



STUDY GUIDE

WHY THE 3/5THS COMPROMISE WAS ANTI-SLAVERY

KEY TERMS: clause U.S. Constitution person
 compromise representation slavery

| NOTE-TAKING COLUMN: Complete this section <u>during</u> the video. Include definitions and key terms. | CUE COLUMN: Complete this section <u>after</u> the video. |
|---|--|
| <p>How many members of the Emory University faculty disagreed with its president's response to the three-fifths compromise question?</p> <p>Who devised the three-fifths compromise?</p> <p>How large had the slave population grown by the time the Civil War began?</p> | <p>What is controversial about the three-fifths compromise?</p> <p>In what ways was the three-fifths compromise a good action?</p> |

DISCUSSION & REVIEW QUESTIONS:

- At the beginning of the video, Professor Swain alerts us to the fact that, “One of the most misunderstood clauses in the United States Constitution is found in Article 1. Section 2. ‘Representatives... shall be apportioned among the... States... by adding to the whole Number of free Persons... three fifths of all other Persons.’” Why do you think that this clause is misunderstood by so many? In the clause, what is the word ‘Representatives’ referring to? Did you misunderstand the clause when first encountering it? Explain.
- Later, after summarizing Emory University’s President Wagner’s response to the question of how the Framers could endorse the idea of some men not being equal to others, Professor Swain notes that, “Many people, including 31 members of his own faculty, vehemently disagreed. Wagner, the faculty members suggested, was excusing the inexcusable. They signed an open letter stating that the three-fifths compromise was ‘an insult to the descendants’ of slaves, and an example of ‘racial denigration.’” Do you agree with the faculty member’s position? Why or why not? Considering that the premise of the question was incorrect, why do you think that so many faculty members responded in such an ignorant fashion? Explain.
- After closely examining the text again, Professor Swain explains that, “...the Constitution does not say that a slave is not a person – it explicitly says that they are ‘persons.’ And it does not say that a slave is three-fifths of a person, as many today mistakenly believe. The ‘three-fifths’ description had nothing to do with the human worth of an individual slave, but everything to do with how many representatives each state would have in the US Congress. For that purpose, states could only claim three-fifths of their slave population.” Why do you think that so many people mistakenly interpret the text to mean three-fifths of a person rather than three-fifths of the non-free population to be counted towards state representation in Congress? Do you think that the clause should have been written differently? Why or why not?
- Towards the end of the video, Professor Swain asks, “Why... didn’t the North simply insist that the South not count slaves at all? Because the slave states would never have agreed to join the Union. They would have formed their own country, and we would have had two nations – one free and one slave – living side by side in conflict from the very start. The ‘three-fifths compromise’ was the solution to the most difficult challenge the Framers faced – how to create a single country out of people so divided on a fundamental issue. As discordant as the compromise sounds to modern ears, without it there would have been no United States.” Do you agree that the three-fifths compromise was paramount to forming a single union? Why or why not? Do you think that another solution could have been found to solve the problem of reconciling enough of the interests of slave-states and non-slave-states in order to form a single nation? If not, why not? If so, what might that solution have been?
- Professor Swain concludes the video by stating, “Following his defense of the compromise, Emory president James Wagner issued an apology to his outraged critics, asking forgiveness for his “clumsiness and insensitivity”. As it turns out, Wagner had nothing to apologize for. The three-fifths compromise didn’t deny the humanity of blacks, it affirmed it.” Do you think that President Wagner should have apologized? Why or why not? In what ways did the three-fifths compromise affirm the humanity of blacks? Explain.

EXTEND THE LEARNING:

CASE STUDY: President Adams's take on the 3/5ths compromise

INSTRUCTIONS: Read the articles "Three Fifths of All Other Persons," then answer the questions that follow.

- How were free person counted as part of the three-fifths compromise? What percentage of the black population was free according to the 1860 census? What conclusion did Robert Goldwin come to in terms of the resulting Southern influence of the three-fifths compromise? What was the result, in terms of representation in Congress, of the North expanding more rapidly than the South? What 'rippling, ill effects' did President Adams attribute to the three-fifths compromise?
- How did President Adams feel overall about the three-fifths compromise and about slavery? Explain. Did President Adams think that slavery would still exist even if the South split from the North? Why or why not? Why do you think that many people are so quick to incorrectly interpret the text, rather than read it closely and understand it, and the context it was written in, better? Explain.
- Which points in the article support points made in the video? Does the fact that a professional scholar and historian, different from the one in the video, writes in support of the thesis of the video make the claims more credible? Why or why not?



QUIZ

WHY THE 3/5THS COMPROMISE WAS ANTI-SLAVERY

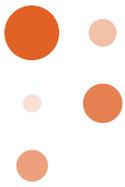
1. James Wagner, President of Emory University, said the three-fifths compromise was an example of _____.
 - a. systemic racism
 - b. difficult, but necessary, political bargaining
 - c. disenfranchisement
 - d. white privilege

2. The three-fifths compromise was devised by those who _____.
 - a. all parties
 - b. opposed slavery
 - c. were for slavery
 - d. were wealthy

3. By the time of the Civil War, the slave population had grown to _____.
 - a. 633,000
 - b. 1.1 million
 - c. 1.8 million
 - d. 4 million

4. The United States Constitution says a slave is three-fifths of a person.
 - a. True
 - b. False

5. If one hundred percent of the slave population had been counted during the Civil War, _____.
 - a. the South would have seceded from the Union
 - b. the Civil War wouldn't have been fought
 - c. it would have had no significant impact to the country
 - d. slavery may very well have lasted into the 20th century



QUIZ - ANSWER KEY

WHY THE 3/5THS COMPROMISE WAS ANTI-SLAVERY

1. James Wagner, President of Emory University, said the three-fifths compromise was an example of _____.
 - a. systemic racism
 - b. difficult, but necessary, political bargaining
 - c. disenfranchisement
 - d. white privilege

2. The three-fifths compromise was devised by those who _____.
 - a. all parties
 - b. opposed slavery
 - c. were for slavery
 - d. were wealthy

3. By the time of the Civil War, the slave population had grown to _____.
 - a. 633,000
 - b. 1.1 million
 - c. 1.8 million
 - d. 4 million

4. The United States Constitution says a slave is three-fifths of a person.
 - a. True
 - b. False

5. If one hundred percent of the slave population had been counted during the Civil War, _____.
 - a. the South would have seceded from the Union
 - b. the Civil War wouldn't have been fought
 - c. it would have had no significant impact to the country
 - d. slavery may very well have lasted into the 20th century

February 5, 2018

Three Fifths of All Other Persons

by Diana Schaub



Newspaper engraving from 1864 (NYPL digital collections)

My review of the John Quincy Adams diaries generated some discussion of Adams' characterization of the Three-Fifths Clause and his bold predictions about the direction the slavery struggle would take. Before responding to those welcome inquiries, it might be best to review the clause itself, since it is so often misunderstood. The persistent canard that the original Constitution regarded blacks as only “three-fifths human” must be refuted with the same persistence.

A look at the text clears up the worst of the misconceptions. The clause sets the rule for representation in the House, basing it upon a formula (the “federal ratio”) for calculating the respective populations of the states. The first thing to note is that all those counted are referred to as “persons.” However, “free Persons” and “all other Persons” (that is, slaves) are not tallied equally. Free persons are counted without regard to sex, age, race, or class. Women and men, girls and boys, blacks and whites, whether indentured servants or not, are counted in full.

According to the first census of 1790, 8 percent of the black population were free, a percentage that slowly ticked up to 10 percent by 1860. All these free black persons figured in the rule of representation on the same terms as whites. The discrimination made by the text is not race-based but condition-based. Of

course, it is true that by this point in the nation's history, all slaves were black—or at least they were so called, regardless of the actual degree of (involuntary) race mixing—even if not all blacks were slaves.

The real question, then, becomes: why were black slaves discounted by two-fifths?

Here, a moment's reflection on the strategies of the pro-and anti-slavery delegates to the Constitutional Convention provides the answer. Which group wanted slaves to count in full? Pro-slavery delegates wanted slaves to be fully counted since they wanted to boost their pro-slavery contingent in Congress. Those delegates who were most anti-slavery held that slaves should not be counted at all in the rule of representation. It mocked the very principle of representation to think that the human chattels of the slaveholders should be used to place more slaveholders in government. The battle between these positions (which involved other permutations about the role of wealth and the respective productivity of free and slave labor) yielded the compromise of counting slaves fractionally.

Paul Seaton brought up Robert Goldwin's fine 1971 essay, "Why Blacks, Women, and Jews Are Not Mentioned in the Constitution." In showing that "the three-fifths clause had nothing at all to do with measuring the human worth of blacks" but was instead solely about "voting power in Congress," Goldwin spelled out the concrete effects of the compromise. If slaves had been wholly excluded from the count, as anti-slavery forces wanted, the slave states would have had 41 percent of the seats in the House. If slaves had been counted on a par with free inhabitants, as the pro-slavery forces wanted, the slave states would have been at 50 percent. The Three-Fifths Compromise put them at 47 percent. The conclusion drawn by Goldwin was that the resulting Southern influence was "not negligible, but still a minority likely to be outvoted on slavery issues." [1]

In view of these statistics, Paul wonders whether Adams was incorrect in claiming that "this slave representation has governed the Union." After all, the other side, led by John C. Calhoun, complained just as bitterly about a growing Northern ascendancy. Keep in mind that, since the apportionment of seats in the House followed the census returns, there was nothing fixed or guaranteed about the relative weight of North and South other than the rule for tallying up the population. And even that could be amended. The legislature of Massachusetts in fact made three attempts (in 1804, 1815, and 1843) to circulate a proposed constitutional amendment that would have based representation solely on free inhabitants. It was roundly rejected by the other states.

At the time of the Founding, it was expected that population growth would occur quickly in the South and Southwest. As luck (or the natural superiority of free labor) would have it, the North and Northwest expanded more rapidly, with the result that, even with the Three-Fifths Clause, the House of Representatives was generally the least pro-slavery part of the federal government. Measures like the 1819 Tallmadge Amendment (excluding slavery from Missouri) and the 1846 Wilmot Proviso (banning slavery in all the territory gained from Mexico) passed the House, but never got through the Senate (where a rough equality between free and slaves states prevailed).

Nonetheless, the effects of the slave bonus were felt. As Abraham Lincoln pointed out, the Kansas-Nebraska Act of 1854 was carried by those 20 additional slave-state representatives in the House. His Peoria speech showed in mathematical detail the manifest unfairness by which every white man in South Carolina had double the voting power of every white man in the North. Maine, with more than twice as many free inhabitants as South Carolina, yet had exactly the same number of House members.

Moreover, the institutional effects of the Three-Fifths Clause were not limited to that body, but extended to the Electoral College, and thus spread throughout the executive and judicial branches (through the President's appointment power). By some calculations, it was the bounty of the slave representation that secured Jefferson's election in 1800, with profound and perhaps incalculable consequences. [2] Certainly, it is true that, over time, the federal system skewed slaveward.

Just as pernicious was that some of the Southern states adopted the three-fifths rule for their state legislatures. (Louisiana went further, counting slaves in full.) Slave populations were often distributed very unevenly across counties—think of the situation in Virginia, with slave-dense plantations in the east and almost no slaves in the west (today’s West Virginia). As a result, non-slaveholding “poor” whites, despite their majority status within these states, lost political power to the oligarchic minority of slaveholders.[3]

Yet, when Adams traces so many rippling, ill effects to the Three-Fifths Clause, his argument is not exclusively numerical. Perhaps more fundamentally, it is psychological. According to Adams, slavery “taints the very sources of moral principle,” perverting both reason and sentiment. The slaveholders display “pride and vainglory in their condition of masterdom. . . . They look down upon the simplicity of a Yankee’s manners, because he has no habits of overbearing like theirs and cannot treat negroes like dogs.” The Three-Fifths Clause compounds this tyrannical tendency by giving official recognition to the master’s arrogation: “masters are privileged with nearly a double share of representation.” For Adams, the Bible foretold the result: “Benjamin portioned above his brethren has ravined as a wolf. In the morning he has devoured the prey, and at night he has divided the spoil.”

Thus Missouri, after gaining statehood in 1820 with slavery intact, immediately grasped for more by drafting a new state constitution that banned free blacks from the state—a measure “directly repugnant to the rights reserved to every citizen of the Union in the Constitution of the United States.” In his diary entry for November 29, 1820, Adams argued that Massachusetts would be justified in retaliating by declaring the white citizens of Missouri “aliens within the Commonwealth of Massachusetts, not entitled to claim or enjoy within the same any right or privilege of a citizen of the United States.” Massachusetts might also refuse to return fugitive slaves to Missouri claimants. “All which I would do,” Adams says, “not to violate, but to redeem from violation, the Constitution of the United States.”

If that article of the Missouri constitution were permitted to stand,

it would change the terms of the federal compact—change its terms by robbing thousands of citizens of their rights—and what citizens, the poor, the unfortunate, the helpless, already cursed by the mere color of their skin, already doomed . . . to drudge in the lowest offices of society . . . this barbarous article deprives them of the little remnant of right yet left them—their rights as citizens and as men.

The habit of domestic despotism was spilling over into the public sphere: “The slave-drivers, as usual, whenever this topic is brought up, bluster and bully, talk of the white slaves of the Eastern States, and the dissolution of the Union, and oceans of blood; and the Northern men, as usual, pocket all this hectoring, sit down in quiet, and submit to the slave-scourging republicanism of the planters.” Because of his own fears for the Union, Adams came around to favoring the Missouri compromise, even though it wasn’t a true compromise since “the serviles have the substance and the liberals the shadow.” But he worried about that choice, confessing to his diary that it might have been “a wiser as well as a bolder course [for the free states] to have persisted in the restriction upon Missouri.” If the conflict were indeed irrepressible, then time only allowed the disorder to grow.

Fred Baumann inquired as to the details of Adams’ prophecy. If the Union fell apart, did he expect slavery to remain intact in a separate Southern confederation?

In a number of entries, Adams sketched his vision of the likeliest scenario. Never did he think an amicable divorce between the free and slave states was possible. Dissolution would bring civil war (between the sections) and servile war (slave insurrections and race war in the South—to see why, imagine what would happen once an alliance of free states refused to return fugitive slaves: widespread desertions by slaves, leading to much harsher treatment, triggering slave rebellions). Adams was convinced that the death of slavery would follow. While fully granting that under normal circumstances the federal government had no authority over slavery in the existing slave states, Adams also hypothesized that in time of civil or servile war, slaves could be freed by federal action on grounds of military necessity.

Here is another visionary passage, not as famous as the one that recounts his conversation with John C. Calhoun, but equally spine-tingling in its accuracy:

If slavery be the destined sword in the hand of the destroying angel which is to sever the ties of this Union, the same sword will cut in sunder the bonds of slavery itself. . . . It seems to me that its result must be the extirpation of slavery from this whole continent; and, calamitous and desolating as this course of events in its progress must be, so glorious would be its final issue, that, as God shall judge me, I dare not say that it is not to be desired.

Glimmers of the 1865 Second Inaugural.

[1] For these calculations, Goldwin relied on William Wiecek who in turn relied on Donald L. Robinson, *Slavery in the Structure of American Politics, 1765-1820* (Harcourt Brace Jovanovich, 1971), p. 180.

[2] As Christopher Wolfe points out in his comment appended to my review, there is dispute among the historians about the systemic effects of the Three-Fifths Clause. For details on some of the competing numbers-crunching scenarios see Garry Wills's "*Negro President*": *Jefferson and the Slave Power* (2003), Don E. Fehrenbacher's *The Slaveholding Republic* (2001), and Lance Banning's review of Wills, entitled "Three-Fifths Historian," in the Fall 2004 issue of the *Claremont Review of Books*.

[3] See the landmark new book by Forrest A. Nabors, *From Oligarchy to Republicanism: The Great Task of Reconstruction*.

Diana Schaub

Diana Schaub is professor of political science at Loyola University Maryland.