualifying “security” in a “republican sense” he seems to have meant not only that republican theory is myopic about sources of insecurity—always choosing one form even when it conflicts with another—but also that republican theory is myopic in its understanding of how best to provide the one form of security about which republican theory is concerned.

Consider, for example, his statement at the Federal Convention that, while similar, differs crucially from the above statement by claiming that, while, like all hereditary monarchies, the British monarchy is free from foreign corruption, it is also “sufficiently controlled ... at home” and therefore (presumably) not oppressive to his people:

As to the Executive, it seemed to be admitted that no good one could be established on republican principles.... The English model was the only good one on this subject. The hereditary interest of the king was so interwoven with that of the nation, and his personal emolument so

great, that he was placed above the danger of being corrupted from abroad, and, *at the same time, was both sufficiently independent and sufficiently controlled to answer the purpose of the institution at home.* One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring great power, become easily the tools of intermeddling neighbors. (6/18/1787, Madison's notes, emphasis added)

Presumably, he meant that the checks exerted by the Commons and Lords were sufficient to keep the executive from exercising arbitrary control. This was a non-republican mechanism for achieving the republican aspiration of liberty from arbitrary executive oppression.

Another telling example was the language he used in #70 to make his case that a unitary executive is more easily controlled than a plural executive. After stating that the idea of a plural executive “has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man,” he suggested that “the species of security sought for in the multiplication of the Executive, is unattainable” by those means. He thus distinguished republican security, in the sense of controlling executive power, as merely one “species” of security, *and* he argued that a preferred republican mechanism for achieving that security, plurality in the executive, was inadequate.

As we will soon see, careful consideration of his remaining essays cast doubt on the possibility of reconciling the ingredients of executive energy with those of the principal republican *mechanism*—popular control through election—for attaining the republican aspiration of individual liberal. However, he did not necessarily think this meant the death knell for liberty as individual security. Unlike Madison, who set-up the problem in *Federalist #37* as one of how to combine “the requisite stability and energy in government, with the inviolable attention due to liberty and to the

republican form,” and, later “the genius of republican liberty,” Hamilton typically did not put “liberty” on the “republican form” side of the ledger. When “liberty” appeared, it was considered to be compatible with, if not dependent upon, the ingredients necessary for executive energy. But those ingredients were not always compatible, and sometimes would be portrayed as undermining, *republican* liberty. This seems to have been an additional part of his re-education of his “republican” audience.

Hamilton’s defenses of unity in the executive in #70 and for re-eligibility in #72 appear on their face to contradict this contention. In those essays he asserted principles of constitutional design that suggest a compatibility of energy, liberty, and popular control over the executive. However, a careful juxtaposition of those essays with his arguments for “duration” in # 71 reveals a contradiction. In light of his other writings, it appears, moreover, that he more sincerely believed his arguments pertaining to duration, for creating popular insulation, than those contradictory arguments claiming unity and re-eligibility to be beneficial for improving popular accountability. These essays both reflect the key difference between Hamilton and the Virginians, and embody his most explicit act of opinion leadership.

***Unity and the Reconciliation of “Energy” and “Safety”:* #70**

In #70, Hamilton offered his famous defense of a single unitary executive, as opposed to two or more co-equal executives, like the two consuls of the Roman constitution, or a single executive controlled in whole or partly by a committee of counselors, as with the contemporaneous constitutions of New Jersey and New York. His case was powerful because he argued not only that unity is a necessary ingredient

of energy, but also that it better promotes republican safety—individual liberty through popular control over the executive—than does plurality in the executive.⁷⁶ It thus defied one of the classical trade-offs of liberal republican constitutionalism. Recall that Montesquieu’s case for placing executive and federative powers in a monarch was the advantages of speed and decision that institution had on account of its being unitary. This argument by Hamilton, which was fully embraced by Jefferson and Madison, demonstrated that a republic could safely enjoy *that* advantage typically provided by monarchs.

To support this thesis, he advanced and supported the following principles of constitutional design:

1. An energetic executive must act with “decision, activity, secrecy, and despatch,” and these qualities will more likely be found in one man than a greater number, and will be diminished in direct proportion as the number of men is increased.
2. Plurality in the executive inevitably leads to disagreement. This disagreement could “impede or frustrate” the administration of the government or split the community into contending factions. So, unity in the executive also promotes “energy” (and liberty) in the form of stability and efficiency.
3. In a “free government,” it is necessary that a unitary executive be counterbalanced by a numerous legislature. The legislative branch benefits from disagreement and slowness of decision, as these things promote deliberation and circumspection and better allow it to perform its vital functions, among which are “to conciliate the confidence of the people, and to secure their privileges and interests.” But these things are undesirable in the executive branch as they undermine energy (for reasons given in 1 and 2).
4. Republican safety is better promoted by having a unitary executive than a plural executive. Contrary to “that maxim of republican jealousy which considers power as safer in the hands of a number of men, than of a single

⁷⁶ This essay is often cited by contemporary adherents of the “unitary executive theory” to support their contention that Presidents may legitimately exercise substantial unilateral power (i.e. act without Congressional approval or even against Congressional proscriptions) due to, among other things, their greater level of democratic legitimacy. (Bailey, 2008, p. 453; 456-458)

man,” it is in fact “far more safe there should be a single object for the jealousy and watchfulness of the people.” Plurality “tends to conceal faults and destroy responsibility,” as it allows the “blame ... of a pernicious measure, or series of pernicious measures” to be “shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author.”

It is important to note, first, that Hamilton’s first two principles can apply to any kind of regime—republic, constitutional monarchy, or absolute monarchy—while the third can apply to either a republic or constitutional monarchy and the fourth can apply only to a republic. It is also important to note that, in this form, the republican benefit of unity is seen solely in negative terms: the ability of the people to blame and punish executive incompetence or malfeasance.⁷⁷ It is only in #72, where he made the case for re-eligibility, that he suggested the responsibility promoted by unity can serve the positive function of allowing the people to reward, and thereby encourage, beneficial executive actions on behalf of the public interest. But, as will be seen below, even in that essay Hamilton articulated a very different relationship between popular will and presidential action than did Jefferson and Madison. The latter two genuinely believed in, as Madison put it, “the great principle of unity and responsibility [i.e. electoral accountability] in the Executive department, which was intended for the security of liberty and the public good.” (April 9, 1789, proceedings of first Congress) I believe Hamilton thought unity, to the contrary, was necessary but not sufficient for promoting the energy necessary for securing liberty and promoting the public good, and that he thought “responsibility” in Madison’s sense of electoral control would undermine, not support, liberty and the public interest.

⁷⁷ It is thus purely about republican safety rather than the authority for positive action claimed by unitary executive theorists. A problem with Bailey’s (2008) interpretation of this essay is that he tends to conflate the negative and positive purposes of popular responsibility.

But even in #70 Hamilton sought to teach his audience that executive energy must take precedence over republican safety. Near the end of the essay, after attributing the idea of a plural executive to “that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man,” he submitted that, if that maxim were (counterfactually) true, in his judgment “the advantage on that side would not counterbalance the numerous disadvantages” for energy that plurality would create.

The biggest problem with Hamilton’s republican arguments in support of unity (in #70) and re-eligibility (#72) is that his case for duration in #71 called into question the desirability of allowing the people to exert any kind of electoral control—positive or negative—over the executive.⁷⁸ Hamilton made it clear, to the contrary, that the duration of the executive’s tenure in office necessary for energy, and thus a good regime, was at odds with popular control over the executive, and, thus, the distinctively republican mechanism for providing safety. Importantly, however, his argument for duration was compatible with the first three principles, and thus the requirements of his merely good regime (well executed monarchy) and his best regime (energetic and free constitutional monarchy).

Duration, “Energy,” and “Republican Safety”: #71 and 72

Jefferson and Madison on Duration, Energy, and Safety

The key contribution of Bailey’s (2007) reinterpretation of Jefferson’s views on executive power is that Jefferson was in fact a proponent of a “strong” or “energetic” executive. Importantly, Jefferson’s well known support for term limits on

⁷⁸ Bailey (2007 and 2008) completely missed this crucial point.

Presidents was not merely about “republican safety.” He had only two objections to the proposed Constitution in 1787: its exclusion of a bill of rights and the perpetual re-eligibility of the President. On republican safety grounds, he stated a fear that re-eligibility would effectively amount to life tenure, which would easily evolve into hereditary succession. However, Bailey’s astute observation is that Jefferson also thought limited duration in office was an important component of executive energy. The reason for this was that Jefferson thought too much time in office would lead to “servile inertness,” whereas the office required the “firmness,”⁷⁹ “vigor and enterprise”⁸⁰ that is found only in “younger heads.”⁸¹ Consequently, although Jefferson—a natural aristocrat who believed, like Madison, in the superiority of representative to direct democracy⁸²—thought executives need to be temporarily removed from the people and, especially, the legislature, in order to competently discharge their duty to the people, he thought duration in office past a certain point would diminish both republican safety and energy.

As we saw in the previous chapter, moreover, Madison, in his principled commitment to protecting republics from the problem of violent death through institutions compatible with republican principles, relied primarily on representation, the extended sphere, and a firm upper legislative chamber with long duration. The latter, as we saw, was his preferred source of “power” for dealing with the problem that not only too much, but also too little power can lead to despotism. As he argued

⁷⁹ Jefferson to Archibald Stuart, January 4, 1797.

⁸⁰ Jefferson to Thomas Flourney, October 1, 1812.

⁸¹ Ibid.

⁸² “A government is republican in proportion as every member composing it has his equal voice in the direction of its concerns ... by representatives chosen by himself, and responsible to him at short periods” (July 12, 1816)

in *Federalist 63*, “history informs us of no long lived republic which had not a senate. Sparta, Rome, and Carthage, are, in fact, the only states to whom that character can be applied.” We have also seen that Madison made a clear distinction between energy in the executive and stability in the legislature, and he, unlike Hamilton, looked only to “stability” (less mutability, but also greater justice and prudence) in legislation to prevent the factional violence that would lead the republic into anarchy and then despotism. Although Madison’s writings do not indicate that he put nearly as much thought as Jefferson into the problem of reconciling executive energy with republican principles, it is certain that he agreed with Jefferson’s basic contention that, while an energetic executive required a lengthy duration, after a certain point (around seven years) both energy (firmness, vigor, and enterprise) and republican safety would be diminished.

Hamilton on Duration and Energy

Hamilton’s theory of the relationship between duration and “energy,” as espoused at the Convention, and, as we shall soon see, in *Federalist 71*, defied this reasoning. As we saw in the previous chapter, Hamilton’s definition of a republic heavily emphasized the distinction between hereditary and non-hereditary succession of office holders. A republic, he stated repeatedly, should be defined as a regime based on “an equality political rights, free of hereditary distinctions.” When he stated at the Convention, therefore, that “we ought to go as far, in order to attain stability and permanency, as republican principles will admit,” he was referring to the creation of a Senate and executive with life tenure. When “all the magistrates are appointed and vacancies are filled by the people, or by a process of election originating with the people,” the regime can properly be considered “republican.” A regime can properly

be considered monarchical only once the line is crossed into hereditary succession. Moreover, Hamilton made it clear that he thought “executive energy” in the form of “firmness,” “independence,” “stability,” and “permanency,” would be adequately achieved only by a monarchical, and therefore hereditary, executive. Under the Virginia Plan for an executive of seven years duration he argued that

the Executive ought to have but little power. He would be ambitious, with the means of making creatures, and as the object of his ambition would be to prolong his power, it is probable that in case of war he would avail himself of the emergency to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power.

However, he argued that even an executive with life tenure, as he proposed, “would have, in fact, but little of the power and independence that might be necessary” for meeting the regime’s functional needs. So Hamilton, unlike the Virginians, saw a linear relationship between “energy” and duration.

Purposes for “Energy” and Strategies for “Safety”

At root, this difference between Hamilton and the Virginians was not a technical disagreement over the effects of duration on the “power” or “strength” of the executive, as Bailey (2007, 2008) has suggested. The crucial difference was in (1) the role they envisaged for “firmness” in the executive’s composition, and (2) how they thought “republican safety” (as an aspiration) should be secured.

For Hamilton, “firmness,” or the will to take a principled stand against corrupting forces, was a direct function of the executive’s insulation from electoral control. Elections could corrupt for two reasons: foreign intrigue or public opinion. As we have seen, he (and Jefferson) were deeply concerned about the former, but in his Convention speech and, as we shall soon see, in *Federalist 71* (albeit gently), he

emphasized the latter. In that speech, he listed factional strife, and the degeneracy into anarchy and then despotism, as one reason for firm government. However, his emphasis was on the “unreasonableness of the people”:

The voice of the people has been said to be the voice of God; and, however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right ... Can a democratic Assembly, who annually revolve in the mass of the people, be supposed steadily to pursue the public good?⁸³

Since they could not, “[t]here ought to be a principle in government capable of resisting the popular current,” and “[n]o periodical duration will come up to this.” Consequently, a hereditary upper legislative chamber and monarch were essential. For the regime to be free, and thus the best, it was essential that the government be partially in the hands of the many. There must be a “vigorous defense of the people.” But their influence must be contained within a single legislative chamber so that the government can meet the minimal requirements of mere goodness (as well as escaping republican violent death). If “a republican government does not admit a vigorous execution,” then it “is therefore bad; for the goodness of a government consists in a vigorous execution.” Those “Gentleman [who] say we need to be rescued from the democracy” are correct, but their proposed means “will not be equal to the object” and therefore “the end [securing effectual rule on behalf of the public interest] will not be answered.”⁸⁴

With respect to firmness and safety, Jefferson and Madison shared two things in common with Hamilton. They did think it important for the executive to be “firm”

⁸³ Hamilton Speech at Federal Convention, 6/18/1787

⁸⁴ Hamilton’s Notes for Speech at Federal Convention, 6/18/1787

against *legislative* encroachments, and they did think that it was essential to liberty that the people enjoy the protection of independent courts.⁸⁵ And Madison, of course, shared Hamilton's concern about excessive popular influence leading to despotism. However, they differed in these crucial respects. First, they thought firmness against the legislature was not equivalent to firmness against the people. The "mother principle," Jefferson told Samuel Kercheval, is that "governments are republican only in proportion as they embody the will of their people, and execute it." The problem with legislatures was that they could be parochial and unreflective of the will of the people. The reason Jefferson and Madison both supported the 12th Amendment was because they genuinely believed that the President should embody the will of the whole people. And this was in no small part because they both believed in the efficacy of the extended sphere for reducing the role of faction in that national majority. Moreover, they thought the popular base of the executive was a legitimizing resource to use against legislative encroachment (Bailey 2007, 1-28)

Third, on republican *safety* grounds, the Virginians were the opposite of Hamilton in how they prioritized popular voice in the legislature vs. popular accountability of the executive. We have seen Madison's insistence on the importance of the great chain of responsibility emanating ultimately from the people. Jefferson actually went further by stating:

Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislature. The execution of the laws is more

⁸⁵ See Read (2000) for an excellent discussion of Hamilton's commitment to the traditional civil rights of Englishmen.

important than the making them. However it is best to have the people in all the three departments where that is possible.⁸⁶

By stating “all three branches,” Jefferson was assuming popular influence over the properly “executive” branch in addition to the “Judiciary department” implied here. But, the more pertinent point is that by saying it was “more important” for the people to have control in the judiciary than in the legislature, Jefferson meant that “safety” was more threatened from arbitrary executive law enforcement than by arbitrary legislation.⁸⁷

In sum, duration in the executive was the critical bone of theoretical contention among these founders because it went to the heart of the purpose of the executive. Hamilton’s executive, like Madison’s Senate, was to be fundamentally a counter-democratic institution. Jefferson’s and Madison’s executive, by contrast, would be temporarily removed from electoral control (through moderate term duration) so as to bolster independence and firmness, but it would also ideally be elective both to secure the rights of the people (safety) against arbitrary executive power and to induce it to reflect and carry out the will of the people.

Hamilton’s “Rhetoric” in #71

In general, the constitution of the President as proposed by the convention would have been fairly easy to defend as striking a reasonable balance between energy and safety. Hamilton could have argued that duration, while necessary for firmness, becomes dangerous past a certain point and so the framers prudently drew the line at four years, with re-eligibility. Instead Hamilton chose to give a quasi-

⁸⁶ Jefferson to L’Abbe Armond, July 19, 1789.

⁸⁷ Bailey (2007, pp. 1-28) got it exactly backward suggesting this was an argument for energy in the (proper) executive. Jefferson was talking about safety from the executive through juries.

defense of the proposed institution that, in reality, amounted to a restatement of his genuine principles. At the heart of this essay was a careful defense of his (monarchical) principle of duration, which would have done nothing to ease the anti-federalist's apprehension about the "sinister" motives of the framers (Storing 2006). Hamilton would moderate his anti-democratic language, in contrast to his statements at the convention, but that was a minimal rhetorical accommodation to the republican prejudice of his audience. The thrust of the argument given, however, was a direct challenge to that prejudice. Consequently, I argue this essay should be interpreted as Hamilton's attempt to begin persuading his audience to accept the necessity of a monarchical rather than the proposed republican executive.

There were two elements in his effort at re-education. First, he would establish his scientific-sounding, but inherently monarchical principle that "energy in the executive"—which, here he taught really meant "the personal firmness of the chief magistrate ... [and the] stability of the system of administration"—is directly proportional to duration in office. Second, he sought to establish (gently) that a properly constituted executive primarily serves a counter-democratic function in a good regime.

Hamilton asserted his "scientific" principle in the first paragraph: the "longer the duration in office," he argued, "the greater will be the probability of obtaining [the] important ... advantage[s]" of "personal firmness" and "stability in administration." (The remainder of this essay was devoted to firmness, and then he discussed stable administration at the beginning of #72.) Why was there a simple linear relationship between duration and firmness? It was, he argued, ultimately

rooted in human psychology: “a man will be ... less attached to what he holds by a momentary or uncertain title, than to what he enjoys by a title durable or certain.” If an executive knew he “*must*” [Hamilton’s emphasis] leave office at a stated time, then he would be “too little interested ... to hazard any material censure or perplexity” that would result from the “independent exertion of his powers” or standing up against “the ill-humours, however transient, which may happen to prevail, either in a considerable part of the society itself [i.e. the people], or even in a predominant faction in the legislative body.” In other words, the term-limited chief magistrate would be too apathetic to enact or execute necessary but unpopular (or politically inconvenient) measures. This was fairly hard-edged, but essentially anticipated the case for re-eligibility that he would make in #72. But then he went further. To assure his reader’s that he literally meant that there was an unqualified linear relationship between duration and firmness, he asserted that a magistrate who merely knew he “*might*” [Hamilton’s emphasis] need to step down “unless continued by a new choice” would *also* fail to serve the public interest when necessity, but not the popular current, dictated it because “his wishes, conspiring with his fears, would tend still more powerfully to corrupt his integrity, or debase his fortitude.” In other words, *any* kind of electoral accountability would diminish the personal firmness of the chief magistrate. But not only that, it would do so “more powerfully” than in the term limited magistrate. The upshot was that “feebleness and irresolution must be the characteristics of” any executive who is term limited or forced to face reelection.

After this powerful opening, rather than moderate his claim, Hamilton immediately went on the attack against those who thought the executive should be

directed by a “servile pliancy ... to a prevailing current, either in the community, or in the legislature.” Hamilton could have offered his oft-repeated claim about too little firmness leading to anarchy and then despotism. Instead, he chose to assert the counter-democratic principle. Those persons who advocate such servile pliancy “entertain very crude notions” about “the purposes for which government was instituted ... [and] the true means by which the public happiness may be promoted.” Bowing a bit to prejudice, Hamilton did not repeat his belief expressed at the Convention that government is instituted due to the “unreasonableness” of the people. Instead he immediately turned to giving an (unorthodox) account of what “the republican principle demands” with respect to the relationship between popular will and executive power. Seemingly acknowledging the necessary role of popular opinion in a republic, he stated that the republican principle demands that “the deliberate sense of the community should govern the conduct of those to whom they intrust the management of their affairs.” However, in a gentle manner, he asserted that the *demos* would not often be the correct judge of the *community’s* “deliberate sense.” Although “the people commonly *intend* the public good,” they do not “always *reason right* about the *means* of promoting it” (*emphasis in original*). This was not, as he otherwise indicated at the Convention, due to anything innate about the people. Rather, the problem was that they were commonly deluded by demagogues: by “the wiles of parasites and sycophants; by the snares of the ambitious, the avaricious, the desperate; by the artifices of men who possess their confidence more than they deserve it.” Yet, it will be noticed, by implication the people were often not a good judge of desert. This will be important when considering his argument in #72.

Hamilton then instructed his audience that, as a consequence of the people's susceptibility to manipulation by demagogues, it was necessary to insulate officials from the people in anticipation of those situations where "the interests of the people are at variance with their inclinations" and their agents must fulfill their "duty ... to be the guardians of those interests."

After making this explicitly counter-democratic argument, he acknowledged that his republican audience may still "insist upon an unbounded complaisance in the executive to the inclinations of the people." So next he would apparently show a little complaisance himself and seek common ground with his audience. Everyone, republicans and non-republicans alike, he suggested, should agree (echoing Madison in #'s47-51) that the "personal firmness" of the executive is at least necessary for maintaining an effective separation of (functional) powers, which, in turn, is essential to both parties' conception of the "fundamental principles of good government." So, duration is important because firmness (defined by popular electoral insulation) is necessary to protect the people from their elected legislators:

[The legislature] may sometimes stand in opposition to the [people]; and at other times the people may be entirely neutral. In either supposition, it is certainly desirable, that the executive should be in a situation to dare to act his own opinion with vigour and decision.

If "both the executive and the judiciary are so constituted, as to be at the absolute devotion of the legislative," then, he argued, the separation of powers "must be merely nominal, and incapable of producing the ends for which it was established"

Since this part of his argument was intended to dampen the counter-democratic thrust of his initial rationale, Hamilton had to explain why electoral insulation would strengthen the executive's firmness viz. a viz. the legislative branch

(as opposed to the people themselves.) “It may perhaps be asked,” he admitted, “how the shortness of the duration in office [i.e. any form of electoral accountability] can affect the independence of the executive on the legislature, unless the one were possessed of the power of appointing or displacing the other?” He gave two reasons. One was “drawn from the principle already mentioned,” that a man will have “slender interest ... in a short-lived advantage, and little inducement ... to expose himself, on account of it, to any considerable inconvenience or hazard.” But his second reason was essentially a restatement of his contention that the people could be easily deluded. However, here, instead of the delusions emanating from demagogues, they would come from “the circumstance of the influence of the legislative body over the people; which might be employed to prevent the re-election of a man who, by an upright resistance to any sinister project of that body, should have made himself obnoxious to its resentment.” This, of course, would apply to any executive facing re-election, including the proposed President.

So now, Hamilton, realizing this, started a quasi-defense, in the penultimate paragraph, of the actual institution under consideration, rather than that which he hoped the people would eventually come to accept. Here he anticipated and addressed the objection that his argument seemed to imply that the four year duration of the proposed President would inadequately “answer the end proposed” (i.e. energy as “personal firmness”). The hypothetical objection went further, stating that if four years was not enough for firmness, perhaps it was long enough to threaten the public liberty, and that, therefore, rather than have the worst of both worlds, it would be better to shorten the duration.

He began addressing the first part of the objection by admitting that he doubted the proposed executive would have adequate firmness to perform its counter-democratic function. “It cannot be affirmed,” he stated, “that a duration of four years, *or any other limited duration*, would completely answer the end proposed” (*emphasis added*). Indeed, he had spent the previous five paragraphs forcefully affirming the opposite. But then, in the next sentence, he would moderate the claim by stating four years duration would nevertheless “contribute towards [firmness] in a degree which would have a material influence upon the spirit and character of the government.” This was hardly confidence-inspiring assertion, however, since the question was “*How much* degree of influence would four years’ duration have on firmness?” His answer was that after election and before re-election (or termination), “there would always be a considerable interval, in which the prospect of an annihilation would be sufficiently remote, not to have an improper effect upon the conduct of a man endued with a tolerable portion of fortitude.” Such a man, moreover, “might reasonably promise himself, that there would be time enough before it arrived, to make the community sensible of the propriety of the measures he might incline to pursue.” Although “it be probable that, as he approached the moment when the public were, by a new election, to signify their sense of his conduct, his confidence, and with it his firmness, would decline;” Hamilton argued it was possible that a President “might ... with prudence, hazard the incurring of reproach, in proportion to the proofs he had given of his wisdom and integrity, and to the title he had acquired to the respect and attachment of his fellow citizens.”

He then addressed the second part of the objection—that four years might be long enough to threaten the public liberty—by making a remarkably audacious argument based on a comparison with the British constitution. The effect of this argument, moreover, was to go well beyond his claim that life tenure would be necessary to endow the institution with requisite firmness. So far were Americans from having grounds for fear that the proposed executive with four year terms would threaten their liberty, he argued, even the British monarch was, if anything, in greater danger of becoming inadequately firm than of becoming a threat to *British* liberty:

If a British house of commons, from the most feeble beginnings, ... have, by rapid strides, reduced the prerogatives of the crown, and the privileges of the nobility, within the limits they [though not Hamilton?] conceived to be compatible with the principles of a free government, while they raised themselves to the rank and consequence of a co-equal branch of the legislature; if they have been able, in one instance, to abolish both the royalty and the aristocracy, and to overturn all the ancient establishments, as well in the church as state; if they have been able, on a recent occasion, to make the monarch tremble at the prospect of an innovation attempted by them; what would be to be feared from an elective magistrate of four years duration, with the confined authorities of a president of the United States? What but that he might be unequal to the task which the constitution assigns him? I shall only add, that if his duration be such as to leave a doubt of his firmness, that doubt is inconsistent with a jealousy of his encroachments.

It should be noted that Madison made a similar argument about the Senate in #63 by noting the encroachments made by the Commons on the Lords as an example of how formidable popular assemblies can be. However, as we have seen, this was hardly equivalent in its audacity. The revolution had repudiated monarchy, not bicameralism.

In sum, this essay, far from being a bow to prejudices for short-term ratification was a risky defense of the superiority of the British model to the proposed

republican executive. Since this would, if anything, imperil ratification, I interpret this essay as an example of Hamilton's long-term effort at swaying public opinion to his way of thinking.

The Sudden Appearance of a Competent *Demos*: Hamilton's Problematic Case for Re-Eligibility (#72)

Hamilton would change his tone and tactics considerably in #72 as he made the case for re-eligibility. Through this essay he would introduce propositions and principles that sat uneasily with, and at times flatly contradicted, the arguments he made in #71. Compared to the previous essay, this one exhibited far greater optimism about the likelihood that popularly accountable executives would have the "courage and magnanimity" to fulfill their duty "to serve [the people] ... at the peril of their displeasure" (#71). More precisely, in this essay he generally disregarded the conflict between the people's "inclinations" and their true "interests" and emphasized instead (1) the benefits to the community to be gained from allowing *deserving* executives to *earn* re-election and (2) the dangers to free government and the public interest created by preventing avaricious or ambitious executives from seeking re-election. In this section I review his argument and note how the major principles asserted in this essay contradicted those of the previous. Then I conclude with an explanation for why he took this tact.

Before addressing re-eligibility, Hamilton devoted the first paragraph to the other advantage, besides "personal firmness," to be gained by duration: "stability of the system of administration." For a variety of reasons "every new president [will tend to] promote a change of men to fill ... subordinate stations," and the result of this would be "a disgraceful and ruinous mutability in the administration of the

government.” Consequently, there was an “intimate connexion between the duration of the executive magistrate in office, and the stability of the system of administration.”

Then he turned to the essays main topic, which, he argued was closely connected to that of the last: “With a positive duration of considerable extent, I connect the circumstance of re-eligibility.” He then gave a slightly different account of why duration was “necessary.” Instead of “firmness,” duration now gave “the officer .. the inclination and the resolution to act his part well.” These could be seen as equivalents, but then he offered a very different image of the people. Duration, he posited, would also give “the community time and leisure to observe the tendency of his measures and thence to form an experimental estimate of their merits.” The voters, who in the previous essay were incurably manipulatable, were now expected to carefully estimate the tendency of the executive’s measures. With re-eligibility, moreover, the people would be “enable[d], when they [saw] reason to approve of his conduct, to continue [the magistrate] in the station, in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of administration.” Of course, he had said in the previous essay that “the people commonly intend the public good ... [but they do not] always *reason right* about the *means* of promoting it.” He was thus careful to say here that they would estimate the “tendency” of measures, rather than the measures themselves. But he also now expected the people to evaluate “conduct” and have enough sense to reelect those who have demonstrated “talents and virtues.” This was also a departure from the image of the magistrate who, as a consequence of needing to seek reelection

to prolong his duration, would most likely have his “integrity” “corrupt[ed]” and his “fortitude” “debased.” The implication before had been that chief magistrates would not seek reelection through good measures, but, rather by a “servile pliancy ... to a prevailing current ... every sudden breeze of passion ... to every transient impulse which the people may receive from the arts of men.” Any magistrate, he had just argued, who was forced to seek election would be highly unlikely to have the “courage and magnanimity enough to serve [the people] at the peril of their displeasure.”

For the rest of the essay, Hamilton proceeded to argue for re-eligibility by arguing against exclusion. This also was a departure from the previous essay. There, as we saw, he argued that the corrupting and debasing influences of non-life-tenure would operate “more powerfully” in the executive seeking reelection than in the one merely excluded from the opportunity for reelection. Here, however, he gave several reasons why the community would benefit more from the former than the latter. Let’s consider a few of these reasons.

One was already implied. Exclusion, he argued, would lead to “a diminution of the inducements to good behaviour.” With re-eligibility, he implied, executives would be allowed to “entertain a hope of *obtaining*, by *meriting*, a continuance of office” [Hamilton’s italics.] Again, he had previously given every reason to believe they would not seek “continuance” in this way. Now he even suggested that magistrates seeking reelection might be animated by “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.” The problem, of course, is

that for this to work, the people would have to reward, or refrain from punishing, the meritorious acts of executives, but, as we saw, Hamilton suspected that the people would often be poor judges of merit.

Also, whereas in #71 he posited that an executive ineligible for reelection will be too apathetic to fulfill his duty to resist popular opinion, in this essay he warned of avaricious or ambitious men whose vicious passions would lead them to threaten the public good, if not the public liberty, if they were excluded from the opportunity for reelection. In the previous essay he argued that a term-limited office would be relatively uninteresting to such characters, while here he refers to the office as “the summit of his country's honors” and something they would reluctantly part with.

Re-eligibility, moreover, could lead to experience, which was “the parent of wisdom.” This could have easily been a part of his argument in the previous essay. As we saw, at the Convention, but not in the previous essay, he argued for a life term (in this case, for Senators) on the grounds that “duration should be the earnest of wisdom and stability.” But, again, why should we expect the wise to be reelected?

Finally, in case of emergencies—when a “nation” faces the “absolute necessity of the services of particular men in particular situations; perhaps ... to the preservation of its political existence”—exclusion can be a “self-denying ordinance” that “serves to prohibit a nation from making use of its own citizens in the manner best suited to its exigencies and circumstances.” At times, such citizens could be needed due to their “personal essentiality,” but at other times a “change of the chief magistrate, at the breaking out of a war, or at any similar crisis, for another, even of equal merit, would at all times be detrimental to the community, inasmuch as it would

substitute inexperience to experience, and would tend to unhinge and set afloat the already settled train of the administration.”

Why This Rhetorical Tact?

It is impossible, after having read the dreary analysis of #71, to not find the heroic image of the executive (and the electors) in #72 somewhat heartening. Mansfield (1993) interprets #72 as indicating that the republic was designed to “employ [the] ... preeminent virtue and abilities” of “extraordinary men” in “order to become great” (270). Certainly, this essay envisioned unusually high conduct by officeholders and by voters. The electoral mechanism was transformed in this essay from its traditional liberal republican purpose of negative protection against executive abuse (safety), and from its corrupting influence portrayed in #71, to a positive inducement for officials to conduct great deeds.

I have sought to demonstrate, however, that Hamilton’s endorsement of the monarchical principle in #71 reflected his more sincere beliefs about constitutional necessity, as well as the likelihood of greatness. That principle strongly suggested that more ill than good would come from electoral accountability in the executive, at least in contrast to the hereditary alternative. So why did Hamilton proceed in this way?

I think it was likely a combination of two things. First, it is not unlikely that Hamilton expected (and hoped) the institution would evolve in the manner Jefferson expected (and feared) it would. The latter wrote that he thought re-eligibility would amount to life tenure and that “the recent instance particularly of the Stadtholder of Holland [had demonstrated to him] how easily offices or tenures for life slide into

inheritances.”⁸⁸ Hamilton may have put this institution in a favorable light in order to encourage this natural tendency to develop. This implied that Hamilton had reason to believe that the people would continue men in office for long duration regardless of whether they acted, or even because they did not act, meritoriously. This would be fine for Hamilton, however, because his monarchical principle was not based on a trust in the essential virtue of the person who happened to be the monarch. It was based, instead, on the positive benefits that would emanate from the (even vicious) passions to be expected from a person of ordinary character placed within the extraordinary circumstances of that institution. So long as the institution was placed within a balanced constitutional framework, the regime would benefit from the virtues of the institution, not the person. When he wrote in his convention speech notes that an executive “ought to be hereditary, and to have so much power that it won’t be in his interest to sacrifice much to acquire more,” he was concurring with the justification for monarchy given by Montesquieu and De Lolme. It was about the manipulation of passions and interests, not the reliance on virtue. In a statement at the New York Ratifying Convention, he exhibited this moral psychological orientation:

Experience has by no means justified us in the supposition that there is more virtue in one class of men than in another. Look through the rich and the poor of the community; the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity, but kind of vices, which are incident to the various classes; and here the advantage of character belongs to the wealthy.⁸⁹

⁸⁸ Jefferson to Francis Hopkinson (3/13/1789)

⁸⁹ Hamilton, NY Ratifying Convention, 6/21/1788

The second reason, however, is that Hamilton had every reason to hope, even if he did not expect, that the republic would benefit from fame-seeking men and high minded electors. He had nothing to lose by raising the possibility in this essay, and perhaps it would actually inspire some to live up to its high standards. Consequently, the rhetorical tact he took in this essay was completely failsafe. As it was far more flattering to the people's prejudices than the previous essay, it was effective for ratification purposes. Beyond this, he could have hoped that it would bolster support for an institution he had reason to believe was a road to monarchy. Finally, in the meantime, he had presented a standard of conduct that, if followed, would make the republic more stable and fit for survival (or perhaps even greatness) as it developed along its expected path to monarchy.

Summary of the Two Theories of Executive Power

In this chapter we have considered several points of convergence and divergence in Hamilton's theory of executive power, on the one hand, and that of Madison and Jefferson, on the other. Let's briefly review these findings.

There were three crucial elements in Hamilton's theory executive power. First, as good execution was his standard of good government, he sought to assure that the President had the independent formal authority to capably execute the office. Second, to assure that the power was used for the public interest, he sought to give the institution as much insulation from corrupting (foreign and domestic) forces as possible. Third, since the best regime would mix good execution with liberty, he sought to find ways to make necessary executive power compatible with liberty. For Hamilton, the British model was the best for combining all three. The monarch had

substantial functional independence (i.e. unilateral constitutional authority) and the insulation from foreign and domestic corruption afforded by hereditary succession. Moreover, following 18th century conventional wisdom, Hamilton thought a hereditary monarch protected liberty by preventing the republican violent death. On the last point, of course, the monarch alone was insufficient for creating and preserving liberty. There had to be a true separation of powers and the people needed to have due weight within that scheme: full legislative power in one chamber and ability to defend their customary rights and liberties through independent courts and trial by jury. Hamilton's emphasis on the need for executive "energy" was thus due to his concern for securing the mere goodness of the regime *and* based on his belief that the non-monarchical elements necessary for liberty (and thus the best regime) were already in place.

I have argued that Hamilton sought to give more power to the executive not only to meet the functional needs of the time, but also to put the regime on a developmental path toward monarchy. All regimes were in motion; the only question was in which direction. If they moved in the more republican direction, they would suffer quick death. If they moved in the monarchical direction they could enjoy a time under the best regime before passing on to absolute monarchy. And, as his teacher (Hume) had instructed him, going directly from mixed monarchy to absolute monarchy was the easier road to despotism. So the monarchical direction was the obvious course for the Americans to take: they would have a better life and a less painful death.

But, and this is crucial, Hamilton always had reservations about giving the American president formal unilateral authorities while it was still a republican executive. This emanated from the second element in his thought: the need for virtue in the institution that (he believed) could only result from its insulation from corrupting forces. Recall that at the Convention he said that under the Virginia Plan for an executive of seven year duration, “the Executive ought to have but little power.” Whereas those holding that office “would be ambitious” and thus would be likely to act against the public interest, his proposed “Executive for life [would not have] this motive for forgetting his fidelity, and will therefore be a safer depository of power.”⁹⁰ Also, in *Federalist 75*, he would argue that it is “proper or safe[,] where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties,” but “it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years duration.” He continued: “The history of human conduct does not warrant that exalted opinion of human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind ... to the sole disposal of a magistrate created and circumstanced as would be a president of the United States.” Though Hamilton would eventually endorse extensive Presidential authority in foreign affair in his *Pacificus* essays (1793), I have argued that, given his principles, this only made sense because he believed the institution would evolve in a less democratic direction over time. Indeed, as was discussed above, Hamilton had a tendency to favor granting expansive formal authority as a means of enabling an institution to acquire greater effectual power.

⁹⁰ Hamilton Speech at Federal Convention, 6/18/1787.

Madison and Jefferson were in agreement with Hamilton on certain principles. They all favored a strong unitary executive. Moreover, they all believed in the necessity of independent courts for protecting rights against executive abuse. They also all saw a need for executive “firmness” against legislative encroachments. Finally, they all believed that unilateral executive action according to the executive’s best judgment of the public interest could be justified under certain conditions.

Madison and Jefferson envisaged an executive whose authority emanated from electoral will of the national people. Hamilton, by contrast, would insulate the institution as much as possible from electoral pressure. For this reason, he favored a life tenure if not hereditary succession for the chief magistrate, while the Virginians believed that a duration of around seven years was optimal for both republican safety and “energy.” Part of their disagreement was based on how they conceived of “energy.” The Virginians viewed it as youthful vigor that diminished past a certain duration, while Hamilton equated it with firmness, stability, and experience, all things he thought would increase with duration in office. Moreover, while the Virginians thought of “firmness” against legislative encroachment as part of the executive’s duty as agent of the people, Hamilton tended to equate it with control over the people (i.e. as a counter-democratic mechanism.) Finally, Jefferson, and probably Madison, thought prerogative actions should be admitted as illegal and brought before the people to judge, while Hamilton thought this ran the danger of legitimizing illegality and thus efficacy of rule of law. He thus favored a broad interpretation of the executive’s formal power in order to uphold the integrity of the law by legalizing any necessary actions the executive might judge it right to make.

Conclusion

The comparative analysis provided in this chapter provides further evidence that Madison was correct in attributing monarchical principles and intentions to Hamilton's constitutional project. I have argued that Hamilton's theory of executive power is most accurately described as counter-democratic and monarchical. Madison's and Jefferson's theory, by contrast, was genuinely republican, as it sought to reconcile republican safety, popular rule, and executive energy.

Moreover, I have argued that the contradictions between *Federalist #71*, on one hand, and *#70* and *#72*, on the other, are best explained with reference to Hamilton's multiple rhetorical objectives in the *Federalist*. The case for duration in *#71* amounted to a far more persuasive case for the British monarch than for the proposed Presidency. Its central message was that the regime required an electorally insulated executive who would stand above factional conflict to prevent the republican violent death and act firmly against popular will to promote the public interest. By contrast, *#70* heralded the unitary structure of the proposed executive for reconciling energy and "safety in the republican sense." Similarly, *#72* spoke favorably of the re-eligibility of the President because it would provide positive inducements for the executive to serve the public interest by "meriting" reelection. The contradiction could not be clearer: in the latter two essays Hamilton spoke optimistically about electoral accountability, while in *#71* he strongly suggested that electoral insulation was necessary for an adequately energetic executive.

I argued that *#71* reflected Hamilton's genuine views and was an example of his long-term attempt to lead public opinion toward accepting a return to the British

constitution. His support for #70, by contrast, was largely due to his immediate rhetorical objective of earning ratification. His argument for re-eligibility in #72, however, served three objectives. First, it helped assure ratification: since it implied a competent electorate, it was flattering to his audience. Second, Hamilton had reason to believe the institution would result in life tenure and, therefore, would take the regime closer to hereditary succession. Third, and finally, Hamilton could have written it in hopes that it would inspire high standards of conduct in office holders. However, his general orientation toward executive power suggests that he thought this was highly unlikely.

Now that the case has been made that Madison was justified in believing Hamilton harbored monarchical principles and intentions, we have one remaining task for understanding the basis of Hamilton's and Madison's political alliance and rupture. As a prudent statesman, Madison was no more inclined than Hamilton to let abstract principles of natural right cloud his judgment about what was politically achievable. To support the federal republic on the basis of prudence as well as principle, Madison would need to confront the 18th century critique of republics. How he did this is the topic of the next chapter.

Chapter 5: Republican Remedies: Madison vs. the 18th Century Critique of Republics

Federalist #10 is famous for explaining how the American regime was designed to avoid the “violence of faction” that had hitherto “been the mortal diseases under which popular governments ... every where [had] perished.” Against the orthodox axiom of republican theory—most famously articulated by Montesquieu and Rousseau, and routinely recited by anti-federalists (Storing 2006)—that republican government requires direct popular participation in power within small homogenous communities, Madison followed David Hume (Adair 1974) in asserting the opposite. For Madison and Hume, the only cure for faction consistent with republican principles—and thus the only hope for durable republican government—was to combine the mechanism of representation with a large pluralistic population extended over a large territory in order to improve the deliberative quality of lawmaking (and thus the prudence and justice of the laws) and, more importantly, to make majorities less inclined and/or less able to execute measures antithetical to private rights and the public good. As the proposed Constitution adopted these principles, Madison argued, it presented “a republican remedy for the diseases most incident to republican government.”

Although Madison did not emphasize it in this essay, the extended sphere served as a simultaneous remedy for *two* “diseases most incident to republican government”: faction and external insecurity. As was discussed in Chapter 2, by Montesquieu’s analysis the problem of size stood at the intersection of the republican security dilemma and the republican violent death. For Montesquieu, civic virtue was

the only republican remedy for the disease of faction, but civic virtue could not be sustained in a large modern commercial society. This created a republican security dilemma for Montesquieu, however, because he believed a territory the size of contemporaneous France or Spain presented the optimal extent for external security. Montesquieu presented two possible solutions to this republican security dilemma, confederacies and the British constitution, but he evidenced a clear preference for the latter. The idea that the extended sphere presented a republican remedy for the republican violent death thus presented a theoretical alternative to Montesquieu's preferred solution to the republican security dilemma created by the problem of size. This is just one of many examples of how Madison confronted the 18th century critique of republics in order to find republican remedies for the diseases most had concluded were best treated by the British constitution.

This chapter seeks to complete my interpretation of the theoretical basis of Madison's and Hamilton's political alliance and rupture by demonstrating how Madison, unlike Hamilton, came to believe the federal republic presented a simultaneous solution to multiple manifestations of the republican security dilemma and republican violent death. I demonstrate, first, that the core basis of their agreement in 1787-88 was over their mutual fears over disunion. They were united, among other things, in fearing that the republican security dilemma would manifest among the States in the event of disunion.

Second, I also demonstrate that the basis of Madison's and Hamilton's rupture was already evident by the qualitative differences in their "nationalist" visions. Although Banning and Wood have reached a similar conclusion, theirs is based on

highlighting the difference between Hamilton's aspiration for a strong fiscal-military state and Madison's more pacific vision. While not disagreeing that this was important, I also point to differences in the degree of popular control over State and national power in their official proposals at the Convention. In this respect, their principled difference over monarchical vs. republican government was the most salient difference in their nationalist visions.

Finally, third, I point to two theoretical innovations Madison made in the early 1790s based on his more mature thinking on the republican security dilemma. One of these innovations helps to explain why he changed his mind about the importance of partial State sovereignty. Although it is well known that he came to see the States as essential for checking an undue aggrandizement of power in the central government, I demonstrate that he also came to see the States as necessary for mobilizing support in times of war. In other words, he concluded that extending the sphere alone was not sufficient for providing external security. Thus, the States became necessary for this element of his effort to resolve Montesquieu's republican security dilemma.

His second innovation in 1790s had to do with the strategic logic of modern war finance. As was discussed in Chapter 2, it was widely believed in the 18th century that systems of taxation and borrowing were necessary for national security, but this also had the unhappy consequence of allowing executives to engage in unnecessary wars and aggrandize power domestically. Madison, I will demonstrate, turned this logic upside down by suggesting fiscally restrained republican regimes will be more externally secure. In arguing this, moreover, he also found a remedy for Thucydides' ancient observation that republics are susceptible to imprudently

committing themselves to ruinous war out of momentary passion. These two innovations, I argue, help explain why he came to the conclusion that the federal republic was not only a remedy for the violent death and republican security dilemma among the States, but also that it was the most externally secure regime yet devised.

This chapter is organized into four sections. The first section briefly overviews Madison's beliefs in the last years of his life about the intrinsic virtues of the status quo "partly federal, partly national" political association that he had done so much to help build. I demonstrate that he saw it as a complex solution for multiple manifestations of the republican security dilemma and republican violent death. The task of the next two sections is to explain how he came to this conclusion that defied the orthodox 18th century critique of republics, which Hamilton accepted. The second section focuses on his views at the time of the Convention and the third section discusses his innovations in the 1790s. Finally, in the fourth section, I point to the one source of pessimism in Madison's assessment of the viability of the antebellum constitutional order. The union had been so successful at providing external security, he came to believe, that it had eliminated a credible external threat. The problem with this was that Madison believed a moderate external threat was necessary for cementing the union.

Madison's Prudential Defenses of the Status Quo Constitution During the Nullification Crisis

Amid the controversies surrounding the nullification crisis—and particularly Calhoun's appropriation of the Virginian and Kentucky Resolutions to defend nullification, coupled with his direct assault on Madison's theory of dispersed majoritarianism—Madison devoted much effort in the last years of his life to

defending the status quo constitutional order.⁹¹ Part of his defense relied upon clarifying his legal theory of the constitution.⁹² However, for our purposes, the most important aspect of his defense was his insistence on the intrinsic liberal republican goodness of the political system itself. Nullifiers, and anyone harboring thoughts of secession, were not only mistaken in their account of constitutional legitimacy; they were also imprudent for pursuing a set of policies that defied the dictates of their self-interest in sustaining a stable popular government that secures life, liberty, and property and thereby promotes their happiness.

The central part of his prudential argument was negative: vindicating the system of divided sovereignty under a presumptively supreme federal authority by contrasting it to the anticipated consequences of the “wholly federal” (confederation, by our modern terminology) arrangement implied by the doctrine of nullification. Without presumptive federal judicial supremacy over constitutional disputes, he could not see how “the Constitution itself could be the supreme law of the land; or that the uniformity of the Federal Authority throughout the parties to it could be preserved; or that without this uniformity, anarchy & disunion could be prevented.”⁹³ Indeed, Madison had not wavered from the conclusion he had drawn from his review of ancient and modern confederacies in 1787⁹⁴, which was that confederal systems “tend rather to anarchy among the members, than to tyranny in the head.”⁹⁵ His great hope

⁹¹ For a focused analysis on Madison’s debate with Calhoun over majoritarian vs. consensus democracy, see Read (2009, 2005).

⁹² The most excellent analysis of Madison’s social compact theory of legitimate political order and its relation to both constitutional legitimacy and the problem of prudent constitutional design, see Rosen (1999).

⁹³ “Madison to N P Trist, December 1831”

⁹⁴ “Of Ancient and Modern Confederacies,” 1787.

⁹⁵ “Federalist No. 18”

since the ratification of the Constitution had been that the States would be adequately subordinated to national authority to prevent their succumbing to this pathology of pure confederacies. He thus would typically argue against the doctrine of nullification by reciting the liberal republican parade of horrors that he always believed would result from disunion.

It is, he wrote in 1833, “the obvious consequences of disunion, by which the value of Union is to be calculated.”⁹⁶ The image he portrayed of the consequences of disunion was essentially a recap of the *Federalists 2-14* portrayal:

The positive advantages of the Union would alone endear it to those embraced by it; but it ought to be still more endeared by the consequences of disunion, in the jealousies & collisions of Commerce, in the border wars, pregnant with others, and soon to be engendered by animosities between the slaveholding, and other States, in the higher toned Govts. especially in the Executive branch, in the military establishments provided agst external danger, but convertible also into instruments of domestic usurpation, in the augmentations of expence, and the abridgment, almost to the exclusion of taxes on consumption (the least unacceptable to the people) by the facility of smuggling among communities locally related as would be the case. Add to all these the prospect of entangling alliances with foreign powers multiplying the evils of internal origin.⁹⁷

For our purposes, the most important of these claims was his reference to “the higher toned Govts. especially in the Executive branch, in the military establishments provided agst external danger, but convertible also into instruments of domestic usurpation.” Madison believed, in other words, that disunion would thrust individual Americans into the republican security dilemma, with the internal structure of their domestic governments designed, not for a durable reconciliation between popular government and liberal rights, but, rather, to achieve security from external “aliens,

⁹⁶ Madison to Benjamin F Papoon, May 18, 1833

⁹⁷ “Madison to Daniel Drake, January 12, 1835”

rivals, enemies” whom had hitherto been “fellow citizens of one great, respectable, and flourishing empire.”⁹⁸ Madison first made reference to this consequence of disunion at the Convention and would repeat it throughout his life when describing the scene he foresaw in that event. If consistency is a portal to a man’s soul, it appears this was one of Madison’s gravest concerns.

In 1833, in a telling letter to Henry Clay, Madison impugned the nullifiers, not for legal infidelity, but, rather, for imprudently assuming political separation would make them safer from Northern oppression than would continued association in the federal republic:

[W]hat madness in the South, to look for greater safety in disunion. It would be worse than jumping out of the Frying-pan into the fire: it wd. be jumping into the fire for fear of the Frying-pan. The danger from the alarm is that the pride & resentment exerted by them may be an overmatch for the dictates of prudence and favor the project of a Southern Convention insidiously revived, as promising by its Councils the best securities agst grievances of every sort from the North.⁹⁹

In other words, nullifiers had misperceived a threat of sectional domination presented by the North in addition to failing to see that, even if there were such a threat, disunion would create sources of domination at least as bad. Put another way, their conflicts of interest would not change, only the mode of adjudicating them would: from an imperfect political process to an even more imperfect diplomatic mode.¹⁰⁰

⁹⁸ “Federalist No. 14”

⁹⁹ “Madison to Henry Clay, June 1833”

¹⁰⁰ I am operating here from Bernard Crick’s (1993) distinction between “politics” and “diplomacy,” with the former being marked as a process for dealing with deep disagreement within the context of an association with a settled centralized monopoly on legitimate force. Such a process is one enabled by that sovereign force, but it is marked by non-violent mobilization, bargaining, deliberation, and, above all else, persuasion. By this framework, the dual sovereignty of the antebellum states-union meant that controversies were settled through a partly political and partly diplomatic process. Graber’s (2006)

As far back as 1821 Madison had suggested that it was an open question “[w]hether the Constitution, as it has divided the powers of Govt. between the States in their separate & in their united Capacities, tends to an oppressive aggrandizement of the Genl Govt or to an Anarchical Independence of the State Govts.” Although from the 1830s forward he rarely spoke of the former, from the early 1790s to the early 1820s he often expressed a belief that consolidation of the States would “naturally lead to a dangerous accumulation in the Executive hands;”¹⁰¹ or, more dramatically, that it was “a high road to monarchy.”¹⁰² Indeed he seems to have genuinely believed, as he wrote in the Virginia Resolutions of 1798, that the Federalist’s broad constructions of national government power would, whether intended or not, have the long term tendency of

consolidate[ing] the States by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or at best a mixed, monarchy.¹⁰³

There is no evidence that he changed his mind about this. It is most likely that he spoke less about this danger after the 1820s because by then it was clear that the system was tending more toward “anarchical independence” than toward an “oppressive aggrandizement” of national power.

distinction between “a constitutional politics that persuades” and “a non-constitutional politics that compels” (p. 18) can be seen as either paralleling this distinction between diplomacy and politics or as contrasting a genuine mode of Crickian politics to a perverted “politics” whereby one group seeks to use the association’s monopoly on force to resolve disagreement through force. The close relation between diplomacy and this perverted form of “politics” was reflected in Locke’s description of arbitrary sovereign rule as a “state of war” (1978).

¹⁰¹ “Madison to John G Jackson, December 27, 1821”

¹⁰² “Government of the United States (February 6, 1792)”

¹⁰³ Madison, December 21, 1798, “Virginia Resolutions”

He did, however, mention both extremes in the 1830s when he advanced his positive prudential claims defending the status quo constitutional order of the 1830s. In his *Notes on Nullification* (1835), he explained that the system was designed not only to overcome the inherent deficiencies of consolidation and pure state sovereignty, but also to gain the advantages of each extreme:

the U. S. have adopted a modification of political power, which aims at such a distribution of it as might avoid as well the evils of consolidation as the defects of federation, and obtain the advantages of both.¹⁰⁴

In that essay he mentioned just one of those advantages. “Republicanism,” he wrote, suffers from “frailties” without “the control of a Federal organization.” Thus, one advantage was the improvement of republican government itself. In an unaddressed letter in 1833, moreover, he delineated what those improvements were: “It remained for the people of the U. S.,” he wrote, “by combining a federal with a republican organization, to enlarge still more the sphere of representative Govt and by convenient partitions & distributions of power, *to provide the better for internal justice & order, whilst it afforded the best protection agst. external dangers.*”¹⁰⁵ In his view, this association, “by enlarging the practicable sphere of popular governments,” promised the “consummation of all the reasonable hopes of the patrons of free Govt.”

In sum, in the last two decades of his life, Madison had to come to conclude the following:

- (1) Disunion and consolidation would both result in the loss of republican government in North America.

¹⁰⁴ Madison, “Notes on Nullification (1835)”

¹⁰⁵ “Madison To (1833)” italics added

- (2) The extended federal republic—a large association of republican governments governed with shared sovereignty between those governments and a presumptively supreme republican superintending government—was the *best* mode of association yet invented for durably mixing republican government with justice, order, and external security, and, in turn, thereby preserving republican government itself.

All of these conclusions defied the orthodox understanding prevalent in the 1780s. Conventional wisdom held, as we saw in Chapter 2, that such an association would be the least rather than the most likely to sustain the conditions requisite for durable liberty, for the following reasons:

- (1) Montesquieu and De Lolme had insisted that the British balanced constitution was the form best suited for combining “republican government” with “internal justice & order.” With the exception of Hume, European authorities thought modern republics were destined to be unjust and disorderly and, thus, to succumb to the republican violent death.
- (2) The size of the extended sphere that Madison lauded in the 1830s was, by Montesquieu’s reasoning, too large for both republican government and for the external security of *any form* of government.
- (3) Finally, by Thucydides’ account, republics, by their very nature, tend to blunder into imprudent wars thus canceling-out their inherent advantages.

For Madison to reach these conclusions, he would need to not only confront orthodox theory; he would also have to readjust the views he held during and shortly after the Convention. As we shall see in the next section, his original constitutional vision is best described as a republicanized remix of the old British imperial constitution; one that would “superintend” over the republican States so as to prevent them from succumbing to the republican violent death or the republican security dilemma. At this stage, he would pay “a decent regard to the opinions of former times and other

nations,”¹⁰⁶ but reconstruct those opinions in a multifaceted effort to preserve the Revolution’s commitment to republican government. However, at this time he focused his efforts on finding a national “republican solution to the diseases ... [of the State] republican government[s].”¹⁰⁷ In the early 1790s, as will be discussed in the third section, he discovered that the vast Western expansion that he believed was necessary for minimizing the bites of the republican violent death and republican security dilemma would, in turn, require a role for the States in preserving popular government. They would be necessary for sustaining engaged republican citizenship, mobilizing the country in time of war, and preventing an oppressive aggrandizement of national government power.

Madison in the 1780s: States as Disease in Need of Republican Cure

In this section I seek to reconstruct Madison’s constitutional ideas at the time of the founding as a sequential process of reasoning, where he weighed various options and chose that which he thought was the best, or, more accurately, the least bad. This is my own construction, based on my interpretation of his writings in the critical period and through the Convention. I seek to demonstrate, in the process, that Madison’s thought process was best described as an attempt to create a republicanized and thus improved version of the old British imperial constitution: one constituted according to republican principles and with the purpose of preserving and expanding republican self-government while providing the “superintending” authority necessary for providing for the common defense, peace between the States, regulation

¹⁰⁶ *Federalist 14*

¹⁰⁷ *Federalist 10*

of commerce, and other public goods once provided by the King in Parliament. I also suggest that Hamilton's and Madison's "nationalism" were always different in complexion, and their difference can be understood as two distinct orientations toward the former British imperial constitution. The biggest difference between them was their approach toward the vacuum left by the loss of monarchy in the old system.

Let's begin with the first step in Madison's reasoning.

Step 1: The Confederation was a Failure

In his "Vices of the Political System of the United States" (April 1787), Madison listed twelve problems with the status quo constitutional order. Of these, the first nine were about the relations of the States with each other and with the central government of the Confederacy. The last four spoke to the problems inside the States. Among the first nine, the most noteworthy include:

Failure of the States to comply with the Constitutional requisitions.

The States routinely came up with excuses for not paying, with the most frequent being that they *could not* pay due to their State's poor economic health. As Dougherty (2001) has shown, however, there was no significant statistical relationship between State income and propensity to pay. A State was likely to pay only when the requisition was earmarked for a service that served that State's immediate interest.

Encroachments by the States on the federal authority

By this, Madison meant States exceeding their own bounds of authority, such as separately negotiating treaties with other nations.

Violations of the law of nations and of treaties

This was a routine practice, and was badly damaging the United States diplomatically (Keohane 2002).

Trespasses of the States on the rights of each other.

By this he meant such things as trade protectionism and the externalities of monetary policies.

Want of concert in matters where common interest requires it

He noted that this was “strongly illustrated in the state of [their] commercial affairs.” The issue highest on his mind most likely was the Jay-Gardoqui Treaty negotiated by John Jay in 1785. The treaty would have given northern merchants access to Spanish markets in exchange for Spanish control over navigation of the Mississippi River for 25 years. No issue was important to Southern interests than gaining access to the Mississippi. As McDonald (2002, 14) reports, “when the proposal came to a vote in Congress, heated debate along sectional lines stimulated mutterings of breaking the Union into two or three regional confederations.”

Hamilton was also alarmed by these conditions. However, he also had a specific concern that emanated from his observations of New York Governor George Clinton’s activities. He essentially started to pursue a financial program similar to what Hamilton would later propose at the national level. As McDonald put it, through his policies, “New York effectively declared that it would be first among equals in the United States or else not be one of the States at all” (McDonald 1982, 87).

Step 2: The problem was rooted in the nature of confederations

Madison's study of ancient and modern confederacies had convinced him that this was a universal problem with confederations. The critical vice of those forms of association was that they created *Imperium in Imperio*: sovereignty within sovereignty. At a more practical level, the problem was that the "superintending" authority could not legislate (and execute) measures directly on individuals. The central government instead had to seek compliance from member units (States in the American case.) The problem with this was that there was no effective means of enforcement. The only way to sanction non-compliance was by coercing the States as collective units, which meant by force of arms. For effective governance, therefore, it was imperative that the superintending government be able to act directly on the American people as though they were members of a single state. As he put it in *Federalist #20*, history taught "the important truth" that "a sovereignty over sovereigns, a government over governments, a legislation for communities, as contradistinguished from individuals ... is subversive of the order and ends of civil polity, by substituting *violence* in place of *law*, or the destructive *coercion* of the *sword* in place of the mild and salutary *coercion* of the *magistracy*."¹⁰⁸

On this basic diagnosis, Madison and Hamilton were in full agreement

Step 3: Union was Necessary / Disunion would be worse than the Confederation and was a realistic possibility

As mentioned above, this step has typically been downplayed by historians throughout the 20th century. I, however, follow Hendrickson in believing the Federalists "said what they meant and meant what they said" throughout the

¹⁰⁸ Madison, *Federalist #20*

Convention and ratification campaign when they expressed fears that dismemberment was immanent (Hendrickson 2003, 5).

Therefore, the next step in the reasoning process was that the alternative to finding a solution to the problem of the Confederacy was to break into separate confederacies. This, however, was most certainly a cure worse than the disease. First, each separate confederacy would have to overcome the inherent problems of confederacies as well. Second, this ran the risk of turning North America into an anarchical system of States (and confederacies) akin to that in Europe. This would create a host of evils—territorial disputes, trade wars, shooting war, and, Madison never failed to mention, the republican security dilemma among the states themselves.

Madison and Hamilton were in basic agreement about these things, but they did have certain noteworthy differences in this area. One was already mentioned above: Hamilton never before or after *Federalist 8* listed the republican security dilemma between the States as one of his fears for disunion. He almost always emphasized wars between the States, weakness abroad, and an exacerbation of conflict between the States from European meddling. There was also fundamental disagreement on two additional issues.

Nature of External Security to be Provided by the Union

Madison

Madison and Jefferson believed it was necessary for the preservation of republican government in North America to remain secure from Europe with as minimal military engagement as possible. For them, America faced an elaborate version of the republican security dilemma. Not only did war run the risk of creating

a dangerous aggrandizement of executive power¹⁰⁹, but even the process of armament threatened to undermine the socioeconomic basis they thought necessary for necessary for republican government (Tucker and Hendrickson 1990; McCoy 1996; Robert W. Smith 2004). An agrarian economy was essential to republicanism for two reasons. First, they thought farmers made the best citizens because of their independence.¹¹⁰ Second, Madison in particular thought it was necessary for avoiding the severe class conflict that no republican constitutional design could prevent from resulting in the republican violent death.¹¹¹ To remain a republican people, they needed to avoid becoming an advanced manufacturing society. For Madison and Jefferson, it was thus essential that they find non-military means for providing their defense. Western expansion was part of this (more below), but they also hoped that federal unification would in itself be an effective deterrent to European encroachment and that they could use economic sanction (“peaceable coercion”) to demand fair terms of trade and just treatment from the European powers (Tucker and Hendrickson 1990).

Hamilton

¹⁰⁹ “War is in fact the true nurse of executive aggrandizement. In war, a physical force is to be created; and it is the executive will, which is to direct it. In war, the public treasures are to be unlocked; and it is the executive hand which is to dispense them. In war, the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered, and it is the executive brow they are to encircle. The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace.” (Madison, Helvidius IV, 1793.)

¹¹⁰ Jefferson, “Notes on the State of Virginia.”

¹¹¹ Adair (1974, 168) argued that most of the generation thought it was a question if when, not if, republican violent death would set-in, requiring recourse to something like the British model. Madison actually calculated a year after which he thought population pressures would force a regime change. Ironically, it happened to be a fairly significant year in American economic history: 1929.

Hamilton, as was discussed in Chapter 3, had a very different future in mind. He envisioned, as he said in *Federalist 11*, that “the Thirteen States, bound together in a strict and indissoluble union, [would] ... erect... one great American system, superior to the control of all transatlantic force or influence, and able to dictate the terms of the connexion between the old and the new world!” He expected the Americans to become a formidable military power in the Western hemisphere and, indeed, his entire economic program was calculated to, among other things, create the military basis for American ascendancy in foreign affairs. And, as was also discussed in Chapter 3, one reason Hamilton was eager to institute the British model was because he thought class divisions were nearly severe enough already, and, moreover, if he could implement his planned economic program, would soon be exacerbated.

Envisioned Extent / Purpose of Western Expansion of Union

Madison

Madison and Jefferson both believed that the union needed to extend a very great distance for the same reasons that they sought to avoid armament. They both believed that remaining an agricultural people would require a territorial expansion because otherwise there would be a surplus of labor that would need non-agrarian employment to survive. Furthermore, Western expansion would push back European powers and thus lessen the need for military preparedness (Stourzh 1970, 192).

Hamilton

Hamilton, by contrast, seems to have held to Montesquieuian orthodoxy about the optimal size for a state.¹¹² He envisioned the United States confining its political territory (though certainly not its sphere of control) to the East of the Mississippi.¹¹³

Step 4: The States legislatures were governing irresponsibly, which was bad in itself, but was especially alarming because it jeopardized America's experiment in republican government

At the same time, the republican governments in the States were engaged in an irresponsible form of lawmaking. Not only was their parochialism, recalcitrance, and sovereign pretensions the root causes of the crisis of the union, but their internal legislation was marked by three vicious qualities: "multiplicity," "mutability," and "injustice."¹¹⁴ Shay's rebellion had alarmed Madison as much as anyone, but his fears ran deeper.

As a liberal, Madison was most certainly alarmed by what he saw as the abuse of property rights (injustice) by the democratic assemblies in the States. But he consistently expressed worry that this injustice would lead to the republican violent death. In a letter he wrote about a proposed constitutional reform in Virginia in 1788, Madison endorsed a firm Senate as a means of preventing the violent death

A Senate for six years will not be dangerous to liberty, on the contrary it will be one of its best guardians. By correcting the infirmities of

¹¹² Stourzh (1970, 193) mistakenly attributed Hamilton's limited expansion to his "pertinaciously holding to the dogma that no free republic could be established and maintained in a large geographical areas." In fact, the sphere he had in mind was well beyond what conventional wisdom said was appropriate for a republic (see Hamilton, Federalist 9.) The dogma he seems to have held to was Montesquieu's limit on any state, including monarchy.

¹¹³ Hamilton to general Charles Cotesworth Pinckney (Dec. 29, 1802): "You know my general theory as to our Western affairs. I have always held that the <i>unity of our empire</i> and the best interests of our nation require that we shall annex to the United States all the territory east of the Mississippi, New Orleans included."

¹¹⁴ From his "Vices of the Political System of the United States" (April. 1787)

popular Government, it will prevent that disgust agst that form which may otherwise produce a sudden transition to some very different one. It is no secret to any attentive & dispassionate observer of ye pol: situation of ye U. S., that the real danger to republican liberty has lurked in that cause.¹¹⁵

It is also important to consider closely Madison's wording in a letter to Jefferson after the Convention in 1787:

The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the Public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform therefore which does not make provision for private rights, must be materially defective.¹¹⁶

The letter implies a lot about Madison's priorities. First, he implied that, though most citizens were more concerned with their own private interests, the real primary problem from the standpoint of the public good was the crisis of the union. Second, he implied that the violation of private rights was a matter of concern for republican government. The crisis had "prepared the Public mind for a general reform," but, the propertied may have been ready for the introduction of something other than a republic if they believed it would better protect their rights. If not for the virtues of the members of the Convention, the opportunity presented by the crisis could have been seized by the enemies rather than the "stedfast friends of Republicanism."

Step 5: The States are the core problem and are actually superfluous (in the abstract) from the standpoint of the rights, freedom, and welfare of individual Americans

¹¹⁵ Madison, 1788, "OBSERVATIONS ON THE DRAUGHT OF A CONSTITUTION FOR VIRGINIA"

¹¹⁶ Madison to Jefferson, 10/24/87

Before the Convention, Madison expressed to Edmund Randolph his views on the proper place of the States in the reformed constitutional order. “I hold it for a fundamental point,” he wrote, “that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty.” However, he also thought “a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient.” So, he advocated trying to take a “middle ground” that would “at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.”¹¹⁷ At the time, this was about as conciliatory toward the idea of States’ rights as Madison would get.

Several times at the constitutional convention, when refuting those who argued for States’ rights on the grounds that a wholly consolidated republic would violate their freedom, Madison and Hamilton noted the artificiality of states and their ultimate irrelevance to individual rights (in the abstract). For example, early in the Convention, Madison stated the following:

Were it practicable for the general government to extend its care to every requisite object without the cooperation, of the state governments, the people would not be less free, as members of one great republic, than as members of thirteen small ones. A citizen of Delaware was not more free than a citizen of Virginia; nor would either be more free than a citizen of America. Supposing, therefore, a tendency in the general government to absorb the state governments, no fatal consequence could result. Taking the reverse as the supposition, that a tendency should be left in the state governments towards an independence on the general government, and the gloomy consequences need not be pointed out.

Now his point here was not that the States *would* be abolished, but only that there was asymmetry in the extremes of total disunion and total consolidation. The

¹¹⁷ Madison to Edmund Randolph (April 8, 1787)

latter could, at the level of abstract theory, be republican and thus free, whereas the former would lead America to be the face of Europe, with high toned governments and standing armies.

Similarly, Hamilton would state:

But as states are a collection of individual men, which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been said that, if the smaller states renounce their equality, they renounce, at the same time, their liberty. The truth is, it is a contest for power, not for liberty. Will the men composing the small states be less free than those composing the larger?¹¹⁸

Step 6: The Old British Imperial Constitution, though oppressive, was a successful model of continental governance. Could they Reconstitute it as a Republican Government, Retain Its Virtues, and Employ it in the service of Preserving Republican State Governments?

The key to Madison's solution to the crisis of the union and the crisis of republicanism was to create a genuinely republican supreme national authority with an absolute veto over State legislation. Madison decided that this was the crucial element of the old imperial constitution that needed to be incorporated into the new constitution. He made the case for the veto most powerfully at the Convention on June 8. In his view, "an indefinite power to negative legislative acts of the states [was] absolutely necessary to a perfect system." The states had shown a "constant tendency ... to encroach on the federal authority; to violate national treaties; to infringe the rights and interests of each other; to oppress the weaker party within their respective jurisdictions." All of these "mischiefs," in his judgment, could be

¹¹⁸ Hamilton, "Speech at Federal Convention June 29, 1787"

prevented through the veto. Moreover, he thought it was “the mildest expedient that could be devised” for this purpose. Without the negative, the national authority would have no choice but “an appeal to coercion,” whereas the “negative would render the use of force unnecessary.” Moreover, “to give the negative this efficacy, it must extend to all cases. A discrimination would only be a fresh source of contention between the two authorities.” The national government must be the supreme judge of constitutional disputes. The proposed “prerogative [i.e. veto] of the general government [would be] the great pervading principle that must control the centrifugal tendency of the states; which, without it, will continually fly out of their proper orbits, and destroy the order and harmony of the political system.” “This,” he continued, “was the practice in the royal colonies before the revolution, and would not have been inconvenient if the supreme power of negating had been faithful to the American interest, and had possessed the necessary information.”

The key then was that the veto wielded under the new system would be constituted so as to possess what the imperial constitution had lacked: faithfulness to the “American interest” and “necessary information.” Elsewhere he would put it slightly differently. The “The great desideratum in Government,” he wrote to Jefferson, “is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to controul one part from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the entire Society.”¹¹⁹

¹¹⁹ Madison to Jefferson 10/24/1787.

It is now, after following this train of reasoning, that we can properly place the logic of *Federalist 10* and *51* into Madison's program of Constitutional reform. A necessary (though not sufficient) element in the constitution of the veto power was that it be based on the republican principle of majority rule (society's control over the sovereignty) and that the majority be kept "netural," or, that is, prevented from being factious. The national majority of an extended sphere would combine these elements. For the reasons made well known in *#10* and *#51*, the majority in an extended sphere would be less likely to be factious because it would "make it less probable that a majority of the whole [would] have a common motive to invade the rights of other citizens; or if such a common motive exist[ed], it [would] be more difficult for all who feel it to discover their own strength, and to act in unison with each other."¹²⁰ It was through the course of attempting to figure-out a republicanized functional equivalent to the British constitution that Madison developed his insight about the superiority of large to small republics.

However, the extended national majority was one, but only one, part of the reason that he thought it was safe to vest the veto in the central government. Just as important to Madison was that it would be wielded by the Senate, "the great anchor of the Government."¹²¹ In fact, when he spoke of the Senate at the Convention, he expressed worry that if it did not have a long enough duration, then even the national government could suffer the republican violent death:

What we wished was, to give to the government that stability which was every where called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He [Madison] was not

¹²⁰ Federalist #10

¹²¹ Madison to Jefferson, 10/24/87.

afraid of giving too much stability, by the term of seven years. His fear was, that the popular branch would still be too great an overmatch for it. . . . He conceived it to be of great importance that a stable and firm government, organized in the republican form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared the time is not distant, when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.¹²²

This Senate, however, would derive its natural aristocratic quality primarily by the structure of the institution: its duration (though not specified, it was expected to be under ten years) and small size. It incorporated a popular element because it would be nominated by the State legislatures and elected by the popularly elected lower chamber.

Comparison with Hamilton

It is important to consider how Madison's Virginia Plan compared and contrasted with Hamilton's. We have already discussed the central place of the executive elected for life in Hamilton's plan. Like in Madison's model, the legislature would have an absolute veto over the States. This was a less popular mechanism, however, because the upper chamber had life tenure. However, the central difference between the two plans was that the national legislature would appoint the governors to each State who would also have an absolute veto over State legislation. It is often said that this effectively consolidated the States into a single unitary state. There is certainly some truth in this notion, but the more apt description is that the States were effectively returned to their old colony status with exception being that the people now had the representation in the "Parliament" for which they

¹²² Madison, Speech at Federal Convention, June 8, 1787.

had initiated the Revolution (and which Hamilton continued to believe was the real issue at hand.)

Rakove (1996) has argued that the two “differed little in their judgment of the defects of the Constitution [after the Convention].... Where they did diverge was in their understanding of exactly how ‘subordinate’ or ‘inferior’ a jurisdiction the states should retain.” (pp. 197-198) I would argue, to the contrary, that their real difference was over *why* the States should be subordinated and *by what principle?* On the one hand, Madison, though at this time at his most “nationalistic” stage, still was concerned with preserving the States as semi-independent republics. His veto, as we have seen, was intended to prevent the republican violent death within the States, as well as to protect the national legislature from State encroachment. Most crucially, he allowed the people of the States to continue exercising direct control over their executive. The citizens in Hamilton’s States, by contrast, would have no effective control over the Governors who not only wielded the executive power of the State, but also represented an independent will over their legislation. Madison’s national veto, by contrast, would be exercised by legislators nominated by the States and elected directly by the elected popular branch. So both of Hamilton’s veto’s over State legislation had greater insulation from popular pressure than did Madison’s. *This* was the core difference in their “nationalisms.” It was not only a matter of degree of consolidation, but also of the degree of uncontrolled (insulated) power exercised over the people.

Rethinking the States Post-Ratification: The Federal Republic and Two Republican Security Dilemmas

Prior to the 1790s, Madison did not articulate views that would indicate why, besides overcoming Montesquieu's limits on the size of republics, an extended republic might be superior to monarchies for external strength. He had indicated that the strengthened union under the new Constitution would be adequate for external security and superior to the old Confederacy, but he had not said it would be *superior* to non-republics in this respect. Montesquieu, it will be recalled, actually only gave two reasons to support the conventional wisdom that monarchies are stronger than republics in foreign affairs. One was that monarchs, because of their unitary nature, were simply faster than the deliberative assemblies that ruled in republics. This republican security dilemma was overcome, as was discussed in the last chapter, by the advent of a unitary republican executive. The other reason he gave was indirect. Monarchies tended to be stronger because they were necessary for the governance of territories optimally sized for external security. The outer limit on size, recall, was set by how quickly an army could be moved from one border to another. In his judgment, contemporaneous France and Spain presented the optimal size. Madison, of course, defied this logic by showing how large republics would be more stable and just than small republics. But Madison had not indicated reason for believing republics would be stronger than monarchies.

But Madison thought differently. In this section I consider two manifestations of the republican security dilemma that Madison grappled with in the 1790s, and help explain why he came to think the extended federal republic was "the best" at providing external security. One problem had to do with the effectual size of the

extended sphere. Though Madison's theory defied Montesquieu's size trade-offs, Madison's particular constitutional project, I will demonstrate, faced a new trade-off of its own. His resolution to this problem, in turn, was part of the reason he came to accept the States as something more than a disease in need of remedy; they became a part of his cure to the republican security dilemma. The other problem had to do with the problem of the financial institutions of the modern fiscal-military state discussed in Chapter 2. A classic manifestation of the republican security dilemma in the 18th century was that systems of war finance, while necessary for effectively fighting foreign war, could have the effect of allowing monarchs-executives to aggrandize power by allowing them to initiate wars without first extracting revenue from society. Madison faced this problem in the context of arguing against Hamilton's financial program. In so doing, however, he also seems to have sought to resolve the dilemma pointed to by Thucydides that democracies, while having certain strategic advantages, are prone to falling into imprudent wars leading to their ruin.

The States and Overcoming Limits to the Extended Sphere

In the last section I noted that Madison and Jefferson both preferred a very large territory so as to allow Americans to remain as long as possible as an agricultural society. This, however, created an institutional design problem for Madison, because, although he did not emphasize it in the *Federalist*, he believed that the benefits of the extended sphere had a natural limit and, at some point, size would be pernicious to rather than supportive of popular government. To Jefferson in 1787 he wrote: "It must be observed however that this doctrine [of the extended sphere] can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed agst. the weaker party; so in too extensive a

one, a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration.”¹²³

Madison first implied a solution to this problem in #51 when he pointed to the “double security” afforded to the people by the ability for the two levels of government to “control each other; at the same time that each will be controlled by itself.” The implication was that the States would act as agents on the people’s behalf if the federal government became oppressive, as he indeed attempted to do with the Virginia Resolutions (1798). Then, in the last two sentences of #51 he noted that this implied the States could be useful for extending the “practicable sphere”:

It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government. And happily for the *republican cause*, the practicable sphere may be carried to a very great extent, by a judicious modification and mixture of the *federal principle*.

Sheehan (1992) has noted, however, that Madison in his “Notes on Government,” which he drafted in 1791-92, had determined that the States were now to perform a more robust role in his theory beyond mere mobilization to check oppression. Within the context of a sophisticated argument about the role of public opinion in a republic, Madison argued that for a regime to be genuinely free, the citizenry and elected leaders would need to engage in a sort of give and take, with the people expressing their voice, and it ultimately determining the law, but with the officials also actively engaged in opinion leadership. One implication of this was that the spread of representative republics across the territory would be helpful in sustaining this active process of opinion formation. Consequently, Madison had

¹²³ Madison to Jefferson 10/24

decided that the States had a positive, as well as a negative checking, role to play within the context of his theory of the extended sphere of republican government. If his arguments at the Convention suggesting the superfluity of the States were sincere, rather than hypothetical or rhetorical, then it is clear that as of 1792 Madison had changed his mind. The upshot was that Madison's system was now making use of the States to improve the process of republican politics at both levels of government rather than just extending the sphere to create an effective, yet safe, superintending authority to remedy the problem of the States.

Importantly, this also presented a possible solution to a different problem with the extensive sphere with which Madison had to contend. And this was one was more directly related to the republican security dilemma. Madison had observed that too large of a sphere could make a state externally insecure, not for Montesquieu's reasons, but, rather because it was essential for external security that the regime be capable of building public support for fighting its wars. He decided that the States would be instrumental for this as well.¹²⁴

It seems, then, that this discovery of the utility of the States for extending the practicable sphere could be a major reason why Madison became convinced that the institutional form of the federal republic found mutual reinforcement in the means necessary for external security and republican liberty, and thus averted the republican security dilemma.

¹²⁴ Madison, "Notes on Government," 1791-92

Defying the Logic of the Fiscal-Military State (and Thucydides)

Madison seems to have thought he had found another such case of mutual reinforcement through the logic he articulated in his *Gazette* essay “Universal Peace” (1792). This essay, published in the *National Gazette*, presents a fascinating argument about how republics could overcome their propensity to imprudent wars pointed to by Thucydides. Though he did not cite Thucydides, he did cite him in a *Gazette* essay one month and four essays earlier, which suggests he likely had him in mind when writing this essay. By seeking to imbue democracy with wisdom, this was a part of Madison’s lifelong project of creatively mixing the advantages of aristocracy with democracy. In this case, the advantages of democracy he highlighted included not only the control over rulers by the ruled, but also, by implication, the citizen courage traditionally thought to be encouraged by free government.

On its face, “Universal Peace” is an argument against Rousseau’s alleged¹²⁵ endorsement of Abbe Saint Pierre’s peace plan for Europe. Madison’s argument centered around the primacy of regime form in determining inter-regime relations. Pierre’s plan—which called for “a confederation of [monarchical] sovereigns, under a council of deputies, for the double purpose of arbitrating external controversies among nations, and of guaranteeing their respective governments against internal revolutions”—was “as preposterous as it was impotent,” Madison wrote, because it failed to comprehend the “impossibility of executing [a] pacific plan among governments [i.e. monarchies] which feel so many allurements to war.” A proper plan, he argued, “Instead of beginning with an external application, and even

¹²⁵ Rousseau did not endorse that plan; he in fact objected to it for reasons similar to Madison’s.

precluding internal remedies, ... ought to ... commence ... with, and chiefly rel[y] on, the latter prescription.”

In a republic, the government is “subordinate to, or rather the same with, the will of the community,” but a “hereditary” government has a will independent of the rest of the community. In such regimes, war is declared

by those whose ambition, whose revenge, whose avidity, or whose caprice may contradict the sentiment of the community, and yet be uncontroled by it; by those who are to spend the public money, not by those who are to pay it; by those who are to direct the public forces, not by those who are to support them; by those whose power is to be raised, not by those whose chains may be riveted.

While these conditions persist, the “disease” of war “must continue to be hereditary like the government of which it is the offspring.” Therefore, war “can no otherwise be prevented than by such a reformation of the government, as may identify its will with the will of the society.” That is, a republican revolution, like America’s or that then underway in France, would be necessary if there was to be a “universal and perpetual peace” among nations. Most importantly in this regard, each republic should be constituted so that war is “declared by the authority of the people, whose toils and treasures are to support its burdens, instead of the government which is to reap its fruits.”

However, universal republicanism, while necessary, was not sufficient for creating greater peace among regimes. Madison did not think it inevitable that the “will of the community” would be pacific. If a hereditary regime is belligerent because the warlike passions of its minority rulers are impervious to the costs and risks of war that they pass onto the majority, it is possible that a republic would also be hawkish if the majority is able to externalize (or if it does not feel itself

internalizing) the risks and costs of war. (He implicitly assumed that most citizens will be risk averse with respect to their lives and fortunes—if not their sacred honor?—and thus would be highly reluctant to *deliberately* impose upon themselves the risks and costs of war. He assumed, that is, that the people were pacific even if a popular regime may not be.) How could the majority conduct such an externalization? Madison did not here consider the possibility that the majority, especially in a large extended republic, could force or persuade a sizable minority to pay for and fight their wars for them, but he did consider how a current majority could pass the financial cost onto a future (and thus un-represented) majority. A current majority that uses a modern system of finance to fund its wars, Madison argued, may be psychologically similar to a hereditary monarch or aristocracy that is insulated from the burdens of their wars. Such financial systems were in fact designed to make it easier for states to engage in war by allowing “each generation ... [to] tax... the principal of its debts on future generations” or by using inconspicuous taxation that the current generation does not feel. To institute a republic with a pacific disposition would therefore require “subjecting the will of the society to the reason of the society; by establishing permanent and constitutional maxims of conduct, which may prevail over occasional impressions and inconsiderate pursuits.” This familiar call by Madison for an aristocratic-mechanistic check on popular will would, in this case, be achieved by improving the judgment of the people by emancipating their reason from their passions through institutional manipulation of those passions. If “each generation ... [is] made to bear the burden of its own wars, instead of carrying them on, at the expence of other generations,” then, he argued,

“avarice would be sure to calculate the expences of ambition ... [and] in the equipoise of these passions, reason would be free to decide for the public good.” If, he concluded, “all nations [were] to follow the example ... the temple of Janus might be shut, never to be opened more.”

This argument is intriguing, in no small part because it seemingly suggests that Madison was an early believer in “the democratic peace,” if not a nascent proponent for an aggressive regime change foreign. The latter, indeed, would seem to follow from the former since an obvious problem with this proposal, if directed simply at a single regime, is that it seems to be a form of unilateral constitutional disarmament. Would not constituting a regime to be war-averse imprudently weaken its propensity to defend its independence and existence? Hamilton, in *Federalist* #34, had argued as much when he said constitutional limits on the financial means of defense (or offense) would be “novel and absurd.” “Admitting,” he wrote, “that we ought to try the novel and absurd experiment in politics, of tying up the hands of government from offensive war, founded upon reasons of state: yet, certainly, we ought not to disable it from guarding the community against the ambition or enmity of other nations.” Indeed, Madison seems to have echoed this prudential reasoning in *Federalist* 41, where he wrote:

The means of security can only be regulated by the means and the danger of attack. They will, in fact, be ever determined by these rules, and by no others. It is in vain to oppose constitutional barriers to the impulse of self-preservation If one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions.

But Madison made it clear that he in fact did not see his proposed constitutional restraint on borrowing for war as a form of unilateral constitutional

disarmament akin to a constitutional prohibition on standing armies. In his view, the former, unlike the latter, would not frustrate the “impulse of self-preservation.” Instead it would make the regime *stronger* in fighting wars necessary for self-preservation precisely because it would make the regime less likely to pursue wars for other (unnecessary) reasons. If a republic is properly fiscally restrained, thus allowing “reason . . . to decide for the public good,” then, Madison argued, “an ample reward would accrue to the state, first, from the avoidance of all its wars of folly, secondly, from the vigor of its unwasted resources for wars of necessity and defence.” Importantly, this award would accrue to the state regardless of what other states do, which means there would be good prudential reasons for following his suggested “constitutional maxim of conduct” even if other states did not follow suit.

If it is considered that the essay was generally dismissive of the possibility of achieving a universal and perpetual peace—such a thing, “it is to be feared, is in the catalogue of events, which will never exist but in the imaginations of visionary philosophers, or in the breasts of benevolent enthusiasts”—and that he elsewhere made it clear that he thought (like Hamilton in #6) that other factors, especially geographic proximity, would often be a source of war regardless of regime form (e.g. #41 quoted above), it seems that Madison’s primary purpose with this essay was to offer an alternative constitutional strategy (from Hamilton’s) for reconciling security and free government. In this single essay, Madison managed to attack two central pillars of Hamilton’s vision for American ascendancy in foreign affairs. First, he offered a rationale for allying with (republican) France rather (monarchical) Britain. While Madison may have doubted that the spreading of France’s republican

revolution across Europe would be sufficient for a completely peaceful world, his essay did demonstrate how such a revolution could significantly reduce aggressive and unnecessary wars, including those involving the United States. Siding with republican France would make the world safer for American republicanism.

Second, and most importantly, he gave an account of how the government of the union could defy the European path of state development—with a symbiosis between the ratcheting of executive power, employment of modern systems of finances, and fighting wars—while being strong enough to be respectable in foreign affairs. We have seen how Madison had already addressed this problem when he was forced to confront the dilemma of size. If size is essential for external strength, and republics are not only able to be, but are actually *better* when, large, then a classic dilemma was averted. Here Madison confronted a similar republican security dilemma which arose from the conventional wisdom that monarchies, equipped with modern systems of finance, are stronger in foreign affairs for reasons independent of the size of their territories and populations.

Echoing an insight first made by Thucydides (more in a moment) and anticipating contemporary IR scholarship (Reiter and Stam 2002), Madison hit upon an important insight: regimes in which the people who shoulder (and feel themselves shouldering) the risks and burdens of war also decide when to declare war are likely to pick their fights well (winnable wars) and to be stronger in waging them because they likely will have conserved resources by avoiding “wars of folly.”

Thucydides was perhaps the first to note this strategic advantages enjoyed by democracies, but, not surprisingly, Madison seems to have thought that he had

improved upon the ancient republican experience by overcoming the strategic weakness of democracies also noted by Thucydides. For Thucydides, like Madison, republican regimes, wherein present majorities of citizens internalize the burdens and benefits of war, can be expected to fight more effectively than regimes in which the incentives are aligned differently. Thucydides, however, quite unlike Madison, emphasized the effect of popular participation on citizen/soldier courage and morale: citizens/soldiers will fight harder in wars that they, with their fellow citizens, agreed to enter into knowing full well that they themselves would absorb the costs and risks and enjoy the benefits (400/ 354 B.C.) By contrast, Madison's case for republican strength, as we have seen, was essentially negative and at the level of judgment rather than action. His republic, in which the raw will of the people would be subjected to "the reason of society," would be strong because it would limit itself to necessary wars and have the benefit of resources conserved by avoiding unnecessary wars.

Importantly, Madison's view on the source of republican strength was not only different from Thucydides' (for he had a very different republic in mind), but also a remedy for what Thucydides saw as the principal strategic weakness of (ancient) republics. As Samuel Issacharoff (2009) has put it well, for Thucydides,

[t]he equalization of burdens [in Athens] and the predictability of that equalization were key to the sense of common enterprise that the Athenians were able to bring to war, providing Athens with its advantage in the wars against Persia and in the first stages of the Peloponnesian Wars. [However,] these same qualities would contribute to misguided military adventures, such as the calamitous naval attack on Sicily ... [T]his sort of democratized war effort creates the risk that popular passion and avarice might gain an upper hand. If these forces go unchecked, as indeed occurred, democracy's strength becomes its weakness.

Madison's mixed republic, by contrast, would attempt to make the popular vice of avarice a source of aristocratic wisdom—and indirectly strength—and thus convert Athens' vulnerability into America's safeguard. However, Madison left implicit the major assumption that his republic would still retain enough of the citizen courage—traditionally seen as a leading benefit to the community of democratic liberty—to fight its wars of necessity and defense. Presumably he thought his aristocratic corrective to dangerous popular passions would complement rather than extinguish the useful and necessary spiritedness of the people.

Last Thoughts: The Triple-Mixed State and the Precarious Federal Union

As we saw in the first section, in the last years of his life Madison correctly foresaw that the tendency of the federal republic was, as the confederacy had been in the 1780s, “tending more toward anarchy in the members than tyranny in the head.”¹²⁶ A major reason for this, he believed, was that since the Battle of New Orleans, the States had lost what had hitherto been the most reliable negative inducement to union: a credible external threat. As we have seen, by the early 1790s he had already put considerable thought into the double-edged nature of this factor of fortune. But as he pondered the future of the union in the 1830s, this factor took a more prominent place in his thinking about the federal republic. “The propensity of all communities to divide when not pressed into a unity by external danger, is a truth well understood,” he wrote in 1829.

There is no instance of a people inhabiting even a small island, if remote from foreign danger, and sometimes in spite of that pressure, who are not divided into alien, rival, hostile tribes. The happy Union

¹²⁶ *Federalist 18*

of these States is a wonder; their Constn. a miracle; their example the hope of Liberty throughout the world. Woe to the ambition that would meditate the destruction of either!¹²⁷

This, it must have seemed, was the ironic twist in his reconstruction of orthodox liberal republican theory. The republican union of republics had overcome the classic trade-offs of republican vulnerability, but in truth, it was only a combination of fortune and remarkable political skill and ingenuity that had allowed the Americans to escape the cruel logic of Rousseau's mixed state. While that mixed state as a fact of the human condition is essentially timeless, the manner in which it manifests itself is highly context dependent. The Americans had actually enjoyed a fortuitous triple-mixed state: individuals caught in a system of states within a system of states. Prior to the battle of New Orleans, the European system of States had presented enough of a threat to cement the union, but not enough to push the union into a dangerous aggrandizement of national-executive power. It was under this tenuous condition that the Americans were able to reform their own system of States so that it took on its (also always tenuous) partly federal, partly consolidated form. And it was under this form alone, Madison firmly believed, that republican governments could escape the internal and external cycles that had historically led to the destruction of those governments.

Conclusion

In this chapter I have considered Madison's constitutional project as a multifaceted attempt to find republican answers to the 18th century critique of republics. He, unlike Hamilton, became convinced that Americans had invented a

¹²⁷ "Outline, September 8, 1829"

political association superior to the British constitution. Not only was it more conducive to durable liberty than the British model; it was also better adapted for providing external security. To reach these conclusions, he rejected two crucial tenets of the 18th century critique of republics. First, he argued that there is no trade-off between the small size requisite for liberty and the large size necessary for external security. However, he came to believe that the States were essential for extending the sphere as far as he thought necessary for providing security and preserving the socioeconomic basis necessary for preventing the republican violent death. Second, he rejected the idea that modern systems of war finance—and the potential aggrandizement of executive power that this could bring—are necessary for external security. Indeed, he argued the opposite: republican regimes constitutionally restrained from borrowing and inconspicuous taxation would be stronger at fighting wars, not weaker. For his part, Hamilton accepted these elements of the classical critique. This provides the final piece of evidence to support this dissertation's thesis. The basis of Hamilton's and Madison's political break was, as Madison always said, based on their theoretical and principled difference over the necessity and propriety of monarchy in post-Revolutionary America.

Chapter 6: Summary and Applications

The American legal constitutional order is, in its essential aspects, a product of three defining “constitutional moments” in U.S. history: the founding period examined in this study; the Reconstruction era, formalized in the 13th, 14th, and 15th Amendments; and the New Deal era, in which the vision of Herbert Croly and other Progressives for robust national socioeconomic regulatory authority received informal ratification by the U.S. Supreme Court (Ackerman 1993, 2000). But the *de facto* nature of the American political regime has always been shaped and strained by interactions between its extant political institutions; changes in its broader social, cultural, and international context; and efforts by influential political agents to reform and create new institutions whenever opportunities to do so arose (see e.g. Skowronek 1997; Orren and Skowronek 2004). The great questions concerning the strength and fragility of republics recur throughout history, buffeted and supported in turn by changes in domestic and international forces of economics, politics, and increasingly, technology. Every critical turn in American history bears the hallmark of some form of the debate over republicanism’s weaknesses.

This dissertation considers how Madison and Hamilton sought to create durable governmental institutions conducive to human liberty by anticipating, and attempting to thwart, two dynamic socio-political processes they saw as threats to republics. I have called these the “republican violent death,” and the “republican security dilemma.” These were anticipated patterns of political outcomes that emanated from the interaction between institutions, social conditions, and geopolitical context. Madison and Hamilton believed these patterns naturally tended to transform

republics into despotic or, at best, limited monarchical regimes. The immediate purpose of this study has been to explain their political alliance and break as resulting from their common and disparate solutions to those problems. However, this study of their political thought can also give us insight into modern political conditions and the challenges we face as we seek to preserve and improve the republic.

This concluding chapter is divided into two sections. In the first section, I briefly summarize the historical argument developed in this dissertation. Then, in the second section, I consider how this understanding of Madison's and Hamilton's thought can help us to evaluate and approach the myriad challenges facing the American republic today. To present an application of the theories of republicanism and the Founding debates across the broad sweep of American history from the Constitutional Convention to the inauguration of Barack Obama is clearly not manageable in an entire dissertation, much less a concluding chapter. However, the instructive lens of analysis creative by Madison and Hamilton – the framework of their political thought – provides an important base of understanding for modern challenges. Indeed, we can see their debate crop up throughout American history. In this concluding chapter, I will offer a few examples from the 20th and 21st centuries to highlight the enduring centrality of republicanism and the Madison-Hamilton debate.

Summary of Argument

This dissertation has offered a new interpretation of the theoretical basis of Hamilton's and Madison's political alliance and estrangement. I have argued that Madison was essentially correct that his and Hamilton's difference was over degree of principled commitment to republican, as opposed to limited monarchical,

government. More specifically, I have presented the case that Hamilton never evidenced a principled commitment to the republican form and that he believed preserving liberty in North America would require adopting a mixed regime, complete with a hereditary monarchy, modeled after the British constitution. This thesis defies a scholarly consensus that dates back to the Progressive historians of the early 20th century. Though many have held that Madison genuinely *believed* that this was the nature of their disagreement, most have concluded he was mistaken about Hamilton's intentions. I argue not only that Hamilton believed America needed a monarchical executive, but also that he deliberately sought to put the regime on a developmental path toward monarchy.

This interpretation has been different from previous studies in part because of its thematic and conceptual focus and in part because of how I have approached the textual record. One thematic focus of this dissertation that has led it to deviate from dominant scholarly trends is that it has operated from the assumption that Madison and Hamilton always believed not only that disunion would have tragic consequences, but also that it was an imminent threat for which the establishment of a strong "national" government to restrain the States was the only remedy. Put another way, they both genuinely believed the central thesis of *Federalists 2-36* that (1) the union was necessary for the basic goods most American wanted—security from foreign war; internal security from violent rebellion, usurpation, and civil war; prosperity through favorable trade relations; and the preservation of free government—and (2) a central government at least equally as strong as the one proposed was necessary for preventing disunion. Due to the legacy of the Progressive

historians who downplayed the diplomatic and sectional aspects of the founding, most scholars in the 20th century have assumed that the warnings of disunion in the *Federalist* amounted to clever propaganda.

A second theme guiding my interpretation is a set of beliefs widely held among the founding generation that I refer to as the 18th century critique of republics. This critique, which was leveled by several prominent 18th century political theories, pointed to two dynamic processes that seemed to render republics unfit for modern conditions. One of these was the “republican violent death,” which suggested republics naturally tend toward factional violence, anarchy, and, eventually, despotism. The other was the “the republican security dilemma,” which suggested that physically contiguous regimes in anarchy with one another will tend to create institutions and promote policies that undermine the requirements for domestic republican liberty.

The first dynamic was rooted in the fundamental belief that all regimes are in motion toward either the extreme of pure republicanism or the other extreme of absolute monarchy. The British constitution was widely thought to exist at a middling stage of that developmental path, which led David Hume to write an essay speculating as to whether the British constitution was tending toward republicanism or absolute monarchy. However, the developmental path was thought to be cyclical, not linear. If the regime landed in republicanism, it would degenerate into anarchy and this would lead to so much violence that the people would seek safety in despotism. The conventional wisdom at the time of the founding, as written by such authorities as Montesquieu, Hume, and De Lolme, taught that a hereditary monarch

within the British balanced constitutional framework was the best means for overcoming the republican violent death while retaining important elements of the republican aspiration for liberty as “rule of law, of not men.”

For the second dynamic, the republican security dilemma, thinkers as diverse as Montesquieu, Rousseau, and Vattel agreed that this presented a formidable threat to republican viability, but none offered a solution that was acceptable to the founders. England, they all agreed, had been able to retain a limited monarchy in large part because of geophysical fortune: its insular position that allowed the state to rely more on naval than land forces for pursuing its foreign policy thus taking away the “pretense” for the monarch to keep up a large standing army for power aggrandizement at home. For regimes seeking to retain their freedom on the continent, however, they were less optimistic. While they all pointed to confederacies, such as that of the Swiss or Dutch, as the best solution for republics on the continent, they also agreed that most peoples had been unable to avail themselves of this strategy. Moreover, the founders decided that those confederacies faced significant deficiencies, rendering them generally ineffective.

The other reason my interpretation is different is because of three distinct approaches I have used for studying the textual record. First, I begin with the assumption that Hamilton’s statements at the Constitution Convention are a reliable source of his genuine views. While most scholars have tended to ignore or explain away his statements critical of republics and favorable toward the British constitution, I argue that he was more likely to be candid in that context than most any other. Second, I used targeted searches of Hamilton’s and Madison’s complete digitized

works in order to discover pertinent passages related to the primary issues and themes of this study: monarchy, executive power, republicanism, the republican violent death, the republican security dilemma, and the problem of preserving the union. This allowed me to discover, interpret, and compare all pertinent passages by Madison and Hamilton on a single topic over time and across contexts. Third, I read Hamilton's writings closely to attempt to distinguish between sincere statements and those that he made for rhetorical reasons. This was an important part of my reading of his *Federalist* essays.

By applying this interpretive approach and reading Hamilton's and Madison's writings with an eye toward the republican security dilemma and republican violent death, I discovered strong evidence that Hamilton and Madison both took the critiques seriously, but differed fundamentally over how to resolve them. Their common concern with these processes was rooted more fundamentally in their mutual aversion to military despotism. Despite Hamilton's reputation among some scholars as a Hobbesian despot, I found abundant evidence that he feared despotism as much as Madison. This was one reason that they both believed a strong national government was necessary to keep the States out of anarchy and therefore the republican security dilemma. This was due to the fact that they both exhibited a fear that disunion and anarchy among the States would lead them create large standing armies and uncontrolled executives, like the absolute monarchies in Europe. Similarly, they both also feared that faction would lead to anarchy and then despotism.

Where they differed was in how they sought to resolve these problems.

Hamilton viewed these problems through a traditional lens, while Madison sought innovative solutions to the problems. For example, Hamilton, unlike Madison, held fast to the orthodox view that executive “energy” in the form of “firmness” through electoral insulation was necessary to prevent the republican violent death. Indeed, at times he admitted to believing that nothing short of the British balanced constitution presented a reliable solution to the problem. Madison, on the other hand, generally expressed optimism that this problem could be resolved through (1) republican institutional design—the extended sphere, representation, bicameralism, national superintendence of the States (initially through the Senate veto, but eventually through the judiciary), and separation of powers—and (2) policies designed to prolong the agrarian stage of political economic development. Similarly, Hamilton thought strong executive authority was necessary to prevent disunion. At one point he even said that the thought a monarch would be superior at cementing the union.

Part of my interpretation also involved paying close attention to Hamilton’s statements that indicated his beliefs about public opinion. I discovered that Hamilton admitted that he did not think it was responsible to speak openly about his belief in the necessity of a limited monarch. Doing so, he suggested, could create fear or alarm in the people and potentially trigger the violent death and/or disunion. Somewhat ironically, therefore, his fear of despotism emanating from anarchy both led him to favor a monarchical executive *and* led him to be reluctant about admitting it publicly. I suggested that this is a leading reason why scholars have been reluctant to entertain the idea that Hamilton favored monarchy, since he did not often express

the belief. However, my close reading of the textual record revealed several signs of his genuine preference.

Hamilton also expressed a hope that public opinion may one day become favorable toward adopting the British constitutional model. I took this as evidence that Hamilton might on occasion engage in opinion leadership in order to gently move public opinion closer to his way of seeing things. I found instances where this seems to have been the case. For example, Hamilton often made a point of distinguishing between “free governments” (or, “the principles of civil liberty”), on the one hand, and “republican governments,” on the other, in rhetorical contexts where it made little sense for him to do so unless he was trying to convince his audience to reject their anti-monarchism and return to their pre-1776 faith in the superiority of the British balanced constitution. Two prominent examples of this were in *Federalist #9* and in his draft of “Washington’s Farewell Address.” In addition to this selective use of terminology, I also demonstrated, through my close interpretive reading in Chapter 4, that he seems to have been engaged in long term opinion leadership through his bold (and ratification-threatening) defense of the British monarch in *Federalist #71*. This is one reason that I argue Hamilton deliberately sought to put the regime on a developmental path toward monarchy.

Madison’s optimism about avoiding the republican violent death was predicated upon American maintaining a predominantly agrarian economy. He, like most members of his generation, believed that as America transformed into a manufacturing society, a majority of Americans would become property-less, which would exacerbate class conflict and possibly the need for monarchical

superintendence to prevent the republican violent death. That is, he harbored doubts that his republican institutional mechanisms would be sufficient amid substantial inequities in property ownership. A subterranean part of my argument, therefore, was that since Hamilton also believed this would be a consequence of property bifurcation, the fact that he was comfortable with pursuing policies that would rapidly divide American society into a propertied few and property-less many can only be explained by his lacking an aversion to the introduction of monarchy.

As for the republican security dilemma at the national level, Hamilton's political economic policies were the most important element in his program for American greatness. To pursue this foreign policy required a lack of aversion to monarchy both for the indirect reason mentioned above (most thought the social bifurcation it would create would require the introduction of monarchy in order to prevent the republican violent death) and because it was widely believed that war presented an opportunity for executive aggrandizement of power. Madison and Jefferson, who sought to prevent both paths to monarchy, needed to find a way to prolong the agrarian stage of development while doing everything possible to assure security from Europe without recourse to conventional military means. This converged on their dual policies of extensive Western expansion and the use of economic sanctions ("peaceable coercion") for protecting American rights and interests from European injury. Western expansion would serve the dual purposes of prolonging the agrarian stage of development and removing European threats from the continent, while the second would enable the Americans to benefit from favorable commercial relations with Europe without introducing the socioeconomic changes

necessary for producing the military means requisite for doing so through a military power balancing strategy. Again, since there is every reason to believe Hamilton also thought this would be a consequence of his power balancing strategy, and because he intended America's Western expansion to stop East of the Mississippi, I argue that this is further confirmation of the thesis that Hamilton sought to speed along, or, at the very least, simply did not fear, the introduction of monarchy in America.

Since Madison's principled commitment to republicanism interacted with his understanding of the republican security dilemma to create his policy preferences for far-reaching Western expansion and for arresting Hamilton's economic program, Madison made two theoretical breakthroughs to explain how these two policies could be compatible with stability and security. The problem with Western expansion was that Madison believed, despite the unqualified optimism of his arguments in #10 and #14 about the ability for an extended sphere to improve republican stability, the logic could only hold for a territory of "mean extent." This, I argue, was a major reason that Madison started to reconsider the role of the States in his system. Though he implied in #51, for the first time in the writings, that the States would allow for extending the practicable sphere of republican government, he seems to have more fully developed this logic in his systematic theoretical study in his "Note on Government" in 1791 and 1792. For our purposes, the most important of these was his concern about lessened ability to rally public support for war when the sphere was extended too far. His vision of State representatives as opinion leaders suggested that this presented a solution to that problem. This, I argue, was one of the reasons he concluded that the "partly federal" nature of the American system was the best model

not only for spreading stable popular governments, but also for providing external security.

His other major breakthrough was to discover, in defiance of conventional understandings of the republican security dilemma, that constitutional limits on government borrowing could serve to strengthen the regime rather than weaken it. His argument was that if each generation was forced to bear the burden of their own wars, then they would be less likely to fall into wars of “folly” (imprudence) or “wickedness” (government venality.) This, in turn, would serve to strengthen the state by encouraging it to conserve its resources for wars of absolute necessity.

This study has sought to set the historical record straight about Hamilton’s intentions and motives. Ever since Herbert Croly and other Progressive historians decided to hold Hamilton up as a model for modern democratic nationalism, scholars have been reluctant to take Madison’s claim seriously that their rupture was due to Hamilton’s and the Federalists’ support for monarchical policies and principles. More than anything else, this has had the unfortunate consequence of diminishing the extent to which Madison engaged with the classical critique of republics to develop innovative multifaceted republican cures for “the diseases most incident to republican government.”

Applications: Where We Are, and Where We Are Heading

Americans are unique in seeking to find meaning, and even guidance, in the present by looking back to the thought and actions of their “founding fathers.” I am not immune to this tendency. This curiosity gave rise to this study with an eye toward finding a better understanding of the problems in our present and future

through the lens of the past. The founders' context was very different from ours, and this makes it difficult to seek guidance from them as we think about the fate of our free institutions today. However, it seems that their views on the two fundamental problems facing republics—the republican violent death and the republican security dilemma—and the legacy of their efforts to address those problems, can give us some helpful insights on our present condition and our possible futures.

Republican Violent Death

The 20th century analog to the 18th century fear of the republican violent death was a Marxian labor uprising that would seek to overturn republican institutions and establish a dictatorship of the proletariat. Needless to say, such a threat is far from credible today. But it is useful in an effort to begin understanding our present condition to examine Herbert Croly's (1909) analysis of the problem at the turn of last century. As Croly's highly influential Progressive manifesto, *The Promise of American Life*, was written a century after Madison's first year as President and a century before Barack Obama's, the work presents a convenient bridge between the era studied in this dissertation and our own times.

Throughout the book, Croly expressed a fear that a violent clash between the wage-earning many and capitalist few could threaten the American republic. In language reminiscent of Hamilton's fears of demagoguery leading to anarchy and the eventual overthrow of free institutions, Croly decried the "aggressive and unscrupulous unionism ... [that was] beginning to talk as if they were at war with the existing social and political order" (p. 128). The "union laborer," he wrote with alarm, "is tending to become suspicious, not merely of his employer, but of the constitution of American society" (ibid.). Channeling Madison, he noted that "the

practical dangers” of an overthrow of the “American political and social order” were, for the time being, “largely neutralized by the mere size of the country” and the fact that “so large a proportion of the American voters [were still] land-owning farmers” (pp. 128-129). But he thought the long-run prospects for America’s national political institutions were uncertain and, in the meantime, “particular states and cities [could not] be considered as anywhere near so secure.” The bottom line was that the rise of corporations and organized labor, “two such powerful and unscrupulous and well-organized special interests,” had, in Croly’s estimation, “created a condition which the founders of the Republic never anticipated” (p. 131).

If Croly’s analysis combined Hamiltonian and Madisonian reasoning (apparently unbeknownst to him), his proposed preventive cure was purely Hamiltonian. Using terminology traceable to de Lolme¹²⁸, Croly insisted that the portending rise of capital-labor factional conflict required “as a counterpoise a more effective body of national opinion, and a more powerful organization of the national interest” (ibid.). Indeed, the independent regulatory agencies that he had in mind with this statement, while based on a very different moral-political psychology from what Hamilton lauded in monarchy, are often referred to today as “neo-Hamiltonian” (e.g. Kettl 2002). Most who would use that label, however, have in mind the “popular but responsible” administrative executive most famously portrayed by Hamilton in *Federalist 72*. But Croly, for one, seems to have also envisaged a functional equivalent to Hamilton’s monarchical executive (described in #71) that would stand

¹²⁸ “As the power of the People, when they have any kind of power, and know how to use it, is at all times really formidable, the Constitution has set a counterpoise to it; and the Royal authority is this counterpoise.” (De Lolme 1771).

firmly outside of factional conflict so as to control it and thereby prevent America's free government from succumbing to a violent death. Croly certainly did not explicitly make this connection, but the parallel is nevertheless instructive.

Croly's fears notwithstanding, the United States, of course, did not succumb to the socialist version of the republican violent death in the 20th Century.¹²⁹ A variety of reasons have been given to explain this (see e.g. Lipset and Marks 2000), but this glimpse into Croly's views at the turn of last century suggests possible Madisonian and Hamiltonian institutional explanations. Though he did not cite Madison, Croly himself, as we have seen, pointed to the effect of Madison's extended sphere. This, in conjunction with the multiple veto points created by the separation of powers, which gives minority interests ample opportunities to protect their bottom lines, can undoubtedly go a long way in explaining why a majoritarian tyranny did not develop and ignite the violent death.¹³⁰ An alternative, Hamiltonian, explanation could be that Croly's preferred response to the rising tide of labor, electorally insulated national regulatory agencies, created the "counterpoise" Croly (and Hamilton) thought necessary.

The example of Croly's fears about early 20th century American succumbing to the anarchy of class interests feels anachronistic given the political apathy of the modern era and the strength of governmental institutions. Yet throughout the 20th century, there were periods in which reasonable and well informed political observers anticipated the potential collapse of the American experiment. The Great Depression,

¹²⁹ Indeed, the United States was exceptional among modern industrialized democracies for not even producing a viable Socialist or Social Democratic Party.

¹³⁰ Graber (2001) makes a much more thorough case for this kind of institutional explanation.

the early part of the Cold War, and the Vietnam era all produced critics that questioned whether the fabric of American republicanism would be torn asunder either by popular factionalism or the centralization of power in government. These particular concerns of the past are largely superfluous today with the impotency of the union movement (see e.g. Mosher 2007) and the fact that ordinary Americans are apparently still highly unlikely to act out politically based on class interest.

With the exception of the celebrity-status presidential campaign of Barack Obama, there have been relatively few occasions in which American citizens have organized substantial political tumult. Recent events seem to confirm that this feature of modern American political culture is still in full force. Despite the devastating impact the financial crisis has had on millions of Americans, and that many of them believe the crisis was attributable to nefarious corporate practices, the only notable popular protests in the past year were the “Tea Parties,” which were in response to Obama’s proposed (progressive) tax policy. This is particularly striking considering that inequalities in wealth and income have reached levels unseen since the 1920s (see e.g. Krugman 2002).

There is no shortage of irrational political activism across the political spectrum on a wide range of issues – but nothing rises to anything approaching the level of anarchic disruption. The 9/11 Truth conspiracy on the left all the way over to the muddled furor of Palin-ism suggests that the ills of democracy continue to fester in the American polity—goaded by ignorance, disillusion and jingo-ism. And yet, there is no power structure for these insurgent ideologies outside of the mainstream political parties, no strong organizing vector with the potency to threaten the existing

social order. In fact, it is the impotency of wild-eyed populism (left and right) against social inequalities and the economic dominance of Wall Street and the lobbies of capital that characterize modern American politics. From this vantage point, it is the righteous indignation of unrequited suffering that fueled Obama-mania; and conversely, it is Rubin-onomics, the coal industry, and the pharmaceutical lobby that are blunting the sharp edge of reform politics promised to the people. The civic virtue of informed citizenship has indeed fallen away in a large republican state – but it has not given way to violent anarchism, but rather to oligarchic levels of social inequalities that perversely produce only tepid passion for redress that rarely hits the streets in protest.

Indeed, those scholars and commentators who have pointed to social threats to the republican constitutional order have appropriately focused their attention, not on excessive democracy leading to anarchy, but on social and economic forces pushing toward greater centralization of government power. It should be recalled that Madison and Hamilton both believed “liberty” could be lost, not only by too little “power” (i.e. anarchy igniting the violent death), but also by gradual accumulations of government power over time. Though Hamilton and Madison differed fundamentally over the best constitutional strategy for finding a proper balance between “liberty” and “power,” they both believed it was necessary to find such a balance.

It is useful to consider that two prominent political theorists from opposite ideological perspectives, Sheldon Wolin and Paul Rahe, have recently argued that America is moving dangerously toward despotism (Wolin 2003; Rahe 2009). While there are several salient differences between the two, they both are alarmed by the

increasing role of the national government in all spheres of American life, and both point to an ominous decline in citizen vigilance. For Wolin, it is all explicable by the systemic needs of a totalizing capitalism. He warns of an emerging “inverted totalitarianism,” run by a corporate power elite who “share with Nazism the aspiration toward unlimited power and aggressive expansionism, [but whose] methods and actions seem upside down.” According to Wolin, “under Nazi rule there was never any doubt about ‘big business’ being subordinated to the political regime,” but in the “United States ... it has been apparent for decades that corporate power has become so predominant in the political establishment ... and so dominant in its influence over policy, as to suggest a role inversion the exact opposite of the Nazis’.” For his part, Rahe does not seem at all concerned about class structure, but, for our purposes, it is noteworthy that his immediate target is Croly’s (and, by extension, Hamilton’s) solution to the republican violent death: the ever increasing reach of the administrative state. Rahe, however, follows Tocqueville (1994) in blaming it on what he sees as the tyrannical force of the excessive egalitarianism that they both considered to be the fundamental principle of modern democracy. Rahe’s conservative solution includes a roll back of the federal government, reinvigoration of civil society, and return to traditional moral values. Ironically, the American left that was most alarmed by the Bush version of big government will happily embrace Obama’s new New Deal and the ballooning federal presence in American social life. Although these two presidents have enormous differences, they are united in presiding over extraordinary expansions of state power.

Both traditional conservatives, like Rahe, and libertarian conservatives (e.g. Hayek 1944; Nozick 1974; M. Friedman and R. D. Friedman 1980; Goldberg 2008; Beck 2009) are dismissive of class structure and often appeal to the authority of the founders to support their case for saving liberty from excessive government power. However, it is important to note that Hamilton and Madison did not believe bifurcated wealth and income is inconsequential to the preservation of free government, even in the absence of a realistic threat of the republican violent death. Although it was not emphasized in this dissertation, for it was not perceived by Madison or Hamilton as a realistic threat at the time, the 18th century discourse on factional conflict allowed for an equilibrium outcome other than the violent death: aristocratic/oligarchic domination. Hamilton and Madison were united in disfavoring this development. Though they are well known for criticizing excessive democracy and favoring institutional protections for the propertied, neither of them would have endorsed tyranny by the few if they had perceived it as a credible threat. One of Hamilton's stated reasons at the Convention for favoring a monarch, recall, was that he thought it was necessary to maintain a balanced separation between the few and the many. That balance was necessary, in his view, because if the founders were to "give all power to the many, they will oppress the few," and if they were to "give all power to the few, they will oppress the many."¹³¹ Madison, similarly, endorsed the representative republic in part because "it chuses [sic] the wisdom," of which "aristocracy has the chance; whilst it excludes the oppression of that form."¹³²

¹³¹ Hamilton, "Speech at the Federal Convention," June 18, 1787 (Madison's Notes)

¹³² Madison, "Government," *The National Gazette*, January 2, 1792

Conservatives and progressives are always going to find many points of disagreement, but it seems clear to me that they should find common cause in seeking to reconstruct a middle class that can prevent elite domination of the political process. In an age of globalization, however, this will necessarily require redistributive policies coordinated at the national, if not international, level. Taking Madison as his point of departure, Stephen Elkin (2006) has demonstrated that such national policies can be made conformable to, and may be necessary for realizing, the aspirations for a robust and prosperous market economy *and* reinvigoration of local civic engagement. Much more work following Elkin's model of "new constitutional" political science is required as we seek to preserve and invigorate republican self-government amid the inevitable economic inequalities produced by the economic foundations of the modern commercial republic.¹³³

Republican Security Dilemma

The relevant contextual factors with which Madison and Hamilton had to grapple as they confronted the logic of the republican security dilemma were, as with the problem of the republican violent death, radically different from those that apply today. For example, no one today worries about (or plausibly hopes for) "anarchical independence" among the States. Since the Civil War, federal supremacy has become firmly established, a recent trend of policy "devolution" and Supreme Court declarations of Constitutional limitations on national authority notwithstanding. This supremacy is based not only on Constitutional amendments and Supreme Court

¹³³ Of course, the "new constitutionalism" project is being developed and applied toward regimes besides the American commercial republic. See Soltan and Elkin (1996) and Elkin and Soltan (1993, 1999).

decisions—for that would be irrelevant if the States drifted back toward anarchy—but also on a robust American national identity and the shift in the balance of material resource power toward the national government. For example, state militias have been gradually converted into units of the National Guard (Deudney 2007, 175-176) and the states' budgets have become highly dependent on federal funds (Peterson 1995). Never in modern memory has this financial dependency been more true than at this time of economic crisis.

In addition to the changed structure of the union, the national government's place in the broader international “anarchical society” is radically different as well. In this section, we will consider two of those relevant differences. First, while Hamilton and Madison had to contend with the credible threat of European domination, the United States today stands in a position of overwhelming global military supremacy. Consequently, the relevant question today is whether the republic can withstand present efforts to extend and entrench American empire. Second, changes in the nature of weapons technology—both their destructive force and availability to non-state actors—threatens to create a global security environment much worse than Hamilton and Madison envisaged even for the States in the event of disunion. This, in turn, portends a manifestation of the republican security dilemma that will incline all regimes, including the United States, to increasingly develop repressive institutions that undermine the practices necessary for durable republican liberty.

Can There Be An American Republican Empire?

A striking development in recent years is the growing willingness for certain members of the American political and intellectual elite to openly endorse “American

empire.” It is no longer thought necessary to use euphemisms, such as “benign hegemony” and “global leadership,” when speaking favorably of a development that arguably began in the wake of World War II and apparently culminated in a plateau of perpetual US dominance with the collapse of the Soviet Union (Johnson 2004). The rise of a multi-polar world in the form of Chinese and Indian economic power and the consolidation of the European Union has not altered America’s unrivaled military position in the global order. Though debating the merits of American empire deserves careful analysis and evaluation from the standpoint of justice and prudence, I will here just note one prudential question that Madison and even Hamilton would have considered imperative to ask but that contemporary proponents of American empire have not, in my view, given adequate attention: Can the domestic requisites for American republican liberty be preserved if it seeks to solidify a global empire?

A presentation at Harvard six years ago by Stephen Rosen (2003), one of the leading proponents of American empire, is indicative of the present state of debate on the nature and consequences of America’s hegemonic role in the world. Rosen’s talk laid-out the case for empire by noting several systemic benefits it provides—relative peace and stability; promotion and preservation of “minimally acceptable” regimes around the world; greater prosperity—and by suggesting that no other plausible approach to world organization would as reliably provide those benefits. After the talk, he called on an audience member who asked the following question: “You were notably silent about the cost of empire domestically ... [Can you] name an imperial order that was a democracy?” Rosen then gave this striking response:

Yes, there have been imperial democracies--the Roman, the British, the Athenian. This question was central in the minds of the founding

fathers when they said, we are constructing a democracy but we hope we are constructing a democracy that can deal with the world outside our borders as well.

This dissertation has given two reasons, from the standpoint of historical accuracy, to question the validity of this response by Rosen. First, we have seen that Madison and Hamilton were in agreement that a republic could not remain a true republic while pursuing an aggressive foreign policy. While Hamilton did envision America becoming a great military power, he and Madison both believed this would result in the development of a monarchical executive. Hamilton's vision of a mixed constitutional regime saw that executive as not only compatible with, but also necessary for, durable American liberty. But his foreign policy was calculated, I have argued, to reconcile American external and internal liberty. Hamilton's foreign policy was intended to balance external powers, not pursue imperial domination. It is not clear that even he can be cited as believing an imperial foreign policy could be made compatible with domestic liberty, even with his pseudo-republican understanding of what the latter entailed. However, there is no question, as we have seen, that Madison believed republics are highly susceptible to subversion from any form of ambitious foreign policy.

This brings us to the second, and more salient, problem with Rosen's historical references. Conventional wisdom in the 18th century held that, while it is true that Rome was an imperial power while it was still a republic, it is also true that imperial overstretch ultimately subverted the republic. Madison himself, recall, argued that "the liberties of Rome proved the final victim to her military triumphs."¹³⁴

¹³⁴ Madison, Federalist #41.

This was also the core thesis of Montesquieu's *Considerations on the Causes of the Greatness of the Romans and their Decline* (1734), and a theme repeated throughout his *Spirit of the Laws* (1752). Hume went so far as to say even his imagined *Perfect Commonwealth* (1752) would not be immortal, in part, because it would be susceptible to making the Roman mistake:

extensive conquests, when pursued, must be the ruin of every free government; and of the more perfect governments sooner than of the imperfect; because of the very advantages which the former possess above the latter. And though such a state ought to establish a fundamental law against conquests, yet republics have ambition as well as individuals, and present interest makes men forgetful of their posterity.

To be fair, the Madison and Hamilton examples hardly prove that America's free institutions cannot withstand the kind of imperial foreign policy advocated for by Rosen and others. Indeed, he could retort that Madison's and Hamilton's reasoning cannot very well explain how the United States endured the Cold War without the Presidency evolving into something resembling monarchy. He might concede that the office has become much more powerful, relative to the other branches, and that this was due in large part to America's changing role in the international system (Schlesinger 2004; Yoo 2006). Moreover, he might even grant that the Cold War altered the informal constitution of the America republic due to the political power now wielded by the arms industry (Rundquist and Carsey 2002) and by a news media that has discovered that war coverage can be highly profitable (Baum 2005; Bacevich 2005). Even after conceding those points, he still could say with justification that the institution today—popularly elected (with nearly all adult citizens eligible to vote), with a formal two term limit, and significant pressures to

follow public opinion—is actually more democratic than Madison or Hamilton envisioned.

However, the goal of global imperial domination will require a level of international commitment much greater than that of the Cold War. Moreover, it will not benefit from the ideological reflexivity of that conflict, which induced Americans to prove the superiority of liberal democracy to Communism by better living up to their espoused commitment to civil rights and liberties (see e.g. Klinkner and Rogers M Smith 1999). Perhaps most importantly, Rome clearly should not be held-up as a model of successfully reconciling republican government with expansive imperialism. The question should be, not why Rome succeeded at this, but, rather, why it eventually failed.

For these, and a variety of other reasons, further research is required on the likely consequences of American global domination on its domestic liberties. This, in turn, must be balanced by careful analysis of alternative achievable models of global organization. Currently, there is something of a division of labor—along ideological lines—among constitutional scholars in the treatment of these interrelated issues. For example, Yoo (2006) places America’s changing role in the international system at the center of his explanation (and justification) for changes in the balance of warmaking power among the branches of the national government. However, one will look in vain for any discussion in his book on the impact of these developments on the structural basis of domestic liberty. Louis Fischer (2008), by contrast, exhibits precisely the opposite tendency. He has a lot to say about the founders’ (especially Madison’s) understanding of the importance of legislative-executive balance for

preserving liberty, but he is silent about (1) what kinds of international systems, and American roles within them, are necessary for sustaining such a domestic structural arrangement and (2) the merits of such systems relative to those less conducive to optimal domestic structures. I confess that I share Fischer's concerns, but I do believe Yoo has addressed an important piece of the overall puzzle and presented a formidable argument worthy of serious consideration and response on its merits.¹³⁵

The Age of Terrorism and the New Mixed State

Looking at some of the major works published in recent years on constitutional law in an age of terrorism, it is striking that scholars with otherwise divergent views agree that terrorism creates a unique and serious threat to security, and requires unprecedented responses that threaten American liberty. Richard Posner (2007) sees the problem as such:

the 'war on terrorism' is not a conventional war, because it is not a military conflict with a foreign state. But it has essential features of a war, indeed of a total war. It is a violent conflict with a powerful, resilient enemy Their lack of a national base . . . weakens our ability to retaliate against them or even find them. The stakes are magnified by the enemy's effort to obtain and deploy weapons of mass destruction, which are becoming increasingly accessible to terrorist groups and against which, in the hand of terrorists, retaliation in kind is impossible. . . . [I]t is the peculiarly insidious character of the terrorist threat that requires responsive measures that test our commitment to civil liberties. (pp. 147-148)

One of the most devastating implications of our present condition, he continues, is that "a terrorist attack . . . incites curtailments of civil liberties" (149). Consequently, "[c]ivil libertarians should value safety [from terrorist attacks] not only for its

¹³⁵ I am as appalled as anyone by the legal opinions Yoo wrote while serving in the Office of Legal Counsel, but I think progressives should spend more time forging a coherent response to his (and other neoconservative's) ideas and less time seeking to prosecute him.

intrinsic merits,” but also because of the predictable popular support for more repressive measures in the wake of an attack. Posner calls for a context-sensitive approach to judicial decision making that seeks to find a perfect balance between “liberty” and “safety.” He makes it clear, however, that providing safety in the age of terrorism require substantial reductions in traditional liberties.¹³⁶

While concurring with much of Posner’s grave assessment, Bruce Ackerman (2007) points out that, while seeking to prevent terrorist strikes is important (both intrinsically and for protecting civil liberties in the long-run), we should accept the fact that we will not be completely successful at the attempt. In his view, “[p]reventive measures will sometimes fail” and so the “only question is how often the security services will drop the ball: once out of ten threats, once out of a hundred, once out of a thousand?” (14). Indeed, Ackerman argues that we should accept the fact that “[i]t may be only a matter of time before a suitcase A-bomb decimates a major American city” (p. 43).

Also unlike Posner and most other conservatives, Ackerman believes we are led astray by speaking and thinking of terrorism through “the fog of war talk” (p. 14). He makes two important distinctions between our conflict with terrorism and traditional wars. First, he argues that the root problem is the availability of weapons of mass destruction to non-state actors. This means that, unlike traditional wars and the image portrayed by Posner, there is in fact no identifiable enemy to defeat:

If the Middle East were magically transformed into a vast oasis of peace and democracy, fringe groups from other places would rise to

¹³⁶ This structure of thought, it should be noted, is similar to that justifying the balanced constitution in order to prevent the republican violent death: use executive energy today to prevent a predictable future popular cry for even greater executive power.

fill the gap. We won't need to look far to find them. If a tiny bank of extremists blasted the Federal Building in Oklahoma City, others will want to detonate suitcase A-bombs as they become available, giving their lives eagerly in the service of their self-destructive vision. (p. 14)

Second, Ackerman argues that traditional wars, or, at least “our most terrible” ones—especially the Civil War and World War II—“not only involved mass slaughter but presented a genuine threat to the very existence of our government” (p. 21). It was in these wars that posed a serious “*existential* threat to the nation” (ibid.) that repression was arguably most justified and, not surprisingly, the very ones in which “presidents acted unilaterally with devastating effect on civil liberties” (p. 20). Terrorism, by contrast, only indirectly threatens our existence as a free society by coaxing us into treating it like a direct existential threat:

Just as the Spanish American War did not pose an existential threat, neither does the struggle with terrorism. We will suffer grievous casualties in future attacks, but the only thing that genuinely threatens to jeopardize our polity is the war talk that we hear around us. It is precisely this rhetoric that will encourage courts to rubber-stamp presidential decisions to respond to terrorist attacks with escalating cycles of repression. If the courts don't challenge the language of war, they will ultimately acquiesce in the permanent destruction of our liberties. (p. 22)

The reason Ackerman believes the “destruction of liberties” will be “permanent,” it should be made clear, is because the nature of the struggle is permanent. Since there is no identifiable enemy, and the problem is rooted in the availability of devastating weapons to “the millions of haters in the world” (p. 13) who are prone to use them, there will be no end to the justifications for repression that are given today. Indeed, as such weapons are likely to become increasingly available to non-state actors, the justifications will only increase.

Based on the terminology and concepts developed in this dissertation, we can think of this emerging permanent condition of insecurity as constituting a fundamental shift in the traditional nature of the republican security dilemma. To see the shift, it is helpful to think of it terms of Rousseau’s “mixed state.” Rousseau’s concern, recall, had to do with the problem that while, in a civil state, the means of coercion—by individuals in their relations with each other and by the state itself—are under the control of law, the means of coercion from external states are not controlled by law. Consequently, the civil state must develop the capacity to meet external force with force, which can have the unhappy consequence of introducing institutions into the civil state that can undermine the domestic constraints of law. This condition was a “mixed state” because the law-bound sovereign civil state eliminated anarchy among individuals, but itself remained in a state of anarchy (“or state of war”) between other sovereign states.

The fundamental problem today is that civil states no longer have a monopoly on the means of catastrophic force. Consequently, civil states can only imperfectly remove individuals from the “state of war” in their relations with each other. The overall consequence of this seems to be that individuals in their relations with both fellow citizens and non-citizens are simultaneously drawn toward both a universal state of war and universal civil state. Individual states may retain the monopoly on the *legitimate* use of force, but that is little consolation if a neighbor might be willing to *illegitimately* detonate a suitcase nuclear bomb. In such a situation, the state cannot reliably uphold law through the deterrent effect of sanctions. Consequently, basic level civil safety becomes a matter of *prevention*, the logic of which pushes the

state toward greater intervention into the lives of its own citizens and, under international anarchy, into the sovereign territory of other states. Thus, the constraints of both domestic and international law are giving way to the logic of emergency executive action, and thereby the *civil* state is undermined.

This, however, is being met with greater calls for enforceable universal human rights protections. Thus, the drift toward the universal state of war is reinforcing pressure for norms, laws, and relations of universal civility. This dual development is symbolized by two remarkable and unprecedented developments in U.S.

Constitutional case law. On the one hand, we see a U.S. citizen captured and detained as an "illegal enemy combatant," and, according to the plurality, potentially legitimately denied *habeas corpus* through procedures other than those required by Article One, Section Two¹³⁷. This is one of many examples of how the fundamental securities of the civil state can be undermined by the logic of terror prevention. On the other hand, we have seen the extension of *habeas corpus* to non-citizens¹³⁸, which shows the current propensity toward extending the logic of the civil state beyond traditional territorial borders. The traditionalist Scalia's bewilderment in both cases is a sure sign that our current condition is unprecedented.

In considering how we might be able to preserve our free institutions under these conditions, it is useful to first reconsider Madison's analysis of the Constitution's approach to preventing military despotism in *Federalist #41*. He began by noting that a "standing [military] force ... is a dangerous, at the same time that it may be a necessary, provision." Therefore, he continued, a "wise nation[,] ...

¹³⁷ Hamdi v. Rumsfeld 542 U.S. 507 (2004) (Scalia's and Stevens' interpretations in dissent.)

¹³⁸ Boumediene v. Bush, 553 U.S. ____ (2008)

whilst it does not rashly preclude itself from any resource which may become essential to its safety, will exert all its prudence in diminishing both the necessity and the danger of resorting to one which may be inauspicious to its liberties." In his judgment, moreover, "the clearest marks of this prudence are stamped on the proposed Constitution." Then Madison explained how the Constitution prudently sought to reduce both the "necessity" and the "danger" of resources (here, standing armies) that can be essential for safety but potentially pernicious to liberty.

The Constitution reduced the *danger* of such resources by anticipating how they can undermine liberty and by regulating their use accordingly. In this case, he was referring to the limitation on appropriations for armies to two years. A standing army would threaten to become an instrument of despotism only when the people could not disband it through their power over the purse. A constitutional limitation on appropriations for the Army to two years would make effectual the people's power of the purse, and thus enable them to retain control over this potentially dangerous but necessary instrument.

To prevent the *necessity* of introducing such resources in the first place, he noted how the union would help the States to escape the republican security dilemma. That is, by escaping anarchy in their relations with each other, the States would escape the necessity of providing for their own security from one another and thus their citizens would be freed from that systemic origin of military despotism.

Two scholars, Ackerman and Daniel Deudney (2007), have recently presented solutions that resemble this prudence that Madison endorsed. Ackerman's proposed "emergency constitution" is an example of Madison's first approach. Like the

constitutional provision that limits army appropriations to two years, the emergency constitution anticipates the dangers created by the means used to provide security and then regulates them in order to prevent a long-term threat to liberty. Ackerman, we have seen, argues that Americans cannot possibly achieve total security from terrorist strikes even with the most repressive preventive measures. He thus endorses beginning with a default normal state wherein some reasonable balance is struck between efforts at terrorist prevention and Americans' commitment to living as a free people under their traditional civil rights and liberties (p. 6).

The problem addressed by his emergency constitution is how to meet two imperative objectives in the wake of a devastating terrorist attack. First, the government must be empowered to act to prevent a second (or third, fourth, etc.) strike. Second, a way must be found to channel "collective anxiety" away from support for repressive policies and institutions and toward "more constructive forms" (ibid.). The emergency constitution serves both objectives by allowing for a temporary constitutionally regulated "state of emergency" that permits presidents to take extraordinary measures to prevent a second strike while, in the process, easing the anxiety of the people by giving them confidence that the effective sovereignty of the state is intact (pp. 4-7). The legally designed procedures of the emergency constitution, moreover, are designed to induce the executive to pursue only measures that are effective at preventing a second strike while minimizing the burden placed on innocent citizens (p. 4). The principal measure would be a nationwide dragnet, whereby law enforcement officials are authorized to detain suspected terrorists to assure that they are not planning a second strike (p. 47). When the state of emergency

lapses, all those not found guilty are released and financially compensated through the operating budgets of the law enforcement agencies. This rule would reduce the injustice of detentions while serving as an incentive to minimize arbitrary arrests (pp. 49-50). Moreover, although the President may declare the state of emergency unilaterally, she must get majority Congressional approval two weeks later, or else the country will return to a normal constitutional state. This initial authorization will expire after two months unless a Congressional supermajority of 60% reauthorizes; that reauthorization will lapse two months later unless the President gets 70% of Congress to reauthorize; and so on (p. 4). The further specific details are less important than the general approach. This is precisely the kind of Madisonian reasoning that we need if we are to preserve liberty in this new security milieu.

Deudney's (pp. 271-277) approach to the problem is reflective of Madison's second example of how the Constitution prudently protects liberty from the advent of military despotism. Just as Madison argued that the central government established by the Constitution prevented the "necessity" of standing armies in the States by preventing the States from falling into the republican security dilemma, Deudney argues that the survival of free institutions today requires preventing the acute terrorist security threat described by Posner and Ackerman by reducing the availability of destructive weapons to non-state actors. Moreover, Deudney argues that for this arms-control strategy to be effective, we must construct a world organization with effective authority over individuals, as opposed to states. Since the objective of this institution is to preserve (and allow the further development of) republican regimes around the world, the principal problem with constituting this

world organization is to assure that it does not itself become a source of arbitrary power. For a model of how to constitute this global organization, Deudney has pointed to the original antebellum American constitutional order. The great virtue of that international organization, he argues, is that it was effectively structured for keeping it limited to its minimally authorized objectives. Unlike calls for a “world federation”—modeled after federal states like the contemporary U.S. or Germany—the “states-union” model would preserve substantial state sovereignty. This would be a key mechanism for self-limiting the organization. However, since it would apply to individuals, it also would include electoral institutions and the separation of powers. Deudney argues, further, that since this organization would not need to interact with other organizations in anarchy, it would avoid the republican security dilemma. Consequently, “an important set of pressures for hierarchical centralization would be absent,” and, therefore, this “world government, unlike all previous governments, could be a purely republican ... arrangement” (pp. 276-277).

Deudney makes a persuasive case for the utility of such an organization for preserving republican liberty under modern conditions. However, it is important to note that Madison gave reason to believe such an association, or any supreme world constitutional order, cannot be sustained. Madison believed, it will be recalled, that the union as constituted prior to the Civil War was in grave danger of dissolution due to the lack of a significant external threat. Madison and Deudney both noted that the lack of an *acute* external threat had the beneficial effect of allowing the Americans to prevent an oppressive aggrandizement of executive power. But Deudney’s appraisal of the cause of ultimate failure of the system (from the standpoint of preserving

substantial state sovereignty) differs from Madison's in a critical respect (pp. 171-175). Although Deudney mentioned the lack of an external threat as a reason, he explained its effect as being *indirect* through enabling the rapid Western expansion that he argues was the direct cause of instability and disunion. Madison, however, thought both factors had a strong *independent* impact and later in life only emphasized the lack of external threat. He seems to have thought that Calhoun and others would not have been so brazen had they thought the South would have to go it alone against a formidable European rival. As it was, however, they were able to imagine that, in the event of disunion, they would be secure from Europe. Circumstances gave them the freedom to imagine a rosier future than any informed American could entertain when contemplating disunion before the Battle of New Orleans.

This does not mean Madison was correct, but it does present a significant challenge to Deudney's analysis. If Madison was right, then cementing a world "states-union" may require greater effectual means of military coercion than Deudney's model suggests. Thus, one of its expected virtues—tightly constrained executive power—would not manifest. Further research should address this challenge posed by Madison's understanding of the dynamics governing the stability of the antebellum American constitutional order. If Deudney is right about the necessity of a world government for preserving and expanding free institutions into the future, then we should hope that Madison's analysis was inaccurate.

Conclusion

The conclusion that must be drawn from this survey of our present condition is that the fate of the American republic, as well as republican regimes around the world, is far from certain. Socioeconomic, cultural, geopolitical, and technological factors seem to all be pushing toward, as Madison would put it, an “oppressive aggrandizement” of national executive power. The core of the history and theory presented in this dissertation is far from a snapshot of a transient moment in time. It shines a spotlight on the origins of an American political dilemma that has persisted throughout our history and sits at the foundation of the existential political debates of modern times. It cries out for more research if not a fundamental change of attitude about how the research of politics and the practice of politics should intersect. I do not here offer specific courses of action, but, I will conclude with a thought and a plea.

The great virtue of these founders, and something worthy of emulation, was their prudence. Aristotle taught us that prudence is the qualities of character and intellect of political agents who “by reasoning, aim at and hit the best thing attainable to man by action” (Aristotle and Chase 1998, 1141.b12). Perhaps the most important lesson to learn from these founders is that if we are to preserve and expand human liberty, and other valuable human ends, we will need to better develop the capacity for prudent political action, which, in turn, will require a political science more like theirs than our own. Their political science, after all, sought to give practical guidance to those prudent political actors facing the all-important question, so imprudently answered in the 20th century, of “What is to be done?” Deterministic,

positivistic, and postmodern, as opposed to prudential, social science finds it difficult to believe that the counterfactuals of early American political development—the perpetual wars among the several confederated alliances of North America; the military despotisms this created; the constitutional monarchy, established in 1857—did not occur, in part, because at crucial moments of decision, influential agents, endowed with prudence and informed by a prudential political science, aimed at and achieved the best (which may have been the least bad) thing attainable by action under the circumstances. Our current disciplinary specializations and interdisciplinary divisions have rendered us unfit for providing ourselves, and the next generation, with the knowledge necessary for prudent action. Political scientists need to become economists, economists need to become political scientists, and both need to become sociologists, philosophers, and historians. The republic demands nothing less.

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