

Real World Graduation: Question 4

Edward D. Duvall
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Question 4

Article I, Section 2 of the U. S. Constitution originally contained the following provision:

"Representatives and direct Taxes shall 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."

In this passage, "representatives" refers to the number of seats in House of Representatives in Congress, "Numbers" refers to population, "several States" refers to any State that ratifies the Constitution, "those bound to service" refers to indentured servants (those who had committed to a term of voluntary servitude in compensation for repayment of the voyage to America fronted by others), "Indians not taxed" refers to Indians on reservations, "other persons" refers to slaves, and "free persons" refers to anyone not in the "other person" group, i.e. not slaves.

This passage can therefore be clarified as follows: "Representatives and direct Taxes shall be apportioned among the States according to their respective population, which shall be determined as the sum of the number of a) all free persons, b) indentured servants, and c) three-fifths of slaves; specifically excluding Indians on reservations." In other words, representation in Congress was apportioned to the full population of all people in the state not on reservations, except for slaves, whose apportionment was at a fraction of only 60%. This is known as the "three-fifths" rule. This three-fifths provision was superseded by the 14th Amendment, which was ratified 9 Jul 1868.

Why did the Founding Fathers insert the three-fifths clause regarding slaves?

- a) Most of the Founding Fathers were slave owners who had contempt for black people, and reduced the value of black people to 60% of a white person because it was a long-held tradition.
- b) Most of the Founding Fathers were slave owners who had contempt for black people, and reduced the value of a black person to 60% of a white person in an attempt to deprive the slaves of their fair share of welfare payments.
- c) Even the Founding Fathers who did not own slaves were racist, and reduced the apportionment of slaves to 60% of a white person to suppress the political influence of the black slaves in the Southern states.
- d) The members of the Democratic Party insisted on this provision before they would allow a ratification vote in the Southern states.
- e) Each of the Founding Fathers had different motives, but these motives were generally a combination of a), b), and c).

Answer to Question 4

This is a trick question. All of the answers provided are wrong.

Answer (a) is wrong for two reasons: 1) the provision originated in 1783 as explained below; and 2) the provision applied to slaves, not to all black people (there were many free black people in the states).

Answer (b) is wrong because the Constitution was developed and ratified in 1787 and 1788; "welfare" payments did not begin until the 1960's.

Answer (c) is wrong because slaves were considered property, and thus had no political voice. Slaves did not get to vote, did not get to send representatives, and were prohibited from engaging in any type of political activity.

Answer (d) is also wrong for two reasons: 1) the Democratic Party did not exist for another 12 years; and 2) although it is true that the members of the Democratic Party founded, sponsored, and protected the Ku Klux Klan, and adopted and enforced the Jim Crow laws, these activities did not start until after the Civil War, approximately 90 years after the Constitution was debated and ratified.

Here is the explanation of how the "three-fifths" provision came to be, and why answers based on race are wrong. In 1778, (during the Revolutionary War) the thirteen American states proposed a mutual defense confederacy against Great Britain called the Articles of Confederation. The Articles were adopted and put into force with the ratification by the last state (Maryland) on 1 Mar 1781. The eighth Article contained a provision whereby the confederacy would raise money and pay its obligations based on the relative value of the lands and buildings held by the respective States [1]. In other words, the central government was financed under the notion of property taxes upon the States, but this notion only determined the amount each state should pay. Each State was allowed to raise the tax by any means determined by the state legislatures. This turned out to be difficult to implement in practice, so various amendments were introduced such that the tax became proportional to population instead of property. The northern states therefore wanted to count all the slaves in the south equally with free persons, as that would increase the amount of tax to be paid by the southern states, and reduce the amount owed by the northern states. The southern states objected to that proposal, arguing that slaves were not nearly as productive as free persons, and so the state should not be forced to pay taxes as if they were. Several compromises were proposed on how to count people, and finally a three-fifths ratio for slaves was proposed by James Madison on 18 Apr 1783. The Articles of Confederation required unanimity of the states for amendments, and this proposal failed to get the required votes (New York and New Hampshire rejected it). The original provision continued under the Articles. Note that the "three-fifths rule" was originally proposed in 1783 as a compromise on a taxation issue, not apportionment. There was no "apportionment" under the Articles of Confederation, since each state had one vote.

During the debates on the Constitution in 1787, the same issue came up, except now it also centered on the number of seats each state would get in the House of Representatives as well as direct taxation. During debate on 16 Jul 1787, James Wilson proposed the old 18 Apr 1783 amendment (which was not adopted under the Confederacy) as a means of reaching a compromise between the competing factions, proportioning both direct taxation and representation in Congress [2, 3, 4]. So, the three-fifths rule was a political compromise designed to settle issues of how much taxes each state would pay to support the federal government; having nothing to do with moral judgment on the relative value of black people, racism, or the Democratic Party's long-standing contempt for black people.

Contrary to claims by some that the three-fifths rule increased incentives for slave-owners, it turned out to be a means to reduce the political power of those states having a large concentration of slaves by reducing the number of seats in the House of Representatives. The three-fifths rule did not lead directly to the demise of slavery, but it did prevent the situation from becoming worse. As the number of southern states increased, the number of congressional seats held by slave states also increased. However, the three-fifths rule reduced the number of seats they would have had if slaves had been counted as full persons; this prevented the southern states from obtaining enough votes to amend the Constitution in such a way that slavery would always be allowed.

This original provision's effectiveness as a tax measure was superseded in practice by the use of tariffs to fund the government and later by the 16th Amendment (which permitted a personal income tax). The apportionment aspect was superseded directly by the 14th Amendment, which reads as follows:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed"

Were those who adopted the 14th Amendment racists because they continued to exclude Indians on reservations? No: those Indians did not become citizens until the early 20th century, and therefore at the adoption of the 14th Amendment, were not qualified as citizens to be counted in the apportionment.

The main point to remember in this example is: don't blindly trust political hacks in their claims about racism and other people's alleged motivations. Don't believe that all white people who believe in the Constitution are racist because the Founders were racist, and the Founders were racist because they adopted the three-fifths rule. The rule was adopted as the best economic and political compromise that could be reached at that time, not for racial reasons. It may well be that some of the Founders did regard black people as inferior, but that sentiment was not the source of the "three-fifths" rule. If anything, it retarded the growth of slavery. Examine the historical facts for yourself.

[1] James Bryce, "The American Commonwealth", New York: Macmillan Co., 1907, Vol. 1, pp. 692-698

[2] James Madison, "Notes of Debates in the Federal Convention of 1787", Athens, OH: Ohio University Press, 1966 (reprinted 1976), p. 103

[3] Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787, Together with the Journal of the Federal Convention*, [commonly known as "Elliot's Debates"], Philadelphia, PA: J. B. Lippincott & Co., 1881, Vol. 1, pp. 205, 206

[4] For a full analysis of this provision from *Elliot's Debates*, see Edward D. Duvall, "Regarding the Three-Fifths Rule", 20 Jun 2011, <http://edduvall.com>