

THE THREE-FIFTHS CLAUSE: A NECESSARY AMERICAN COMPROMISE OR  
EVIDENCE OF AMERICA'S ORIGINAL SIN?

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By

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ABSTRACT

For over 230 years historians and scholars have argued that the Three-fifths Clause of the United States Constitution, which counted slaves as three-fifths a citizen when calculating states' population for apportionment in the House of Representatives, gave Southern states a disproportional amount of power in Congress. This "Slave Power" afforded by the additional "slave seats" in the House of Representatives and extra votes in the Electoral College allegedly prolonged slavery well beyond the anticipated timelines for gradual emancipation efforts already enacted by several states at the time of the Constitutional Convention. An analysis of a sampling of these debates starts in the period immediately following ratification and follows these debates well into the 21<sup>st</sup> century. Debates on the pro- or anti-slavery aspects of the Constitution began almost immediately after ratification with the Election of 1800 and resurfaced during many critical moments in the antebellum period including the Missouri Compromise, the Dred Scott decision, The Compromise of 1850 and the Wilmot Proviso. These debates were further fueled by the Garrisonian anti-slavery movement in the 1840's and made the decade leading to the election of Abraham Lincoln, the Civil War and the passage of the Thirteenth, Fourteenth and Fifteenth Amendments perhaps the most divisive period in American history. Post-bellum debates on the Three-fifths Clause quieted until the turn of the century, when scholarly research tended to take an anachronistic view on the matter, most notably with the Progressive-era Beardian economic origins and the neo-Garrisonian debates of the modern Civil Rights era. Finally, in the 21<sup>st</sup> century, views have begun take on a more moderate position espousing a combination of factors creating what

some still call a pro-slavery Constitution. My final assessment concludes that the “pro-slavery” clauses in the Constitution were incidental to more significant concerns of the Convention delegates. The security, unity and economic stability of the nation was at stake and these issues took primacy leading to several compromises, including the Three-fifths Clause, to ensure ratification. Unfortunately, these compromises, regardless of their origins, the delegates’ intentions and several civil rights-inspired Constitutional amendments, remain to many, evidence of a pro-slavery Constitution.

## DEDICATION

This thesis is dedicated to my children, Jessica, Michelle and Michael. May they find joy, opportunity and success as they continue to enjoy the freedoms assured them by the United States Constitution. May they accept that for all that is good with our country, it is not without flaws. Finally, I pray they recognize that as our flawed country grows alongside them that the brilliance of our founding document allows for course corrections that allows their children and their children's children to enjoy the same freedoms their parents and grandparents enjoyed and that they understand how lucky they are to live in the United States of America. One last thought to my dear children . . . where ever life's journey takes you, no matter where you go or what you do, no one can ever take your education from you—unlike other things in life that are fleeting, knowledge you obtained is yours forever . . . and no one can ever take that away from you.

To my beautiful wife, Angelina . . . thank you for your support—your love and patience makes everything possible!

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## INTRODUCTION

### **THE THREE-FIFTHS CLAUSE: A NECESSARY AMERICAN COMPROMISE OR EVIDENCE OF AMERICA'S ORIGINAL SIN?**

The Declaration of Independence, The Bill of Rights and The United States Constitution. All road maps for a better world and a democratic society delivering on promises made by King John over four centuries earlier in Magna Carta. However, the importance placed on each of these messengers of the American Dream is often misplaced. The most renown of these celebrated documents, The Declaration of Independence and Bill of Rights receive a lot of deserved attention. After all, The Declaration of Independence, a brilliant piece of work by a young Thomas Jefferson—with some editing by a sagacious Benjamin Franklin and the Continental Congress—is often lauded as the foundational document of American democracy and the Bill of Rights is renowned for protecting Americans against the abuses they claimed were committed by King George.

Yes, in some ways the Declaration of Independence is foundational but only in the sense that it expressed what would become the American dream and a desire to cut political ties with the British Crown to form free and independent states. All the Declaration of Independence accomplished was to confirm what the world already knew—the colonies were in rebellion against the crown. The Declaration of Independence, as inspiring as it was, and still is, did not form a new union. The second celebrated document, The Bill of Rights, an important product its own right, only exists as a series of amendments to the Unites States Constitution. Granted, these first ten amendments, which secured Americans' most fundamental rights, were essential to the Constitution's ratification, but the Bill of Rights is a checklist of democratic human rights. Without the Constitution and its six basic articles, the Bill of Rights would not carry the weight it does

today. Yet, the 8000 words of the Constitution,<sup>1</sup> the document that establishes a more perfect union, the balance of powers between the three branches of government and procedures for selection of our leaders, is the least appreciated, least quoted and receives the least credit of these three documents. The Constitution provides the framework of government that makes the American Dream possible. The Declaration of Independence merely promises an American Dream and the Bill of Rights preserves the American Dream but the United States Constitution established the democratic republic we live in today and protects the freedoms of almost three-hundred million Americans. Finally, it is the document that other nascent nations look to for guidance . . . just as our Founding Fathers looked to Magna Carta.

However, the Constitution does come under much more scrutiny than the other two founding documents. As the protector of the American Dream the scrutiny is justified. As THE document that established a “City on a Hill”<sup>2</sup> and the world’s longest standing democratic republic, a democratic republic built upon values in the Declaration of Independence, it should come under scrutiny. This scrutiny is what makes the government so enduring. The irony is that the Constitution itself encourages the very scrutiny it finds itself subject to. Look no further than the First Amendment to this very document that says, “Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.”

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<sup>1</sup> Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), xi.

<sup>2</sup> “City on a Hill” is a phrase rooted in American lore. It originates from the parable of Salt and Light in Matthew 5:14-14 where Jesus says “You are the light of the world. A city on a hill cannot be hidden.” John Winthrop borrowed this phrase when describing the importance of the Massachusetts Bay Company and their attempt to establish a settlement foothold in 1630. Over three hundred years later, on 9 January 1961, President John F. Kennedy quoted Winthrop during his farewell speech to his home state of Massachusetts as he articulated the characteristics he desired for his new administration. Kennedy said, “We must always consider that we shall be as a city upon a hill—the eyes of all people are upon us.”

Over the course of its 230 years, one Constitutional issue heavily scrutinized is the Three-fifths Compromise that counted African American slaves as three-fifths a citizen when computing representation in the House of Representatives and population for direct taxation. This compromise, borrowed from debates during the creation of the Constitution's predecessor, the Articles of Confederation as well and 1783 Congress,<sup>3</sup> convinces many that the United States Constitution was a slave states' document and therefore inherently racist.

Claims of a pro-slavery Constitution were based on the perception that the compromise gave Southern states disproportionately more power than Northern states due to the additional representation in the House of Representatives that would eventually count three million slaves as three-fifths a citizen. The additional representatives provided by these almost three million "three-fifths citizens," as the opponents' narrative goes, shifted the balance of power disproportionately between North and South. Thus, in this new nation, a nation other nations found inspiration from, had slavery as its flaw . . . or as historian Akhil Amar puts it: slavery was the original sin in the New World garden, and this clause did more to feed the serpent than to crush it.<sup>4</sup> Or did it?

Ironically, by 1787 antislavery societies had been established in many states and the abolitionist cause appeared to be prospering. Abolition had begun in the Northern states and was expected to prevail eventually at least as far south as Delaware. In addition, Virginia and Maryland passed legislation to facilitate private manumission and every state except Georgia had in some way inhibited or suspended slave importation. Most considered slavery exclusively a state problem and no one thought slavery was a problem that should be addressed by a national authority. Yet, while slavery frequently intruded on the Constitutional Convention's deliberations; likely because

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<sup>3</sup> Leonard L. Richards, *The Slave Power—The Free North and Southern Domination 1780-1860* (Baton Rouge: Louisiana State University Press, 2009), 32.

<sup>4</sup> Amar, *America's Constitution*, 20.

fifteen of the fifty-five delegates were slave owners,<sup>5</sup> indirectly affected several of its important decisions<sup>6</sup> and became the focus of 230 years of debates on the convention's intent and racist origins of the foundational document of our Nation, many will argue that slavery was a secondary issue. The most significant issue on the delegates' mind was not slavery at all but rather the economic well-being of the young nation.

This paper will analyze the debates over the Three-fifths Clause. I will dissect many of the debates beginning with the earliest debates including the contentious Election of 1800 and its impact on future presidential elections, then venture into the hotly contested antebellum arguments and finish with an overview of the 20<sup>th</sup> and 21<sup>st</sup> century debates. Each argument has its own nuances but the focus in all is on the pro- or anti- slavery aspects of the Constitution and the six clauses in the Constitution most historians attribute to slavery, most specifically the Three-fifths Clause.

How the Constitution addressed the institution of slavery became a topic of debate by both pro- and anti-slavery advocates almost immediately after ratification. The most intense early debate focused on the Election of 1800. As the election between Thomas Jefferson, John Adams, Aaron Burr and General Charles Cotesworth Pickney was thrown to the House for resolution, many believe the additional Southern representation garnered by the Three-fifths Clause secured the vote for Jefferson. Deeper research into this election as well as House roll calls of the time offer interesting insights on the role the Three-fifths Clause played in this election and in Congress in the years leading up to the 1820 Missouri Crisis.

Between 1820 and the election of Abraham Lincoln abolitionist debates continued but for the most part the Three-fifths Clause, contrary to what some historians may suggest, was a relative

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<sup>5</sup> Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Dover Publications, Inc, 2004), 150-151.

<sup>6</sup> Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (Oxford: University Press, 2001), 28.

non-factor. Slave Power was still a concern and long series of Southern presidents allowed the Slave Power to shape the federal government, most significantly in the Supreme Court, but the Three-fifths Clause's role in attributing to the rise of the Slave Power is questionable. The battle over the Slave Power, abolition and states' rights led to the bloodiest five-year period in the country's history followed by a constitutionally transformative five-year period.

In the postbellum period, the Three-fifths Clause did not receive much attention but as the 20<sup>th</sup> century turned and the Progressives became much more prominent, the debates shifted from an emphasis on slavery to an emphasis on the economic origins of the Constitution. Some Progressive-era historians are accused of minimizing the role slavery played in the development of the Constitution as they made compelling arguments for the economic origins of the founding document.

In the mid-20<sup>th</sup> century debates mirrored the Civil Rights concerns of the 1960s and shifted to the alleged racist and pro-slavery intent of the framers as evidence of inherent racism in the American government. These neo-Garrisonians, perhaps motivated by the Civil Rights movement, accused the Constitution of perpetuating the practice of slavery and therefore, as an extension, accused the United States government as being inherently racist.

Finally, a more moderate position emerged in the 21<sup>st</sup> century that balanced the Progressive's economic-based position with the neo-Garrisonian's Civil Rights view of the Constitution. This position takes the stance, contrary to the neo-Garrisonians, that the framers intent was to form an economically-sound central government and therefore the Constitution was rooted in economic principles. However, this moderate view also contends that slavery was, despite what the Progressives claimed, a significant factor in securing compromises that made ratification possible.

My conclusion will summarize the debates and offer my thoughts on the pro- or anti-slavery origins of the Constitution and more specifically the Three-fifths Clause. However, before we get

started, a review of how the Three-fifths Clause came to fruition begins with a look into the debates in Philadelphia during the creation of the Articles of Confederation.

## CHAPTER 1

### A COMPROMISED IS FORGED

By 1787 the Articles of Confederation was proving to be a dangerously inadequate government for the United States in the view of an important faction of its leaders. As they saw it, the loose confederation of the Articles provided a central government far too weak to meet the nation's challenges. Each state was free to mint money, raise taxes, form treaties with each other and other nations and none were truly beholden the others for their collective benefit. Additionally, external forces were working to undermine the relatively weak new union as well. After the Revolutionary War, British troops remained in United States western territory fostering relationships Indian attacks to harass the new American government in hopes of provoking its collapse.<sup>1</sup> Furthermore, England had recently closed its West Indies colonies to American trade and France and Spain watched as the states, bucking taxes, spoiled the Continental Congress' promises to pay off foreign loans. Finally, some states passed their own import and export taxes essentially treating each other as foreign nations.<sup>2</sup> This weak central government was in need of a course correction.

Thus, twelve state governments, all states of the confederation except Rhode Island, met in summer 1787 to revise the Articles of Confederation and set the young, weak and economically unsound nation on a new path. Four years after the Treaty of Paris formally ended the American rebellion against the crown, the new nation was not united and more importantly, the nascent nation's future was uncertain. Adding to the mix was the fact that changes to the Articles of Confederation were required to be ratified by only nine states to take effect and only then, only

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<sup>1</sup> Harlow G. Unger, *John Quincy Adams* (Boston: Da Capo Press, 2012), 87.

<sup>2</sup> David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009), 63.

those states who ratified would be bound to it.<sup>3</sup> Thus, as disunited as the states were under the Articles of Confederation, there was a risk that with any revisions, the states would be furthered fractured if they all did not find the changes to their satisfaction.

Shortly after arriving, the fifty-five delegates<sup>4</sup> quickly displayed a strong disposition to draft a whole new constitution for the United States. Most of the delegates were in general agreement that their primary purpose was to strengthen the national government creating a central government with the power to govern effectively. Many plans were presented and debated but the crux of the debates came down to an equitable distribution of states' power within the national government.<sup>5</sup>

### **A New Union is Formed**

Fortunately, although it took over two years, all thirteen states ratified the new Constitution. Delaware, Pennsylvania, New Jersey, Georgia and Connecticut were the first five states to ratify in late 1787 and 1788, and Massachusetts, Maryland and South Carolina made eight by spring 1788 leaving ratification one state short. The Northern-most state, New Hampshire ratified in June to make it nine and blessing the Constitution as the nation's governing document. Virginia quickly followed<sup>6</sup> bringing the number of states to ten.

At this point it would be interesting to imagine a United States without New York which was in crucial and pivotal position for the proposed new union. Without New York, the New England states would be cut off from the rest of the union and it does not take much revisionist history to

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<sup>3</sup> Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 5-6.

<sup>4</sup> Charles A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Dover Publications, Inc, 2004), 150.

<sup>5</sup> Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (Oxford: University Press, 2001), 29.

<sup>6</sup> Amar, *America's Constitution*, 6.

imagine how critical that would have been to the continuity of the nation. Fortunately, New York, after a rough start to their convention—two-thirds of the sixty-four delegates were initially opposed to ratification—ratified in late July 1788 by a razor thin margin of 30 votes to 27 thanks to some political maneuvering by the Federalists.<sup>7</sup> Thus, when President George Washington was sworn in, eleven states looked to him as their President—not thirteen. However, in 1789 the number of states grew to twelve with North Carolina’s ratification and then thirteen in 1790 when Rhode Island’s convention, the only state not represented at the Constitutional Congress, finally ratified the new United States Constitution.<sup>8</sup> These last two states held out as long as they could but were really left little choice when the establishment of the new government put in motion powerful economic forces isolating them from the rest of the original colonies.<sup>9</sup> It took almost three years but at last, all thirteen states were together as one.

### **The Three-fifths Clause**

This final product, the United States Constitution, like the eleven-year-old Declaration of Independence, was unlike anything seen in world to date. In fact, the concept was quite novel. Self-governing democracies were incredibly rare in the 18<sup>th</sup> century as Kings, emperors, czars and other forms of dictators or autocrats ruled the earth. While other smaller democracies had existed, none allowed the governed to vote on their own governing document. Even the Articles of Confederation was ratified by state legislatures without input from their constituents but the Constitutional Congress followed a practice established by some states, who, during the Revolutionary War, sent state constitutions to voters for approval.<sup>10</sup> However, the notion of the

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<sup>7</sup> Beard, *An Economic Interpretation*, 229.

<sup>8</sup> Amar, *America’s Constitution*, 7.

<sup>9</sup> Beard, *An Economic Interpretation*, 237.

<sup>10</sup> Amar, *America’s Constitution*, 9.

Constitution as a model of Equality, Liberty and the Pursuit of Happiness as stated in the Declaration of Independence, has been frequently challenged since its inception. In fact, the debates started before the document was even ratified. At first glance the Constitution with its representational government and Bill of Rights, appears a logical successor to the Declaration of Independence but one only needs to read Section 2 of the first of its six articles to get the sense that something was not quite as it appears.

The portion of Section II that garners so much attention addresses representation and direct taxes.<sup>11</sup> It reads as follows:

Representatives and direct Taxes will be apportioned among the several states which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons.<sup>12</sup>

Section 2 goes on to detail an interim number of representatives for each state until the first census and other rules of the House, but the “three-fifths of all other Persons” clause, more commonly known as the “Three-fifths Clause” has generated a tremendous amount of passionate debate since quill was put to parchment.

Debates over the Three-fifths Clause centered on the political influence the southern states, more specifically, Southern slave states since 94% of the 657,000 slaves in the nation of four million were owned by masters in the Southern states,<sup>13</sup> gained by the additional representation provided by counting three-fifths of their slaves as citizens rather than the property that the masters

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<sup>11</sup> Howard A. Ohline, in his 1971 essay “*Republicanism and Slavery: Origins of the Three-Fifths Clause in the United States Constitution*,” noted that the Three-fifths Clause was not a quid pro quo as it appears in the United States Constitution because the delegates had not envisioned direct taxes as a major source of revenue. Ohline added that when Rufus King of Massachusetts later asked the delegates “what was the precise meaning of direct taxation?,” no one could answer him (Ohline, 581).

<sup>12</sup> Amar, *America’s Constitution*, 480.

<sup>13</sup> *Ibid.*, 94.

claimed they were. Subsequent chapters will explore these debates but for now let us look at how the Constitutional Congress arrived at the controversial Three-fifths Clause.

The traditional view is that the three-fifths ratio was a legacy from the Articles of Confederation<sup>14</sup> and that most delegates to the Constitutional Congress knew beforehand that it was the minimum price for Southern acceptance of any new constitution.<sup>15</sup> While there may be some degree of truth to that belief only the three-fifth ratio was a matter of legacy. The ratio may have been planted in the minds of convention attendees some fourteen years earlier, but its purpose at the time was not intended for the computation of representation in any branches of the government.

During the 1777 debates over the Articles of Confederation the three-fifths ratio was discussed with regard to taxation since the Articles of Confederation called for representation at the rate of one-state/one-vote regardless of the number of delegates each state sent to Congress. A population-based tax standard was necessary because if states were required to pay equal taxes the smaller states such as Rhode Island would pay as much tax as the more heavily populated states such as New York and Virginia.<sup>16</sup>

During these earlier debates, Benjamin Harrison of Virginia made the first proposal of partial representation of slaves as one-half a citizen offering the rationale that they did not work at the same rate as a free man in the North. James Wilson of Pennsylvania objected to the advantage this ratio offered slave owners who would not only have to pay fewer taxes but also provide fewer men for the common defense. Wilson also objected because the ratio, or any counting of slaves, encouraged

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<sup>14</sup> Garry Wills, *Negro President: Thomas Jefferson and the Slave Power* (Boston & New York: Houghton Mifflin Company, 2003), 51.

<sup>15</sup> Leonard L. Richards, *The Slave Power—The Free North and Southern Domination 1780-1860* (Baton Rouge: Louisiana State University Press, 2009), 32.

<sup>16</sup> Wills, *Negro President*, 51.

the importation of additional slaves when, he felt, the government should do all it can to discourage the practice of slavery.

Finally, James Witherspoon of New Jersey proposed taxation should be based on “lands and houses.” The South backed Witherspoon’s property proposal and although all the New England states objected, the property quota was passed by a vote of five states to four. Thus, the ratified Articles of Confederation stated taxes will be paid:

. . . in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvement thereon shall be estimated according to such mode as the United States in Congress assembled shall from time to time direct and appoint.<sup>17</sup>

Although this provision would create its own set of problems during the war, the idea of considering a ratio of slaves as inhabitants for taxation was a seed that sprouted six years later.

During the Revolutionary War Congress realized that basing taxes on land values was a tricky proposition. Some states were accused of underreporting land values to reduce taxation and even legitimate estimates were difficult to assess as property values fluctuated significantly due to occupation and wartime destruction. Thus, when Congress met in 1783, it revisited the original idea of taxation based on population which raised a familiar debate—how would slaves be counted? After much debate over ratios that ranged from three-quarters, to one-quarter and one-third, a vote was taken on counting slaves as two-thirds. This vote lost. James Madison then suggested a three-fifths ratio which was viewed as a compromise between the one-half the South supported and the three-quarters the North supported. This figure was much more palatable as it only took two votes to realize a majority result—the last vote was 11-2 in favor of three-fifths but since this was to be an amendment to the Articles of Confederation, a unanimous vote was required for enactment.<sup>18</sup>

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<sup>17</sup> Ibid., 52.

<sup>18</sup> Ibid., 53.

Therefore, although these percentages were negotiated and agreed upon by the majority, the amendment was not enacted and the three-fifths ratio was never formalized in relation to taxes, representation or any other matter. However, a second seed was planted—the seed of counting slaves as three-fifths an inhabitant regardless for what they were counted.

Although the three-fifths seed was planted years before, the original proposals for a representation formula presented before the Constitutional Convention of 1787 did not use the three-fifths ratio. These proposals focused on “how” the legislature(s) would be represented—proportionally by population (without regard at this point to free persons or slaves) or equally among the states. One little-known proposal was offered by David Brearly, the Chief Justice of the New Jersey Supreme Court, who believed that, to preserve state sovereignty and resolve the friction between large and small states, existing boundaries should be redrawn to form thirteen equal states.<sup>19</sup> However, the two proposals that garnered the most consideration were the Virginia and New Jersey—William Patterson’s, not Brearly’s—Plans. James Madison’s “Virginia Plan” called for a national legislature of two houses, with representation in both houses apportioned amongst the states according to free population or contributions to the national treasury. Delegates from smaller states objected to Madison’s proposal out of fear that they would be swallowed up by the larger states if representation in the Congress were based solely on population.<sup>20</sup> The smaller states countered with the status quo, or William Patterson’s “New Jersey Plan,” which called for equal representation of one vote per state in a single legislature, which currently existed under the Articles of Confederation.

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<sup>19</sup> Howard A. Ohline, “Republicanism and Slavery: Origins of the Three-Fifths Clause in the United States Constitution,” *William & Mary Quarterly* 28, no. 4 (1971): 570.

<sup>20</sup> Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (London and New York: Routledge, 2014), 15.

The debates raged for fifteen days with the focus on representation in the houses and did little but expose sectional differences between North and South. Once it became apparent they were not close to a resolution, the Convention accepted General Charles Cotesworth Pinckney's recommendation that the issue be sent to a committee composed of one representative from each state. This committee met for three days to address the most critical issue addressed by the Convention—representation in the legislature. On 5 July, the committee proposed what is now known as the Three-fifths Compromise which called for representation in the lower house based on population and representation in the upper house where the states would have an equal vote. Three-fifths for both representation and taxation was part of this proposal and started a four-day debate over slavery and representation.<sup>21</sup>

C. C. Pinckney's cousin, Charles Pinckney, a South Carolinian owner of 111 slaves,<sup>22</sup> came to the convention with his mind set on the South gaining at least three-fifths of their slaves counted towards representation in Congress. However, the political savvy Pinckney did not introduce the measure himself. Instead, in what would portend years of numerous Northern Democrats—or Doughfaces—cow towing to Southern concerns, he had James Wilson of Pennsylvania, who thought he was fostering harmony between major slave states and the heavily populated Northern states, introduce the ratio as a compromise. Ironically, this is the same James Wilson who, in 1777, objected to any ratio because it encouraged the importation of additional slaves.

C.C. Pinckney, later an ironic victim of the Three-fifths Clause in the Presidential Election of 1800, quickly seconded Wilson's motion and the ratio picked up steam throughout the convention.<sup>23</sup> As Southern delegates made it clear that some slave ratio must be considered in

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<sup>21</sup> Ibid., 15-16.

<sup>22</sup> Ohline, *Republicanism and Slavery*, 568.

<sup>23</sup> Richards, *Slave Power*, 32-33.

representation—Charles Pinckney himself said that “blacks ought to stand on an equality with white” but he “would . . . agree to the ratio settled by Congs.” Paterson of New Jersey countered logically. He asked that if slaves were not counted in allocating representatives in Southern state legislatures, “Why should they be counted in the general government?”<sup>24</sup> Others offered their own objections as well.

Gouverneur Morris of Pennsylvania joined the attack against the three-fifths ratio. Morris focused on the façade that the ratio had anything to do with taxes. Instead, he focused on the impact any ratio would have on slavery, and, if not openly, at least indirectly, on Northern financial interests. While some in the North argued that it should have been five-fifths rather than three-fifths to oblige the South to pay more taxes, they also forgot that five-fifths would have garnered more seats for the South.<sup>25</sup> Morris aggressively attacked these points. Morris’ first attack was on the idea of representation as a tax-generator. The idea that the “General Government can stretch its hand directly into the pockets of people scattered over so vast a country” was nonsense to Morris. To Morris, the only way the federal government could raise money was through excise taxes and import duties—and these would fall “heavier on Northern freemen than the whole consumption of the miserable slave . . . .”<sup>26</sup> Therefore, according to Morris, in another logical attack on the ratio, the only thing three-fifths did was give slave masters extra representation in Congress.<sup>27</sup>

In addition to the extra seats in Congress, the clause also indirectly encouraged the continuation of slavery. If representation was based on population, Morris reasoned, there would be three means for increasing a state’s population—by consensual migration from one state to

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<sup>24</sup> Finkelman, *Slavery and the Founders*, 15-16.

<sup>25</sup> Amar, *America’s Constitution*, 89.

<sup>26</sup> Richards, *Slave Power*, 33.

<sup>27</sup> *Ibid.*

another, consensual immigration from foreign lands or by non-consensual immigration. Three-fifths, or any fifths for that matter, encouraged the latter. Morris argued that counting slaves as any percentage of a citizen for representation encouraged slave masters to import additional slaves. For every one hundred slaves imported, a state gained sixty “citizens.” To Morris, essentially bringing the Declaration of Independence into the argument, it all came down to this:

That the inhabitant of Georgia and South Carolina who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages, shall have more votes in a government instituted for the protection of the rights of mankind, than the citizens of Pennsylvania or New Jersey who views with a laudable horror, so nefarious a practice.<sup>28</sup>

Despite the appearance of the highest human values, Morris’ argument may have supported an ulterior motive and may not necessarily have had the best interest of those in bondage in mind. Evidence of his lack of benevolence can be found not only in the obvious fact that any agreed-upon ratio would not free any slaves, but also in Morris’ financial motivations. Morris was one of the many delegates who represented the financial interests of not only themselves but also their regions. Morris’ family was part of New York’s powerful aristocracy and he was regarded as expert in financial affairs and he was heavily involved in commercial ventures to include shipping and shares in an iron works factory on the Delaware River.<sup>29</sup> The fact that Morris was a rich man makes it difficult to imagine his opposition fueled by anything but the future impact three-fifths would have on Eastern financial interests. Morris was concerned that a fixed apportionment that would bind all future Congresses. He hoped Congress would use its discretion to count wealth alongside population and give a Northern-dominated Congress the leeway to count slaves at some ratio less

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<sup>28</sup> Ibid.

<sup>29</sup> Beard, *An Economic Interpretation*, 133.

than three-fifths and thus shore up Eastern financial interests against the westward flow of migration.

Note Morris' use of "Eastern" rather than "Northern." Morris, and others, saw regional differences along an East-West/industrial-agrarian axis rather than the North-South/free-slave differences that dominated early 19<sup>th</sup>-century politics. His vision was not that far-fetched as in 1787 most observers expected American settlers to pour more quickly into the Southwest than the Northwest<sup>30</sup> but many under-estimated the underlying regional and cultural differences that would linger between Northern and Southern states.

Morris' commercial concerns would re-surface during the many of the Northern state's ratifying conventions when many state delegates were willing to compromise on three-fifths in return for commercial benefits. James Wilson of Pennsylvania, the Northerner who initially proposed three-fifths on behalf of Charles Pinckney, supported three-fifths on pragmatic grounds. Admitting that he "did not well see on what principle the admission of blacks in the proportion of three-fifths could be explained," he also asked, if slaves were citizens, "why are they not admitted on equality with White Citizens?" But if slaves were "admitted as property, it was reasonable to ask, "then why is not other property admitted into the computation."<sup>31</sup> This is another point that will re-surface during state ratifying conventions.

The South's position on the other hand was all about the goal of eventual an equal, or a more advantageous representation in Congress. C. C. Pinckney revealed that the South did not require "a majority of representatives but [he]wished them to have something like an equality." Otherwise, "Congress [sic] would pass commercial regulations favorable to the North, and the Southern states

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<sup>30</sup> Amar, *America's Constitution*, 89-90.

<sup>31</sup> Finkelman, *Slavery and the Founders*, 18.

would “be nothing more than overseers for the Northern States.” Hugh Williamson of North Carolina agreed, arguing that under the present system the North would get a majority in Congress that it would never relinquish, and thus “the Southern Interest [sic] must be extremely endangered.”<sup>32</sup>

William Davie, also of North Carolina, put it best when he explained that it became “their duty to acquire as much weight as possible in the legislation of the union; and as the Northern states were more populous in whites, this could only be done by insisting that a certain proportion of our slaves should make a part of the computed population.” Charles Pinckney also offered a further peek into Southern designs by admitting the South was likely to get the better of the North on this issue. He admitted they were looking to obtain representation for property that the North did not possess and that the South would not have to concede too much to do so.<sup>33</sup> Morris, once again leading the Northern cause, became the first delegate to challenge the assumption that the South was richer than the North and therefore deserved greater representation in congress. He also argued, echoing a concerned voice by Wilson in 1777, that in the time of emergency, Northerners would have to “spill their blood” meaning that because there were more free men in the North than in the South and because slavery made the South an unreliable ally in wartime.<sup>34</sup>

Although some Northern states opposed counting slaves at all—likely due in large part to the definition of “property”—and many Southern states wanted slaves to be counted fully, the stage was now set for a compromise. From a numbers perspective one could understand Southern concerns. As the Constitution was taking shape the South, who was outnumbered by Northern

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<sup>32</sup> *Ibid.*, 17.

<sup>33</sup> Wills, *Negro President*, 57.

<sup>34</sup> Finkelman, *Slavery and the Founders*, 17.

states eight to five,<sup>35</sup> could foresee a minority position in both the House and Senate for years to come. A compromise had to be forged. The North, on the other hand, knew that without a compromise, the chances of the Southern states ratifying the Constitution was slim. The math was easy. With sixty percent of the white population in the North, counting slaves fully would have made the North and South equal in the House. Counting slaves as three-fifths would give the South forty-seven percent of the delegates in the House.<sup>36</sup> However, as Pinckney suggested, the South was looking to future. With the anticipated westward migration favoring the South due to the combination of the popularity of an agrarian culture versus an industrial one and the addition of more slave states, later to be Kentucky and Tennessee, the South expected the percentage in the House quickly becoming equal and over time, providing the South an edge in House delegates.<sup>37</sup> We will see later that this did not quite work out as anticipated but this thought process was a simply a glimpse of future complications throughout the first half of the 18<sup>th</sup> century.

Delegates also debated the merits of proportional representation in the Senate. James Madison was concerned that equal votes for each state in the Senate would give the Northern states an edge in perpetuity. In what now may seem like an odd proposal in retrospect, Madison also suggested counting free whites in one chamber and slaves fully counted in the other. Discussions about a sliding scale were entertained as well but in the end, polling was based on proportional representation for both taxation and representation in the House of Representatives based on the proposed three-fifths provision.

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<sup>35</sup> Wills, *Negro President*, 54.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, 57-58.

The first vote, taken on 11 July, was defeated six to four but the following day the provision passed by a six to two margin with two states divided.<sup>38</sup> The deciding factor in ratification was ensuring ratification of the Southern states. Without some sort of compromise, it was very unlikely the Southern states would have ratified the Constitution, leaving the new union fractured and likely a very complicated relationship that likely would have led to significant conflict between two new nations. Morris held his ground and opposed the concession. He declared himself torn between doing injustice to the Southern states or to human nature and admitted that he must do it to the former for he could never agree to give such encouragement to the slave trade by granting the South representation for their slaves but he also believed that the Southern states would never ratify on terms that would deprive themselves of their slave trade.<sup>39</sup> Morris' assumption was not unfounded.

Where the states stood on the slave trade depended on which state you asked. In the North, where slavery still existed, slavery was of little direct economic consequence. However, in Virginia and Maryland, where an overabundance of slaves already existed, slave trade was detrimental to their financial interests as it would decrease the value of their property. On the other hand, further South, Georgia and South Carolina demanded an open door for slave traders as they suffered a high death rate among slaves in the rice swamps and lacked ready replacements. C. C. Pinckney railed against the Virginian delegates at the convention of the differences between the Upper South and Lower South. Pinckney declared:

South Carolina and Georgia cannot do without slaves. As to Virginia she will gain by stopping the importations. Her slaves will rise in value and she had more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms.<sup>40</sup>

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<sup>38</sup> Ibid., 55.

<sup>39</sup> Ibid., 56.

<sup>40</sup> Beard, *An Economic Interpretation*, 177.

Finally, William Davie said he was sure North Carolina would never ratify on any terms that did not rate slaves at least as three-fifths of a citizen. Davie explained that “If the eastern states meant therefore to exclude them altogether, the business was at an end.” Morris’ reply was that a union of North and South, based on Davie’s terms, was therefore impossible. Morris clarified that it was in vain for the eastern states to insist on what the Southern states will never agree to and that it was equally vain for the latter to require what the other states can never admit.<sup>41</sup>

Morris held on to the bitter end and made one last desperate attempt to amend the proposal by removing the three-fifths ratio and basing representation on “free” inhabitants but the convention overwhelmingly rejected this change with all states voting against it except New Jersey. Eventually when the draft Constitution came up for final approval, Morris supported it and wrote a crisp document. His actions earned the respect of Madison who said Morris was “exceptional in his readiness to aid in making the best of measures in which he had been overruled.”<sup>42</sup>

After the compromise was passed, Alexander Hamilton of New York admitted that the three-fifths proviso was necessary. “Without this indulgence,” he said, “no union could possibly have been formed.” The most vocal opponent of the compromise, Morris, admitted the same as well. He admitted that the North acquiesced as the concession was, at the time, believed to be a great one, and has proved to have been the greatest which was made to secure the adoption of the Constitution. Rufus King of Massachusetts expressed his frustration of encountering the inflexibility of the South on the issue of slavery but he also balanced his personal frustration with a severe dose of reality by recognizing that without the compromise the Union stood little chance at success. King knew the inclusion of slaves into the formula for representation was a “most

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<sup>41</sup> Ibid.

<sup>42</sup> Richards, *Slave Power*, 34.

grating circumstance.” However, King admitted he had not made a strenuous objection because he hoped the compromise would create “a willingness to strengthen the general government and to mark a full confidence in it.”<sup>43</sup> King’s pragmatism would prove, over the long run, one of the more logical explanations for the North’s concession on the federal ratio.

At the close of the Convention, two delegates, Elbridge Gerry of Massachusetts and George Mason of Virginia, two men from very different political leanings, explained why they could not sign the document they helped create. Both had a plethora of objections that included slavery-related issues. But their objections were not grounded in moral or philosophical opposition to slavery; rather like the arguments of those delegates who ultimately supported the compromise over slavery, Gerry’s and Mason’s objections were practical and political. Gerry, the Northerner, objected to three-fifths ratio because it gave the South too much political power at the expense of New England. The Southerner Mason opposed allowing the slave trade to continue because “such importations render us weaker, more vulnerable, and less capable of defense.”<sup>44</sup> Gerry’s argument seemed consistent with many Northerners’ concerns while Mason’s illustrated a Southern split on the issue of the slave trade.

Only thirty-nine of the fifty-five delegates signed the final copy of the United States Constitution. But overall, the delegates seemed pleased with their product. Wilson summed it up well when he judged the final product as “The best form of government that has ever been offered to the world.”<sup>45</sup> However, regardless of the convention’s vote or their pride in their work, there

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<sup>43</sup> Wills, *Negro President*, 60.

<sup>44</sup> Finkelman, *Slavery and the Founders*, 35.

<sup>45</sup> Matthew C. Simpson, “The Founding Fathers’ Power Grab: Was the Constitution designed to make the United States less Democratic?” review of “*The Framers Coup: The Making of the US Constitution*, by Michael J. Klarman, 29 September 2016, The New Republic, <https://newrepublic.com/article/137310/founding-fathers-power-grab>, accessed March 24, 2017.

was still work to be done. Each state still had to ratify and each held ratifying conventions to that end . . . and the debates continued.

### **State Ratification**

On 17 September 1787, the convention sent the new Constitution to Congress with the suggestion that it should be forwarded to each state for ratification through state conventions consisting of delegates chosen by the people of said state. The delegates further recommended that once nine states had ratified the Constitution it should go into effect between the ratifying states. On 28 September, Congress accepted the advice on the Constitutional Convention and sent the Constitution to the state legislatures for ratification.<sup>46</sup> In the state ratifying conventions, many delegates did not share Wilson's enthusiasm. This new form of government appeared less democratic than the Articles of Confederations and the individual state constitutions; the House was small—only sixty-five original delegates; the smallest state had the same number of Senators—who were appointed by state legislatures—as the largest; the Supremacy Clause in Article VI shifted sovereignty from the states to the federal government, and to many, this new document appeared to shift power from the many to the few.<sup>47</sup> The state delegates' concerns were manifold but slavery was not a prominent concern. As historian Don Fehrenbacher suggested, slavery was a disturbing but a rather marginal issue as discussion of the issues was usually tailored to the primary purpose of promoting or discouraging ratification.<sup>48</sup> This attitude is hard to imagine in the 21<sup>st</sup> century but for the period it reflected the attitude of the times and reinforced the belief that

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<sup>46</sup> Beard, *An Economic Interpretation*, 217.

<sup>47</sup> Simpson, "The Founding Fathers' Power Grab."

<sup>48</sup> Fehrenbacher, *The Slaveholding Republic*, 38.

slavery, in 1787, was a state, rather than a national issue. However, where debates on slavery occurred, the arguments were like those of the Convention.

Some anti-slavery leaders argued that Three-fifths was a moral victory. Their view was that anything less than five-fifths was an acknowledgement that slavery was constitutionally disfavored. Furthermore, the fact that the “S-word” did not appear in the federal ratio or elsewhere implied an anti-slavery stance. Some even claimed Article I encouraged abolition—a state that freed its slaves could increase its share in the House by counting its freed blacks at five-fifths and avoid a two-fifths penalty.<sup>49</sup> Historian Akhil Amar pokes holes in this argument by noting that states with large slave populations were hardly inclined to encourage freedmen to remain within the state as valued citizens as colonization proposals usually accompanied the most serious abolition plans. If emigration followed emancipation, a state would not rise from three-fifths to five-fifths but would rather slip to zero-fifths as freedmen departed the state.<sup>50</sup>

A *New Yorker* complained that the Constitution condoned “drenching the bowels of Africa in gore, for the sake of enslaving its free-born innocent inhabitants.” Luther Martin of Maryland, further demonstrating the South’s split view on the slave trade, urged a rejection of the Constitution based on the “provision not only putting it out of its (the central government) power to restrain and prevent the slave trade, but even encouraging that most infamous traffic, by giving the States power and influence in the union in proportions as they cruelly and wantonly sport with the rights of their fellow creatures ought to be considered as a solemn mockery of and insult to the God whose protection we had then implored.”<sup>51</sup>

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<sup>49</sup> Amar, *America’s Constitution*, 89.

<sup>50</sup> *Ibid.*, 90.

<sup>51</sup> Wills, *Negro President*, 60.

The farther North, the stronger the opposition to counting slaves for representation. Many questioned the motives of the New England delegates and wondered why they gave so much power to slave owners. The owner of Maine's only newspaper, after reading the Three-fifths Clause and its purposeful evasion of the word "slavery," was incredulous over the evasive wording.<sup>52</sup> Another Maine newsman wondered why "a Southern negro, in his presently debased condition, is any more entitled to representation, than a Northern bullock."<sup>53</sup> Both are mere pieces of property—nothing more!" A future Congressman from Maine agreed stating that slaves are "property of their masters and ought to be taxed but not represented, any more than our oxen and horses."<sup>54</sup> In New Hampshire, "a friend of the Rights of People" asked, "Can we then hold up our hands for a Constitution that licenses this bloody practice? Can we who fought so hard for liberty give our consent to have it taken away from others."<sup>55</sup>

Entire towns in Massachusetts rebelled against Boston's wealthy leadership and Quakers in the state were the most vocal. Quakers were most vocal about the Fugitive Slave Clause that essentially voided an earlier ruling by the Massachusetts Supreme Court outlawing slavery in the state. This led a Quaker to comment that the Constitution rested not on the "Righteousness of God" but rather on "Slavery and Blood." Of the New England states, the Constitution passed by a comfortable margin only in Connecticut. In fact, Rhode Island initially rejected it by a margin of eleven to one only to finally ratify it two years later, the last state to do so.<sup>56</sup>

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<sup>52</sup> Richards, *Slave Power*, 35.

<sup>53</sup> A bullock is a young bull.

<sup>54</sup> Richards, *Slave Power*, 37.

<sup>55</sup> Finkelman, *Slavery and the Founders*, 35.

<sup>56</sup> Richards, *Slave Power*, 35-36.

Meanwhile, farther South, ratification met little resistance. In Virginia, George Nicholas told the ratifying convention that despite the “dreaded influence of New England states it must be supposed that our population, in a short period, would exceed theirs . . . therefore, this government, which I trust will last until the remotest age, will be very shortly in our favor.” Morris saw it the same way. He opined that the Carolinas and Georgia would soon have the majority of the people in America.<sup>57</sup> Others envisioned westward growth taking on more Southern than Northern characteristics and their visions were not off the mark. Most of the settlers at this time settled Southwest of the Ohio River and most of those in places like Kentucky and Tennessee were either descendants, friends and neighbors of Southern plantation owners<sup>58</sup> who were already developing the land in an agrarian fashion which would, at least initially, tilt power in Congress towards Southern and pro-slavery views.

With such a future all but a foregone conclusion, the South could take a stronger position on the three-fifths ratio. It was clear they were willing to trade a short-term disadvantage for what they thought was an almost guaranteed long-term advantage and thus, they made it clear they would not ratify without the compromise. The Deep South was most vocal on this matter. Charles Pinckney stated, “South Carolina can never receive the plan if it prohibits the slave trade” while South Carolinian John Rutledge, owner of 243 slaves<sup>59</sup> and a future Supreme Court Justice, added “If the convention thinks Georgia, North Carolina and South Carolina will ever agree to a plan unless their right to import slaves be untouched, the expectation is in vain. The people of these states would never be such fools to give up so important an interest.”<sup>60</sup> Conversely, the North was

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<sup>57</sup> Wills, *Negro President*, 58.

<sup>58</sup> *Ibid.*, 59.

<sup>59</sup> Ohline, *Republicanism and Slavery*, 570.

<sup>60</sup> *Ibid.*

in a tough spot. A Union without the Southern states would hardly be a union at all, it also would demolish the principles of the Declaration of Independence and render almost all for which the colonies fought moot. In addition, two small nations were weaker than a larger, unified nation.

Therefore, Northern delegates wanting to limit Southern power really had little choice. They could not “go-it-alone” so they had to make concession . . . however, the best they could wrangle out of the South was the agreement to terminate slave importation twenty-years hence. The North, much like Rufus King, was balancing reality and hope. They were balancing the reality of a nearly impossible compromise-free ratification with the hope of a strong government that eventually could address abolition at the national level.

## **Conclusion**

A new governing document was to lead the land. The Constitution is often held in high regard for its protection of rights, its check and balances and its amendment process. However, its most telling testimony is its endurance. In the 230 years since ratification, the nation has seen over fifty transfers of political power and forty-five different elected leaders but only one governing document. The fact that the delegates could come to a compromise and create such an enduring document after battling over such a contentious issue such as slavery is quite simply, amazing. However, as well as the document has endured, it did not necessarily forge the results delegates predicted in 1787. Over time, the significant advantage the South anticipated in the House did not materialize. However, the initial surge created a sense of panic of what was to come. The first three states added to the South added fifteen members to Congress while the first two states added in the North added only two members thus increasing Southern power, if at least for a short period of time. These initial surges fueled later debates about adding territories such as Louisiana, Florida, Mexico and California, and compromises involving the addition of Maine, Missouri, Kansas and Nebraska. These additions would be threatening to the North in terms of representation and its

impact on future governance, including the impact on future Presidential elections.<sup>61</sup> However, the question often debated is about just how much this perceived threat was grounded in reality. A look at congressional voting records is a good place to start.

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<sup>61</sup> Wills, *Negro President*, 61.

## CHAPTER 2

### THE THREE-FIFTHS CLAUSE, THE ELECTION OF 1800 AND THE AFTERMATH

It did not take long for Constitutional interpretations to begin to permeate the capital city and the states of the infant nation. While the word “slavery” is nowhere to be found in the document,<sup>1</sup> many of the Constitutional interpretations focused on slavery and the intentions of the Constitutional delegates. This will be a debate that would, except for a brief period of robust nationalism after the War of 1812,<sup>2</sup> dominate the political landscape up to the American Civil War, continue through Reconstruction and even continue, in one form or another, to the current day. No matter what shape the argument took, each side had their own spin on reality. Most of the positions each camp took, whether they be North, South, East, West, urban, agrarian, Democrat, Republican, Whig, Federalist, abolitionist or slaveholder, were rooted in passion, if not a dose of fantasy, and from time to time, reality.

The most basic arguments centered on one of the most fundamental principles in the Declaration of Independence—freedom. Radical anti-slavery voices agreed that slaves, as human beings, were entitled to freedom and to enjoy “the fruits of their labors at their own disposal.” To them, the great incongruity could not be justified: if all men truly were created equal, slavery had to be destroyed. Other arguments centered on the economic impact of abolition, while others, both in the North and South, blamed slavery for encouraging an aristocratic love of luxurious leisure and a despotic temperament among the slaveholders. And along a similar vein, some claimed that slavery produced a backward economy, controlled by a small opulent elite that discouraged the wide diffusion of property among non-slaves. Eighteenth century historian David Ramsey of

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<sup>1</sup> Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (W.W. Norton and Co: New York, 2005), 224.

<sup>2</sup> Sean Wilentz, *The Politicians and Egalitarians: The Hidden History of American Politics* (W.W. Norton and Co: New York, 2016), 47-48.

South Carolina supported the latter concern when he noted in 1789, that the slave system had “led to the engrossing of land, in the hands of the “few,” in marked contrast to the mostly free North.<sup>3</sup> Finally, staunch pro-slavery advocates such as South Carolina Federalist William Loughton Smith, took a pejorative view of an entire race. Smith felt that slavery was a justified beneficial status for members of an “indolent,” “improvident” race, “averse to labor,” who, if emancipated, “would either starve or plunder.”<sup>4</sup> Regardless of the camp in which the arguments were grounded, the most fundamental issue was the freedom of another human.

However, the basic right of freedom would not be an easy prize to claim for anti-slavery advocates. The issue was much more complex than simply constitutionally granting the right that the Declaration of Independence stated God had already granted all men. The issue of slavery was forced only through the persistence of abolitionist politics, begun amid the struggles for emancipation in the late-eighteenth-century North, accompanied and pushed forward by the activism of free blacks and the resistance of Southern slaves.<sup>5</sup> Their struggle began even before the Constitutional Convention convened and continued for over seventy-years.

In Massachusetts and Pennsylvania, where a combination of egalitarian fervor among antislavery whites, antislavery activities by free blacks, and resistance from the slaves brought state-level constitutional and judicial elimination of slavery as well as the first legislative acts in history aimed at gradual emancipation.<sup>6</sup> The first anti-slavery movement took place in Philadelphia in 1775 and in 1780 Pennsylvania focused on gradual emancipation by passing a law that made

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<sup>3</sup> Ibid., 46-47.

<sup>4</sup> Ibid., 94.

<sup>5</sup> Ibid., 48.

<sup>6</sup> Ibid., 47.

children born to slaves free on their 28<sup>th</sup> birthday.<sup>7</sup> In 1783, the Massachusetts Superior Court ruled that slavery was incompatible with the state's constitution and its bill of rights that stated "all men are born free and equal." In New England, New Hampshire did the same and even earlier, Vermont formally abolished slavery in its territory by constitutionally declaring no persons "born in this country, or brought from over sea, ought to beholden by law to serve any purpose, or servant, slave or apprentice" after they attain adulthood, unless "by their own consent" or by "appropriate court-ordered legal prescription." In 1784 Rhode Island and Connecticut passed gradual emancipation laws as well.<sup>8</sup> Also in 1784, the Confederation Congress nearly prohibited slavery in the West after 1800 and in 1787 it barred slavery in the Northwest Territory—a precedent that will be cited by anti-slavery advocates during the Missouri Crisis over 30 years later—and finally, by 1788 ten of the most northern states banned further importation of African slaves.<sup>9</sup>

Meanwhile in the South, a clash of slaveholder cultures was emerging. States in the Upper South like Virginia and Maryland were beginning to soften their stance on the institution. Masters in these states treated their slaves much more paternalistically than states in the Deep South and their slaves benefited from better food, clothing and shelter. Slaveholders of the Upper South were also more reluctant to break up families and allowed for a more permissive environment by allowing slaves to visit between plantations, even 'run away' for a short period time provided they eventually returned, and mingle with lower-class whites in churches and drinking establishments.<sup>10</sup> For many in the Upper South, including Thomas Jefferson, total emancipation was just a matter of

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<sup>7</sup> Akhil Reed Amar, *America's Constitution: A Biography* (New York: Random House, 2005), 20.

<sup>8</sup> Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (New York: Oxford University Press, 2009), 519-520.

<sup>9</sup> *Ibid.*, 20.

<sup>10</sup> Wood, *Empire of Liberty*, 520-521.

time. Incredibly, all these state-wide emancipation efforts and more temperate approaches to slavery took place before delegates even met in Philadelphia to contemplate changes to the Articles of Confederation. However, these efforts did not necessarily ensure emancipation—gradual or otherwise—in fact, just the opposite occurred.

Quite conceivably, it could have been the emancipation efforts of the states and the temperate slave/slaveholder relationship in the Upper South that reinforced the delegates’ opinion that slavery was a state, rather than a federal issue and may help explain why the constitution itself contained no wording to eliminate slavery. Despite state initiatives on emancipation, many Constitutional clauses accommodated slavery rather than eliminate or mitigate the peculiar institution. Article I barred Congress from using its powers to influence immigration or international trade to end the importation of African or Caribbean slaves.<sup>11</sup> Despite this wording however others held out hope. As early 1798, Massachusetts Republican Joseph Varnum expressed his desire that “Congress would have so much respect for the rights of humanity as to not legitimize the existence of slavery any farther than it already exists.”<sup>12</sup> Delegate James Wilson demonstrated a similar view during the Pennsylvanian ratifying convention when he predicted national emancipation was inevitable but also recognized that it was not something that would occur in the immediate future.<sup>13</sup> Finally, the diffusionist argument—a theory that spreading slavery to the territories of the West would make eventual emancipation easier by spreading out the slaves over a wider territory thus creating small pockets of slaves and eventual freed men that would make emancipation more palatable while at the same time tempering the temptation to band together and revolt—may have forewarned of the South’s admission that emancipation was inevitable. In 1798, Virginia Congressman John

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<sup>11</sup> Amar, *America’s Constitution*, 20.

<sup>12</sup> Sean Wilentz, *The Rise of American Democracy*, 226.

<sup>13</sup> Wood, *Empire of Liberty*, 520.

Nicholas contended that opening the West to slavery would benefit the entire country. It would, he explained:

Spread the blacks over a large space, so that in time it might be safe to carry into effect the plan which certain philanthropists have so much at heart, and to which he had no objection, if it could be effected, viz., the emancipation of this class of men.

In 1798, in what was essentially a nod to the diffusionists and a modification to Article I, Section 9 of the Constitution, Congress prohibited the importation of slaves from abroad into the Mississippi Territory. However, at the same time Congress allowed the introduction of slaves into the West from states where slavery already existed.<sup>14</sup> These actions did little to curb the spread of slavery but rather turned slave importation into the West into a money-making proposition for slave owners with excess slaves.

Indeed, we will see later that a slave revolt in a foreign land, Haiti, did more to restrict Caribbean slave trade than the United States Constitution. According to the Constitution, it would not be until 1808 when Congress *could* stop the slave trade but even then, they were under no obligation to do so.<sup>15</sup> Article I of the Constitution incentivized states to expand slavery. As Gouverneur Morris pointed out during the Constitutional Convention, if a state freed slaves and the freedmen moved away, the state would actually lose seats in the House of Representatives conversely, if it imported additional slaves, it would gain seats in the House. Article II similarly gave extra seats in the Electoral College based on slave population which in turn gave the South a head start on presidential elections and as an extension, the opportunity for appointment of additional pro-slavery judges the Supreme Court.<sup>16</sup> Many will argue that these provisions allowed

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<sup>14</sup> Ibid., 522.

<sup>15</sup> Amar, *America's Constitution*, 19.

<sup>16</sup> Ibid., 20.

for compromises that made Constitutional ratification possible between two very diverse socio-economic cultures but over the long term, it perpetuated a terrible practice. These provisions also served as the basis for decades of heated debates that eventually led to the bloodiest years the country has ever seen.

### **Blame the Slave Power**

Freedom was not the only concern vis-à-vis slavery. As slavery grew and became more deeply rooted, Northern states, searching for a cause of increased Southern power in Congress, placed the blame squarely on what they called “Slave Power.” The problem as they defined it, was the Slave Power inflated by the concessions given to slavery under the Constitution. In the two years following the constitutional convention, most Northern Federalists, and others, accepted the Three-fifths Clause as the price to keep the Union together. However, with Jefferson’s presidential election victory in 1800 serving as an exclamation point to rising Democratic-Republican opposition, Federalist support for the Three-fifths Clause waned.<sup>17</sup> They now objected to the Three-fifths Clause that counted slaves for inflated representation of the Southern states in Congress and the Electoral College. Consequently, those chosen to represent the South and fill “slave seats” were among the wealthiest and most fervently proslavery Southern slaveholders. These wealthy and powerful representatives used their collective power to temper their respective parties’ anti-slavery enthusiasm and pressured them to agree to keep issues connected to slavery out of national debates.<sup>18</sup>

It was this “Slave Power,” allegedly enabled by the Three-fifths Clause, and its perceived subsequent influence on early 18<sup>th</sup> century American politics that generated tremendous debate—

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<sup>17</sup> Wood, *Empire of Liberty*, 532.

<sup>18</sup> Wilentz, *The Politicians and Egalitarians*, 47-48.

then and now. 18<sup>th</sup> and 19<sup>th</sup> century and modern historians tend to take two separate camps on this issue. Modern historians Gerry Wills and Akhil Amar opine that three-fifths was very decisive in the House of Representatives and the Electoral College and Sean Wilentz argues otherwise. Wills asserts that the South's extra representation enabled the South to push legislation that protected human bondage and permitted its expansion and gave, "On crucial matters the federal ratio" the "South a voting majority." Wills also contends that this Southern influence prevented the exclusion of slavery from Missouri in 1820 and crushed the Wilmot Proviso in the 1840s that would have banned slavery from territories won from Mexico.<sup>19</sup>

However, one does not have to delve too deeply into the House's roll calls to begin to question Wills' and Amar's assertions. Almost immediately after ratification, in the very first Congress, after a very fractious debate over slavery, the House crushed, by a margin of three to one, an effort by angry lower-South slaveholders to reject an antislavery petition from the Pennsylvania Abolition Society, signed by the group's president, Benjamin Franklin, which slaveholders charged was unconstitutional. The Southerners gained a pyrrhic victory of sorts when they managed to tone down an ensuing special committee report which encouraged the abolitionists and their "humane objects," but they could not establish slavery's protection under national law.<sup>20</sup> Thus, the advantage the South sought, fought for, and won, during the very recent Constitutional Convention failed to benefit them in the first opportunity it had to do something for their cause.

Shortly after, in 1798, Massachusetts Federalist congressman George Thatcher proposed an amendment to ban the spread of slavery into Mississippi Territory. Thatcher, devoutly antislavery, hoped to also embarrass the Republican slaveholders amid the continuing struggle over the Alien

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<sup>19</sup> Ibid., 100-101.

<sup>20</sup> Ibid., 102.

and Sedition Acts, and announced that he was offering a motion “touching on the rights of man.” Ironically, the only two members of the House who spoke on the amendment’s behalf were both Republicans, whose party was supposedly pro-slavery leaning, including Albert Gallatin, Jefferson’s future treasure secretary. Thatcher’s proposal did not stand a chance and was rejected by a vast House majority. Although amendment lost, it was not due to the Three-fifths Clause as the defeat was so overwhelming the amendment would not have passed even without the added “slave seats” thus rendering the Three-fifths Clause moot in this roll call.

During the debates on Thatcher’s proposal, Federalist Gary Otis declared that he “would not interfere with the Southern states as to the species of property in question,” and that “he really wished that the gentlemen who held slaves might not be deprived of the means of keeping them in order.”<sup>21</sup> Otis’ comments provide a glimpse into the view of many Northerners who respected property rights and were unwilling to put their livelihoods on the line by aggressively pursuing abolition which would, ostensibly, deprive men of their property in violation of the Fifth Amendment. His comments would be repeated by many in the decades to come.

The South’s “slave seat” advantage was not without success but most of that success had little or no impact on slavery. The Fifth and Sixth Congresses, which met between 1797-1801, were most affected by the Three-fifths Clause. Indeed, one of the most significant early congressional struggles where the three-fifths rule proved decisive was not all proslavery. In both congresses, the extra slave representation made the difference in more than half of the recorded House roll-call votes but the only major pieces of legislation passed during this period were the Alien Act and the Sedition Act, both approved in 1798.<sup>22</sup> These notoriously repressive measures, two of the four

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<sup>21</sup> Ibid., 106-107.

<sup>22</sup> Ibid., 101.

laws known collectively as the Alien and Sedition Acts, were far from a proslavery measure. Ironically, the Three-fifths Clause, in this case, was indirectly responsible for repressing the rights of freedmen rather than those in bondage. The Alien and Sedition Acts were passed during a frenzied period when war with France appeared inevitable. The acts empowered the Federalist President Adams with extraordinary powers at the expense, Republicans argued, of the liberties of free people. The alien laws invested the president with the authority to deport aliens he considered dangerous and the sedition bill criminalized free speech by forbidding anyone to write, print, utter or publish any false, malicious or scandalous observations or comments against the government, including the House of Representatives and the Senate.<sup>23</sup> Thus, what little success the South's advantage offered the Slave Power in the House was actually more beneficial to the Federalists—Southern or Northern, slaveholders or not—than to the slaveholders of the South.

In subsequent Congresses, the Three-fifths Clause inflated Southerners' power in the House of Representatives but not the way Southerners anticipated. Despite, contrary to what Southern delegates envisioned, the share of Southern seats declined slightly from forty-five percent in 1790 to forty-two percent in 1820, the Three-fifths Clause managed to carry some major bills through the House but none of these concerned slavery.<sup>24</sup> In fact, the Three-fifths Clause failed to prevent one of the earliest efforts to curb slavery in the nation's Capital when in 1805, Representative James Sloan from New Jersey, proposed a resolution that would free district slaves born after July 4<sup>th</sup> of that year upon reaching a certain age. The timing of Sloan's proposal could not have come at a worse time as it coincided with the slave rebellion in Haiti and slave disturbances in Virginia which struck fear in the hearts of most slave owners. Sloan's proposal was easily defeated in the House

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<sup>23</sup> Jon Meacham, *Thomas Jefferson: The Art of Power* (New York: Random House, 2012), 312-313.

<sup>24</sup> Wilentz, *The Politicians and Egalitarians*, 101.

by a 77-31 vote—a margin so dramatic that the “slave seats” afforded by Three-fifths Clause had no bearing on the result.<sup>25</sup> Nor did the Three-fifths Clause prevent the House from voting to exclude slavery from the new state of Missouri in 1819. During deliberations the House twice passed, by substantial margins, antislavery resolutions proposed by Republican James Tallmadge, Jr., but these anti-slavery efforts died in the Senate, where again, the Three-fifths Clause was of no consequence.<sup>26</sup> Finally, votes in the Senate and the House on the Compromise of 1850, which according the historian Sean Wilentz, was more of a balancing act than a compromise—a truce that delayed but could not prevent an even greater crisis over slavery,<sup>27</sup> were not all impacted by Three-fifths in the House or the balance of slave and free states in the Senate. The compromise, which tilted in favor of the South, passed in the House by a margin of 124 to 59 and in the Senate by 33 to 19.<sup>28</sup> Thus, although the compromise was more advantageous to the South, the representation ratios had no impact on its passage.

To further rain on Wills’ and Amar’s parade, numbers indicate the Three-fifths Clause did not impact the Wilmot Proviso as they suggest. During the Mexican-American War, Pennsylvanian Democrat Congressman David Wilmot twice added a proviso to a military appropriations bill which would ban slavery from any territory gained in a defeat of Mexico. Both times the House of Representatives, where the Three-fifths Clause provided extra seats for Southern states, voted to approve the proviso and support the ban of slavery in territory gained from Mexico only to see it defeated in Senate due to a large Southern majority. The Senate prevailed after a long and furious debate, when thanks to Northern Democratic defections, the House approved an enlarged

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<sup>25</sup> Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery* (Oxford: University Press, 2001), 67.

<sup>26</sup> Wilentz, *The Politicians and Egalitarians*, 103.

<sup>27</sup> Wilentz, *The Rise*, 637.

<sup>28</sup> Fehrenbacher, *The Slaveholding Republic*, 87.

appropriations bill without the proviso. As Wilentz points out, the added seats in the House of Representatives had nothing to do with the defeat of the proviso, but rather it was the Southern power in the Senate created by the Constitutionally-granted two seats per state representation ratio. Once again, the Three-fifths Clause was not responsible for a pro-slavery measure approved by Congress.

Wills also contended that one of the most crucial matters debated in Congress and connected to slavery in the early-1800's concerned the Hillhouse amendments which were presented in 1804 by Connecticut Federalist James Hillhouse in reaction to the Louisiana Purchase.<sup>29</sup> Many New England Federalists viewed Jefferson's Louisiana Purchase as unconstitutional and they feared it would forever disrupt the balance between free and slave states by creating six or more slave states in this vast territory. Their fears were not unreasonable given the reality of New Orleans' well-entrenched slave system<sup>30</sup> thus, Hillhouse's proposal called for alterations to a territorial organizing bill, including one that would have ended slavery in the newly acquired Louisiana Territory. However, this issue was decided in the Senate rather than the House, so, in a similar fashion as the Wilmot Proviso and the Missouri crisis, and contrary to Wills' contention, the Three-fifths Clause was a non-factor in this case.<sup>31</sup>

The only significant pro-slavery legislation passed in the early years of Congress was the controversial Fugitive Slave Law of 1793 which called for the return of escaped slaves to their owners. While this law was instrumental in later versions of the same law, especially the Fugitive Slave Act, it was passed by such an overwhelming majority in the House—48 to 7 with 14

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<sup>29</sup> Ibid., 102-104.

<sup>30</sup> Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2009), 43.

<sup>31</sup> Wilentz, *The Politicians and Egalitarians*, 102-103.

abstaining—that the Three-fifths Clause was, once again, irrelevant.<sup>32</sup> One could argue further that this law was not as much about slavery as it was about protecting Fifth Amendment personal property rights.

Therefore, according to Wilentz, the Three-fifths Clause guaranteed the South a voting majority on some but hardly all the “crucial slavery matters,” in the late nineteenth century. Indeed, Southern power in congress proved to rest not in the House of Representatives, but rather in the Senate, where the Three-fifths Clause made no difference. This is one reason why the slaveholders fought to admit as many new slave states as possible to the Union and keep parity, or exceed, representation in the Senate with the North.<sup>33</sup> Quite simply, instead, as Amar and Wills contend, of the Three-fifths Clause creating Southern influence in the House, it was the Constitutionally-granted two seats per state in the Senate that shifted the power in Congress from the North to the South.

The one area in which the Three-fifths Clause found an advantage was in the shaping of party caucuses politics and later, party conventions, as well as patronage and judicial appointments.<sup>34</sup> But it was the judicial appointments that that had the most profound effect on slavery, most specifically in the Dred Scott case in the mid-1850’s. In the years between Washington and Lincoln’s presidencies, the Three-fifths Clause helped shape the Supreme Court. The long parade of Southern presidents, some presumed to be aided in their election bids via the additional electoral votes provided via the Three-fifths Clause, appointed nineteen slaveholding Supreme Court Justices out of the thirty-four justices who sat on the bench during this time. While some Justices

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<sup>32</sup> Ibid., 102.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., 101.

like John Marshall and Joseph Story were either neutral or anti-slavery, by the 1830's the composition of the court began to change due to a series of resignation and deaths—including Marshall's. These vacancies afforded President Andrew Jackson and his vice president and successor, Martin Van Buren, a chance to reshape the court. These two presidents appointed eight justices, six of whom were slave owners. These appointments postured the court to make some critical decisions regarding slavery, most damaging of which was the 1857 Dred Scott decision wherein Justice Robert B. Taney's court ruled that blacks held no claim to citizenship in the United States and denied Congress' authority to prevent the spread of slavery into the new territories. The court at that time had five slave owning justices<sup>35</sup> giving the court a guaranteed majority on all rulings affecting slavery—a gift to the South indirectly granted by the Three-fifths Clause. Another gift many believe the Three-fifths Clause gave the South was Thomas Jefferson's victory in the Election of 1800.

### **Election of 1800**

The Election of 1800 saw, what many proclaim, the first peaceful transition of power in modern history. However, while no blood was shed, the transition was far from peaceful. This election was the slow-boil of partisan politics finally boiling over. When Vice President Jefferson wrested the presidency away from President John Adams, many people, past and present, blamed the Three-fifths Clause.

The Federalists attempted to explain their loss of executive power by pointing out the advantages the Southern Republicans gained by the Three-fifths Clause. The *Gazette of the United*

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<sup>35</sup> Richards, *Slave Power*, 94-96.

*States*, echoing a similar refrain heard during the Constitutional Convention thirteen years earlier, explained as follows:

There are above 500,000 negro slaves in the United States, who have not more voice in the Election of the President and Vice-President...than 500,000 New England horses, hogs, and oxen. Yet . . . their masters for them chose 15 electors!<sup>36</sup>

Disproportionate representation quickly became the Federalist's talking point on the loss. To them, it was an easy argument to make, especially by using Adams' home state of Massachusetts to illustrate their point. At the time, Massachusetts had the largest free population in the country but due to the Three-fifths Clause, Virginia had five more electoral votes<sup>37</sup> thanks to their robust slave population. Furthermore, Virginia had six "slave seats" and the rest of the Southern states had eight. Their argument was that since Jefferson lost handily in the North, it was only by virtue of these additional fourteen electoral votes that he was able to defeat Adams by eight votes.<sup>38</sup> On the surface this argument makes sense but as modern historians debate the issue and offer more evidence, the argument becomes a little more complicated.

Amar and Wills, and others including William W. Freehling, take a similar position as the 19<sup>th</sup> century Federalists by also asserting that Jefferson benefited tremendously in 1800 by the extra Southern electoral votes provided by the Three-fifths Clause. According to Amar, had the Electoral College been apportioned based on free population, Jefferson would have ended up with about four fewer electoral votes than Adams rather than eight votes more.<sup>39</sup>

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<sup>36</sup> *Ibid.*, 42

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> Amar, *America's Constitution*, 346.

Amar feels so strongly about his contention on the close election he goes as far as to make an emotional plea reminiscent of 18<sup>th</sup> and 19<sup>th</sup> century arguments when he stated, “The hard fought and razor close election of 1800-01 had made the Three-fifths Clause’s electoral significance obvious to anyone with eyes and a brain.”<sup>40</sup> Wills’ allegation mirrors Amar’s. Wills stated that if not for the Three-fifths Clause, Adams would have defeated Jefferson and won reelection in 1800.

Just like the Federalists’ argument, the raw numbers appear to support their assertions. With the Three-fifths Clause in effect, Jefferson defeated Adams in the Electoral College by seventy-three votes to sixty-five. Freehling, on whom Wills relies, using the same math as the Federalists 200 years earlier, calculates that without the rule, Adams would have won reelection with sixty-three votes to Jefferson’s sixty-one. So, it was only the extra representation given to the slaveholders that elected Jefferson president. But, according to Wilentz, this overlooks the Federalists’ deliberate suppression of the Jeffersonian vote in key Northern states.<sup>41</sup>

As Wilentz notes, in Adams’ home state of Massachusetts, for example, the Federalists simply rescinded popular voting in 1800 in some of the larger towns with sizable Jeffersonian constituencies. More importantly, the Federalists’ manipulations in heavily Jeffersonian Pennsylvania, where they blocked legislation to organize the presidential voting, garnered Adams as many as seven more electoral votes, and Jefferson getting seven less, than they respectively deserved. The Federalist actions were designed to counter their recent poor showings in the Keystone State and their fear that Jefferson would win Pennsylvania in a landslide. Their fears, if not their actions, were justified.

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<sup>40</sup> Ibid., 345.

<sup>41</sup> Wilentz, *The Politicians and Egalitarians*, 105.

Jefferson swept Pennsylvania in 1796 in his loss in the presidential campaign to Adams and in 1800 Republicans routed the Federalists in Pennsylvania's state and congressional elections, winning upward of two-thirds of the votes cast.<sup>42</sup> According to Wilentz, if one were to eliminate the three-fifths rule and the Federalists' "perversions of democracy" Jefferson would have beaten Adams by six to ten votes and the election would have not have gone to the House at all. Clearly, Jefferson, were it not for Federalists meddling, would have taken Pennsylvania and all, if not most, of its electoral votes therefore rendering the claims of a Jeffersonian Revolution moot. However, it was not only the Three-fifth Clause that created this debate, but also another flaw in the Constitution—Article II, Section 1—that fueled future debates.

### **Article II's Imperfection**

Article II, Section 1 outlined an odd election process that called for state electors to cast two votes, one of whom "shall not inhabit the same state as themselves" for president without specifying one as president or vice president. Essentially, both candidates were assumed to be equally qualified for the job. The candidate with the largest number of electoral votes would be president and the runner-up would be vice president with no consideration given to party affiliation.<sup>43</sup> Having a president and a vice-president from different political parties today would be unthinkable, but the Founding Fathers did not anticipate partisan politics as we know them today and if anyone did, they likely doubted partisan issues would arise so quickly after the American Revolution.

The flaw in the Constitution's electoral process did not surface in the first two elections that pitted George Washington against his co-Federalist John Adams, due in large part to Alexander

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<sup>42</sup> Ibid.

<sup>43</sup> John Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (New York: Oxford University Press, 2004), 5-6.

Hamilton's behind-the-scenes efforts to divert a few "second-place votes" away from Adams to a lesser candidate to ensure Washington's majority.<sup>44</sup> However, the next two elections highlighted the flaw. In 1796, the runner-up and Democratic-Republican, Jefferson served as vice-president to the winner and Federalist Adams. This is the only time in American history where a president and vice president were of different parties. As one could imagine, Jefferson was quickly marginalized as the Federalist and Democratic-Republican ideologies were far from complementary. Adams and Jefferson saw eye-to-eye on few issues and Jefferson spent most of his time at Monticello as an absentee-vice president.

The next election in 1800, almost created a repeat scenario of 1796 with Adams and Jefferson competing as the front runners. It was looking as though one would be the vice president for the other until the final results indicated a first-place tie between Jefferson's "running mate" from New York, Aaron Burr, and Jefferson with 73 votes. The two Federalists, Adams and C. C. Pinckney, the same C. C. Pinckney from the Constitutional Convention, finished third and fourth with 65 and 64 votes respectively. The first-place tie necessitated a Constitutionally-mandated vote in the House of Representatives to determine the victor. Although Jefferson was assumed to be his party's first choice, and Burr their second, that result was not assured. Complicating matters was that, although the Democratic-Republicans trounced the Federalists in the 1800 congressional elections, the newly-elected majority would not be seated in the House until after the inauguration. Therefore, it was up to the lame duck Federalists, no friends of Jefferson and the Democratic-Republicans, to determine if Jefferson or Burr would lead the nation, or even worse, if they wanted, to delay a conclusive vote until after Inauguration Day by creating a deadlock, potentially extending Adams'

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<sup>44</sup> Amar, *America's Constitution*, 337.

term, creating even more succession confusion and the nation's first major constitutional crisis.<sup>45</sup> The lame-duck Federalists supported Burr but in reality the support was more anti-Jefferson than it was pro-Burr. The Democratic-Republicans, on the other hand, supported Jefferson. It was only through the maneuvering of Jefferson's nemesis from the Washington White House, Federalist Alexander Hamilton, who threw his support behind Jefferson instead of his fellow New Yorker Burr and an abstention from Delaware's James Bayard that swayed the House vote. Hamilton convinced his fellow Federalists that Jefferson was the lesser of two Republican evils in that he would work better with the Federalists than Burr, and Bayard, also convinced that Burr would not work well with the Federalists, abstained during the 36<sup>th</sup> ballot thus ending the deadlock<sup>46</sup> just in time for the March 4 inauguration.

### **Inevitable Results**

Not only are the claims of a "three-fifths aided" Election of 1800 unfounded, many historians overlook a significant shift in political alignment in favor of the Democratic-Republicans that predated and lasted beyond the election of 1800. This shift began in 1796 when Jefferson won Pennsylvania and continued in 1800 when the Democratic-Republicans won their first congressional majority in 1800 by picking up seven seats in the Senate and twenty-three seats in the House.<sup>47</sup> The "party of Jefferson" continued to make additional gains in the 1802. Finally, in 1804 President Jefferson dominated in his 1804 re-election by carrying every New England state except Connecticut and every slave holding state except the border states of Maryland and

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<sup>45</sup> Ibid., 339-341.

<sup>46</sup> Ferling, *Adams vs. Jefferson*, 193.

<sup>47</sup> Wilentz, *The Rise of American Democracy*, 98.

Delaware.<sup>48</sup> Jefferson's overwhelming victory completed the shift and ensured, with Presidents James Madison and James Monroe to follow, what would amount to twenty-four years of Jeffersonian leadership in the White House. Any assertion that the Three-fifths Clause and Slave Power stole the Election of 1800 or was responsible for the fall of the Federalists is hyperbole and at best, a stretch, as the Republicans were well on their way to assuming power from the Federalists well before Jefferson, Adams, Burr and Pinckney battled for the White House in 1800.

### **The Aftermath—The Twelfth Amendment**

With the 1804 election looming, the potential for a repeat of 1796 or the contentious house-decided election of 1800, needed to be remedied for future elections. The Twelfth Amendment re-wrote presidential election rules. Instead of electors voting for two candidates for essentially the same seat, they now were to cast a single vote for president and another for vice president. On the surface the change appeared simple and made sense but deliberations in Congress between 1802 and 1804 echoed those of the Constitutional Convention seventeen years earlier and turned into more battles about the Three-fifths Clause.

Connecticut Congressman Samuel Dana stated that if Republicans were sincere about changing the electoral rules, they should consider a wide-array of issues to include whether representatives should be based on “whites or in proportion to whites compounded with slaves.” Representative Seth Hastings of Massachusetts argued for equal representation of “free and free citizens only.” Massachusetts Federalist George Thatcher lamented the “peculiar inequality between regions created by “representation of slaves,” who would add “eighteen Electors of president and vice president in the next election.” In the Senate, William Plummer from New Hampshire, asked if this amendment would “lessen the weight and influence of the Eastern states .

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<sup>48</sup> Wilentz, *The Politicians and Egalitarians*, 106.

. . . and still retain this unequal article in your Constitution?” Shall property in one part of the Union give an increase to electors and be wholly excluded in other states?” Just as the debates mirrored the past, so did the voting. New England accounted for six of the ten votes against the amendment in the Senate and in the House, states north of New Jersey generated 31 of the 42 no votes.<sup>49</sup> Ultimately, the amendment passed and according to some, changed the future of the presidency and eventually was recognized as the to the Thirteenth Amendment.<sup>50</sup>

Fifty-seven years later, it is this same Twelfth Amendment that permitted the election of Abraham Lincoln despite his 40 percent of popular vote and who likely would not have won in a head-to-head match-up against anyone of his rivals. Lincoln’s clean sweep of the North propelled him to victory despite losing in every state south of Virginia. Lincoln’s election eventually led to Civil War and then the Thirteenth Amendment which abolished slavery throughout the nation.

Amar claims the results of the Election of 1800 and the Twelfth Amendment that followed were precursors to almost 60 years of slavocratic presidents. Amar says:

Amendment XII was refashioned the office in the likeness of Jefferson and in a manner that prefigured Andrew Jackson. After the Twelfth Amendment, America’s presidential election rules and thus America’s presidents, would generally be more democratic, more partisan, and more openly slavocratic. Prior to the amendment, America’s first president had taken steps to free his slaves, and the second had no slaves to free. America’s third, a transitional figure elected under Article II and reelected under Amendment XII, had passionately condemned slavery in his early years but did little to back up his youthful rhetoric after his slavery-support triumph in 1801. The next dozen, most southern slaveholders or Northern doughfaces, likewise did little to challenge slavery.<sup>51</sup>

Amar’s logic is faulty simply for the fact that his first assertion that Jefferson was victorious only because of the Three-fifths Clause, was not the case. Therefore, anything that follows, is also faulty. The Twelfth Amendment was not a ploy to empower slavocracy in the highest offices of

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<sup>49</sup> Amar, *America’s Constitution*, 346.

<sup>50</sup> *Ibid.*, 347.

<sup>51</sup> *Ibid.*

the land—this was already assured by the federal ratios for the Senate and House—but rather an effort to correct a flawed election process. Although Congress missed another opportunity to fix the faulty federal ratio, the amendment served its intended purpose. Only twice since 1800, in 1825 and 1877, did the presidential choice again fall to the House of Representatives. Furthermore, the Twelfth Amendment fixed a huge flaw in the Constitution while demonstrating one of the beautiful features of the founding document—the ability to change with the times.

The Three-fifths Clause undoubtedly shifted the balance of power in the House and the Supreme Court and helped the South earn the “Slave Power” moniker. But as Wilentz explains, an advantage in any of these centers of power did not necessarily equate to pro-slavery results. Power in the House, where the power was anticipated, never really materialized. The House voted against several pro-slavery measures and it was only by virtue of the pro-slavery advantages in the Senate and Supreme Court that many pro-slavery measures passed.

### **Conclusion**

By the time the dust settled on the election, politically savvy Americans realized the nation’s deepest fissures were not between big and small states but rather between free and slave states<sup>52</sup> and therefore, as an extension, North and South. The tension between North and South was only exacerbated by the addition of new slave states in the form of Kentucky and Tennessee but the fervor really exploded with Jefferson’s Louisiana Purchase. To the North, this purchase was not only unconstitutional but was a precursor for the addition of several slave states<sup>53</sup> thus extending the Slave Power even further.

The Louisiana Purchase, in retrospect was a steal for the young nation. However, the vast territory became the battleground for the next several decades of debates that focused just as much

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<sup>52</sup> Ibid., 345.

<sup>53</sup> Richards, *Slave Power*, 42-43.

on keeping the balance between free and state slaves and as an extension, the number of voters in the House and Senate. This balance, to many, was tilted in favor of the South. Southern political domination in the highest offices of the land was a point of significant contention in the antebellum years and debated throughout the remainder of the 19<sup>th</sup> century and well into the 20<sup>th</sup>.

## CHAPTER 3

### **THREE-FIFTHS—A SHORT-LIVED COMPONENT OF AN ENDURING DOCUMENT**

The impact of many political decisions cannot be measured in the immediate aftermath of the decision, nor can those decisions be weighed in a vacuum. Often it is not a single event that shapes the future but rather a series of events. For example, the roots of World War II and Nazi Germany can easily be traced back to the start of World War I and the Treaty of Versailles. The genesis of the 21<sup>st</sup> century's Global War on Terror can be traced back to United States policies in Afghanistan and the Middle East dating back to the 1970's. The impact—or lack thereof—of the Three-fifths Clause is not any different. Although the Three-fifths Clause was a short-lived component of the Constitution—it was eliminated with the ratification of the Fourteenth Amendment in 1868—its impact on several decades of the Union and its eventual demise warrants a deeper look.

Any impact the Three-fifths Clause had on the early American political scene cannot be measured solely by the Election of 1800, the Missouri Crisis, the Wilmot Proviso or the Dred Scott decision. Make no mistake, decisions made in 1787 impacted those issues, and in the case of the Dred Scott decision, quite profoundly, but the Three-fifths Clause may not have been as significant a factor as some historians assert. Analysis of the impact the Three-fifths Clause had on these events should begin with a brief fast-forward to about sixty years to future.

#### **Southern Domination?**

By 1850, there were 350,000 slave owners. However, if you counted the parents, children, immediate relatives, and dependents these slave owners represented, Slave Power represented closer to two million people. Charles Frances Adams of Massachusetts claimed these 350,000 men commanded the political resources of fifteen states and all official strongholds of the United States Government. Other prominent figures carried the same argument only with different numbers. Horace Greeley, whose voice was influential as the editor of the New York Tribune, and abolitionist

Edmund Quincy eliminated the small slaveholders who carried less clout in their home states and the figure changed to somewhere between 50,000 and 60,000 men commanding the United States Government. Josiah Quincy, former president of Harvard, felt the number was even smaller when he said it was 1000 men who decided policy.<sup>1</sup> Regardless of the number, their point was that such a small number of people held a disproportionate amount of power in the United States Government allegedly due to the Three-fifths Clause.

Taken at face value, their arguments appear logical. In the sixty-two years between the Constitutional Convention and the Compromise of 1850, the nation had a slave holding President for fifty of those years. In addition, not a single non-slave holding president was re-elected for second term. Other key offices and positions were led or held predominately by slave owners as well. The House Speaker was a slave owner forty-one years, the Chairman of Ways and Means Committee was a slaveholder in forty-two of the sixty-two years, and eighteen of the thirty-one Supreme Court Justices were slave owners as well. South Carolina's John C. Calhoun tried to counter this argument by noting that nearly half of the national legislature was either born or educated in Connecticut. Calhoun's math was not far off as thirty-six Connecticut men either represented Connecticut or western states. However, the North, led by former New York governor and Senator William Seward, had the stronger argument because while the North had a larger number of legislators, they rarely held the nation's most powerful offices and therefore, slave holders were generally in control. Some Southerners agreed with Seward's contention. James Hammond of South Carolina not only agreed with Seward's contention that the South "ruled" the

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<sup>1</sup> Leonard L. Richards, *The Slave Power—The Free North and Southern Domination 1780-1860* (Baton Rouge: Louisiana State University Press, 2009), 21.

early Republic, he also boasted about it.<sup>2</sup> The South may have ruled, but how much of their dominance falls upon the Three-fifths Clause is debatable.

Southern dominance in the first half of the 19<sup>th</sup> century can be attributed to many factors but the Three-fifths Clause is just one. The Southern view of politics as a career can be credited to a large degree. Southern society viewed a career in politics as a noble calling and therefore, some of the South's best minds were guided towards a political career. Whereas in the North a career in politics was considered a second-rate profession and their best minds directed their energies towards emerging industries. Furthermore, the Southern elite felt their way of life was under siege and to protect their way of life they needed influence in Washington;<sup>3</sup> hence the emphasis on politics as a career choice. All one needs to do is look at the quality of the Southern presidents compared to Northern presidents. Of the eleven elected, full-term presidents<sup>4</sup> from Washington to Buchanan, those generally considered the strongest hailed from the South. The names of all six Southern presidents during this period are as recognizable as any names in American history while the five Northern presidents—besides the two Adams<sup>5</sup>—are mere footnotes in the history books. Furthermore, these Southern presidents are much more renowned for the military and/or political acumen than their ownership of slaves. George Washington, victorious general in the Revolutionary War and Father of our Country; Thomas Jefferson, author of the Declaration of Independence, visionary of westward expansion and suppressor of the Barbary Pirates; James Madison, Father of the Constitution and victor over the British in the War of 1812; James Monroe

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<sup>2</sup> Ibid., 9-10.

<sup>3</sup> James Hershman, e-mail message to author, March 19, 2017.

<sup>4</sup> Presidents William H. Harrison and Zachary Taylor and their vice presidents John Tyler and Millard Fillmore were not included since they all served abbreviated terms due to the deaths of Harrison and Taylor.

<sup>5</sup> John Adams and his son John Quincy Adams, both from Massachusetts.

of the Monroe Doctrine; Andrew Jackson, the hero of the Battle of New Orleans and the first “people’s president; and finally, James Polk from Tennessee, at the time the youngest president ever, who annexed Texas (albeit under questionable motives) and achieved all of his major political aims while in office including securing Oregon from the British while at the same time avoiding armed conflict. On the other hand, the North offered John Adams and John Quincy Adams—both of whom earned their well-deserved place in American lore as two of the Nation’s most reputable and effective diplomats and statesmen but were not extremely effective in the White House; Martin Van Buren, Franklin Pierce and James Buchanan. These men, the latter three especially, lack the bona fides of the upper tier of presidents in American history and it is unlikely most Americans would be able to cite any of their accomplishments. Therefore, while the Three-fifths Clause may have helped put some of these Southern presidents in office it was their political grooming and acumen that kept them in office—not the Three-fifths Clause—and allowed them to forge reputations as some of the better presidents in United States history. Southern presidents earned and retained their power on merit but let’s look at the other offices Richards notes to be Southern dominated.

Richards made the claim of Southern dominance in the Speaker of the House position as well and his figures of a slaveholder holding the seat for forty-two years is accurate. However, according to the “*History, Arts & Archives House of Representatives*” website, three men: Nathaniel Macon of North Carolina; Henry Clay of Kentucky; and Andrew Stevenson of Virginia, accounted for twenty-six of those forty-two years. Furthermore, Clay, a border state moderate<sup>6 7</sup> political

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<sup>6</sup> Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (W.W. Norton and Co: New York, 2005), 638.

<sup>7</sup> Clay demonstrated his moderate position on slavery during his five-hour speech about his Compromise of 1850 when he did not defend slavery—he charged that over the past fifty years the South had exercised a “preponderating influence” over national affairs and should now display forbearance and statesmanship before the citizenry and Almighty God. (Wilentz, *The Rise*, 639).

powerhouse of his day—even political foe John Quincy Adams conceded that Clay had all the virtues required in a popular leader as was a “republican of the first fire”<sup>8</sup>—accounted for twelve of those years himself and given the high regard his opponents had for him, its likely he would have served as House Speaker regardless of how many “slave seats” were in the House. Thus, without Clay’s twelve years, Richards’ numbers are reduced significantly making his argument a little more specious.

Finally, Richards implies that some of the Southern dominance is attributable to the eighteen slaveholding Supreme Court Justices. On the surface that seems logical and in fact, the Dred Scott decision was, in fact, a result of a heavy slave holding court. However, a higher percentage of Southern judges were appointed by Northern presidents. Between Washington and Buchanan, Southern presidents appointed twenty-two justices, fourteen of which were Southern. Conversely, Northern presidents appointed eight justices, six of whom were from the South. Granted, Southern presidents served more years in the oval office so they had more opportunities to appoint justices but Northern presidents, when afforded the opportunity to appoint justices, selected a Southern judge seventy-five percent of the time as compared to Southern presidents who looked to South for their justices just over sixty-percent of the time. Furthermore, the only two presidents after Washington—who is the only president to have appointed more than one Chief Justice of the Supreme Court<sup>9</sup>—to appoint Chief Justices, John Adams from Massachusetts and Andrew Jackson from Tennessee, both appointed Southern judges (John Marshall and Roger Taney respectively).<sup>10</sup>

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<sup>8</sup> Sean Wilentz, *The Politicians and Egalitarians: The Hidden History of American Politics* (W.W. Norton and Co: New York, 2016), 145.

<sup>9</sup> Washington appointed three Supreme Court Justices: John Jay of NY, John Rutledge of VA, and Oliver Ellsworth of CT ([https://www.supremecourt.gov/about/members\\_text.aspx](https://www.supremecourt.gov/about/members_text.aspx)), accessed 20 March 2017.

<sup>10</sup> “Members of the Supreme Court of the United States,” [https://www.supremecourt.gov/about/members\\_text.aspx](https://www.supremecourt.gov/about/members_text.aspx), accessed 20 March 2017.

It is apparent that although Southern presidents, elected via an alleged “Three-fifths” aided Electoral College, had more opportunities to appoint Southern-leaning Supreme Court Justices, there is no clear indication that significant sectional biases went into many of the appointments otherwise one would see a larger number of selections along sectional lines. Therefore, one can conclude that justices were, largely, appointed based on merit rather than their stance on slavery issues and thus making any allegation that Three-fifths directly impacted the Supreme Court, at best, a stretch.

Without question the South dominated the White House and other key office, arguably owing to Three-fifths to a small degree but these men were the polished politicians of their day. The power Three-fifths gave them is incidental to *how* these men earned their place in the highest offices of the land and *what* they—the presidents especially—did to hold onto power via, in all cases except Polk, a second term. It took a new party and an upstart from Illinois to upset this apple cart and start the Three-fifths Clause on the road to its eventual demise.

### **New Parties – New Power**

The Free Soil Party of late 1840s and early 1850s and the newly emerging Republican Party were the political impetus behind the popular thought that a slave oligarchy ran the nation. This thought is now commonly referred to as the “Slave Power Thesis.” Ironically, many Southerners also believed the Slave Power Thesis to be true including Hammond and the future vice-president of the Confederacy, Alexander Stephens. These parties, with a heavy dose of Northern membership, condemned slavery as a relic of barbarism and a blatant violation of the Declaration of Independence’s proclamation that “all men are created equal” and have inalienable rights to “Life, Liberty, and the Pursuit of Happiness.”<sup>11</sup>

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<sup>11</sup> Richards, *Slave Power*, 1-2.

The Free Soilers and Republicans were not as restrained as previous parties who while, in some cases, voting against the spread of slavery, still needed the cooperation of Southerners to win national elections and gain support for other issues. The Free Soilers and Republicans however, were based entirely in the North and had little need to placate the South. Freed of the need for cooperative politics with the South, the Free Soilers and Republicans could attack the Slave Power at every turn. In their view, the Slave Power had run the nation for years and now the Slave Power was conspiring to add additional slave states in the West or by annexing Cuba, or even worse, extending slavery into the old free states.<sup>12</sup>

Free Soilers and Republicans agreed on two issues—they both vehemently opposed the expansion of slavery and were hostile towards the slave oligarch and its allies. The combined force of the Free Soiler and Republican incessant pounding took its toll on Northern Democrats who were trounced at the polls in the 1850s. Congressional districts that had been in the hands of Democrats for years became Republican strongholds. For example, New Hampshire, the one-time Democratic stronghold, went Republican almost overnight. In 1853 Democrats won every district in the state by at least 1200 votes. Four years later the results were completely flipped as Republicans won every district by at least 1000 votes.<sup>13</sup> The Free Soil Party did not survive the decade, however the Republican Party was emerging as a Northern powerhouse and the combined efforts of these two parties paved the way for Abraham Lincoln's total electoral domination of the North in 1860.

Lincoln was not convinced of the pro-slavery's threats of disunion but he was convinced change was imminent—Lincoln felt the middle ground that existed since the Union's inception could not last. Therefore, his House Divided speech differentiated himself from his opponents—

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<sup>12</sup> Ibid., 3-4.

<sup>13</sup> Ibid.

most notably Stephen Douglas in the 1858 Illinois senate campaign—and his numerous opponents in the 1860 presidential election—without taking a definitive pro- or anti-slavery stance. In June 1958, Lincoln told his audience:

A house divided against itself cannot stand. I believe this government cannot endure, permanently, half slave and half free. I do not expect the Union to be dissolved — I do not expect the house to fall — but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its advocates will push it forward, till it shall become lawful in all the States, old as well as new — North as well as South.<sup>14</sup>

Lincoln’s moderate words were consistent with the 1860 Republican platform which pledged to the “inviolable right of each State to order and control its own domestic institutions according to its own judgement exclusively.”<sup>15</sup> Historian Akhil Amar’s view of Lincoln was that he eschewed the hardline sectional position and emphasized that Lincoln could see the Nation one way or the other . . . free or slave. But he saw the Nation as one. He still admitted that “If slavery is not wrong, nothing is wrong” and he did not “. . . suppose that in the most peaceful way ultimate extinction would occur in less than a hundred years at the least.”<sup>16</sup>

But Sean Wilentz sees it differently and credits Lincoln for choosing his words wisely. For practical political and constitutional reasons Lincoln kept suppression of the rebellion first and foremost throughout the first two years of the war but immediately following the shots at Ft Sumter Lincoln knew very well that slavery was at the root of the conflict. Politically he understood that he needed to secure the liberal, moderate and conservative Republican factions in the North to

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<sup>14</sup> *House Divided Speech, 1858*,” <http://www.abrahamlincolnonline.org/lincoln/speeches/house.htm>, accessed 13 Mar 2017.

<sup>15</sup> Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005), 353.

<sup>16</sup> Amar, *America’s Constitution*, 352.

achieve both of his goals.<sup>17</sup> Constitutionally, Lincoln feared that destroying slavery while destroying the Constitution was no victory at all. Destroying the Constitution would demonstrate to the world that the American Republic was a folly impervious to dramatic reform.<sup>18</sup> Thus, Lincoln knew he had to choose his words carefully if he was to achieve both of his goals—saving the Union and securing emancipation.

Lincoln's moderate voice won the day, at least in North. Eighty percent of eligible voters showed up at the polls on 7 November 1860 to select the next President of the United States. Amazingly, Lincoln's name did not appear on the ballot in ten Southern states but he still won a resounding majority of electoral votes despite receiving less than forty percent of the popular vote. Lincoln's electoral power base was in the North where he earned a clear popular mandate that he rode to the presidency.<sup>19</sup> Almost immediately after his election Lincoln's confidence that disunion was unlikely would be tested and the road to the demise of the Three-fifths Clause was paved.

### **The Reconstruction Amendments**

However distasteful Lincoln's election may have been to some, the election was lawful. If the Twelfth Amendment's rules had, just this once, advantaged an antislavery candidate—some have argued that these rules had usually, and by design, done just the opposite—in a sound republic, turnout was fair play. As Lincoln himself explained on July 4, 1861, "Republicanism's foundational premise required the losers of a fair election to abide by its results."<sup>20</sup> One of the greatest ironies in American history is that if the Slave Power would have simply accepted the

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<sup>17</sup> Wilentz, *The Politicians and Egalitarians*, 194-195.

<sup>18</sup> *Ibid.*, 191.

<sup>19</sup> Harold Holzer, *Lincoln at Cooper Union: The Speech that Made Abraham Lincoln President* (New York: Simon and Schuster, 2004), 229-230.

<sup>20</sup> Amar, *America's Constitution*, 372.

results of the 1860 election and waited out the Republicans slavery would have likely endured for many more decades. Instead, secession hastened the emancipation they fought against for so many years. Secession created, thanks to a loss of the Three-fifths seats from the seceded states (border slave states were still represented in Congress), the first anti-slavery majority in Congress.<sup>21</sup> This anti-slavery Congress, combined with a Union victory five years later, voted for first emancipation, then the abolishment of the Three-fifths Clause and finally, voting rights for freed slaves. But that was over a five-year period and it took some time to realize these changes.

Rather than immediately leveraging their advantage, Lincoln and the Republicans treaded lightly. The president's primary war objective was to restore the Union with as little bloodshed as possible and he knew that any radical measures would ruin any chance of a reunion and he could not risk alienating Maryland, Kentucky, Delaware and Missouri—the four remaining loyal slave states. Just days before the Confederates fired the first shots of the Civil War at Ft Sumter, Lincoln, in one last desperate attempt to keep the Union from falling into a bloody civil war, supported a proposed amendment that would make slavery in the *states*—not future territories—immune from congressional abolition. Also, in July 1861 Congress endorsed a resolution defining Union war aims: “This war is not waged . . . for any purpose . . . of overthrowing or interfering with the rights or established institutions of those states (in revolt), but to defend and maintain the supremacy of the Constitution.” The ground rules were established—Union first, slavery second.

It took a year for Congress to act on emancipation. In April 1862 Congress adopted gradual emancipation by giving states financial aid to assist in state-level emancipation efforts, freeing all slaves in the District of Columbia and outlawing future slavery in the federal city. Two months

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<sup>21</sup> *Ibid.*, 355.

later Congress barred slavery in all federal territory.<sup>22</sup> The entering wedge was now in place for much larger measures.

Finally, the act that changed the meaning of the war: Lincoln's September 1862 Emancipation Proclamation that declared all slaves held in states in rebellion with Union on 1 January 1863 would be freed. Lincoln's proclamation did not free any slaves in states loyal to the Union but it changed the direction of the war and while Lincoln did not envision total emancipation for many years—in his December 1862 Annual Message he proposed legislation that would compensate states abolishing slavery before 1900<sup>23</sup>—it was the precursor to the Thirteenth Amendment and the eventual demise of Three-fifths.

### **The Thirteenth Amendment—Slaves to Freedmen**

The Emancipation Proclamation indirectly gave Lincoln the political strength he needed for re-election in 1864. Freed blacks fled plantations and joined the Union army thus significantly damaging the South's economy. Success on the battlefield, in no small measure thanks to the 180,000 African Americans serving in the Union Army, helped Lincoln tremendously at the ballot box. Lincoln's overwhelming victory over George McClellan coupled with success in the congressional elections provided Lincoln the mandate he needed to hasten his time schedule for emancipation. In January 1865, the 38<sup>th</sup> Congress voted for an abolitionist Thirteenth Amendment which passed by a two-thirds margin in July by the non-seceding states and two-thirds of all states, including those of the former Confederacy, in December, seven months after Lincoln's death. The Thirteenth Amendment was very clear on the issue of slavery—it freed everyone without

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<sup>22</sup> Ibid., 355-56.

<sup>23</sup> Ibid., 357.

compensation and stated no state nor the federal government could revive slave codes, import new slaves or otherwise allow bondage.<sup>24</sup>

The Thirteenth Amendment represented a seismic shift in federal and state relations. A pre-war Constitution imposed few legal limits on what a state could do—in fact, the Bill of Rights was almost aimed entirely towards limiting the power of the federal government—to its own citizens but the Thirteenth Amendment now imposed strict regulations on each state, enforced at the national level. It also authorized the largest redistribution of property in American history. At the start of the Civil War, slaves were, aside from land, worth more than any other asset in the nation. Slaves represented about three times as much value as the entire nation’s manufacturing and railroad stock and this “property” was “seized” without so much as a penny of compensation. The alleged pro-slavery Constitution became, essentially overnight, anti-slavery.<sup>25</sup> But the Constitution’s work was just beginning.

#### **The Fourteenth Amendment—Blacks to African Americans**

Charles Sumner advocated that the Thirteenth Amendment address the effects of slavery that would linger after emancipation. Sumner desired an amendment that would address equal rights for those freed. However, the version that was passed in December 1865 only address abolishing slavery, without a mention of equality. It was only after concerns over the ineffectiveness of the Freedman’s Bureau and the Civil Rights Act of 1866 that Congress was compelled to address these concerns with an additional amendment. The Fourteenth Amendment, passed in 1868 gave the federal government the power to protect people’s rights from an inappropriate state authority.<sup>26</sup>

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<sup>24</sup> Ibid., 358.

<sup>25</sup> Ibid., 360-361.

<sup>26</sup> Fehrenbacher, *The Slaveholding Republic*, 331.

The Fourteenth Amendment's text begins by repudiating the racist vision of American identity that had highlighted Chief Justice Roger Taney's Dred Scott decision that proclaimed a black man could never claim rights of citizenship under the federal Constitution. The Fourteenth Amendment took direct aim at Taney and his court when it said: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Fourteenth Amendment made it clear that all persons born or naturalized in the United States were to be counted, not as three-fifths, but five-fifths a citizen thus eliminating the need for a Three-fifths Clause for representation and taxation purposes. This was the first explicit constitutional definition of American citizenship but just as importantly, the amendment specified that being an American citizen meant having rights not just in the federal government but also in one's home state and made clear that all Americans were citizens of the nation first and foremost and thereby a state could not enjoy *carte blanche* to treat citizens as they saw fit and could not prevent a citizen from becoming a state citizen and refuse them the rights of that state.<sup>27</sup>

Unfortunately, but not surprisingly, suffrage rights laid outside the domain of the Fourteenth Amendment. For example, white women and children had been long considered free and equal citizens but they still were not entitled to vote.<sup>28</sup> Thus, once the Three-fifths Clause was eliminated via the Fourteenth Amendment, emancipation without black enfranchisement threatened to actually increase the South's power in Congress and the Electoral College.<sup>29</sup> Instead of one hundred slaves counting as sixty citizens towards the white man's vote for representational purposes, now 100 freedmen counted as 100 citizens towards the white man's vote without giving those one hundred

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<sup>27</sup> *Ibid.*, 381.

<sup>28</sup> *Ibid.*, 382.

<sup>29</sup> *Ibid.*, 392.

freedmen a voice. Furthermore, as reconstructionists used the Thirteenth and Fourteenth Amendments to enforce laws at the local and state levels and reports of terrorism against African Americans, violence targeted at white Unionists, voter fraud and new “black codes” aimed at reducing freedmen to peons,<sup>30</sup> leaders such as Frederick Douglas called for African American suffrage as a stronger reform that would do much more to prevent discriminatory state laws in the first place. To Douglas and others, African American voting would do more to preserve the principles for which the war was fought.

Although the Fourteenth Amendment contained language stating the if the South withheld the African American vote (or any male vote for that matter), their representation in the House of Representatives could be trimmed proportionately.<sup>31</sup> However, this stipulation was never enforced. Therefore, it became more obvious that Reconstruction was in a catch-22 . . . African Americans were not permitted to vote in the South and therefore had no say in who represented their interests and those that were sent to Washington could use their power to do whatever they could to limit African American rights. Something had to be done . . .

### **The Fifteenth Amendment—the Final Reconstruction Amendment**

The Fifteenth Amendment was ratified in 1870, the last of Reconstruction Amendments. However, the amendment did not specifically guarantee the African American vote but rather it merely prohibited race-based disenfranchisement. Later decades would bring about literacy tests and poll taxes to exclude African Americans from the ballot box<sup>32</sup> but the Constitution did its

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<sup>30</sup> *Ibid.*, 377-78.

<sup>31</sup> *Ibid.*, 333.

<sup>32</sup> Amar, *America’s Constitution*, 399.

work—it enfranchised African American males consistent with their white male counterparts. Enforcement on the hand was a different matter.

### **Were the Amendments Unconstitutional?**

As righteous as the Reconstruction Amendments were, there are some who argued the ratification of these amendments actually *violated* the very Constitution they sought to amend. Opponents of the amendments, especially the Old Guard Democrats, argued that the passage of the Thirteenth and Fourteenth Amendments violated Article V of the United States Constitution that required approval of two-thirds of the states to enact an amendment. The argument goes that when the Thirteenth Amendment came up for congressional vote, Congress refused to seat congressmen representing the defeated Southern states and that Congress essentially operated without widespread Southern representation until mid-1868. Therefore, without this Southern representation, the votes on these two amendments would likely have not passed. However, Historian Akhil Amar points out that the 1789 Bill of Rights and the Twelfth Amendment were passed under a similar scenario in that some states did not vote on these acts yet they both were passed.<sup>33</sup> Some critics would claim that refusing seats to ex-Confederate congressmen was unconstitutional but proponents could counter that if free-African Americans were not permitted to vote in state-wide elections, then the representatives Southern states sent to Congress were not truly representative of their constituents as they failed to abide by the basic ground rules of republican government.<sup>34</sup> Therefore, excluding ex-confederate states from Congress in 1865 was actually constitutionally sound rather than unconstitutional.

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<sup>33</sup> Ibid., 364-367.

<sup>34</sup> Ibid., 368 and 373.

In addition, the Old Guard Democrats claimed Southern elections in 1865 generally followed the same election laws that were on the books in 1860 when the states last sat congressmen and therefore argued that they deserved seats under these guidelines. Republicans countered with the argument that the act of secession was unlawful and the unlawful war the South waged against a duly elected government justified the Union's demands for new safeguards in rebel regions. Furthermore, republicans added that excluding slaves from voting was one issue but excluding freedmen from voting was altogether different.<sup>35</sup>

The Old Guard Democrats also accused Republicans of hypocrisy because in 1865 only a handful of Northern states allowed blacks to vote. However, the Republican response was that Northern African Americans represented about two percent of the population of most Northern states while in the South, free African Americans constituted an outright majority in two states—South Carolina and Mississippi—and almost half of four others and a quarter of the population in the remaining Southern states. Therefore, while regrettable to Reconstructionists, Northern voter laws were not as un-republican as Southern laws as the vast majority of Northern free whites could vote as opposed to the South where a vast majority of free men could not vote. Sumner explained that “the denial of justice to colored citizens in Connecticut and New York is wrong and mean; but it is on so small a scale that it is not perilous to the Republic. Sumer added that had Southern blacks been able to vote in the 1860-61, “the acts of secession must have failed. Treason would have been voted down.”<sup>36</sup>

Though modern critics might be tempted to dismiss the self-serving Republican defense, it drew strength from both Founding-era definitions of republicanism and contemporary realities.

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<sup>35</sup> Ibid., 373.

<sup>36</sup> Ibid., 374-75.

Southern black disenfranchisements in 1865 threatened to skew political power dramatically both within Congress and individual state legislatures. Once the millions of Southern blacks became free, unless they were also enfranchised, the white voters in the plantation belts might have even more voting power than before because the old three-fifths would become five-fifths<sup>37</sup> without the black vote. In retrospect, especially considering the taxation portion of the Three-fifths Clause never really materialized as planned, a “Five-fifths Clause” for representation without black enfranchisement would have been nirvana for Southern delegates in 1787. So, something had to be done to ensure black suffrage.

Finally, the argument against women disenfranchisement went that they would not be expected to take up arms in defense of the county but free black males would. Additionally, while white males could reasonably expect to vote with the interests of their wives, daughters, and mothers in mind, former slave owners could not reasonably be expected to do the same for the people they, until just recently, held in bondage.<sup>38</sup>

The arguments against the constitutionality of the trilogy of Reconstruction Amendments coming from the Old Guard Democrats fall flat on their merits. Arguing that one could secede from the Union, wage a deadly war against the remaining states—who during the intervening five years made changes to their government—and then re-join the Union under precisely the same conditions under which they seceded is, at worst absurd, and at best naïve. The secessionists broke from the Union on their own accord. They could have remained loyal and waged war via the ballot box as the Jefferson’s Democrat-Republicans did in 1796 and 1800 but they took the treasonous route. The fact that they thought they would be welcomed back like a long-lost brother was extremely short-sighted.

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<sup>37</sup> Ibid., 375.

<sup>38</sup> Ibid., 376.

Over one-hundred years later, in 1987, Justice Thurgood Marshall, the nation's first Supreme Court Justice and the man who, as a lawyer, made the Constitution the centerpiece of the legal strategy he employed to persuade the Supreme Court to end school segregation in the landmark *Brown v. Board of Education* decision summed up this ten-year period well. Speaking at a celebration to honor the two-hundred-year anniversary of the United States Constitution, Marshall said:

(The Constitution) was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government and its respect for the individual freedoms and human rights we hold as fundamental today.<sup>39</sup>

Marshall's words recognize the Constitution as a "living document" modifiable based on American societal changes. The Old Guard Democrats were operating under the assumption that the Constitution they disavowed in 1860 was the same, unmodified document they hoped to return to Union under. They were sorely mistaken.

### **The Garrisonians**

The Southern Domination and a "pro-slavery" Constitution, was, of course, met with resistance on many levels but none more passionate than a young abolitionist from Boston, William Lloyd Garrison.<sup>40</sup> Garrison called the Constitution "an infamous bargain" and "the most bloody and heaven-daring arrangement ever made by men for the continuance and protection of a system of the most atrocious villainy ever exhibited on earth." Garrison also coined the phrase "a covenant with death, and an agreement with hell."<sup>41</sup> Garrison claimed slavery was founded on absurd and

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<sup>39</sup> Juan Williams, "The Survival of Racism Under the Constitution," *William & Mary Law Review* 34, no. 1 (1992): 8.

<sup>40</sup> Wilentz, *The Rise*, 335.

<sup>41</sup> Fehrenbacher, *The Slaveholding Republic*, 39.

immoral racial prejudice and asked people to imagine that if slaves should suddenly become white “would you shut your eyes upon their sufferings?”<sup>42</sup> Garrison was a new and different voice. A white, non-politician whose arguments were very logical, he railed for his cause outside the political system as he felt all politicians were hopelessly compromised—some his followers will point to the Three-fifths Compromise as the original sin of compromise. The difference between Garrison and other abolitionists was Garrison’s tone of urgency. While others called for gradual emancipation or immediate emancipation but only where the government held the authority to do so, Garrison defiantly would settle for nothing less than immediate emancipation. Garrison even went as far as to lambaste President Andrew Jackson suggesting that “Old Hickory” should be “manacled with the chains he had forged for others and smarting under the application of his own whips”<sup>43</sup> and when Southern states began to secede in 1860 and 1861, Garrison called efforts to save the Union “simply idiotic.”<sup>44</sup>

Wendell Phillips, a leading Garrisonian in the 1840s, insisted that Northern delegates “bartered honesty for gain” and became “partners with tyrants” and contended that the Three-fifths Clause was the “chief pro-slavery clause in the Constitution” because it provided a political bonus for slave holders—through the extra “slave seats” the clause provided—and it constitutionally legitimized slavery. The Garrisonians were rebutted by two groups, “constitutional utopians” and “anti-Garrisonians.”

The constitutional utopians contended that the delegates did not intend a pro-slavery document and posited that the Constitution, if properly interpreted, could make slavery illegal everywhere in the nation. In fact, Virginia’s own Patrick Henry argued that Congress, in its possession of power

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<sup>42</sup> Ibid., 336.

<sup>43</sup> Wilentz, *The Rise*, 337.

<sup>44</sup> Wilentz, *The Politicians and Egalitarians*, 286.

to lay taxes and provide for the common defense, would have the constitutional means of abolishing slavery completely. The anti-Garrisonians admitted the Constitution was pro-slavery in some details but anti-slavery in its purpose and ultimate potential. Gerrit Smith, an anti-Garrisonian, said the few concessions to slavery did not “give character to the instrument” any more than the current of a stream was “determined by its eddies.”<sup>45</sup>

Modern historian Don Fehrenbacher gives little credence to the Garrisonian point of view. Fehrenbacher states that Three-fifths could have just as easily of been zero-fifths or five-fifths. Fehrenbacher reasons that the Garrisonian view on Three-fifths assumes that free-population was the only appropriate basis for allocating legislative power among the states. In 1787, Fehrenbacher asserts, it would have made just as much sense to base allocation on the entire population, including slaves and other non-voting members of society such as women. Therefore, the Garrisonian view that Three-fifths was a bonus for slave holders could be easily argued that it was just as much a penalty as well. Furthermore, the clause’s wording, if directing a ratio based on free-population could still be interpreted as pro-slavery so therefore the Three-fifths phrase carried no implication of national sanction of slavery or passed on no assertion on the idea of human property. Fehrenbacher insists that any effort to label the Three-fifths Clause pro-slavery or anti-slavery would be more an act of volition than of judgement.<sup>46</sup>

The Garrisonians were the most radical and vocal abolitionists of their time. Their message of immediate emancipation was a bridge too far for the first half of the 19<sup>th</sup> century. Even during the Civil War, President Lincoln, operating with a congressional majority thought it wise to begin emancipation gradually. However, even after the Reconstruction Amendments neo-Garrisonians

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<sup>45</sup> Ibid., 37-40.

<sup>46</sup> Fehrenbacher, *The Slaveholding Republic*, 40-41.

still took on the battle of their forefathers, something we will explore deeper in the following chapter. But for now, the original Garrisonian views, while extreme, outlived their founder and are still debated to this day.

### **Conclusion**

Southern domination in early-19<sup>th</sup> century American politics was real as many slave holders held the highest offices of the land in the antebellum years. However, owing that domination to the Three-fifths Clause is a stretch. Plainly put, the South bred the best and most accomplished politicians while the North directed their greatest minds elsewhere . . . and it showed at the polls. Following a similar path as the early 19<sup>th</sup> century Federalists, Northern Democrats suffered a near total collapse in the mid-1800s at the hands of the modern-day Republican Party which brought an end to the Southern domination. The steady decline of Democratic power in the North in the 1850s culminated with overwhelming support for the new Republican Party in 1860 leading to the most transformative ten years in American history—which tragically began with a five-year bloody struggle pitting brother against brother.

To say the five years immediately following the Civil War were constitutionally transformative would be an incredible understatement. No period—not the Revolutionary War era, the Progressive Era, the Great Depression, World War II, no single brief period—saw a nearly complete transformation of American Democracy in such a short period of time. The passage of the Thirteenth, Fourteenth and Fifteenth Amendments did more for American Democracy and nothing since has matched their Constitutional impact. Granted, full implementation of these amendments was a longer struggle—a struggle that some argue continues today—but as the federal government attempted to cash the checks it wrote with the passage of these transformative works, no one could argue that the United States and its Constitution would never be the same.

The 1865 passage of the Thirteenth Amendment was remarkable as it was the first Constitutional Amendment since 1804. But after breaking an amendment-free sixty-one years, Congress would again amend the Constitution twice in the next five years. Three amendments in five years—the first abolishing slavery in the United States; the second making all persons, white or black, male or female, born in the United States full and equal; and the third guaranteeing African Americans the rights afforded them under the Fourteenth Amendment<sup>47</sup>—created a trilogy of constitutional righteousness missing from the original document drafted in 1787. However, viewed through a 21<sup>st</sup> century lens these actions may seem long overdue but to assert such a position would be anachronistic. To assume the 1787 delegates were remiss in their responsibilities by not living up to the letter of the Declaration of Independence is an over simplified look at the era in which they lived.

With the demise of the Three-fifths Clause at the hands of the Fourteenth Amendment's does not mean the debates died a quiet death. Rather, debates over the Three-fifths Clause continued well into the 20<sup>th</sup> and 21<sup>st</sup> centuries. Some of the debates rekindled old arguments such as the Garrisonian positions of the mid-1800's while others focused on more contemporary issues such as economics and civil rights.

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<sup>47</sup> Ibid., 351.

## CHAPTER 4

### PROGRESSIVE, NEO-GARRISONIAN AND CONTEMPORARY PERSPECTIVES

In a post-bellum environment debates on the Three-fifths Clause transitioned from the immediate impact on contemporary issues such as slavery and the slave trade to analyses of the framers' intent. In attempts to get into the framers' minds, the debates centered on the degree of significance slavery played in the framers' deliberations over the Three-fifths Clause. Some historians, such as the neo-Garrisonians, argue that slavery issues, and as an extension, the Three-fifths Clause, were central issues at the Constitutional Convention, while others, such as the progressive-era historians, dispute otherwise—that many others issues superseded slavery in importance at the Convention. Four prominent historians—one from the progressive era, another a civil rights advocate, and two who take on bits and parts of both—offer snapshots of the debates of the 20<sup>th</sup> and 21<sup>st</sup> centuries. Let's start with a look at the progressive-era historians who found issues of greater importance than slavery at the heart of Convention proceedings.

Early 20<sup>th</sup> century historian Charles Beard took an economic view of the Constitution. Beard, in his 1913 book *An Economic Interpretation of the Constitution*, asserts that the Constitution was not racist . . . rather its biases rested solely on the economic interests of a small group of property holders who were looking out for the economic well-being of the Union. Beard contends that those most active in seeking changes in the Articles of Confederation were those working towards the establishment of sufficient revenue to discharge the public debt and those working for commercial regulations advantageous to shipping, manufacturing and speculation in western lands.<sup>1</sup> Or in other words, those very much concerned about the economic well-being of the Union were the ones pushing for a new Constitution.

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<sup>1</sup> Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: MacMillan Co., 1913), 50.

Beard began by examining the structure of American society at the time and breaks it down into four groups who were not represented at the convention: 1) the slaves, 2) indentured servants, 3) disenfranchised men and, 4) disenfranchised women.<sup>2</sup> The number of disenfranchised and therefore unrepresented Americans, is shocking and reinforced by a comment by James Madison who warned his colleagues at the Convention against suffrage for the “industrial masses.” Madison, the Father of the Constitution, said:

. . . the freeholders of the Country would be the safest depositories of Republican liberty. In future times a great majority of the people will not only be without land, but any other sort of property. These will either combine under the influences of their common; in which case, the rights of property and the public liberty will not be secure in their hands, or, which is more probably, they will become the tools of opulence and ambition, in which case there be equal danger on another side.<sup>3</sup>

This striking insight into the mindset of the moneyed elite of the late 18<sup>th</sup> century suggests an effort on behalf of the landowning elite to control the economy for their interests and hints that Northern and Southern delegates were just as concerned about an uprising in their regions—the South with a Nat Turner-like revolt and the North with another Shay’s rebellion.<sup>4</sup>

The Connecticut Courant, on 12 November 1787, offered another perspective on the economic state of the Union when it wrote as follows:

In the harbor of New York there are now sixty ships, fifty-five of which are British. The produce of South Carolina was shipped in 170 ships, of which 150 were British . . . surely there is not any American who regards the interest of this country but must see the immediate necessity of an efficient federal government; without it the Northern states will soon be depopulated and dwindle into poverty, while the Southern ones will become silk worms to toil and labor for Europe.<sup>5</sup>

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<sup>2</sup> Ibid., 24.

<sup>3</sup> Ibid., 25.

<sup>4</sup> Ibid., 30.

<sup>5</sup> Ibid., 46-47.

While the *Courant* painted a pretty bleak picture, Beard recognized that everyone did not feel the same. He noted the Benjamin Franklin, in January 1787, claimed the country was so prosperous there was reason for profound thanksgiving. Franklin said farmers were receiving higher prices for their goods at market and lands were increasing in value. In comparison to conditions of the laboring class in Europe, Franklin asserted, Americans were doing quite well. Beard admitted that Franklin may have been correct but he also asserts that there was no question that those seeking protection via a stronger federal government were extensive and diverse.<sup>6</sup> The wealthy played a leading role in Beard's narrative.

State delegate selection for the Constitutional Convention was, in Beard's analysis, the first step in establishing an economically-biased constitution. Beard noted that the states either placed direct property qualifications on the voters who elected their delegates while other states practically eliminated all voters who were not taxpayers. Thus, those who represented the states at the convention were from the urban centers or those allied with their interests.<sup>7</sup>

To further understand Beard's argument one should look at the delegates themselves to see where their interests lie. His analysis of the fifty-five delegates disclosed that most came from towns where property was largely concentrated; no single delegate represented, in his own personal interests, small farming or the mechanic class; and about ninety-percent of the members were immediately, directly and personally interested to a greater or less extent economic beneficiaries from the adoption of the Constitution. Furthermore, forty-nine of the fifty-five delegates fit into at least one—and in some cases more than one—of the following categories: appeared on the Records of the Treasury Department for sums varying from a few dollars up to more than one hundred thousand dollars; held more than a negligible amount of securities; invested in land speculation;

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<sup>6</sup> *Ibid.*, 47-48.

<sup>7</sup> *Ibid.*, 71-72.

loaned money at interest; held an interest in mercantile, manufacturing and shipping; or held slaves. Armed with this data, Beard concludes that delegates were not economically disinterested and they knew through their personal experiences in economic affairs the precise results which the new government they were setting up was designed to attain.<sup>8</sup>

Beard peeled this back even further as he explored the underlying political science of the Constitution. Beard cited two key founders—Madison and New York’s Alexander Hamilton—whose ideas were representative of economic foundation of the Constitution. Madison stated that the first and elemental concern of every government is economic. Madison stated “the first object of government is the protection of the diversity in the faculties of men, from which the rights of property originate. To Madison, known as the Father of the Constitution, “the Chief business of government . . . consists in the control and adjustment of conflicting government interests.”<sup>9</sup> Hamilton, Washington’s future Secretary of the Treasury and the man generally credited for reconciling the nation’s war debt, focused on the four economic issues that, in his opinion, typically lead to war between states: territorial disputes and—specifically in 1787—how the country would resolve western expansion; commercial competition; differing opinions on the importance of discharging the public debt—not an insignificant issue for a nation just a few years removed for the Revolution; and finally, laws in violation of private contracts.<sup>10</sup> Without question Madison’s and Hamilton’s focus was deeply rooted in the economics of the Union and the fact that a Southerner and the Northerner, in voicing their primary constitutional concerns, did not mention slavery, emancipation or abolition, is telling.

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<sup>8</sup> Ibid., 151.

<sup>9</sup> Ibid., 156.

<sup>10</sup> Ibid., 186-187.

Additionally, Beard's analysis concluded that the greatest support for state ratification centered in the regions where mercantile, manufacturing, security and property interests had their greatest strength and the greatest opposition almost uniformly came from agricultural regions and from areas in which debtors had been formulating paper money and other depreciatory schemes. He concluded that the economic interests must have formed a considerable dynamic element, if not the preponderating element, in bringing about the adoption of the new Constitution.<sup>11</sup>

Furthermore, supporting Madison's and Hamilton's view, John Marshall sketched the economic conflict which led to the adoption of the Constitution: mercantile interest was sorely tried under the Articles of Confederation as there was general discontent with the course of trade; public creditors had lost faith in the old government; and there was a profound division based on the different views of property.<sup>12</sup>

Thus, with his preponderance of evidence, Beard made the following seven conclusions: 1) a movement towards the Constitution was originated and carried through principally by four groups of property interests which had been economically adversely affected by the Articles of Confederation; 2) the first firm steps toward the Constitution were taken by a small group of men immediately interested through their personal possessions in the outcome of their labors; 3) no popular vote was taken; a large property less mass was, under the prevailing suffrage qualifications, excluded from the outset from participation in the work of framing the Constitution; 4) delegates were, with few exceptions, immediately, directly, and personally interested in, and derived economic advantages from, the establishment of the new system; 5) the Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular majorities; 6) the Constitution was

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<sup>11</sup> Ibid., 290-291.

<sup>12</sup> Ibid., 296-297.

ratified by a vote of probably not more than 1/6 of the adult males; and finally, 7) the leaders who supported the Constitution in the ratifying conventions represented the same economic groups as the members of the convention; and in a large number of instances, they were also personally interested in the outcome of their efforts. So, to Beard, the Constitution was not created by “the whole people” as the jurists have said; neither was it created by “the states” as Southern nullifiers long contended; but it was the work of a consolidated group whose economic and financial interests knew no state boundaries and were truly national in their scope.<sup>13</sup>

Beard was not the only progressive-era historian who felt slavery was a secondary issue at the Convention. Yale professor Max Farrand admitted that while the slave trade and navigation acts were genuine compromises between slavery and trade, he asserted it is “quite misleading” to put slavery among the foremost issues of the Convention. Farrand believed much of the perceived Constitutional Convention’s emphasis on slavery stemmed from the release of the “*Madison Papers*” in the 1840 when slavery was emerging as the “all absorbing in our national life” thus leading writers of the day to overemphasize the slavery questions of the Convention.<sup>14</sup> Had the “*Madison Papers*” been released, perhaps twenty-five years earlier, during the period of relative tranquility after the War of 1812, the emphasis on slavery at the Convention may not have been such an emotional and dissected topic. Farrand suggested the myths that have been passed down from the most heated days of the slavery struggle should be finally put aside. One such myth, Farrand suggested was the Three-fifths Clause. The ratio had been incorporated in the revenue amendment of 1783 and had been accepted by eleven states before the Federal Convention ever met. When the ratio was proposed at the Convention it was adopted by a vote of nine to two and it

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<sup>13</sup> *Ibid.*, 325.

<sup>14</sup> Max Farrand, “Compromises of the Constitution,” *The American Historical Review* 9, no. 3 (Apr 1904): 479-480.

was also embodied in the New Jersey plan. Farrand suggested that to “regard this as a compromise is altogether a misinterpretation.” He quoted Rufus King, who, in the Massachusetts state convention said about the federal ratio: "This rule . . . was adopted, because it was the language of all America." Furthermore, Farrand stated the power of the executive and the judiciary, western expansion, control of the militia and a dozen other subjects, all ranked above slavery in importance and insisted that it cannot be too strongly emphasized that in 1787 the slavery question was not the important question and that it was “not the moral question that it was in 1850.” Farrand admitted the South demanded concessions, but the North was ready to make them, especially if it could obtain some concessions (such as the navigation acts) in return. To magnify these question “to the exclusion or to the belittling of other interests” is, to Farrand, a complete misreading of history.<sup>15</sup> Beard’s and Farrand’s “Progressive indifference” to the issue of slavery was later challenged in mid-century from neo-abolitionists.<sup>16</sup>

### **A Neo-Garrisonian View**

The 1960’s, in a somewhat eerily similar scenario to one hundred years before, saw a re-emergence of the Garrisonian position on Three-fifths. The neo-Garrisonians paralleled the concerns of the 19<sup>th</sup> century Garrisonians in their involvement with the Civil Rights movement of the 1960’s. The 20<sup>th</sup> century neo-Garrisonians believed that slavery was at the heart of the Constitutional Convention leading to a decidedly pro-slavery document. One such neo-Garrisonian was Civil Rights activist and Yale professor Staughton Lynd.

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<sup>15</sup> Ibid., 481.

<sup>16</sup> Howard A. Ohline, “Republicanism and Slavery: Origins of the Three-Fifths Clause in the United States Constitution,” *William & Mary Quarterly* 28, no. 4 (1971): 566.

Sixty years after Beard, Lynd found much fault with Beard's analysis, which Lynd claimed systemically minimized slavery's importance in American History. William Lloyd Garrison would likely agree with Lynd's assertion that Beard portrayed slavery in both the Revolutionary era and the time of the Civil War as merely a form of "agrarianism" thereby blurring the fact the Constitution was not a victory of capitalism over slavery but a compromise between capitalism and slavery.<sup>17</sup> Like many neo-Garrisonians, Lynd found much fault with Progressive-era historians as American society continued to struggle with the treatment of African Americans. So, now, during the heat of the Civil Rights movement, the arguments shift from economic-focused to abolitionist-focused.

In a 1966 article, "*The Compromise of 1787*," Lynd linked the origins of the Three-fifths Clause to the Northwest Ordinance<sup>18</sup> by claiming a conspiracy between delegates attending the nearly simultaneous Constitutional Convention in Philadelphia and the Confederation Congress in New York. Lynd asserted there was likely a high degree of communication between both meetings leading to the alleged conspiracy. The fact that seven delegates, including Madison, were members of both sessions—these men travelled directly from New York to Philadelphia in May—and that several prominent figures, including the Convention's influential Gouverneur Morris, travelled back and forth between New York and Philadelphia during both sessions suggested the details of the Northwest Ordinance were available to the Convention,<sup>19</sup> offer credence to Lynd's allegation.

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<sup>17</sup> Staughton Lynd, "On Turner, Beard and Slavery," *The Journal of Negro History* 48, no. 4 (Oct 1963): 235.

<sup>18</sup> The Northwest Ordinance prohibited slavery in territories north of the Ohio and east of the Mississippi Rivers.

<sup>19</sup> Staughton Lynd, "The Compromise of 1787," *Political Science Quarterly* 81, no. 2 (Jun. 1966): 225-250.

Lynd submitted as further evidence a statement from Madison's secretary, Edwin Coles, who, in the 1850s, offered a quote from Madison regarding the two sessions:

Many individuals were members of both bodies and thus were enabled to know what was passing in each . . . The distracting question of slavery was agitating and retarding the labors of both, and led to . . . a compromise by which the northern or anti-slavery portion of the country agreed to incorporate, into the Ordinance and Constitution, the provision to restore fugitive slaves; and this mutual and concurrent action was the cause of the similarity of the provision contained in both, and had its influence, in creating the great unanimity by which the Ordinance passed, and also in making the Constitution the more acceptable to the slave holder.<sup>20</sup>

Lynd asserted that both conventions were motivated by the same issue—slavery. In New York, pro-slavery Southerners who sought to preserve slavery and to strengthen the pro-slavery bloc in Congress viewed a Northwest settlement, even without slavery, as a means to those ends. In Philadelphia, sanctions for slavery (specifically, as Lynd points out, the Three-fifths and slave trade clauses) were essential for the same results: protection against emancipation and a Southern majority in the House. In each case the North agreed to the concessions the South demanded, but in New York, because of the South's mistaken assumptions about the future of the Northwest, an antislavery clause could be included in the Northwest Ordinance. The fugitive slave clause adopted unanimously by both bodies shows, according to Lynd, that if there wasn't a sectional compromise between Congress and Convention, at least that the makers of both the Northwest Ordinance and Constitution (and the Three-fifths Clause) were ready to compromise the concept that all men are equal. To Lynd, this was the “fundamental compromise of 1787”<sup>21</sup> and that the Three-fifths Clause, the Constitution's half of this compromise, sanctioned slavery more decidedly than any previous action at a national level.<sup>22</sup>

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<sup>20</sup> Ibid., 228.

<sup>21</sup> Ibid., 249-250.

<sup>22</sup> Ibid., 225.

Temple Professor Thomas A. Ohline, in his 1971 analysis of Lynd's writings, agreed with Lynd's assessment that slavery was a major question from the beginning—but not for the reasons Lynd suggests. Ohline adds that Lynd's moralism was abolitionist (read: Garrisonian) in sentiment as evidenced by Lynd's assertions that the Three-fifths Clause "sanctioned slavery more decidedly than any previous action at a national level" and was achieved because the members of the Convention "were ready to compromise on the concept that all men are equal."<sup>23</sup> Ohline also agreed that Lynd correctly pointed out that some Southerners supported the proportional representation of population because they believed that Southern population growth would outpace Northern population growth and they were confident of controlling the West in the future (hence Lynd's conspiracy theory). But, Ohline adds, if the dispute over three-fifths was only a sectional compromise between the North and South, Lynd does not explain convincingly what the North received in exchange. In Ohline's analysis, Lynd's attempt to build a case about the Northwest Ordinance fits into his North-South sectional model, but ignored the complexity of the problem with the Convention.<sup>24</sup>

Ohline explained that whatever the Three-fifths Clause meant to Americans after 1787, in the convention it wasn't primarily the product of a sectional struggle for political power or a rejection of revolutionary ideals. Convention politics were fraught with sectionalism but the issue of representation and slavery was too complex to be fully placed in a simple North-South frame of reference. In Ohline's analysis, the Three-fifths Clause was key to weakening the principle of state sovereignty and establish the republican ideal that the people were sovereign and was instrumental in bringing about a Union in which representation in the national legislature would reflect the changing distribution of popular opinion.

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<sup>23</sup> Ohline, *Republicanism and Slavery*, 566.

<sup>24</sup> *Ibid.*, 567.

Ohline added that the key to political reform for many in 18<sup>th</sup> century England was the destruction of the rotten borough system and the adoption of a political structure in which Parliamentary representation was based on population. This radical principle of equal representation became part of the American Revolutionary ideology because it largely conformed to the structure of colonial institutions, thus by the time of the Revolution the concept that legislative assembly should mirror society was at heart of republican ideology—any legislation based on less would destroy republicanism. But the paradox of the 18<sup>th</sup> century was that a national legislature accurately reflecting 18<sup>th</sup> century American society would also have to reflect the institution of slavery.<sup>25</sup>

The biggest objections to the Three-fifths Clause were not over the racist nature of the clause but rather of how property was counted for representation and, in arguments like Morris' and one that Luther Martin of Maryland endorsed, that the clause would encourage importation of additional slaves. No anti-slavery activist of the 18<sup>th</sup> century condemned the Three-fifths Clause publicly as a sanction of slavery—moral condemnation of the clause emerged among later generations for a variety of reasons. Ohline asserted evidence suggests the Convention's discussions of counting slaves was all about representation, not the federal government's power over the institution. Ohline concluded his analysis by stating the Three-fifths Clause was a major instrument in uniting slave and non-slave states in a national legislature that represented a significant improvement over the static form of English constitutional structure. To Ohline, the regrettable paradox was that the new nation had to acknowledge the existence of slavery to be republican and the major dispute in the Convention was not whether the institution should be or not be, but *how* it would be.<sup>26</sup>

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<sup>25</sup> Ibid., 567-568.

<sup>26</sup> Ibid., 583-584.

Beard's economic model to Lynd's neo-Garrisonian conspiracy model to Ohline's republicanism model takes us to a final analysis . . . Michael J. Klarman's "Framers' Coup."

### **A Contemporary Look at Three-fifths**

Klarman, in his 2016 book *"The Framers' Coup: The Making of the United States Constitution,"* in a Beardian-like analysis, asserts the Constitutional delegates framed a document to protect the wealthy against redistributive tendencies of popular government against the redistribution of wealth. The Constitution was, in Klarman's assessment, a conservative counterrevolution against, what leading statesmen of the day considered, irresponsible economic measures implemented by a majority of the state legislatures. Klarman focused on the overly democratic state constitutions that allowed the commoners, during a post-war financial crisis, to alter economic policies such as progressive taxation and inflationary monetary policies favoring themselves but were also ruinous to the farming class and artisans and disadvantageous to creditors and the wealthy. In Klarman's analysis, the Constitution was an effort to diminish the democratic impact at state level and protect the wealthy from popular opinion.<sup>27</sup> Where Klarman departed from Beard however, is in his interpretation that slavery *was* instrumental in the Convention's proceedings. But unlike Lynd, Klarman did not cite a conspiracy theory to ensure slavery's protection, but rather he linked slavery to the economic interests of the Southern elite.

Klarman insisted that every pro-slavery clause in the Constitution was written to protect the institution—and the subsequent economic benefits—despite many Southerner delegates' objections to the practice.<sup>28</sup> Although many men of the Upper South, especially George

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<sup>27</sup> Matthew C. Simpson, "The Founding Fathers' Power Grab: Was the Constitution designed to make the United States less Democratic?" review of *"The Framers Coup: The Making of the US Constitution,"* by Michael J. Klarman, 29 September 2016, The New Republic, <https://newrepublic.com/article/137310/founding-fathers-power-grab>, accessed March 24, 2017.

<sup>28</sup> Ibid.

Washington, James Madison, George Mason and Edmund Rudolph, regarded slavery as a temporary evil that hopefully could be eliminated soon through the actions of slave owners and state legislatures (once again emphasizing the view that slavery was state issue), the men of the Deep South did not speak this way. Their economies were hugely dependent on slave labor and South Carolina, for example, appointed as delegates four enormously wealthy slave owners.<sup>29</sup> Therefore, many Southern delegates felt that the South's interests were sufficiently distinctive and sufficiently at risk that they repeatedly threatened to walk out of the convention if adequate safeguards for slavery were not provided.<sup>30</sup>

Despite this reality, there was still no question the delegates were very concerned about the economic trajectory of the Union. The government, in the eyes of many leading citizens, appeared to be disintegrating. The states had largely ceased fulfilling their financial obligations to Congress and Congress lacked the power to compel the states to comply.<sup>31</sup> Furthermore, an attempt by Congress, in October 1786, to borrow half a million dollars from private enterprises to finance an expansion of the army to suppress an insurrection of tax resisters and debtors in Massachusetts was a complete failure as states declined to pledge their tax support for repayment of the load. Finally, the government was helpless against Spanish closure of the Mississippi River to American ships in 1784 and could do little against Algerian pirate attacks on American ships in the Mediterranean Sea in 1785.<sup>32</sup> Roger Sherman of Connecticut said “Our credit as a nation is sinking. The resources

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<sup>29</sup> Michael Klarman, *The Framers Coup: The Making of the United States Constitution* (New York: Oxford Press, 2016), 263.

<sup>30</sup> *Ibid.*, 258.

<sup>31</sup> Historian David Waldstreicher, in his 2009 book *Slavery's Constitution: From Revolution to Ratification*, stated “France and Spain watched as the states, bucking taxes, spoiled the Continental Congress’ promised to pay off foreign loans. Some states even passed their own import and export taxes—in effect treating each other as foreign nations (63).”

<sup>32</sup> *Ibid.*, 11.

of the country could not be drawn out to defend us against a foreign invasion, nor the forces of the Union to prevent a civil war.” Virginian Edmund Randolph feared that “If things continue on their present course, the Union will be dissolved, the dogs of war will break loose and anarchy and discord will complete the ruin of this country.” Rufus King of Massachusetts said it quite plainly when he said “It is not possible that the public affairs can be in a much worse situation.”<sup>33</sup> Finally, William Grayson from Virginia told Madison the many congressional delegates had concluded the “The present Confederation is utterly inefficient, and that if it remains much longer in its present state of imbecility we shall be one of the most contemptible nations on the face of the earth.”<sup>34</sup> It is obvious that concerns were abound and the wealthy had significant concerns about the economic stability and viability of the young nation.

The backdrop of the failure of the Articles of Confederation provided Klarman with the evidence he needed to conclude that slavery had nothing to do with the calling of the convention but given its impact on the economic fortunes of the South, he asserted that, nonetheless, slavery played an enormous role in the proceedings. That the convention would write an anti-slavery document was never in the cards. Given that slaves accounted for about forty percent of the population of the five southernmost states and one-third of their tangible wealth, it was inconceivable that Southern delegates would have agreed to an anti-slavery Constitution. Furthermore, even anti-slavery Northerners were disinclined to press for an anti-slavery constitution as, aside from the fact that many states had a significant number of slaves and most Northerners respected the sanctity of property rights, the aspiration to establish a permanent union with the South was just too great.<sup>35</sup>

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<sup>33</sup> Simpson, “The Founding Fathers’ Power Grab.”

<sup>34</sup> *Ibid.*, 12.

<sup>35</sup> *Ibid.*, 264.

That said, while delegates were reluctant to author an anti-slavery document, they were equally reluctant to push a pro-slavery founding document. Many were queasy about tainting the nation's founding document with linkages to slavery thus in the "s-word's" place the document used euphemisms such as "other persons" and "persons held to service or labor."<sup>36</sup> Klarman insisted that to expect the Constitution to be less protective of slavery would have been unrealistic because the South had leverage over the North in that all delegates wished to preserve the Union. Madison, for example, suggested that banning the slave trade would have led Georgia and South Carolina to reject the Constitution would be "dreadful for them and to us. As great as the evil" the foreign slave trade was, "a dismemberment of the union would be worse."<sup>37</sup>

Thus, while Klarman tossed around the word "pro-slavery," he did so in the sense that slavery was protected within the document but only as a by-product of economic concerns and the emphasis all delegates placed on maintaining the union. To Klarman, the reason the Constitution was "pro-slavery," was that Southern delegates generally were more intent upon protecting slavery than Northern delegates were upon undermining it. In fact, most Northern delegates cared far more about how Southern slavery would affect the political power and economic interests of the North, as well as protecting Southern property rights, than they cared about eliminating the institution.<sup>3839</sup>

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<sup>36</sup> Ibid., 264-65.

<sup>37</sup> Ibid., 303.

<sup>38</sup> Ibid., 303-304.

<sup>39</sup> Simpson cautions that the problem with Beard's and Klarman's economic interpretations of the Constitution is that it tends to link the wealthy with selfishness. Simpson admits that there's no doubt that a primary goal of the Constitution was, in Klarman's words, "to constrain the influence of public opinion upon government." But to Simpson and Klarman, there was much more at stake. Protecting wealth was perhaps one of them but most delegates feared civil war, widespread bankruptcy or a foreign invasion—all scenarios that would be disastrous for rich and poor alike. A strong central government offering security, unity and economic development, would do much to quell those fears, even if it meant concessions to slavery. But in another departure from Beard, Klarman did not insist state ratification was a rich man's effort. The ratified Constitution was advantageous to poorer Americans as the federal government's assumption of the states' war debts stabilized the economy and reduced the tax burden on typical Americans by up to ninety percent. As

## Conclusion

The typical narrative of the political conflict behind the Three-fifths Clause follows that Northerners wanted to count slaves in determining each state's share of direct taxes but not representation; southerners, the opposite; thus, the Three-fifths Clause was a compromise between the North and South.<sup>40</sup> However, this simplified narrative contradicts many 20<sup>th</sup> and 21<sup>st</sup> century scholarly views on what happened in Philadelphia in 1787. Just as the slave/Constitution narrative evolved in the 19<sup>th</sup> century, the same holds true with the 20<sup>th</sup> and 21<sup>st</sup>. The narrative is often shaped by contemporary issues that have little to do with 1787 but those very issues compel modern historians to frame the narrative in a contemporary perspective.

For example, Progressive-era historians, such as Charles Beard, living in an era where industrial and economic reform took center stage, viewed the Constitution from a similar perspective, to the detriment of, some will argue, the racial component of the Constitution. In fact, many modern historians accuse Progressives of ignoring the slavery components of the Convention. Several decades later, in a period reminiscent of a century earlier where African Americans who fought for their country in the Civil War struggled to gain civil equality, analysis of the Constitution focused on the racial component of the Constitution. Neo-Garrisonians, such as civil rights active Staughton Lynd, rekindled 19<sup>th</sup> century pro-slavery arguments as 20<sup>th</sup> century African Americans struggled for civil equality twenty years after fighting for their country in World War II while also sending their sons and brothers to fight in Vietnam. As the page turned on the 20<sup>th</sup> century, another

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Simpson suggests, it is hard to see the class warfare that existed previously driving these institutions and policies and if the framers wanted a central government that exploited the poor, they did not lack for examples around the globe. Instead, they created a framework for economic prosperity and security. In Philadelphia, for example, the daily wages of laborers doubled between 1790 and 1796. Washington did not exaggerate in his 1795 address to Congress when he noted, "Our agriculture, commerce, and manufactures prosper beyond former example" (Simpson, *The Founding Father's Power Grab*).

<sup>40</sup> Ohline, *Republicanism and Slavery*, 564.

voice, Michael Klarman, took a stance that balances both the Progressives and neo-Garrisonians. Klarman takes a Beardian position in that he agrees the economic concerns were the genesis of the Constitution. However, Klarman, in a nod to the neo-Garrisonians, also acknowledges that once in Philadelphia, slavery was a significant issue in the constitutional proceedings.

Klarman's perspective, likely drawing upon several more decades of scholarly research, is probably the more realistic scenario. While both Beard and Klarman make a compelling argument for the economic factors driving the Constitution and its proceedings, very few would deny slavery's inextricable link to the health of a very precarious late-18<sup>th</sup> century United States economy—the very economy Beard and Klarman suggest compelled the founders to create a new founding document.

## CONCLUSION

Two-hundred and thirty years ago fifty-five men from twelve states arrived in Philadelphia to set the young nation on new path. The governing Articles of Confederation were failing the Union as it essentially sanctioned thirteen different states to function as thirteen different nations. The weak central government lacked the power to collect taxes, regulate money and generally govern for the greater good of the nation. The nation was at a crossroads—it was either continue down the path of failure or do something revolutionary. The delegates chose the latter. Several months later, after suffering through the intense summer heat while locked away in secrecy, they emerged with a new founding document, one that still governs to this day—the United States Constitution.

From day one the Constitution was scrutinized, for both what it said and what it did not say. As it worked its way through state ratification the socio-economic pros and cons were hotly contested. It took almost three years for all thirteen states to ratify the Constitution but ratification did not stop the debates. The earliest debates, much like debates in the Convention, focused on the ratio used to determine representation in the House of Representatives and the impact of that ratio. The federal ratio, as it was known, authorized via the “Three-fifths Clause” in Article I, Section 2, directed that in addition to counting free persons towards for representation, three-fifths of all other persons—slaves—would be counted as well. This clause, and the other five that directly concerned slavery had greater implications for slavery than the Articles of Confederation, even though the Constitution never mentions slavery directly.<sup>1</sup>

The debates involving the Three-fifths Clause can be conveniently grouped into the eras and the contemporary issues from which they emerged. For example, the period immediately following ratification, the debates focused, to a large degree, on the power the “slave seats” gained via the

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<sup>1</sup> David Waldstreicher, *Slavery’s Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009), 1.

Three-fifths Clause gave South in the Electoral College and in the House of Representatives—especially on issues regarding slavery. After a brief period of unity after the War of 1812, the debates shifted to one of morality highlighted by the Garrisonian crusade near mid-century and the “Slave Power” in the capital allegedly emerging from extra voting power afforded the South via the Three-fifths Clause. This perceived Slave Power led to a changing of the guard in Northern politics, which in turn, resulted in a change in power at the federal level and subsequent changes to the Constitution that would forever fundamentally change the United States. After the turn of the century, scholarly debates mirrored contemporary concerns such as wealth-distribution and Civil Rights of the Progressive and Civil Rights eras respectively. Finally, with the turn of another century, 21<sup>st</sup> century analyses perhaps found a middle ground between the Progressive-era Beardian-economic and Civil Rights-era neo-Garrisonian theories.

Regardless of the theory one supports, the United States Constitution and the Three-fifths Clause is not pro-slavery. But it is not anti-slavery either. It just is. Three-fifths is simply a reflection of late 18<sup>th</sup> century American society. Future debates should focus on *why* three-fifths found itself in the document. Few could predict the second and third order effects of the compromise but the compromise, along with the other “slavery” clauses, was necessary for the collective well-being of the nation. Slaves were not going to be counted as full citizens at the federal-level in 1787—it is just an unfortunate reality of the era.<sup>2</sup> Furthermore, the South would not ratify if slaves were counted as a full citizen for taxation purposes nor would the North accept

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<sup>2</sup> When the Constitution was ratified, free black men enjoyed many of the Constitutional freedoms of white men, including, in all but three states, the right to vote. In fact, black men were enfranchised in the new states of Kentucky, in 1792 and Tennessee in 1796. It was only later that black men lost their right to vote in these states—in 1799 and 1834 respectively. In addition, black voters were involved in the ratification process. That made them citizens of not only their state but also the US under Article IV Section 2, which stipulated that “the citizens of each state shall be entitled to all privileges and immunities of citizens of the several states” (Wilentz, *The Rise of American Democracy*, 712).

zero-fifths. It had to be “something-fifths” (or something thirds, or fourths) because slavery existed before 1787 and it was going to continue to exist after 1787. But one’s view on whether three-fifths was pro- or anti-slavery depends on one’s perspective. For pro-slavery advocates, was three-fifths a “slave bonus” or was it a two-fifths penalty for representation? Or . . . for anti-slavery advocates, was it a mere two-fifths “concession” or was it a three-fifths “defeat?”

For whatever fault the critics find with the founder’s final document, one cannot help but praise the amendment process that allows for a “living document” adaptable to American socio-economic changes. This fact is no more apparent than with the Reconstruction amendments that granted slaves their freedom, citizenship and then, the franchise. These three amendments fundamentally changed America’s founding document without tearing down the basis of the United States Government—a second American Revolution if you will.

However, despite the radical changes enacted via this trilogy of amendments, the questions remain to this day. What was the founders’ intent? Was the Three-fifths Clause racist? Was the Constitution pro-slavery? Those questions are as justified as “Why did Truman drop the bomb?” or “Was the Iraq invasion justifiable?” The challenge with questioning historical events is the temptation of anachronism, or thinking the past was no different than the present. A truly objective analysis avoids anachronism which helps one avoid the trap of asking “What should they have done?” and instead focuses on “Why did they do what they did?” The latter question provides a better perspective on value system of the era which leads to a better understanding of *why*. We generally know the *what* . . . to best understand history we need to know the *why*. Doing so prevents us from imposing the moral standards of today on a bygone era and allows us to judge those in the past by the standards of their time, which in turn allows us to arrive at an informed and objective *why*.

To that end, we are reminded of what John G. Nicolay and John Hay both observed about Abraham Lincoln’s speeches and quotes. They said that to understand Lincoln “as a whole” that with any utterance of Lincoln’s, the surrounding “conditions . . . must continually be kept in mind.”<sup>3</sup> That is true with any look into the past—one must continually be aware of the surrounding conditions. Many framers hoped for abolitions and many viewed that slavery was on life support but they did little at the Convention to facilitate slavery’s eventual demise because any anti-slavery initiative would have made ratification extremely unlikely. The priority was putting the Union on sound economic footing. Once achieved, other issues could be addressed.

So, yes, the Three-fifths Clause was pro-slavery, if only for the fact that it was not the “Zero-fifths Clause” or the “Five-fifths Clause.” But, “Zero-fifths” or “Five-fifths” would also have been resisted by both anti- and pro-slavery advocates depending on their perspective on the taxation and/or representation issues. From a 21<sup>st</sup> century rubric, nothing short of “Five-fifths” would be acceptable; however, using an 18<sup>th</sup> century rubric, “Five-fifths” would have been an outrage by many in the North and the South, pro-slavery or not. “Five-fifths” would have been toxic for those who opposed including “property” in the federal ratio but, of course, “Five-fifths” would have been a boon for direct taxation. Conversely, “Zero-fifths” would have been an outrage for those who felt slaves were “citizens enough” to be included in the federal ratio but “Zero-fifths” would have been a welcomed tax relief for slaveholders. There was no path to a decisive victory in either of these scenarios. Today there remains no path to victory only because there is no question that all Americans, regardless of skin color, would be included in the federal ratio because moral values have evolved over the past two-hundred and thirty years.

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<sup>3</sup> Sean Wilentz, *The Politicians and Egalitarians: The Hidden History of American Politics* (W.W. Norton and Co: New York, 2016), 194.

Each generation has its own perspective . . . a perspective that influences historical interpretation. The role of the Three-Fifths Clause, and indeed the entire role of slavery in the Constitutional Convention, is not settled. As eras change, contemporary issues influence historical interpretation. The debate over the Constitution is no different but those who insist on placing slavery at the center of America's founding are in for a major disappointment. There is no question the abhorrent practice was central to Colonial and early-United States socio-economic systems but slavery was not the central theme some assert it was for the Founders' at the Constitutional Convention. The slavery-related clauses in the Constitution were incidental to a greater need—the need for a stronger central government that would provide the weak nation unity and the strong economic foundation it needed to recover from a near financial crisis and total collapse. A government that, albeit seventy-years later, allowed all citizens to pursue the American Dream espoused in the Declaration of Independence.

At the closing of the Constitutional Convention, Benjamin Franklin observed that when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish view.” Therefore, it was astonishing “to find this system approaching so near to perfection as it does.”<sup>4</sup> Two-hundred and thirty years later we still debate the Constitution's perfection but the fact that it remains this nation's governing document is evidence that, contrary to Justice Thurgood Marshall's claim of a defective document, it is closer to perfection than many will admit.

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<sup>4</sup> Michael Klarman, *The Framers Coup: The Making of the United States Constitution* (New York: Oxford Press, 2016), 1.

## BIBLIOGRAPHY

- Amar, Akhil Reed. *America's Constitution: A Biography*. New York: Random House, 2005.
- Beard, Charles A. *An Economic Interpretation of the Constitution of the United States*. New York: MacMillan Co., 1913.
- Farrand, Max. "Compromises of the Constitution," *The American Historical Review* 9, no. 3 (Apr 1904): 479-489.
- Fehrenbacher, Don E. *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*. Oxford: University Press, 2001.
- Ferling, John. *Adams vs. Jefferson: The Tumultuous Election of 1800*. New York: Oxford University Press, 2004.
- Finkelman, Paul. *Slavery and the Founders: Race and Liberty in the Age of Jefferson*. London and New York: Routledge, 2014.
- Holzer, Harold. *Lincoln at Cooper Union: The Speech that Made Abraham Lincoln President*. New York: Simon and Schuster, 2004.
- Klarman, Michael J. *The Framers Coup: The Making of the United States Constitution*. New York: Oxford Press, 2016.
- Lynd, Staughton. "On Turner, Beard and Slavery." *The Journal of Negro History* 48, no.4 (Oct 1963): 235-250.
- Lynd, Staughton. "The Compromise of 1787." *Political Science Quarterly* 81, no. 2 (Jun. 1966): 225-250.
- Meacham, Jon. *Thomas Jefferson: The Art of Power*. New York: Random House, 2013.
- Ohline, Howard A. "Republicanism and Slavery: Origins of the Three-Fifths Clause in the United States Constitution." *William & Mary Quarterly* 28, no. 4 (1971): 563-584.
- Richards, Leonard L. *The Slave Power—The Free North and Southern Domination 1780-1860*. Baton Rouge: Louisiana State University Press, 2009.
- Simpson, Matthew C. "The Founding Fathers' Power Grab: Was the Constitution designed to make the United States less Democratic?" Review of "*The Framers Coup: The Making of the US Constitution*, by Michael J. Klarman, 29 September 2016, The New Republic. <https://newrepublic.com/article/137310/founding-fathers-power-grab>, accessed March 24, 2017.
- Unger, Harlow G. *John Quincy Adams*. Boston: Da Capo Press, 2012.
- United States Constitution.
- Waldstreicher, David. *Slavery's Constitution: From Revolution to Ratification*. New York: Hill and Wang, 2009.

Wilentz, Sean. *The Rise of American Democracy: Jefferson to Lincoln*. New York: W.W. Norton and Co., 2005.

Wilentz, Sean. *The Politicians and Egalitarians: The Hidden History of American Politics*. New York: W.W. Norton and Co., 2016.

Williams, Juan. "The Survival of Racism Under the Constitution." *William & Mary Law Review* 34, no. 1 (1992): 7-31.

Wills, Garry. *Negro President: Thomas Jefferson and the Slave Power*. Boston & New York: Houghton Mifflin Company, 2003.

Wood, Gordon S. *Empire of Liberty: A History of the Early Republic, 1789-1815*. New York: Oxford University Press, 2009.