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**DOCUMENT A** Three-fifths Clause — Article I, Section 2, Clause 3  
Essay by Erik M. Jensen (pp. 54–56)

The Three-fifths Clause is one of the most misunderstood clauses in the Constitution. The clause does not deny that blacks are full persons (in fact, free blacks were counted on par with whites for purposes of apportionment). Rather, it addresses whether and how slaves should be counted for the purpose of determining the number of representatives in Congress. Though Southern slave owners asserted that slaves were held as property, Southern delegates at the Constitutional Convention wanted slaves to count as full persons for purposes of determining representation in Congress. Including slaves as part of the Southern population would give the South disproportionately greater representation in Congress and therefore more influence in forming the country's laws.

By contrast, Northern delegates favored omitting slaves entirely when determining representation and therefore denying Southern states the advantage in the national legislature. The compromise allowed three-fifths of the slave population to count toward determining representation. However, a compromise for apportionment did not satisfy the South. To break the Convention deadlock, Gouverneur Morris suggested tying taxes to apportionment as a solution. While it was not in the South's interest to count only a portion of the slave population toward apportionment of representatives, it was in the region's best interest to count only a portion of the slave population towards a state's tax liability.

Thus, even though slaves were property under the laws of the Southern states, the Constitution itself acknowledged that they were persons. By tying both representation and direct taxation to apportionment, the Framers removed any sectional benefit, and thus any proslavery taint, from the special counting rule. This compromise also protected the integrity of the census, since inflating the population numbers to gain more seats in Congress would increase a state's tax liability.

**Vocabulary to Learn:**

**DOCUMENT B** Slave Trade — Article I, Section 9, Clause 1  
Essay by Matthew Spalding (pp. 150–152)

While the first debate at the Constitutional Convention concerning slavery focused on representation, the second debate focused on Congress's power to regulate or ban the slave trade. The Slave Trade Clause was the first independent restraint on Congress's powers. The first draft from the Committee of Detail permanently prohibited Congress from taxing exports, outlawing or taxing the slave trade, and passing navigational laws without a two-thirds majority in both houses of Congress.

This draft divided the Southern delegates: Gouverneur Morris of Virginia denounced the slave trade as a nefarious (*evil, appalling*) institution; Georgia and South Carolina refused to support the Constitution without a safeguard for slavery. The issue was referred to the Committee of Eleven. The committee recognized a congressional power over the slave trade but recommended that this power be restricted for 12 years. It also recommended a tax on slave importation. Southern delegates agreed to these recommendations, with the exception that Congress's power over the slave trade be restricted for 20 years until 1808.

Thus, the final draft of the Slave Trade Clause temporarily restricted Congress's commerce power. Although protecting the slave trade was a major concession demanded by proslavery delegates, the final clause was not a permanent element of the constitutional structure. It was a temporary restriction of a delegated federal power. The restriction applied only to states existing at the time, not to new states or territories, and did not prevent individual states from outlawing slavery on their own.

**Vocabulary to Learn:**

**DOCUMENT C** Fugitive Slave Clause — Article IV, Section 2, Clause 3  
Essay by Matthew Spalding (pp. 275–276)

A model of circumlocution (*use of many words to be intentionally vague*), the Fugitive Slave Clause comes the closest of the so-called Slave Clauses (Article I, Section 2, Clause 3; Article I, Section 9, Clause 1; and Article V) to recognizing slavery as a protected institution. The Fugitive Slave Clause was one of the most controversial clauses in the Constitution because it provided that escaped slaves would be returned to those who claimed ownership. The Framers carefully drafted the clause to ensure that the Constitution did not give moral sanction to slavery. The final revision emphasized that slaves were held according to the laws of individual states and that slavery was not based on natural or common law.

The language also implies that a slave owner's property did not extend to federal territories if Congress chose to prohibit slavery there. Indeed, according to the legal requirements of the clause, an escaped slave was no longer a slave upon entering a state that did not recognize slavery under its law. Unlike other clauses in Article IV, which vest power either in Congress directly or in the United States, this clause is written in the passive voice, confers no power on the federal government, but limits state authority. In 1793, though, Congress passed legislation to enforce the clause. In *Prigg v. Pennsylvania* (1842), the Supreme Court held (in a decision written by Justice Joseph Story) that Congress had exercised powers that were necessary and proper to carry out the provision and that a state law that penalized the seizure of fugitive slaves was unconstitutional. However, Justice Story also concluded that the federal government could not compel state officials to enforce the act.

Consequently, some states passed personal liberty laws forbidding state officials to enforce the act. The Compromise of 1850 led to a new federal Fugitive Slave Act. As a result, the Supreme Court in *Moore v. Illinois* (1852) held that states could impose penalties on citizens for harboring fugitive slaves. In *Dred Scott v. Sanford* (1857), Chief Justice Taney pointed to this clause (and the Slave Trade clause) as evidence that slaves were property and not citizens, but neither of these clauses addressed citizenship. These clauses were accommodations to existing slavery interests in particular states.

**Vocabulary to Learn:**

**DOCUMENT D (PART I) Abolition of Slavery — Amendment XIII**  
Essay by Herman Belz (pp. 380–384)

The text of the Thirteenth Amendment reflects its historic character as the culmination (*peak*) of a movement that began during the American Revolution. Eschewing (*avoiding*) originality, the authors of the amendment relied on the language of the Northwest Ordinance of 1787, sought to abolish slavery where it had been established for more than two centuries, and intended to keep slavery from being taken into national territory. Proposed on January 31, 1865, and ratified on December 6, 1865, the Thirteenth Amendment was a positive guarantee of personal liberty, expressed in the negative form of a proscription (*banning*) of slavery or involuntary servitude.

Viewed in historical context and in the tradition of American political thought, the amendment affirms the idea that liberty consists in the right of individuals to exercise, without interference, their natural rights. Moreover the amendment established a minimum national standard of equality: the guarantee of personal liberty for all persons in the United States. By granting Congress the power to enforce the prohibition of slavery in the United States in Section 2, the amendment alters the relationship between the states and the federal government.

For the most part, the Constitution regulates the activity of state governments or state officials. Under the Thirteenth Amendment, states no longer had the power to recognize or establish slavery, and their ability to regulate personal liberty and civil rights was curtailed. Significantly, the Thirteenth Amendment also regulated the behavior of private individuals, because a private person who keeps a slave violates the amendment. To be sure, the scope of the amendment's enforcement power depends on the meaning of slavery and involuntary service. Specific definitions were not included in the amendment because slavery was well understood to mean one person holding another person as chattel and appropriating that person's labor through force rather than consent.

**Vocabulary to Learn:**

**DOCUMENT D (Part II) Abolition of Slavery — Amendment XIII**

Essay by Herman Belz (pp. 380–384)

Most of the congressional debate [over the Thirteenth amendment] focused on the effects of prohibiting slavery. In its most narrow interpretation, the Thirteenth Amendment affirmed an individual's right not to be held as the property of another individual. Beyond this limitation, states had the authority to regulate the civil rights of persons within their jurisdiction, and private individuals could discriminate in commercial and social interactions. Congressional authors of the amendment, however, argued that the prohibition of slavery also implied the conferral (*the giving*) of certain basic civil rights, such as the right to labor, the right to sue, the right to enter contracts, and the right to marry. Yet the authors did not include language specifically protecting or granting civil rights to newly freed slaves.

Shortly after the ratification of the Thirteenth Amendment, Congress passed the Civil Rights Act of 1866 in response to the “black codes” that Southern states instituted to restrict the rights of blacks within their jurisdiction. The Civil Rights Act of 1866 declared that all persons born in the United States (except Indians not taxed) were citizens of the United States. The act also conferred civil rights on individuals, regardless of previous conditions of servitude, and authorized courts to protect persons whose rights were violated.

Though many Members of Congress favored extending civil rights to blacks, lawmakers wanted to do so constitutionally. The constitutionality of the Civil Rights Act was a matter of dispute. Some argued that Section 2 of the Fourteenth Amendment empowered Congress to address the treatment of black citizens in the South. Ultimately, Congress proposed the Fourteenth Amendment to grant Congress the power to legislate civil-rights issues in the states.

**Vocabulary to Learn:**

