

Background Essay: Slavery and the Constitution's Compromises

The 55 men who gathered in Philadelphia in 1787 had a great deal on their minds. The American Revolution was over. The revolutionary leaders had formed a new government under a set of rules called the Articles of Confederation. Many of those leaders soon decided that the Articles gave too little power to the national government. In Philadelphia, their goal was to form a new, stronger government. Stronger, but not too strong. These men agreed about much, but they also disagreed about much. They spent the summer arguing, insisting and compromising. In September, they finished their work. The result was the U.S. Constitution. It is this Constitution that still sets the rules for the nation's government to this day.

One big issue the 55 delegates to the Constitutional Convention in Philadelphia argued about was slavery. Slavery existed in all 13 colonies at the start of the Revolution. In fact, it had existed in the colonies and in much of the rest of the world for centuries. It was especially crucial to the plantation economies of the South. Several delegates from the South came to Philadelphia especially determined to make sure the new Constitution would protect slavery. They were fearful that it might not.

They had reason to be fearful. Something new and threatening to them had appeared. It was a growing sense that slavery was repugnant, immoral, and should end. In the 1700s, small groups of Quakers and other religious groups in America and Great Britain had begun to speak out against slavery. During the era of the American Revolution, this spirit spread and became politically powerful for the first time. In the 1780s, most Northern states acted to end slavery. By 1787 when the Constitutional Convention met, all but two Northern states had abolished slavery outright or had passed gradual emancipation laws that would end it in a few decades time. New York and New Jersey, the two holdouts, would pass such laws in 1799 and 1804.

Given this new and growing clash between defenders of slavery and its opponents, it was unavoidable that the issue would divide and challenge the Constitutional Convention.

Above all, the delegates wanted all 13 states to agree to a new constitutional framework of government. Their overall goal was to preserve the independence of the individual states while also uniting them under a more powerful national government. They sought to make that government strong, but also limited in its powers. Each of its three main branches – legislative, executive, judicial – would have its own powers but also the ability to check or limit the powers of the other branches. This national government would also share power with the states, and it would protect the rights of individuals. Reaching agreement about such a complex federal system would have been a challenge no matter what. Slavery made the challenge much greater.

The delegates from South Carolina and Georgia were especially determined to make sure slavery was protected under the new Constitution. In Virginia, attitudes toward slavery were more mixed than in the Lower South. Some top leaders who themselves owned slaves

nevertheless spoke passionately about its evils. Several Northern delegates were forcefully and openly opposed to slavery. Others agreed, but they feared that a strong stand against slavery would cause several Southern states to leave the union to form their own slave-based government. They believed they had to compromise over slavery in order to hold the union together. Many delegates, North and South, expected slavery to fade away on its own. They were wrong about this, but many held out hope that slavery's days were numbered.

And so, they compromised. How did they compromise?

There were several compromises, but this lesson looks at the three main ones. The most important was the "three-fifths compromise." The South wanted its slaves counted as full persons for the sake of representation in Congress. It did not want them counted at all in deciding how much direct tax a state owed. Many Northern delegates opposed counting slaves at all for purposes of representation. After all, slaves were treated as property and were not citizens with rights. Counting them for representation would increase the South's power by giving it more members in the House of Representatives. The two sides compromised. For every five slaves, only three would be counted for representation and taxation. Here is the wording of the three-fifths clause:

Art. I, sec. 2. 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.

Notice that the word "slave" does not appear in this clause. Nor does it appear anywhere else in the Constitution. Instead, the word "person" is used. It was also used this way in another big compromise. This one had to do with the slave trade. Many delegates wanted the slave trade banned immediately. Most Southern delegates wanted no limits on it at all. The delegates compromised. They decided Congress had to wait to ban the slave trade until 1808. This allowed a horrible activity to continue. Yet it also ensured that Congress could soon end it. In fact, Congress did ban the slave trade on the first day it could in 1808. The clause established that Congress could act to limit or prohibit slavery in some ways, even if it could not alter slavery within any individual state.

Art. I, sec. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The third compromise had to do with aiding in the capture of escaped slaves. Providing for this pleased the slaveholders.

Art. 4, sec. 2. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

However, again the language refers to “persons,” not “slaves.” Moreover, the “persons held to service” are not said to be held by any federal law – only by the laws of the state seeking the runaway. They also were not said to be “justly held” or “legally held,” which were phrases some Southern slaveholders had wanted.

Were these language details important? Some historians say they meant little and were just a way to hide how much the Constitution actually did to protect slavery. Others say the language was crucial. It showed that the federal government did not accept slavery, even though it had no authority to alter it in the states where it was legal. Above all, they say, what was crucial was the refusal to put into the Constitution the idea that enslaved humans were merely a form of property. This refusal may have kept open the possibility of regulating slavery more easily and perhaps ending it some day in the future.

How then can we judge the Constitution’s handling of the issue of slavery? To answer that question, we will look at the views of those in the Convention itself. But it will also help to see the views of those who fought against slavery later in U.S. history. The sources in this lesson will help you do both things. Together, all of the sources should help you answer the lesson's essential question.