

## Chapter 15 -- A Compromise On Slavery Allows The Convention To Proceed



**Dates:**  
1787

**Sections:**

- The “Enumeration Clause” Counts Slaves As 3/5<sup>th</sup> Of A Person
- The Northwest Ordinance Provides A Firm Truce On Slavery In The New Territory

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Time: Mid-July 1787

### The “Enumeration Clause” Counts Slaves As 3/5<sup>th</sup> Of A Person



James Wilson is born in Scotland, mingles with leading Enlightenment thinkers such as David Hume and Adam Smith, emigrates to America in 1776, and becomes a successful lawyer in Philadelphia. As a pamphleteer, he argues that Britain has no right to raise taxes on the colonies because they have no representation in Parliament. When the war breaks out, he serves as a Brigadier General in the Pennsylvania militia. He plays a large role in shaping the Connecticut Plan, and is considered by many to be the most learned man at the 1787 convention

When confronted with the dispute over whether or not to include blacks in a state’s population count, his solution is positively Solomon-like in nature. He proposes to split the difference between the two sides.

Again relying on simple math, he calls for weighting slaves as 3/5<sup>th</sup> of a person for the sake of determining each states official population count. When applied to estimated head counts from 1775, the result projects to 28 seats in the House for the North and 25 for the South.

### Compromise Under 3/5<sup>th</sup> Enumeration Clause

Section	States	Slaves = 3/5 <sup>th</sup>
Lower South	Ga, NC, SC	9
Upper South	Va, Md, Del	16
All South		25
Mid-Atlantic	Pa, NY, NJ	12
New England	Con, RI, NH, Ma	16
All North		28
Grand Total		53

Note: assumes 1 House member for every 40,000 in official population count

This gives the North prospects for a slight majority, albeit not the commanding lead were slaves to be excluded entirely from the calculations.

On the other hand, the South get partial credit for their slaves without needing to accede to the notion that they are “full persons” rather than “property.” Besides which, Southerners firmly believe that future census figures will show much greater population growth in their region given its favorable climate – an outcome that fails to materialize in the long run.

Wilson’s “solution” will eventually be captured in the infamous “Enumeration Clause” of the Constitution, favoring whites over both blacks and all Native peoples.

*Article I, Section 2. Representation 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 the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, and three fifths of all other Persons.*

“All other Persons” is the euphemism chosen to avoid the indelicate word “slaves.”

To allow the convention to move forward, they are to “count” as 3/5ths of a white man -- somewhere between cattle and human beings.

The importance of Wilson’s compromise cannot be overstated, and in later years many will regard him as the “unsung hero of the Convention.”

Madison’s “convention notes,” withheld until 1840, state flat out that the North-South divide over slavery was the biggest threat to finalizing a new government.

*I was always convinced that the difference of interest in the US lay not between the large and small but the northern and southern states...and it was pretty well understood that the institution of slavery and its consequences formed the line of discrimination.*

With the Enumeration Clause in place, the Connecticut Plan is almost ready to move from the Gerry Committee to the full floor.

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Time: July 16, 1787

### The Northwest Ordinance Provides A Firm Truce On Slavery In The New Territory



NORTHWEST TERRITORY

On July 16, another piece in the new government puzzle falls into place. It is called the Northwest Ordinance, often regarded as the third most important document (behind the Declaration of Independence and the Constitution itself) in the formation of the United States.

It deals with a topic on the mind of all delegates from the first day of the Convention – what to do with the new territories west of the Appalachians, won from Britain, and then ceded to the Federal Government in The Land Act of 1785. Surveys are already under way to divide this land into plots, but many questions remain. How will it be settled and governed? Will it involve the creation of new States and, if so, how will they be tied into the union?

Finally, will slavery be allowed in this new land – or not?

As a practical matter, some 100,000 settlers have already put down stakes in “the west” by 1787. They have also christened their “territories” with a host of new names – some lasting (Ohio, Kentucky, Tennessee) and some that will fade away (Transylvania, Westsylvania, Franklin).

The Northwest Ordinance Act agreed to on July 16 says that the land will be divided into 3-5 new Territories, with exact borders to be laid out when the time comes to do so. Once the population in a new Territory reaches a threshold of 5,000 settlers, the Federal Congress will appoint a Governor, a Secretary and three Judges to provide administrative oversight. The Territory may also elect a representative to attend the House of Representatives as a non-voting member.

When a Territory achieves a threshold population of 60,000, it can then write and pass a local constitution, identify its boundaries, and apply for formal admittance to the Union as a new State.

These same “governance principles” are to apply across the South, as soon as documents are signed to cede certain lands still in dispute. When this is completed, in 1789, a Southwest Ordinance is signed into law.

A vigorous debate follows on whether new States will enjoy “equal treatment” vis a vis the original thirteen. The answer is eventually “yes” by a 5-4 floor vote, despite a lasting eastern delegate bias against sharing power with “backwards westerners sporting coonskin caps and twangy dialects.”

What tips the scales here is genuine fear – fear that the Appalachian Mountains, and the westward flowing rivers it feeds, will forever tie the new states to Spanish settlements along the Mississippi River, rather than to the new American union. This is an outcome that few are willing to risk.

All told then, the Northwest Ordinance provides for orderly movement of settlers into the new territory in a way that also binds them to the union – albeit ignoring the rights of the Native peoples already present.

Remarkably the Ordinance also defuses the rising tensions over slavery!

It does this through a last second article added by Nathan Dane of Massachusetts, later referred to as the “father of American jurisprudence.” Dane is not a delegate to the Convention, but is a renowned legal scholar called upon to draft the Ordinance. The article he includes is simple but profound, and, to Dane’s surprise, readily approved by the body.

*Art. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.*

Article 6 lays out a geographical line certain – in this case the course of the Ohio River – and openly declares that the institution of slavery will be prohibited to its north and permitted to its south.

In agreeing to this line of demarcation, the South acknowledges that the North wishes to ban the spread of slavery in “its region” of the country.

The North, meanwhile, agrees to respect continuation of slavery in the South, and to facilitate it by supporting the return of any run-away slaves who cross the Ohio River.

This definitive Ohio River line will quell some of the acrimony left over the subject of slavery, both in the hall and over the next three decades.

It also opens the door for a deal on “slave trading,” agreed to a month later, on September 6. The practice will be allowed to continue for twenty more years, but then cease in 1808. During that period the Congress will collect a tax of \$10 on every imported slave.

While at first glance, this 1808 ban on importing more slaves may appear detrimental to the South; that is not the case at all. The reason being that, in twenty years, domestic owners expect to “breed” a sufficient inventory of “excess slaves” for sale, thus keeping the profits for themselves rather than handing them over to the importers. This “breeding scheme” is particularly important to the state of Virginia, which is already seeing that selling slaves can be more lucrative than selling tobacco.