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Popular sovereignty, slavery in the territories, and the South, 1785-1860

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POPULAR SOVEREIGNTY, SLAVERY IN THE TERRITORIES, AND THE SOUTH,
1785-1860

A Dissertation
Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of History

by
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For my wife

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ABSTRACT

The doctrine of popular sovereignty emerged as a potential solution to the crisis over slavery in the territories because it removed the issue from the halls of Congress. Most historians have focused on its development and implementation beginning in the late 1840s and culminating with passage of the Kansas-Nebraska Act in 1854, but have not recognized its significance in earlier debates over slavery. Popular sovereignty, which took various forms and received different definitions, appeared as a potential solution to the problem of slavery extension as early as the first decade of the nineteenth century when settlers in the Louisiana Purchase and the Old Northwest demanded the right to govern their own domestic institutions. This work charts its development beginning with the earliest debates over the extension of slavery in the territories and traces its place in political discussions until the breakup of the Union.

Focusing on the idea of popular sovereignty illustrates how Americans perceived democracy and democratic institutions, specifically the division of power between states and the federal government. The issue of slavery in the territories became a flash point in the debate over the nature of the Union in the earliest years of the republic; it persisted to the coming of the Civil War. The expansion of slavery remained a contentious issue throughout the nation's first eighty years, even though the terms of the debate changed significantly over time. Popular sovereignty offered a way to avert a clash over the future of slavery by affirming the right of residents in the territories to determine slavery's future within their jurisdiction. Ultimately, the doctrine failed to settle the crisis over slavery in the territories because northerners and southerners could not agree on how the people would exercise self-government. Placing the future of slavery in the hands of settlers in the territories presented a risk to both northerners and

southerners. The North feared that they would permit slavery; the South believed that antislavery citizens would seize control of territorial governments and prohibit slavery.

INTRODUCTION

Americans argued over the expansion of slavery into the territories of the West for much of the eighty-year period between independence and the Civil War. The people had long debated whether the institution of slavery fell under local control or if the federal government dictated where slavery could exist and where it could not. On the issue of slavery in general, from the jurisdiction of issues regarding slavery and the law to the collection and return of fugitive slaves, political leaders had cobbled together a blend of local and federal control designed to allay sectional fears and tension.¹ Whenever the United States gained new territorial acquisitions, however, the dreaded issue of whether slavery would enter those new lands immediately surfaced. From the establishment of the Northwest and Southwest Territories, to the Louisiana Purchase, the annexation of Texas, the acquisition of the Mexican Cession, and finally the debate over Kansas and Nebraska, the extension of slavery confounded politicians. Each time, leaders crafted plans that solved the problem in their time. In retrospect, their compromises lasted for only a short period and failed to settle the dispute once and for all.

The idea of territorial self-government, or what became known as popular sovereignty, played a critical role in almost every debate over slavery in the territories. In nearly every debate from the creation of the Northwest Territory forward, politicians contested whether the power to prohibit slavery rested with Congress or the people residing in the territories. For as long as the United States had added territory to its national domain, leaders had discussed whether decisions regarding the expansion of slavery should rest with the federal government, as owner and agent for the territories themselves, or with those who inhabited and who would inhabit the territories. Closely linked with the argument over states' rights versus nationalism that intensified during the

¹ For a recent account of the federal government's involvement in the institution of slavery, see Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001).

antebellum era, the debate over slavery in the territories showed differences in how Americans viewed the nature and structure of the federal union.

Different interpretations of the nature of the Union prevailed between the sections; northerners believed that the people themselves had created the Constitution, while southerners insisted that the states had created the federal government as their common agent, leaving the states with ultimate authority. The argument intensified in the years before the Civil War. Likewise by the late 1840s Americans could not agree on the correct interpretation of popular sovereignty, the doctrine designed to settle the issue of slavery in the territories, for precisely the same reason. In the 1850s, northerners like Senator Stephen A. Douglas of Illinois declared that the people—at any time acting through their territorial legislatures—could permit or prohibit slavery. Southerners insisted that territories became imbued with sovereignty only when drafting a constitution and seeking admission to the Union. In keeping with their states' rights interpretation of the Constitution, southerners believed, according to Don E. Fehrenbacher, “that the most legitimate embodiment of American sovereignty was a state convention drawn from and acting for the people.”² Did popular sovereignty rest in the masses or in the states, acting on behalf of the people? This was the question that northerners and southerners feuded over, just as they disagreed over states' rights versus nationalism.

My study examines the pivotal issue of local versus federal control over the issue of slavery in the territories. The debate over what Douglas would come to call popular sovereignty emerged in the earliest discussions of whether to permit or prohibit the expansion of slavery into the national domain. Some historians have recognized this, though no scholar has yet portrayed the development of popular sovereignty as a process beginning with the first territorial

² Don E. Fehrenbacher, *Sectional Crisis and Southern Constitutionalism* (Baton Rouge: Louisiana State University Press, 1995), 111. See also Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court* (Athens: University of Georgia Press, 2006), 178-202 and *passim*.

acquisitions of the new nation to its establishment as national policy in the 1850s, with passage of the Kansas-Nebraska Act and finally in the Supreme Court's definition of popular sovereignty in terms favorable to the South.³ I seek to bridge the work of historians who have traditionally examined the doctrine of popular sovereignty as proposed beginning in the late 1840s and the recent writings of scholars who have focused more closely on the struggles over slavery in the early republic.⁴ Historians such as Michael A. Morrison have pointed to this approach in their works, suggesting that a "sectionalization of the inherited revolutionary political heritage" transformed American politics in the twenty years preceding the Civil War.⁵ In the minds of southerners, northerners saw their society as inferior and their peculiar institution as immoral. Just as colonists had chafed at imperial control over local affairs, so slaveholders resented the efforts of antislavery politicians to control the issue of slavery in the territories. Beginning in the late 1840s, Democrats in the North and South "determined to remove this matter of local concern from Congress and eliminate it from national political debate."⁶

Yet the problem had existed long before the 1840s, and so too had the proposed solution. Congress had implicitly established the principle of popular sovereignty when it created the Southwest Territory in 1790. Slavery was prohibited north of the Ohio River, but the people residing to the south could determine the status of slavery for themselves. Of course, few believed that the settlers would prohibit the institution, but territorial inhabitants desired, and in some cases demanded, a certain degree of political autonomy with respect to the issue of slavery.

³ For works dealing with early struggles over the issue of slavery in the territories, see Donald L. Robinson, *Slavery and the Structure of American Politics, 1765-1820* (New York: Harcourt Brace Jovanovich, 1971), 378-423; John Craig Hammond, *Slavery, Freedom, and Expansion in the Early American West* (Charlottesville: University of Virginia Press, 2007); and Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill: University of North Carolina Press, 2006), 172-216 and *passim*.

⁴ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997) is the standard work on slavery expansion and the debates of the 1840s and 1850s.

⁵ *Ibid.*, 7.

⁶ *Ibid.*, 8.

The admission of Missouri Territory into the Union marked a watershed in the debate over slavery in the territories. The antislavery amendment of the relatively unknown New York representative James Tallmadge to a bill for Missouri's statehood reignited the issue of slavery's expansion. Congress debated the issue of statehood for Missouri over the course of three congressional sessions, sometimes using words and arguments that threatened the very stability of the Union. In the course of this bitter debate, the national legislators revisited the concept of local control over slavery and its expansion. Southerners and westerners vehemently asserted the right of local determination over the issue, while members of Congress from the Northeast seemed more reticent to relinquish congressional authority, for they argued that Congress did indeed possess the sovereign right to make the decision.⁷

Ultimately Congress reaffirmed the idea of a dividing line between freedom and slavery. Slaves could not pass into the Louisiana Purchase north of 36° 30' latitude, but to the south of the line citizens could permit or prohibit slavery as they wished. The issue would arise again several times before the late 1840s, most notably during the debate over the Congressional gag rule in the second session of the Twenty-fifth Congress in 1837 and 1838, as the Senate debated John C. Calhoun's resolutions on slavery and the federal Union. Put another way, the debate over local control of slavery and its expansion, which had emerged in the infancy of the republic, never disappeared.

My work examines the development of the concept of popular sovereignty to the coming of the Civil War—first, by offering a narrative of how popular sovereignty surfaced and evolved in the antebellum era; second, by examining the key issue of the relation of the territories to the

⁷ Two works summarize the Missouri debates: Glover Moore, *The Missouri Controversy, 1819-1821* (Lexington: University Press of Kentucky, 1953) and Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: University of North Carolina Press, 2007). Moore's book remains the standard account of the actual debates, while Forbes provides insight into the Missouri Compromise's significance on the slavery debate after 1821.

federal government. Tracing the evolution of the doctrine of popular sovereignty exhibits the continuity in the debate over slavery and local control that existed in the United States prior to the Civil War. When politicians debated the terms of popular sovereignty as it pertained to slavery in the territories, they discussed the relation of the federal government to the states and to the “embryo states,” or the territories seeking admission into the Union.⁸ Throughout the antebellum era, these politicians debated the merits of allowing the people of the territories themselves to decide whether they would permit or prohibit slavery—the policy that came to be known as popular sovereignty. Yet the solution itself created a host of seemingly insoluble problems.

Popular sovereignty had an unintended consequence because neither North nor South could agree upon its meaning. It effectively “constitutionalized” the debate over slavery in the territories by mimicking the debate over the nature of the Union.⁹ The issue of when or if a territory could ban slavery became a matter of constitutional interpretation, a process which culminated in the case of *Dred Scott v. Sandford*, when the Supreme Court affirmed the southern interpretation of popular sovereignty. Antislavery northerners, however, rejected the high court’s pronouncement, which they considered immoral. At the same time, many southerners began to believe that the federal government—acting as their common agent—would have to take measures to protect slave property in the territories. The idea of popular sovereignty, and indeed the Union, crumbled under the ever-increasing weight of cumbersome constitutional rhetoric over the slavery issue. A broader history of the popular sovereignty idea shows how the

⁸ Legal historians Francis S. Philbrick and William Wiecek both use this term in their work to describe the territories at the time they seek admission into the Union. See Philbrick, ed., *The Laws of Illinois Territory* (Springfield: Illinois State Historical Library, 1950); Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca: Cornell University Press, 1977).

⁹ Don E. Fehrenbacher uses this term in his magisterial study of *Dred Scott v. Sandford*. See *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978).

debate over slavery divided the nation into rigid sectional blocs, providing essential insight into how and when the Union sundered.

In order to chronicle accurately the evolution of the popular sovereignty doctrine and to analyze its significance to the debates over slavery in the antebellum era, I have taken a chronological approach to this study. It begins with an overview of the debate over slavery in the territories from the implementation of the Northwest Ordinance to the time of the Missouri controversy. To understand how the issue became so hotly contested in 1819 and 1820, one must investigate its origins in the first attempts to settle the vast national domain of the Old Northwest and the Southwest regions of the United States. The second chapter addresses southern attitudes toward territorial expansion and their legal formulations regarding the peculiar institution and its expansion, which developed during the Missouri debates. Federal legislation beginning with the Northwest and Southwest Ordinances implicitly created a dividing line between slave and free territory. The Missouri Compromise expanded on this and firmly placed the concept of a division in American legal precedent. In the following chapter, I discuss this precedent in more detail by analyzing how specific territories became states and how they exercised local control over the institution of slavery. I also discuss the congressional debate in 1837 and 1838 over the relationship between the federal government and the territories, part of the larger debate over Senator John C. Calhoun's resolutions on the Union. Written in the midst of the well-known "gag rule" debate, Calhoun's resolutions touched on the right of Congress to determine the expansion of slavery in the territories. By addressing these basic legal and political issues, this debate marked another step in the evolution of popular sovereignty.

The acquisition of more territory from Mexico in 1848 led to the recrudescence of the issue of slavery in the territories in its most disruptive form since the days of the Missouri

Compromise. In an effort to settle this increasingly fractious dispute, northern Democratic leaders like George M. Dallas of Pennsylvania, Daniel S. Dickinson of New York, and Lewis Cass of Michigan articulated the concept of popular sovereignty. The doctrine would remain in the national spotlight for the succeeding twelve years; the debate over its application would also continue unabated. The Compromise of 1850 and its settlement for the Utah and New Mexico territories put popular sovereignty into practice. But the debate over the compromise measures and the settlement for the territories provoked contention over the idea of popular sovereignty itself. When the northern Democrats proposed the doctrine beginning in 1847, many moderate southerners had enthusiastically accepted it as a suitable compromise. Some proponents of the doctrine, most notably Daniel Dickinson, explicitly stated that the citizens of a territory had the right to decide on the slavery issue before applying for statehood and crafting a constitution. In his seminal formulation of popular sovereignty, Lewis Cass left this question unanswered, most likely in a purposeful effort to appease people on both sides of the Mason-Dixon Line.

Southerners bristled at the idea of allowing the pivotal decision on the future of slavery to be made before the population of a territory had fully developed. More radical southerners who identified with the politics and theories of John C. Calhoun threatened solid southern support for what the Calhounites derisively called “squatter sovereignty.” Whigs and Calhounites in the South helped ensure Cass’s defeat in 1848 and raised critical questions about just how his brand of popular sovereignty would work—questions that Cass himself proved unwilling to answer. These questions had particular significance in the case of New Mexico, where southerners accused Mexicans of manipulating the political process in an effort to bar the introduction of slavery. They argued that this course allowed the conquered to govern the conqueror. The admission of California as a free state and the creation of New Mexico Territory with an openly

antislavery government threatened southerners, who withdrew support for popular sovereignty in this form—and for Cass, whom they saw as deceptive.

The issue would reemerge with the push for creating the Territory of Nebraska. A pet project of Stephen A. Douglas, Nebraska seemed beyond debate regarding the slavery issue, as it lay north of the compromise line of 1820. Southerners, however, pushed Douglas to divide the vast region into two territories—Kansas and Nebraska—and to include an explicit repeal of the Missouri Compromise line. The Illinoisan obliged, arguing that the Compromise of 1850 had rendered it “inoperative” anyway. Popular sovereignty would replace the line that had become odious to many southerners, a consideration that played no small part in moving many southerners to reconsider the doctrine they jettisoned following the 1850 debate. Popular sovereignty enjoyed greater support from the southern states in 1854 than ever before. Yet the old debate over the timing of a decision on the slavery issue—when a territory’s settlers could exercise their popular sovereignty—appeared again, and proved its ultimate undoing. The proponents of popular sovereignty looked to the Supreme Court for a final determination on how the doctrine would operate in practice. Southerners rejected Douglas’s interpretation of popular sovereignty and heaped scorn upon its chief proponent, who they believed had defined the doctrine against their best interests. When the Supreme Court endorsed the southern version of popular sovereignty in the Dred Scott case, many northerners spurned the Court itself and refused to abide by its determination. Ultimately popular sovereignty failed and even played a role in the destruction of the Union because neither North nor South could agree on its meaning. The debate between states’ rights and nationalism subsumed the popular sovereignty discourse, destroying the series of moderate stances on slavery that politicians had embraced in one form or another for eighty years.

While I utilize sources from both the North and the South, I have chosen to focus more sharply on the South and its attitude toward popular sovereignty. In almost every context in which it came up, politicians offered the idea of local control over slavery as a way to satisfy the South—or at least to compromise in a way that would not offend the states' rights constitutional scruples of southerners. Northern Democrats exemplified this compromise approach in the late 1840s when they sought to unify their party across sectional lines by proposing a solution acceptable to southerners. Popular sovereignty usually emerged as a means to assure the people of the South that their voices would be heard, that their concerns would be addressed. Its proponents sought to bridge the Mason-Dixon Line, a division that in times like the Missouri controversy, the introduction of the Wilmot Proviso, and the congressional debates of 1849 and 1850, seemed like a chasm. Southern support for popular sovereignty, which had emerged in the Missouri debates, became strongest in the late 1840s and 1850s. Southerners rejected the doctrine, however, when northerners proposed a version of the doctrine that the South found disingenuous. Approaching popular sovereignty from the southern perspective illustrates whether southerners believed that it upheld their rights to hold property in slaves, as well as its congruity with their beliefs about the relation of the federal government to the states and territories.

A final word on nomenclature is necessary. What historians call popular sovereignty today actually went by many names in the nineteenth century. In fact, the term popular sovereignty itself did not gain widespread use until the passage of the Kansas-Nebraska Act in May 1854. Prior to this time, politicians, newspaper editors, and others interchangeably used the terms non-intervention, non-interference, territorial sovereignty, and self-government, the last used chiefly during the Missouri debates of 1819-1821. Additionally, opponents of the idea that

a territory could make a decision regarding slavery before writing a constitution and applying for statehood used the epithet “squatter sovereignty.” Few historians have attempted to set this straight, with Don E. Fehrenbacher being a notable exception. He correctly noted the difference between non-intervention and popular sovereignty; indeed, popular sovereignty could not exist without an affirmation of non-intervention by Congress.¹⁰ Nevertheless, few people at the time looked at the matter in such precise terms and consequently used the different labels interchangeably. In these pages, I attempt to use the language common at the time I am writing about. This results in the use of multiple terms for the same basic idea, but it more correctly shows the evolution of popular sovereignty itself.

¹⁰ Fehrenbacher, *The Dred Scott Case*, 140-142.

CHAPTER 1

SLAVERY AND SELF-GOVERNMENT IN THE EARLY AMERICAN TERRITORIES

The United States never implemented a wholly uniform system to incorporate territory within the nation, in spite of attempts to do just that. The strongest effort to create a sort of territorial code preceded the ratification of the Constitution of 1787. Beginning in 1784, the nation's leaders began grappling with the best way to assimilate territory previously held by individual states into the Union and prepare it for eventual statehood. These early debates laid the groundwork for the ongoing discussion of the nature of states and territories that continued up to the Civil War. Even at the earliest stages of the discussion of how to create territories and states, the future of slavery in the national domain assumed critical importance.

In 1784, even the idea of a national domain seemed foreign. Several of the original thirteen states, which had held title to vast tracts of lands in the interior of the continent, ceded their claims to the new federal government as created under the Articles of Confederation.¹ Most leaders agreed on the necessity of some sort of uniform code for the orderly settlement of western lands, but in the discussion over how to govern the West, several critical issues emerged that greatly complicated the process. What role would the federal government have in governing these territories? How could the government ensure a smooth transition from wilderness to settlement—from inchoate territory to organized state? Who possessed the power to impose order on these territories—the federal government or the states themselves? These three questions especially troubled national policy makers, for they touched on fundamental principles of the Union itself: the nature of the Union and the power of the federal government vis-à-vis the states. The questions raised seem abstract on first glance, but they held great practical meaning

¹ For a general overview of the federal government's assumption of western lands, see Richard B. Morris, *The Forging of the Union, 1781-1789* (New York: Harper & Row, 1989), 220-244.

to politicians engaged in the process of securing the new nation and testing the parameters of its newly written Articles of Confederation.

The Constitution of 1787 altered the nature of the American polity by substituting a strong federal government for the loose confederation created by the Articles, but it did not substantively change the nature of territorial administration. In the first session of the new Congress created by the Constitution, legislators reenacted the Northwest Ordinance, essentially giving approval to the action of the Confederation Congress on the subject.² By 1790, Congress had passed a series of laws that addressed these issues specifically, but had largely failed to provide sufficient and final answers to the questions regarding establishment of territories and state making. Furthermore, political leaders had difficulty establishing how much self-government a territory should exercise versus how much control the federal government must assume. Many individuals recognized that American citizens populating the territories possessed the same rights and privileges as citizens residing in the states. The fragile territorial condition, however, seemed to necessitate a period when the federal government would have to circumscribe the political rights of territorial citizens to ensure the orderly political development of the territory itself. No one seemed to know how to calculate the right blend of territorial self-government and federal control. Furthermore, the issue of federal supremacy over the territories raised questions among the states. Some believed that the territorial laws gave too much power to the federal government at the expense of the states. Questions of states' rights would emerge from the territorial debate as well. The lack of consensus on the entire matter proved especially toxic when the question of slavery in the territories arose. Debates ensued, leaders made compromises, the process of creating territories began, but questions lingered.

² Act of August 7, 1790, ch. VIII, 1 *U.S. Statutes at Large*, 50-53. See also Peter S. Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), xviii.

The first effort at regulating the creation of territories came with the Ordinance of 1784, which most historians agree that Thomas Jefferson authored. The legislation did not establish territorial governments as later envisioned by the federal government, however, because Jefferson made no distinction between states and territories; he called the inchoate political subdivisions created by the bill “states.”³ Jefferson most likely made this choice as a way to ensure the equality of the new states with the original thirteen.⁴ He nevertheless recognized the necessity of a maturation period, where a particular embryo state could attain sufficient population to support itself and become a full-fledged member of the Union. He therefore sought to create different stages of government, whereby a “state” would progress in development over time until it reached the maturity necessary to become a full member of the Union.⁵ The embryo states—as historians have labeled them—would initially adopt a constitution of an existing state; they would operate under the charter until they reached the point where they could apply for statehood. When they reached a population of twenty thousand, the citizens could organize a constitutional convention to draft their own charter. Finally, when the embryo state reached the population of the least populous of the original states, it automatically gained statehood. Jefferson’s plan of government imposed order on the state making process, just as it gave great latitude to the embryo states to conduct their own affairs. As Arthur Bestor has argued, “The central feature of the Ordinance of 1784, both as Jefferson originally drafted it

³ For a thorough discussion of this point, see Arthur Bestor, “Constitutionalism and Settlement of the West: The Attainment of Consensus, 1754-1784,” in John Porter Bloom, ed., *The American Territorial System* (Athens: Ohio University Press, 1973): 30-31; Onuf, *Statehood and Union*, 55-56.

⁴ Onuf, *Statehood and Union*, 55.

⁵ See Bestor, “Constitutionalism and Settlement of the West,” 13-44. For Jefferson’s Ordinance of 1784, see especially pp. 27-33. See also Robert Berkhofer, Jr., “The Northwest Ordinance and the Principles of Territorial Evolution,” in Bloom, ed., *The American Territorial System*, 47-50.

and as Congress finally adopted it, was its unhesitating grant of self-governing institutions to inhabitants of new lands from the very beginning.”⁶

Jefferson’s draft ordinance contained a second provision that, if passed by Congress, could have fundamentally altered the debate over the territories that ensued in the nineteenth century. The initial draft, read in Congress on March 1, 1784, contained the following proviso: “That after the year 1800 of the Christian era, there shall neither be slavery nor involuntary servitude in any of the said states, otherwise than in punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty.”⁷ Jefferson’s proviso surely reflects his own ambiguity on the institution of slavery by providing for its gradual extinction in the newly created states of the western territories, yet it also seems incongruous with the document itself. If an embryo state could select the constitution of any of the original thirteen states as it saw fit, and then possess the power to enact legislation in conformity with that document, why could it not legislate on the issue of slavery? The record of the Continental Congress gives scant detail of the debates themselves, so determining Jefferson’s intentions is difficult.

Viewing Jefferson’s aim for the clause as a beginning point for the gradual extinction of slavery in the United States does not seem implausible given his feelings toward the institution. This proviso, however, did not survive the debates in Congress. On April 19, two delegates from North Carolina and South Carolina, representing the southern opposition to a slavery ban, moved to strike the proviso from the draft and a vote to sustain the wording failed.⁸ By the rules of the Confederation Congress, seven votes were required to retain the provision. Members of seven

⁶ *Ibid.*, 28.

⁷ Galliard Hunt, ed., *Journals of the Continental Congress, 1774-1789*, 34 vols. (Washington, D.C.: Government Printing Office, 1904-1937), XXVI, 119. (hereafter cited as *JCC*)

⁸ *Ibid.*, 247.

state delegations from the North voted to keep the slavery ban, but New Jersey's delegation had one member absent due to illness. Consequently, its vote did not count and the measure to retain failed. Jefferson resented the outcome, noting that "the voice of a single individual" would have "prevented this abominable crime of spreading itself across the country."⁹

Though the issue of slavery in the western cessions emerged unsettled from the debates over Jefferson's Ordinance of 1784, the law did provide for an orderly settlement process and for a surprisingly broad degree of self-government for any embryo state created under its terms. It also set a lasting precedent for the process of territorial policy and state making; in all future legislation on the matter, Congress would use Jefferson's concept of territorial grades—or stages of development. Jefferson's ordinance also had specific implications regarding the question of federal jurisdiction over the territories. The legislation of 1784 seemed to mirror the government at large, with its emphasis on power resting in the constituent states that made up the United States as a nation—essentially the foundation of states' rights theory. As criticism mounted against the Articles of Confederation, with its weak form of national government, leaders saw the Ordinance of 1784—with its provisions for a broad degree of territorial self-government—as insufficient for effective administration of a large national domain.

Politicians who led the vanguard for a stronger federal government also argued that the Ordinance of 1784 provided too loose a framework for the embryo states prior to their drafting of a unique constitution. Specifically, some leaders believed that the federal government needed to draw a sharper distinction between embryo states and states on the same footing as the original thirteen. A stronger federal government would have to assume firmer control of its western

⁹ "Jefferson's Observations on Demanier's Manuscript for the *Encyclopedie Methodique*," 1786, in Julian P. Boyd, et.al., eds., *The Papers of Thomas Jefferson*, 34 vols. to date (Princeton: Princeton University Press, 1950-), X, 58. See also Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 77; Donald Robinson, *Slavery and the Structure of American Politics, 1765-1820* (New York: Harcourt Brace Jovanovich, 1971), 379-380.

lands for the safety of the Union. Some western separatists, individuals on the frontier who contemplated forming a separate union outside of the United States, saw the Ordinance of 1784 as “an invitation to political action.”¹⁰ The large degree of self-government granted to settlers in the western lands could play into the hands of western separatists who had little or no allegiance to the young Union. Forthcoming legislation would deal specifically with these issues and implement more rigorous control over what would become known as the territories. Provisions for the orderly settlement of western lands would have to make clear the subordinate nature of the unincorporated districts to the federal government. To a considerable extent, the impetus for stronger federal control over the territories would necessitate a retreat from the broad self-government that Jefferson had envisioned.¹¹

The efforts at revised legislation to create a territorial system began in September 1786, when the Continental Congress named a committee to draft legislation for territorial governments in the western territories.¹² These initial efforts failed to gain traction, leading to the prompt creation of a second committee to write a new draft. With “equal (and uncharacteristic) dispatch,” Congress unanimously adopted the Northwest Ordinance on July 13, 1787.¹³ Historians have exhaustively studied the creation of this document, but several issues related to its passage merit closer examination here. First, the new ordinance carefully delineated the differences between territory and state. The committee dispensed with Jefferson’s plan of government—whereby territories would adopt an existing state constitution—and imposed a plan of government clearly subordinate to Congress. In the first grade of territorial

¹⁰ Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775-1787* (Philadelphia: University of Pennsylvania Press, 1983), 42.

¹¹ Historians have vigorously debated the differences between the Ordinance of 1784 and the Northwest Ordinance, specifically in relation to the question of self-government. For a useful guide to this debate, see R. Douglas Hurt, “Historians and the Northwest Ordinance,” *Western Historical Quarterly* 20 (August 1989): 261-280.

¹² The standard history of the Northwest Ordinance is Onuf, *Statehood and Union*. For the drafting of the 1787 ordinance, see pp. 54-66.

¹³ *Ibid.*, 58.

government, Congress would appoint territorial governors, secretaries, and judges for the newly created territories. Once “five thousand free male inhabitants of full age” came to reside in the territory, it would ascend to the second grade, thereby receiving the power to elect a legislative assembly.¹⁴ The third and final grade came when the territory’s population numbered at least 60,000 citizens; at this point, it could apply for statehood. The wording of the ordinance seemed to suggest that admittance to the Union did not proceed automatically at some point. Instead, Congress had the discretion to confer statehood “provided the constitution and government so to be formed, shall be republican, and in conformity to the principles” of the ordinance itself.¹⁵

Second, the most well known feature of the ordinance came at the sixth and final “article of compact”:

There shall be neither Slavery nor involuntary Servitude in the said territory otherwise than in 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.¹⁶

The sixth article has an unclear provenance, as Congress inserted without debate the clause on the day of the ordinance’s passage.¹⁷ Most likely, Nathan Dane of Massachusetts, a leader in crafting the ordinance itself, appended the sixth article at the last minute. No mention of any intended prohibition of slavery, however, exists in the entire record of the debate over the ordinance until its appearance in the final reading.

Just why Congress enacted such a provision in 1787, when three years earlier it had rejected Jefferson’s gradual prohibition of slavery remains unclear. Why slaveholders acquiesced in the prohibition clause proves even more puzzling. Even the purported author of

¹⁴ For the text of the ordinance, see *ibid.*, 60-64.

¹⁵ *Ibid.*, 64.

¹⁶ *Ibid.*

¹⁷ *JCC*, XXXII, 334-343.

the sixth article professed surprise at its easy passage. “When I drew the ordinance which passed (in a few words excepted) as I originally formed it,” Dane wrote to his friend Rufus King, who had attempted to reinstate Jefferson’s ban in 1785, “I had no idea the States would agree to the sixth Art. prohibiting Slavery---;as only Massa. of the Eastern States was present. . . but finding the House favourably disposed on this subject, after we had completed the other parts I moved the art---;which was agreed to without opposition.”¹⁸ Scholars have long debated this very point and have arrived at few concrete answers. Circumstantial evidence does shed some light on the insertion of the sixth article. Historian Peter Onuf notes that prohibition of slavery in the newly framed “neo-colonial” system of territorial government served twin purposes: first, as a tangible part of strengthening federal control over the territories; second, and more significantly, as a way to entice the emigration of New Englanders to the Northwest Territory. By 1787, Massachusetts and New Hampshire had ended slavery.¹⁹ The states of Pennsylvania, Rhode Island, and Connecticut had committed to gradual emancipation. A number of delegates to Congress, especially from the northeast, surmised that settlers in the Northwest Territory would hail from the states that had emancipated their slaves and consequently would not desire the institution. Yet the southern boundary of the territory—the Ohio River—served as the northern boundary of a vast territory once in the possession of the states of Virginia and North Carolina. North Carolina ceded its territory to the federal government in 1790; Virginia’s land would become the state of Kentucky two years later. Perhaps citizens from the Atlantic slave states would care to settle in the region. Politicians would soon find that emigration patterns would hardly evolve so

¹⁸ Nathan Dane to Rufus King, July 16, 1787, in Paul H. Smith, et al., eds. *Letters of Delegates to Congress, 1774-1789*, 25 vols. (Washington, D.C.: Library of Congress, 1976-2000), XXIV, 358. For King’s effort to ban slavery in the territories, see Robinson, *Slavery and the Structure of American Politics*, 380.

¹⁹ For the controversy over the authorship of the sixth article, see Paul Finkelman, “Slavery and the Northwest Ordinance: A Study in Ambiguity,” in *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, 2nd ed. (Armonk, NY: M.E. Sharpe, 2001), 41-42 and 209n13.

neatly, as people from both the eastern states as well as southern states would move to the newly created territory.

Interestingly, the southern states raised no objections to the sixth article. In a letter to James Monroe, delegate William Grayson of Virginia wrote, “The clause respecting slavery was agreed to by the Southern members for the purpose of preventing Tobacco & Indigo from being made on the N.W. side of the Ohio, as well as for sevl. other political reasons.”²⁰ Identifying those “other political reasons” is difficult, but Grayson’s comments suggest that southerners initially did not have a serious interest in the Northwest Territory. Perhaps they believed that slaveholders would not move to the Northwest, but poorer farmers would. Regardless, these suppositions were just that—mere best guesses at the makeup of the future citizens of the territory, making Grayson’s comments conjectural. Alternatively, the historian Staughton Lynd posits that southerners acquiesced for several reasons and offers an explanation for the political motivation of acceding to the slavery prohibition. In 1787, southern delegates concerned themselves more with the balance of sectional power in the Congress than with finding room for slavery’s expansion. Precisely because the territory shared a boundary with the southern-dominated lands south of the Ohio River, southerners believed any states formed out of the Northwest Territory would ally with the South. Of course, northerners believed the exact opposite. In his letter to Rufus King, Dane argued that territory that would become the state of Ohio would “no doubt be settled chiefly by Eastern people,” and would most likely have the same politics.²¹ Nevertheless, southerners hoped to influence politics in the Northwest Territory by adding to its population. If southerners would emigrate to the territory, they could

²⁰ William Grayson to James Monroe, 8 August 1787, in *Letters of Delegates to Congress*, XXIV, 393.

²¹ Dane to King, July 16, 1787, in *Letters of Delegates to Congress*, XXIV, 358. See also Dane to King, August 12, 1787, in *ibid.*, XXIV, 401-403 and Staughton Lynd, “The Compromise of 1787,” *Political Science Quarterly* 81 (June 1966): 229-230.

undoubtedly sway the political attitudes of the three territories that would eventually be created. But any effort among southerners to influence the politics of the Northwest Territory would require a broad degree of self-government.

Southerners had a second reason for assenting to the ordinance as amended. Lynd has produced evidence suggesting that the North and South had arrived at an implicit compromise on the issue of slavery that would bar its presence from the Northwest Ordinance while keeping silent on its status in the territory south of the Ohio River.²² In the initial version of a new ordinance for the creation of territorial governments, written in September 1786, the drafting committee made no distinction of what territory fell under its jurisdiction, instead providing for a general form of territorial government that the federal government could apply anywhere and at any time.²³ In July 1787, however, the committee changed the wording to reflect its application to the Northwest Territory, drawing “an explicit East-West line through the Western territories by legislating for the Northwest alone.”²⁴ Limiting the geographic scope of the legislation produced an arrangement by which the northwest would remain free territory, while the federal government would remain silent on the status of slavery in the territory south of the Ohio River.

Given the evidence, no historian can offer a definitive explanation on why southerners did not object to the prohibition of slavery in the Northwest Territory. Placing the debate in its historical context, however, provides a reasonably solid explanation. In 1784, nearly all the southern delegates in the Congress except Thomas Jefferson and one North Carolina delegate voted to strike the slavery prohibition from the Ordinance of 1784.²⁵ In that case, the interdiction

²² Lynd, “Compromise of 1787,” 231-232.

²³ See *JCC*, XXXI, 669-673.

²⁴ Lynd, “Compromise of 1787,” 231. Lynd argues that this alteration in the ordinance represents not only a compromise on where slavery could or could not exist in the western territories, but also a compromise related to passage of the three-fifths ordinance being debated at the same time at the Constitutional Convention in Philadelphia. For the study of popular sovereignty, the former is of greater concern.

²⁵ *JCC*, XXVI, 247.

would have applied to all western lands. Furthermore, it provided a specific timetable for the ultimate end of slavery in the future western states. Three years later, the Northwest Ordinance contained a slavery ban for a region that did not seem suited to large-scale plantation agriculture, but made no interdiction of slavery in lands south of the Ohio River. The lands of the southwest seemed the most viable outlet for southern expansion. Furthermore, the fact that the slavery ban in the 1787 ordinance went into effect immediately actually weakened its effect. The ordinance made no statement on the status of slaves already in the territory, which politicians and courts alike often interpreted as an exemption; after all, how could the government deprive an existing slaveholder of his property without notice or compensation.²⁶ The lack of clarity in the ordinance provided an entering wedge, albeit a small one, whereby slavery could possibly exist in the territory. Settlers in the territory would soon exploit the lack of precision in the Northwest Ordinance. Southerners most likely looked at the northwest as a secondary concern. They fixed their eyes on the rich lands of the southwest, where plantation agriculture would soon boom. By creating a *de facto* dividing line between free and slave territory, the future of slavery in the southwest seemed secure. In later years, southerners would regret the decisions they made in the debate on the Northwest Ordinance, but from the vantage point of 1787, it may well have seemed like a good deal for their region.

In its final form, the Northwest Ordinance prohibited slavery in the territory—at least at first glance. Yet constitutional scholars have noted numerous flaws in the document that not only reveal the haste in which the delegates added the slavery prohibition, but also cast doubt on the actual status of slavery in the Northwest Territory. The sixth article interdicted slavery in the future, but said nothing about the status of any slaves living in the territory prior to its passage. Conflicting language within the ordinance itself muddled the meaning of the slavery prohibition.

²⁶ Finkelman, “Slavery and the Northwest Ordinance,” 44-46, 51-55.

The delegates left intact language referring to “free male inhabitants” in several parts of the document.²⁷ The ordinance left considerable room for legal wrangling, if not outright evasion of the intended purpose of the sixth article, to prohibit slavery. Indeed, settlers in the Northwest Territory would soon test the boundaries of the famous sixth article by questioning its true meaning and objecting to its ultimate application. Likewise, they would challenge the broad authority of the federal government over the territories—or at the very least its expediency. Specifically, they would come to question the federal government’s authority to prohibit slavery in one place and not the other. Some would question the power altogether, arguing that the citizens of the territories themselves could best regulate their domestic affairs.

Almost three years passed after the passage of the Northwest Ordinance before the federal government set to work on organizing the territory south of the Ohio River. In April 1790, the federal government accepted North Carolina’s cession of the territory that would become the state of Tennessee.²⁸ Congress acted quickly to organize the cession as a territory, and in May 1790, they passed with little debate what has become known as the Southwest Ordinance.²⁹ The law applied all the terms of the Northwest Ordinance to the new territory, “except so far as is otherwise provided in the conditions” of the cession of North Carolina; that is, it excluded the slavery prohibition of the sixth article.³⁰ By applying the Northwest Ordinance—save the sixth article—Congress set a precedent in creating the Southwest Territory. Future territorial legislation usually replicated the terms of the Ordinance of 1787, except in respect to slavery. North Carolina’s terms of cession forced the hand of Congress, as they

²⁷ For the definitive discussion of this and other conflicting clauses within the Northwest Ordinance, see *ibid.*, 44-49.

²⁸ Act of April 2, 1790, ch. VI, 2 *U.S. Statutes at Large*, 106-109. The Southwest Ordinance applied initially only to the North Carolina cession—the future state of Tennessee. The future state of Kentucky remained part of Virginia until it became a state in 1792.

²⁹ *Annals of Congress* (hereafter cited as *AC*), Senate, 1st Cong., 2nd Sess, 978, 985-988, 999-1000.

³⁰ Act of May 26, 1790, ch. VI, 2 *U.S. Statutes at Large*, 123.

stipulated, “That no regulations made or to be made by Congress, shall tend to emancipate slaves.”³¹ Whether as part of an actual compromise, an implicit understanding, or some other unknown arrangement, Congress had assented to a dividing line for slavery. In this case, Congress undoubtedly believed it was acting in the best interests of settlers in both the Northwest and the Southwest Territories by prohibiting slavery in one and remaining silent on the question in the other.

Though Congress quickly dispatched with provisions for territorial government in the Southwest Territory, it did not act with such haste in forming a state from it. Kentucky, which lay along the northern border, became a state in 1792, but the Southwest Territory remained just that—a territory.³² Weary of territorial government and possessing the requisite number of residents for statehood, the residents of Tennessee petitioned for statehood in early 1796.³³ What might have seemed like a simple legislative process became complicated when some congressmen raised questions about the technical power of admitting a state. Did the territory automatically become a state upon meeting the conditions stipulated in the Northwest Ordinance or did Congress have the jurisdiction to grant statehood at its discretion.³⁴ In the debate over how a territory gained statehood, two schools of thought emerged regarding the status of the territory and Congress’s role in creating states. On the one hand certain congressmen argued that, in the words of South Carolina Federalist William Loughton Smith, “Congress was alone competent to form the Territory into one or more States;” therefore it possessed solely the power of actually *granting* statehood rather than merely certifying that the requirements

³¹ The deed of cession is printed in Act of April 2, 1790, ch. VI, 2 *U.S. Statutes at Large*, 106-109, quote on p. 108.

³² Because Kentucky remained part of the state of Virginia until its admission to the Union as a separate state, only Virginia could permit or prohibit slavery within its bounds. And because Kentucky never had a territorial phase, the decision rested undisputedly with the Kentuckians after 1792. See John Craig Hammond, *Slavery, Freedom, and Expansion in the Early American West* (Charlottesville: University of Virginia Press, 2007), 11-12.

³³ *AC*, House, 4th Cong., 1st Sess, 892.

³⁴ See *AC*, House, 4th Cong., 1st Sess, 1299-1329.



Map 1: The United States, 1783-1803

had been met.³⁵ Other legislators argued for a more permissive interpretation of the law. Robert Goodloe Harper, another South Carolina Federalist, contended that, “in all questions relative to the formation of Governments, the wish of the people ought to be gratified,” that “whenever it should appear to be the wish of the United States, or any considerable portion of them, to be governed in such or such a manner, their inclination should be attended to.”³⁶ Because the Tennesseans desired statehood and had met the requirements as outlined by Congress, their statehood should proceed automatically. In the case of Tennessee, Smith and Harper might have disagreed on the power of Congress over slavery in the territories, but most southerners sided with Harper.

In one sense, the debate seems esoteric, but the ultimate decision had real implications for the future. Both sides argued from a perspective beyond the immediate concern of Tennessee; they recognized that their actions would set precedent for the admission of subsequent states. Furthermore, the whole issue touched on the delicate situation of territorial government itself. In reality, the old debates from 1787—where politicians argued over the power of the federal government—had never completely disappeared.

Some members of the Federalist Party—with the notable exception of Harper—tended to look at the revised territorial government process as entirely suitable; the territories needed a period of gestation in which they could mature into full participation in the political life of the United States. Federalists from New England especially adhered to this view. Their opposition seemed uncomfortable with the status of the territories, as the new system bore more than a faint resemblance to a colonial system of government. Should the nation rule its territories in such an aristocratic manner—much like the relation of Great Britain to the American colonies? James

³⁵ *Ibid.*, 1301.

³⁶ *Ibid.*, 1305.

Madison argued that the “inhabitants of that district of country were at present in a degraded situation,” meaning that they had no representation in Congress and a limited power of internal legislation.³⁷ The writer of the Constitution betrayed his discomfort with the process of creating subordinate territorial governments that limited the sovereignty of Americans who had moved west. The concerns coming from both sides of the debate suggest that politicians had not yet settled their minds on how much power either the citizens of a territory or Congress should have regarding territorial government or state making. Tennessee gained admission on June 1, 1796, but the issues discussed in the debate over its statehood remained largely unresolved.³⁸

While Congress debated statehood for Tennessee, citizens in the Northwest Territory began raising their own questions about the issue of slavery north of the Ohio River. In May 1796, a committee of four citizens in St. Clair and Randolph counties transmitted a memorial to Congress asking for the suspension of the slavery prohibition. The citizens argued that the sixth article of the Northwest Ordinance constituted an *ex post facto* law, thereby depriving them of their property “without their consent or concurrence.”³⁹ The political climate in the western part of the Northwest Territory—the remainder of the original territory after Ohio became a state in 1803—reflected the fact that citizens from both the eastern states as well as the upper South had emigrated to the region, thus fulfilling the predictions of Nathan Dane and many southerners—William Grayson excepted. In 1787, these individuals had claimed that citizens from their respective sections would emigrate and dominate the politics of the territory. As the Northwest Territory grew, settlers in the eastern portion tended not to support slavery. In the western

³⁷ *Ibid.*, 1309.

³⁸ Act of June 1, 1796, ch. XLVII, 1 *U.S. Statutes at Large*, 491-492.

³⁹ “Slavery and the Exchange of Certain Donations of Land in the Northwestern Territory,” May 12, 1796, *American State Papers* (hereafter cited as *ASP*): Public Lands, 1:69. For the context of this memorial and a discussion of internal debate over slavery in Illinois, see Nicole Etcheson, *The Emerging Midwest: Upland Southerners and the Political Culture of the Old Northwest, 1787-1861* (Bloomington: Indiana University Press, 1996), 15-26.

portion, where upland southerners had settled, politics had a more proslavery bent. A committee appointed by Congress to address the St. Clair and Randolph memorial disputed its contents, arguing that “an alteration of the ordinance, in the manner prayed for by the petitioners, would be disagreeable to many of the inhabitants of the said territory.”⁴⁰ The memorial itself revealed an inescapable fact: slavery did exist in the Northwest Territory in spite of the prohibition.

The slavery issue, as raised by this initial memorial, represented two distinct but complementary power struggles ensuing in the Northwest Territory. First, an internal struggle between Ohio Valley settlers hailing from the South and those who came from the eastern states raised issues of who would control the three districts that would eventually become the states of Illinois, Indiana, and Ohio. Some members of the Federalist Party, most notably the Northwest Territory’s governor, Arthur St. Clair, questioned not only the loyalty of the “multitude of indigent and ignorant people” who resided in the territory, but also their ability to govern themselves.⁴¹ On the other side, a cadre of Virginia settlers, many of whom owned slaves, desired the repeal of the sixth article of the Northwest Ordinance and the creation of a slave society, albeit on a drastically smaller scale than that of their home state. In the middle stood a significant group of upland southern yeomen who believed the current territorial status smacked of aristocracy and arbitrary government. They opposed the Federalist leaders, but also resented the introduction of slavery as a hindrance to their prosperity in the new territory.⁴² Still, both the Virginians and the southern yeomen believed that they had the upper hand in the struggle and would win if the issue of sustaining or repealing the slavery prohibition came to a plebiscite. This scenario would continue to play out in the territory for much of the next ten years. In the

⁴⁰ “Slavery and the Exchange of Certain Donations of Land in the Northwestern Territory,” May 12, 1796, *ASP: Public Lands*, 1:68.

⁴¹ Arthur St. Clair to James Ross, December 1799, quoted in Etcheson, *The Emerging Midwest*, 16.

⁴² Nicole Etcheson addresses the Northwest Territory’s complex political milieu in *ibid.*, 15-26, 63-71, and *passim*.

process of petitioning Congress for repeal of the slavery prohibition, or in some cases petitioning to sustain it, the settlers of the Northwest Territory showed their desire for self-government—asserting that they could best determine their own domestic affairs.

Nearly two years after Congress received the St. Clair and Randolph petition, legislators addressed the subject of territorial expansion in a vast expanse of land west of the state of Georgia. That state had claimed rights to the lands making up the present-day states of Alabama and Mississippi for some time. During the second session of the fifth Congress, the House of Representatives voted against Georgia's claim and immediately set out to organize the large district into a territory. In the course of the debate over the bill to create Mississippi Territory, a Federalist congressman from Massachusetts moved to strike out a clause in the bill that exempted the territory from the Northwest Ordinance's ban on slavery.⁴³ George Thatcher's motion prompted a heated discussion on the issue of slavery and whether the federal government or settlers within the territory should determine its status. Southerners vigorously objected to exclusion of slavery in this region. Planters in the Natchez district—the extreme western portion of what would become Mississippi Territory—already held slaves. Furthermore, southerners saw the vast territory as a natural place to escape the depleted soils of the Atlantic states and extend their agricultural pursuits.⁴⁴ Any effort to prohibit slavery in Mississippi Territory constituted an attack on southern economic expansion, as a group of Natchez planters argued in a 1797 petition to Congress.⁴⁵ In September of that year, Andrew Ellicott had noted opposition to a ban on slavery in the Natchez district to Secretary of State Timothy Pickering. Ellicott, a Pennsylvania Quaker opposed to slavery, had worked with the Spanish authorities in the district

⁴³ For the debate on the bill, see *AC*, House, 5th Cong., 2nd Sess., 1277-1312.

⁴⁴ See Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005), 24-26 and *passim*.

⁴⁵ *Ibid.*, 49-50.

on boundary issues after the ratification of Pinckney's Treaty in 1796. Accordingly, he possessed an intimate knowledge of the political situation in the region. "Slavery though disagreeable to us northern people," he wrote, "it would certainly be expedient to let it continue in this district, where they are numerous, upon the same footing it is at present in the southern States."⁴⁶ The people of the Natchez district, he noted, objected to the Northwest Ordinance precisely because of its ban on slavery. So, too, did southerners.

Southern legislators in Congress gave voice to these concerns. Robert Goodloe Harper sought to place the ban on slavery in the Northwest Territory in context while proving its inexpediency in the case in question. "In the Northwestern Territory the regulation forbidding slavery was a very proper one," he argued, "as the people inhabiting that part of the country were from parts where slavery did not prevail" whereas in Mississippi Territory, "that species of property already exists, and persons emigrating there from the Southern States would carry with them property of this kind."⁴⁷ Other southerners—and, curiously, at least one New England Federalist—concurred. Harrison Gray Otis of Massachusetts argued that southerners would settle the territory; therefore, Congress should assent to the wishes of the people who would live there. Furthermore, he predicted a slave insurrection among slaves in the Natchez district if Congress passed the amendment of his Massachusetts colleague.⁴⁸ A Virginia congressman articulated a theory that would become a staple of the slavery-in-the-territories argument. Barring slavery at this point made no sense, John Nicholas argued, as the territory could make that determination for itself at the time it applied for statehood.⁴⁹

⁴⁶ Andrew Ellicott to the Secretary of State, September 24, 1797, in Clarence Edwin Carter, ed., *The Territorial Papers of the United States* (hereafter cited as *Territorial Papers*), The Territory of Mississippi, 1798-1817 (Washington D.C.: United States Government Printing Office, 1937), V, 5.

⁴⁷ *AC*, House, 5th Cong., 2nd Sess., 1306.

⁴⁸ *Ibid.*, 1308.

⁴⁹ *Ibid.*, 1310.

Several key issues became clearer over the course of the Mississippi debate. Thatcher made his motion from what at the time represented an extreme position against slavery, that the institution violated “the rights of man.”⁵⁰ Many of his northern colleagues agreed with him, though few used such strong words. Southerners like Harper and Nicholas did not address the moral argument itself, except in arguing that diffusion of slavery would actually prove a boon to the slaves. Instead, they assumed a position that the prohibition against slavery in this region would hinder emigration and prevent free white property holders in exercising their right to own slaves. Southerners believed that the debate had portrayed their section, according to John Rutledge, Jr. of South Carolina, “in an odious light.”⁵¹ Rarely in these years did congressmen engage in such heated criticism aimed at one section from another. In this case, though, a northerner sought to prohibit slavery in a region understood as within the orbit of the South, and in unusually harsh terms. Rutledge responded in kind, chastising Thatcher for “uttering philippics against a practice with which his and their philosophy is at war.”⁵² Many southerners at the time embraced the diffusion argument and spoke of an eventual end of slavery in America, but they bitterly resented the northern offensive against the peculiar institution. Southerners insisted that Congress should not interfere with slavery in Mississippi Territory, but that the decision should rightfully be left to those who settled in the region. This argument did not necessarily deny Congress of the legal *right* to bar slavery from the territories, but it certainly questioned the *expediency* of congressional action. In an uncharacteristically bitter debate, the members of the Fifth Congress went a long way in defining the boundaries of the argument concerning slavery in the territories.

⁵⁰ *Ibid.*, 1311.

⁵¹ *Ibid.*, 1307.

⁵² *Ibid.*

George Thatcher's motion to prohibit slavery in a territory south of the Ohio River—the first instance of its kind—failed when the act creating the Mississippi Territory became law on April 7, 1798.⁵³ Just days before, Timothy Pickering penned a letter to Andrew Ellicott notifying him that the bill had passed in the Senate and would almost certainly become law.⁵⁴ Mississippi Territory had become the first territory created beyond the aegis of the Northwest and Southwest Ordinances, but the dividing line between free and slave territories implicitly created by those acts seemed solidified. And southerners had made their case that only the residents of Mississippi Territory could make the final decision on whether to permit or prohibit slavery.

Congress seemed to have established a pattern by which territories north of the Ohio River would remain free, while those south of the river would remain open to the institution. However, settlers in the Northwest Territory continued to argue about slavery. Congress's rejection of the 1796 memorial asking for suspension of the sixth article had not given rest to the desire of some settlers to introduce slavery in some form within that territory. The Territory of Indiana became a flash point in this dispute. Created in 1800 as preparation for the entry of Ohio into the Union, Indiana Territory encompassed a long swath of land bounded on the south by the Ohio River and on the west by the Mississippi. The Ohio portion of the Northwest Territory never seriously countenanced slavery, but settlers in to the west had different opinions.⁵⁵ Numerous Virginia citizens and other individuals from the upper South, in addition to settlers from the eastern states, had migrated into what became Indiana Territory. The mix of southerners and easterners made for occasionally fractious politics in the region. In February 1803, William Henry Harrison, the president of a proslavery convention held at Vincennes,

⁵³ Act of April 7, 1798, ch. XXVIII, 1 *U.S. Statutes at Large*, 549-550.

⁵⁴ The Secretary of State to Andrew Ellicott, March 27, 1798, in Carter, ed., *Territorial Papers*, The Territory of Mississippi, 1798-1817, V, 15-16.

⁵⁵ For details on the partition of the Northwest Territory and creation of the state of Ohio, see "Application to Erect the Northwestern Territory into a State," *ASP: Miscellaneous*, 1:325-329.

Indiana, to explore the option of suspending the slavery prohibition, communicated a memorial to Congress “declaring the consent of the people of Indiana” to remove the ban on slavery for a period of ten years.⁵⁶ After the ten-year period had ended, the prohibition of slavery would resume, but any slaves in the territory and their issue would remain enslaved. The Vincennes petition would ensure a small but perpetual slave community in Indiana, and quite possibly could provoke an eventual repeal of the sixth article.

Historians have analyzed Harrison’s actions and motives in calling for a proslavery convention in December 1802 and have cited economic concerns as the chief goal behind permitting slavery in Indiana Territory. Proslavery citizens believed the admission of slavery would increase emigration to the territory and provide a ready labor source for agriculture.⁵⁷ The way in which Harrison and his allies went about seeking their goals, however, is far more interesting. The governor and the delegates to the Vincennes Convention exhibited a broad knowledge of the ambiguity in congressional dealings with the territories. Congress had continually wrestled with the competing ideas of federal control over territorial affairs versus local self-government. By arguing that suspension of the sixth article had “the consent of the people of Indiana,” Harrison and his fellow memorialists appealed to the legislators who endorsed greater authority for settlers over their own internal affairs. Yet Harrison could hardly prove that the Vincennes Convention represented the will of a majority of the territory’s citizens.

The committee appointed by the House of Representatives to examine the Vincennes memorial viewed it with skepticism for several reasons. It recommended that Congress deny the request, as “the labor of slaves is not necessary to promote the growth and settlement of colonies

⁵⁶ AC, House, 7th Cong., 2nd Sess., 473. For a discussion of the situation regarding slavery in the Northwest Territory, see Hammond, *Slavery, Freedom, and Expansion in the Early American West*, 96-150.

⁵⁷ For a brief discussion of these factors, see Hammond, *Slavery, Freedom, and Expansion in the Early American West*, 103-113. See also Paul Finkelman, “Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois,” in *Slavery and the Founders*, 58-80.

in that region.”⁵⁸ The northern makeup of the committee likely influenced this argument; only its chairman, John Randolph of Virginia, lived in the South. Legal historian Paul Finkelman has noted a second reason why the committee may have rejected the memorial. Indiana’s proximity to British territory may have provoked fear that the British would resort to their old tactics of offering freedom to American slaves in the case of a war, providing the committee with another reason to reject the memorialists’ request.⁵⁹ Perhaps, too, the committee recognized that Harrison could hardly lay claim to represent the true will of the majority. For reasons unclear, Congress deferred action on the petition and the Randolph committee’s report. When Congress resumed in the next session, another committee composed solely of southern congressmen drafted a far more favorable report, recommending that Congress suspend the sixth article as requested. However, the committee called for gradual emancipation of the descendants of any slaves brought to Indiana.⁶⁰ For a short time, the proslavery faction held out hope based on the committee’s favorable report. One Indianan wrote to a friend that “the prospect of establishing Slavery among us brightens daily,” and alleged that “the [P]resident is decidedly in favor of th[e ar]ticle in our ordinance agt Slavery being repealed.”⁶¹ In spite of the report and the high hopes of the Indiana proslavery faction, Congress took no action on the Vincennes memorial.

Undeterred, the proslavery faction in Indiana persisted in its efforts. A steady stream of petitions made their way to Washington over the next few years as proslaveryites in Indiana sought to get their way, while antislavery settlers aimed to prevent the repeal of the sixth article. Both sides used the rhetoric of local government and popular will to get their way. The

⁵⁸ “Indiana Territory,” March 2, 1803, *ASP: Public Lands*, 1:160. All of the relevant petitions are also compiled in Jacob Piatt Dunn, ed., *Slavery Petitions and Papers* (Indianapolis: Bowen-Merrill Company, 1893).

⁵⁹ Finkelman, “Evading the Ordinance,” in *Slavery and the Founders*, 66.

⁶⁰ “Second Report on Petition of the Vincennes Convention,” February 17, 1804, in Dunn, ed., *Slavery Petitions and Papers*, 33.

⁶¹ John Rice Jones to Judge [Thomas T.] Davis, January 21, 1804, in Carter, ed., *Territorial Papers*, The Territory of Indiana, 1800-1810, VII, 169.

proslavery faction followed up their initial efforts with a subsequent series of petitions asking for suspension of the sixth article for ten years. Again the petitioners asserted that they represented the popular will.⁶² And again, a committee in Congress received favorably the memorials written in 1805. This time the committee noted, “The suspension of this article is an object almost universally desired in that Territory,” a point the antislavery faction would certainly debate.⁶³ However, measuring the true level of proslavery support in Indiana is impossible. Regardless of whether a majority of the territory’s citizens preferred suspension, Congress again followed the now-familiar pattern of calling a committee to address the Indiana memorials and then taking no action on the committee report.

In the meantime, the proslavery settlers in Indiana Territory devised a way of circumventing the prohibition of slavery by creating a system of “indentured servitude,” by which slave owners held their slaves to a term of service rather than in perpetual slavery.⁶⁴ This extralegal method of permitting *de facto* slavery outraged the antislavery faction in the territory, which petitioned Congress on its own behalf in 1807. The proslavery settlers controlled the territorial legislature, which had recently passed another set of resolutions calling for the repeal of the sixth article, this time in perhaps the strongest words used in the whole debate.⁶⁵ Again, the memorialists asserted that the citizens of Indiana “decidedly approve of the toleration of slavery” and that allowing slavery to exist there would provide a safety valve for the southern states. But this time they went a step further, posing a question to Congress: “Slavery is tolerated in the Territories of Orleans, Mississippi, and Louisiana: why should this Territory be

⁶² See, for example, “Memorial from Randolph and St. Clair Counties, 1805,” December 1805, in Dunn, ed., *Slavery Petitions and Papers*, 41-50, esp. p. 43.

⁶³ “Report on the Petitions of 1805,” February 14, 1806, in Dunn, ed., *Slavery Petitions and Papers*, 53.

⁶⁴ See Finkelman, “Evading the Ordinance,” in *Slavery and the Founders*, 68-73.

⁶⁵ “Legislative Resolutions of 1807,” January 21, 1807, in Dunn, ed., *Slavery Petitions and Papers*, 65-67.

excepted?”⁶⁶ The petitioners asserted that the Northwest Ordinance deprived them of rights equal with those of the other territories. The latest petition from Indiana again appealed to the spirit of local government and congressional nonintervention with slavery by arguing that Congress had committed a wrong by imposing conditions on matters of local concern.

Disgusted with the action of the territory’s Legislative Council and House of Representatives, the antislavery forces called for their own convention to address the issue. They specifically questioned the opinion expressed in previous congressional reports that the proslavery faction represented the majority will of Indiana Territory. Furthermore, the Clark County petitioners called for Congress to “suspend any legislative act on this subject until we shall, by the constitution, be admitted into the Union, and have a right to adopt such a constitution, in this respect, as may comport with the wishes of a majority of the citizens.”⁶⁷ The antislavery coalition had used the strategy of their proslavery adversaries and appealed to Congress to let the territory decide the issue for itself when drafting a state constitution. One student of Indiana history has remarked that this appeal represented the doctrine of popular sovereignty, “antedat[ing] by forty years the letter of General Cass in which the doctrine is commonly supposed to have been first enunciated.”⁶⁸

Congress had seemingly grown weary of the infighting in Indiana and the steady stream of petitions sent from that territory. The committee that received the memorial of the Indiana territorial legislature had recommended suspending the sixth article on the terms asked for, noting that many of the emigrants to that territory came from southern states and citing a need

⁶⁶ Quotes from “Slavery in the Indiana Territory, September 19, 1807, *ASP*: Miscellaneous, 1:485.

⁶⁷ “Counter-Petition of Clark County [1807],” September 19, 1807, in *ibid.*, 77-78.

⁶⁸ Jacob Piatt Dunn, *Indiana: A Redemption from Slavery*, 2nd ed. (Boston: Houghton Mifflin, 1905), 359.

for increased emigration.⁶⁹ Nine months later the Senate favorably received the antislavery resolutions from Clark County, deeming it inexpedient to repeal the sixth article.⁷⁰ The political seesaw that the slavery issue had become began to slow after this last report. The flow of petitions slowed as proslavery settlers found it easier to evade the law rather than change it, and as antislavery settlers mobilized and began to assume more control of territorial affairs.⁷¹

Evasion of the law became particularly clear in Illinois Territory, where settlers actively practiced the “indentured servitude” ploy first devised in Indiana Territory. The fractious politics in Indiana Territory had provoked settlers in Illinois to seek a second division of the original Northwest Territory.⁷² Illinois became a separate territory effective March 1, 1809, which “virtually killed proslavery hopes in what was to become Indiana itself.”⁷³ After this point, the debate on slavery in Indiana Territory quieted considerably as Congress denied action on the sixth article and the antislavery movement gained popularity. In Illinois, however, history seemed to repeat itself as proslavery and antislavery forces repeated the battles fought to the east. Proslaveryites controlled the legislature and passed a series of laws designed to circumvent the sixth article. In Illinois, leaders devised a strategy similar to that of Indiana’s proslavery faction, but also informed by the ultimate failure of the Indianans to change policy. Proslavery Illinoisans resolved to maintain their indentured servant laws until the territory achieved statehood. After becoming a state, the proslavery party believed it could move for a constitutional amendment to permit slavery. Of course, any such amendment would imply that the Northwest Ordinance had no bearing on the region once the separate territories became

⁶⁹ “House Report on the [Indiana Legislative Resolutions of 1807],” February 12, 1807, in Dunn, ed., *Slavery Petitions and Papers*, 67-68.

⁷⁰ “Report on [Slavery in Indiana Territory],” November 13, 1807, in *ibid.*, 79.

⁷¹ Finkelman, “Evading the Ordinance,” in *Slavery and the Founders*, 68, 72-73.

⁷² See Hammond, *Slavery, Expansion, and the American West*, 115-123.

⁷³ Duncan MacLeod, *Slavery, Race, and the American Revolution* (Cambridge: Cambridge University Press, 1974), 103.

states, an argument that some northerners considered questionable and certainly in bad faith. In the meantime, indentured servitude would suffice.

Over the previous quarter century, the United States had grappled with how to organize and administer the regions west of the original thirteen states. The issue of slavery had complicated the creation of a territorial system, especially with respect to who had the right to determine the status of the institution in the national domain. The federal government ultimately settled on a compromise, which prohibited slavery in the northwest while implicitly permitting it in the southwest. Americans south of the Ohio River could determine the status of slavery for themselves, though few believed that they would prohibit it. The outright ban on slavery in the Ordinance of 1787 prevailed in the northwest. Opposition to the slavery ban had surely emerged in the southernmost part of the Northwest Territory—and would continue for some time—but the system seemed to please a majority of Americans eager to settle the western territories.

Issues concerning territorial self-government and slavery had held a significant place in the discussion over American territorial expansion into the lands east of the Mississippi River. These same concerns appeared during the settlement of the nation's grandest territorial acquisition—the Louisiana Purchase. The acquisition of this vast region from France seemed to defy comprehension; indeed, neither seller nor buyer knew its exact boundaries. Such a mammoth territory promised tremendous space for national expansion, even as it presented numerous challenges to the federal government, which would have to organize and secure the land as well as try to assimilate its residents—once foreign subjects but now American citizens.⁷⁴

⁷⁴ For a discussion of these issues, see Peter J. Kastor, *The Nation's Crucible: The Louisiana Purchase and the Creation of America* (New Haven: Yale University Press, 2004), 19-75.

Slavery had existed in Louisiana practically since the colony's founding. Settlers of French and Spanish descent held property in human chattel in a system that at one time had been far more permissive than its Anglo-American counterpart. By the 1790s, slavery in Louisiana had become increasingly rigid.⁷⁵ In its treaty negotiations with the United States, France ensured that any residents of Louisiana would not only gain citizenship, but also all of the rights of property and religion—both delicate issues—that Americans had by their constitution. Consequently, the federal government would have to contend with this stipulation whenever it began the process of creating territories in the purchase.

Leaders initiated the process of organization promptly, desiring to establish control quickly over the territory and its citizens and begin the process of assimilation. Regarding the citizens and their interests, a judge from Indiana Territory wrote that he desired to “promote their future prosperity by Granting them a Territorial Government in their own Country And Organize Such a System of Policy as may be Consonant with their wishes And congenial to the American Character.”⁷⁶ According to an inhabitant of Louisiana, encouraging southern emigration required that the government make clear that slave property would have legal protection. The citizens of Louisiana, he wrote to a Kentucky congressman, “are very much Interested in Obtaining a Ulimited [*sic*] Slavery Many of them hold a considerable part of their Estate in that Species of property.”⁷⁷ Most settlers voiced similar concerns; they strongly desired a broad degree of self-government and the right to determine their own local customs.

Congress addressed these issues in the early months of 1804 when it debated the organization of territories in the Louisiana Purchase. Louisiana presented Congress with a

⁷⁵ *Ibid.*, 29-32. See also Jon Kukla, *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America* (New York: Alfred A. Knopf, 2003).

⁷⁶ John Edgar to John Fowler, September 25, 1803, in Carter, ed., *Territorial Papers*, The Territory of Louisiana-Missouri, 1803-1806, XIII, 6-7.

⁷⁷ *Ibid.*, 7.

problem that it had not encountered in any previous effort to organize a territory—its citizens (at least those at the time of the purchase) would be naturalized Americans. They had lived as colonial subjects under a monarchy; they would now live in a federal republic. In December 1803, a Senate committee began drafting legislation to create territorial governments for Louisiana.⁷⁸ Some three weeks later, the full Senate received the committee’s work and began deliberations on the bill. The fourth section of the Senate’s initial legislation stipulated that the president would select “thirteen of the most fit and discreet persons of the Territory” to serve as a Legislative Council, which would advise the territorial governor on internal matters.⁷⁹ Senators approved the stipulation, but it faced considerable opposition in the House of Representatives. In February 1804, that body began a lengthy debate over the ability of the Louisianans to govern themselves in the American mold, an argument that would recur over forty-five years later with the acquisition of the Mexican Cession. In short, the proper way to govern Louisiana confounded members of Congress, especially those of the popularly elected lower house. House members quickly began deliberations on an act to create two territories out of the vast purchase, but found it difficult to agree on how to structure the legislative branch of the territorial governments. The clause in the Senate’s bill differed from recent practice; as many congressmen noted, the legislation for Mississippi Territory provided for popular election of a legislative council. Some individuals, including members of Congress, questioned why this sufficed for Mississippi Territory and not the territories of the Louisiana Purchase.

The representatives quickly fell into two camps. One side demanded the striking of the original fourth section and its replacement with a clause permitting popular election of a council. The other side argued for the wisdom of the section as drafted, as it would allow the naturalized

⁷⁸ *Senate Journal*, 8th Cong., 1st Sess., 320-321.

⁷⁹ For the text of the fourth section as initially proposed, see *AC*, House, 8th Cong., 1st Sess., 1054.

citizens of the territories to mature and learn the way of American republican institutions. As William Eustis of Massachusetts argued, “the principles of civil liberty cannot be suddenly ingrafted upon a people accustomed to a regimen of a distinctly opposite hue.”⁸⁰ The people of Louisiana, according to Eustis and his like-minded colleagues, could not yet engage in self-government because they had never done so before. Giving them such a broad franchise could allow unscrupulous men to seize control of the territorial government. Furthermore, such action could allow those not professing loyalty to the American government to attempt some sort of coup against American authority. A Pennsylvania congressman cited reports that when American authorities in New Orleans lowered the French flag and raised the Stars and Stripes, the people present cried, proving that the cession “had not been received with approbation by them.”⁸¹ Other congressmen suggested that Congress had a duty to provide for Louisiana’s government, as the territory stood “in nearly the same relation to us as if they were a conquered territory.”⁸² “The object of this bill,” James Holland of North Carolina noted, “is to extend the laws of the United States over Louisiana, not to enable the people of Louisiana to make laws.”⁸³ To his mind, Congress needed to provide a system of government specifically suited to the unique conditions under which Louisiana became American property. Only after American rule had been established and the allegiance of the territories’ citizens secured could Congress consider granting self-government.

The opposition met these arguments with considerable vigor. First, several legislators posited that Congress had little choice but to grant the Louisiana territories self-government, as the treaty between the United States and France provided for just this. Representing the opinion

⁸⁰ *Ibid.*, 1058.

⁸¹ *Ibid.*, 1061.

⁸² *Ibid.*, 1058.

⁸³ *Ibid.*, 1073.

of many of his western colleagues, a Tennessee congressman argued that the majority of Louisianans “conceive themselves entitled” to the right of self-government by the terms of the treaty.⁸⁴ The fourth article most likely violated the purchase’s terms. Second, several members of the House noted that the federal government had granted Mississippi Territory self-government on local affairs. Congress owed it to the residents of Louisiana to integrate them fully within the American political system—specifically by granting them self-government as would normally proceed from any other act to territorial legislation. After all, might not Louisiana’s citizens resent not having the same powers as their neighbor to the east? “I cannot conceive,” remarked George Washington Campbell of Tennessee, “what can have rendered them so different from those people of the Mississippi Territory; they were once the same people and under the same Government, and they could not have then become unfit for self-government.”⁸⁵ Nathaniel Macon of North Carolina concurred, asking “will they not expect the same grade of government with the inhabitants of the Mississippi Territory, with whom they will have a constant intercourse?”⁸⁶

Many of the congressmen who rejected the proposed restrictions on Louisiana added a new dimension to the argument for self-government by attacking the notion of a pervasive federal presence and interference in territorial affairs. Such misuse of federal authority compromised the freedom of American citizens, regardless of how they gained their citizenship or for how long they had held it. These individuals cast the debate in the terms of liberty versus slavery, an argument that southerners in later years would use to defend the expansion of slavery in the territories.⁸⁷ Matthew Lyon of Kentucky castigated the opposition, stating that “the most

⁸⁴ *Ibid.*, 1063.

⁸⁵ *Ibid.*, 1066.

⁸⁶ *Ibid.*, 1062.

⁸⁷ See William J. Cooper, Jr., *Liberty and Slavery: Southern Politics to 1860* (New York: Alfred A. Knopf, 1982).

ludicrous idea I have heard expressed on the subject is, that these people must be kept in slavery until they can be learned to think and behave like freemen.”⁸⁸ Another congressman asked, “Are they blind to the difference between liberty and slavery? Are they insensible to the difference of laws made by themselves, and of laws made by others?”⁸⁹ These congressmen rejected outright the notion of a period of territorial tutelage, instead arguing that Congress had the obligation to let Louisianans govern themselves. They did not conceive of the American territorial system as one of quasi-colonial control over unincorporated lands, but a system that granted as broad a degree of self-government as possible while providing for the orderly transition from territory to state. Of course, both sides would probably have agreed to the latter statement, but they differed considerably on the means to achieve that goal.

The House of Representatives voted by a sizeable majority to strike the original fourth section of the bill and replace it with a more suitable framework for the legislative branch.⁹⁰ The legislation faced considerable opposition in conference negotiations with the Senate, which preferred its original wording. Ultimately, the bill passed with the original section left intact, ostensibly because a popular election of council members could result in legislators of different nationalities who spoke different languages serving together, thereby confounding their work.⁹¹ Congress exhibited considerable unease with the prospect of assimilating once-foreign subjects into the Union. Nathaniel Macon stated it best when he said, “It is extremely difficult to legislate for a people with whose habits and customs we are unacquainted.”⁹²

Nevertheless, the debate had proven most interesting to those who still wrestled with notions of how the American territorial system should operate. Widely differing opinions on

⁸⁸ *AC*, House, 8th Cong., 1st Sess., 1060.

⁸⁹ *Ibid.*, 1064.

⁹⁰ See *ibid.*, 1078-1079, 1193-1194.

⁹¹ See *AC*, Senate, 8th Cong., 1st Sess., 289-290; *AC*, House, 1229-1230.

⁹² *AC*, House, 8th Cong., 1st Sess., 1063.

how much self-government a territory could or should exercise still existed. Establishing a pattern of who supported broad self-government and who endorsed strict federal control of the territories proves difficult, yet certain general patterns appear. For the most part, congressmen from the newer western states supported granting self-government to the territories of Louisiana. Many, but not all, southerners joined them. The key support for the fourth section as originally proposed came from the northeastern congressmen.⁹³ While roll call votes exhibit these general patterns, however, they also reveal that the stark sectional divisions on the question of slavery and self-government had not yet appeared. For its part, the Senate overwhelmingly supported presidential appointment of the council; only nine senators voted to concur with the House and revise the legislation.⁹⁴

The 1804 debate over the Louisiana territorial legislation had steered clear of the slavery issue, which also helps to explain why rigid sectional lines had not formed. Most leaders understood, however, that the issues Congress addressed in the Louisiana debate would have the potential to impact the institution at some point. At this moment, both houses of Congress seemed convinced that the ubiquity of slavery in the territory and the treaty's provisions concerning property rights militated against any effort to prohibit the institution. Slavery had a strong presence in the southern portion that became known as the Territory of Orleans. However, settlers in the northern portion of the purchase—the Louisiana Territory—exhibited wariness about the federal government's intentions. The Territory of Orleans had a far greater population and, therefore, the means to organize quickly a territorial government. Conditions in the more sparsely settled Louisiana Territory presented challenges for creating a viable territorial government, leading Congress to debate whether to annex temporarily the northern territory to

⁹³ See the speeches and roll call votes in *AC*, House, 8th Cong., 1st Sess., 1078, 1194-1195, 1207, 1229.

⁹⁴ *AC*, Senate, 8th Cong., 1st Sess., 290.

Indiana Territory for executive and judicial purposes. Exhibiting a keen awareness of affairs in the Northwest Territory, William C. Carr, a St. Louis lawyer, expressed concern with the idea. “Many were apprehensive that slavery would not only be prohibited,” he wrote to Kentucky congressman John C. Breckinridge, “but the more ignorant were fearful lest those already in their possession would also be manumitted. I discern from the Law, or that part of it which relates to this district that Congress has been silent on the subject altho’ it has been permitted in the territory of Orleans under certain restrictions.”⁹⁵ The issue of slavery would soon enter the discussion in both the Territory of Orleans and the Louisiana Territory.

Congress created the Territory of Orleans effective October 1, 1804, dividing the Louisiana Purchase at the thirty-third parallel.⁹⁶ The land south of this line became the Territory of Orleans and that north became the District (later Territory) of Louisiana. Immediately upon becoming a territory, the citizens of Orleans examined the enabling legislation and found it wanting. Their objections mirrored those of the congressmen who had fought to strike the fourth section of the bill regarding the legislative branch of the territorial government. The settlers concurred with their allies in Congress, arguing that the law deprived them of self-government guaranteed by the treaty of cession and the American constitution. They quickly submitted a memorial to Congress, objecting to the enabling legislation and arguing that it had “no one principle of republicanism in its composition.”⁹⁷ Pierre Sauve, Pierre Derbigny, and Jean Noel Destrehan, who drafted the memorial, sharply criticized the actions of Congress and challenged its authority to enact such strict legislation. They illustrated a clear knowledge of the principles written in the Declaration of Independence and the Constitution and accused Congress of not

⁹⁵ William C. Carr to John C. Breckinridge, July 7, 1804, in Carter, ed., *Territorial Papers*, The Territory of Louisiana-Missouri, 1803-1806, XIII, 30.

⁹⁶ For the final draft of the law, see *AC*, Appendix, 8th Cong., 1st Sess., 1293-1300.

⁹⁷ “Remonstrance of the People of Louisiana Against the Political System Adopted by Congress for Them,” December 31, 1804, in *ASP*: Miscellaneous, 1:398.

living up to these high standards in creating territorial governments for Louisiana. According to the petitioners, the law placed Louisiana in a seemingly perpetual state of subordination, arguing that “no manifestation of what awaits us at the expiration of the law is yet made.”⁹⁸

Accordingly, the people of Louisiana would remain inferior to other American citizens until, “*in the school of slavery, we have learned how to be free, our rights shall be restored.*”⁹⁹

In addition to demanding the right of local legislation, the petitioners raised a most delicate subject—the foreign slave trade. The territorial legislation strictly forbade the importation of slaves from Africa, a trade that the Constitution forbade after 1808 anyway. The slave trade clause had provoked its own debate, particularly in the Senate, where members argued over whether to accept the amendment by James Hillhouse of Connecticut banning the foreign slave trade in Louisiana, or in the words of a Georgia senator, to “Let those people judge it for themselves—the treaty is obligatory upon us.”¹⁰⁰ The law as passed imposed stiff penalties for engaging in the foreign slave trade. Disregarding the relative unpopularity of the African slave trade, the petitioners objected to its ban as unfair and an inconvenience to agriculture in the territory. Echoing the words of the Georgia senator, Sauve, Derbigny, and Destrehan wrote, “We only ask the right of deciding it for ourselves, and of being placed in this respect on an equal footing with other States.”¹⁰¹

The House of Representatives received the memorial of the citizens of Orleans and referred it to a committee chaired by John Randolph of Virginia. The committee was balanced along sectional lines, but five of its seven members belonged to the Republican Party, which

⁹⁸ *Ibid.*, 397.

⁹⁹ *Ibid.* Italics in the original.

¹⁰⁰ For the Hillhouse amendment, see AC, Senate, 8th Cong, 1st Sess., 240. Quote of Sen. James Jackson of Georgia in Everett Somerville Brown, *The Constitutional History of the Louisiana Purchase, 1803-1812* (Berkeley: University of California Press, 1920), 113.

¹⁰¹ *Ibid.*, 399.

proved far more sympathetic to self-government than the Federalists. Some in Washington questioned the loyalty of the three petitioners, given their French background and the way in which they chastised the federal government for its approach toward territorial government in Louisiana.¹⁰² The Randolph committee quickly answered the petition, stating that though “the memorialists may have appreciated too highly the rights which have been secured to them by the treaty of cession,” Congress should not disregard their grievances.¹⁰³ Randolph, who during the first session of the Eighth Congress had voted in favor of expanding territorial self-government,¹⁰⁴ argued that revising the existing law would quiet discord in the territory and draw the citizens closer to the Union. As long as Louisianans obeyed federal law, he wrote, “your committee are at a loss to conceive how the United States are more interested in the internal government of the Territory than of any other State in the Confederacy.”¹⁰⁵ However, the Randolph committee rejected outright the memorialists’ objections to prohibiting the foreign slave trade. The report nevertheless showed that certain members of Congress still supported granting the territories broader power to legislate on their own affairs.

The Randolph committee evidently discussed their report with Sauve, Derbigny, and Destrehan—who presented their memorial to Congress in person—before submitting it to the full chamber. At its invitation, the three delegates from the Territory of Orleans penned a rejoinder to the committee’s report. Not content with letting Randolph have the last word on the subject, the memorialists further questioned the power of Congress to impose such strict control on the territories. In the process, they raised an argument that would linger in the territorial debate for years to come. Noting that some politicians had cited Article Four, Section Three of the

¹⁰² See Brown, *The Constitutional History of the Louisiana Purchase*, 155-156.

¹⁰³ “Revision of the Political System Adopted for Louisiana,” January 25, 1805, in *ASP: Miscellaneous*, 1:417.

¹⁰⁴ *AC*, House, 8th Cong., 1st Sess., 1078, 1206-1207.

¹⁰⁵ “Revision of the Political System Adopted for Louisiana,” January 25, 1805, in *ASP: Miscellaneous*, 1:417.

Constitution (that Congress “shall have Power to make all needful Rules and Regulations respecting the Territory or other property belonging to the United States”) as the basis for the Louisiana territorial law, Sauve, Derbigny, and Destrehan retorted that this clause “has no relation whatever with the situation of the inhabitants of Louisiana, and is evidently relative only to the disposal and management of the property of the United States.”¹⁰⁶ Furthermore, the writers rejected the notion that the Northwest Ordinance applied to Louisiana, in an apparent effort to head off any future attack on slavery within the territory. They noted that the citizens of Louisiana had received guarantees concerning their property in the treaty of cession—a circumstance not addressed by the Northwest Ordinance. The treaty did not provide for admittance to the Union in accordance with the Northwest Ordinance, but “according to the principles (the elemental laws) of the constitution.”¹⁰⁷ Accordingly, the terms of cession demanded that the property and rights of Louisiana’s residents receive full protection. The committee of three sent by the people of the Territory of Orleans had stated their case in bold terms, perhaps too bold in the opinion of some Washington leaders. Their arguments outlined the same fundamental disputes and complexities regarding the territorial system that had existed for some time. As the United States continued to add territory to its domain, questions of self-government would continue to arise, particularly in relation to the institution of slavery.

Although Sauve, Derbigny, and Destrehan spoke primarily for the citizens of the Territory of Orleans, they also addressed the concerns of citizens north of the thirty-third parallel in the newly created Louisiana Territory. These settlers, too, feared “the fetters of an endless territorial infancy.”¹⁰⁸ Citizens from this territory submitted their own petitions to Congress,

¹⁰⁶ *Ibid.*, 418.

¹⁰⁷ *Ibid.*

¹⁰⁸ “Remonstrance of the People of Louisiana Against the Political System Adopted by Congress for Them,” December 31, 1804, in *ASP: Miscellaneous*, 1:400.

asking for changes in the territorial system and for guarantees that their property in slaves would receive protection under the law. Earlier in 1804, St. Louis lawyer William Carr had raised these very concerns. In September of that year, the Louisiana territorial legislature drafted a statement concerning their territorial government. It strongly opposed annexing Louisiana Territory to Indiana Territory for executive and judicial affairs, an arrangement that Louisiana settlers feared would threaten their title to slave property, as Indiana Territory prohibited slavery (at least in name). “Is not the silence of Congress with respect to slavery in this district of Louisiana,” the memorialists wrote, “and the placing of this district under the Governor of a Territory where slavery is proscribed, calculated to alarm the people with respect to that kind of property, and to create the presumption of a disposition in congress to abolish at a further date slavery altogether in the district of Louisiana?”¹⁰⁹ The citizens asked for an explicit guarantee that the federal government would not disturb their right to hold slave property and that they would allow for the importation of slaves, “under such restrictions as to Congress in their wisdom will appear necessary.”¹¹⁰ While the settlers in Louisiana Territory wanted the same provisions as their neighbors in Orleans, they asked in more conciliatory language.

Congress sympathetically received the protests of citizens in both territories and sought to allay their fears and act on their grievances. They refused to countenance, however, the petition to allow importation on slaves. Indeed, the government would seek to strengthen the ban in the Ninth Congress.¹¹¹ Congress quickly passed legislation granting the Orleans Territory the second grade of territorial government, allowing for broader local control of internal affairs. It also sought to assuage any fears of an eventual ban on slavery by excluding the sixth article of

¹⁰⁹ *Ibid.*, 401.

¹¹⁰ *Ibid.*, 404.

¹¹¹ See “Importation of Slaves into the Territories,” February 17, 1806, *ASP*: Miscellaneous, 1:451.

the Northwest Ordinance from operation in Orleans.¹¹² An act for the government of Louisiana Territory ended the debate over the executive and judicial power by giving the territory its own governor and judicial system and essentially imposing the first grade of territorial government to Louisiana.¹¹³ While the law remained silent on slavery in the territory, most people assumed that the treaty of cession guaranteed slave property. And because Louisiana would not be under the control of Indiana Territory, most settlers felt reassured. The Louisianans remained persistent, however, in seeking the second grade of government and stronger assurances that the federal government would not legislate against slavery in their territory. In 1810, Congress responded to a petition by drafting legislation that would grant the settlers' requests, including a provision that exempted the territory from the Northwest Ordinance's ban on slavery.¹¹⁴ Congress repeatedly delayed the legislation until finally passing an amended version in May 1812, which inexplicably omitted the exemption clause. Nevertheless, the law granting Louisiana Territory—now known as Missouri Territory to avoid confusion with the new state of Louisiana—did not explicitly address the slavery issue, as many settlers in the territory had desired. The language of the legislation, however, implicitly sanctioned slavery and admitted its presence.¹¹⁵

The debate over slavery and self-government in the Louisiana Purchase reveals a continued lack of clarity on how Congress should or could govern its territories. While some politicians insisted on strict control of territorial affairs and contended that the Constitution granted this power solely to Congress, other disagreed. Opponents of the former view argued that placing the territories under strict federal control reduced their citizens to vassals and deprived them of their constitutional rights. The Louisiana Purchase had complicated matters by

¹¹² AC, Appendix, 8th Cong., 2nd Sess., 1674-1676.

¹¹³ *Ibid.*, 1684-1686.

¹¹⁴ "A Bill for the Government of Louisiana Territory," [January 22, 1810], in Carter, ed., *Territorial Papers*, The Territory of Louisiana-Missouri, 1806-1814, XIV, 362-364; AC, House, 11th Cong., 2nd Sess., 1157, 1253.

¹¹⁵ AC, House, 12th Cong., 1st Sess., 1279; Senate, 244; Appendix, 2310-2315.

introducing naturalized citizens into the debate. Some in Congress questioned whether these former French and Spanish subjects deserved the trust of the American government to exercise self-government and exhibit loyalty to the Union, yet many American citizens from the east would emigrate to the new western lands. They questioned how the federal government could rightly treat them as subordinates. Congress debated these questions and imposed regulations designed to accommodate both views, but politicians did not arrive at a concrete solution to the problem. As for the slavery issue, Louisiana entered the Union as a slave state in 1812.

Congress would not address statehood for the more sparsely populated Territory of Missouri for seven more years. During that time, Congress's silence on the slavery issue essentially allowed the territory to exercise self-government concerning slavery issues. The institution thrived in Missouri, though not on the scale of the states and territories farther south. With territorial affairs largely settled in the Louisiana Purchase, the federal government's attention once again turned to the northwest, where Indiana and Illinois prepared for statehood. In both territories, the issue of slavery remained unsolved.

In January 1816, Congress received a petition for statehood from Indiana's territorial legislature. In contrast to the lengthy debates over Indiana in its territorial years, Congress granted the request in April with little debate. Indiana became the nineteenth state on December 11, 1816, after drafting a constitution that confirmed the antislavery party's victory in the debates over the sixth article. While it "temporized" on the matter of indentured servants, the new state's constitution stipulated that no amendment could ever allow slavery.¹¹⁶ After almost a decade of debate, self-government in Indiana resulted in an antislavery constitution. Two years later Illinois sought statehood, but the issue of slavery did not pass quietly as it had in Indiana.

¹¹⁶ Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill: University of North Carolina Press, 2006), 150. For the congressional debate, see *AC*, House, 14th Cong., 1st Sess., 408, 1373; Senate, 31, 315.

Proslavery leaders planned to gain statehood and then after entering the Union in full standing, amend their constitution to permit slavery. Recognizing the strategy of the Illinoisans, one New York congressman objected to the resolution to grant statehood. James Tallmadge argued that the framers of the draft constitution had not “sufficiently prohibited” slavery, a clear violation of the sixth article of the Northwest Ordinance. The Illinois constitution “contravened this stipulation, either in the letter or the spirit.”¹¹⁷ Once again, the Northwest Ordinance and its slavery prohibition entered the debate, with congressmen arguing over its true meaning and application. One Kentucky congressman noted, “Still less were the people of the Northwestern Territory a party to the compact, as the gentleman supposed it, not being represented at all, nor consulted on it.”¹¹⁸ A prominent Ohio congressman echoed his Kentucky colleague. Even though he personally opposed slavery, William Henry Harrison—the president of the Vincennes convention of 1803—“wished to see that State, and all that Territory, disenthralled from the effects of articles to which they never gave their assent, and to which they were not properly subject.”¹¹⁹ The congressmen who spoke against Tallmadge’s objection each raised the same critical point: they believed that the Northwest Ordinance had impaired the ability of the territory’s citizens to determine their own local affairs. The debate over slavery in Illinois would persist into the 1820s, though until the 1830s the state continued to face questions over legal title to slaves held in Illinois.

Over thirty years after passage of the Northwest Ordinance in the Confederation Congress, politicians still did not agree on the nature of territorial government. In 1787, the Confederation Congress had passed legislation that seemed to establish a quasi-colonial system of government that placed authority over the territories squarely in the hands of the federal

¹¹⁷ *AC*, House, 15th Cong., 2nd Sess., 306-307.

¹¹⁸ *Ibid.*, 309.

¹¹⁹ *Ibid.*, 311.

government. The new Congress reaffirmed the Northwest Ordinance in 1789. As the nation faced its first efforts at creating organized territories, however, politicians and citizens alike seemed uncomfortable with the United States acting as a colonial power toward its western territories. Slavery complicated territorial governance in ways that the founders did not wholly anticipate. Slaveholders insisted on the sanctity of their property and their right to settle anywhere in the national domain without restriction. Americans committed to the eventual extinction of slavery, however, saw the federal government's influence over the territories as an agent of change. National policy could end slavery in the western lands, whereas it could not in the existing states. James Tallmadge's objection to the 1818 Illinois constitution illustrated the thought of those opposed to the extension of slavery. Just months later he would again raise an objection to slavery in the Territory of Missouri, one that would prove far more notable.

CHAPTER 2

“SHALL THE CREATURE GOVERN THE CREATOR”? THE MISSOURI COMPROMISE AND TERRITORIAL SELF-GOVERNMENT

Over the course of the Missouri controversy, southerners resisted the efforts of northerners to restrict the expansion of slavery into the territories by articulating the doctrine of self-government—that the residents of the territories themselves possessed the sole right to determine their own local affairs. James Tallmadge’s amendment to prohibit slavery in Missouri, which he introduced on February 13, 1819, provoked an immediate response from the South. Northern restrictionists like Tallmadge sought to assert federal authority over slavery in the territories; their opponents argued that Congress had the sole responsibility of ensuring that an incoming state’s constitution provided a republican form of government. The southerners who composed the antirestrictionist faction used the concept of self-government to refute congressional intervention on the slavery issue. The Tallmadge amendment altered the political calculus of territorial policy and state making by reviving the debate over federal power in the territories, the right of territorial self-government, and states’ rights in general.

Thomas Jefferson famously remarked that the Missouri question “like a fire bell in the night, awakened and filled me with terror.”¹ Jefferson’s statement—so frequently quoted by historians to illustrate the gravity of the Missouri crisis—lent drama to the Missouri controversy, but it stretched the truth. For over thirty-five years, Americans had wrestled with the question of slavery in the territories. The debate over the Tallmadge amendment and Missouri statehood in Congress, the nation’s newspapers and periodicals, and in communities throughout the country resonated like no previous debate. The Missouri controversy marked a pivotal moment in the struggle over slavery in the territories, not because it introduced the issue of slavery in the

¹ Thomas Jefferson to John Holmes, April 22, 1820, in Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 1434.

territories for the first time, but because it heightened and transformed the debate into a sectional question heretofore unseen. Not only did the Tallmadge amendment draw the line of contention for the debate over slavery in Missouri, but it also revealed deep divisions within the nation over the institution itself.

In previous debates, Congress and political leaders had equivocated on the issue of federal power over slavery in the territories, leaving considerable room for debate on how far congressional authority extended. Tallmadge's amendment took federal control over the territories as a routine matter of course by not only placing the question squarely in the domain of Congress, asserting that it could impose conditions on a territory seeking admission into the Union. The proviso not only prohibited the "further introduction of slavery or involuntary servitude" but also stipulated that "all children of slaves, born within the said State, after the admission thereof into the Union, shall be free, but may be held to service until the age of twenty-five years."² The Tallmadge amendment imposed conditions on Missouri as a territory *and* as a state. Southerners found both points unacceptable.

Slavery had existed in Missouri throughout its territorial phase, making the move to prohibit the institution from the point of statehood seem unfair to proslavery individuals. Missourians and southerners alike would question the timing of the restrictionists' proposing a ban on slavery in the territories. Why had the opponents of slavery not raised their objections when Congress created the Territory of Missouri in 1812, southerners asked? Individuals with proslavery beliefs doubted the prudence of a ban on the institution, the right of Congress to impose it, and the reason why people in the North supported it.

The Missouri debate showed how the issue of slavery in the territories could become sectionalized. Northerners opposed the increasingly southern-based institution, which by the

² AC, House, 15th Cong., 2nd Sess., 1170.

three-fifths rule in the Constitution that counted slaves as three-fifths of a human being for purposes of apportionment enhanced the slaveholding section's power in the halls of Congress.³ Numerous observers noted that the Missouri controversy meant as much about slavery as it did the sectional balance of power in the Union. In fact, the politics of slavery assumed many meanings; Congress debated the future of slavery in the West, the right to restrict slavery in the territories, the power to impose conditions upon a territory seeking admission to statehood, and the sectional balance of power in the federal government.

Although the nature of territorial sovereignty has received little attention from students of the period, self-government in the territories emerged as a major component of the debate. Members of Congress hotly debated the expediency of leaving to the territories the right to legislate on slavery, a continuance of the thirty-year dispute over the unresolved issue. Most stakeholders in the Missouri conflict—President James Monroe, Congress, interested observers in the North and South, and of course the Missourians—at some point reckoned with the question of local control over slavery. The question of territorial self-government over slavery had divided Americans along roughly sectional lines in the past, but not always. Northerners and southerners alike deviated from the pattern. Over the course of the Missouri debates rigid sectional blocs formed over the issue, with northerners opposing slavery in Missouri and supporting federal power to legislate on the issue and southerners vigorously denying the validity of the northern argument. As members of Congress debated the issue in “remorseless reiteration” and Americans followed the debate and formulated their own opinions, they defined the nature of popular sovereignty and slavery in the territories for the entire antebellum period.⁴

³ For a thoughtful discussion of the sectional balance of power, see Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2000), 52-82.

⁴ George Dangerfield, *The Era of Good Feelings* (New York: Harcourt, Brace and Company, 1952), 218.

Any debate over the future of slavery in Missouri would test the future northern boundary of the slaveholding section of the Union. Some ten thousand slaves resided in Missouri Territory during the late 1810s, approximately fifteen percent of the total population. While the territory seemed unlikely to become a major producer of the traditional southern agricultural staple—cotton—planters did utilize slave labor in a significant hemp-growing market. Regardless of the nature of agriculture in the region, the Missourians expressed a desire to maintain slavery as a labor force, as exhibited in petitions to Congress and their reaction to the slavery debates over the Louisiana Purchase in general.⁵ Many of the Missourians had emigrated to the territory from the southern states, bringing with them the notions of a slave society. Indeed, a strong pro-southern and proslavery sentiment existed throughout the territory. Yet the territory itself rested at the outer limits of the traditional slave domain, by most Americans' definition. Furthermore, most of Missouri lay north of the Ohio River, suggesting to many antislavery partisans that the territory should become a free state. The territory shared the Mississippi River border with the free state of Illinois, itself an anomaly with its free-soil northern contingent and a population in the southern part of the state sympathetic to slavery and southern interests. Missouri also counted the slave states of Kentucky and Tennessee as its neighbors. Each of these states would try to exert influence in the territory's political formation.

By the middle of the 1810s, Missourians desired statehood. Four new states joined the Union in this decade, as Indiana gained statehood in 1816, definitively settling its own long dispute over slavery within its borders. Congress admitted Illinois two years later under similar circumstances. Two slave states entered the Union immediately following Indiana and Illinois. Mississippi became a state in December 1817, while Alabama, carved out of the eastern portion of the old Mississippi Territory, followed almost exactly two years later. The future of slavery

⁵ See Glover Moore, *The Missouri Controversy, 1819-1821* (Lexington: University of Kentucky Press, 1953), 31-32.

was secure in both new states, as they lay south of the Ohio River, which had become the dividing line between free and slave territory. Besides, Congress had defeated a motion to prohibit slavery in the Mississippi Territory in 1798. Twenty years later, no one challenged its existence in the incoming states. On November 21, 1818, the Missouri territorial legislature applied for admission to the Union, citing a population of 100,000—it was actually much less—and asking for relief from the territorial form of government.⁶

At the same time, Missouri's proposed boundaries necessitated creation of a new territory to the south, the Territory of Arkansas, which greatly complicated the Missouri issue. Now Congress would have to debate on the slavery question in two territories, as northerners moved to prohibit the institution in Arkansas's territorial phase. With Missouri and Arkansas both on the agenda, the second session of the Fifteenth Congress would address the whole gamut of issues concerning self-government versus federal jurisdiction over slavery in the territories.

Discerning James Tallmadge's motives in presenting his amendment to the Missouri bill and asserting federal authority over slavery in the territories remains difficult. Numerous contemporaries puzzled at the freshman congressman's motives, and historians since have added little to their conjectures. Thomas Jefferson surmised that New York governor DeWitt Clinton had pushed Tallmadge to propose the amendment as part of a Federalist Party plot to agitate the slavery issue, a conjecture that historians have discredited. Tallmadge himself provided a more plausible explanation; he introduced the amendment in an effort to halt the spread of slavery.⁷

Regardless of his intentions, the reason why so many northern politicians "rallied to Tallmadge's

⁶ "Application of Missouri for Admission into the Union as a State," November 21, 1818, *American State Papers: Miscellaneous*, 2:557-558. The 1820 census lists Missouri as having a population of just over 66,586.

⁷ For Jefferson's claim, see Richards, *The Slave Power*, 53-54. For Tallmadge's explanation, see Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: The University of North Carolina Press, 2007), 36. See also Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 147-148.

side” intrigues even more.⁸ Northern political leaders seemingly desired to make a stand on the slavery issue at this time. Tallmadge’s objections to Illinois’s proposed constitution of 1818 presaged the Missouri controversy, as he represented the wishes of certain northerners who desired to limit the expansion of slavery. A New Hampshire congressman proposed what became the “first intimation of a Northern attempt to restrict slavery in Missouri,” but while his attempt at restriction, in the form of a constitutional amendment, failed to gain support, Tallmadge’s strategy succeeded.⁹

In “probably the most candid discussion of slavery ever held in Congress,” northerners promptly rallied behind the New Yorker’s effort, while southerners prepared for battle against what they saw as a bold usurpation of local power and states’ rights.¹⁰ The opponents of restriction “contended that Congress had no right to prescribe to any State the details of its government, any further than that it should be republican in its form.” Besides, any territory once admitted to statehood possessed the “unquestioned right” to amend its constitution, therefore rendering the whole debate moot. The restrictionists refuted this claim by arguing that “Congress had a right to annex conditions to the admission of any new State” and that slavery “was incompatible with republican institutions.” Therefore, Congress had a duty to impose the ban on slavery in Missouri.¹¹

Key northern congressmen lined up alongside Tallmadge to assert the power of Congress to interdict slavery in Missouri. John W. Taylor, a prominent New York Republican and friend

⁸ Richards, *The Slave Power*, 54.

⁹ Moore, *The Missouri Controversy*, 33.

¹⁰ Forbes, *The Missouri Compromise and Its Aftermath*, 36. Forbes’s work has supplanted Moore’s *The Missouri Controversy* as the standard history, but Moore gives greater detail on the legislative activity in Congress during the period. And while both historians mention self-government, they do not emphasize it as a major part of their respective interpretations of the Missouri crisis.

¹¹ *AC*, House, 15th Cong., 2nd Sess., 1170.

of Tallmadge, emerged as one of the strongest defenders of the northern argument.¹² Taylor endorsed the antislavery amendment, interpreting Article Four, Section Three of the Constitution as granting “unlimited” authority to Congress in the matter. “It would be difficult,” he argued, “to devise a more comprehensive grant of power.”¹³ Politicians had debated the true meaning of the “needful rules and regulations” clause before, but from the Missouri debates to secession the provision would attract the attention of most every individual who debated the limits of congressional power over slavery in the territories. In essence, Taylor had stated the argument that northern Republicans would use over the course of the Missouri controversy: Congress could and must prohibit slavery in Missouri. Ostensibly, concern for morality and true republican government motivated the northern faction. “At the heart of the Republicans’ reasoning,” argues historian Sean Wilentz, “was their claim that the preservation of individual rights, and strict construction of the Constitution, demanded slavery’s restriction.”¹⁴ Southerners insisted that strict construction and preservation of individual rights demanded that Congress not interfere with slavery.

Speaker of the House Henry Clay of Kentucky took the lead in refuting the northern argument. According to the speaker, serving his second term as the House leader, Congress had “no right to prescribe any condition whatever to the newly organized States, but must admit them by a simple act, leaving their sovereignty unrestricted.”¹⁵ Clay went further, challenging the

¹² For more on the alliance between Tallmadge and Taylor, see Forbes, *The Missouri Compromise and Its Aftermath*, 37-38; Moore, *Missouri Controversy*, 38-44. New Yorkers played a role on both sides of the Missouri debate; the Empire State had commenced the process of abolition, but it would not be completed until 1827. See David N. Gellman, *Emancipating New York: The Politics of Slavery and Freedom, 1777-1827* (Baton Rouge: Louisiana State University Press, 2007), esp. 189-219.

¹³ *AC*, House, 15th Cong., 2nd Sess., 1171, 1173.

¹⁴ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton & Company, 2005), 225-226.

¹⁵ Remarks on the Tallmadge Amendment, February 15, 1819, in James F. Hopkins, et.al., eds., *The Papers of Henry Clay*, 11 vols. (Lexington, KY: University of Kentucky Press, 1959-1992), II, 670. Unfortunately, the House

northerners who criticized the South's institution of labor. The *Washington Daily Intelligencer* commented on his speech, "What comparison did he make between the 'black slaves' of Kentucky and the 'white slaves' of the north; and how instantly did he strike a balance in favor of the condition of the former."¹⁶ Southerners saw the criticisms of the restrictionists as unfounded.

The northern Republicans had touched a raw nerve in the South, which intensified the tenor of the debate on Missouri. The Federalists quickly joined their erstwhile opponents, seeking to earn much needed political capital and perhaps reinvigorate their party by forming a sectional bloc opposed to the power of the South. A Massachusetts Federalist challenged the Clay rejoinder, stating, "the attempt to extend slavery to the new States is in direct violation of the clause which guaranties a republican form of government to all the states."¹⁷ Interestingly, many southerners "insisted at every turn that Federalists were the principal *provocateurs*."¹⁸ Federalists certainly saw the debates as a golden opportunity to exploit the slavery issue in an effort to regain lost political power, though the debates revealed more of a sectional divide rather than a party divide on the issue of slavery in Missouri. Northern Republicans and Federalists alike enthusiastically endorsed restriction; their southern counterparts forcefully opposed their efforts.

Southerners quickly rose in objection to the northern argument that "until the ceded territory shall have been made into States, and the new States admitted into the Union, we can do

reporter did not transcribe Clay's speech (or many of his speeches from this session of Congress). Historians have determined the thrust of his argument from the context of other speeches and from statements in the press.

¹⁶ *Ibid.*

¹⁷ *AC*, House, 15th Cong., 2nd Sess., 1182.

¹⁸ Shaw Livermore, Jr., *The Twilight of Federalism: The Disintegration of the Federalist Party, 1815-1830* (Princeton: Princeton University Press, 1962), 90. For a discussion of the Federalist course in the Missouri debates, see pp. 88-112.

what we will with it.”¹⁹ The southern delegation generally argued that the Constitution granted no such power, that the federal government possessed no right to fix conditions on a territory about to draft its constitution, except that the document embody republican principles. Indeed, the southern argument implied that Congress had the duty, not the discretion, to elevate a territory to statehood. Some southerners wavered on the power of Congress to prohibit slavery in the earlier territorial phase. Philip P. Barbour of Virginia, for one, suggested that if Congress had wished to ban slavery in Missouri, it should have done so through territorial legislation.²⁰ He asserted, however, that Congress should consult the people of Missouri to discern their opinions on the issue, “because [otherwise] we should be legislating directly against the wishes of a people who were competent to legislate for themselves.”²¹

While some legislators broached the idea of territorial self-government with some unease, others more forcefully asserted the right of the Missourians to determine the status of slavery within their territory. By denying congressional jurisdiction over the issue, Henry Clay had articulated a stronger position in his speeches, though he, too, would later moderate his remarks when compromise seemed within grasp. The territorial delegate from Missouri took the most rigid stance. John Scott thundered against the Tallmadge amendment, accusing the restrictionists of reducing Missouri to a lesser among equals. The proposed amendment created a “discrimination not warranted by the Constitution.”²² Congress had no right to prescribe conditions to admission into the Union, even according to the writer of the Constitution. He quoted James Madison, who argued that Congress must only ascertain that the incoming state

¹⁹ *AC*, House, 15th Cong., 2nd Sess., 1192.

²⁰ *Ibid.*, 1185.

²¹ *Ibid.*, 1191.

²² *Ibid.*, 1201.

guaranteed a republican form of government. Beyond that, all decisions were reserved to the local authorities. As Scott explained:

In no part of the Constitution was the power proposed to be exercised, of imposing conditions on a new State. . . nor in any portion of the Constitution was the right prohibited to the respective States, to regulate their own internal police, or admitting such citizens as they pleased, or of introducing any description of property, that they should consider as essential or necessary to their prosperity.²³

The restrictionists proposed exactly what Madison had deemed unconstitutional, to impose restrictions on a territory preparing to enter the Union as a state. Missourians could not abide this infringement on their rights. The antirestrictionists, however, failed to persuade a sufficient number of their colleagues that Congress could not impose the Tallmadge amendment on Missouri. After a closing statement by its author, the House of Representatives passed the amendment on a strictly sectional vote and sent the Missouri bill to the Senate for concurrence.²⁴

With the Missouri bill dispatched to the upper chamber, the House commenced deliberations on the territorial bill for Arkansas, a move that further complicated the already busy congressional agenda. Almost immediately, John Taylor moved to insert a clause in the legislation prohibiting slavery in the new territory.²⁵ While the Missouri issue addressed the right of Congress to legislate on slavery for an established territory seeking admission to the Union, the creation of Arkansas would test whether Congress could or should prohibit slavery in a territory from the outset. Consequently, the two separate issues of Missouri statehood and the creation of Arkansas Territory became linked in the increasingly complex debate over self-government in the territories.

²³ *Ibid.*, 1196-1197.

²⁴ For the vote, see *ibid.*, 1214-1215. For a sectional roll call analysis of the vote, see Moore, *Missouri Controversy*, 53.

²⁵ *AC*, House, 15th Cong., 2nd Sess., 1222.

Southerners quickly rallied to oppose Taylor's effort to prohibit slavery in Arkansas, arguing that the people who actually lived there should make the decision for themselves. Felix Walker of North Carolina contended that Congress had "no legitimate power to legislate on the property of the citizens."²⁶ The northern effort to restrict slavery in Arkansas Territory therefore represented an encroachment on the rights of slaveholders who might wish to settle there. The right of self-government protected and defended the right to hold personal property—namely slaves—wherever one wished. More important, according to Walker, the amendment deprived "the people of this territory the natural and Constitutional right of legislating for themselves, and imposing on them a condition which they may not willingly accept."²⁷ Walker moved toward an argument advanced in earlier debates over slavery in the territories, but he articulated it more clearly than any of his predecessors. "In organizing a territorial government, and forming a constitution," Walker contended, "they and they alone, have the right, and are the proper judges of that policy best adapted to their genius and interest, and it ought to be exclusively left to them."²⁸

In deeming the people of Arkansas and the western territories "competent judges of their Constitutional rights" and therefore able to settle the slavery question for themselves, Walker had given form to the doctrine of popular sovereignty as no one else had done before.²⁹ His colleagues, however, expressed some trepidation at its implications for self-government on the frontier. A Massachusetts Federalist reaffirmed that "the territories are under the absolute control of the United States," even as he offered a hint at compromise.³⁰ In "an effort to do justice to our Southern brethren," Congress should permit slavery in Arkansas Territory to

²⁶ *Ibid.*, 1226.

²⁷ *Ibid.*, 1227.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*, 1278.

balance the effect of restriction in Missouri.³¹ Several congressmen, in fact, began suggesting some form of compromise to settle the dispute over restriction. Louis McLane, a freshman representative from Delaware, attempted to steer clear of Walker's proposal for popular sovereignty while offering his own version of compromise. Though "he did not believe that Congress had the power to impose the restriction," McLane endorsed the "fixing of a line west of the Mississippi, north of which slavery should not be tolerated."³²

Walker's formula for territorial self-government seemed to suggest that the settlers of Arkansas could legislate on the slavery issue in the earliest stages of territorial development, an interpretation of self-government that did not fully satisfy his colleagues. Some politicians made overtures to broker a compromise similar to the establishment of the Ohio River as a line between free and slave territory. In the territory south of any such line, the people could determine the status of slavery as they pleased without congressional intervention, but Congress would establish free territory north of that line. Indeed, after the House rejected Taylor's amendment to prohibit slavery in the Arkansas Territory, he offered a second amendment that would ban slavery north of the line of north latitude thirty-six degrees, thirty minutes. Taylor's second effort raised objections as well, especially from Virginians who feared compromising on the question of self-government. His critics argued that the proposal created inequality in the territories "by applying a rule to one portion and a different rule to another portion of citizens having equal rights and placed under similar circumstances."³³ The second Taylor amendment also failed, but the *New Yorker* had advocated a compromise almost exactly like the final settlement that emerged from Congress.

³¹ *Ibid.*, 1279.

³² *Ibid.*, 1228, 1229.

³³ *Ibid.*, 1281.

The cause of self-government prevailed in the Arkansas debate—though solely for that territory. Politicians quickly passed the bill creating the territory, effective July 4, 1819, realizing that they still had to settle the Missouri issue. The territorial legislation contained no mention of slavery, implicitly leaving the matter to the people of the territory itself.³⁴ Congress had done little to resolve the constitutional debate over territorial sovereignty because it did not address the issue explicitly. Perhaps the legislators realized that the Missouri debate still loomed over their proceedings, which would afford them ample opportunity to debate the issue. From their vantage point, the significance of Arkansas paled in comparison to the Missouri debate.

The restrictionist forces scored a victory when they passed the Missouri bill with the Tallmadge amendment, but the Senate, after “a long and animated debate,” refused to concur.³⁵ Thomas Ritchie, the well-known editor of the *Richmond Enquirer*, held out hope that the Senate would “strike out this obnoxious feature. It is a struggle of Eastern prejudice against southern principles.”³⁶ He had good reason to express optimism. Even though the northern states outnumbered the South in the Senate, southerners could usually count on the support of Illinois’s senators. The Senate divided the question and considered the two stipulations of the Tallmadge amendment separately. Senators voted against the latter part, which provided for the gradual emancipation of slaves in Missouri, by thirty-one to seven. A more closely divided Senate also voted down the motion to prohibit slavery in the state of Missouri. The Illinois delegation, a Vermont senator, and the enigmatic Harrison Gray Otis of Massachusetts voted with the entire southern contingent to strike down this part of the Tallmadge amendment.³⁷ Absent a consensus

³⁴ See Act of March 2, 1819, ch. XLIX, 3 *U.S. Statutes at Large*, 493-496.

³⁵ *AC*, Senate, 15th Cong., 2nd Sess., 273, 279-280.

³⁶ *Richmond Enquirer*, February 25, 1819.

³⁷ For the roll call vote on these questions, see *AC*, Senate, 15th Cong., 2nd Sess., 273.

between the two houses of Congress on the slavery issue, Missouri remained a territory at the end of the second session of the Fifteenth Congress.

People across the country resumed the Missouri debate where their representatives had left off. Newspapers published a voluminous correspondence that revealed just how significant the issue of slavery in the territories had become outside of Washington. Missourians in particular argued their case with great force. Nathaniel Beverley Tucker, writing under the pseudonym “Hampden,” considered the restriction an insult to the citizens of Missouri Territory who had proved their loyalty in the War of 1812. Tucker, a Virginian who had emigrated to Missouri in 1816 and had been appointed as a judge in St. Louis, emerged as a leading voice for the doctrine of self-government.³⁸ He reminded his audience that the citizens of Missouri were Americans, and as such they deserved the right to legislate their own local affairs. He took particular aim at those who misinterpreted the needful rules and regulations clause of the Constitution to sanction restriction.³⁹ That clause, according to Hampden, had nothing to do with congressional authority over local law; instead, it addressed federal property in the territories. Southerners who sought to refute northern claims of federal supremacy over territorial law frequently used this argument. Linking notions of territorial authority with the tenth amendment to the Constitution—the bulwark of states’ rights ideology—Hampden argued that self-government “is inherent in, and is moreover expressly ‘reserved to the states respectively, or to the people.’ The state of Missouri then, can derive none of its *powers* from Congress; all it needs from that quarter is the *means of organization*.”⁴⁰

³⁸ See Robert J. Brugger, *Beverley Tucker: Heart over Head in the Old South* (Baltimore: Johns Hopkins University Press, 1978), 49-57.

³⁹ *St. Louis Enquirer*, April 7, 1819.

⁴⁰ *Ibid.*

Northerners earned the enmity of many southerners who objected to their efforts to assert federal authority over slavery in the territories. “Is it not insulting to our common sense, to be told that a constitution not only permitting, but partly based on domestic slavery” would allow for federal interdiction of the institution, Hampden asked. “But it is just such a doctrine as I should expect to hear” from those who believed that “*congress have power to make laws to bind the territory in all cases whatsoever.*”⁴¹ Local committees met and passed resolutions denouncing the Tallmadge amendment. A citizens’ meeting in Montgomery County, Missouri, attacked the hypocrisy of Congress in admitting Alabama Territory without restriction, “while the people of this territory have been refused, unless they would stoop to a condition, which degrades them below the rank of free men, and lays the foundation of a slavery more abject than that which congress pretends to be so zealous to reform.”⁴²

Proslavery Missourians portrayed the restrictionists’ efforts as an attack on the freedom of American citizens residing in the territory. “If congress can with impunity enforce a single restriction in direct opposition to the will of the people of this territory,” argued one correspondent, “they may go on to what lengths they please, fearless of our being able to compete with them.”⁴³ When someone did speak out in favor of restriction as a way to protect farmers making their home in the territory, fellow citizens responded with more attacks on the actions of Congress.⁴⁴ “Are the only legitimate sovereigns on earth to be told that they hold their liberties at the will of ‘seventy-eight’ of their servants” who voted for the Tallmadge

⁴¹ *Ibid.*, April 28, 1819.

⁴² *Ibid.*, May 12, 1819.

⁴³ *Ibid.*, April 21, 1819.

⁴⁴ *Missouri Gazette*, April 7, 1819.

amendment, a proslavery Missourian asked. “Shall the *creature* be permitted to assume an absolute sovereignty over his *creator*, and to stifle even an inquiry into his powers?”⁴⁵

The restrictionists implied that living in a territory necessitated surrender of certain rights enjoyed by Americans living in the states, an issue that southerners raised ceaselessly. Politicians and ordinary citizens alike had grappled with the issue of territorial government and popular sovereignty since the inception of the territorial system itself and had never arrived at any concrete answers. While most leaders saw the need for some sort of oversight of territorial affairs, few could agree on the extent of federal interference. Imposing conditions on territories seemed to contradict the idea that people could govern themselves. Why could not Americans living in a territory govern their affairs with as much competence as those residing in a state? In the case of Missouri, southerners questioned the right of the federal government to dictate the structure of their constitution. Each territory seeking admission had a right to create its own organic law according to this line of reasoning, an argument that “became the centerpiece of the southern stand against restriction.”⁴⁶ The restrictionists of the North hardly seemed concerned with the implications of the Tallmadge amendment on the rights of slaveholders residing in the territories.

Missourians and southerners pounced on what they saw as an inconsistency in the logic of the antislavery contingent that pushed for the restriction of slavery in Missouri—and the West in general. Beverley Tucker addressed this very point when he claimed that restriction would “establish a precedent that will sap the foundation of state authority and make this federal government a consolidated nation.”⁴⁷ Ignoring the strictures of the Northwest Ordinance, he argued that Congress could not restrict the right of a citizen to move to any territory with his

⁴⁵ *St. Louis Enquirer*, April 21, 1819.

⁴⁶ Forbes, *The Missouri Compromise and Its Aftermath*, 40.

⁴⁷ *St. Louis Enquirer*, April 28, 1819.

personal property. The fact that a person held slaves as property did not allow for an exception to the rule. When a territory prepared itself for statehood, its inhabitants could decide in convention whether to permit or prohibit the institution of slavery within its bounds. This authority, according to a Kentucky writer who appealed to the logic of the tenth amendment, “is unquestionably one of those rights which the citizens did not surrender by the federal constitution.”⁴⁸ According to the proponents of self-government, the restrictionists proposed to take away the sovereign right of the people of Missouri and subject them to the will of Congress merely because they resided in a territory rather than a state.

Restriction also drew criticism from individuals who noted that the third article of the treaty of cession between France and the United States—the Missourians’ “Magna Carta,” in the words of one historian—had guaranteed the property rights of the residents of the Louisiana Purchase.⁴⁹ Ignoring the treaty’s stipulation “divested [Missourians] of the only right which gives value to citizenship—the right of governing themselves.”⁵⁰ Because the federal government had made no effort to prohibit slavery in Missouri at the outset of its territorial period, settlers in the region considered the restriction movement in the Fifteenth Congress doubly impolitic. In the period between sessions of Congress, antirestrictionist writers reminded the public of the treaty as yet another reason to challenge the authority that the restrictionists claimed for the federal government.

Southerners suspected northerners of possessing ulterior motives in their efforts to block slavery’s expansion. The “chief spur to the debate over Missouri was sectional political

⁴⁸ *Kentucky Reporter*, quoted in *St. Louis Enquirer*, June 9, 1819.

⁴⁹ Moore, *The Missouri Controversy*, 48.

⁵⁰ *St. Louis Enquirer*, June 23, 1819. The opponents of restriction actually misinterpreted the treaty; its provisions applied only to those residents who lived in Missouri under French rule. American law governed settlers who resided in the territory after the cession.

advantage,” not the welfare of slaves or the morality of the institution itself.⁵¹ Northern congressmen had argued that concern for the slaves and the protection of the future of republican government necessitated the restriction of slavery in the territories, points that the southerners rejected outright. Southerners and westerners alike resented what they perceived as the haughty attitude of northerners toward people of their respective regions. Certainly a number of northerners (and probably some southerners, too) considered western emigrants as uneducated and inferior to the citizens of the older portions of the nation. Furthermore, in the debates over the Louisiana Purchase, some northerners had also questioned the loyalty of the residents of the vast territory.

Opponents of restriction in the South and West seized these issues to use as ammunition against the restrictionists, charging northerners with trying to upset the sectional balance and even questioning their loyalty. Some labeled opponents of self-government in Missouri as supporters of the Hartford Convention, the ill-fated New England secession plot during the War of 1812, or members of the Essex Junto, an alleged cadre of New England sectionalists. By linking the restrictionists with the idea of secession, southerners hoped to completely discredit their movement. Southerners believed that northerners ignorantly impugned the character and honor of western settlers. But these so-called “enlightened men” of the North would find themselves “wofully [*sic*] disappointed if they expect that the people here have degenerated, have forgotten the rights which they will never alienate because they inhabit a territory, or have not had the good luck to come from the Land of Steady Habits.”⁵²

In the interim period between congressional sessions, southerners and the Missourians laid out a comprehensive rebuttal of the argument for the restriction of slavery. Though many

⁵¹ Forbes, *The Missouri Compromise and Its Aftermath*, 48.

⁵² *St. Louis Enquirer*, May 19, 1819.

politicians conceded that the federal government had a role to play in organizing territories, southerners insisted that the slavery issue remained beyond the jurisdiction of Congress. Northerners, however, rejected the notion that Congress did not possess the discretionary power to impose conditions upon a territory asking for admission to the Union; indeed, the federal government had exhibited virtually unchallenged its authority to prohibit slavery in the Northwest Territory. Congress could and should exercise its power to admit new states as it deemed fit, and to stipulate conditions for the admittance of a new state. While the Constitution “admits all the *original* states to hold slaves as they please,” an observer wrote, the “*discretionary* power granted to admit new states into the union, by simply saying, ‘new states may be admitted,’ necessarily supposes a right in congress to designate the conditions of admission.”⁵³ As an Illinois correspondent noted, if Congress could not impose conditions on admission, then the federal government had robbed Illinois of the right to establish slavery within its bounds.⁵⁴

While southerners utilized the tenth amendment and the concept of states’ rights to attack the restrictionist agenda, northerners mocked their efforts to accuse antislavery leaders of endorsing federal consolidation. They also questioned the policy of territorial self-government. “In an extent of country capable of supporting six millions of our inhabitants,” an Illinois editor asked, “shall it be considered a reasonable demand for the nation to allow a few thousand the right of deciding a question of such vital importance, merely because the few, from pecuniary interest, wish for the future toleration of slavery?”⁵⁵ The writer did not necessarily oppose submitting the decision to the will of the people, but he contended that all of the people and not just those in Missouri had a right to decide the issue. Both sides argued that all of the United

⁵³ *Niles’ Weekly Register*, August 14, 1819. See also *Edwardsville Spectator*, June 9, 1819.

⁵⁴ *Edwardsville Spectator*, June 5, 1819.

⁵⁵ *Ibid.*, July 10, 1819.

States had purchased the territories with common treasure. Both sides used theories of constitutional law to support their respective arguments that slavery should or should not pass into the territories of the Louisiana Purchase. And both sides attempted to galvanize popular majorities to support their reasoning.

As the days of late autumn passed and the country prepared for the opening of the Sixteenth Congress, the Missouri issue increasingly became a struggle over constitutional interpretation, a hallmark of early nineteenth century political discourse.⁵⁶ Americans frequently met in committee to discuss political issues and issue resolutions expressing their views to their elected representatives. At numerous meetings in the northeastern states, restrictionists claimed that Congress could deny admission to statehood if it considered slavery “to be inconsistent or inimical to republican institutions.”⁵⁷ Recriminations flew back and forth in the war of words over the extension of slavery as both sides sought political advantage ahead of the upcoming session. Southerners, too, leveled charges against the restrictionists and sought to fuse the link between the South and West.

Numerous conventions met in the largest northern states to express their support for the restriction of slavery in Missouri, a development that Thomas Ritchie considered a “source of regret to the southern and western states.”⁵⁸ In the late fall before the Sixteenth Congress convened, citizens held a final set of meetings at Trenton, New Jersey, New York City, Philadelphia, Boston, and other northern cities.⁵⁹ On the whole, they added little to the debate that had raged all summer and fall, but their proceedings suggest a further hardening of the

⁵⁶ Don E. Fehrenbacher discusses how the issue of slavery in the territories became increasingly “constitutionalized” in the antebellum era as a part of his magisterial study of the Dred Scott case. See *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), esp. 102-103, 135-151.

⁵⁷ *Niles' Weekly Register*, November 6, 1819. See also November 27, 1819.

⁵⁸ *Richmond Enquirer*, November 23, 1819.

⁵⁹ In addition to the citations 57 and 58, see *New-York Gazette & General Advertiser*, November 18, 1819.

sectional lines that divided the nation on Missouri's admission. Each of the committees passed resolutions stating that Congress did have the power and the obligation "to prohibit the admission of slavery into any state or territory hereafter to be formed and admitted into the union."⁶⁰ Indeed, the "honor and interests of the country" demanded congressional action.⁶¹ Of course, southerners and the Missourians responded in kind, arguing that the "solemn faith" of the nation demanded Missouri's admission "on an equal footing with the other states."⁶² They also exhibited considerable resentment that Missouri's proposed admission to statehood had become entwined with the larger issue of slavery. "Nothing has been done to promote our local interests," argued a Kentucky correspondent, "and every scheme to give us a fair participation in the benefits of the union, has been thwarted or defeated."⁶³

Southerners and proslavery westerners resented northerners' attempts to thwart admission for Missouri, because they increasingly viewed the restriction movement as part of a broader movement to end slavery. Sensing the gravity of the issue, state legislatures throughout the Union met to enact resolutions regarding the crisis. In the days when voters did not elect their senators to Congress, the state legislatures who did select them often instructed their senators on how to vote on key issues. Nine northern states passed resolutions instructing senators on how to vote on slavery restriction in Missouri.⁶⁴ Their resolutions articulated the same arguments as those ratified by the countless public meetings across the nation, but the legislatures' resolutions carried the additional weight of acting as an instruction on how senators should vote in Congress. They gave senators marching orders, in effect, on how to proceed in the congressional session.

⁶⁰ *New York Evening Post*, quoted in *Niles' Weekly Register*, November 27, 1819.

⁶¹ *Niles' Weekly Register*, November 6, 1819.

⁶² *Ibid.*, November 27, 1819.

⁶³ *St. Louis Enquirer*, December 4, 1819.

⁶⁴ See Herman V. Ames, ed., *State Documents on Federal Relations: The States and the United States* (1906; repr., New York: Da Capo Press, 1970), 196-203.

Northern states issued resolutions condemning the spread of slavery to the western territories and asserting the right of Congress to stop its expansion. Northern state legislatures intended to direct the action of senators in Washington by affirming their commitment to restriction, a stance that drew the ire of southerners who saw the northern effort as an attack on their section. A series of resolutions from Pennsylvania particularly offended antirestrictionists. Thomas Ritchie stated, “it is contrary to the whole genius of our constitution to colonize the regions to the West of the Mississippi.”⁶⁵ The northern scheme promised to deny western settlers their rights by transforming their choice of residence into a colony. Southerners found this unacceptable.

As legislatures in state capitols and citizens in public meetings weighed in on the right of Congress to restrict slavery in the territories, the president monitored the debate from Washington. James Monroe had remained silent on the matter in his State of the Union message to Congress in December 1819, but expressed privately his opinions to advisors. To his son-in-law and political confidant George Hay, he wrote, “I indulge a strong hope that the restriction will not pass.”⁶⁶ The Virginian Monroe, who had disputed the force of the Northwest Ordinance’s prohibition of slavery, sided with the southerners on the Missouri issue, arguing that Congress could not admit a new state on conditions different from the old states and that it could not prohibit slavery in the territories. In questioning the force of the Northwest Ordinance, Monroe represented the prevailing opinion of his home state—and indeed the South at large. Ritchie had cited the 1787 act as a “usurpation” of power and believed that the ordinance had gained passage “without adequate discussion and deliberation.”⁶⁷ Northerners attempted to shield their efforts at restriction behind a dubious precedent, southerners argued.

⁶⁵ *Richmond Enquirer*, December 21, 1819.

⁶⁶ James Monroe to George Hay, December 20, 1819, quoted in Noble E. Cunningham, *The Presidency of James Monroe* (Lawrence: University Press of Kansas, 1996), 94.

⁶⁷ *Richmond Enquirer*, December 21, 1819.

Unlike Ritchie and many of his contemporaries, the president did appear amenable to some sort of compromise to end the increasingly dangerous dispute, although he could not say so publicly. Virginia's strong opposition to any compromise on the matter left Monroe in a politically precarious situation.⁶⁸ If Monroe and his advisors openly endorsed a compromise, "they were vulnerable to attack from the South because of their broadly national stance; they could hardly allow themselves to appear flexible in the defense of slavery."⁶⁹ The president faced a reelection bid in 1820; if he wanted a chance at a second term, he had to pay heed to the opinions of his southern power base—particularly Virginia—by resisting the northern encroachment on the South's peculiar institution. He also had to keep the nation from falling apart over slavery in the territories.

When the members of a new Congress arrived in Washington, they faced the grim task of resolving the crisis over Missouri before events spiraled out of control. The Sixteenth Congress convened on December 6, 1819, returning to the Capitol for the first time since the British had burned the structure in 1814. One absence from the House of Representatives gained notice; an ailing James Tallmadge had declined to run for a seat in the new Congress. The end of his short tenure, however, certainly did not mark the death of his amendment. Three weeks later, the House of Representatives resumed debate in earnest on the Missouri statehood bill. Speaker of the House Henry Clay left the speaker's chair to deliver a speech from the floor, in which he recapitulated the debate that had consumed the second session of the last Congress. The speaker took the position of his fellow southerners and westerners by arguing that his northern colleagues attempted to treat the territory like "she is our vassal, and we have the right to affix to her

⁶⁸ The best summary of Monroe's stance on Missouri is in Cunningham, *The Presidency of James Monroe*, 93-104. Robert Pierce Forbes makes special effort to rehabilitate the president's reputation by also arguing that Monroe involved himself in the crisis behind the scenes. Forbes, however, ascribes more effort to Monroe than the evidence allows. See Forbes, *The Missouri Compromise and Its Aftermath*, esp. 63-71.

⁶⁹ Forbes, *The Missouri Compromise and Its Aftermath*, 64.

conditions not applicable to the States on this side of the Mississippi.”⁷⁰ Clay rejected such expansive congressional authority, arguing, “when the population and extent of a territory had been such as to entitle a territory to the privilege of self-government, and the rank of a State, the single question had presented itself to admit or reject it, without qualification.”⁷¹ Indeed, Clay and his fellow southerners implied elsewhere that Congress could not even reject such a bid; the Constitution and the treaty of cession entitled the Missourians to statehood.

The speaker’s opening remarks on the Missouri bill left little doubt that the affair had become a great debate over constitutional interpretation as it pertained to slavery. Northerners had committed a grievous error, in the estimation of southerners, by seizing on the Missouri bill as an opening to attack the institution of slavery. As the debate in Congress proceeded, legislators from North and South lined up to offer their interpretation of the Constitution’s impact on the issue of slavery in the territories. Again, southerners argued that the federal government had no right to restrict Missouri’s sovereign right to permit or prohibit slavery within its bounds. In the previous session of Congress, the senators had remained largely silent on the matter, leaving the members of the House of Representatives to conduct the more vigorous debate. In this session, however, the senators eagerly engaged the issues. Both of Georgia’s senators rose in defense of slavery in Missouri. In addition to the now-familiar arguments of congressional authority over slavery in the territories and the terms of the treaty of cession and its impact on the rights of slave owners, the issue of self-government emerged in the Senate debate. Georgia’s Freeman Walker argued that the citizens of Missouri, “who certainly ought to be esteemed at least as capable of judging of this matter as those so far removed,” opposed congressional interference, instead “wishing to have the privilege of regulating their

⁷⁰ *AC*, House, 16th Cong., 1st Sess., 835.

⁷¹ *Ibid.*, 832.

internal police as in their judgment shall best promote their happiness and welfare.”⁷² The policy of self-government, the course most true to the Constitution, ensured that Americans in the territories had the same rights as their fellow citizens in the states. His argument resonated in the minds of those who found the concept of territorial oversight unsettling. “Let us grant to them the boon of self-government without alloy,” Walker declared.⁷³

Just as southern members of Congress took the lead in assaulting the northern restriction effort to “alloy” the right of self-government, so too did the southern press coordinate the resistance outside of Washington. In particular, Ritchie’s *Richmond Enquirer* became a leading voice against restriction. One regular correspondent took great care in analyzing the nature of territorial government itself, citing the “temporary” character of a territory.⁷⁴ Restricting slavery hardly represented a needful rule or regulation as envisioned by the framers of the Constitution; indeed, it embodied an abuse of power. Northerners proposed a massive expansion of federal power over territorial organization and state making. They resolved to force policies on the people of Missouri that they did not want. “And if we can make their constitution, and render it perpetual,” argued a Virginian, “what will the people of that territory be but *slaves*?”⁷⁵

Southerners insisted that the restrictionists in the North had resolved to force their beliefs on the people of Missouri against their will. Free men could not accept such an infringement on their personal liberty. In speech after speech, southern congressmen attacked the northern antislavery vanguard and its cavalier attitude toward the sovereignty of the people. “A wise Legislature,” noted Senator Nathaniel Macon of North Carolina, “will always consider the

⁷² AC, Senate, 16th Cong., 1st Sess., 169-170.

⁷³ *Ibid.*, 175.

⁷⁴ *Richmond Enquirer*, January 1, 1820.

⁷⁵ *Ibid.*

character, condition, and feeling, of those to be legislated for.”⁷⁶ Senator Rufus King, recognized as the Senate’s leader on restriction, and his antislavery colleagues meant to run roughshod over the rights of settlers in Missouri, instead of leaving them “free to do as they pleased.”⁷⁷ Northerners had made an issue of the expansion of slavery, and in their zeal to end the expansion of the institution they threatened the Missourians’ right to form a government of their choosing.

To southerners who believed in the virtues of strong local government, the northern restriction movement proved that the specter of consolidation loomed larger than ever before. Across the Capitol rotunda in the House of Representatives, southerners gained a northern ally who spoke in uncommonly prescient terms about the danger of the Missouri debates. Henry Meigs, a lawyer and first-term congressman from New York, lamented the “increasing spirit of local and sectional envy and dislike between the North and South.”⁷⁸ He gave a wide-ranging defense of the principles of self-government in the territories, noting that Congress could not and should not meddle in its sovereign right to govern its own local affairs. “We are attempting here to legislate for Missouri, without a due attention to the situation, the genius of the people, soil, climate, and all the matters which ought to constitute good law.”⁷⁹ In a thinly veiled attack on the New England Federalists, Meigs chastised the efforts of those who held “in doubt and apparent dread the extension of Republican Government.”⁸⁰ Why did they fear the will of the people?

Southerners cried that the restrictionists’ argument treated the Missourians as children and viewed them as inferior to the men of the East, a betrayal of northeastern elitism that

⁷⁶ *AC*, Senate, 16th Cong., 1st Sess., 222.

⁷⁷ *Ibid.*, 229.

⁷⁸ *AC*, House, 16th Cong., 1st Sess., 943.

⁷⁹ *Ibid.*, 944.

⁸⁰ *Ibid.*, 945.

disgusted southerners and many individuals from the middle states. But Meigs advanced the antirestriction argument further by articulating a theory that would become famous some thirty-five years later. He argued that Congress had no power to enact laws “contrary to the genius and will of a people.” Meigs then went on to add, “Such attempts will be mere absurdities—violence will be committed upon the fundamental principles of all law, and can never be executed.”⁸¹

Stephen A. Douglas articulated this same concept over thirty-five years later in his debate with Abraham Lincoln at Freeport, Illinois. Meigs likely drew from knowledge of northwesterners’ evasion of the slavery prohibition in the Northwest Territory as he made a crucial point that became a foundation of the argument for self-government in the territories: settlers would only stand for so much federal interference before they started evading the law. Consequently, it behooved Congress to practice a policy of non-intervention not only as a matter of *right*, but of *expediency*.

In other words, Meigs argued, Congress did not possess the power to interdict slavery in Missouri, nor did it really want that authority lest it offend the settlers and provoke resistance to the rule of law. His speech garnered praise from his southern colleagues and enmity from those of the North, especially the New England Federalists whom he attacked most strongly. Certainly southerners agreed with his characterization of the Federalists, particularly Rufus King, who had become a favorite target of the southern press. Other northerners joined Meigs in his criticism of the restrictionists’ efforts. Mathew Carey, a Philadelphia printer and political observer of the Jeffersonian Republican persuasion, rejected the efforts to prohibit slavery in Missouri and warned of dire consequences if “we are to persist in shackling her with restrictions.”⁸² Carey opposed slavery; indeed, he argued that had southerners looked to the future, they would

⁸¹ *Ibid.*, 946.

⁸² Mathew Carey, *Some Considerations on the Impropriety and Inexpediency of Renewing the Missouri Question* (Philadelphia: M. Carey & Son, 1820), 4.

themselves have approved a restriction similar to the Northwest Ordinance. But many southerners did not believe restriction constitutionally possible. Carey evaluated the southern argument, especially the notion that restriction would deprive southerners of equal rights within the Union, and deemed it “sufficiently plausible.”⁸³

Northerners erred in using Missouri as a convenient means of attacking the institution of slavery, according to Carey and Meigs, and in the process they endangered the Union. Though Carey expressed his belief in the evil of slavery, his constitutional arguments could not have pleased southerners more. Men like Carey and Meigs proved that the South still had allies in the northern states. Southerners embraced their arguments against the northern restrictionists. They believed that King and his supporters purposely disregarded the wishes and interests of the Missourians, who had formed their own opinions on the subject of slavery. “With this evidence of feeling and of fact before his eyes,” the *Richmond Enquirer* asked, “will Mr. King contend that it is expedient to go on?—What! are the opinions of the people of Missouri, having the deepest interest in the question, nothing?”⁸⁴ What did New Yorkers know of the wants, needs, and desires of the people of Missouri? Again, southerners appealed to the spirit of localism, arguing that only the people of the territories could know what local laws and institutions best suited them.

At the same time that southerners chided northern restrictionists for interfering in the purely local matter of slavery in the territories, they also struck back at the northern attack on the institution of slavery itself. In numerous speeches before and during the Missouri crisis, southern politicians characterized slavery as an institution foisted upon them by generations past. Leaders expressed hope that someday the institution would pass away through means most often

⁸³ *Ibid.*, 38.

⁸⁴ *Richmond Enquirer*, January 8, 1820.

unclear. Some politicians, like Henry Clay, argued that African colonization provided the best solution for the problem. Contemporaries and historians alike have questioned the sincerity of these pronouncements in favor of a gradual end to the peculiar institution.

When northerners attacked the institution of slavery in the debates over Missouri, “southern congressmen had no choice but to defend it.”⁸⁵ North Carolina Senator Nathaniel Macon, an early leader in the southern defense of slavery, challenged the northerners’ arguments. “The Constitution tolerates [slavery]; and that was not adopted from necessity, but through choice. If the necessity ever ceases, who is to decide when? Congress did not decide for Pennsylvania, or any other State; she decided for herself. Let Missouri do the same.”⁸⁶ Some writers went a step further, offering a biblical and historical defense of slavery designed to thwart the institution’s critics and retard their efforts to cast the South in an unfavorable light over the issue.⁸⁷ As the Missouri debate continued and ideological lines hardened, “leading white southerners accepted their section’s identification with slavery and fought for its interests and reputation with increasing vigor,” a development that presaged significant changes in the southern stance on slavery.⁸⁸

Even as the debates exhibited the increasing intransigence of both sides on the issue of slavery’s expansion into the territories and new states, some leaders in Congress indicated a desire to end the contentious dispute. Samuel Foot of Connecticut suggested a compromise, even as he expressed his desire to stop the expansion of slavery into the West. Congress should leave the question “to the good sense of the people of the States to be formed out of that

⁸⁵ Forbes, *The Missouri Compromise and Its Aftermath*, 40. For a fuller discussion of the emerging southern defense of slavery, see pp. 37-42; Mason, *Slavery and Politics in the Early American Republic*, 158-176.

⁸⁶ AC, Senate, 16th Cong., 1st Sess., 228-229. For more on Macon’s efforts, see Mason, *Slavery and Politics in the Early American Republic*, 162-164.

⁸⁷ See, for example, *Richmond Enquirer*, January 1, 1820.

⁸⁸ Mason, *Slavery and Politics in the Early American Republic*, 159.

Territory,” but if anyone questioned the right of slavery to exist in any such state, “it might be left for the proper tribunal, the Supreme Court, to determine it.”⁸⁹ Foot’s proposal sounded much like popular sovereignty, or permitting the people to make their own decision, but it actually discouraged such a popular referendum on the issue of slavery by placing the issue under the jurisdiction of the federal judiciary. Given the makeup of the Supreme Court in 1820, with the nationalist John Marshall as its chief justice, the tribunal would almost undoubtedly have sided with the restrictionists. The suggestion went nowhere, but some twenty-eight years later John Clayton, a Delaware Whig congressman, would revive the notion when Congress found itself mired in a debate over slavery in the Mexican Cession.

Northern politicians eager to end the congressional stalemate began to express their willingness to compromise. The first overtures toward an mutual concession on the slavery issue had emerged in the previous Congress, when Louis McLane of Delaware, a congressman from a state closely divided over the issue of slavery in the territories, proposed to draw a dividing line between free and slave territory.⁹⁰ The plan went nowhere in that session, but by January 1820, some congressmen appeared willing to entertain the notion. Another proposal would have banned slavery in any territory north of the thirty-eighth parallel, a compromise that the House rejected for the moment.⁹¹ But on February 3, Illinois senator Jesse Thomas made a similar proposal in the upper chamber, suggesting that Congress prohibit slavery in the Louisiana Purchase—excepting Missouri—north of the line thirty-six degrees, thirty minutes. Because the southerners in the Senate had successfully maneuvered to combine the admission of Maine with

⁸⁹ *AC*, House, 16th Cong., 1st Sess., 949.

⁹⁰ *AC*, House, 15th Cong., 2nd Sess, 1228.

⁹¹ See *Papers of Henry Clay*, II, 768 for a discussion of the Storrs proposal and Clay’s objections to it.

that of Missouri, Thomas's proposal seemed an appropriate compromise.⁹² Maine would enter the Union as a free state and Missouri would become a slave state, while the amendment would prohibit slavery in the remainder of the Louisiana Purchase, save the newly created Arkansas Territory.⁹³

The Thomas plan seemed to offer a way out of the congressional impasse. Yet the southern maneuver to link Maine and Missouri's statehood had "deeply alienated the North and stiffened the South."⁹⁴ The ensuing debates in the House and Senate reflected the animosity on both sides, even as certain individuals moved toward compromise. Louis McLane approached the debate warily; circumstances in his home state made his course a necessity. Though he argued "that Congress does not possess the power to impose the contemplated restriction," McLane shied away from the bolder pronouncements of his southern colleagues who insisted on self-government for the territories.⁹⁵ Instead he asserted that Congress had vacated its power to impose conditions on Missouri when it permitted slavery in the territorial enabling bill. He stumbled on the question of congressional jurisdiction over slavery in the territories; in some parts of his speech, he asserted that only the people themselves could make their own municipal regulations, while in other instances he noted that Congress "can give laws to a Territory."⁹⁶ The Delaware representative walked his political tightrope with great difficulty.

The Virginians emerged as the most ardent defenders of southern interests and slavery in the territories, advancing arguments against restriction that seemed to threaten the impetus for compromise. The *Richmond Enquirer* served as the leading anticompromise voice in the

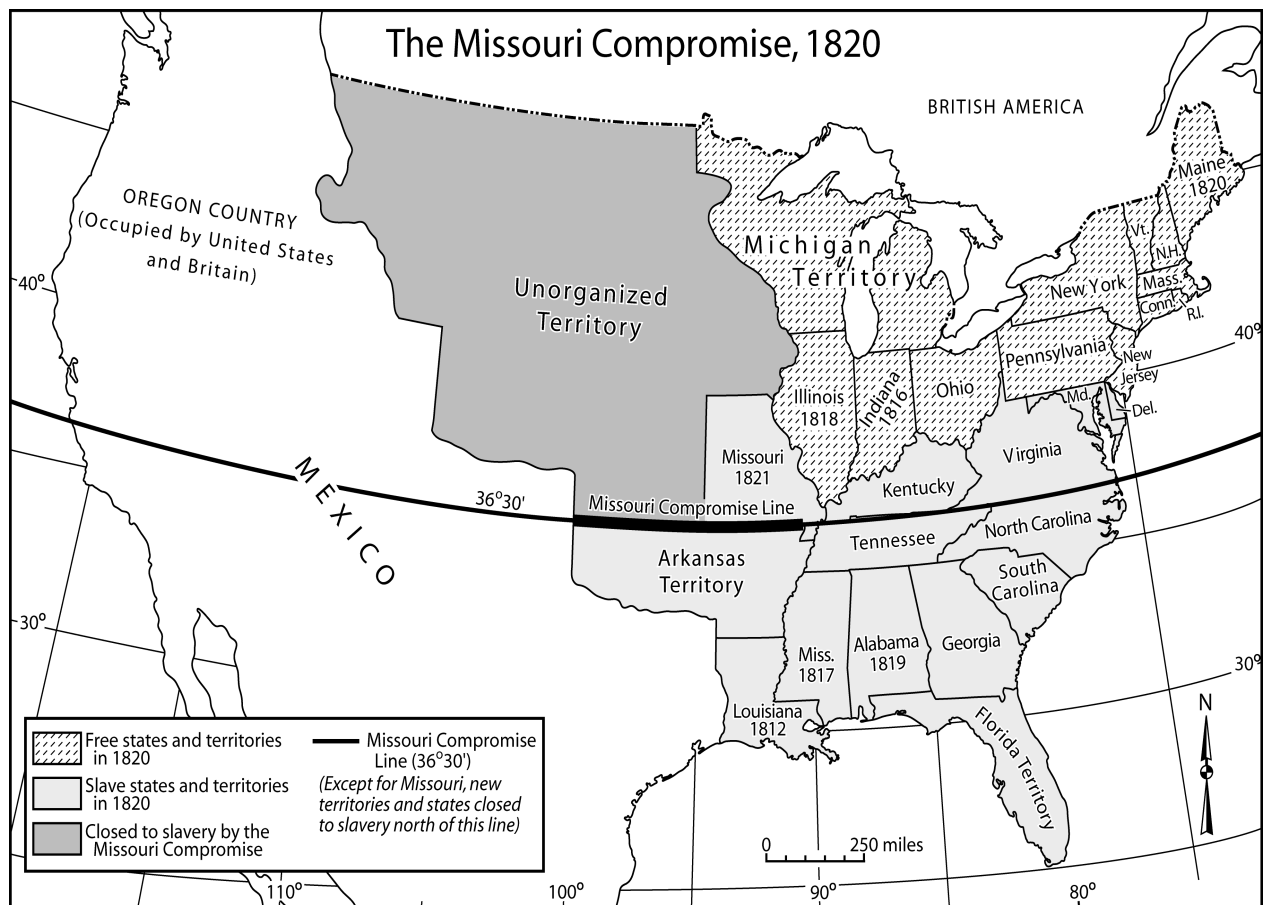
⁹² For the legislative history surrounding the link between Maine and Missouri's statehood, see Moore, *The Missouri Controversy*, 86-90; for a detailed analysis of the motives behind the plan, see Forbes, *The Missouri Compromise and Its Aftermath*, 62-68.

⁹³ In 1819, Arkansas Territory included the land that would become Indian Territory (present-day Oklahoma) by 1828.

⁹⁴ Forbes, *The Missouri Compromise and Its Aftermath*, 68.

⁹⁵ AC, House, 16th Cong., 1st Sess., 1140.

⁹⁶ *Ibid.*, 1160.



Map 2: The Missouri Compromise, 1820

southern press. “Can we compromise with the constitution of our country?” Thomas Ritchie asked.⁹⁷ The Thomas compromise proposal did just that, according to Ritchie. Another Virginian noted that the “publick mind is all in a ferment about this compromise spoke of in Washington.”⁹⁸ The writer concurred with Ritchie’s condemnation of compromise. “If the Southern people yield – the consequences will be serious – and unless the Northern people retrace their steps, the result will be equally so – the naked question will then be presented – war or disunion.”⁹⁹ Congress could not legally restrict even a territory. After a speech by an Illinois congressman, which mockingly accused southerners who supported Thomas’s compromise overtures “as conceding the point, that Congress has the power to make the restriction or territorial prohibition perpetual and binding on the States hereafter,” the more rigid states’ rights members of Congress stood firm in their convictions.¹⁰⁰

Philip Barbour of Virginia advanced one of the most sophisticated arguments about congressional power and territorial sovereignty in the course of the debate. For the sake of argument, he deferred on the original question of territorial sovereignty—though suggesting that the people of a territory had the right to determine their own local institutions—and assumed a position similar to that of Louis McLane. Even conceding that point (for the sake of argument only), Barbour posited, Congress had delegated the power of local legislation by statute. In the case of Missouri, he noted, “we have, by one of our own regulations, given it a legislative body; that we have extended to that body the whole power of legislation, subject only to the limitation that their laws shall not be inconsistent with the Constitution and laws of the United States.”

Because “the question of slavery is one of a legislative character; it, therefore, already belongs to

⁹⁷ *Richmond Enquirer*, February 10, 1820.

⁹⁸ C.W. Gooch to David Campbell, February 16, 1820, Box 4, Campbell Family Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, North Carolina.

⁹⁹ *Ibid.*

¹⁰⁰ *AC*, House, 16th Cong., 1st Sess., 1111.

them to decide it by our own grant.”¹⁰¹ Barbour’s argument garnered the praise of several of his colleagues. John Scott of Missouri quickly adopted Barbour’s argument, noting that when Congress promoted Missouri to the second grade of territorial government, it ended congressional “superintendence over the laws of the territory” and gave the territorial legislature “all legislative power without reserve.”¹⁰²

Southerners contended that Congress had “already spoken on the slavery issue” when it established territorial governments for Louisiana, Missouri, and Arkansas, without legislating on the issue of slavery, but northerners persisted in bending the “needful rules and regulations” clause of the Constitution to reassert authority over the issue.¹⁰³ A South Carolinian argued that “in making such regulations for the government of the territory, [Congress is] no more authorized to inhibit slavery in the territory, than they are in the State—for, if they should have the power, it would indirectly effect the same thing.”¹⁰⁴ Southern politicians and their constituents continued to ascribe the actions of northerners to a concerted effort at augmenting federal authority and assaulting the institution of slavery by advancing a dubious interpretation of the Constitution.

Northern restrictionists had willfully misinterpreted the Constitution to advance their antislavery program and to change the nation’s political calculus by creating more free states and striking a blow at the heart of self-government, according to southerners. Their efforts, the antirestrictionists argued, threatened the liberty of Americans residing in the territories. As Thomas Ritchie noted, “What is a territorial restriction to-day becomes a state restriction to-

¹⁰¹ *Ibid.*, 1237.

¹⁰² *Ibid.*, 1502.

¹⁰³ *Ibid.*, 1320.

¹⁰⁴ *Ibid.*, 1327.

morrow.”¹⁰⁵ Congress could not interfere with the rights of a citizen just because he resided in a territory. “By whom has the territory been settled?” asked a Virginia representative. “Are the inhabitants strangers, foreigners, aliens to our Government, manners, religion? Or are they native citizens of the United States? They are native citizens; many of whom have fought and bled in defence of the principles of which we all proudly boast.”¹⁰⁶

Congress threatened to commit a grievous injustice by depriving American citizens of the right to self-government. John Tyler, a Virginia congressman and future president, disputed the right of Congress to intervene in the slavery issue at any stage within the territorial period or at the point of statehood, accusing the northerners of wanting the government to act as a colonial power. “England denied to us the right to legislate, except by her special authority; nay, she proclaimed the very principle which you now proclaim as applicable to Missouri—the right to bind you by her own system of legislation.”¹⁰⁷ By recalling the memory of the American Revolution, Tyler invoked the ideals of the founders to stop the northern advance against slavery.

Southern legislators failed to persuade their northern colleagues. Restrictionists rejected outright the southern interpretation of the needful rules clause in the Constitution. They specifically attacked any notion of territorial sovereignty as expressed by many antirestrictionists. Congress had the express power to legislate for the territories at any time. The “passing of one act prescribing the manner in which laws for the Territory shall be made, does not commit Congress; they can change the mode at their pleasure.”¹⁰⁸ Northerners attempted to expose a lack of unity among the antirestrictionists, many of whom preferred to

¹⁰⁵ *Richmond Enquirer*, March 7, 1820.

¹⁰⁶ *AC*, House, 16th Cong., 1st Sess., 1368.

¹⁰⁷ *Ibid.*, 1382. For a discussion of the tenth president’s beliefs on republican government and states’ rights during the Missouri controversy, see Dan Monroe, *The Republican Vision of John Tyler* (College Station: Texas A&M University Press, 2003), 24-47.

¹⁰⁸ *AC*, House, 16th Cong., 1st Sess., 1130.

remain silent on the question of territorial sovereignty, instead focusing on the rights of a territory preparing for statehood. “Even gentlemen on the opposite side of the question admit we may” legislate for the territories, noted one congressman.¹⁰⁹ The restrictionists, however, failed to recognize that a sizeable majority of southerners at this time did not believe that Congress could legislate on slavery at any stage in the territorial existence.

Additionally, some northern congressman raised questions about the nature of popular sovereignty in the territories itself that revealed strong ideological differences on the nature of local government. According to a Massachusetts representative, “absolute sovereignty resides, not in minute portions or States, but in the whole people, whose will expressed by their Constitutional organs, is the law, and must be obeyed.”¹¹⁰ Popular sovereignty could not rest in an inchoate community such as a territory, and respecting the governance of the territories themselves, it could not rest in the individual states of the Union. The federal government possessed exclusive power over territories from their infancy to the moment Congress granted them statehood. Few other members of Congress advocated such a nationalist agenda in such stark terms.

Restrictionists argued that Congress possessed the *discretionary* power to admit states. If the national legislature did not believe admitting a territory to statehood represented the best interests of the nation at large, it could deny admission. In the case of Missouri and any other territory seeking admission as a slave state, members of Congress had a right and a duty to “judge for themselves, whether it will be for the good of the Union to admit new members who hold mankind as slaves.”¹¹¹ No territory could demand admission to the Union from Congress;

¹⁰⁹ *Ibid.*, 1345.

¹¹⁰ *Ibid.*, 1294-1295.

¹¹¹ *Ibid.*, 1377.

no treaty could trump the right of Congress to grant admission as it saw fit. Any contrary argument denied the sovereign power delegated to Congress by the people.

In spite of the rigid positions taken by members of both sides of the Missouri debate, Congress appeared poised to enact a compromise by the middle of February. Compromise offered the only avenue to safely navigate the question. Moderates appeared willing to negotiate on the terms of the Thomas amendment. Mathew Carey had hinted at drawing a compromise line in his pamphlet on the Missouri controversy, written in early 1820. He cited an “understanding” between the free and slave states, “that slavery should be tolerated within a certain line, and excluded beyond it.”¹¹² Carey almost certainly referred to the use of the Ohio River as a dividing line between free and slave territory. The Thomas proposal, it seemed, merely extended this precedent. The House of Representatives held out for some time, refusing to concur in the Senate’s amendments to the Missouri bill, namely the Thomas amendment. But by March, a final settlement seemed imminent. Outside of Washington, however, considerable resistance to compromise developed. Some northerners looked at the Thomas amendment with alarm, as drawing a line between slave and free territory “would seem to establish different interests, and create the worst sort of parties that we can possible have.”¹¹³

To the minds of many southerners, the compromise plan yielded on the issue of congressional authority over slavery in the territories, a settlement the South could not afford to endorse. Congress had “no right to restrict even the territorial government,” nor did it have the right to “shackle future sovereign states” on the issue of slavery.¹¹⁴ Yet the Thomas amendment did both by yielding on the issue of territorial sovereignty north of the thirty-six degree, thirty minutes line and by making the prohibition perpetually binding. “Why use this very expression

¹¹² Carey, *Some Considerations on the Missouri Question*, 57.

¹¹³ *Niles’ Weekly Register*, January 29, 1820.

¹¹⁴ *Richmond Enquirer*, February 26, 1820.

which seems copied from the ordinance of '87," the *Richmond Enquirer* asked, "if it be not intended to pursue the precedent set in the N.W. territory?" President Monroe, who quietly observed the proceedings in Congress and the public debate from the White House, concurred. The Thomas amendment inferred "that the restraint should apply to territories, after they become states as well as before. This will increase the difficulty incident to an arrangement of this subject, otherwise sufficiently great, in any form, in which it can be presented."¹¹⁵

Monroe consulted with several colleagues on the legality of the compromise emerging from Congress in the closing days of the congressional session. The president's correspondence indicates that he remained unsure of the legality of such an arrangement. James Madison provided the president with a carefully reasoned treatise on the subject. Madison recognized that the Constitution left much pertaining to the territories open to interpretation. The "ductile nature" of the needful rules and regulations clause left "much to legislative discretion."¹¹⁶ The territories needed some manner of oversight in their infancy, but the "suspension of the great principle of self-government, ought not to extend farther nor continued longer than the occasion might fairly require."¹¹⁷ In the specific case of Missouri, Madison deemed the restriction unconstitutional.

In addition to contacting the fourth president and framer of the Constitution for his interpretation of the issues of self-government in the territories, Monroe summoned the members of his cabinet to the White House for a meeting on March 3. The president asked his advisors to submit written opinions on two questions: whether Congress had the right to prohibit slavery in

¹¹⁵ James Monroe to Thomas Jefferson, February 19, 1820, in Stanislaus Murray Hamilton, ed., *The Writings of James Monroe: Including a Collection of His Public and Private Papers and Correspondence Now for the First Time Printed*, 6 vols. (New York: G.P. Putnam's Sons, 1902), VI, 115-116.

¹¹⁶ James Madison to James Monroe, February 23, 1820, *Letters and Other Writings of James Madison, Fourth President of the United States*, 4 vols. (Philadelphia: J.B. Lippincott & Co., 1865), III, 168.

¹¹⁷ *Ibid.*

the territories and whether the Missouri bill, which interdicted slavery forever north of the compromise line proposed by Jesse Thomas applied only to territories or to states after their admission to the Union.¹¹⁸ The cabinet discussed their opinions in person in addition to submitting written opinions. Secretary of the Treasury William H. Crawford, Attorney General William Wirt, and Secretary of War John C. Calhoun—all slaveholders—responded that the federal government did indeed possess the power to prohibit slavery in the territories, a stunning admission given their respective backgrounds.

Secretary of State John Quincy Adams noted the aberration immediately. “The progress of this discussion has so totally merged in passion all the reasoning faculties of the slaveholders,” Adams wrote in his diary, “that these gentlemen, in the simplicity of their hearts, had come to a conclusion in direct opposition to their premises, without being aware of or conscious of inconsistency.”¹¹⁹ The three men believed that the slavery prohibition in the bill applied only to the territories, however. Adams concurred on the first point with his southern colleagues, but argued that the slavery prohibition would apply even in statehood, because “by its interdiction in the territory, the people, when they come to form a Constitution, would have no right to sanction slavery.”¹²⁰ Having consulted with his advisors and received their sanction for the proposed compromise plan, Monroe resolved to sign the bill as received from Congress.

The president certainly helped shape the bill that he signed into law on March 6, 1820. Historians have reexamined the record in recent years and argued that Monroe worked behind

¹¹⁸ This account is based the diary of John Quincy Adams. See entry for March 3, 1820, in Charles Francis Adams, ed., *Memoirs of John Quincy Adams, Comprising Portions of His Diary from 1795 to 1848*, 12 vols. (Philadelphia: J.B. Lippincott & Co., 1874-1877), V, 4-11. See also Cunningham, *The Presidency of James Monroe*, 103-104.

¹¹⁹ *Ibid.*, 5. For the written response of Crawford, Calhoun, and Wirt, see their letter to James Monroe, March 4, 1820, in Worthington Chauncey Ford, ed., *Writings of John Quincy Adams*, 7 vols. (New York: Macmillan, 1913-1917), VII, 1-2.

¹²⁰ *Memoirs of John Quincy Adams*, V, 6. Adams did not specify this in his written response to the president; see *Writings of John Quincy Adams*, VII, 1-2 for that letter.

the scenes to craft a moderate coalition between the sections that would vote for compromise.¹²¹

To achieve a workable adjustment, Monroe and the compromisers in Congress, led by Speaker Henry Clay, would have to exert pressure on enough northern restrictionists to gain sufficient votes to pass the compromise bill. Fourteen northerners voted with the southern delegation for the compromise bill, including Henry Meigs of New York, who had so eloquently articulated the antirestrictionist argument in Congress. These “doughfaces,” a pejorative term coined by the eccentric John Randolph of Virginia, gave Henry Clay and the administration enough support in the House of Representatives to pass the compromise bill. Randolph mocked these northern men with southern principles, saying that he knew that these men who “*were scared at their own dough faces*” would cave in to southern demands.¹²² “The seventeen or eighteen doughfaces whom Randolph belittled made sectional peace possible in 1820.”¹²³

Those doughfaces would have to explain their actions to their constituents after the close of the congressional session. Admitting Missouri assuaged the South, explained a congressman from the District of Maine, while the Thomas proviso inhibited “slavery from a territory larger than all of the original thirteen United States, in exact conformity to the ordinance of 1787.”¹²⁴ A second representative from Maine, John Holmes, added that the Constitution represented a “compromise of conflicting rights and interests” that necessitated accommodation of diverse opinions.¹²⁵ Of course, the linking of Maine’s admission as a state with that of Missouri might

¹²¹ See Forbes, *The Missouri Compromise and Its Aftermath*, 89-95 and *passim*; Hammond, *Slavery, Freedom, and the American West*, 161-168.

¹²² Quoted in Richards, *The Slave Power*, 84. See pp. 84-86 for an explanation of “Randolph’s pejorative.” See also Moore, *The Missouri Controversy*, 103-104. The epithet may be misspelled; Randolph may well have referred to “doe faces,” suggesting the men had the nature of a timid female deer.

¹²³ See Richards, *The Slave Power*, 86. See pp. 83-87 for details on the northerners who voted for the compromise bill.

¹²⁴ From Mark Langdon Hill, Massachusetts-District of Maine, March 31, 1820, in Noble E. Cunningham, Jr., ed., *Circular Letters of Congressmen to Their Constituents, 1789-1829*, 3 vols. (Chapel Hill: University of North Carolina Press, 1978), III, 1103.

¹²⁵ From John Holmes, Massachusetts-District of Maine, in *ibid.*, III, 1111.

have motivated both of these congressmen as well. Holmes played an instrumental role in gaining statehood for Maine by working on the Arkansas and Missouri bills. While his constituents gratefully acknowledged his efforts, Holmes never escaped the brand of being a doughface.¹²⁶ He resigned after the end of the session and never returned to Congress.

Southerners compromised on the issue of congressional nonintervention; endorsing the Thomas amendment conceded that Congress could determine the status of slavery in the territories, at least north of 36° 30'. Strict constructionists from the South abhorred the compromise and predicted that it would injure their section in the future. Moderate southerners saw a good deal and accepted the terms. They believed that the compromise conceded far less than it seemed. Some southerners “doubted that Congress would actually impose the restriction when the region was organized into territories.”¹²⁷ In Illinois and Indiana, for example, Congress had largely ignored the efforts of slaveholders to bypass the Northwest Ordinance, leaving the battle over slavery to local citizens. Furthermore, they interpreted the clause that “forever prohibited” slavery in the territory north of the compromise line as applying only to the territorial phase. Once a territory in the region gained statehood, it could amend its constitution to permit slavery if it wished. Regardless of what applied during the territorial phase, no law of Congress could overrule the sovereign right of a state to create and alter its own organic law.

Finally, the legislation left a considerable portion of territory south of the compromise line open to slavery if settlers in those areas desired to permit the institution. Congress had established the principle of self-government in Arkansas Territory during the last session of Congress and the Territory of Florida seemed beyond the reach of northern restrictionists. Southerners could feel secure in their rights to hold slaves and to hold a commensurate power in

¹²⁶ Richards, *The Slave Power*, 87-88.

¹²⁷ Hammond, *Slavery, Freedom, and the American West*, 167.

the halls of government given the political calculus that emerged from the Missouri debates. The arrangement provided for a balance between free and slave states that would keep southern interests safe. Speaker Clay, who played an instrumental role in shepherding the bill through a hostile House of Representatives, expressed his relief at the denouement of the crisis. “I gave my consent to and employed my best exertions to produce this settlement of the question,” he wrote to a political friend, “and I shall be rejoiced if the community will sanction it.”¹²⁸

The concept of self-government on the issue of slavery in the territories emerged from the Missouri debates in much the same condition as it had entered—unsettled. For a time, it seemed that southerners would insist on congressional sanction of the right of settlers in the territories to determine the legality of slavery. Many southerners, especially the Virginians, essentially demanded that Congress recognize this as a right. Northerners strongly objected to the doctrine over the course of the Missouri controversy; they equated self-government in Missouri and the western territories as *de facto* establishment of slavery in the region. The cases of Illinois and Indiana ten years earlier seemed to bolster their claims. In both territories, even the Northwest Ordinance’s provision against slavery did not settle the issue. A long battle over slavery ensued in both territories, indeed in Illinois it had not yet ended.¹²⁹ Northern restrictionists could not allow the territories to decide the issue, for if the federal government affirmed self-government “alone to decide the institution’s fate, human nature and the demands of western settlement dictated that western territories would choose slavery over freedom.”¹³⁰ Under the terms of the compromise, northerners would have to concede the admission of Missouri as a slave state, but

¹²⁸ Henry Clay to Adam Beatty, March 4, 1820, in *Papers of Henry Clay*, II, 788.

¹²⁹ For details on the effort to revive slavery in Illinois, see Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana: University of Illinois Press, 1967), 12-17.

¹³⁰ Hammond, *Slavery, Freedom, and the American West*, 157.

they could prevent its spread into the portion of the Louisiana Purchase north of the compromise line.

Southerners responded to the passage of the compromise with mixed reviews. Some castigated those who voted for the bill and lamented that their fellow southerners had compromised on self-government in the territories. “A constitution warped from its legitimate bearings, and an immense region of territory closed for ever against the Southern and Western people—such is the ‘sorry sight’ which rises to *our* view,” Thomas Ritchie wrote.¹³¹

Alternatively, a Georgia correspondent reflected the attitudes of the moderate camp by encouraging a novel application of popular sovereignty. “Now, I think if we go to the people we shall find a decided majority in favor of the proposed restriction, at least such appears to be the fact from the votes of their more immediate organ, the House of Representatives.”¹³² His readers could debate the existence of a “decided” majority—southerners in the House had voted 39-37 in favor of the Thomas proviso.¹³³ In Washington, John C. Calhoun confided to Andrew Jackson that the Missouri controversy may have “contributed to weaken in some degree the attachment of our Southern and Western people to the Union; but the agitators of that question have, in my opinion, not only completely failed; but have destroyed to a great extent their future capacity for future mischief.”¹³⁴ Regardless of the vote tally or the objections of strict constructionists, the larger point remained intact: many southerners saw the compromise bill as acceptable.

Southern press coverage made another point clear in the days after President Monroe signed the Missouri Compromise: many southerners still believed that Congress did not possess the power to interdict slavery in the territories. A Missouri editor maintained, “We still believe

¹³¹ *Richmond Enquirer*, March 7, 1820.

¹³² *Milledgeville Southern Recorder*, March 7, 1820.

¹³³ See Moore, *The Missouri Controversy*, 108-111 for roll call analyses of the compromise votes.

¹³⁴ John C. Calhoun to A[ndrew] Jackson, June 1, 1820, in Clyde N. Wilson, et.al., eds., *The Papers of John C. Calhoun*, 28 vols. (Columbia: University of South Carolina Press, 1959-2003), V, 164.

that under the constitution Congress has no such power over the territories.”¹³⁵ Now Missouri had a solemn duty to conduct. “Never has a Territory so young been called upon to act so great a part; for now is thrown into its hands the decision of a question upon which depends not only the liberties of the Missouri people and of their unborn posterity, but also the safety of the Republic and the preservation of the Union.”¹³⁶ The Missourians now had to frame a constitution and defend its rights and those of the South.

When the Missourians did submit their constitution to the second session of the Sixteenth Congress, it provoked another firestorm that threatened the initial compromise and promised to renew the rancorous debate. The draft constitution forbade passage of any law that emancipated slaves without the consent of their owners and directed the legislature to pass legislation that would prohibit free blacks and mulattoes from living in the state. In their efforts to strike back at Congress for attempting to legislate their affairs, many legislators believed that the Missouri Constitution’s framers had overstepped their bounds and violated the United States Constitution. Baltimore editor Hezekiah Niles argued, “It can hardly be believed that congress will sanction either of these provisions: the first, in the present state of the public feeling, is inexpedient. . . and the second is unconstitutional.”¹³⁷ The first provision did not violate the constitution, but it offended many northerners who already viewed the compromise with contempt. The second clause clearly violated Article Four, Section Two of the Constitution, which states, “The Citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several States.” Because free blacks and mulattoes held citizenship in some northern states, Missouri could not constitutionally enforce the offending clause.

¹³⁵ *Richmond Enquirer*, quoted in *St. Louis Enquirer*, March 25, 1820.

¹³⁶ *St. Louis Enquirer*, March 25, 1820.

¹³⁷ *Niles’ Weekly Register*, October 21, 1820.

The restrictionists fully intended to do battle again with the proslavery forces in Congress. But because they chose the issue of banning free blacks from Missouri as their entering wedge, the second Missouri debate had little impact on the issue of territorial self-government. Many southerners realized that the clause violated the U.S. Constitution. It would take all the skill of Henry Clay to broker another compromise that would appease the restrictionists while keeping intact the original compromise. Clay and a joint congressional committee drafted a resolution that gave tacit approval to the Missouri Constitution, but declared that the free blacks clause “shall never be construed to authorize the passage of any law” that would exclude any American citizen “from the enjoyment of any of the privileges and immunities” of the United States Constitution.¹³⁸ Clay averted another crisis that could have threatened the stability of the Union. With the terms of the first Missouri Compromise secure, the nation hoped to put the divisive issue of slavery in the territories to a rest, but because the compromise itself had not settled the issue of whether a territory had the right to decide the slavery issue for itself, considerable room for dispute remained.

¹³⁸ AC, House, 16th Cong., 2nd Sess., 1228.

CHAPTER 3

SLAVERY IN THE TERRITORIES AFTER THE MISSOURI COMPROMISE

Following passage of the Missouri Compromise, many Americans breathed a collective sigh of relief. Congress had averted crisis and had crafted a compromise that many believed would provide a lasting arrangement between the North and South. Questions regarding the expansion of slavery might reappear, but the Missouri Compromise formula would provide a means of settlement even in the future. “In the acquisition of *new* territories (say of Florida, the only new territory that we ever wish to see added, taking the line as fixed by the late treaty with Spain for our boundary west,) the question may be partially revived,” noted the editor of *Niles’ Weekly Register*, “but sufficient for the day is the evil thereof.”¹

Not all Americans expressed such a sanguine attitude toward the compromise that their leaders in Washington had brokered. A considerable number of southerners viewed the accord with skepticism, particularly because they believed that their representatives had conceded a legal point crucial to the defense of the South and her institutions: Congress had no right to interfere with slavery in the territories. While supporters of the compromise on both sides of the Mason-Dixon Line evaluated the legislation’s merits based on its short-term effects, opponents argued that the compromise made intolerable concessions that would have injurious long-term consequences. Northern opponents maintained that the new arrangement conceded too much to the South; the North had compromised on the immorality of slavery to quiet the immediate discord. Southerners predicted that the compromise would not satisfy the “insatiable appetite” of the restrictionists for the eventual extinction of slavery.² Congress had prohibited the institution in a vast portion of the Louisiana Purchase, leaving a single territory—Arkansas—open to

¹ *Niles’ Weekly Register*, March 11, 1820.

² *Richmond Enquirer*, March 17, 1820.

southern slaveholders. Southerners feared, however, that the opponents of slavery would not rest with the generous terms handed to them. They would push for more concessions from the South in the future.

The terms of the Missouri Compromise applied to a circumscribed portion of the national domain in 1821. In negotiations with the Spanish empire two years earlier, Secretary of State John Quincy Adams had determined the location of America's western boundary. The Adams-Onís Treaty settled a lingering dispute over the American-Spanish border, much to the dissatisfaction of many Americans who desired more favorable terms that would have given part of Texas to the United States.³ Regardless of any disappointment with Adams's work, the treaty established a permanent western boundary for the United States and gave the nation title to the territories of Florida. Americans assessing the impact of the Missouri Compromise in 1821 viewed their nation in the boundaries created by the Adams-Onís Treaty, not by the rhetoric of continental expansion expressed twenty-five years later and more exhaustively chronicled by historians. From the vantage point of 1821, few Americans could have imagined the future territorial acquisitions that their nation would accomplish. Viewed in these terms, many southerners believed that the Missouri Compromise unequally divided the national domain in favor of antislavery interests.

From a legal standpoint, the Missouri Compromise had significant implications for territorial self-government. The act established the principle of congressional nonintervention in the territories of Arkansas and Missouri. In other words, Congress would not make a positive declaration on the issue of slavery in those territories. Of course, Missouri became a state on

³ For a brief summary of the treaty and its stipulations, see Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (New York: Oxford University Press, 2007), 108-111. See also Samuel Flagg Bemis, *John Quincy Adams and the Foundations of American Foreign Policy* (New York: Alfred A. Knopf, 1949), 317-340.

August 10, 1821, but Arkansas would remain a territory for fifteen more years. By declining to intervene in the matter of slavery south of the Missouri Compromise line, Congress, by implication, sanctioned the principle of territorial self-government.⁴ Settlers in those territories could determine the status of slavery for themselves. Just as congressional nonintervention suggested the practice of territorial self-government, so too did it suggest that those settlers would permit slavery. The legislators who crafted the compromise assumed that the people of Missouri and Arkansas wanted slavery within their borders.

Congress left alone the issue of slavery in the territory south of the Missouri Compromise line, but the Thomas amendment expressly and “forever” prohibited slavery in the northern portion of the Louisiana Purchase.⁵ Southerners who even cursorily glanced at any map of the nation immediately realized that Congress had declared the preponderance of the national domain free territory, a fact that seemed patently unfair to slaveholders. Another fact provoked even greater concern: the South had conceded the cornerstone of their argument in the Missouri debates. “Thoughtful southern leaders recognized that they had suffered at least a partial defeat in the Missouri controversy” by acquiescing in congressional power to legislate on the issue of slavery in the territories.⁶ Southerners would come to resent exclusion from such a vast expanse of territory, but persisted in denying the right of Congress to interfere with slavery in any territory. Proslavery opponents sensed the inconsistency in such logic, realizing that the Missouri Compromise injured their argument for absolute congressional nonintervention on the subject of slavery.

⁴ See Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 87, 137, 142.

⁵ See *ibid.*, 110.

⁶ William M. Wiecek, *The Sources of Antislavery Constitutionalism, 1760-1848* (Ithaca: Cornell University Press, 1977), 126.

The *Richmond Enquirer's* Thomas Ritchie pounced on the twin concessions of the Missouri Compromise. He criticized the compromisers who ceded so much territory to the antislavery interests and at the same time conceded the right of Congress to legislate for the territories on the slavery issue. The compromise had blocked the northward migration of slaveholders based on an artificial and arbitrary line. "If we are cooped up on the north, we must have elbow room to the west," Ritchie noted.⁷ The Adams-Onís Treaty, however, had blocked westward migration as well by setting the southwestern boundary of the nation at the Sabine River. Southern expansionists had alleged that the Louisiana Purchase included much of eastern Texas, a claim the Spanish dismissed as absurd.⁸ The South did gain the Territory of Florida, but westward expansion after 1821 seemed unlikely given the realities of the Missouri Compromise and the treaty with Spain. Circumstances had effectively hemmed in the South, leaving no room for westward expansion. No slaveholder would move into a territory where his slaves could not follow. Southerners believed that they possessed the constitutional right to emigrate wherever they wished with their property—slaves included. More pragmatically, the older portions of the South relied on westward migration to provide a market for surplus slaves in states like Virginia.⁹ These conditions combined to frustrate many southerners who believed that the North had mounted an attack on their peculiar institution.

The dispute over congressional power over the territories angered southerners who believed in the concept of self-government on the slavery issue. They believed that northern congressmen sought to assume power not provided them by the constitution. In the same issue of the *Enquirer* in which he expressed the need for southerners to look westward toward

⁷ *Richmond Enquirer*, March 7, 1820.

⁸ Bemis, *John Quincy Adams and the Foundations of American Foreign Policy*, 309-310; 321-322.

⁹ See Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (New York: Oxford University Press, 2005), 42-46 and *passim*.

expansion, Ritchie excoriated northerners for assaulting the right of territorial self-government north of the Missouri Compromise line. That “Congress should forever take from [the settlers of the territories] the privilege of self-government, under the pretence that it is a ‘needful regulation’” smacked of arbitrary government.¹⁰ Southerners could not afford to permit what he perceived as an unconstitutional assumption of power. In his remonstrances against congressional intervention with regard to slavery in the territories, Ritchie represented a set of principles commonly identified with southern conservatives. The Missouri controversy revitalized the notion of states’ rights and strict construction embodied in the Virginia and Kentucky Resolutions of 1798, the twin documents that the “Old Republicans,” or southern conservatives, saw as bulwarks of self-government and states’ rights, as well as a defense against centralized power.¹¹ Ritchie and other southern conservatives assumed the mantle of strict construction to decry the expansion of federal authority over domestic institutions in the territories. Nathaniel Beverley Tucker, who during the Missouri controversy had defended the principle of self-government in his Hampden letters, believed that southerners had to “stand in the breach between our native states and their assailants—and to call back our countrymen to the forgotten principles of their forefathers.”¹²

Perhaps the greatest criticism of the Missouri Compromise from a southern conservative came from the pen of John Taylor of Caroline. A brilliant political theorist from Caroline County, Virginia, Taylor had long supported libertarian views and a states’ rights interpretation of the constitution.¹³ In his book *Construction Construed, and Constitutions Vindicated*, the

¹⁰ *Richmond Enquirer*, March 7, 1820.

¹¹ See Norman K. Risjord, *The Old Republicans: Southern Conservatism in the Age of Jefferson* (New York: Columbia University Press, 1965), 222-223.

¹² Nathaniel Beverley Tucker to James Monroe, August 4, 1819, quoted in Robert J. Brugger, *Beverley Tucker: Heart over Head in the Old South* (Baltimore: Johns Hopkins University Press, 1978), 57.

¹³ The standard biography of Taylor is Robert E. Shalhope, *John Taylor of Caroline, Pastoral Republican* (Columbia: University of South Carolina Press, 1980). For a superb sketch of Taylor’s intellectual heritage, see

Virginian deprecated the Missouri crisis as an “absurd controversy,” yet he took great pains to evaluate the implications of the compromise on southern people and institutions.¹⁴ He chastised those who thought that a dividing line could settle the slavery issue once and for all. Indeed, Taylor argued in his characteristically prolix language that the Missouri Compromise’s “balance of power contemplates two spacious territories, with the population of each separately integral, as conglomerated by an adverse interest, and though substantially federal in themselves, substantially anti-federal with respect to each other.”¹⁵ In other words, Congress had divided the national domain into two antagonistic sections over the issue of slavery’s expansion.

In restricting slavery north of 36° 30’, Taylor argued, Congress had exceeded its constitutional authority. Repeating the argument expressed by many southerners during the Missouri debates, Taylor asserted that Congress had no right to *make* a state, but only to *admit* it once the people of a territory had written a constitution and asked for admission to the Union. “Do congress participate of this sovereignty with the people of Missouri,” Taylor asked, or is the sovereignty of the people subservient to that of the federal government?¹⁶ The antirestrictionists had maintained that only the people of the territory themselves could draft a constitution, and Taylor concurred. “It must be the work of the sovereignty of the people, associating by their title to self-government,” he concluded.¹⁷

Although self-government had prevailed in Missouri and Arkansas, Congress had established a different set of rules for the remainder of the Louisiana Purchase, a point that Taylor and his fellow southern conservatives considered unconscionable. In attempting to force

Michael O’Brien, *Conjectures of Order: Intellectual Life and the American South, 1810-1860* (Chapel Hill: University of North Carolina Press, 2004), 785-799.

¹⁴ John Taylor, *Construction Construed, and Constitutions Vindicated* (Richmond: Shepherd & Pollard, 1820), 229.

¹⁵ *Ibid.*, 292-293.

¹⁶ *Ibid.*, 304.

¹⁷ *Ibid.*

conditions upon Missouri in order to gain admission to the Union, Congress assumed power over local legislation, a move that Taylor considered “evidently inconsistent with reason, with the essential character of representation.”¹⁸ Southerners had resisted their efforts, only to see the Missouri Compromise give legal sanction to the practice north of an arbitrary line. In ratifying the Constitution, according to Taylor, no state had conceived of conveying the power to Congress—or to a majority of states—the right to enact local legislation for another state. Yet northerners had precisely this aim; they sought to exercise “feudal power” over the territories in order to check the expansion of slavery.¹⁹ Southerners would rue the passage of such an odious measure, Taylor insisted, for it allowed antislavery leaders a way to attack the institution of slavery and the equal rights of the South.

Southerners hearkened back to the principles of 1798—as embodied in the writings of Thomas Jefferson and James Madison—by insisting on states’ rights and strict construction, but they also advanced the doctrine of territorial self-government. From the carefully drawn arguments found in the writings of John Taylor to the essays found in daily newspapers such as Ritchie’s *Enquirer*, southerners reasserted the primacy of territorial self-government, a principle that became “the keystone of the South’s entire constitutional defense system in 1819-1821.”²⁰ Yet in the compromise legislation, they had scored only a partial victory. Asserting the right of territorial self-government in Missouri and Arkansas seemed to vindicate southerners’ claims, but they again insisted that the positive exclusion of slavery north of the compromise line suggested otherwise. Why did Congress deem it safe to only allow self-government south of thirty-six degrees, thirty minutes latitude? Few Americans lived in the northern portion of the

¹⁸ *Ibid.*, 303.

¹⁹ *Ibid.*, 306. John C. Calhoun would draw on Taylor’s logic in later years to craft his doctrine of the concurrent majority.

²⁰ Glover Moore, *The Missouri Controversy, 1819-1821* (Lexington: University of Kentucky Press, 1953), 123.

Louisiana Purchase in 1821, the area Zebulon Pike had described as uninhabitable and that two years later, in 1823, Stephen Long would label the “Great American Desert.” Certainly some southerners, too, considered the land uninhabitable. Conversely, slaveholders could inhabit Arkansas and Missouri, a territory deemed suitable by surveyors for slave-based agriculture.²¹ For these reasons, southern moderates likely saw benefit in accepting the Missouri Compromise and partially conceding the point of territorial self-government. Conservatives, however, chafed at any retreat on the principle of the matter.

Though not all Americans expressed pleasure with the Missouri Compromise, the arrangement did quiet sectional tension for much of the 1820s and 1830s. The nation possessed little additional territory that demanded settlement, so the issue of slavery in the territories seemed settled for the present—or at least held in abeyance. The absence of additional territory, however, did not mean that Congress had no territorial business to transact. On the contrary, the federal government continued its active management of the territories and, in fact, expressed an “ever increasing inclination” to exercise greater control over the existing territorial domain.²² Certain leaders in Congress believed that developing a systematized approach to territorial affairs would greatly benefit the nation as a whole. A uniform approach to territorial establishment and governance, however, connoted centralized control over territorial affairs. Would the revised policy threaten self-government on the frontier? As seen in the debates of the first two decades of the nineteenth century, many Americans objected to the lack of democracy in the territories. In almost every congressional debate over the organization of a particular territory, some congressman spoke in criticism of the way in which the federal government held its territories in

²¹ See William Rector to Josiah Meigs, April 14, 1819, in Carter, ed., *The Territorial Papers of the United States*, The Territory of Arkansas, 1798-1817, XIX, 67.

²² Max Farrand, *The Legislation of Congress for the Government of the Organized Territories of the United States, 1789-1895* (Newark, NJ: Wm. A. Baker, Printer, 1896), 35.

a quasi-colonial status. Settlers in the territories joined these sympathetic congressmen in demanding changes to the territorial system that would reflect the growing democratization of the nation.

During the 1820s and 1830s, only three territories existed in the United States—Michigan, Arkansas, and Florida. Congress had supplied each territory with a system of government that restricted local control over their government and the people's right to suffrage.²³ Congress would grant these three territories enhanced autonomy over time, such as the right to elect their own territorial legislatures and officials as well as a judiciary selected by the respective territorial governments. At the same time, Congress also attempted to rein in territorial legislatures by interfering in their affairs. With the organization of the Territory of Florida in 1822, Congress set the terms of compensation for territorial legislators, a practice that would lead to additional controls on legislatures in the territories.²⁴ The federal government had always enacted legislation that guided the development of territorial governments, but Congress passed laws during the 1820s that restricted legislative sessions in the territories and circumscribed the power of territorial governments on matters previously within the jurisdiction of local governments, particularly with respect to how the territorial judiciary operated.²⁵ In sum, the federal government had yet to establish precisely the relationship between itself and the territories. Congress had expanded its power over territorial affairs in the aftermath of the Missouri crisis, however, even as it sought to expand democratic institutions in the territories. These seemingly contradictory aims defied reconciliation in the minds of the nation's leaders.

Slavery presented the greatest anomaly within the territorial system, as the Missouri Compromise had perpetuated the dividing line between free and slave territory that southern

²³ See *ibid.*, 30-37.

²⁴ Act of March 30, 1822, ch. XIII, 3 *U.S. Statutes at Large*, 654-659.

²⁵ Farrand, *Legislation of Congress for the Government of the Organized Territories*, 34-35.

conservatives disdained. Might the assumption of greater power over the nation's territories by Congress have further alarmed southerners already wary of the security of slavery after the Missouri crisis? A definitive answer to this specific question is elusive, but given the southern response to congressional intervention with slavery in the territories as an unconstitutional power grab, they may well have feared intervention in other territorial affairs. Conversely, and perhaps more dangerously, if Congress could dictate when and how a territorial legislature could operate, the antislavery cadre within Congress might try to assume enhanced power over slavery in the future.²⁶

Southerners evaluated their stance on slavery and the territories both during and after the Missouri crisis, arriving at different conclusions. The South did not present a united front on slavery and territorial self-government. Most southerners agreed that the settlers within the territories could best determine the status of their own local institutions when drafting a constitution, but southern leaders divided on the appropriate course of action with regard to Missouri and the remainder of the Louisiana Purchase. On the question of the Thomas proviso, which established the 36° 30' line, the southern delegation in the House of Representatives had almost evenly divided.²⁷ Clearly, many southerners in Congress believed that a successful compromise to save the Union and secure slavery in Missouri and Arkansas trumped the unequivocal application of territorial self-government in the Louisiana Purchase.

When southern moderates and conservatives battled over the merits of compromise in the early 1820s, the conservatives won. The Thomas proviso had divided the South “between those

²⁶ See Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 265-266.

²⁷ Moore, *The Missouri Controversy*, 111.

who were more sensitive to the relationship of slavery to politics and those who were less so.”²⁸

In 1822, however, the southern electorate sided with the conservatives by reelecting seventy percent of the congressman who had voted against compromise. Conversely, only thirty-nine percent of the congressmen who supported the proviso gained reelection, a clear “measure of the resurgence of Old Republicanism.”²⁹ Many southerners believed that their section would have to guard assiduously its rights in the future, lest northerners try to make further inroads against slavery in the territories.

For southerners, the fear of northern encroachment on slavery and its expansion became a reality as antislavery individuals in the northern states began to advocate the abolition of the South’s peculiar institution. The argument over slavery in the territories quieted after 1821 because the Union had organized the preponderance of the national domain.³⁰ This did not mean, however, that Americans had forgotten the issues concerning the expansion of slavery. Just as southerners had voiced warnings that their section must remain vigilant against interference with slavery in the territories, northerners, too, expressed their own concerns. By 1830, abolitionists had begun to form a movement in the North to advocate the end of slavery.³¹ While slavery in the existing states may have seemed secure to all but the most fearful southerners, the abolition movement represented a direct and immediate threat to slavery in the territories. The abolitionists conceived the end of slavery in the territories as an initial step in eradicating the institution altogether.

²⁸ Richard H. Brown, “The Missouri Crisis, Slavery, and the Politics of Jacksonianism,” *South Atlantic Quarterly* 65 (Winter 1966): 60.

²⁹ *Ibid.*, 61.

³⁰ Fehrenbacher, *The Dred Scott Case*, 116.

³¹ See Louis Filler, *The Crusade Against Slavery, 1830-1860* (New York: Harper & Row, 1960), esp. 10-27, 82-90 for a sketch of the origins of abolitionism.

Abolitionism and abolitionist rhetoric infuriated southerners who continued to insist that decisions on the slavery issue were reserved to the states, or to the people, as the tenth amendment to the Constitution provided. The abolitionists, southerners argued, used incendiary techniques that had the potential to stoke resistance among slaves and provoke fear among slaveholders in order to advance their agenda of ending slavery. Perhaps no event so vividly illustrates the motives of abolitionists as their efforts to flood Congress with antislavery petitions.³² Likewise, few other episodes in antebellum history reveal southerners' resistance to abolitionism as the effort to impose a "gag rule" on Congress by refusing to receive the antislavery petitions. The gag rule controversy heightened tensions in Congress over the slavery issue, further hardening the lines between North and South.³³ The debate over antislavery petitions emerged in full force during the Twenty-Fourth Congress, with the infamous gag rule devised during the first three months of 1836.³⁴

The debate over admitting Arkansas to the Union—the first territory desiring statehood since the Missouri crisis—commenced in this rancorous atmosphere. The citizens of Arkansas who desired statehood, however, had carefully watched developments in Washington for much of the year 1835.³⁵ Sensing a change in mood—and tactic—among northern opponents of slavery, the Jacksonian pro-statehood element in Arkansas Territory advocated the immediate drafting of a constitution and petitioning Congress for statehood in the first session of the

³² See Richard H. Sewell, *Ballots for Freedom: Antislavery Politics in the United States, 1837-1860* (New York: Oxford University Press, 1976), 6-20, for the origins of the petition movement.

³³ For the standard (if somewhat idiosyncratic) history of the petition controversy, see William Lee Miller, *Arguing About Slavery: The Great Battle in the United States Congress* (New York: Alfred A. Knopf, 1996).

³⁴ *Ibid.*, 115-119. For the gag rule in the Senate, see George Rable, "Slavery, Politics, and the South: The Gag Rule as a Case Study," *Capitol Studies* 3 (Fall 1975): 69-85; Daniel Wirls, "'The Only Mode for Avoiding Everlasting Defeat': The Overlooked Senate Gag Rule for Antislavery Petitions," *Journal of the Early Republic* 27 (Spring 2007): 115-138.

³⁵ For the history of Arkansas Territory and the statehood movement, see Lonnie J. White, *Politics on the Southwestern Frontier: Arkansas Territory, 1819-1836* (Memphis: Memphis State University Press, 1964); Jack B. Scroggs, "Arkansas Statehood: A Study in State and National Political Schism," *Arkansas Historical Quarterly* 20 (Autumn 1961): 227-244.

Twenty-Fourth Congress. They had several reasons for settling on this course of action.

Michigan Territory seemed poised to become a state at the same time, and it would enter the Union as a free state. To keep the sectional balance of power in the Senate equal, statehood for Arkansas, which would certainly permit slavery within its bounds, would most likely gain broad support in Congress.

Arkansans also recognized that if they sought statehood at some later time, without a free state complement to preserve the balance of power, northerners would almost certainly object to their entry. One correspondent from the territorial capital of Little Rock summed up the dilemma that the territory faced if it delayed the push for statehood to a later date: “We apprehend that strong opposition will be made to our admission, unless trammelled with restrictions which the people of Arkansas will never submit to.”³⁶ In other words, Arkansas would provoke a dispute similar to the Missouri statehood debate fifteen years earlier. Proponents of statehood for Arkansas feared just such a development, citing the recent flurry of petitions entering Congress praying for interdiction of slavery in the District of Columbia and the territories. A Pennsylvania congressman had recently introduced a petition asking for legislation on this very topic. Pro-statehood citizens within the territory contended that northerners almost certainly would try to block Arkansas’s entry as a slave state. “That an attempt of the kind will be made, whenever we do apply,” one resident wrote, “by some of the miserable fanatics of the northern and middle States, we have pretty good reason to believe.”³⁷ If Michigan entered the Union alone, without a slave state counterpart, northern legislators would have added leverage to impose conditions on the admission of Arkansas to the Union. Many citizens of Arkansas Territory predicted another move against self-government in the territories.

³⁶ *Little Rock Arkansas Gazette*, March 31, 1835.

³⁷ *Ibid.*

Given the logic of those who sensed danger in delaying their cause, the citizens of Arkansas would need to move forward rapidly with plans to draft a constitution and apply for statehood. Congress had already failed to pass an enabling act to permit the residents of Arkansas to form a constitutional convention.³⁸ Arkansas's territorial delegate to Congress, Ambrose H. Sevier, noted that Michigan had organized a constitutional convention without congressional sanction and declared that Arkansas should do the same.³⁹ Sevier emerged as a leader in the statehood movement, mobilizing political operatives in the territory to expedite the process of applying for statehood. In an appeal to the citizens of the territory written in March 1835, Sevier portrayed the statehood movement as a safeguard against northern encroachment on slavery. Appealing to the sanctity of property, Sevier wrote specifically to Arkansas's slaveholders. "It is wise in us, I think, to risque [*sic*] the imposition of additional burthens which an economical administration of our State Government may impose, rather than, by attempting to avoid it, for a few years of delay, to jeopardize the principal part of your estates, or find yourselves, by Congressional legislation, forced into exile in quest of new homes."⁴⁰ Sevier clearly implied that Arkansas would have to guard carefully its right to self-government, lest northern congressmen make a successful assault on the doctrine and threaten the sanctity of property in slaves.

Slavery had not exactly flourished in Arkansas during its fifteen years of territorial existence, but slaveholders remained determined to maintain their society free from congressional interference. In 1830, slaves composed only fifteen percent of the territory's population, a figure similar to that of Arkansas's northern neighbor Missouri. While certainly not on the scale of America's other southern territory, Florida, in which slaves counted as fifty-

³⁸ White, *Politics on the Southwestern Frontier*, 164-167.

³⁹ *Ibid.*, 172.

⁴⁰ *Little Rock Arkansas Gazette*, April 7, 1835.

four percent of the total population, slavery played an important role in the agricultural economy of the Arkansas Territory.⁴¹ And the Arkansans intended to protect their property from any abolitionist effort to end slavery in the territories.

The supporters of immediate statehood increased the intensity of their pleas to the people of Arkansas to support statehood and avoid the potential disaster of repeating the history of the Missouri crisis. Although not all citizens of the territory deemed the statehood movement wise policy, those who did ceaselessly cited the efforts of northerners to reignite the issue of slavery in the territories and end the policy of congressional nonintervention. The ardently prosouthern editor Duff Green wrote in his Washington, D.C., newspaper that the abolitionists intended to “direct their missiles against the institutions of the south” by moving against slavery in the nation’s capital and then in the territories.⁴² Green predicted that “Arkansas and Florida are next to be reformed” as the supporters of abolition sought with increasing vigor to make inroads against slavery.⁴³

Arkansas residents pounced on Green’s latter point by vigorously objecting to any interference with the territory’s sovereign right to draft its own constitution. “Florida and Arkansas are to be stopped at the door, and stripped of their property, before they are admitted into the Union,” cried one writer, a move that would “operate destructively upon our interests” as well as violate the rights of Arkansas’s citizens.⁴⁴ Although northerners made “a doleful howling about humanity” in their condemnation of slavery, they hypocritically sought to end the institution by abridging the rights of others. “When we ask for admission into the Union, we ask

⁴¹ All 1830 census figures from U.S. Secretary of State, *Abstract of the Returns of the Fifth Census, Showing the Number of Free People, the Number of Slaves, the Federal or Representative Number; and the Aggregate of Each County of Each State of the United States*, 22nd Cong, 1st Sess, House Document 263 (Washington, D.C. 1832), <http://www.census.gov/prod/www/abs/decennial/1830.htm> (accessed April 16, 2009).

⁴² *United States Telegraph*, February 18, 1835.

⁴³ *Ibid.*

⁴⁴ *Little Rock Arkansas Gazette*, May 12, 1835.

for a Constitutional right, but when Congress stops us at the door, until we consent to abandon our property, she acts the part of a tyrant.”⁴⁵ Northerners sought establishment of rights for slaves at the expense of freemen, an Arkansas writer observed, a proposition that Arkansans and southerners alike could not countenance in any way. The crisis assumed immediacy with Arkansas preparing for statehood. The territory could “prevent a renewal of the alarming difficulties of ‘The Missouri Question,’” a group of citizens in Jackson County resolved, only by seeking prompt admission concurrently with Michigan.⁴⁶

In the months immediately before Congress prepared to go into session, the territorial government of Arkansas officially endorsed immediate statehood. Echoing the sentiments of Sevier and others who expressed trepidation at delaying statehood, territorial governor William S. Fulton convened the Arkansas Legislature in October by warning the solons of the peril of delaying action on the statehood issue. Fulton expressed dismay at the efforts of the abolitionists, who sought to prohibit slavery in a territory surrounded by slaveholding states. He surmised that the “momentous question of the right of restriction, which once threatened the integrity of the Union, will again be agitated with reference to this Territory” and that “the rights of the citizens of the Union will again be disturbed by it.”⁴⁷ By recalling the memory of the Missouri controversy and predicting a similar calamity if northerners should have their way with the debate in Congress over statehood for Arkansas, the governor astutely appealed to southerners who began to believe that northerners could not even abide by a compromise that had given so much to their section at the expense of the South. This feeling would only grow stronger with time.

⁴⁵ *Ibid.*

⁴⁶ *Little Rock Arkansas Gazette*, May 26, 1835.

⁴⁷ *Washington Globe*, November 2, 1835.

Fulton's message resonated with Arkansans and southerners alike, but he badly miscalculated in making a statement about the power of Congress to review a territory's proposed constitution. The governor opined that Congress most likely did not possess the power to require submission of the constitution for approval.⁴⁸ Clearly this violated the federal Constitution's provision that Congress had the duty to ensure a republican form of government for territories seeking admission to the Union as states. Whether Fulton may simply have made a mistake in his message to the territorial legislature or may have intended something more of his remarks is impossible to know. The fact that he had taken precisely the opposite point of view on the subject just two months earlier makes the issue more vexing.⁴⁹ Northerners, however, pounced on the impolitic statement as evidence that southerners would use any means necessary to ensure the future of slavery in the territories, even flouting the authority of the constitution. Territorial Delegate Sevier worked assiduously in Washington to undo any harm caused by Fulton's message, assuring the president and members of Congress that the proponents of statehood had no intention of forming a state government and dissolving the territorial government "*without the approbation of Congress.*"⁵⁰ Sevier and his allies had good reason to assuage politicians in Washington, for Arkansas had elected delegates to a constitutional convention that would soon draft a charter for the territory. No one wanted to cloud the legitimacy of its work and risk delaying statehood.

Arkansas's constitutional convention met at Little Rock on January 4, 1836, and promptly began the process of writing the organic law for the prospective state, including the manner in which it would govern the institution of slavery. The framers of the Arkansas constitution included an express constitutional protection for slavery. The committee assigned to

⁴⁸ *Ibid.*

⁴⁹ White, *Politics on the Southwestern Frontier*, 175-177.

⁵⁰ *Little Rock Arkansas Gazette*, December 29, 1835.

address slavery recommended passage of a clause prohibiting the General Assembly from emancipating slaves without the owners' consent and without compensation. Furthermore, the constitution guaranteed the right of emigrants to bring their slaves into the state.⁵¹ The committee borrowed the substance of both provisions from the constitutions of Alabama, Mississippi, and Missouri, all three of which established explicit protections for slavery and slaveholders' rights to their property.⁵² The convention delegates approved the committee's draft of the slavery provisions without discussion. Within the month, the convention had completed and ratified a constitution and sent it to Congress for approval.

Congress received the Arkansas constitution on March 10, 1836, and prepared for debate on the document. Because similar provisions for slavery had garnered criticism in the past, southern congressmen expected that their northern counterparts would revisit the issue of slavery and constitutional law. The day after Congress received the constitution, Sevier wrote to his associate William E. Woodruff, the pro-statehood editor of the *Arkansas Gazette*, "Don't be astonished if we should have another *Missouri discussion upon the subject of slavery*."⁵³

Thomas Hart Benton, the Democratic senator from Missouri, too perceived the potential for a fight over the slavery provisions. When the Senate commenced debate on the document on April 4, 1836, he "alluded to the great agitation on the subject of slavery" and sought to calm the atmosphere by dismissing the significance of the issue.⁵⁴ The senator noted that the Arkansas application had been given to a senator from a free state, James Buchanan of Pennsylvania, while the Senate had placed Michigan's constitution in his hands—a senator from a slave state—illustrating the "total impotence of all attempts to agitate and ulcerate the public mind on the

⁵¹ *Journal of the Proceedings of the Convention Met to Form a Constitution and System of State Government for the People of Arkansas. . .*, (Little Rock: Albert Pike, 1836), 25.

⁵² White, *Politics on the Southwestern Frontier*, 192.

⁵³ *Little Rock Arkansas Gazette*, April 12, 1836.

⁵⁴ *Congressional Globe*, 24th Cong., 1st Sess., 315.

worn-out subject of slavery.”⁵⁵ Benton’s effort proved ineffective; a Vermont senator rose immediately to object to the slavery clause in the Arkansas constitution. The issue of slavery in the territories had clearly not died.

The Senate dispatched the Arkansas issue within a relatively short period of time, passing the statehood bill on April 6 by a vote of 31-6. In spite of objections from northern senators that the Arkansans had drafted their constitution without congressional sanction and that the slavery clause “made slavery perpetual,” few senators felt that they could in good conscience block admission.⁵⁶ Doing so would violate the principle of self-government. An Ohio senator asserted that Congress had no reason to believe that the proposed constitution expressed “the opinions and wishes” of the people of Arkansas.⁵⁷ Furthermore, congressional leaders had paired the admission of Michigan with Arkansas in order to allay fears that one section would gain power over the other. Citing the support of the president and several southern senators as critical to the swift passage of the bill with minimal debate on the slavery issue, Arkansans demanded immediate statehood.⁵⁸

The Arkansas debate resumed briefly a week later when Henry Clay introduced a set of petitions from antislavery citizens of Philadelphia opposing the territory’s constitution. Apparently Clay knew some of the petitioners as casual acquaintances, which most likely explains why he felt compelled to submit the documents to the Senate. The Great Compromiser, however, made clear that he did not support the petitioners’ aims since the Missouri Compromise had settled the issue. Clay argued that “all the States admitted into the Union were bound by the terms of the Missouri compromise; that all those north of the line described in the bill were

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, 316.

⁵⁸ *Little Rock Arkansas Gazette*, April 26, 1836.

prohibited from holding slaves, and that all those south of the line were permitted to hold them.”⁵⁹ In the Kentucky senator’s mind, the Compromise of 1820 offered a permanent and inviolate adjustment for the issue of slavery in the territories. No one could disturb the great settlement.

Clay’s remarks provoked a rejoinder from an Alabama senator who used the opportunity to express his dissatisfaction with the Missouri Compromise. William King bitterly resented the introduction of the antislavery petitions, especially when the Senate had already voted on the Arkansas bill—a point Clay himself had conceded. King expressed regret at his role in the passage of the Missouri Compromise, stating that “he had yielded too much in a spirit of conciliation and harmony; and that, under like circumstances, he never would consent to yield so much again.”⁶⁰ The Alabamian’s remarks implied that the South had conceded a great deal in the compromise negotiations only to find that northerners wished to renegotiate after the fact. Territories seeking admission to the Union should possess the freedom to “make what regulations they pleased on the subject of slavery, or any other subject relating to their internal concerns,” according to King.⁶¹ The abolitionist phalanx sought to abridge this right, which in the case of Arkansas directly violated the Missouri Compromise. What assurances, then, did Clay’s grand compromise offer to the South? None, according to King and other southerners who increasingly regretted their support of the Missouri Compromise.

The House of Representatives greeted the Arkansas bill with a flurry of petitions from northerners who opposed the slavery clauses in the proposed constitution. Southern members rallied to meet the challenge posed by their northern counterparts who, as one North Carolina representative argued, sought to advance the designs of “a miserable degraded faction” of

⁵⁹ *CG*, 24th Cong., 1st Sess., 346.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 346-347.

abolitionists.⁶² With passions running high in the lower chamber of Congress, the Arkansas statehood bill became entwined with the long-running debate over slavery petitions and the rising abolition movement. Because the House of Representatives had recently impaneled a special committee on the abolition of slavery, the Arkansas bill only fueled an already roaring fire over the future of slavery.

In the midst of the vitriolic debate, the indefatigable Ambrose Sevier maintained focus on his territory's application for statehood. Exasperated with the plodding pace of the House debate on the Arkansas bill, the delegate moved to end the waiting and secure passage of the statehood bills for Arkansas and Michigan.⁶³ On June 13, the House finally addressed the Arkansas bill, but not before the former president and current Massachusetts representative John Quincy Adams made one final attempt to block passage by introducing a resolution condemning the proposed state constitution for its stance on slavery.⁶⁴ His three-hour effort to introduce the amendment went for naught, as the House moved to pass the bill and admit Arkansas to the Union by a vote of 143-50.⁶⁵ Those who voted against the admission of Arkansas overwhelmingly came from the New England and mid-Atlantic states and belonged to the nascent Whig Party.⁶⁶ Arkansas and Michigan would enter the Union simultaneously so as not to disturb the sectional balance of power in the Senate.

Although the Senate had dispatched with the Arkansas bill relatively quickly, the House debated the measure for several months, concluding with an "arduous session of twenty-five

⁶² *Ibid.*, 374.

⁶³ *Ibid.*, 533.

⁶⁴ *Ibid.*, 550-551.

⁶⁵ For Adams's account of the debate, see John Quincy Adams diary, June 13, 1836, *The Diaries of John Quincy Adams: A Digital Collection* (Boston: Massachusetts Historical Society, 2004), 603. For the roll call vote, see *CG*, 24th Cong., 1st Sess., 551.

⁶⁶ For a detailed roll-call analysis of the Arkansas vote in the House, see Thomas B. Alexander, *Sectional Stress and Party Strength: A Study of Roll-Call Patterns in the United States House of Representatives, 1836-1860* (Nashville: Vanderbilt University Press, 1967), 11-13, 130.

hours.”⁶⁷ Thomas Hart Benton noted that the main obstacle to passage concerned bringing the bill to a vote; once the parliamentary maneuvering had ceased, the House passed it by a comfortable majority. The Missouri senator argued that party politics had delayed passage of both the Michigan and Arkansas bills because the Democrats believed that both states would vote for Martin Van Buren in the upcoming presidential canvass.⁶⁸ Arkansas did become a strongly pro-Democratic state, as the faction within Arkansas that supported statehood became the Arkansas Democratic Party.⁶⁹ Whigs based their opposition on the potential effect that the two states could have on their candidates, William Henry Harrison and Hugh Lawson White. Benton’s assessment correctly explained the relation of partisan politics to passage of the Arkansas bill, but he failed to mention that the entire southern congressional contingent—save two Whigs—voted for statehood. Northern Whig congressmen attempted to use the Arkansas issue not only in an attempt to better the chances of their presidential candidates, but more significantly for advantage in the continuing struggle over slavery in the territories and the rise of the abolitionist movement in the North.

The partisan debate in Congress over statehood for the territory revealed some of the changes that would come from the birth of a two-party political system in the United States. Jacksonian Democrats and the anti-Jackson opposition—soon referred to as Whigs—took different sides on the Arkansas issue, at least in the North. Nearly all southerners in Congress, whether Whig or Democrat, united on statehood for Arkansas. Within Arkansas, however, Democrats and anti-Jackson leaders fought over immediate statehood, presaging the two-party

⁶⁷ Thomas Hart Benton, *Thirty Years’ View; or A History of the Working of the American Government for Thirty Years, from 1820 to 1850*, 2 vols. (New York: D. Appleton and Company, 1854-1856), I, 637.

⁶⁸ *Ibid.*, 637-638.

⁶⁹ See Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), 50, and White, *Politics on the Southwestern Frontier*, 164-205, for details on Arkansas’s Democratic leanings.

political system that would mature in the coming years. Indeed, the debate over statehood gave birth to the second party system in Arkansas.⁷⁰

Party politics did successfully contain the slavery issue for some time, as politicians raised and debated other salient issues that the nation faced. The slavery issue, however, always tended to transcend party lines and take on distinct sectional overtones. Especially in the South, the slavery issue never strayed far from the political scene. First and foremost, southerners demanded protection for their peculiar institution from outside encroachment. Partisan leaders from both the Whig and Democratic parties knew this and sought to portray their respective parties as the more trustworthy protectors of slavery and southern rights.⁷¹ Though southern Democrats could usually count on substantive support from the northern wing of their party, the Whigs remained hopelessly divided on the slavery issue throughout their history. Consequently, and as seen in the Arkansas debate, the Whig Party divided on statehood while Democrats North and South tended to support the bill for admission.

The rise of abolitionism in the North and the efforts of some northern politicians to block the expansion of slavery threatened southerners, who looked to their representatives for answers on how to check the advance of antislavery sentiment and abolitionist agitation. In the minds of many southerners, northern antislavery partisans not only sought to promote the abolitionist agenda at the expense of the South, but they did so by reneging on the Missouri Compromise. Southerners had thwarted the attempts of abolitionists to delay statehood for Arkansas, but many slaveholders worried that the situation would merely repeat itself the next time a southern territory, namely Florida, applied for statehood. Furthermore, the Arkansas debate had given

⁷⁰ Scroggs, "Arkansas Statehood," 238-244; Brian G. Walton, "The Second Party System in Arkansas," *Arkansas Historical Quarterly* 28 (Summer 1969): 120-155; Gene Wells Boyett, "The Whigs in Arkansas, 1836-1856," (Ph.D. diss., Louisiana State University, 1972), 1-14.

⁷¹ See William J. Cooper, Jr., *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University Press, 1978), 43-97 and *passim*.

southerners who had always opposed the Missouri Compromise the opportunity to vocalize their disdain for the sectional adjustment brokered in 1820. In the winter of 1837-1838, the issue of slavery in the territories reappeared in the Senate when John C. Calhoun offered a provocative set of resolutions designed to assert southern rights. One of his resolves dealt expressly with the issue of slavery in the territories.

As the Twenty-Fifth Congress opened, the nation had entered a sharp economic downturn that had become greatly politicized because of Andrew Jackson's epic—and ultimately successful—war against the Bank of the United States. He left his handpicked successor Martin Van Buren in a precarious position, which only grew worse as the economy sagged and recriminations flew in the halls of Congress. More significantly for the slavery issue, the continuing discord over petitions to abolish slavery had not abated. Indeed, the abolitionists had only strengthened in their resolve by sending more petitions to the legislators in Washington; in 1836 alone, some one hundred thousand petitions arrived at the capitol.⁷² The petition movement alarmed Calhoun, who held the abolitionist movement in great contempt as he carefully watched its movements.⁷³

Petitions from abolitionist organizations always angered southerners, who detested the members of such organizations and viewed their work as incendiary, but one from the Vermont legislature infuriated southern senators. In November 1837, that state's legislature passed a series of resolutions affirming the right of the federal government “to abolish” slavery and the slave trade “in the several Territories of the Union where they exist” and arguing that Congress “ought immediately to exercise that power.”⁷⁴ Benjamin Swift of Vermont introduced the

⁷² Sewell, *Ballots for Freedom*, 8.

⁷³ For a discussion of Calhoun's actions during the petition controversy, see John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988), 200-207.

⁷⁴ For the text of these resolutions, see *Macon Weekly Telegraph*, January 8, 1838.

petition to the Senate on December 19, 1837, and asked that it be read into the record.⁷⁵

Southern senators immediately protested and when news reports of the Vermont legislature's actions reached the southern public, they too objected. "The intermeddling of any of the States, or their representatives in Congress" to abolish slavery in the states or the territories, a Georgia editor wrote, "is an assault on the Southern States, and should be considered by their citizens as a direct attack upon the institutions of the slave holding States."⁷⁶

The apoplectic Senator Calhoun could hardly believe that a state legislature had taken up the abolitionist mantle. "You have seen the Vermont resolutions," he wrote to Nathaniel Beverley Tucker. "They go far beyond the wildest fanatticks."⁷⁷ Calhoun vigorously objected to one sovereign state attempting to impair the sovereignty of others, or of the territories and the District of Columbia. He believed the actions of the Vermont legislature marked a radical departure from precedent and intended to take action to prevent other states from taking similar action. Calhoun determined to meet this latest abolitionist assault with his own pronouncement on slavery and the nature of the federal government, one designed to ensure the safety of slavery where it currently existed and to ensure its potential expansion in the territories.

Calhoun launched his attack against the abolitionist cadre on December 27, 1837, when he introduced in the Senate a series of six resolutions concerning slavery and the Union.⁷⁸ "My object," he wrote to a northern associate, "is to rally all States rights men of any creed on the old States rights principles of '98, against the dangerous sperit [*sic*] of fanaticism now abroad."⁷⁹

The abolitionist fervor threatened the safety of the Union, Calhoun would claim repeatedly. In

⁷⁵ *CG*, 25th Cong., 2nd Sess., 39.

⁷⁶ *Milledgeville Federal Union*, January 9, 1838.

⁷⁷ John C. Calhoun to Nathaniel Beverley Tucker, January 2, 1838, in Clyde N. Wilson, et.al., *The Papers of John C. Calhoun*, 28 vols. (Columbia: University of South Carolina Press, 1959-2003), XIV, 45.

⁷⁸ *CG*, 25th Cong., 2nd Sess., 55.

⁷⁹ John C. Calhoun to William Hendricks, January 4, 1838, in *The Papers of John C. Calhoun*, XIV, 53.

his resolutions, the South Carolinian essentially distilled the theory of the nature of American government that he had developed over the course of the past decade. Two of the resolves specifically addressed the issue of slavery in the states and the territories, respectively. In the fourth resolution, Calhoun contended that “domestic slavery, as it exists in the Southern and Western States” composed an integral part of their society that neither Congress nor any other state of the Union could abridge.⁸⁰ Calhoun almost certainly made the conscious link between the southern and western states to isolate the North as a section bent on imposing arbitrary authority on sovereign states. Southerners had long sought to ally themselves with the people of the West as fellow slaveholders and defenders of local self-government.

Calhoun’s fifth resolve addressed the issue of slavery in the territories by attacking any effort at intervention, whether by Congress or by the petition of citizens from any portion of the Union. He wrote,

That the intermeddling of any State or States, or their citizens, to abolish slavery in the District, or any of the Territories, on the ground, or under the pretext, that it is immoral or sinful; or the passage of any act or measure of Congress, with that view, would be a direct and dangerous attack on the institutions of the slaveholding States.⁸¹

Clearly aimed at the abolitionist petitioners of the North, Calhoun’s fifth resolution advanced a stronger position on the slavery issue than heretofore articulated by other proslavery southerners. His logic bore many hallmarks of past arguments, from the implicit assumption that northerners meant to abridge the rights of southerners to the explicit assertion that neither Congress nor the people of other states could legislate for the domestic affairs of a territory or state.

Calhoun also implied that the designs of the abolitionists had forced southerners to stand for their rights and demand that Congress—and those not involved in slavery—leave southerners and their peculiar institution alone. The senator had changed his opinions on federal jurisdiction

⁸⁰ *CG*, 25th Cong., 2nd Sess., 55.

⁸¹ *Ibid.*

over slavery in the territories, however. During the Missouri controversy, Calhoun, then a nationalist, had confirmed the federal government's power to prohibit slavery in the national domain. Responding to the changed political climate of the 1830s, especially the rise of the abolition movement in the North, the South Carolinian saw congressional intervention as a back door movement "to usurp the power to suppress slavery in the Southern States."⁸²

The Calhoun resolves provoked considerable debate in the Senate. James Buchanan of Pennsylvania expressed dissatisfaction with Calhoun's tactics. "I therefore deprecate a protracted discussion of the question here," Buchanan stated, after explaining why he believed Calhoun had acted rashly. "It can do no good, but may do much harm, both in the North and the South."⁸³ Ever the careful politician, he recommended forming a select committee to discuss the matter and report its own set of resolutions, which surely would prove less offensive. Other northern senators stood with their antislavery constituents and attacking Calhoun's handiwork as extremist. A Massachusetts Whig dismissed as absurd Calhoun's implications that northerners meant to attack slavery in the states. Defending the petitioners, the senator noted that "they repudiate, and very properly, all right to interfere with the States, and confine themselves to the Territories and the District of Columbia."⁸⁴ Any senator who argued that northerners meant to tamper with slavery in existing states merely sought to fan the flames of sectional discord, the Whig senator argued. Southerners could in no way countenance the assertion that Congress could interfere with slavery in the territories. The Massachusetts senator sought to refute claims that the North aimed to end slavery throughout the Union. To the minds of southerners like Calhoun, however, he defeated his own argument by advocating the right of congressional intervention in the territories.

⁸² *CG*, 25th Cong., 2nd Sess., Appendix, 22.

⁸³ *Ibid.*, 30.

⁸⁴ *Ibid.*, 37.

Calhoun unflinchingly asserted that Congress had no power to prohibit slavery in the territories. But who did possess the power to legislate on the issue? In answering this question, the South Carolina senator broke new ground by arguing that Congress could not grant to a territory a power which it did not itself possess. In his memoirs, Thomas Hart Benton summarized Calhoun's position brilliantly. "Congress had no power to legislate upon slavery in a territory, so as to prevent the citizens of slaveholding States from removing into it with their slave property," Benton recalled.⁸⁵ Calhoun's statement reiterated the southern argument as it had stood since the Missouri Compromise. He moved beyond this point in the second and third parts of his position, affirming that "Congress had no power to delegate such authority to a territory," nor did the territory possess the power itself.⁸⁶ Benton acidly wrote that Calhoun's logic left "the subject of slavery in a territory without any legislative power over it at all."⁸⁷ Actually, Calhoun raised a critical point in the doctrine of territorial self-government. Southerners had never before objected to allowing the people of a territory to legislate for themselves on the slavery issue because, in the past, such action had always provided for the expansion of slavery. The concept of territorial self-government, however, clearly implied that the citizens of a territory had a choice in the matter. Calhoun's logic anticipated the potentiality that a territory could move to bar slavery from within its borders. In his formulation, because the states held the territories in common trust, the Constitution dictated that slavery could go into any territory over which the American flag flew.⁸⁸

Almost every other southern senator, and some northerners, agreed with Calhoun's initial supposition that the government "had no right to interfere, either to protect or to invade any

⁸⁵ Benton, *Thirty Years' View*, II, 141.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ See Fehrenbacher, *The Dred Scott Case*, 122-123.

institution.”⁸⁹ Any semblance of accord ended there. Calhoun, it seemed, wanted congressional nonintervention in one instance, and congressional intervention in another. The resolutions assumed, an Indiana senator argued, “that it may become necessary for this nation to attach territory (*Texas*) to the Union, for the purpose of *protecting* and *extending* the domestic institutions (*slavery*) of the South.”⁹⁰ By no means would northerners brook such a policy.

Even some southerners found Calhoun’s opinions unpalatable. When on January 9, the Senate commenced debate on the fifth resolution, John J. Crittenden of Kentucky delivered a stinging rebuke to the resolutions. Calhoun “reiterates, over and over again, the trite theme and cry of ‘danger to the Union,’” Crittenden argued, and if the Senate did not pay heed to his words, Calhoun “urges the inevitable consequence of the ‘destruction of the Union.’”⁹¹ In other words, Calhoun went too far in his efforts to defend southern institutions; indeed, he went on the offensive. Many senators questioned the wisdom of Calhoun’s methods, even if they did object to the movement of abolitionists against slavery in the territories.

Henry Clay had listened quietly to the debate as it developed in the Senate, growing especially concerned at the remarks of some ardent northerners and southerners who sought to bring the issue of Texas annexation into the debate. Northerners feared that admitting Texas to the Union would provide a vast new domain from which numerous slave states could grow. Southerners, on the other hand, hailed the prospect of annexation for precisely the reason that they could expand the slave society west. The injection of Texas into the discussion alarmed the Kentuckian and provoked him to speak. Clay worried that the deliberations over the resolutions could quickly spiral out of control if someone did not restore some sense of order to the proceedings. Like his junior colleague Crittenden, Clay did not support Calhoun’s redefinition

⁸⁹ *CG*, 25th Cong., 2nd Sess., Appendix, 22.

⁹⁰ *Ibid.*, 28.

⁹¹ *Ibid.*, 55.

of the power of Congress over slavery in the territories. Accordingly, Clay submitted to the Senate his own substitutes for Calhoun's resolutions, and "a battle of the Titans began."⁹² Whereas Calhoun had spoken in "strong language, menacing tones, and irritating measures," Clay sought "conciliation" through "firm, but temperate language."⁹³

In his alternative for Calhoun's fifth resolution, Clay wrote that "it would be highly inexpedient to abolish slavery in Florida, the only Territory of the United States in which it now exists, because of the serious alarm and just apprehensions" such action would surely provoke.⁹⁴ Clay consciously made a point of limiting the discussion to Florida and not allowing it to enter into the Texas debate. In the second part of his resolution, Clay reaffirmed the standard southern interpretation of congressional nonintervention—one that he had offered during the Missouri crisis—by advocating self-government. Congress should refrain from abolishing slavery in Florida "because the people of that Territory have not asked it to be done, and, when admitted as a State into the Union, will be exclusively entitled to answer that question for themselves." Furthermore, any intervention by Congress would violate the "solemn compromise" of 1820.⁹⁵ In his efforts to craft a tamer version of the Calhoun resolves Clay advocated, in the words of one constitutional historian, an "early version of the doctrine later popularized by Lewis Cass and Stephen A. Douglas known as popular or squatter sovereignty."⁹⁶ Clay, however, actually upheld the doctrine of territorial self-government he had so forcefully articulated in 1820 and that southerners had endorsed as sound constitutional law for much of the nineteenth century.

⁹² Charles M. Wiltse, *John C. Calhoun: Nullifier, 1829-1839* (Indianapolis: Bobbs-Merrill Company, 1949), 373.

⁹³ *CG*, 25th Cong., 2nd Sess., Appendix, 60. For Clay's role in the debate of the Calhoun resolutions, see also Robert V. Remini, *Henry Clay: Statesman for the Union* (New York: W.W. Norton, 1991), 509-511.

⁹⁴ *CG*, 25th Cong., 2nd Sess., Appendix, 59.

⁹⁵ *Ibid.*

⁹⁶ Wiecek, *The Sources of Antislavery Constitutionalism in America*, 188.

Clay espoused established southern doctrine on the issue of slavery in the territories, but some of his southern colleagues objected to the conciliatory wording of his resolution on the issue. Some wondered if the Kentuckian had moderated Calhoun's sentiments too much. Clay's suggestion that Congress should *refrain* from abolishing slavery in Florida obfuscated the true constitutional interpretation that Congress *could not* abolish slavery there. William Cabell Rives of Virginia raised this issue, noting that the "rights and interests of the inhabitants" in any of the territories precluded congressional intervention.⁹⁷ While Clay's colleagues certainly understood—and in most cases endorsed—his efforts to quiet agitation on the Texas issue, they believed that any satisfactory resolution must include a statement on the territories in general and not just Florida. An Alabama senator suggested inclusion of all the territories in the resolution, to which Clay agreed.⁹⁸

Undeterred by the proponents of moderation, Calhoun persisted in his attempts to persuade the Senate to adopt his resolution on slavery in the territories and not accept a more conciliatory version. The South could no longer afford to compromise on equal rights in the territories, the senator maintained. Clay's proposal "would be an utter abandonment of the entire ground assumed in the resolutions already adopted."⁹⁹ The Senate had passed four of the six resolutions initially proposed by Calhoun. And now Clay's compromise version of the fifth threatened the meaning of Calhoun's entire platform. The South Carolinian "regarded slavery, wherever it exists throughout the whole Southern section, as one common question, and is as much under the protection of the Constitution here, and in the Territories, as in the States themselves; and herein lies our only safety." He intoned a final warning, "Abandon this, and all

⁹⁷ *CG*, 25th Cong., 2nd Sess., Appendix, 72.

⁹⁸ *Ibid.*, 61.

⁹⁹ *Ibid.*

is abandoned.”¹⁰⁰ Calhoun would not retreat from his effort to redefine the southern doctrine on congressional nonintervention.

Calhoun’s proslavery clarion call provoked a northern backlash, as senators from the North renewed the long-running protests against congressional nonintervention with slavery in the territories. Daniel Webster emphatically stated that the constitution left the issue “entirely to the discretion and wisdom of Congress,” but his characteristically impressive efforts to defend the right of Congress to legislate on slavery in the territories failed to gain traction.¹⁰¹ Most senators focused on endorsing either Clay’s interpretation of congressional nonintervention or Calhoun’s expanded doctrine on the issue. Even the South Carolinian, however, began to recognize that he did not possess the support necessary to gain passage of his resolution on slavery in the territories. A majority of senators clearly favored Clay’s version, amended to include all of the territories within its scope and not merely Florida. Southerners wanted assurances that Congress would not interfere with slavery in any of the territories currently held or subsequently acquired. In vain, Calhoun fired one last broadside against Clay’s resolution by attacking the Missouri Compromise itself. The South, according to Calhoun, had committed a grievous error by acquiescing in the Compromise of 1820, which in no small part led to the circumstances the nation found itself in 1838. Calhoun conceded that he had favored the compromise in 1820. Indeed, as a member of the Monroe cabinet he had endorsed the measure as constitutional. He “now believed that it was a dangerous measure, and that it had done much to rouse into action the present spirit” of abolitionism and antislavery politics.¹⁰² The South had practically invited antislavery agitation by conceding its true constitutional rights in an effort to achieve sectional concord.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, 64.

¹⁰² *Ibid.*, 70.

Calhoun lost his battle on the fifth resolution, as the Senate overwhelmingly passed Clay's less incendiary version. Eight New England Whigs and one Pennsylvania Democrat voted against the Clay substitute, exhibiting again that the locus of antislavery sentiment came from the New England states.¹⁰³ "Calhoun, in fact, had nothing approaching united southern support for his extremist position."¹⁰⁴ Continuing the division between Calhounite and moderate southerners—both Whig and Democrat—that had existed since the beginning of the petition controversy, the moderates simply could not accept the redefinition of the southern position on slavery in the territories Calhoun proposed.¹⁰⁵ They accepted the Clay substitute as sufficient protection, provoking even Calhoun to concede defeat and voted in its favor.¹⁰⁶

The debate over the Calhoun resolutions had little practical effect in squelching abolitionist fervor, but it did define where northern and southern politicians stood on the issue of slavery in the territories. Northern Whigs stood most strongly against the expansion of slavery. Calhoun knew precisely that the issue of congressional power over slavery in the territories remained ambiguous, in part he argued because the South had unwisely compromised on the issue in the past.¹⁰⁷ He also knew that his fellow southerners considered the ongoing abolitionist petition drives menacing. Moreover, they believed the Vermont legislature's resolutions had, in the words of one Virginia writer, "given to this matter a new and more serious aspect than it has yet assumed."¹⁰⁸ A state government had endorsed the tactics of the abolitionists southerners considered fanatical by calling for a federally imposed ban on slavery in the territories.

¹⁰³ For the final roll call on the Clay resolution, see *ibid.*, 74.

¹⁰⁴ Fehrenbacher, *The Dred Scott Case*, 123.

¹⁰⁵ See Rable, "Slavery, Politics, and the South," 75-77, for a discussion of division among southerners during the gag rule controversy.

¹⁰⁶ *CG*, 25th Cong., 2nd Sess., Appendix, 74.

¹⁰⁷ See Wiltse, *John C. Calhoun: Nullifier*, 374. Wiltse correctly notes that Calhoun's resolutions addressed concrete issues facing the Union, not abstract constitutional theories. Yet he stands on less solid ground when he argues that Calhoun's constitutional interpretation "was nearer to that envisaged by the founding fathers."

¹⁰⁸ *Richmond Enquirer*, January 2, 1838.

Southerners continued to insist on territorial self-government over the issue. Congress, in their view, had no authority to determine the status of slavery in the territories. The people of the territories possessed this power, presumably when they sought admission to the Union and drafted a constitution. The South would have to wait and see what northerners would do when the last slaveholding territory—Florida—asked for admission to the Union.

When Congress established Florida Territory in March 1822, it implicitly recognized the role that slavery in the region's society by making no attempt to intervene against the institution.¹⁰⁹ Furthermore, few congressmen considered debating the merits of slavery in the southernmost territory of the United States, especially after passage of the Missouri Compromise. If Henry Clay's masterstroke of sectional conciliation did represent a compact between North and South, no one could consider prohibiting slavery in Florida. Over the course of fifteen years, however, the political calculus of the slavery issue had changed drastically. As the debate over statehood for Arkansas in 1836 and the Calhoun resolutions on the nature of the Union amply exhibited, according to southerners, antislavery northerners would not limit their actions against slavery based on geographic lines or sectional compacts. Southerners anticipated that Florida's petition for statehood would provoke a struggle similar to the experience of the Arkansas debate.

Florida took a long and circuitous route to statehood because of internal political factors. Plagued with internal dissension over the potential of dividing the territory into its two historical segments—West Florida and East Florida—versus asking for immediate statehood for the entire territory, the territory's citizens delayed action on the issue numerous times.¹¹⁰ In 1838, the territory finally elected a convention to draft a constitution for and to seek admission to the

¹⁰⁹ See Act of March 30, 1822, ch. XIII, 3 *U.S. Statutes at Large*, 654-659.

¹¹⁰ See Sidney Walter Martin, *Florida During the Territorial Days* (Athens: University of Georgia Press, 1944), 258-277.

Union. The St. Joseph convention took almost exactly the same approach with regard to slavery as did the Arkansas constitutional convention of 1835-1836. The Committee on the Subject of Domestic Slavery proposed that the state legislature would have “no power to pass laws of the emancipation of slaves” and that emigrants to the state possessed the right to bring slaves with them.¹¹¹ The committee also recommended banning free blacks from settling in the state. The convention accepted the recommendation without debate and included the article regarding slavery into their final product.¹¹²

Even before the territory’s citizens had ratified the document, antislavery northerners took notice of the Florida constitution. Abolitionist newspapers in the North raised objections to the proslavery clauses in the document, especially the clause that prohibited the state legislature from abolishing slavery.¹¹³ The abolitionists may have lost their battle to block admission of Arkansas based on its proslavery constitution, but they intended to try again with Florida. Florida’s own citizens would delay their efforts. During the first half of 1839, it seemed ratification of the constitution might fail in the territorial referendum because of the ongoing battle over immediate statehood versus division of the territory. Finally, in August, the constitutional convention announced that voters had accepted the document by a majority of just ninety-five votes.¹¹⁴ Internal dissension persisted, though Florida would wait six years for statehood. Congress received conflicting petitions asking both for immediate statehood and division of the territory, leaving legislators in Washington perplexed. Finally, Florida presented a united front in 1844 and 1845 and asked for immediate statehood based on the St. Joseph

¹¹¹ “Report of the Committee on General Provisions, including the Subject of Domestic Slavery,” December 11, 1838, *Journal of the Proceedings of a Convention of Delegates to Form a Constitution for the People of Florida, Held at St. Joseph, December 1838*, in Dorothy Dodd, ed. *Florida Becomes a State* (Tallahassee: Florida Centennial Commission, 1945), 170.

¹¹² *Ibid.*, 325.

¹¹³ See *Boston Emancipator*, February 14, 1839, April 11, 1839; *Philadelphia National Enquirer*, July 18, 1839.

¹¹⁴ Martin, *Florida During the Territorial Days*, 272.

Constitution of 1838.¹¹⁵ Congress paired Florida with Iowa in the long-standing practice of admitting one free state and one slave state to maintain sectional balance in the Senate.

Predictably, northern members of Congress raised objections to the admission of Florida with her ardently proslavery constitution. A Maine representative moved to force Florida to amend the constitution as a condition of admission to the Union, prompting a debate over the right of the citizens of Florida to determine their own form of government.¹¹⁶ Southerners objected to any interference with Florida's right to draft its own constitution. "But here came a proposition from the extreme northern portion of this Union," a Virginian objected, "to remodel the form of government which the people of Florida had adopted for themselves—a proposition which, on its very face, assumed the people of Florida were not able to judge what form of constitution was best adapted for them."¹¹⁷ The citizens of Florida possessed the express right to install whatever provisions they deemed necessary to protect slavery. After all, northern abolitionists had driven the South to take such precautions in order to protect their rights.

The deliberations over Florida statehood became especially bitter because of the concurrent debate in Congress over the annexation of Texas. The Texas issue took center stage in the congressional session of 1844-1845 as the legislators debated the merits of annexation and the effect that incorporating Texas into the Union would have on the welfare of the nation itself. Northern antislavery partisans viewed the situation with concern, for Texas annexation would give the South a sectional advantage in the Senate. Furthermore, many Americans from North and South believed that Texas would eventually be divided into several smaller states, promising

¹¹⁵ *CG*, 28th Cong., 2nd Sess., 273.

¹¹⁶ *Ibid.*, 283.

¹¹⁷ *Ibid.*

more conflict in the future as the South gained more slave states.¹¹⁸ A New York journal linked the Florida and Texas issues by accusing the South of engaging in aggressive efforts to expand the slave domain. “While the South was content with so much slavery as the constitution tolerates she was safe, but the attempt to enlarge its boundaries and increase its power, will surely be resisted.”¹¹⁹ Texas annexation occupied far more attention than did the petition of Florida for statehood because of the higher stakes involved in bringing the Lone Star Republic into the Union.

Nevertheless, the Florida statehood bill represented the latest battleground over the interpretation of congressional authority over slavery in the territories, a point not lost on northern and southern members of Congress. Lawmakers seemed never to grow weary of debating who possessed the power to legislate on slavery—Congress or the people of the territories themselves. Members from the North and South stridently debated the issue in the course of the Florida debate. A young Democratic representative from Illinois sought to bridge the gap between the sections by occupying a middle position on the matter. Stephen A. Douglas made clear that he did not support all of the provisions of the constitutions of either Florida or Iowa. Determining the prudence of individual clauses within a prospective state’s constitution, however, did not fall under the purview of Congress. “Sufficient had been said,” in the debate, Douglas argued, “to show that it could never have entered the minds of the framers of the constitution that Congress was to pass on the propriety and expediency of each clause of the

¹¹⁸ For Texas annexation, see Joel H. Silbey, *Storm over Texas: The Annexation Controversy and the Road to Civil War* (New York: Oxford University Press, 2005), 80-90 and *passim*. See also William W. Freehling, *The Reintegration of American History: Slavery and the Civil War* (New York: Oxford University Press, 1994), 162-165, for a brief but cogent statement of the southern position on Texas.

¹¹⁹ *Albany Journal*, quoted in *Boston Emancipator and Weekly Chronicle*, June 11, 1845.

constitution of the new States.”¹²⁰ Congress could not and should not exercise control over “regulations and institutions, local and domestic in their character.”¹²¹

Douglas framed the congressional authority over state making in a way that few, if any, southerners would have found objectionable. He repeated an argument standard to the defense of self-government: that the “people of each State are to form their constitution in their own way and in accordance with their own views, subject to one restriction only; and that was, it should be republican in its character.”¹²² Douglas, however, “was not yet prepared to concede the same freedom to the people of a territory.”¹²³ The Illinoisan made clear that the privilege of self-government applied only at the moment that a territory sought statehood and not a moment before. Noting that “the father may bind the son during his minority,” Douglas argued that Congress possessed jurisdiction over the territories until they reached the point where they could safely and responsibly assume statehood.¹²⁴

By advocating congressional authority over the territories during the territorial phase itself, Douglas assumed ground more akin to the northern argument on federal power in the national domain. Indeed, in his young career as a congressman the Illinois representative had generally supported the form of territorial governance that Congress had developed and refined over the course of the nation’s history. He also supported the effort by many in Washington to systematize the territorial system. To Douglas’s mind, this ensured the speedy and uniform development of the national domain.¹²⁵ Florida had matured to the point where it could assume its place as a state and therefore, Douglas argued, members of Congress should drop their

¹²⁰ *CG*, 28th Cong., 2nd Sess., 284.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 220.

¹²⁴ *CG*, 28th Cong., 2nd Sess., 284.

¹²⁵ See Johannsen, *Stephen A. Douglas*, 219-221 for a discussion of Douglas’s opinions on territorial government at this time in his career.

objections to the prospective state's constitution and approve its admission to the Union. Just as had transpired in the Arkansas statehood debate nine years before, northern Whigs voted *en masse* against the Florida bill. Nevertheless, on February 13, the House of Representatives passed the bill on February 13 by a vote of 145-46.¹²⁶ Thirty-eight Whigs from across the North voted against the bill, while only one Maryland Whig joined his northern colleagues in opposition. Even though the Whigs had to know that opposition would prove futile, they still objected to Florida and its proslavery constitution. With passage secured, the House sent the bill to the upper chamber, where an abbreviated debate soon ensued over the slavery issues the representatives had debated.

On March 1, the same day that President John Tyler signed the joint resolution of Congress annexing Texas, the Senate began debate on Florida statehood. The senators merely repeated the deliberations that had occurred in the House. Northern antislavery senators announced their intentions to vote against the bill because of the slavery provisions in the constitution. Southerners and some westerners refuted the northern argument by insisting that Congress had only to ensure that Florida would have a republican form of government. Late in the evening of March 1, the Senate—now far more concerned with the issues surrounding Texas—voted to admit Florida to the Union by a vote of 36-9. In the Senate, only the New England Whigs maintained opposition to the admission of Florida.¹²⁷

The debates over slavery in Arkansas and Florida revealed sectional fissures within the American political establishment, as northerners fought more boldly to circumscribe the limits of slavery within the Union and southerners fought to protect the existence and expansion of their peculiar institution. The Missouri Compromise, designed as a grand sectional compact, pleased

¹²⁶ *CG*, 28th Cong., 2nd Sess., 286.

¹²⁷ *Ibid.*, 383.

neither the North nor the South. An increasingly large number of southerners came to believe that moderates from their section had acquiesced in a compromise that infringed their constitutional rights north of an artificial line of latitude. Swayed by antislavery and abolitionist rhetoric, northerners challenged the morality of slavery and sought to limit its existence to the states of the South.

The debates in the 1830s and 1840s over admitting Arkansas and Florida to statehood also revealed that the Missouri Compromise had settled absolutely nothing concerning the issue of territorial self-government. In one respect the sectional accord did work, as both North and South acquiesced in the parameters set by the compromise line. But it only masked the underlying issues of constitutional interpretation; it did not settle them. Southerners still claimed the constitutional right to carry slaves into any territory, even though they had seemingly ceded that right north of 36° 30'. Northerners claimed that Congress possessed the indisputable right to prohibit slavery in any territory as it saw fit. With both Arkansas and Florida, the South claimed that antislavery northerners sought to break the Missouri compact by attempting to deny statehood based on the slavery issue. The South, many of its residents believed, could not trust the North to let territorial self-government prevail.

The debate over the resolutions of John C. Calhoun exhibited all too clearly for southerners, however, that their section hardly presented a united front on the issue of slavery in the territories. Some southerners promoted sectional unity as the only means of defending slavery. During the debate on Calhoun's resolutions, a Georgia editor wrote, "So long as we are divided, feverish and powerless, we cannot expect the northern fanatics to cease their mischievous endeavors to wound our feelings."¹²⁸ A significant number of southerners, however, simply could not accept Calhoun's original resolution on slavery in the territories.

¹²⁸ *Macon Weekly Telegraph*, January 8, 1838.

Calhoun had advocated a bold new stance on the issue; the right to hold slaves in the territories transcended territorial law or congressional intervention. Supposedly the constitution protected the sanctity of slave property across state and territorial boundaries, but many southerners did not support Calhoun's doctrine. They adhered to the long-standing rule of territorial self-government as sufficient protection for slavery. The admission of Texas into the Union in 1845 seemed to promise further debate on the subject. Sectional lines had undoubtedly hardened over the course of the past twenty years and if the United States ever did gain additional territory, no one knew how Americans would respond in the changed atmosphere.

CHAPTER 4

“A FIT OF CONVULSIONS”: THE WILMOT PROVISO AND SLAVERY IN THE WEST

The annexation of Texas in 1845 intensified the debate over the westward expansion of slavery. The very possibility of annexation had changed the tenor of the congressional deliberations over Florida's application for statehood, as northern opponents calculated the effect of annexing such a vast land—a land where slavery existed and presumably would grow. For those who jealously watched the sectional balance of power, Texas annexation seemed to portend a resurgence of power for the proslavery delegation in Congress. Some northerners adopted a cautious approach while others vigorously disputed the addition of Texas to the Union as a blatant attempt to expand the slave domain and the Slave Power.¹ Southerners viewed annexation as essential to the stability of their section and the continued prosperity of their agricultural economy.

Slavery in Texas, however, seemed safely beyond the reach of those who had resolved to halt the expansion of the South's peculiar institution. The annexation of Texas presented opponents of slavery expansion with a host of complicated legal issues. The United States had assumed a formerly sovereign nation into its national union as a state, a move that almost certainly meant that Congress could not disturb its domestic institutions. Additionally, the joint resolution for annexation provided for the formation of four additional states if the State of Texas should consent.² The resolution extended the Missouri Compromise line through Texas; any additional states formed to the south of 36° 30' could seek admission with or without slavery,

¹ For the history of Texas annexation, see Joel H. Silbey, *Storm over Texas: The Annexation Controversy and the Coming of the Civil War* (New York: Oxford University Press, 2005). For the constitutional issues surrounding annexation, see Frederick Merk, *Slavery and the Annexation of Texas* (New York: Alfred A. Knopf, 1972), 121-151.

² See Resolution of March 1, 1845, no. VIII, 5 *U.S. Statutes at Large*, 797-798.

while the institution was prohibited in the small and irregular portion north of the line.³ It seemed unlikely that Texas would consent in the future to a division of its domain into smaller states unless their residents preserved slavery. The furor over annexation, however, greatly strengthened the antislavery movement and its resolve to check the westward expansion of slavery. The potential that five new states, including Texas, could enter the Union almost certainly as slave states alarmed the opponents of slavery. Their efforts to prevent that eventuality would only gain urgency as the nation went to war against Mexico in May 1846, and discussion of a “territorial indemnity,” or the assumption of Mexican lands into the territorial domain of the United States gained traction.

As politicians debated the implications of Texas annexation and as the Mexican War captivated the attention of all Americans, a second front emerged in the nation’s territorial situation. After years of tedious—and sometimes bellicose—debate between the United States and Great Britain, the two nations signed the Oregon Treaty on June 15, 1846, setting the northern boundary of the territory at the forty-ninth parallel. With the treaty ended the rallying cry of fifty-four forty or fight, but so too did the potentiality of a second war.⁴ In negotiating the treaty, Secretary of State James Buchanan had averted war with the British, but a battle on the home front ensued within the Democratic Party. Northern Democrats expected that a free territory of Oregon would offset the recent acquisition of slave Texas. The Democratic platform of 1844 had implied as much. Soon, however, Texas annexation overshadowed events concerning Oregon. But when Congress took up discussion of the Oregon treaty, “the pent-up

³ For the inclusion of the Missouri Compromise line in the joint resolution, see Merk, *Slavery and the Annexation of Texas*, 122-125, 152-153.

⁴ For the correct context of the famous phrase, see Edwin A. Miles, “‘Fifty-four Forty or Fight’—An American Political Legend,” *Mississippi Valley Historical Review* 44 (September 1957): 291-309.

resentments of the northern Democrats burst out in a flood of bitter incrimination.”⁵ Angered by the actions of President James K. Polk’s administration, with their proslavery implications, the Democratic Party for the first time split on sectional lines over the Oregon treaty. Indeed, northern Democrats nearly derailed the president’s plans. The bitter feelings created by ardent support for Texas annexation and tepid endorsement of incorporating a circumscribed Oregon into the territorial domain wounded the Democratic Party, prompting its leaders to search for ways to compromise on slavery expansion.

Northern Democrats committed to antislavery policy resolved to stand firm against their expansionist, and seemingly proslavery, president. A wellspring of antislavery sentiment in parts of New England and the Old Northwest had only grown in the aftermath of Texas annexation, leading other northern Democrats who once evinced less interest in the politics of slavery to reconsider their stance—if only to preserve their chances at election time. Accordingly, these northern Democrats distanced themselves from the southern wing of the party.⁶ Their efforts to resist the expansion of slavery would culminate in the discussion over assuming Mexican territory into the United States.

On August 10, 1846, President Polk reported in his diary, “Late in the evening of Saturday, the 8th, I learned that after an excited debate in the House a bill passed that body, but with a mischievous & foolish amendment to the effect that no territory which might be acquired by treaty with Mexico should ever be a slave-holding country.”⁷ The president had requested a two million dollar appropriation to pay Mexico for a territorial cession. Assuming that

⁵ David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 25. For the context of the Oregon debate, see pp. 24-27.

⁶ See Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2000), 144-47; 150-152. See also Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 53-58.

⁷ Milo Milton Quaife, ed., *The Diary of James K. Polk During His Presidency, 1845-1849*, 4 vols. (Chicago: A.C. McClurg & Co., 1910), II, 75.

congressional Whigs would attempt to derail the legislation, Polk arranged to have the bill introduced at the end of the congressional session in order to minimize, if not stifle, debate. Though the president certainly did not know it, and the members of the House on the floor that Saturday night could hardly have perceived what would happen, a Pennsylvania Democrat, not a “no-territory” Whig, would cause the administration trouble. The “mischievous & foolish amendment” proposed by David Wilmot injected the issue of slavery into the debate over the Two-Million Bill.⁸ Perhaps most alarming, the vote on the bill produced a sectional cleavage as nearly the entire southern bloc voted against the bill while the northern representatives voted in the affirmative. The House passed the Two-Million Bill with the Wilmot Proviso, but on the last day of the session the Senate let it expire without a vote. Though the Wilmot Proviso had failed to pass Congress amid the bustle of the ending session, it had transformed the debate over slavery in the territories. “Grave topics to be decided during a fit of convulsions!” the editor of *Niles’ National Register* remarked.⁹

The Wilmot Proviso would provoke fits of convulsions for the next fourteen years, because it inextricably linked westward expansion with the slavery issue. It also linked the debates of 1846 with past discussions of the slavery issue. Wilmot borrowed the language of his proviso from the Northwest Ordinance—that “neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted.”¹⁰ The proviso also bore striking resemblance to the amendment of James Tallmadge

⁸ Chaplain W. Morrison, *Democratic Politics and Sectionalism: The Wilmot Proviso Controversy* (Chapel Hill: University of North Carolina Press, 1967), 3-20; Potter, *The Impending Crisis*, 18-23.

⁹ *Niles’ National Register*, 15 August 1846.

¹⁰ Quoted in Potter, *The Impending Crisis*, 21. Historians have carefully studied the origins of the proviso. Some argue that Wilmot authored the amendment alone, while others argue that he did the bidding of other angry northern antislavery Democrats. For the former, see Milo Milton Quaife, *The Doctrine of Non-Intervention with Slavery in the Territories* (Chicago: Mac C. Chamberlin Co., 1910), 13-16. For a persuasive version of the latter argument, see Eric Foner, “The Wilmot Proviso Revisited,” *Journal of American History* 56 (September 1969): 262-279. For a more recent analysis that places Wilmot and his proviso in the context of Free Soil politics, see Jonathan H. Earle,

in the Missouri debates some twenty-five years earlier. Tallmadge's amendment sought to check the westward expansion of slavery just as did the Wilmot Proviso. Of course, Tallmadge sought to legislate for territory within the Union, whereas Wilmot sought to check slavery expansion in a territory not yet owned by the United States. Nevertheless, both the Tallmadge amendment and the Wilmot Proviso had similar aims, as both borrowed from the antislavery heritage embodied in the Northwest Ordinance.

The Wilmot Proviso served as the platform of disaffected northern Democrats who resented the proslavery expansionism of the Polk administration. The "friends of the administration led off the opposition to their southern brethren," according to a Baltimore editor, because of "the 'bad faith' of the south, as they called it."¹¹ To their minds, the southern members of Congress and the president had pushed zealously for Texas annexation and proslavery interests while practically abandoning the northerners' pet project of Oregon. These sentiments held true, to a degree, but many northern Democrats did not intend to take a "gratuitous slap at the South."¹² They initially sought to maintain the support of their constituents, but it soon became clear that the antislavery Democrats had united with their erstwhile opponents, who became known as the Conscience Whigs, in opposing the expansion of slavery on constitutional grounds.¹³ In sum, these antislavery politicians had taken a major step toward dissolving party lines that had held reasonably firm since the 1830s. But Americans had witnessed hints that the sectionalization of politics could occur when slavery expansion entered congressional deliberations. The debate over John C. Calhoun's resolutions on slavery in 1837

Jacksonian Antislavery and the Politics of Free Soil, 1824-1854 (Chapel Hill: University of North Carolina Press, 2004), 123-143.

¹¹ *Baltimore American*, in *Niles' National Register*, August 15, 1846.

¹² Foner, "The Wilmot Proviso Revisited," 278.

¹³ Morrison, *Slavery and the American West*, 54-55. See also Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), 250-253.

had shown that southerners would rally to the defense of slavery to ensure their own support at home. Northern opposition to slavery had appeared with the admission of Arkansas and Florida to the Union, though northerners could offer only minimal resistance. The introduction of the Wilmot Proviso reinvigorated old debates over the expansion of slavery. The massive expansion of territory that seemed all but imminent with victory in the war against Mexico gave the utmost urgency to the issue.

The United States seemed certain to gain a vast “territorial indemnity” from Mexico, but at what cost to the bonds of Union? Discussion of adding California to the American territorial domain began even before war commenced. So too did the discussion of whether slavery would follow the flag west. A Virginia congressman received a letter from a northern friend arguing that slavery would never enter California—that slavery could not prosper there. “I think the southern members [of Congress] manifest too much feeling,” the northerner wrote. “You admit slavery to be an evil, but a necessary one, why then impose it on a country in which it is not necessary[?]”¹⁴ Many northerners, especially those Democrats who sought to bridge the divide that the Wilmot Proviso had made within their party, would argue that slavery could never exist in California. Discussion of the issue, they argued, inflamed sectional tensions for a mere abstraction. Southerners, of course, would counter that they sought to defend their constitutional rights and their equality within the Union, which to their minds, was hardly an abstraction.

Even if climate and soil did preclude the successful introduction of slavery in California, a point that many southerners disputed, the fact that Mexican law prohibited slavery further complicated matters. Virginia congressman Henry Bedinger’s northern friend proved remarkably prescient when he raised an issue that would appear frequently in the debate over slavery after

¹⁴ William A. Hale to Henry Bedinger, January 26, [1846], Box 2, Bedinger-Dandridge Papers, Rare Book, Manuscript, and Special Collections, Duke University, Durham, North Carolina.

1846: the people in the territories would chiefly determine whether slavery could or would exist there. “It will be said that Congress has no right to interfere with this question in her territories; so I think, but she has done it, and if the people of the territories do not concur, it has no effect.” In the case of California, “Anti slavery has the start there and will preclude the introduction of slaves.”¹⁵ Issues of territorial sovereignty vis-à-vis the ability of the federal government to impose its will on its territories would become paramount to the debate over the expansion of slavery.

Politicians interested in preserving party lines feverishly sought ways to navigate the treacherous slavery debate. In particular, Democrats seeking to rediscover party unity would revisit the issues of self-government and territorial sovereignty that had appeared years before. Prominent voices in politics began to suggest that endorsing self-government could alleviate sectional tension by deferring on the slavery issue to the people of the territories. During the debate over Texas annexation in January 1845, the Missouri General Assembly sent a series of resolutions to Congress addressing the slavery issue and advocating territorial self-government. According to Missouri’s legislators, the state’s citizens overwhelmingly endorsed annexation, but they preferred “that Texas should be annexed to the United States without dividing her territory into slaveholding and non-slaveholding States,” instead “leaving that question to be settled by the people who now, or may hereafter, occupy the territory that may be annexed.”¹⁶

Texas would not prove the most opportune instance in which to apply popular sovereignty, but the Missouri resolutions show that some westerners saw the doctrine as a logical way to settle the debate over slavery and territorial expansion. The Missouri resolutions clearly endorsed a form of popular sovereignty, though the document’s authors did not consider the

¹⁵ *Ibid.*

¹⁶ *CG*, 28th Cong., 2nd Sess., 154. See also P. Orman Ray, *The Repeal of the Missouri Compromise: Its Origin and Authorship* (Cleveland: Arthur C. Clark Company, 1909), 170-172, esp. 172n240.

implications of Texas entering the Union as a state. Could Texas itself impose conditions on the division of its domain into several smaller states? In one sense, the question would prove moot anyway; no one doubted that Texas and any states carved from its vast domain would enter the Union as slave states. For this very reason, since the 1830s a significant number of northern Democrats and Whigs alike had criticized Texas annexation as a blatant proslavery expansion project.¹⁷

The effort to apply the principles of self-government in the territories continued after the annexation of Texas and intensified after the introduction of the Wilmot Proviso. The issue would gain far greater urgency as northern Democrats sought a compromise plan to bury the Wilmot Proviso and safely dispense with the slavery issue. When the New Hampshire Democratic Party met for its state convention in June 1846, it inevitably had to address the issues of Texas annexation, the Oregon treaty, and the possibility that the nation could gain more territory in the war with Mexico. One might have expected the convention to affirm the actions of antislavery Democrats who had recently bolted party ranks and joined the Conscience Whigs in condemning the expansionist and proslavery policies of the Polk administration. The spirit of compromise, however, prevailed among the New Hampshire Democrats. Seeking to maximize party unity, the convention heartily endorsed territorial expansion in the broadest terms.

The rebellion against the Polk administration had emerged most virulently in Pennsylvania, Ohio, and New York. In the immediate term, the New Hampshire party seemed largely immune to party divisions, even if its leaders recognized the precarious situation in other states. With that knowledge in mind, former senator and future president Franklin Pierce reported a series of resolutions that carefully addressed the Texas and Oregon issues, hailing both acquisitions as equally important to the future of the Union. More interestingly, the

¹⁷ Silbey, *Storm over Texas*, 11-13.

resolutions committee suggested a compromise for addressing slavery in the territories based on the principle of self-government. The resolutions stated, “That the policy to be pursued in reference to slavery, rests with the States and Territories within which it exists—that whatever parties may *profess*, it is only as citizens of such States and Territories that the members of those parties can efficiently influence that policy.”¹⁸ Pierce and his committee on resolutions had outlined the basic tenets of territorial self-government.

The resolution on slavery in the territories passed by the New Hampshire Democracy hearkened back to the discussion of self-government in Louisiana and Missouri. Allowing the people of the territories to decide whether they would permit or prohibit slavery within their bounds removed the fractious issue of slavery from the halls of Congress. It capitalized on the democratic spirit of American politics, present since the Revolution itself, by affirming the sovereignty of the people in their local concerns. It neutralized the Wilmot Proviso by denying the expediency, if not the right, of Congress to legislate on the local institution of slavery. It showed, in sum, significant promise as a policy that could heal the broken Democratic Party.

Some Democrats, however, had no intention of compromising if it meant papering over their antislavery beliefs. New York Representative Preston King dealt a significant blow to the impetus for party reconciliation when the Twenty-Ninth Congress convened for its short session in December 1846. Within a month of the session’s commencement, King reintroduced the Wilmot Proviso in a fiery speech that gave no ground to the southern wing of the Democracy. He noted that the North had yielded on the issue of slavery in Texas. As for the Mexican Cession, King intended to yield no further. He specifically rebuked those who preferred to let the slavery matter alone by deferring to the people. “If left alone, slaves, more or less, will be carried to the new territory; and if the country, while it remains a territory should be settled by a population

¹⁸ *New-Hampshire Patriot and State Gazette*, June 18, 1846.

holding slaves,” King argued, “the new and additional question of abolition is presented, and in order to get a free state, slavery must first be abolished.”¹⁹ If Congress truly wished to respect the voice of the people on slavery in the cession, it would prohibit the institution during the territorial phase. “In order, then, to secure this freedom of choice to the state and to the people, slavery must be excluded from the country while it shall be a territory, and until it shall become a state.”²⁰ The *New Yorker*, of course, firmly believed that slavery could only exist in the cession if Congress afforded it express protection, specifically by endorsing John C. Calhoun’s common-property doctrine. To the minds of King and his northern colleagues, the South intended to gain federal protection for slavery in the territories.

King’s speech and his renewal of the Wilmot Proviso dismayed the president. Polk called his efforts “a fire-brand in the body” and deprecated the effort to renew an “abstract question.”²¹ The president knew that the Wilmot Proviso threatened his efforts to gain a vast cession of land by uniting northern Democrats and Whigs against the expansion of slavery. King’s speech galvanized the free soil element in the northern Democracy.²² It, too, would call the South to action. Polk surely recognized the implications of the King speech when he summoned his cabinet to discuss the issue. But the council of advisers gave little comfort to their worried executive. “All deprecated the discussion now going on in Congress,” Polk wrote laconically, “but all feared it would be impossible now to arrest it.”²³ Prescient observers of the debate in Congress concurred. “Old party distinctions—war measures and peace measures—

¹⁹ The entire speech is contained in *Niles’ National Register*, January 16, 1847.

²⁰ *Ibid.*

²¹ *Polk Diary*, II, 308.

²² Morrison, *Democratic Politics and Sectionalism*, 29-34.

²³ *Polk Diary*, II, 334-335.

president making and tariff making,” the editor of *Niles’ Register* wrote, “are all influenced by the new line of parties which this question chalks out.”²⁴

The abstract nature of the slavery debate, to the minds of Polk and many pro-expansion Democrats, rendered the remarks of King and his colleagues needless. Polk flatly denied that slavery could ever exist in the Mexican territory, an argument that many in his cabinet—most notably Secretary of State James Buchanan—would endorse. “There is no probability that any territory will ever be acquired from Mexico in which slavery could ever exist,” the president argued.²⁵ But southerners disagreed vigorously with those who portrayed the debate as involving abstract principles. Just before Congress convened, Polk had met with John C. Calhoun to discuss possible treaty issues with Mexico and reiterated his belief that slavery would never thrive in the Mexican Cession. Calhoun “readily assented,” but noted, “if the slavery restriction was put into a Treaty, it would involve a principle, and that whatever the other provisions of the Treaty were, he would vote against it.”²⁶

Calhoun spoke with a certain degree of authority when he informed Polk that neither he nor his fellow southerners would stand for the Wilmot Proviso in any form. Preston King’s speech immediately provoked spirited rebuttals from congressmen and the press alike. Virginia’s James Seddon took to the floor two days after the King speech to defend the rights of the South. “On what ground,” he cried, should the North “arrogate superiority, and claim exclusive appropriation of all” the territories?²⁷ Northerners, Seddon argued, had abandoned any semblance of compromise or sectional comity to promote their antislavery agenda—all at the expense of southern rights. “Let the white men of the north and of the south, each with

²⁴ *Niles’ National Register*, 23 January 1847.

²⁵ *Polk Diary*, II, 308.

²⁶ *Ibid.*, 284.

²⁷ *Niles’ National Register*, January 23, 1847.

privilege,” emigrate to the territories with their property as they saw fit. “Let them determine for themselves according to their circumstances and necessities whether they will be free or slave states. As they determine, in such character admit them to full communion in the Union, composed alike of slaveholding and free states.”²⁸

The southern press echoed Seddon’s protest against King’s speech and the free soil movement against slavery in the territories. The *Richmond Enquirer* took a cautious approach in venting anger towards the antislavery bloc. “All patriots will deeply regret to see the question of slavery introduced into the discussions in Congress,” its editor wrote. “It is premature and mischievous.”²⁹ In a more comprehensive examination of the Wilmot Proviso and slavery in the Mexican Cession, the *Charleston Mercury* directly accused the proviso’s supporters of misinterpreting the constitutional relationship between the federal government and the states and territories. The territories, according to the *Mercury’s* editor, were “raw material for States, to be finally admitted into the Union upon the same terms as the Old Thirteen.”³⁰ Congress had no right to prohibit slavery in the territories; only the people of the territories themselves, in constitutional convention, could legislate on slavery.

In denying the constitutionality of the Wilmot Proviso, the editor of the *Mercury* left little, if any, room for compromise on the issue, referring to the Missouri Compromise itself as “mere shallow clamor.”³¹ A significant number of Democrats, especially in the North, however, believed that extension of the compromise line of 1820 might avert the present sectional crisis. James Buchanan emerged as the leading proponent of extending the Missouri line to the Pacific Ocean. Buchanan had introduced the idea in a cabinet meeting and received the approbation of

²⁸ *Ibid.*

²⁹ *Richmond Enquirer*, January 12, 1847.

³⁰ *Charleston Mercury*, in *Milledgeville Federal Union*, January 19, 1847.

³¹ *Ibid.*

his colleagues. President Polk assented to the idea, but resolved to wait until the terms of a potential territorial cession became clearer to “recommend it to the Congress as the policy of administration.”³²

The proposed extension of the Missouri Compromise line had surfaced in a curious congressional debate over creating a territorial government for Oregon. A territorial enabling bill had emerged from committee that extended the Northwest Ordinance to Oregon Territory. No one seriously believed that slavery would ever exist in Oregon, but southern congressmen promptly objected to the slavery provision because it set a precedent for congressional intervention over slavery in the territories. They intended to use the Oregon bill as a test case for extension of the Missouri line.³³ Oregon, consequently, “assumed strategic importance as a bargaining point” in the ongoing debate over the Wilmot Proviso.³⁴ A Virginia representative argued that applying the sixth article of the Northwest Ordinance stemmed from a “predetermined purpose here to apply that article to all the territory of the United States no matter how acquired, or where situated or in what manner it may be affected by past compromises of legislation.”³⁵ Other southerners agreed that it served no other purpose than to inflame slaveholders. South Carolina Representative Armistead Burt introduced an amendment to the bill that provided for Oregon to remain free territory because it lay north of the Missouri Compromise line. Burt’s amendment would remove the odious language of the Northwest Ordinance, while strongly implying that any territorial acquisitions south of the compromise line would be open to slavery.³⁶

³² *Polk Diary*, II, 309. See also pp. 334-335.

³³ Quaife, *The Doctrine of Non-Intervention*, 24.

³⁴ Potter, *The Impending Crisis*, 65.

³⁵ “1st Oregon Bill [speech draft],” [January 1847], Folder 67, James McDowell Papers #459, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill.

³⁶ See Potter, *The Impending Crisis*, 65-66 and Morrison, *Democratic Politics and Sectionalism*, 32.

A considerable number of southerners supported extension of the Missouri line in order to secure the right to carry slaves into at least part of the potential Mexican Cession, even if they debated or doubted its constitutionality. More doctrinaire southerners, however, opposed the maneuver. Declaring his opposition to extension, Virginia Representative Shelton F. Leake stated, “I am heartily sick of ‘compromises.’”³⁷ He maintained that the South had compromised too often, only to see the North breach its part of the compact. To his mind, extending the compromise line merely obscured a movement among northerners to deny the South equal privilege in the territories. Speaking for the South, the Virginia Democrat stated: “We maintain that it is a matter of municipal regulation, with which this Government cannot, rightfully, interfere; but which ought to be left to the people of the States and Territories to arrange for themselves.”³⁸ Instead of extending the Missouri Compromise line, Leake advocated adhering to the principle of self-government. He did not specifically state when a territory could legislate on the slavery issue, but his other remarks strongly suggest that, like Calhoun, he believed that settlers acting in a constitutional convention had the power to permit or prohibit slavery.

South Carolina Representative Robert Barnwell Rhett followed with a speech in which he disputed the right of Congress to prohibit slavery in the territories. Rhett took a slightly different approach than Leake by recapitulating the old southern argument that the “needful rules and regulations” clause of the Constitution did not allow Congress to legislate for the territories. Sovereignty rested in the people, not the government, lest the people become ruled, “and do not

³⁷ *CG*, 29th Cong., 2nd Sess., Appendix, 112.

³⁸ *Ibid.*, 113. Historians have debated the meaning of Leake’s comments for years. Hermann von Holst first recognized the Leake statement and an early statement of popular sovereignty in his work, *The Constitutional History of the United States*, 8 vols. (Chicago: Callaghan and Company, 1876-1904), III, 353. Milo Quaife disagreed, stating that “what Leake had in mind was not Squatter Sovereignty at all, but the ordinary doctrine among Southern politicians. . . of the lack of power in Congress to legislate upon Slavery in the Territories.” [Quaife, *The Doctrine of Non-Intervention*, 46.] True, Leake did not advocate “squatter sovereignty,” but he did propose a form of popular sovereignty that had existed since the settlement of the Louisiana Purchase.

rule themselves.”³⁹ But in what way and at what time could the citizens of the territories exercise sovereignty over the slavery issue? Like Leake, Rhett did not specifically address this issue though the context of his speech strongly suggests that he believed that the territories could prohibit slavery only in constitutional convention.⁴⁰ Rhett essentially staked out a position similar to that of his fellow South Carolinian John C. Calhoun, as had Leake, though their statements largely fell on deaf ears. At the moment, too many southerners considered the Missouri Compromise a safer and more desirable way to dispose of the Wilmot Proviso. Although the Burt amendment failed to gain passage in the House of Representatives by a vote of 82-113, 76 southerners had voted in the affirmative.⁴¹ Southern support of the compromise line would not die with the failure of Burt’s amendment. The South, according to a Georgia writer, would abide by an extension of the Missouri Compromise line, but no more.⁴² Over the course of 1847 as the debate over the Wilmot Proviso continued, northern and southern Democrats would revisit the extension issue in their efforts to unite on a compromise program.

The failure of the Burt amendment, however, gave the Calhounites ammunition to use against the North. Some southerners had already attacked the premise of compromise itself. The defeat of the Burt amendment by northern votes, the ultra southerners believed, merely confirmed that northerners would not abide by compromises anyway. “Let us be done with compromises,” John C. Calhoun intoned in the Senate. “Let us go back and stand upon the Constitution!”⁴³ In his speech, Calhoun claimed that he had suggested extension of the Missouri Compromise line to his fellow South Carolinian Burt, even though he disapproved of the

³⁹ *CG*, 29th Cong., 2nd Sess., Appendix, 244.

⁴⁰ For the link between Rhett’s speech and Calhoun’s thoughts, see Charles M. Wiltse, *John C. Calhoun: Sectionalist, 1840-1850* (Indianapolis: Bobbs-Merrill Company, Inc., 1951), 295.

⁴¹ *CG*, 29th Cong., 2nd Sess., 187-188.

⁴² *Milledgeville Federal Union*, January 19, 1847.

⁴³ *CG*, 29th Cong., 2nd Sess., 454.

principles behind the compromise itself. But the North rejected this latest effort at magnanimity from the South—as Calhoun portrayed it—when its representatives in the House overwhelmingly voted against compromise.

Calhoun echoed the earlier statements of his southern colleagues that the time for compromise had passed. He introduced a series of resolutions that affirmed southern rights in the territories. Calhoun stated, “That it is a fundamental principle in our political creed, that a people in forming a constitution have the unconditional right to form and adopt the Government which they may think best calculated to secure their liberty, prosperity, and happiness.”⁴⁴ Neither Congress nor any individual state could abridge the right of a territory, when in its constitutional convention, to draft its own organic law provided that it embodied republican principles. Calhoun’s resolutions stated explicitly what Leake’s speech on territorial self-government had implied: that the ultra southerners believed that a territory could act on the slavery issue only at the formation of their constitution.

In developing a southern “counterpoise” to the Wilmot Proviso, Calhoun had developed a subtly different version of self-government that advanced what has become known as the common-property doctrine on the territories.⁴⁵ Indeed, Calhoun’s statement regarding slavery in the territories built on the political theories he had developed over his long political career. First, Calhoun asserted that neither Congress nor a territorial legislature could prohibit slavery in the territories. Most southerners had agreed for at least the past forty years that Congress had no right to legislate for the territories on domestic institutions, a point that Calhoun himself had declared in his 1837 resolutions on slavery in the territories. The right of a territorial legislature

⁴⁴ *Ibid.*, 455.

⁴⁵ Potter, *The Impending Crisis*, 61. My interpretation of Calhoun’s territorial doctrine largely follows the work of Potter. Charles M. Wiltse gives Calhoun’s speech in the Senate marginal treatment in his *John C. Calhoun: Sectionalist*, 305-307.

to pass laws restricting slavery remained in doubt, largely because the concept had never been tested. The Missouri Compromise had basically settled the issue by dividing the territorial domain, as it existed in 1820. Second, Calhoun believed that a territory could legislate on slavery only when drafting a constitution, a concept likewise rooted in traditional southern political doctrine on the issue of slavery and territorial expansion. Southerners had amply explained and defended the people's sovereignty to craft their own organic law regarding slavery during the Missouri controversy and in subsequent debates on statehood for Arkansas and Florida.

Calhoun's formulation added a new element to the debate over slavery in the territories. Slavery followed the flag; it existed in territories purchased or conquered by the United States and remained a legal institution unless a territory prohibited it as part of their constitution. Then, and only then, could someone bar the expansion of slavery. By arguing that neither Congress nor a territorial legislature could prohibit slavery, Calhoun implied a subtle but powerful corollary: that the federal government had an obligation to protect the institution's existence during the territorial phase.⁴⁶ Calhoun's speech only hinted at this concept, but the South Carolinian himself and others would develop it further with time. The senator also launched a preemptive attack against any legislator who would argue that territorial legislatures could prohibit slavery if they so desired. In sum, Calhoun's doctrine represented the extreme southern position, just as the Wilmot Proviso was the extreme northern position. More conciliatory politicians would have to stake out a position somewhere in between.

Presidential aspirants from the North and South, particularly among the Democrats, mobilized in 1847 to advance their respective positions on the slavery issue. All interested

⁴⁶ See Morrison, *Slavery and the American West*, 58-59. See also Potter, *The Impending Crisis*, 60-61; Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 268.

parties attempted to establish safely a position that could restore sectional harmony. They did so, however, amidst growing bellicosity among the most ardent supporters of the Wilmot Proviso in the North and the Calhounite position in the South. Preston King's reintroduction of the proviso prompted a flurry of resolutions from northern state legislatures demanding no further extension of slavery. In February, the legislatures of New York, Pennsylvania, and Ohio instructed their senators to oppose the extension of slavery; by July, New Hampshire and Maine had joined in passing their own resolves.⁴⁷

In spite of the continued enthusiasm for the Wilmot Proviso in the North and the emergence of Calhoun's proslavery doctrine as the ultra southern doctrine, extension of the Missouri Compromise line remained the leading solution to compromise in the summer of 1847. Indeed, no other solution seemed more likely to gain sufficient support from the public and in Congress. Leading southern journals approved of extension as a way of securing southern rights in at least a portion of any potential cession from Mexico. The *Milledgeville Federal Union*, for example, reaffirmed the support of the South for extension: "Thus far she will go, but not an inch beyond."⁴⁸ Other journals echoed the the sentiment. "We go for the compromises of the constitution," one Louisiana editor wrote, "as continued and carried out by the Missouri compromise."⁴⁹ The *Richmond Enquirer* maintained pressure on supporters of the Wilmot Proviso, insisting that Congress had no right to "fetter" the territories by affixing conditions to their admission into the Union.⁵⁰ The South could not afford to "trust the whole matter to the justice and good sense of Congress—which would make us admit that Congress has the *power* to abolish slavery in our territories, and to *impose* conditions on new States coming into the

⁴⁷ *Niles' National Register*, February 6, 1847; July 31, 1847.

⁴⁸ *Milledgeville Federal Union*, August 3, 1847.

⁴⁹ *New Orleans Louisiana Courier*, August 31, 1847.

⁵⁰ *Richmond Enquirer*, August 24, 1847.

Union.”⁵¹ Herein lay the problem with extending the Missouri Compromise line. While moderate southerners endorsed extension, they did so at the peril of admitting that Congress possessed the power to legislate over the territories. Thomas Ritchie himself, who had edited the *Enquirer* until 1845, had lamented passage of the Compromise of 1820 precisely on the grounds that it surrendered the South’s constitutional rights north of 36° 30’.⁵²

Calhoun had illustrated the inherent flaw in the Missouri Compromise when he advocated his own theory on slavery in the territories. The South Carolina senator, however, conveniently neglected to mention that he had supported the compromise as a member of President James Monroe’s cabinet. Nevertheless, Calhoun raised an important caveat that southerners could not help but heed. Could the South afford to surrender constitutional ground—even in the spirit of compromise—at a time when it had less influence in national councils than ever before?⁵³

Calhoun gave a rousing speech in Charleston, South Carolina, upon his return home from the late congressional session. He repeated the thesis of his Senate speech: “As constituent members of the Union, all the Territories and other property of the Union belong to them, as joint owners or partners, and not to the Government, as is er[r]oneously supposed by some.”⁵⁴ Calhoun excoriated the abolitionist minority that used its power to sway elections in several key northern states where Whigs and Democrats consistently ran even in balloting. They used party politics to advance their anti-southern agenda. They also exhibited no reverence for the Constitution in attempting to deny southern slaveholders equal participation in westward expansion. The

⁵¹ *Ibid.*, August 27, 1847.

⁵² See, for example, *ibid.*, March 7, 1820.

⁵³ Calhoun referred to the South’s minority status in a follow-up speech to his February 19, 1847, resolutions; see *CG*, 29th Cong., 2nd Sess., 466-467. For a fuller discussion, see also Jesse T. Carpenter, *The South as a Conscious Minority, 1789-1861* (1930; Columbia: University of South Carolina Press, 1990), 77-126.

⁵⁴ “Speech at a Meeting of Citizens of Charleston, March 9, 1847, in Clyde N. Wilson, et.al., eds., *The Papers of John C. Calhoun*, 28 vols. (Columbia: University of South Carolina Press, 1959-2004), XXIV, 250.

senator appealed for southern unity to resist the corrosive effects of party politics and to deny Congress the ability to legislate for slavery in the territories.⁵⁵

Calhoun found a close ally in his efforts to galvanize southern resistance to the Wilmot Proviso and to advocate his common-property doctrine on the territories. In May 1847, William Lowndes Yancey, a former representative from Alabama and an ardent advocate of southern rights, shepherded a series of resolutions that closely resembled the Calhoun doctrine through a state Democratic meeting. Democratic party conventions in several southern states had drafted resolutions in response to the Wilmot Proviso. The Virginia Resolutions affirmed the right of any citizen to enter the territories with his property. In Georgia, the state Democratic convention vowed not to support any presidential candidate who did not state his opposition to the Wilmot Proviso.⁵⁶ Whereas many Democratic regulars in Virginia and throughout the South wished to restore party unity and cooperation with the northern Democrats, Yancey sided with Calhoun in considering southern rights paramount to intersectional political collaboration. Yancey's resolutions at the May 1847 Democratic meeting in Montgomery stated the familiar refrain that Congress had no power to interfere with slavery in the territories. At another Alabama Democratic meeting, party regulars vowed not to vote for any presidential candidate who did not explicitly refuse to interfere with slavery in the territories.⁵⁷ In time, Yancey would link the two ideas in a formidable defense of southern rights squarely in the Calhoun tradition.

Despite Calhoun's warnings and the movement of his allies in other southern states, most Democrats forged on with their efforts to achieve a compromise solution and appease Americans

⁵⁵ For the full text of the Charleston speech, see *ibid.*, XXIV, 248-260. For a summary that emphasizes Calhoun's attack against party politics, see Wiltse, *John C. Calhoun: Sectionalist*, 308-311.

⁵⁶ For the Alabama meeting see W[illiam] L[owndes] Yancey, *An Address to the People of Alabama* (Montgomery, AL: Flag and Advertiser Job Office, 1848), 9-10. For the Virginia Resolutions, see Joseph G. Rayback, *Free Soil: The Election of 1848* (Lexington: University Press of Kentucky, 1970), 113; Morrison, *Democratic Politics and Sectionalism*, 48-49. For the Georgia resolutions, see Morrison, *Democratic Politics and Sectionalism*, 51.

⁵⁷ Eric H. Walther, *William Lowndes Yancey and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 2006), 97-98.

on both sides of the slavery issue. The senator may have found “perfect unanimity” in Charleston regarding his recent pronouncements on slavery and the territories, but other southerners as well as many northern Democrats continued to look for common ground.⁵⁸ James Buchanan took the lead by offering the most reasoned rationale for extending the Missouri Compromise line. In a practice common in nineteenth-century politics, presidential aspirants announced their candidacy by drafting a letter to a friend, who in actuality was a campaign supporter.⁵⁹ Buchanan announced his candidacy in a letter to the Democrats of Berks County, Pennsylvania, in which he reiterated his position that the “harmony of the States & even the security of the Union itself require that the line of the Missouri Compromise should be extended to any new territory which we may acquire from Mexico.”⁶⁰ In what became known as the Old Berks letter, the presidential hopeful asserted that designing politicians advocated the Wilmot Proviso for naught. Slavery could never exist in any territory acquired from Mexico. “Neither the soil, the climate, nor the productions of that portion of California south of 36° 30’, nor indeed of any portion of it North or South, is adapted to slave labor.”⁶¹ Buchanan’s assessment of whether slavery could thrive in the Mexican territory most likely came from reports from the West. Numerous commentators considered the land unsuitable for slavery and plantation agriculture. One observer wrote that Americans had overestimated “to an absurdity the arable surface of California”; he believed that only four percent of the land would prove suitable for “the purposes of civilized life.”⁶²

⁵⁸ John C. Calhoun to Duff Green, March 9, 1847, *Calhoun Papers*, XXIV, 260.

⁵⁹ See Potter, *The Impending Crisis*, 69-70 for an explanation of this practice.

⁶⁰ James Buchanan to Charles Kessler, et.al., August 25, 1847, in John Bassett Moore, ed. *The Works of James Buchanan: Comprising His Speeches, State Papers, and Private Correspondence*, 12 vols. (Philadelphia and London: J.B. Lippincott Company, 1908-1911), VII, 386. Buchanan biographers have given scant attention to his advocacy of extending the Missouri Compromise line; see Philip Shriver Klein, *President James Buchanan: A Biography* (University Park: Pennsylvania State University Press, 1962), 201-202.

⁶¹ *Ibid.*, 386-387.

⁶² *New York Herald*, August 31, 1847.

With his statement endorsing extension of the Missouri Compromise line, Buchanan became the first presidential contender to solidify his position on the Wilmot Proviso. Other politicians soon followed. “Parties are beginning to define their position with somewhat more clearness on this vexed question” of the Wilmot Proviso, *Niles’ Register* editor Jeremiah Hughes noted, “and we find considerable diversity of opinion prevailing in the same party in different sections of the country in regard to it.”⁶³ In the southern press, Democratic journals maintained pressure on Whigs and the northern Democracy to reject the idea of congressional power over slavery in the territories. The *Richmond Enquirer* endorsed the Buchanan plan, citing the old Berks letter as “evidence that our friends at the North do not mean to desert us at this crisis.”⁶⁴ Democratic moderates throughout the South looked to extension as a viable compromise and a hopeful sign that abolitionism had not co-opted the northern wing of their party.⁶⁵

At the same time, however, wary southerners maintained pressure on the Wilmot Proviso issue, affirming its unconstitutionality. The editor of the *Richmond Enquirer* chastised his Whig counterpart for its “insidious” contention “that because the old Federal Congress of 1787 thought itself empowered to prohibit slavery in the territory ceded by Virginia, the present establishment . . . must have greater, or at least equal, power over slavery.”⁶⁶ Debate over the Wilmot Proviso had assumed the level of a constitutional discourse, as did so many issues in mid-nineteenth-century politics—a development that provided even greater impetus to reach a compromise on the vexed slavery issue.

Many Democrats received Buchanan’s compromise proposal favorably precisely because of the need to restore intersectional party unity for the upcoming election. Thomas Ritchie, the

⁶³ *Niles’ National Register*, August 28, 1847.

⁶⁴ *Richmond Enquirer*, September 3, 1847.

⁶⁵ See *Milledgeville Federal Union*, September 14, 1847.

⁶⁶ *Richmond Enquirer*, August 27, 1847.

editor of the Democratic Party's organ *Washington Union*, endorsed the Old Berks letter as sound policy, noting that the Polk administration "oppose[s] all restrictions upon the South, and all efforts to restrict slavery south of the 36° 30' north latitude."⁶⁷ Ritchie signaled that extension of the Missouri Compromise line, which the Polk administration had endorsed privately since January 1847, had become the president's favored policy. Moderate northern journals also exhibited willingness to embrace compromise. In New York, a state riven with political discord over the slavery issue, moderate Democrats acknowledged the futility of imposing the Wilmot Proviso on the South. Like Buchanan, a number of northern editors considered slavery in the Mexican territories an abstraction. Several New York editors noted that "the moment state governments are formed, the power of Congress ceases—and the people, acting in their sovereign capacities, can establish slavery at any moment."⁶⁸ Why, then, jeopardize the harmony of the Union and the successful negotiation of a territorial indemnity over the issue of slavery?

A number of southern politicians also began to express their views on slavery in the territories as presidential politics intensified in late 1847. Mississippi Senator Jefferson Davis recognized the need for party unity, but demanded that prior to nomination of presidential candidates northern Democratic delegates profess "a disavowal of the principles of the Wilmot Proviso; an admission of the equal right of the south with the north, to the territory held as the common property of the United States; and a declaration in favor of extending the Missouri compromise to all States to be hereafter admitted into our confederacy."⁶⁹ Even southern Whigs insisted on gaining equal rights in the territories, though many endorsed the no-territory position

⁶⁷ *Washington Union*, quoted in *Niles' National Register*, September 18, 1847.

⁶⁸ *Buffalo Courier*, quoted in *Niles' National Register*, September 18, 1847.

⁶⁹ Jefferson Davis to Charles J. Searles, September 19, 1847, in Lynda L. Crist, et.al., eds., *The Papers of Jefferson Davis*, 12 vols. to date (Baton Rouge: Louisiana State University Press, 1971-present), III, 225.

as the safest means of maintaining the Union. Georgia Senator John M. Berrien, one of the architects of the concept, asked his constituents “if they would consent to acquire this territory by our common sufferings, blood and treasure, and have it, except upon terms of perfect equality with our northern territory and exclude slavery from it?”⁷⁰ No southerner, of course, could accept such unequal terms. “Far better go with our whig brethren at the north, leave our weak and distracted sister republic to the possession of her territory, and save the constitution and the country.”⁷¹ Most Americans, however, embraced the idea of a Mexican cession. The Union would simply have to find a way to compromise on the slavery issue.

The machinations behind presidential politics spawned a second compromise formula that would compete for Democratic fealty. Vice-President George M. Dallas held hopes of becoming president after serving a long and distinguished career in a variety of public offices. The Pennsylvanian, however, had never exhibited any outstanding qualities for the highest office; indeed, he gained the vice-presidential nomination in 1844 only after New York senator Silas Wright declined the offer.⁷² Dallas wanted to seek the Democratic presidential nomination in 1848, but he had to find a way to distinguish himself from his bitter rival and fellow Pennsylvanian James Buchanan, by most accounts the leading contender in late 1847.⁷³ He did so by rejecting extension of the Missouri Compromise line and espousing the doctrine of territorial self-government.

Dallas launched his presidential campaign in a speech given at Pittsburgh in September 1847.⁷⁴ While the vice president discussed other issues such as the conduct of the Mexican War

⁷⁰ *Niles' National Register*, October 23, 1847.

⁷¹ *Ibid.* See also Rayback, *Free Soil*, 121-129.

⁷² See John M. Belohlavek, *George Mifflin Dallas: Jacksonian Patrician* (University Park: Pennsylvania State University Press, 1977), 86-90.

⁷³ For Dallas's presidential candidacy in 1848, see *ibid.*, 126-130 and Rayback, *Free Soil*, 13-14, 131-135.

⁷⁴ For the text of Dallas's Pittsburgh speech, see “Great Speech of Hon. George M. Dallas, Upon the Leading Topics of the Day, Delivered at Pittsburgh, Pa.,” (Philadelphia: Times and Keystone Job Office, 1847), 7-17.

and the tariff, he directed most of his remarks to the Wilmot Proviso and the slavery issue. Paying lip service to the antislavery faction of the Democratic Party, Dallas observed that they objected to the expansion of slavery on moral grounds. He claimed, however, that the Constitution prevented the federal government from interfering with the institution of slavery where it existed. If the antislaveryites wanted to end slavery, they would have to do so through amending the Constitution, a prospect that Dallas almost certainly knew would prove impossible.

After chastising the free soilers for their misinterpretation of the Constitution, Dallas turned to the issue of compromise. “But we hear, in some quarters, much talk of what is called *compromise*,” Dallas stated. “I am of that old school of Democrats who will never compromise the Constitution of my country.”⁷⁵ Perhaps Dallas aimed this remark at southerners who had voiced objections to the extension of the Missouri Compromise line as an unfair accord forced on the South by northerners. No matter for whom he intended the remarks, he followed with a stinging criticism of the Missouri Compromise itself. In 1820, Dallas argued, “men got together and talked of compromises, and made compromises, and one-half insisted on what they had no right to ask, and the other half submitted to that which they never should have submitted to.”⁷⁶ Such compromises actually undermined, rather than preserved, constitutional government and sectional comity. By perpetuating an already flawed compromise formula, Buchanan’s proposal to extend the Missouri Compromise line would only exacerbate sectional tensions.

Dallas proposed an appealing way to settle the dispute over the expansion of slavery and bury the dreaded Wilmot Proviso. “The very best thing which can be done,” he argued, “will be to let it alone entirely—leaving to the people of the territory to be acquired, the business of

⁷⁵ *Ibid.*, 14.

⁷⁶ *Ibid.*, 15.

settling the matter for themselves.”⁷⁷ Dallas asserted that the people of the territories would achieve their desires regardless of congressional mandate, “for where slavery has no existence, all the legislation of Congress would be powerless to give it existence; and where we find it to exist the people of the country have themselves adopted the institution; they have the right, alone, to determine their own institutions.”⁷⁸ The vice president ended his remarks on slavery in the territories by appealing to both sides of the issue not to condemn the other for their respective opinions on the slavery issue.

In the course of his short speech, Dallas had proposed a thoughtful application of territorial self-government that would captivate the attention of his fellow Democrats as a promising means of bypassing the Wilmot Proviso and assuaging the party rank and file in the North and South. Dallas had carefully assembled his proposal in a way that conceded specific points to each section. He would surely have objected to calling his plan a compromise, but in fact the vice president had developed just that—a proposal that balanced northern and southern concerns regarding the expansion of slavery. Dallas recognized the labors of antislavery politicians in the North to end the institution, even if he plainly disagreed with their rhetoric. He rejected their efforts to interfere with slavery in the South, but in doing so he clothed himself with the armor of the Constitution. “If you can accomplish the abolition of slavery in the Southern States through its instrumentality,” Dallas instructed the antislaveryites, “why do so. . . . The only true test, however, to which we can submit this question, or any other that may arise, is the Constitution.”⁷⁹ In donning the constitutional mantle, Dallas appealed to moderate northerners and the southern wing of the Democracy by implicitly accusing abolitionists of operating against the Constitution.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*, 14.

Dallas's condemnation of the Missouri Compromise served a twofold purpose: it immediately distinguished him from his archrival James Buchanan and it appealed to southerners who viewed the compromise warily. Calhoun and his followers had raised concerns about extending the compromise line that resonated with southerners. The Dallas plan merely dispensed with extension altogether by assuming the old southern argument that the Compromise of 1820 was at least extraconstitutional, if not unconstitutional. Again, Dallas appealed to the higher authority of the Constitution as the final arbiter of the slavery issue. Upholding the tenets of the founding charter, however, required some plan of action. To Dallas, the Constitution clearly dictated that the people themselves would have to decide whether to permit or prohibit slavery within their bounds. The Tenth Amendment, in the vice president's reasoning, represented not only fundamental law, but also an axiom of political behavior. The Constitution affirmed that powers not delegated to the federal government resided with the states, or the people. Therefore, the states possessed sovereignty over slavery within their bounds. In the territories, the people would presumably possess the power to determine their own domestic institutions. Regardless of what Congress dictated, the people would decide the issue for themselves. Constitutional law and human nature suggested no other way.

The Dallas plan, however, raised several significant questions that the vice president himself did not answer. No one disputed the power of the states to determine their own domestic institutions, but how could a territory—as an inchoate political community—make the decision? From the organization of the Louisiana Purchase forward, southerners, and many northerners, had affirmed that the territories could make the decision when they drafted a constitution. More recently, Calhoun had taken this opinion in articulating his theory on slavery in the territories. But if read another way, Dallas's speech seemed to suggest that the people of the territories,

during the *territorial phase*, could legislate on the matter for themselves. Might territorial legislatures, then, have the power to permit or prohibit slavery? The Dallas speech left unanswered the questions of how to apply the doctrine of territorial self-government. The presidential candidate may have refrained from offering a more precise definition of his doctrine in order to create ambiguity.⁸⁰ Without further clarification, northerners could view the Dallas plan as essentially antislavery. Northern Democrats knew that Mexican law prohibited slavery. If settlers could legislate on the institution during the territorial phase, the Mexican inhabitants could reaffirm their prohibition of slavery before slaveholders had a chance to emigrate to the territory. Conversely, southerners could argue that Dallas had merely reaffirmed the longstanding policy of the Democratic Party and Calhoun's formulation.

Southerners hailed the Dallas speech as a bold defense of their rights in the territories. "Could the most ultra opponent of the Wilmot Proviso—the most rigid stickler for the rights of the South," the *Richmond Enquirer* asked, "take stronger ground?"⁸¹ A Louisiana journal stated that Dallas's pronouncement essentially endorsed the Calhoun theory on slavery in the territories.⁸² Some southerners expressed their satisfaction with the speech to the vice-president himself. One Mississippi citizen applauded Dallas's rejection of the Missouri Compromise. "Had you supported the principles of the Missouri compromise as being the true standard, & set it up before the Union as a reason why the line should not be continued upon the present compromise parallel to the Pacific, we could not have reposed our confidence in you to the same broad extent which we do now."⁸³ A Pennsylvania jurist, though openly professing his antislavery beliefs, felt reassured that Dallas's "long tried democratic principles have not been

⁸⁰ Belohlavek, *George Mifflin Dallas*, 127-128; Morrison, *Democratic Politics and Sectionalism*, 87-88.

⁸¹ *Richmond Enquirer*, October 1, 1847.

⁸² *New Orleans Louisiana Courier*, October 8, 1847.

⁸³ John Marshall to George M. Dallas, October 7, 1847, George Mifflin Dallas Political and Business Papers, Box 4, Folder 26, Historical Society of Pennsylvania, Philadelphia, PA.

extinguished by the centralism which has long been at war with the rights of the states.”⁸⁴ Praise from the North and South showed that Dallas’s malleable statement for self-government seemed to have potential as a compromise.

The Pittsburgh speech, however, did have its critics. The *Richmond Times*, a Whig journal, argued that “Southern interests would be far more certainly secured by the adoption of Mr. Buchanan’s proposition, than by leaving the question open, as Mr. Dallas advises, to the bone of future contentions.”⁸⁵ In an effort to portray the Whig Party as a superior guardian of slavery, the *Times* cautioned fellow Whigs to view both the Buchanan and Dallas with skepticism, “for we cannot but suspect them of bidding for Southern support.”⁸⁶ Criticism of both Buchanan and Dallas stemmed from a larger issue: Whigs feared territorial expansion. The Democrats, in the words of a Maryland Whig, “blindly pursue a war of conquest having in view the acquisition of more territory without considering the effect such a course may have upon our domestic institutions.”⁸⁷ Even southern Whigs who took the no territory stance, though, had to defend the institution of slavery in the states and territories in order earn the trust of southern voters. The same Marylander who objected to the Mexican War also emphatically stated that the expansion of slavery “should be a discretionary matter with the State or States that may be carved out of Territory. It is a matter with which the general government has no concern, the constitution having invested them with no despotic power.”⁸⁸ In one sense, southern Whigs almost had to pay respect to the doctrine of self-government.

⁸⁴ Ellis Lewis to George M. Dallas, October 7, 1847, *ibid*.

⁸⁵ *Richmond Times*, quoted in the *Richmond Enquirer*, October 1, 1847.

⁸⁶ *Ibid*.

⁸⁷ “The Presidential Nomination,” January 1, 1848, William Claude Tell Editorials, William L. Clements Library, University of Michigan, Ann Arbor, MI.

⁸⁸ “The Thirtieth Congress,” November 20, 1847, *ibid*.

Dallas's plan for self-government in the territories had the potential to surpass Buchanan's call for extension of the Missouri Compromise line because of its unmistakable link to democracy and popular government. A South Carolina Whig best explained the difference between Buchanan and Dallas on the slavery issue, at least according to southerners. In a speech in Greenville, South Carolina, Waddy Thompson offered resolutions "complimentary to two distinguished citizens of Pennsylvania, who have the boldness and virtue (rare in these times) to take high ground in favor of the south, and one of them (Mr. DALLAS) in support of our constitutional rights."⁸⁹ Even Thompson, a no-territory Whig, perceived the difference between Buchanan and Dallas. Buchanan's proposal merely extended a compromise that many southerners found imperfect at best, while Dallas advocated a plan that seemed congruent with the statements of the most ardent southern rights men. Men of the South found great appeal in the Dallas plan and the "noble stand" the candidate had taken "in defence of her institutions."⁹⁰

The Polk administration remained aloof from the debate between the competing plans of how to dispose of the Wilmot Proviso. The president himself seemed reluctant to choose sides, for fellow Democrats might construe an endorsement of either the Buchanan or Dallas plan as backing the candidate himself.⁹¹ The administration's official newspaper made note of the Dallas speech and his denouncement of the Missouri Compromise, but made no further comment on the matter.⁹² The vice president remained an outside contender; in the fall of 1847, Buchanan seemed a stronger choice. But a number of southern Democrats had shifted their support to the Dallas proposal. Given the delicacy of the situation and the fact that the presidential election

⁸⁹ *Greenville Mountaineer*, quoted in *Niles' National Register*, October 30, 1847.

⁹⁰ Montgomery Moses to George M. Dallas, October 23, 1847, Dallas Papers, Box 4, Folder 26.

⁹¹ David Potter brilliantly explains Polk's actions in *The Impending Crisis*, 68-73. See also Eugene Irving McCormac, *James K. Polk: A Political Biography* (Berkeley: University of California Press, 1922), 612-631. Polk's most recent biographer gives scant attention to his support of extending the Missouri Compromise line to the Pacific. See Walter R. Borneman, *Polk: The Man Who Transformed the Presidency and America* (New York: Random House, 2008), 324, 333-334.

⁹² *Washington Union*, quoted in *Niles' National Register*, October 2, 1847.

season had only recently begun in earnest, the administration chose to remain silent awaiting further developments.

To some degree Polk's silence may have stemmed from the lingering questions regarding the true meaning of Dallas's version of self-government. A New York editor perhaps unwittingly illustrated the confusion inherent in the Dallas statement when he endorsed the vice-president's speech. "Let [the Democrats] leave the embarrassing question of slavery where the framers of the constitution left it; let them leave to the future what belongs to the future, and await the influence of time and the dispensations of Providence, and all will be well."⁹³ More prescient political observers knew that the future would eventually arrive, with all its questions about how to apply the principle of self-government to the territories.

Abolitionists from the North took quick aim at the territorial self-government doctrine, arguing that territorial legislatures could not constitutionally possess the power to pass laws concerning slavery. Liberty Party luminary James G. Birney asked rhetorically, "Is it not true, that if Congress choose for any reason to give its legislative authority to a Territorial legislature, it cannot give a power which it did not itself possess[?] Congress, being responsible, too, the Territorial legislature cannot exercise a power that it did not receive."⁹⁴ Birney clearly based his argument on the fact that slavery did not exist in Mexican territory, and to his mind could not unless Congress or territorial legislatures passed enabling legislation. Indeed, neither legislative body had the power to *permit* slavery. Interestingly, John C. Calhoun and his followers attacked the doctrine of territorial self-government by raising almost the same questions, but asserting conversely that the U.S. Constitution would prevail over existing Mexican law, dictating that

⁹³ *Binghamton Democrat*, quoted in *New Orleans Louisiana Courier*, October 28, 1847.

⁹⁴ James G. Birney to William Cullen Bryant, October 18, 1847, Box 13, James G. Birney Papers, William L. Clements Library, University of Michigan, Ann Arbor, MI.

slavery would follow the flag. Calhoun insisted, too, that neither Congress nor territorial legislatures had the power to *prohibit* slavery.

While abolitionists became the major critics of territorial self-government in the North, Whigs in the South pointed out the danger in adopting the Dallas principle, especially if the implication that territorial legislatures could decide the slavery issue prevailed. A Virginia Whig editor asked the pivotal question: who were “the people” of the territories? “Interpreting Mr. Dallas’ obscurity with the aid of the light imparted by his official rival, we must believe that the people in question are, ‘*in large proportion, a colored population, ’ among whom ‘the negro does not socially belong to a degraded race.’* Must the South return thanks for the boon which Mr. Dallas proffers it, through the hands of such delectable governors?”⁹⁵ By asking the question “Who governs?” Southern Whigs had raised an issue that would plague Dallas and any other proponent of territorial self-government. Could the people of any territory gained from Mexico prohibit slavery before southern slaveholders, in theory, had the chance to emigrate to the West?

James Buchanan, who also had a low estimation of the Mexican people, addressed the ability of the Mexican people to assimilate to American government and institutions in advocating extension of the Missouri Compromise line. “How should we govern the mongrel race which inhabits” the territory, Buchanan asked General James Shields. “Could we admit them to seats in our Senate & House of Representatives? Are they capable of Self Government as States of this Confederacy?”⁹⁶ Other politicians such as Senator Lewis Cass of Michigan had questioned territorial acquisition because they believed the inhabitants could not govern themselves effectively, according to Buchanan. Many Americans viewed the Mexican republic

⁹⁵ *Richmond Times*, October 28, 1847.

⁹⁶ James Buchanan to General James Shields, April 23, 1847, *Buchanan Works*, VII, 286.

as a farce and the people of Mexico as unable to contribute to Anglo-American society.⁹⁷ They presumably would need a period of tutelage where they could learn the ways of American society and political institutions.

Buchanan argued that the Mexicans would never consent to establish slavery within their territory. They had ended the institution of slavery when they gained independence. Buchanan argued that the United States could never establish slavery there not only because of the climate, but also because of the people themselves. Should the United States gain a territorial indemnity, Buchanan wrote, “it is still more improbable that a majority of the people of that region would consent to re-establish slavery.”⁹⁸ Buchanan basically admitted that the inhabitants of any territory gained from Mexico would have, by virtue of their very presence, some role in deciding whether slavery would or would not exist within the territory—a prospect that many Americans in 1847 would find troubling. Anti-Mexican rhetoric would only intensify as politicians continued to debate self-government and the expansion of slavery into the future Mexican Cession.

In a speech given at Hollidaysburg, Pennsylvania, just over a month after his Pittsburgh address, Dallas did little to clarify his position on slavery in the territories or address the concerns of his critics. He merely reiterated his interpretation of the Constitution that Congress had no right to “extinguish the privilege of self-government, and to do precisely with the local communities what it pleased.”⁹⁹ The vice president once again neglected to state *when* a territory could legislate on slavery, an omission that many southern Democrats ignored. For the sake of party unity they embraced the Dallas formula in spite of the questions concerning its application.

⁹⁷ For a discussion of American opinions and racial attitudes regarding the Mexican population, see Reginald Horsman, *Race and Manifest Destiny* (Cambridge: Harvard University Press, 1981), 229-248 and *passim*.

⁹⁸ James Buchanan to Charles Kessler, et.al., August 25, 1847, *Buchanan Works*, VII, 387.

⁹⁹ The Dallas speech is quoted in *Milledgeville Federal Union*, November 9, 1847.

But southern Whigs who sought to strengthen their own party's record on slavery immediately pounced on the inconsistencies of the Pennsylvanian's plan for territorial self-government. "So long as the Democracy of the South, can find such men at the North to sustain their principles," a Georgia editor declared, "they will not despair of the republic."¹⁰⁰ Yet the lack of clarity in Dallas's position ultimately put southern Democrats on the defensive, as their Whig opponents and ultra southern rights men would question what the doctrine of self-government would actually mean when put into practice.¹⁰¹

The opponents of the Dallas doctrine, however, could not overcome the popularity of the idea of self-government as defined by the vice-president. Although the introduction of the doctrine raised serious questions regarding when people in the territories could permit or prohibit slavery, a significant number of southern Democrats embraced the concept while dismissing or ignoring the caveats raised by their opponents. The power of Congress over the territories, a Virginia correspondent wrote, "must be determined by the Constitution also and the reserved rights of the community. Where a doubt rises in the construction of the former, it may often be solved by reference to the latter."¹⁰² Moderate northern Democrats largely agreed. If new states carved from the western territories desired to permit slavery, the *New York Herald* asked, "what right would the people of Massachusetts or Connecticut have to interfere with their regulations?"¹⁰³

By the time that the Thirtieth Congress convened in the first week of December 1847, the self-government doctrine had largely surpassed extension of the Missouri Compromise as the preferred Democratic stance on the slavery expansion issue. Several Democratic senators from

¹⁰⁰ *Ibid.*

¹⁰¹ See, for example, *Richmond Enquirer*, October 29, 1847.

¹⁰² *Richmond Enquirer*, October 19, 1847.

¹⁰³ *New York Herald*, November 28, 1847.

the North had decided to test congressional support for self-government by introducing a refined version of the Dallas doctrine. After consulting with several Senate colleagues, including presidential contender Lewis Cass of Michigan, Daniel S. Dickinson of New York introduced resolutions endorsing territorial self-government. The senator argued that the federal government could impose no conditions on states or territories that placed them in an inferior status to the original thirteen states. More importantly, he specifically sanctioned the practice of self-government by the territories themselves. “That in organizing a territorial government for territory belonging to the United States,” Dickinson wrote, “the principles of self-government, upon which our federative system rests, will be best promoted, the true spirit and meaning of the Constitution be observed, and the confederacy strengthened, by leaving all questions concerning the domestic policy therein to the legislatures chosen by the people thereof.”¹⁰⁴

Dickinson’s interpretation of territorial self-government removed any inherent uncertainty from the version presented by Vice President Dallas three months earlier. Territorial legislatures would have the express right to legislate on slavery within their boundaries, a stipulation that fixed precisely when territorial self-government went into effect. As soon as Congress enabled a territory to elect a legislature, commonly known as the second grade of territorial government, it could permit or prohibit slavery as it wished. In sum, Dickinson had taken sides on the issue of how to apply the practice of self-government by rejecting the notion that a territory could legislate on slavery only preparatory to drafting its constitution and seeking admission to the Union.¹⁰⁵

¹⁰⁴ *S. Doc. Misc. No. 6*, 30th Cong., 1st Sess. (December 14, 1847). Serial Set No. 511. For the introduction of the resolutions in the Senate, see *CG*, 30th Cong., 1st Sess., 21, 26.

¹⁰⁵ For the standard interpretations of Dickinson’s resolutions, see Morrison, *Democratic Politics and Sectionalism*, 88-89; Potter, *The Impending Crisis*, 71-72; Rayback, *Free Soil*, 116.

The full Senate delayed consideration of the Dickinson resolutions for several weeks, but that did not stop senators and the public alike from commenting on their merits. As many politicians might have expected, John C. Calhoun emerged as the fiercest critic of Dickinson's version of territorial self-government. By resolving the ambiguity of the Dallas proposal and asserting the power of territorial legislatures to pass laws concerning slavery, the Dickinson resolutions repudiated the Calhoun doctrine on slavery in the territories. The South Carolinian immediately attacked the resolutions as a free soil maneuver, though he ascribed their origin to the Polk administration. Calhoun believed that the president had sanctioned their introduction as a compromise measure designed to unite moderates on both sides of the slavery issue. He wrote, "Much circumlocution is used, in order to disguise their real meaning, but their real object is to affirm, that the territorial Legislatures may exclude the introduction of slaves, while they deny that Congress can."¹⁰⁶

Calhoun vehemently objected to the notion that the Mexicans residing within the territory the United States stood to gain in the war with Mexico could have a hand in determining the future of slavery in the southwest. "Now, when we reflect that the Mexicans are all abolitionists," he wrote to a close associate, "it is easy to see that the scheme will, as effectually exclude slavery, as would the Wilmot Proviso itself." Calhoun stated that he would rather let Congress decide the matter "than to leave it to the Mexicans to decide."¹⁰⁷ To Calhoun's mind, the Dickinson resolutions effectively barred the South from expanding into the Mexican territories regardless of whether the land could sustain slavery. The venerable South Carolinian, however, doubted that a majority of southerners would see the resolutions as he did. "[T]here

¹⁰⁶ John C. Calhoun to H[enry] W. Conner, December 16, 1847, *The Papers of John C. Calhoun*, XXV, 18.

¹⁰⁷ *Ibid.*

are Southern men, who I fear will be either too blind to see the truth, or too much devoted to party & President making” to oppose the Dickinson resolutions and endorse his stronger line.¹⁰⁸

Calhoun assumed correctly that his opposition to the Dickinson resolutions lacked unified support. One of Georgia’s leading Democratic journals immediately endorsed the Dickinson resolutions as constitutionally sound and “acceptable to the South.”¹⁰⁹ Indeed, a state Democratic convention in Milledgeville, Georgia, seemingly gave sanction to territorial self-government. The convention’s resolutions affirmed that the South did not ask Congress for positive establishment of slavery in the territories—a request that the federal government could not grant constitutionally. The states of the South “simply require that the inhabitants of each territory shall be left free to determine for themselves, whether the institution of slavery shall or shall not form a part of their social system.”¹¹⁰ Georgia Democrats emerged first as the proponents of the Dickinson resolutions, but their effusions of praise are significant for what they did not say as much as what they did. They praised the principle of self-government, but made no comment on Dickinson’s assertion that territorial legislatures could pass laws concerning slavery. In other words, a number of southern Democrats professed support for the Dickinson resolutions, but in reality they maintained the ambiguous interpretation of George Dallas. Most Democrats in the South either ignored the implications of Dickinson’s resolutions for the sake of party unity, or simply maintained the traditional southern interpretation of territorial self-government in spite of what their northern brethren said.

Support for Dickinson’s stance among southern Democrats revealed the impetus for compromise among moderates. Hopkins Holsey, an Athens, Georgia, editor and political operative expressed his support for the Dickinson resolutions, which he stated, “assumed the

¹⁰⁸ *Ibid.*

¹⁰⁹ *Milledgeville Federal Union*, December 21, 1847.

¹¹⁰ *Ibid.*, December 28, 1847.

same ground taken by Mr. Dallas of Pennsylvania last summer.”¹¹¹ Like a number of southern Democrats, though, Holsey questioned whether the northern wing of the party would support the doctrine of territorial self-government. “Satisfactory as this position must be to us in all respects (leaving out the absolute monomania of the Calhoun faction) it becomes us to ascertain, before we adopt it as the basis of our action in the next campaign, whether the Northern Democracy will rally to its support?”¹¹² While self-government seemed the preferred choice over extension of the Missouri Compromise line, southerners recognized the necessity of finding a position that Democrats from the North and South could agree upon.

Holsey professed that he expressed the fears of other southern Democrats that party unity would fail over the slavery issue. He surmised that extension might prevail over self-government in the North, because it enabled northerners to “retain their constitutional prepossessions.”¹¹³ But southern Democrats who professed this belief underestimated the extent to which the Calhoun faction had discredited the Missouri Compromise in the South. While the Calhounites did not enjoy sufficient support to advance their position on slavery in the territories—at least in late 1847, they did in part succeed by appealing to the South’s own constitutional prepossessions. Those who endorsed self-government over extension did so in no small part because it allowed them to avoid the traditional southern opinion that the Missouri Compromise was not entirely constitutional.¹¹⁴

By the end of 1847, the slavery debate had advanced to a point where a compromise seemed within grasp. The coming of a presidential election season linked the issue of slavery in

¹¹¹ Hopkins Holsey to Howell Cobb, December 31, 1847, in Ulrich B. Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: Government Printing Office, 1913), 92.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ See William J. Cooper, Jr., *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University Press, 1978), 253-254.

the territories with the politics of president making. Already two Democratic contenders for president had advanced competing plans for disposing of the Wilmot Proviso. Extension of the Missouri Compromise line seemed a straightforward policy. Tepid support from southern Democrats and the Polk administration, however, had compromised support for the plan. The ambiguous version of territorial self-government proposed by Vice President Dallas had received warm approval from southern Democrats and even some Whigs. Abolitionists from the North had attacked the Dallas plan as a proslavery subterfuge, while Calhounites in the South characterized it an antislavery policy clothed in the rhetoric of moderation. Southern Whigs had taken the lead in illustrating the dangers inherent in the nebulous compromise plan, arguing that it merely deferred the serious questions surrounding slavery and westward expansion to a later date. The efforts of Daniel Dickinson to clarify the doctrine and assert the right of territorial legislatures to pass laws concerning slavery only made matters worse among skeptical southerners.

As northern Democrats had debated the merits of one compromise plan over the other, a third Democratic presidential hopeful had observed developments and quietly waited to make his own statement launching his presidential campaign. Senator Lewis Cass of Michigan, an experienced politician who had served in government for over thirty years, understood the calculus of the political situation in 1847. No Democratic presidential candidate could seriously contend for the office without advancing a plan to eliminate the threat of the Wilmot Proviso. While Dallas and Buchanan had sparred over their competing proposals and the Democratic Party remained split in factions, Cass worked behind the scenes to enhance his chances while maintaining silence in public.¹¹⁵ The Michigan senator's prospects for gaining the nomination

¹¹⁵ For Cass's actions in the fall of 1847 and his appeal as a potential candidate, see Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996), 175-176.

looked promising. In late September 1847, Cass had written a political confidant, “I am however very quiet, and am determined to remain so. I shall write no letters for publication, author no inquiries, give no pledges.”¹¹⁶ By late December, Cass decided to break his silence and enter the presidential field with his own pronouncement on the slavery issue. As a formidable competitor against Buchanan and Dallas for the Democratic nomination, political observers eagerly awaited his solution to the crisis over slavery in the territories.

¹¹⁶ Lewis Cass to Aaron Hobart, September 30, 1847, Box 11, Lewis Cass Papers, William L. Clements Library, University of Michigan, Ann Arbor, MI.

CHAPTER 5

TERRITORIAL SELF-GOVERNMENT AND THE ELECTION OF 1848

On Christmas Eve, 1847, Lewis Cass finally broke his silence on the territorial issue. He issued a public letter summarizing his views on the main questions of the day and offering his approach to the problems the country faced. Following the practice of his political rivals George Dallas and James Buchanan, Cass began his presidential campaign in the letter to Tennessee political operative Alfred O.P. Nicholson.¹ Like his rivals for the nomination, Cass rejected the Wilmot Proviso and sought to offer an alternative to settle the question over slavery in the territories. Out of political necessity, slavery ranked first and foremost on his political agenda. The Michigan senator had bided his time, waiting until the right moment to enter the political fray with a bold statement of his principles on the vexing question of slavery. Dallas and Buchanan had inaugurated their candidacies some three months earlier, engaging in a contest that meant nearly as much about who would control Pennsylvania state politics as it did the upcoming presidential contest. Other contenders such as Levi Woodbury of New Hampshire and former New York governor Silas Wright had expressed interest in gaining the nomination. The time seemed appropriate for Cass to enter the presidential race and to make a significant statement on the slavery issue that would propel him to the top of the list of presidential contenders.²

Cass had hoped to secure the Democratic presidential nomination in 1844, but saw his

¹ Nicholson had supported Cass's bid for the Democratic nomination in 1844, much to the chagrin of James K. Polk. See Charles Sellers, *James K. Polk: Continentalist, 1843-1846* (Princeton: Princeton University Press, 1966), 8-10.

² For the nominees and the status of the presidential campaign season in the latter months of 1847, see Joel H. Silbey, *Party over Section: The Rough and Ready Presidential Election of 1848* (Lawrence: University Press of Kansas, 2009), 45-85; Joseph G. Rayback, *Free Soil: The Election of 1848* (Lexington: University Press of Kentucky, 1970), 56-80. Wright unexpectedly died in August 1847 just as his name entered discussion over the nomination.

slim hopes dashed by a younger Tennessean in the mold of Andrew Jackson—James K. Polk.³ Cass still yearned for the presidency, and in a political system designed to reward fealty to party, he almost certainly felt that his fellow Democrats should give him the reward for his years of service. But Cass, like the perennial presidential contender Henry Clay, learned that one's service to party certainly did not guarantee the presidency. Though rebuffed by his party in 1844, Cass hoped to gain the nomination—and the presidency—in 1848, when a mentally and physically exhausted Polk declined to seek a second term in office.⁴

Cass used the issue of slavery in the territories to advance his candidacy for president by promising to dispose of the Wilmot Proviso and the principle of congressional intervention against the institution. During the silent phase of his presidential campaign in the latter months of 1847, Cass had circulated a draft of the Nicholson letter among thirty to fifty members of Congress and almost certainly communicated with other political operatives in an effort to draft an alternative policy to the Wilmot Proviso.⁵ He also had a strong association with New York Senator Daniel S. Dickinson, who had very likely introduced his resolutions advocating territorial self-government with Cass's blessing.⁶ Ten days after the Senate received the Dickinson resolutions, Cass brought out his letter to Nicholson and advocated essentially the same principles on the slavery issue.

³ For Cass's presidential aspirations in 1844, see Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996), 119-144.

⁴ In 1844, Polk had promised to serve only one term, yet many politicians believed he would seek reelection in 1848. See Eugene Irving McCormac, *James K. Polk: A Political Biography* (Berkeley: University of California Press, 1922), 713-717.

⁵ Lewis Cass to John Larwill, February 6, 1848, Box 20, [photostat], Lewis Cass Papers, William L. Clements Library, The University of Michigan, Ann Arbor, MI.

⁶ See David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 71.

In the Nicholson letter, Cass advanced a carefully wrought yet somewhat vague argument that not only confused his contemporaries, but has puzzled historians ever since.⁷ He began with a defense of the war with Mexico and the need to finish the effort, but the letter concentrated most on the issue of slavery in the territories. The Wilmot Proviso had upset the national councils by forcing Congress to provide resolution for the slavery issue, a duty it had heretofore proved unable to discharge. Cass endorsed the doctrine that southerners had advanced for almost thirty years—the slavery issue “should be kept out of the national legislature, and left to the people of the confederacy in their respective local governments.”⁸ After penning a statement that would surely please southern Democrats, the senator aimed to satisfy his fellow northerners. Cass maintained that like many northerners, he deprecated the institution of slavery. Regardless of the morality of the institution, however, Congress did not have the power to interfere with the institution where it currently existed. Matters concerning slavery rested solely with the local governments in places where it existed “Local institutions,” Cass declared, “whether they have reference to slavery, or to any other relations, domestic or public, are left to local authority; either original or derivative.”⁹ But what about slavery in the territories, namely in any territory gained from Mexico, where slavery did not exist by virtue of local law?

To this point, Cass had made no original statement; he had merely affirmed the established Democratic orthodoxy. He had taken great pains to portray himself as a northern man attuned to southern interests—a doughface. Yet he had also stated his own distaste for slavery, a clear gesture toward northerners who considered the institution undesirable even if they believed that they had no power to force its extinction. After avowing that slavery was a local institution, Cass now turned to the situation in the territories. He noted that territories

⁷ The text of the Nicholson letter was printed in the *Washington Union*, December 30, 1847.

⁸ *Ibid.*

⁹ *Ibid.*

differed from states; as inchoate political communities, territories did not have the same political standing within the Union. The only explicit passage regarding the territories—the “needful rules and regulations” clause—had provoked considerable debate since the earliest days of the republic. After briefly citing the history of the debate over the territories clause, Cass sided with those who believed the clause referred solely to the territories as tangible property. To his mind, it did not “extend to the unlimited power of legislation” over them.¹⁰

In order to uphold the principles of the Constitution and preserve the safety of the Union, Cass argued, the nation had to reject the Wilmot Proviso and its assumption of federal control of local institutions. Here the senator summed up his stance on the slavery issue: “I am opposed to the exercise of any jurisdiction by Congress over this matter; and I am in favor of leaving to the people of any territory, which may be hereafter acquired, the right to regulate it for themselves, under the general principles of the constitution.”¹¹ Cass claimed the right of the territories to determine the status of slavery for five reasons. First, the Constitution did not grant Congress the power to interfere with slavery. Certainly northerners could debate this point vigorously, as the Northwest Ordinance explicitly sanctioned congressional intervention against slavery. Southerners, however, could interpret Cass’s reasoning as an attack on such legislation. Second, Cass believed that implementing the Wilmot Proviso would “sow the seeds of future discord, which would grow up and ripen into an abundant harvest of calamity”—an overt reference to the possibility of civil war.¹² Southerners, he implied, would not stand for the passage of the Wilmot Proviso. Third, implementation of the Wilmot Proviso would handicap the efforts to conclude successfully the Mexican War. If Congress did not remove the offending proviso from efforts to fund the war effort, it might never pass a bill to fund the army. Likewise, Cass argued that if the

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

Wilmot Proviso became law southerners in Congress would withhold support for any peace treaty with Mexico providing for a territorial indemnity.

Finally, Cass returned to the crux of his argument by addressing the issue of state versus territorial sovereignty. Even if the Wilmot Proviso became law and barred slavery from the proposed Mexican Cession, it would only carry force during the territorial phase. Once settlers carved states from the cession and gained admission to the Union, the right of Congress to impose a ban on slavery would unquestionably disappear. State sovereignty would prevail and the people would then have the right to determine the status of slavery for themselves. Here Cass broached the nettlesome issue of when a political community gained sovereignty. For many if not most Americans, a territory gained sovereignty only when an elected convention drafted a constitution and sought admission to the Union.¹³ Cass responded to the question of state sovereignty and constitutional law with a pragmatic question: why should Congress assume jurisdiction over the status of slavery during the presumably brief territorial phase when its authority would cease with the territory's admission to the Union? "Is the object, then, of temporary exclusion for so short a period as the duration of the Territorial governments," Cass asked, "worth the price at which it would be purchased?"¹⁴ Most of Cass's statements up to this point had merely reiterated established Democratic doctrine. The candidate broke new ground, however, by strongly implying that territorial legislatures should have the power to determine the status of slavery. Many Democratic politicians had simply insisted that Congress had no power to address the issue of slavery in the territories, without addressing who did possess jurisdiction.

¹³ The best analysis of the state sovereignty question is Arthur Bestor, "State Sovereignty and Slavery: A Reinterpretation of Proslavery Constitutional Doctrine, 1846-1860," *Journal of the Illinois State Historical Society* (Summer 1961): 117-180. See also Francis S. Philbrick, ed., *The Laws of Illinois Territory*, (Springfield: Illinois State Historical Library, 1950), lvii and *passim*.

¹⁴ *Washington Union*, December 30, 1847.

In the Nicholson letter, Cass answered the question by maintaining that the territories themselves had the right to permit or prohibit slavery.

Cass had advanced a thoughtful argument that portrayed the Wilmot Proviso as an absurd attempt by Congress to legislate on the slavery question for a brief period of time and in a place where it did not currently, and most likely, never would exist. Moderates on both sides of the slavery issue could endorse the former idea as a sound and pragmatic approach to a divisive political issue. But the latter point received the scorn of southern slaveholders who viewed Cass's rationale as a blithe dismissal of their constitutional rights. Unfortunately for Cass's standing with the South, he expanded on his reasoning concerning the viability of slavery in the Mexican territory. The senator essentially adopted the stance of James Buchanan and Secretary of the Treasury Robert J. Walker on slavery; the institution could never exist in the cession because of the race of the indigenous population and because the laws of nature precluded the development of plantation agriculture. In 1844, Walker, then a senator from Mississippi, had asserted that slavery would never exist in California and New Mexico "not only because it is forbidden by law, but because the colored race there preponderates in the ratio of ten to one over the whites; and holding, as they do, the government and most of the offices in their possession, they will not permit the enslavement of any portion of the colored race, which makes and executes the laws of the country."¹⁵

Walker's pronouncement had offended southerners—and their hostility to his argument did not abate. Southern Democrats especially rejected the notion that the Mexican laws prohibiting slavery would prevail under American control. Furthermore, many considered the prospect that Mexicans would control territorial governments in the cession outrageous.

¹⁵ Quoted in *ibid.* For an incisive assessment of Walker's theories on slavery in the West, see Thomas R. Hietala, *Manifest Design: Anxious Aggrandizement in Late Jacksonian America* (Ithaca, NY: Cornell University Press, 1985), 27-32.

Allowing Mexicans to govern the cession amounted to the conquered governing the conqueror. And to the minds of many southerners, both points seemed to deprive Americans of their sovereignty in the Mexican Cession, an assertion that one could argue directly controverted Cass's aim in the Nicholson letter—to affirm territorial sovereignty. During the election year, southern Whigs and Calhounites alike exploited the fact that in the Nicholson letter, Cass endorsed the statements of Walker.

Cass, however, faced a greater obstacle than any offending remarks found within the Nicholson letter. In the waning days of the Twenty-Ninth Congress when the Senate deliberated over the Two Million Bill, Cass had tacitly agreed to vote for passage with the Wilmot's amendment. Of course, the Senate did not vote on the Two Million Bill—the House had adjourned before Senate managers could take a vote—but Cass had made his position clear. Even after the session's end, the senator remarked to a New York congressman that the northern Democrats had agreed to vote for the amended bill and that “'he regretted very much' not receiving the opportunity to vote on it.”¹⁶ Most likely Cass did not recognize the extent of southern feeling against the proviso and instead opted to support prosecution of the war, even if it meant accepting the amendment.¹⁷ Cass had changed his opinion by the time he penned the Nicholson letter. Indeed, when he wrote of a “great change” in the public mind, as well as his own, he may have intended an oblique reference to his actions in August 1846.¹⁸ When news surfaced of Cass's conversation with the New York congressman, though, a number of southerners fumed at the presidential candidate's one-time support of the hated Wilmot Proviso.

In the meantime, the Nicholson letter gained the approbation of northern and southern Democrats. The *New York Herald* called the letter “[o]ne of the most important moves on the

¹⁶ Quoted in Klunder, *Lewis Cass and the Politics of Moderation*, 162.

¹⁷ This is the explanation of Cass's most recent biographer; see *ibid.*, 162-163.

¹⁸ *Washington Union*, December 30, 1847.

political chess-board.”¹⁹ Echoing the sentiments of individuals from both sections, the *Herald* posited that Cass “goes farther than Mr. Calhoun himself.”²⁰ By arguing that Congress had no right to legislate for the territories on the slavery issue, Cass had advanced a position more strident than most southern ultras. He had advanced an argument in which southerners could find safety, a Virginia editor affirmed.²¹ The senator had developed a strong argument based on principles of the past, a doctrine most Democrats believed “destined to become the platform” of the party.²²

What did the Cass doctrine, as many would come to call it, really mean? Though many Democratic partisans wanted to believe that “Gen. Cass’s letter contains its own best interpretation,” the document actually left supporters and opponents alike befuddled. Like many of his predecessors during the earlier debates over the expansion of slavery, Cass did not take an explicit stand on the right of Congress to legislate on slavery in the territories. He merely considered congressional intervention impolitic. More interestingly, many of Cass’s contemporaries as well as historians up to the present have advanced competing theories on the true meaning of Cass’s version of territorial self-government. As one scholar has colorfully written, the senator “was as silent as the dumbest oracle on the precise stage of territorial development at which inhabitants were to regulate slavery.”²³

Because Cass wrote the Nicholson letter to advance his candidacy for president, he artfully balanced his remarks to appease the differences within his party, thereby sacrificing clarity to placate the different factions within the party. On the issue of the expansion of slavery,

¹⁹ *New York Herald*, January 1, 1848.

²⁰ *Ibid.*

²¹ *Richmond Enquirer*, January 4, 1848.

²² *New Orleans Louisiana Courier*, January 7, 1848.

²³ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 84.

Cass sought to insert himself into a long tradition of Democratic doctrine on the right of the people to engage in self-government. By advancing the cause of self-government, the Nicholson letter exhibited its author's sterling credentials as a Jacksonian Democrat and a defender of democratic rights. Paeans to the revolutionary doctrine of popular sovereignty and self-government did not settle the pragmatic question of when the settlers of a territory could exercise their presumptive right to permit or prohibit slavery within the bounds of their territory.

In spite of the Nicholson letter's perhaps intentional lack of precision, Cass left significant clues as to when he believed settlers of a territory could decide the slavery issue. Whereas most Democrats believed that self-government came in the phase immediately preceding statehood, when a territorial convention met to draft a constitution, Cass strongly implied that he believed Congress should let settlers decide the question at some point earlier. Cass had asked his readers whether a "temporary exclusion" of slavery from the territories merited the inevitable struggle that would result.²⁴ The people of the territory would possess the unquestionable right to legislate on slavery when admitted to statehood. The senator clearly implied that Congress should let territorial governments decide the slavery issue rather than risk a firestorm of sectional discord over the Wilmot Proviso and congressional intervention for or against slavery in the territories.

Cass did little to clarify his position on when a territory could legislate on slavery, perhaps because of the sharp criticism leveled against the Dickinson resolutions in the Senate. Some two weeks after the Nicholson letter appeared in the press, the New York senator rose to defend his resolutions calling for territorial self-government. Dickinson basically echoed the reasoning of the Nicholson letter. Why risk sectional discord in Congress for a prohibition that would carry no force once a territory became a state, Dickinson asked. His resolutions promised

²⁴ *Washington Union*, December 30, 1847.

to “leave, under the Constitution, all questions concerning the admission or prohibition of this institution in the territories, to the inhabitants thereof, that its intrusion may not hereafter arrest the policy, defeat the measures, or disturb the councils of the nation.”²⁵ Dickinson took a position stronger than any other legislator on the right of self-government in the territories. He argued that the territories should possess the same rights to self-government as other “political communities,” a point that considerably blurred the difference between territory and state.²⁶ Dickinson maintained that Congress could not abridge the rights of an American citizen because he resided in a territory rather than a state. Certainly the framers of the Constitution did not intend to impose a colonial status on the territories and their inhabitants.

The Dickinson resolutions—and indeed the entire issue of territorial self-government—not only had profound implications for the expansion of slavery, but they also raised significant questions about the nature of American government. Dickinson advocated territorial sovereignty in its purest form, though even he did not explicitly state precisely when a territory and its inhabitants became imbued with sovereignty. The New York senator went too far, however, in the opinion of a number of his colleagues. Immediately following Dickinson’s speech in the Senate, David Yulee of Florida introduced a resolution of his own, stating that “the federal government has no delegated authority, nor the territorial community any inherent right, to exercise any legislative power” that might prohibit slavery.²⁷

Yulee’s resolution embodied the Calhounite position that neither settlers in the territories nor Congress could interfere with the right of an American citizen to emigrate to a territory with his slave property. The Calhounites left open the possibility that a territorial legislature could enact slave codes to regulate the institution, but they explicitly denied the right of anyone to

²⁵ *Congressional Globe*, 30th Cong., 1st Sess., 157

²⁶ *Ibid.*, 159.

²⁷ *Ibid.*, 160; *S. Doc. Misc. No. 6*, 30th Cong., 1st Sess. (January 12, 1848). Serial Set No. 511.

prohibit slavery in a territory. Dickinson's resolutions, to the minds of ultra southerners, offended the right of slaveholders to enjoy the common property of the territories, which Congress merely administered as an agent for the states. In sum, the Calhounites believed that Cass and Dickinson's version of territorial self-government unquestionably gave settlers the right to legislate on slavery during the territorial phase. They saw no lack of clarity in the pronouncements of these two northern Democrats. Calhoun remarked to an associate that the speeches of Dallas and the letters of Buchanan and Cass "are intended to delude the South."²⁸ Throughout the election year of 1848, politicians and interested observers would grapple with the Cass doctrine and attempt to give precision to his assertion that the people of the territories possessed the right to determine their own domestic institutions. As individuals lined up for and against the principles embodied in the Nicholson letter, the doctrine of territorial self-government itself assumed different meanings. Cass's initial statement may have lacked clarity, but proslavery and antislavery partisans would further muddle its meaning in order to gain political advantage.

In the early months of 1848, northern Democrats, especially the doughfaces, offered their endorsement of the Nicholson letter and the Dickinson resolutions. A New Yorker expressed his satisfaction with Dickinson's effort in the Senate. "The Wilmot Proviso as it is termed or whoever may be its putative Father," he wrote, "I have always considered Abolitionism in disguise."²⁹ Northern Democrats saw abolitionists as radicals bent on destroying the Union and consequently sought to steer a more conciliatory course. Cass and Dickinson provided a compromise that seemed able to reunite the fractured Democratic Party. In the press, moderate

²⁸ John C. Calhoun to Henry Gourdin, January [ca. 15], 1848, in Clyde N. Wilson, et.al., eds., *The Papers of John C. Calhoun*, 28 vols. (Columbia: University of South Carolina Press, 1959-2004), XXV, 121.

²⁹ Campbell P. White to Daniel S. Dickinson, February 2, 1848, Daniel S. Dickinson Correspondence, Modern Manuscripts Collection, Newberry Library, Chicago, IL.

supporters of territorial self-government found their voice in James Gordon Bennett's *New York Herald*, which endorsed the Cass doctrine as a position that northern and southern Democrats could unite upon.³⁰

Not all Democrats could endorse the Nicholson letter wholeheartedly, because Cass conceded much to the proslavery interests. In an effort to "make the amplest reparation for his former support of the Wilmot proviso," a Washington correspondent noted, the senator had given the South "not only all it requires, but what it never dreamed of asking."³¹ Some Democrats, including the correspondent, wondered if Cass had given too much to the South. They recognized that many northerners abhorred the institution of slavery and did not entirely trust southern politicians to stand for national interests. At an Ohio Democratic convention in January, the delegates expressed their fears of ceding too much power to slaveholder interests. The convention gave only a tepid endorsement of the Nicholson letter by affirming the ages-old doctrine that Congress could not interfere with slavery in the states, but ignoring Cass's implication that territorial legislatures could pass laws permitting or prohibiting slavery.³²

Southern Democrats hailed the Nicholson letter as an important defense of southern rights in the territories. "Gen. Cass has taken his place side by side with Buchanan and Dallas upon this great question," a Georgia editor effused. "What a brilliant trio! And they all are Democrats!"³³ Southern Democrats noted that their section still had friends in the North who would stand for the constitutional rights of slaveholders and non-slaveholders alike. The Cass doctrine promised to heal the division caused by the Missouri Compromise over twenty-five years before. Democrats in the South insisted that territorial self-government would give

³⁰ See *New York Herald*, January 1, 1848.

³¹ *Ibid.*, January 24, 1848.

³² *Ibid.*, January 21, 1848.

³³ *Milledgeville Federal Union*, January 11, 1848.

southerners equal rights in the territories, which the Compromise of 1820 had denied—at least north of the 36° 30' line.³⁴

Although many southern Democrats supported the Cass doctrine, they differed as to how they interpreted the Nicholson letter and its definition of territorial self-government.

Considerable differences exist within the South over the application of self-government, which subtly changed over the course of the election year. In the first half of 1848, certain Georgia Democrats emerged as stalwart supporters of the Cass doctrine. One Georgia editor clearly explained his interpretation of territorial self-government. Congress had no right “to interfere either one way or the other in a question of slavery in the territories” because the Constitution “looks with equal regard upon the respective social organization of the different states. The whole disposition of the matter must then be with the Territorial Legislature.”³⁵ Moderate Georgia Democrats assailed the Calhounite position, which to their minds forced slavery upon the territorial legislatures without their consent. If Congress possessed the power to force slavery upon a people, could it not conversely force abolition, a Democratic editor asked.³⁶

Other Democrats exhibited a curious understanding of what their northern brethren meant in proposing territorial self-government. The Dickinson resolutions had clearly vested power over slavery in the territorial legislatures, but some southern Democrats either did not fully understand or chose to ignore the implications of Dickinson’s resolutions and Cass’s Nicholson letter. More likely they desired to reshape the doctrine to suit their own political purposes. Georgia politician Henry L. Benning wrote to his close friend Senator Howell Cobb, “The resolutions do not declare what principle ought to govern in *the interval* between the time of acquiring the territory and the time at which the people thereof may choose to settle those

³⁴ *Richmond Enquirer*, January 25, 1848.

³⁵ *Milledgeville Federal Union*, February 1, 1848.

³⁶ *Ibid.*

‘questions of domestic policy’, which it is left to them to settle.’³⁷ Benning took a unique stance that straddled the line between the position of northern Democrats that territorial legislatures had the unquestioned power to legislate on slavery and the Calhounites who insisted that neither Congress nor territorial legislatures could exercise such power. He did not object to allowing territorial legislatures, once created in the second stage of territorial government, to decide the slavery question. Benning did propose adding a clause to the resolution on territorial self-government, however, that would permit slaveholders to enter the territory until a territorial legislature passed laws to the contrary.

The remarks of men like Benning show that while a significant number of southern Democrats committed themselves to territorial self-government, they did so with certain reservations and on their own terms. Furthermore, the issue had sharply divided the South. Neither southerners nor the national Democratic Party had unified on the best way to dispose of the Wilmot Proviso. In Alabama, for example, moderate Democrats who supported territorial self-government faced stiff opposition from the allies of William Lowndes Yancey, who had endorsed the Calhounite position. At a state Democratic convention, the moderates resolved to combat the rhetoric of the Yancey faction by expressing their satisfaction with “the Democracy of the North for their conduct on the Slavery question.”³⁸ Yancey and his followers, however, would strengthen their opposition to the Cass doctrine over the course of the election year. And in Georgia, where significant support among moderates emerged for territorial self-government, moderate Democrats feared that the northern wing of the party would withhold support for the Cass doctrine because of their objections to the institution of slavery. “Why, then, will not our

³⁷ Henry L. Benning to Howell Cobb, February 23, 1848, in Ulrich B. Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: Government Printing Office, 1913), 97.

³⁸ Edward A. O’Neal to George S. Houston, February 6, 1848, Box 1, George Smith Houston Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, NC.

Northern brethren,” a Milledgeville editor asked, “consent for this doctrine to apply to territory which may be hereafter acquired?”³⁹

Democrats faced a daunting task in 1848: “to gain South and not lose North,” in the words of Henry L. Benning.⁴⁰ Democrats had to convince southerners that their party would best protect slavery and southern interests in the territories, but at the same time keep northerners who objected to slavery and addressing southern demands in the party fold. They faced considerable opposition in the North and South. As early as March, some southern Democrats doubted if Cass could garner sufficient votes from northerners or southerners.⁴¹ Growing northern hostility to the institution of slavery had forced some politicians to reckon with the Wilmot Proviso and to abandon efforts to build intersectional ties with southern leaders. In the South, moderate Democrats contended with the Calhounites, who doubted the efforts of men like Cass. The followers of Calhoun would insist on a platform that would give positive protection to southern rights in the territories.

Democrats from the North and South never expected to convert either abolitionists or antislavery zealots to their cause. According to a southern observer who believed that “Politics & Fanaticism are confederated for our destruction,” antislavery northerners viewed slavery “as sinful—and thy think that if they suffer new—free territory to be occupied by Slaves—the sin will be upon them.” In opposition, party regulars portrayed themselves as moderate patriots who sought to save the bonds of Union from the machinations of antislavery fanatics. Antislavery northerners criticized Cass for his stance on the slavery issue. “Mr. Cass does not mean to be behind Messrs. Woodbury, Buchanan or Dallas, who are each anxious to receive the reward of

³⁹ *Milledgeville Federal Union*, February 1, 1848.

⁴⁰ Henry L. Benning to Howell Cobb, February 23, 1848, in *Correspondence of Toombs, Stephens, and Cobb*, 98.

⁴¹ See R.F. Simpson to James L. Orr, March 7, 1848, Orr and Patterson Family Papers #1413 (microfilm), Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill.

their subservience to slavery,” a New Hampshire editor wrote.⁴² Cass merely presented another example of doughfaces doing the bidding of the South. The efforts of moderate Democrats to unite the party fell flat with the increasingly strident opponents of slavery in the North.

Antislavery leaders responded to the Nicholson letter as expected; so too did the Calhounites, who had objected vociferously to the proposals of northern Democrats since George Dallas had spoken in support of territorial self-government. Calhoun recognized the allure of Cass’s position on the slavery question and sought to solidify his ranks in support of his own common property doctrine. Dallas, Buchanan, and Cass certainly opposed the Wilmot Proviso, “but not the end at which it aims; to exclude the South from whatever Territory may be acquired from Mexico.”⁴³ The Nicholson letter offended Calhoun by quoting the remarks of Buchanan, who had insisted that slavery would never thrive in the Mexican Cession. To Calhoun, the viability of slavery in the West did not matter; the right of a slaveholder to carry his property into the territories was paramount. Northern Democrats had drafted grand proposals to replace the Wilmot Proviso with an affirmation of the people’s right to determine their own institutions. But what people—American citizens or Mexican inhabitants? And for what purpose? Buchanan and Cass had both suggested that slavery would never exist in the Mexican Cession. Calhoun pounced on these issues, and directed his associates to do the same in an effort to rally the South behind his banner.⁴⁴

The Calhounites launched their offensive against territorial self-government by accusing its proponents of deceiving slaveholders. Cass and Dickinson maintained that their proposal preserved southern rights in the territories, according to a Charleston editor, but they “had also said, in the way of a confidential whisper to the north, ‘the inhabitants of the territory that may

⁴² *New Hampshire Sentinel*, January 6, 1848.

⁴³ John C. Calhoun to Henry Gourdin, January [ca. 15], 1848, in *Calhoun Papers*, XXV, 121.

⁴⁴ See Henry Gourdin to John C. Calhoun, January 19, 1848, in *Calhoun Papers*, XXV, 135-136.

be acquired will have the right to decide whether slavery shall have entrance upon the soil or not; and as the institution has now no existence there, and is regarded with great aversion by the people, there is no danger whatever that slavery will ever be permitted to advance beyond its present limits.”⁴⁵ The doughfaces, according to Calhoun and his allies, wanted to gain votes in the South by proposing the right of the people, rather than Congress, to determine the status of slavery in the West. They also wanted to keep wary northerners in the Democratic fold by suggesting that slavery would never take root in the Mexican Cession. Calhoun sought to show that the northern Democrats saw self-government as an essentially antislavery doctrine.

Calhoun’s indictment of the Cass doctrine resonated with those southerners who trusted neither the northern Democrats nor the current residents of the Mexican Cession to uphold southern rights. While most southerners endorsed the principle of self-government in its broadest definition, more doctrinaire citizens of the section disagreed with the application of territorial sovereignty as proposed by Cass and other northerners. Because Mexican law prohibited slavery, it seemed highly unlikely that the Mexican residents would consent to introducing the institution. Only if Americans emigrated to the cession and took control of the institutions of territorial government could slavery have a chance to flourish, which necessitated two preconditions. First, slaveholders needed time to emigrate to the West. Southerners—indeed all Americans—could not allow the Mexican citizens to shape American law. Second, and especially in the minds of the Calhounites, the federal government had to affirm and defend the right of slaveholders to carry their property into the cession. For this reason especially, southerners had looked to extension of the Missouri Compromise line as a viable compromise solution. The pronouncements of Dallas and Cass, however, had brushed aside the compromise

⁴⁵ *Charleston Mercury*, quoted in *Niles’ National Register*, February 19, 1848.

in favor of the alluring idea of self-government, a doctrine rooted in America's revolutionary ideology and Jacksonian democracy.⁴⁶

Calhoun's own strict construction of the Constitution may have contributed to the rejection of extending the Missouri Compromise line, since the South Carolinian had vigorously attacked the old compact as an infringement on the South's constitutional rights. In July 1848, Calhoun gave a speech in the Senate opposing the extension of the Missouri Compromise line to the Pacific Ocean.⁴⁷ Yet the compromise offered perhaps the best alternative by which Congress could dispose of the Wilmot Proviso and restore sectional harmony. It would have essentially permitted slavery in a significant portion of the Mexican Cession and, by past convention, would presumably have delayed the decision of whether to permit or prohibit slavery to the moment when the territories drafted their respective constitutions and applied for statehood, an argument to which the Calhounites held fast. In the waning days of the congressional session, the Senate—Calhoun included—voted for a measure that would have extended the Missouri Compromise line to the Pacific Ocean, but the bill died in the House of Representatives.⁴⁸ Calhoun supported extension only as a temporary measure and disclaimed that it would set any constitutional precedent for congressional restriction of slavery, though his support for extension, however tepid, must have puzzled those who witnessed his effusions against the Missouri Compromise in the past.⁴⁹ President Polk's timidity to endorse extension of the compromise line—he did not express support for the proposal until June 1848—and southern hostility toward

⁴⁶ Michael A. Morrison makes this point brilliantly in *Slavery and the American West*, 84-85 and *passim*.

⁴⁷ *CG*, 30th Cong, 1st Sess., Appendix, 868-873. For an analysis of Calhoun's objections to the "Bright amendment" a provision extending the Missouri Compromise line which Indiana senator Jesse Bright appended to the Oregon bill, see John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988), 315-317.

⁴⁸ *CG*, 30th Cong., 1st Sess., 1061.

⁴⁹ See Charles M. Wiltse, *John C. Calhoun: Sectionalist, 1840-1850* (Indianapolis: Bobbs-Merrill Company, 1951), 354-357.

the Missouri Compromise itself encouraged politicians to find an alternate solution. The Nicholson letter and its endorsement of territorial self-government filled the void.⁵⁰

The Calhounites could not endorse the Cass version of self-government, with its implication that territorial legislatures could potentially prohibit slavery. The venerable South Carolina senator had devoted allies in Congress and in key southern states who raised objections to the efforts of the moderate Democrats to settle the slavery question. Florida Senator David Yulee had objected to the Dickinson resolutions immediately after the New Yorker introduced them in the Senate by insisting that settlers in the territories had no right to prevent slaveholders in the states from emigrating with their property. Just weeks later, Alabama Senator Arthur P. Bagby introduced a similar resolution asserting that Congress could not confer a power on a territorial legislature that it did not itself possess. Neither Congress nor territorial legislatures, Bagby claimed, could prohibit slavery in the territories.⁵¹

Aside from the pronouncements of Calhoun himself, the most sustained objections to territorial self-government came from Alabama politician William Lowndes Yancey. Brilliant in oratory but often a dour, insecure man with a violent temper, Yancey moved in lockstep with John C. Calhoun in an effort to unite southerners in a “bipartisan southern political bloc.”⁵² In 1848, Yancey focused his efforts on removing the Cass doctrine of territorial sovereignty from southern political discourse and substituting the Calhoun common-property doctrine. The Alabamian staunchly opposed any intimation that settlers in the Mexican Cession could determine the status of slavery. Furthermore, he insisted that the federal government had the

⁵⁰ Historians have generally ignored the strength of the movement to extend the Missouri Compromise line, even though its ultimate rejection played a significant role in the development of popular sovereignty, a point that David M. Potter noted in *The Impending Crisis, 1848-1861*, 56-57, 71-73.

⁵¹ *S. Doc. Misc. No. 37*, 30th Cong., 1st Sess. (January 27, 1848). Serial Set No. 511.

⁵² Eric H. Walther, *William Lowndes Yancey and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 2006), 98.

obligation to protect slaveholders' rights to take slaves into any territory. Beginning in December 1847, Yancey and his Alabama associates began advocating their own doctrine on the slavery issue, which became known as the Alabama Platform. He demanded that southerners refuse to vote for any presidential candidate who did not explicitly disavow any intention to interfere with slavery in the territories.⁵³ More specifically, Yancey considered the Cass version of territorial self-government a fraud—essentially the Wilmot Proviso couched in language designed to deceive the southern populace. The Alabama Platform, as crafted by Yancey and future Supreme Court Justice John A. Campbell, repudiated the presidential candidacy of Cass and his interpretation of self-government.

Yancey and Campbell's platform consisted of four statements that affirmed southern rights in the territories and, indeed, in the Union. First, they denied congressional power to prohibit slavery in the territories. The second plank of the platform stipulated that the people of a territory could prohibit slavery only when drafting their constitution. At any time prior to the conferral of statehood, slavery was protected by the federal constitution. Though a territorial legislature could not exclude slavery, the platform did not expressly prohibit legislation such as slave codes. Third, the platform instructed Alabama's delegates to the Democratic national convention to withhold support for any candidate who refused to repudiate the Wilmot Proviso and the Cass doctrine. Finally, in its most controversial plank, the platform dictated that the federal government had the obligation to protect the institution of slavery in the Mexican Cession.⁵⁴ In sum, Yancey and Campbell had crafted the most proslavery statement of their time regarding slavery in the territories.

⁵³ *Ibid.*, 96-97.

⁵⁴ This description of the Alabama Platform essentially comes from *ibid.*, 102-103.

Yancey expressed the most comprehensive and vehement attack against the presidential candidacy of Cass and his version of territorial self-government of any southerner in politics. He reminded his audience that Cass had once supported the Wilmot Proviso, speciously calling the Michigan senator a “leading advocate” of the infamous measure.⁵⁵ Cass’s opinion that the Mexicans could determine the status of slavery for themselves, even before Americans had a chance to emigrate there, smacked of antislavery sentiment. In assessing the character of the Mexican people, Yancey echoed the sentiments of Buchanan, who had argued that Mexicans would never allow slavery in their midst because to them, “as we are assured by the letters of Gen. Cass and Mr. Buchanan, ‘the negro does not belong socially to a degraded race.’”⁵⁶

The Alabama Platform received the unanimous approbation of the state’s Democratic convention in February 1848, after Yancey rose to give an impassioned speech in defense of southern rights in the territories and asserting that the Cass doctrine violated the Constitution.⁵⁷ Having discredited Cass and the doctrine of self-government, the crafty Alabamian revealed that his fellow southerners should rally around Supreme Court Justice Levi Woodbury of New Hampshire for the Democratic nomination. Yancey claimed that Woodbury opposed “both federal and popular interference with slavery in the Territories, and that he believed that the people of a Territory could only legislate on a subject when they met to frame a constitution preparatory to admittance as a State into the Union.”⁵⁸ Though Yancey and his close friend Senator Dixon Lewis had received private assurances from Woodbury that he opposed the Wilmot Proviso and the Cass doctrine, they could never seem to coax a public statement from

⁵⁵ W[illiam] L[owndes] Yancey, *An Address to the People of Alabama* (Montgomery, AL: Flag and Advertiser Office, 1848), 7.

⁵⁶ *Ibid.*, 13.

⁵⁷ See Walther, *Yancey*, 102; Yancey, *Address to the People of Alabama*, 17-20. See also Rayback, *Free Soil*, 141-142.

⁵⁸ *New York Express*, quoted in *Boston Daily Atlas*, May 24, 1848. See also Rayback, *Free Soil*, 141.

the justice. Although considered a frontrunner for the nomination, Woodbury never mustered much support outside of the Deep South—and most of that came from the Yancey faction in Alabama.⁵⁹

The initial enthusiasm for the Alabama Platform and its bold defense of southern rights cooled after people realized that Yancey timed his pronouncement to damage the Cass campaign and advance the cause of Woodbury.⁶⁰ Yancey intended to build his movement among those individuals who remained skeptical of Cass and the Nicholson letter. A number of southerners viewed Cass, Dickinson, and other northern Democrats as, in the words of a Macon, Georgia, editor, “trimmers between downright Abolitionism, and the true Democratic States-Right doctrine.”⁶¹ Yancey relied on the groundswell of proslavery and expansionist sentiment in southern legislatures to advance the Alabama Platform. Legislatures in Alabama, Georgia, Florida, and Virginia passed resolutions in the early months of 1848 insisting that the citizens of the states had a right to bring slaves into any new territory acquired from Mexico.⁶² On first impression, these resolutions seemed to discredit the Cass doctrine as they upheld the traditional southern conception of territorial self-government—that the people could permit or prohibit slavery when they drafted a state constitution.

Yancey and his associates, however, miscalculated on two crucial points. In supporting Levi Woodbury for president, they rallied behind a candidate who refused to make public his views on the slavery question. Woodbury drafted a letter on the slavery issue that, by comparison, made the Nicholson letter look crystal clear. The Supreme Court justice penned broad platitudes of strict construction of the Constitution, but he equivocated on the issue of

⁵⁹ See Joel H. Silbey, *Party over Section: The Rough and Ready Election of 1848* (Lawrence: University Press of Kansas, 2009), 47; *ibid.*, 140-141.

⁶⁰ For southern reaction to the Alabama Platform, see Walther, *Yancey*, 104-106.

⁶¹ *Macon Weekly Telegraph*, April 25, 1848.

⁶² For a digest of these resolutions, see Yancey, *Address to the People of Alabama*, 20-21.

slavery in the territories.⁶³ More importantly, the Yanceyites underestimated the ability of moderate southern Democrats to craft their own interpretation of the Nicholson letter—or simply ignore Cass’s implication that territorial legislatures could regulate slavery.

Southern Democrats desperate to hold their party together also took a perilous course of prevarication on the meaning of the Cass doctrine. Northern Democrats, according to a New Orleans writer, had “almost *en masse*, come forward to sustain the constitutional rights of the South—to declare that Congress has *no right* to prescribe what social institutions the people of a territory shall or shall not have.”⁶⁴ The correspondent, like many of his fellow Democrats, deferred comment on when the people could make their decision—or even which people could take part in the process. In many respects, those individuals eager to restore party unity selectively read the Nicholson letter. And Cass played along in lending a degree of mystery to its meaning. When a Florida delegate to the Democratic National Convention asked for clarification on whether Cass believed that territorial legislatures possessed the right to permit or prohibit slavery, Cass “referred the Floridian to the Nicholson letter—the very document he had been asked to clarify.”⁶⁵

The debate over the meaning of the Cass doctrine gained added significance at the Democratic National Convention at Baltimore in May. A palpable tension shrouded the convention, as two sets of New York delegates demanded recognition, a development that paralyzed the party’s business for several days as leaders sought desperately to achieve a compromise. But the allies of Martin Van Buren—the Barnburners—would ultimately bolt from the convention. At the same time, other state delegations maneuvered feverishly on behalf of

⁶³ The Woodbury letter is printed in *ibid.*, 28-29.

⁶⁴ *New Orleans Louisiana Courier*, March 11, 1848.

⁶⁵ *New York Herald*, September 22, 1848; for the quote, see Klunder, *Lewis Cass and the Politics of Moderation*, 178.

their preferred candidates for nomination.⁶⁶ Yancey came ready for battle, as he intended to introduce his Alabama Platform on the convention floor. The delegates took a step, however, that incensed Yancey and other southern ultras—they agreed to choose nominees for president and vice president before they agreed on a platform. An apoplectic Yancey well understood the meaning of the development; his chances of advancing the Alabama Platform had markedly decreased.⁶⁷ To his mind, the convention sought conciliation and compromise over principle. Delegates placed three candidates before the convention—Cass, Buchanan, and Woodbury, and on the fourth ballot they nominated Cass for the presidency. In the balloting, the sixty-six year old Michigan senator carried all the states in the Old Northwest, five southwestern states, and Virginia.⁶⁸

With Cass's nomination secured, the convention moved to draft a platform, but at a convention marred by the presence of dissent, especially the debacle over New York's delegation, most delegates desired to craft a mild and conciliatory statement of Democratic party faith. The platform committee drafted a document that reiterated the usual statements of platforms past. On the slavery question, the platform took only the broadest stance, asserting that Congress had no power to interfere with slavery in the states and, in a glancing blow to the supporters of the Wilmot Proviso, "that all efforts of the Abolitionists or others made to induce Congress to interfere with the questions of slavery, or to take incipient steps in relation thereto," threatened the Union.⁶⁹ The platform made no mention of territorial self-government as the alternative to the Wilmot Proviso. Yancey, already incensed by the nomination of Cass, immediately rose to protest the wording of the platform, which he argued imperiled southern

⁶⁶ For a good narrative of the Baltimore convention, see Silbey, *Party over Section*, 62-68.

⁶⁷ Walther, *Yancey*, 109.

⁶⁸ Silbey, *Party over Section*, 64. See also Klunder, *Lewis Cass and the Politics of Moderation*, 184-187.

⁶⁹ Democratic Party Platform, 1848, quoted in Silbey, *Party over Section*, 158.

rights in the territories by its vagueness on the slavery question. He would later write, “When Gen. Cass was nominated the great deed of wrong and injury to the South was consummated and could only have been alleviated by a bold and decided expression of constitutional principles on the part of the Convention.”⁷⁰ But as Yancey must surely have recognized by the time the platform committee presented its work, few delegates spoiled for a fight over the slavery issue. Speaking for the minority of delegates unsatisfied with the platform’s indistinct stance on slavery in the territories, Yancey introduced an amendment designed to clarify the party’s position: “*Resolved further*, That the doctrine of non-interference with the rights of property of any portion of the people of this confederacy, be it in the States or Territories, by any other than the parties interested in them, be the true republican doctrine recognized by this body.”⁷¹

Yancey had again erred badly in proposing the poorly worded amendment to the platform, as it by no means clarified his position on the slavery question. Members of the Virginia delegation rejected the ambiguous statement, maintaining that “Mr. Yancey’s amendment surrendered the very doctrine he had contended for,” the inability of territorial legislatures to prohibit slavery.⁷² Delegates from North Carolina and Georgia concurred.⁷³ Even if one assumed Yancey’s intent to uphold the spirit of his Alabama Platform, John Slidell of Louisiana posited, the resolution “would rebuke the opinions of Gen. Cass, and be inconsistent with itself!”⁷⁴ The delegates rejected the statement by a vote of 216-36, though five southern state delegations voted in favor of the amendment.⁷⁵ A disgusted Yancey left the convention floor with a fellow Alabamian and the Florida delegation, an exhibition of political theater in the

⁷⁰ Yancey, *Address to the People of Alabama*, 42.

⁷¹ *Ibid.*, 48.

⁷² *Richmond Enquirer*, June 2, 1848.

⁷³ *Ibid.*

⁷⁴ Yancey, *Address to the People of Alabama*, 49.

⁷⁵ Rayback, *Free Soil*, 194.

face of the inevitable more than a serious protest of the convention's actions. The Democrats soon adopted the platform by a unanimous vote—in an effort to show party unity—and adjourned to celebrate their work.

As the Democrats left Baltimore with Lewis Cass as their presidential nominee, the Whigs journeyed to Philadelphia to nominate a candidate of their own. Members of the Whig Party had criticized the Democrats and Cass for taking what they perceived as a duplicitous position on the slavery question. Northern Whigs could argue that the Cass doctrine gave slavery a chance to expand to the Mexican Cession, whereas the Wilmot Proviso specifically forbade it. The South, however, presented Whigs with a significant challenge. In order to gain votes in the slave states, they had to field a candidate who would appear safer on the slavery issue than the northerner Cass. The Whigs resolved on a two-front attack by nominating Zachary Taylor. A career soldier whose political beliefs remained largely shrouded from public knowledge, Taylor seemed an ideal Whig candidate. Northern Whigs could point to his distinguished military career, while southern Whigs could portray the Louisiana slaveholder as a southern man who would safeguard the institution of slavery. A significant number of Whig stalwarts believed that Taylor “could give them what Jackson had given the Democrats two decades earlier: the domination of southern politics.”⁷⁶

The southern Whigs used the Cass doctrine itself as the second weapon with which they fought the Democrats. While northern Whigs interpreted the Cass doctrine to mean that settlers in the territories could *establish* slavery where it did not exist, southern Whigs argued that the Cass doctrine allowed the settlers to *prohibit* the institution, even before Americans could

⁷⁶ William J. Cooper, Jr., *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University Press, 1978), 245. My interpretation of the Whig position in 1848 is indebted to Cooper's book, especially pp. 225-268 and Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 2000), esp. 310-382.

emigrate west. The argument bore striking resemblance to the Calhounite position, a similarity that blurred party lines and further complicated an already complex argument over the status of slavery in the Mexican Cession. The Whigs, however, exposed their one weakness in their Philadelphia convention; they drafted no platform and made no statement on the issue of slavery in the territories. They hoped that the appeal of Taylor as a military hero in the North and as a slaveholder in the South would suffice. While the move made sense for the sake of party unity, it allowed Democrats to pillory their opposition for “Taylor’s cowardly silence.”⁷⁷ Privately, Taylor had ridiculed the Democrats for their position on the expansion of slavery. Before the Democratic convention, he wrote his former son-in-law Jefferson Davis, “Cass, Buchanan, & Dallas in defining their position in their letters addressed to the public in relation to [slavery in the territories], bid for the votes of the Slave holding portions of the Union; which I apprehend will have the effect to prevent the election” of any of the three.⁷⁸ But the Whig Party’s silence on the slavery issue exposed them to attack from the opposition.

Democrats and southern ultras alike pounced on the Whig Party’s lack of a platform. Even some Calhounites who opposed the Cass doctrine questioned Taylor’s stance. Southern Democratic newspapers practically mocked the Whig offensive against Cass and territorial self-government. A Virginia editor assured the Whigs that “the whole Democracy of Virginia, and ourselves, are satisfied with the ticket that floats at our masthead.”⁷⁹ Would the Whig nominee equally satisfy those who demanded a defense of southern rights, he asked? A Charleston correspondent and Calhoun supporter wrote that some southerners inexplicably believed that neither the Wilmot Proviso nor territorial self-government would not endanger slavery in the

⁷⁷ Holt, *The Rise and Fall of the American Whig Party*, 357. For the Philadelphia convention, see Rayback, *Free Soil*, 194-200; Silbey, *Party over Section*, 68-71.

⁷⁸ Zachary Taylor to Jefferson Davis, April 20, 1848, in Lynda L. Crist, et.al., eds., *The Papers of Jefferson Davis*, 12 vols. to date (Baton Rouge: Louisiana State University Press, 1971-present), III, 306-307.

⁷⁹ *Richmond Enquirer*, June 6, 1848.

states, and “for anything that we know, Gen. Taylor may be one of these, and may not even be opposed to the Wilmot Proviso, as Gen. Cass professes to be.”⁸⁰

Regardless of the Whig Party’s lack of a definite stance on the slavery issue, southern Democrats faced inescapable problems surrounding the meaning and interpretation of the Cass doctrine. Southern Whigs assailed the Democrats’ position as unclear at best and injurious to southern rights at worst. In a lengthy speech on the Senate floor, Willie P. Mangum of North Carolina dismissed the Cass doctrine as a “manifest evasion.”⁸¹ He accused Cass of selling different versions of his doctrine to the North and the South in an effort to gain votes. Mangum further charged the Cass campaign with distributing separate biographical sketches in both sections that differed subtly on issues relating to slavery in the territories. “General Cass, in the ‘Nicholson letter,’” Mangum concluded, “has evaded the only ‘real issue’ on this subject, and left the public wholly in the dark in regard to his opinions.”⁸²

Democrats scrambled to defend Cass against the Whig accusations and depict the Nicholson letter as a solid statement in favor of southern rights. Southern Democrats seized on an important statement in the Nicholson letter; while Cass “concedes to the people of the territories the right to regulate the [slavery] question for themselves, he does it with the qualification ‘under the general principles of the constitution,’ and the ‘relations they bear to the confederacy.’”⁸³ They could contend, therefore, that since the Constitution guaranteed equal protection to American citizens’ property, and since the territories belongs to the states as a whole, Cass’s “clear and palpable meaning” was to uphold the traditional southern formula for

⁸⁰ *Charleston Mercury*, quoted in *ibid.*, June 27, 1848.

⁸¹ “Democratic Platform,” Speech in the Senate, July 3, 1848, in Henry Thomas Shanks, ed., *The Papers of Willie Person Mangum*, 5 vols. (Raleigh, NC: State Department of Archives and History, 1950-1956), V, 664.

⁸² *Ibid.*, 661.

⁸³ *Richmond Enquirer*, June 6, 1848.

legislating on slavery in the territories.⁸⁴ The settlers could determine the status of slavery when they drafted a constitution and sought admission to the Union. According to Cass's most ardent southern supporters, no reasonable observer could contend that he meant otherwise. In sum, any ambiguity in the Nicholson letter stemmed from interpretation of the clause "under the general principles of the constitution," and far less so from his statements regarding when a territory could decide the slavery question. The Constitution and its interpreters, which in the absence of a national consensus meant ultimately the Supreme Court, would dictate the terms of application for territorial self-government.

Not all southern Democrats, however, could so easily dispatch with the questions surrounding the Nicholson letter. Proslavery Democrats knew what they wanted the Cass doctrine to mean, but they did not fully grasp Cass's true intentions. The calculus of bisectonal politics, which led parties to endorse one idea in the North and another in the South, had become injurious to the party system. It utilized the obfuscation of political ideas to create intraparty unity. The Democratic convention at Baltimore confirmed that the Democrats would play this most dangerous game. Their strategy led northerners like James Tallmadge—the congressman whose amendment to the Missouri bill almost thirty years earlier inflamed sectional tensions—to assert that "*Cass*, had danced around the circle--& settled down, under a pledge to *Slavery* and Southern interests."⁸⁵ Conversely, southerners like Calhoun insisted that Cass's stance "made concessions, which surrender everything, as far as territories are concerned; and in which the South cannot acquiesce without endangering her safety."⁸⁶

⁸⁴ *Ibid.*

⁸⁵ James Tallmadge to Daniel Webster, June 16, 1848, in Charles M. Wiltse, et.al., eds., *The Papers of Daniel Webster*, 15 vols., (Hanover, NH: University Press of New England, 1974-1989), Series I: Correspondence, VI, 298.

⁸⁶ John C. Calhoun to Henry Bailey, June [ca. 15], 1848, in *Calhoun Papers*, XXV, 484.

Southern Democrats desperately wanted to interpret the Cass doctrine as an affirmation of the long-held belief that a territory could permit or prohibit slavery when admitted to the Union. “My own notion is that a Territorial Legislature while legislating *as such* and for the Territory and for territorial purposes *has no right* to pass a law prohibiting slavery,” a North Carolina politician wrote to Howell Cobb. “Because if we adopt that doctrine we at once practically exclude the slaveholder forever.”⁸⁷ Therein lay the problem for slaveholders, as Dobbin illustrated; if southerners had any chance at expanding slavery into the Mexican Cession under the American flag, they had to prevent the settlers already there from passing legislation once the region became American soil. The Cass doctrine would not give southerners enough time to emigrate west before the antislavery settlers passed positive laws prohibiting slavery.

The Mexican ban on slavery presented proslavery leaders with a quandary they had never before faced. All of America’s major territorial acquisitions in the past included places where slavery existed and where slaveholders could emigrate without fearing for the legal status of their slaves. Local control over slavery seemed less threatening to southerners when slaveholders lived in the territory. But allowing for the possibility that antislavery Mexicans could determine the status of slavery in the Mexican Cession seemed patently unfair, if not unconstitutional, to many southerners. Southerners would evaluate Cass and the Democrats—as well as the Whigs—on their ability to protect southern institutions and rights, a test that made the interpretation of territorial self-government all the more significant. Absent a concrete definition of the Cass doctrine, southern Democrats could only resort to what northern and southern party members agreed upon—the “principle that Congress shall not legislate for new territories.”⁸⁸ Despite the fact that the Whigs had dodged the slavery question in their own convention and

⁸⁷ James C. Dobbin to Howell Cobb, June 15, 1848, in *Correspondence of Toombs, Stephens, and Cobb*, 108.

⁸⁸ *Mobile Journal*, quoted in *Milledgeville Federal Union*, June 13, 1848.

through the nomination of Taylor, party regulars pummeled the Democrats on the Cass doctrine. Particularly in the South, Whigs unceasingly exposed the inconsistency of the Democratic stand on slavery in the territories. Virginia Whigs likened the Cass doctrine to a statement “that a territory is sovereign.”⁸⁹ Other Whigs accused the Democrats of evading the real questions concerning the expansion of slavery. According to them, Cass and the Democrats had crafted a platform that deferred the hard decisions concerning the status of slavery in the Mexican Cession to a later date.⁹⁰

In an effort to shore up southern support for Cass, Stephen A. Douglas of Illinois, a rising star in Democratic politics, embarked on an early summer tour of the South to rally the party faithful and to gauge southern support for Cass. From Mississippi, he wrote the candidate a summary of his meetings with southern party leaders. North Carolina, Douglas affirmed, would vote for Cass “unless Taylor should be nominated by the Whigs.” South Carolina, as expected, seemed unlikely to go for the Democrats. The news from Georgia and Alabama, however, seemed generally positive. Alabama’s Democrats had repudiated the ultra politics of Yancey and fallen behind the nominee. In Mississippi, “the Democrats are in the best of spirits & the Whigs give up the contest.”⁹¹ Douglas made no mention of Florida and Louisiana, two states where the Cass seemed in trouble. In a rousing speech in New Orleans in early June, Douglas warned his fellow Democrats that Taylor’s election by no means guaranteed the protection of slavery. The Whig candidate’s silence on issues surrounding slavery expansion and the Wilmot Proviso posed too much of a risk for southern voters. Cass had made his stand clear, Douglas

⁸⁹ *Richmond Whig*, quoted in *Richmond Enquirer*, June 30, 1848. See also *Richmond Enquirer*, July 14, 1848.

⁹⁰ See *New Orleans Louisiana Courier*, July 4, 1848.

⁹¹ Stephen A. Douglas to Lewis Cass, June 13, 1848, Box 12, Cass Papers.

implied.⁹² Douglas's southern tour provided Cass with much needed information concerning how southerners had received his nomination and the principles of the Nicholson letter. Yet Douglas ended his missive with the following cryptic warning: "Write no more letters. The South are satisfied with your views on the slavery question, as well as others."⁹³ Perhaps Douglas meant Cass to read his words at face value, but perhaps too he meant to discourage the candidate from making any additional pronouncements that would further complicate the already difficult situation surrounding the interpretation of the Nicholson letter.

During the summer of 1848 the issue of race and territorial self-government resurfaced, as a significant number of southerners raised objections to allowing the Mexican population to determine the status of slavery. Interestingly, a northerner—James Buchanan—had first voiced concern over the nature of the Mexican-born settlers in the cession when he proposed extension of the Missouri Compromise line. The discussion of how to settle the slavery issue in the Mexican Cession gained greater urgency with ratification of the Treaty of Guadalupe Hidalgo in May 1848 as partisans asked who should have the right to determine whether the institution would pass into the cession or stall in Texas. "Shall the few ignorant Mexicans now living in the country have the power of excluding the Southern people from settling amongst them with such property, as they choose to carry with them," a Columbus, Georgia, correspondent asked John C. Calhoun.⁹⁴

The argument of those individuals who questioned the Cass doctrine based on the ability of the Mexican population to prohibit slavery in the territorial phase assumed two forms.⁹⁵ The

⁹² For a summary of Douglas's southern tour and speech in New Orleans, see Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 232-233. See also *Milledgeville Federal Union*, 4 July 1848.

⁹³ Stephen A. Douglas to Lewis Cass, June 13, 1848, Box 12, Cass Papers.

⁹⁴ Mansfield Torrance to John C. Calhoun, June 19, 1848, in *Calhoun Papers*, XXV, 493.

⁹⁵ The following discussion of how race impacted the debate over territorial self-government is influenced, in part, by the insights of Eugene H. Berwanger. See *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Urbana: University of Illinois Press, 1967), 60-77 and *passim*.

more benign, and less common, reasoning suggested that Congress should defer granting New Mexico and California an elected territorial legislature, allowing time for the people's democratic instincts to "ripen."⁹⁶ Forty years before, of course, southerners had vehemently objected to the suggestions of northerners that the people of the Louisiana Purchase—including the foreign population—could not legislate for themselves. But the settlers of the Louisiana territory posed no threat to the institution of slavery. The native inhabitants of the Mexican Cession did not desire the extension of slavery into New Mexico and California.

In its more common form, the debate assumed a more derogatory tone against the native population and its ability to participate in territorial governance. One of Calhoun's associates flatly stated, "Congress has no authority to give the right of voting in conquered territory to Indians, negroes, or mixed breeds, in making constitutions or laws to Govern."⁹⁷ In a blatant attempt to use the issue of race to repel voters from Cass and the Democrats, a Virginia Whig editor wrote that the Nicholson letter meant that the Mexican residents "can prohibit slavery and will do so, and in fact having as much authority to act as the people of the *States*, they may even prohibit the introduction of *white* people within their domain."⁹⁸ Allowing the residents of the Mexican Cession to assume sovereignty similar to that possessed by the states, the writer argued, would jeopardize the sovereignty of white Americans. "Is this what Southern Democrats mean? Is it their object to establish a Black republic in our South Western border! [*sic*] And is it for that reason, they are so enthusiastic for Cass?"⁹⁹

Southern Democrats responded to their critics by trying to assert that the Cass doctrine did not grant the power to legislate on slavery in the earliest stages of territorial existence. A

⁹⁶ *Richmond Enquirer*, July 21, 1848. See also *Washington Union*, quoted in *Niles' National Register*, July 26, 1848.

⁹⁷ Fitzwilliam Birdsall to John C. Calhoun, July 31, 1848, in *Calhoun Papers*, XXV, 645.

⁹⁸ *Richmond Whig*, quoted in *Charleston Southern Patriot*, August 4, 1848.

⁹⁹ *Ibid.*

Georgia Democrat sought to assuage his fellow southerners that the doctrine of “territorial sovereignty” did not mean that the “mixed races of New Mexico and California” had the power to prohibit slavery.¹⁰⁰ Those who construed the Cass doctrine as a grant of sovereignty to the Mexican settlers failed to note the claim in the Nicholson letter that power would only be exercised “under the general principles of the constitution.” Indeed, the *Richmond Enquirer* maintained, “the Nicholson letter was written to discuss the power of Congress to exclude Slavery in the Territories, and to show that Congress possessed no such power; it does not directly touch upon the powers of a Territorial Legislature over slavery.”¹⁰¹

While southern and northern Democrats alike continued to finesse the meaning of Cass’s territorial sovereignty doctrine, a competing alternative to the Wilmot Proviso emerged in the Senate. In the closing weeks of the first session of the Thirtieth Congress, the Whig Senator John M. Clayton of Delaware moved to form a select committee to settle the issues surrounding the problems surrounding Oregon and the Mexican Cession. With Jesse Bright of Indiana, Daniel S. Dickinson, and Calhoun, the Clayton committee drafted a plan to establish territorial governments for Oregon, New Mexico, and California. Under the Clayton Compromise, the prohibition of slavery enacted by Oregon’s provisional government would stand until the territorial legislature passed its own law either permitting or prohibiting the institution. In essence, the Clayton Compromise established the principle of territorial sovereignty in Oregon.¹⁰² For New Mexico and California, however, the committee resolved on a much different course of action. The bill prohibited the territorial legislatures from passing any law

¹⁰⁰ *Milledgeville Federal Union*, July 26, 1848. This article marks one of the first references to the Cass doctrine as “territorial sovereignty.”

¹⁰¹ *Richmond Enquirer*, August 15, 1848.

¹⁰² For the slavery issue in Oregon Territory see Robert W. Johannsen, “Oregon Territory’s Movement for Self-Government, 1848-1853,” in *The Frontier, the Union, and Stephen A. Douglas* (Urbana: University of Illinois Press, 1989), 3-18; Johannsen, *Frontier Politics on the Eve of the Civil War* (Seattle: University of Washington Press, 1955), 16-17.

permitting or prohibiting slavery. Any slave brought into either territory would have the express right to sue for freedom in the territorial courts, with the ultimate right of appeal to the Supreme Court. In other words, the Clayton Compromise left to the federal judiciary the decision of whether slavery could exist in the Mexican Cession.¹⁰³ “Constitutionalization of the struggle over slavery in the territories had at last been pursued to its logical conclusion,” a historian of the period has argued.¹⁰⁴

The Clayton Compromise and the Cass doctrine of territorial sovereignty had much in common—a point that some contemporaries recognized. By vesting final authority over the question of slavery in the Mexican Cession to the Supreme Court, Clayton’s bill meshed with Cass’s principle that territorial sovereignty had to follow the principles of the constitution. A Virginian expressed his opinion that the Nicholson letter was “identical” with the Clayton Compromise.¹⁰⁵ Georgia Whig and U.S. Senator John M. Berrien believed that the bill upheld the traditional southern interpretation of territorial sovereignty, thereby protecting southern rights.¹⁰⁶ Indeed, most southerners who lent support to the Clayton bill echoed Berrien’s claim that by denying territorial legislatures the right to legislate on slavery, it upheld southern equity in the territories.¹⁰⁷

Though certainly not identical in form, the two plans for adjusting the slavery question certainly bore similarities. First and most apparent, the Clayton bill established the principle of territorial sovereignty in Oregon. Like Cass and the Democrats, the compromise equivocated on the issue in New Mexico and California. By barring the territorial legislatures from enacting

¹⁰³ For a summary of the Clayton Compromise, see Holt, *The Rise and Fall of the American Whig Party*, 335-337; Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 148-151.

¹⁰⁴ Fehrenbacher, *The Dred Scott Case*, 149.

¹⁰⁵ *Richmond Enquirer*, August 8, 1848.

¹⁰⁶ *Milledgeville Federal Union*, August 29, 1848.

¹⁰⁷ See *Richmond Enquirer*, July 21, 1848; *Milledgeville Federal Union*, July 26, 1848; *Washington National Intelligencer*, quoted in *Niles’ National Register*, July 26, 1848.

laws permitting or prohibiting slavery, the Clayton bill silenced the cries of individuals who objected to the Mexican population exercising legislative power over the issue. By deferring the decision of the legality of slavery to the courts, the plan essentially upheld Cass's statement that any action on the slavery question had to conform to the Constitution. Under the Clayton Compromise, the Supreme Court would almost certainly rule on the constitutional issues surrounding slavery in the territories.

Northerners trembled at the thought that the Supreme Court, with its proslavery majority, would rule on the slavery question. A New York editor called the plan "a perfect specimen of arrant political cowardice."¹⁰⁸ Antislavery northerners posited that the compromise opened the door for slavery by allowing slaveholders to enter and remain in the cession with their property until the courts ruled on the issue. For that matter, few antislavery partisans seemed to trust that the courts would rule on their side.¹⁰⁹ People from both sections saw a more ominous flaw in the Clayton Compromise, however. Clayton's plan assumed that either northerners or southerners would acquiesce in the decision of the Supreme Court as final and binding. Given the superheated atmosphere surrounding the slavery issue, partisans in both sections questioned whether people on the losing side of the issue would accept the court's decision.¹¹⁰

The most decisive opposition to the Clayton Compromise, however, came from southern Whigs, especially a group of eight congressmen led by the diminutive Alexander Stephens of Georgia. Whigs from the South raised objections to the Clayton bill on several grounds. A Virginia Whig editor argued that the Supreme Court had already ruled that slavery could not exist in a free territory until it became a state, a position most clearly articulated by Henry

¹⁰⁸ *New York Herald*, July 20, 1848.

¹⁰⁹ *New York Tribune*, quoted in *ibid.*

¹¹⁰ Fehrenbacher, *The Dred Scott Case*, 150.

Clay.¹¹¹ Beside the fact that the Clayton Compromise wrongly assumed that slavery could pass into the Mexican Cession without congressional legislation, it still places southerners at a disadvantage, according to a Tennessee Whig. The bill unfairly forced southerners to engage in litigation to secure the right to carry slaves into the territory. “This seems very much like legislating the South out of her rights,” the correspondent insisted.¹¹² Stephens and his associates in the House of Representatives likewise contended that slavery in the Mexican Cession could exist only by congressional authority.¹¹³ David Outlaw, a Whig congressman from North Carolina, rejected the Clayton bill as a blow against southern rights. “My impressions were against it,” he confided to his wife, “because I regard it as no compromise at all but a surrender of the whole territory to the North.”¹¹⁴

All speculation on the Clayton bill, however, proved academic. The legislation met with a fate similar to that of the effort to extend the Missouri Compromise line to the Pacific Ocean. The Senate passed the bill by a vote of 33-22, but the House of Representatives killed the bill when Stephens introduced a motion to table the legislation. Most observers believed that the compromise would fail for want of support among northern representatives. But Stephens, Outlaw, and six other southern Whigs combined to oppose the bill. The Clayton Compromise died by a vote of 112-97. Had Stephens and his seven southern Whig colleagues voted yea, the Clayton Compromise might well have passed by the slimmest margin, but he took the occasion to defend his own peculiar understanding of the constitutional status of slavery in the

¹¹¹ *Richmond Whig*, quoted in *Richmond Enquirer*, August 1, 1848. For Clay’s evaluation of the Clayton Compromise, see Clay to Thomas B. Stevenson, August 5, 1848, in James F. Hopkins, et.al., eds., *The Papers of Henry Clay*, 11 vols. (Lexington: University Press of Kentucky, 1959-1992), X, 518-519.

¹¹² Andrew S. Fulton to William B. Campbell, August 10, 1848, Box 24, Campbell Family Papers, Duke University.

¹¹³ For Stephens’s position, see Holt, *The Rise and Fall of the American Whig Party*, 336-337, 482-483.

¹¹⁴ David Outlaw to Emily B. Outlaw, July 23, 1848, Folder 5, David Outlaw Papers #1534, SHC. See also letter of July 19, 1848.

territories.¹¹⁵ Slavery, the Georgian insisted, could legally exist in a federal territory only by congressional fiat. Stephens, too, feared that the Clayton bill jeopardized Taylor's own stance on the slavery issue because some Democrats had endorsed the plan.¹¹⁶ So Stephens and seven other southern Whigs combined with all of the northern Whigs and over half of the northern Democrats to kill Clayton's bill.¹¹⁷ The bitter debate over the Clayton Compromise showed yet again how the politics of slavery could blur, if not obliterate, party lines over the issue of the expansion of slavery.

With the Clayton Compromise unceremoniously buried by the House of Representatives, both parties reverted to their established plans for dealing with slavery in the Mexican Cession. Democrats had to burnish their candidate's reputation and his plan for territorial self-government, especially among skeptical southerners. Stephen Douglas's warning that Taylor could defeat the southern Democrats appeared increasingly prescient, and other Democrats took notice. "I hope the South will see that their interests require them to stand fast for our Candidate," a northern Democrat wrote to a colleague. "If he is defeated by their fault it seems to me there will not soon if ever be another national candidate."¹¹⁸ The Whigs assaulted Cass and territorial sovereignty with renewed vigor, forcing southern Democrats to further bend the meaning of their candidate's message. A Virginia Whig journal accused Cass and his associates of using "bungling illustrations" to explain the meaning of the Nicholson letter.¹¹⁹ Democratic opponents struck back with complicated logic, arguing that the Whigs themselves had misconstrued Cass's words when he wrote that "in the mean time," presumably the point between territorial formation and admission to statehood, that the people of the territories should

¹¹⁵ Holt, *The Rise and Fall of the American Whig Party*, 336-337.

¹¹⁶ Cooper, *The South and the Politics of Slavery*, 264-265.

¹¹⁷ Holt, *The Rise and Fall of the American Whig Party*, 337.

¹¹⁸ A.H. Redfield to Dutee J. Pearce, August 20, 1848, Box 12, Cass Papers.

¹¹⁹ *Richmond Enquirer*, August 15, 1848.

manage their “internal concerns.”¹²⁰ The Whigs failed to recall that the people themselves had no voice in selecting their territorial officers in the first grade of government, the *Richmond Enquirer* replied. Furthermore, the Cass doctrine only meant to give territorial legislatures the power to *regulate* slavery, not to *abolish* it.

Southern Democrats settled on two critical points in interpreting the meaning of territorial sovereignty. First, they insisted that the power to establish or prohibit slavery existed only when a territory drafted its constitution and sought admission to the Union as a sovereign state. Second, Democrats concluded that territorial legislatures could only pass laws regulating slavery. Cass proposed to limit congressional authority to the creation of territorial governments and to allow territorial legislatures to pass laws regulating slavery as they saw fit, but the “power to regulate the institution of slavery, implies the existence of such an institution to be regulated, and is wholly distinct from, and by no means includes, the power to *prohibit it*.”¹²¹

From Democrats in the South, Cass faced a confusing array of signals about his chances to carry the region. His standing among southern Democrats reflected the uncertainty surrounding his position on the all-important slavery question. Cass received a letter from a Jackson, Mississippi, correspondent urging him to support President Polk’s Oregon message, which advocated extension of the Missouri Compromise, if he had any hope of carrying the state. One Virginian, however, advised him to oppose the message in order to sway the state’s voters. An exasperated Cass sought clarification from Mississippi Senator Henry S. Foote, but found little hope of finding the true pulse of southern opinion.¹²² A Virginia representative expressed more favorable sentiments, assuring Cass that the South would give “generous support” to his campaign. “All reflecting men, whose party bias does not overcome their devotion to their

¹²⁰ *Ibid.* See also September 18, 1848.

¹²¹ *Ibid.*, August 18, 1848 (italics in the original).

¹²² Lewis Cass to Henry S. Foote, September 18, 1848, Box 12, Cass Papers.

country and the Union,” John Y. Mason wrote, “must see, and do see, that the association of the Democratic party, is now the only hope of the Union.”¹²³

The fire-eater Robert Barnwell Rhett, however, better captured the division in southern opinion on Cass. Rhett dismissed “territorial sovereignty” as proposed by Cass and the Democrats. The South Carolinian stated in a speech, “I feared, and I think I had reason to fear, that the Southern Democrats might be divided as to the rights of the South, by a portion of them supporting this doctrine.”¹²⁴ While Cass loyalists in the South gamely declared, “neither in the Nicholson letter nor any where else, that we have seen, has [he] declared himself in favor of Territorial Sovereignty,” they simply could not shape public opinion in their favor.¹²⁵ The attacks of southern Whigs, ultra states’ rights advocates, and, to a certain degree, the language of the Nicholson letter itself, proved crippling to the southern Democrats’ bid to prove their candidate would best protect the institution of slavery and southern interests in the west. The statements of Democratic speechmakers that Cass had taken the “true Southern ground” on the slavery question failed to impress a sufficient number of southern voters.¹²⁶ Alexander Stephens best characterized southern sentiment on the Cass candidacy. “Shall it be said that the South can not trust their peculiar interest in the hands of a cotton and sugar planter of Louisiana, but they must look for a man in Detroit, who has not a feeling in common with them?”¹²⁷

In the end, Cass could not overcome the odds against him in the South. His opponents had raised too many questions about his sincerity in protecting southern rights. They had skillfully attacked the Nicholson letter and its doctrine of territorial sovereignty as unsound

¹²³ John Y. Mason to Lewis Cass, September 25, 1848, in *ibid.*

¹²⁴ *Milledgeville Federal Union*, October 10, 1848.

¹²⁵ *Macon Georgia Telegraph*, October 3, 1848.

¹²⁶ *Clarksville Northern Standard*, October 21, 1848.

¹²⁷ Quoted in William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1990), 476-477.

policy for the South. Territorial sovereignty, designed to placate northerners and southerners alike, had ended up proving a liability—a doctrine that inflamed antislavery and proslavery partisans while failing to rally a sufficient number of moderates on the slavery question. Taylor won the national popular vote by 4.8 percent, while in the South he won by only 2.8 percent.¹²⁸ In the electoral vote, Cass carried seven southern states, while Taylor carried eight. The Whigs proved strongest in the southeastern states, while Cass carried Texas, Missouri, Arkansas, Mississippi, and Alabama. Taylor did not succeed at peeling large numbers of southern Democrats from their traditional party alliances, but many Democratic stalwarts in the South stayed home on Election Day.¹²⁹ Indeed, a significant number of Democrats stayed home on Election Day, pointing to the unpopularity of Cass. Taylor, on the other hand, invigorated the southern Whig base especially. Taylor gained more actual votes than had Henry Clay in 1844 in every southern state save Maryland.¹³⁰ For a complex set of reasons, Cass and territorial sovereignty did not prevail in the politics of slavery.

In the month before the election, two Democrats—a man from Cleveland and another from Louisiana—met aboard a steamboat traveling west from Buffalo. On deck, the Cleveland man enthusiastically endorsed Cass as the right choice for president, ensuring his audience that the candidate opposed the extension of slavery and favored the Wilmot Proviso. Puzzled at the Ohioan’s speech, the Louisianan replied, “We are both Cass men, sir, but I see you are advocating his election on wrong grounds.” On the contrary, the man insisted, Cass’s Nicholson letter repudiated the Wilmot Proviso and protected southern interests in the territories. With that, the discussion ceased.¹³¹ Cass and the Democrats played a dangerous game in 1848 and lost.

¹²⁸ For a popular and electoral vote analysis, see Silbey, *Party over Section*, 134-137.

¹²⁹ *Ibid.*, 141.

¹³⁰ Holt, *The Rise and Fall of the American Whig Party*, 368-369.

¹³¹ *Boston Daily Atlas*, October 9, 1848.

They tried to court voters in different sections of the Union by trying to obscure the implications and lend a double meaning to their own platform—the doctrine of territorial sovereignty. To a certain degree, they deferred the decision on whether slavery would exist in the Mexican Cession to some future date, when the nation, or more likely, the Supreme Court, would have to decide the constitutional issues surrounding slavery in the territories. True, the Whigs had scarcely done better, but Taylor’s silence on the slavery question actually helped his candidacy.

Southern Democrats bitterly received news of their candidate’s defeat. “Strange as it may seem,” a Georgia editor wrote, “although the victorious chief is a Southern man, yet the South is the vanquished party.”¹³² The southern endorsement of Taylor would prove “a suicidal policy.”¹³³ Taylor would finally have to break his silence on the slavery question, which would prove whether southerners had rightly placed their trust in one of their own. While Cass emerged defeated from the election of 1848, no one knew whether his doctrine of territorial sovereignty would reemerge as an alternative to the Wilmot Proviso or whether the election had killed it, too.

¹³² *Milledgeville Federal Union*, November 14, 1848.

¹³³ *Ibid.*

CHAPTER 6
SLAVERY AND SELF-GOVERNMENT IN THE MEXICAN CESSION:
THE CRISIS OF 1849 AND THE COMPROMISE OF 1850

Lewis Cass and the Democrats took considerable time licking the wounds they received at the hands of the triumphant Whig Party in November 1848. On the surface, the electorate had repudiated the doctrine of territorial sovereignty and the efforts of Democrats to prove themselves safe on the slavery question. Zachary Taylor, a Louisiana slaveholder and hero of the Mexican War, received sufficient support from the Whigs to overcome indignant antislavery opposition and ascend to the presidency. He won election not by standing on an ambiguous platform, but by endorsing no platform at all. Whig pundits accused Cass and the Democrats of crafting an indecisive and evasive campaign message regarding the Wilmot Proviso and slavery in the territories, but Taylor's Whigs revealed nothing about their ideas, leaving many wondering if Taylor had a plan at all.

While citizens puzzled over the president-elect's potential course, the seemingly inexorable debate over slavery in the Mexican Cession continued to trouble the national councils. With possession of the cession secured and people both within the territory and in the states clamoring for the extension of American law and institutions over the Mexican lands, leaders perceived the gravity of the situation in the West and the need to settle the slavery issue. Under Mexican law, however, slavery did not exist anywhere in the cession except the institution of peonage, which little resembled the institution that existed in the American South.¹ In the Mexican system, peons technically contracted themselves to their master for a meager wage. In practice, however, the institution effectively bound peons and their issue into a labor relation

¹ For peonage in New Mexico, see Howard Roberts Lamar, *The Far Southwest, 1846-1912* (New Haven: Yale University Press, 1966), 27-28; Loomis Morton Ganaway, *New Mexico and the Sectional Controversy* (Albuquerque: University of New Mexico Press, 1944), 9-10.

similar to that of slavery. Antislavery and proslavery partisans argued over whether the Mexican law prohibiting slavery prevailed under American rule, as antislavery politicians posited, or if slavery followed the flag, as proslavery leaders like John C. Calhoun insisted.

The slavery debate that had raged during the election year continued into the lame duck second session of the Thirtieth Congress. In the antebellum era, Congress met in a short winter session, which in an election year meant that Congress met in between the election and seating of its successor body. The situation became even stranger in a presidential election year, when the president remained in office for almost four months after the election of his successor.

Accordingly, in December 1849 President James K. Polk sent his final message to Congress, chiding the legislators for failing to provide territorial governments for California and New Mexico and encouraging them to act promptly lest conditions deteriorate in the West. Polk lamented that the slavery issue had delayed the erection of territorial governments. Indeed, the president argued, “no duty imposed on Congress by the Constitution requires that they should legislate on the subject, while their power to do so is not only seriously questioned, but denied by many of the soundest expounders of that instrument.”² Polk maintained that Congress should not intervene in the slavery issue, leaving the matter to the territories themselves when they drafted state constitutions. Instead, they had insisted on debating the matter in Congress while leaving the territories of the Mexican Cession unsettled and without government. Congress had to act, Polk insisted, most preferably by organizing territories out of the vast cession and leaving the matter of slavery alone.

California quickly emerged as the jewel of the Mexican Cession—a vast, fertile territory of immense natural resources and strategic importance to the newly continental nation. In his message to Congress, Polk had recognized the incalculable value of California to the nation.

² *Congressional Globe*, 30th Cong., 2nd Sess., 5

Almost two years earlier, settlers had found gold at Johann Sutter's mill along the banks of the American River, provoking an astonishing influx of prospectors who moved west to find wealth.³ New Mexico, on the other hand, seemed far less impressive—a territory dominated by cattle grazing and the ages-old Spanish seigneurial system of agriculture, a situation by no means suited for plantation agriculture.⁴

Slavery could never flourish in the Mexican Cession, a Virginia minister wrote, because of the land, the climate, and the inhabitants who would almost surely prohibit slavery by their territorial laws and constitution.⁵ An army officer visiting New Mexico in 1846 had observed that the “profits of labor are too inadequate for the existence of negro slavery.”⁶ In California, some believed that the gold rush would work against the expansion of slavery. Not only did the influx of white laborers to the gold mines seemingly militate against the use of slave labor, but the hostility of the native Mexicans as well as the whites emigrating to the region placed slaveholders at a disadvantage. Emigrants from the free states almost assuredly would tip the balance in favor of a free California, long before Congress would act on the subject.⁷ Though slaves might well prove excellent mine laborers, Georgia politician Wilson Lumpkin stated, slaveholders would not “under existing circumstances run the risque of loosing [*sic*] the slaves.”⁸ Unless Congress could provide some sort of protection for slave property in the Mexican Cession, significant southern emigration seemed unlikely. What slaveholder would want to

³ See Leonard L. Richards, *The California Gold Rush and the Coming of the Civil War* (New York: Alfred A. Knopf, 2007), 8-14. For Polk's comments on California, see *ibid.*, 4-5.

⁴ For a discussion of New Mexico under Spanish rule, see Ganaway, *New Mexico and the Sectional Controversy*, 1-13.

⁵ *Richmond Enquirer*, January 2, 1849.

⁶ *H.R. Exec. Doc. No. 41*, 30th Cong., 1st Sess., (1848), Serial Set No. 517, 98.

⁷ *New York Herald*, quoted in *Milledgeville Federal Union*, January 9, 1849.

⁸ Wilson Lumpkin to John C. Calhoun, January 3, 1849, in Clyde N. Wilson, et.al., eds., *The Papers of John C. Calhoun*, 28 vols. (Columbia: University of South Carolina Press, 1959-2004), XXVI, 200.

move west, many observers asked, especially since the land seemed unfit for plantation agriculture.

Southerners demanded equal rights in the national domain regardless of whether slavery would or would not thrive there. For antislavery followers who believed that slavery could never exist profitably in the region, the question of the expansion of slavery to the Mexican Cession seemed an abstract notion dreamed up by ultra southerners seeking to augment their power in the nation. Their increasing hatred of the institution, however, led them to make a stand against its expansion. Conversely for southerners, the question of the profitable existence of slavery in the cession itself seemed abstract. They sought to secure their rights in the face of what they deemed an onslaught against their peculiar institution and their section. Moderate Democrats like Polk, James Buchanan, and Lewis Cass had sought to avert a battle over the issue by brokering a compromise or a suitable arrangement by which northerners and southerners alike could save face and protect their interests. With the electoral defeat of the Democrats in 1848 and the apparent repudiation of territorial sovereignty, the nation looked to the Congress and the president-elect for the next step. Congress, however, would have the first chance to act.

The cries from individuals on both sides of the issue did not dissipate with the election of Taylor. Proslavery politicians continued to accuse northerners of attempting to deprive the South, in the words of Texas Democrat Louis T. Wigfall, of “the common conquest and purchase” of the Mexican Cession.⁹ Southerners could not predict the course that Taylor would take with regard to the slavery issue, however, a point that betrayed the fact that some questioned the proslavery credentials of Louisiana’s favorite son. “Unless they can show a united and bold front,” a northern observer predicted, “it is generally thought Gen. Taylor will go against

⁹ Louis T. Wigfall to John C. Calhoun, January 4, 1849, in *ibid.*, 202.

them.”¹⁰ Southerners like Andrew Jackson Donelson, the nephew of Old Hickory, could only express hope that Taylor would adopt a compromise proposal similar to the Clayton Compromise or endorse the Cass doctrine by allowing the territories themselves to settle the matter for themselves.¹¹

Many political spectators, however, predicted that while Taylor would not openly endorse the Wilmot Proviso, neither would he veto it. Even some southern Whigs had begun to question their leader’s resolve on the slavery issue.¹² Nevertheless, southerners remained badly divided over the slavery issue. Calhoun’s efforts to create a southern caucus in Congress and issue an address to the southern people to promulgate his opinions on settling the slavery issue had foundered amid the familiar divide between southern moderates and ultras.¹³ Vice President George M. Dallas observed the proceedings of the southern caucus, noting that Calhoun seemed unable to convince many of his colleagues of adopting an ultra southern stance that even hinted at the prospect of disunion over the slavery issue.¹⁴

Calhoun’s effort to rally the South failed while Congress took a moderate course, renewing deliberations over establishing territorial governments in California and New Mexico. At the beginning of the congressional session, Senator Stephen A. Douglas of Illinois introduced a bill that organized the entire Mexican Cession into one giant state of California, thereby bypassing the territorial stage.¹⁵ Though he had served in Congress for only four years—two

¹⁰ J. Pugh to John Meredith Read, Sr., January 7, 1849, Folder 1, John Meredith Read, Sr. Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, NC.

¹¹ Andrew J. Donelson to John C. Calhoun, January 5, 1849, in *Calhoun Papers*, XXVI, 203.

¹² See David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 87.

¹³ For the Southern Address, see *ibid.*, 83-86; John Niven, *John C. Calhoun and the Price of Union* (Baton Rouge: Louisiana State University Press, 1988), 322-327.

¹⁴ Roy F. Nichols, ed., “The Mystery of the Dallas Papers (Part II),” *Pennsylvania Magazine of History and Biography* 73 (October 1949): 492-495.

¹⁵ For Douglas’s introduction of the California bill, see Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 241-242.

terms in the House of Representatives before the Illinois state legislature elected him senator—Douglas had earned a reputation as an ardent supporter of westward expansion. He also had come to endorse the doctrine of territorial self-government. In the current session of Congress, the Illinoisan had considered taking a more orthodox approach, providing separate bills creating the territories of California and New Mexico. Douglas became convinced, however, that any territorial bill would fail because of the prevailing atmosphere in Congress. In order to organize the session, he concluded, Congress had to grant immediate statehood and let the people of the Mexican Cession decide for themselves the status of slavery within their constitution. The senator almost certainly knew that he proposed a state of unwieldy size; therefore, his bill provided that in the future, Congress could create additional states out of the land that lay east of present-day California.¹⁶

Douglas's ingenious plan addressed the political realities of the day while fulfilling his ultimate goal of extending American law and institutions over the Mexican Cession. Most significantly, the Douglas bill provided for self-government but rendered moot the discussion of when a territory could exercise its sovereignty over the slavery issue. Practically everyone agreed that a state possessed the right to determine the status of slavery in its constitution. The Douglas plan preserved the best part of the Cass doctrine by removing the issue of slavery from congressional deliberation, while it jettisoned the vexing question of when a territory gained the right to legislate on slavery.

Though Douglas's bill might have appealed to those looking for a way to organize the session without renewing the contentious debate over slavery, southern senators soon raised objections. Douglas knew that his bill faced an uphill battle in the Senate, and almost insurmountable opposition in the House of Representatives. The Illinois senator hoped to

¹⁶ For Douglas's California bill, see *CG*, 30th Cong., 2nd Sess., 21.

commit the bill to his own Committee on Territories, where it would receive a favorable reading. Georgia Senator John M. Berrien outfoxed his northern colleague by using a parliamentary maneuver to derail the legislation. He reminded Douglas that the Judiciary Committee, which he chaired and which he knew would resist the bill, traditionally received statehood bills. Berrien won his point, and within four weeks the Judiciary Committee had issued an unfavorable report on the Douglas bill. The legislation, according to the committee, proposed to create a state out of a vast territory sparsely inhabited by people unfamiliar with American institutions and “unfitted” to assume the burden of self-government.¹⁷ Given the present circumstances, statehood for California seemed a poor idea.

Douglas could only stand by as a combination of northern and southern radicals dismantled his effort to organize the Mexican Cession and remove the slavery issue from congressional deliberation. Simply put, he stood between two sides that did not especially desire to close the debate on slavery in the territories. Northerners remained committed to extending the Wilmot Proviso—or at least its spirit—over the western territories. The radical southerners, on the other hand, advanced a new argument in their efforts to protect what they perceived as southern rights in the territories. Whereas in the past (most notably in the Louisiana Purchase) southerners had ridiculed northerners who insisted on a period of “territorial pupilage,” where the foreign residents of a territory could become Americanized, they now insisted that the native Mexicans could not govern themselves. Beneath this explanation of why Congress should delay California statehood, however, southerners protested that they had not been given sufficient time to emigrate west themselves and influence the governance of the cession.

Certain political leaders observed that ultras on both sides of the slavery issue had maneuvered against Douglas’s bill in an effort to gain advantage on the slavery question. Vice

¹⁷ *Ibid.*, 191.

President Dallas lambasted the southern members of the Senate Judiciary Committee. The committee's argument that the "people of New Mexico & California are too barbarous," he confided to his diary, "seem to me mere spurious pretexts, devised by an acute and ingenious mind in order to keep those territories open to Slavery."¹⁸ Indeed, Dallas sensed the true purpose behind the opposition to the Douglas bill. In a conference with President Polk, Calhoun had frankly admitted that southerners opposed California statehood because slaveholders had been denied the opportunity to emigrate to the region with their slaves. He conceded, too, that California would certainly enter as a free state, which rankled southerners who viewed the entire statehood movement as a northern plot to prevent the expansion of slavery. The president reminded Calhoun that the people themselves possessed the right to determine the status of slavery, but such reasoning would not suffice for the South Carolinian, who believed that the equal rights of slaveholders in the territories merited federal protection.¹⁹

Douglas would have to compromise on the terms of his bill if California statehood would have any chance of passing through Congress in early 1849. He lacked southern support both in Congress and in the court of public opinion. "No man can be blind to the fact," a Georgia editor wrote, "if called on to form a State Constitution now, the people of California will exclude slavery. In doing this, they will also fix the fate of New Mexico."²⁰ Though Calhoun had failed to rally sufficient support for his Southern Address, a significant number of southerners agreed with his contention that the Douglas plan excluded southern slaveholders from having a stake in the future of the Mexican Cession. The Polk administration saw great benefit in admitting California as a state by bypassing the territorial stage, but the president and his advisers

¹⁸ Entry of January 9, 1849, George M. Dallas Diary [December 4, 1848-March 6, 1849], George M. Dallas Papers, Historical Society of Pennsylvania, Philadelphia, PA.

¹⁹ Milo Milton Quaife, ed., *The Diary of James K. Polk During His Presidency, 1845-1849*, 4 vols. (Chicago: A.C. McClurg & Co., 1910), IV, 287-288.

²⁰ *Milledgeville Federal Union*, January 30, 1849.

considered the size of the state as proposed by Douglas as prohibitively large. Better to secure statehood for California alone, the cabinet concluded, and defer deliberations on New Mexico for a later date. Of course, separating New Mexico from California forsook one of the benefits of the original Douglas plan—by organizing the entire cession as one state, the bill had the potential to neutralize the debate over slavery in the territories. Nevertheless, Polk prevailed on a reluctant Douglas to amend his bill.²¹

The revised legislation provided for the immediate admission of California and the delayed admission of New Mexico, almost certainly a nod to the fact that California would enter as a free state. By delaying statehood for New Mexico, however, southerners could theoretically gain a foothold in the territory. For a fleeting moment, passage of the amended bill seemed possible.²² Supporters lauded the effort of Douglas to extend self-government to the Mexican Cession. “We go for the principle of non-intervention,” the *Washington Union* declared, “We cannot obtain it in the territorial form. We must, then, seek it in the form of States—leaving the people themselves to frame their own constitution, and to seek admission into the Union as States.”²³ The *Union*’s editor characterized precisely the motives behind the Douglas bill. The Illinois senator recognized that the Cass doctrine of territorial sovereignty had failed to unite the Democratic Party because of the vexing issue of when a territory could exercise sovereignty. Indeed, while Cass had initially suggested in the Nicholson letter that territorial legislatures could pass laws permitting or prohibiting slavery, the Democrats faced a firestorm of opposition from southern party regulars who argued that “squatter sovereignty” would allow the native Mexicans to prohibit slavery in California and New Mexico before Americans could emigrate

²¹ Johannsen, *Stephen A. Douglas*, 244. See also James L. Huston, *Stephen A. Douglas and the Dilemmas of Democratic Equality* (Lanham, MD: Rowman and Littlefield, 2007), 68-70.

²² Johannsen, *Stephen A. Douglas*, 246; *Milledgeville Federal Union*, February 13, 1849.

²³ *Washington Union*, quoted in *Baltimore Sun*, February 16, 1849.

west. By bypassing the territorial phase and admitting California and New Mexico as states, Congress could obviate the difficulty over when a territory could legislate on slavery while preserving the right of the people to settle the matter when drafting a constitution.

Though southerners had rejected the superheated rhetoric of Calhoun's Southern Address and veiled threats of disunion, they nonetheless felt threatened by northern encroachment on slavery and westward expansion. In this atmosphere of fear over antislavery attempts to deny southerners equal rights in the territories, they renewed their opposition to the Douglas bill. "The bill assumes that it is a mere point of honor for which the South is contending, and not for an actual bona-fide participation in the territory," an associate wrote to Georgia congressman Howell Cobb. "Be that as it may, the question is will even the point of honor or equality be saved by a practical surrender of the whole territory to the North."²⁴ The Douglas bill, to the minds of southerners, did not settle the territorial issue in an equitable manner. Furthermore, it sanctioned the vote of native Mexicans in deciding whether California and New Mexico would become free or slave states, a point that southerners would not abide.

Territorial self-government received a new name at the latest juncture of the debate over slavery in the territories as politicians began to refer to the doctrine as non-intervention. Traditionally, non-intervention had meant simply that Congress would not involve itself in matters concerning slavery in the territories. The concept of territorial self-government, or territorial sovereignty, represented the corollary to non-intervention. Conceivably Congress could decline to interfere with slavery in the territories, but not specify who could determine its status or when. In other words, congressional non-intervention *could* allow for the practice of territorial sovereignty. In the past, however, congressional non-intervention had always meant

²⁴ Hopkins Holsey to Howell Cobb, February 13, 1849, in Ulrich B. Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: Government Printing Office, 1913), 150.

territorial sovereignty in practice.²⁵ Because in past history Congress had always paired non-intervention with territorial sovereignty and perhaps, also, to avoid the debate over when or if a territory possessed sovereignty, people began referring to territorial sovereignty as non-intervention in contemporary parlance.

Even the revised Douglas bill for California statehood deftly avoided the contentious territorial phase, thereby providing a way to remove the slavery issue from Congress while organizing the cession. Southern senators, however, continued to rebuff the amended legislation as injurious to the interests of their section. A group of southern Whigs in the House of Representatives had closely followed the deliberations across the Capitol and latched onto the idea of immediate statehood as an ingenious way to solve the territorial crisis. They especially wanted to settle the issue before Taylor took office. Polk and Douglas sold their plan to southern Whigs as a way to defuse the explosive Wilmot Proviso and secure southern rights in name, even if not in practice. Most everyone surmised that California would enter the Union as a free state regardless of any plan in Congress. The Douglas plan, however, effectively killed the debate over the Wilmot Proviso. If the Democrats and southern Whigs could unite behind the Douglas bill, moderation would prevail and Congress could hopefully dispense with the slavery issue.²⁶

With Douglas's bill mired in contentious Senate negotiations, the proponents of immediate statehood looked to Virginia Whig congressman William Ballard Preston to introduce legislation in the lower house. The Preston bill borrowed the language of Douglas's original legislation by admitting the entire cession as a single state of California. Speaking for the

²⁵ Don E. Fehrenbacher notes the difference between non-intervention and territorial sovereignty in *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 142-146. See also Harold M. Hyman and William M. Wiecek, *Equal Justice Under Law: Constitutional Development, 1835-1875* (New York: Harper & Row, 1982), 135.

²⁶ For the proposed alliance between the Democrats and southern Whigs, see William J. Cooper, Jr., "'The Only Door': The Territorial Issue, the Preston Bill, and the Southern Whigs," in William J. Cooper, Jr., et.al., eds. *A Master's Due: Essays in Honor of David Herbert Donald* (Baton Rouge: Louisiana State University Press, 1985), 76-78.

moderate Whigs and Democrats, Preston entreated his colleagues to give careful consideration to his bill; legislation he argued would settle the long-standing crisis over slavery in the territories by letting the people of California draft their constitution and select their own institutions as they saw fit. Preston mocked the notion that the people of California could not erect their own government and therefore needed a period of “territorial tutelage.” Illustrating the stakes involved in delaying the organization of California, Preston thundered, “Tutelage! You, in the great day and great hour of this question—are you to stop, like a mere pedagogue, to teach New Mexico and California the A B C of political liberty, while the destruction of an empire and a government might learn you the last lesson of its overthrow?”²⁷

Supporters of the Preston bill rallied for the principle of non-intervention. Quoting the words of James Madison in the Missouri crisis, Democrat James McDowell of Virginia said, “The right of Congress to control the territories being given from the necessity of the case and in suspension of the great principle of self-government, ought not to be extended further nor continued longer than the occasion might fairly require.”²⁸ McDowell endorsed the Preston bill as a sure way of ensuring southern rights while upholding the principle of non-intervention. As for Preston himself, he represented the sentiments of those who had grown weary of the incessant turmoil over the Wilmot Proviso. “*I want repose,*” Preston exclaimed, “*and the bill now offered gives finality to the question. I want the question ended.*”²⁹

Though the moderates desired a speedy resolution of the territorial issue, northern Whigs and southern ultras would not let the matter rest. Southern Democrats voiced opposition to the Preston bill as the Wilmot Proviso cloaked in the mantle of compromise.³⁰ Some even

²⁷ *CG*, 30th Cong., 2nd Sess., 480. For the bill and Preston’s speech, see pp. 477-480.

²⁸ *CG*, 30th Cong., 2nd Sess., Appendix, 213.

²⁹ *Ibid.*, 478 (italics in the original).

³⁰ See Cooper, “The Only Door,” 85-86.

maintained that the continued agitation of the slavery question only benefited the Democratic Party in the South.³¹ Southern ultras repeated their claims that immediate statehood would allow Indians, blacks, and native Mexicans to deny Americans the right to carry their slaves into the cession.³² Preston's most intractable opposition came from northern Whigs who insisted that Congress apply the Wilmot Proviso to the Mexican Cession. Two last-minute amendments, one of which added the Proviso to the bill, derailed his efforts to avoid the issue. With the intent of the bill destroyed, not one member of the House voted for passage. The original bill never came up for a vote. The lame duck Congress would pass no legislation for California or New Mexico statehood, leaving the issue for the next Congress and the new president. The slavery issue would continue to threaten the stability of the Whig Party, just as it stood poised to claim the presidency for only the second time in the party's brief existence.³³

The Whigs had failed in their efforts to settle the slavery issue before Zachary Taylor took the presidential oath of office. The efforts of congressional moderates to solve the crisis had failed in spite of their efforts to broker a settlement in the last days of the session. All eyes fixed on the new president for some clue, some direction as to how he would settle the Wilmot Proviso controversy. Taylor's speech gave them nothing; in his "exceptionally brief and bafflingly vague" inaugural address, the new president gave no indication of the course he would take on the slavery in the territories; indeed, he made no explicit mention of the issue.³⁴

Surveying the new administration, former president John Tyler wrote to his eldest son, "For the settlement of our territorial difficulties we must look to the territories themselves. They must

³¹ Hilliard M. Judge to John C. Calhoun, April 29, 1849, in *Calhoun Papers*, XXVI, 384-386.

³² See, for example, Fitzwilliam Byrdsall to John C. Calhoun, February 28, 1849, in *ibid.*, 326-328.

³³ Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (Oxford University Press, 2000), 389-390.

³⁴ *Ibid.*, 415. For Taylor's brief address, see James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, 10 vols. (Washington, D.C.: Government Printing Office, 1896-1899), V, 4-6.

organize governments for themselves as Congress will not do so for them.”³⁵ Tyler, too, had no indication of what the new president might do with regard to the situation in California and New Mexico.

Within the month, however, Taylor had settled on a plan for organizing the Mexican Cession. Working closely with Kentucky Governor John J. Crittenden and other Whig associates, Taylor decided that the substance of the Preston bill provided the best means of allaying sectional tensions. The administration, however, would circumvent Congress by taking action through the executive branch. Crittenden urged the administration to send emissaries to California, New Mexico, and Deseret (present-day Utah) in order to urge the citizens in each territory to organize governments and draft constitutions. The Taylor plan possessed great promise, as it organized the entire Mexican Cession into three states of large, but not unmanageable size, thus removing one of the complaints against both the Douglas and Preston bills. Furthermore, with the entire cession organized, no American territory would remain where the status of slavery had not been previously determined. The policy, too, upheld the twin principles of non-intervention and self-government as the best means of settling the slavery dispute. The people in the three territories would determine the status of slavery for themselves, not distant members of Congress.³⁶

Taylor’s plan may have seemed an inventive proposal for organizing the Mexican Cession, but he either ignored or failed to recognize that his plan bore too many similarities to the aborted Douglas and Preston bills to gain the approbation of Congress and the public. The president had anticipated difficulty with Congress and therefore bypassed the legislative branch by sending agents west to prod the residents of the cession to act on their own, but he

³⁵ John Tyler to Robert Tyler, March 5, 1849, in Lyon Gardiner Tyler, ed., *The Letters and Times of the Tylers*, 2 vols. (Richmond: Whittet & Shepperson, 1884-85), II, 462.

³⁶ The best narrative of the Taylor plan is Holt, *The Rise and Fall of the American Whig Party*, 437-475.

misunderstood the nature of southern public opinion against the mélange of American settlers—squatters to the minds of southerners—and native Mexicans drafting constitutions and seeking admission to the Union before southerners themselves could enter the territories. Opposition to the Taylor project would only grow and deepen over the spring and summer of 1849.³⁷

Taylor's stance toward the Wilmot Proviso intensified southern opposition to his plan for admitting California and New Mexico to statehood, as a growing number of southern politicians recognized that the president would not veto the antislavery statement. Taylor himself dismissed the possibility that the proviso would even reach his desk; his plan for immediate statehood would obviate the need for any such antislavery dictum. His belief that Congress would never send him the proviso revealed his certainty that slavery would never take root in the Mexican Cession. The president had kept quiet on his opinions regarding slavery in the cession through the first few months of his administration, but in the summer of 1849 he took a northern tour in which he revealed his opinions on slavery in the territories. In a speech given at Mercer, Pennsylvania, in late August, Taylor declared, "The people of the North need have no apprehension of the further extension of slavery."³⁸ For southerners already skeptical of the president's beliefs on the slavery question, the northern tour—and especially his antislavery pronouncement at Mercer—confirmed their worst suspicions. "It explained the purpose of King's mission to California and placed the man whom they had promised would never betray his fellow slaveholders squarely against slavery expansion."³⁹ For the interests of Whig party

³⁷ For a discussion of Taylor's opinion of the southern opposition to California and New Mexico statehood, see K. Jack Bauer, *Zachary Taylor: Soldier, Planter, Statesman of the Old Southwest* (Baton Rouge: Louisiana State University Press, 1985), 289-298.

³⁸ Quoted in Holt, *The Rise and Fall of the American Whig Party*, 444. For Taylor's antislavery statement at Mercer, see also Holman Hamilton, *Zachary Taylor: Soldier in the White House* (Indianapolis: Bobbs-Merrill Company, 1951), 224-225, 227-228.

³⁹ Holt, *The Rise and Fall of the American Whig Party*, 444. For Taylor's eroding support among southern Whigs, see William J. Cooper, Jr., *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University Press, 1978), 275-278.

unity as well as the bipartisan hopes for a calm, considered settlement to the slavery question, Taylor's remarks proved disastrous. For southern Democrats, Taylor's actions confirmed the campaign rhetoric better than they could have dreamed. If the southern states had rallied behind Lewis Cass, Tennessee Congressman Andrew Johnson stated, he would have won election and "then all would have been safe."⁴⁰

Even before Taylor's summer tour, proslavery and antislavery advocates had commenced making preparations for a battle over the slavery issue. Calhoun's unsuccessful southern rights movement, which culminated in the pronouncement of his Southern Address, may not have united the South behind a non-partisan proslavery banner, but southerners continued to look warily at northern movements on slavery in the territories. A number of southern state legislatures and citizens' organizations issued resolutions condemning the Wilmot Proviso and asserting southern rights in the newly acquired territories.⁴¹ They affirmed that the right to prohibit slavery belonged, in the words of the Missouri General Assembly, "exclusively to the people thereof, and can only be exercised by them in forming their Constitution for a State government, or in their sovereign capacity as independent States."⁴² Of course, if Taylor's plan for immediate statehood for California and New Mexico succeeded, the very beliefs of southerners who insisted that territories could exercise their sovereignty to prohibit slavery only when drafting a constitution would result in the creation of two new free states. As Georgia Senator Herschel V. Johnson commented, the Taylor plan would prove nothing less than "a

⁴⁰ Speech at Evans' Crossroads, Greene County, TN, May 26, 1849, in Leroy P. Graf, et.al., eds., *The Papers of Andrew Johnson*, 16 vols. (Knoxville: University of Tennessee Press, 1967-1996), I, 503.

⁴¹ See *Milledgeville Federal Union*, February 20, 1849; *Niles' National Register*, February 21, 1849, March 14, 1849, April 25, 1849.

⁴² *Niles' National Register*, April 25, 1849.

circuitous mode of cheating the South out of her rights and gaining the object of the Provisoists.”⁴³

With the Whig difficulties arising from the president’s actions regarding the Wilmot Proviso, Democrats took the offensive on the slavery issue and renewed their call for non-intervention and territorial sovereignty. The *Washington Union*, the official Democratic newspaper, led the call in the press for replacing the Taylor plan with the sound Democratic doctrine of territorial sovereignty. “We propose the ground of NON-INTERVENTION; by which we mean that Congress shall abstain from all legislation in relation to the subject of slavery in the new territories; leaving it to the people of the territories themselves to make the necessary provision for their eventual admission into the Union, and to regulate their internal concerns in their own way.”⁴⁴ The latest pronouncements for territorial self-government marked a subtle retreat from the Cass doctrine, which most people agreed provided for territorial legislatures to determine the status of slavery. In the latest discussions over slavery in the territories, however, the issue of when a territory had the right to “regulate their internal concerns” became murky. According to its supporters, non-intervention retained the promise to extricate Congress from jurisdiction over the dreaded slavery issue, while returning the nation to its first principles of popular sovereignty and consent of the governed. In the case of the Mexican Cession, according to Thomas Ritchie of the *Union*, the doctrine left to the courts all matters concerning the prohibition of slavery in the territories—essentially the aim of the Clayton Compromise of 1848, which would have given the Supreme Court the ultimate authority to adjudicate the slavery issue.

Democrats maintained that they had provided a safe way to dispose of the slavery question in 1848, but southerners had chosen one of their own rather than to entrust the safety of

⁴³ Herschel V. Johnson to John C. Calhoun, July 20, 1849, in *Calhoun Papers*, XVI, 510.

⁴⁴ *Washington Union*, quoted in *Milledgeville Federal Union*, June 12, 1849.

slavery to an outsider. Now the president, a southern slaveholder, had inexplicably abandoned their interests in the territories. Southern Democratic politicians reminded their constituents that in the 1848 presidential contest “the Northern Democracy proved true to Southern interests,” but now northerners had become wary of extending a hand of friendship across the Mason-Dixon Line.⁴⁵ Northern Democrats had endorsed the Cass doctrine at considerable danger to their own electoral prospects at home, only to see southerners rebuff their overtures.⁴⁶ Nevertheless, Democrats hoped to renew the enthusiasm for non-intervention and territorial sovereignty, especially with the increasing dissatisfaction toward the Taylor administration among southerners. In 1848, Democrats had unsuccessfully defined territorial sovereignty as a bisectonal compromise designed to unify the party and neutralize the Wilmot Proviso, but the party failed to convince either southerners or antislavery northerners of the doctrine’s sufficiency. In 1850, moderate northern Democrats such as Lewis Cass and Daniel Dickinson renewed the effort to establish territorial sovereignty as national policy. This time, however, they worked especially hard at convincing southerners that electing one of their own versus voting for the safety of slavery by upholding non-intervention had cost them dearly. Once again, the South became center stage in the debate over territorial sovereignty.

Cass himself entered the political dialogue once again by defending the doctrine he had advanced in the Nicholson letter almost two years before. The former Democratic presidential candidate, who had returned to the Senate in March 1849, accused his opponents of resorting to “inconsistency, amounting to dishonesty” in order to discredit his concept of territorial sovereignty.⁴⁷ Those who maintained the constitutionality of the Wilmot Proviso, he argued,

⁴⁵ *Niles’ National Register*, June 13, 1849.

⁴⁶ See Henry L. Benning to Howell Cobb, July 1, 1849, in *Correspondence of Toombs, Stephens, and Cobb*, 168-172.

⁴⁷ *Washington Union*, July 17, 1849.

must also believe that Congress possessed the power to “direct all the internal territorial legislation at its pleasure, without regard to the will of the people affected by it.”⁴⁸ Drawing from classic Jacksonian principles, Cass denied both suppositions. The Wilmot Proviso, according to Cass, was patently unconstitutional. Furthermore, the idea that Congress could dictate local laws for territories or states denied the nation’s very heritage. Americans had risen in revolution against the British because the mother country refused to let the colonies rule their own internal concerns. Had the United States government created its own colonial system in the West that it could rule at its own will, Cass asked rhetorically. “This dispute divided one empire,” he proclaimed. “Let us take care that a similar assumption does not divide another.”⁴⁹

Cass’s defense of non-intervention and territorial sovereignty resonated with moderates on the slavery issue, even if the Michigan senator assiduously avoided the question of when the territories gained sovereignty. By hearkening to the nation’s revolutionary heritage, Cass sought to give the Democratic Party’s doctrine added legitimacy. Southern Democrats who rallied behind the Cass banner in 1848 lamented that their candidate had not taken the White House. They had missed their opportunity to unite with sympathetic northerners and secure the safety of slavery in the West. In an aspersion directed at the president the editor opined, “The South. . . has been betrayed, and basely betrayed, and that too by her own sons.”⁵⁰

Yet in the face of the bellicose pronouncements of ultra proslavery and antislavery leaders, northern Democrats like Cass and Daniel S. Dickinson rallied once again in favor of territorial sovereignty. Soon after Cass issued his letter to Thomas Ritchie defending the principles he outlined in the Nicholson letter, Dickinson moved to galvanize his New York supporters to make another attempt at instituting his favored doctrine. Like Cass, Dickinson

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Milledgeville Federal Union*, July 24, 1849.

appealed to the nation's revolutionary heritage in a bid to win the support of recalcitrant northerners who threatened to give up compromise with the South. Territorial sovereignty, Dickinson reminded his audience, upheld the right of self-government while rejecting the "tyrannical precedent of that living compound of scrofula and gold-lace, called George III."⁵¹ Dickinson, who had always taken a stronger position on the territorial sovereignty issue than had Cass, argued that the people of the territories possessed the same sovereignty as the residents of the states. Surely American citizens did not lose their right of self-government merely by virtue of emigrating to the territories, Dickinson maintained. The New York senator, however, offended southerners who believed that the North had conspired to prevent southerners from sharing in the common conquest of the Mexican Cession by concluding that the people of California had already decided against slavery, and that the people of the states must respect their decision as final and binding.

Southerners derided the process by which California seemed poised to draft an antislavery constitution, but they had become resigned to the fact that they could do little about it. "We admit the right of a people in forming a State Constitution to establish or eschew slavery," Herschel Johnson reasoned. "Then, ought we to oppose and how?"⁵² Southerners agreed that they could not stand idly by as California became a free state, and New Mexico seemed ready to follow suit. They did not concur on how to oppose the movement. Some southerners, like Johnson, seemed puzzled at how to oppose a free state constitution for California when the South had always upheld the sanctity of self-government in the drafting of organic law. Others viewed the situation more pragmatically. "I feel a most solemn conviction

⁵¹ "Speech at a Democratic Convention in Rome, NY, 15-17 August 1849," in John R. Dickinson, ed., *Speeches, Correspondence, Etc., of the Late Daniel S. Dickinson, of New York...*, 2 vols. (New York G.P. Putnam & Son, 1867), I, 318.

⁵² Herschel V. Johnson to John C. Calhoun, July 20, 1849, in *Calhoun Papers*, XVI, 510.

that the South must arouse from its negative position and assume that of the lion,” a Tennessean wrote to Calhoun, or California “will be cut off from us & the doom of our children sealed.”⁵³ More experienced politicians viewed the situation in less apocalyptic terms. Mississippi Senator Henry S. Foote intimated that southerners could not hope to gain a foothold in California, but that they should insist on the admission of New Mexico only when a sufficient number of Americans had emigrated to the territory to apply for statehood. In the meantime, Congress should prohibit the native New Mexicans from legislating on the subject of slavery.⁵⁴

Many southerners blamed the California situation on the machinations of the Taylor administration to foment a statehood movement among the native population and the few American squatters on the ground. Consequently, they began to attack the *process* by which California seemed ready to apply for statehood, not the *principle* that a territory had the right to self-government in drafting a constitution. Renewing an argument first suggested by Robert J. Walker and James Buchanan in 1847, a number of southerners attacked the notion that foreigners could decide the fate of slavery in the Mexican Cession. In one of the more colorful pronouncements against the California free state movement, a proslavery commentator lamented the fact that the cession had become “the resort of Mexicans and South Americans of every hue and race, of Sandwich Islanders and even Chinese.” Yet northerners sought to bar “the people of the fifteen Southern States and of that particular class to which Washington, Jefferson, Madison, Henry, Pinckney, Rutledge and Carroll belonged; that class from which the people of the North and South have elected a large majority of their Presidents.”⁵⁵ To the writer, the North had abandoned years of sectional conciliation and compromise in a mad effort to purge the territories of slavery. He even suggested that the Northwest Ordinance had its proslavery corollary—the

⁵³ Levin H. Coe to John C. Calhoun, August 20, 1849, in *ibid.*, XXVII, 27.

⁵⁴ Henry S. Foote to John C. Calhoun, September 25, 1849, in *ibid.*, XXVII, 66.

⁵⁵ *Richmond Enquirer*, August 7, 1849.

Southwest Ordinance, which had provided for an equitable distribution of the nation's territories between the North and South. But now the North sought to renege on generations of compromise. The correspondent called the northern efforts to bar slavery in the territories an "incendiary plot" of the "surviving fragments of the fallen houses of Braintree and Kinderhook," referring to the antislavery leaders John Quincy Adams and Martin Van Buren.⁵⁶

While most southerners did not resort to such superheated rhetoric, many did believe that native Mexicans had no right to determine the status of slavery in the cession. After the residents of California elected delegates to draft a constitution in August 1849, southerners fumed at what they deemed a "mongrel convention."⁵⁷ Their criticism only intensified when, on September 10, the convention officially added a slavery prohibition clause to their draft constitution. It seemed that the South had lost its battle against the antislavery advocates. Critics lambasted the members of the convention as Mexicans unfit to draft organic law and accused the convention of admitting foreigners to its councils.⁵⁸ The fact that the convention adopted the antislavery clause unanimously, according to the *Richmond Enquirer*, only deepened their suspicion of the convention's work.⁵⁹ Ultimately, the journal blamed the California situation on President Taylor. "Such are the 'glorious fruits' which the South is to reap under the administration of a 'Southern President.'"⁶⁰

Once again the issue of slavery in the territories loomed over a newly elected Congress, as the nation's representatives gathered in Washington, D.C., in December 1849. With southerners attacking antislavery northerners for conspiring to bar the South from the cession

⁵⁶ *Ibid.*

⁵⁷ *Augusta Republic*, quoted in *Milledgeville Federal Union*, November 30, 1849. For the election of delegates and the constitutional convention, see Richards, *The California Gold Rush and the Coming of the Civil War*, 69-70; 72-77.

⁵⁸ *Augusta Republic*, quoted in *Milledgeville Federal Union*, November 30, 1849.

⁵⁹ *Richmond Enquirer*, November 16, 1849. Actually, the convention wrestled with the antislavery issue mightily. See Richards, *The California Gold Rush and the Coming of the Civil War*, 72-77.

⁶⁰ *Ibid.*, November 20, 1849.

and the Taylor administration's support for a free soil California, most of the solons knew that they faced a difficult session ahead, one that might well impact the stability of the Union. The election of a speaker of the House of Representatives portended the conflict ahead, as for three weeks the lower chamber failed to elect a leader. Without a speaker, the House sat paralyzed, unable to function.⁶¹ So far most southerners had rebuffed the efforts of radicals to foment disunion, but one could foresee the future. The poisonous atmosphere in Washington, so vividly evinced by the battle for the speakership in the House, further troubled political observers. But both sides stood ready to defend their beliefs on whether slavery could or would exist in California and New Mexico.

As the congressional session began and with the dawn of a new year and decade, an array of individuals throughout the nation as well as state legislatures issued resolutions, gave speeches, and printed essays concerning the slavery issue. Most failed to advance any new arguments or provide new insights into the vexing issues of the day; instead, they recapitulated the familiar points raised and debated incessantly since the introduction of the Wilmot Proviso. The Missouri General Assembly promptly forwarded resolutions decrying the agitation over slavery in the West and raised the familiar refrain that territories could legislate on slavery only when drafting a constitution.⁶² Observant southerners, however, had already noted that with respect to California and New Mexico, maintaining that territorial sovereignty existed only in a constitutional convention would not suffice. Northern Democrats had hailed the California constitutional convention as a "triumphant confirmation" of the territorial sovereignty as defined by Cass.⁶³ Southerners would have to attack the constitution making in California as illegitimate

⁶¹ See Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (Lexington: University of Kentucky Press, 1964), 34-42.

⁶² *S. Doc. Misc. No. 5*, 31st Cong., 1st Sess., (1849), Serial Set No. 581, 1-2.

⁶³ *Columbus Daily Ohio Statesman*, January 7, 1850.

in order to halt the process. As Missouri Congressman James S. Green wrote to his constituents, they could stand by the “old and long cherished doctrine of the Democratic party”—non-intervention, but they also must insist on the right of citizens from all the states to enjoy the benefits of the new territories.⁶⁴ The precipitous move of the California statehood supporters threatened that right. In spite of the cries of a number of southern leaders, many already believed in the inevitability of a free state of California.

The president only confirmed their fears when he delivered special messages to Congress concerning his administration’s efforts to promote immediate statehood for California and New Mexico. Taylor defended sending emissaries to both of the territories to encourage them to draft constitutions and seek immediate admission to the Union. Congress had proven unable to settle the issue without violent debate and interminable delay, so the president took another approach that seemed to promise a way out of the quandary provoked by the Wilmot Proviso. Taylor, however, denied that either he or his representatives had actively influenced the formation of statehood movements in the territories, a truthful claim with respect to California, but not in the case of New Mexico.⁶⁵ More importantly, Taylor disputed the claims of those who characterized the citizens of the cession as a conquered population. He noted that a significant number of American citizens had moved to the territories and had a right to draft a constitution as they saw fit. In short, Taylor refuted the claims of those who denied the legitimacy of the California constitutional convention and their efforts to prohibit slavery.

The president encouraged Congress to adopt his plan for settling the territorial issue, as it removed the issue from its purview and rightly placed it in the hands of the people of California

⁶⁴ *St. Louis Daily Missouri Republican*, January 22, 1850.

⁶⁵ For Taylor’s message, see *CG*, 31st Cong., 1st Sess., 195; *Messages and Papers of the Presidents*, V, 26-30. See also Holt, *The Rise and Fall of the American Whig Party*, 474-475. For the Taylor administration’s efforts to actively promote statehood for New Mexico, see Mark J. Stegmaier, *Texas, New Mexico, and the Compromise of 1850* (Kent, OH: Kent State University Press, 1996), 68-79.

and New Mexico. By virtue of its authority to “make all needful rules and regulations respecting the Territories of the United States,” he stated, Congress had time and again wrestled with the issue of whether to prohibit or permit slavery in newly acquired territories.⁶⁶ He suggested that Congress should dispense with its authority and forego the contentious territorial phase for the cession. While Taylor’s proposition seemed reasonable, he had perhaps unwittingly raised an even more contentious issue by arguing that Congress had the power to prohibit slavery in the territories. Furthermore, his language suggested that he would not veto a congressional prohibition of slavery—essentially the Wilmot Proviso—if Congress passed such legislation. In other words, Taylor believed the Wilmot Proviso constitutional but unnecessary, as the territories could establish or prohibit slavery once they became states.⁶⁷

Southerners excoriated the president for his message and his administration’s actions with regard to the cession. North Carolina Whig Representative Thomas Clingman broke ranks with his president over the plan for immediate statehood. “The idea that conquered people should be permitted to give law to the conquerors,” he exclaimed, “is so preposterously absurd, that I do not intend to argue it.”⁶⁸ A Texas Democrat likewise attacked the president’s actions, implying that if Cass had been elected president, he would have rallied to the southern cause. Southerners had erred in electing one of their own, or at least a man who they believed would stand for their interests. The Democratic doctrine of non-intervention, he suggested, would have protected southern rights far better than the active intervention and machinations of the Taylor administration.⁶⁹

⁶⁶ *Messages and Papers of the Presidents*, V, 28.

⁶⁷ Holt, *The Rise and Fall of the American Whig Party*, 474.

⁶⁸ *CG*, 31st Cong., 1st Sess., 202.

⁶⁹ *Ibid.*, 205-210.

Democrats across the nation had rallied to defend their party and its presidential candidate in the midst of Taylor's controversial course on the slavery issue. In a lengthy address to his colleagues, Senator Cass defended himself and reaffirmed his belief in the doctrine he had expressed in the Nicholson letter. The Michigan legislature had placed Cass in a political quandary, as they had instructed him to vote for the Wilmot Proviso. Cass, of course, completely opposed the proviso and insisted on his own formula for dealing with slavery in the territories. Though the Michigan senator probably wished to avoid the discussion over slavery, by late January he recognized the impossibility of maintaining silence.⁷⁰ Cass repeated the theme that had become common among proponents of territorial sovereignty—that the United States fought a war of revolution against Great Britain for precisely the same principles at stake in the present debate over slavery in the territories. He portrayed the battle over territorial sovereignty as nothing less than a fight for the “human rights” of citizens residing in the cession.⁷¹ “Are not the people of the territories competent to manage their own affairs,” Cass asked his colleagues. “Are they not of us, and with us?—bone of our bone, and flesh of our flesh?”⁷²

Cass identified the essence of the principle of territorial sovereignty—that Americans who emigrated to the territories still possessed the basic political rights of their fellow citizens residing in the states. National citizenship and the rights of an American citizen, Cass implied, did not cease or change because a resident of a territory did not necessarily possess citizenship within a particular state. Of course, the issue of citizenship—itsself a troubling matter of constitutional interpretation in antebellum America—remained unsettled, but Cass insisted that

⁷⁰ See Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996), 241-243.

⁷¹ *CG*, 31st Cong., 1st Sess., Appendix, 59.

⁷² *Ibid.*

Americans in the territories had the same natural right to self-government as those in the states.⁷³ How they could exercise those rights in an inchoate political community, a problem that had plagued the doctrine of territorial sovereignty since Cass wrote the Nicholson letter in 1847, remained undefined.

Cass provided an exhaustive defense of territorial sovereignty, answering his many critics and attempting to revive the doctrine as the preferred solution to the crisis at hand. He maintained the belief that the Constitution did not give Congress the power to pass laws concerning slavery in the territories, defending his position in spite of the precedents of the Northwest Ordinance and the Missouri Compromise, both of which avowed congressional authority over slavery in at least part of the national domain. Cass disputed the authority of the Northwest Ordinance because it had become law under the Articles of Confederation.⁷⁴ The Missouri Compromise, Cass argued, “was not a legislative precedent,” but a “political expedient, which adjusted a fearful controversy.”⁷⁵

Cass sought once again to build support for his favorite theory of territorial sovereignty, though he maintained a certain degree of ambiguity on when and how a territorial legislature could pass laws concerning slavery. The senator, however, clearly implied that Congress should dispose of the issue and leave the question of the extension of slavery to the people of the territories themselves. Cass feared for the safety of the Union, as forces on both sides of the slavery issue threatened to tear apart the nation. Portraying himself as the voice of moderation, the indefatigable senator from Michigan called on his colleagues to support the principle of territorial sovereignty.

⁷³ For the citizenship issue, see Hyman and Wiecek, *Equal Justice Under Law*, 95, 181-183.

⁷⁴ Cass ignored the fact that the Congress created by the Constitution of 1787 had reaffirmed the ordinance.

⁷⁵ *CG*, 31st Cong., 1st Sess., Appendix, 71.

The southern Democratic press generally praised the Cass speech and its firm statement against congressional intervention with slavery in the territories. His implication that territorial legislatures possessed the right to legislate on the slavery question and his contention that the Californians had rightfully exercised their right to draft a free state constitution offended a few southern observers, but most of the southern press focused instead on his avowal of non-intervention.⁷⁶ Others praised the senator for standing firm for constitutional principles while his own state's legislature had instructed him to vote for the Wilmot Proviso. Southerners still had a stalwart friend in Lewis Cass, a Georgia paper opined.⁷⁷ Some Democrats accused President Taylor of stealing the Cass doctrine for his own political purposes. "It is a singular coincidence, that while Cass was making this fine speech in the Senate, Taylor, in his message, then being read in the House, was signifying his consent to the great doctrine of NON-INTERVENTION, opposed and misrepresented by his whig friends in the last Presidential canvass."⁷⁸ And yet it seemed that little of the rancorous debate over the doctrine itself had abated, as implied by the nearly complete southern silence on the part of Cass's pronouncement that addressed territorial sovereignty. The ability of the Cass doctrine to serve as a compromise remained doubtful.

Amid the intensifying rancor over the slavery question, some leaders concluded that only a broad based, sectionally balanced compromise could preserve the Union. Since October 1849, the momentum for a southern rights convention to be held at Nashville the following June had increased, as six southern states had committed delegates to the meeting.⁷⁹ Such ominous developments worried Henry Clay, the seventy-two year old senator from Kentucky who had shepherded compromises through Congress in 1820 and 1833. Sensing the onset of a true crisis

⁷⁶ For opposition to the Cass speech, see *Baltimore Sun*, February 2, 1850.

⁷⁷ *Milledgeville Federal Union*, February 5, 1850.

⁷⁸ *New Orleans Louisiana Courier*, February 5, 1850.

⁷⁹ For the Nashville Convention, see Thelma Jennings, *The Nashville Convention: Southern Movement for Unity, 1848-1851* (Memphis: Memphis State University Press, 1980); Potter, *The Impending Crisis*, 94-95, 104-105.

of the Union, he took the lead in devising a way to avert the coming crisis of 1850. Clay's meeting on January 21 with Daniel Webster, in which he convinced the famed senator to aid him in drafting a compromise plan, and his subsequent introduction of a far reaching settlement of the difficulties between the North and South have become historical legend.⁸⁰ Clay's compromise plan, which he delivered to the Senate on January 29, proposed eight resolutions each designed to placate the North and the South on the troublesome questions concerning slavery and the westward expansion of the institution. Two of the resolutions directly affected slavery in the territories.⁸¹ First, Clay proposed to admit California to the Union with her free state constitution. Second, Clay proposed congressional non-intervention respecting slavery in the remainder of the Mexican Cession by establishing territorial governments without reference to the institution. In doing so, however, he contended that slavery would most likely never exist in the region; therefore, he considered congressional intervention "inexpedient."⁸² Furthermore, Clay clearly stated that he hoped that California and New Mexico would never admit slavery within their boundaries. He would not oppose statehood, however, if either or both territories did permit slavery because "then it would be their own work, and not ours, and their posterity will have to reproach them, and not us for forming constitutions allowing the institution of slavery to exist among them."⁸³

For almost the next eight months, Congress and the nation would debate the Clay compromise plan in a discourse that itself repeatedly threatened to derail any effort at

⁸⁰ The standard history of the Compromise of 1850 is Hamilton, *Prologue to Conflict*. Michael F. Holt's incisive narrative of the compromise effort, however, has largely superseded Hamilton's book. See *The Rise and Fall of the American Whig Party*, 459-597. For a beautiful description of the lead up to Clay's compromise plan and a succinct summary of the compromise package itself, see Potter, *The Impending Crisis*, 96-100.

⁸¹ Clay's third resolution dealt with the explosive issue of the boundary of Texas and New Mexico, which obliquely concerned slavery in the territories. See Stegmaier, *Texas, New Mexico, and the Compromise of 1850*. For the resolutions, see *CG*, 31st Cong., 1st Sess., 244-247.

⁸² *CG*, 31st Cong., 1st Sess., 245.

⁸³ *Ibid.*, 246.

conciliation. More specifically, Americans debated the virtues and the complications of non-intervention, as Clay had settled upon using the idea of self-government as the preferred means to defuse the Wilmot Proviso controversy. Clay's interpretation of territorial sovereignty proved vague and elusive, however, presumably because he believed that slavery would never exist in the region. He provided no answers for how or when the territorial governments erected in New Mexico and Deseret would settle the slavery question.

Much to the chagrin of the Great Pacificator, southerners pounced on the compromise plan as soon as Clay uttered the last words of his speech. Two Mississippians—Henry S. Foote and Jefferson Davis—expressed their dissatisfaction with the Kentuckian's plan. Foote flatly rejected Clay's reasoning that slavery did not exist by law in the Mexican Cession. To his mind, "the treaty with the Mexican republic carried the Constitution, with all its guaranties, to all the territory obtained by treaty."⁸⁴ He also expressed resentment at Clay's contention that slavery would probably never enter the cession. Let time and the people of the states decide the question, Foote maintained. After insisting that Clay yield the floor for a response to his political "set speech" on the compromise measures, Davis denied that the eight resolutions comprised any sort of compromise. The Mississippi senator preferred extension of the Missouri Compromise line as the only way the South could hope to share equally in the settlement of the cession. Davis demanded that Congress adopt extension, with a positive declaration that citizens had a right to possess slaves south of the line.⁸⁵

Southerners outside of Washington joined the chorus against the Clay proposal. The compromise, according to a Georgia editor, "concedes all the Provisoists ask—that the territories are already free—all that the abolitionists contend for—that Mexican law in the territories, is

⁸⁴ *Ibid.*, 246

⁸⁵ *Ibid.*, 249-250. For Davis's opinion on the compromise measures, see William J. Cooper, Jr., *Jefferson Davis, American* (New York: Alfred A. Knopf, 2000), 189-191.

paramount to the constitution.”⁸⁶ Clay’s second resolution, with its assertion that slavery would most likely never exist in the cession and with its implication that the Mexican laws prohibiting slavery remained in force, particularly offended southerners. Some southerners fumed at Clay’s expression that congressional legislation was *inexpedient*; they deemed it *unconstitutional*. “It is of no avail that the second resolution proposes to erect territorial governments, without saying any thing about slavery,” the *Richmond Enquirer* stated; “the right of Congress to regulate it is conceded, and it is declared by the same resolution not to exist in the land.”⁸⁷

Though the criticism aimed at Clay stemmed chiefly from his second resolution on slavery in the territories, some southerners also took issue with granting California admission with her free state constitution. “A mere handful of men should never be allowed to appropriate to themselves a vast extent of territory,” a New Orleans Democrat argued.⁸⁸ Southerners maintained that the “gold diggers in California are not *bona fide* inhabitants but mere adventurers” who had no lasting stake in the land.⁸⁹ Perhaps more importantly, a number of southerners contended that the mixed race native population of California had no right to participate in drafting a state constitution. “Her constitution,” a Georgian wrote, “was made by those who had no right to make it.”⁹⁰

Southern state governments responded to the compromise plan with equal disdain. Just days after Clay delivered his compromise speech, the Georgia legislature passed resolutions of its own stating that Congress had no authority to prohibit slavery in the territories and that people of all the states had the right to emigrate to the territories with their slave property.⁹¹ In

⁸⁶ *Milledgeville Federal Union*, February 5, 1850.

⁸⁷ *Richmond Enquirer*, February 5, 1850.

⁸⁸ *New Orleans Louisiana Courier*, February 16, 1850.

⁸⁹ *New York Herald*, January 11, 1850.

⁹⁰ *Milledgeville Federal Union*, February 5, 1850.

⁹¹ Herman V. Ames, ed., *State Documents on Federal Relations: The States and the United States* (1906; repr., New York: DaCapo Press, 1970), 260.

Louisiana, Governor Isaac Johnson repeated sound Democratic doctrine, declaring that the “inhabitants of the territories have a clear and indisputable right to settle this question according to their own wishes, when ready for admission into the Union as a state.”⁹² Any congressional interference, he contended, would meet with solid resistance from the South.

Clay had concluded his presentation of the compromise measures with an appeal for northern magnanimity, but many southerners believed his plan asked for far more concessions from their section than from the North. Clay maintained that he asked northerners for “a more liberal and extensive concession than should be asked from the slave States” because the North held the preponderance of power in the Union.⁹³ He entreated them to recognize that while they viewed slavery as an abstraction, southerners faced the palpable reality of the institution and the danger and discontent stirred by antislavery fanatics who sought an end to the peculiar institution. To the minds of many men from his own section, however, Clay had surrendered southern constitutional rights to the North in return for little to nothing. Throughout the remainder of the congressional session, both politicians in Washington and the people they represented would debate what measures would create a just compromise. At the center of that discussion lay the issue of territorial sovereignty, which continued to provoke heated debate over its meaning and potential application. Southerners certainly did not accept the version Clay had proposed in his second resolution.

The debate over slavery in California and New Mexico centered on the power of Congress to legislate on the issue of slavery in the territories. While it seemed to provide a way out of the controversy caused by the Wilmot Proviso, Clay’s compromise proposal failed to satisfy a number of southern senators because of its implication that Congress did possess the

⁹² *Richmond Enquirer*, February 8, 1850.

⁹³ *CG*, 31st Cong., 1st Sess., 246.

right to legislate for the territories with regard to slavery. “Sir, it is no longer a mere question of party policy in the South,” said Whig Senator Willie P. Mangum of North Carolina, in response to Clay. “An overwhelming proportion of our people believe that this Government has no power to touch the subject of slavery in either the States or in the Territories.”⁹⁴

Mangum correctly argued that southerners would rally first to the defense of slavery and second to party fealty, but he failed to recognize that southern opinion once again had divided along familiar lines. Two factions—essentially those that had divided the South in the election year of 1848—reappeared: those who supported the Cass doctrine of territorial sovereignty and those who sided with Calhoun and demanded federal protection of slavery in the territories. Within these two broad distinctions lay numerous variants of how specifically to settle the issue of slavery extension, but essentially the moderates and the Calhounites once again battled over how to protect best the rights of the South.⁹⁵

Almost a month after Cass renewed the call for territorial sovereignty, Jefferson Davis rose in opposition to the plan, claiming that Cass had finally defined his doctrine and revealed it as essentially antislavery. Indeed, on the day that Davis spoke against territorial sovereignty, Cass had made two statements that offended southerners. First, he stated that slavery would never exist in the Mexican Cession. Second, Cass reiterated that “the people of the Territories have just the same right to govern themselves as the people of the States have.”⁹⁶ Cass qualified his second statement by insisting that by territories he meant organized communities, but he could not define precisely when that would happen. In fact, he made the subtle implication that the courts might well have to adjudicate the issue. Cass had surely offended Davis and other southerners who believed that the Californians had abused the right of territorial sovereignty in

⁹⁴ *Ibid.*, 300.

⁹⁵ See *Savannah Republican*, March 21, 1850.

⁹⁶ *CG*, 31st Cong., 1st Sess., 398.

drafting their constitution. The Mississippi senator immediately chastised Cass for his statements on territorial sovereignty. “His doctrine, which acknowledges sovereignty in any community which may by accident or design be planted on territory belonging to the States, I always rejected.”⁹⁷ As Cass asserted his belief that the people of the territories had the right to legislate on the slavery question prior to drafting a constitution, more conservative southerners attempted to refute his claims. Once again southerners debated the meaning and practice of territorial sovereignty.

A North Carolina Whig congressman wryly explained the predicament that southern Democrats faced in 1850 concerning slavery in the territories. They had demanded that Congress could not legislate on slavery for the territories, but that the people alone possessed the right when drafting a constitution. When California presented a constitution prohibiting slavery, though, southern Democrats cried foul. “What is not a little remarkable upon this subject, too,” David Outlaw wrote to his wife, “is the fact that the Democracy, whose candidate Gen. Cass, avowed before and has since reiterated the same opinion, that the people of the territories alone have the power to legislate, are the loudest in their denunciations—against their own doctrines.”⁹⁸ Outlaw had captured the dilemma facing southern Democrats. California had followed the southern plan of territorial sovereignty, which excluded slaveholders from the future state. Proslavery Democrats now could only object by disputing the right of native Mexicans to take part in constitution making and by arguing that an insufficient number of Americans lived in the territory.

Southerners mocked the notion that the native Mexican population in the new American Southwest could have a hand in telling citizens of the states what property they could and could

⁹⁷ *Ibid.*, 402.

⁹⁸ David Outlaw to Emily B. Outlaw, March 4, 1850, Folder 8, David Outlaw Papers #1534, Southern Historical Collection, Wilson Library, University of North Carolina at Chapel Hill.

not bring into the territories. “[S]hall these *conquered people* be allowed to dictate such terms as will exclude one half of her *conquerors* from enjoying their acquired immunities within her limits,” a Georgia commentator wrote.⁹⁹ Some southerners derided territorial sovereignty, as defined by northern Democrats, because they feared it would deny their section equal participation within the territories. Others sought to seize control of the debate over territorial sovereignty’s meaning by asserting the South’s traditional interpretation of the doctrine. Whig Senator John Bell of Tennessee, for example, introduced his own set of compromise resolutions that affirmed specifically that the people of a territory gained sovereignty when seeking admission to the Union.¹⁰⁰ Bell’s plan considered California a lost cause, providing for its admission with the free state constitution presented to Congress. But Bell sought to save New Mexico for the South by defining when the territories gained sovereignty.

As the debate over Clay’s compromise measures continued through the spring of 1850, numerous southerners had settled on the belief that Congress would have to institute some form of non-intervention in order to solve the crisis. “We know that whenever the settlement does take place, a New Orleans journalist wrote, “it must be done on the ground advocated first by General Cass.”¹⁰¹ Kentucky Governor John J. Crittenden, a Whig who supported the Taylor administration’s plan to settle the slavery issue, expressed his belief “that the slavery question must soon be settled, & that upon the basis of admitting Calafornia [sic] & establishing Territorial governments without the Wilmot Proviso.” The nation had unwisely rejected

⁹⁹ *Milledgeville Federal Union*, March 12, 1850.

¹⁰⁰ *CG*, 31st Cong., 1st Sess., 436-439; *ibid.*

¹⁰¹ *New Orleans Louisiana Courier*, April 1, 1850.

Taylor's "pacific policy" to bypass the territorial phase, but any overall plan that reaffirmed congressional non-intervention seemed likely to gain the approval of Congress.¹⁰²

Most southerners, however, made clear that they would not stand for squatter sovereignty—or the rule of a small and inchoate number of squatters on the public domain. The rule of law and order, as well as the spirit of equality demanded that all decisions on the slavery issue rest with an elected territorial assembly charged with drafting a constitution. The allies of John C. Calhoun demanded that southern politicians repudiate squatter sovereignty. "The doctrine of absolute sovereignty in the inhabitants of a territory," Representative Daniel Wallace of South Carolina declared, "in every petty province of a mother country, is repugnant to all past history."¹⁰³ The Calhounites addressed a concern of most southerners that squatters and native Mexicans had seized control of the statehood process in California—and threatened the same in New Mexico. But their language came perilously close to portraying the United States as a colonial power, which offended numerous advocates of non-intervention, including Lewis Cass. Cass himself had, after all, justified non-intervention and territorial sovereignty by invoking the memory of America's revolution against Great Britain.

The Clay compromise as well as President Taylor's initial proposal to settle the slavery issue each contained the essence of territorial sovereignty, though observers could quibble about finer points of how to interpret and implement the doctrine. Nevertheless, southerners remained divided over the compromise plan in Congress and the principle of territorial sovereignty. Expressing support for the Clay compromise, John Tyler wrote to an associate, "I do not see that anything better can be done." Like President Taylor's plan, the Clay compromise left the slavery

¹⁰² John J. Crittenden to Orlando Brown, April 30, 1850, Box 2, John J. Crittenden Papers, Rare Book, Manuscript, and Special Collections Library, Duke University.

¹⁰³ *CG*, 31st Cong., 1st Sess, Appendix, 432.

matter “open to the selection of the people themselves in convention.”¹⁰⁴ Under the circumstances, the South could not expect much better. A Georgia editor expressed similar resigned support: “By the compromise we get territorial governments, and non-intervention on the slavery question for the Territories. That is something.”¹⁰⁵

Not all southerners could muster even tepid support for the compromise emerging in Congress. In the Senate, Jefferson Davis remained a stalwart opponent of Clay’s bill, especially because of its implication that the Mexican laws against slavery trumped the rights of American citizens, including slaveholders. He declared himself willing “to leave the question to be decided according to the great cardinal principles of the Democratic party; that the people inhabiting a territory, when they come to form a State constitution for themselves, can do as they please.”¹⁰⁶ Davis could not support, however, either the implication that Mexican law prevailed in the cession or the idea that territorial legislatures could prohibit slavery. Furthermore, the Mississippi senator flatly rejected Clay’s contention that slavery could never exist in the region. The people themselves could decide that question by emigrating there with or without slaves. But Congress, with its limited knowledge of the vast territory and its geographical conditions, had neither the knowledge nor the right to declare the Mexican Cession unfit for slavery.

Though Davis attacked the compromise based on specific provisions that he deemed odious to southern interests and rights, other legislators questioned whether the package of resolutions even made up a compromise. Democratic Representative James Seddon of Virginia wrote to his constituents that the compromise demanded great concessions from the South and no expense to the North—“not even the poor boon of equal privilege and simple protection of our

¹⁰⁴ John Tyler to Alexander Gardiner, May 29, 1850, in *The Letters and Times of the Tylers*, II, 484. See also Tyler to Henry S. Foote, May 21, 1850, 485-489; *Richmond Enquirer*, May 31, 1850.

¹⁰⁵ *Augusta Constitutionalist*, quoted in *New Orleans Louisiana Courier*, June 1, 1850.

¹⁰⁶ *CG*, 31st Cong, 1st Sess., 1003.

property in the Territories of Utah and New Mexico, the least valuable of our new acquisitions.”¹⁰⁷ Others predicted that the people of the territories, namely any southern slaveholders who might choose to settle in the West, would not stand for any infringement of their rights and would establish or prohibit slavery as they saw fit, regardless of any congressional dictate.¹⁰⁸ Southern ultras felt that the compromise had hoodwinked the moderate leaders of their section and lulled them into a dangerous complacency. Lamenting the “decadence of the Southern spirit” to resist the compromise measures, Senator Robert M. T. Hunter of Virginia decried the efforts of northerners to “dragoon the South into fastening this act of submission on herself and by her own vote.”¹⁰⁹

Amid the continued dissension over both the Clay compromise and the territorial sovereignty issue, which had spilled over into the summer, an exasperated Lewis Cass mounted another campaign to defend his favored doctrine. Cass served on the Committee of Thirteen in the Senate that took Clay’s initial compromise plan and reworked it into a unified piece of legislation known as the “Omnibus” bill.¹¹⁰ Clay and his select committee believed that a single bill composed of the individual compromise resolutions would more easily gain passage and, moreover, force senators to accept a unitary compromise package rather than merely vote for their specific interests. But the Omnibus bill had the opposite effect as it solidified opposition among northern and southern ultras, leaving moderates in despair of their efforts to secure a bisectional adjustment.¹¹¹

¹⁰⁷ *Richmond Examiner*, quoted in *Milledgeville Federal Union*, June 11, 1850.

¹⁰⁸ *New Orleans Louisiana Courier*, June 21, 1850. This statement anticipates Stephen A. Douglas’s Freeport Doctrine, in which he claimed that, in spite of the Supreme Court’s proslavery ruling in *Dred Scott v. Sandford*, people in the territories could prohibit slavery by declining to enact laws favorable to slavery.

¹⁰⁹ R.M.T. Hunter to George Booker, May 24, 1850, Folder 1, George Booker Papers, Rare Book, Manuscript, and Special Collections Library, Duke University.

¹¹⁰ See Klunder, *Lewis Cass and the Politics of Moderation*, 246-250.

¹¹¹ See Holt, *The Rise and Fall of the American Whig Party*, 498-501.

Facing discord over the Omnibus bill as well as heightened criticism over the correct interpretation of territorial sovereignty, Cass clarified his position on the Senate floor one last time. In a rare moment of self-deprecation for the Michigan senator, Cass stated that it seemed the Nicholson letter “is so dark that every man may read it his own way, or, in fact, no way at all.”¹¹² Cass finally and emphatically stated that the Nicholson letter asserted the doctrine that territorial governments could legislate on the slavery issue.¹¹³ Over the course of 1850, he had come to define the doctrine in more emphatic and less ambiguous terms. In the speech he delivered to the Senate in February, Cass affirmed his belief in the power of territorial legislatures to pass laws concerning slavery. In the heat of the contentious debates in June, the senator left no doubt of his opinion on the interpretation of territorial sovereignty. Yet he left open the possibility that the Supreme Court could rule on the issue. The inhabitants of the territories “will always have a legislature which will reflect their wishes; and, if they desire slavery, they will have it, and if they do not, they will exclude it, unless prevented by the Constitution.”¹¹⁴ While Cass left open the possibility of a legal challenge to territorial sovereignty, he left no doubt that he believed it not only constitutional, but also the wisest policy to avert disunion.

For three years politicians and political observers had debated the real meaning of the Nicholson letter. In the Nicholson letter itself, Cass had strongly *implied* that territorial legislatures had the power to permit or prohibit. When a veritable firestorm erupted over the issue, it seemed that Cass and other supporters of the doctrine prevaricated on its true meaning. Now that Cass had explicitly stated his true belief, his speech had little impact on the continuing debate in Congress. The opponents of territorial sovereignty already knew its true meaning,

¹¹² *CG*, 31st Cong., 1st Sess., 1120.

¹¹³ *Ibid.*, 1121.

¹¹⁴ *Ibid.*, 1122.

while supporters could either embrace his latest pronouncement or continue to ignore the implications of vesting power over slavery in territorial governments.

As if the proponents of the Omnibus bill did not have enough problems to contend with, a new front emerged in the battle over the Mexican Cession. In May 1850, the residents of New Mexico Territory had elected a constitutional convention that promptly drafted a document prohibiting the institution of slavery.¹¹⁵ Though few observers expected the New Mexico statehood movement to succeed, the actions taken by the territory's antislavery faction received an indignant response from southerners and heightened concerns about the compromise bill in the Senate. The movements in New Mexico seemed only to confirm that northerners sought to "*convert the Territories into States*, before the south has a chance to gain a foothold in them."¹¹⁶

Efforts to secure compromise faced far greater challenges than the tenuous statehood movement in New Mexico. The summer of 1850 turned chaotic, as the Senate debate over the Omnibus bill grew increasingly acrimonious. Then, on July 9, President Taylor died unexpectedly. In the short term, the president's death created instability and uncertainty as to the prospects of achieving compromise. Thoughtful observers knew that Taylor had stubbornly opposed the Clay compromise, especially after the Kentucky senator had broken ranks with the administration over the preferred mode of sectional adjustment. Intrigue swirled regarding the course that Vice President Millard Fillmore would take now that he assumed Taylor's office. The new president took only two weeks to chart a new course, ultimately deciding to throw his administration's support behind Clay's Omnibus package.¹¹⁷

¹¹⁵ Ganaway, *New Mexico and the Sectional Controversy*, 49-54; Stegmaier, *Texas, New Mexico, and the Compromise of 1850*, 115-133.

¹¹⁶ *Richmond Enquirer*, June 28, 1850. See also *Milledgeville Federal Union*, June 25, 1850; *New Orleans Louisiana Courier*, July 3, 10, 31, 1850.

¹¹⁷ For Fillmore's course after assuming the presidency, see Holt, *The Rise and Fall of the American Whig Party*, 521-530.

“Close quarters. Neck and neck, and the omnibus under whip and spur, and on the outside track. Looks bad—looks awful—looks mighty squally for the vehicle, the freight, and the passengers,” wrote a witty *New York Herald* correspondent.¹¹⁸ Even with President Fillmore’s support for the bill and his influence among key senators, the impetus for compromise—at least that proposed by Clay—seemed in peril. In spite of the plaintive appeals for moderation and the seemingly endless speeches in favor of an adjustment, the Omnibus met its fate on July 31, when opponents of the compromise package in the Senate succeeded at killing the bill through a procedural maneuver.¹¹⁹ Physically and mentally broken, Henry Clay retreated to Newport, Rhode Island, while his supporters contemplated the next move. A perceptive Tennessee representative recognized perhaps the only tactic left to save any of Clay’s efforts—to pass each proposition separately.¹²⁰ Ironically, Clay himself had used a similar maneuver in 1820 to get the Missouri Compromise through an intransigent Congress.

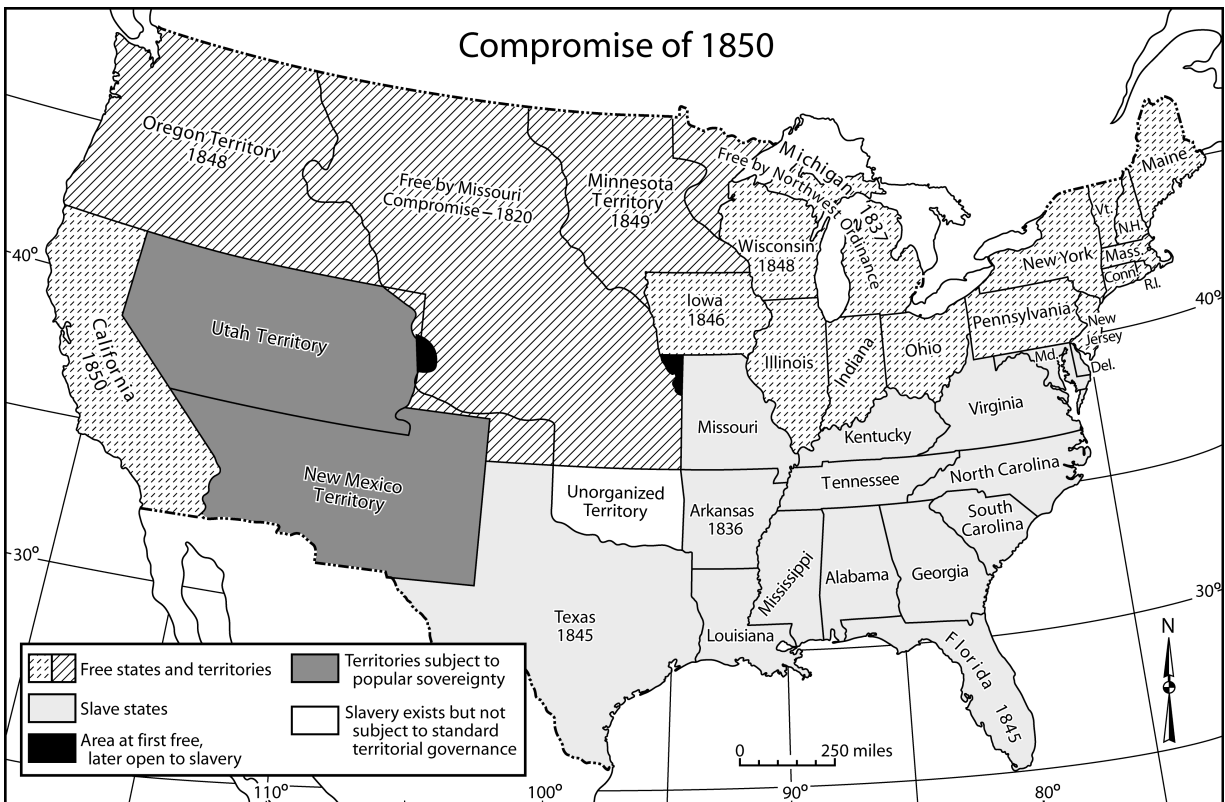
Stephen Douglas assumed control of the compromise movement, proposing to secure passage by breaking the ruined Omnibus bill into its constituent parts. The Illinois senator knew that he could obtain passage of individual measures by utilizing sectional and partisan blocs in the Senate. The plan stood a great chance of success, but it completely defeated Clay’s original purpose—to broker a bisectional compromise in which both northerners and southerners would have to give and take. The Douglas maneuver ensured passage, but did so through parliamentary tactics and not through a sincere desire for compromise.¹²¹ Nevertheless, by September 16 Douglas had gained passage of the separate bills through the Senate and the House, where Douglas himself had correctly predicted a bruising battle for passage. The bills comprising the

¹¹⁸ *New York Herald*, July 31, 1850.

¹¹⁹ Potter, *The Impending Crisis*, 107-108; Holt, *The Rise and Fall of the American Whig Party*, 531-532.

¹²⁰ Andrew Ewing to Edwin [?], August 2, 1850, Folder 1, Andrew Ewing Papers, Rare Book, Manuscript, and Special Collections Library, Duke University.

¹²¹ For Douglas’s efforts, see Johannsen, *Stephen A. Douglas*, 294-303.



Map 3: The Compromise of 1850

Compromise of 1850 arrived at President Fillmore's desk the next day and received his signature. The measures provided statehood for California, much to the chagrin of southerners, as well as congressional non-intervention and territorial sovereignty in New Mexico and Deseret.

The Compromise of 1850 instituted territorial sovereignty in all of the Mexican Cession except California. Interestingly, the debate over the territorial sovereignty provision took an unexpected turn in the House of Representatives, where Georgia Representative Robert Toombs made a last ditch effort to erase any doubt that the Mexican laws prohibiting slavery had ceased with American acquisition of the territory. Toombs sought to nullify explicitly Mexican law and bar territorial legislatures from prohibiting slavery in one sweeping amendment. Toombs's maneuver did not succeed; indeed, the wording of the final bill seemingly granted territorial legislatures the right to prohibit slavery if they so desired.¹²² Territorial sovereignty had prevailed, and had become law with respect to the Mexican Cession. The territories of New Mexico and Deseret possessed the right to permit or prohibit slavery as they saw fit.

On the surface, the nation rejoiced in the settlement of the difficult problems concerning slavery in the Mexican Cession through a compromise effort that touched the existence of the institution both in the territories and in the states. Territorial sovereignty had prevailed. Southerners feared that territorial sovereignty in practice meant the prohibition of slavery. "The authors and inventors of the doctrine frankly and honestly avowed that its practical operation and result was identical with [the Wilmot] proviso," an Alabama jurist wrote. "It secured to the Northern States, by 'masterly inactivity,' all the fruits of the Mexican law; and correspondingly

¹²² For a fascinating analysis of this often overlooked effort and its implications of territorial sovereignty in New Mexico, see Holt, *The Rise and Fall of the American Whig Party*, 540-541. For the assertion that the compromise granted territorial legislatures power to permit or prohibit slavery, see Robert R. Russel, "What Was the Compromise of 1850?" *Journal of Southern History* 22 (August 1956): 292-309. David M. Potter takes issue with this contention in *The Impending Crisis*, 117n45.

with this, excluded the South.”¹²³ Jefferson Davis lamented the passage of the territorial sovereignty provision as a defeat for southern interests. He had opposed the “odious doctrine” because he “never knew what it meant.”¹²⁴ The Mississippian likewise abhorred the notion that squatters on the land could deny southern slaveholders the right to enter the territories with their property.¹²⁵ Nevertheless, most all southerners acquiesced in the compromise plan and seemed to welcome an end to the crisis.

Questions concerning the application of the compromise abounded, however, as observers pondered the finality of the compromise and the meaning of the measures concerning slavery in the territories. When a group of Georgia citizens queried former Vice President George M. Dallas about the compromise measures and their impact on slavery in New Mexico, he predicted in his reply that the Supreme Court would eventually decide the issue of whether Mexican laws prohibiting slavery in the cession would prevail.¹²⁶ In other words, the compromise could not dispose of all the issues concerning slavery in the territories. Historians, too, have asked questions about the finality of the Compromise of 1850, especially whether the Thirty-First Congress crafted a settlement designed to apply to all territories present and future.¹²⁷ From the vantage point of 1850, it seemed that Congress had settled all issues concerning slavery in the Mexican Cession or had deferred them to the judiciary. It seems that few, if any, leaders had given much consideration to future territorial acquisitions or to the remaining unorganized territory of the Louisiana Purchase. And in the case of the latter, the

¹²³ “Letter from John A. Campbell to his Excellency, H.W. Collier,” ca. October 5, 1850, Box 1, Abraham Watkins Venable Scrapbook, Rare Book, Manuscript, and Special Collections Library, Duke University.

¹²⁴ Speech at Raymond, October 26, 1850, in Lynda L. Crist, et.al., eds., *The Papers of Jefferson Davis*, 12 vols. to date (Baton Rouge: Louisiana State University Press, 1971-present), IV, 135.

¹²⁵ Speech at Fayette, July 11, 1851, in *ibid.*, 183-218.

¹²⁶ George M. Dallas to R.L. McWhorter, Jas. R. Sanders, B.E. Spencer, A.S. Williams, W.L.A. Harris, John Dyson, and O.A. McLaughlin of Pinfield, GA, November 19, 1850, George Mifflin Dallas Political and Business Papers, Box 5, Folder 2, Historical Society of Pennsylvania, Philadelphia, PA.

¹²⁷ See Milo Milton Quaife, *The Doctrine of Non-Intervention with Slavery in the Territories* (Chicago: Mac C. Chamberlin, 1910), 98-99.

Missouri Compromise prohibition of slavery north of $36^{\circ} 30'$ had unquestionably settled the issue. The recrudescence of the issue of slavery in the territories less than four years later would place all established precedent in doubt.

CHAPTER 7

“A RECURRENCE TO FIRST PRINCIPLES”: KANSAS-NEBRASKA AND THE ESTABLISHMENT OF POPULAR SOVEREIGNTY AS NATIONAL POLICY

The Compromise of 1850 settled the question of slavery expansion in the vast Mexican Cession, and while southerners had chafed at the admission of California as a free state and the seemingly inevitable passage of New Mexico toward the same course, most acquiesced in the outcome. The compromise that Stephen A. Douglas had shepherded through Congress scotched any impetus for disunion, even as ultra southerners tried in vain to exploit dissatisfaction with the law to organize a second southern convention to contemplate secession. Moderates carried the day and the heirs of the Calhounite mantle missed their chance to unite the South and deliver the North an ultimatum on the slavery issue.¹

Still, key southern politicians continued to express consternation over the compromise measures and what the South had given away for the sake of national unity. Mississippi's Jefferson Davis embarked on a statewide speaking tour in an effort to galvanize southern opposition to the compromise, though he never specified how southerners should counter the new policy on slavery in the territories. California had gained statehood, Davis insisted, with the aid of antislavery partisans. More importantly, the admission of California to the Union illustrated the danger of squatter sovereignty, by which transient Americans combined with the native Mexicans, Indians, and other immigrants from foreign lands had seized control of the constitution-making process and drafted an antislavery document. By enacting the compromise, Congress practically endorsed the actions of these “squatters’ upon the soil.”² In his judgment, it had also endorsed the doctrine of non-intervention in its most odious form, allowing a motley

¹ See Elizabeth R. Varon, *Disunion! The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 227-231.

² Speech at Fayette, July 11, 1851, in Lynda L. Crist, et.al., eds., *The Papers of Jefferson Davis*, 12 vols. to date (Baton Rouge: Louisiana State University Press, 1971-present), IV, 190.

assortment of settlers to exercise self-government. A year after denouncing California statehood and in the midst of the election season of 1852, Davis continued to assail territorial sovereignty as a doctrine that injured southern rights and interests. “The intangible, ever-changing doctrine of non-intervention,” he said, “receiving as many interpretations as there were varieties of sectional policy, demoralized the South, and bore down the best and bravest of our Northern friends.”³ Defending territorial sovereignty against the charges of antislavery politicians, according to Davis, had forced northern Democrats who had endorsed equal southern participation in the territories to abandon their bisectional overtures in order to save face at home. At the same time, southerners like Davis believed that the doctrine imperiled southern rights by allowing the first settlers on the ground to determine the status of slavery for all time. Behind Davis’s attack on territorial sovereignty lay his belief that the South would have fared better with an extension of the Missouri Compromise line.

Though southerners like Davis may have objected to the Compromise of 1850 and its endorsement of territorial sovereignty, many more overcame their initial resentment of the policy. Unionist sentiment overwhelmed any effort by southern separatists to renew agitation over slavery in the Mexican Cession. Desperate for peace on the slavery issue and for a resumption of party harmony, the Democrats in 1852 sought to resolve their differences. Yet the party operatives advanced two old warhorses for the presidential nomination—Lewis Cass of Michigan and James Buchanan of Pennsylvania. The young but politically experienced Stephen A. Douglas emerged as the third candidate. All carried significant liabilities. Cass’s position on territorial sovereignty lingered in the minds of southern Democrats. More than any other northern Democrat, Cass refuted the southern interpretation of territorial sovereignty, which earned him the enmity of key southern politicians. The Michigan senator exacerbated the

³ Speech at Jackson, June 9, 1852, in *ibid.*, 271.

problem when he reiterated his stance on the Senate floor in March, affirming that the “first settlers” of a territory inevitably influenced the community’s “political and social system.”⁴ Southerners like Jefferson Davis, to whom Cass directed his remarks, viewed this latest statement as further evidence that the author of the Nicholson letter endorsed squatter sovereignty. Antislavery northerners opposed Cass because they believed he had pandered to the South for votes. New York businessman and Democrat Erastus Corning wrote to a friend that Cass stood no chance of carrying the Empire State in a presidential canvass for “reasons which you can well understand”—a veiled reference to the Michigan senator’s stand on slavery.⁵

The proceedings of the Democratic Convention in Baltimore in June 1852 revealed the party’s fragile condition on the slavery question. The party platform endorsed the Compromise of 1850 as a permanent solution to the question of slavery in the territories. Desperate to end the internecine struggle over slavery, the platform committee proclaimed that Democrats would “resist all attempts at renewing, in congress or out of it, the agitation of the slavery question.”⁶ For forty-nine ballots, Cass, Douglas, and Buchanan jockeyed for advantage, but none could gain the necessary two-thirds of the delegate votes. In the end, the Democrats turned to a dark horse, Franklin Pierce of New Hampshire. The Democracy united behind Pierce, a candidate backed by southerners who viewed the Mexican War veteran as a proper doughface and by northerners as an acceptable alternative to the trio of Cass, Douglas, and Buchanan.

In the weeks before the Baltimore convention, Pierce had accepted the Compromise of 1850 with enthusiasm. “If the compromise measures are not to be substantially and firmly

⁴ *Congressional Globe*, 32nd Cong., 1st Sess., 784. For southern opposition to Cass’s 1852 candidacy, see David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 141-142; Roy F. Nichols, *The Democratic Machine, 1850-1854* (New York: Columbia University Press, 1923), 48-49.

⁵ Erastus Corning to William A. Seaver, December 13, 1851, Box 13, Lewis Cass Papers, William L. Clements Library, The University of Michigan, Ann Arbor, MI.

⁶ Kirk H. Porter and Donald Bruce Johnson, eds., *National Party Platforms, 1840-1960*, 2nd ed. (Urbana: University of Illinois Press, 1961), 17.

maintained,” Pierce wrote in a public letter, “the plain rights secured by the constitution will be trampled in the dust.”⁷ Both North and South had to stand behind the compromises made in the turbulent summer of 1850 for the sake of the Union, not to mention for the future of the Democratic Party. Six years earlier, he had endorsed the territorial sovereignty doctrine as a young state party operative. Pierce trounced the Whig candidate Winfield Scott in the November election, carrying an overwhelming majority of the electoral vote. For a fleeting moment it seemed that moderation had prevailed and the Compromise of 1850 might well have settled the slavery question. But candidate Pierce’s hopes for party unity and national harmony would face serious constraints once he became President Pierce.

Just as the new president took office in March 1853, a discussion had commenced over the organization of a vast territory in the center of the transcontinental nation—what became known as Nebraska. The large unincorporated portion of the Louisiana Purchase, which spanned roughly from the northern boundary of present-day Oklahoma to the Canadian border and included land between the Missouri River and the Rocky Mountains, had escaped the attention of Washington for years, as many leaders viewed the domain as an Indian territory. The desire to construct a transcontinental railroad along with the inexorable westward push of settlers on the frontier led people both in the West and in Washington to reconsider the future of the vast region.⁸

⁷ Quoted in Roy Franklin Nichols, *Franklin Pierce: Young Hickory of the Granite Hills* (1931; Philadelphia: University of Pennsylvania Press, 1958), 202.

⁸ The literature on the origins of the Kansas-Nebraska Act and the transcontinental railroad is voluminous and often superfluous, but the essential studies are as follows. See Potter, *The Impending Crisis*, 145-154; James C. Malin, *The Nebraska Question, 1852-1854* (Lawrence, KS, 1953), 24-153 and *passim*; P. Orman Ray, *The Repeal of the Missouri Compromise: Its Origin and Authorship* (Cleveland: Arthur C. Clark Company, 1909), 72-108; Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 390-395. For a historiographical review of the act, which pays attention to its origins, see Roy F. Nichols, “The Kansas-Nebraska Act: A Century of Historiography,” *Mississippi Valley Historical Review* 43 (September 1956): 187-212.

No one had taken more interest in the settlement of the vast territory than Stephen Douglas. The Illinois senator had first introduced legislation to organize Nebraska Territory in 1844 in a multipronged effort to organize territories in the remainder of the Louisiana Purchase and Oregon, as well as prepare for construction of a transcontinental railroad. The construction of the railroad would bring a host of settlers eager to take residence along the line and engage in farming, many of whom would be eligible for free homesteads provided by the federal government. The breathtaking scope of Douglas's design, a master plan to settle the remainder of the west, bore more than a faint resemblance to Jefferson's plan for an agrarian republic. He would connect the Great Plains to the industrial East, with Chicago at its center, by laying iron rails through the center of the republic. For ten years, the senator refused to give up hope on his plan, even in the face of formidable odds and considerable sectional rancor.⁹

While Senator Douglas continued to seek support for organizing Nebraska in Washington, residents in western Missouri and Iowa began to push on their own for organization. The Missourians, in particular, eagerly sought organization of the territory in order to exploit its natural resources and establish homesteads. While the initiative remained quite popular in western Missouri, Senator David Rice Atchison raised objections to the organization of Nebraska on the grounds that the Missouri Compromise would prohibit slavery in the prospective territory. Atchison, a rough and tumble frontier Democrat from Platte County, Missouri, raised objection to the Nebraska bill at the close of the second session of the Thirty-Second Congress. With "no prospect, no hope for a repeal of the Missouri compromise,

⁹ See Johannsen, *Stephen A. Douglas*, 391-395; Michael A. Morrison, *Slavery and the American West: The Eclipse of Jacksonian Democracy and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 142-143.

excluding slavery from that Territory,” the senator confessed that he could not vote for any bill organizing Nebraska.¹⁰

Atchison condemned the Northwest Ordinance and the Missouri Compromise as twin “irremediable” errors that previous congresses had passed against the spirit, if not the letter, of the Constitution.¹¹ Given the apparent inviolability of the Missouri Compromise it seemed that, to his mind, slaveholders would simply have to acquiesce in the prohibition. But in the summer of 1853, Atchison clarified his position in a series of speeches given in his home territory, demanding that any bill organizing Nebraska embrace the doctrine of territorial sovereignty. “I am willing that the people who may settle there, and who have the deepest interest in this question, shall decide it for themselves,” he declared.¹² Missourians had long supported the principle of territorial sovereignty via memorials to Congress and numerous public meetings, especially during the contentious congressional session of 1849-1850. Now Atchison demanded that Congress apply the same standard to Nebraska. Almost certainly unconscious of the implications of his statement, the senator had raised the pivotal question of whether the Compromise of 1850, with its endorsement of territorial sovereignty, had superseded the Compromise of 1820.

The Missourians wasted no time in making their sentiments known to Congress and the nation. In a series of public meetings held in the heart of Atchison’s political power base, citizens’ committees endorsed “leaving questions of local policy to be settled by the citizens of the territory when they form a state government.”¹³ In other words, they endorsed the concept of

¹⁰ *CG*, 32nd. Cong., 2nd Sess., 1113. See also William E. Parrish, *David Rice Atchison: Border Politician* (Columbia: University of Missouri Press, 1961), 121-131; Malin, *The Nebraska Question*, 102-112.

¹¹ *CG*, 32nd. Cong., 2nd Sess., 1113.

¹² Quoted in Parrish, *David Rice Atchison*, 126.

¹³ Resolutions of the Nebraska Convention at St. Joseph, Missouri, January 1854, quoted in Ray, *The Repeal of the Missouri Compromise*, 170. For a detailed discussion of the St. Joseph Convention and the impact of western Missourians on the Nebraska situation, see Malin, *The Nebraska Question*, 207-287.

territorial sovereignty as defined by the South. Furthermore, their motives in supporting the organization of Nebraska became clear. First, western Missourians expected to supply a significant number of residents for the territory and therefore desired to carry slavery there. Second, many feared that a free Nebraska would prove hazardous to slaveholders in Missouri itself, as runaway slaves could cross the border to freedom. The latter issue would gain significance as the debate over Nebraska proceeded.¹⁴

Douglas closely observed the developments in western Missouri and surely maintained contact with Atchison as the proposal to organize Nebraska gained momentum. Indeed, in December 1853, a citizens' committee from St. Joseph, Missouri, had invited the Illinois senator to attend its proceedings the following month.¹⁵ During the latter months of 1853, Douglas had begun organizing his own thoughts on how to revive his plan for western settlement and the construction of a transcontinental railroad that would pass through Nebraska. Douglas knew that he needed southern and western support to achieve his goals, but realized that the Missouri Compromise prohibition on slavery north of 36° 30' represented a significant obstacle.

Ever the astute politician, Douglas believed that the principles of the Compromise of 1850, namely territorial sovereignty, could assuage southerners and westerners and ensure their support for organizing Nebraska Territory. The senator, however, also recognized that violating the principles of the Missouri Compromise's slavery ban almost certainly would infuriate antislavery northerners. Douglas hoped to mollify all parties and interests by a sleight of hand; he would endorse territorial sovereignty in Nebraska and remain silent on the Missouri Compromise. The senator staked his project on the belief that "all will be willing to sanction and

¹⁴ For the settlement of Nebraska by Missourians, see Malin, *The Nebraska Question*, 154-178; Ray, *The Repeal of the Missouri Compromise*, 164-194.

¹⁵ Johannsen, *Stephen A. Douglas*, 399.

affirm the principle established by the Compromise measures of 1850,” and would ignore the Missouri Compromise.¹⁶

The Thirty-Third Congress commenced its first session on December 5, 1853, with the Nebraska issue at the top of its agenda. Senator Augustus Dodge of Iowa introduced legislation to organize Nebraska Territory, essentially the same bill that had failed in the previous session. But the Senate referred the legislation to Douglas’s Committee on Territories, and in the course of three weeks the chairman had reworked the Dodge bill to his liking. Meanwhile, the press began feverishly speculating on the course the Douglas committee and Congress at large would take with regard to Nebraska. A well-informed correspondent to the *Richmond Enquirer* captured perfectly the negotiations occurring behind the scenes. Missouri’s two senators—David Atchison and the venerable Thomas Hart Benton—were in the midst of a battle over who would control the state’s politics. Benton favored the immediate organization of Nebraska with the Missouri Compromise ban on slavery intact, while Atchison, the “faithful champion of the South,” according to the *Enquirer’s* correspondent, favored territorial sovereignty. “Peopled by immigrants of from Missouri, and, by the fertility of its soil inviting the labor of the negro, Nebraska, if allowed the free exercise of its own discretion, will soon apply for admission into the Union as a slave state,” the writer predicted.¹⁷ By all indications the people of Missouri, especially along its western border, favored the Atchison plan.

On the other side of the issue, northerners quickly perceived that some senators wanted to circumvent the thirty-four year old Missouri Compromise and potentially open Nebraska to slavery. “While so much zeal is evinced in behalf of the South, there is some danger that the

¹⁶ Stephen A. Douglas to J.H. Crane, D.M. Johnson, and L.J. Eastin, December 17, 1853, in Robert W. Johannsen, ed., *The Letters of Stephen A. Douglas* (Urbana: University of Illinois Press, 1961), 271. See also Johannsen, *Stephen A. Douglas*, 399-402.

¹⁷ *Richmond Enquirer*, December 6, 1853.

rights of the North may be overlooked,” a New Jersey editor warned. “It may be that the glories of the compromise of 1850 have so dimmed those of its Missouri namesake that it may be forgotten that by the latter agreement Nebraska may be nothing but free territory.”¹⁸ Northerners and southerners perceived the stakes of the coming debate over Nebraska just as clearly as their fellow citizens in Missouri. The great question became clear: would territorial sovereignty supersede the Missouri Compromise ban on slavery in Nebraska?

The Senate Committee of Territories released its much-anticipated report on Nebraska on January 4, 1854, which set the stage for the debate over territorial sovereignty. The committee maintained that the Compromise of 1850 had indeed invalidated the Missouri Compromise, though the report specifically avoided explicit repeal. Writing for the committee, Douglas argued that the compromise measures “were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory.”¹⁹ As the author of the Utah and New Mexico legislation, he argued that it established a new precedent for territorial organization. The Douglas report endorsed the Cass formula for territorial sovereignty by allowing the people, “by their appropriate representatives,” to legislate on “all questions pertaining to slavery in the territories.”²⁰ Presumably the Missouri Compromise ban on slavery would remain in effect until the territorial legislature provided otherwise. In sum, Douglas had reshaped the Dodge bill to incorporate the compromise principles without explicitly repealing the Missouri Compromise. But would northerners and southerners accept the crafty proposal?

Even before Douglas introduced his version of the Nebraska bill, political observers in the South had intimated that they would support the organization of Nebraska only under the

¹⁸ *Trenton State Gazette*, December 8, 1853.

¹⁹ *S. Rep. No. 15*, 33rd Cong., 1st Sess., (1854), Serial Set No. 706, 1.

²⁰ *Ibid.*, 4.

terms of the Compromise of 1850. The *Enquirer* accused the North of having repudiated the Missouri Compromise in 1850, only to claim its validity in respect to Nebraska in 1853.²¹ Of course, northerners intended precisely that. The Missouri Compromise did not apply to the Mexican Cession; accordingly Congress had provided a different means of organizing Utah and New Mexico. Passage of the Compromise of 1850, according to antislavery partisans, did not nullify the Missouri Compromise. Northern Democrats and southerners, however, saw the matter quite differently. The compromise measures had established the twin principles of congressional non-intervention and territorial sovereignty as the preferred policy of territorial organization. Congress should defer to the wishes of the people on the slavery question. Supporters of the compromise principles saw the Douglas bill as a test of “how far gentlemen are willing practically to enforce their acquiescence” in non-intervention and territorial sovereignty.²² “Before this bill gets through Congress,” a Florida editor predicted, “the South will have an opportunity of seeing who among the members of both Houses construe the Compromise of 1850 as a settlement of the slavery difficulty.”²³

Why had the South come to embrace the principles of the Compromise of 1850, when a substantial number of southerners expressed skepticism four years earlier? Put simply, conditions in 1854 differed greatly from those the South faced in 1850. Then territorial sovereignty seemed destined to prevent slavery from entering the Mexican Cession. California had drafted a free state constitution without congressional sanction, embodied the principle of territorial sovereignty—or squatter sovereignty, as southerners derisively labeled the doctrine. New Mexico seemed poised to follow suit with its own free state movement, supported by native Mexicans and a small number of Americans who had moved west to exploit the region’s natural

²¹ *Richmond Enquirer*, December 6, 1853.

²² *New York Weekly Herald*, January 7, 1854.

²³ *Tallahassee Floridian and Journal*, January 14, 1854.

resources. Southerners felt that they had *lost* the Mexican Cession because of territorial sovereignty. But in Nebraska, southerners could *gain* a foothold for slavery only by implementing territorial sovereignty. The Missouri Compromise prohibition on slavery stood on solid legal footing, unlike the Mexican prohibition on slavery in the cession. Proslavery partisans recognized that territorial sovereignty could potentially circumvent the thirty-four year ban on slavery in the remainder of the Louisiana Purchase. Though southerners seemed to embrace the fundamentals of the Nebraska report, they soon recognized that the plan had a significant flaw. Douglas's implication that the Compromise of 1850 had superseded the Missouri Compromise provided insufficient protection for southern interests. Only by explicitly repealing the Compromise of 1820 could the South truly have a chance of extending the slave domain into Nebraska. At this point, the impetus for repeal mixed with the familiar politics of slavery to create a concerted effort to repeal the Missouri Compromise.

Days after the Senate Committee on Territories released its report on the Nebraska bill, the *New York Herald*, a northern Democratic newspaper with pro-southern proclivities, maintained that it contained an “artful dodge.”²⁴ Few, if any, accepted Douglas's effort to avoid contention over the Missouri Compromise. The failure to repeal the slavery prohibition equaled a tacit endorsement of the Wilmot Proviso, the *Herald* argued. Southerners could not have agreed more. Indeed, they saw an effort among antislavery advocates to reopen the wounds that the Compromise of 1850 had purportedly closed. “The compromise measures will soon again be in jeopardy,” a Louisiana writer opined.²⁵ Southerners espoused the belief—sincere or not—that the compromise achieved four years earlier had settled the slavery question permanently and had, in spirit, supplanted the Missouri Compromise. Facing northern opposition to the expansion of

²⁴ *New York Herald*, January 14, 1854.

²⁵ *New Orleans Louisiana Courier*, January 18, 1854.

slavery, as well as pressure within the South to stand firm on the issue, southern politicians in Washington began to move for an explicit repeal of the Missouri Compromise's ban on slavery.

Most interestingly, the impetus for repeal came from southern Whigs who sought to prove themselves safer on slavery than their Democratic adversaries and to rejuvenate their moribund party. Southern Whigs recognized that the Douglas bill left much to chance in its explicit refusal to repeal the slavery ban from 1820. Additionally, they hoped to capitalize on southern skepticism of the Douglas formula for territorial sovereignty. The Illinois senator had followed Lewis Cass's definition of the doctrine by insisting that territorial legislatures could prohibit or permit slavery at their pleasure. The bill of January 4, 1854, clearly expressed the Cass version of the doctrine.²⁶ Even southern Democrats hoped to amend that portion of the bill. Southerners demanded that the "people of Nebraska shall have the privilege of admitting or excluding Slavery, when the form a State constitution," a Georgia journalist declared.²⁷ Many southerners continued to express their opposition to squatter sovereignty, whereby a select few individuals could take the reins of government and prevent slaveholders from sharing the territory, insisting that citizens could determine the future of slavery only when drafting a constitution.

Two members of Congress took the lead in proposing the repeal of the Missouri Compromise's slavery ban—a Whig senator from Kentucky and a Democratic representative from Alabama. On January 16, Senator Archibald Dixon introduced an amendment that provided for the repeal of the ban on slavery. Answering charges that he sought to embarrass the Democrats, Dixon declared, "I know no Whiggery, and I know no Democracy. I am a pro-

²⁶ On January 10, Douglas added another section to the bill, which had been omitted in a "clerical error." Some scholars have claimed that the new section reinvented the bill. While his claim of omission is dubious, the additional section merely affirmed the principles in the Compromise of 1850 in clearer language. It did not fundamentally alter the bill's meaning as some have claimed. See Johannsen, *Stephen A. Douglas*, 408-409.

²⁷ *Milledgeville Federal Union*, January 10, 1854.

slavery man. I am from a slaveholding State; I represent a slaveholding constituency; and I am here to maintain the rights of that people whenever they are presented before the Senate.”²⁸

Dixon and the Whigs hoped to resurrect their failing party by proving themselves safer on slavery than the Democrats, but their actions also bear witness that the preservation of slavery and southern rights came before party considerations.²⁹

In an unprecedented effort to prove himself and his party safe on slavery, Dixon went a step beyond repeal. In what one historian has rightly called “one of the most extreme proslavery pieces of legislation ever aired in Congress,” the Dixon amendment also stipulated that American citizens had the right “to take and hold slaves within any of the Territories of the United States or of the States to be formed therefrom.”³⁰ Because the Dixon amendment guaranteed federal protection of slavery in the territories as well as new states, it could not conceivably gain the support of the Senate. It destroyed the principle of territorial sovereignty by specifically sanctioning congressional intervention for slavery in the territories, but the Kentucky senator’s move to repeal the Missouri Compromise’s ban on slavery had the support of southerners from both parties. Recognizing that he would have to incorporate repeal into the Nebraska bill, Douglas consulted with his Whig colleague and received permission to take charge of the movement for repeal.³¹

Even before Dixon introduced his amendment to the Senate, an Alabama representative anticipated the impetus for repeal and acted in the House of Representatives. At the request of Douglas, the freshman Democrat Philip Phillips introduced his own amendment to repeal the

²⁸ *CG*, 33rd Cong., 1st Sess., 240.

²⁹ See William J. Cooper, Jr., *The South and the Politics of Slavery, 1828-1856* (Baton Rouge: Louisiana State University Press, 1978), 348-350, 379.

³⁰ Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), 809; *CG*, 33rd Cong., 1st Sess., 175.

³¹ For Douglas’s consultation with Dixon, see Johannsen, *Stephen A. Douglas*, 411-412.

Missouri Compromise's ban on slavery.³² Unlike the Dixon effort, in which the Kentucky Whig sought to jettison self-government in the territories, Phillips built his proposal on territorial sovereignty. Written just days after Douglas introduced the Nebraska bill, the amendment stipulated that "the people of the Territory through their Territorial legislature may legislate upon the subject of slavery in any manner they may think proper not inconsistent to the Constitution of the United States, and all laws inconsistent with this authority or right shall, from and after the passage of this act, become inoperative void and of no force and effect."³³

In sum, the Phillips amendment had two aims. First, it unequivocally endorsed the Cass/Douglas version of territorial sovereignty. Phillips, a Deep South congressman, had sanctioned the right of territorial legislatures to legislate on slavery. Furthermore, the amendment had received the approbation of key southern members of the Senate, Missouri's David Atchison, Robert M.T. Hunter and James Mason of Virginia, and Andrew P. Butler of South Carolina, all friends of Douglas, all powerful advocates of southern rights, and all individuals who would play a pivotal role in selling the Douglas bill to President Pierce and his administration.³⁴ Undeniably, southerners continued to maintain different beliefs about the territorial sovereignty doctrine, but Phillips had taken a significant step toward placating all southern interests. To his endorsement of territorial sovereignty, Phillips added the important caveat that any act of a territorial legislature could not conflict with the Constitution, thereby creating an opening for the judiciary to decide ultimately the meaning of territorial sovereignty and the fate of slavery in the territories. Second, the amendment voided the Missouri

³² *Ibid.*, 413.

³³ Henry Barrett Learned, "The Relation of Philip Phillips to the Repeal of the Missouri Compromise in 1854," *Mississippi Valley Historical Review* 8 (March 1922): 303-317, quote on p. 310.

³⁴ *Ibid.*, 313. See also Johannsen, *Stephen A. Douglas*, 413.

Compromise's ban on slavery, but in more equivocal language than Dixon would use in his amendment just days later.

The movement for repeal became a *sine qua non* for southern support; without voiding the restriction on slavery in Nebraska, Douglas could not muster sufficient votes to pass his bill. Phillips and Douglas had attempted to assuage southerners with some success, yet the oblique wording surrounding the repeal of the slavery restriction troubled others. Dixon's language regarding the Missouri Compromise proved far more acceptable to the South. After the Kentucky senator presented his amendment, Douglas knew that he would have to endorse the explicit repeal of the Missouri Compromise restriction on slavery. Meanwhile, the southerners in Congress surely knew that they had seized the initiative on the Nebraska bill and the future of slavery.

Northern Democrats seemed willing to broker a deal with the southern wing of their party in order to pass the Nebraska bill and remove the slavery question from the political discourse. Certain party stalwarts called on Lewis Cass to endorse repeal of the slavery ban. The aging Michigan senator, however, sent mixed signals about his stance on the Nebraska bill and the Dixon amendment. Certain newspapers reported that Cass would "not only vote for the repeal of the Missouri compromise as far as it interferes with the compromise of 1850," but that he would also declare the slavery ban unconstitutional.³⁵ On the contrary, Cass vigorously denied the *New York Herald's* report, for in private, he advised President Pierce to oppose the repeal effort for fear that it would irreparably fracture the party.³⁶ Cass may well have deplored the idea of repeal, but he also bore some personal animosity toward Douglas, who in the opinion of the elder

³⁵ *New York Herald*, January 18, 1854.

³⁶ For Cass's rebuke of the *Herald*, see Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996), 266. For Cass's consultation with Pierce, see Nichols, *Franklin Pierce*, 321-322; Johannsen, *Stephen A. Douglas*, 413.

senator had unfairly and unceremoniously appropriated the territorial sovereignty doctrine for himself. Accordingly, the elder senator kept silent for some time, refusing to lend either his name or his support to the Nebraska bill.

While the nation debated the merits of repealing the Missouri Compromise ban on slavery, Douglas worked feverishly behind the scenes to craft a revised bill and secure the necessary southern support. Southern public opinion left no doubt of the course that the Illinois senator would have to take. Passage of the Compromise of 1850 had remodeled the nation's territorial system, according to the *Richmond Enquirer*. "Does [the Compromise of 1850] render null and void the Missouri Compromise of 1820, which, if left in operation, will prohibit slavery in Nebraska and commit a gross outrage upon the South," its editor asked. "We do not entertain a doubt on the subject."³⁷ In order to protect the rights of all citizens—slaveholders included—Congress needed to remove itself from the slavery debate and "throw its decision upon the courts and the people who may occupy the Territory, when it shall be sufficiently populated to be admitted as a State into the Union."³⁸ Indeed, a number of southerners demanded explicit repeal because without it, they feared that the judiciary might strike down slavery in Nebraska based on the Compromise of 1820.³⁹

After consulting with Archibald Dixon as well as his southern Democratic colleagues, Douglas prepared a revised Nebraska bill that included repeal of the Missouri Compromise. The senator, however, faced opposition from the president, who had concurred with Lewis Cass's assessment of repeal and had pledged to oppose the effort. Pierce did not hold to that position for long; while Cass sincerely condemned repeal in any form, the president merely desired to avoid

³⁷ *Richmond Enquirer*, January 24, 1854.

³⁸ *St. Louis Daily Missouri Republican*, January 22, 1854.

³⁹ See Robert R. Russel, "Congressional Issues over the Kansas-Nebraska Act," *Journal of Southern History* 39 (May 1963): 193.

addressing the issue directly. Convinced by his attorney general that the slavery restriction in the Missouri Compromise was unconstitutional, Pierce sought to leave the decision to the judiciary. The cabinet prepared an amendment to the Nebraska bill stipulating that “the rights of persons and property shall be subject only to the restrictions and limitations imposed by the Constitution of the United States and the acts giving governments, to be adjusted by a decision of the Supreme Court of the United States.”⁴⁰ In its ultimate outcome, the ponderous amendment bore resemblance to the unsuccessful Clayton Compromise of 1848, which would have left the status of slavery in the Mexican Cession in the hands of the Supreme Court. The president may well have known, too, that certain southerners would support a measure that would refer the issue to the southern-dominated Supreme Court. Douglas would have acquiesced in the amendment, but Atchison and his southern colleagues rejected the effort. They demanded direct repeal.

With one day left before he intended to deliver his revised bill to the Senate, Douglas faced the seemingly impossible task of convincing Pierce and the cabinet to accept a more direct form of repeal. At the behest of key southern senators, Secretary of War Jefferson Davis arranged an extraordinary Sunday meeting that has become legendary in the history of the effort to organize Nebraska. The pious president normally refused to conduct business on Sundays, but Davis convinced him of the necessity to discuss the legislation.⁴¹ That afternoon, Douglas, Davis, and a number of southern legislators met with Pierce at the White House. The president must have faced one of the most surreal experiences of his young presidency as the most influential southern Democrats in Congress, and the most influential northern Democratic

⁴⁰ Quoted in Nichols, *Franklin Pierce*, 321-322.

⁴¹ For Davis’s role in arranging the meeting, see William J. Cooper, Jr., *Jefferson Davis, American* (New York: Alfred A. Knopf, 2000), 286-287.

senator, confronted the titular head of their party with an ultimatum for repeal.⁴² Pierce capitulated. But because the president “had a way of changing his mind when later advice was given,” Douglas insisted that Pierce place his assent in writing.⁴³ The next day, Douglas presented the revised bill to the Senate. And amazingly, at the same time Pierce declared that he considered support of the new bill a test of party faith. In sum, he staked the success of his presidency on the Douglas bill.

Douglas doubly surprised his colleagues when he took the Senate floor on Monday, January 23. The senator’s revised bill contained two provisions that fundamentally altered the legislation. First, the bill delivered on his promise to his southern colleagues by declaring the eighth section of the Missouri Compromise “inoperative.”⁴⁴ He had inserted the amendment drafted at the White House the previous day, much to the surprise of those who had not taken part in the negotiations. Second, the senator stunned his colleagues by dividing Nebraska into two territories—Kansas to the south and Nebraska to the north. Douglas claimed that agents from the Nebraska territory, and especially from Iowa, had petitioned for division of the vast land.⁴⁵ Though no explicit proof has ever surfaced, the record suggests that Douglas and the people from the West advocated division of the territory as a corollary to the repeal of the Missouri Compromise. “The object of this construction of the compromise of 1850, and the introduction of two territories instead of one,” the *New York Herald* noted, “is understood to be one territory for the North and the other for the South.”⁴⁶ Kansas would lie west of Missouri, and would likely become a slave state. With its proximity to the free state of Iowa, Nebraska

⁴² The best account of this meeting is in Nichols, *Franklin Pierce*, 321-324. See also Johannsen, *Stephen A. Douglas*, 414-415.

⁴³ Nichols, *Franklin Pierce*, 323.

⁴⁴ *CG*, 33rd Cong., 1st Sess., 221-222.

⁴⁵ See Malin, *The Nebraska Question*, 309-310.

⁴⁶ *New York Herald*, January 24, 1854.

would almost certainly become a free state as well. Regardless of geography, the bill declared that “all questions pertaining to slavery in the new Territories, and in the new States to be formed therefore, are to be left to the decision of the people residing therein, through their appropriate representatives.”⁴⁷ Douglas had succeeded at protecting the principle of territorial sovereignty.

One week later, the Little Giant rose in the Senate to explain his Kansas-Nebraska bill to his constituents and to the nation. But he also sought to defend the bill against a strident attack from northern antislavery advocates. A group of six senators led by Salmon P. Chase of Ohio had issued an “Appeal of the Independent Democrats in Congress to the People of the United States,” accusing Douglas of serving a “Slave Power” conspiracy that sought to extend its domain.⁴⁸ The label affixed to the address gave sufficient cause for alarm, as some feared for the effect of the Kansas-Nebraska bill on the Democratic Party. Chase and his associates condemned the repeal of the Missouri Compromise ban on slavery and called on Democrats to resist Douglas and the Pierce administration.⁴⁹ Their effort led Douglas to respond with a vituperative attack against the appeal and the opponents of his bill. On the “holy Sabbath, while other Senators were engaged in attending divine worship, these Abolition confederates were assembled in secret conclave, worship plotting by what means they should deceive the people of the United States, and prostrate the character of brother Senators.”⁵⁰ Of course, Douglas omitted that he and his associates had conducted business on the same Sabbath day, when they called on President Pierce at the White House.

⁴⁷ *CG*, 33rd Cong., 1st Sess., 222.

⁴⁸ See Mark E. Neely, Jr., “The Kansas-Nebraska Act in American Political Culture: The Road to Bladensburg and the *Appeal of the Independent Democrats*,” in John R. Wunder and Joann M. Ross, eds., *The Nebraska-Kansas Act of 1854* (Lincoln: University of Nebraska Press, 2008), 13-46.

⁴⁹ The address is printed in *CG*, 33rd Cong., 1st Sess., 281-282.

⁵⁰ *Ibid.*, 277.

The senator spoke with incredulity as he described the efforts of those who opposed applying territorial sovereignty to Kansas and Nebraska. The Compromise of 1850, he maintained, had superseded the Missouri Compromise. Northern antislavery Democrats had no one to blame but themselves for the eclipse of the Missouri Compromise. “The first time that the principles of the Missouri compromise were ever abandoned, the first time they were ever rejected by Congress, was by the defeat” of Douglas’s own provision to extend the Missouri Compromise line to the Pacific Ocean. By whom was that defeat effected,” Douglas asked. “By northern votes, with Free-Soil proclivities.”⁵¹

The magnanimity of Democrats from both North and South had led politicians to propose extending the compromise line, Douglas suggested. Now he aimed to restore the “great principle of self-government” by affirming the right of the people in the territories to decide whether or not they desired slavery.⁵² Furthermore, he insisted on the right of sovereignty during the territorial phase, of course with the ubiquitous proviso that their actions conform to the Constitution. Congress simply could not, nor should it, attempt to establish the domestic institutions of the territories. Douglas used his own state as an example of how congressional interdiction of slavery had failed. Congress failed to prohibit slavery in Illinois Territory in spite of the Northwest Ordinance “because the people there regarded it as an invasion of their rights.”⁵³ Finally, Douglas maintained, with the Kansas-Nebraska bill the nation would return to its democratic principles of self-government and popular sovereignty. The senator had inaugurated the debate over Kansas-Nebraska in a bold fashion; afterward, he would face the task of preventing northerners—especially the Chase faction—from delaying deliberations over the bill.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*, 279.

Southerners generally hailed the Douglas effort as a vindication of their section's rights. The senator had demolished the artificial line preventing them from equal participation in the territories, thereby correcting the mistake that their predecessors had made some thirty-four years before. Southern commentators portrayed the actions and words of the abolitionist vanguard as hypocritical. "The natural religion of Abolitionism is all laid aside, and the South is appealed to in the name of the binding obligation of the Missouri Compromise—an act of Congress," a South Carolinian remarked. "It is a prodigious fall from the clouds, for such high-reaching spirits as the Free-soilers."⁵⁴

Douglas's southern colleagues hailed the establishment of self-government, "the redeeming feature of the Compromise bill of 1850," as the resurrection of sound Democratic doctrine and the guarantor of southern rights.⁵⁵ Georgia Senator Robert Toombs best explained the southern position, maintaining that the North had long ago made the Missouri Compromise a dead letter. "They have adhered to its prohibitory provisions, but uniformly and nearly unanimously trampled its principles under foot so far as the South was to be benefited by it."⁵⁶ Conversely, Toombs praised Douglas for recognizing the Compromise of 1850 as a "compact" recognized by North and South. The Kansas-Nebraska bill wisely affirmed it as national policy for present and future.⁵⁷ Howell Cobb of Georgia lauded the bill as a "doctrine worthy of the democratic party."⁵⁸ Recognizing that in times past the South had divided over territorial sovereignty, Douglas responded, "our southern friends have only to stand firm & leave us of the North to fight the great Battle. . . . The great principle of self government is at stake & surely the

⁵⁴ *Charleston Mercury*, quoted in *New Orleans Louisiana Courier*, January 29, 1854. See also *New York Herald*, 29 January 1854.

⁵⁵ *New Orleans Louisiana Courier*, February 2, 1854.

⁵⁶ Robert Toombs to W.W. Burwell, February 3, 1854, in Ulrich B. Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: Government Printing Office, 1913), 342.

⁵⁷ *Ibid.*

⁵⁸ Howell Cobb to Stephen A. Douglas, February 5, 1854, Box 3, Folder 5, Stephen A. Douglas Papers, Special Collections, Joseph Regenstein Library, University of Chicago, Chicago, IL.

people of this country are never going to decide that the principle upon which our whole republican system rests is vicious & wrong.”⁵⁹ Douglas appreciated the plaudits of his southern colleagues, but recognized that he needed more from their section.

At first glance it seemed that southerners had gained mightily from allying with Douglas to repeal the Missouri Compromise and establish territorial sovereignty as national policy. But some observers viewed the situation warily. “I perceive a new storm is to break out in Congress and the country by the organization of the Nebraska Territory,” former president John Tyler wrote. “As customary, I presume it is to end, as has heretofore been the case, in the despoilment of the South.”⁶⁰ Tyler feared that the abolitionists would move strongly against the Douglas bill’s proponents. Indeed, his sentiment reflected a growing fear in what southerners perceived as a movement by abolitionist fanatics against southern rights. “Let the power of meddling with the domestic institutions of the States and Territories be taken away from Congress, and fanatics will cease to send men to Congress for the sole purpose of mooted this dangerous question,” a southern correspondent cried.⁶¹

Not only did proslavery advocates accuse their northern opponents of rank hypocrisy, but they also charged them with ignoring the Constitution. The argument that the North opposed extending the principles of the Compromise of 1850 became a staple of the southern response to the antislavery forces. But proslavery supporters advanced a more potent supposition. The tenth amendment to the Constitution vested in the people the power of determining whether slavery would exist in the territories. They lauded the Kansas-Nebraska bill because it made “a clean

⁵⁹ Stephen A. Douglas to Howell Cobb, April 2, 1854, *The Letters of Stephen A. Douglas*, 300.

⁶⁰ John Tyler to Col. David Gardiner, February 2, 1854, in Lyon Gardiner Tyler, ed., *The Letters and Times of the Tylers*, 2 vols. (Richmond: Whittet & Shepperson, 1884-85), II, 509.

⁶¹ *Milledgeville Federal Union*, February 7, 1854.

sweep of all sectional compacts, dictated by trading aspirants for the Presidency,” and left the issue of slavery in the territories “directly in the sovereignty of the people.”⁶²

Southerners and their allies had begun to craft a nuanced argument that supported the Kansas-Nebraska bill based on the Anglo-American heritage of popular sovereignty. Political theorists had long used the term to describe the will of the people to form and direct their own political affairs and institutions.⁶³ During the Kansas-Nebraska debate, supporters of the bill appropriated the term—and the rich history behind it—to bolster their claim that the legislation would return the nation to first principles. Accordingly, writers hearkened back to classical political theorists such as Edmund Burke, John Locke, and others to legitimate the doctrine of non-intervention and territorial sovereignty, which increasingly became known as popular sovereignty. “We have an opportunity now of restoring the constitution to its original vigor, and of vindicating the great principle of self-government,” a New Orleans Democrat wrote, “and we will do both by passage of the Nebraska act.”⁶⁴ According to its southern supporters, the doctrine of popular sovereignty with respect to slavery in the territories had the promise to end the bitter sectional quarrel because it respected states’ rights and local control over domestic affairs. It respected the Constitution. And in the spirit of Jacksonian democracy, it respected the *vox populi*.

A substantial number of southerners rallied to support the Douglas bill, with its repeal of the long-hated Missouri Compromise ban on slavery and the affirmation of local control over the issue of slavery. While some in the South undoubtedly questioned whether it sanctioned squatter sovereignty, the legislation gained significant support below the Mason-Dixon Line. “We cannot

⁶² *New York Weekly Herald*, February 11, 1854.

⁶³ See Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton, 1988).

⁶⁴ *New Orleans Louisiana Courier*, February 12, 1854.

imagine what objection any reasonable man at the South can raise against Judge Douglas's doctrine," a Georgia editor declared.⁶⁵ Other journals followed suit in declaring the Kansas-Nebraska bill as safe for the South, because it left the territories open to equal participation for northerners and southerners. "To adopt the Douglas bill only leaves the question where it should be—in the hands of the actual settlers, and equally within the control of the North and South."⁶⁶ In sum, the Kansas-Nebraska bill garnered support from the South for several reasons. First, the South's political leaders had succeeded in forcing Douglas to include an explicit repeal of the 1820 ban on slavery; second, the legislation affirmed the principle of popular sovereignty. The two actually worked in tandem. Without popular sovereignty in Kansas and Nebraska, southerners could have no hope of extending slavery into the region. Of course, without repeal of the 36° 30' line not even popular sovereignty could prevail. Southerners could—and did—remain divided on the interpretation of popular sovereignty even though Douglas had sent strong signals that he believed that territorial legislatures could settle the issue. Nevertheless, many believed they had reaffirmed southern rights and southern power with considerable success.⁶⁷

Though Kansas-Nebraska received substantial support in the South, contrarians raised concerns about the bill and its meaning.⁶⁸ Former Alabama Senator Jeremiah Clemens emerged as an opponent of the bill, predicting that with its passage, a "floodgate will be opened, and a torrent turned loose upon the country which will sweep away in its devastating course every

⁶⁵ *Milledgeville Federal Union*, February 14, 1854.

⁶⁶ *Dover Delaware State Reporter*, February 24, 1854. See also *ibid.*, February 14, 1854; *New Orleans Louisiana Courier*, February 17, 1854.

⁶⁷ My interpretation of southern Democratic support of popular sovereignty and Kansas-Nebraska builds on the work of Cooper, *The South and the Politics of Slavery*, 346-349.

⁶⁸ For southern opposition to Kansas-Nebraska, see Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861* (Baton Rouge: Louisiana State University Press, 1953), 192-205. Craven, however, exaggerates opposition in the South to the Douglas bill.

vestige of the compromise of 1850.”⁶⁹ He declared himself “fully against the doctrines of Gen. Cass’s Nicholson letter,” because it sanctioned squatter sovereignty. Now Douglas, who had become the chief proponent of popular sovereignty, wanted to repeal the slavery prohibition in the Missouri Compromise and replace it with squatter sovereignty. Clemens predicted that the courts would have to determine the constitutional interpretation of popular sovereignty. John Minor Botts, a former Whig congressman from Virginia, excoriated Douglas and his “mischievous and pernicious” effort to repeal of the slavery ban.⁷⁰ He predicted that the bill would merely reopen the corrosive slavery question and destroy the benefits of the Missouri Compromise, which had provided relative peace for thirty-four years.

In the Senate, Sam Houston of Texas emerged as one of the most vocal critics of the Kansas-Nebraska bill. Standing against the Pierce administration and much of the Democratic Party, the colorful senator dismissed the legislation as folly. Like other opponents of the bill, Houston predicted that it would “convulse the country from Maine to the Rio Grande.”⁷¹ Not only did he believe the bill would reopen the debate over slavery in a most dangerous form, and for a mere abstraction, but he also concluded Douglas’s misinterpreted the true meaning of popular sovereignty. Houston would not “apply the principle to the Territories in their unorganized and chrysalis condition.”⁷²

Yet the southern supporters of Kansas-Nebraska greatly outnumbered the bill’s opponents. Under normal circumstances, one would surmise that the Whigs would have stood in opposition to the Democratic measure. But the politics of slavery had again blurred party lines. After all, a Whig—Archibald Dixon of Kentucky—had first proposed the repeal of the Missouri

⁶⁹ Jeremiah Clemens to John Van Buren, February 4, 1854, printed in *Trenton State Gazette*, February 9, 1854. See also John Van Buren to Jeremiah Clemens, February 3, 1854, Box 13, Lewis Cass Papers, Clements Library.

⁷⁰ *Richmond Enquirer*, February 21, 1854.

⁷¹ *CG*, 33rd Cong., 1st Sess., Appendix, 340.

⁷² *Ibid.*, 338.

Compromise's prohibition of slavery.⁷³ Not all southern Whigs warmly endorsed the Kansas-Nebraska bill, but they recognized that a majority of the South saw the bill as a bold defense of slavery and southern rights. Even at the risk of further diluting party lines, they had to support the bill in order to maintain credibility in the South.

Even as southerners gave solid support to the Kansas-Nebraska bill, significant questions lingered about the interpretation of popular sovereignty. Though some happily ignored the issue, others could not overlook any implication that popular sovereignty equaled squatter sovereignty. Several factors provoked a response from wary southerners. After maintaining a long but studied silence on the Douglas bill, Lewis Cass delivered an address to the Senate regarding the measure in late February.⁷⁴ The aging Michigan senator confessed that he did not support the movement for repeal, instead hoping that Douglas and his allies would remain silent on the Missouri Compromise. He endorsed popular sovereignty, though his language seemed equivocal at times. With advancing age and infirm health, the senator had gained a reputation for labored oratory, which only became worse when he tried to convince both sections that popular sovereignty would serve their interests. Cass declared that the citizens of the territories “are their own masters, under the Constitution, as much as the people of a State, and are the property of no man.”⁷⁵ Of course, he added the phrase “under the Constitution” to signal that in the future, the courts might well have to decide the true meaning of popular sovereignty. In sum, the senator

⁷³ In *The Rise and Fall of the American Whig Party*, pp. 814-816, Michael F. Holt argues that southern Whigs had contemplated opposing the bill precisely because it sanctioned repeal. For a fleeting moment, they sought to portray the Kansas-Nebraska bill as dangerous to sectional harmony and a needless attack on the great compact of 1820. The Free Soil attack on the bill dashed their hopes. Southern Whigs, however, had to defend slavery in order to maintain support at home. Southern Democrats had rallied behind southern rights; therefore, the Whigs could not afford but to follow suit and endorse repeal. See Cooper, *The South and the Politics of Slavery*, 350-353.

⁷⁴ *CG*, 33rd Cong., 1st Sess., Appendix, 270-279.

⁷⁵ *Ibid.*, 272.

called for a return to the “true principles” of the Constitution as outlined in his Nicholson letter some six years earlier.⁷⁶

Cass’s tone concerning the South, however, did much to offend slaveholders. In terms perhaps clearer than ever before, the senator affirmed that he never meant for his doctrine to sanction the introduction of slavery in the territories. Likewise, he never fathomed that slavery would enter either Kansas or Nebraska, just as it would never enter the Mexican Cession. Cass merely intended the principle of popular sovereignty to affirm the principle of equality in the territories. For southern senators and anyone else who read the Cass speech, his words seemed to ring hollow. Southerners who doubted popular sovereignty only had their mistrust of the venerable politician confirmed.⁷⁷ Indeed, the southern press interpreted his remarks to mean that slavery could enter the territories only “by positive enactment of the territorial legislature.”⁷⁸ They considered such a position anathema, and a “question belonging properly to the Supreme Court of the United States, and not to Congress.”⁷⁹ Even supporters of popular sovereignty lamented the senator’s speech. “Gen. Cass’ gingerly speech was a source of profound regret to me,” a correspondent wrote to Stephen Douglas. “He spoke as if annoyed & frightened at the resurrection of his own offspring.”⁸⁰ For the sake of the Democratic Party, many politicians and spokesmen pleaded for unity. Southern Democrats rallied behind the bill and its author, pleading with their fellow citizens for unity on its passage. “As usual with the unfortunate and fated South we have split into any number of factions upon this Bill,” a Georgia Democrat lamented.⁸¹ Other observers predicted disaster if the South failed to unite behind the Kansas-Nebraska bill.

⁷⁶ *Ibid.*, 279.

⁷⁷ See Klunder, *Lewis Cass and the Politics of Moderation*, 266-268.

⁷⁸ *Baltimore Sun*, February 28, 1854.

⁷⁹ *Ibid.*

⁸⁰ S.W. Johnston to Stephen A. Douglas, March 24, 1854, Box 3, Folder 6, Douglas Papers.

⁸¹ *Macon Georgia Telegraph*, February 28, 1854.

Without unity on the issue, “the South is certain to lose by a division among her representatives.”⁸²

Notwithstanding criticism leveled from the North or the South, two facts became evident even in the early stages of the debate. First, Douglas had unquestionably eclipsed the Michigan senator as the leading advocate of popular sovereignty. Second, he had done so with the support of numerous southern Democrats, and increasingly with the approval of southern Whigs. Many southerners saw the Kansas-Nebraska bill as perhaps the best deal they could obtain under present circumstances. Popular sovereignty in California and New Mexico had failed the South; the former had become a free state, while the latter seemed destined to follow suit. Kansas presented an altogether different scenario. The citizens of Missouri, many of whom held slaves, had long shown interest in settling in the territory to their west. Furthermore, the division of the Nebraska territory into two separate entities—Kansas and Nebraska—suggested that slaveholders might enter Kansas, while Nebraska would almost certainly become a free state. Given these circumstances, popular sovereignty in Kansas might actually work to the benefit of southerners.

Ultra states’ rights southerners had voiced concerns about the Douglas bill and applying popular sovereignty to Kansas. Instead, they adhered to the common property doctrine first advanced in the late 1840s by John C. Calhoun while others seemed to ignore the implications of the Kansas-Nebraska bill and popular sovereignty.⁸³ Robert Toombs of Georgia defined popular sovereignty in the traditional southern way, arguing that the power to prohibit slavery came only when a territory became a state. “Every citizen of each State carries with him into the Territories this equal right of enjoyment of the common domain,” Toombs declared, but the “inchoate

⁸² *New Orleans Louisiana Courier*, March 8, 1854.

⁸³ See Russel, “Congressional Issues over the Kansas-Nebraska Bill,” 188-189, 201.

society of the Territories” could do nothing more than protect the rights of property—the people residing therein could not legislate against a particular type of property until they assumed statehood.⁸⁴ Virginia Senator Robert M.T. Hunter proposed to leave the matter alone, since proponents of the bill differed on its interpretation. Like many other politicians, Hunter believed the courts could and would ultimately decide the proper interpretation of popular sovereignty. “There is a difference of opinion amongst the friends of this measure, as to the extent of the limits which the Constitution imposes upon the Territorial Legislatures,” Hunter said. The senator invoked the Clayton compromise in saying, “I am willing to leave this point, upon which the friends of the bill are at difference, to the decision of the courts.”⁸⁵

Moderates chose to ignore the long-standing debate over when territories could exercise popular sovereignty, even though the truth became clearer over the course of the congressional debate. Nevertheless, Democrats chose to believe that the courts could and probably would decide the issue in the future. Antislavery northerners, however, had prepared an ingenious plan to discredit the doctrine by defining it in terms that the South could not accept. The amendments contemplated by the antislavery forces would, in the words of a Texas correspondent, “test the sincerity of southerners, now, as to the non-intervention of Congress with respect to slavery in the territories.”⁸⁶ Salmon P. Chase of Ohio, the leader of northern opposition to the bill, proposed an amendment specifically granting territorial legislatures the right to prohibit slavery, an effort that one southern journal termed “insidious and mischievous.”⁸⁷ Chase and his associates clearly wanted to taint popular sovereignty with an antislavery interpretation in an effort to strip the bill of southern support.

⁸⁴ *CG*, 33rd Cong., 1st Sess., Appendix, 347.

⁸⁵ *Ibid.*, 224. See also Milo Milton Quaife, *The Doctrine of Non-Intervention with Slavery in the Territories* (Chicago: Mac C. Chamberlin Co., 1910), 111.

⁸⁶ *Austin Texas State Gazette*, February 28, 1854.

⁸⁷ *CG*, 33rd Cong., 1st Sess., 420; *Richmond Enquirer*, February 21, 1854.

Two southern senators—Andrew Pierce Butler of South Carolina and Albert Gallatin Brown of Mississippi—took the Ohioan’s bait and decried the notion that territorial legislatures could determine the status of slavery. Lewis Cass reminded them that the “the power of the people of the Territories to legislate upon their internal concerns, during the period of these temporary governments, is most clearly given in this bill, if the Constitution permits it.”⁸⁸ He left open the possibility that popular sovereignty would have its day in court, where the judiciary would decide its constitutional meaning. While Butler vigorously disagreed with Cass’s interpretation of popular sovereignty, he pronounced himself, alongside Hunter of Virginia, “perfectly willing to leave it under the Constitution, to be decided by the law tribunals of the country.”⁸⁹ Critics of popular sovereignty had long accused its proponents of shrouding its true meaning in order to maintain bisectional support. But given statements from Cass and Douglas, among others, it seems more plausible that the supporters of popular sovereignty defined the doctrine clearly, but always subjected their interpretation to the ultimate decision of the judiciary—a point on which both the North and South could agree. When legislators used the phrase *subject to the Constitution*, they meant *subject to the Supreme Court*.

Another critical issue directly related to the implementation of popular sovereignty surfaced in the Senate debate. Previous legislation organizing territories had given territorial governors, as well as Congress, the right of veto over local legislation.⁹⁰ Both provisions threatened the free exercise of popular sovereignty since the president appointed territorial governors and Congress could nullify the laws passed by a territorial legislature. Douglas moved to amend the bill by giving territorial legislatures the right to override a governor’s veto and strip

⁸⁸ *CG*, 33rd Cong., 1st Sess., 423.

⁸⁹ *Ibid.*

⁹⁰ See Johannsen, *Stephen A. Douglas*, 427-428; Russel, “Congressional Issues over the Kansas-Nebraska Bill,” 203-204.

Congress of its right to review and nullify legislation.⁹¹ The unprecedented move would cement the status of popular sovereignty in the territories and indisputably remove Congress from any deliberations over the future of slavery in the West—precisely the aim of the senator from Illinois.

Over the previous two months, the debate in the Senate had addressed at great length numerous points concerning the meaning and implementation of popular sovereignty in Kansas and Nebraska, but Douglas worked assiduously to preserve the cornerstone of his legislation, keep the bill on track, and prevent any effort to delay its passage. By the end of February, the senator signaled that he would move to close debate on the bill and bring the measure to a vote, culminating a months-long process of spirited debate and intense backroom negotiations. Beginning on March 2 and spilling over into the next day, the senators engaged in final deliberations before the vote. Leaders from both the North and the South delivered their final arguments over the merits of the Douglas bill. Southern senators repeated the now-familiar refrain that the North had long ago abandoned the principles of the Missouri Compromise when they deemed it expedient, only in the present to characterize it as a sacred compact. “Will any one dare to rise here to-day and say that the principle of the bill is not the American principle—the principle upon which our whole system of government is based—the right of the people to govern themselves,” exclaimed Whig senator William C. Dawson of Georgia.⁹² Why, he asked, should senators object to the very idea of self-government that their Revolutionary forebears had embraced? Other senators echoed his claims, while members of the northern antislavery caucus repeated their dismay over the repeal of the Missouri Compromise.

⁹¹ *CG*, 33rd Cong., 1st Sess., 520.

⁹² *Ibid.*, Appendix, 304.

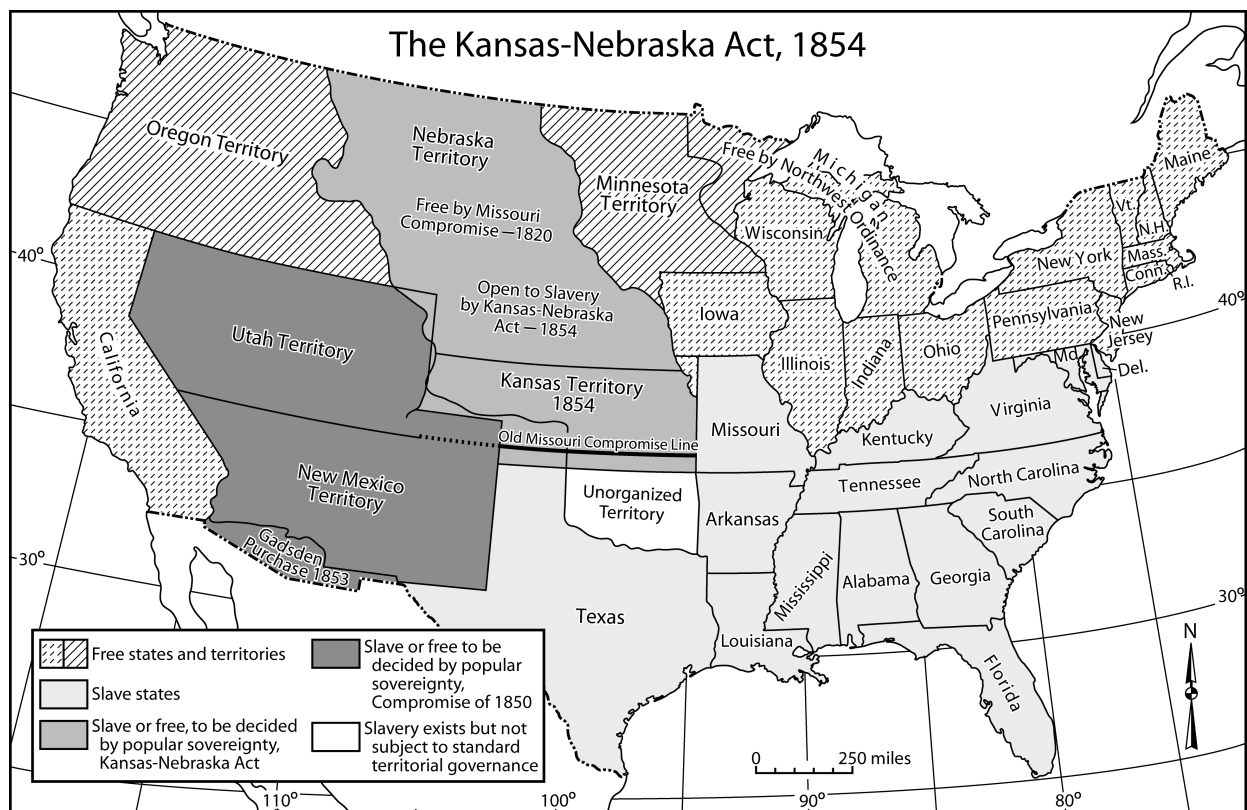
At eleven-thirty on March 3, over ten hours after the Senate had convened, Douglas rose to give his final defense of the bill. Throughout the long day, the Illinois senator had listened to criticism from his northern colleagues and bided his time waiting to respond. With his patience worn thin, Douglas gave a three-hour long speech that for sheer vitriol rivaled the address in which he introduced the Kansas-Nebraska bill. After addressing a few ancillary criticisms, the senator turned his focus to the “great principle involved in the bill”—popular sovereignty.⁹³ Senators from the North had accused Douglas of reigniting the slavery debate by repealing the Missouri Compromise’s ban on slavery and substituting popular sovereignty. He flatly rejected their allegation; indeed, “from 1820 to 1850 the abolition of congressional interference with slavery in the Territories and new States had so far prevailed as to keep up an incessant agitation in Congress, and throughout the country, whenever any new Territory was to be acquired or organized.”⁹⁴ The Kansas-Nebraska bill aimed to calm the fury over slavery in the territories by placing it in the hands of the people concerned, not fanatics in the North and South.

Douglas asserted that he had viewed the Compromise of 1850, which he played a pivotal role in passing through Congress, as a “general principle of universal application” for addressing the slavery issue.⁹⁵ The Kansas-Nebraska bill, he argued, followed the principles passed into law in 1850 and sanctioned by both parties in their campaign platforms in 1852. Betraying exasperation with the northern members of his party, the Illinoisan defended himself against charges that he did the bidding of the Slave Power. Douglas engaged in a curt dialogue with Whig William Seward of New York over the Missouri Compromise and its status as a compact between the sections. He excoriated Massachusetts Free Soil Senator Charles Sumner and Salmon Chase—both of whom had ceaselessly attacked the bill and upheld the Missouri

⁹³ *Ibid.*, 326. See also Johannsen, *Stephen A. Douglas*, 428-432.

⁹⁴ *CG*, 33rd Cong., 1st Sess., Appendix, 326.

⁹⁵ *Ibid.*, 327.



Map 4: The Kansas-Nebraska Act, 1854

Compromise. To them, Douglas replied, “The Missouri compromise was interference; the compromise of 1850 was non-interference, leaving the people to exercise their rights under the Constitution.”⁹⁶ He predicted that passage of the Kansas-Nebraska bill would forever destroy “all sectional parties and sectional agitations,” effectively silencing men like Seward, Chase, and Sumner as well as the proslavery fanatics of the South.⁹⁷ Moderation in the nation would prevail if popular sovereignty prevailed in Congress. On that note, Douglas concluded his remarks early in the morning of March 4.

The debate continued for several more hours as Sam Houston of Texas made one final plea for maintaining the Missouri Compromise. At five-o’clock in the morning, after seventeen hours of continuous debate, the Senate passed the Kansas-Nebraska bill by a vote of 37-14.⁹⁸ Southern Democrats and Whigs united to support the bill; only Houston and John Bell of Tennessee voted nay. Fourteen northern Democrats voted for the bill, while four voted nay. The Democrats had held together, though not without some struggle. As for the Whig Party, however, the vote revealed a fatal division between its northern and southern wings. Nine southern Whigs voted for Douglas’s bill, while six northern Whigs voted against it. Three Whigs from the North had left the Senate floor. In the Senate, however, the bill would have passed without any southern Whig support.⁹⁹ Douglas had succeeded brilliantly in shepherding the Kansas-Nebraska bill through the Senate. The governor of North Carolina wrote the senator, expressing the “proud satisfaction” of North Carolinians and southerners in general with his “statesmanlike and patriotic” efforts to affirm the principle of popular sovereignty.¹⁰⁰ A Virginia

⁹⁶ *Ibid.*, 337.

⁹⁷ *Ibid.*, 328.

⁹⁸ *CG*, 33rd Cong., 1st Sess., 538.

⁹⁹ For vote analyses, see Holt, *The Rise and Fall of the American Whig Party*, 819-820; Johannsen, *Stephen A. Douglas*, 432; Cooper, *The South and the Politics of Slavery*, 354.

¹⁰⁰ David S. Reid to Stephen A. Douglas, March 16, 1854, Box 3, Folder 7, Douglas Papers.

editor called the bill the “greatest triumph that the South and the Constitution has ever had.”¹⁰¹

Southerners congratulated themselves on the fact that they had united “with a unanimity unprecedented in the annals of legislation, to approve a principle in ’54 about the propriety of which she was divided in ’50.”¹⁰²

The Little Giant had convinced enough of his colleagues that congressional non-intervention and popular sovereignty would prove safe for their respective interests. Removing the slavery issue from Congress would quiet the increasingly bellicose political discourse; allowing the people in the territories themselves to determine their own course with regard to slavery would uphold the American tradition self-government. But the adroit politician also knew that the biggest battle would come in the House of Representatives, where recalcitrant northern Democrats might well buck the administration and oppose the legislation. Regardless of the potential outcome, Douglas knew that he would not achieve a landslide victory in the lower house. Supporters urged Douglas and the friends of the bill to keep the issue in front of the public. “Popular Sovereignty will win, if it is thoroughly & properly discussed & understood,” a Kansas-Nebraska supporter wrote to Douglas.¹⁰³ Indeed, the public discussion of popular sovereignty did not abate.

The leading voices for popular sovereignty stressed the common sense nature of the doctrine—self-government should apply to slavery in the territories as much as it did to any other American institution. “Ultimately, the social institutions of all Territories seeking and obtaining admission into this Union on equal terms must be moulded and fashioned by the people thereof when they possess a sufficient population to entitle them to take rank as states,” the *New York Herald* declared. It became axiomatic among the supporters of popular

¹⁰¹ John M. Daniel to Stephen A. Douglas, March 16, 1854, in *ibid.*

¹⁰² *Tallahassee Floridian and Journal*, March 18, 1854.

¹⁰³ S.W. Johnston to Stephen A. Douglas, March 24, 1854, Box 3, Folder 6, Douglas Papers.

sovereignty that the doctrine embodied the essence of American politics and the nature of people as political actors. Settlers in the territories would naturally take responsibility for determining their own ways of life and domestic institutions. Conversely, they would resent any effort from a distant federal government to direct them otherwise. Characterized in these terms, popular sovereignty seemed eminently wise.

Southern advocates linked popular sovereignty with the states'-rights doctrine that their section had embraced for years. Emboldened by the movement to repeal the Missouri Compromise ban on slavery, southerners lashed out at those who believed that men in Washington could determine whether slaves would pass into the territories. The federal government had no power "to prevent a Southern man from carrying his slaves to any Northern latitude he might select," a New Orleans editor stated, "provided the local authority of State or Territory permitted him to locate his habitation within their limits." No person who had a "correct understanding of State rights" and the Tenth Amendment to the Constitution could declare otherwise.¹⁰⁴

One of the most impassioned defenses of popular sovereignty came from a Georgia Democrat writing under the pseudonym of Cato. Recognizing that northerners sought to exploit divisions in the South over the doctrine, Cato entreated his fellow southerners to stand firm for the right of the people to determine the status of slavery in the territories for themselves. Antislavery newspapers in the North noted strains of southern dissent toward squatter sovereignty.¹⁰⁵ Though a significant contingent of southern leaders rejected the notion of squatter sovereignty—that the first settlers on the ground could forever determine whether to permit or prohibit slavery—Cato expressed little concern of such an eventuality. He wrote, "in

¹⁰⁴ *New Orleans Louisiana Courier*, April 2, 1854.

¹⁰⁵ See, for example, *Boston Daily Atlas*, April 29, 1854.

future territory acquired by this government, under the great principle of non-intervention and the sovereign right of the people to make their own laws, wherever slavery will be found advantageous there it will go.”¹⁰⁶

Likewise, he warned the people of the South that if they rejected popular sovereignty, they would “place slavery at the mercy of a growing number of representatives of the free States,” which would be “the most critical and dangerous position it could possibly occupy.”¹⁰⁷ Cato astutely recognized the diminishing power of the South in the halls of Congress, especially the House of Representatives. In a letter to Douglas, New York Governor Horatio Seymour had expressed concern that antislavery Democrats sought “to abolitionize the rank & file of the party.” Furthermore, the governor predicted that “Southern men will yet realize that they committed an error in remaining passive spectators of a ruthless crusade against” northern moderate Democrats.¹⁰⁸ Cato seemed to believe the claims of northern Democrats like Seymour and tried to impress on southerners that they could not abandon their northern brethren. He argued that the South would fare far better by placing the future of slavery in the hands of local communities that would act in their own best interests, rather than in Congress, where an ever-growing phalanx of antislavery politicians sought to end the institution.

Like Douglas, careful political observers in the South knew that the Kansas-Nebraska bill faced stiff opposition in the House of Representatives. Southern Democrats rallied the party faithful by appealing to the virtues of popular sovereignty while seeking to extinguish claims that the bill would foist squatter sovereignty on the South. “Some profess to support the Nebraska bill because the doctrine of Squatter Sovereignty is embodied in it, others support it because the

¹⁰⁶ *Milledgeville Federal Union*, April 11, 1854.

¹⁰⁷ *Ibid.*

¹⁰⁸ Horatio Seymour to Stephen A. Douglas, April 14, 1854, Box 3, Folder 6, Douglas Papers.

doctrine is not admitted in the bill,” a Georgia editor observed.¹⁰⁹ Democratic regulars in the South, however, did not see the difference of opinion as an obstacle. They believed, in the words of Cato, that if “any doubt arises upon the constitutionality of a territorial law the tribunal of judgment is not Congress but the Supreme Court.”¹¹⁰ On this point both northern and southern Democrats could agree. “The extreme pro slavery, as well as the anti-slavery men, will still desire to fight out the battle on the compromise and slave extension issues,” a New York Democrat wrote, “but the moderate men of both parties will resolve to leave over those points to be discussed and settled on their own legitimate ground”—namely the territorial legislatures and, on appeal, the Supreme Court.¹¹¹

While the nation debated the merits and meaning of popular sovereignty, the House of Representatives labored over the Kansas-Nebraska bill.¹¹² A close Douglas associate, fellow Illinoisan William A. Richardson, had introduced the bill on March 21, but a recalcitrant New York Democrat used a parliamentary maneuver to bury the legislation under a mountain of other bills before the House. The Kansas-Nebraska supporters fought valiantly, but the amendment of Francis B. Cutting to commit the bill to the full House, where it would rank below forty-nine other bills, succeeded on a close vote.¹¹³ The Cutting amendment showed the managers of the Kansas-Nebraska bill that they faced an almost impossible battle to bring the bill to the floor, let alone secure passage. Fortunately for Douglas, who maintained an almost constant presence in the House chamber while the representatives considered his bill, his associates proved equal to the task. The senator as well as representatives from the Pierce administration placed intense

¹⁰⁹ *Milledgeville Federal Union*, April 18, 1854.

¹¹⁰ *Ibid.*, April 11, 1854.

¹¹¹ *New York Sun*, quoted in *Trenton State Gazette*, April 20, 1854.

¹¹² The classic narrative of the once-neglected battle in the House over Kansas-Nebraska is Roy F. Nichols, *Blueprints for Leviathan: American Style* (New York: Atheneum, 1963), 104-120.

¹¹³ *CG*, 33rd Cong., 1st Sess., 701-703.

pressure on House Democrats to clear quickly other legislation so that they could debate the Kansas-Nebraska bill.¹¹⁴

By early May, Richardson had brought the bill before the House for debate, though it seemed that the opposition might kill it yet through a myriad of objections to the way in which supporters had introduced the legislation. Finally, Alexander Stephens of Georgia broke the parliamentary logjam. The Georgia Whig had emerged as an ardent supporter of the legislation, considering it the best possible deal the South could obtain. “I feel a deep interest in the success of the measure as a Southern man,” he wrote to an associate.¹¹⁵ Stephens believed that while slavery might never gain hold in either Nebraska or Kansas, the nation could gain more territory in the future—perhaps in Cuba or elsewhere in the Caribbean. Establishing popular sovereignty as the principle by which the nation would judge where slavery would or would not pass could greatly benefit the South in the future.¹¹⁶ Given his support of popular sovereignty, Stephens worked assiduously to ensure that the Kansas-Nebraska bill received a floor vote. On May 22, the House passed the Kansas-Nebraska bill by a vote of 113-100. Southern Democrats provided nearly unanimous support, but without help from southern Whigs the bill could very well have failed. Thirteen southern Whigs provided “the critical margin of victory,” while seven voted against the bill.¹¹⁷ The House vote confirmed the splitting of the Whig Party evinced by the Senate vote almost three months earlier. For the Democrats, however, the House vote revealed sharper differences between the northern and southern wings of the party. The northern Democracy divided evenly—forty-four representatives voted yea and forty-four voted nay.

¹¹⁴ See Johannsen, *Stephen A. Douglas*, 433.

¹¹⁵ Alexander Stephens to W.W. Burwell, May 7, 1854, in *The Correspondence of Toombs, Stephens, and Cobb*, 344.

¹¹⁶ See Robert E. May, *The Southern Dream of a Caribbean Empire, 1854-1861* (Baton Rouge: Louisiana State University Press, 1973), 59-60, 177-181 and *passim*, for a discussion of territorial expansion in the Caribbean and the slavery issue.

¹¹⁷ Holt, *The Rise and Fall of the American Whig Party*, 821.

Democrats in New England and the northern states of the Old Northwest provided significant opposition to Kansas-Nebraska.¹¹⁸ On May 30, President Pierce signed into law the bill that he had reluctantly thrown his administration's support behind and had made a test of party faith.

Supporters hailed the vote with a jubilant response. "The contest in the House was close and hot but we whipped the opposition out and carried the measure by 13 majority," Stephens exclaimed. "Nobody says anything now against it but the abolitionists. Let them howl on—" "Tis their vocation."¹¹⁹ John Tyler hailed the outcome as a vindication of the nation's Revolutionary heritage of self-government and affirmed that the South would back the outcome, stating, "they desire a rule of universal application to all the Territories, which will prevent the busy intermeddling of Congress, and allow it some moments free from eternal agitation to look to the great interests of the country."¹²⁰ Stalwart supporters of the Kansas-Nebraska bill announced a "recurrence to first principles" and "the triumph of a great principle over temporizing expedients—of the constitution over sectional fanaticism, and of popular sovereignty over the usurpations of Congress."¹²¹

Many southerners found much to support in the Kansas-Nebraska Act. First, by securing the repeal of the Missouri Compromise's ban on slavery, it had the potential to open free territory to slaveholders. It also removed a restriction that had irked southerners for thirty-four years. To no small number of proslavery and states'-rights advocates, the Kansas-Nebraska Act restored the nation to constitutional principles. Indeed, one New York Whig remarked acidly that southerners supported the bill in spite of squatter sovereignty "because it repeals the

¹¹⁸ See the roll-call analysis in Thomas B. Alexander, *Sectional Stress and Party Strength: A Study of Roll-Call Voting Patterns in the United States House of Representatives, 1836-1850* (Nashville: Vanderbilt University Press, 1967), 85-90, 226-229.

¹¹⁹ Alexander Stephens to J.W. Duncan, May 26, 1854, in *The Correspondence of Toombs, Stephens, and Cobb*, 345.

¹²⁰ John Tyler to Rev. William Tyler, February 2, 1854, in *Letters and Times of the Tylers*, II, 510.

¹²¹ *New York Herald*, May 27, 1854.

Missouri Compromise.”¹²² Southerners certainly embraced repeal, but many found other merits in the legislation. Second, it removed Congress from the business of determining where slavery could or could not exist and placed the decision in the hands of the people involved. It, too, set a useful principle for the future: Congress could no longer meddle with slavery in the territories. Regardless of whether slavery would ever flourish in Kansas and Nebraska, the South had gained mightily by removing the issue from the hands of an increasingly antislavery Congress.

Yet not all southerners could muster such delight over the triumph of popular sovereignty. Many questioned whether the South would ever benefit from the principles of the Kansas-Nebraska Act. In reality, some feared a northern backlash. “This act may give more quiet to the South but it will be the protest for the formation of a new party at the North,” a friend confided to Georgia Governor Herschel V. Johnson. “Now is the time to unite the South with the great west, our only safety depends on that union.”¹²³ Other southerners advised vigilance against the abolitionists, who roundly criticized the bill as a violation of a sacred compact—the Missouri Compromise. “Our Southern friends must be up and stirring,” future Caribbean filibuster William Walker wrote to David Atchison. Virginia, Tennessee and Kentucky ought to send her hardy sons out to claim their rights and maintain them too.”¹²⁴

Though a few southern politicians feared a northern backlash or meddling from abolitionists, others maintained the claim that the Kansas-Nebraska Act legalized squatter sovereignty, which would bar the South from the territories just as effectively as the Wilmot Proviso. Certain southern Whigs charged their Democratic rivals with embracing the notion that mere squatters could prohibit slavery. “[The Democrats] tell us, they contend for the principle,

¹²² Solomon G. Haven to James M. Smith, May 16, 1854, Solomon G. Haven Papers, Clements Library.

¹²³ William B.W. Dent to Herschel V. Johnson, June 13, 1854, Box 1, Herschel Vespasian Johnson Papers, Duke University.

¹²⁴ William Walker to David Rice Atchison, July 11, 1854, David Rice Atchison Papers, Western Historical Manuscript Collection, University of Missouri at Columbia, Columbia, MO.

that Congress has no right to legislate on the subject of slavery,” remarked an Arkansas Whig, “appearing to forget that the admission of this principle necessarily admits the right of the squatter to legislate the people of the south out of any territory we now possess, or may hereafter acquire.”¹²⁵ The very principle embodied in the Kansas-Nebraska Act, opponents argued, had in 1850 lost California to the South.

Irrespective of concerns that the Kansas-Nebraska Act would injure the South, a substantial majority of southern citizens believed that they had won a signal victory, at least on principle and quite possibly in practice. While hardly anyone expected Nebraska to become a slave state, Kansas presented an altogether different possibility. If populated by Missourians and other slaveholders from the region, the territory might well sustain a slave culture similar to that of its eastern neighbor. Even if Kansas became a free state, the South had won a symbolic victory. Kansas-Nebraska vindicated their principles of states’ rights and local control of domestic issues and institutions.¹²⁶

Stephen Douglas had succeeded at affirming popular sovereignty with respect to slavery in the territories as the law of the land. The ebullient senator celebrated his victory by proclaiming the triumph of “self-government, state rights, & constitutional liberty” as embodied in the act.¹²⁷ More importantly for the ardent expansionist, passage of the act now paved the way for the settlement of a vast portion of the nation’s territorial domain. He could now concentrate on issues like homestead policy and a transcontinental railroad, which would encourage economic development and bind the West to the rest of the Union.¹²⁸ Unfortunately for Douglas’s hopes and aspirations, the Kansas-Nebraska Act did not quiet the debate over slavery

¹²⁵ *Little Rock Arkansas Whig*, June 1, 1854.

¹²⁶ See Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 9-27.

¹²⁷ Stephen A. Douglas to Indiana State Central Committee, August 8, 1854, Box 38, Folder 18, Douglas Papers.

¹²⁸ See Johannsen, *Stephen A. Douglas*, 435-439.

in the territories. In fact, it seemed to have inaugurated a race between North and South over which section would gain control of the two territories. In other words, the settlement of Kansas and Nebraska became equated with the battle for sectional supremacy. A correspondent who had traveled to Kansas saw the coming migration as a chess game between the sections. “The territories of Kansas and Nebraska being free from constitutional clogs and thrown open to the competition of North and South,” he wrote, “no one who understands the philosophy of Yankee enterprise can doubt the result for a moment.”¹²⁹ Some southerners admitted that the “Abolitionists will compass sea and land heaven & hill to prevent the establishment of slavery” in Kansas.¹³⁰

The first indication that the Kansas-Nebraska Act had achieved anything but its goal of promoting sectional harmony and an end to the struggle over slavery in Congress came with the November 1854 elections for Congress. Northern Democrats suffered a horrendous electoral defeat in the midterm elections, while southern voters rewarded their Democratic legislators by returning them to Congress. In the North, the Democrats lost sixty-six congressional seats, while the southern Democrats lost only four.¹³¹ In sum, voters decimated the northern Democracy while the southern wing of the party remained strong, a fact that did not bode well for the future of a bisectional Democratic Party. The Whigs, on the other hand, disintegrated. In several key southern states, Whig politicians fell to their Democratic rivals. By the end of the election season, the party had virtually “bled to death.”¹³² Outrage over the repeal of the Missouri Compromise line gave rise to an “Anti-Nebraska” movement that rallied antislavery northerners against doughfaces and southerners. Moreover, the indignation over Kansas-Nebraska lent a

¹²⁹ *Madison Wisconsin Patriot*, July 24, 1854.

¹³⁰ William Walker to David Rice Atchison, July 11, 1854, Atchison Papers.

¹³¹ The election statistics are taken from Potter, *The Impending Crisis*, 175.

¹³² Holt, *The Rise and Fall of the American Whig Party*, 839; Cooper, *The South and the Politics of Slavery*, 359-360.

greater sense of urgency to the race for Kansas and Nebraska. Northerners and southerners would compete for control of the territories. Though Nebraska remained securely a free territory, Kansas Territory became a battleground over the future of slavery and the meaning of popular sovereignty in ways no one could have predicted. Popular sovereignty—the elegantly simple affirmation of the people’s right to govern their own domestic affairs—would face its ultimate test on the plains of Kansas.

CHAPTER 8

THE SOUTHERN CRITIQUE OF POPULAR SOVEREIGNTY IN KANSAS

The footrace between antislavery and proslavery forces to gain control of Kansas had commenced even before President Franklin Pierce signed into law the Kansas-Nebraska Act, but it gained vigor and urgency once popular sovereignty became national policy. The federal government had officially created the territories of Nebraska and Kansas; the former would almost certainly become a free state while southerners hoped they could add the latter to the ranks of the slave states. Indeed, southerners had embraced popular sovereignty in 1854 because it made possible the impossible by permitting slavery in a territory where the Missouri Compromise had restricted it. The South had long supported its version of the popular sovereignty doctrine, by declaring that a territory could decide the future of slavery within its bounds when drafting a constitution and applying for statehood. When the settlers of California and New Mexico moved swiftly to prohibit slavery, however, southerners cried foul. Southerners attacked the notion that a cadre of antislavery emigrants could prohibit slavery before citizens of the South could move west, a maneuver they derisively called squatter sovereignty. They lambasted the pronouncements of key northern Democrats, especially Lewis Cass, who endorsed the actions of the western settlers as a perfect embodiment of the right to self-government. For the South, the Kansas-Nebraska Act seemed to make amends for the past, voiding the Missouri Compromise's restriction on slavery and calling for popular sovereignty. Now southerners believed they had to take advantage of the opportunity.

Southerners embraced popular sovereignty in Kansas for several critical reasons. First, southern politicians trusted Stephen Douglas. The Illinois senator had made himself the leading proponent of popular sovereignty, taking the title from Cass, whom southerners viewed as

unreliable on the slavery question. Second, a number of slaveholders lived within close proximity to Kansas and seemed certain to settle the new territory. The Missourians had remained stalwart defenders of slavery and popular sovereignty throughout the Kansas-Nebraska debate. Southerners believed that slavery had a legitimate chance to exist in Kansas Territory.¹

The substitution of popular sovereignty for the thirty-four year restriction on slavery in the territory masked the significant challenges presented by the new policy. Popular sovereignty created a contest for the future of slavery in Kansas and Nebraska; one side would win and the other would lose. This fact alone raised a host of questions. A high-stakes contest over slavery in Kansas opened the possibility of fraud and chicanery from people on both sides of the issue. Southerners had accused the North of swindling slaveholders in California and New Mexico. Would northerners and southerners follow the rules of popular sovereignty? Perhaps more importantly, what were the rules? A significant number of southerners continued to insist that settlers could prohibit slavery only when drafting a state constitution; before that time, they could not interfere with the institution. Northerners interpreted popular sovereignty to mean that territorial legislatures could ban slavery whenever they pleased. More than any other proponent of popular sovereignty, Stephen Douglas left the question open by giving credence to both interpretations. Of course, many people in the North and South believed that the Supreme Court would probably decide which interpretation would prevail. Finally, given the highly charged atmosphere surrounding the slavery debate, one could legitimately question if the losing side would abide by the will of the majority. Would, or more importantly, could, popular sovereignty work?

¹ See Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004), 30-31.

In 1854 and 1855, many southerners believed that popular sovereignty would achieve the desired result of adding a slave state to the Union. Southern state legislatures hailed the doctrine as a bold avowal of the Compromise of 1850. The Georgia Legislature embraced popular sovereignty in the territories, asserting that “the question whether slavery shall or shall not form a part of their domestic institutions is for them alone to determine for themselves.”² The legislature in Arkansas concurred, approving the Kansas-Nebraska Act as a repeal of the “mis-named ‘compromise’ of eighteen hundred and twenty” and the victory of popular sovereignty and congressional non-interference with slavery in the territories.³ Howell Cobb of Georgia praised the bill because it “affirmed the great principle of popular sovereignty” and “pledged Congress to the admission of Nebraska and Kansas, with or without slavery, as the people of those territories might declare for or against slavery, in the organization of their State Constitutions.”⁴ Cobb encapsulated the southern view of popular sovereignty and the best hopes of his section that Kansas would become a slave state, while Nebraska would apply for statehood with a free state constitution. The democratic and moderate principle of popular sovereignty would restore sectional harmony and maintain the balance between free and slave states.

Popular sovereignty worked almost exactly as planned in Nebraska Territory. Historians have usually ignored Nebraska’s path to statehood, instead focusing on its wayward southern neighbor. Only recently have scholars investigated how popular sovereignty operated in the northern territory.⁵ In the 1850s practically nobody expected slavery to exist in Nebraska Territory. The settlers themselves did not want the institution, and slaveholders had no desire to

² Herman V. Ames, ed., *State Documents on Federal Relations: The States and the United States* (1906; New York: Da Capo Press, 1970), 282.

³ *Ibid.*, 285.

⁴ *Milledgeville Federal Union*, June 19, 1855.

⁵ Nicole Etcheson has filled this gap as a part of her studies on Bleeding Kansas. See “Where Popular Sovereignty Worked: Nebraska Territory and the Kansas-Nebraska Act,” in John R. Wunder and Joann M. Ross, eds., *The Nebraska-Kansas Act of 1854* (Lincoln: University of Nebraska Press, 2008), 159-182.

emigrate to the territory. During the congressional debate over the Kansas-Nebraska Act, a Nebraskan sent a memorial to Congress endorsing popular sovereignty based on constitutional principles. The writer, however, made clear that “the philanthropist need not be alarmed, as I believe there has never been, nor do I suppose there ever will be, a single slave residing in the Territory of which I am writing.”⁶ Because nobody believed that slavery would ever exist in Nebraska, few resorted to extraordinary actions, chicanery, or other dubious measures to affect the outcome. In Nebraska, popular sovereignty operated successfully as the will of the people to become a free state prevailed. No competition between proslavery and antislavery forces emerged in the territory. Consensus within Nebraska on the slavery issue emerged in the territory’s earliest days and never waned, making self-government appear sensible and unproblematic. Conditions in Kansas could not have differed more.

Supporters on both sides on the slavery issue in Kansas quickly mobilized to influence the outcome of the race to make the territory a free state or a slave state. Candidates committed to a “Southern Rights” platform carried the election for a delegate to Congress in the fall of 1854. Four months later, Missourians flooded the territory and elected a proslavery territorial legislature.⁷ Antislavery supporters rejected the results of the fraudulent election; the proslavery votes cast in March 1855 exceeded the eligible voters by over two times. According to northerners, proslavery supporters intended to abuse the doctrine of popular sovereignty to make Kansas a slave state. Without doubt, the Missourians fully intended to use their power to sway the territorial government in favor of a proslavery policy.

⁶ *S. Misc. Doc. No. 23*, 33rd Cong., 1st Sess., (1854), Serial Set No. 705, 3.

⁷ The best treatment of the Bleeding Kansas period is Etcheson, *Bleeding Kansas*. For the elections of 1854 and 1855, see pp. 50-68. See also David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 199-224.

Popular sovereignty in the territories seemed a perfect idea in theory, but in practice settlers found numerous problems that they would have to address in order to create a government. Ignoring the certain election frauds perpetrated by proslavery forces in Kansas, the nation's patchwork system of electoral law confounded efforts to create a uniform system in a territory peopled by emigrants from across the nation. Residency requirements varied from state to state, and jurisdictions administered the election process differently.⁸ Ensuring a fair, uniform, and equitable election would have proven challenging even in an atmosphere free of electoral fraud. In Kansas, however, proslavery Missourians made a farce of honest elections by brazenly crossing the border to vote in territorial elections. Antislavery Kansans who complained of fraud and intimidation resolved to counteract the efforts of the proslavery faction.

In 1854, southerners believed that they had control of Kansas Territory and that they would make it a slave state. The first territorial census revealed that nearly two-thirds of the residents hailed from Missouri and other southern states, with the remaining third coming from the North.⁹ The numbers, however, obscured other facts that would come to concern southerners. In spite of the overwhelming majority of southerners residing in the territory, the slave population remained meager. Two factors contributed to the lack of slaves in the territory. Poorer farmers who did not own chattel slaves moved to Kansas to seek cheap land and economic sufficiency. More importantly, the Missourians who resided on the border between their state and Kansas felt reluctant to move west with their slaves until they had secured the future of slavery in the territory. Southerners residing on the border appealed to their fellow citizens to move west in order to make Kansas a slave state. "As to the security of negro

⁸ Etcheson, *Bleeding Kansas*, 51-52. For a survey of different voting processes in the antebellum era, see Chilton Williamson, *American Suffrage from Property to Democracy* (Princeton: Princeton University Press, 1960), 260-280.

⁹ Etcheson, *Bleeding Kansas*, 29.

property,” a Lexington, Missouri, correspondent wrote, “that will depend on the aid we get from Southern States.”¹⁰ The writer asserted that if only “500 to 1000 at most pro-slavery men, who would move to Kansas with their slaves,” their presence “would settle the matter beyond question.”¹¹ Slaveholders, however, wanted assurances that the territorial government would take a favorable stance toward slavery. Their reticence to emigrate led to a self-fulfilling prophecy of doom for slavery in Kansas. Slaveholders wanted security for their property and their future before they would move west, something they could not achieve through the popular sovereignty formula unless they took a chance and settled in Kansas. Only one other option remained: to influence the creation of the territorial government by crossing the border to vote. Missourians did precisely that.

Mobilization of the antislavery movement further complicated the already unstable situation in Kansas. After passage of the Kansas-Nebraska Act, antislavery proponents in New England determined to send settlers west to secure the territory against slavery. Organizations such as the New England Emigrant Aid Company, backed by powerful northeasterners, mobilized in the spring and summer of 1854. In spite of a miniscule number of emigrants during the first year of the enterprise, their very presence galvanized free soil supporters and inflamed the South.¹² “We should not allow the Abolitionists to Colonise [*sic*] Kansas by emigrant societies without making the effort to counteract it by throwing in a Southern population,” Jefferson Davis wrote.¹³

¹⁰ *Milledgeville Federal Union*, March 4, 1856.

¹¹ *Ibid.*

¹² See Etcheson, *Bleeding Kansas*, 35-38; Allan Nevins, *Ordeal of the Union*, 2 vols. (New York: Charles Scribner's Sons, 1947), II, 306-316.

¹³ Jefferson Davis to William R. Cannon, December 7, 1855, in Lynda L. Crist, et.al., eds., *The Papers of Jefferson Davis*, 12 vols. to date (Baton Rouge: Louisiana State University Press, 1971-present), V, 141-142.

By the summer of 1855, southerners recognized that the Kansas issue had become far more complicated than they had anticipated. Familiar divisions reemerged in the South, as ultra proslavery advocates called for a sectional political party to resist any northern encroachment on southern rights in the territories. Facing a reelection bid as governor of Georgia, Herschel V. Johnson implored his Democratic friends to stay true to their party and to popular sovereignty. He reminded Georgia Democrats that many of their northern brethren had worked diligently to pass the Kansas-Nebraska Act. “Did they not aid the South in repealing the Missouri restriction, under which she had writhed for thirty years, as degrading to her equality and violative of the constitution,” he asked?¹⁴ Johnson urged southerners to wait and see what happened in Kansas, leaving open the possibility that the South could resort to stronger action should Congress refuse to admit Kansas should it submit a proslavery constitution.¹⁵

Southerners stood by popular sovereignty even as its application in Kansas Territory became increasingly troubled. They understood that the principle gave their section the best possible chance at securing Kansas as a slave state. A Mississippi correspondent lauded Stephen Douglas for protecting the rights of southerners in the territories through popular sovereignty and expressed hope that both northerners and southerners would “let the Territories settle their own affairs without the intervention of Congress.”¹⁶ Although many southerners stood by popular sovereignty, they also made clear that the South would not allow the free soil elements entering Kansas to seize control of the territorial government solely for the purposes of prohibiting slavery. Just as southerners had viewed emigrants to California and New Mexico as squatters on

¹⁴ Herschel V. Johnson to John W. Stoward, June 11, 1855, Box 1, Herschel Vespasian Johnson Papers, Rare Book, Manuscript, and Special Collections Library, Duke University, Durham, NC.

¹⁵ Herschel V. Johnson to L.B. Smith, E.J. McGehee, John Ward, and R.H.D. Sorell, June 8, 1855; Johnson to Col. T. Lomax, June 21, 1855, in *ibid.*

¹⁶ C.S. Tarpley to Stephen A. Douglas, November 15, 1855, Box 3, Folder 14, Stephen A. Douglas Papers, Special Collections, Joseph Regenstein Library, University of Chicago, Chicago, IL.

the land and not bona fide citizens, so too they rejected those who settled in Kansas under the auspices of emigrant aid societies. At a rally in Milledgeville, Georgia, Democrats made clear their interpretation of popular sovereignty. The people of Kansas “have the right, when the number of their population justifies it, to form a republican State constitution, with or without slavery, as they may determine,” the committee stated.¹⁷ If Congress refused to admit Kansas with a proslavery constitution, there would exist “just cause for the disruption of all ties that bind the State of Georgia to the Union.”¹⁸

As the antislavery movement in Kansas continued to take shape, southerners more carefully—and more forcefully—asserted their interpretation of popular sovereignty. The presence of New England free soil emigrants challenged proslavery settlers in Kansas as well as southerners in the states who sought to protect slaveholders’ interests in the new territory, yet the South continued to face the conundrum of how to settle Kansas to its advantage. Few disagreed that slaveholders needed to emigrate to the territory if the institution of slavery stood any chance of survival, if for no other reason than to maintain a proslavery majority in the territorial legislature. If northerners gained control of the territorial government, they would surely seek to prohibit slavery as soon as possible. Southerners denied their right to enact such a prohibition, but maintaining control of the Kansas territorial government removed any doubt for the future.

Southern politicians accused their northern opponents of trying to change the substance of the popular sovereignty doctrine by affirming the power of territorial legislatures to prohibit slavery. “The true doctrine was incorporated in the Utah bill of 1850,” a Richmond editor argued, “declaring the right of the people of the territories *in organizing a State government preparatory to admission into the Union*, and not before, to decide the question of slavery or no

¹⁷ *Richmond Enquirer*, November 20, 1855.

¹⁸ *Ibid.*

slavery for themselves.”¹⁹ Alternatively, Lewis Cass and many northerners now endorsed the idea of squatter sovereignty, which affirmed the right of territorial legislatures to exclude slavery. The editor argued that Douglas upheld the former, while Lewis Cass and many northerners affirmed the latter. Squatter sovereignty, according to the editor, “means no more nor less than the power of congress through its creatures, the territorial legislatures, to legislate upon the subject of slavery—which is held an absurdity among all State Rights politicians.”²⁰ As conditions in Kansas deteriorated in late 1855 and early 1856, southerners felt they had to defend their interpretation of popular sovereignty to maintain slavery within the territory. They increasingly recognized that whichever interpretation of the doctrine prevailed would determine the future of slavery in Kansas.

The presidential election of 1856, in many ways, served as a referendum on Kansas-Nebraska and popular sovereignty. It soon became clear that the turmoil in Kansas issue would adversely affect the Democratic Party. Enactment of the Kansas-Nebraska Act had caused considerable disruption in the political system, leading antislavery Democrats and Whigs united under a new political banner called the Republican Party. Republicans completely rejected popular sovereignty as a formula for disaster. “Popular sovereignty had not provided a common ground but a battle ground.”²¹ The newly formed party criticized the self-government in the territories as an insidious means of avoiding discussion of the slavery question. To the Republicans’ minds, the doctrine of Stephen Douglas ignored the moral dilemma of extending slavery and upheld the absurd claim that Congress had no power to legislate for the territories.²²

¹⁹ *Ibid.*, February 6, 1856 (italics in the original).

²⁰ *Ibid.*

²¹ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 164.

²² For Kansas-Nebraska, popular sovereignty, and the origins of the Republican Party, see *ibid.*, 162-175; William E. Gienapp, *The Origins of the Republican Party, 1852-1856* (New York: Oxford University Press, 1987); Eric Foner,

Southerners viewed with great alarm the development of a sectional antislavery party, expressing resentment and fundamentally rejecting the attacks on southern morality. The South's leaders struck back with force during the election year. "We believe our institutions to be as moral, rightful and expedient as those of the North," a Virginian wrote. "But we are no propagandists, and we do not set ourselves up, like Massachusetts, as a model and as a pattern for other people."²³ The writer portrayed the South as eminently tolerant and democratic; indeed, he implied, northerners intended to impose their will on other free Americans, rather than staying true to the quintessentially American principle of popular sovereignty. According to many southerners, the North sought to violate the terms of state equality and equal rights for all free Americans. The Kansas-Nebraska Act and popular sovereignty, southerners argued, returned the nation to its heritage of self-government, whereas the abolitionists sought to slaveholding Americans to give up their peculiar institution. In a touch of biting criticism, the *Richmond Enquirer* stated, "Were the Federal Government to enact a law preventing Massachusetts from sending Sharp's rifles to Kansas, all would admit the iniquity of the law. Yet the exclusion of Southern slaves is alike in principle, and far more iniquitous in practice."²⁴

Southern moderates and their northern allies sought to quiet the increasingly bellicose debate by pointing to popular sovereignty as the best means of compromise on the slavery question. While the doctrine steered a moderate path between the ultra opinions in the North and the South, according to moderate Democrats, it represented not a compromise but a fundamental axiom of American political institutions—the right of the people to govern themselves. In early 1856, Douglas worked closely with southern Democrats to boost northern support for popular

Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War (New York: Oxford University Press, 1970), esp. 124-133.

²³ *Richmond Enquirer*, March 11, 1856.

²⁴ *Ibid.*, March 28, 1856.

sovereignty. He encouraged southerners to give speeches in and send correspondence to the North in an effort to unite the Democracy.²⁵ Several notable southern political leaders responded by extolling the virtues of popular sovereignty as a moderate, pragmatic solution to the slavery issue. “In the Kansas bill it was provided that this vexed question of slavery should be left—where the blood of the Revolution put it,” Howell Cobb cried before a New Hampshire audience, “where the constitution leaves it; where the great principle of self-government leaves it—to be decided by the people of Kansas, subject only to the constitution of the United States.”²⁶ Cobb argued firmly that neither the people of his native Georgia nor any other state had the right to tell the settlers of Kansas whether to prohibit or permit slavery. Southern Democrats who believed that the ascendancy of a sectional antislavery party threatened the power and security of their section fell back on popular sovereignty as a way to defend their interests within the political system.

Southerners rallied to defend states’ rights and popular sovereignty as a bulwark of their liberty.²⁷ At the same time, their words drew a line that politicians could not cross. Antislavery leaders had increasingly attacked the South and slavery for perpetuating an immoral institution. They had expanded their arguments beyond the familiar bounds of constitutional interpretation in order to chastise slaveholders on moral terms. Southerners would not tolerate attacks upon their morality. “Whenever the South takes the distinct ground that her institutions are righteous, honorable and expedient, as those of the North, she will find her defence easy,” the editor of the *Richmond Enquirer* wrote. “Until she does this, until she asserts her equality in morality, as well

²⁵ See Stephen A. Douglas to Howell Cobb, January 8, 1856; Douglas to James W. Singleton, March 16, 1856, in Robert W. Johannsen, ed., *The Letters of Stephen A. Douglas* (Urbana: University of Illinois Press, 1961), 346-347, 351.

²⁶ *Milledgeville Federal Union*, March 18, 1856.

²⁷ For a cogent discussion of the emerging southern defense, see Morrison, *Slavery and the American West*, 176-177.

as in right, she invites, nay, she justifies, the attacks of abolition.”²⁸ Southern politicians sought to impress on their northern friends that popular sovereignty presented the best way to navigate safely the issue of slavery in Kansas. In a letter to the Tammany Society of New York, Governor Herschel Johnson of Georgia, another southern Democratic moderate, implored northerners to withdraw their criticism of popular sovereignty. “[W]hy should the Abolitionists and Free-Soilers rail against the Kansas-Nebraska act?—They had repudiated the Missouri Compromise in 1850, why insist upon it now,” he asked? “Its repeal does not, ipso facto extend the area of slaveholding territory. Its only effect is, to open the territory to emigrants from every State in the Union, upon terms of equality.”²⁹

Southern Democrats tried to convince their northern brethren of the virtues of popular sovereignty and the benefits of a united party in the months preceding their national convention. Politicians in both sections recognized that the Kansas-Nebraska Act had wounded the Democracy, fracturing the party along sectional lines. When the party of popular sovereignty met in Cincinnati for its national convention in June 1856, its leaders and delegates almost certainly anticipated a protracted fight over the presidential nomination as well as the platform. The convention marked the first time that a national party held its meeting in the West, a certain nod to the growth of the nation and the political power of the western states.³⁰ Based on the press coverage of popular sovereignty, one might have expected a battle over how the platform would address the doctrine. The delegates, however, unanimously endorsed the plank supporting popular sovereignty and the Kansas-Nebraska Act.³¹ The language of the platform suggested

²⁸ *Richmond Enquirer*, March 14, 1856.

²⁹ *Milledgeville Federal Union*, August 5, 1856.

³⁰ For a colorful description of the Cincinnati convention, see Roy F. Nichols, *The Disruption of American Democracy* (New York: Macmillan, 1948), 14-18. See also Nevins, *Ordeal of the Union*, II, 456-460.

³¹ *Official Proceedings of the Democratic National Convention, Held in Cincinnati, June 2-6, 1856* (Cincinnati: Enquirer Company, 1856), 23-29.

that the resolutions committee had defined popular sovereignty. It upheld congressional non-interference with slavery, while proclaiming that the people of any territory, “acting through the legally and fairly expressed will of a majority of actual residents, and whenever the number of their inhabitants justifies it; to form a Constitution, with or without domestic slavery, and be admitted into the Union upon terms of perfect equality with the other states.”³² The popular sovereignty plank artfully addressed the issues surrounding the doctrine’s operation in Kansas by obliquely addressing the recent election frauds. Perhaps more importantly, it suggested that territories exercised their true popular sovereignty when writing a constitution—and not before. In sum, the platform carefully balanced sectional concerns in order to present a united front on popular sovereignty and slavery in the territories.

The delegates quickly and harmoniously approved the platform, but the contest over who would receive the presidential nomination proved more contentious. Northerners would take their stand against Kansas-Nebraska by striking at the Pierce administration, while southerners would uphold his and Douglas’s efforts to transplant popular sovereignty in the territory. Southerners made clear their preference for Pierce, with Douglas as their second choice should the incumbent fail to gain sufficient votes.³³ The president clearly lacked the support for a second term from the northern wing of his own party, which voiced opposition to his handling of events in Kansas. In the afternoon of the fourth day of the convention, the delegates began the laborious process of nominating candidates and taking ballots. James Buchanan of Pennsylvania emerged as the frontrunner, with Pierce and Douglas considerably behind in the vote. After fourteen ballots, the delegates adjourned for an evening of closed-door politicking. The northern delegates had no intention of supporting Pierce’s nomination for a second term. A number of

³² *Ibid.*, 26.

³³ Morrison, *Slavery and the American West*, 177-178.

southern delegates remained true to the president, though others voted for Douglas. The next morning revealed that a deadlock had emerged between Buchanan and Douglas. After intense debate and a handwritten plea from Douglas for party unity, enough delegates shifted their votes to push Buchanan over the top. During the final vote, several southern delegations expressed their hearty support for Douglas and his efforts to provide for popular sovereignty in Kansas, making clear that they expected the Democracy to stand firm for the doctrine.³⁴

The greatest praise for Douglas and popular sovereignty came from William E. Preston of Kentucky, who gave an impromptu speech supporting the Illinoisan and his doctrine. Preston lauded the efforts of northerners like Douglas, who had worked to repeal the Missouri Compromise's ban on slavery, "which for thirty years, had produced festering discontent at the North and the South."³⁵ When Buchanan accepted the nomination ten days later, he endorsed the Kansas-Nebraska Act and popular sovereignty. The nominee had not always looked with favor on the doctrine; for years, he advocated extending the Missouri Compromise line to the Pacific Ocean. Now, however, with the nomination of his party secured and the expressed support of the delegates for popular sovereignty, Buchanan could only offer praise for the doctrine derived "from the original and pure fountain of legitimate political power."³⁶

Two other political parties—both new and both composed of dissidents from the Democratic and the defunct Whig parties—sealed their nominations for the coming election season. Just ten days after the Democratic Convention adjourned, the nascent Republican Party opened its convention in Philadelphia with delegates present from only four slave states. Their platform not only denied the right of territorial legislatures to regulate slavery, but affirmed the

³⁴ *Proceedings of the Democratic National Convention*, 50-58. See also Nevins, *Ordeal of the Union*, II, 459-460.

³⁵ *Proceedings of the Democratic National Convention*, 70.

³⁶ *Ibid.*, 76.

“right and imperative duty of Congress” to prohibit the institution in the territories.³⁷ The Democrats, according to the delegates’ work, had upset a solemn compact between the sections—the Missouri Compromise—that Congress should never have disturbed. Finally, the platform decried the violence in Kansas and posited that it would end only with the admission of the territory as a free state. John C. Fremont won the nomination of the Republicans, a party that committed itself to rejecting the Kansas-Nebraska Act and the doctrine of popular sovereignty.³⁸

The third party that nominated a presidential candidate in 1856, the American, or Know-Nothing Party, also addressed the popular sovereignty issue. In the South, many former Whigs joined the Know-Nothing ranks after the disintegration of the former organization. In the past, southern Whigs had advanced negative, but thoughtful, critiques of popular sovereignty, even though some among their ranks supported the doctrine. In 1856, the southern Know-Nothings used the familiar politics of slavery by resurrecting the old Whig charge that popular sovereignty equaled squatter sovereignty. Know-Nothings in the South reminded the electorate that squatters in California had “assembled without law or authority, in a mob—called a Convention and formed a Constitution prohibiting slave owners forever from the whole Territory of California. This was Squatter Sovereignty in its worst form.”³⁹ The Democrats, according to southern Know-Nothings, had caused the disaster in Kansas by repealing the Missouri Compromise and substituting popular sovereignty, which gained nothing for the South. Indeed, the doctrine deceived many southerners into believing that North and South could unite based on self-government. Popular sovereignty, according to the Know-Nothings, bore different meanings in

³⁷ Charles W. Johnson, *Proceedings of the First Three Republican Conventions of 1856, 1860, and 1864* (Minneapolis, 1893), 43.

³⁸ For Fremont’s nomination, see Allan Nevins, *Fremont: Pathmarker of the West* (New York: D. Appleton-Century, 1939), 421-438; James A. Rawley, *Race and Politics: “Bleeding Kansas” and the Coming of the Civil War* (Philadelphia: J.B. Lippincott, 1969), 146-153.

³⁹ See *Milledgeville Federal Union*, August 5, 19, 1856.

the two sections. Better to secure part of the West for slaveholding interests via the Missouri Compromise line than to lose everything by popular sovereignty, they argued. More alarming for the South, the Missouri Compromise repeal had united antislavery citizens and fostered the creation of the Republican Party, a sectional organization fundamentally opposed to the South and her interests.⁴⁰ In spite of their objections to the Democratic platform, southern Know-Nothings flocked to the party when their own fledgling organization collapsed amid its own sectional disputes. They realized that the South faced a common enemy—the Republican Party.

Though the Know-Nothings achieved little in using the squatter sovereignty issue to advance their own party, they did raise significant questions for southerners to confront. The efforts of northerners to move to Kansas with the express purpose of securing the territory against slavery led a few in the South to believe that squatter sovereignty could prevail. Supporters of the doctrine, however, rallied to the defense of self-government in Kansas. “The people who bona fide settle the territories North and South, by their fairly expressed will, are to determine the character of their institutions,” a Georgian wrote. “This is popular—or as our American friends see fit to call it—‘squatter sovereignty.’”⁴¹ Alexander Stephens, who had provided critical support for passage of the Kansas-Nebraska Act and who became a Democrat after the collapse of the Whig Party, made clear to his fellow southerners that popular sovereignty did not permit squatter rule. He firmly endorsed the traditional southern view that “when admitted as a State the said territory or any portion of the same shall be received into the union with or without slavery as their Constitution may prescribe at the time of their

⁴⁰ For an excellent summary of the southern Know-Nothing position, see Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861* (Baton Rouge: Louisiana State University Press, 1953), 240-242. The standard history of the party in the South is W. Darrell Overdyke, *The Know-Nothing Party in the South* (Baton Rouge: Louisiana State University Press, 1950).

⁴¹ *Milledgeville Federal Union*, August 19, 1856.

admission.”⁴² Stephens denied the allegations of Know-Nothings and other opponents of popular sovereignty that the doctrine allowed squatter rule. “Neither the Kansas, nor the Utah bill, nor the New Mexico bill, recognized any such doctrine,” he insisted. “For all the powers exercised by the Territorial Legislatures of all these territories emanated from Congress—they exercised them by permission and by grant from Congress and not by sovereign right.”⁴³ Stephens advanced three vital points that composed the southern view of popular sovereignty. First, Congress could not grant to a territory a power that it did not possess itself. Second, neither Congress nor a territorial legislature could exclude American citizens from “equal enjoyment of the public domain as long as it remains a territory.”⁴⁴ Finally, territories became imbued with sovereignty only when they stood ready to draft a constitution and enter the Union. To Stephens’s mind, no southerner could reject this interpretation of popular sovereignty.

Democratic leaders canvassed the nation to secure support for Buchanan in the coming election and to encourage the party faithful to stand behind popular sovereignty. Douglas maintained a grueling speaking schedule in his home state. The senator knew that the strife over Kansas had divided the Democrats in his home state of Illinois and elsewhere. Anti-Nebraska Democrats had united with the new Republican Party in opposition to popular sovereignty. Douglas sought to rally the electorate and counteract the inroads made against the Democratic by party dissidents and the Republicans.⁴⁵ By the end of September, he felt confident enough to inform Buchanan that Illinois would vote Democratic.⁴⁶ In New York, Daniel Dickinson once again took to the hustings to support the Democrats and—most importantly to him—popular sovereignty. The former senator lambasted the abolitionists for their efforts to stir discontent and

⁴² *Ibid.*, October 28, 1856.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ For an account of Douglas’s efforts, see Johannsen, *Stephen A. Douglas*, 535-539.

⁴⁶ Stephen A. Douglas to James Buchanan, September 29, 1856, in *Letters of Douglas*, 367-368.

for not supporting the principles of self-government. “They admit that man is capable of self-government in New York and Massachusetts,” Dickinson said mockingly, “but if he gets out into Kansas they would put a kind of political baby-jumper about him, to protect him from himself and learn him to walk, before they would trust him to make the attempt.”⁴⁷ Dickinson, however, held the northern position that slavery would never exist in Kansas because of the soil and climate. Therefore, popular sovereignty would almost certainly make Kansas a free state.

The efforts of key Democratic leaders paid off, as their party won the presidency and both houses of Congress. The Democrats won every southern state except Maryland. Nevertheless, the vote revealed significant problems for the Democrats, as Buchanan received a plurality, not a majority of the popular vote. In the North, Democrats had carried only five free states. The presence of three parties diluted the voter base; an alarming sign for southerners given that one of the parties had no interest in courting the southern electorate. Furthermore, the Republicans had made significant inroads in the North, carrying eleven states for Fremont. In fact, if Pennsylvania and either Illinois or Indiana had voted Republican, Fremont would have become president.⁴⁸ The Democrats’ troubles did not end with the election, because Buchanan now had to devise a plan to govern the nation and resolve the contentious Kansas issue.

Though Buchanan endorsed popular sovereignty during the election, he had equivocated on how it would operate. In some instances, he supported the southern view of the doctrine; in others, he suggested that territorial legislatures could settle the matter.⁴⁹ In a speech given at Wheatland, Buchanan’s Pennsylvania home, the president-elect declared his support for “the doctrine which is the very root of all our institutions.” Popular sovereignty recognized the right

⁴⁷ Speech at a Democratic Meeting at Brooklyn, October 21, 1856, in John R. Dickinson, ed., *Speeches, Correspondence, Etc., of the Late Daniel S. Dickinson, of New York*, 2 vols. (New York: G.P. Putman and Sons, 1867), I, 533.

⁴⁸ Morrison, *Slavery and the American West*, 185.

⁴⁹ Johannsen, *Stephen A. Douglas*, 538.

of “a majority of the people of a Territory, *when about to enter the Union as a State*, to decide for themselves whether domestic slavery shall or shall not exist among them.”⁵⁰ Buchanan extolled the idea of popular sovereignty as the democratic way of settling the slavery issue, but he offered no clue as to how he believed it should operate. Supporters of popular sovereignty, as well as Buchanan, added the key phrase “subject only to the Constitution” or “under the principles of the Constitution” to any description of popular sovereignty. In the aftermath of the 1856 election, the *New York Herald* asked, “‘Subject only to the constitution!’ What does that mean? How far does the constitution allow the people of a Territory to go in their legislation upon slavery?”⁵¹

Democrats could not agree upon a single answer to the most significant question regarding popular sovereignty. Lewis Cass and Daniel Dickinson had stated that territorial legislatures could enact legislation with regard to slavery whenever they pleased. Southern Democrats denied that interpretation, asserting that territories could act on slavery when drafting a constitution. Anyone who read the 1856 Democratic Party platform had to conclude that the party supported the latter interpretation. Douglas seemed intent on avoiding the issue as best as he could. Though Democrats had differing interpretations of popular sovereignty, a problem that intensified as events in Kansas spiraled out of control, most party regulars assumed that Supreme Court would ultimately decide what definition would prevail. The true meaning of the phrase “subject only to the Constitution” lay in the assumption that the judiciary would have to interpret

⁵⁰ Speech at Wheatland, November 6, 1856, in John Bassett Moore, ed. *The Works of James Buchanan: Comprising His Speeches, State Papers, and Private Correspondence*, 12 vols. (Philadelphia and London: J.B. Lippincott, 1908-1911), X, 97.

⁵¹ *New York Herald*, December 28, 1856.

the meaning of popular sovereignty. The *Herald* stated defiantly that Buchanan's first duty would be to "give us his official interpretation of squatter sovereignty."⁵²

The new president would not have the chance to define popular sovereignty for the nation, in what he surely considered a welcome relief from a task that no moderate politician wanted to touch. For some time, Congress and presidents alike had attempted to defer the question to the judiciary. The Kansas-Nebraska Act itself declared several times that territorial citizens could legislate on slavery "subject only to the Constitution of the United States."⁵³ In other places, it mimicked the language of the Clayton Compromise, which left "all cases involving title to slaves and 'questions of personal freedom'" to the "adjudication of local tribunals, with the right of appeal to the Supreme Court of the United States."⁵⁴ In December 1856, the Supreme Court heard for the second time a case that most political observers believed would settle the interpretation over popular sovereignty. The case involved a Missouri slave named Dred Scott, who had sued his current owner, John F.A. Sanford, for freedom based on the fact that his previous owner had kept him in the state of Illinois and Wisconsin Territory even though both jurisdictions prohibited slavery. Scott and his attorneys posited that his residence in Illinois and Wisconsin had made him free. The case made its way slowly through the judicial system, finally arriving on appeal at the Supreme Court in February 1856.

The justices of the Supreme Court faced two questions regarding Scott's case, one of which had direct bearing on slavery in the territories. First, the court would have to decide if Scott, a slave, had the right to sue in court. The issue centered on whether a slave held citizenship. If Scott was a citizen of the state of Missouri, he clearly possessed the right to sue his owner in court, but if he did not possess citizenship he had no legal standing to sue. Second,

⁵² *Ibid.*

⁵³ Act of May 30, 1854, ch. LIX, 10 *U.S. Statutes at Large*, 277-290.

⁵⁴ Quoted in Potter, *The Impending Crisis*, 271.

the justices would determine whether Scott's residence in Illinois and Wisconsin Territory invalidated his master's ownership. To address this issue the justices had to determine whether a territory—in this case, Wisconsin—had the right to pass laws prohibiting slavery. Over the course of the Jacksonian era, the Supreme Court had developed a jurisprudence of self-rule that would lead the justices to address the meaning of popular sovereignty regarding slavery in the territories.⁵⁵

For months political observers pondered how the Supreme Court would rule in the Dred Scott case. Nearly all believed that the southern-dominated court would rule against Scott's bid for freedom. Whether the Court would end there or proceed to consider the legality of Wisconsin's ban on slavery—and thereby the Missouri Compromise's ban on slavery north of 36° 30'—remained uncertain. That Congress had invalidated the Missouri Compromise line in the Kansas-Nebraska Act only complicated matters further. For a time, it seemed that the justices would confine their ruling to a determination on Scott's case for freedom. By February 1857, however, the Court decided to rule on the constitutionality of the Missouri Compromise. The Court almost certainly wanted to settle the question of slavery in the territories and a majority of the justices wanted to issue an “emphatically pro-southern decision.”⁵⁶

Perhaps no one hoped more for a judicial determination on popular sovereignty than James Buchanan. The president-elect, who desperately wanted to end the slavery dispute, saw in *Dred Scott v. Sandford* a perfect opportunity to dispose of the issue with the inauguration of his administration. Buchanan crossed the line of propriety, however, by communicating directly

⁵⁵ The standard history of *Dred Scott v. Sandford* is Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978). For a brief recent summary of the case, see Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007). For an alternative view that emphasizes the evolution of the Court's thought on self-rule and popular sovereignty, see Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens: University of Georgia Press, 2006), 178-202 and *passim*.

⁵⁶ Fehrenbacher, *The Dred Scott Case*, 311.

with several justices on the Supreme Court regarding the case and the emerging decision of Chief Justice Roger B. Taney. The president knew on his inauguration day the substance of the decision that Taney, the man who would administer the oath of office, would imminently deliver. The two men even engaged in a brief conference during the ceremonies, which would lead to speculation that they had colluded on the decision. Buchanan's speech fueled those suspicions. The new president began his address with platitudes about the American system of government and the cherished principle of self-government. The election had "excited to the highest degree" the passions of the electorate, but "when the people proclaimed their will, the tempest at once subsided, and all was calm."⁵⁷

Buchanan then made the logical leap from the vindication of self-government in the presidential canvass to popular sovereignty in the territories. "What a happy conception, then, was it for Congress to apply this simple rule—that the will of the majority shall govern—to the settlement of the question of domestic slavery in the Territories," he exclaimed.⁵⁸ Buchanan acknowledged that a "difference of opinion" existed regarding when a territory could exercise popular sovereignty, but dismissed it as "a matter of but little practical importance."⁵⁹ He could dismiss the problem because he knew of the Supreme Court's impending decision. It "is a judicial question, which legitimately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled."⁶⁰ Subtly but unmistakably, Buchanan had revealed that the court would make a pronouncement on the constitutionality of the Missouri Compromise and the meaning of popular sovereignty. He did not, however, reveal which way the court would rule, though he almost certainly knew from his

⁵⁷ Inaugural Address, March 4, 1857, in *Works of Buchanan*, X, 105.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 106.

⁶⁰ *Ibid.*

correspondence with Justices John Catron and David Grier that the court would declare the Compromise of 1820 unconstitutional.⁶¹ Buchanan declared somewhat disingenuously that he would “cheerfully submit” to the court’s decision, “whatever this may be.”⁶²

Two days later, Chief Justice Taney delivered the decision of the Supreme Court in *Dred Scott v. Sandford*. The eighty-year old jurist, his voice barely audible, read the opinion of the Court in its chambers in the Capitol.⁶³ On the first question the justices faced, the Taney opinion declared that a “free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a ‘citizen’ within the meaning of the Constitution of the United States.”⁶⁴ Therefore, Scott had no right to bring suit in a federal court. Most startling, the opinion affirmed that neither a slave nor a free black could ever hold American citizenship, regardless of emancipation. Taney further complicated matters by addressing the issue of state versus national citizenship, thereby converting the issue of whether Scott alleged citizenship in Missouri to his standing as a citizen of the United States. In other words, he nationalized the issue of Scott’s citizenship. The chief justice then declared that blacks could not hold state citizenship either. Taney had to do so for his opinion to have any meaning, because under the diversity of citizenship clause in the Constitution if one state granted citizenship to a slave another had to recognize it. In sum, *Dred Scott* held neither state nor national citizenship and therefore had no standing to sue in court.

At first glance, the citizenship issue seems to have little to no bearing on the interpretation of popular sovereignty, but to Taney’s mind the latter built on the former.⁶⁵ Indeed, the Supreme Court could have ended its ruling with invalidation of Scott’s original suit

⁶¹ For the letters of Catron and Grier, see *ibid.*, 106-108n1.

⁶² *Ibid.*, 106.

⁶³ See Fehrenbacher, *The Dred Scott Case*, 314-316.

⁶⁴ 19 Howard 393.

⁶⁵ For a discussion of the citizenship issue, see Fehrenbacher, *The Dred Scott Case*, 335-364.

and declined to address the issue of slavery in the territories. Taney fully intended, however, to rule on popular sovereignty and the Missouri Compromise restriction. He began the second part of the decision with a summation of the nation's territorial history. Under the Articles of Confederation, the national government accepted certain cessions of land from the states on behalf of the confederacy and pledged to act as their common agent in administering the national domain. The territories, therefore, belonged to the states as common property. In reasoning closely akin to the theories of John C. Calhoun, Taney asserted that the Constitution of 1787 largely maintained the relation of the federal government to the territories. The new government, too, acted as a common agent for the states, holding the territories for the equal enjoyment of the citizens.⁶⁶

The chief justice anticipated criticism from those who believed that Article Four, Section Three of the Constitution—the “needful rules and regulations” clause—gave Congress the express power to legislate for the territories on all matters, including slavery. Taney took the narrow interpretation of the clause long held by southerners that it referred only to the administration and disposition of federal property. The clause certainly did not grant to Congress the “despotic and unlimited power over persons and property” in the territories as some implied.⁶⁷ Citing an 1842 Supreme Court case involving the Territory of Florida, Taney affirmed that the federal government did possess the power to enable creation of territorial governments. He sanctioned the traditional practice of assigning territorial grades, or stages of government, based on the population of a territory and its ability to govern itself. “In some cases a Government, consisting of persons appointed by the Federal Government, would best subserve the interests of the Territory, when the inhabitants were few and scattered, and new to one

⁶⁶ 19 Howard 434-437.

⁶⁷ *Ibid.*, 439.

another,” Taney explained. “In other instances, it would be more advisable to commit the powers of self-government to the people who had settled in the Territory, as being the most competent to determine what was best for their own interests.”⁶⁸

The government’s role as a common agent for the states, however, limited its jurisdiction as well as that of any territorial government it created. The Fifth Amendment, Taney argued, guaranteed the right of property to an American citizen regardless of where he resided. Accordingly, an act of Congress “which deprives a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name of due process of law.”⁶⁹ Because Congress could not confer a power that it did not itself possess, a territorial legislature could not prevent a citizen from the enjoyment of his property within a territory. Taney therefore concluded that the Missouri Compromise restriction was unconstitutional and therefore void.

Not only had the Supreme Court declared the Missouri Compromise restriction unconstitutional, but it had also defined popular sovereignty. If taken at its word, the Scott decision dealt a fatal blow to the Cass/Douglas definition of the doctrine and upheld the southern interpretation.⁷⁰ Moreover, it substantiated the Calhoun common-property doctrine regarding slavery in the territories. With the Taney opinion, the Supreme Court defined popular sovereignty as the right of the people in a territory to determine the status of slavery when they drafted a constitution and asked for admission to the Union—and not a moment before. Territorial legislatures could presumably pass laws to regulate slavery, such as slave codes, but

⁶⁸ *Ibid.*, 449.

⁶⁹ *Ibid.*, 450.

⁷⁰ See Fehrenbacher, *The Dred Scott Case*, 379.

they could not prohibit slavery or restrict the right of a person to hold slaves as property within any territory.

For the first time in the nation's history, the Supreme Court had invalidated a major piece of federal legislation. "The decision just made in the Dred Scott case, an obscure African, by the Supreme Court of the United States," a Maryland editor wrote, "is probably the most important that ever emanated from that highest tribunal of our country."⁷¹ Scott's name had become inextricably linked with the slavery issue; his case had given the Supreme Court the opportunity to define popular sovereignty. More important to the moment, the Court had delivered "a final adjudication" on the slavery issue, "one which is in accordance with the great principle of popular sovereignty in regard to slavery in the Territories."⁷² The *Charleston Mercury* hailed the decision as a vindication of southern rights. The court's opinion, the editor argued, "is equally fatal to Congressional Intervention and Squatter Sovereignty, and opens before the South a clean and unobstructed field for the propagation of its institutions."⁷³ Abolitionists had threatened to negate the spirit of the Kansas-Nebraska Act by imposing squatter sovereignty, the *Mercury* argued, but the Supreme Court had ruled for states' rights and strict construction of the Constitution, thereby restoring the true meaning of popular sovereignty. Southerners believed the Taney court had vindicated their rights in the territories and had relieved their section from the "moral stigma" of slavery restriction.⁷⁴ To the minds of southerners, the court had upheld their equality in the Union.

Northern and southern Democrats initially united in approval of the decision and its meaning for the issue of slavery in the territories. The high court had given Democratic

⁷¹ *Baltimore Sun*, March 9, 1857.

⁷² *Ibid.*

⁷³ *Charleston Mercury*, April 2, 1857.

⁷⁴ Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 100.

politicians what they had long hoped for, a decision on the meaning of popular sovereignty. The Taney opinion absolved Congress of the duty to define the doctrine, thereby allowing the legislative branch to maintain the policy of non-intervention with the vexing slavery issue. Many Democrats saw the opinion as a mighty blow against the young Republican Party. A Maryland journal acknowledged the “indiscreet and suicidal ravings among some of those who *know no law* except that of their own violent self-will and passions,” but concluded that even the Republicans would have to abide by the Court’s definition of popular sovereignty.⁷⁵ Other observers held hope that the case marked the end of the slavery dispute and the Republican Party itself. The Supreme Court’s decision, a Georgia editor declared, “crushes the life out of that miserable political organization.”⁷⁶ Indeed, the virulent response of the Republicans to the decision in *Dred Scott v. Sandford* “had the effect of uniting the Democracy behind the Court.”⁷⁷ Democrats in the North and South could come together against their common enemy and declare that popular sovereignty—the democratic and Democratic doctrine—had prevailed.

In upholding the long-held views of the South on popular sovereignty and slavery in the territories, the Taney court had rejected Stephen Douglas’s position on the doctrine. The Little Giant held his tongue on the matter, choosing to study the issue carefully and let others—especially the Republicans—make intemperate remarks before he would issue his own pronouncement on the decision and its implications for popular sovereignty. The doctrine’s other great supporter, Lewis Cass, had to respond cautiously given his position as Secretary of State in the Buchanan administration. Prior to the inauguration, he had contended to Buchanan that territorial legislatures could pass laws concerning slavery, though he also hoped that the

⁷⁵ *Baltimore Sun*, March 9, 1857 (italics in the original).

⁷⁶ *Augusta Constitutionalist*, March 15, 1857.

⁷⁷ Morrison, *Slavery and the American West*, 189.

Supreme Court would settle the matter.⁷⁸ Consequently, when the Court handed down the Dred Scott decision, Cass could offer little objection to its endorsement of the southern position. Of course, Douglas had long ago succeeded the elderly and infirm Cass as the chief proponent of popular sovereignty. Most observers waited for Douglas to address the decision.

Douglas broke his silence in June with a major address delivered in Springfield, Illinois, on the strife in Kansas, the ongoing problems with the Mormons in Utah, and most importantly, the Dred Scott decision.⁷⁹ The senator warmly endorsed the Court's invalidation of the Missouri Compromise, but he strained to express his opinion on the decision's meaning for popular sovereignty. Ever the master of circumlocution, Douglas argued lamely that he could find no contradiction between his and the Supreme Court's definition of popular sovereignty. In his attempt to resolve the differing interpretations, Douglas resorted to an idea that others had expressed during the debates over slavery in the Old Northwest and in Missouri, but one for which he later would become famous. He argued that the right of a person to hold slaves in a territory "necessarily remains a barren and a worthless right, unless sustained, protected and enforced by appropriate police regulations and local legislation." Any regulations depended "entirely upon the will and wishes of the people of the territory as they can only be prescribed by the local legislatures. Hence the great principle of popular sovereignty and self-government is sustained and firmly established by the authority of this decision."⁸⁰

In one respect, Douglas spoke of a different issue than what the Supreme Court addressed. Nothing in the Dred Scott decision suggested that a territorial legislature could not

⁷⁸ See Willard Carl Klunder, *Lewis Cass and the Politics of Moderation* (Kent, OH: Kent State University Press, 1996), 296-297.

⁷⁹ The Mormon question assumed limited significance in the popular sovereignty debate because of the polygamy issue. Politicians in Washington questioned whether the settlers in Utah should have the right to exercise self-government, given their unorthodox religious beliefs and suspicions of some that the Mormon Church desired to establish a religious oligarchy in the territory. See Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2001).

⁸⁰ Quoted in Johannsen, *Stephen A. Douglas*, 569.

pass laws regulating slavery; it simply declared that they could not prohibit the institution. More importantly, Douglas raised a critical point by noting that the people in any territory—but especially Kansas—could easily find ways to implement a *de facto* prohibition of slavery and thereby circumvent the spirit of the Dred Scott decision. Southerners did not like the implications of Douglas’s statement, though some had already arrived at the same conclusion. Just four months before the Supreme Court ruled in *Dred Scott v. Sandford*, South Carolina Representative James L. Orr declared that slavery could not exist where “local legislation and local police regulations” did not protect the sanctity of slave property.⁸¹

With popular sovereignty defined by the Supreme Court and Buchanan’s resolve to regain control of Kansas, politicians faced the task of putting theory into practice. Southerners welcomed the pronouncements of Buchanan and the Supreme Court, but feared that they had secured a hollow victory.⁸² Betraying a belief that the South would lose Kansas to the abolitionists, Louisiana Senator Judah P. Benjamin implored the Buchanan administration to consider the expansionist impulse of the South as well as the North. “Let your policy be directed to affording to the South legitimate expansion,” he wrote to Cass, “and she will forget all about Kansas, as unworthy of a struggle, whilst her individual energies can be bent on her development in regions where our future is plainly marked out for us.”⁸³ Not all southerners looked to expansion in the Caribbean as a panacea for the nation’s sectional disputes, but an increasing number believed that Kansas would become a free state regardless of what anyone said. The Republicans seemed intent on halting the spread of slavery at any cost and had gained a perhaps decisive foothold in Kansas. Others made clear that the South could ill afford to let down its

⁸¹ *Congressional Globe*, 34th Cong., 3rd Sess., 103-104. See also Stampp, *America in 1857*, 102-104.

⁸² Morrison, *Slavery and the American West*, 193-195.

⁸³ Judah P. Benjamin to Lewis Cass, March 9, 1857, Box 14, Lewis Cass Papers, William L. Clements Library, University of Michigan, Ann Arbor, MI.

guard, even with the resounding victory of the Dred Scott decision. Jefferson Davis reiterated his denunciations of the “dangerous innovation” of squatter sovereignty.⁸⁴ Though Davis and most southerners hoped that the Supreme Court had sounded the death knell for squatter sovereignty, they looked west to Kansas with a wary eye.

Events in Kansas reached a fever pitch in the summer of 1857, as deliberation over a proslavery constitution intensified and as the Buchanan administration sent a new territorial governor to impose order. Robert J. Walker, a prominent Democratic politician, reluctantly agreed to take charge in Kansas and steer the chaotic territory toward statehood. To the president and his cabinet, Walker seemed a perfect fit; as “a Northerner by birth, a Southerner by adoption, and a Union man by conviction,” the diminutive but resolute man possessed the necessary credentials to unite people of disparate opinions and quiet the discontent in Kansas.⁸⁵ Walker firmly endorsed popular sovereignty, but he also believed that Kansas would never accommodate slavery. In 1856, he had made the controversial assertion that Kansas would become a free state because of its climate and soil as well as the mass of northern immigration that brought laborers to the new territory. Kansans would not need slaves for labor when they could hire European immigrants and northern day laborers, Walker posited.

Largely because of his opinions on slavery in Kansas, southerners coolly received news of Walker’s appointment. Some southerners insisted that Walker depart from the practice of his “treacherous” predecessors, maintaining “nothing short of a genuine and strict neutrality” on the slavery issue.⁸⁶ Others implored the South to give Walker a chance to oversee a fair and neutral

⁸⁴ Speech at Jackson, May 29, 1857, *Papers of Jefferson Davis*, VI, 122.

⁸⁵ Allan Nevins, *The Emergence of Lincoln*, 2 vols. (New York: Charles Scribner’s Sons, 1950), I, 145. For Walker’s appointment as territorial governor, see Etcheson, *Bleeding Kansas*, 143-149.

⁸⁶ *Charleston Mercury*, quoted in *New York Herald*, May 27, 1857.

application of popular sovereignty in the territory.⁸⁷ Almost immediately, however, the governor ingratiated himself with the free state partisans in Kansas. In his inaugural address, Walker repeated his claim that Kansas lay beyond an “isothermal” line that would prevent slavery from developing in the region.⁸⁸ Walker also addressed the recent action of the territorial legislature to organize a constitutional convention. Popular sovereignty would fail in Kansas, the new governor insisted, “unless the Convention submit the constitution to a vote of all the actual resident settlers of Kansas [*sic*], and the election be fairly and justly conducted, the constitution will be and ought to be rejected by Congress.”⁸⁹ Northern newspapers and antislavery editors in the territory alike received Walker’s words as an affirmation that Kansas would become a free state.⁹⁰

Radical southerners almost immediately broke with Walker over his inaugural remarks, arguing that the new governor had no intention of ensuring the fair and impartial expression of the people’s will. Laurence Keitt of South Carolina called Walker’s demand that voters ratify the constitution “unprecedented, and intended only to restore [Kansas] to black republicanism.”⁹¹ A Louisiana newspaper accused Buchanan on breaking his promise to southerners to protect their rights; instead the administration had “irredeemably sold” the South to curry northern favor.⁹² Moderate southerners rejected the fulminations of their fire-eating brethren. In the past, constitutional conventions may not have submitted their work to the voters for ratification, but the Kansas-Nebraska Act had set a new precedent. “The distinct ground of this Act is—and a more important ground was never taken—that the people of a territory have a right to say in their

⁸⁷ *Milledgeville Federal Union*, June 23, 1857.

⁸⁸ See Stampp, *America in 1857*, 165.

⁸⁹ *Inaugural Address of R.J. Walker, Governor of Kansas Territory* (Lecompton, KS: Union Office, 1857), 6.

⁹⁰ *New York Herald*, June 6, 7, 1857.

⁹¹ *Ibid.*, June 12, 1857.

⁹² *New Orleans Crescent*, July 17, 1857.

constitution what shall be the character of their domestic institutions,” a Georgia correspondent wrote. “How can they say this? In no other way so effectually as by a direct vote of themselves.”⁹³

Walker faced a barrage of criticism from southern ultras, but once again the South divided over the administration’s plan for overseeing the constitutional convention that would convene in the territorial capital of Lecompton. Key Democrats, most especially Stephen Douglas and Lewis Cass—the chief proponents of popular sovereignty, feared for the governor’s position. Douglas praised Walker’s call for popular ratification of a constitution, citing that his position “commanded the approbation of the whole country, with the exception of a small party at the South.”⁹⁴ Southern radicals intended to make the new governor a “scape goat” for their dissatisfaction with the Buchanan administration, Douglas wrote.⁹⁵ He encouraged Walker to stand firm on his course and to ensure that the actual residents of Kansas voted on election day. Not only did the governor need to make sure that Missourians did not cross the border and vote fraudulently, but he also needed to convince the free state Kansans not to boycott the election as they had done in past canvasses.

Cass and Douglas both knew that the future of popular sovereignty as a successful means of settling the slavery question hinged on the outcome of the Lecompton constitutional convention and the subsequent vote on the document it drafted. Cass also endorsed Walker’s actions, encouraging a plebiscite on the constitution when drafted. Like Douglas, he believed that Walker had to ensure a vote free of fraud in order to achieve stability in Kansas.⁹⁶ At the same time, Cass communicated with key southern allies in an effort to galvanize support for the

⁹³ *Milledgeville Federal Union*, July 21, 1857.

⁹⁴ Stephen A. Douglas to Robert J. Walker, July 21, 1857, *Letters of Stephen A. Douglas*, 386.

⁹⁵ *Ibid.*

⁹⁶ Klunder, *Lewis Cass and the Politics of Moderation*, 297-300. For Cass’s instructions to Walker, see *Transactions of the Kansas State Historical Society*, 10 vols. (Topeka, KS: 1875-1908), V, 323-324.

administration and for popular sovereignty in Kansas. Robert Toombs of Georgia praised Cass for the instructions he had initially sent to Walker, directing the governor to ensure a fair vote on any prospective constitution. Toombs stated his belief that most southerners had no issue with submitting the constitution to a popular vote. “This course though not necessary to the validity of the act unless required by lawfull [*sic*] authority,” he wrote to Cass, “yet, is more conformable to the more recent practice, & under the peculiar circumstances of Kansas I should consider the most prudent & proper policy.”⁹⁷ Walker, however, had committed an error that southerners could not ignore. “He has usurped the authority to decide what people, what voters shall have the right to vote on this constitution.”⁹⁸ Toombs insisted that the territorial legislature—elected by the people themselves—possessed the right to determine who could or could not vote in the election. As a federal appointee, Walker’s course was “in direct contravention of the doctrine of non-interference.” Popular sovereignty could not prevail with the governor’s interference. “Shall he fix the qualifications of voters in Kansas,” Toombs asked, “or shall the people in Kansas be free to form their institutions according to their own will?”⁹⁹

Toombs had raised an important point by using the popular sovereignty doctrine as a weapon against its chief supporters. A popular vote on the prospective Kansas constitution would circumvent the ruling in *Dred Scott v. Sandford* by allowing a version of squatter sovereignty to prevail. Ultra southerners like Toombs undoubtedly realized that the popular vote in Kansas would reject a proslavery constitution, but if the constitutional convention and the territorial legislature ratified the document, slavery would almost certainly prevail. The opponents of squatter sovereignty had once focused on the right of territorial legislatures to prohibit slavery; now they expanded their criticism to the process by which a territory ratified its

⁹⁷ Robert A. Toombs to Lewis Cass, July 28, 1857, Cass Papers.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

constitution. The fight over Kansas increasingly became a struggle over the implementation of popular sovereignty as defined by the Supreme Court. The Dred Scott decision had not ended the popular sovereignty debate; it merely shifted the focus from territorial legislatures to constitutional conventions.

Lewis Cass anguished over how to address Toombs's concerns. The Buchanan administration scarcely needed another prominent critic of its policy toward Kansas, but desperately wanted southern allies. Democratic state conventions in three southern states had already passed no-confidence resolutions against Walker, a development that the *New York Herald* called a declaration of "open war" between the southern ultra Democrats and the administration.¹⁰⁰ Cass conferred with Secretary of the Treasury Howell Cobb, who advised him to reply that "we do not approve of any dictation to the people of Kansas about the qualification of voters & that Walker himself in his communications disclaims such purpose."¹⁰¹ Jefferson Davis praised Cass for his services to the southern states in dealing with the Walker imbroglio, even as he warned him that Congress would have to approve of the Kansas constitution, a subtle implication that southerners in the House and Senate would not approve a constitution drafted by means they considered fraudulent.¹⁰² The president, on vacation in Bedford Springs, Pennsylvania, instructed his secretary of state to remain cautious in answering Walker's critics. "The game is now plain," the president wrote. "The assaults on Walker were intended to reach the administration."¹⁰³

Some southerners had indeed grown impatient with the Buchanan administration's handling of the affairs in Kansas. Once again, they argued that the northern wing of the

¹⁰⁰ Stamp, *America in 1857*, 169-170; *New York Herald*, July 4, 1857.

¹⁰¹ Howell Cobb to Lewis Cass, August 1, 1857, Cass Papers.

¹⁰² Jefferson Davis to Lewis Cass, August 1, 1857, *ibid.*

¹⁰³ James Buchanan to Lewis Cass, August 5, 1857, *ibid.*

Democratic Party had reneged on past promises made to the South. Popular sovereignty in Kansas seemed on the brink of becoming a repeat of what happened in California seven years earlier, when a group of antislavery squatters—to the minds of southerners—had taken control of the territorial government, drafted an antislavery constitution, and stealthily gained admission to the Union as a free state.¹⁰⁴ Southerners in the states as well as in Kansas called for restrictions on voting rights in the territory to ensure that only bona fide settlers had a voice in the formation of a constitution. Toombs repeated his claims that Walker's actions in Kansas amounted to "executive interference with the popular will in Kansas," a direct attack on President Buchanan's policy.¹⁰⁵ Not all southerners openly criticized Buchanan and the popular sovereignty policy. According to a South Carolinian residing in Kansas, the southern settlers supported popular ratification of the Lecompton constitution, but "with a restriction, requiring at least, six months residence in the Territory so as to cut out all those who are denominated here as the 'carpet sack gentry' from the North, who have doubtless been imported by the aid societies."¹⁰⁶

During the contentious summer of 1857, the Buchanan administration stood firm on popular sovereignty and Governor Walker. Events in Kansas, however, continued to deteriorate. The free state coalition, actually a shadow government headquartered some twenty miles west of Lecompton in Topeka, resolved to do everything in its power to disrupt the work of the Lecompton convention. They had refused to take part in the June election of delegates to the constitutional convention, but in the fall had participated in the election of a new territorial legislature and won control of the body. Incensed at the results of the election, the proslavery Lecompton constitutional convention finished work on a proslavery constitution in November.

¹⁰⁴ For contemporary examples of the comparison between Kansas and California, see *New York Herald*, July 4, 1857; *Charleston Mercury*, July 7, 1857.

¹⁰⁵ Robert Toombs to Lewis Cass, August 11, 1857, Cass Papers.

¹⁰⁶ *Milledgeville Federal Union*, September 8, 1857.

At first the delegates had resolved to submit their work directly to Congress and ignore Governor Walker's instructions to seek popular ratification, but they relented at the behest of moderates who forged a compromise plan. The Lecompton convention would submit the seventh article of the charter—which addressed the slavery issue—to voters for ratification. Voters could choose a constitution with slavery or without slavery, the convention contended. Actually, Kansans had no such choice. If they approved the slavery article, Kansas would become a slave state complete with a slave code akin to that of Missouri and Kentucky. Rejection of the article would prohibit the future importation of slaves, but would not affect the status of slaves currently residing in the territory. One way or the other, slavery would remain in Kansas.

The Lecompton constitution presented northern Democrats with an anguishing dilemma. If they rejected the convention's version of ratification, the South would erupt in opposition to federal interference in the affairs of Kansas. If they accepted popular sovereignty Lecompton style, they would face the wrath of voters at home. Either way they would cause an irreparable breach between the northern and southern wings of their party. In his first annual message to Congress, the president declared that the Lecompton convention had "fairly and explicitly referred to the people whether they will have a constitution 'with or without slavery,'" therefore complying with the principle of popular sovereignty.¹⁰⁷ "Looking back, knowing the ultimate consequences of Buchanan's policy decision," one historian has remarked, "it stands as one of the most tragic miscalculations any President has ever made."¹⁰⁸

Some consequences of Buchanan's endorsement of the Lecompton convention became immediately apparent. Douglas leapt to his feet after the Senate clerk had finished reading the president's message, announcing his opposition to the administration's course regarding

¹⁰⁷ First Annual Message, December 8, 1857, in James D. Richardson, ed., *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, 10 vols. (Washington, D.C.: Government Printing Office, 1896-1899), V, 453.

¹⁰⁸ Stamp, *America in 1857*, 282.

Lecompton. The following day, the Illinois senator delivered a speech on the Senate floor, rebuking Buchanan for his startling endorsement of the Lecompton convention.¹⁰⁹ The man whom some had predicted would become the “great pacificator between the policy of the administration and the uncompromising attitude of hostility assumed by Governor Walker” had broken with his president.¹¹⁰ The proslavery convention threatened to make a mockery of popular sovereignty, Douglas argued, by submitting only a part of the constitution to the people for ratification. If “the President be right in saying that, by the Nebraska bill, the slavery question must be submitted to the people, it follows inevitably that every other clause of the constitution must also be submitted to the people.”¹¹¹

Douglas saved his most vituperative criticism for the manner in which the convention delegates had framed the question of whether slavery would or would not exist in Kansas. To Douglas and many northerners, the convention gave Kansans no choice at all; regardless of the outcome of the vote slavery would remain. “Is that the mode in which I am called upon to carry out the principle of self-government and popular sovereignty in the Territories—to force a constitution on the people against their will,” Douglas asked?¹¹² The indignant senator had broken with the president in bold fashion, completely discrediting Buchanan’s motives and actions with respect to the Lecompton fiasco. Douglas took the matter personally, as the administration had trifled with his popular sovereignty doctrine. “I have spent too much strength and breath, and health, too,” Douglas declared before his fellow senators, “to establish this great principle in the popular heart, now to see it frittered away.”¹¹³

¹⁰⁹ *CG*, 35th Cong., 1st Sess., 14-18.

¹¹⁰ *New York Herald*, December 5, 1857.

¹¹¹ *CG*, 35th Cong., 1st Sess., 15.

¹¹² *Ibid.*, 16.

¹¹³ *Ibid.*, 15. See also Johannsen, *Stephen A. Douglas*, 589-593.

The Little Giant's break with Buchanan "plunged the party into confusion and consternation," as leaders sought to calculate their next step.¹¹⁴ Douglas particularly lamented the inevitable loss of his southern allies, but he believed that Buchanan's policy left him no other choice but to oppose the work of the Lecompton convention and risk the break with the South. Southern Democrats suggested that Douglas discredited his own doctrine by attempting to dictate to Kansans how they should ratify their own constitution. "It is with regret," a Baltimore editor wrote, "that we find this distinguished man now, at this moment, when he should be firm in support of his own measure, deliberately arraying himself against it, and virtually declaring that the Kansas-Nebraska act is a failure."¹¹⁵ "That Senator Douglas is in and with the Northern party," the *Charleston Mercury* maintained, "is no longer questioned."¹¹⁶ John Tyler declared his disgust with Douglas's break with the president, arguing like many other southerners that the Illinois senator had basically invalidated his own doctrine. "Douglas, I see, has taken ground against the Lecompton Convention, and yet nothing is plainer than that, by his own admission, the convention was the creation of the popular will, as far as the voting class could make it so, and that is the only standard to which we can refer."¹¹⁷

Voters in Kansas did receive the chance to vote on the entire Lecompton constitution, but only after some complicated maneuvering by Acting Governor Frederick Stanton. Walker had left Kansas for Washington, never to return, to plead his opposition to the Lecompton convention. Stanton let the initial election continue, but scheduled a second referendum in which residents would vote on the whole constitution and not just Article VII. On December 21, 1857, voters ratified the Lecompton constitution with the seventh article by a vote of 6,226-

¹¹⁴ Johannsen, *Stephen A. Douglas*, 592.

¹¹⁵ *Baltimore Sun*, December 12, 1857.

¹¹⁶ *Charleston Mercury*, December 15, 1857.

¹¹⁷ John Tyler to Robert Tyler, December 14, 1857, in Lyon Gardiner Tyler, ed., *The Letters and Times of the Tylers*, 2 vols. (Richmond: Whittet & Shepperson, 1884-85), II, 541.

569.¹¹⁸ The free state supporters boycotted the December election that they considered fraudulent. Southerners hailed news of the vote while the northern Democrats bided their time until the next canvass, when Kansans would vote on the entire document. On January 4, they voted en masse against ratification of the Lecompton constitution by the overwhelming vote of 10,226-162.¹¹⁹ This time, the proslavery faction boycotted the election. Which vote—and which version of popular sovereignty—would prevail?

The Buchanan administration proceeded with referring the constitution to Congress for ratification, disregarding the January 4 free state vote. The entire affair had caused irreparable damage to his reputation and to the stability of the Democratic Party. The South, however, feared defeat at the hands of the anti-Lecompton Democrats. The Buchanan administration's allies desperately tried to convince southerners that the party remained the last bulwark of security for their section, but many in the South could not forgive Douglas's opposition to the Lecompton convention. To their minds, Douglas had committed himself to squatter sovereignty, just as Lewis Cass had during the debate over the Compromise of 1850. Almost eight years later, Douglas had finally shown his true colors. Southerners could no longer trust the Little Giant as a defender of their rights. Douglas and the northern Democracy had betrayed the South and her interests by interpreting popular sovereignty as an antislavery principle that would bar slaveholders from the plains of Kansas.

Democrats on both sides of the Kansas issue remained firm in their positions following the votes in Kansas. Douglas maintained his position, arguing that the January 4 vote has established conclusively that “the Lecompton Constitution is not the act of the people of Kansas,

¹¹⁸ Potter, *The Impending Crisis*, 318; Etcheson, *Bleeding Kansas*, 156-161.

¹¹⁹ Potter, *The Impending Crisis*, 318. Of the 162 voters for Lecompton, 138 voted for the document with slavery and 24 for it without.

and that it does not embody the popular will of that Territory.”¹²⁰ Southerners, too, vociferously defended the work of the Lecompton convention. Congress thrust itself into one of the most heated deliberations in its history over admitting Kansas to statehood with the Lecompton constitution. In the lower house in particular, anti-Lecompton Democrats rebelled against the president, threatening to block the admission of Kansas. Southerners witnessed the proceedings with indignation. Governor Joseph E. Brown of Georgia declared, “If Kansas is rejected by a direct vote I can see no other course for Georgia to take but to stand by her rights, upon her platform, and act, or confess to the world that she has backed down from her solemn pledges.”¹²¹

With Congress deadlocked, the Democratic Party nearly destroyed, and threats of disunion surfacing, an Indiana Democrat developed an ingenious, if outrageous, means of circumventing the crisis caused by the Lecompton constitution. A bill presented by Representative William H. English would submit the Lecompton constitution to another popular vote because of a change in the land grant provided to the territory. Under the English plan, voters would have the choice to gain statehood with slavery if they agreed to a vastly reduced federal land grant. If they opposed the change, Kansas would have to wait until it had a population of ninety-three thousand—the minimum population to gain a representative in Congress—to reapply for statehood. The land grant subterfuge allowed Kansans to take another vote on the constitution, this time sanctioned by the federal government. Most politicians recognized that the Kansans would reject the constitution and delay admission.¹²² Though radical southerners opposed the English bill, most moderates acquiesced in the fact that the Lecompton constitution would inevitably fail.

¹²⁰ Stephen A. Douglas to John W. Forney, et.al., February 6, 1858, *Letters of Stephen A. Douglas*, 408.

¹²¹ Joseph E. Brown to Alexander Stephens, March 26, 1858, in Ulrich B. Phillips, ed., *The Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb* (Washington, D.C.: Government Printing Office, 1913), 432.

¹²² See Etcheson, *Bleeding Kansas*, 168-189.

The English bill, which passed Congress on April 30, 1858, allowed the South to save face in some small way. Voters would not technically reject the constitution because of slavery, but because of the land grant. On August 2, Kansans went to the polls yet again and resoundingly defeated the Lecompton constitution. Kansas would not become a state until January 29, 1861, and then it would join the Union under an antislavery constitution.¹²³

Southerners lamely portrayed the English bill as a technical victory for the South. In the months after the Lecompton vote, Jefferson Davis made several speeches in Maine and in his home state of Mississippi lauding the English bill as a vindication of southern rights. Technically, according to Davis, Congress had admitted Kansas as a slave state. The Kansans themselves had rejected its offer of admission because of the terms stipulated for the circumscribed land grant. To Davis's mind, the English bill preserved the power of the Democratic Party by protecting equal rights for the South.¹²⁴ The Mississippi senator's optimism did not obscure the incredibly weak bargain Congress had struck, but politicians saw no better way to extricate themselves from the Kansas imbroglio.

The Lecompton fiasco destroyed any hope that popular sovereignty could settle the question of slavery in the territories. Northerners and southerners could not agree on how to implement the doctrine even after the Supreme Court had defined it in the Dred Scott case. Far from determining when a territory could legislate on slavery, the focus of the debate merely shifted after Chief Justice Taney pronounced his infamous opinion of the court. Northerners and southerners thereafter fought over when and how a constitutional convention could draft and ratify a prospective state's organic law. Southerners maintained that the territorial legislature of Kansas had elected a constitutional convention that possessed the sole right of determining the

¹²³ Potter, *The Impending Crisis*, 324-325; *ibid.*, 184.

¹²⁴ William J. Cooper, Jr., *Jefferson Davis, American* (New York: Alfred A. Knopf, 2000), 294-296.

process of ratification; thereby hoping to avoid a plebiscite on the slavery issue in which they suspected slaveholding interests would lose. Northerners demanded just such a vote because they believed the free state interests would prevail. Popular sovereignty—the doctrine designed to vest power over domestic institutions in the hands of the people themselves—proved unable to prevent meddling from outsiders. The final blow came with the English bill, which ended any pretense of congressional non-intervention with slavery in the territories. Congress directly involved itself in the affairs of Kansas Territory by ordering the resubmission of the Lecompton constitution to the voters.

Stephen Douglas would not admit the defeat of popular sovereignty. The Little Giant, who had invested so much in the ideal of self-government, would continue to defend it as the only way to ensure the safety of the Union. Desperately clinging to his favored principle, he would continue to promote a “strict adherence to the doctrine of popular sovereignty and non intervention by Congress with slavery in the territories as well as in the states” long after Kansas and made a mockery of the former and Congress and flagrantly violated the latter.¹²⁵ The southerners who had once vigorously supported the Illinois senator now had virtually abandoned him, as they now viewed popular sovereignty as an antislavery doctrine.

Two significant issues confirmed that southerners could no longer trust popular sovereignty as sound policy for addressing slavery and territorial expansion. In the winter of 1860-1861, Congress once again found itself forming governments for western territories, even as the secession of southern states shattered the Union. During the fateful session of Congress, legislators voted to create three new territories in the West—Colorado, Dakota, and Nevada.¹²⁶ The enabling bills for each territory contained no reference to slavery, a development that

¹²⁵ Stephen A. Douglas to James W. Singleton, March 31, 1859, *Letters of Stephen A. Douglas*, 439.

¹²⁶ Bills to create two other territories—Idaho and Arizona—did not pass. Idaho became a territory in 1863. Arizona was a Confederate territory from 1861 to 1863, when Union forces regained control of the region.

Stephen Douglas saw as an oblique endorsement of popular sovereignty.¹²⁷ Dakota Territory presented an interesting case, as it was the last unorganized region within the Louisiana Purchase. Before 1857, the Missouri Compromise would have prohibited slavery within the territory, but the Dred Scott decision's invalidation of the compromise line left discussion of that legal technicality superfluous. Of course, it did not matter, because slavery would never exist in Dakota.

In an interesting turn of events, the Republican Party had taken to the doctrine with an enthusiasm that troubled Douglas and the Democrats. Republicans, like southerners, recognized that popular sovereignty had become an effective tool to prevent the spread of slavery. They believed that popular sovereignty had prevented slavery from taking root in Kansas. In 1859, some Republicans called for an extreme version of popular sovereignty that would have allowed territorial residents to elect their own governor and judges, presumably to prevent the proslavery Buchanan administration from appointing officials sympathetic to slavery. By 1860, however, Republicans dropped their insistence on an explicit prohibition of slavery in the bills creating the Colorado, Dakota, and Nevada territories.

Republicans in Congress had worked diligently to remove any shadow of a doubt that slavery would never exist in the new territories. The bills had initially contained language affirming the popular sovereignty principle, much akin to the clause in the Kansas-Nebraska Act. Key senators had removed the clause, however, in order to gain passage of the separate bills. Senator Benjamin Wade, an influential Ohio Republican, revealed the reason: Republican factions within both the House and Senate could not agree on the meaning of popular sovereignty. Accordingly, negotiators from both chambers agreed to remove the offending

¹²⁷ Johannsen, *Stephen A. Douglas*, 830-831.

clause and remain silent on the slavery issue within the three bills.¹²⁸ Popular sovereignty—the doctrine that so many politicians had believed could solve the vexing slavery issue in so many critical moments over the past seventy-five years—still lacked a definition because northerners and southerners still sought to interpret it to their advantage.

Douglas tried valiantly to save some remnant of his cherished doctrine, but key Republicans as well as Douglas opponents stripped the bills of any overt reference to his version of popular sovereignty. In a carefully designed blow against the Supreme Court, the Senate amended the bills to deny the right of appeal to the Supreme Court on property issues. They sent a clear message that Congress would not allow the Taney Court to exercise its power of judicial review to permit slavery in Colorado, Dakota, or Nevada.¹²⁹ Again Douglas offered resistance to the amendment, calling out the Republicans for their effort to circumscribe the authority of the southern-dominated Supreme Court and enhance the power of Republican President-Elect Abraham Lincoln. Republicans could play the political game to their advantage now, Douglas averred, “but suppose, four years from now, there should be a southern President; then are we to be called upon to change the law again, to give a right of appeal from the territorial judges to the Supreme Court of the United States? Are we to change the law and the territorial system according as the politics of the President may be changed?”¹³⁰

Douglas suffered a final blow to his conception of popular sovereignty in the territorial bills of 1860-1861, but in a way, the bills contained the idea of popular sovereignty in its purest form. None of the three bills addressed the slavery issue with regard to the powers of territorial legislatures or the judiciary. Slavery received no mention in the legislation, presumably leaving the matter to the people. Neither Congress nor the Supreme Court had a charge to implement or

¹²⁸ *CG*, 36th Cong., 2nd Sess., 763-765.

¹²⁹ *Ibid.*, 1205-1208.

¹³⁰ *Ibid.*, 1205.

interpret popular sovereignty. Most important to the South, nobody believed that slavery would exist for a day within Colorado, Dakota, or Nevada. The territorial debate in the secession winter of 1860 and 1861 provided still more confirmation that popular sovereignty would not provide southerners with what they demanded—more slave states.

Even before Congress considered organizing territories in the West, the frantic discussion over the meaning of popular sovereignty had convinced southerners that the doctrine offered neither solace nor security for their peculiar institution. Between the rejection of the Lecompton constitution and the secession winter, numerous politicians weighed in on the meaning of popular sovereignty in the territories. The arguments that emerged proved that self-government in the territories could not extinguish the slavery debate. Northerners would not accept popular sovereignty as defined by the Taney Court and the South, while southerners had come to believe that the doctrine would never yield an inch of territory for their section.

EPILOGUE

THE DEMISE OF POPULAR SOVEREIGNTY

Numerous efforts to resurrect popular sovereignty surfaced after passage of the English Bill and the subsequent rejection of the Lecompton Constitution, especially in the secession winter of 1860 and 1861 when politicians grasped at anything that might save the Union. Popular sovereignty, however, could not function if the North and South could not agree on its interpretation. In the two-year period between the rejection of Lecompton Constitution and the coming of the Civil War, three substantive arguments emerged over the interpretation of popular sovereignty. Separately, they show how different people in different sections wanted to cast popular sovereignty in order to achieve their desired ends. Together, they illustrate that despite over seventy-five years of debate over popular sovereignty and slavery in the territories, the establishment of the doctrine as national policy in 1854, and finally the Supreme Court's decision in *Dred Scott v. Sandford*, the North and South still held to differing interpretations of territorial self-government on which they would not compromise.

In September 1859, Stephen Douglas drafted a lengthy article for *Harper's Magazine* in which he defined popular sovereignty. His treatise, by far the most elaborate description of the doctrine ever produced, placed popular sovereignty in historical context in order to refute the *Dred Scott* decision and the arguments of southern ultras.¹ The Supreme Court had effectively gutted Douglas's formula for popular sovereignty by endorsing the southern interpretation of the doctrine. The Illinois senator resolved to challenge the Court's decision and justify his conception of popular sovereignty.

¹ See Stephen A. Douglas, *The Dividing Line between Federal and Local Authority* (New York: Harper & Brothers, 1859). The best analysis of Douglas's *Harper's* article is Robert W. Johannsen, "Douglas, *Harper's Magazine*, and Popular Sovereignty," in *The Frontier, the Union, and Stephen A. Douglas* (Urbana: University of Illinois Press, 1989), 120-145.

In addition to the Dred Scott decision, another political factor motivated Douglas to write a defense of his conception of popular sovereignty. After the failure of the Lecompton Constitution, the Republican Party had taken to the doctrine with an enthusiasm that troubled Douglas and the Democrats. Republicans, like southerners, recognized that popular sovereignty had become an effective tool to prevent the spread of slavery. They believed that popular sovereignty had prevented slavery from taking root in Kansas. In 1859, some Republicans called for an extreme version of popular sovereignty that would have allowed territorial residents to elect their own governor and judges, presumably to prevent the proslavery Buchanan administration from appointing officials sympathetic to slavery. Douglas recognized that if he had any hope of resurrecting popular sovereignty from the ashes of the Kansas debacle, he had to neutralize the new Republican threat.²

Douglas had a reputation as a brilliant speaker and master debater, but “The Dividing Line between Local and Federal Authority” lacked his characteristic verve and logic. In forty pages of labored prose, the Little Giant presented the case for his version of popular sovereignty. After stating its different interpretations for his readers, Douglas launched into a history lesson designed to show that his doctrine upheld the central tenet of the nation’s Revolutionary fathers—the right of the people to govern themselves. America’s forebears had fought for independence to gain “Local Self-Government” in order to “make their own local laws, form their own domestic institutions, and manage their own internal affairs in their own way.”³ The founders recognized that a “diversity of interests” regarding slavery existed and that only through compromise could the thirteen states join in a Union.⁴ Popular sovereignty, Douglas

² See *ibid.*, 123-124; Robert W. Johannsen, *Stephen A. Douglas* (New York: Oxford University Press, 1973), 706-707.

³ Douglas, *The Dividing Line*, 8.

⁴ *Ibid.*, 12.

implied, had facilitated the creation of the Union itself by leaving the matter of slavery to local communities.

For far too long, Douglas argued, the federal government had ignored the wisdom of its fathers by meddling in the local affairs of the territories. The Compromise of 1850 and the Kansas-Nebraska Act had restored the nation to its constitutional moorings, but the Dred Scott decision—or at least the interpretation others gave to it—threatened all that Douglas and the Democrats had gained. He lamely attempted to assert that the decision did not affect popular sovereignty in the territories, a contention easily dismissed by his critics. The Supreme Court had unquestionably challenged Douglas’s contention that territorial legislatures could pass laws prohibiting slavery. On some occasions, most notably the Lincoln-Douglas Debates of 1858, the Illinoisan had fallen back on an idea that became known as the Freeport Doctrine, arguing that slavery could not exist where the people did not provide laws and aid for its protection. Other politicians had articulated the idea long before Douglas, but his statement of the principle gained immediate attention and prompt disdain from the South. In the *Harper’s* article, however, Douglas moved away from the Freeport Doctrine and tried to portray the Dred Scott decision as sympathetic toward his version of popular sovereignty.⁵

The Douglas essay failed to persuade any of the senator’s opponents to embrace his version of popular sovereignty. Indeed, other politicians clamored for the chance to respond to Douglas’s argument. The southern press rose in opposition to the Illinois senator’s defense of squatter sovereignty—as they saw it. The doctrine as described in the *Harper’s* article “is as false in theory as it would be dangerous in practice should it ever be established as the policy of

⁵ See Douglas, *The Dividing Line*, 26-28; Johannsen, “Douglas, Harper’s Magazine, and Popular Sovereignty,” 130-131.

this government,” the *Nashville Union* declared.⁶ The *Richmond Enquirer* labeled it an “incendiary document” designed to pacify antislavery northerners.⁷ Southerners now viewed the Douglas doctrine as an antislavery tool that would deprive the South of “all her rights in the territories.”⁸

Just as southern Democrats excoriated Douglas’s words, so too did the Republicans, who accused the senator of ignoring the will of the North, not to mention the moral crime inherent in perpetuating slavery. Horace Greeley, the editor of the *New York Tribune*, asserted that most Americans wanted to halt the spread of slavery into the territories.⁹ He lambasted popular sovereignty as “a politician’s dodge” designed to prevent sectional discord through a false sense of compromise.¹⁰ “The Sovereignty you defer to, is that of a political necessity, not that of the people of the Territories,” Greeley charged.¹¹ The editor took issue with Douglas’s interpretation of history, noting that the senator had twisted the meaning of words in cavalier fashion. For example, Douglas used Thomas Jefferson’s proposed Ordinance of 1784 to prove that the founding generation instituted popular sovereignty in the territories—or “new states,” as Jefferson called them. Douglas did not admit, Greeley correctly argued, that Jefferson’s ordinance would have abolished slavery in any of the territories after 1800. Douglas completely ignored Jefferson’s proposal for gradual abolition in any states created out of the national domain. Likewise, Greeley claimed, Douglas completely ignored the Northwest Ordinance’s precedent for federal legislation over slavery in the territories. In the Ordinance of 1784 and the Northwest Ordinance of 1787, Greeley concluded, history gave “two explicit affirmations by the

⁶ *Nashville Union*, September 7, 1859.

⁷ *Richmond Enquirer*, August 30, 1859. For the general reaction of the South to the essay, see Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861* (Baton Rouge: Louisiana State University Press, 1953), 302-303.

⁸ *New Orleans Delta*, September 15, 1859.

⁹ For Greeley’s rejoinder, see *New York Tribune*, October 15, 1859.

¹⁰ *Ibid.*

¹¹ *Ibid.*

Revolutionary Fathers, of the right and duty of Congressional Inhibition of slavery in the Territories.”¹²

The third statement on the popular sovereignty controversy came from the pen of Jeremiah S. Black, President James Buchanan’s attorney general.¹³ Though he hailed from Pennsylvania, Black held the views of his chief executive on the slavery issue. The attorney general’s rebuttal to Douglas outlined the position that most southerners held after the failure of the Lecompton Constitution. Black, too, questioned Douglas’s interpretation of history, but for far different reasons than Horace Greeley. The nation’s history provided no precedent for the power of territorial legislatures to prohibit slavery, as Douglas asserted, or for congressional intervention, as Greeley argued. Black, however, largely avoided giving a history lesson and focused instead on the legal aspects of the popular sovereignty question. “The Constitution certainly does not *establish* slavery in the Territories, nor anywhere else,” he maintained. “But the Constitution regards as sacred and inviolable all the rights which a citizen may legally acquire in a State.”¹⁴ In other words, the attorney general supported the decision in *Dred Scott v. Sandford*, which upheld the right of an American citizen to hold slaves in any federal territory. The Constitution was impartial on slavery in the territories, requiring both slaves and freedmen “to remain in *statu quo* until the *status* already impressed upon them by the law of their previous domicil [*sic*] shall be changed by some local competent authority,” namely a constitutional convention.¹⁵

Black completely endorsed the Dred Scott decision as the authoritative interpretation of popular sovereignty. The Republicans, whom the attorney general called a “little band of ribald

¹² *Ibid.*

¹³ [Jeremiah S. Black], *Observations on Senator Douglas’s Views of Popular Sovereignty, as Expressed in Harper’s Magazine, for September 1859*, 2nd ed. (Washington: Thomas McGill, 1859).

¹⁴ *Ibid.*, 4 (italics in the original).

¹⁵ *Ibid.*, 5.

infidels,” refused to abide by the decision.¹⁶ Douglas, too, seemed insistent on rejecting the definition supplied by the Supreme Court in favor of his view that territorial legislatures could prohibit slavery. Black articulated the position southerners had held for years—only a constitutional convention could determine the future of slavery within a territory preparing for admission to the Union. He accused Douglas of ignoring his own doctrine with respect to the Lecompton Constitution. Douglas himself had rejected the vote of a plebiscite on the slavery provision in the constitution because the Lecompton convention did not allow popular ratification of the entire document. After the failure of Lecompton, Douglas insisted that the territorial legislature could determine the status of slavery without submission of the question to the people. “Popular sovereignty in the last Congress meant the freedom of the people from all the restraints of law and order; now it means a government which shall rule them with a rod of iron,” Black wrote. “It swings like a pendulum from one side clear over to the other.”¹⁷

In pointing out the inconsistencies of Douglas’s argument, Black advanced the southern definition of popular sovereignty as upheld by the Supreme Court. The Constitution protected the sanctity of personal property—including slavery—in the national domain. Southerners had felt vindicated after the Dred Scott decision, but the unrelenting assault on slavery by the North, especially the Republicans, led them to realize that popular sovereignty would never sufficiently secure the South’s peculiar institution. Douglas’s rejection of the Lecompton Constitution and his subsequent defection from the Democratic fold convinced many southerners that popular sovereignty was an antislavery doctrine. Squatter sovereignty had triumphed over the true

¹⁶ *Ibid.*, 6.

¹⁷ *Ibid.*, 13.

doctrine of popular sovereignty, according to the South. “Squatter Sovereignty,” a New Orleans editor declared in 1860, “looks to *permanent exclusion* by hostile Territorial legislation.”¹⁸

The failure of the North to accept the Dred Scott decision and acquiesce in the southern definition of popular sovereignty left the South with but one alternative: to demand federal protection for slavery in the territories. Some ultra southerners had endorsed federal protection in the past, but most southerners repudiated the idea, instead standing by their conception of popular sovereignty. On January 18, 1860, Albert Gallatin Brown, a Democratic senator from Mississippi, delivered a series of resolutions calling for federal protection of slavery in the territories. Most notably, Brown demanded a federal slave code that would guarantee the sanctity of slave property in any territory.¹⁹ Two weeks later, Senator Jefferson Davis introduced a less bellicose set of resolutions that once again affirmed the constitutional right to hold slaves in the territories. Mississippi’s other senator did not call for a federal slave code or for active federal intervention against antislavery forces in the territories.²⁰ Instead, his resolutions demanded that the Senate use its power to “resist all efforts to discriminate” against slaveholders’ rights in the territories.²¹ Regardless of the debate over a federal slave code, southerners clearly expressed their belief that popular sovereignty no longer offered them protection for slavery.

In spite of several efforts to resurrect popular sovereignty in order to save the Union from destruction, neither Douglas nor any other politician could restore trust in the doctrine. Popular sovereignty—the doctrine that at one time had held significant promise as a way to solve the

¹⁸ *New Orleans Delta*, April 3, 1860.

¹⁹ *Congressional Globe*, 36th Cong., 1st Sess., 404.

²⁰ *Ibid.*, 658. Some historians have claimed that Davis, too, proposed a federal slave code; others dispute the point. See William J. Cooper, Jr., *Jefferson Davis, American* (New York: Alfred A. Knopf, 2000), 305-306; William W. Freehling, *The Road to Disunion: Secessionists Triumphant, 1854-1861* (New York: Oxford University Press, 2007), 275-278.

²¹ *CG*, 36th Cong., 1st Sess., 658.

vexing issue of slavery in the territories—had failed because no one could agree on what it meant. Northerners and southerners held different interpretations of the doctrine that suited their respective political goals and opinions. Republicans and Douglas Democrats used the doctrine as an antislavery weapon, while the South saw it as a way to permit the spread of slavery into the territories. Both goals meant that people defined popular sovereignty in different ways at different times, leading to often complex interpretations of a doctrine that seemed so simple—the right of the people to govern themselves. Ultimately, northerners and southerners in the states could not trust the people in the territories to do as they wished.

For seventy-five years, American politicians had held to some form of popular sovereignty doctrine as a way to determine the future of slavery in the territories. For many years, the idea worked in concert with compromises that prohibited slavery north of a geographic line and allowed for popular sovereignty to the south. The Southwest Ordinance left settlers south of the Ohio River free to determine the status of slavery, while the Missouri Compromise extended the precedent to the Louisiana Purchase. In these instances, popular sovereignty had facilitated the expansion of slavery through the South. By the 1840s, however, the North had hardened its stance against slavery, just as southerners became increasingly defensive of their peculiar institution. In the late 1840s and 1850s, politicians tried to use popular sovereignty again as the best possible compromise to maintain sectional harmony. At the same time, leaders muddled its meaning by refusing to specify when the residents of a territory could exercise self-government. In the absence of a dividing line—and later in the repeal of the Missouri line itself—politicians looked to the Supreme Court to define how popular sovereignty would work. When the decision came in 1857, many in the North repudiated it. In 1860, when the opponents of popular sovereignty and slavery gained the presidency, southerners repudiated the Union.

Ultimately popular sovereignty failed because it could not provide the North or the South with the certain result each section desired. Popular sovereignty failed, too, for the very reason that politicians had enacted it—it removed them from the decision-making process and placed the future of slavery beyond their control.

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