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**THE FAILURE OF
POPULAR SOVEREIGNTY**



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Introduction

In the eighty-five years between 1776 and 1861, the United States of America had grown into a prosperous nation of thirty-four states linked by economic prowess, common heritage, and an abiding, if still developing, sense of nationalism. Yet with growth and prosperity came discontent as the nation's breathless pace of expansion sparked a furious debate over the institution of slavery. Would the slave domain expand with the nation's boundaries or would the institution remain fixed in space? Over the course of the early nineteenth century, slavery indeed became the South's peculiar institution. Slavery, both a labor system and a social system, brought great prosperity to the southern states—and indirectly to the North as well. But a rising tide of moral indignation against American slavery built within the northern states, leading to bitter recriminations between Americans North and South over the future of the institution. Northerners came to demand the prohibition of slavery in the nation's vast territorial domain, while southerners insisted on their right to take slaves into any territory over which flew the Stars and Stripes.

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 between the creation of the republic and the onset of the Civil War. From the formation of the Northwest Territory in the 1780s to the admission of Kansas as a free state in 1861, politicians contested whether the power to prohibit slavery rested with Congress or the people residing in the territories. 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 them.

Scholars have traditionally dismissed the popular sovereignty doctrine as a supple political contrivance devoid of substantive meaning. My book seeks to restore some of its meaning by analyzing how its definition and application—from the Confederation period to the coming of the Civil War—became enmeshed with the politics of slavery in the South. At its core, the dispute over

slavery in the territories paralleled the growing rift in American politics between northern nationalism and southern states' rights advocates. In turn, southern politics became defined by twin commitments to states' rights and slavery. At the same time, my study explains how the slavery debate radicalized southern politics. Popular sovereignty, instead of quieting sectional passions over the extension of slavery, actually gave voice to an increasingly radical, states' rights interpretation of the federal compact that placed slavery front and center in the national political discourse.

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. Yet practically since the founding of the republic, Congress had prohibited slavery in the territories of the North while allowing the southern territories to determine the status of slavery for themselves. Of course, southerners had always established slavery in the founding charters of new states. In other words, territorial self-government had always resulted in the expansion of slave territory. A majority of northerners and southerners alike seemed reasonably content with an arrangement that basically divided the national domain into free and slave territory.

The watershed debate over admitting Missouri into the Union, however, shattered the notion of sectional comity over the slavery question that had prevailed with minimal challenge for some forty years. New York representative James Tallmadge's bid to prohibit slavery in Missouri as a condition of statehood transformed the slavery debate and southern politics by affirming federal power over slavery in the territories. Southerners, fearful of any threat to the institution, joined westerners in vehemently asserting the right of local determination over the issue, while congressmen 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.¹ Ultimately Congress reaffirmed the idea of a dividing line between freedom and slavery. Slaves could not pass into the Louisiana Purchase north of 36 degrees, 30 minutes latitude, but to the south of the line citizens could permit or prohibit slavery as they wished. But the Missouri controversy had revealed deep tensions between North and South over the extension of slavery.

In its aftermath, an ever-growing group of southerners resolved to prevent any further interference from northerners with slavery and its extension into

the territories. They did so by denying the right of regulation to the federal government. During the 1830s, the slavery debate reappeared with continued territorial expansion and the admission of new states to the Union, which occurred against the backdrop of a growing abolition movement. In the congressional gag rule debates of 1837 and 1838, John C. Calhoun emerged as the proponent of an extreme states' rights doctrine that sought to destroy the rising abolitionist vanguard and secure the future of slavery in the South—and the territories. Once an ardent nationalist, the South Carolinian and his many allies became convinced that federal authority would eventually become a weapon of the anti-slavery vanguard. With the zeal of a convert, Calhoun maneuvered to repudiate the right of Congress to determine the status of slavery in the territories via a curious mix of states' rights and national power. To the Calhounites, popular sovereignty in the territories permitted local control over the institution while the Constitution trumped localism by dictating that slavery followed the flag into the territories of the West. In the 1830s and 1840s, Calhoun had some difficulty convincing his fellow southerners of his theories; by the late 1850s, they had virtually become political dogma in the South as extension became the manifest destiny of the peculiar institution.

During the 1840s, however, northern Democrats appropriated the popular sovereignty idea for themselves, transforming it into a doctrine that they hoped would appeal to northern and southern Democrats alike, thereby saving their political party and quieting discord over the extension of slavery. Instead, they created a crisis over the meaning of popular sovereignty that further divided North and South. Northerners like Senator Lewis Cass of Michigan and his more prominent colleague, 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. More than a mere question of constitutional theory, deciding how popular sovereignty would work directly impacted whether the slave domain would expand or not. Almost a decade of persistent discord over the meaning of

popular sovereignty destroyed the bisectonal Democratic Party, removed the South from the political mainstream of the Jeffersonian and Jacksonian eras, and fostered the growth of a virulently radical form of southern politics designed to uphold states' rights. By 1860, many southerners ironically called for a massive expansion of federal power—via a federal slave code—to protect the right of southern slaveholders to keep slaves in the territories.

My book explores the parallel relationship between the idea of popular sovereignty as applied to the extension of slavery and the nature of southern politics in the early American republic—both of which changed over time and in concert with one another. As northerners grew increasingly hostile toward slavery, southerners became increasingly defensive of the institution, their way of life, and their role within the Union. 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. Few historians have recognized the history of popular sovereignty before the 1840s; no scholar has yet portrayed its development as a process beginning with the first territorial 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 decision in *Dred Scott v. Sandford*, which imbued popular sovereignty with a pro-southern definition that mirrored Calhoun's reasoning.³ By lending narrative coherence to the story of slavery extension, my book bridges 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 According to southerners, northerners saw society in the South as inferior and its 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 Their efforts produced precisely the opposite outcome, as slavery subsumed all other issues in national political discourse.

Yet the problem had existed long before the 1840s, and so too had the pro-

posed solution. Recovering the history of popular sovereignty from the nation's founding forward reveals how the expansion of slavery became the most contentious disagreement between North and South, a debate that in no small part led to the coming of the Civil War. Congress 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.

My work examines the concept of popular sovereignty by offering a narrative of how it surfaced and evolved during the era of the early American republic and explaining how the debate over its meaning transformed and radicalized southern politics, eventually marking a clear departure in practice and principle from the established norms of American political discourse—which eventually led the South outside the mainstream of Jeffersonian and Jacksonian politics. Because neither North nor South could agree upon the meaning of popular sovereignty, it effectively “constitutionalized” the debate over slavery in the territories by mimicking the debate over the nature of the Union.⁷ 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. Faced with the solemn vow of antislavery northerners to reject the high court's pronouncement, which they considered immoral and unjust, 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 southern fealty to the American political system and 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 debate over slavery transformed the South into a rigid sectional bloc dedicated to the protection and perpetuation of slavery, thereby providing essential insight into how and when the Union sundered.

Understanding popular sovereignty requires consulting sources from the North and South, but my focus on southern politics reflects the fact that the South was the fulcrum on which popular sovereignty operated. 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. For almost sixty years, popular sovereignty operated exclusively in the South; the Northwest Ordinance and the Missouri Compromise prohibited the expansion of slavery in the North. After 1847, northern Democrats used the doctrine as a vehicle for compromise, seeking 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 seemed like a chasm during times like the Missouri controversy, the introduction of the Wilmot Proviso, and the congressional debates of 1849 and 1850. 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 believed would halt the expansion of slavery.

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, my book is organized as a narrative. 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. The subsequent chapter analyzes this precedent in more detail by studying 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 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 le-

gal and political issues, this debate marked another step in the evolution of the southern position on the meaning 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. Chapters 4 and 5 analyze the effort to settle this increasingly fractious dispute, as northern Democratic leaders like George M. Dallas of Pennsylvania, Daniel S. Dickinson of New York, and Lewis Cass of Michigan reformulated and articulated the concept of popular sovereignty. The doctrine remained 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, as explained in chapter 6, 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 in 1847 the northern Democrats proposed applying the doctrine to the Mexican Cession, many moderate southerners enthusiastically accepted it as a suitable compromise. Some proponents of the doctrine, most notably 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, 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. 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 version of popular sovereignty would work—questions that Cass himself declined to answer. These issues 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. Slave-state leaders 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.

Sectionalism actually grew before the fiasco in Kansas Territory and the southern rights question became more, not less, salient six years before Lin-

coln's election. As explained in chapter 7, passage of the Kansas-Nebraska Act in 1854 only widened the sectional chasm by reinforcing southern unity across party lines at a time when the northern Democracy had begun to disintegrate. 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. Chapter 8 explains why popular sovereignty enjoyed greater support from the southern states in 1854 than ever before, but also how that support eroded with the reappearance of the old debate over when a territory's settlers could exercise their popular sovereignty, which would prove 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. Faced with the Pyrrhic victory in the Supreme Court, slave-state politicians identified but one remaining course of action: eschew the popular sovereignty doctrine and demand federal protection of slavery in the territories. The epilogue evaluates how 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-five years.