

The Command of Our Own Fortunes

Three Lectures on the Statesmanship of George Washington

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Lecture II:

Washington as Lawmaker: “We have a character to establish”

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Thank you, Gay. It is so wonderful to be with you all again. I'm especially glad to see that so many of you came back for more.

In our last conversation, we discussed George Washington as Founder, and placed him in a very broad historical context. We left off in 1783 at Newburgh – where Washington rejected the use of military force to establish the political arrangement at the end of the Revolutionary War. The significance of this particular moment is great, because the choice of the rule of force or the rule of law is all important.

It is not that General Washington was incapable of forceful actions. In fact, he never shied away from using his power to advance the strategic objectives of the war.

In 1776, and again in 1777, when Congress was forced to abandon Philadelphia in the face of advancing British troops, General Washington was granted virtually unlimited powers to maintain the war effort and preserve civil society – powers not unlike those assumed in an earlier era by Roman dictators.¹ At one point, Washington ordered farmers to harvest, thresh and deliver their grain to him according to specific timetables or risk having it seized by the army.² At another point, he proclaimed that all who had not taken an oath of loyalty within thirty days would be considered “enemies of the American states” and treated accordingly.³

And yet, when he was given the opportunity at the end of the war to use his power to determine the political outcome of the revolution, he refused.

As we discussed last time, this had much to do with Washington's deep understanding of virtue, honor, and the nobility of democratic government. A more complete answer requires that we flesh out Washington's alternative. And so this evening I want to discuss Washington and the cause of constitutional government, and consider how that idea, from the very start, defined his strategic vision and guided his actions.

Constitutionalism is often, and rightly, associated with those who framed the Constitution, especially James Madison. But it is Washington, I believe, who played the

¹ Washington was given the “full power to order and direct all things relative to the department, and to the operations of war.” Resolution of Congress, December 12, 1776, in Writings of Washington, 6:354n. See also, Garry Wills, Cincinnatus: George Washington and the Enlightenment (New York: Doubleday & Company, 1984), 17-23.

² Proclamation, December 20, 1777, Writings of Washington, 10:175.

³ Proclamation, January 25, 1777, Writings of Washington, 7:61-63.

most significant role in the development of constitutional government in the United States, and thus our constitution as a people.

Early Constitutional Thought

We can see Washington's constitutional mind at work from the very beginning. In 1758, after the French and Indian War, Washington resigned his British commission and returned to Mount Vernon, where he married Martha Custis and began a 15-year career in the Virginia House of Burgesses. This placed him at the very center of the unfolding debate over the constitutional relationship between Great Britain and America.

The first real political crisis came with the passage of the Stamp Act of 1765--Parliament's first direct tax on the colonies. Washington's reaction was that this act was "a direful attack upon their Liberties" and an "unconstitutional method of Taxation."⁴ When the Stamp Act was repealed and replaced by the less onerous Townshend Acts, Washington maintained that it was "highly necessary that some thing shou'd be done to avert the stroke and maintain the liberty which we have derived from our Ancestors." If the colonies could not avert British actions by peaceful means, Washington saw the possible necessity of armed resistance. He told George Mason in 1769 that "no man shou'd . . . hesitate a moment to use arms in defense of so valuable a blessing [as liberty]."⁵

There was no spirit of compromise when Parliament passed the Tea Act in May of 1773 and subsequently (in the first of the Coercive Acts) closed the Port of Boston after the Massachusetts colonists' infamous Tea Party. When Virginia objected, and the Royal Governor in turn dissolved the House of Burgesses, Washington led the effort in Virginia to assert colonial self-government and convene the First Continental Congress. The British, Washington wrote in the summer of 1774, were "endeavoring by every piece of Art and despotism to fix the Shackles of Slavery upon us."⁶

Washington collaborated with George Mason in drafting the Fairfax Resolves to instruct the county's representatives in the Virginia legislature. The Resolves asserted the principle that colonial representatives must consent to the laws governing America. When Parliament claimed to pass laws without that consent, it violated the principles of the British constitution, as well as colonial charters and, more fundamentally, the natural rights of all men. The Resolves called for a non-importation association, urged non-exportation and called for a plan to defend American rights. They also proposed warning the King that the next appeal would be a resort to arms.

Particularly revealing is a series of letters between Washington and loyalist Bryan Fairfax, the son of his old friend William Fairfax, one month before the First Continental Congress. Fairfax reminded Washington that "it becomes good subjects to submit to the

⁴ Washington to Francis Dandridge, September, 20, 1765, in Writings of Washington, 2: 425.

⁵ Washington to George Mason, April 5, 1769, in Writings of Washington, 2: 501.

⁶ Washington to George William Fairfax, June 10, 1774, in Writings of Washington, 2:224.

Constitution of their Country.”⁷ He wanted to know how a loyal subject who recognized the good of the British constitutional order could justify such revolutionary ideas.

Washington unambiguously replied that Parliament was undermining colonial rights and liberties as part of a plan to impose a "despotic system of tyranny" upon the colonies. "The Parliament of Great Britain hath no more right to put their hands into my pocket, without my consent, than I have to put my hands into yours for money."⁸

In another letter, Washington told Fairfax that while he had “no new lights to throw on the subject,” “an innate spirit of freedom” had brought him to conclude “that the measures, which [the British] hath for some time been, and are now most violently pursuing, are repugnant to every principle of natural justice.” He had also become convinced by “abler heads”--probably George Mason and Patrick Henry--that the British laws were “not only subversive to natural right, but subversive of the laws and constitution of Great Britain itself.”⁹ Washington did in fact make many arguments drawn from the English constitution, but his arguments were also always a reflection of the more fundamental laws of nature.

In the spring of 1775, British troops in Massachusetts began preparing for possible hostilities by seizing rebel cannon and gun powder. By the time Washington attended the Second Continental Congress in May, fighting had already broken out at Lexington and Concord. The last resort of armed resistance which he had foreseen in 1769 was now at hand.

Revolutionary Thoughts

In the spring of 1776, Washington wrote the President of Congress advocating that Congress proclaim “in words as clear as the sun in its meridian brightness” that “the spirit of freedom beat too high in us to submit to slavery” and that “we are determined to shake off all connexions with a state so unjust and unnatural.”¹⁰ That June, General Washington took valuable time from military operations in New York to come to Philadelphia, lobbying the Continental Congress for two weeks, and leaving just three days before his friend and fellow Virginian, Richard Henry Lee, introduced his fateful resolution for independence.

⁷ Bryan Fairfax to Washington, July 17, 1774, in Writings of Washington, 3: 230n.

⁸ Washington to Bryan Fairfax, July 20, 1774, in Writings of Washington, 3: 232-4.

⁹ Washington believed that the acts of Parliament were “no longer governed by the principles of justice” and that the crisis had finally arrived when Americans must assert their rights “or submit to every imposition, that can be heaped upon us, till custom and use shall make us as tame and abject slaves, as the blacks we rule over with such arbitrary sway.” Washington to Bryan Fairfax, August 24, 1774, in Writings of Washington, 3:232-4.

¹⁰ Washington to Joseph Reed, February 10, 1776, in Writings of Washington, 4: 321. In the same letter, Washington complained of “the ardor of the chimney-corner heros,” a phrase reminiscent of Paine's later phrase “summer soldier and sunshine patriot.”

By the time Congress made its formal declaration on July 4, Washington by his actions had already declared *de facto* independence, reorganized the continental army, and engaged the enemy.

George Washington understood the rights of human nature to be the moral ground of the American Revolution. Designing and establishing a government that would secure and protect those rights, however, would prove to be the difficulty. Determining and forging a path to achieve that end would be even more of a challenge.

The Articles of Confederation, drafted in late 1777 (but not approved until early 1781), created little more than a league of friendship, and quickly proved both insufficient to the war effort and an obstacle to the establishment of a stronger union. Dependent on the whims of state legislatures and faced with a weak and unwilling Congress, Washington was forced to spend much of his time writing to governors, begging for men and supplies. Mired in their own local concerns and prejudices, the states had become hotbeds of political corruption and poor management.

As early as 1779, Washington saw “a very disagreeable train” of events: “The rapid decay of our currency, the extinction of public spirit, the increasing rapacity of the times, the want of harmony in our councils, the declining zeal of the people, the discontents and distresses of the officers of the army; and I may add, the prevailing security and insensibility of danger, are symptoms, in my eye of a most alarming nature.”¹¹ The problem was that jealous and petty politics invited and encouraged a jealous and petty spirit in the people. By nourishing petty politics, speculation, and special interests, and generally aiding narrow political passions, bad government undermined the possibility of self-government.

But rather than taking up Colonel Nicola’s infamous invitation to become a king, or the call of others (including several of his senior officers, and at one point, James Madison, and at another, Alexander Hamilton) to seize control of the national government, Washington took a different course. “The honor, power, and true Interest of this Country must be measured by a Continental scale,” he wrote. The solution was “to form a Constitution that will give consistency, stability and dignity to the Union” --a permanent union of the states upon republican principles under a well-defined, national structure. To form such a constitution was “a duty which is incumbent upon every Man who wishes well to his Country.”¹²

The successful outcome of the Revolutionary War saw an end to hostilities, but also the beginning of such an honorable venture. “We now stand an Independent People, and have yet to learn political tactics,” Washington wrote Lafayette in the spring of 1783. “We are placed among the Nations of the Earth, and have a character to establish.”¹³

¹¹ Washington to Gouverneur Morris, May 8, 1779, in Writings of Washington, 15: 25.

¹² Washington to Marquis de Lafayette, April 5, 1783, in Writings of Washington, 26:298.

¹³ *Ibid.*

Washington believed that having increased authority in a national government—an idea thought to be antithetical to the principles of republicanism—was in fact necessary for establishing a workable republican government. But it had to be done in a way that was consistent with the principles of free government and the character of a free people. A new constitution was crucial to the larger task of forming a republican people. “In a word, the Constitution of Congress must be competent to the general purposes of Government; *and of such a nature as to bind us together*. Otherwise, we may well be compared to a rope of Sand.”¹⁴

The Circular Address

In the summer of 1783, Congress deserted Philadelphia and pretended to rule the country from the village of Princeton, New Jersey. Congressman Madison was focused on ensuring that commercial treaties made their way through congressional committees. Governor Jefferson was still in Virginia, having not yet arrived in Congress. Alexander Hamilton resigned from Congress in disgust of its inability to function, returning to private law practice, but not before drafting a call for a convention to amend the Articles of Confederation. Under the circumstances, Madison convinced him to drop the idea. Benjamin Franklin in France and John Jay in England were working on the peace treaty, as was John Adams before heading to Holland.

Nevertheless, Washington, acting independently from his military headquarters in New York, made one of his boldest moves. Just three months after the crisis at Newburgh--and only two years in to the Articles of Confederation --he called for a new constitutional order.

During the war, General Washington communicated with the state governors (who provided the funds and personnel for the war effort) by way of official and virtually identical letters called “circulars.” His final (and longest by far) is that of June 14th, 1783.

In it, Washington congratulated the governors on the American military victory and announced his intention to return his military commission, the “great object” for which he had been appointed now “being accomplished.” But then Washington presented a choice of historic proportions. This was the “moment,” he declared, that would “establish or ruin the national Character forever”¹⁵ The peace had been won, independence had been established, and a vast territory was now in their sole possession. It was in the power of the American people to decide their own fate and choose to be a respectable and prosperous nation, or a contemptible and miserable one.

The answer to this question would determine whether the Revolution would turn out to be “a blessing or a curse.” “This is the moment,” he wrote, “when the eyes of the World are turned upon them.” That language closely parallels Washington's orders of July 1776: when the question was whether Americans were to be “Freemen, or slaves”; and “the

¹⁴ Washington to Lieutenant Colonel Tench Tilghman, 24 April 1783, in Writings of Washington, 26: 359.

¹⁵ Washington, Circular to the States, June 8, 1783, in Writings of Washington, 26:483-96.

eyes of all our Countrymen” were upon them.¹⁶ In both cases, the fate of millions rested on the decision. Washington believed that the choices of 1783 were as important as those of 1776.

Washington beautifully described the unique circumstance of America as having been "peculiarly designed by Providence for the display of human greatness and felicity."¹⁷ But the opportunity did not guarantee success. For that, he asserted, you must “seize the occasion and make it your own.” Washington recommended four things: the “Pillars”, as he called them, "on which the glorious Fabrick of our Independency and National Character must be supported.”

The first pillar is an indissoluble union of the states under a national government. Washington always understood union to be the substance of American nationhood. As early as 1756, he had advocated an association of the states for purposes of self-defense. By 1783, he argued that a stronger constitutional union was essential to liberty and national independence. Foreshadowing Lincoln’s address at Gettysburg, Washington argued that without union the “fruits of the Revolution” would be lost, and the suffering and bloodshed of the war “would have been made in vain.”

Second, Washington recommended a sacred regard for public justice. He was concerned with the debt owed his soldiers of course, and those owed the states from the war, but also with the general upholding of contracts, agreements and obligations throughout the nation. In short, constitutional government first required a fundamental public commitment to the rule of law.

Third, Washington wanted the adoption of what he called "a proper peace establishment." It was necessary for the defense of the republic that the continental militia—“the palladium of our security,” he called it—be placed on “a regular and respectable footing” and that the army be built upon a single system of organization, uniform throughout the Union. Experience taught the difficulty, expense, and confusion that resulted from any other arrangement.

And fourth, Washington came back to his great theme of character. Republican government required “a pacific and friendly Disposition among the People of the United States, which will induce them to forget their local prejudices and policies, to make those mutual concessions which are requisite to the general prosperity, and in some instances, to sacrifice their individual advantages to the interest of the Community.” The particulars of that national character, here left to “the good sense and serious consideration” of others, can be seen throughout Washington's writings and in all his major addresses. He returned to the theme in the conclusion of the Circular Address in the form of a prayer for the nation. This passage is significant because it is an expansion on Washington's favorite book of the Bible.

¹⁶ Washington, General Orders, July 2, 1776, in Writings of Washington, 5: 211.

¹⁷ Washington, Circular to the States, June 8, 1783, in Writings of Washington, 26:483-96.

"I now make it my earnest prayer, that God would have you, and the State over which you preside, in his holy protection," he begins. He ends by asking that God "would most graciously be pleased to dispose us all, to do Justice, to love mercy, and..." (not merely "walk humbly with thy God," which is the language of Micah chapter 6 verse 8) but, even more challenging,

to demean ourselves with that Charity, humility and pacific temper of mind, which were the Characteristics of the Divine Author of our blessed Religion, and without an humble imitation of whose example in these things, we can never hope to be a happy Nation.¹⁸

For Washington, the American Founding was an auspicious moment that would prove the viability of republican government and determine the political future of liberty. But the crucial act in the founding of the new nation was the formation of a good Constitution and the establishment of the habits of citizenship that would stamp the nation with an indelible character and make its people capable of ruling themselves.

Six months after the final British withdrawal from America and after retaking the city of New York, Washington proceeded to Annapolis in order to resign his commission to Congress. This brief episode in late 1783, almost anti-climatic – the dénouement of the Revolution – is perhaps the most significant event of American history, and laid the groundwork for everything that would follow.

Road to Philadelphia

The Articles of Confederation had been ratified in March 1781 -- three and a half years after their initial submission to the states. The first comprehensive reforms that were submitted by Congress to the states came in April 1783, but they languished for a year without any action. Congress considered revisions in 1786, but never even submitted them to the states. As Congress failed to act, and the states continued to bicker, the situation worsened. The country was at "the brink of a precipice."¹⁹

Once again, Washington took the lead. In March 1785, commissioners from Virginia and Maryland met in Alexandria, Virginia to consider problems dealing with the navigation of the Chesapeake Bay and the Potomac River. The meeting was moved to Mount Vernon to be under Washington's watchful eye. The commissioners agreed on the jurisdictional questions and recommended uniform commercial regulations, a uniform currency, and an annual meeting of states to discuss commercial problems. As a result, the Virginia legislature invited all the states to meet in Annapolis. That meeting failed, but it took the step (in language drafted by Alexander Hamilton) of calling for a convention at Philadelphia in May 1787 to discuss all matters necessary "to render the constitution of the Federal Government adequate to the exigencies of the Union."²⁰

¹⁸ Washington, Circular to the States, June 8, 1783, in *Writings of Washington*, 26:483-96.

¹⁹ Washington to Thomas Johnson, October 15, 1784, in *Writings of Washington*, 27: 481.

²⁰ Henry Steele Commager, ed., *Documents of American History*, Vol. I, (New Jersey: Prentice-Hall, 1973), p. 133.

By late 1785 Washington had concluded that the confederation was “a shadow without the substance” and that Congress was but “a nugatory body.” So far had things declined that, “from the high ground on which we stood,” Washington wrote, “we are descending into the vale of confusion and darkness.”²¹ Shays' Rebellion in western Massachusetts, during which the local militia hesitated and the federal government proved helpless, made manifest the threat to popular self-government.

Throughout this “critical period,” Mount Vernon was the hub of nationalist conversation. Washington's intense correspondence with James Madison in 1786 tells the story.

Thirteen competing sovereignties would soon bring ruin to the whole nation, Washington wrote Madison, but “a liberal and energetic Constitution, well guarded and closely watched to prevent encroachments, might restore us to that degree of respectability and consequence, to which we had a fair claim, and the brightest prospect of attaining.” The upcoming convention in Philadelphia, Washington observed, “may be the spring of reanimation” needed to save the country.²²

Madison informed Washington that the Virginia legislature would send a delegation to the upcoming convention, and that they had nominated Washington as its head. But Washington hesitated. At first, he said it was because of a scheduling conflict. He asked Henry Knox whether his nonattendance would be seen as a dereliction of his republican duty. Finally, at the strong behest of his associates, he said that he would attend--if his health permitted. Still, Washington delayed.

Some see this as a lack of seriousness and initiative. His letters present a different explanation. Aware of the failure of the Annapolis Convention, he worried that all the states would not be represented and that those that were would so constrain their delegates that the whole proceeding would be jeopardized. Only when it became clear that the delegates would have sufficient freedom to provide for serious changes did Washington act--and he acted decisively.

Washington wrote Madison that the convention must adopt “no temporizing expedient” but instead “probe the defects of the Constitution to the bottom, and provide radical cures.” Any new constitutional structure must give adequate powers and energy to the federal government. It must allow the discretion and dispatch characteristic of all good government. Finally, it must have the confidence and ability to exercise national powers and pursue national policies. This must be the plan of the convention from the beginning: “a conduct like this, will stamp wisdom and dignity on the proceedings.”²³

Washington asked for Madison's considered thoughts, and Madison had been thinking. He replied by submitting to Washington his outline of a new system based on the creation of a supreme national government and a change in the principle of representation.

²¹ Washington to James Warren, October 7, 1785, in Writings of Washington, 28:290.

²² Washington to James Madison, November 18, 1786, in Writings of Washington, 29:71.

²³ Washington to James Madison, March 31, 1787, in Writings of Washington, 29:191-2.

Characteristically, Washington made his own notes from this before leaving Mount Vernon. While they waited at Philadelphia for a quorum of delegates, Washington presided over daily morning meetings of the Virginia delegation to consider strategy and refine Madison's proposals, which became the Virginia Plan that was presented at the outset of the convention.

Immediately elected president of the convention, Washington presided over the enterprise for the next four months. He contributed to formal debate only once, at the end of the Convention. Yet his leadership and silence only served to increase his moral authority. He worked actively behind the scenes and caucused with his state delegation throughout the proceedings, and an examination of his voting record shows his consistent support for a strong executive and strong national powers—two issues on which he was a leading advocate. The convention placed all the papers and notes of the proceedings in his care.

Although he did not publicly participate in the ratification debate, Washington staunchly supported the Constitution. To his allies, Washington was unequivocal and decided on the issue of ratification; he increased his correspondence with key political leaders and invited others to circulate and communicate his strong support for the new plan.

Washington had good reasons to support the resulting document: it established a national government, created a strong executive, and formed the legal framework necessary for a commercial republic. In doing so it opened the door to restoring health to the national character.

The Path to Self-Government

While it still remained to be seen whether “there is good sense and virtue enough left to recover the right path,” Washington thought the favorable outcome of the congressional elections of 1788—which overwhelmingly elected supporters of the Constitution—to be a good sign.²⁴ “If I can form a plan for my own conduct,” he told Lafayette, anticipating his presidency, it would be to “extricate my country from the embarrassments in which it is entangled” and “establish a general system of policy” that would lead to its political happiness. “I think I see a *path*, as clear and as direct as a ray of light, which leads to the attainment of that object.”²⁵

Washington was well aware that his every word and action, small and large, would set the example for the future. “As the first of everything, in our situation will serve as a Precedent, it is devoutly wished on my part, that these precedents may be fixed on true principles,” Washington explained to Madison.²⁶ These precedents, rightly established, would legitimate the presidency but also the Constitution, and thereby the nation.

²⁴ Washington to Benjamin Lincoln, June 29, 1788, in Writings of Washington, 30:11.

²⁵ Washington to Marquis de Lafayette, January 29, 1789, in George Washington: A Collection, ed. W.B. Allen (Indianapolis: Liberty Classics, 1988), p. 428.

²⁶ Washington to James Madison, May 5, 1789, in George Washington: A Collection, ed. W.B. Allen (Indianapolis: Liberty Classics, 1988), p. 531

Washington always understood his great potential for raising the moral tone of his soldiers, of lawmakers and the American citizenry, a point seen clearly in his First Inaugural--his first official communication as president. The vehicle for doing this--and the constant object of his grandest vision for the nation--was the Constitution, which he now swore to faithfully execute, and to preserve, protect and defend. And so the sacred fire of liberty remains in the hands of the American people.

But as I said earlier, the great turning-point events occurred over the course of 1783, halfway between the principled words of the Declaration of Independence and the operational framework of the Constitution, during the difficult transition from war to peace, and the tectonic shift from a world dominated by force to one based on the rule of law and the consent of the governed. These are perhaps the most important events in the history of liberty and constitutional government the world has yet known. And in every case, one man stood alone. George III observed that Washington would be the greatest man of the age. Defeated and exiled, Napoleon, the tyrant dictator produced by the French Revolution, is said to have lamented the significance of it all: "They wanted me to be another Washington."

That the American Revolution led to a constitutional government--and that the all-powerful commander on the battlefield doggedly brought his country to establish a written Constitution of self-government--explains why George Washington (perhaps even more than the ever-brilliant James Madison) could be said to be America's true lawgiver.

According to the Athenian stranger in *The Laws*, Plato's most practical political dialogue, "It is really the case that lawgiving and the founding of cities is the most perfect of all tests of manly virtue."²⁷ So it is.

These great moments of the American narrative--in which the founder gives up power to become the lawgiver--presage Washington's last resignation and farewell, in which he assumed the role of statesman, and offered an assessment of his completed project and gave his lasting advice to America and the friends of liberty everywhere.

But this is the topic of my final lecture, contemplating Washington's final objective of bequeathing to his beloved country, to the extent humanly possible, the command of its own fortunes.

²⁷ Plato, *The Laws of Plato*, 708d and 712a, trans. Thomas L. Pangle (Chicago: University of Chicago Press, 1980), 94, 97-8.

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