

George Washington and the Constitution

by Theodore J. Crackel

George Washington was among the first of America's statesmen to recognize the flaws in the government under the Continental Congress and the Articles of Confederation. His experience in the Revolutionary War had convinced him that excessive concerns for states' rights and state sovereignty would be fatal to an effective national government. The inability of the Continental or Confederation government to feed, accommodate, supply, or pay the army was more than enough to convince him that a stronger central government was essential to maintain such an extended nation.

At the war's end, he shared his thoughts with Nathanael Greene:

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It remains only for the States to be Wise, and to establish their Independence on that Basis of inviolable efficacious Union, and firm Confederation, which may prevent their being made the Sport of European Policy; may Heaven give them Wisdom to adopt the Measures still necessary for this important Purpose.[1]

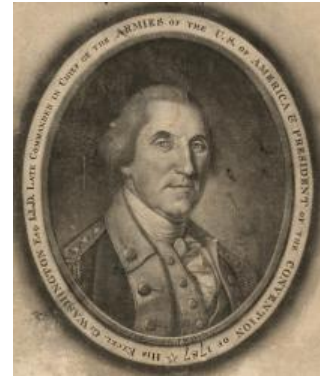
By early in 1784, it was evident to him that many who held power in the states did not share his view. "The disinclination," he wrote Benjamin Harrison,

of the individual States to yield competent powers to Congress for the Fœderal Government—their unreasonable jealousy of that body & of one another—and the disposition which seems to pervade each, of being all-wise & all-powerful within itself, will, if there is not a change in the system, be our downfall as a Nation. This is as clear to me as the A. B. C.[2]

Although Washington applauded the call made by the Annapolis Convention in 1786 for a broader convention empowered to recommend a new, stronger central government, he remained skeptical. "I believe," he wrote Henry Knox on February 3, 1787, "that the political machine will yet be much tumbled & tossed, and possibly be wrecked altogether, before such a system . . . will be adopted." Still, he added,

I shall be surprized at nothing; for if three years ago, any person had told me that at this day, I should see such a formidable rebellion against the laws & constitutions of our own making as now appears I should have thought him a bedlamite—a fit subject for a mad house.

Immediately after the call for the Philadelphia Convention, Washington was nominated as a delegate from Virginia. Although at first he hesitated, he finally came to believe that he should go. "I would try what the



"His Excel: G: Washington Esq. . . . Late commander in chief of the armies of the U.S. of America & president of the Convention of 1787," by Charles Willson Peale, 1787. (Library of Congress Prints and Photographs Division)

wisdom of the proposed Convention will suggest,” he told John Jay. “It may be the last peaceable mode of essaying the practicability of the pres[en]t form, without a greater lapse of time than the exigency of our Affairs will admit.”[3] This decision was buttressed by the encouragement of Benjamin Franklin, who said that he was “persuaded that your Presence will be of the greatest Importance to the Success of the Measure.”[4]

When on May 25, 1787, the convention opened, Washington was unanimously elected president of the convention. In the weeks after, he presided over, but never participated in a substantial way, in the debates. “His largest contribution,” wrote his biographer Douglas Southall Freeman, “was not that of his counsel but that of his presence.”[5] For a time, however, that did not seem enough. In mid-July he wrote Alexander Hamilton, who had left the convention for a period,

you will find but little ground on which the hope of a good establishment, can be formed. In a word, I almost despair of seeing a favorable issue to the proceedings of the Convention, and do therefore repent having had any agency in the business.

Still, he was not ready to give up, and added that nothing “should discourage exertions till the signature is fixed.”[6]

In the end, the new document did not go as far as he had hoped

If however, some good does not proceed from the Session, the defects cannot, with propriety, be charged to the hurry with which the business has been conducted: Yet, many things may be forgot – some of them not well digested – and others become a mere nullity. – Notwithstanding which I wish a disposition may be found in Congress – the several States Legislatures – and the community at large to adopt the Government which may be agreed on in Convention; because I am fully persuaded it is the best that can be obtained at the present moment, under such diversity of ideas as prevail.[7]

In the months following the new Constitution’s submission to the Congress and then to the states for ratification, he espoused a similar theme: the document was the best on which the Convention could agree, and a second such effort was not likely to do better. The choice was, in his view, between the recommendations of the Convention and almost certain national ruin.

“The plot thickens fast,” he wrote to Lafayette in late May 1788.

A few short weeks will determine the political fate of America for the present generation and probably produce no small influence on the happiness of society through a long succession of ages to come. . . . I will confess to you sincerely, my dear Marquis; it will be so much beyond any thing we had a right to imagine or expect eighteen months ago, that it will demonstrate as visibly the finger of Providence, as any possible event in the course of human affairs can ever designate it.[8]

On March 4, 1789, the new Constitution became the law of the land, and on April 30, George Washington was sworn in as the nation’s first president. For all that the power of his presence at the Constitutional Convention may have counted, it is very likely that he made his most significant contribution to constitutional law and rule as president. Yet, among all of the precedents that were established in the new nation’s first eight years, the most important was the careful and thoughtful manner by which he acted in areas where the new Constitution was vague or silent.

The Constitution invested the executive power of the nation in the president, but did very little to define

those powers. Even the delineated powers were not described in any detail. As president, Washington was Commander in Chief of the Army and Navy of the United States, and of the state militias when called to federal service, although only Congress could declare war. He could require the opinions, in writing, of the principal officers in each of the executive departments, but it was up to Congress to establish these departments, and up to the Senate to advise on and consent to the appointment of their heads. He could also grant reprieves and pardons for offences against the United States. He could, with the advice and consent of the Senate, make treaties, appoint ambassadors and other public ministers and consuls, appoint judges of the Supreme Court, and name other officers of the government. He was required by the Constitution: “from time to time” to give Congress information about the “State of the Union”; recommend to their consideration such measures as he should judge necessary and expedient; receive ambassadors and other public ministers; and take care that the federal laws were faithfully executed. A fuller definition of what constituted the executive power of the president was left to be worked out between Washington (and subsequent presidents) and the Congress.

It was from the implications of what was written and, in some cases, not written in the Constitution that the role and power of the presidency was largely derived, and it was Washington’s actions that established precedents, many of which still guide presidents today. One such was “executive privilege”—the power to withhold information requested by the legislative or judicial branches of government, a power derived from the supremacy of the executive branch in its own area of constitutional activity as defined in Section II.

In early 1794 President Washington invoked executive privilege in declining to provide the Senate with documents relating to negotiations between the United States and France “which in my judgment,” he told the Senate, “for public considerations, ought not to be communicated.”[9] Two years later, in 1796, he declined a House request for documents dealing with the recently completed negotiations between John Jay and the British. In his message to the House of Representatives, Washington noted that this branch of the legislature was allotted no role in treaty making, and added:

As it is essential to the due administration of the government, that the boundaries fixed by the constitution between the different departments should be preserved: a just regard to the Constitution and to the duty of my Office . . . forbids a compliance with your request.[10]

In 1794 several important precedents were established. It was, for example, a year of unrest in western Pennsylvania. When citizens finally burst into open revolt against the tax levied on whiskey, Washington was forced to call up the militia. It was his duty, he had warned two years earlier when this issue first surfaced, “to take care that the laws be faithfully executed.”[11] When all efforts at reconciliation had failed, it became necessary to quell the rebellion, and Washington rode forward with the troops to demonstrate that the new nation could and would enforce its laws.

Despite this show of force, Washington more typically acted with caution; when it became necessary to stake out new powers, his response was carefully measured. “The powers of the Executive of the U States,” wrote Washington in mid-1794,

are more definite, & better understood perhaps than those of almost any other Country; and my aim has been, & will continue to be, neither to stretch, nor relax from them in any instance whatever, unless imperious circumstances sh[oul]d render the measure indispensable.[12]

Washington, as president, did much to define the constitutional role of his office, but when he did so he acted with a restraint born of the presumption that history would take the measure of his every move and judge him by it.

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- [1] George Washington to Nathanael Greene, March 31, 1783.
 - [2] George Washington to Benjamin Harrison, January 18, 1784.
 - [3] George Washington to John Jay, March 10, 1787.
 - [4] Benjamin Franklin to George Washington, April 3, 1787.
 - [5] Douglas Southall Freeman, *Washington* (New York: Scribner, 1995), 6:112.
 - [6] George Washington to Alexander Hamilton, July 10, 1787.
 - [7] George Washington to Henry Knox, August 19, 1787.
 - [8] George Washington to the Marquis de Lafayette, May 28, 1788.
 - [9] George Washington to the US Senate, February 26, 1794.
 - [10] George Washington to the US House of Representatives, March 30, 1796.
 - [11] GW Proclamation, September 15, 1792.
 - [12] George Washington to Alexander Hamilton, July 2, 1794.
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