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Alexander Hamilton and American Progressivism

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Abstract

Of all the American Founders, Alexander Hamilton argued most forcefully for a powerful and active national government. Today, he is considered by some, both on the left and on the right, to have been a forerunner of contemporary progressivism. However, a close examination of the historical context and his writings proves the contrary. Hamilton's thought differs profoundly from the progressive ideas of the 20th and 21st centuries. His vigorous defense of private property, his understanding of the necessary limits of constitutional government, and—above all—his adherence to the natural rights doctrine all point to his essential conservatism.

Was Alexander Hamilton, one of the most consequential of the American Founders, actually an early version of a modern progressive? One could entertain such a suspicion on the basis of some of today's political discourse.

On the right, certain libertarians and limited-government conservatives dismiss Hamilton as a prophet of big government, the odd man out in a Founding generation that insisted on strict limits on national power. Libertarian economist Thomas DiLorenzo, for example, charges Hamilton with being the “instigator of ‘crony capitalism’” and “eager to centrally plan the entire economy.” For DiLorenzo, Hamiltonianism was an effort to create

exactly what the American Revolution was fought to escape: “a highly centralized state that was headed by a despotic chief executive who pulled the strings of the British mercantilist economic system.”¹

On the left, liberals and progressives praise Hamilton on similar grounds, seeing in his legacy a Founding-era version of their own aspirations to use the national power as a tool of economic and social development. Thus, left-wing sociologist Christian Parenti has presented Hamilton as the Founder with the most “progressive vision” because he “created (and largely executed) a plan for government-led economic development,” seeking to establish a “state that could facilitate, encourage, and guide the process of economic change.” According to Parenti, “Hamilton drew up the blueprint for a planned economy,” and Americans should look to his example today for guidance on how to deal with climate change, since the country faces, now as then, “a profound crisis rooted in an economy that demands to be *remade*.”²

All peoples are tempted to politicize their own histories. They seek to press the key events and leading

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figures of their history into the service of contemporary political ends. No doubt this impulse is to some extent behind contemporary characterizations of Hamilton as the forerunner of progressivism among the Founders. Nevertheless, such claims are not simply present-day partisan inventions. Rather, they find a deeper root in American history in the self-understanding of the first generation of American progressives.

Most notably, Herbert Croly, founder of *The New Republic* and one of the most influential progressive intellectuals of the early 20th century, celebrated Hamilton's legacy in his seminal progressive book, *The Promise of American Life*. Specifically, Croly praised Hamilton for advocating a policy of "active interference with the natural course of American economic and political business and its regulation and guidance in the national direction."³

Although Hamilton advocated an energetic national government, his grounds for doing so reveal that his thinking has much more in common with American conservatism than it has with its progressive ideological rival.

Of course, the original progressives' understanding of Hamilton as a kindred spirit does not settle the question of whether Hamilton really should be viewed as a proto-progressive. An idea may be somewhat old and nevertheless remain inaccurate. It is reasonable, then, to ask whether this view of Hamilton—first suggested over one hundred years ago and echoed in political discourse today—is in fact true.

This question is important not only for an accurate understanding of Hamilton's legacy, and hence

of America's political history, but also for its contemporary political significance. In American politics, a kind of legitimacy flows from the Founders. Americans of all political persuasions feel compelled to present their principles and policies as somehow carrying on the work of the Founding, either by defending it or by building on it. For contemporary progressives, the ability to claim Hamilton as a forerunner of progressivism is therefore essential if they are to present their own project as an outgrowth of the Founding.

The deeper question is whether progressivism can really trace its origins to the Founding and thus refute the conservative claim that it is an alien stream of thought that intruded into the American political tradition in the late 19th century. From the conservative point of view, the question is whether conservatives can really ground their preference for limited government and natural rights in the consensus view of the American Founders. For if Hamilton—one of the most prominent Founders, and the leader of one of the two original American political parties—was really a proto-progressive, then limited government and natural rights were not American Founding principles, but merely principles held by some Founders and rejected by others.

Although Hamilton advocated an energetic national government, his grounds for doing so reveal that his thinking has much more in common with American conservatism than it has with its progressive ideological rival. Hamilton's program as Secretary of the Treasury was animated by his practical interest in laying the foundations of American security and prosperity, not by any progressive concern with pursuing a continual amelioration and equalization of social conditions. His vision, therefore, called for active but not unlimited government.

Moreover, Hamilton shared the Founders' rather conservative view of the limits of human nature and the dangers of excessively concentrated power and

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1. "What Hamilton Has Wrought," *LewRockwell.com*, October 6, 2008, <http://www.lewrockwell.com/2008/10/thomas-dilorenzo/hamiltons-curse/> (accessed March 13, 2015); Thomas J. DiLorenzo, *Hamilton's Curse: How Jefferson's Archenemy Betrayed the American Revolution—And What It Means for Americans Today* (New York: Crown Forum, 2008), pp. 115, 4. Michael W. McConnell offers a similar but more moderate criticism. While admitting that Hamilton was too conservative in some respects to be embraced by contemporary progressives, McConnell nevertheless holds that "Hamilton originated" some ideas, such as "big government and loose constitutional construction," for which progressives now advocate. Michael W. McConnell, "What Would Hamilton Do?" *Harvard Journal of Law and Public Policy*, Vol. 35 (2012), p. 260.
 2. Christian Parenti, "Reading Hamilton from the Left," *Jacobin*, August 24, 2014, <https://www.jacobinmag.com/2014/08/reading-hamilton-from-the-left/> (accessed March 13, 2015) (emphasis in original).
 3. Herbert Croly, *The Promise of American Life* (New York: The MacMillan Company, 1911), pp. 40, 45.
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accordingly defended institutions like separation of powers and federalism that modern progressives have been quick to criticize. Finally, as both theorist and statesman, Hamilton was guided by the Founding natural-rights doctrine, which progressivism is inclined to jettison.

Alexander Hamilton and Energetic Government

In his own day, Hamilton famously advocated a strong national government. The call for a more powerful national government is a thread that runs throughout Hamilton's career in American politics, and it informed his most famous acts of statesmanship. That advocacy affords the most obvious ground on which to establish the claim that he was a kind of proto-progressive.

Today, the progressive political vision also calls for the national government to take on much more responsibility and power than conservatives are willing to concede. Hamilton therefore seems to have occupied in his own time a political position analogous to that taken by progressives today.

Taken in its proper historical context, however, Hamilton's advocacy of strong national government appears to stem from a different rationale and to subsist within more clearly defined boundaries than is true for the progressive advocacy of today. As a young man, Hamilton served as George Washington's chief aide during most of the American War of Independence. He was an eyewitness to all of the inconvenience and even danger that arose from the government's lack of power to raise men and matériel under the Articles of Confederation. By the early 1780s, Hamilton was already calling for reforms that would increase the power of the government of the Union.⁴

Such views, of course, were hardly unique to Hamilton. Many of the leading men of the day shared his sense that America needed a stronger national government. Their collective efforts led to the Constitutional Convention that met in Philadelphia in the summer of 1787.

Hamilton attended the convention as a representative of the State of New York, and once the Constitution was written, he secured for himself an important place in American history by becoming one of

the leading Federalist advocates of ratification. He not only led the forces for ratification in New York, but also joined with James Madison and John Jay to write the *Federalist Papers*, which became the source of pro-Constitution arguments for Federalists throughout the new nation.

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Certainly, Hamilton chalked up a solid record of nationalist statesmanship, but this record is not sufficient to establish the claim that he was a proto-progressive. While he did promote a stronger national government than then existed in the nascent United States, Hamilton merely expressed the consensus of the Founding generation, not an outlying point of view. He was not arguing for a national government any stronger than the majority of the Founding generation could accept. After all, each of the major Founders supported the Constitution, and all 13 of the states eventually ratified it. In other words, the strong national government for which Hamilton the framer and proponent of ratification ultimately contended is the same as the government established by the Constitution.

Contemporary progressives, by contrast, are often quite open about their belief in the need for today's national government to be more powerful and more expansive than the model authorized by the Constitution. Hence, they tend toward skepticism about contemporary conservative claims that the national government should be limited to the tasks entrusted to it by the Constitution. Times have changed, they insist. Modern society is more complex than the society that existed at the time of the Founding and requires a more powerful national government than the one envisioned by the Founders.

4. See, for example, Hamilton's Continentalist essays, published in 1781-1782, in *The Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1961), Vol. II, pp. 649-652, 654-657, 660-665, and 669-674, and Vol. III, pp. 75-82 and 99-106.

Moreover, progressives suggest, we have become more enlightened than our predecessors, able to see that government must pursue a conception of social justice that is more ambitious than the rather narrow vision of individual rights that the Founders entertained. Therefore, the conclusion runs, the Founders' Constitution should not remain absolutely binding on the present generation.

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Views like these seem to inspire liberal scholar Louis Michael Seidman's praise for Franklin Roosevelt's "willingness to extend federal power beyond anything the framers imagined," as well as Barack Obama's complaint that the Constitution, at least as traditionally interpreted, was merely a "charter of negative liberties" that stressed only what government "can't do to you" but failed to say what "government must do on your behalf."⁵

Those who seek a Founding-era precedent for modern progressivism, then, need a Founder who advocated and tried to establish in practice a federal government even more expansive than that established by the Constitution. Some tend to view Hamilton as just such a Founder. Hamilton's political activity, they point out, did not end with his efforts on behalf of the Constitution. As the nation's first Secretary of the Treasury, they claim, he acted with a view to establishing a government even stronger than that envisioned by the Constitution.

This criticism of Hamilton, first made by his political rivals during his lifetime, is now restated both by his contemporary admirers on the left and by critics on the right. Evaluating this criticism demands a fuller examination of the nature of and motivation for the financial policies that Hamilton supported.

Hamilton's Treasury program consisted of three main initiatives.

First, he proposed and Congress enacted a plan for servicing America's Revolutionary War debt that called on the national government to take responsibility for the war debts of the state governments. The plan was unpopular in some quarters, especially with states that had already paid much of their war debt, although it did not spark widespread complaints that it pushed the federal power beyond the bounds of the Constitution.

Second—and more controversially—Hamilton proposed and Congress enacted in 1791 a national bank. Such an institution, he contended, would facilitate the government's borrowing of money and foster national economic development by circulating a paper currency.

Third—and also more controversially—in his celebrated 1791 *Report on Manufactures*, Hamilton contended that the federal government should encourage the development of an American manufacturing sector by paying "bounties," or what are today called subsidies, to domestic manufacturers. To become a prosperous, powerful, and secure nation, Hamilton argued, instead of depending on its agricultural trade to purchase manufactured goods overseas, America needed to develop an economy capable of producing such goods for itself. Because of more advanced foreign competition, however, and because foreign governments also maintained policies of support for their own manufacturers, Hamilton believed that American manufacturing would not develop fully or quickly enough without the aid of the national government. He therefore proposed that the national government should assist domestic manufacturers through a system of bounties, which would lower the price of American-made goods and make them more competitive in the marketplace.

Hamilton readily admitted that both the national bank and the payment of bounties to encourage manufacturing tended to enhance the power of the national government, but his political adversaries—most notably Thomas Jefferson and James Madison—insisted that they enhanced the national power unconstitutionally. Jefferson and Madison contended that the Constitution authorized neither the bank

5. Louis Michael Seidman, "Let's Give Up on the Constitution," *The New York Times*, December 30, 2012, <http://www.nytimes.com/2012/12/31/opinion/lets-give-up-on-the-constitution.html> (accessed March 13, 2015); Barack Obama, Radio Interview on WBEZ 91.5, 2001, <http://www.youtube.com/watch?v=OkpdNtTgQNM> (accessed March 13, 2015).

nor the bounties. Accordingly, Jefferson charged that Hamilton's Treasury program "manifested" a desire to "get rid of the limitations imposed by the constitution on the legislature."⁶

To become a prosperous, powerful, and secure nation, Hamilton argued, instead of depending on its agricultural trade to purchase manufactured goods overseas, America needed to develop an economy capable of producing such goods for itself.

Hamilton's contemporary critics on the right seize upon this history to contend that the dangers of anti-constitutional big government can be traced even to the immediate aftermath of the Founding. Already in the 1790s, they find Hamilton seeking to use the national power to intervene in the economy without being shackled by the limitations of the Constitution. At the same time, they find in Hamilton's rivals, Jefferson and Madison, the origins of a conservative resistance to such projects—one that insists on a strict adherence to the Constitution.

Hamilton's Conservatism and Constitutionalism

Despite its surface plausibility, such an effort to depict Hamilton as a proto-progressive fails. Although his statesmanship called for more government than his adversaries wanted to see, it was not informed by the same vision of government and society that informs modern American progressivism.

There is, for example, something recognizably conservative in Hamilton's advocacy of a national bank and subsidized manufacturing. He defended these not as ideologically inspired innovations, but instead as institutions that had been tested by experience and found to be useful. In his *Report on a National Bank*, Hamilton noted that public banks had "found admission and patronage among the principal and most enlightened commercial nations."

It was, he continued, a "circumstance" of "considerable weight" in their favor that "after an experience of centuries," the countries in which banks had "been so long established" still recognized their utility. Both "[t]heorists and men of business" acknowledged their benefits.⁷

Similarly, Hamilton's *Report on Manufactures* noted that government support for manufacturing had contributed to the industrial accomplishments of the European manufacturing powers. The report concluded that America should follow suit if it wished to rise to Europe's level of prosperity and power.

The celebrated conservative thinker Russell Kirk held that conservatism is not so much one ideology among many as it is the *opposite* of ideology. Ideologies, Kirk suggested, try to make society fit into a preconceived theoretical mold, while conservatism, being more humble and more sensible, takes its cues from experience. One sees in Hamilton's advocacy of a national bank and support for manufacturing no signs of ideology as Kirk understood it, but instead the practical conservative statesman's respect for institutions tested by experience.⁸

Contemporary progressivism is characterized not only by a preference for a more activist federal government than conservatives favor, but also by a deep reluctance to identify any fast and clear limit to this expansion of federal power. The identification of such a limit, after all, would be inconsistent with the unlimited social improvement that progressivism desires. Progressives have a theory of history—or rather of History—understood not just as a catalogue of events from the past, but as a force moving in a certain direction, a progressive direction. That is to say, progressives believe in Progress, understood as the continual amelioration and equalization of social conditions, with government having a responsibility to stay abreast of this process and urge it forward.

Thus, contemporary progressives see a compelling need for government action where an earlier generation of progressives saw no need at all. Also, contemporary progressives cannot present their most recent achievement as setting the outermost

6. *The Papers of Thomas Jefferson*, ed. Charles T. Cullen, Vol. 23 (Princeton: Princeton University Press, 1990), p. 535.

7. Alexander Hamilton, *Writings*, ed. Joanne B. Freeman (New York: Library of America, 2001), p. 575.

8. See, for example, Russell Kirk, *The Politics of Prudence* (Bryn Mawr, PA: Intercollegiate Studies Institute, 1993).

limit of federal power, since that would foreclose the possibility of further progress in the future.

There is, however, nothing in Hamilton's thinking about the desirability of a national bank or government support for manufactures that corresponds to this progressive vision. He defended these policies not as single steps along a path of infinite social improvement, but simply as necessary for American security and prosperity.

For Hamilton, a national bank was a matter of national security because of its ability to facilitate lending to the government.⁹ Hamilton knew that the Bank of North America had been essential to the government's ability to prosecute and win the War of Independence, and he believed that a similar institution would be necessary to see America through future wars. Hamilton appears to have regarded war as an ordinary and recurring feature of political life—not, as many progressives seem to think, as an atavism that will gradually disappear as democracy advances. He accordingly believed that a responsibly managed government would be prepared for it.

A national bank, in Hamilton's view, was a necessary part of such preparedness. Wars require a great deal of resources, and a government that can raise a large amount of money in a short amount of time will be in a better position to wage war successfully than will one that cannot. It is difficult, however, to raise money quickly through taxation, and borrowing from a large number of small lenders is not much better. Both operations require too much time when vital national interests require speedy action. Hence the need, in Hamilton's mind, for a financial institution already in existence and with a large accumulation of capital from which it could lend to the government at need.

Besides its necessity in the event of war or crisis, Hamilton also thought that a national bank would be useful to the ordinary operations of the government and help to boost the infant national economy. A national bank provided a place where the government could deposit the revenues it collected. Moreover, it would circulate a paper currency based on its gold and silver deposits, which currency would in turn provide a convenient medium by which citizens could pay their taxes.

Hamilton also thought that the post-Revolution economy suffered from a currency shortage: Because there was not enough money, the price of land was depressed, and development of commerce was impeded. By circulating a paper currency the bank would help to solve this problem.¹⁰

Hamilton made a similar defense of his proposed program of government support for American manufacturing. Such a policy, he contended, was justified in the first place as an essential step to guaranteeing American security. A nation without its own manufacturing sector, Hamilton reasoned, cannot provide the means for its own defense. It has to rely on other countries to supply arms and other necessary materials for war, and this dependence makes it vulnerable.¹¹

Hamilton's Treasury program aimed to make America prosperous and able to defend itself in the event of war. These aims, consistent with the purposes of the Constitution, called for a somewhat active national government. They did not, however, call for anything like the activist government that contemporary progressives crave.

Hamilton also noted that the development of a manufacturing sector would render America's national economy more prosperous and more stable. The introduction of manufacturing would increase American productivity by permitting a greater division of labor and a more extensive use of technology.¹² Moreover, a manufacturing and agricultural economy would generate a more diverse set of products than a merely agricultural economy would, and this diversity would protect the national economy from fluctuations in foreign demand for specific American goods.¹³

In sum, Hamilton's Treasury program aimed to make America prosperous and able to defend itself in the event of war. These aims, which are certainly

9. Hamilton, *Writings*, p. 579.

10. *Ibid.*, pp. 579–580, 590.

11. *Ibid.*, p. 692.

12. *Ibid.*, pp. 659–661.

13. *Ibid.*, p. 690.

consistent with the purposes of the Constitution, called for a somewhat active national government. They did not, however, call for anything like the activist government that contemporary progressives crave.

Today's progressives seek to use national power not just to promote the security and prosperity of the nation as a whole, but to enact a more particular conception of social justice. They seek to protect the economic equality of individuals and even to promote individual autonomy by empowering individuals to pursue whatever life projects they may choose.

In many cases, progressives elevate this vision of social justice above the aims of security and prosperity that Hamilton pursued. Hence their willingness to raise taxes—thus burdening the economy—and cut military spending in order to secure money for programs designed to advance the individual equality and autonomy they seek. Moreover, their desire for progress requires that these aims be realized ever more perfectly in relation to an ever-changing set of threats to individual equality and impediments to individual autonomy. The result, once more, is the progressive's reluctance to assign any distinct limits to the expansion of government authority.

In contrast, the aims of Hamilton's statesmanship were altogether more limited and intelligible. They would have been recognized as legitimate by almost all pre-progressive statesmen, who would not have thought that they required or justified a continually expanding set of responsibilities for government.

Hamilton admittedly called for a broad interpretation of the federal power. He did so, however, so that the federal government would have sufficient flexibility to meet whatever "exigencies" the nation might encounter.¹⁴ Hamilton thus emphasized the uncertainty of the future, which might (or might not) call for government action. This is a far cry from the progressive tendency to assume knowledge of a future in which the activities of government will gradually and inexorably expand.

It is also worth noting that even as Hamilton defended government policies that were activist by the standards of his day, he showed a healthy conservative respect for the operations of the free

market. Contemporary progressives often view the outcomes brought about by market forces as irrational and unjust, in need of continual correction by government planning and intervention. Hamilton tended to defend the operations of the market even as he advocated a role for the government in laying the foundations of a prosperous economy.

Even as Hamilton defended government policies that were activist by the standards of his day, he showed a healthy conservative respect for the operations of the free market.

For example, in his *Report on a National Bank*, Hamilton responded to the day's common criticisms of banks, which alleged that banks often encouraged "unskilled adventurers and fraudulent traders." To the extent that this was true, Hamilton replied, the phenomenon would correct itself over time, because the owners of banks have every incentive to ensure that they lend money only to responsible borrowers who will be able to repay their loans. "The practice of giving fictitious credit to improper persons," he noted, is "one of those evils" that "experience guided by interest speedily corrects."¹⁵

Banking has obviously played an important part in America's economic development. It could not have done this—the banks themselves could not have survived—if banks tended to foster more business failure than success. Hamilton's assessment, therefore, has been confirmed by the facts.

Similarly, Hamilton insisted that the Bank of the United States, if it was to fulfill its public functions reliably, had to be held and directed by private owners and not by the government. Private ownership and private interest would ensure that the bank would be operated in a manner consistent with its financial soundness, while ownership by the government would encourage the bank to make risky loans, since those running its operations would have no personal investment in it.¹⁶

14. *Ibid.*, pp. 619–620.

15. *Ibid.*, p. 585.

16. *Ibid.*, p. 601.

Even Hamilton's *Report on Manufactures*, which advocated a role for government in promoting manufacturing, acknowledged the merits of a free-market economy. Hamilton noted the argument against his plan: that American manufacturing should be left to develop at the rate at which market forces could sustain it. In response, Hamilton admitted the general "solidity" of this claim, but he also noted a number of specific circumstances—including the artificial support that foreign governments provided to their own manufacturers—that he thought the government of the United States had to counter if America were to develop a manufacturing base quickly enough to ensure its security.¹⁷

Hamilton took pains to defend his policies as constitutional, thus showing his respect for the Constitution and the limits on government that it establishes.

Moreover, Hamilton indicated that government support for manufacturing should be temporary. "The continuance of bounties on manufactures long established," he admonished, "must always be of questionable policy," since it implies that there are "natural and inherent impediments" to the "success" of the industry. Hamilton evidently did not favor the use of government support to prop up forms of manufacturing that in the long run could not be sustained by the market.¹⁸

Finally, and most important, Hamilton took pains to defend his policies as constitutional, thus showing his respect for the Constitution and the limits on government that it establishes. By contrast, some modern progressives admit openly that their vision of government actually goes beyond the Constitution established by the Founders, alleging that this incompatibility reveals not the illegitimacy of their own political aims, but instead the inadequacy of the Constitution itself. On this view, the Constitution is outmoded. It established a government for an

18th century nation—a government too limited for the needs of a 21st century nation.

Hamilton, on the other hand, never suggested that his policies went beyond the Constitution or corrected the Constitution by breaking through its improper constraints on government power. On the contrary, he defended his Treasury program as authorized by a reasonable interpretation of specific constitutional provisions.

In defense of the National Bank, he noted that the Constitution empowered Congress to make all laws "necessary and proper" to the execution of its enumerated powers. The bank, he held, was a necessary and proper means for carrying out the government's enumerated powers to borrow money, raise taxes, and spend money—a view that a unanimous Supreme Court later endorsed in *McCulloch v. Maryland* (1819). Similarly, he defended his proposal for bounties in support of manufacturing as an exercise of the federal government's authority under the General Welfare Clause, conferred on Congress at the beginning of the enumeration of powers in Article I, Section 8 of the Constitution.

Nor did Hamilton treat these constitutional provisions as if they were sources of unlimited government authority. The Necessary and Proper Clause, he contended, gave Congress a broad power to legislate in relation to its enumerated powers, but it also established an outer limit to that power by requiring that such legislation be genuinely and reasonably related to the responsibilities entrusted to Congress in the enumeration. Similarly, while he held that the General Welfare Clause authorized Congress to spend federal revenue for the public well-being, he also noted that the clause limited such spending to truly national (i.e., general) purposes and did not authorize Congress to spend on just any particular or local project its Members chose.¹⁹

Hamilton's contemporary critics, including Thomas Jefferson and James Madison, insisted that his approach to the Constitution tended to obliterate all limits on the federal power. No doubt the testimony of these revered figures has fostered the current suspicion, especially on the American right, that Hamilton was a proto-progressive enemy of the founding experiment in limited government.

17. *Ibid.*, p. 670.

18. *Ibid.*, p. 701.

19. *Ibid.*, p. 703. I develop this account of Hamilton's understanding of the limits of the national government's powers more fully in a forthcoming Heritage Foundation *First Principles* essay on "Hamiltonian Constitutionalism."

It should be remembered, however, that Jefferson and Madison's charges were made in an environment of intense partisan rancor fostered by understandable—although, in retrospect, exaggerated—fears about the survival of the infant republic. Recalling some of Hamilton's private remarks in praise of the British Constitution, as well as his speech at the Constitutional Convention calling for a lifetime presidency and Senate, Jefferson suspected Hamilton's Treasury policies of actually aiming to overturn the new American government and replace it with a monarchy on the British model. For his part, Hamilton, viewing with horror the Jeffersonians' bitter denunciations of the nation's debt, as well as Jefferson's own speculations that the present generation has no authority to bind the future, feared that Jefferson and his party were enemies of public faith and private property who were willing to repudiate the nation's legally binding financial obligations.

In fact, the fears on both sides were exaggerated. Hamilton's theoretical preference for limited monarchy did not stop him from committing himself to the success of the new American republic, just as Jefferson's theoretical musings on the limits of the present generation's power over the future did not lead him to advocate a repudiation of the nation's debts. Each man was far too practical and prudent a statesman to entertain the visionary aims attributed to him by the other. In view of these circumstances, the careful reader should not take the charges made by either side at face value.

It is also worth noting that even if Jefferson and Madison's complaints about Hamilton were true—which one certainly need not concede but may entertain for the purposes of argument—it would still not follow that Hamilton was a forerunner of modern progressivism. Even if Hamilton really had wanted to establish a limited monarchy such as then existed in Britain, such a government has nothing to do with the aims of contemporary progressivism.

Most of the Founders thought that the American Constitution was a decisive improvement over the British regime. Following Montesquieu, however, most of them also thought that the British regime was, up to their time, the best example in existence of a system structured to limit the government's power and protect the individual's rights. Accordingly, even if Hamilton had wanted to establish a

British form of government, this cannot be taken to mean that he wanted such a government to do what modern progressives want government to do—or indeed that he would have wanted it to do anything other than what all the Founders thought *any* government should do: defend the nation's security and interests and protect the rights of individuals.

Hamiltonianism constitutes the most vigorously expansive interpretation of the federal power in play at the time of the Founding, but it offers no precedent for the desire to transcend constitutional limits that is often professed by contemporary progressives.

In any event, Hamilton denied and strove to refute claims that his principles tended to overthrow the limits imposed by the Constitution, an effort that bears implicit witness to his belief in the importance of constitutional fidelity. Therefore, whatever Hamilton's political opponents may have said about his proposals in the heat of partisan dispute, the argument over those proposals was an argument about how to understand the limits imposed by the Constitution, not a debate between those who supported such limits and those who were willing to dismiss them in pursuit of their own vision of a good society. Hamiltonianism admittedly constitutes the most vigorously expansive interpretation of the federal power in play at the time of the Founding, but it offers no precedent for the desire to transcend constitutional limits that is often professed by contemporary progressives.

Hamilton and Human Nature

Hamilton, then, differs from progressives on the fundamental question of whether a just and prudent statesmanship should be limited by the Constitution. Probing deeper reveals an even more fundamental disagreement: Hamilton did not share the understanding of human nature that supports the modern progressive's inclination toward an ever-expanding, ever more centralized government.

The progressive's faith in the possibility of progress depends implicitly on a certain optimism about

human nature. Progressivism does not lay out a clear account of the just society that could serve as a permanent standard by which to judge the just powers of government and the limits of those powers. Instead, it offers a vision of unlimited social progress, a vision that does not permit any fixed account of government's functions and their limits, and therefore invites government to continually expand its reach with a view to fostering unlimited improvement or "progress."

This vision in turn depends on progressivism's confidence in human goodness. If human nature is flawed or imperfect, then every expansion of government authority carries with it the danger of abuse, and every new program of social amelioration carries with it the danger of unintended bad consequences. In practice, progressives never take such considerations seriously enough to limit their aspirations for government-led social improvement. They may not claim to believe in human perfectibility, but they act as if they do.

Moreover, the "improvement" progressives seek has a specific content. Progressives are egalitarians. Their vision of an ever more just society is in fact a vision of a society with ever-greater equality of conditions. Just as there is no "good" or "just" state of society with which a progressive could rest satisfied, there is no society that sufficiently lives up to the progressive understanding of the principle of equality. Since the behavior of free people under the rule of law tends to result in many inequalities, progressivism sees a constant need for government to intervene to eliminate or lessen these inequalities.

Thus, the progressive quest for an ever more perfect society is in fact a quest for an ever more egalitarian society, which in turn requires a government of ever-expanding authority. Justice is equality, on this view, and only a powerful authority like the state can manufacture and enforce such total equality.

Hamilton took a much more sober view of human nature. In *Federalist* No. 76, writing as Publius in defense of the Constitution, Hamilton urged his readers to see human nature as it is "without either flattering its virtues or exaggerating its vices," without falling into the error of assuming it to be characterized by either "universal rectitude" or "universal

venality."²⁰ Later, writing in defense of his Treasury policies after he had left public office, Hamilton warned against visionary politicians who try to "travel out of human nature and introduce institutions and projects for which man is not fitted." The "true politician"—the genuine statesman—"takes human nature...as he finds it, a compound of good and ill qualities, of good and ill tendencies—endued with powers and actuated by passions and propensities which blend enjoyment with suffering and make the causes of welfare the causes of misfortune."²¹

Such a view of human nature is, of course, consistent with government action that aims to draw on the good qualities in human nature with a view to improving society, and Hamilton no doubt thought of his policies as pursuing just such an aim. Nevertheless, Hamilton took care not to speak as if social conditions were capable of unlimited improvement. There is no evidence that he yielded to the progressive temptation of indefinitely expanding government.

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Moreover, Hamilton was certainly no egalitarian. His writings and speeches contain no suggestion that government should seek to shepherd the development of an ever-increasing equality and no inkling that social and economic inequalities are presumptively unjust. His policies were intended to make America more prosperous, powerful, and secure, not to equalize social and economic conditions. There is no reason to think that he would dissent from the observation of his *Federalist Papers* collaborator, James Madison, in *Federalist* No. 10 that "the protection" of man's "faculties" for acquiring property "is the first object of government" and that from this "protection of different and unequal

20. Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), pp. 513–514.

21. *The Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1973), Vol. XIX, pp. 59–60.

faculties of acquiring property, the possession of different degrees and kinds of property immediately results.”²²

Hamilton’s political enemies accused him of being an aristocrat. Such charges were unjust. Hamilton in fact believed that the abolition of the “feudal rights” that had once “oppressed all Europe” was a “great...good” for society.²³ Nevertheless, the fact that such a charge could be made against him indicates that there were no traces of progressive egalitarianism in his principles or his policies.

Separation of Powers and Federalism

Modern American progressivism lends itself both to the expansion of government power and to a centralization of power that is inconsistent with America’s traditional constitutional system. Progressives see this centralization as necessary to the expansion of the scope of government that they desire.

The Founders’ system of separation of powers decentralizes the authority of the federal government by first spreading it among a variety of distinct political institutions, each with its own character and interests, and then requiring this diverse group of agents to work in concord to enact policy. This arrangement tends to render policymaking more deliberative and more difficult. Under this system, it is hard to expand the reach of government.

Progressives realize this and resent separation of powers accordingly. For example, Woodrow Wilson complained that the Founders’ system of checks and balances was based on a misguided application of Newtonian physics to politics. The Founders, he suggested, thought a well-designed government was like the solar system: made up of independent parts held together not by any common purpose but by each part’s exerting its force on the other parts. Instead, Wilson argued, government should be more like an organism as understood in Darwin’s system—not, however, emphasizing competition among organisms, but instead emphasizing the *cooperation* that must exist among the parts of a single organism to ensure success in this competition.

Government, Wilson held, should be like a living organism whose life and flourishing require the ready cooperation of its various members. “There can be no successful government,” Wilson admonished, “without leadership or without the intimate, almost instinctive, coordination of the organs of life and action.”²⁴

Progressives also believe that this enhanced centralization of power is safe because of their optimism about human nature. The Founders endorsed separation of powers in part because they believed that tyranny, especially tyranny of the majority, was still a live possibility. The arrangement of mutual checks that they established within the structure of the federal government was designed to minimize the chances that a tyrannical passion could seize the entire government at the same time. Progressives tend to think of governmental tyranny as a problem of the past, at least in the West. They therefore view separation of powers as an archaic institution standing in the way of the good that they think government can do for society.

Hamilton’s more realistic assessment of human nature—his awareness of its troubling propensity to tyranny—led him to support the Constitution’s separation of powers. Although he did not write the *Federalist* essays that explained and defended this principle in detail—a task that fell to James Madison—Hamilton’s own contributions to that project certainly acknowledged the principle’s importance. In *Federalist* No. 71, for example, Hamilton noted that the “same rule that teaches the propriety of a partition between the various branches of power, teaches us likewise that this partition ought to be so contrived as to render the one independent of the other.”²⁵

In *Federalist* No. 9, Hamilton revealed the concern that lay behind this “rule.” The whole history of republican governments, he contended, showed their tendency to remain “in a state of perpetual vibration between the extremes of tyranny and anarchy.” This tendency was so indisputable that “the enlightened friends to liberty would have been obliged to abandon the cause” of republican government if it had proved impossible to devise “models”

22. *The Federalist*, p. 58.

23. *The Papers of Alexander Hamilton*, Vol. XI, p. 472.

24. Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1907), pp. 56–57.

25. *The Federalist*, p. 48.

of government “of a more perfect structure.” Among the “improvement[s]” in the “science of politics” that permitted the taming of republican government, Hamilton wrote, was the “regular distribution of power into distinct departments.”²⁶

For Hamilton, then, separation of powers was essential to liberty. The combination of republican government with respect for liberty had become possible not by any improvement in human nature, but only by an improvement in the knowledge of how to manage unruly human nature.

As a member of Washington’s Cabinet, Hamilton became known as a defender of robust executive power. He emerged in this capacity especially in 1793, when, writing as Pacificus, he defended the Neutrality Proclamation that President Washington had issued to keep America out of the war that had broken out between France and Great Britain. Here Hamilton pressed rather hard for an expansive interpretation of the executive authority, contending that the President’s role as enforcer of the nation’s treaties carried with it an authority to interpret their terms, which in turn included the right to determine whether such treaties placed America under an obligation to make war.

As in other contexts, Hamilton’s political rivals presented these arguments as an attack on the Constitution. Writing in response as Helvidius, James Madison contended that Pacificus’s account of the executive authority laid waste the cherished principle of separation of powers.

Again, however, Hamilton’s critics overstated their case, because even as he defended a wide presidential authority in this area, Hamilton conceded the legitimate powers of the other departments of government in the same sphere. Thus, while he held that the President’s authority to interpret treaties implied an authority to determine whether such treaties obliged America to make war, he also admitted that no such presidential determination could control Congress’s power to declare war or not as it saw fit. Hamilton even noted that in cases involving the rights of private individuals, the courts would have an independent authority to interpret treaties if necessary. As with Hamilton’s debate with

Jefferson and Madison over the scope of the federal power, his debate with them over separation of powers revealed a disagreement over how to interpret a commonly held principle, not a willingness on his part to reject that principle.

For Hamilton, separation of powers was essential to liberty. The combination of republican government with respect for liberty had become possible not by any improvement in human nature, but only by an improvement in the knowledge of how to manage unruly human nature.

Contemporary progressives, of course, seek a greater centralization of authority both within the federal government and across the nation. That is, they are skeptical not only of separation of powers, but also of federalism. They resist federalism as an impediment to their desire for greater equalization of societal conditions. The decentralized freedom of 50 states to manage their own internal concerns may—as Alexis de Tocqueville contended in *Democracy in America*—foster an energy in the population that over time will generate remarkable improvements in society. By its nature, however, such decentralization cannot result in improvements that are uniform across the country and equally shared in all of its parts.²⁷

Here again, contemporary progressivism could claim a plausible Hamiltonian root for its own propensities. Hamilton, after all, was known in his own day as a proponent of the federal power and—in contrast to rivals such as Jefferson and Madison—certainly not as a partisan of the authority of the states. In *Federalist* No. 27, Hamilton contended that it was reasonable to expect that the federal government would be “better administered” than the state governments, and contemporary progressives might seize upon such remarks as justifying their own preference for centralized authority as more efficient.²⁸

26. *The Federalist*, p. 51.

27. Alexis de Tocqueville, *Democracy in America*, trans. Harvey Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2002), Vol. I, Part 1, Chapter 5.

28. *The Federalist*, p. 172.

Even here, however, Hamilton's thinking stayed broadly within the Founding consensus. He affirmed the role of the state governments and conceded that that role necessarily implies a limit to the federal authority.

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In *Federalist* No. 32, Hamilton noted that the Constitution “aims only at a partial union or consolidation” and that, therefore, the “State governments would clearly retain all the rights of sovereignty which they before had” and which were not “exclusively delegated” to the federal government by the Constitution.²⁹ Later, in a speech to the New York ratifying convention, Hamilton assured the delegates that “[w]hile the Constitution continues to be read, and its principles known, the states must, by every rational man, be considered as essential component parts of the union; and therefore the idea of sacrificing the former to the latter is totally inadmissible.”³⁰

It is true that Hamilton, by his own admission, fought as Secretary of the Treasury for what he called a “liberal construction” of the federal authority because he wanted to build up the power of the federal government in relation to that of the states. He added, however, that he did not seek this out of any desire to “prostrate the state governments.” On the contrary, Hamilton said that he wished to see the existing arrangement of federalism preserved and that he thought the states’ individual governments would prove “useful and salutary” if they could be “circumscribed within bounds consistent with the preservation of the national government.”³¹

As this remark reveals, Hamilton sought an expansion of the federal authority not out of any dogmatic belief that such expansion would be desirable

under any and all circumstances, but because he thought it appropriate in the circumstances of the Founding. After having been governed as a confederation of states, America had just embarked on the experiment of having an effective government of the Union, and Hamilton understandably feared that in those circumstances, there was a natural but dangerous tendency to favor the states at the expense of the federal government.

Needless to say, Hamilton's willingness to make such a judgment lends no support to the idea that he would today favor the further expansion of a federal power that has been firmly established for two centuries and now has a wider scope than at any other time in American history.

Hamilton was aware of the fear, loudly proclaimed by the Constitution's Anti-Federalist critics, that the federal government would gradually “absorb in itself” the “residuary authorities” that belonged to “the states for local purposes.”³² He did not, however, think that this would happen, in part because he did not think it reasonable to suppose that the people in charge of the federal government would have any desire to intrude into the realm of state power in this way.

Men of high ambition, Hamilton suggested in *Federalist* No. 17, would tend to dominate the offices of the federal government, but such men would tend to regard state issues as small and beneath their notice. “The regulation of the domestic” administration “of a state,” he held, seems to “hold out slender allurements to ambition.” National commerce and finance, and foreign policy and war, “seem to comprehend all the objects which have charms for minds governed by” ambition, and the powers necessary to these activities were already placed in the federal government. He concluded that it was unlikely that “there should exist a disposition in the federal councils to usurp the powers” of the states, because the effort to exercise such powers would be “as troublesome as it would be nugatory, and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.”³³

29. *The Federalist*, p. 200.

30. *The Papers of Alexander Hamilton*, Vol. V, pp. 70–71.

31. *The Papers of Alexander Hamilton*, Vol. XI, p. 443.

32. *The Federalist*, pp. 105.

33. *Ibid.*, pp. 105–106.

Passages such as these provide the ground for a certain criticism of Hamilton, for while they reassure us about his intentions regarding respect for state powers, they also call into question his foresight about the later trajectory of American politics. Unlike Alexis de Tocqueville, Hamilton did not anticipate the kind of egalitarianism and passion for centralizing political authority that would later come to animate American progressivism and lead the federal government to intrude upon realms of policy traditionally reserved to the states. At the same time, however, this failure to foresee such intrusions also shows that Hamilton did not himself share these progressive passions. Accordingly, one cannot reasonably present his thought and statesmanship as the Founding-era root of such progressive propensities.

Hamilton and Natural Rights

One more fundamental—and perhaps the most fundamental—difference exists between Hamilton’s ideas and those of contemporary progressivism: Hamilton was a firm proponent of the natural rights doctrine, which progressives tend to reject.

Progressives believe not only that society is capable of indefinite improvement, but also that the standards of political justice are themselves subject to change. This, again, is necessary to the possibility of unlimited progress around which progressives organize their thought and practice. If permanent standards could be identified, then the just society could potentially be achieved, at which time there would be no further need for expansions of government authority. As a result, progressives tend to criticize the natural rights doctrine of the American Founding, which they regard as establishing unreasonable limits on the progress of justice understood as equality and on the power of government to act in the pursuit of such equality.

Woodrow Wilson, for example, held that the American government should not consider itself “bound

to adhere to the doctrines held by the signers of the Declaration of Independence,” but that Americans should instead use each Fourth of July as “a time for examining our standards, our purposes, for determining afresh what principles, what forms of power we think most likely to effect our safety and happiness.”³⁴ Progressive legal scholar Frank Goodnow was even more pointed on this topic: The Founders’ theories of “natural right” represented a “static” rather than a “progressive” conception of society and were in fact “worse than useless” because their influence acted to “retard development.”³⁵

Alexander Hamilton was a firm proponent of the natural rights doctrine. Like the rest of the Founding generation, he understood the idea of natural rights to be an insight into the permanent order of things.

Progressives have been particularly impatient with the Founders’ belief that there is a natural right to private property and their accompanying insistence on the sanctity of contracts. As noted, a society established on such beliefs tends to develop inequalities that progressives find irksome and that they hope to use government power to remedy.³⁶ Finding the natural rights doctrine—especially the right to property—standing in their way, they tend to dismiss these ideas as mere relics of the 18th century, no longer suitable to the country’s present stage of social and economic development.

Alexander Hamilton, however, was a firm proponent of the natural rights doctrine. Like the rest of the Founding generation, he understood the idea of natural rights to be an insight into the permanent order of things.

At the beginning of his public career, in *The Farmer Refuted* (1775), Hamilton wrote in defense of

34. *The Papers of Woodrow Wilson*, ed. Arthur S. Link (Princeton, NJ: Princeton University Press, 1974), Vol. XVII, p. 251.

35. Frank Goodnow, *Social Reform and the Constitution* (New York: Macmillan, 1911), pp. 1-3. Consider also John Dewey’s dismissive remark that “[n]atural rights and natural liberties exist only in the kingdom of mythological zoology” in *Liberalism and Social Action* (Amherst, NY: Prometheus Books, 2000), p. 27.

36. Consider, for example, Franklin Roosevelt’s observation that the “exercise of property rights” by some can interfere with the “personal competency” rights of others—such as the “freedom of personal living each man according to his own lights”—and that this problem calls for government intervention. See Roosevelt’s “Campaign Address on Progressive Government at the Commonwealth Club in San Francisco, California,” September 23, 1932, <http://www.heritage.org/initiatives/first-principles/primary-sources/fdrs-commonwealth-club-address>.

the rights of the American colonies. Those rights, he contended, were rooted not only in the colonial charters and in traditional British law and practice, but also in a deeper or higher source. “The sacred rights of mankind,” he said, “are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself, and can never be erased or obscured by mortal power.”

Later in the same essay, Hamilton made clear that property is among these “sacred rights of mankind.” Even in a state of nature, men are under the authority of God’s “eternal and immutable law, which is indispensably obligatory upon all mankind, prior to any human institution whatever.” In such a state, he continued, “no man had any moral power to deprive another of his life, limbs, property, or liberty.” He then concluded that British policy toward the colonies was unjust because it tended to “divest” the Americans of “that moral security” for their “lives and properties” to which they were “entitled” and “which it is the primary end of society to bestow.”³⁷

Hamilton penned *The Farmer Refuted* when he was only about 20 years old, but he held fast to the rights doctrine, and particularly to the importance of the right to property, when he was a mature statesman in a high position of national responsibility. In 1792, as Secretary of the Treasury, Hamilton wrote a series of essays entitled *The Vindication*, intended as a defense of his program.

In the third of these essays, he echoed the theme he had first sounded 17 years earlier as a young revolutionary. He held that “the established *rules of morality and justice are applicable to nations as well as to individuals*; that the *former* as well as the *latter* are bound to *keep their promises, to fulfill their engagements, to respect the rights of property* which others have acquired under contracts with them.” This same principle, he continued, was the basis of “all distinct ideas of right or wrong, justice or injustice in relation to society and government.” Without it, there could “be no such thing as rights” and “no such thing as property or liberty.” Without it, “[a]ll the boasted advantages of a constitution of Government” would “vanish in air,” and everything would

“float on the variable and vague opinions of the governing party of whomsoever composed.”³⁸

Moreover, as Secretary of the Treasury, Hamilton respected these principles both in speech and in practice. They guided and limited the policies he crafted and promoted. This is most obvious in his *Report on Public Credit*, in which he put forward his plan for paying the government’s debts from the Revolutionary War.

Hamilton clearly regarded the debt as a burden on the nation. He did not think it could be paid in its existing form while also paying for the government’s ordinary operations without resorting to high rates of taxation, which he evidently regarded as imprudent. It is striking, therefore, that in the entire report, Hamilton never once ventured near the suggestion that the government could solve its debt problem by unilaterally diminishing, or even altering the form of, its obligations. On the contrary, he insisted that a sound state of public credit required scrupulous adherence to public faith—in other words, a strict fulfillment of promises—by the government.

In addition, he insisted on such a course for both practical and moral reasons. Failure to pay the nation’s debts would obviously result in higher rates of interest for future loans, which Hamilton feared would impair the ability of the government to meet the “exigencies” it might encounter in the future. At the same time, however, he also noted that the observance of good faith is also “enforced by considerations of still greater authority”—namely, the “immutable principles of moral obligation.”³⁹

Hamilton was guided by the same moral considerations in rejecting calls that some had made for a plan of “discrimination” between present and past holders of government debt. Such arguments held that the government should not pay the full value of government securities to those who had purchased them secondhand so that it could pay something to the original holders, who might have sold them at less than their full value out of economic distress and a fear that the government might never make good on its obligations.

Although such arguments sounded humane and equitable, Hamilton rejected the policy as unjust. For

37. Alexander Hamilton, “The Farmer Refuted,” Heritage Foundation *Primary Sources*, <http://www.heritage.org/initiatives/first-principles/primary-sources/alexander-hamilton-the-farmer-refuted>.

38. *The Papers of Alexander Hamilton*, Vol. XI, p. 470 (emphasis in original).

39. Hamilton, *Writings*, p. 533.

him, such “discrimination” was “inconsistent with justice” because it required a “breach of contract.” The government securities were clearly framed to be transferrable. “The nature of the contract in its origin” was that the government would “pay the sum expressed in the security” to “the first holder, or his *assignee*.” Therefore, every later purchaser of a government security had to be understood as having the same right as the original holder to “the identical sum expressed in the security.” Such purchasers had acquired their right to be paid the value of the securities “in conformity to the original agreement and intention of the government,” and as a result, their claims could not “be disputed without manifest injustice.”⁴⁰

For Hamilton, the natural rights doctrine—particularly the right to property and the accompanying notion of the sanctity of contracts—established firm limits that a just government was bound to observe.

For Hamilton, the natural rights doctrine—particularly the right to property and the accompanying notion of the sanctity of contracts—established firm limits that a just government was bound to observe. Hamilton, like the rest of the Founding generation, viewed the security of property as one of the primary purposes of government. For him as for them, a government that failed to protect property was a failure in a key respect. Accordingly, as Secretary of the Treasury, Hamilton took care that the new government should not come into being on the basis of violations of this right, thus making itself a failure from the outset.

Conclusion

It is understandable that some contemporary progressives and even some contemporary conservatives would view Hamilton as the Founding-era forerunner of Progressivism and praise or blame him accordingly. He was the most vigorous promoter

of an activist federal government in his day, and to that extent, the position he staked out corresponds roughly to that occupied by progressives today.

The impression is strengthened by the tone of some criticisms made by Hamilton’s own political opponents, which sound much like the criticisms of progressivism made today by conservatives. Hamilton’s critics, after all, accused him of favoring a federal government that transcended the limits imposed by the Constitution and even of favoring a federal government with no limits on its power at all. These critics included important figures like Thomas Jefferson and James Madison. Small wonder, then, that many people today uncritically accept the testimony of these revered Founders and see in Hamilton the origins of the thirst for unlimited federal power that characterizes today’s progressives.

Nevertheless, as the preceding review of Hamilton’s statesmanship has shown, its resemblance to progressivism is more superficial than substantive. Hamilton favored an active national government, but his vision of its purpose was derived from a conservative meditation on the lessons of experience, not from a progressive thirst for indefinite social progress led by a government of indefinite scope. In addition, even while advocating such a national government, he continued to respect the limits imposed by the constitutional enumeration of powers as well as constitutional structures like separation of powers and federalism.

Above all, Hamilton understood the powers of government to be limited—not only by the written law of the Constitution, but also by the natural rights affirmed by the consensus of the Founding generation. Hamilton favored an activist federal government, but he did so on grounds and within limits that are recognizably part of the American conservative and constitutional tradition.

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40. *Ibid.*, p. 538 (emphasis in original).