

Exemplar History and Social Studies Informational Texts – America’s Constitution: A Biography

Amar, Akhil Reed. *America’s Constitution: A Biography*. New York: Random House, 2005. (2005) From Chapter 2, “New Rules for a New World”

Let’s begin with two tiny puzzles posed by the Article I command that “Representatives and direct Taxes shall be apportioned among the several States...by adding to the whole Number of free Persons...three fifths of all other Persons.” First, although this language specified the apportionment formula “among the several states,” it failed to specify the formula within each state.

[...]

A second small puzzle: why did Article I peg the number of representatives to the underlying number of persons, instead of the underlying number of eligible voters, a la New York?

[...]

These two small problems, centering on the seemingly innocent words “among” and “Persons” quickly spiral out into the most vicious words of the apportionment clause: “adding three fifths of all other persons.” Other persons here meant other than free persons – that is, slaves. Thus, the more slaves a given state’s master class bred or bought, the more seats the state could claim in Congress, for every decade in perpetuity.

The Philadelphia draftsmen camouflaged this ugly point as best they could, euphemistically avoiding the S-word and simultaneously introducing the T-word – taxes – into the equation (Representatives and direct Taxes shall be apportioned).

[...]

The full import of the camouflaged clause eluded many readers in the late 1780s. In the wake of two decades of debate about taxation and burdens under the empire and confederation, many Founding-era Americans confronting the clause focused on taxation rather than on representation. Some Northern critics grumbled that three-fifths should have been five-fifths so as to oblige the South to pay more taxes, without noticing that five-fifths would have also enabled the South to gain more House seats.