



Written by [William Norman Grigg](#) on August 24, 2020

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## The Great Emancipation

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In a speech to a group of legal activists on May 6, 1987, the late Supreme Court Justice Thurgood Marshall denounced our nation's charter of government and the framers of that document. At the time, Americans were commemorating the constitutional bicentennial, and Marshall — who had sworn a solemn oath to uphold and protect the U.S. Constitution — could barely contain his contempt for that observance.



Dissenting from what he called “a complacent belief that the document is worthy of praise,” Marshall indicted the Founding Fathers for their supposed lack of “wisdom, foresight, and sense of justice” and insisted that “the government they devised was defective from the start.” The fatal defect in the Founders’ handiwork, Marshall asserted, was its failure to abolish the practice of slavery outright. This reflected “the prevailing opinion” among the Founders that blacks “were so far inferior, that they had no rights which the white man was bound to respect ... and that the Negro might justly and lawfully be reduced to slavery for his benefit,” Marshall opined. Within a very short time, the sentiments expressed by Marshall — which caused shock and consternation at the time — became enshrined as something of a cultural consensus. It is hardly an exaggeration to say that practically the only thing many American students know about George Washington or Thomas Jefferson is that both were “slave owners” and therefore utterly unworthy of respect.

It’s not just students, though. Today many people of good will have a difficult time reconciling the principles of God-given individual rights and equal protection under the law — concepts that were given such eloquent expression in our founding documents — with the fact that the Framers of the Constitution compromised on the issue of chattel slavery. Even many of those who revere the Founders and cherish their accomplishments are inclined to see the Framers’ handling of the slavery issue as a cynical exercise in expediency. That the Framers struck a compromise on slavery is indisputable. But that compromise, which reflected a sound understanding of the limitations of human nature and human institutions, was devised in such a way as to hasten the abolition of slavery, rather than to perpetuate the practice.

The institution of chattel slavery, until quite recently, was embedded in nearly every human society. While the Framers of the Constitution drew upon the inherited wisdom of the ages in drafting our charter of government, their treatment of slavery represented a dramatic break with the past: By giving Congress the power to cease the importation of slaves, the Constitution curbed, and provided for the abolition of, an age-old practice that is an offense against human liberty.



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## Compromise and Consequence

"In no matter what field of the European past we make our research," wrote British parliamentarian and philosopher Hilaire Belloc in his study *The Servile State*, "we find, from two thousand years ago upwards, one fundamental institution whereupon the whole of society reposes; that fundamental institution is slavery." Across the sweep of 20 centuries, Belloc observes, "we find no organized effort, nor (what is still more significant) do we find any complaint of conscience against the institution which condemned the bulk of human beings to forced labor." By the time of the American founding, Christian concepts of individual worth and liberty had permeated Western society to such an extent that the continued existence of slavery became untenable. (Significantly, the movement to abolish slavery was a distinctly Christian undertaking; there was no non-Christian equivalent.)

Although the emancipation movement was under way by the time of the founding, slavery was still commonly practiced throughout the Western world. "Americans were not the only patrons of the institution of slavery at the time of [American] independence," notes writer Richard Brookhiser in *Founding Father*, his biography of Washington. "They bought their slaves from African dealers. Though the Chief Justice of the King's Bench had ruled in 1772 that any slave who set foot in Britain became free, slavery was not touched in the colonies, where nearly all of the slaves in the empire lived. Slavery was sanctioned by the Bible and by Aristotle. But, alone in a world of slaveholders, Americans brought on themselves the charge of hypocrisy, because of their principles and their rhetoric."

The Framers understood that they lived in a society that was (in Alexander Hamilton's words) "remote from the happy empire of perfect wisdom and perfect virtue." Unlike the utopian social engineers who believed that human customs and prejudices can be re-molded by the power of government, the architects of the U.S. Constitution sought to accommodate human nature and existing institutions, while providing for the refinement of justice in harmony with the "laws of Nature and of Nature's God." Had they been animated by purely self-interested motives, the Framers would probably have given the issue of slavery wide berth; had they less respect for the principles of limited government under law, they might have tried to eradicate the practice by decree — with disastrous results. The course ultimately settled upon by the Framers, however unsatisfactory it may seem to some of those who enjoy the blessings of their efforts, displayed great wisdom and insight.

Slavery was the most divisive issue at the Philadelphia Convention of 1787, and the resulting compromise did permit the continued importation of slaves for 20 years. However, as James Madison pointed out in *The Federalist*, No. 38, under the Articles of Confederation, the continuation of the slave trade was "permitted forever." While Madison and others among the Framers would have preferred immediate abolition, the anti-slavery element at the Convention had succeeded in creating a framework that — if followed — could have brought to a rapid and orderly end a despicable practice that had existed for centuries. As Madison explained in *The Federalist*, No. 42:

It ought to be considered as a great point gained in favor of humanity that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic in the prohibitory example which has been given by so great a majority of the Union. Happy would it be for the unfortunate Africans if an equal prospect lay before them of being



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redeemed from the oppressions of their European brethren!

## Beginnings of Abolition

The constitutional provisions that prefigured an end to the practice of slavery were explicitly acknowledged during the debate over ratification. “A solid foundation is laid for exploding the principles of negro slavery, in which many good men of all parties in Pennsylvania, and throughout the union, have already concurred,” declared Federalist Tenche Coxe in a September 1788 essay. Noah Webster concurred: “An immediate abolition of slavery would bring ruin upon the whites, and misery upon the blacks, in the southern states. The constitution has therefore wisely left each state to pursue its own measures, with respect to this article of legislation, during the period of twenty-one years.”

During the Philadelphia Convention, Roger Sherman of Connecticut, who opposed slavery, observed (as Madison recorded his remarks) that “the abolition of slavery seemed to be going on in the United States and that the good sense of the several States would probably by degrees compleat [sic] it.” “Some states began to act with the purpose of eventually ending slavery almost as soon as independence from Britain was declared,” writes Clarence Carson in Volume 2 of his authoritative series *A Basic History of the United States*. “In 1776, Delaware prohibited the importation of slaves and removed all restraints on their manumission (freeing by the owner). Virginia stopped slave imports in 1778; Maryland adopted a similar measure in 1783. Both states permitted manumission. In 1780, Pennsylvania not only prohibited further importation of slaves but also provided that after that date all children born of slaves should be free. Similar enactments were made in the early 1780s in New Hampshire, Connecticut, and Rhode Island. In Massachusetts, the supreme court ruled that on the basis of that state’s constitution of 1780 slavery was abolished there.... In order to protect free Negroes, Virginia made it a crime punishable by death for anyone found guilty of selling a freed Negro into slavery.”

“After 1808, Congress was free to abolish the slave trade, as it did,” writes historian Thomas G. West in his book *Vindicating the Founders*. While it is true that the Constitution tolerated the continued practice of chattel slavery on a temporary basis, “it did not stand in the way of any state that wished to abolish slavery,” continues West. “Congress could cut off the slave trade after twenty years. Congress could cut off the spread of slavery to new states and to the western territories. Congress could regulate interstate commerce in slaves. The Constitution was not the problem. The problem was the absence of political will” to use constitutional mechanisms to hasten the end of institutionalized slavery.

Once again, it is important to recognize that by devising these anti-slavery mechanisms, the Framers were acting to abolish a well-entrenched social institution. “What is significant in the historical context of the time is not that the liberty-loving Revolutionaries allowed slavery to survive, but that they — even those who profited directly from the institution — went so far in condemning it, confining it, and setting in motion the forces that would ultimately destroy it,” observes historian Bernard Bailyn. “A successful and liberty-loving republic might someday destroy the slavery it had been obliged to tolerate at the start; a weak and fragmented nation would never be able to do so.”

## Founders’ Intent

Clearly, the intention of the Framers was to set slavery “in the course of ultimate extinction,” as Abraham Lincoln observed. In his *Notes on Virginia*, Thomas Jefferson expressed the hope that America was pre-paring, “under the auspices of heaven, for a total emancipation” of the slaves. Madison



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expressed confidence that the Constitution would succeed in “palliating slavery as a deep-rooted abuse.” Another noted Virginian, abolitionist George Mason, issued a sobering warning to his fellow delegates at the Constitutional Convention: “Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this. By an inevitable chain of causes and effects providence punishes national sins, by national calamities.”

The same viewpoint was ardently championed by other lesser-known supporters of the new constitution. “A man who exercises absolute power over some hundred fellow creatures, although he should not abuse it, cannot easily have a heart-felt sensibility of the equal rights of mankind, the moderation of a republican, and a genuine love of liberty,” wrote Federalist Nicolas Collin (under the pseudonym “A Foreign Spectator”) in Philadelphia’s *Independent Gazetteer* in September 1787. “This national evil must indeed be abolished with prudence, and by degrees; but let it be done with all possible speed.”

Writing under the pen name “Crito,” Stephen Hopkins of Rhode Island, a signer of the Declaration of Independence, explained how the principles of that document applied to black and white alike:

The Africans, and the blacks in servitude among us, were really as much included in these assertions as ourselves; and their right, unalienable right to liberty, and to procure and possess property, is as much asserted as ours, if they be men.

And if we have not allowed them to enjoy these unalienable rights, but violently deprive them of liberty and property ... we are guilty of a ridiculous and wicked contradiction and inconsistency [sic].

George Washington became a slave owner by inheritance — through his half-brother Lawrence’s will and his marriage to Martha Custis. As a planter with extensive holdings, Washington both bought and sold slaves, and as president he was cautious not to offend the powerful slaveholding interests in the Southern states by publicly agitating for emancipation. However, Washington expressed his repugnance for slavery to his closest friends, and toward the end of his life, he acted upon his principled desire to see an end to the practice.

One of Washington’s most revealing statements on the subject came in 1774, amid increasingly brazen encroachments by the British Crown. Washington warned that if Americans allowed such usurpations to continue, “custom and use shall make us as tame and abject slaves as the blacks we rule over with such arbitrary sway.” Biographer James Thomas Flexner underscores a critical element of Washington’s warning: “The final clause in this sentence reveals disgust at the behavior of the whites, but even more significant is the assumption that the ‘custom and use’ which had debased the blacks would debase whites equally.”

Between the Revolution and his presidency, Washington reflected upon the need to bring about “the rooting out of slavery.” “There is not a man living who wishes more sincerely than I do to see a plan adopted for the abolition of slavery,” Washington declared on one occasion. In a conversation with his close friend David Humphreys, Washington described the “unfortunate condition of the persons whose labors I in part employed” as an “unavoidable subject of regret”: “To make the adults among them as easy and comfortable as their actual state of ignorance and improvidence would admit, and to lay a foundation to prepare the rising generation for a destiny different from that in which they were born, affords some satisfaction to my mind, and could not, I hoped, be displeasing to the justice of the Creator.”



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In a private letter sent to his friend Tobias Lear, Washington expressed his intention “to liberate a species of property which I possess very repugnantly to my feelings”; his intention, Flexner observes, “was to have the renters of his farms hire, ‘as they would do any other laborers,’ the blacks who had previously worked on the same farms as slaves.” Although he offered to rent his farms on these terms, “the end remained unachieved” at the time of his death in December 1799. However, when Washington drew up his last will and testament in July of that year, he made provision to free his slaves outright:

Upon the decease of my wife it is my will and desire that all the slaves which I hold in my own right, shall receive their freedom. — And whereas among those who will receive freedom, there may be some, who from old age or bodily infirmities, and others who on account of their infancy, will be unable to support themselves; it is my will and desire that — they shall be comfortably clothed and fed by my heirs while they live.

## After Slavery

One of emancipation’s greatest challenges, Washington observed, was educating freed-men “to perceive what are the obligations of freedom.” This same challenge was commented upon by Booker T. Washington, America’s first widely recognized black leader. Unlike contemporary racial grievance-peddlers, Booker T. Washington — who adopted the surname of the father of our country as his own — actually experienced firsthand the “cruelty and moral wrong of slavery.” Nevertheless, Washington did not share Thurgood Marshall’s contempt for the handiwork of our Founding Fathers.

“I have never seen [a former slave] who did not want to be free, or one who would return to slavery,” reflected Washington in his memoir *Up From Slavery*. Writing just decades after chattel slavery had been abolished in the United States, Washington observed that “the ten million Negroes inhabiting this country, who themselves or whose ancestors went through the school of American slavery, are in a stronger and more hopeful condition, materially, intellectually, morally, and religiously, than is true of an equal number of black people in any other portion of the globe.”

As a youngster, Washington had seen his mother “kneeling over her children and fervently praying ... that one day she and her children might be free.” The joy that greeted emancipation was tempered by the understanding that freedom entails responsibility as well. “The great responsibility of being free, of having charge of themselves, of having to think and plan for themselves and their children, seemed to take possession [of the newly liberated slaves],” wrote Washington. “In a few hours the great question with which the Anglo-Saxon race had been grappling for centuries had been thrown upon these people to be solved.” To many of the newly liberated slaves, “it seemed that, now that they were in actual possession of it, freedom was a more serious thing than they had expected to find it.”

Freedom was indeed a “serious thing” for Washington, who was born into slavery and destitution. Would that those of us who have not known such trials take our freedoms as seriously.

*Photo: Library of Congress*

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