ALEXANDER HAMILTON.

1757–1804.

BY

JAMES BROWN SCOTT,

Solicitor for the Department of State; Professor of International Law in George Washington University.

Our National Government—The Rock of our Political Salvation—Hamilton.¹

HAMILTON, the brilliant and dashing soldier, culminates in the storming of the redoubt at Yorktown, and his graceful and impetuous figure stands out for a brief moment in bold relief as the embodiment of chivalry and valor; Hamilton, the lawyer, is a tradition, although evidence is not lacking of his success as an advocate at the bar, but as a man of the law his fame must be known to the student or the select few; Hamilton the statesman, is alike the glory and the property of the Nation.

Any one of these qualities would entitle him to

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¹The following mosaic is composed of carefully selected passages from the lives by Senator Lodge in the American Statesmen Series (revised edition), Wm. G. Sumner, George Shea, and various others. In many cases passages are quoted and references given; at times the language is paraphrased, and in not a few instances when the reader was presumed to be off guard or when it otherwise seemed safe, neither quotation nor reference is given.

The primary source must always be that of the son John C. Hamil-
respect; their combination to admiration; but taken singly or collectively they fail to explain the fascination which his career inspires alike in young and old, and the affection in which he is held by successive generations of his countrymen.

The youth of Hamilton, his untimely and tragic death, appeal to the imagination and disarm criticism. The details of banking and finance are regarded merely as evidences of the genius and the mind of the man; the charm of manner and the dash of personal beauty make an appeal none the less direct and individual because of his failings. The age of Washington was heroic; Hamilton was human, a thing of flesh and blood. We instinctively feel this in contemplating the period and we turn our backs on the statue. The touch of nature makes us kin; we admire the life work of Hamilton but we love the man. Hamilton was always young with the weakness and strength of youth; a reliance upon his own judgment and a passionate obstinacy to control; but side by side there existed a passionate earnestness, boundless courage, irresistible energy and enthusiasm which crushed if it did not over-

— in seven volumes, but few references are given to it. Hamilton's services were great, but it lay not in the mouth of the son to proclaim them.

The Federal Edition of the works (2nd edition, 1904) by Senator Lodge is the one referred to.

Mr. Frederick Scott Oliver's Alexander Hamilton: An Essay on American Union, appeared too late for use in the text, but the work cannot be too highly commended.

Other references are cited in the notes.
come opposition. He had no past of his own; he settled in a country with none, and dreamed and planned of a future for himself and country. The task of youth is to do things, not to recount triumphs won; the future is the young man's heritage, and the future has claimed this stranger in the land as her very own.

And yet this man was never young. Physically he was indeed a child; mentally he was always a man. His life work was done at thirty-eight when he resigned from Washington's cabinet in 1795, but he had then been before the public for twenty years. He was mature rather than precocious, for the precocious youth is ordinarily the mediocre man. The younger Pitt was a marvelous prime minister at twenty-four; the Pitt of Austerlitz was a weak and worn out minister of the crown. Napoleon was a wreck at Waterloo. Hamilton grew with the years and death found him intellectually at his height. Indeed Grotius and Hamilton in middle life stand almost alone among the wreck of youthful prodigies. The conclusion is inevitable; they were not youths; they were men—great alike at birth and death.

There is little to relate of the early years. Alexander Hamilton was born on January 11,

\[H^3\] He had not then attained his forty-eighth year. Chancellor Kent's Memoirs of Alexander Hamilton, printed in the appendix of Memoirs and Letters of Chancellor Kent by William Kent, pp. 328-329. This article is henceforth cited, "Memoirs." This admirable monograph seems to the present writer to be the profoundest study of the charac-
1757—the year of Romilly’s birth—in the little Island of Nevis in the British West Indies. Genealogists have had a hard time with his ancestry and have had no little difficulty in patching up his parentage. The offspring himself was never strong in domestic relations. It is certain that his father was Scotch; that his mother was of French Hugue- not descent. From the father he inherited the strength and appearance of his race; from the mother, the language, the charm and vivacity of the French. A quotation from a sympathetic biog- rapher states this happy combination and trans- fusion: “A bright, ruddy complexion; light-colored hair; a mouth infinite in expression, its sweet smile being most observable and most spoken of; eyes lustrous with deep meaning and reflection, or glanc- ing with quick canny pleasantry, and the whole countenance decidedly Scottish in form and expres- sion, . . . His political enemies frankly spoke of his manner and conversation, and regretted its irre- sistible charm.”

What the education of the child was we do not

\(^{3}\) See Lodge’s Life of Hamilton, Appendix A, Note A, where the birth of Hamilton is treated with learning and sense and the reader in the nature of things, is left in doubt. The curious reader should consult Mrs. Gertrude Atherton, “A few of Hamilton’s Letters” (1903), in the preface and appendix to which apparently conclusive evidence of Hamilton’s illegitimacy is advanced.

know: after the manner of the tropics he grew and blossomed early. At twelve years of age he was placed in a counting house and it is at his clerkly desk, as Mr. Lodge admirably puts it, that “we catch the first clear glimpse of the future statesman in the well-known letter addressed to his friend Edward Stevens: 5

I condemn the groveling condition of a clerk, or the like, to which my fortune condemns me, and would willingly risk my life, though not my character, to exalt my station. I am confident, Ned, that my youth excludes me from any hopes of immediate preferment, nor do I desire it; but I mean to prepare the way for futurity. I’m no philosopher, you see, and may justly be said to build castles in the air: my folly makes me ashamed, and I beg you’ll conceal it; yet, Neddy, we have seen such schemes successful when the projector is constant. I shall conclude by saying, I wish there was a war.

Stilted and grandiloquent this undoubtedly is, but the young man of twelve had already fixed his eye on “futurity” and the desired war was the means of accomplishing his “constant ambition.” As he lived and died in a whirlwind it is not unnatural that he was caught up by a hurricane. His account of one that ravaged the West Indies pleased his “vague relatives” and it was decided that the genius should be given a chance in the world. 6 Funds were raised and the close of the year 1772 found Hamilton in

6 A copy of this effusion was found in the Royal Library, Copenhagen, Denmark, and was republished for the first time in Mrs. Atherton’s “A few of Hamilton’s Letters,” pp. 261–267.
New York, released from "the groveling condition of a clerk or the like to which my fortune, etc., condemns me."

An education was the first step to lead him from "the groveling condition" and he prepared himself for college earnestly and zealously as was his wont. His first choice was Princeton where he would narrowly have missed his future friend and rival, Madison. But Princeton promoted men by classes, and Hamilton wanted to rush through his course without waiting for the laggards to catch up. King's College possessed this advantage and the young man enrolled himself in King's College, now Columbia University, in the city of New York, where students could then, as now they cannot, pursue their studies as rapidly as individual capacity permits. The storm-cloud of revolution was gathering and the collegian was soon to be caught up in its progress. The war he desired was impending and the adventurer was at hand.

A successful speech in the fields, in 1774; a couple of vigorous pamphlets in 1774 and 1775, and the youth was a marked man, besought by whig and tory. The college was deserted; the pen was busy, but the sword was the means by which the young man was to carve his way to fame and fortune. Military affairs engrossed his study and he sought

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7 Works of Alexander Hamilton, vol. 1, 1-196, in which "A full Vindication" (1774); "The Farmer Refuted" (1775), and the "Remarks on the Quebec Bill" (1775), are given in full.
and found practical experience in a volunteer company. New England was already in arms and the war had begun.

There are two fine episodes of this period that cannot be passed over, for they show Hamilton's innate love of law and order, and a liberty broadly bottomed on both. In an attack upon Dr. Cooper, the loyalist president of Kings, Hamilton threw himself on the steps between president and mob, so that the good doctor escaped their violence, although confounding protector with mob, he denounced both. The reader will no doubt connect this little episode with Sergeant Hoche, thrusting himself between an angry and infuriated mob, so that his Queen might escape. The sympathy of both was with revolution; but a saving sense of chivalry offered protection to the weak and unfortunate.

In a similar way he saved the life of one Thuman from the rabble and when Rivington's press was destroyed and the types carried off by the mob, Hamilton besought his associates to pursue the Connecticut horse and recapture the property.

These are indeed small matters; but a chip shows the current of the flood, and these far from isolated instances show a sense of justice even in the throes of revolution.

The war had already broken out in New England and the colonies girded themselves for a struggle with the strongest power of Europe. Driven from
Boston, the British concentrated in New York, the possession of which they deemed essential. Could they have made New York a basis for successful operations, the loss of New York might have proved fatal to the colonies, because it would have shut off New England from the rebellious colonies in the south. There was then no west, and the Hudson would have been a waterway to Canada. Events showed the strategic value of New York, but it is futile to speculate what might have happened had the British commanders been capable and successful men. They were neither, and simply illustrate Burns's happy quatrain:

The best laid schemes o' mice and men
Gang aft a-gley;
And leave us naught but grief and pain
For promised joy.

In the struggle for the protection of New York, Hamilton won his spurs, so to speak. Early in 1776 the New York Convention ordered a company of artillery to be raised; Hamilton applied for the command and received it. The opportunity had come and Hamilton set his foot firmly upon the threshold of his dreams. He stood the baptism of fire at Long Island and covered the retreat; distinguished himself at White Plains and conducted himself admirably in the brilliant campaign of Trenton and Princeton. Greene had befriended the young man and introduced him to Washington. As cap-
tain he justified the encomium of the one and the approbation of the other. On March 1, 1777, Washington selected him as his military secretary with the rank of lieutenant-colonel. His connection with New York thus ceased when he entered the Continental Army. He lost for the time a state, but he gained a country. The sentiment of nationality, of loyalty to the nation rather than to the colony as such which existed in the household of the Commander-in-chief—profoundly impressed the young man of twenty, who had not taken great interest in the colony as such. From being a Briton he became an American, without the intervention of a colony. The advocates of State-rights have been men reared in and devoted to a state; the foreigner looks solely to the nation and knows no lesser allegiance. Immigration made the North lovers of a union; the lack of immigration kept the South what it originally was, locally patriotic.

But to return to Hamilton. Many admirers find in him all the qualities of a great commander, and assign to him much of Washington's glory, in ascribing to the energetic and brilliant secretary, plans of the subsequent campaigns; his detractors, on the other hand, degrade him practically to "the groveling condition of a clerk, or the like," to which his fortune condemned him at the outset of his career. Neither view is correct, and the truth lies here, as often, in the golden mean. Hamilton's abilities first attracted Washington and these same abilities made
him exceedingly useful at headquarters. Confidence, a plant of slow growth, came later, and when Washington saw that the young man merited confidence, he freely bestowed it. In this way Washington found an excellent hand to execute the thought of his brain, and it may be true, indeed it is highly probable, that the young man exercised considerable influence on his chief. To exaggerate the importance of Hamilton in these years is simply silly. Washington stood alone from early youth and though he listened freely to advice he generally reserved his judgment. Hamilton was enthusiastic, overbearing, and rash; these qualities are lacking in Washington. Then again, competent and impartial critics consider that the New Jersey campaign was the most brilliant of Washington's military career, and this was outlined and executed before Hamilton was attached to his staff. The mind that thought out that campaign did not need tutelage. It would be equally unjust, however, to the young man to under-value his services; but whether at headquarters or in semi-diplomatic missions to Gates or Putnam, the services were essentially those of a subordinate. Hamilton chafed at this and regretted that he had left the line, and it would appear that

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8 In speaking of the year 1781 the late Mr. Lecky said: "It is somewhat remarkable how very little was done at this time by Washington himself. His eminent wisdom in counsel and administration was never more apparent than in the latter period of the war; but his great military reputation appears to me to rest almost entirely on his earlier campaigns." History of England in the XVIII Century, vol. IV, 206.
he unsuccessfully applied for the position of adjutant-general, for which he was pressed by Lafayette, and his early protector, General Greene. It is absurd, however, to overlook the advantage of association and friendship with Washington. In the field, he would have been brilliant and dashing, no doubt. Brilliant and dashing he always was, but older and more experienced commanders were in the field. The solidity and judgment of Washington, seen at close range, must have been inestimable, and it would have been the part of wisdom in the younger man to fashion himself on the model of his chief; for, notwithstanding his enormous ability, the judgment of Hamilton was at times lamentably weak.

In the military career of Hamilton two picturesque moments may be singled out. In the aftermath of the miserable plot to betray West Point, in 1780, Hamilton played a rôle as delicate as it was admirable. His was the duty to console Mrs. Arnold in the first agony of her disgrace, and circumstances brought him into close personal contact with the unfortunate André. In two hurried and delicate, tender letters to the future Mrs. Hamilton (Miss Schuyler), he depicts the sufferings of the deserted wife, and, in a lengthy letter to Colonel John Laurens, he sympathetically described the agony of the unfortunate soldier who met a miserable fate with manly devotion and courage. Of André, he says and rightly: "Never did any man
suffer death with more justice or deserve it less. . . . Among the extraordinary circumstances that attended him in the midst of his enemies, he died universally esteemed and universally regretted." Hamilton's judgment is likewise the judgment of posterity: . . . "the refusing him the privilege of choosing the manner of his death, will be branded with too much obstinacy." 9

He must be made of firm stuff and of no ordinary clay who can read these letters with an unmoistened eye.

The second episode is the storming of the redoubt at Yorktown. One day in the year 1781, on the 16th of February, Washington had sent for Hamilton to come to him; but the latter, to quote Mr. Lodge, "delaying a few minutes in obeying, found the General at the head of the stairs, who reproved him with no undue sharpness, saying that to keep him waiting was a mark of disrespect. Whereupon Hamilton replied: 'I am not conscious of it, sir; but since you have thought it, we part.' One can hardly read this youthful ebullition even now without a smile." 10

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9 Works of Alexander Hamilton, vol. IX, 206–223. Of the letter to Laurens, Mr. Lodge says: "This letter is the best description extant of Arnold's treason, and all the accompanying incidents. It is admirably written, and shows, in a striking way, Hamilton's literary skill."

It was reasonable that Washington should be annoyed, but a simple explanation, such as that given in the letter to General Schuyler, would have beeneminently satisfactory. As it was, Washington sent for Colonel Hamilton, and a word should have reconciled the young man, but he childishly refused the proffered interview. Had Washington been less the man he was and a trifle more human, it is possible that Hamilton's military career would have ended then and there at the foot of the stairs. But Washington was incapable of resentment, and recognizing the services of his secretary and his youth, appointed him to command the assault upon the redoubt on October 14, 1781, which Hamilton executed with brilliancy and dash as was his wont. The war was practically over; his military career ended in a blaze of glory. Shortly thereafter Hamilton resigned his commission, and began the serious study of the law. The war had given him reputation; his marriage in the winter of 1780 with the daughter of General Philip Schuyler, added social position; the practice of law was to furnish a livelihood and be the stepping stone to a broader career.

And for the practice of law Hamilton was admirably fitted. In the matter of physical presence he was as favored as Lord Erskine and he possessed a power of speech hardly inferior, it would seem, to the Scotchman. These are qualities not to be despised, but while they may make the verdict getter they do not make the lawyer. A knowledge of the
law and its fundamental and underlying principles; a knowledge of the history of the law added to the power of searching analysis and philosophic grasp are essential to the lawyer in the scientific sense. In rounded completeness they make the jurist. Mere learning in the law will not do; for the duty alike of lawyer and judge is not to decide past but to adjudicate present cases. The mere knowledge of precedents will decide a case clearly falling within the precedents; an understanding of the spirit or principle underlying the precedent can alone enable the bench and bar correctly to decide a case of first impression. A safe judge follows but does not go beyond the authorities; a great judge strips precedent from precedent until he discovers the spirit of the law, liberating it, as it were, from its confinement. In a word, he goes to the heart and soul of things. A couple of illustrations will serve to make clear this distinction in the person of two illustrious examples. Chief-Justice Marshall was wont to say: "These seem to me to be the conclusions to which we are conducted by the reason and the spirit of the law. Brother Story will furnish the authorities." It is a matter of history that Brother Story did furnish the authorities; it is also a fact that Story recognized the fundamental difference between himself and the great chief. "When I examine a question," said Story, "I go from headland to headland; from case to case. Marshall has a compass, puts to sea, and goes directly to his result."
These words are applicable to Hamilton, who went boldly and directly to the heart of things and laid bare the reason and spirit of any case, however difficult or complicated, with the unerring eye and hand of the master.

Hamilton's arguments at the bar are lost to us with a few exceptions, but his speech in the case of Harry Croswell would of itself suffice for a reputation were other proofs lacking. We are not, however, forced to rely solely on this single speech and argument. Two measured opinions of friend and foe exist, upon which posterity may well be content to base its judgment.

First as to the political enemy. Judge Ambrose Spenser said: 11

Alexander Hamilton was the greatest man this country ever produced. I knew him well. I was in situations often to observe and study him. I saw him at the bar and at home. He argued cases before me while I sat as judge on the Bench. Webster has done the same. In power of reasoning, Hamilton was the equal of Webster; and more than this can be said of no man. In creative power Hamilton was infinitely Webster's superior. . . . It was he, more than any other man, who thought out the Constitution of the United States and the details of the Government of the Union; and, out of chaos that existed after the Revolution, raised a fabric every part of which is instinct with his thought. I can truly say that hundreds of politicians and statesmen of the day get both the web and woof of their thoughts from Hamilton's brains. He, more than any man, did the thinking of the time.

The opinion of the friend and admirer Kent, who followed Hamilton's career during a period of twenty-two years, could not be more overwhelming.\(^{12}\)

He rose at once to the loftiest heights of professional eminence, by his profound penetration, his power of analysis, the comprehensive grasp and strength of his understanding, and the firmness, frankness, and integrity of his character. We may say of him, in reference to his associates, as was said of Papinius: "\textit{Omnes longo post se intervallo reliquerit}.''

The fact that Hamilton appeared repeatedly before Kent's Court clothes his statements with peculiar authority. Kent's profound cruidation and unswerving honesty, evidenced at once by his Commentaries and the whole course of his life, must make his judgment final.

The following passages are therefore quoted from Kent's Memoirs:

He never made any argument in court in any case without displaying his habits of thinking, and resorting at once to some well founded principle of law, and drawing his deductions logically from his premises. Law was always treated by him as a science founded on established principles.\(^{13}\)

Between the years of 1795 and 1798 he took his station as the leading council at the Bar. He was employed in every important and especially in every commercial case.\(^{14}\)

He taught us all how to probe deeply into the hidden recesses of the science, or to follow up principles to their far distant sources.

\(^{12}\) Lodge's Life of Alexander Hamilton, p. 274.

\(^{13}\) Page 290.

\(^{14}\) Page 317.
He was not content with the modern reports, abridgments, or translations. He ransacked cases and precedents to their very foundations; and we learned from him to carry our inquiries into the commercial codes of the nations of the European continent, and in a special manner to illustrate the law of insurance by the severe judgment of Emerigon and the luminous commentaries of Valin.\(^\text{15}\)

My judicial station, in 1798, brought him before me in a new relation, but the familiar friendly intercourse between us was not diminished, and it kept on increasing to the end of life. At circuits and in term time I was called, in a thousand instances, to attend with intense interest and high admiration to the rapid exercise of his reasoning powers, the sagacity with which he pursued his investigations, his piercing criticisms, his masterly analysis, and the energy and fervor of his appeals to the judgment and conscience of the tribunal which he addressed. If I were to select any two cases in which his varied powers were most strikingly displayed, it would be the case of Le Guen vs. Gouverneur and Kemble, argued before the Court of Errors in the winter of 1800, and the case of Croswell ads. The People, argued before the Supreme Court in February term, 1804.\(^\text{16}\)

The other case I mentioned involved the discussion of legal principles of the greatest consequence. Croswell had been indicted and convicted of a libel upon Thomas Jefferson, then President of the United States. The libel consisted in charging Mr. Jefferson with having paid one Callender, a printer, for grossly slandering George Washington and John Adams, the former Presidents; and the defendant offered to prove the truth of the charge. But the testimony was overruled by Chief-Justice Lewis, who held the circuit, and he charged the jury that it was not their province to decide on the intent of the defendant, or whether the libel was

\(^{15}\) Page 318. He was not content, for instance, with examining Grotius and taking him as an authority in any other than in the original Latin language in which the work was composed. Page 317.

\(^{16}\) Pages 320–321.
true or false or malicious, and that those questions belonged exclusively to the court. The motion was for a new trial for misdirection of the Judge and those two great points in the case were elaborately discussed before the Supreme Court, and they were considered by General Hamilton, who appeared gratuitously for the defendant, as affecting very essentially the constitutional right of trial by jury in criminal cases, and the American doctrine of the liberty of the press.

I have always considered General Hamilton's argument in that cause the greatest forensic effort that he ever made. He had bestowed unusual attention to the case, and he came prepared to discuss the points of law with a perfect mastery of the subject. He believed that the rights and liberties of the people were essentially concerned in the vindication and establishment of those rights of the jury and of the press for which he contended. That consideration was sufficient to arouse all the faculties of his mind to their utmost energy. He held it to be an essential ingredient in the trial by jury that, in criminal cases, the law and the fact, were necessarily blended by the plea of not guilty, and that the jury had a rightful cognizance of the intent and tendency of the libel, for in the intent consisted the crime. They had a right and they were bound in duty to take into consideration the whole matter of the charge, both as to the law and the fact, for it was all involved in the issue and determined by a general verdict. On the independent exercise of the right of the jury in criminal cases to determine the guilt or innocence of the defendant, according to their judgment and consciences, rested the security of our lives and liberties. Nothing would be more dangerous to the citizens of this country than to place the trial by jury in such cases under the control and dictation of the court. The English history, in its dark and disastrous periods, showed abundantly by its records that the most dangerous, the most sure, the most fatal of tyrannies consisted in selecting and sacrificing single individuals, under the mask and forms of law, by dependent and partial tribunals. We could not too perseveringly cultivate and sustain the rights of the jury
in all their common-law vigor, as the great guardians of liberty and life, equally against the sport and fury of contending factions, the vindictive persecution of the public prosecutor, and the 'machinations of demagogues and tyrants on their imagined thrones.'

On the other great question in the case he contended with equal ardor and ability for the admission of the truth in evidence to a qualified extent in justification of the libel. He showed that it depended on the motive and object of the publication whether the truth was or was not a justification.

The liberty of the press was held to consist in the right to publish with impunity the truth, whether it respected government, magistrates, or individuals, provided it was published with good motives and for justifiable ends. The hard doctrines under which his client was convicted came from the Star Chamber, that arbitrary and hated tribunal acting under the government of a permanent body of judges, without the wholesome restraints of a jury. He felt a proud satisfaction in the reflection that the Act of Congress of July, 1798, for preventing certain libels against the Government, and which Act had been grossly misrepresented, established these two great principles of civil liberty involved in the discussion. It declared that the jury should have the right to determine the law and the fact, under the direction of the court, as in other cases, and that the defendant might give in evidence in his defence the truth of the libel. He was as strenuous for the qualification of the rule allowing the truth of the libel to be shown in the defence, as he was for the rule itself.

While he regarded the liberty of the press as essential to the preservation of free government, he considered that a press wholly unchecked, with a right to publish anything at pleasure, regardless of truth or decency, would be, in the hands of unprincipled men, a terrible engine of mischief, and would be liable to be diverted to the most seditious and wicked purposes, and for the gratification of private malice or revenge. Such a free press would destroy public and private confidence, and would overawe and corrupt the impartial administration of justice.
There was an unusual solemnity and earnestness on the part of General Hamilton in this discussion. He was at times highly impassioned and pathetic. His whole soul was enlisted in the cause, and in contending for the rights of the jury and a free press he considered that he was establishing the finest refuge against oppression. The aspect of the times was portentous, and he was persuaded that if he should be able to overthrow the high-toned doctrine contained in the charge of the judge, it would be great gain to the liberties of his country. He entered, by the force of sympathy, into the glorious struggles of English patriots, during oppressive and unconstitutional times, for the rights of juries and for a free press; and the anxiety and tenderness of his feelings and the gravity of his theme rendered his reflections exceedingly impressive. He never, before, in my hearing, made any effort in which he commanded higher reverence for his principles, or equal admiration of his eloquence.

Nor were his efforts on that occasion lost to his country. The fruit of them still exists and will remain with posterity, a monument of his glory, though the court was equally divided on the motion he discussed, and therefore decided nothing; yet in the following winter the Legislature of New York passed a declaratory statute, introduced into the House of Assembly by William W. Van Ness, his friend and associate on the trial, admitting the right of the jury in all criminal cases to determine the law and the fact under the direction of the court, and allowing the truth to be given in evidence by the defendant, in every prosecution for a libel; provided that such evidence should not be a justification, unless it should be made satisfactorily to appear that the matter charged as libel was published with good motives and for justifiable ends.\(^{17}\)

The address is to be found in Lodge's Edition of the Works of Alexander Hamilton,\(^ {18}\) and notwithstanding the close logic and analysis of the pre-

\(^{17}\) Pages 323-326.
\(^{18}\) Vol. VIII, 387-425.
cedents and the absence of ornament or literary effect, it compares not unfavorably with Erskine's famous speech in behalf of the Dean of St. Asaph on the Rights of Juries. Its compressed thought carries conviction, but as reported and printed, while it amply justifies Hamilton's reputation as a lawyer, it gives no adequate idea of his power as an orator. It has, for example, none of the richness of thought and literary splendor that characterize the contemporary address of Sir James Mackintosh in defence of Peltier. The fault, however, is the fault of the publisher, not of Hamilton, for, as the reporter said:

It is proper, however, to remark, that the brief sketch of the arguments of counsel is not given with a view to exhibit, in any degree, the solid and ingenious reasoning, or the powerful and matchless eloquence, displayed in this interesting and celebrated cause, but merely to present to the profession the general course of argument, and the legal authorities adduced on a very important and much litigated subject of jurisprudence.

The People vs. Croswell (1804) is reported in the 3d volume of Johnson's Cases. In speaking of the case, which is printed in the Appendix to the Reports, Mr. Johnson says:

The nature and magnitude of the questions discussed in the following case, which came before the supreme court subsequent to the time of these reports, will, it is believed, render my apology unnecessary for its insertion, as an appendix to this volume. It was obligingly communicated to the reporter, by a person of great

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legal eminence [Kent] on whose accuracy and judgment the utmost reliance is placed.

The case has always been considered the strongest and most forcible presentation of the theory that truth may be given in evidence on indictment for libel and that the jury is to decide both on the law and the fact. The opinion of Kent himself was worthy of the argument of his friend, General Hamilton. As stated in the quotation from Kent, the judges were equally divided but a bill was introduced in and passed both Houses unanimously, and became a law on the 6th of April, 1805, which act brought the law into harmony with Hamilton's argument. The statute recognized Hamilton's contention and it is especially stated to be declaratory of the law. In consequence of this statute the court in the August term, 1805, unanimously awarded a new trial.

The following quotations from books of authority show the influence of Hamilton's argument and the present status of the law:

A general and comprehensive definition of libel is that of Lord Camden, cited by Hamilton in the argument in the case of The People vs. Crosowell, which has been repeatedly approved by the courts of New York, and is as follows: "A censorious or ridiculing writing, picture, or sign, made with a mischievous or malicious intent, toward government, magistrates or individuals."

20 An accurate but brief summary of the argument in the very words of Hamilton is given on page 360 to 362 (3 Johnson's Cases) in which Hamilton recapitulated the substance of the doctrine for which he contended. The argument, including the summary, is likewise printed in Works, vol. VIII, 383-386.

To constitute a malicious publication it is not necessary that the party publishing be actuated by a feeling of personal hatred or ill-will towards the person defamed, or even that it be done in the pursuit of any general evil purpose or design, as in the case of malicious mischief. It is sufficient if the act be done wilfully, unlawfully, and in violation of the just rights of another, according to what, as we have seen, is the general definition of legal malice. And malice is presumed as matter of law by the proof of publication. Under modern statutes, and, in some cases, constitutional provisions, however, the whole question of law and fact, i. e., whether the matter published was illegal and libellous, and whether it was malicious or not, as well as whether it was written or published by the defendant, is left to the jury, they having in such cases greater rights than in other criminal prosecutions.

It is not essential that the charge should be false or scandalous; it is enough if it be malicious. Indeed, the old maxim of the common law was, "The greater the truth, the greater the libel," on the ground that thereby the danger of disturbance of the public peace was greater. The truth, therefore, is no justification of the common law. But this rule has in some cases, in this country, been so far modified as to permit the defendant to show, if he can, that the publication under the circumstances was justifiable and from good motives, and then show its truth, in order to negative the malice and intent to defame. And statutes in most if not all of the States now admit the truth in defence if the matter be published for a justifiable end and with good motives, and give the jury the right to determine these facts, as well as whether the publication be a libel or not." 22

At common law, the fact that the publication is true is no justification, but by statutes in England and in this country, the common-law rule has been so far modified that the truth of the publication may be shown, and will constitute a defense,

if it is made to appear that the publication was made with good motives, and for justifiable ends, or that it was for the public benefit. Unless this is made to appear, the truth of the publication is no justification or excuse, even under the statutes. 23

The whole subject is discussed with accuracy and a profusion of learning in Sparf and Hanson vs. United States. 24 Attention is particularly called to the dissenting opinion of Mr. Justice Gray—according as it does with Hamilton's—in which the present writer most respectfully concurs. The following paragraphs are quoted from this masterly opinion: 25

The question of the right of the jury to decide the law in criminal cases has been the subject of earnest and repeated controversy in England and America, and eminent jurists have differed in their conclusions upon the question. In this country, the opposing views have been fully and strongly set forth by Chancellor Kent in favor of the right of the jury, and by Chief-Justice Lewis against it, in People vs. Croswell (3 Johnson's Cases 337); by Judge Hall in favor of the right, and by Judge Bennett against it, in State vs. Croteau (23 Vermont Reports, 14); and by Chief-Justice Shaw against the right, and by Mr. Justice Thomas in its favor, in Commonwealth vs. Anthes (5 Gray's Reports, 185.)

Alexander Hamilton was of counsel for the defendant. Two reports of his argument upon that motion have come down to us, the one in 3 Johnson's Cases (pp. 352-362), the other in a contemporary pamphlet of the speeches in the case (pp. 62-78),

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24 156 United States Reports, pp. 51-183.
and reprinted in 7 Hamilton's Works (ed. 1886, 336-373). But the most compact and trustworthy statement of his position upon the general question, unsurpassed for precision and force by anything on the subject to be found elsewhere, is in three propositions upon his brief, (7 Hamilton’s Works, 335, 336) read by him in recapitulating his argument, (3 Johnson’s Cases, 361, 362).

Hamilton’s disinterestedness is shown by the fact that he appeared gratuitously as did Richard Henry Dana, Jr., in the case of Anthony Burns, and Dana’s noble reply in returning a check to the anti-slavery advocates was doubtless uppermost in Hamilton’s mind: “Besides my own feeling in the matter, which would be conclusive with me, I would not have the force of precedent which has been set in the trials for freedom in Massachusetts thus far impaired in the least, for the honor of my profession and the welfare of those in peril.”

The case of People vs. Croswell has been considered at length because it is the one case in which Hamilton’s brief and argument exist in a form sufficiently authentic, and they are both—through Johnson’s Reports and Mr. Lodge’s admirable edition of the Works—readily accessible to lawyer as well as layman. There are happily still other and ampler materials extant by which Hamilton’s power of legal analysis may be tested: The Federalist, and the Opinion as to the Constitutionality of the Bank of the United States, 1791. The latter is professedly the exercise of a trained lawyer and is a reply to the
adverse opinions of the Secretary of State (Jefferson) and the Attorney-General (Randolph) of Washington’s cabinet. It is a matter of common knowledge that Washington accepted the opinion of his Secretary of the Treasury, and it also is a matter of knowledge that Chief-Justice Marshall’s masterly judgment in McCulloch vs. Maryland 26 is based upon the Hamiltonian theory as to the implied powers of the Constitution. In fact, at the close of the argument, the great Chief-Justice remarked that “there was nothing in the whole field of argument that had not been brought forward by Hamilton.” To have convinced Washington and to be affirmed by Marshall in a unanimous court is in itself a demonstration. But of the Federalist and Opinion in turn and in detail.

It is well known that the Constitution as it left the Convention of 1787 was not wholly to Hamilton’s liking. The inefficiency of the Confederacy, not to say its helplessness, was due to the lack of a central coercive force, and he looked to such a thorough revision or remodelling of the discredited articles as would obviate this defect by conferring upon the government of the country every power necessary to the preservation of national existence. He looked to a welding or fusion of the states into a nation, rather than a co-ordination of equal states. His union was not merely to be more perfect: it was to be indissoluble because the parts in be-

26 4 Wheaton’s Reports, p. 316 (1819).
ing merged into the whole had lost their original characteristics. His plan failed of adoption, and the result was, as is well known, a compromise more or less happy between the national and local elements. The preamble voiced this national sentiment; the decisions of Chief-Justice Marshall interpreted the Constitution in this national sense; and the war between the states made us a nation. In the throbbing words of Chief-Justice Chase, in Texas vs. White: "The Constitution in all its provisions looks to an indestructible Union composed of indestructible States." 27

But the Constitution, however inadequately it met Hamilton's views, received his immediate and unswerving support. If the union was not perfect, it was nevertheless more perfect than the union under the Articles of Confederation. Its adoption was therefore a first necessity.

In the New York convention he was its pillar of strength and his eloquence overcame, if it did not silence, opposition. But the influence of a voice dies with the sound. The people must be reached, roused, and rallied. Therefore Hamilton and his two bosom friends, James Madison and John Jay, united in the serial publication in the press of a systematic exposition of the Constitution in order to show the exact nature and extent of the federal government contemplated by the Constitution. The essays extended over many weeks and appeared as a

27 7 Wallace's Reports, pp. 700, 725 (1868).
rule every three days. The conception was Hamilton's; the execution was largely his and it is not unjustly regarded as his monument.\textsuperscript{28} The press teemed with attack and defense, but their very names are lost to all save the antiquary, while these fugitive sheets have stood the test of time and are alone remembered. The nature of their publication precluded reflection and study, for Hamilton and Madison were busy men in the thick of a contest. The work was the overflow of a well-stocked mind, which responded to any emergency. These papers are not light reading, for they are the anatomy of government, into which Hamilton was later to breathe the breath of life and make the blood pulsate to the very extremes of the body. They are expository and analytical in their nature; for Hamilton needed to analyze the national and state powers, showing where each would fall and the appropriate sphere of each under the Constitution. But more than analysis was necessary, for the system as a whole must be considered and brought to the comprehension of the citizen. Not only was it an analysis and an exposition; it was a prophecy, for the Constitution was not meant for a day, but it may be for all time. It was therefore necessary to show the origin of each provision; to analyze and expound the provision as a

\textsuperscript{28} For an investigation of the perplexing question of authorship of the various numbers see Lodge's introduction to the Federalist in Works, vol. XI, 15-65, and also the introduction of the late Paul Leicester Ford to his admirable one volume edition of the Federalist.
part of the whole; to outline and interpret the Constitution in the light of the future. It therefore demanded and well-nigh exhausted the highest powers of reason and analysis, exposition, and interpretation. It was the work of philosopher, statesman, lawyer, and judge, all four happily and profoundly united in the person of Hamilton, in whose life the Federalist was an incident, composed in odd moments, often written while the printer waited for the copy, snatched rather than spared from the thousand and one avocations of a party leader.

To have produced a rounded whole would have been to his infinite credit; to have produced the world’s masterpiece in the matter of constitutional government argues a miracle.

The American is, however, not to be trusted in this matter of the Federalist; for the Constitution is dear to him in every fibre of his body and the prejudice in favor of the source of political happiness and prosperity extends to the Federalist. The foreigner is a saner and therefore a safer guide; but cool reflection and disinterested contemplation are no less commendatory, and time and place add to rather than detract from the merits of the Federalist. Sir Henry Maine, the author of the work on Ancient Law and one of the foremost writers on the development of legal institutions, was no lover of America and his study on Popular Government is anything but a panegyric upon our institutions, yet the conclusion of this profound investigator as to the Federalist is
strangely like that of the American, although the language is more balanced and measured.²⁹

The antecedent doubt, whether government by the Many was really possible—whether in any intelligible sense, and upon any theory of volition, a multitude of men could be said to have a common will—would have seemed to be strengthened by the facts that whenever government by the Many had been tried, it had ultimately produced monstrous and morbid forms of government by the One, or of government by the Few. This conclusion would, in truth, have been inevitable, but for the history of the United States, so far as they have had a history. The Federal Constitution has survived the mockery of itself in France and in Spanish America. Its success has been so great and striking, that men have almost forgotten that, if the whole of the known experiments of mankind in government be looked at together, there has been no form of government so unsuccessful as the Republican.

The antecedents of a body of institutions like this, and its mode of growth, manifestly deserve attentive study; and fortunately the materials for the inquiry are full and good. The papers called the "Federalist," which were published in 1787 and 1788 by Hamilton, Madison, and Jay, but which were chiefly from the pen of Hamilton, were originally written to explain the new Constitution of the United States, then awaiting ratification, and to dispel misconstructions of it which had got abroad. They are thus, undoubtedly, an ex post facto defence of the new institutions, but they show us with much clearness either the route by which the strongest minds among the American statesmen of that period had travelled to the conclusions embodied in the Constitution, or the arguments by which they had become reconciled to them. The "Federalist" has generally excited something like enthusiasm in those who have studied it, and among these there have been some, not at all given to ex-

²⁹ Maine's Popular Government, pp. 201-205.
cessive eulogy. Talleyrand strongly recommended it; and Guizot said of it that, in the application of the elementary principles of government to practical administration, it was the greatest work known to him. An early number of the "Edinburgh Review" (No. 24) describes it as a "work little known in Europe, but which exhibits a profundity of research and an acuteness of understanding, which would have done honor to the most illustrious statesmen of modern times." The American commendations of the "Federalist" are naturally even less qualified. "I know not," wrote Chancellor Kent, "of any work on the principles of free government that is to be compared in instruction and in intrinsic value to this small and unpretending volume of the 'Federalist'; nor even if we resort to Aristotle, Cicero, Machiavel, Montesquieu, Milton, Locke, or Burke. It is equally admirable in the depth of its wisdom, the comprehensiveness of its views, the sagacity of its reflections, and the freshness, patriotism, candour, simplicity, and eloquence, with which its truths are uttered and recommended." Those who have attentively read these papers will not think such praise pitched, on the whole, too high. Perhaps the part of it least thoroughly deserved is that given to their supposed profundity of research. There are few traces in the "Federalist" of familiarity with previous speculations on politics, except those of Montesquieu in the "Esprit des Lois," the popular book of that day. The writers attach the greatest importance to all Montesquieu's opinions. They are much discomposed by his assertion that Republican government is necessarily associated with a small territory, and they are again comforted by his admission, that this difficulty might be overcome by a confederate Republic. Madison indeed had the acuteness to see, that Montesquieu's doctrine is as often polemical as philosophical, and that it is constantly founded on a tacit contrast between the institutions of his own country, which he disliked, with those of England, which he admired. But still his analysis, as we shall hereafter point out, had much influence upon the founders and defenders of the American Constitution. On the
whole, Guizot’s criticism of the “Federalist” is the most judicious. It is an invaluable work on the application of the elementary principles of government to practical administration. Nothing can be more sagacious than its anticipation of the way in which the new institutions would actually work, or more conclusive than its exposure of the fallacies which underlay the popular objections to some of them.

To take up the opinion upon the constitutionality of the bank in which the powers of close, rapid, and conclusive reasoning, which Hamilton possessed in abundance, were put to test. He was very busy at the time, as appears from his letter to President Washington. To prepare his opinion he was obliged to sit up most of the night, as he says. As it is hurried and hasty as regards preparation, the native quality of his mind is therefore more evident than if the opinion had been the work of many weeks.

President Washington was in doubt as to the constitutionality of the bank, and he, therefore, requested, or, to use his own term, required the various members of his cabinet to present their views in writing. The importance of this transaction lies not merely in the fact that Hamilton shone to greater advantage than Randolph and Jefferson; but in the fact that Hamilton in this argument laid bare, expounded, and, by the grace of Chief-Justice Marshall and a unanimous court, in McCulloch vs. Maryland, established the implied powers of the Constitution upon an equality with those expressly granted.

Hamilton, it will be remembered, stood for a na-
tional government, and objected to the Constitution because that instrument did not centralize the power in a national government. He wished to make this government effective by clothing it, not merely with the express powers, but with all the powers necessary or incidental to the exercise of powers with which a sovereign is ordinarily vested. His opinion was a masterpiece. It not only convinced Washington; it impressed Marshall, and it is the recognized canon of constitutional interpretation. The opinions of Messrs. Jefferson and Randolph were transmitted to Hamilton, and his opinion falls into two divisions, in the first of which he considers, in general, the doctrine of implied and express powers; and in the second part specifically answers the various and technical objections of Jefferson and Randolph.

In order that the answer of Hamilton may be properly appreciated, the salient objections contained in Jefferson's opinion are given:

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." Xth amendment. To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

1. They are not among the powers specially enumerated: for
these are: 1st, A power to lay taxes for the purpose of paying the debts of the United States. . . .

2. "To borrow money." . . .

3. To "regulate commerce with foreign nations, and among the States, and with the Indian tribes." . . .

II. Nor are they within either of the general phrases, which are the following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for the purpose of providing for the general welfare." For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised. They are not to lay taxes ad libitum for any purpose they please; but only to pay the debts or provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to lay taxes for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed as a means was rejected as an end by the Convention which formed the Constitution. A proposition was made to them to authorize Con-
gress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was, that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is, "to make all laws necessary and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not necessary, and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the means which are "necessary", not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to everyone, for there is not one which ingenuity may not torture into a convenience in some instance or other, to some one of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the necessary means, that is to say, to those means without which the grant of power would be nugatory.

Anyone familiar with Hamilton’s compressed style will at once recognize how difficult it is to paraphrase a series of syllogisms, or to give a summary of his legal argument. It is, therefore, proposed to lay before the reader the necessary parts of Hamilton’s opinion in order that he may judge for himself of the legal quality of Hamilton’s mind, rather than accept the opinion of another, however well qualified that other may be. The opinion of
Hamilton is given in his own language. The abridgment consists in the omission of passages valuable but not necessary to an understanding of the question at issue.

In entering upon the argument, it ought to be premised that the objections of the Secretary of State and Attorney General are founded on a general denial of the authority of the United States to erect corporations. The latter, indeed, expressly admits, that if there be anything in the bill which is not warranted by the Constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury that this general principle is inherent in the very definition of government, and essential to every step of progress to be made by that of the United States, namely: That every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the essential ends of political society.

This principle, in its application to government in general, would be admitted as an axiom; and it will be incumbent upon those who may incline to deny it, to prove a distinction, and to show that a rule which, in the general system of things, is essential to the preservation of the social order, is inapplicable to the United States.

The circumstance that the powers of sovereignty are in this country divided between the National and State governments, does not afford the distinction required. It does not follow from this, that each of the portion of powers delegated to the one or the other, is not sovereign with regard to its proper objects. It will only follow from it, that each has sovereign power as to certain things, and not as to other things. To deny that the government of the United States has sovereign power, as to its de-
clared purposes and trusts, because its power does not extend to all cases, would be equally to deny that the State governments have sovereign power in any case, because their power does not extend to every case. The tenth section of the first article of the Constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a political society without sovereignty, or of a people governed, without government.

If it would be necessary to bring proof to a proposition so clear, as that which affirms that the powers of the federal government, as to its objects, were sovereign, there is a clause of its Constitution which would be decisive. It is that which declares that the Constitution, and the laws of the United States made in pursuance of it, and all treaties made, or which shall be made, under their authority, shall be the supreme law of the land. The power which can create the supreme law of the land in any case, is doubtless sovereign as to such case.

This general and indisputable principle puts at once an end to the abstract question, whether the United States have power to erect a corporation; that is to say, to give a legal or artificial capacity to one or more persons, distinct from the natural. For it is unquestionably incident to sovereign power to erect corporations, and consequently to that of the United States, in relation to the objects intrusted to the management of the government. The difference is this: where the authority of the government is general, it can create corporations in all cases; where it is confined to certain branches of legislation, it can create corporations only in those cases.

Here then, as far as concerns the reasonings of the Secretary of State and the Attorney General, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President, that the principle here advanced has been untouched by either of them.

For a more complete elucidation of the point, nevertheless, the arguments which they had used against the power of the govern-
ment to erect corporations, however foreign they are to the great and fundamental rule which has been stated, shall be particularly examined. And after showing that they do not tend to impair its force, it shall also be shown that the power of incorporation, incident to the government in certain cases, does fairly extend to the particular case which is the object of the bill.

The first of these arguments is, that the foundation of the Constitution is laid on this ground: "That all powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved for the States, or to the people." Whence it is meant to be inferred, that Congress can in no case exercise any power not included in those not enumerated in the Constitution. And it is affirmed, that the power of erecting a corporation is not included in any of the enumerated powers.

The main proposition here laid down, in its true signification is not to be questioned. It is nothing more than a consequence of this republican maxim, that all government is a delegation of power. But how much is delegated in each case, is a question of fact, to be made out by fair reasoning and construction, upon the particular provisions of the Constitution, taking as guides the general principles and general ends of governments.

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

But be this as it may, it furnishes a striking illustration of the general doctrine contended for; it shows an extensive case, in which a power of erecting corporations is either implied in, or
would result from, some or all of the powers vested in the national government. The jurisdiction acquired over such conquered country would certainly be competent to any species of legislation.

To return:—It is conceded that implied powers are to be considered as delegated equally with express ones. Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be, in this, as in every other case, whether the mean to be employed, or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes, because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage.

. . . .

To this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is objected, that none but necessary and proper means are to be employed; and the Secretary of State maintains, that no means are to be considered as necessary but those without which the grant of the power would be nugatory. Nay, so far does he go in his restrictive interpretation of the word, as even to make the case of necessity which shall warrant the constitutional exercise of the power to depend on casual and temporary circumstances; an idea which alone refutes the construction. The expediency of exercising a particular power, at a particular time, must, indeed, depend on circumstances; but the constitu-
tional right of exercising it must be uniform and invariable, the same today as tomorrow.

All the arguments, therefore, against the constitutionality of the bill derived from the accidental existence of certain State banks,—institutions which happen to exist today, and, for aught that concerns the government of the United States, may disappear tomorrow,—must not only be rejected as fallacious, but must be viewed as demonstrative that there is a radical source of error in the reasoning.

It is essential to the being of the national government, that so erroneous a conception of the meaning of the word necessary should be exploded.

It is certain that neither the grammatical nor popular sense of the term requires that construction. According to both, necessary often means no more than needful, requisite, incidental, useful, or conducive to. It is a common mode of expression to say, that it is necessary for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, "to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof."

To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a restrictive operation, an idea never before entertained. It would be to give it the same force as if the word absolutely or indispensably had been prefixed to it.
Such a construction would beget endless uncertainty and embarrassment. The cases must be palpable and extreme, in which it could be pronounced, with certainty, that a measure was absolutely necessary, or one, without which, the exercise of a given power would be nugatory. There are few measures of any government which would stand so severe a test. To insist upon it, would be to make the criterion of the exercise of any implied power, a case of extreme necessity; which is rather a rule to justify the overleaping of the bounds of constitutional authority, than to govern the ordinary exercise of it.

It may be truly said of every government, as well as of that of the United States, that it has a right to pass only such laws as are necessary and proper to accomplish the objects intrusted to it. For no government has a right to do merely what it pleases. Hence, by a process of reasoning similar to that of the Secretary of State, it might be proved that neither of the State governments has a right to incorporate a bank. It might be shown that all the public business of the state can be performed without a bank, and inferring thence that it was unnecessary, it might be argued that it could not be done, because it is against the rule which has been just mentioned. A like mode of reasoning would prove that there was no power to incorporate the inhabitants of a town, with a view to a more perfect police. For it is certain that an incorporation may be dispensed with, though it is better to have one. It is to be remembered that there is no express power in any State constitution to erect corporations.

The degree in which a measure is necessary, can never be a test of the legal right to adopt it; that must be a matter of opinion and can only be a test of expediency. The relation between the measure and the end; between the nature of the mean employed toward the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of necessity or utility.

This restrictive interpretation of the word necessary is also contrary to this sound maxim of construction; namely, that the pow-
ers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defense, etc., ought to be construed liberally in advancement of the public good. This rule does not depend on the particular form of a government, or on the particular demarcation of the boundaries of its powers, but on the nature and object of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means. Hence, consequently, the necessity and propriety of exercising the authorities intrusted to a government on principles of liberal construction.

But the doctrine which is contended for is not chargeable with the consequences imputed to it. It does not affirm that the national government is sovereign in all respects, but that it is sovereign to a certain extent; that is, to the extent of the objects of its specified powers.

It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the end, to which the measure relates as a mean. If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority. There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State or of any individual? If it does not, there is a strong presumption in favor of its constitutionality, and slighter relations to any declared object of the Constitution may be permitted to turn the scale.

The general objections, which are to be inferred from the reasonings of the Secretary of State and Attorney General, to the
doctrine which has been advanced, have been stated, and it is hoped satisfactorily answered. . . .

It is presumed to have been satisfactorily shown in the course of the preceding observations:
1. That the power of the government, as to the objects intrusted to its management, is, in its nature, sovereign.
2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power.
3. That the position, that the government of the United States can excercise no power, but such as is delegated to it by its Constitution, does not militate against this principle.
4. That the word necessary, in the general clause, can have no restrictive operation derogating from the force of this principle; indeed, that the degree in which a measure is or is not necessary, cannot be a test of constitutional right, but of expediency only.
5. That the power to erect corporations, is not to be considered as an independent or substantive power, but as an incidental and auxiliary one, and was therefore more properly left to implication, than expressly granted.
6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to incorporate for purposes within the sphere of the specified powers.

And lastly, that the right to exercise such a power in certain cases is unequivocally granted in the most positive and comprehensive terms. To all which it only remains to be added, that such a power has actually been exercised in two very eminent instances; namely, in the erection of two governments; one northwest of the River Ohio, and the other southwest—the last independent of any antecedent compact. And these result in a full and complete demonstration, that the Secretary of State and the Attorney General are mistaken when they deny generally the power of the national government to erect corporations.
In the eyes of Talleyrand, Hamilton's supreme greatness lay in the fact that he divined Europe; to us, his countrymen, it lies in the incontrovertible fact that he divined, if he did not make, America.

At the bar, as in public and private life, Hamilton showed his contempt for popularity as such. If a cause or course of action commended itself to his judgment he held lightly the opinions of others. His self-reliance was superb in the contemptuous sense of the word. At the very beginning of his professional career as an advocate he appeared for the defendant, the tory Waddington, against the widow Rutgers, whose brew and malt-house had been occupied by the defendant from 1780 to 1783, under license and permission of the Commander-in-chief (Sir Henry Clinton) at the rental of one hundred and fifty pounds a year, payable quarterly. By virtue of a statute of the legislature passed in 1783 the plaintiff brought trespass and counted in eight thousand pounds.

In an elaborate and reasoned opinion of great importance in the domain of constitutional law, but wide of the present purpose, the court held "that the plea of the defendant as to the occupancy of the plaintiff's brew-house and malt-house, between the 28th day of September, 1778, and the last day of

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30 Mr. John C. Hamilton has the following on the case of Rutgers vs. Waddington: "Hamilton now commenced his professional career and it is one of the interesting incidents of that career that the first exertions of his talents as an advocate, was in the cause of clemency and good faith." Life, vol. III, 11.
April, 1780; and the last plea of the defendant as to the whole of the trespass, charged in the plaintiff's declaration, are insufficient in the law; and that only the plea of the defendant in justification of the occupancy between the last day of April, 1780, and the 17th day of March, 1783, is good and sufficient in law."

This judgment raised such a storm that the House of Assembly of the state adopted a preamble and a resolution; but what is of greater interest is the information, "that Mr. Waddington, alarmed at these manifestations, and at the threatened appeal and writ of error, soon after compromised with Mrs. Rutgers." 31 The appearance of Hamilton in such a case and at such a time, 1784, when he had been but two years at the bar, did not augur well for a political career; but then, as always, he held his head proudly in the air and scorned to lay his ear

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31 Rutgers vs. Waddington was privately printed in 1866 by Henry B. Dawson, from a copy of the original of 1784. In the introduction Mr. Dawson says: "It is said that six of the Council were heard by the Court; and the following pages will show with what tact and ability the case was argued on either side. Unfortunately the files of the Court, in which were the pleadings and other papers in the action, were destroyed by fire, when the upper story of the City Hall was consumed, on the 1st of September, 1858; and there is no original evidence now in existence to show the particular parts in the arguments, which were taken by the several Councils employed." Pages 17, 18.

In the Life of John C. Hamilton, reliance is placed on an elaborate brief in his possession and the arguments printed in the report of the case are attributed to Alexander Hamilton, vol. III, 13-22.

See the case, comments, and annotations thereon in Thayer's Cases on Constitutional Law, vol. I, 63-72, and note on pages 72-73.
to the ground to know what or whether he should think. The populace was roused, but he won the admiration of the court, which said: "We cannot but express the pleasure which we have received in seeing young gentlemen [Hamilton and R. Livingston] just called to the bar, from the active and honorable scenes of a military life, already so distinguished as public speakers, so much improved in an arduous science."

So much for Hamilton's career at the bar, within which he was an ornament and a leader almost from his admission to the day of his death. Indeed his solicitude for the welfare of his clients was so great that he requested and secured a postponement of the fatal duel until he might wind up the various cases of his numerous clients. Greater independence and devotion it would be hard to find.

But great and justified as was Hamilton's professional success and reputation, it is as nothing compared to his service and standing as a statesman. Had he never tried a case, or if every case he ever tried were forgotten, his career as a statesman would be undiminished. His public services so overshadow his attainments as a lawyer that we either overlook or underestimate his professional eminence. And yet it was the study of the law, supplemented by the training at the bar, that made his judgment so keen, balanced, analytical and unerring, in matters of legislation and political service. The bar was, however, a means: the end was public life.
In the year 1782, the year of his admission to the bar, Hamilton was chosen a delegate to the Continental Congress and thus entered upon his civil career in national politics at the age of twenty-five. This statement should perhaps be qualified, because in June, 1782, Robert Morris, then at the head of the Treasury, appointed him Continental receiver of taxes for New York. National by appointment, the sphere of his action was local. In this position he displayed excessive activity, but the legislature refused to adopt his "clear and scientific plan of taxation to replace the impotent and chaotic system then existing." His appeal to and personal contact with the legislature were not, however, fruitless, for it passed a set of resolutions demanding a new convention and a better union of the states; and in the second place, the legislature was induced by personal knowledge and appreciation of the young man's abilities to elect him to Congress, in which discredited and wholly inefficient body Hamilton sat from November, 1782, until June, 1783.

That this body had fallen from grace was not so much due to its personnel, because it still contained some able and patriotic men; it was due rather to the fact that under the Articles of Confederation it possessed solely the power of recommending measures to the states, but had no power to enforce compliance with its requests. The states had never been over-obedient or respectful, but the danger of war with the possibility of subjugation held the states together
and a union of necessity may be said to have existed. The war was now over, and with relief from external danger the spirit of unity and with it the spirit of compliance vanished into thin air. Then, too, the reorganization upon a peace footing occupied the states and absorbed the energy and ability of the most distinguished citizens for local purposes. Again, the center of interest had shifted, because all eyes were turned to Paris where the Commissioners were negotiating the treaty of peace by which the independence of the states was to be recognized in law as it was in fact.

The Articles of Confederation provided that "in determining questions in the united states, in congress assembled, each state shall have one vote;" 32 that "the united states in congress assembled shall never engage in a war, . . . nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money . . . unless nine states assent to the same;" 33 "nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state. 34 If Article II be borne

32 Article V.
33 Article IX.
34 Article XIII.
in mind—"each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled"—and if it be remembered that this emasculated Congress possessed no power to coerce an unwilling or recalcitrant state, be it large or small, New York or Virginia, Rhode Island or Delaware, it is at once seen that it was merely a deliberative and advisory, not a legislative, assembly. Congress might recommend the laying of an impost and the collection of a revenue for national purposes; the state might agree or dissent, or agree and withdraw its consent. It might be persuaded by an appeal to national sentiment; it could not be forced into compliance; local pride and sensitiveness, local needs of the hour, appealed to local leaders, who turned a deaf and unwilling ear to the entreaties of nationalist or statesman.

Into such an assembly Hamilton entered in the closing months of 1782, and sought at once to galvanize it into action and to persuade the states to raise a permanent revenue. "The first object was to obtain consent to the grant of an impost on imports. One state had not been heard from, but Rhode Island was the only one in active opposition, and to the conversion of this obstinate and selfish little community Hamilton addressed himself. He it was who led the debate in Congress, who obtained a committee to visit Rhode Island and argue with
their government, and from his pen proceeded a forcible letter to the governor. Even while he was contending with Rhode Island, Virginia receded from the agreement and the whole scheme fell through. Had it succeeded, it would, if the states had held to it, have furnished a permanent revenue, and hence Hamilton’s zcal.\(^{35}\)

Congress was a beggar; the nation, as a nation, was bankrupt, and local pride held the purse strings and drew them tighter. The agent of France returned to Trenton in 1784, in the expectation of the assembling of Congress, but there was no quorum. After waiting several days he reported: “There is in America no general government, neither Congress, nor president, nor head of any one administrative department.”

The following paragraph shows the utter collapse of national authority, being what the late Mr. Fiske aptly termed the critical period of American history:\(^{36}\)

A human society bound together by no stronger ties than those provided by the Articles of Confederation must tend naturally to anarchy. Even during the War of Revolution the weakness of the government seemed to many to portend financial ruin and a speedy dissolution of the Union. As soon as the pressure of war was removed the symptoms of disintegration grew alarmingly worse. Congress had become a mere Rump, without dignity, without power, and without a home. It was compelled to appeal repeatedly to the States before it could obtain a quorum of mem-


\(^{36}\) Johnston’s American Politics, ed. 1902, 148–9.
bers to ratify the treaty of peace. Many of the States refused or neglected to pay even their allotted shares of interest upon the public debt, and there was no power in Congress to compel payment. Eighteen months were required to collect only one-fifth of the taxes assigned to the States in 1783. The national credit became worthless. Foreign nations refused to make commercial treaties with the United States, preferring a condition of affairs in which they could lay any desired burden upon American commerce without fear of retaliation by an impotent Congress. The national standing army had dwindled to a corps of eighty men. In 1785 Algiers declared war against the United States. Congress recommended the building of five 40-gun ships of war. But Congress had only power to recommend. The ships were not built, and the Algerines were permitted to prey on American commerce with impunity. England still refused to carry out the Treaty of 1783, or to send a Minister to the United States. The Federal Government, in short, was despised abroad, and disobeyed at home.

But to return to Hamilton. His career in Congress impressed associates and contemporaries with a sense of his rare ability and boundless energy. Measured by results the year was absolutely fruitless. He withdrew in the summer of 1783 and devoted himself to the practice of his profession. His chief interest was, however, in politics, and he watched events as keenly from his desk in New York as did the other founder of America from the quiet retreat of Mount Vernon. The time had not yet come, but the rift in the clouds was discoverable. What national pride and a fine sense of honor at home and abroad had failed to do, the needs of commerce were to accomplish. While the purse-strings were
clutched firmly, an appeal to the conscience was vain; self-interest demanded an expansion of commerce and the regulation of interstate commerce opened the way for the Constitution.  

It was done under the lead of James Madison. Virginia and Maryland had been negotiating together respecting their joint jurisdiction over navigation in the Chesapeake Bay and the Potomac River. Commissioners had agreed upon a plan which was laid before the legislature of each state. In December, 1785, Maryland signified to Virginia her acceptance of it, and at the same time proposed that Delaware and Pennsylvania be invited to coöperate in a plan for a canal between the Chesapeake and Delaware rivers. Thus a scheme of interstate commerce among some of the states was projected, which ought to extend upon just terms to all. Maryland proposed that all the states should be invited to meet and regulate the restrictions upon commerce. Madison, who was a member of the Virginia legislature, saw his opportunity. He prepared a resolution for the appointment of commissioners, to meet such commissioners as should be appointed by the other states, "to take into consideration the trade of the United States, to examine the relative situation and trade of the said states; to consider how far an uniform system in their commercial regulations may be necessary to their common interests and their permanent harmony; and to report such an act to the several states relative to this great object as, when unanimously ratified by them, will enable the United States in Congress assembled effectually to provide for the same." This resolution he procured a Mr. Tyler, who was not suspected of wishing to give to the confederacy over-much power, to introduce. It was permitted to sleep until the last day of the session, when it was brought forward and adopted without debate. Madison was

placed at the head of the commission. This resolution was sent to the other states, and four of them responded.

The delegates of the five states, Hamilton representing New York, met at Annapolis on September 11, 1786, and as the result of their discussion recommended the meeting of commissioners from all the states to be held at Philadelphia on the second Monday in May, 1787, “to take into consideration the United States, to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union.” The report was sent to their respective states and copies to the other states. Congress approved the recommendation of the meeting, provided it be “for the sole purpose of revising the Articles of Confederation” and that the proceedings of the Convention be reported to the Congress.

The needs of commerce, it has been said, convinced merchants of the necessity of some amendment to the frame of government. Shays’s rebellion, breaking out as it did at this time in western Massachusetts, strengthened the hands of the men of law and order in other parts of the country. There must be some central power to regulate commerce in the interest of all, lest New York, for example, might prevent imports from the sister states by prohibitive duties; and it was no less evident that there must be some central and paramount force to put down the rebellion and anarchy so lately exhibited in western Massachusetts. What had happened there might
happen elsewhere, and although Citizen Jefferson might write from Paris about "once in twenty years watering the tree of liberty with blood of tyrants," men who had seen blood flow and knew what it meant thought and wrote otherwise. As Washington wrote to Lee: "You talk, my good sir, of employing influence to appcase the present tumults in Massachusetts. I know not where that influence is to be found, or, if attainable, that it would be a proper remedy for the disorders. Influence is not government. Let us have a government by which our lives, liberties, and properties will be secured, or let us know the worst at once."

Shays's rebellion was indeed a fortunate event; if it plunged the country into the uttermost depths of darkness, it was the darkness that precedes the dawn. Happening as it did just before the meeting of the Convention, it permitted a choicc between government and restraint on the one hand, and no government and anarchy on the other. It was not doubtful which way the beam would incline.

The next event of capital importance was the influence of Washington, and Madison labored incessantly to persuade the hope of a nation to head the movement. It was well known what Washington's sentiments were, and could he be persuaded, could he be made to feel that duty bade him leave Mount Vernon for Philadelphia, the success of the movement would be assured in advance. For had not Washington solemnly said and but recently: "I do
not conceive we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union in as energetic manner as the authority of the State Governments extends over the several states. . . . To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity and madness." Shays's rebellion added to personal appeal turned the balance, and Washington headed the Virginia delegation to the Convention in which every state, except the Sovereign Commonwealth of Rhode Island, was represented.

It is not the purpose of this article to describe the proceedings of the Convention that met in May and adjourned in September with the completed and national constitution under which we live. It is enough to say that Madison planned the Convention and outlined its work; that Washington presided over its deliberations, and that Hamilton justified its ways to men. Hamilton's share in the outcome was slight: he was handicapped by the presence of two colleagues, Lansing and Yates, who were unalterably opposed to a national form of government and who withdrew early in the proceedings. It is not to be supposed that Hamilton was without a plan, for that well-ordered intellect could never approach a subject without giving to it a definite and detailed form. But his dream, rather than hope, was a nation in which the states should be subordinated to an ever-
present and all-pervading sovereign, resting upon the will of the people, it is true, but not upon a universal or direct suffrage. This plan he unfolded in a speech of great power and eloquence, and although it failed of its immediate purpose, as he well knew it would, there can be no doubt that the Constitution as actually framed bears silent but impressive testimony to the spirit that prompted and pervaded it. Hamilton presented his propositions and made his great address, occupying five hours in delivery, on June 18, 1787. 38

The Constitution was a compromise between the extreme national plan of Hamilton on the one hand, and the loose and local project championed by New Jersey. Expressed simply, the Constitution was a platform upon which the extremes might meet and stand. Satisfactory it was not to Hamilton, but it was at least a beginning and a working scheme of government. He loyally accepted it and strove by voice and pen to secure its adoption by the Convention to which it was submitted in New York. In this Convention he was outnumbered and outvoted, but the Convention ultimately adopted it "in full confidence" that certain amendments be made to the

38 The Propositions are printed in Works, vol. I, 347-369; the brief for the speech,—370-378. Fragments of this and other speeches are preserved by Madison and Yates, printed in Works, vol. I, 381-420. Madison's reports are brief but accurate and had the advantage of the approval of Hamilton himself. The immediate effect of the proposals and speech was the defeat of the loose New Jersey plan. For the broader question as to influence on the Constitution, see note by Senator Lodge in Works, vol 1, 368-370.
instrument, but not until New Hampshire's vote had made the Constitution a reality. It will be remembered that the Constitution was not to go into effect until ratified by nine states, and New Hampshire was this ninth. News of the ratification of Virginia reached New York and the Convention went over to the little man whom the language of affection had not inaptly dubbed the "little lion." The ratification was real, not conditional, and New York, lying between New England and the South, was added to the Union.

Hamilton's speeches in the New York Convention were not only admittedly of the highest order, but they met the rarest test of greatness: they changed convictions and made votes. They exist, however, in a rude and fragmentary form which shows, notwithstanding the reporter's shortcomings, Hamilton's force and energy. Nor should the reporter be harshly judged. A frank confession mitigates though it cannot wholly disarm our judgment, for did not the reporter say: "He thinks an apology due for the imperfect dress in which these arguments are given to the public. Not long accustomed, he cannot pretend as much accuracy as might be expected from a more experienced hand?" 39 The Federalist, however, remains at once the defense and arsenal of constitutional theory and argument.

39 See the Works, vol. II, 3-91, for the speeches; brief of argument on the Constitution of the United States, pp. 91-95; and Hamilton's draft of proposed ratification with specified amendments, pp. 95-100.
The Constitution was to go into effect on the fourth of March, 1789. That Washington was to be President was a foregone conclusion. The election of John Adams to the Vice-presidency was by no means so certain, but followed. In the distribution of the various offices it was certain that Hamilton would be designated for a position of power and trust. His friends considered that "the office of Chief-Justice of the Supreme Court of the United States would be in every way suited to the exercise of his discernment and judgment; and that he was well fitted for it by his accurate acquaintance with the general principles of jurisprudence." Of all this there could be no doubt. But his versatile talents, adapted equally for the bench or the bar, the field, the Senate, House, and the Executive Cabinet, were fortunately called to act in a more complicated, busy, and responsible station.\(^40\) Washington would no doubt have agreed with these gentlemen in their opinion of the talents—we would rather say genius—of Hamilton, but he chose him for the Treasury. Hamilton accepted and justified the choice, and posterity approves both the selection and acceptance.

In one sense, the Department of State would have been a peculiarly happy selection, but it is common knowledge that Hamilton, none the less directed the foreign policy of the United States from his desk in the Treasury Department. It is also a matter of fact, which merely needs to be stated to be accepted,

\(^{40}\) Kent's Memoirs, p. 312.
that none other than Hamilton could have directed the financial policy. The Confederation went to pieces for lack of revenue; and revenue was as essential to the new government as its lack was fatal to the old. This the brains of Hamilton devised and created, and in so doing he not only preserved the government for the time being; he created the United States of America. A strict and literal interpretation of the Constitution would have limited the government to the express powers; the creation and development of the implied powers in a concrete and visible form vested the government with the sovereignty that the Convention denied. Foiled in theory, he succeeded in practice. The history of our country is summed up in and clustered about three names: Washington, whose sword secured the independence of the colonies; Hamilton, whose statesmanship welded these colonies into a country; Lincoln, whose character preserved that nation which Washington planned and Hamilton made.

At the Treasury, Hamilton’s work may be summed up in the impressive eulogy of Webster:

He smote the rock of the national resources, and abundant streams of revenue gushed forth. He touched the dead corpse of Public Credit, and it sprung upon its feet.

The economic measures as such are beyond the scope of the present article. They belong to the political economist and they must rise or fall by their own merit. Of this merit the trained economist
must necessarily judge, and economists are not wanting to question their economic soundness and expediency. But even his severest critic in the domain of economic science does not deny him the proud title of founder of the nation. Scientifically sound or unsound, these measures were not ends in themselves; they were rather means to an end, and this end was the establishment of our national government. To this end, far and beyond the question of dollars and cents, they were admirably adapted, and upon them securely rests—to quote Hamilton's own phrase—"Our National Government—the Rock of our Political Salvation." This fact is evident to a keen and trenchant critic who says: "Hamilton's work went to the making of the American State, but personally he may be said to have failed." This is unfortunately true, for, as the same critic observes, "when death overtook him he had no political future, and could have had none, unless he could have readjusted himself entirely to the conditions of American public life." This is the veriest truism: the system, however, survived not only exile and death, but the throes of a civil war. Even the sun is beclouded and sets in shame and darkness only to break forth with the radiance of the morning.

This same critic, an economist of national standing, subjected Hamilton's opinions on economic, and more especially on financial, matters to a thorough examination and criticism, and comes to the conclu-

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41 Life, p. 27. For the letter, see Works, vol. III, 310, 341.
sion that "his attainments and his achievements in that domain have been greatly exaggerated." Be it so; Hamilton nevertheless remains the one political economist of national reputation. An examination from a single standpoint is generally dangerous. The microscope enlarges a defect into huge proportions; the natural surroundings are lost in the exaggerated view which distorts, if it does not destroy, the harmony of nature. The sun itself has spots, but it is nevertheless the source of energy and gives forth light and heat to an expectant and dependent world, notwithstanding the imprecations of astronomer and the revelations of the telescope. Tried by this standard, Washington cuts but a sorry figure. The classicist pronounces him ignorant of the rudiments of ancient culture; the professor of modern languages notes that he knew them not; and the purist finds fault with his English. The military critic maintains that his campaigns were but small affairs, and that he lacked genius and inspiration. He was undoubtedly inferior to each member of his cabinet in his peculiar specialty. So probably was Lincoln, but the humble minded fellow countryman devoutly and devotedly thanks God for both of them. Strip Hamilton of economic genius—talent cannot be denied him—and the statesman remains to console and bless.

Hamilton’s interest in matters of finance was of long standing. For years he had had a bank on the brain. While in the army as military secretary and
busied with a thousand petty details, he nevertheless found time to take up the pen which had made him known before the war and which was to immortalize him within a few years in the Federalist. This maiden effusion in the financial line is supposed by Mr. Lodge to be addressed to Robert Morris and written early in 1780. Professor Sumner ascribes it to November of the previous year. Mr. Lodge is high in praise of the letter, saying: 42

This little essay on inflated and depreciated currency is as valuable today as when it was written a century ago, and proves beyond question an inborn genius for finance, showing its author indeed to be entitled to stand with Turgot and Pitt as a pioneer in what has since become the most important department of practical government.

Mr. Sumner, on the contrary, is severe: 43

The scheme of 1779 is crude in the extreme. . . . The scheme presents no workable device. It is related to those which every other man had in his pocket in 1875. Unfortunately, it is mutilated at the part where he undertakes to set forth how it would work.

In the concluding paragraph of the letter, Hamilton states that “the present plan is the product of some reading on the subjects of commerce and finance, and of occasional reflections on our particular situation.” Upon this passage Mr. Sumner remarks: “It is not easy to see what he could have read.” 44

42 Sumner’s Alexander Hamilton, p. 4.
44 Sumner’s Alexander Hamilton, p. 109, in a footnote to which
It is impossible to reconcile these two conflicting opinions. If the essay does not show genius, it does at least betray talent and a natural liking for financial investigation. It shows the bent of his mind, and was on the whole a worthy exercise for a young man of twenty-three. The present writer would prefer to consider it rather as a trial or maiden essay. About his letter to Congressman James Duane, dated September 3, 1780, there are not, indeed there cannot be, two opinions.\(^\text{45}\) The letter is, however, an analysis of the defects of the Confederacy and suggestions as to their correction. His recommendation of a single head to each department met with instant approval in the establishment of a Department of Foreign Affairs, of which Chancellor Livingston was the first secretary. Soon after three other executive departments were established, the Superintendent of Finance being Robert Morris.

To relieve the financial situation he proposes four means; a foreign loan, which should have been obtained long ago; taxes in kind; a bank founded on public and private credit; and taxes in money. The plan of the bank is briefly outlined.

On April 30, 1781, Hamilton wrote his long and able letter to Robert Morris containing a matured proposal for a bank.\(^\text{46}\) Whether the project be ac-
cepted or rejected, this letter made it evident that Hamilton had found himself in matters of finance. The young man of twenty-four was a finished financier. In speaking of this letter and its great importance, Professor Sumner says: 

His bank was a paper-money machine, and the scheme of it contained financial fallacies which . . . he never conquered; but the boldness of the scheme, and the skill with which it was aimed at the difficulties of the situation, are most remarkable. It is the statesmanship of it which is grand, not the finance. He had seized the chief faults in the existing institution of government.

These letters or papers have been specifically mentioned in order to show that Hamilton had given much thought and reasoning to the subject of finance; that he had already served an apprenticeship, so that when he took charge of the Treasury under the Constitution he spoke as one having authority.

Of the many reports and measures recommended to Congress, three demand special mention, because they not only summed up his policy as secretary of the Treasury, but they are the foundations of his greatness as a minister of State. They are more than that: they are landmarks in the political history of the country. Their adoption established the public credit of the United States at home and abroad; they defined or rather divined, what bids fair to be the

cles — pp. 367–380 — to each of which Hamilton added remarks by way of explanation.

permanent policy of the country. But greater and more fundamentally important than these results—however desirable they might be—they announced and put into practical concrete effect, the implied powers of the Constitution, whereby the Nation was invested with the powers inherently residing in a sovereignty.

On January 9, 1790, Hamilton prepared the First Report on the Public Credit, which was sent to Congress on the 14th of the month. Professor Johnston says:48

It consisted of three recommendations, — first, that the foreign debt of the Confederacy should be assumed and paid in full; second, that the domestic debt of the Confederacy, which had fallen far below par and had become a synonym for worthlessness, should also be paid at its par value; and third, that the debts incurred by the States during the Revolution, and still unpaid, should be assumed and paid in full by the Federal Government.

Hamilton's First recommendation was adopted unanimously. The Second was opposed, even by Madison and many moderate Anti-federalists, on the ground that the domestic debt was held by speculators, who had bought it at a heavy discount, and would thus gain usurious interest on their investment. Hamilton's supporters argued that, if only for that reason, they should be paid in full, that holders of United States securities might learn not to sell them at a discount, and that the national credit might thus be strengthened for all time to come. After long debate the second recommendation was also adopted.

Hamilton's Third recommendation involved a question of the powers of the Federal Government. It therefore for the first

time united all the Anti-federalists in opposition to it. They feared that the "rope of sand" of the Confederacy was being carried to the opposite extreme; that the "money power" would, by this measure, be permanently attached to the Federal Government; and that the States would be made of no importance. But even this recommendation was adopted, though only by a vote of 31 to 26 in the House. A few days later, however, the Anti-federalists received a reinforcement of seven newly arrived North Carolina members. The third resolution was at once considered, and voted down by a majority of two.49

As is well known, the passage of the third resolution was secured by what may be termed the first example of logrolling under the Constitution. The assumption of state debts was generally favored by the North; the opponents of the measure were principally from the South. The question of the capital was unsettled. This both North and South wanted. Hamilton and Jefferson, the secretary of state, had a little dinner together which has assumed national importance. The site of the capital seems to have been on the bill of fare. The result was that Jefferson persuaded his friends to vote for the assumption, and Hamilton saw to it that the capital was located in the present District of Columbia. Jefferson later suggested that he had been hoodwinked by Hamil-

49 For a searching and unfavorable criticism of this Report, see Sumner's Alexander Hamilton, p. 144 et seq. See Hamilton's own defense, Works, vol. III, 3-24; vol. VIII, pp. 429-492; vol. IX, 3-24. These two defences win the commendation of Professor Sumner, who says: "They are both extremely able papers, the second being altogether the best paper which we possess from his hand." Alexander Hamilton, p. 147.
ton and had been made a party to a corrupt bargain. The viewpoint of Hamilton was simple. He was careless of geography: the site of the national capital was a matter of indifference to him, but a national policy and a national government were of prime importance. If he had any convictions on the subject, he sacrificed them promptly and cheerfully in the interests of policy.

It is impossible to overrate the importance of this first report. It redeemed the faith of the Nation and it turned the thoughts and interests alike of state and citizens to the Nation. The dinner incident, trifling as it would seem, is also important, for it marks the beginning of hostility and distrust between Hamilton and Jefferson, who saw when it was too late that he, the archpriest of states-rights, had played into the hands of the prophet of nationalism. The present writer holds a brief for Hamilton; let those who have a stomach for it pay tribute to Jefferson. These two great men stand at opposite poles and between them lies the history of our country.

The next great measure of Hamilton was the Report on Manufactures, which was sent to the House of Representatives on December 5, 1791.⁵⁰

The purport of this weighty measure, which bore no immediate fruit, but which has since become the seemingly permanent policy of the country, is well

expressed in the opening paragraphs, which are quoted in full: 

The Secretary of the Treasury, in obedience to the order of the House of Representatives, of the 15th day of January, 1790, has applied his attention, at as early a period as his other duties would permit, to the subject of Manufactures, and particularly to the means of promoting such as will tend to render the United States independent of foreign nations for military and other essential supplies; and he thereupon respectfully submits the following report:

The expediency of encouraging manufactures in the United States, which was not long since deemed very questionable, appears at this time to be pretty generally admitted. The embarrassments which have obstructed the progress of our external trade, have led to serious reflections on the necessity of enlarging the sphere of our domestic commerce. The restrictive regulations, which, in foreign markets, abridge the vent of the increasing surplus of our agricultural produce, serve to beget an earnest desire that a more extensive demand for that surplus may be created at home; and the complete success which has rewarded manufacturing enterprise in some valuable branches, conspiring with the promising symptoms which attend some less mature essays in others, justify a hope that the obstacles to the growth of this species of industry are less formidable than they were apprehended to be, and that it is not difficult to find, in its further extension, a full indemnification for any external disadvantages, which are or may be experienced, as well as an accession of resources, favorable to national independence and safety.

As to the wisdom or folly of the protective system, no opinion is expressed. To discuss the subject is not within the province of the present article. The

\[51 \text{Works, vol. IV, 70-71.}\]
Report is the foundation of the American system and the document and history speak for themselves.\textsuperscript{52}

The third State paper of national importance is the recommendation to the House of Representatives, dated December 14, 1790, to establish a national bank.\textsuperscript{53} The project itself is of no present importance, but in Hamilton's view a national bank was a necessity, and its organization had been a favorite project—the French would term it \textit{l'idée fixe}—for many years. Its constitutional importance lies in the fact that there was no express authorization in the Constitution for its establishment. This authority was to be found, if at all, in the fact that the United States as a sovereignty possessed all powers necessary, convenient, or proper to carry into full effect the powers expressly granted. Jefferson and his school could not point the finger to an express grant of power. Hence the project was unconstitutional. It may be noted in passing that this stickler for strict construction of the Constitution furnishes the sole instance in our history of a President forcing a measure—the Louisiana Treaty—through Congress which he believed and admitted, wrongly enough it is true, to be unconstitutional. But theory and practice are different things, and statesmen as well as politicians are sometimes put to hard shifts.

Hamilton called the implied powers of the Con-

\textsuperscript{52} See the criticism of Professor Sumner both as to the construction and style of the report, and as to its doctrine, in Alexander Hamilton, pp. 172–183.

stitution into being. As this matter has been sufficiently discussed in considering Hamilton as a lawyer, no further reference is necessary. Upon these three masterly papers Hamilton's reputation as a constructive statesman must always rest.

Turning now from domestic to foreign affairs, it is no exaggeration to say that his influence was as predominant as in his own peculiar domain. There can be no doubt that his activity in this sphere was peculiarly annoying to Jefferson, and it is easy to understand, without any great insight into human nature, that the latter considered him a meddler. It is true that Jefferson held strong views on Hamilton's domestic measures and opposed them in and out of the Cabinet. If it was wrong in one it was surely wrong in the other; but the simple truth is that Hamilton's views were right in both instances, and they prevailed. Jefferson had been minister to France, and either had or affected to have a great admiration for things French. The colonics owed their independence in great part, if not wholly, to the intervention of France in our Revolutionary War, and the young Republic owed to France a debt of gratitude. Then, too, the King had been overthrown, and a republic established, and thus sympathy was added to gratitude. The outrages in France were ascribed, and rightly, to centuries of oppression, and much should be pardoned to the spirit of liberty. If its excesses could not be condoned, at least sympathy should not be withheld. This was
undoubtedly the attitude of the people at large. When the war broke out between Great Britain and France in 1793, the good people of our young republic simply lost their heads, and clamored for special favors to France. Citizen Genêt was received as a hero, and fêted as if he were a conqueror, not a minister to a neutral country. Citizen Jefferson and the other citizens welcomed him like a lost brother. This not unnaturally turned the head of the envoy, who began to use this country as a basis of hostile operations against Great Britain. Washington became alarmed, because such conduct was unneutral, and if permitted must surely lead to war with Great Britain. The man of war, as so often happens, was a man of peace. Hamilton had also seen the horrors of war, and war neither he nor Washington would have. This was as humanitarian as it was sane; for the clear heads of the country saw that war would be as fatal as it would be impolitic, because our interests attracted us naturally to Great Britain. From France nothing was to be hoped in the way of trade or commerce.

Hamilton had always stood for law and order as established and guaranteed in the English Constitution. His sympathies seem to have been with France; his judgment inclined him to England, and enlightened selfishness irresistibly led to the same conclusion. The friends of England were strangely considered the enemies of liberty, silk stockings the emblem of tyranny, and patched trousers the safe-
guard of republican institutions. Hence Washington and his followers were aristocrats and Hamilton was a monarchist. The result is well known. The proclamation of neutrality, proposed by Hamilton, and based upon Jay's draft, was published. War with Great Britain was averted, and the modern doctrine of neutrality was grafted upon the law of nations.\textsuperscript{54} As in the case of the Declaration of Independence, so in the proclamation of neutrality, Jefferson was but the scribe.

Two parties had grown up within the cabinet, headed by Hamilton and Jefferson, and the line of cleavage extended throughout the country at large. The Federalists stood by Hamilton and his policy both domestic and foreign; the Anti-Federalists, or Democratic-Republicans, stood for a strict construction and friendship with France. As Washington sided invariably with Hamilton, the position of Jefferson was anomalous, if not intolerable. He withdrew on December 31, 1793. Hamilton remained some time longer, resigning in 1795 to devote himself to his private affairs, which had greatly suffered through his tenure of office. Thus at the early age of thirty-eight, Hamilton withdrew from public affairs, and with the brief period of the rupture with France in 1798, when he was appointed major-general and inspector-general of the Army, he never again held office.

The expression "withdrew from public affairs"

\textsuperscript{54} See Hall's International Law (5th edition), pp. 591–593.
is not wholly accurate, because Hamilton’s interest in affairs of State ceased only on July 11, 1804, when he fell a miserable victim to a political quarrel in the duel with Aaron Burr. For the truth is that in or out of the Cabinet, Hamilton was the undoubted leader of his party, albeit John Adams held the presidency and the titular rank.

These last years were years of professional success and advancement at the bar; they were unfortunately years full of bitter quarrels and political rancor. But Hamilton’s work as a constructive statesman was done, and it cannot be said that the nine years of retirement and political activity have added to his renown. His life was a busy life and fully twenty of his forty-seven years had been devoted loyally and unstintingly to the service of the public.

It is interesting but idle to speculate what the future might have been. In Hamilton’s case speculation is irresistible. Chancellor Kent was fully convinced that, had not the bullet of a political madman closed his career, Hamilton would have had other claims—greater they could not well be—upon our admiration and gratitude. Chancellor Kent said:55

Shortly before his death he revealed to me a plan he had in contemplation, for a full investigation of the history and science of civil government, and the practical results of the various modifications of it upon the freedom and happiness of mankind. He wished to have the subject treated in reference to past experience,

and upon the principles of Lord Bacon’s inductive philosophy. His object was to see what safe and salutary conclusions might be drawn from an historical examination of the effects of the various institutions heretofore existing, upon the freedom, the morals, the prosperity, the intelligence, the jurisprudence, and the happiness of the people. Six or eight gentlemen were to be united with him in the work, according to his arrangement, and each of them was to take his appropriate part and to produce a volume. If I am not mistaken Mr. Harrison, Mr. Jay, Mr. Morris, and Mr. King were suggested by him as desirable coadjutors. I recollect that he proposed to assign the subject of ecclesiastical history to the Rev. Dr. Mason, and he was pleased to suggest that he wished me to accept a share of the duty. The conclusions to be drawn from these historical reviews, he intended to reserve for his own task, and this is the imperfect outline of the scheme which then occupied his thoughts. I heard no more of it afterwards, for the business of the court occupied all our attention, and after the May term of that year I saw him no more.

I have very little doubt that if General Hamilton had lived twenty years longer, he would have rivalled Socrates, or Bacon, or any other of the sages of ancient or modern times, in researches after truth and in benevolence to mankind. The active and profound statesman, the learned and eloquent lawyer would probably have disappeared in a great degree before the character of the sage philosopher, instructing mankind by his wisdom and elevating his country by his example. He had not then attained his forty-eighth year, and all his faculties were in their full vigor and maturity, and incessantly busy in schemes to avert distant dangers and to secure the freedom and promote the honor and happiness of his country.

I knew General Hamilton’s character well. His life and actions, for the course of twenty-two years, had engaged and fixed my attention. They were often passing under my eye and observation. For the last six years of his life he was arguing causes before me. I have been sensibly struck, in a thousand
instances, with his habitual reverence for truth, his candor, his ardent attachment to civil liberty, his indignation at oppression of every kind, his abhorrence of every semblance of fraud, his reverence for justice, and his sound legal principles drawn by a clear and logical deduction from the purest Christian ethics, and from the very foundations of all rational and practical jurisprudence. He was blessed with a very amiable, generous, tender, and charitable disposition, and he had the most artless simplicity of any man I ever knew. It was impossible not to love as well as respect and admire him. He was perfectly disinterested. The selfish principle, that infirmity too often of great as well as of little minds, seemed never to have reached him. It was entirely incompatible with the purity of his taste and the grandeur of his ambition. Everything appeared to be at once extinguished, when it came in competition with his devotion to his country's welfare and glory. He was a most faithful friend to the cause of civil liberty throughout the world, but he was a still greater friend to truth and justice.

The language of eulogy has been exhausted in the attempt to do justice to the career of Alexander Hamilton; hasty and ill-formed judgments have reacted upon those who opposed him in life and denied him in death his due. It is always difficult to lay aside partisanship and sit in judgment upon friend or foe with philosophic calm. Especially is this the case with Hamilton, whose reputation grows with the growth of our country.

Nor is this reputation confined to America. Talleyrand was a man of keen intellect, whose judgment was not easily warped by friendship or moved by sentiment. He knew the man Hamilton as he knew the men and measures of his time in Europe,
and he has left a deliberate judgment on record:—
"I consider Napoléon, Fox, and Hamilton as the
greatest three men of our epoch, and if I might
judge these three, I should assign without hesitation
the first place to Hamilton. He divined Europe."

However that may be, it is abundantly clear, at
least to the present writer, that Hamilton not only di-
vined but made the American nation, and that he is
the greatest single intellectual force in the history of
the United States.