

WASHINGTON'S CROSSING<sup>1</sup>REVIEWED BY MAJOR JONATHAN E. CHENEY<sup>2</sup>

*These are the times that try men's souls: The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands it NOW, deserves the love and thanks of man and woman.*

— Thomas Paine, December 19, 1776<sup>3</sup>

*Victory or Death.*

— General George Washington  
December 24, 1776<sup>4</sup>

In *Washington's Crossing*, history professor David Hackett Fischer<sup>5</sup> details in a scholarly yet riveting fashion the military victories General George Washington and the American army forged from crisis in the New Jersey campaign of 1776-77. In doing so, Fischer shows how Washington adapted to his circumstance to go from a defeated general at New York to a general admired worldwide within a few months.<sup>6</sup> Fischer provides the reader interested in military affairs a depth of detail that readily facilitates analysis of lessons learned. Moreover, the United States has successfully incorporated many of these lessons learned into a military doctrine instrumental to a legacy of victory in battle. In addition to unearthing rich military history, judge advocates, in particular, can mine *Washington's Crossing* for insights into the importance law plays in the military. This review provides an overview of *Washington's*

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<sup>1</sup> DAVID HACKETT FISCHER, *WASHINGTON'S CROSSING* (2004).

<sup>2</sup> U.S. Army. Written while assigned as a student, 53d Judge Advocate Officer Graduate Course, The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia.

<sup>3</sup> Thomas Paine, *The American Crisis, No. 1*, PA. J., Dec. 19, 1776, reprinted in FISCHER, *supra* note 1, at 141 (reprinting only the first page of Paine's 1776 document).

<sup>4</sup> FISCHER, *supra* note 1, at 220. General Washington wrote this password on slips of paper for American forces in their impending attack on Trenton. *See id.*

<sup>5</sup> University Professor and Warren Professor of History, Brandeis University. Directory entry, *David Hackett Fischer*, at <http://www.brandeis.edu/departments/history/faculty/fischer.html> (last visited Mar. 14, 2005). Other titles authored by Mr. Fischer include: *Liberty and Freedom: American Visions* (2004), *The Great Wave: Price Revolutions and the Rhythm of History* (1996), *Paul Revere's Ride* (1994), and *Albion's Seed: Four British Folkways in America* (1989).

<sup>6</sup> *See* FISCHER, *supra* note 1, at 360-61.

*Crossing*, examines some of its strengths and weaknesses, discusses its value to military leaders, and points out some nuggets of special interest to military lawyers.

Fischer introduces this military history not on the battlefield, but with the renowned 1850 painting by Emanuel Leutze, *Washington Crossing the Delaware*.<sup>7</sup> As Fischer tells the story of the painting's production, he exposes threads he will weave throughout his narrative. As in the painting, the book's central figure is General Washington.<sup>8</sup> However, even as Fischer carefully describes the diverse American Soldiers struggling to cross the ice-choked river in Leutze's painting, he fleshes out numerous people on both sides of the conflict throughout the book and shows their impact on the outcome.<sup>9</sup> Fischer alerts the reader that he will examine this "watershed in American history"<sup>10</sup> as a collision of ideas, describing it as a conflict between "the forces of order" and "an army of free men."<sup>11</sup>

Fischer begins the body of his text by introducing Washington; the American, British, and Hessian armies; and the brothers Admiral Lord Richard Howe and General William Howe, commanders of the British and Hessian coalition in America in 1776-77.<sup>12</sup> Fischer then moves into the preparations and battles for New York City.<sup>13</sup> The disastrous defeat at New York in the fall of 1776 leads to the American retreat across New Jersey and the British conquest and occupation of New Jersey.<sup>14</sup> The heart of the book begins with what Fischer calls the rising of New Jersey, a guerrilla war initiated by bands of New Jersey citizens acting independently of Washington and his American army.<sup>15</sup> Fischer then

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<sup>7</sup> *See id.* at 1-2.

<sup>8</sup> "The critical difference, however, is that Leutze's goal was to sustain the myth of Washington as hero, while Fischer's enterprise is to contextualize Washington's actions and reflect on their significance." Fred Anderson, *A Pivotal Moment for America*, L.A. TIMES, Feb. 29, 2004, at 8.

<sup>9</sup> *See, e.g.*, FISCHER, *supra* note 1, at 58, 235-37, 243, 259 (detailing some of the experiences of Hessian Lieutenant Andreas Wiederholdt).

<sup>10</sup> Anderson, *supra* note 8, at 8 (describing the importance of the days surrounding the battles of Trenton and Princeton and praising Fischer's ability to portray these events as such).

<sup>11</sup> FISCHER, *supra* note 1, at 6.

<sup>12</sup> *See id.* at 7-19 (Washington), 19-30 (Americans), 31-50 (British), 51-65 (Hessians), 66-78 (Howes).

<sup>13</sup> *See id.* at 81-114.

<sup>14</sup> *See id.* at 115-81.

<sup>15</sup> *See id.* at 193-205.

details the crossing of the Delaware on Christmas night, 1776, the ensuing battle of Trenton, the lesser-known second battle of Trenton on 2 January 1777, the battle of Princeton on 3 January 1777, and the relatively unknown forage war in New Jersey fought from January to March, 1777.<sup>16</sup> The author concludes by summarizing some of his key teaching points.<sup>17</sup>

But Fischer is not done. While the casual reader may be tempted to skip the twenty-four appendices covering topics ranging from troop strengths and casualty lists to ice conditions and ferries on the Delaware River, curiosity will demand that he examine at least some of this mostly trivial matter. The historiography, however, falls in a different category—it is a must read. A fascinating history in itself, the historiography chronicles a variety of interpretations of the New Jersey campaign that have been presented over the years from both home and abroad.<sup>18</sup> A twenty-eight-page bibliography indicates that Fischer has left no stone untouched in his search through both primary and secondary sources.<sup>19</sup> Over one thousand endnotes contain more than just citations to authority; they add many fascinating details of Fischer's research and discoveries.<sup>20</sup> Finally, a comprehensive index properly declares that the book should be taken seriously as a reference work.<sup>21</sup>

Strengths of *Washington's Crossing* can be found by examining its great balance—between storytelling and scholarship, between American

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<sup>16</sup> See *id.* at 206-20 (Delaware), 221-59 (Trenton I), 277-307 (Trenton II), 308-43 (Princeton), 346-60 (forage war).

<sup>17</sup> Fischer's main teaching points are that history occurs in a web of contingency, that American leaders invented a new way of waging war as a result of the circumstances surrounding the New Jersey campaign, that American culture underlay America's new way of war-fighting, and that American war-fighting was consistent with a policy of humanity. See *id.* at 363-79.

<sup>18</sup> Another reviewer states that the historiography "alone is worth most of the price of the book." Tom Blackburn, *Book Review: "Washington's Crossing,"* PALM BEACH POST (Fla.), Apr. 18, 2004, at 5J.

<sup>19</sup> See FISCHER, *supra* note 1, at 459-86.

<sup>20</sup> See, e.g., *id.* at 496 n.3 (showing new evidence that British negotiated for Hessian mercenaries before Lexington and Concord).

<sup>21</sup> See Donald Higginbotham, *A Vivid Look at a Key Campaign of the Revolutionary War*, CHI. TRIB., Mar. 21, 2004, at C3 ("Thanks to Fischer, the Trenton-Princeton story will not need to be retold for a long time."); see also Blackburn, *supra* note 18, at 5J ("[*Washington's Crossing*] ought to stand as the authoritative study of the battles that saved the Revolution at least until the tercentennial.").

and British coalition perspectives,<sup>22</sup> and between detail and overview. First of all, *Washington's Crossing* is a good read; it is a scholarly tome that is pleasurable reading for the general public. Fischer refers to his narrative style as “braided narrative”—“the art of ‘telling complicated stories without trying to simplify them, but giving them narrative coherence’ and analytical ballast.”<sup>23</sup> He bases his authoritative writing style on prodigious research, enabling him to build upon the knowledge of past historians. For the casual reader, this sizeable book’s early chapters on the various armies and the other background information may appear daunting, but provide information required to understand the storyline, such as the difference between a grenadier and a dragoon.<sup>24</sup> More importantly, Fischer puts a face to the different ideologies preparing to collide in the conflict between old world and new. Throughout, Fischer vividly describes the players and painstakingly describes locations important to the story.<sup>25</sup> The pace accelerates during the battle for New York, and once the reader gets to the crossing of the Delaware, the narrative becomes a fast-paced page-turner.

The book’s features beyond the post-text materials previously described are well done. The text and the historiography have many black-and-white reproductions of portraits, paintings, and drawings to aid the reader. Additionally, the book lacks only a map for the battle of White Plains to provide maps sufficient to follow the battles described; the reader familiar with the depicted locations will find additional interest in the overlay of a few of today’s roads on the battle maps.

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<sup>22</sup> See Robert Ruth, *History Washington's Crossing: Resilience Lies at Heart of Victory*, COLUMBUS DISPATCH (Ohio), Apr. 4, 2004, at 7D (“Unlike many Revolutionary War historians, [Fischer] doesn’t slight the British and their allies.”).

<sup>23</sup> Alexander Rose, *History in the Making*, Nationalreviewonline, at <http://www.nationalreview.com>, July 1, 2004 (quoting Fischer in a telephone interview). Fischer accomplishes this by the “selecting, compressing, and positioning [of his] materials.” *Id.* Rose credits Fischer’s braided narrative as one reason *Washington's Crossing* reads like fiction and has been so popular. See *id.* Indeed, *Washington's Crossing* was marketed for mass appeal, enabling this scholarly work to debut at number twelve on the *New York Times* nonfiction best seller list. See *Best Sellers*, N.Y. TIMES, Mar. 7, 2004, at Book Review 18.

<sup>24</sup> The grenadiers were the “storm troops of the [British] army,” selected for size and strength; the dragoons were the “highly mobile and heavily armed” cavalry. FISCHER, *supra* note 1, at 34, 36.

<sup>25</sup> See, e.g., *id.* at 227 (Jacob’s Creek crossing).

One of the book's strengths is its analysis. Fischer views this pivotal moment in American history<sup>26</sup> as occurring "not in a single event, or even a chain of events, but in a great web of contingency."<sup>27</sup> This perspective allows Fischer to delve into many of the intricacies of individual accounts and still paint the big picture, doing both masterfully.<sup>28</sup>

Fischer is unafraid to present competing explanations with his appended historiography, even explanations of those historians who have accused him of triumphalism—*i.e.*, of viewing American achievement as superior to that of others.<sup>29</sup> Though Fischer credits only man for the achievements he records because he writes from his web of contingency, he does not seem to fear including the viewpoints of those participants who looked to Divine explanations.<sup>30</sup> However, he may have hesitated in doing the same for Washington, perhaps attempting to maintain credibility among his peers while objectively describing this exemplary hero. While Fischer credits Washington for success in the winter of 1776-77, he insufficiently allows Washington to credit God, as he undoubtedly did—Washington had previously credited Providence for his survival in the 1755 Battle of the Monongahela and subsequently credited Providence for the nation's success.<sup>31</sup> The closest Fischer

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<sup>26</sup> *Washington's Crossing* is aptly included in Oxford University Press's "Pivotal Moments in American History" series. See FISCHER, *supra* note 1, at ix (as explained in the Editor's Note by James M. McPherson).

<sup>27</sup> FISCHER, *supra* note 1, at 364. "This book is mainly about contingency, in the sense of people making choices, and choices making a difference in the world." *Id.*

<sup>28</sup> See Jean Dubail, *Delving Deep into a Legendary Moment in History*, PLAIN DEALER (Cleveland, Ohio), Feb. 15, 2004, at J10 ("[W]here [Fischer] really excels [in Washington's Crossing] is at painting the big picture."); Joseph J. Ellis, *Sit Down, You're Rocking the Boat*, N.Y. TIMES, Feb. 15, 2004, at Book Review 13 ("Fischer . . . provid[es] an overarching picture of the way armies move, with a genuine sense of what it looks and feels like to face a bayonet charge or to witness the man abreast of you disemboweled by a cannonball."); Michael Kenney, "Crossing" Superbly Takes Readers Back to 1776, BOSTON GLOBE, Feb. 16, 2004, at C4 ("Washington's Crossing' is history at its best, fascinating in its details, magisterial in its sweep.").

<sup>29</sup> See FISCHER, *supra* note 1, at 454; David Mehegan, *A Revolutionary View: Author Revisits, Retells Key Part of US History with an Eye on the Present*, BOSTON GLOBE, Feb. 16, 2004, at C1 (interview with Fischer).

<sup>30</sup> The capitalization is intentional. See, e.g., FISCHER, *supra* note 1, at 259 ("[Many Americans] deeply believed that the battle of Trenton was a Sign of God's Redeeming Providence.").

<sup>31</sup> See Margaret Sitte, *Washington, Humble Champion, in His Words*, BISMARCK TRIB. (N.D.), Feb. 20, 1998, at 4A (quoting Washington in 1755 and 1783); see also Ellis, *supra* note 28, at 13 ("Washington went to his grave convinced that the eventual American triumph over Britain was, as he put it, a 'standing miracle'"); Letter from

comes to showing Washington's reliance on God is an innocuous reference in a letter to "the smiles of providence"<sup>32</sup> and Washington's belief "that victory would come only if they deserved to win."<sup>33</sup> If nowhere else, this aspect of the book's central figure should have received a closer look in Fischer's introduction of Washington, where Fischer tells the reader merely that Washington regularly attended church.<sup>34</sup> Otherwise, Fischer's presentation of Washington is full and complete.

Of minor consequence is Fischer's failure to define key political terms. Fischer often refers to American Whigs, British Whigs, Loyalists, and Tories without satisfactorily defining or describing their distinctive views. After three chapters dedicated to the various armies, Fischer could spare a page or two—or at least an endnote—distinguishing between these various categories. Nevertheless, considering its strengths, criticism of *Washington's Crossing* starts to become "mere quibble."<sup>35</sup>

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George Washington to John Augustus Washington (July 18, 1755), at Series 2, Letterbook 1, Image 90, <http://memory.loc.gov/ammem/gwhtml/gwhome.html> (last visited Mar. 14, 2005) ("But, by the All-powerfull [sic] Dispensations of Providence, I have been protected beyond all human probability or expectation for I had four Bullets through my Coat, and two Horses shot under me, yet escaped unhurt although Death was leveling my Companions on every side of me!").

<sup>32</sup> FISCHER, *supra* note 1, at 190. Washington wrote to General Horatio Gates on 14 December 1776, "If we can draw our Forces together I trust under the smiles of providence, we may yet effect an important stroke, or at least prevent General Howe from executing his Plan." *Id.*

<sup>33</sup> *Id.* at 276. This is a consideration not usually presented in law of war and Rules of Engagement training.

<sup>34</sup> *See id.* at 9.

<sup>35</sup> Ellis, *supra* note 28, at 13. Compared to the "larger achievement of Fischer's riveting narrative," Ellis considers as "mere quibble" his complaints of Fischer "get[ting] somewhat carried away" and misusing the term, "an American way of war." *Id.* Another reviewer quibbles over "Fischer's unfortunate use of the TV weathercasters' 'nor'easter.'" Kenney, *supra* note 28, at C4. Yet another quibbles that Fischer falters in his "brisk style . . . only when he, like too many other historians of war, loses himself and the reader in lists of regiments and their commanders." Dubail, *supra* note 28, at J10. Although list tables appear only in appendices, this criticism has some merit. Notwithstanding, providing the names of the various actors, supports Fischer's web of contingency paradigm—that different people making choices influenced the outcome.

One history professor complains that the American army that emerged from the winter of 1776-77 "was more like a European 'army of order' than Fischer seems prepared to admit." Pauline Maier, *Watershed Moment; A Historian's Blow-by-Blow Account of the Military Saga Behind a Famous Painting*, WASH. POST, Feb. 15, 2004, at T6. The focus of this professor, however, is more on the force's activity; Fischer focuses more on its formation and composition.

Washington's leadership is a relevant study for today's military leaders, who face many of the same challenges. Washington commanded an all-volunteer army comprised of people of diverse cultures and values.<sup>36</sup> His average Soldier was literate and of moderate means by the day's standards,<sup>37</sup> but lacked the experience and discipline of the British and Hessian troops.<sup>38</sup> Enlistment was a recurring concern.<sup>39</sup> In showing how Washington met his various challenges, Fischer effectively contrasts Washington's leadership style to that of many of the British and Hessian commanders.<sup>40</sup> Furthermore, Fischer develops Washington's character and leadership style, showing adaptation<sup>41</sup> and growth as a leader to transform his ill-matched troops into an armed force able to defeat the greatest military power of his day.

For the military historian, Fischer provides, in his conclusion, ready frameworks for analyzing his book both for types of engagement and principles of warfare.<sup>42</sup> He writes,

In the New Jersey campaign, American troops repeatedly defeated larger and better trained regular forces in many different types of warfare: special operations, a night river crossing, a bold assault on an urban garrison, a fighting retreat, a defensive battle in fixed positions, a night march into the enemy's rear, a meeting engagement, and a prolonged *petite guerre*.<sup>43</sup>

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<sup>36</sup> See FISCHER, *supra* note 1, at 11-12, 19-21.

<sup>37</sup> See *id.* at 21, 368. But see Maier, *supra* note 35, at T6 (claiming the poor comprised a disproportionately high number of the enlistments after 1776).

<sup>38</sup> See FISCHER, *supra* note 1, at 33, 55, 101; see also *id.* at 87 (concerning discipline in field sanitation).

<sup>39</sup> See FISCHER, *supra* note 1, at 129, 270 (addressing expiring enlistments).

<sup>40</sup> See, e.g., FISCHER, *supra* note 1, at 310-16.

<sup>41</sup> See Higginbotham, *supra* note 21, at C3 ("Although Washington learned valuable lessons from the Trenton-Princeton campaign and its aftermath, it is doubtful that British generals did. The same Cornwallis who had witnessed the foolishness of leaving detached bodies in remote posts in New Jersey in 1776-77 repeated the error as commander in the South in 1780.").

<sup>42</sup> The topics discussed in the conclusion do not exhaust the principles raised in the book. See, e.g., *id.* at 134 (comparing the naval superiority of the British at New York to that of the Americans on the Delaware).

<sup>43</sup> FISCHER, *supra* note 1, at 367. Fischer adds: "Professional observers judged that entire performance to be one of the most brilliant in military history." *Id.* *Petite guerre* is a term for what modern strategists call guerilla warfare. See *id.* at 348.

Concerning principles of warfare, Fischer notes that, in the New Jersey campaign, the colonists developed an “American way of fighting” calculated to be quick and decisive while also remaining consistent with their unique culture. They accomplished this by using the principles of “boldness and prudence, flexibility and opportunism, initiative and tempo, speed and concentration, force multipliers, and intelligence.”<sup>44</sup> *Washington’s Crossing* anecdotally supports each of these types and principles throughout the narrative.<sup>45</sup> Considering the broad range of American military principles it discusses, *Washington’s Crossing* has vast potential for discussion in present-day situations.<sup>46</sup>

Points of special interest to the judge advocate are not generally so nicely packaged, but are sufficiently apparent to serve as illustrations or lessons learned today. Military lawyers can gain appreciation from the exception that is neatly packaged—the well-developed material on the ad hoc development of America’s system of congressional oversight of the military that remains a part of the U.S. system.<sup>47</sup> Military practitioners will readily notice similarities between the British Articles of War<sup>48</sup> and the Uniform Code of Military Justice (UCMJ). Trial counsel who have known a command’s interest for quick justice, but reluctance to commit unit resources for courts-martial can gain perspective from the August 1776 court-martial of Lieutenant Colonel Herman Zedwitz, a court requiring participation of two regimental commanders with attack imminent.<sup>49</sup> Operational attorneys can muse over which ideas are preferable between the Americans or the Europeans concerning civilians taking up arms.<sup>50</sup>

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<sup>44</sup> *Id.* at 375. The term “force multipliers” here refers essentially to massed artillery. *See id.* at 374.

<sup>45</sup> *See, e.g., id.* at 195-96 (Ewing’s raids), 206-20 (night river crossing of the Delaware), 221-59 (attack on an urban garrison, Trenton I), 281-301 (a fighting retreat, Trenton II), 301-07 (a defensive battle in fixed positions, Trenton II), 308-23 (a night march into the enemy’s rear, Princeton), 324-43 (a meeting engagement, Princeton), 346-60 (a prolonged *petite guerre* and forage war), 370-75 (principles).

<sup>46</sup> One commentator has used *Washington’s Crossing* to compare and contrast al Qaeda’s situation in Iraq to that of the Americans in New Jersey, finding similarity in the superiority in power of the enemy and hope in bleeding the enemy and finding one key difference in which side favors freedom. *See* Thomas Bray, *Fruitless Blame Game*, N.Y. SUN, Mar. 31, 2004, at Book Review 11.

<sup>47</sup> *See* FISCHER, *supra* note 1, at 145.

<sup>48</sup> *See id.* at 45.

<sup>49</sup> *See id.* at 91-92. Both American regiments suffered heavy battle losses the day following the court-martial. *See id.* at 95.

<sup>50</sup> *See id.* at 180.



*Washington's Crossing* provides many illustrations for law of war discussions. While today's laws of war differ markedly from those of 1776, *Washington's Crossing* illustrates the desirability of law of war compliance insofar as universal principles underlie modern-day laws of war. For instance, European laws of war in 1776 allowed a Soldier to not give quarter, an idea repugnant to American ideals<sup>51</sup> and today's laws of war. Similarly, British standards of treatment for enemy prisoners of war were less humane than American standards.<sup>52</sup> As natural consequences of these discrepancies, British and Hessian maltreatment of American Soldiers attempting to surrender enraged Americans and was a factor in Congress immediately rejecting an offer to negotiate following New York.<sup>53</sup> Similarly, adverse natural consequences from violating present-day laws of war concerning civilians plagued the British in New Jersey. Numerous acts of plunder, pillage, and rape motivated civilians and militia to rise up against British forces, straining the resources allotted to the Hessian outposts.<sup>54</sup> Washington took advantage at Trenton. Judge advocates can debate whether carefully crafted rules of engagement trained to disciplined British coalition troops could have affected the outcome of the New Jersey campaign.

Professor Fischer has spun a superb narrative in *Washington's Crossing* describing how Washington and the American army emerged from crisis to victory in the nation's first winter. Judge advocates and other military leaders will benefit in a study of its timeless lessons.

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<sup>51</sup> See *id.* at 377.

<sup>52</sup> See *id.* at 377-78. Editorialists have contrasted the treatment Washington demanded for prisoners of war and the notorious treatment American Soldiers inflicted on the prisoners at Abu Ghraib. See, e.g., Michael J. Bailey, *Soldiers, Follow Gen. Washington's Lead*, COLUMBUS DISPATCH (Ohio), May 22, 2004, at 11A (in letters to the editor); William A. Lindsay, *The Buck Should Stop with President Bush*, ROANOKE TIMES & WORLD NEWS (Va.), July 4, 2004, at 2 (in letters to the editor).

<sup>53</sup> See FISCHER, *supra* note 1, at 99, 377-78. Conversely, the American principle of humanity won the hearts of many of its prisoners with a large percentage of Hessian prisoners of war electing to remain in or return to the United States following the war. See *id.* at 379.

<sup>54</sup> See *id.* at 204-05.