Swarthmore College

Works

Political Science Faculty Works

Political Science

2002

Representation Of The Antebellum South In The House Of Representatives: Measuring The Impact Of The Three-Fifths Clause

B. D. Humes

E. K. Swift

Richard M. Valelly

Swarthmore College, rvalell1@swarthmore.edu

K. Finegold

E. C. Fink

Follow this and additional works at: <https://works.swarthmore.edu/fac-poli-sci>

Part of the [Political Science Commons](#)

[Let us know how access to these works benefits you](#)

Recommended Citation

B. D. Humes, E. K. Swift, Richard M. Valelly, K. Finegold, and E. C. Fink. (2002). "Representation Of The Antebellum South In The House Of Representatives: Measuring The Impact Of The Three-Fifths Clause". *Party, Process, And Political Change In Congress: New Perspectives On The History Of Congress*. Volume 1, <https://works.swarthmore.edu/fac-poli-sci/361>

This work is brought to you for free by Swarthmore College Libraries' Works. It has been accepted for inclusion in Political Science Faculty Works by an authorized administrator of Works. For more information, please contact myworks@swarthmore.edu.

Representation of the Antebellum South in the House of Representatives: Measuring the Impact of the Three-Fifths Clause

BRIAN D. HUMES, ELAINE K. SWIFT,
RICHARD M. VALELLY, KENNETH FINEGOLD,
AND EVELYN C. FINK

During the Constitutional Convention, Southern ambivalence toward the Constitution was resolved through a number of sectional compromises. One of the most important was the three-fifths clause" of Article 1, which provided that three-fifths of all slaves be counted as part of a state's population when apportioning congressional seats. The clause reads as follows:

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.

Enforcement of this clause enabled the South to receive significantly more House seats than would have been the case had it been apportioned on the same basis as the North. This malapportionment in turn created ripple effects inside and outside the institution, further magnifying the section's seat advantage.¹

Between 1795 and 1861, the three-fifths clause openly and systematically gave the South a disproportionate share of seats in the House. This overrepresentation allowed Southerners to wield tremendous power over House decisions; in addition to influencing legislative battles, the clause also af-

fected the outcomes of two critical presidential elections. Thus it played an important part in shaping the course of antebellum U.S. history.

In this chapter, we advance two counterfactual thought experiments as a means of measuring the impact of the three-fifths clause.² In our first counterfactual, we estimate how representatives would have been apportioned in the antebellum era if slaves in the South had not been counted for purposes of apportionment. We then apply these apportionment figures in several ways. First, we look at roll call votes in the House, presenting data on the number of outcomes altered by the enforcement of the three-fifths clause. Next, we look to see whether any “major” legislation that passed during this period would have been defeated. Finally, we examine the collateral effects of the clause on the electoral college.

In our second counterfactual, we imagine an antebellum United States where slaves were counted in the same way as women and children. That is, we count slaves as whole persons for the purpose of apportionment.³ We then repeat the analysis of the first counterfactual, looking at both the number of roll call vote outcomes altered and the collateral effects of the clause on the electoral college. *Whereas both counterfactuals yield significant departures from the historical record, our first counterfactual represents a more drastic change from actual outcomes.* Had slaves not been counted for purposes of apportionment of House seats in the antebellum South, nearly half of the roll call votes could have had different outcomes, including a number of “major” pieces of legislation. Further, we find that the outcomes of two critical presidential elections—1800 and 1824—would likely have been reversed without the enforcement of the three-fifths clause.

To conclude, however, that these findings represent the *actual* effect of the three-fifths clause would require the strong assumption that aside from the method of counting blacks, all else would have remained constant. In particular, three aspects of the lawmaking process—the types of Southern representatives elected, the way those representatives voted, and the legislative agenda—would have to have been the same in order for our counterfactuals to accurately portray the alternative outcomes that would have been obtained without the three-fifths clause (see Appendixes A and B to this chapter for further discussion of our assumptions). We do not assert that all else would have been constant. Rather, the findings in this chapter should be understood as the maximum possible effect of the three-fifths clause. We contend that the magnitude of our results, particularly in the first counterfactual, demonstrates a clear and substantial effect.

The chapter proceeds as follows. First, we show how the apportionment

of House seats would have changed if slaves had not been counted for apportionment. Next, based on the new apportionment, we predict the outcomes of all roll call votes in the House from 1795 to 1861, followed by a more specific investigation of some of the major legislation of that era. We then turn to our second counterfactual and again perform an analysis of legislative outcomes between 1795 and 1861. Following that, we apply both of our counterfactual apportioning procedures to the electoral college and look at how each might have changed the outcomes of presidential elections.

Counterfactual 1: Slaves Are Not Counted for Apportionment Purposes

In order to estimate the South's gains from the three-fifths clause, we must first define what constituted the South in antebellum politics. Although the postbellum South was, and is, commonly defined as the former states of the Confederacy (Black and Black 1992; Key 1984; Kousser 1974), antebellum political actors included other states—typically border states with significant slave populations—in their view of that region. Adopting the construction of contemporaries, we define the South as the “slave states” that Congress sought to evenly balance with “free states” in the composition of the antebellum Senate: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia (Swift 1996: 108–110).

CONGRESSIONAL APPORTIONMENT

In Appendix A, we detail our methods for assessing the number of representatives the South gained from the three-fifths clause. Here, suffice it to say that in apportioning seats to Southern states, we applied the same formulas used to allot House members to Northern states. Table 15.1 presents our results. The three-fifths clause awarded the South significant extra representation. Between the 4th (1795–97) and 36th (1859–61) Congresses, the South gained anywhere from 14 to 30 seats per Congress, with an average gain of 20 seats.

Further, the seats the South gained from the three-fifths clause were fairly evenly distributed between the parties of the period. In sharp contrast to the Solid Democratic South that would take root in the late nineteenth and early twentieth centuries, the antebellum period was far more competitive, particularly after the emergence of the Jacksonian Democrats and the Whigs. Unsurprisingly, then, our estimates of the impact of the clause on party and factional strength show that it had limited impact on their relative proportions in the House.⁴ In the 4th through 17th Congresses (1795–1823), the

Table 15.1

Impact of the Three-Fifths Clause on Slave and Nonslave State Representation, 4th–36th Congresses (1795–1861)

<i>Census Used for Apportionment</i>	<i>Congresses Affected</i>	WITH THREE-FIFTHS CLAUSE		WITH SLAVES NOT COUNTED ^a		<i>Slave State Gains from Three Fifths Clause</i>
		<i>Slave States^b</i>	<i>Nonslave States^b</i>	<i>Slave States^b</i>	<i>Nonslave States^b</i>	
1790	4th–7th	49 (46.2%)	57 (53.8%)	35 (38.5%)	56 (61.5%)	14 (7.7%)
1800	8th–12th	66 (46.2%)	77 (53.8%)	50 (39.4%)	77 (60.6%)	16 (6.8%)
1810	13th–17th	81 (43.5%)	105 (56.5%)	63 (37.7%)	104 (62.3%)	18 (5.6%)
1820	18th–22nd	90 (42.3%)	123 (57.7%)	68 (35.6%)	123 (64.4%)	22 (6.7%)
1830	23rd–27th	100 (41.3%)	142 (58.7%)	75 (34.6%)	142 (65.4%)	25 (6.7%)
1840	28th–32nd	89 (38.4%)	143 (61.6%)	74 (32.5%)	154 (67.5%)	15 (6.1%)
1850	33rd–36th	95 (41.8%)	132 (58.2%)	75 (33.1%)	152 (66.9%)	30 (12.6%)

^aSee Appendix A for the method by which representation was estimated in the absence of the three-fifths clause.

^bSlave and nonslave states were defined by the antebellum conventions used to balance representation of these interests in the U.S. Senate (Swift 1996). The following were considered slave states: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Jeffersonian Republicans gained 1.1 percent more adherents, while the Federalists lost the same proportion. In the 18th through 24th Congresses (1823–37), a period marked by competition between an emerging Jacksonian party and less organized anti-Jacksonian factions, the Jacksonians gained just 0.7 percent more seats, while the opposition lost 1.6 percent. From the 25th through 33rd Congresses (1837–55), the high tide of competition between the Jacksonians and the Whigs, the former gained 0.9 percent more seats, while the latter lost 1 percent.⁵

LEGISLATIVE OUTCOMES

The South's inflated House delegation made its numbers felt in legislative outcomes. As Table 15.2 shows, we find that the clause changed the results in 41.3 percent of the roll calls in the antebellum period, changing winning coalitions into losers and losing coalitions into winners (see Appendix B for a discussion of the procedures behind these results). The percentage of roll calls that changed ranges from 26.3 percent in the 34th Congress (1859–61) to 55.3 percent in the 6th Congress (1799–1801). Analyzing the roll call results on a decade-by-decade basis, we find that the clause affected almost half of the roll calls in the 1790s; the proportion of bills affected is 28.9 percent in the first decade of the 1800s, 37.8 percent in the 1810s, and 36.5 percent in the 1820s. This figure then increases, peaking at 51 percent in the 1840s. While these numbers seem to show a trend in the clause's impact, there is a considerable amount of variation within each decade. However, it is clear from this analysis that a large number of roll call votes were affected.⁶

Our analysis further suggests that the South's bonus seats had an impact on a wider variety of issues than just those traditionally associated with the region, including government management, social welfare, agricultural assistance, civil liberties, and international involvement. We found that there is little variation in the degree to which the clause reversed outcomes in each of the categories.

Of course, one might inquire whether these were important votes or not. Although we cannot directly answer this question, we can begin to address it by looking at the impact of the three-fifths clause on major legislation. We use Dell and Stathis (1982) to identify important measures in each Congress from the 4th through the 36th.⁷ For each Congress, Dell and Stathis identify two to six pieces of legislation. A large number of the measures identified did not have recorded votes on final passage. However, this list is not intended as an exhaustive analysis. Rather it is presented as an illustration of the types of measures that could have been defeated with a change in apportionment. For measures where there are final recorded votes, we note

Table 15.2
Roll Call Votes Affected by the Three-Fifths Clause,
4th–36th Congresses (1795–1861)

<i>Congress (years)</i>	<i>Affected Votes</i>	<i>Total Votes</i>	<i>Percentage of Votes Affected</i>
4 (1795–1797)	25	83	30.1
5 (1797–1799)	86	155	55.5
6 (1799–1801)	54	96	56.3
7 (1801–1803)	44	142	31.0
8 (1803–1805)	41	132	31.1
9 (1805–1807)	52	158	32.9
10 (1807–1809)	54	237	22.8
11 (1809–1811)	77	293	26.3
12 (1811–1813)	97	314	30.9
13 (1813–1815)	112	352	31.8
14 (1815–1817)	41	113	36.3
15 (1817–1819)	48	106	45.3
16 (1819–1821)	66	147	44.9
17 (1821–1823)	26	95	27.4
18 (1823–1825)	40	94	42.6
19 (1825–1827)	49	111	44.1
20 (1827–1829)	76	233	32.6
21 (1829–1831)	98	273	35.9
22 (1831–1833)	212	462	45.9
23 (1833–1835)	138	327	42.2
24 (1835–1837)	150	459	32.7
25 (1837–1839)	197	475	41.5
26 (1839–1841)	327	751	43.5
27 (1841–1843)	474	974	48.7
28 (1843–1845)	278	597	46.6
29 (1845–1847)	331	642	51.6
30 (1847–1849)	273	478	57.1
31 (1849–1851)	293	572	51.2
32 (1851–1853)	239	455	52.5
33 (1853–1855)	290	607	47.8
34 (1855–1857)	403	729	55.3
35 (1857–1859)	274	548	50.0
36 (1859–1861)	167	433	38.6

the measures that could have been defeated if the South did not receive apportionment based on its slaves. The measures discussed here are the only ones that are identified by Dell and Stathis for which a roll call vote was taken on final passage.

In the 4th through 6th Congresses, five measures would have been defeated with a change in apportionment. In the 5th Congress, there were three measures: an act to establish a Department of the Navy, the Alien Act, and the Sedition Act. The latter two acts were parts of the Alien and Sedition Acts that encouraged and reinforced in the split between the Federalists and the Jeffersonian Republicans. In the 6th Congress, a change in apportionment would have resulted in the defeat of the First Federal Bankruptcy Law and the Judiciary Act of 1801. The latter act reduced the number of Supreme Court justices from six to five, increased the number of district courts, and established six circuit courts.

In the 7th through 11th Congresses, there were only two acts that would have been defeated. Both occurred in the 9th Congress: the Cumberland Road Act and the Judiciary Act of 1807. The former was the first major internal improvement project funded by the federal government and created the most important route for immigration to the Northwest until 1840. The latter increased the number of Supreme Court justices from six to seven.

In the 12th through 16th Congresses, only one major piece of legislation would have been affected. In the 14th Congress, the Second National Bank of the United States was established. The creation of the bank, of course, led to major political battles in the 1830s between President Jackson and the supporters of the National Bank.

In the 17th through 21st Congresses, only the Indian Removal Act, passed in the 21st Congress, met our criteria. This act arranged for the removal of Native Americans to lands west of the Mississippi. It resulted in the forcible relocation of the Chickasaws, Choctaws, Creeks, Cherokees, and Seminoles to present-day Oklahoma. Thus this act authorized what is now referred to as the "Trail of Tears."

In the 22nd through 26th Congresses, only one act would have been affected. This was the Tariff Act of 1832, passed in the 22nd Congress. This act was expected to appease the antiprotectionist South. However, soon after its passage, South Carolina adopted the Ordinance of Nullification. This resulted in President Jackson's call for a "force bill."

In the 27th through 31st Congresses, two pieces of legislation would have been affected, both in the 31st Congress. The Texas and New Mexico Act established boundaries between the United States and Texas, compensated Texas for relinquishing claims to New Mexico, and made provisions to al-

low the citizens of New Mexico to decide if it would be admitted as a slave state or a free state. The Utah Act established the boundaries of that state and let its voters decide whether it was to be a free or slave state.

In the 32nd through 36th Congresses, only the English Bill passed in the 34th Congress with a sufficiently small margin that it could have been defeated without the three-fifths clause. This bill concerned the admission of Kansas to the statehood. It stated that Kansas would be admitted immediately if its citizens accepted the Lecompton Constitution. If its citizens rejected this measure, the state would not be admitted until it met the minimal size required for apportionment of a member of the House of Representatives.

The foregoing discussion clearly shows that policy was affected by the three-fifths clause. We have shown that the outcomes of numerous votes would have changed had apportionment been done without counting slaves as part of a state's population. We have also shown that several important pieces of legislation would have been defeated without the additional representation given to the South through the implementation of the clause. Although some of these measures were not as important as others, some clearly defined the political landscape of the time. As such, it is clear that the North yielded something real to the South when it agreed to the three-fifths clause.

Counterfactual 2: Slaves Count as Whole Persons for Apportionment Purposes

Of course, because the three-fifths clause was a compromise, the South also made concessions to the North; let us now consider what the South yielded when it agreed to the compromise by examining what would have happened if slaves had been counted as whole persons for apportionment purposes.

CONGRESSIONAL APPORTIONMENT

We repeat our earlier analysis, with one change. Instead of not counting slaves toward apportionment at all, we count slaves as whole persons. Except for the weightings, the process is identical to that discussed earlier and in Appendix A.

Table 15.3 presents our results. As we can see, the three-fifths clause reduced the proportion of seats awarded to the South. Between the 4th (1795–97) and 36th (1859–61) Congresses, the South lost anywhere from 6 to 15 seats, with an average loss of 10.9 seats.

Once again, the seats that the South lost from the three-fifths clause were fairly evenly distributed between the parties of the period. Unsurprisingly,

Table 15.3
Impact of the Three-Fifths Clause on Slave and Nonslave State Representation,
4th–36th Congresses (1795–1861), with Slaves Counted as Whole Persons

<i>Census Used for Apportionment</i>	<i>Congresses Affected</i>	WITH THREE-FIFTHS CLAUSE		WITH SLAVES NOT COUNTED ^a		<i>Slave State Gains from Three Fifths Clause</i>
		<i>Slave States^b</i>	<i>Nonslave States^b</i>	<i>Slave States^b</i>	<i>Nonslave States^b</i>	
1790	4th–7th	49 (46.2%)	57 (53.8%)	55 (49.1%)	57 (50.9%)	6 (5.7%)
1800	8th–12th	66 (46.2%)	77 (53.8%)	75 (49.3%)	77 (50.7%)	9 (13.6%)
1810	13th–17th	81 (43.5%)	105 (56.5%)	95 (47.3%)	106 (52.7%)	14 (17.2%)
1820	18th–22nd	90 (42.3%)	123 (57.7%)	104 (45.8%)	123 (54.2%)	14 (15.6%)
1830	23rd–27th	100 (41.3%)	142 (58.7%)	115 (34.6%)	142 (65.4%)	15 (15.0%)
1840	28th–32nd	89 (38.4%)	143 (61.6%)	100 (44.7%)	137 (55.3%)	11 (12.4%)
1850	33rd–36th	90 (40.5%)	132 (59.5%)	97 (43.7%)	125 (56.3%)	7 (7.8%)

^aSee Appendix A for the method by which representation was estimated in the absence of the three-fifths clause.

^bSlave and nonslave states were defined by the antebellum conventions used to balance representation of these interests in the U.S. Senate (Swift 1996). The following were considered slave states: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

then, our estimates of the impact of the clause on party and factional strength show that it had limited impact on their relative proportions in the House.⁸

LEGISLATIVE OUTCOMES

The South's deflated delegation weakened its influence on legislative outcomes. As Table 15.4 shows, we find that the clause changed the results in 26.3 percent of the roll calls in the antebellum period (again, see Appendix B for a discussion of the procedures behind these results). The percentage of roll calls affected ranges between 10.8 percent in the 4th Congress (1795–97) to 36.2 percent in the 18th (1823–25). Decade by decade, the pattern is as follows: the clause affected almost one-quarter of the roll calls in the 1790s, 22.1 percent of its roll calls in the next decade, and 29.7 percent in the 1810s, which is the high point of the number of roll calls affected; the level declined to 25.7 percent in the 1820s and rose slightly to 27 percent in the 1830s and 27.5 percent in the 1840s and 1850s. While these numbers seem to show a slight trend in the clause's impact, there is a considerable amount of variation within each decade. However, it is clear from this analysis that a significant number of roll call votes were affected.⁹

As in our first counterfactual, further analysis suggests that the South's loss of seats had an impact on a wider variety of issues than just those traditionally associated with the region. Looking at the same issue areas—government management, social welfare, agricultural assistance, civil liberties, and international involvement—we again found little variation in the degree to which the clause reversed outcomes in each of the categories.

Collateral Effects of the Three-Fifths Clause

House apportionments determine the size of a state's delegation in Congress, as well as the size of its delegation in the electoral college.¹⁰ The South therefore reaped dividends from the enforcement of the three-fifths clause not only in its number of representatives but also in the number of its electors. In general, the clause increased the importance of the South in presidential contests, inflating the extent to which the region had to be courted in order to secure an electoral college victory. As we can see from Table 15.5, the impact of the three-fifths clause on the electoral college was especially important in the formative stages of the first party system, affording a decisive advantage to the Jeffersonians, who were stronger in the South. Moreover, it undoubtedly encouraged that party to maintain its

Table 15.4

Roll Call Votes Affected by the Three-Fifths Clause,
4th–36th Congresses (1795–1861) with Slaves Fully Counted

<i>Congress (years)</i>	<i>Affected Votes</i>	<i>Total Votes</i>	<i>Percentage of Votes Affected</i>
4 (1795–1797)	9	83	10.8
5 (1797–1799)	46	155	29.7
6 (1799–1801)	34	96	35.4
7 (1801–1803)	24	142	16.9
8 (1803–1805)	27	132	20.5
9 (1805–1807)	31	158	32.9
10 (1807–1809)	23	237	19.6
11 (1809–1811)	46	293	15.7
12 (1811–1813)	56	314	17.8
13 (1813–1815)	87	352	24.7
14 (1815–1817)	33	113	29.2
15 (1817–1819)	44	106	41.5
16 (1819–1821)	52	147	35.4
17 (1821–1823)	17	95	17.9
18 (1823–1825)	34	94	36.2
19 (1825–1827)	36	111	32.4
20 (1827–1829)	49	233	21.0
21 (1829–1831)	57	273	20.8
22 (1831–1833)	140	462	30.3
23 (1833–1835)	97	327	29.7
24 (1835–1837)	88	459	19.2
25 (1837–1839)	129	475	27.2
26 (1839–1841)	214	751	28.5
27 (1841–1843)	320	974	32.9
28 (1843–1845)	140	597	23.5
29 (1845–1847)	166	642	25.9
30 (1847–1849)	143	478	29.9
31 (1849–1851)	145	572	25.3
32 (1851–1853)	106	455	23.3
33 (1853–1855)	149	607	24.5
34 (1855–1857)	263	729	36.1
35 (1857–1859)	184	548	33.6
36 (1859–1861)	88	433	20.3

Table 15.5
Impact of the Three-Fifths Clause on the Electoral College, 1792–1860

<i>Census Used for Apportionment</i>	<i>Congresses Affected</i>	WITH THREE-FIFTHS CLAUSE		WITH SLAVES NOT COUNTED		<i>Slave State Gains from Three Fifths Clause</i>
		<i>Slave States</i>	<i>Nonslave States</i>	<i>Slave States</i>	<i>Nonslave States</i>	
1790	4th–7th	65 (47.1%)	73 (52.9%)	51 (41.5%)	72 (58.5%)	14 (5.6%)
1800	8th–12th	81 (46.0%)	95 (54.0%)	65 (40.6%)	95 (59.4%)	16 (5.4%)
1810	13th–17th	103 (44.0%)	131 (56.0%)	85 (39.5%)	130 (60.5%)	18 (4.5%)
1820	18th–22nd	114 (43.7%)	147 (56.3%)	92 (38.5%)	147 (61.5%)	22 (5.2%)
1830	23rd–27th	126 (42.9%)	168 (57.1%)	101 (37.5%)	168 (62.5%)	25 (5.3%)
1840	28th–32nd	117 (39.8%)	177 (60.2%)	102 (26.0%)	291 (74.0%)	15 (13.8%)
1850	33rd–36th	135 (44.6%)	168 (55.4%)	128 (42.2%)	175 (57.8%)	7 (2.3%)

Southern roots, which it did by nominating only Southerners as presidential candidates.

The three-fifths clause not only consistently strengthened Southern influence in presidential contests but also, in two elections, actually altered the outcome. These elections were among the most significant of the antebellum period: that of 1800, which set in motion the dominance of the Jeffersonian party, and that of 1824, which launched the Jacksonian party.

In the famous election of 1800, Jefferson captured 52.9 percent of the electoral college votes.¹¹ However, had the three-fifths clause not been a factor, John Adams would have captured 51.5 percent of the electoral college and therefore the presidency.¹² The role that the three-fifths clause played in Jefferson's narrow victory was well recognized by contemporaries (see Miller 1959: 563–64; Lynd 1967: chap. 7). Years later, the memory was still fresh: the Federalists who gathered at the 1814 Hartford Convention had not forgotten the devastating impact and included a call for abolition of the clause in the first of their reform planks. Abolitionists, too, recognized its significance and pointed to the election as an example of how the South might sway national politics through what they viewed as an unholy advantage (Lynd 1967: chap. 7).

The role that the clause played in the election of 1824 was subtler but just as crucial. In that fractious presidential contest, no candidate won a majority of the electoral college. The House, therefore, had to choose the president from among the top three electoral college vote-getters; this meant that the fourth-highest vote-getter, Speaker of the House Henry Clay, was eliminated from consideration, leaving the House to choose among Andrew Jackson, John Quincy Adams, and William Crawford. Although Clay's role in influencing the ultimate selection of Adams was—and is—disputed, he vetted the candidates and played an active role in guiding the House's selection (Remini 1991). If the three-fifths clause had not been in effect, the three names forwarded to the House for decision would have been Clay, Adams, and Jackson. Given Clay's strong presidential ambitions and the extent of his support in the House, he undoubtedly would have pursued the prize and would have had a plausible chance of winning it.¹³

What if slaves had been counted as whole persons for the purpose of apportionment? Table 15.6 illustrates the change in representation in the electoral college if slaves had been counted as whole persons. In the first two decades of apportionment, representation of slave states was nearly equal to that of nonslave states. Although the margin increased over time, with nonslave states always dominating the process, this margin would have been significantly smaller had slaves been counted as whole persons.

Table 15.6

Impact of the Three-Fifths Clause on the Electoral College, 1792–1860, with Slaves Fully Counted

<i>Census Used for Apportionment</i>	<i>Congresses Affected</i>	WITH THREE-FIFTHS CLAUSE		WITH SLAVES NOT COUNTED		<i>Slave State Gains from Three Fifths Clause</i>
		<i>Slave States</i>	<i>Nonslave States</i>	<i>Slave States</i>	<i>Nonslave States</i>	
1790	4th–7th	65 (47.1%)	73 (52.9%)	71 (48.6%)	73 (51.4%)	6 (8.5%)
1800	8th–12th	81 (46.0%)	95 (54.0%)	93 (49.5%)	95 (50.5%)	12 (12.9%)
1810	13th–17th	103 (44.0%)	131 (56.0%)	117 (47.4%)	130 (52.6%)	14 (12.0%)
1820	18th–22nd	114 (43.7%)	147 (56.3%)	128 (46.5%)	147 (53.5%)	14 (10.9%)
1830	23rd–27th	126 (42.9%)	168 (57.1%)	147 (46.7%)	168 (53.3%)	21 (14.3%)
1840	28th–32nd	117 (39.8%)	177 (60.2%)	128 (42.8%)	171 (57.2%)	11 (8.6%)
1850	33rd–36th	135 (44.6%)	168 (55.4%)	142 (45.9%)	167 (54.1%)	7 (4.9%)

However, only one election would have been affected by this change. In the election of 1796, the order of finish would have been reversed: instead of Adams becoming president and Jefferson serving as vice president, Jefferson would have defeated Adams by one vote in the electoral college. With the election of Jefferson at that time, it is unlikely that the Federalists would have pushed for the Alien and Sedition Acts. Without these acts, one can only conjecture about whether or when there would have been a split between the Federalists and the Jeffersonians.

Conclusion

We turn now to a brief recapitulation of our findings. Like many of the authors in this book, we illustrate a way in which a particular institution affected congressional history. We have done so by examining the impact of the three-fifths clause of Article 1 of the U.S. Constitution, using two counterfactual premises about counting slaves for apportionment purposes. Under both counterfactuals, we find that congressional seat apportionment, legislative battles, and presidential elections would have differed from those that actually occurred. In particular, we find dramatic differences in the first counterfactual scenario (slaves are not counted at all), estimating that nearly half of all roll call votes would have had different outcomes, including a number of pieces of major legislation. In addition, we find under the first counterfactual that two crucial presidential elections—those of 1800 and 1824—would likely have had different outcomes. Although these findings should be taken as a “maximum possible effect” of the three-fifths clause, we argue that the magnitude of our results is large enough to substantiate our point.

are those where North and South Dakota are treated as distinct territories with the population apportioned according to the geographic split that took place at admission. The results are robust to treating Dakota as a single territory and to dropping the Dakotas altogether.

34. Many of specifications of YRSORG were tried, but the natural log fit the best. In particular, a quadratic function was fitted, but the squared term was small and statistically insignificant.

35. It is also true that territories represented by Republican delegates had significantly larger populations ($t = 2.54$).

36. We should note that Figure 14.11 probably gives an overstated view of Republican prescience since many states that defected from the Republicans were brought back into the fold by the realignment of 1896.

37. These support scores are calculated simply as the percentage of each set of votes each that senator cast with the majority of his party.

Chapter 15

1. The richest vein of research on the three-fifths clause concerns its constitutional origin, with only a small amount of research devoted to its impact beyond 1787 (Lynd 1967; Ohline 1971, 1980; Potter 1972; Robinson 1971; Simpson 1941).

2. In each counterfactual, to explore the impact of the three-fifths clause, we adopt a comparative statics approach. Commonly used by economists but increasingly applied by political scientists, it estimates the impact of an independent variable on the dependent variable by holding all other independent variables constant. To conduct this historical comparative statics exercise of estimating the impact of the three-fifths clause, we adhered as much as possible to the minimal-rewrite rule, which calls for "altering as few 'well-established' historical facts as possible" (Tetlock and Belkin 1996: 18).

3. At first glance, it may seem odd that we would consider this latter alternative. However, one must remember that the three-fifths clause was a compromise. Southerners pushed in the Constitutional Convention, briefly and unsuccessfully, for apportionment to be based equally on the slave and free population. Although this proposal was defeated, it did offer one end of the spectrum from which the eventual compromise was developed; the other was not counting slaves for apportionment at all. Thus to understand the effects of the compromise, one must examine both what the South *gained* and what it *lost*.

4. For brevity, we have chosen not to provide a detailed discussion of the impact of the three-fifths clause on political parties since no political party was clearly harmed or benefited from the impact of this clause.

5. We use the party and factional identifications made by Martis (1989). In the 18th Congress, Jacksonian Federalists and Republicans were classified

as Jacksonians. All Adams- and Crawford-affiliated factions were classified as anti-Jacksonians. In later Congresses, anti-Masonics, Nullifiers, and Whigs were classified as anti-Jacksonians. Majority party and factional percentages are affected by rounding and by the presence of minor party and faction members that fall outside of the dominant pro- and anti-Jefferson and pro- and anti-Jacksonian cleavages of the period.

6. We make no attempt to distinguish between types of votes here (votes on final passage, procedural issues, amendments, etc.), for two reasons. First, eliminating all votes but those on final passage would leave very few votes to examine during this era. And second, although some of the votes included in our analysis might have been frivolous or dilatory, we have no way of judging this without studying the circumstances of each vote carefully. Since we cannot reasonably make such judgments, we have decided to include all roll call votes in the analysis. However, some of the more obvious purely procedural roll calls are eliminated through Clausen's (1973) coding scheme.

7. These authors note only major pieces of legislation that passed. However, it is clearly the case that if these measures had been defeated in the House, national policy would have changed, since the measures either had passed or eventually passed the Senate. Clearly, some of these measures would not have passed if the South had not been overrepresented by the impact of the three-fifths clause.

8. See note 4.

9. See note 6.

10. We should also note that national political party conventions for much of the nineteenth and twentieth centuries allocated delegates to states on the basis of their electoral college apportionments. However, we do not treat the implications of the Three-Fifths Clause because in single-ballot conventions, their enforcement or nonenforcement did not affect the outcomes, and in multiballot conventions, it is difficult to say how they would have affected the complex web of timing, dealmaking, momentum, and section-oriented voting rules that influenced the nomination process. For the fullest treatment of the influence of the South on Republican and Democratic party nominations in this era, see Bain (1960) and David, Goldman, and Bain (1960).

11. Aaron Burr, the Jeffersonian Republican's candidate for vice president, captured the same percentage, necessitating a final decision in the House.

12. Adams would have become president, and Thomas Pinckney would have become vice president, having received one less electoral vote than Adams.

13. By 1824, Clay had already sought the presidency twice and would wage aggressive campaigns two more times; also by 1824, he had been elected Speaker each of the five nonconsecutive terms he sought the office, and each time he won on the first ballot.