

ESSENTIAL CIVIL WAR CURRICULUM

Popular Sovereignty

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The idea of popular sovereignty as it pertains to the extension of slavery to the territories in the antebellum era was a political concept that allowed the residents of the territories themselves, rather than Congress, to determine whether to permit or prohibit slavery. Historians have traditionally identified the doctrine as an invention of the late 1840s, when moderate northern Democrats sought to defuse the crisis over slavery in the Mexican cession of 1848 and the antislavery Wilmot Proviso. The concept of popular sovereignty, however, predated the 1840s; leaders had questioned the extension of slavery in the sixty years prior to Texas annexation and the Mexican War.¹

The idea that people within the territories possessed the right to determine the status of slavery appeared in virtually 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. Whenever the United States enlarged its territorial domain, leaders naturally discussed whether decisions regarding the extension of slavery

¹ Stung by the annexation of the Republic of Texas by the United States in 1845 which it regarded as illegal, Mexico believed that the border between the Texas territory and Mexico was along the Nueces River. The federal government offered to buy California but was rebuffed by Mexico. In an act of provocation President James K. Polk sent federal troops south of the Nueces River to the Rio Grande River, the border with Mexico claimed by Texas. After a Mexican attack on Americans north of the Rio Grande River President Polk asked for and received a declaration of war from Congress initiating the Mexican-American War on May 13, 1846. The war ended with the Treaty of Guadalupe Hidalgo signed February 2, 1848. The treaty established the Rio Grande as the Southern boundary of Texas and allowed the United States to obtain California and the American Southwest, an area known as the Mexican Cession. While strongly supported in the South, the war was opposed by many in the North who believed that it was instigated by Southerners who wanted to spread slavery to California. To prevent this from happening, Pennsylvania congressman David Wilmot introduced the Wilmot Proviso, attached to an appropriations bill for the Mexican War, in 1846. The Wilmot Proviso stated that all land in the Mexican cession should be closed to slavery. It passed in the House but failed in the Senate where the Senators were split evenly with fourteen free and fifteen slave states. Each year for the next four years the Wilmot proviso was reintroduced, passed in the House and defeated in the Senate, with the Senators split along sectional rather than party lines. Northerners saw the Wilmot Proviso as a way to prevent the spread of slavery to the West while Southerners saw it as interfering with their rights and denying them the spoils of war.

should rest with the federal government or with the people who inhabited and who would inhabit them. Increasingly, northerners demanded the prohibition of slavery throughout the nation's territorial domain, while southerners insisted that the right to hold slaves as property followed the flag.

Theoretically, popular sovereignty provided politicians with a convenient way to circumvent the slavery debate, maintain party unity, and promote sectional harmony. In practice, however, the doctrine became ensnared in the politics of slavery. Northerners committed to a concept of union based on a strong central government and popular rule endorsed the notion that the people's representatives could and indeed should strive to circumscribe the boundaries of slavery. Conversely, southerners who defined their political philosophy in terms of states rights and local self-government insisted that the regulation of slavery came under the purview of local communities, and that the federal government had a responsibility to guarantee the sanctity of private property to any American.

The promise and peril of popular sovereignty lay in its conflicted meanings. Northern moderates embraced its clear and distinct connection to the revolutionary-era rhetoric of self-government and believed that it would appeal to the majority of Americans who opposed the extension of slavery. Southerners believed the doctrine protected the right of local control over the slavery issue itself while removing the issue from federal purview. Implementing the doctrine, therefore, proved difficult as northerners and southerners contested its meaning. Instead of calming sectional passions, popular sovereignty roiled the national political discourse by placing competing interpretations of the union front and center in the national debate over slavery.

Southerners conveniently ignored the numerous occasions in the forty years after independence that the federal government had indeed exercised authority over slavery in the territories. In 1787, Congress unilaterally prohibited slavery in the Northwest Territory of the North; three years later in the Southwest Ordinance, it permitted the southern territories to determine the status of slavery for themselves. The residents of territories south of the Ohio River—what became the dividing line between the Northwest and Southwest territories, and thereby the dividing line between free and slave territory—promptly established slavery in their state constitutions.

Most northerners and southerners contented themselves with an arrangement that divided the federal domain between free and slave territory until the debate over admitting Missouri into the Union disrupted forty years of sectional comity over the slavery question. But when New York congressman James Tallmadge Jr. proposed to prohibit slavery in Missouri as a condition of statehood, he inaugurated a bitter debate concerning federal authority over slavery in the territories. Tallmadge and his northern colleagues averred that the “sovereignty of Congress in relation to the States, is limited by specific grants—but, in regard to the Territories, it is unlimited.”²

² 33 Annals of Cong. 1173 (1818);

Southerners read the Tallmadge amendment as a call to defend the institution of slavery and the principle that territories possessed the right to create a state constitution free from congressional intervention. In sum, they demanded that Congress respect the sovereignty of the Missourians to draft their organic law as they wished. The residents of Missouri agreed, insisting that they, and they alone, possessed the power to determine the status of slavery in their territory. Though the territory lay at the outer limits of the traditional slave domain, approximately 10,000 slaves resided in Missouri Territory by 1819, comprising about fifteen percent of the total population.

Southerners who had once accepted—or at least acquiesced in—federal authority over the extension of slavery now invoked the states rights doctrine to assert that only the people within the territories had the right to determine the status of slavery. Between 1819 and 1821, southern politicians conceived a revised interpretation of federal authority that affirmed local control over slavery. Now that northerners had shown desire to restrict the extension of slavery, the South assumed a defensive posture by denying the right of Congress to affix conditions to statehood and to interfere with the domestic affairs of local communities. In the end, the southern congressional delegation compromised by agreeing to a partition of the national domain into free and slave territory, for which they received Missouri as a slave state. Congress reaffirmed the idea of a dividing line between freedom and slavery. According to Illinois Senator Jesse Thomas’s compromise formula, slavery would not exist in the Louisiana Purchase north of 36° 30’ latitude, but to the south of the line citizens would decide its fate.

The Missouri Compromise transformed the discussion over popular sovereignty and federal authority over slavery in the territories. Southerners who recognized that the institution had become peculiar to the South sought to make the decision-making process over its extension a local matter by denying federal intervention with slavery. The rise of abolitionism during the 1830s, coupled with a renewed push to organize the territorial domain, fueled growth of a proslavery, States Rights vanguard that culminated in the congressional gag rule debates of 1837 and 1838.³

The political veteran John Caldwell Calhoun, who had spent much of the 1810s and 1820s advocating sound nationalist policy, emerged as the new movement’s leader

. See also Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: University of North Carolina Press, 2007); Glover Moore, *The Missouri Controversy, 1819-1821* (Lexington: University of Kentucky Press, 1953).

³ The First Amendment to the Constitution states that “Congress shall make no law respecting... the right of the people... to petition the Government for a redress of grievances.” As the abolitionist movement gained strength and became more aggressive during the 1830s its followers flooded Congress with petitions. Traditionally a petition would be read into the record and debated as an important part of the process of protecting free speech. Congress became bogged down in bitter debate over the flood of anti-slavery petitions. In 1836 the House of Representatives passed a “gag rule”, a resolution which had to be renewed annually, under which antislavery petitions would be automatically tabled without debate. In the Senate a similar informal practice was implemented. Former President John Quincy Adams, at this time a representative from Massachusetts, abhorred the gag rules and fought to repeal them, which was finally achieved in 1844.

during the 1837-1838 debates. As a member of James Monroe's cabinet, the South Carolinian had endorsed the restriction of slavery embodied in the Missouri Compromise line. But during and after the 1820s, Calhoun transformed into a states rights advocate. With the zeal of a convert, Calhoun repudiated the right of Congress to determine the status of slavery in the territories in a mixture of political philosophy composed of states rights politics with a liberal dash of national power. To Calhoun and his followers, popular sovereignty in the territories permitted local control over slavery while the Constitution trumped localism by dictating that slavery followed the flag into the territories of the West. And congressional intervention had to cease because the rising antislavery movement could someday threaten slavery in the states. "The Abolitionists commenced with petitions for the abolition of slavery in the District of Columbia," Calhoun argued in 1838; "then they petitioned for the abolition of slavery in the Territories; now they are demanding the prohibition of the trade between the States; and their next step will be to require Congress to usurp the power to suppress slavery in the Southern States." A majority of southerners during the 1830s and 1840s found Calhoun's theories too extreme, but in the subsequent decade they would gain wide acceptance.⁴

Westward expansion once again became a driving issue in American politics during the late 1830s, as Texas declared independence from the Republic of Mexico and proffered annexation overtures to the United States government. Andrew Jackson and his successor Martin Van Buren, sensing the inevitability of a debate regarding Texas and the extension of slavery, deftly avoided any movement toward annexation. But by the 1840s, the pro-annexation forces had gained the upper hand. The Texas annexation controversy breathed new life into the slavery issue, dividing Americans not only along the familiar partisan lines of Whigs and Democrats, but even between northern and southern members of the parties themselves. Southern politicians, especially President John Tyler and John C. Calhoun, misread the mood of the North when they openly argued in favor of Texas annexation as a means to secure the future of slavery from alleged British encroachment and to provide new territory for slaveholders. Northerners bristled at the notion that annexation would expand the slave domain.⁵

The first fissures between northerners and southerners of the same political persuasion came during the presidential election of 1844, when northern Democrats, including former president and current presidential contender Martin Van Buren, came out in opposition to expansion of the slave domain. Southern Democrats responded with fury against the northern apostasy, demanding a pro-annexation (and proslavery) candidate for president. James Knox Polk, a slaveholding Tennessee Democrat who rivaled Tyler and Calhoun in his zeal for acquiring Texas, replaced Van Buren as the standard bearer for the Democrats—and for annexation.

⁴ Cong. Globe, 25th Cong., 2nd Sess. Appendix, 22 (1838).

⁵ For the debates over Texas, see Joel H. Silbey, *Storm over Texas: The Annexation Controversy and the Road to Civil War* (New York: Oxford University Press, 2005).

Polk won the election, but the new president would preside over a party badly divided on the slavery issue. Northern Democrats grew increasingly resentful of their southern brethren, whom they accused of using the party for the aggrandizement of the slave domain. The annexation of Texas in 1845 and the ratification of the Oregon Treaty, in which Polk conceded a northern boundary at the forty-ninth parallel to Great Britain, in June 1846, had given rise to the notion that southerners expected the northern party stalwarts to do their bidding in Congress. The president's actions only seemed to confirm their suspicions; Polk vigorously pursued the settlement of the Texas boundary issue, to the point of declaring war with Mexico, while delaying action on Oregon and ultimately settling for less generous terms. When the official declaration of war with Mexico came on May 25, 1846, the inter-sectional dispute came into the open as northern Democrats accused their southern colleagues of supporting a war of conquest to extend the slave domain.

Southerners dismissed their claim, but a Pennsylvania representative called their bluff. The Wilmot Proviso, a measure to prohibit slavery in any territory acquired from Mexico as a result of the war, brought a new dimension to the long-standing dispute over the extension of slavery. Previous efforts to restrict the extension of slavery had focused almost exclusively on states entering the Union. Southern leaders responded by expanding their definition of local self-government by seemingly extending the prerogatives of states rights to territories. Slaveholders, they argued, possessed the right to hold slaves in the territories by virtue of their citizenship in a slave state and because the federal government merely held the territories in trust for the states themselves.

Faced with unabated friction within the Democratic Party, moderate Democrats desperately searched for a compromise formula that would satisfy southern constitutional scruples while avoiding any explicit endorsement of the proslavery cause. Beginning in 1847, a cadre of moderate northern Democrats led by George Mifflin Dallas of Pennsylvania, Daniel Stevens Dickinson of New York, and Lewis Cass of Michigan reformulated the concept of popular sovereignty to fit the circumstances at hand. For the next twelve years, the popular sovereignty doctrine, its meaning, and its application to the territories would stand in the national spotlight.

Initially, the popular sovereignty doctrine received the approbation of moderate southerners who were likewise eager to restore harmony within the Democratic Party and settle the slavery issue. But questions of how popular sovereignty would operate in practice dogged its proponents. Some versions of the doctrine, especially Dickinson's, seemed to imply that the citizens of a territory had the right to decide on the slavery issue before applying for statehood and crafting a constitution. Southerners would not support the notion that a territorial legislature could prohibit slavery. In the seminal formulation of popular sovereignty, which came from the pen of Lewis Cass, the question remained unanswered, but efforts to obfuscate the issue largely failed as northerners and southerners alike demanded to know the true meaning of the doctrine.

Northern Democrats hoped that popular sovereignty would reunite the discordant factions and end the dispute over slavery in the Mexican cession. Instead, a crisis emerged over the meaning of popular sovereignty itself. Throughout the late 1840s and into the 1850s, northern Democrats like Cass and his senate colleague Stephen Arnold Douglas of Illinois declared that the people—at any time acting through their territorial legislatures—could permit or prohibit slavery. Did popular sovereignty rest in whoever arrived in a territory first, via a territorial legislature, or did it reside in a constitutional convention acting on behalf of the people? On this seemingly esoteric question lay the future of slavery in the territories. Southerners, in keeping with their states rights interpretation of the Constitution, insisted that territories possessed sovereignty only when drafting a constitution and seeking admission to the Union. If a territorial legislature could decide the status of slavery, slaveholders could be quickly and completely barred from emigrating to a territory.

The Compromise of 1850 provided a means of avoiding the slavery extension controversy by using the popular sovereignty formula in the Mexican cession, but southerners remained vigilant because of its implication that the inhabitants held authority over slavery in the territories. In some respects, the accord indeed represented a compromise, as neither North nor South emerged from the incendiary negotiations completely satisfied. But one historian has aptly named the compromise “The Armistice of 1850,” because the slavery debate had not been resolved. Southern unity on the necessity to defend the right to hold slaves in the territories grew stronger during and after the 1850 congressional session, even if the radicals’ calls for secession failed to capture much support. That unity had become clear during the interminable debates on the compromise. “Sir, it is no longer a mere question of party policy in the South,” said Whig Senator Willie Person Mangum of North Carolina, responding 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.”⁶

The armistice held for about four years, but in 1854 the slavery issue reappeared as the pro-expansion Douglas made overtures to organize the remainder of the Louisiana Purchase into territories via his Kansas-Nebraska Act, which enshrined popular sovereignty as the means to address the slavery issue. Once the Little Giant indicated his willingness to include repeal of the Missouri Compromise line within the bill and replace it with popular sovereignty, southerners enthusiastically rallied behind the doctrine because it offered them the possibility to have something they otherwise could not obtain: a new slave state in the form of Kansas. The South, however, paid a mighty price. Northern outrage over the repeal of the Missouri Compromise line gave rise to an “Anti-Nebraska” movement that incorporated antislavery Democrats and Whigs into a political movement arrayed against doughfaces (northerners who favored the southern position in political disputes) and the Slave Power.

⁶ David M. Potter, *The Impending Crisis, 1848-1861*, completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 90; Cong. Globe, 31st Cong., 1st Sess. 300 (1850).

Just as significantly, passage of the Kansas-Nebraska Act created a competition for the future of Kansas between proslavery and antislavery partisans who flocked to the territory. Repeal of the Missouri Compromise line emboldened southern rights politicians who insisted that equal rights necessitated that the territory remain open to slaveholders. Northerners, on the other hand, poured considerable effort and resources into creating antislavery communities whose people could win control of the territorial government and halt the extension of slavery into Kansas. Clearly, the debate over when a territory's settlers could exercise their popular sovereignty had appeared again. It would prove to be the doctrine's undoing. Ultimately, northerners and southerners looked to the Supreme Court for a final determination on its meaning and application to the territories.

As early as 1848, politicians had hinted that the courts should intervene at some point to define how popular sovereignty would operate in the territories. The issue of when or if a territory could prohibit slavery became a matter of constitutional interpretation, a process which culminated in the case of *Dred Scott v. Sandford*. When the Supreme Court endorsed the most extreme southern version of popular sovereignty in its landmark 1857 decision, northerners denounced Chief Justice Roger Brooke Taney and his blatantly proslavery decision and refused to abide the court's pronouncement that a territory could ban slavery only through a constitutional convention and not a moment before.⁷

Southerners, however, had won a Pyrrhic victory in the Dred Scott case. The ongoing antislavery assault against the extension of slavery grew stronger all the time, especially after proslavery partisans in Kansas attempted to foist a proslavery state constitution on the territory. The Lecompton Constitution fiasco in 1858 confirmed the belief of northern leaders that the Slave Power would stop at nothing to make Kansas a slave state. Proponents of the proslavery constitution failed to achieve their goal, however, as Congress rejected the document amidst one of the most dramatic political developments of the 1850s. When the presidential administration of James Buchanan threw its support behind the Lecompton Constitution, Stephen Douglas broke with the Buchanan administration. The chief proponent of popular sovereignty accused the Lecompton Constitutional Convention of making a mockery of his doctrine. Southerners cried foul, but they could not save the proslavery coterie in Kansas from certain defeat.⁸

In a sense, popular sovereignty actually worked in Kansas because the antislavery majority thwarted the Lecompton forces. Indeed, a majority of legitimate residents within the territory opposed slavery and when it became the thirty-fourth state on January 29, 1861, Kansas entered the Union under an antislavery constitution. The interminable conflict over the meaning of popular sovereignty, however, virtually destroyed any sense of intersectional comity within the Democratic Party—a development that contributed to

⁷ For a description of the Dred Scott case, see Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978).

⁸ For the Bleeding Kansas story, see Nicole Etcheson, *Bleeding Kansas: Contested Liberty in the Civil War Era* (Lawrence: University Press of Kansas, 2004).

the coming of the Civil War. In the absence of the bisectonal party, southerners seemed poised more than ever to rally under a states rights, proslavery banner.

Moreover, the successful antislavery onslaught against slavery and the complete failure of the proslavery Kansans to force their will on the free state majority in Kansas, led southerners after 1858 to a radical conclusion. The federal government—by virtue of its role as the states’ common agent in the territories—must protect slave property in the territories. With calls for federal protection of slavery in the territories and the establishment of a territorial slave code, the idea of popular sovereignty withered amidst growing radicalism among southern states rights proponents. To southerners, the election of the Republican Abraham Lincoln to the presidency in 1860—a candidate who did not receive a single electoral vote in the southern states, meant that their section had lost the battle over the extension of slavery, the meaning of popular sovereignty in the territories, and their vision of a confederated nation based on the principles of states rights and localism.
