THE IMPACT OF ALEXANDER HAMILTON'S ECONOMIC THOUGHT ON THE MARSHALL COURT*

David Seaton**

INTRODUCTION

The Federal Government of the United States is, at least in theory, a government of specific powers enumerated in the Constitution of the United States.[1] The primary powers of the Federal Government are specifically enumerated in section eight of the first article of the Constitution;[2] although additional powers are also enumerated in other sections of the Constitution such as the Civil War Amendments.[3] The powers outlined in section eight of the first article include the power to: tax; spend; regulate international, interstate, and intertribal commerce (hereinafter the Commerce Clause);

* The research question that this paper seeks to answer is what if any connection exists between the jurisprudence of the Marshall Court and the prevailing economic consensus of the day. The thesis of this paper is that the best explanation for the jurisprudence of the Marshall Court is that, rather than relying on the text of the Constitution itself, the Marshall Court was simply implementing the economic consensus of Northern Capital; in particular the economic thought of Alexander Hamilton.

** PhD Student and graduate teaching assistant University of Missouri Kansas City; M.A. in Economics, City University of New York (CUNY) John Jay College of Criminal Justice, 2023.

[1] United States v. Lopez, 514 U.S. 549, 552 (1995).

[2] U.S. CONST. art. 1, § 8.

[3] *See* U.S. CONST. amends. XIII, XIV, XV.

borrow money; establish uniform laws of immigration and bankruptcy; mint money; punish counterfeiting; create a postal service; regulate patents; create courts subordinate to the Supreme Court of the United States; punish piracy; declare war; grant letters of mark; regulate the taking of prizes; forming a professional military; regulating the military and the militia; governing Washington D.C. and any federal facilities; and all things necessary and proper to accomplish the forgoing powers (herein after the Expandable Clause).[4]

One might be inclined to conclude that the evolving consensus of economic thought should not and cannot have much influence on the meaning of the Constitution during the Marshall Court (or any other court for that matter). The words are what they are, and they mean what they mean.[5]

Unfortunately, this rationale breaks down, because the Constitution (and any other legal document for that matter) means whatever judges say it means. This can be trivially demonstrated by the fact that—although the wording of the Commerce Clause has not been amended, changed, or altered in any way—the Supreme Court's interpretation of the Commerce Clause has changed over time. From the late Nineteenth to the early Twentieth Century for example, the Commerce Clause was interpreted to permit the federal regulation of interstate transportation, but not manufacturing (to include working conditions, length of the workday, or minimum wage).[6] Fast forward to the mid-Twentieth Century, the Commerce Clause serves as the rationale—not only for economic legislation—but also for a variety of other ostensibly non-economic federal policies by virtue of their impact on interstate commerce including: civil rights legislation,[7] narcotics criminalization,[8] and, for a time at least, gun control laws.[9] Indeed at the conclusion of the period of time when the Commerce Clause was interpreted most broadly, the Supreme Court noted "if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate."[10]

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[4] U.S. CONST. art. 1, § 8.

[5] Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, *in* A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 3, 22 (Amy Gutmann, ed., 1997).

[6] *See* Kidd v. Pearson, 128 U.S. 1 (1888); United States v. E. C. Knight Co., 156 U.S. 1 (1895); Oliver Iron Mining Co. v. Lord, 262 US 172 (1923); Adair v. United States, 208 U.S. 161 (1908); Hammer v. Dagenhart, 247 U.S. 251 (1918); Adkins v. Children's Hospital, 261 U.S. 525 (1923).

[7] Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964).

[8] Gonzales v. Raich, 545 U.S. 1 (2005).

[9] United States v. Lopez, 514 U.S. 549 (1995).

[10] *Id.* at 564.

Having observed that constitutional interpretation requires looking beyond the four corners of the Constitution, the question that must then be answered is what exactly is driving the interpretation of the Commerce Clause. This is where we must turn to the question of legal philosophy.[11] Namely, what is the law? Generally, there are three answers: Natural Law Theory, Positivism, and Legal Realism.[12] Natural Law Theory—which by its very nature is a theory of both moral and legal philosophy—is a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society.[13] The state will issue commands backed by force which it claims are law, but Augustine says "an unjust law is no law at all."[14] Positivism[15] on the other hand is the legal philosophy that laws are simply commands issued by a sovereign to a more or less obedient populace backed by force.[16] As H.L.A. Heart observes there is an is/ought dichotomy between the way things are and the way things ought to be, and the law is simply the way things are.[17] Both Natural Law Theory and Positivism anticipate that the state will issue commands that it calls laws and expects the populace to obey. Unfortunately, neither philosophy explains how the state determines which commands to issue.

This leaves us with Legal Realism which is the theory that the law is simply an arbitrary series of commands (certainly backed by force) which are rationalized *post hoc* with little or no interest in the words (be they constitutions, statutes, or regulations) that they are intended to interpret.[18] This theory actually gives a framework to look beyond the four corners of the Constitution in order to find its influences. More importantly, one of the founding fathers of realism is Justice Oliver Wendell Holmes Jr. who served

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[11] *Jurisprudence*, ENCYC. BRITANNICA (Jeannette L. Nolen ed.), https://www.britannica.com/science/jurisprudence (last visited Dec. 6, 2024).

[12] See *Natural Law*, ENCYC. BRITANNICA, https://www.britannica.com/topic/natural-law (last visited Dec. 6, 2024); *Legal Positivism*, INTERNET ENCYCL. OF PHILOSOPHY, https://iep.utm.edu/legalpos/#:~:text=Legal%20positivism%20is%20a%20philosophy,common%20law%20or%20case%20law (last visited Dec. 6, 2024); *Legal Realism*, ENCYCLOPEDIA.COM, https://www.encyclopedia.com/law/encyclopedias-almanacs-transcripts-and-maps/legal-realism#:~:text=The%20school%20of%20legal%20philosophy,determinate%20and%20apolitical%20judicial%20decision (last visited Dec. 6, 2024).

[13] *Natural Law Theory*, *supra* note 12.

[14] Lawrence W. Reed, *Augustine: Searching for Truth and Wisdom*, FOUNDATION FOR ECONOMIC EDUCATION (March 4, 2016), https://fee.org/articles/an-unjust-law-is-no-law-at-all/.

[15] The legal philosophy of Positivism should of course not be confused with the epistemological philosophy of the same name that indicates the only things we can know are things that can be verified by empirical observations. *Positivism*, ENCYC. BRITANNICA, https://www.britannica.com/topic/positivism (last visited Dec. 6, 2024).

[16] *Legal Positivism*, *supra* note 12.

[17] H.L.A. HART, THE CONCEPT OF LAW (3rd ed. 2012).

[18] *Legal Realism*, *supra* note 12.

on the Supreme Court.[19] Okay, but why is the whole field of human knowledge focus on economic thought in particular?

This leads us to the dichotomy between the original founders of Legal Realism, like Supreme Court Justice Oliver Wendell Holmes Jr., who were happy with the implications of Legal Realism ("Realists"),[20] and those who—though convinced of the internal logic of Legal Realism—were horrified by Legal Realism (proponents of the following disciplines: Critical Legal Studies; Feminist Legal Theory; and Critical Race Theory).[21] Legal Realists tend to be members of the ruling class (or have pretentions of being members of the ruling class) and tend to believe that the law is simply rationalizations *post hoc* designed to implement ideal policy; whatever that may be. Critical Legal Studies is the legal philosophy that the law is simply rationalizations *post hoc* designed to ensure maintenance of class divides (such as Capital dominating Labor which is a theme in many, but not all economic thought).[22] Feminist Legal Theory is the legal philosophy that the law is simply rationalizations *post hoc* designed ensure the maintenance of gender divides.[23] Critical Race Theory is the legal philosophy that that the law is simply rationalizations *post hoc* designed to ensure the maintenance of racial divides.[24]

Ok, so we've narrowed down the possible fields of human endeavor as a lens with which to view constitutional interpretation to: class (and therefore economics); gender; race; and good policy (and therefore potentially all forms of human endeavor). It doesn't seem as if we have narrowed it down much. Taking these possibilities in reverse order however, what rulers consider "good policy" to be is ultimately overdetermined by the economic consensus of the time. As John Maynard Keynes indicated in *The General Theory of Employment, Interest, and Money*, "[p]ractical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist."[25] Moreover as Silvia Federici notes in *Caliban and the Witch*, modern gender roles were created in the middle

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[19] *Legal Realism: Power and Economics In Society, The Persuasion And Characteristics Of Individual Judges, Society's Welfare*, JRANK, https://law.jrank.org/pages/8165/Legal-Realism.html (last visited Dec. 6, 2024).

[20] *Id.*

[21] *See Critical Legal Studies*, ENCYC. BRITANNICA, https://www.britannica.com/topic/Critical-Legal-Studies (last visited Dec. 6, 2024); Martha Albertson Fineman, *Feminist Legal Theory*, 13 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW 13, (2005); *Critical Race Theory*, ENCYC. BRITANNICA, https://www.britannica.com/topic/critical-race-theory (last visited Dec. 6, 2024).

[22] *Critical Legal Studies*, *supra* note 21.

[23] *See generally* Fineman, *supra* note 21.

[24] *Critical Race Theory*, *supra* note 21.

[25] JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY 241 (1936).

ages to facilitate the destruction of the feudal economy and the establishment of modern capitalist economy.[26] Finally as Theodore Allen, Kenneth Stamp, and Howard Zinn describe in *They Would Have Destroyed Me": Slavery and the Origins of Racism*, *Peculiar Institution*, and *A Peoples History of the United States* respectively that the modern concept of race was created by the white ruling class of the British colonies which would eventually become the United States, in the wake of Bacon's Rebellion, in order to prevent cross-racial class solidarity; thus preventing a disruption of the economic *status quo*.[27] Taken together, Critical Legal Studies explicitly endorses the reliance of economic thought in order to understand legal decisions, and Legal Realism, Feminist Legal Theory, and Critical Race Theory—whether they are willing to admit or not—are ultimately dependent on economic thought.

Thus, prevailing economic thought is the best explanation for the changing interpretations of the Constitution (or any law for that matter). Although a much longer treatise could focus changing interpretations of constitutional law throughout the entire history of the United States, this paper will focus on the constitutional jurisprudence of the Supreme Court of the United States during the period of time when John Marshall presided over it as Chief Justice of the United States (hereinafter Marshall Court). The thesis of this paper is that the best explanation for the jurisprudence of the Marshall Court is that, rather than relying on the text of the Constitution itself, the Marshall Court was simply implementing the economic consensus of Northern Capital; in particular the economic thought of Alexander Hamilton.

I. METHOD

The Method of this paper shall be to outline the jurisprudence of the Marshall Court, and then to outline the economic thought of Alexander Hamilton while explaining why his economic thought was illustrative of the prevailing economic thought of the day; as well as demonstrating his influence on the Marshall Court.

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[26] SILVIA FEDERICI, CALIBAN AND THE WITCH: WOMEN, THE BODY AND PRIMITIVE ACCUMULATION (2004).

[27] Theodore Allen, '. . . *They Would Have Destroyed Me': Slavery and the Origins of Racism, Understanding and Fighting White Supremacy*, SOJOURNER TRUTH (1976), http://www.sojournertruth.net/destroyedme.html (last visited Dec. 6, 2024); HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 31 (2003 ed.).

II. JURISPRUDENCE OF THE MARSHALL COURT

During the Marshall Era, the Marshall Court assumed the power of judicial review and—having done so—determined that the Federal Government had the authority to create a national bank and regulate interstate transportation. The Marshall Court assumed these powers in a trilogy of cases: *Marbury v. Madison*,[28] *McCulloch v. Maryland*,[29] and *Gibbons v. Ogden*.[30] Together these three cases established that the Federal Government could implement the economic consensus of Northern Capital using the Commerce Clause as a cudgel.

We first turn our attention to *Marbury v. Madison*.[31] In *Marbury*, the Marshall Court—a collection of unelected hacks chosen for their political connection as often if not more so than by their skill—declared that it had the authority to override the authority of the elected legislature and executive.[32] Ultimately, this assumption of power became a key cornerstone in implementing the economic consensus of Northern Capital over any pesky objections that could be raised by a democracy.[33]

In President George Washington's farewell address, he warned against the establishment of competing political factions or what we would now call political parties.[34] Ultimately, these remarks were too little too late, because political factions had already developed among Washington's cabinet.[35] Alexander Hamilton was on the Federalist side opting for institutions capable of managing the economy and creating infrastructure in order to foster an industrial economy.[36] Thomas Jefferson[37] was on the side of the Jeffersonian Democrat-Republicans opting instead for an agricultural economy

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[28] Marbury v. Madison, 5 U.S. 137 (1803).

[29] McCulloch v. Maryland, 17 U.S. 316 (1819)

[30] Gibbons v. Ogden, 22 U.S. 1 (1824).

[31] Marbury v. Madison, 5 U.S. 137 (1803).

[32] *Id*.

[33] It of course should be noted that at its founding, the United States was in no sense a true democracy, because a true democracy must respect the notion of one person one vote. Reynolds v. Sims, 377 U.S. 533 (1964). Additionally, at the time, suffrage was only guaranteed to wealthy white men. "The Founders and the Vote," *Library of Congress* available at https://www.loc.gov/classroom-materials/elections/right-to-vote/the-founders-and-the-vote/#:~:text=Unfortunately%2C%20leaving%20election%20control%20to,who%20did%20not%20own%20property. (last visited May 21, 2022). Regardless, the results of *Marbury* reveals that even the constraints of such a limited democracy was too much for Capital to bother with.

[34] George Washington, *The Address of Gen. Washington to the People of America on His Declining the Presidency of the United States*, September 19, 1796 *available at* https://www.mountvernon.org/education/primary-sources-2/article/washington-s-farewell-address-1796/ (last visited May 21, 2022).

[35] ZINN, *supra* note 27, at 97.

[36] JACOB ERNST COOKE, ALEXANDER HAMILTON 109-20 (1982).

[37] *Id.*

dominated by yeoman farmers sustaining themselves on a small parcel of land.[38] Regardless, Washington was succeeded by the Federalist John Adams; thus giving the Federalists, at least for the moment, the upper hand.[39] This success, however, was short lived, because Thomas Jefferson would defeat Adams in the next election.[40] The Federalists under Adams—not content to allow the result of an election interfere with their economic vision[41]—hatched a court packing plan to ensconce Federalist influence into the government irrespective of the results of a democratic election.[42]

Congress created a number of new judicial positions before Jefferson could take office.[43] Adams immediately appointed individuals sympathetic to the Federalist cause to these newly created judicial vacancies.[44] Additionally, Adams appointed his Secretary of State John Marshall as Chief Justice of the United States;[45] the official responsible for presiding over the Supreme Court.[46] The appointees were quickly confirmed by the Senate, and commissions memorializing the appointments were sent to the Secretary of State—still Marshall—who was responsible for delivering the commissions to the appointees.[47] Unfortunately, Marshal—even after enlisting the help of his brother—did not have time to deliver all of the commissions to their recipients prior to Jefferson taking office.[48] Upon taking office, Jefferson declined to deliver the remaining commissions; thus preventing an already stacked judiciary from being further stacked against him.[49] James Madison

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[38] This of course rings hollow given that the Constitution was only written after Shay's Rebellion, a populist rebellion demanding economic relief, gave rise to the fear that the then current government established under the Articles of Confederation would not be able to maintain order; one the key events of George Washington's administration was crushing the Whiskey Rebellion, a populist rebellion of yeoman farmers demanding economic relief,; and the fact that Thomas Jefferson was a slave owner and a plantation owner. ZINN, *supra* note 27, at 97-98, 101.

[39] *Id.* at 184.

[40] *Id.* at 215-30.

[41] *Judiciary Act of 1801*, ENCYC. BRITANNICA, https://www.britannica.com/ topic/Judiciary-Act-of-1801 (last visited May 22, 2022).

[42] The legitimacy of such a "democratic election" can easily be called into question. This should not cloud the fact that even this degree of "democracy" was too democratic for the outgoing Federalists to honor.

[43] The Judiciary Act of 1801, 2 Stat. 89 (1801).

[44] *Judiciary Act of 1801*, ENCYCL. BRITANNICA, https://www.britannica.com/topic/Judiciary-Act-of-1801 (last visited Dec. 6, 2024).

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

replaced Marshall as Secretary of State [50] but Marshall retained his newly appointed position as Chief Justice.[51]

William Marbury—an intended recipient of one of the undelivered commissions—was displeased that he had been politicked out of a job, and he filed suit against Madison in the Marshall Court insisting that he was entitled to the commission.[52] This put the Marshall Court in a bit of a pickle.[53] On the one hand, Marbury had been appointed and confirmed to a judicial vacancy. On the other hand, there was the risk that Jefferson would refuse to obey the Court's opinion, and—without the power of the purse or the sword—the Marshall Court would have little if any means of coercing Jefferson to comply with their instructions.[54] Ultimately, in a unanimous opinion—authored by Marshall—the Marshall Court found the Constitution did not grant the Marshall Court original jurisdiction to hear the case, and the federal statute that granted the Marshall Court jurisdiction to hear the case was unconstitutional.[55] In doing so, the Marshall Court assumed the authority to strike down democratically enacted legislation as unconstitutional without any explicit authority given to it in the Constitution.[56] Instead, the Court reasoned that in order for the Constitution to limit the powers of Congress some institution had to be able to strike down legislation, and the best institution to have that power was the Judiciary; because it is the Judiciary's job to interpret laws up to and including the Constitution.[57]

> The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited

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[50] *Id.*

[51] Interestingly enough, Jefferson asked Marshall to stay on until his replacement could be appointed and confirmed. *John Marshall*, ENCYCL. BRITANNICA, *available at* https://www.britannica.com/biography/John-Marshall (last visited Dec. 6, 2024). This of course raises a question. Why on Earth didn't Marshall just deliver the remaining commissions? Did he feel honor bound to respect Jefferson's authority? Was he content that the appointments that had been delivered were already sufficient to thwart Jefferson's agenda and thus did not believe it mattered one way or another? Whatever the reason, Marbury's commission was not delivered despite a clear opportunity to do so, and thus a constitutional crisis could have been avoided persisted. This represents a potential hinge point in which American history *could* have progressed in a very different way depending on its outcome.

[52] Marbury v. Madison, 5 U.S. 137 (1803).

[53] *Marbury v. Madison*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/event/Marbury-v-Madison (last visited Dec. 6, 2024).

[54] *Id.*

[55] *Madison*, 5 U.S. at 171-73.

[56] *Id.*

[57] *Id.*

> powers is abolished if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the Legislature may alter the Constitution by an ordinary act.
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> Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it . . . if . . . true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable. . . . It is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.[58]

Thus, Marshall retreated from direct confrontation with executive authority (caving to Jefferson's demands) while inventing from whole cloth the entirely new doctrine of Judicial Review (the authority to unilaterally countermand democratically enacted legislation) that appears nowhere in the Constitution to justify appeasing to the executive's demands. Clearly at its inception, this newly created doctrine of Judicial Review was anemic. Indeed, the Marshall Court could countermand Congress, but the Marshall Court would need the President to implement the decision; without the President's seal of approval this doctrine was useless. Regardless, it set a precedent for using judicial authority to override the popular will; a key ingredient to implementing the economic consensus of Capital over the will of the people.

Next, we turn our attention to *McCulloch v. Maryland*.[59] In *McCulloch*, the State of Maryland levied a tax against the Second Bank of the United States; the then national bank of the United States.[60] The head of the Maryland branch refused to authorize the payment of the tax. Litigation ensued, and the matter was eventually appealed to the Marshall Court.[61] At issue before the Marshall Court was: firstly, whether it was even permissible for the Federal Government to create a national bank; and secondly, whether or not the State of Maryland could tax it.[62]

When we survey the Constitution (in particular section eight of the first article) we do not see anything explicitly indicating that Federal Government

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[58] *Id.* at 176-77.
[59] McCulloch v. Maryland, 17 U.S. 316 (1819).
[60] *Id.*
[61] *Id.*
[62] *Id.*

has the power to create a national bank.[63] Regardless, the Marshall Court, upon surveying the Federal Government's powers, concluded that the Federal Government has the power of "[t]he sword of the purse."[64] It then looked to the final clause of section eight of the first article which indicated that the Federal Government had the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution [*sic*]"[65] (which is also known as the Expandable Clause).

> Although, among the enumerated powers of Government, we do not find the word "bank" or "incorporation," we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its Government. It can never be pretended that these vast powers draw after them others of inferior importance merely because they are inferior. . . [A] Government entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be entrusted with ample means for their execution.[66]

The Court concluded that a national bank was necessary and proper to exercising its powers over the sword and the purse, and—as such once one applies the Expandable Clause to the other federal powers—the Federal Government does have the authority to create a national bank.[67] Namely, a national bank could aid the Federal Government in raising money in one region of the country in order to fund the government operations (up to an including an army) in another region of the country.[68] As a national bank was an institution that the Marshall Court considered useful in executing this function, the Marshall Court concluded that the Federal Government had the power to create it.[69]

> It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic . . . revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the Nation may

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[63] U.S. CONST. art. 1, § 8.
[64] *McCulloch*, 17 U.S. at 407.
[65] U.S. CONST. art. 1, § 8, cl. 18.
[66] *McCulloch*, 17 U.S. at 407-08.
[67] *Id*. at 316.
[68] *Id.*
[69] *Id.*

> require that the treasure raised in the north should be transported to the south that raised in the east, conveyed to the west, or that this order should be reversed. . .[T]he Constitution . . . does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential, to the beneficial exercise of those powers.[70]

The Court then reasoned that "the power to tax involves the power to destroy" concluded that as the State of Maryland did not have the authority to destroy the Federal Government it did not have the authority to tax the Federal Government, and that this inability to tax the Federal Government also applied to institutions lawfully created by the Federal Government; like the Second Bank of the United States.[71] Thus we have another key ingredient to implementing elite economic consensus. Not only can the Marshall Court strike down any popularly enacted legislation that is unfavorable to elites on the grounds that it is not explicitly addressed in the Constitution, but the Marshall Court can also certify and protect any federal entity that elites approve of even when it is not explicitly authorized by the Constitution.[72]

Finally, we turn to *Gibbons v. Ogden*.[73] Aaron Ogden and Thomas Gibbons had purchased rival licenses to operate steamboats between New York and New Jersey. Ogden's license was issued by the State of New York, and Gibbon's license was issued by the Federal Government.[74] The Marshall Court ultimately ruled that transportation equaled commerce, and, as a result, the Federal Government had the authority under the Commerce Clause to regulate the traffic on major interstate waterways.[75]

> The subject to be regulated is commerce, and our Constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word . . . Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. The mind can scarcely conceive a

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[70] *Id.* at 408-09.

[71] *Id.* at 431.

[72] It is important to note that a good deal of the discussion in the Court's reasoning deals with the doctrine that the Constitution was created by and for the People rather than by State governments. Despite this ostensible appeal to populism however, *McCulloch* extends the doctrine outlined in *Marbury* that the Marshall Court can strike down popularly enacted federal legislation to the state level; thus eliminating every lever of power that a popular movement in opposition to an elite consensus might have.

[73] Gibbons v. Ogden, 22 U.S. 1 (1824).

[74] *Id.*

[75] *Id.*

> system for regulating commerce between nations which shall exclude all laws concerning navigation, which shall be silent on the admission of the vessels of the one nation into the ports of the other, and be confined to prescribing rules for the conduct of individuals in the actual employment of buying and selling or of barter.
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> If commerce does not include navigation, the government of the Union has no direct power over that subject, and can make no law prescribing what shall constitute American vessels or requiring that they shall be navigated by American seamen. Yet this power has been exercised from the commencement of the government, has been exercised with the consent of all, and has been understood by all to be a commercial regulation. All America understands, and has uniformly understood, the word "commerce" to comprehend navigation. It was so understood, and must have been so understood, when the Constitution was framed. The power over commerce, including navigation, was one of the primary objects for which the people of America adopted their government, and must have been contemplated in forming it. The convention must have used the word in that sense, because all have understood it in that sense, and the attempt to restrict it comes too late.[76]

Moreover, the Court discussed the notion of what has become known as the Dormant Commerce Clause that due to the Federal Government's authority to regulate interstate commerce (in this case transportation) the governments of the several states did not have any authority to regulate interstate commerce (in this case transportation).[77] Consequently, the Marshall Court concluded that the federal license was not only valid, but that it clearly trumped the license issued by the State of New York.[78]

The legacy of the Marshall Court is best characterized by three cases: *Marbury v. Madison*,[79] *McCulloch v. Maryland*,[80] and *Gibbons v. Ogden*.[81] In these three cases, the Marshall Court assumed the power of judicial review (and in effect became the final arbiter of the Constitution) and used the assumed power to conclude the Federal Government had both the authority to create a national bank (as well as potentially any other institution it needed to create) and to regulate interstate transportation. As we shall see, these three cases taken together were shaped by and facilitated the ability to enact the

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[76] *Id.* at 89-90.
[77] *See* Gibbons, 22 U.S. 1.
[78] *Id.*
[79] Marbury v. Madison, 5 U.S. 137 (1803).
[80] McCulloch v. Maryland, 17 U.S. 316 (1819).
[81] *Gibbons*, 22 U.S. at 1.

economic consensus of Northern Capital; in particular the economic consensus outlined by Alexander Hamilton.

III. THE ECONOMIC THOUGHT OF ALEXANDER HAMILTON AS THE KEY TO UNDERSTANDING THE MARSHALL COURT.

The single individual who best illustrates the economic consensus of the prevailing thought in the fledgling United States is Alexander Hamilton. Although arguably not an economist *per se*, Hamilton advocated for and by virtue of his position was able to implement a vision of the American economy. Moreover, we see his influence in the Marshall Court including: allying with the interests of Northern Capital, creating a national bank, and regulating interstate transportation.

The two political parties that developed shortly after the adoption of the Constitution were the Federalists and the Jeffersonian Democrat-Republicans.[82] The Federalists like Alexander Hamilton aligned with the interests of Northern Capital.[83] Hamilton's economic ideas are best encapsulated by the trilogy of government reports: the *First Report on the Public Credit*,[84] the *Report on a National Bank* (also known as the *Second Report on the Public Credit*),[85] and the *Report on Manufactures*.[86] On the other hand, the Jeffersonian Democrat-Republicans—led by (you guessed it) Thomas Jefferson—broadly speaking represented the interest of the Southern Planter class; while admittedly making rhetorical overtures to the masses.[87]

In the *First Report on the Public Credit* Hamilton outlined his plan to address outstanding American debts.[88] Hamilton begins that by outlining how public credit is essential for a government to be able to respond to national emergencies.[89] "That exigencies are to be expected to occur, in the affairs of nations in which there will be a necessity for borrowing. That loans in times of public danger, especially from foreign war are found to be an indispensable resource, even to the wealthiest of them."[90] Thus given the inevitable need for government borrowing, Hamilton argues that "it is

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[82] ZINN, *supra* note 27, at 97.

[83] JOHN C. MILLER, ALEXANDER HAMILTON AND THE GROWTH OF THE NEW NATION 323 (Harper Torchbooks 1959).

[84] Alexander Hamilton, *First Report on Public Credit, reprinted in* THE REPORTS OF ALEXANDER HAMILTON (Jacob E. Cooke ed., 1964).

[85] Alexander Hamilton, *Report on a National Bank, reprinted in* THE REPORTS OF ALEXANDER HAMILTON (Jacob E. Cooke ed., 1964).

[86] Alexander Hamilton, *Report on Maufactures*, *reprinted in* THE REPORTS OF ALEXANDER HAMILTON (Jacob E. Cooke ed., 1964).

[87] *Id.* at 115.

[88] Hamilton, *supra* note 84.

[89] *Id.*

[90] *Id.* at 2.

equally evident, that to be able to borrow upon *good terms*, it is essential that the credit of a nation should be well established."[91] While conceding that "[t]he advantage to the public creditors from the increased value of that part of their property which constitutes the public debt needs no explanation…"[92] Hamilton argues that public credit benefits everyone. Public credit "will procure to every class of the community some important advantages, and remove some no less important advantages."[93] Specifically, Hamilton argues that the establishment of good credit will give the public debt of the United States a similar value to currency backed by specie, and that this in turn will benefit trade, manufacturing, agriculture, manufacturing, and cheaper commercial credit.[94]

> It is a well known fact that in countries in which the national debt is . . . an object of established confidence, it answers most of the purposes of money. Transfers of . . . public debt are there equivalent to payments in specie[.] . . . The same thing would, in all probability happen here, under the like circumstances.

The benefits of this are various and obvious.

> First. Trade is extended by it, because there is a larger capital to carry I on, and the merchant can at the same time, afford to trade for smaller profits; as his stock, which when unemployed, brings him in an interest from the government, serves him also as money when he has a call for it in his commercial operations.
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> Secondly. Agriculture and manufactures are also promoted by it: For the like reason, that more capital can be commanded to be employed in both: and because the merchant, whose enterprize[*sic*.] in foreign trade, gives to them activity and extension has greater means for enterprize[*sic*.].
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> Thirdly. The interest of money will be lowered by it; for this is always in a ratio, to the quantity of money, and to the quickness of circulation. This circumstances will enable both the public and individuals to borrow on easier and cheaper terms.[95]

Turning to Hamilton's actual policy prescription, the debts at issue could be broadly broken down into three categories: foreign debt, domestic debt, and state debt. Hamilton recommended the full payment of foreign debts plus interest, the assumption of state debt, and the establishment of a sinking fund

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[91] Hamilton, *supra* note 84.
[92] *Id.* at 5.
[93] *Id.*
[94] *See* Hamilton, *supra* note 84.
[95] *Id.* at 5-6.

in order to maintain the price of public securities.[96] Ultimately, this plan worked to the benefit of Northern Capital, because as Alfred Jay Nock in his biography of Thomas Jefferson notes "[m]any of these, probably a majority, were speculators who had bought the government's war bonds at a low price from the original investors who were too poor to keep their holdings."[97] Indeed, many of the original holder of government debt were Revolutionary War veterans who were paid in securities rather than cash for their service in liberating the United States from the British Empire.[98]

Hamilton might very well have been influenced by a genuine admiration for the speculators. As John C. Miller in his biography of Hamilton indicates "[m]en willing to risk their wealth on long chances he deemed indispensable to a flourishing capitalism; he liked his capitalism spiced with audacity and he found this particular ingredient abundantly among the purchasers of government securities."[99]

From perspective of Hamilton's contemporaneous critics however, Hamilton's effort to enrich Northern Capital had a more sinister side to it; namely an outward contempt for the common man. As Zinn notes "Hamilton . . . believe[ed] that government must ally itself with the richest elements of society to make itself strong[.]"[100] As Jacob Cooke in his biography of Hamilton indicates

> To Hamilton's critics . . . perquisites of the states [was] more essential than the enhancement of the power of the unition, the maintenance of a predominantly agrarian society and the well-being of farmers and planters preferable to a balanced economy that would pander to the interests of the mercantile and capitalistic classes. . . . [T]he gravamen of his critics' indictment, was well founded. That Hamilton's plan was heavily weighted in favor of precisely those classes is . . . beyond dispute.[101]

Hamilton's critics seem to have a salient point as Hamilton's own remarks seem to confirm his critics worst criticism that he was an elitist who strove to curry favor with the upper class.

> All communities divide themselves into the few and the many. The first are the rich and well-born, the other the mass of the people. The void of the people as been said to be the voice of God; and however generally the maxim has been quoted and believed it is not true in fact. The people are turbulent and changing; they

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[96] COOKE, *supra* note 36, at 76-77.
[97] ALBERT JAY NOCK, JEFFERSON 112 (Univ. Press America, 1985) (1926).
[98] RON CHERNOW, ALEXANDER HAMILTON 298 (2004).
[99] MILLER, *supra* note 83, at 233.
[100] ZINN, *supra* note 27, at 101.
[101] COOKE, *supra* note 36, at 77.

> seldom judge or determine right. Give therefore to the first class a distinct permanent share in the government . . . Can a democratic assembly who annually revolve in the mass of the people be supposed steadily to pursue the public good? Nothing but a permanent body can check the impudence of democracy[.][102]

Then again, looking at Hamilton's perspective more sympathetically it is possible that Hamilton didn't have any choice. Hamilton himself explained that getting the support of Northern Capital was necessary in order for the government to survive. "[I]f all the public creditors receives their dues from one source, distributed by an equal hand, their interest will be the same. And, having the same interests, they will unite in support of the fiscal arrangements of the Government."[103] As Cooke notes the direction "toward which Hamilton pointed was a monolithic nationalism – a unified, centralized, strong federal government that would both reflect and serve the interests of every section and all classes, while singling out those whose support was most indispensable."[104] Margaret G. Myers in *A Financial History of the United States* concurs by indicating that "Hamilton had advocated it as part of his plan to attach the 'monied interest' to the new government and thus strengthen it, and this he undoubtedly accomplished."[105] W.R. Brock also agrees observing "[i]njustice is often done to Hamilton in supposing that he intended to use national authority simply to" help the rich; "[r]ather, he intended to make their power, which might otherwise be against the public interest, serve a useful purpose[.]"[106] Perhaps Miller puts it best. "Hamilton saw that if capitalism were to prosper, capitalists were indispensable . . . [and] he knew of no effective substitute for capitalism[.]. . .To an eighteenth-century statesman bent upon . . . capitalism . . .flourish[ing], the "improvident majority" was of little importance."[107]

But even bending over backwards to see things from Hamilton's point of view seems to provide little solace for the tactic that Hamilton would employ to silence his critics. Namely, tried and true capitalist tactic of blaming the poor for suboptimal outcomes in a system stacked against them. Knock observed that Hamilton "declared that the impoverished original holders should have had more confidence in their government than to sell out their holdings and that the subsidizing of speculators would broadcast this salutary

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[102] ZINN, *supra* note 27, at 96.

[103] MILLER, *supra* note 83, at 235.

[104] COOKE, *supra* note 36, at 77.

[105] MARGARET G. MYERS, A FINANCIAL HISTORY OF THE UNITED STATES 62 (1970).

[106] COOKE, *supra* note 36, at 78; W.R. Brock, *The Ideas and Influence of Alexander Hamilton, in* BRITISH ESSAYS IN AMERICAN HISTORY 140 (H.C. Allen & C.P. Hill, eds. 1957).

[107] MILLER, *supra* note 83, at 233.

lesson."[108] Even proponents of Hamilton admit to this odious tactic. As Ron Chernow notes (in a creepily enthusiastic way) in his biography of Hamilton, Hamilton argued that the "original investors had gotten cash when they wanted it and had shown little faith in the country's future. . . In this matter, Hamilton stole the moral high ground from opponents[.]"[109] Not content to simply attack the poor, Hamilton and his supporters, as Richard Brookhiser and Forest McDonald note, also alleged that any attempt to treat people who sold their securities out of desperation differently then rich rentier speculators was discrimination against the rich rentier speculators.[110]

In his *Report on a National Bank*, Hamilton outlined his plan for (you guessed it) a national bank. Hamilton requested that Congress charter a national bank capitalized by a combination of private and public investment.[111] The Federal Government would deposit funds in the national bank, and the national bank would issue legal tender redeemable in specie.[112] Although technically a private institution, the government would appoint one fifth of the bank's directors and audit the bank's records.[113] Hamilton argued that that there were three principal advantages of a national bank: augmenting the capital of the nation; facilitating pecuniary aids particularly during emergencies; and facilitating the payment of taxes.[114] National banks augment capital, according to Hamilton, in three ways.

> First. A great proportion of the notes which are issued and pass as Cash are indefinitely suspended in circulation, from the confidence which each holder has, that he can at any moment turn them into gold and silver. Secondly, Every loan, which a Bank makes is, in its first shape, a credit given to the borrower on its books, the amount of which it stands ready to pay, either in its own notes, or in gold or silver at his portion. . . . The Borrower frequently, by a check or order, transfers his credit to some other person, to whom he has a payment to make; who, in his turn, is as often content with a similar credit[.] . . . And in this manner the credit keeps circulating . . . till it is extinguished by a discount with some person who has a payment to make to a Bank, to an equal or greater amount. . . . Thirdly, there is always a large quantity of gold and silver in repositories of the Bank . . . which is placed therewith a view partly to its safe keeping and partly to the accommodation

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[108] NOCK, *supra* note 97, at 112.

[109] CHERNOW, *supra* note 98, at 298.

[110] Richard Brookhiser, *Alexander Hamilton, American*, (New York, NY: The Free Press, 1999), 84-87; Forrest McDonald, *Alexander Hamilton: A Biography*, (New York, NY: W. W. Norton & Company, 1979), 165-67.

[111] Hamilton, *supra* note 85.

[112] *Id.*

[113] COOKE, *supra* note 36, at 89.

[114] Hamilton, *supra* note 85.

> of an institution, which is itself a source of general accommodation. . . . though liable to be redrawn at any moment, experience proves, that the money so much oftener changes proprietors than place, and that what is drawn out is generally so speedily replaced as to authorize the counting upon the sums deposited, as an *effective fund*; which . . . enables [the Bank] to extend loans, and to answer all demands . . . arising form the occasional return of its notes.[115]

Hamilton also observes that national banks facilitate pecuniary aids including during times of emergency, because "[t]he capitals of a great number of individuals are . . . collected to a point[.] . . . The mass, formed by this union, is in a certain sense magnified by the credit attached to it[.] . . . the interest of the bank to afford that aid . . . is a sure pledge of its disposition."[116] Finally, Hamilton argued that a national bank facilitates the collection of taxes for two reasons. First, "[t]hose who are in a situation to have access to the Bank can have the assistance of loans to answer with punctuality the public calls upon them[,]"[117] and second, a national bank could create a general currency that would allow anyone and everyone to pay any debt that they incurred. "The other way, . . . is the increasing of the quantity of circulating medium and the quickening of circulation. . . . [W]hatever enhances the quantity of circulating money adds to the ease, which every [man] . . . to better pay his taxes as well as supply his other wants."[118]

Once again, Hamilton's critics saw the creation of a national bank as a giveaway to Northern Capital. As Cooke has noted Hamilton's critics "though that he was strengthening the government's servitude to business interests of the Northeast. . . Both sectional and class interests were responsible for Congress' opposition to Hamilton's bank report."[119] This time however, Hamilton's efforts appear to be a good faith—albeit most likely naïve—believe that such a private institution would act in the best interests of the people as a whole rather than in the interests of an elite few. Miller indicates "[n]otwithstanding Hamilton's insistence upon private control of the Bank of the United States, he was resolved that the Bank should be run mainly for the benefit of the public." More specifically, Miller suggest that the reason Hamilton thought this was possible was "Hamilton believed that it was sufficient for government to keep businessmen on the right track by a system of rewards and penalties, always bearing in mind that their initiative

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[115] *Id.* at 49.
[116] *Id.* at 50-51.
[117] *Id.* at 51.
[118] *Id.*
[119] COOKE, *supra* note 36, at 90.

must not be paralyzed by too many directives and too much officiousness." As Hamilton himself put it "[t]o attach full confidence to an institution of this nature it appears to be an essential ingredient in its structure, that it shall be under a *private* not a public direction – under the guidance of *individual interest*, not of *public policy*."[120]

In his *Report on Manufactures*, Hamilton outlined what is now known as the Infant Industry Argument.[121] Namely, that the United States should protect infant industries until they had the ability to compete with foreign competitors by implementing tariffs, creating patent laws to encourage innovation,[122] and building a transportation network including "[g]ood roads, canals[,] and navigable rives to connect the nation together.[123] Speaking on the topic of transportation networks specifically, Hamilton indicated that a comprehensive national plan to establish and regulate interstate transportation networks is one of the best strategies of promoting industry, and that it should naturally be the pride of the people of any nation.[124]

> Improvements favoring this object intimately concern all the domestic interests of a community; but they may without impropriety be mentioned as having an important relation to manufactures. There is perhaps scarcely anything which has been better calculated to assist the manufacturers of Great Britain, than the amelioration of the public roads of that Kingdom, and the great progress which has been of late made in opening canals. Of the former, the United States stand much in need; for the latter they present uncommon facilities.
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> The symptoms of attention to the improvement of inland Navigation, which have lately appeared in some quarters must fill with pleasure every breast warmed with a true zeal for the prosperity of the Country. These examples, it is to be hoped, will stimulate the exertions of the Government and citizens of every state. There can certainly be no object more worthy of the cares of the local doubt of the power of the national Government to lend its direct aid on a comprehensive plan. This is one of those improvements, by any part or parts of the Union.[125]

Lest you think that perhaps Hamilton is turning over a new leaf and learning to root his economic policies in grassroots populism, he immediately makes clear that creating an interstate transportation network will, of course, require crushing local opposition.

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[120] MILLER, *supra* note 83, at 261
[121] Hamilton, *supra* note 86.
[122] HA-JOON CHANG, ECONOMICS: THE USER'S GUIDE, 47 (2015).
[123] Hamilton, *supra* note 86, at 178.
[124] *See* Hamilton, *supra* note 86.
[125] Hamilton, *supra* note 86, at 177-78.

There are cases in which the general interest will be in danger to be sacrificed to the collisions of some supposed local interests. Jealousies, in matters of this kind, are as apt to exist as they are apt to be erroneous.[126]

Jefferson served as a foil for Hamilton's economic vision. "The quarrel between Hamilton and Jefferson is the best known and historically the most important in American political history."[127] Generally, Jefferson opposed the conversion of the American economy from a largely agricultural economy to an industrial one. Although personally disturbed by the institution of slavery (an institution he was personally a beneficiary of), Jefferson rationalized his beliefs under the idealized vision of a nation of independent farmers subsisting off individual plots of land.

> Wishing to hold fast to an idealized past, [Jefferson] saw a nation of planters and farmers, the latter tilling their own soil, turning out local manufactures, and employing only their own families, and the planters overseeing the labor of their slaves. Appalled by the prospect of ubiquitous factories, impoverish industrial workers, and urban blight, he recoiled from the budding Industrial Revolution abroad and its possible transplantation to America. The way of life he wished to preserve was that which he had known in Virginia (although about slavery his conscience was troubled).[128]

Both the Federalists and the Jeffersonian Democrat-Republicans were represented in the administration of George Washington; the first presidential administration.[129] Hamilton, however, as the first Treasury Secretary had far more influence on developing the economy than Jefferson did (or even could) as the first Secretary of State; both by virtue of the subject matter of the departments that they presided over and the size of those Departments.[130] Hamilton, for example, had 30 clerks to assist him in his duties while Jefferson had only four.[131] On a personal level, Hamilton also had a deeper relationship with President Washington being both a former *protégé* and close confidant.[132] Thus, Hamilton was able to garner more influence in the Washington administration then Jefferson was.

Hamilton left the Treasury department towards the end of the Washington administration,[133] and Washington was replaced as President by

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[126] *Id*.
[127] *Id.* at 109.
[128] *Id.* at 115.
[129] ZINN, *supra* note 27, at 97.
[130] COOKE, *supra* note 36, at 74.
[131] *Id.*
[132] *Id*. at 9-20.
[133] *Id.* at 157.

John Adams; a federalist.[134] More importantly, Hamilton was replaced at Treasury by Oliver Wolcott, Jr. who was a committed federalist and saw eye to eye with Hamilton on economic policy.[135] As a result, Hamilton's economic vision endured beyond his tenure at the Treasury Department.

John Adams would lose his bid for reelection to Thomas Jefferson,[136] and the Federalists became a minority party (never holding power again) until their dissolution after the War of 1812.[137] Jefferson appointed Albert Gallatin to the Treasury Department and served until 1814.[138] Gallatin was a loyal Jeffersonian Democrat-Republican who clashed with Hamilton's economic thought and the economic policies of the Federalists as a whole.[139] By this point in time however, the institutions and policies created by Hamilton had been in place for over a decade and had cemented themselves into the government.[140] Thanks to the Court packing scheme at the end of the Adam's administration moreover, the Federal Bench was filled with federalist judges to protect these Federalist institutions.[141]

Having reviewed Hamilton's economic thought, we now turn to its relation to the key cases of the Marshall Court (*Marbury v. Madison*,[142] *McCulloch v. Maryland*,[143] and *Gibbons v. Ogden*).[144] As we have discussed, Hamilton saw a need to transform the American economy from an agricultural economy to a to an industrial one. In pursuit of this endeavor, Hamilton has little if any concern for the opinions of the People; insistent on pushing his vision through at all costs. More importantly, the Federalists found Hamilton's vision convincing. Unfortunately, the Federalists were voted out of power in 1801. As previously noted, the outgoing Adams administration packed the judiciary to ensure Federalist influence after being voted out of office. In *Marbury*,[145] the Marshall Court assumed the power to determine – even over the objects of Congress – what the Constitution means. In this capacity, the Marshall Court determined that the Constitution said about Hamilton's vision. In *McCulloch*,[146] the Marshall Court found the Federal Government could create a national bank thus fulfilling Hamilton's

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[134] *Id.* at 184.

[135] *Id.* at 74, 105, 117, 154, 160, 187-88, 195, 218, 219, 241, 268.

[136] *Id.* at 229-30.

[137] CLEMENT EATON, HENRY CLAY AND THE ART OF AMERICAN POLITICS 34-35 (1957).

[138] *Albert Gallatin*, ENCYC. BRITANNICA, https://www.britannica.com/biography/Albert-Gallatin (last visited Dec. 6, 2024).

[139] *Id.*

[140] COOKE, *supra* note 36.

[141] *Judiciary Act of 1801*, *supra* note 41.

[142] Marbury v. Madison, 5 U.S. 137 (1803).

[143] McCulloch v. Maryland, 17 U.S. 316 (1819).

[144] Gibbons v. Ogden, 22 U.S. 1 (1824).

[145] Madison, 5 U.S. at 137.

[146] McCulloch v. Maryland, 17 U.S. 316 (1819).

recommendations in the *Report on a National Bank*, and, in *Gibbons*,[147] the Marshall Court found that transportation equals commerce; thus ensuring the Federal Government had the ability to build and regulate the transportation such as canals as outlined in Hamilton's *Report on the Manufactures*.[148]

Alexander Hamilton is perhaps the single individual who best represents the prevailing economic thought of Northern Capital during the early years of the United States. We can see Hamilton's influence in the Marshall Court during the Marshall Court including: allying with the interests of Northern Capital, creating a national bank, and regulating interstate transportation.

CONCLUSION

The best explanation for the jurisprudence of the Marshall Court is that, rather than relying on the text of the Constitution itself, it was manipulated in order to implement the economic consensus of Northern Capital; in particular the economic thought of Alexander Hamilton. In order to adequately understand constitutional interpretation, one must look beyond the four corners of the Constitution itself. The best field of discipline to observe in order to properly understand the Constitution is economic thought. Alexander Hamilton's economic thoughts provide the best explanation for the jurisprudence of the Marshall Court. Without understanding Hamilton's economic beliefs, it is difficult, if not impossible, to determine how the Marshall Court determined, without any explicit authorization from the Constitution itself, that it: had the authority to overrule a democratically elected legislature; could authorize a national bank; or could authorize the Federal Government to assume control of interstate transportation networks; without referencing the economic thought of Alexander Hamilton who advocated: ignoring the will of the people; establishing a national bank; and regulating interstate transportation networks. This explanation provides clarity where others provide confusion and is the best explanation for our observations.

[147] Gibbons, 22 U.S. at 1.
[148] Hamilton, *supra* note 86.