George Washington and American Constitutionalism

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Epilogue:
George Washington and
the Constitutional Tradition

When George Washington stepped down from the presidency in the spring of 1797 the survival of the Constitution was still much in doubt. Never unreservedly optimistic about the "noble" experiment in republican self-government, the events of the previous eight years had left him deeply pessimistic about the prospects for that experiment. His political sensitivities had always been constructed as much out of fear as aspiration: fear of foreign powers, fear of intrigue and conspiracy, fear of the spirit of party and disharmony, fear of disorder and anarchy, fear even of man's capacity to live according to any constitution at all. The last years of his life were more and more given over to these fears. He became increasingly embittered by the elevated partisanship of national politics and by the personal invective that rained upon him in the last months of his administration. He offered his unequivocal support to John Adams and his old Federalist friends in their struggle with the Jeffersonians and warmly endorsed the Alien and Sedition Acts as an appropriate means of protecting "the constitutional form of government." He answered President Adams's call that he serve yet again as commander-in-chief of the federal army being mustered in anticipation of war with France. To Washington the "concord, peace, and plenty" that had welcomed the new constitutional government in 1789 was nowhere to be found in 1797. Things seemed to be falling apart.

But even if we account for the tragedy of a bitter and bloody Civil War fought by both sides in part over constitutional principles, things did not fall apart. Despite Washington's fears, the republic and the constitutional tradition upon which it was constructed endured. And Washington, despite a relatively short twenty-five-year career in public life and his own oft-repeated protestations of inadequacy, should be credited with significant contributions to this legacy.

As commander-in-chief of the Continental Army George Washi
ton remained steadfast in his commitment to republican principles. Throughout the war he subordinated himself to the lawful authority of Congress and the states, even in those times, and there were many, when he was convinced that the policies of the civilian governments impeded the successful prosecution of that war. When he was granted emergency powers he refrained from exercising them in any manner that might reflect dishonor on the army, himself, or the republican cause. When a series of mutinies and insurrections erupted within the army—mutinies directed more at the civilian governments than at the army’s command structure—he hesitated not at all to pit soldier against soldier in the defense of those governments. When the frustrations of many of the army’s most talented officers had festered to a point where a coup d’état was a real possibility, he stood almost alone among his comrades in reminding them of their republican duty.

Emerging nations in the last two centuries have often given birth to constitutional governments founded upon the most optimistic ideals and principles. But all too frequently those constitutional regimes are the victims of preemptive strikes by their military “protectors.” History demonstrates the wisdom of the old opposition republicans who believed fervently that no republic could long thrive where a standing army (or in modern terms, a permanent military establishment) existed. Yet the United States stands out as a shining exception. Here, the professional military takes pride in its unswerving support of the Constitution and its tradition of political disengagement. No constitution could survive long enough to become a tradition without a depoliticized military. George Washington’s role in establishing military subordination to popular government is incalculable. This alone would be sufficient to assure his inclusion on any list of essential Founders.

But Washington’s constitutional contributions did not end with the conclusion of the war. When internal crises in the postwar years led him to fear for the success of the grand experiment in republican self-government he chose to risk his hard-won reputation, a thing most precious to a classicist like Washington, in support of a peaceful, constitutional solution. His decision to attend the Philadelphia Convention lent that body a legitimacy it would not otherwise have had. Given that the final product of that assembly was a new Constitution, where merely amendments to the existing one had been authorized, Washington’s presence was probably indispensable. During the war his commit-
ment to republican principles had already been tested as had that of no other American. Thus, those who opposed the new Constitution had to surmount a formidable obstacle; George Washington had helped to write it and had given it a warm endorsement. The enterprise still very nearly failed. Ratification in such key states as New York and Virginia was in doubt until the very end. Washington alone did not carry the ratification fight, but it stretches credulity to contemplate federalist success without Washington's participation and support.

In an effort to quickly situate the new Constitution as the legitimate core of the constitutional tradition he accepted the new office of president. Recognizing that 'first forms' can often influence the direction of an embryonic constitutional tradition for generations to come, he assumed the presidency with an eye not merely toward safeguarding republican principles, but also toward incorporating his particular continentalist vision of republicanism. Like every president since, he did not fully succeed. But modern presidents, despite having to govern under conditions quite unlike those in Washington's time, must still confront a presidential structure that owes much to Washington's particular reading of the Constitution.

First, Washington accepted the view that a constitutional presidency was one that was subordinate to the rule of law. Washington never allowed his enthusiasms for particular policies (principally Federalist policies) or his fears of real and imagined crises to serve as an excuse for government by fiat. He occasionally questioned the wisdom of popularly directed government, fretted over public opinion's tardiness in recognizing the 'true' state of affairs, and even wondered on occasion whether the republican experiment would succeed. But he never once allowed those doubts to color his official commitment to the Constitution. He fervently believed that the nation would be well served by a national university and a system of canals (most especially, his favored Potomac Canal). But he never presumed that the presidency endowed him with extralegal powers to enact those projects on his own authority in the 'national interest.' Activist presidents ever since have faced the formidable figure of Washington in arguing otherwise.

Washington also helped to establish the tradition of the president as an interpreter of the Constitution with coequal authority to the Congress and the Judiciary. In numerous incidents—the nullification of his own Supreme Court appointment because he viewed his nominee (a
former senator) as disqualified under the Constitution, his withholding of treaty materials from the House because it lacked a constitutional claim to them, his willingness to share those same materials with the Senate because of their constitutionally mandated responsibilities, his use of the veto, his removal of executive officers without the Senate's approval, his assumption of primary responsibility for the making of foreign policy, and many others noted earlier—George Washington put forth a "presidential interpretation" of the Constitution that was ultimately acceded to by the other coordinate branches.

There were some exceptions. The Senate, for example, successfully resisted his efforts to attach it as a conciliar appendage of the presidency. But even here Washington prevailed often enough to create a constitutional climate in which subsequent presidents have been able to make similar successful appeals for senatorial support. To see evidence of the enduring weight of Washington's precedent, one need look no further than the willingness of Congress to accept George Bush's interpretation of the president's constitutional war powers and treaty powers as a justification for American involvement in the Gulf War.

Washington also helped to shape a conception of the executive branch that we have come to know as the "two presidencies." While he was not uninterested in domestic affairs, foreign policy and, to a lesser extent, domestic insurrections were the focus of most of his thinking and writing as president. His classical background and, particularly, the ideal of the "patriot king" made him view the presidency as bearing a special responsibility for the defense of the people. As such he was more interested in defining his constitutional prerogatives more broadly here—the declaration of neutrality, his secret instructions to John Jay for negotiating with the British, and his use of military force and executive fiat to suppress the Whiskey Rebellion are but a few examples—than in the domestic arena where Congress's constitutional arsenal was far more substantial.

By the same token Washington was not prepared to expand his foreign policy powers any further than the Constitution or the coordinate branches would permit. When Congress insisted on investigating his failures, e.g., the St. Clair disaster, he consented. When the Senate insisted on all papers relative to a treaty, he consented. When the Senate questioned the conduct of one of his ministers, Washington removed him. When Congress frustrated his military policy by not establishing
a uniform national militia, he did not insist on having his way by any means necessary. He was willing to push and stretch the Constitution in order to safeguard the nation, but he was not willing to steer the Constitution toward an unrepublican monarchy. If republican government was not always, in his judgment, "good" government, then he was prepared to accept that as the price of constitutionalism.

He also planted the presidency foursquare behind his vision of a continental republic. The Constitution did not require the president to stand as the symbol of the nation. In fact, Congress, as the most representative of the three branches, could lay equal claim to that role. But neither did the Constitution prohibit the president from serving as the spokesperson and symbol of the American people. For Washington's continental aspirations to succeed he had to establish that the presidency was not the captive of any region or faction or interest. If the president could demonstrate that he represented all Americans then he would be well positioned to suppress state particularism and the sorts of regional jealousies that had made the bonds of union so tenuous under the Confederation.

He did not entirely succeed in implanting his vision of a continental republic. Supporters of nationalism and states' rights continued their uneasy détente under the new Constitution; Washington was only able to give the more nationalist Federalists a temporary advantage in that struggle. His grand plan for a westward-looking republic nurtured by the national government would have to wait. And we still have no national university.

But he did succeed in establishing the president as the custodian of the national idea. He showed himself in every state of the new union at a time when such travels were physically uncomfortable, even difficult. By circulating important addresses and proclamations in newspapers and pamphlets (what passed for a national news media in his time) he spoke directly to the American people, rather than through Congress or other constitutional intermediaries. He insisted, without serious objection from Congress, on serving as the spokesperson for and representative of the American people in the community of nations. His personal reputation assured that the presidency (and to some extent the national government itself) would be treated with awe and respect without resort to the unrepublican trappings of monarchy. Today, most American citizens respect the presidency (a call from the White
House still causes the heart of the most jaundiced local politician to
flutter just a bit) and rarely challenge the authority of a president to
speak for the nation even when they have little regard for the occupant
of the office.

Where ought we, then, place the bust of George Washington in the
pantheon of constitutional demigods? A bit above James Madison? A
bit to the left of Abraham Lincoln? The influence of any one person
upon the intricate web of historical events is unmeasurable. But it is
not unimaginable. For example, other men might well have offered
greater skills as a general. Horatio Gates, Philip Schuyler, and Charles
Lee could claim greater experience than Washington. Benedict Arnold
and Nathanael Greene had battlefield successes that compare well to
Washington's. But Gates and Schuyler were preoccupied with positioning
themselves for political advantage within Congress; Lee had nothing but contempt for republicans; Greene's relationship with Congress
in his duties as quartermaster general can most charitably be described
as unhappy; and Arnold's brief encounter with civilian government as
the administrator of Philadelphia during a period of martial law was a
performance that alienated nearly all of the city's citizens and triggered
a court-martial. Could any of these men, if appointed commander-in-
chief, have subordinated their pursuit of military objectives (or personal glory) to the larger public enterprise of building and preserving a
republican form of government?

And what of Washington's performance at Philadelphia in 1787 and in
the ratification struggle afterwards? The convention threatened to dis-
solve at several points that summer. Had the gathering been presided
over by a figure less imposing than George Washington, would the dele-
gates have gone home? Or would the compromises have taken on a de-
cidedly less continental tilt—perhaps leaving the delegates in agree-
ment only on the submission of the sort of recommendations for
revision of the Articles for which they had originally been convened?
And without Washington's highly visible proratification stance could
the federalists have prevailed? I do not mean to suggest that Washington
was the oarsman without which the American constitutional tradition
would have foundered. There were enough Americans committed to
self-government, constitutionalism, and republican principles to guar-
antee that some sort of constitutional tradition would have continued,
perhaps one that could have been every bit as successful in its own way
as the tradition that eventually emerged. But there is a good chance that it would have been different.

And what does it matter that George Washington was the first president? Would our modern presidency have a different cast to it had John Hancock or John Adams or Thomas Jefferson or Benjamin Franklin been the first to occupy that office? Would Hancock have conceded legislative initiative in the domestic arena? Would Franklin have pursued presidential leadership in foreign affairs as diligently as Washington? Would Adams have sought to be as conciliatory to his political opposition? Would the weight of precedent characteristic of their "first forms" have shifted the current of the American constitutional tradition in a different direction?

The constitutional tradition enjoyed by Americans of the twenty-first century bears little surface resemblance to the one envisioned by Washington. We are today the constitutional children of countless constitutional parents. Throughout its more than two-hundred-year history our Constitution has been shaped and recast by innumerable individuals, groups, institutions, events, and social forces. The Constitution is no more exclusively George Washington's offspring than it is Madison's or Jefferson's or Lincoln's or Franklin Roosevelt's. It is no more the product of the Founding Fathers than it is of subsequent generations of Americans who have governed themselves under its auspices. It is no more the embodiment of classical republicanism than it is of modern welfare liberalism. Yet the constitutional tradition as we know it today still bears the unmistakable signs of Washington's imprint—of his having chosen to direct the main current of that tradition in one direction or another. In the end, the thing "twas builded better than he knew."