Contents

Acknowledgments ix

Introduction: Alexander Hamilton, Lawyer and Lawmaker i

1. Creating the Federal Magistracy: Discretionary Power and the Energetic Executive 18

2. Administrative Accommodation in the Federal Magistracy 57

3. Creating the “Commercial Republic”: Neutrality and Law in the American Courts 85

4. Developing the Jurisprudence of Federalism: Hamilton’s Defense of Federal Fiscal Powers 113

5. “A Most Valuable Auxiliary”: Securing Foreign Capital with the Law of the Land 150

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Alexander Hamilton never handed down decisions from a Supreme Court bench, nor did he write influential treatises on law. Yet he became the central figure in the development of American law during the early republic era. Hamilton’s authority over the formation of a republican jurisprudence both fit for a newly independent nation and compliant with the recently ratified Constitution was extensive; he transformed inherited imperial law into legal and constitutional principles befitting the American experiment in government, one that aimed to divide sovereignty among a central national government, individual states, and the American people.

Hamilton’s formative influence on American law was a direct result of his unique role in the American founding. During the two decades of his career after the army, Hamilton served as a powerful and effective statesman in President George Washington’s Cabinet and as a preeminent attorney, representing the US government and private clients alike. His influence on the development of federal and state jurisprudence would persist decades after his death, well into the nineteenth century. Hamilton’s impact was so foundational, in fact, that even Hamilton’s political and ideological adversaries—Thomas Jefferson, James Madison, Andrew Jackson, and their partisans—adopted Hamiltonian constitutionalism to govern. We do not think of Hamilton as the father of his country, like we do Washington, nor
is he considered the father of the Constitution, like Madison; but Alexander Hamilton deserves to be remembered as a father of American law.

Born in either 1755 or 1757 on the isle of Nevis, British West Indies, Alexander Hamilton grew up sensitive to the social stigma attached to his illegitimate birth. His mother died in 1768, and an impoverished but ambitious young Hamilton worked to support himself, joining the mercantile house of Beekman and Cruger in St. Croix as a clerk. When Hamilton demonstrated his perspicacity and managerial abilities on the job, Nicholas Cruger and another benevolent patron, the Reverend Hugh Knox, sponsored the young clerk’s escape from West Indian obscurity by underwriting Hamilton’s formal education in America. Hamilton arrived in New Jersey in 1772.

Soon after Hamilton moved to New York and enrolled in King’s College (now Columbia University), revolutionary fervor swept through New York City, and he seized this opportunity to taste glory and to rise to prominence. Hamilton organized a company of provincial artillery, and soon after, in March 1777, General George Washington appointed the young artillery captain to join his family of aides-de-camp. Although he served Washington as a most trusted wartime subordinate, Lieutenant Colonel Hamilton eventually resigned as the general’s aide to lead his own battalions at the battle of Yorktown. He left the Continental Army in 1781.

After the war, and with a new wife and son in tow, Hamilton began to read law in preparation for what would be an illustrious and lucrative practice in his adopted home. An astonishingly quick study, Hamilton was admitted to practice before the New York Supreme Court bar by July 1782; the state then admitted him as common law counsel in October 1782, and he qualified as both a solicitor and counsel in the Court of Chancery in 1783. Hamilton practiced law in New York until he became the young republic’s first secretary of the treasury in September 1789. Before taking the post in Washington’s Cabinet, he also served in the Confederation Congress, in the New York assembly, and as a delegate to the Annapolis and Philadelphia constitutional conventions as well as the New York ratifying convention, during the 1780s. Hamilton then quickly resumed his private caseload after resigning his Cabinet post in January 1795. Ever the industrious attorney, Hamilton had pressing business awaiting him in the New York courts up until his untimely death at the hand of Aaron Burr, a fellow member of the New York bar, on July 12, 1804.

Like other members of America’s founding generation, Hamilton trained and practiced in the tradition of the common law, a centuries-old amalgamation of homegrown English, and later American, colonial law that also
incorporated elements borrowed from the civil, canon, and natural law traditions. English lawyers exported the common law, as well as European Enlightenment traditions grounded in reason, natural law, and scientific inquiry, to the British colonies and around the world. Enlightenment thought infused into legal communities on both sides of the Atlantic, such that even an obscure, provincial lawyer could be well versed in this cosmopolitan worldview. Before embarking on his legal training, Hamilton read Locke, Coke, Blackstone, Montesquieu, Postlethwayt, Grotius, Pufendorf, Burlamaqui, and “books and subjects on Ancient and Medieval history and philosophy.” By the time Washington appointed him secretary of the treasury, he had studied Hume, Smith, Vattel, Lord Chief Justice Mansfield, and various volumes issued by English court reporters. Hamilton was thus steeped in the day-to-day practice of English and colonial law, but he was also reading widely in enlightened English, Scottish, Dutch, and Swiss traditions.

Up until the end of the Seven Years’ War, when the British Parliament began actively legislating for its North American colonies, Englishmen and colonists alike celebrated the largely unwritten, customary British constitution for the rights, liberty, and balance of powers it ensured. Hamilton was no exception, and though he joined the American movement for independence, he never abandoned his admiration for the British constitutional system. It should therefore have come as no surprise that, when brainstorming during the debates of the 1787 Philadelphia Convention, Hamilton declared the British constitution to be “the best form of government—not as a thing attainable by us, but as a model which we ought to approach as near as possible.” In making this claim, Hamilton suggested a restorative approach to the American constitutional system; rather than make the radical plea to reinstate monarchy in the United States, he instead called on his fellow delegates to remember their past veneration of the British constitution and to use it to guide the American one they were in the process of drafting.

Hamilton thus did not become a pioneer of American law simply by looking backward to the British constitution or to English precedents—all eighteenth-century common lawyers referred to English case law. Instead, he did so by using English legal traditions instrumentally to accomplish his republican statecraft goals. When writing his authoritative commentary on the nature of federal constitutional power in The Federalist, he juxtaposed the British constitution with the new American one he helped to create; when proposing commercial, monetary, banking, administrative, or foreign policy in Washington’s Cabinet, he used legal arguments to justify his desired course of action. In short, lawyering, legal innovation, and common
law permeated Alexander Hamilton’s professional career. Why, then, have scholars and biographers routinely ignored his influence on the development of American law?

Nineteenth-century Festschrift contributor Daniel W. E. Burke reflected on, and presciently anticipated, a formidable problem facing historians and biographers alike: though Hamilton was “retained in every important case and recognized as the ablest advocate in New York. Yet so chaotic was the system of reporting in those early days, that few of his great cases have come down to us in the books.” To be sure, scholars have caught glimpses of Hamilton’s seminal influence on American law through a particular set of famous, well-documented cases—including *Rutgers v. Waddington*, *Hylton v. US*, and *People v. Croswell*—but largely gave up on piecing together the larger scope and importance of Hamilton’s legal career. Julius Goebel Jr. and Joseph H. Smith, the primary editors of Hamilton’s law papers, are the two noteworthy exceptions to this general neglect.

During the course of his sixteen-year practice, Hamilton argued hundreds of cases and advised an even greater number of clients. Although case reporting was haphazard in the early republic, Hamilton’s reputation as a superb lawyer persisted despite the incomplete legal record. Chancellor James Kent, for example, celebrated Hamilton’s achievements in the New York courts. He described his posthumous reputation among jurists: “But among all his brethren Colonel Hamilton was indisputably preeminent. This was universally conceded.” A century and a half later, historian Forrest McDonald described Hamilton’s particular legal expertise: “For Hamilton did not like arguing the facts or merits of a cause nearly so much as he enjoyed doing battle on grounds of the law, and he became a master of the kind of special pleas that made argument on the latter grounds possible.” Still, generations of scholars and biographers have only superficially recognized Hamilton’s influence on American law, acknowledging his brilliance but confining their exploration of his legal career to only a handful of high-profile cases.

Cursory studies of Hamilton’s legal practice will not suffice, however, as Hamilton lived during a transformative era in American public and private law, and he contributed significantly to its development. Moreover, Hamilton used inherited English legal principles to help conceptualize, define, defend, and explain the distinctly American policies that biographers and scholars associate with Hamilton. Understanding the centrality of law to Hamilton’s career is essential, therefore, because Alexander Hamilton consistently and purposefully used the law as an instrument to accomplish his national, economic, and republican policy goals.
The following chapters aim to recast our understanding of Hamilton’s political career, his policy achievements, and his significant role in the American founding by considering him, first and foremost, as a preeminent lawyer who instrumentally applied law and legal arguments to accomplish his statecraft. By reexamining Hamilton’s postwar accomplishments through the lens of the law, I argue that Hamilton’s thoroughly studied political career, as well as his contributions to republican political science, cannot be fully understood without recognizing and investigating how Hamilton used Anglo-American legal principles to achieve these ends.8

Rethinking Hamilton’s legacy as well as his place in the founding era proves perennially important because he engaged with, and is identified with, early national debates about domestic and foreign policy, constitutional law, governing practices, federal–state authority, and the ways in which the nascent American republic would interact with the rest of the world. In the conventional wisdom, Hamilton is the standard-bearer of an ideology turned political party, the Federalists, who engaged in nothing less than a struggle for the soul of the young United States against their rivals, the Anti-Federalists, and later the Jeffersonian Republicans. Except for the fact that both Federalists and Republicans wanted the young republic to survive and to thrive, on almost every relevant issue of their day, the two ideological factions disagreed on the proper course of action to take. As a consequence, the factions were seen as rivals, then as now, and their debates live on, in modified forms, into the present day.

Because we still identify these factions and their ideologies as “Hamiltonian” versus “Jeffersonian,” a rethinking of Hamilton’s objectives, arguments, and lasting influence consequently revises our notions of the development of political discourse and governmental power, and as I demonstrate below, the course of the development of American law. Hamilton waded into ideological debates made all the more imperative because he, like Washington, Jefferson, and Madison, was charting a completely novel course for the American nation. It turns out, however, that Hamilton and Jefferson’s objectives were not as one-dimensional or as diametrically opposed as we so often think.

By presenting a legal analysis of Alexander Hamilton’s career, this study juxtaposes a narrative of Hamilton’s lasting legal legacy against the more familiar failures of his political career. After Secretary Hamilton’s early legislative successes in the first Federalist-dominated Congresses, he faced increasing political opposition from Thomas Jefferson, James Madison, and their Anti-Federalist faction during the remainder of his term in office.9
Then, once out of office, Hamilton endured a series of political embarrassments and failures. Some noteworthy indiscretions and political losses include an exposé written by Hamilton revealing his extramarital affair that aimed to clear him of alleged (and false) corruption charges; a miscalculated pamphlet published, again by Hamilton, to impugn President John Adams’s suitability for office; the violent public outcry over John Jay’s treaty with Great Britain; isolated rebellions over treasury-sponsored taxes; Jefferson’s presidential election and the waning influence of the Federalists in state and national government; the Jeffersonians’ repeal of the 1801 Judiciary Act, which Federalist lame ducks passed to restructure the federal courts; and Hamilton’s ultimate demise in a duel with his political foe (and the sitting vice president), Aaron Burr. Perhaps mercifully for Hamilton, he did not live long enough to witness the final death throes of the Federalist Party during the War of 1812.

The standard narrative of Hamilton’s post-Cabinet career portrays the precocious lieutenant colonel turned brilliant minister’s star as burning out quickly (perhaps even self-imploding) after reaching his apotheosis as policy maker in the early 1790s. This is true enough, as Hamilton’s political losses outweighed his political victories after 1795. But even though Hamilton’s political career had a losing trajectory, his legal legacy had a winning one.

If Jeffersonian Republicans and Jacksonian Democrats ultimately prevailed throughout the political battles of the early republic, then Hamiltonian jurisprudence proved victorious throughout the era’s legal contests. Both in and out of public office, Alexander Hamilton developed the substantive foundations of American jurisprudence. This in turn allowed him to achieve some of his most important policy goals posthumously, through transformations in law, which he could not achieve through elections and party politics. To this end, Hamilton’s most significant and enduring achievement was to translate and transform English legal traditions into explanations for and defenses of a robust federal judicial power. In addition, he also used the law as a flexible legal toolbox to enhance federal executive power, to increase the republic’s commercial strength, to protect the federal government’s fiscal powers, and to preserve the common law due process, jury trial, and press freedoms that secured the liberties enjoyed by ordinary Americans.

Hamilton’s influence on the development of American law proved to be enduring and authoritative; the US Supreme Court upheld and cited Hamiltonian legal arguments well into the nineteenth century, and occasionally in the twentieth century. Even Jeffersonian and Jacksonian jurists deployed
Hamilton’s principles to support their legal claims. Hamilton’s legacy thus extended beyond the usual summary of his contributions to the early republic—a national debt, a central bank, The Federalist essays, his party politics—to include an accomplishment befitting an American common lawyer in the founding era: a formative influence on the substance of federal and state jurisprudence.

The successes of Hamilton’s legal legacy produced some unintended consequences, however. As I argue throughout, the main thrust of Hamiltonian constitutionalism focused on finding a balance between robust federal and state government authority. This is a more moderate and nuanced objective than scholars usually ascribe to Hamilton. Hamilton was undoubtedly a proponent of a strong central government, but he was also a practical realist, which meant that once the US Constitution delegated specific powers to the national government and reserved so much authority to the states, Hamilton set out to accomplish his statecraft goals within this legal framework, which allowed states to be powerful too. When Hamilton argued for robust federal powers, his aim was to exercise an untried, delegated authority that was new, untested, and vulnerable to encroachments by the states. Rather than seek opportunities to diminish the states’ retained powers, Hamilton instead used his career as a statesman and attorney to offer his extended argument as to how to strike this delicate balance between state and national authority.

Yet one unintended consequence of Hamilton’s prescription for balancing federal and state authority is that, when removed from the context of the initial, precedent-setting years of the early republic, Hamilton’s arguments seem to be unequivocal calls for unfettered central government power. The problem is one of context. In Hamilton’s day, he attempted to strike what he thought was the proper balance of power between the new central government and the preexisting states; subsequent politicians, rivals, jurists, and scholars instead interpreted and revived Hamilton’s arguments as if increasing national government power were his only objective in an antagonistic, zero-sum struggle between the states and the central government. Because Hamiltonian sound bites make good fodder for pronationalist arguments, we think of Hamilton as a die-hard nationalist and nothing else; in the meantime, his more moderate perspective and nuanced legal arguments are lost.

Another unintended consequence of Hamilton’s statecraft is that it generated political controversies that forever tempt subsequent generations to pit Hamilton as Thomas Jefferson’s diametric opposite. The men were in-
deed political opponents, but on closer inspection, Hamilton, like Jefferson, respected the jurisdictional sovereignty and policy-making opportunities offered by the states. And Jefferson, like Hamilton, became, in practice, an advocate of robust executive power at the national level. When figures like Hamilton and Jefferson are flattened and fitted into easy, one-dimensional dichotomies, we lose sight of the complex and multivalent ways they influenced American history.

Although Hamilton was by all accounts an outstanding litigator and orator, he was only one of many excellent attorneys in the young republic. New York produced especially competent common lawyers, as New York modeled its court system on English institutions and thus relied heavily on English precedent. Hamilton worked intimately with this circle of top-tier New York attorneys, consulting with them on pending trials or appeals, serving alongside them as co-counsel, and even requesting their advice on national constitutional matters. Hamilton was not the only practicing attorney to realize the breadth and scope of the common law. Republican judges and lawyers like Jefferson, Madison, Edmund Randolph, St. George Tucker, and Spencer Roane also recognized—but feared—the enormous potential of the common law: if the common law were adopted too extensively, particularly at the federal level, it might swallow up America’s nascent republican constitution. While Hamilton endeavored to aggressively incorporate English legal principles into American governance, Jeffersonians worked to minimize the adoption of common law into federal law.13

Because of his unique position as both lawyer and precedent-setting administrator and policy maker, Hamilton rigged the legal deck, so to speak. He had the opportunity to set practical and substantive precedents while in office, which he then defended with characteristically well-researched and well-reasoned legal arguments. These Hamiltonian precedents proved to be efficient, effective, reasonable, and even customary by the time his successors took office—and so they adopted them too. Another reason that Hamilton’s influence over the development of American law has been lost to scholars of the early republic is that they tend to assume that Hamilton’s political losses overshadowed his posthumous influence. This, however, was not the case, as we will see; Hamilton’s authoritative constitutionalism pervaded the jurisprudence of Thomas Jefferson, Andrew Jackson, John Marshall, Joseph Story, Roger Taney, James Kent, Albert Gallatin, state and federal attorneys general, and federal administrators at all levels. Still, throughout the pages that follow, Hamilton’s political failures will be noted alongside his concurrent legal successes.
Alexander Hamilton’s legal legacy was closely related to the growth of federal judicial power during the early republic. Usually this increase in federal court power is attributed to Chief Justice John Marshall; yet the US Supreme Court was not the primary driver of federal judicial power in this formative era in American law. Instead, federal judicial power was enhanced at every turn by collaborations between executive administrators (from the treasury secretary down to the customs collectors stationed at faraway ports), by litigation strategies drawn up by common lawyers in lower state and federal courts, and by federal district judges who simultaneously acted in both executive and judicial capacities. Federal judicial power was thus inextricably tied to the energy and actions of the executive branch, as well as to the work of district judges and local attorneys. These often forgotten jurists, administrators, and strategists expanded the scope of federal judicial power day by day, transaction by transaction, such that by the time a constitutional question about the scope of federal judicial power made it before the US Supreme Court’s bench, the federal courts already had practice exerting a wider scope of power. This made it all the more feasible for the Court to adopt extensive federal judicial power as a principle of American constitutional law.

As a high-ranking administrator, as a frequent district judge collaborator, and as a public and private litigator, Alexander Hamilton considered the common law to be a flexible, adaptable tradition to be applied instrumentally in order to accomplish his statecraft as well as to shape the contours of American constitutionalism. When Hamilton applied common law principles to his statecraft goals, the common law provided the tools that did the work of governing. By focusing on the ways in which Hamilton translated and transformed inherited English legal principles into a distinctly American jurisprudence, this examination of early republican law demonstrates how, even after the United States ratified its new constitutional order, the new nation had no pressing desire to cut itself off from its English legal roots. America’s continued embrace and reception of English law after the Revolution was enthusiastic and committed still—thus underscoring the founding era as a mixed bag of conservative and revolutionary events.

Throughout his career, Hamilton consciously and purposefully looked backward to soak up the principles of English law while he simultaneously applied them forward to shape a distinct and novel American republic. That he continually referred to English legal concepts reflected how, in the day-to-day business of governing under a newly minted constitution, America’s break from England was every bit as conservative as it was radical and innovative. Like Hamilton, early republican common lawyers, judges, ad-
ministrators, and statesmen all thought in English. These founding officials continued to scrutinize English constitutionalism in order to make sense of their own radical innovations, such as how to separate governmental power in practice, how to preserve federal and state sovereignty, and how to maintain popular sovereignty. That Hamilton too considered the English constitution to provide an authoritative reference for American jurisprudence did not make him unique; Hamilton’s singular influence over the development of American law instead arose from a professional career that combined a lucrative law practice with his distinctive role as drafter, ratifier, expositor, and then, from the moment of its inception, administrator of the new constitutional order.

Hamilton’s most profound influence on American law—and his greatest debt to British constitutionalism—is his adaptation of concurrence. In the American federal system, where sovereignty is divided and delegated between national and state levels of government, concurrence provides harmonizing rules so that the federal and state governments can simultaneously exercise the same powers, like taxing, borrowing, or adjudicating contract disputes. Hamilton provided preliminary guidelines for both the extent and limits of legislative and judicial concurrence in *Federalist* Nos. 32 and 82.

In addition to this federal form of concurrence (between the national and state levels), Hamilton advocated for functional concurrence. In practice, functional concurrence described how executive and judicial functions were often mixed and unified, with executive officers properly exercising judge-like discretion and judges acting as administrators themselves. Hamilton never used the term “concurrent” to describe these combined executive-judicial functions, yet he advocated for an executive-judicial relationship—which I refer to as the federal magistracy—that was concurrent in practice. The president, his ranks of administrators, and the judges of the federal Supreme Court as well as the judges of circuit and district courts each had concurrent authority to exercise discretion and to administer the law. Like federal concurrence, functional concurrence also included limits to the extent of each executive officer or judge’s concurrent authority.

As suggested by the term “magistracy”—a term Hamilton and his contemporaries used to collectively describe executive and judicial officers—the practical model for concurrence in government derived from the British constitution. Constitutional theory in medieval, early modern, and eighteenth-century England organized around the idea that at the center of all law and justice sat the sovereign king. From this theoretical unity of power in the sovereign—the fount of law—sprang the inseparably interwoven ex-
executive, judicial, and lawmakers in the realm. The king’s counselors acted on behalf of the king and for the benefit of his dominions by dispensing judgment in law courts and advice in Parliament. When the king sat in his Parliament, convened with the lords temporal, the lords spiritual, and the commons of his realm, he sat at the very pinnacle of his power. The ultimate sovereignty of England, and later Great Britain, vested in this unified body of the king in Parliament.

The British constitution was thus predicated on unity among its various jurisdictions. All courts, counsels, magistrates, and assembled lawmakers traced their authority to the sovereign, and through his two bodies—his political body (the body politic) and his natural body—unity among them was maintained. The constitution emphasized harmony, sought to minimize conflict, and offered a variety of concurrent arrangements: the king, his counselors (including Parliament and the Privy Council, and his justices of the peace (magistrates) each exercised some degree of executive, judicial, and lawmaking authority. English litigants could choose their preferred venue when going to law among competing jurisdictions like common law, chancery, church, manorial, and prerogative courts. Before Americans challenged the notion, colonial governors and provincial “parliaments” made law for the American colonies concurrently with the king, his Privy Council, and the British Parliament in London.

Great Britain offered examples for both federal (colonial and London) and functional concurrence that modeled concurrence for Hamilton. The theoretical and practical thrust of Hamiltonian concurrence was to unify the American federal system uniquely predicated on the delegated sovereignty assigned through a written constitution. To Hamilton, this harmonizing did not mean simply consolidating power in the federal government; however, concurrence did require lawmakers to understand the precise boundaries of federal and state authority. Hamilton advocated more aggressively for federal power because, compared to the states, federal power was untried and underdeveloped in the late eighteenth century. The US Constitution articulated the powers of the national government, but what that authority meant in practice remained undetermined. Instead, Hamilton wanted robust federal powers to be exercised concurrently with those plentiful existing state powers—that is, he aimed to unify the workings of the nation’s various jurisdictions through the sovereign people’s federal constitution. In doing so, Hamilton demonstrated that the states, when not encroaching on the national government’s proper but inchoate powers, could also help him to accomplish his nationally oriented statecraft.
Hamiltonian concurrence sought to harmonize the combined executive and judicial functions of the federal magistracy, as well as the legislative and judicial authority concurrently exercised by the national and state governments. It was Hamilton’s broadest, most far-reaching influence over American law—and it is evidenced by the judges and lawyers who continually cited Hamilton as the authority on the matter. By enacting functional and federal concurrence, Hamilton quite literally wrote the rules and set the precedents that configured the American federal system. Concurrence also rendered Hamilton, whom historians often consider to be the archnationalist of the early republic, a true, small-f federalist. Because concurrence and the contouring of American federalism form the center of Hamilton’s legal work, they are the pervasive and unifying themes in this book.

That Hamilton borrowed models of concurrent governance from the British example suggests the extent to which early republic constitutionalism relied on English law, but this was by no means the only principle that he inherited and adapted from the British constitution. In each of the following chapters, I describe the many strands of this inherited law on which Hamilton relied in order to accomplish his statecraft.

In order for me to accurately present Hamilton as a masterful attorney deserving of his contemporary reputation, and as the innovative statesman who used law to instrumentally apply his statecraft, I must occasionally delve into the nitty-gritty of case law and legalese that either Hamilton used to make his legal claims or that demonstrate how later jurists adopted Hamiltonian legal principles. In many cases, exploring the legalistic details of a string of judicial decisions and lawyers’ arguments offers the clearest paths to recovering Hamilton’s legal legacy. Still, this book is intended for anyone interested in the founding era, not simply for legal historians or lawyers. Therefore, if you are willing to endure the occasional technical parts of the narrative, I will make clear the significance to be gleaned from those legal details and complexities. Technical arguments are never meant to be the destination but comprise some of the particulars of the journey in the chapters below; most important are the overarching themes of concurrence, increased federal judicial and executive power, retained state sovereignty, and the lasting significance of English law as the ultimate triumphs of Hamilton’s legal career.

In addition, this reconsideration of Hamilton’s influence on law offers three significant revisions to the conventional narrative about the founding of the early republic. First, as mentioned above, though Hamilton’s political prospects withered, his influence persisted in American jurisprudence
throughout the nineteenth century. Hamilton thus triumphed over his political adversaries by setting the rules for constitutional governance that subsequently regulated later administrations.

Next, by shifting focus away from the US Supreme Court and centering it instead on an executive official and his interactions with lower federal courts, administrators, and lawyers, the development of American law becomes less dependent on the decisions made by a single superior court exercising judicial review and more about augmenting federal judicial power incrementally, in various ways, across departments, and from the bottom up. For years, historians have described the growth of federal judicial power by celebrating the instrumental decisions of John Marshall, Joseph Story, and their brethren on the early national US Supreme Court. Legal scholar Grant Gilmore even described the era overlapping with Marshall’s thirty-four-year tenure on the Supreme Court bench as one defined by “great judges deciding great cases greatly”—and Chief Justice John Marshall was perhaps the greatest of them all. But here an administrator takes center stage, demonstrating that much of the Supreme Court’s reasoning filtered up from the processes established in the Treasury, as well as the substantive legal principles articulated by Hamilton and his lawyer colleagues.

Perhaps most revealing, Hamilton’s influence on the development of American law demonstrates how the inanimate, theoretical provisions of the US Constitution, as well as the abstractions of federalism and the separation of powers, assumed real, concrete meaning. Consensus on the original “true” meaning of the US Constitution’s clauses eluded the Framers, just as it continues to elude judges in the twenty-first century. Therefore, statesmen and jurists who first imbued meaning into the Constitution—setting precedents about executive authority, for example, or determining the actual boundaries of state authority and federal power—had significant, lasting influence over the substance of American jurisprudence. Hamilton accomplished this feat not as a judge and not simply because he was the primary author of The Federalist but because he was one of the first statesmen to put constitutional provisions into practice. If the Framers of the US Constitution created a new constitution to address the numerous problems of the Confederation era, then Hamilton used the many varieties of law in his common law toolbox to ensure that the federal constitutional framework would work as he thought fit.

Finally, I intend to remind historians, in particular, that we study the Founding Fathers for a reason. Alexander Hamilton and his close circle of professional or elite, white, and male colleagues mattered indispensably.
to the development of the American nation, and crucially, they were key figures in the development of American law. These men were privileged, learned, and influential, but they still matter greatly to our understanding of the early republic because it was they who turned abstract or aspirational concepts into concrete reality during the founding era.

Rather than reexamine the founding generation’s contributions to American political science (through their political essays, pamphlets, or participation in constitutional conventions), I aim to highlight their less heralded, but no less important, accomplishments in solving the practical, day-to-day problems of running the new republic. Alexander Hamilton and his supporting cast of lawyers, judges, administrators, insurers, merchants, Loyalists, and libelous printers faced the same problem: now that they had a new constitutional framework for government, how did it work in practice? Hamilton did much to figure it out, as well as to set legal and institutional precedents to guide the course of republican governance for the future. That is why he is at the center of the transformations in American law described here.

Each of the following chapters begins by outlining Hamilton’s particular, desired statecraft objective and the English legal principles he instrumentally applied to achieve his policy goals. After describing how Hamilton used a particular legal tool to prevail in private litigation or to administer the Treasury Department, the chapter then explains how judges and jurists adopted, deployed, or modified Hamilton’s legal arguments in early republican and antebellum jurisprudence.

The first two chapters explore functional concurrence. They describe how Alexander Hamilton articulated a lasting doctrine of necessary, inherent executive discretionary authority and put it to use in order to create an energetic executive branch. Hamilton’s arguments about the executive’s prerogative power were also related to the federal judiciary: both departments had discretionary authority, as well as administrative responsibilities, inherited from the practices of English and colonial magistracies. Therefore, judicial and executive magistrates constantly negotiated the balance between executive prerogative and judicial oversight, and in the process developed an enduring federal jurisprudence that delimited the contours of executive and judicial power. The federal courts set some limits on executive authority, but mostly the courts accommodated executive actions and even engaged with treasury officials to administer the law. Over time, the federal
courts upheld the executive’s robust prerogatives, while in turn the federal judiciary’s coordinate and federal review powers expanded as a result of their close collaboration with the executive department.

Chapter 3 begins an exploration of federal concurrence that continues in Chapters 4 and 5. “Creating the ‘Commercial Republic’: Neutrality and Law in the American Courts” examines how Hamilton accomplished his statecraft goal of building a commercial republic through the federal courts’ expanding admiralty jurisdiction. As long as the United States remained neutral during the French Revolutionary and Napoleonic wars, federal district and circuit courts administered neutrality law with the help of Hamilton’s Treasury Department and port-side district attorneys. As a result, the federal judiciary’s prestige and jurisdictional reach expanded to encompass more commercial jurisdictions, including lucrative marine insurance contract disputes. In Chapter 4, “Developing the Jurisprudence of Federalism: Hamilton’s Defense of the Federal Fiscal Powers,” I demonstrate how Hamilton’s extended defense of the federal government’s robust taxing and borrowing powers became legalized—that is, the legal arguments that Hamilton articulated as treasury secretary became incorporated into federal jurisprudence through two decades of Marshall Court decisions.

From fiscal constitutionalism, I proceed to the intricacies of land law in “‘A Most Valuable Auxiliary’: Securing Foreign Capital with the Law of the Land.” As a sought-after attorney favored by land speculators and foreign investors, Hamilton relied on New York’s chancery court and its variety of equitable trusts to attract foreign investment in state lands, as well as to transform the substance of land law in New York state. By working at both the state and federal levels to attract foreign capital, Hamilton proved that the states were critically important jurisdictions through which he could accomplish nationally oriented policy goals.

The final thematic chapter, “Litigation, Liberty, and the Law: Hamilton’s Common Law Rights Strategy,” focuses on Hamilton’s career-long rights consciousness. This approach constitutes a major departure from the popular and scholarly misconceptions about Hamilton, which insist that he was a monarchical elitist who privileged creditor and mercantile interests above all else. What scholars and biographers have missed, however, is that Hamilton was always a common lawyer at heart; therefore, he held a deep reverence for the rights and liberties provided and protected by the Anglo-American common law. So, throughout his career, Hamilton fiercely and consistently fought to preserve common law rights for all Americans.

By surveying the span of Hamilton’s law practice in New York state

*Alexander Hamilton, Lawyer and Lawmaker*
courts—from his defense of minority (Loyalist) rights in *Rutgers v. Waddington* (1784) to his defense of the freedom of the press in *People v. Crosswell* (1804)—I demonstrate that Hamilton was dedicated to preserving the people’s rights to due process, jury trials, and press freedom under common law. To Hamilton, the common law provided a common shield to benefit all Americans from their government’s overreaching and abuse of power.

Hamilton defended common law rights in New York state courts. In doing so, he demonstrated, yet again, that he considered the states to be important jurisdictions for achieving republican policy goals. Federalism, and not the consolidation of power in a national government, mattered to Hamilton and figured prominently in his statecraft. I thus conclude the book by arguing that Alexander Hamilton’s legal legacy presents us with a new portrait of him, not as a die-hard nationalist, but rather as a true federalist, dedicated to balancing robust federal and state sovereignty.

By focusing on these particular episodes and themes that span the entirety of his legal career, I offer an intensive—but not comprehensive—examination of Alexander Hamilton as both a lawyer and a lawmaker. I do not engage with Hamilton’s proposed constitution, offered and rejected during the constitutional convention in Philadelphia, for example. While Hamilton was initially disappointed by the compromises ultimately codified in the final version of the US Constitution, he ended up making the most of the powers articulated in its articles. I do not examine Hamilton’s ideal constitution; instead, I am interested in the way that Hamilton instrumentally used the constitutional provisions that actually became the law of the land.

Also, I do not focus on every type of law invoked by Hamilton, or on each instance of Hamiltonian lawmaking. Instead, I examine representative examples of Hamilton’s lawmaking efforts that affected his policy agenda. I do not discuss all of the contexts in which Hamilton invoked international law, for example; nor do I explore the majority of Hamilton’s extensive land dealings, where he helped to sort out and to quiet titles between feuding patroon families in upstate New York. Similarly, I do not detail the complex contractual litigation and arbitration proceedings in which Hamilton participated when representing French merchant Louis Le Guen or members of New York’s mercantile class. These protracted disputes were important in Hamilton’s day, as they sometimes yielded large settlements for his clients and they won acclaim for Hamilton as one of New York’s premier lawyers. Yet while Hamilton clarified or innovated upon the procedural law involved in this litigation, his efforts had little impact on his greater statecraft goals, and therefore I omit them below. Similarly, I also exclude discussions of the
routine or insignificant cases, mediations, or advisory opinions that occupied Hamilton’s time but had a negligible influence on the development of the law.

In the pages that follow, I examine only those episodes in Hamilton’s career in which his extensive legal practice intersected with his ambitious, republican statecraft goals. In doing so, I provide a selective but intensive way to understand, and thus to appreciate fully, the numerous and profound ways in which Alexander Hamilton developed the substance of American law.