WHY DID WASHINGTON SUCCEED?[*]

by
W. B. Allen
Michigan State University

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I

No political philosopher ever wrote about George Washington, if we hesitate to call John Marshall a political philosopher. No political philosopher ever asked the question, Why did Washington succeed? Which is all the more curious inasmuch as Washington is the only American founder who explicitly described his reflections and his actions as deriving from philosophical speculations.[1]

When we search for philosophical guidance as to the sources and direction of the American founding – and, therefore, founding in the modern world – contemporary political philosophers have exclusively devoted attention to the Madisons, Hamiltons, and Jeffersons and their supposed antecedents in the modern enlightenment. Accordingly, they have written far more about the art of philosophical speculation than about the philosophical speculations that eventuated in the successful founding of a modern regime.

The reason for this neglect may be readily identified: Washington's political philosophy becomes clear entirely through his political deeds and the accounts he gives of them. That is, Washington never produced any philosophical speculation abstractly considered, nor even ventured a political science immediately descriptive of the founding experience (although he recognized and praised the political science of *The Federalist Papers* as the best of its genre).

The failure of political philosophers to enter specifically into Washington's political deliberations has assured that the secret of his success will remain secret. It is not to reveal what so many have for so long deliberately concealed that I now write about Washington's success. It is rather because I am not a political philosopher that I am able to take up Washington's claim seriously, being confident in the process that I will not advance the cause of political philosophy nor reveal its inner truths to the non-initiate.

Washington's public philosophical speculations began early in the Stamp Act Crisis, with the observation that "law can never make just which is in its nature unjust."[2] I believe that the exegesis of that principle constituted the balance of his work through the more than thirty years remaining in the effort to found the United States. Accordingly, I will try to set forth Washington's deliberations and his deeds insofar as they seem to demonstrate that the exegesis of this moral principle constituted the soul of that politics which actually produced the regime of modern liberty.

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[1] Letter to Catherine Macauly Graham, January 9, 1790, in W. B. Allen, *George Washington: A Collection* (Indianapolis, IN: Liberty Press, Inc., 1988 [2d printing, 1991]; "Few who are not philosophical spectators can realize the difficult and delicate part which a man in my situation had to act," p. 537.

[2] The *Collector Magazine*...

In 1797 King George III of England, Washington's erstwhile enemy, appraised Washington's resignation from the presidency, looking back at the dramatic 1783 resignation as Commander-in-Chief upon concluding the Revolutionary War that had won Washington world-wide fame, and concluded that they "placed him in a light the most distinguished of any man living, and that he thought him the greatest character of the age."[3] King George doubtless had no idea of Machiavelli's advice in mind as he spoke. George Washington, however, so frequently and well used the art of resignation, that one can wonder if he were not inspired by considerations like to those advised by Machiavelli.[4]

Washington began his career of resignations when he was still a youthful commander of the colonial militia in Virginia in the early 1750s. His objective then, however, was to pressure the colonial governor and assembly into providing more adequate provision for defense of the frontiers against Indian attacks. By the time of his resignation as Commander-in-Chief in 1783, however, he had clearly established concrete political plans that were to be advanced no less from "a private position" as they previously had been in his public role.

The gravamen of Machiavelli's advice was that a general whose great virtue had acquired for his prince or country new domain or secure liberty should anticipate suspicion. In this case he can act only in one of two ways, to resign the great powers he has acquired or to use those powers to establish himself in supreme office. Resigning would operate not only to defend against suspicion but also to build reputation.

When Washington resigned in 1783 he had already made it clear that he aimed to continue the effort to found a unified nation that could secure its "national character" into a remote futurity. Thus, it would not suffice for him to rule merely in his person. In phrasing his final prayer for his countrymen from *Micah* 6:8, so amended as to embrace the most extensive human ambition, Washington projected the goal he aimed at:

> That [God] would most graciously be pleased to dispose us all, to do justice, to love mercy, and to demean ourselves with that Charity, humility and pacific temper of mind, which were the characteristicks 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.[5]

Washington's *imitatio dei* converts Micah's humble prayer ("What does God ask of man, but to do justly, to love mercy, and to walk humbly with your God?") into an ambitious program to shape a world-historical people.

The conditions of this labor were clear to Washington as early as May, 1776:

> To form a new Government, requires infinite care, and unbounded attention; for if the foundation is badly laid the superstructure must be bad, too much time therefore, cannot be bestowed in weighing and digesting matters well. We have, no doubt, some good

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[3] Benjamin West to Rufus King, May 3 1797.

[4] *Discourses on the First Ten Books of Livy*, Bk I, Ch. 30; also see the general discussion in Machiavelli's dialogue, *On the Art of War.*

[5] "Circular Address to the Governors of the Thirteen States," June 14, 1783, in W. B. Allen, *George Washington: A Collection* (Indianapolis, IN: Liberty Press, Inc., 1988 [2d printing, 1991].

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> parts in our present constitution; many bad ones we know we have, wherefore no time can be misspent that is employed in separating the Wheat from the Tares. My fear is, that you will all get tired and homesick, the consequence of which will be, that you will patch up some kind of Constitution as defective as the present; this should be avoided; every Man should consider that he is lending his aid to frame a Constitution which is to render Million's happy, or Miserable, and that a matter of such moment cannot be the work of a day.[6]

American scholars will debate whether Washington in this passage invokes the constitution of the state of Virginia or the Constitution of the United States. It is fair to say, however, that the Commander-in-Chief who had already declared his permanent independence of the metropolis was not contrasting the colonial constitution with a projected new state constitution. Nor is it likely that Washington expected those future "happy millions" all to be Virginians.

In the very first year of the war, 1775, Washington had addressed the most fundamental question in his first "General Orders" to his troops (which were also always public documents):

> The Continental Congress having now taken all the Troops of the several Colonies, which have been raised, or which may be hereafter raised for the support and defense of the Liberties of America; into their Pay and Service. They are now the Troops of the United Provinces of North America; and it is hoped that all Distinctions of Colonies will be laid aside; so that one and the same Spirit may animate the whole, and the only Contest be, who shall render, on this great and trying occasion, the most essential service to the Great and common cause in which we are all engaged.[7]

We may fairly conclude, therefore, that the work of building "a national character," making one spirit to animate the whole, is a work separable from that of carrying on the armed struggle against the metropolis. Washington retained a profound sense of these separate works from the beginning to the end of the founding. He made unity the watchword of his communications to his troops and his countrymen, even as he made victory the end of his battlefield maneuvers. Thus, as victory on the battlefield eventually rose gracefully from the mire of struggle, Washington's project of unity remained to be pursued.

There is a connection between Washington's project of a United States of America and the early observation that "law can never make just which is in its nature unjust." The fragment spoke of imbibing "the true principles," as it railed against attempts to depreciate currency by law as unjust infringement of contracts. The injustice in this case was to be committed by the colonies, wrestling with the conditions brought on by Great Britain's series of enactments against the economic interests of the colonists. To be punctilious in matters of just respect formed a characteristic attitude for Washington. His conclusion that principles of justice could not survive within a constitutional arrangement that preserved the states as independent sovereigns led him to seek a home for that punctiliousness in a national union. This meant that Washington saw no hope for justice in the form of the country, Virginia, to which he owed his loyalty. Accordingly, he worked to create a new form in which justice acquires advantage, thus subordinating his patriotism to his love of justice.

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[6] George Washington to John Augustine Washington, May 31, 1776, in Allen, ibid., p. 69-70.

[7] July 4, 1775, in Allen, ibid., p. 42.

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II

Washington urged the notion of an American union, in the context of the Revolution, as early as 1775. The progress of the war made his appeals ever more strident and more insistent. In the final two years of the war, despite the enormous labors required to maintain his position in the face of a determined enemy, his appeals attained the status of virtual demands. Even as the Articles of Confederation came finally to be ratified (Maryland acceding and producing ratification March 1, 1781), Washington urged upon legislators and others the necessity for a still stronger national union. He reflected in this the fruit of sad experience: "we must take the passions of men as nature has given them, and those principles as a guide which are generally the rule of action."

Once the war was won and the enemy had left American soil, Washington returned to a Mt. Vernon in considerable disrepair to resume the domestic arts for which he had pined for eight years. Martha Washington had visited with him in the army's camp when occasion permitted and shared with him and his men their many privations. Her ministrations to the soldiers were a source of reinforcement for them and for George Washington. He had returned home but once during eight years of war, taking a brief stop there at the time of the Yorktown campaign. He could see already at that time the labors that lay before him to bring Mr. Vernon back to its former glory.

Though Washington plunged back into the tasks of managing his estates, public concerns still pressed in on him. He resumed his pre-war efforts to produce a waterway connection between the Transappalachians and the Potomac, as much for reasons of state, "to cement the union," as for reasons of commerce. Further, he continued to press for a strengthening of the union. Between the end of 1783 and 1786 Washington managed to draw a coterie of reform-minded men around him, whose efforts at length gave hope of a general reform of the Confederation.

The expectant air of Washington's correspondence during this period justifies his observation that "the present era is pregnant of great and strange events." The role he himself played in these events is central in constructing an accurate view of his political ideas. In the Constitutional Convention of 1787 Washington played a pivotal though quiet role. He was elected to preside and did not participate in the debates, with one notable exception on the final day. The influence that was visible on that singular occasion was exercised invisibly throughout the course of the Convention, as Washington maintained regular though informal conversation with the diverse delegates.

The single, compelling example of Washington's influence occurred on the last day of the Convention. At that moment the Constitution had been completely agreed on, save for the device for signing. It had been engrossed and was ready to hand, so soon as the Convention would determine how it wished to proceed in closing its work. In spite of the spirit of accomplishment that filled the air, however, the Convention remained a parliamentary body. Motions were still in order. Massachusetts's Gorham rose to move an alteration in the formula for representation. He urged a reduction in the scale of representation, from 1:40,000 to 1:30,000. King of Massachusetts and Carroll of Maryland "seconded and supported" the idea, despite the fact the Convention had reaffirmed the rule of 1:40,000, on a motion of James Madison, more than a month before and had undergone lengthy discussion prior to that time.

The only debate recorded in Madison's Notes on this day came from George Washington (though King and Carroll did apparently say something). The last substantive debate of the Con-

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vention was provided by its President, his only recorded contribution to the debate. He spoke as follows:

> When the President rose, for the purpose of putting the question, he said that although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible; – the smallness of the proportion of representatives had been considered by many members of the Convention, an insufficient security for the rights & interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan; and late as the present moment was for admitting amendments, he thought this of so much consequence that it would give much satisfaction to see it adopted.

Following this appeal no voice of opposition was raised, and the measure passed unanimously. Washington thereby set his seal on the genius of the regime as he had theretofore silently worked to assure that an adequate structure, capable of governing, would be erected.

This defining moment suggests that Washington was satisfied with the conditions he had laid out for success prior to the opening of the Convention. He called upon his coadjutors to "adopt no temporizing expedients, but probe the defects of the constitution to the bottom, and provide radical cures."[8] Nothing highlights Washington's determination and intent so clearly as the climax of his efforts toward union in the Convention of 1787. His actions make manifest his claim to LaFayette, that "I see a path, as clear and direct as a ray of light," to the ultimate political happiness and prosperity of the United States.[9]

Washington was perfectly esoteric in his conduct regarding the development of an American republic. He published no treatises in his own name and founded no societies (telling LaFayette that perhaps some American Homer would some day tell the story properly). Indeed, following the close of the war, he did not even hold any public office. He nevertheless very nearly monopolized the people's attention insofar as it concerned itself with the future form of the regime.

The "Circular Address" to which we adverted above carried the movement of reform through the Constitutional Convention (and indeed beyond, since it figured also in the ratification debates). In that address he had made clear that the conditions for achieving the status of "a people" in the United States hinged completely upon the establishment of a rule of justice, not only within the institutions but within the souls of its people. The pre-condition for self-government is the accomplishment of that prayer, for a disposition in the citizens "to do justice, to love mercy, and to demean ourselves with that charity, humility and pacific temper of mind," with which the address closed. A spirit of moderation, understood as a moral proposition – the acceptance of self-government as an objective not only in institutional terms but within the soul of each is that without which "we can never hope to be a happy nation." The accomplishment of such a spirit, however, turned upon the efforts of those who would supply the policies and institutions of the nation.

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[8] George Washington to James Madison, March 31, 1787.

[9] George Washington to LaFayette, January 29, 1789.

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By the end of the Convention Washington's words had already attained among his countrymen the weight of authoritative deeds (which is perhaps the reason he measured them so carefully). That was the prime asset he brought with him to the first American Presidency. Unlike great part of the nationalists (the Federalists), Washington did not undertake a general campaign of public declamation and publication on behalf of the Constitution – at least not directly. True to his past experience, his private expressions of opinion had the facility of finding their way into press. "Washington's opinions, even rumors of them, were too good copy to be passed over even at his desire."[10] Nevertheless, he held to his resolve "not to appear as a partisan in the interesting subject." He wished, rather, that the Constitution "might stand or fall according to its merits or demerits."

III

Washington revealed his view of the Convention's accomplishment only privately, in letters to friends, particularly distant friends, such as Catherine Macaulay-Graham and LaFayette. To LaFayette, for example, he could boast that the Constitution "is provided with more checks and barriers against the introduction of tyranny, and those of a nature less liable to be surmounted than any government hitherto instituted among mortals hath possessed."[11] Only once did he approach a full, public statement of his views (prior to the 1796 "Farewell Address," published on the anniversary of the Convention's approval of the Constitution). That occasion was his first inauguration in 1789, at which time he drafted an inaugural address that constituted a programmatic expression of his hopes.

Unfortunately, much of this draft address is lost to us. Once Washington decided against the departure from his characteristically laconic approach to public debate, the "Discarded Inaugural Address" fell prey to historical accidents that eventuated in its being cut into pieces and widely dispersed as handwriting samples. Standing even in its defective form, however, it is a manifest contribution to our ability to approach Washington's understanding. One example would be his assertion within the document, that "I presume now to assert that better may not still be devised." That was clearly his retrospective judgment on the work of the Convention, many of whose members he had warned beforehand to aim, not for the most that is acceptable, but for the best possible.

Washington appraised the work of the Convention as that of his "colleagues" and his own:

> Although the agency I had in forming this system, and the high opinion I entertained of my colleagues for their ability and integrity may have tended to warp my judgment in its favour; yet I will not pretend to say that it appears absolutely perfect to me, or that there may not be many faults which have escaped my discernment. I will only say, that, during and since the session of the Convention, I have attentively heard and read every oral and printed information on both sides of the question that could be procured. This long and laborious investigation, in which I endeavoured as far as the frailty of nature would per-

[10] Henry Knox to George Washington, quoted in "Washington and the Constitution," David Matteson, #7, in *Honor to George Washington*, ed. By Albert Bushnell Hart for the George Washington Bicentennial Commission, Washington, D. C. 1931, p. 21.

[11] George Washington to LaFayette, February 7, 1788.

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> mit to act with candour has resulted in a fixed belief that this Constitution, is really in its formation a government of the people; that is to say, a government in which all power is derived from, and at stated periods reverts to them – and that, in its operation, it is purely a government of Laws made and executed by the fair substitutes of the people alone.

Note the emphasis both on his *agency* in forming the system and his continued effort to assure himself as to its nature. The proposed address rehearsed all of the structural components of the Constitution from the perspective both of their republican safety and efficiency. He judged its superiority to most constitutions which "have existed in the world" on three grounds: first, it has adequate powers to perform the task of governing; secondly, it has no greater power than is requisite to accomplish the "safety and happiness of the governed;" and, third, (as he said to LaFayette) never before has any government so efficaciously guarded itself against degeneration into oppression. Washington continued to place the Constitution in the context of the Revolution, to show it as an accomplishment of the Revolution rather than of a latter day departure.

Why did Washington determine ultimately to avoid delivering this lengthy and probing analysis of the Constitution upon his first inauguration? The record is not clear. We can at best speculate. One thing is clear, however: the address lay the groundwork for a shift of patriotism from its former objects to this new object, whose charms thus far had attained only a theoretical expression.

Washington undertook to define the character of the regime as such, or, as he put it, "to express my idea of a flourishing state with precision; and to distinguish between happiness and splendour." In making that distinction Washington returned to the animating theme of the "Circular Address," self-government understood as a spirit of moderation. Now, however, he adds to it a spirit of "magnanimity," a spirit which becomes possible for a people truly moderate once they enjoy the blessing of a genuine regime.

This is the same "magnanimity" that Washington praised and encouraged in the 1796 "Farewell," suggesting that he ultimately determined its introduction in 1789 to be premature. This theme returned Washington to the meaning of the Declaration of Independence:

> I rejoice in a belief that intellectual light will spring up in the dark corners of the earth; that freedom of enquiry will produce liberality of conduct; that mankind will reverse the absurd position that the many were, made for the few; and that they will not continue slaves in one part of the globe, when they can become freemen in another.

Washington aimed, he explained, to assume the Presidency with a sense of duty (having explained already that he had no posterity to advantage by his conduct). He aimed, too, to do so in the company of his fellow citizens, entering a path that would yet prove "intricate and thorny," but which would "grow plain and smooth as we go."[12] It would grow so, he held, because of their adhering to that "eternal line that separates right from wrong."

Those final lines from the "discarded Inaugural" may suffice to explain why Washington did not deliver it after all. It were best, perhaps, to wait until the path had become "plain and smooth" before invoking that *amor patriae* the address otherwise seemed to inculcate.

[12] That is, consistent with that "path, as clear and direct as a ray of light," that he had anticipated.

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The "First Inaugural Address" that Washington delivered instead was a very simple, humble appeal for virtue in the citizens. Not until the 1796 "Farewell," the one spurring George III to declare Washington the "greatest character alive," did Washington take up a copious celebration of his fellow citizens, as though the path had, by then, grown "plain and smooth." That is at least the powerful implication of the claim in the "Farewell Address," that "the unity of government which constitutes you one people is now dear to you."

The Revolution had opened with a recognized love of liberty and a circumscribed patriotism. The true founding transformation consisted of an enlargement of patriotism, informed with a sense, not of consanguinity but, of common participation in the *imitatio dei*. The love of liberty is a powerful inducement toward constructing a free society; only the love of being one people provides the means of preserving it against foreign and domestic assault. Washington brought to the people his goal of union; he brought them to vaunt their particularism (newly acquired), the love of the American, and thus gave assurance to individual liberty.

The path followed by Washington – encouragement of virtue through intricate and thorny trials – alone suggests the reason for his success. Having determined to work with nature, rather than against her, Washington built up claims of justice sufficient to make lawmaking possible. Although all claims of justice are tied in some fashion to claims of patriotism, the laws of one's fatherland do not necessarily conform to the demands of justice.[13] The work of detaching a people from the laws of their fatherland, in order to render possible a greater, virtue-based patriotism, is difficult beyond the limits of ordinary imagination. George Washington apparently saw with clarity of vision that exceeded the ordinary. He succeeded because he cared more for justice than for patriotism.

[13] I have developed this principle in an essay, "The Truth About Citizenship: An Outline," in the *Cardozo Journal of International and Comparative Law*, vol. 4, No. 2, Summer, 1996, pp. 355-372.

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