

## **TRANSCRIPT: THE US CONSTITUTION, 3/5, AND THE SLAVE TRADE CLAUSE: CRASH COURSE BLACK AMERICAN HISTORY #9**

*The following transcript is a verbatim account of the video file accompanying this transcript.*

### **Speaker: Clint Smith**

Hi! My name is Clint Smith and this is Crash Course Black American History. So sometimes in life, who we say we want to be is not necessarily who we are in that moment. For example, when I was a little kid, I wanted to be a pro wrestler, and not like, grow up and become one eventually, I wanted to be one right then, right there, in that moment. Now, the thing is, even if I wrote down on a sheet of paper that I was a pro wrestler, even if I got all of my friends to meet in a room and agree that I was a pro wrestler, even if I got all of those friends to sign a long scroll of paper calling me a pro wrestler, none of that, in fact, makes me a professional wrestler.

See, there's a disconnect there, between who I say I want to be, and who I actually am in that moment. This is basically the same thing that happened with the US constitution. Stay with me. America said a lot of great things about who it was and what it represented, even though, for millions of people, the aspirations espoused in that document, didn't apply to them. And not only did it not apply to them, but it further entrenched the racial caste system that was already in place. You see, who America says it is, and who America has been, have not always been neatly aligned, far from it.

It's more than a little ironic that the place where the U.S. Constitution was drafted was later called Independence Hall. Because while it's true that the United States was effectively born there, there were millions of people who called the United States home, who, in many ways, became even less free following the ratification of the Constitution. Now, this is not to imply that the colonial laws we've talked about in earlier episodes weren't restricting and inhumane in their own right – they were. But the constitution, even in its earliest days when so many people around the world weren't really sure what a constitution even was, was intended as an effort to solidify the legal principles of a nation. In the United States, the Constitution is the central legal document of our land. It's the thing everything else comes back to. And in our foundational legal document, the one upon which the legal and political landscape of this country would be built, the founders failed to do away with slavery. In fact, they recommitted to it. And there were many people who felt strongly that this was a moral indictment of the country. Almost 70 years later, in 1854, the famous abolitionist William Lloyd Garrison would hold up a copy of the Constitution and burn it, calling it "a covenant with death and an agreement with Hell."

And it didn't have to be this way. The Founders could have used this as an opportunity to say, 'hey, look let's start this experiment fresh.' They could have said, 'you know what team, we inherited slavery from the British, we just fought a war of independence, and that means we should probably make everyone independent.' But instead the majority of them were like...“nahh.” And the thing is, so many of them knew slavery was wrong, and so many of them knew it was something they should be ashamed of. And that's why the word "slave" didn't actually appear anywhere in the Constitution. They didn't want it anywhere on the document, because they knew it would be something history would judge them for. This matters because it demonstrates what many of the Founders of our nation valued and where they thought Black people should be on the social hierarchy. On an economic front, slavery was an incredibly lucrative business, and the Founders knew that. Many of them personally. Of the 55 delegates to the Constitutional Convention, about 25 owned enslaved people.

This conflict manifested itself in two ways – the Three-Fifths Compromise and the Slave Trade Clause. Let's start with the Three-Fifths Compromise. Article one of the Constitution set up a government with two legislative chambers. In the Senate, each state gets two senators. But in the House of Representatives, representation is determined by the population of the state. And the newly minted states had very different compositions. Northern states were more densely populated with White citizens, while Southern states were heavily populated with enslaved Black people. What this did was create a dilemma. The colonists were unsure if and how they should acknowledge enslaved Black people as members of the population and to what extent they should be counted as “citizens” in the context of allotting states political representation. Let's go to the Thought Bubble Northern delegates did not support including enslaved Black people in the population of the Southern states, largely because it would give the South more political power. But, the Southern Delegates knew that they wouldn't be able to compete in the House of Representatives if enslaved people weren't counted. And this is where we get something called, the three-fifths compromise. The Three-Fifths Compromise was a clause in the Constitution that defined enslaved individuals as 3/5 of a human. It was placed in Article 1, Section 2. and it stated that “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.” Three-Fifths of a person. That doesn't even make sense to say out loud. And it sounds absurd, because it is absurd. Even though the South would have loved for Black people to /fully count/ for political purposes, this legislative compromise, which turned Black people into fractions, came to serve as a larger metaphor for the way that Black people were seen by many as less than human. The implications of this decision were profound. It changed the dynamics of the House of Representatives and the Electoral College.

Without the  $\frac{3}{5}$  compromise, some historians even argue that Thomas Jefferson wouldn't have won the election of 1800. Thanks, Thought Bubble. The 3/5 compromise wasn't the only negotiation about what slavery would look like in the new United States. The Slave Trade Clause was outlined in Article 1, Section 9, Clause 1 of the Constitution. Though it doesn't use the word "slave" it was one of the original provisions of the Constitution that addressed slavery as a policy issue. The text says, "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."

This is basically a really fancy way of saying that the federal government cannot limit how many individuals were imported to the United States. According to legal scholars Gordon Lloyd and Jenny S. Martinez, when they said "any such Persons" they clearly meant "enslaved people of African descent." They also point out that this clause was created to be another compromise between the Northern and Southern colonies. It allowed for slavery to exist in the south, where it directly sustained the economy, and allowed for slavery to remain illegal at the local level where it had already been abolished.

But it allowed for ALL of the colonies to indirectly, economically benefit from slavery, and the fact that so many across the country, North and South, benefited financially from slavery is part of what allowed it to sustain itself for so long.

Some states, like Georgia and South Carolina had a unique reliance on the transatlantic slave trade because their enslaved workers died at higher rates relative to places like Virginia or Maryland. They were particularly insistent on this point, so much that some feared they wouldn't join the Union if there were Constitutional limits placed on the slave trade. So even though this document was written without saying the word "slave", what this clause essentially said was – "Until 1808, the Migration or Importation of enslaved individuals of African descent cannot be regulated by the federal government, but only by the states, to allow for each entity to make the best economic decision for their White citizens." At the end of the day, Southern states were able to benefit by keeping their property and Northern states, we shouldn't forget, also got to benefit from the impact of slavery on the Northern economy.

The Slave Trade Clause prevented action on the transatlantic slave trade for twenty years, and the Three-Fifths Compromise lasted for a LOT longer than that. It took 75 years before the United States eventually pivoted on slavery and it took a Civil War and cost hundreds of thousands of lives, to get there. So, what can we say about the Constitutional Convention? I mean what can we say about the Founding Fathers? So often we are taught about how great they were, and how great this founding document they wrote is. But remember that nearly half of the delegates at the Constitutional Convention owned enslaved people. It's important to understand who was, and who wasn't included, in their vision of

this new nation. Who would be the beneficiaries of its promise of democracy, and whose bodies would be used and cast aside in pursuit of it? Sometimes, American history demands that we hold sets of complicated truths at the same time.

These delegates at the constitutional convention founded a country that would go on to create unprecedented opportunity and upward mobility for millions of people across generations, but it did so, at the direct expense of millions and millions of other people. Both are true. And both are America. And holding multiple truths that seem at odds with one another, well, that's American history in a nutshell. I'll see you next time.

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