UM Libraries Depository

103324907011

THE GIFT OF
Author

- THESIS -

THE ORIGIN and HISTORY
of the
DOCTRINE of POPULAR SOVEREIGNTY.

- MILO M. QUAIFE -

Submitted to the Faculty of the GRADUATE DEPARTMENT
of the
UNIVERSITY of MISSOURI

In partial fulfillment of the requirements for the Degree
of
MASTER of ARTS.

June 1905.

*Approved by the Department of History
as satisfactory*
H. M. Trenchard (in charge of Dept.)
Jonas Viles

378.7M71

XQ23

- INTRODUCTORY NOTICE -

In this study of the Doctrine of Popular Sovereignty the principal attention has been devoted to its Origin and its growth as a political policy until Stephen A. Douglas became its champion and secured its adoption by Congress as the "principle" of the Kansas-Nebraska bill. To this portion of the subject, commonly over-looked, the first four Chapters are devoted. The chief source of information for these Chapters, as also for Chapter V has been the Volumes of the Congressional Globe from 1846 to 1854. From these records considerable information not given in secondary authorities has been gleaned, and the attempt has been to transfer it in organized form to the pages of this study.

The study might have been concluded with Chapter V but for a desire to complete the account of Popular Sovereignty by following its history in the later and better known period from Kansas-Nebraska to the election of Lincoln. This last Chapter has been drawn from the secondary accounts available, for the reason that the prominence of the Doctrine during this period has won for

it adequate treatment by historians. The plan of following the account of the Origin and Development of Popular Sovereignty contained in the first four Chapters, with a critical discussion of the Doctrine in Chapter V has necessitated some slight repetition of matter there, but it has been limited to the amount which clearness demands. No attempt has been made to give in the list of authorities a complete Bibliography of the subject for the reason that Popular Sovereignty was so bound up with the Sectional dispute in general that such a list, to be complete, would lead insensibly to a Bibliography of the latter subject. The works listed therefore include only those which have been used, or which are cited in support of statements made.

.

III

- LIST of AUTHORITIES -

CONGRESSIONAL GLOBE and APPENDIX, 1846 - 1861 inclusive, -
John C. Rives Publisher, Washington.

- Books -

- BENTON, Thomas Hart, - Thirty Years' View; 2 Volumes,
D. Appleton and Company, New York, 1897.
- BURGESS, John W., - The Middle Period, 1817 - 1858,
Scribner and Sons, New York, 1898.
- CLUSKEY, M.W. , - The Political Text-book or Encyclopedia,
Cornelius Wendell, Washington, 1857.
- CURTIS, George Ticknor, - Constitutional History of the United
States; Edited by Joseph C. Clayton,
2 Volumes, Harper and Brothers,
New York, 1896.
- DAVIS, Jefferson, - Rise and Fall of the Confederate Government
2 Volumes, Appleton, New York, 1881.
- GREELEY, Horace , - The American Conflict, 2 Volumes, O.D. Case
and Company, Hartford, 1885.
- HART, Albert Bushnell, - Handbook of the History, Diplomacy,
and Government of the United States,
University Press, Cambridge, 1903.

McLAUGHLIN, Andrew C. ,-- Lewis Cass (American Statesman Series) Houghton, Mifflin and Company Boston, 1891.

MORSE, John T. Jr., - - Abraham Lincoln, (American Statesman Series) 2 Volumes Houghton, Mifflin and Company, Boston, 1893.

NICOLAY, John G. and John Hay, -- Abraham Lincoln, a History, 10 Volumes, Century Company, New York, 1890.

RHODES, James Ford, -- History of the United States from the Compromise of 1850, 5 Volumes (incomplete) Harper and Brothers, New York 1893 - .

SCHOULER, James ,-- History of the United States of America under the Constitution, 5 Volumes, Dodd, Mead and Company, New York.

SCHURZ, Carl ,-- Life of Henry Clay, (American Statesman Series) 2 Volumes, Houghton, Mifflin and Company, Boston, 1892.

SHEPARD, Edward M. .-- Martin Van Buren, (American Statesman Series) Houghton, Mifflin and Company 1891.

SPRING, L.W. .-- Kansas, ^{Commonwealth} (American Statesman Series) Houghton, Mifflin and Company, Boston, 1890.

STANWOOD, Edward, - A History of the Presidency, Houghton,
Mifflin and Company, Boston, 1901.

STATUTES at LARGE and TREATIES of the UNITED STATES,
Volume IX, George Minot, Editor,
Little and Brown, Boston, 1851.

STEPHENS, Alexander H. , - A Constitutional View of the late
War between the States, 2 Volumes
National Publishing Company,
Philadelphia.

THAYER, Eli , - History of the Kansas Crusade, Harper and
Brothers, New York, 1889.

TRENT, W.P. , - Southern Statesmen of the Old Regime,
Crowell, New York, 1897.

VON HOLST, H.E. , - The Constitutional and Political History
of the United States, seven Volumes,
Callaghan and Company, Chicago, 1881.

VON HOLST, H.E. , - John C. Calhoun (American Statesman Series)
Houghton, Mifflin and Company, Boston, 1892.

WILLOUGHBY, W.W. , - The American Constitutional System,
Century Company, New York, 1904.

WILSON, Henry , - History of the Rise and Fall of the Slave
Power in America; ninth edition, 3 Volumes
Houghton, Mifflin and Company, Boston, 1872.

- PERIODICALS -

AMERICAN HISTORICAL REVIEW, Volume X. No. 2; "The Treaty
of Guadalupe Hidalgo". by
Jesse Reeves.

HARPER'S MONTHLY MAGAZINE, Volume XIX, No. 5; "The Dividing
Line between Federal and Local
Authority" by Stephen A. Douglas.

IOWA JOURNAL of HISTORY and POLITICS, Volume III. No. I;
"The Genesis of Popular Sover-
eignty". by Allen Johnson.

NILES NATIONAL REGISTER, 1846 - 1854.

.

VII

- TABLE of CONTENTS -

CHAPTER I :- ORIGIN of the DOCTRINE.

Introductory,	page 1
Definition of POPULAR SOVEREIGNTY,	" 2
The political situation during the Mexican War,	" 4 2
Introduction of the Wilmot Proviso,	" 6
Significance of the Proviso; its failure,	" 9
"Session of the Three-Million Bill" : Parties in Congress,	" 11
Elements which contributed to the birth of POPULAR SOVEREIGNTY,	" 14
✓ Earliest indication of the Doctrine; speeches of S. F. LEAKE,	page 17
Arguments of Ingersoll and Wilmot,	" 20
✓ Speech of Howell Cobb; progress in the evolution of the Doctrine of POPULAR Sovereignty,	" 23
✓ The Doctrine is taken up by Lewis Cass,	" 24
Attitude of Cass toward the Wilmot Proviso,	" 27
Situation of the Democratic Party in 1847,	" 28
✓ Cass's effort to solve its difficulties; the Nicholson letter,	" 30

VIII

✓ Discussion of the Nicholson letter; the first formal enunciation of the Doctrine of TERRITORIAL SOVEREIGNTY,	page 31
Its further elaboration by Senator Dickinson,	" 36
✓ Dickinson's resolutions; his speech of January 12th 1848,	" 37
✓ The share of Cass and Dickinson in the Origin of the Doctrine,	" 39

CHAPTER II:- POPULAR SOVEREIGNTY in the CAMPAIGN of 1848.

Reception of the new Doctrine by the country,	page 41
Reception by Congress; speech of Senator Yulee,	" 42
Bagby's resolutions,	" 44
Speech of Senator Rhett of South Carolina,	" 45
The situation of Political Parties; Relation of POPULAR SOVEREIGNTY to Calhoun's doctrine of Non-intervention,	page 47
Ambiguous attitude of the Democratic Party upon the Territorial issue,	" 49

IX

Yancey's resolution,	page 51
The significance of the action of the party upon the Yancey resolution,	" 52
Result of the Presidential election,	" 55
Result of the Presidential Campaign upon the Doctrine of POPULAR SOVEREIGNTY,	" 55

CHAPTER III :- The TERRITORIAL ISSUE in the COMPROMISE of 1850.

Resume of the Congressional contest over the organization of Oregon,	page 57
The Clayton Compromise,	" 58
Continuation of the Territorial dispute, POPULAR SOVEREIGNTY in the Congressional session of 1848-49,	" 58
Plan of Douglas to avoid the slavery issue,	" 61
Failure of the 30th Congress to solve the Territorial question,	" 62
Changed condition of affairs which confronted the 31st Congress,	" 63
President Taylor's plan,	" 63
Effect of the President's policy; a crisis developed in the Territorial dispute,	" 64

Henry Clay attempts to settle the Sectional controversy; his resolutions of Jan. 29th 1850,	page 66
Reception and discussion of the resolutions,	" 67
The Committee of Thirteen created; its report,	" 69
The ambiguous situation created by the Committee's report,	" 70
The debate upon the report,	" 72
Soule's amendment; the crucial point of the Sectional dispute involved,	" 73
The amendment adopted,	" 75
The Norris amendment,	" 76
Comparison of the attitude of Northern and of Southern men toward the Compromise,	" 76
The significance of the Norris amendment,	" 78
Analysis of the debate and vote upon it; the attitude of the Senate toward POPULAR SOVEREIGNTY,	" 79
The amendment adopted,	" 81
Consideration of the degree in which the vote upon the Norris amendment was influenced by an adherence to the Doctrine of POPULAR SOVEREIGNTY,	page 81

The nature of the Territorial Compromise of 1850; its ambiguity,	page 85
The House concurs in the Compromise reached by the Senate,	" 86
POPULAR SOVEREIGNTY the basis of the Compromise of 1850,	" 88

CHAPTER IV :- THE KANSAS-NEBRASKA BILL; The final
DEVELOPMENT of POPULAR SOVEREIGNTY.

The "finality" of 1850-1854,	page 89
Douglas brings the "finality" to a close,	" 90
The attempt to organize Nebraska Territory in 1853; its significance,	" 91
Renewal of the attempt; Dodge's bill; action of the Committee on Territories,	" 94
Discussion of the Committee's report; the "principle" of the Compromise of 1850,	" 95
Webster's speech upon the Soule/ amendment,	" 97
The evidence that the House in 1850 did not repeal the Missouri Compromise,	" 98
Motives of Douglas in re-opening the slavery dispute; Von Holst's theory,	" 100

XII

Another explanation,	page 102
The motive of personal interest,	" 104
The caucus bargain between the two branches of the Democratic Party,	" 105
Dixon's amendment to the Nebraska bill,	" 107
Taken up by Douglass. A new bill reported; its provisions,	" 108
The meaning of Dixon's approval of the new bill,	" 110
Opposition to the bill. The Appeal of the Independent Democrats,	" 111
Alterations of the bill forced upon Douglas,	" 112
The interpretation clause of the bill; the "little stump speech",	" 113
Why the "little stump speech" was inserted,	" 114
Divisions among the supporters of the bill,	" 115
Chase's amendment; its rejection,	" 116
Passage of the bill by the Senate,	" 117
The bill in the House,	" 117
It becomes a law,	" 120
Comparison of the Compromise of 1850 with the Kansas-Nebraska Act with respect to POPULAR SOVEREIGNTY,	page 120
The bearing of the Missouri Compromise upon the adoption of POPULAR SOVEREIGNTY in 1854,	" 120 (c)

CHAPTER V :- Some considerations of POPULAR SOVEREIGNTY ;
the CONSTITUTIONAL THEORY and the POLITICAL
POLICY.

The two periods in the history of POPULAR SOVEREIGNTY,	page 121
Circumstances of its Origin reviewed,	" 121
The arguments of the Wilmot Proviso party,	" 122
The South at first in favor of extending the Missouri Compromise line,	" 125
The new position of Southern extremists,	" 125
Rhett's argument,	" 126
Calhoun's resolutions,	" 127
The problem Cass attempted to solve,	" 128
The ambiguity of the Nicholson letter,	" 129
The arguments of the advocates of POPULAR SOVEREIGNTY,	" 131
Attractiveness of the Doctrine to Western men,	" 133
The Constitutional argument for POPULAR SOVEREIGNTY,	" 134
Expectations of its supporters,	" 137
The reasons for their lack of realization in Kansas; defects of the political theory,	" 138
Difficulty of determining when the doctrine should begin to operate,	" 139

Conditions invited a Sectional contest,	page 143
Inconsistency in the application of	
POPULAR SOVEREIGNTY,	" 144
Chase's amendments,	" 145
Their rejection a refutation of the	
Constitutional arguments in favor of	
the Doctrine,	" 145

CHAPTER VI :- POPULAR SOVEREIGNTY in KANSAS and in NATION-
AL POLITICS ; from the KANSAS-NEBRASKA Act
to the CIVIL WAR.

Expectations concerning the Kansas-Nebraska	
Act,	page 147
Eli Chayer and the Plan of Freedom,	" 147
The Missouri Blue Lodges,	" 149
The first invasion of Kansas,	" 149
The course of action of the Slavery and	
Anti-slavery parties,	" 150
The intervention of the Federal Government,	" 152
The Kansas issue at Washington,	" 153
The Democratic National Convention of 1856,	" 155
Significance of the election of Buchanan,	" 156
The approaching rupture of the Democratic	
party,	" 157

XV

The Dred Scott case,	page 158
Douglas's difficulty ; his	
Springfield speech,	" 159
The Lecompton Constitution,	" 160
It is adopted by Buchanan ; Douglas breaks	
with the Administration,	" 163
The end of the Lecompton controversy,	" 166
Continuation of the quarrel in the	
Democratic party,	" 167
The Senatorial canvas of Douglas,	" 168
✓ The Lincoln-Douglas debates,	" 168
✓ The "Freeport Doctrine",	" 170
Its effect on the political situation,	" 171
The Democratic quarrel in Congress in the	
Session of 1858 -59,	" 172
Continued divergence of the factions,	" 173
The Charleston Convention of 1860,	" 174
Adjourn ^{ment} to Baltimore ; Douglas nominated,	" 175
Results of the election of 1860,	" 176
Disappearance of POPULAR SOVEREIGNTY; final	
estimate of the Doctrine,	" 176

CHAPTER I:-

ORIGIN of the DOCTRINE.

From the time the Abolitionists became aggressively active, until the beginning of the Civil War nearly thirty years later, the country was agitated by the discussion of the question of slavery. During that portion of this period extending from the annexation of Texas on, the slavery question was the dominant issue in National politics, all other issues and interests being completely subordinated to it. As time went on the issue resolved itself into a struggle for political supremacy between the slaveholding and the non-slaveholding Sections of the country; the former strove to extend slavery to the new Territories and States that were being created; the latter to restrain it within its existing limits. As the contest continued and the Sections became more estranged and bitter toward each other, attempts were made at different times to compromise the political dispute. The result of one such

attempt was the production of the Doctrine of Popular Sovereignty the history of which forms the subject matter of this study.

By the Doctrine of Popular Sovereignty is meant the theory that the people of a Territory have sovereign power to control all that pertains to their local affairs. As a political doctrine it was never practically applied to more than the one question of the control of slavery; so that, as the term is ordinarily used, the Doctrine of Popular Sovereignty meant that the people of a Territory should have the power to dispose of the institution of slavery as they saw fit. This theory, or rule of political action, originated in the discussion over the extension of slavery to the territory gained by the United States as a result of the Mexican War.

To set forth the circumstances attending the origin of the Doctrine under discussion one must begin with an account of the state of politics in the United States during the Mexican struggle. The War was conducted by a Democratic administration. It was a Democratic war. The measures of the administration were therefore supported by the Democrats as a party. The Whigs were at heart opposed to the War. They felt that it had been begun in defiance of both justice and

the Constitution (1). Before it began they denounced the war policy of Polk as unjust and dishonorable (2). But the clever tactics of the supporters of the Administration and the lack of moral backbone on the part of the majority of the Whig congressmen combined to force them, in spite of their opposition, to vote with their opponents for a declaration that the war was caused by the aggression of Mexico. The Democratic majority prefixed to the bill appropriating supplies for the support of Taylor and the American army, a preamble to the effect that war existed "by act of the Republic of Mexico"(3). This modern "Morton's Fork" forced the Whigs either to play into the hands of their Democratic opponents by putting themselves on record as favoring the war, to which they were opposed, or else to incur the charge of refusing to support the American army in the face of the enemy, which would entail the wrath of the people and consequent loss of re-election. The Whigs bitterly resented the tactics which placed them in this predicament, but their desire for re-election proved stronger than their attachment

(1) See speech of Lincoln:-Cong.Globe,30th Cong.1st Session App.page 1043.

(2) Schurz:-Henry Clay,Vol.II,page 387.

(3) Act of May 11th 1846,Globe:39th Cong.1st Sess.page 795.

to Whig principle, and with the exception of two Senators and fourteen representatives, they all voted for the bill with its "palpable falsehood" as Clay, their great leader, denounced it (1). After the war had been thus begun, the Whigs followed the policy of voting without opposition for whatever supplies the Administration requested, in order that they might avoid the charge of attempting to cripple the government in the face of a foreign enemy. But they neglected no opportunity to belittle and discredit the war as an unrighteous, partisan enterprise (2).

From the beginning of the war it was evident that it would result in the acquisition of Mexican territory by the United States (3). The opponents of the Administration believed that Polk had forced on the outbreak of hostilities with this express object in mind, (4) a belief which is still held by many. But whatever misconception as to the real cause of the war there may have been at the time of its

(1) Schurz:--Henry Clay, Vol. II, page 289.

(2) (ibid) page 287.

(3) Article on "The treaty of Guadalupe Hidalgo" American Historical Review, January 1905.

(4) Schurz:--Henry Clay, Vol II, page 290.

declaration in May,- whether it existed "by act of Mexico" as Congress declared (1) or was "actuated by a spirit of rapacity and an inordinate desire for territorial aggrandizement" as Clay asserted (2), the President's message to Congress on the eighth of the following August left no longer any doubt of the intention of the Administration to acquire Mexican territory as its result. In this he asserted his desire for a peace just and honorable to both parties. The chief obstacle to this, the message said, would be the determination of a satisfactory boundary, in the adjustment of which "we ought to pay a fair equivalent for any concessions that may be made by Mexico". The President therefore asked Congress for the sum of \$2,000,000 to be used at his discretion in negotiating a treaty of peace (3). The reason for this unusual request is found in the condition existing in Mexico. The Mexican people were known to be violently opposed to any cession of territory. But the government was in a bankrupt condition. Moreover, it was of such a character that the suspicion existed that it might betray the people and make the cession of territory in

(1) Act of May 11th, 1846.

(2) Quoted in Schurz' Henry Clay, Vol. II, page 290.

(3) President's message, August 8th, 1846, -Globe, 29th Cong. 1st Session page 1211.

spite of their opposition if a sufficient inducement were offered. It was not unnatural, under these circumstances, for Polk to think that if the demand for the desired territory were accompanied by the proffer of an immediate advance of a portion of the purchase money, the Mexican government would consent to the cession.

Thus the intention of the Administration to acquire territory was now fairly avowed. It was received throughout the country with varying feelings of approbation or alarm. The question could not be considered on its own merits, but was entirely subordinated to another,--the future status of the territory with respect to slavery. The anti-slavery party and the North in general opposed all extension of the area of slavery. The slave states, on the other hand, were loud in the demand that ~~their~~ peculiar institution should have free entry into the territory that was likely to be acquired.

It would seem strange if Congress, under the circumstances, had voted the money the President requested without considering how the slavery dispute which was sure to follow such action was to be settled. It was not a case, as it would be today, of simply securing an acquisition of territory for the country as a whole. It must inevitably serve to

increase the political power of one or other of the Sections into which the country was divided. Each Section would strive to join the new territory to itself. Accordingly when, on the same day the President's message was received, a bill was introduced into the House by McKay of North Carolina making the requested appropriation (1), a sharp debate sprang up. White of New York said he could not sanction the bill unless it were amended so as to forever exclude the possibility of extending the institution of slavery over the territory (2). He was followed by Winthrop of Massachusetts who denounced the Administration for placing its opponents in a false light. Winthrop and White were both Northerners and Whigs and their opposition was taken as a matter of course. Their remarks did not occasion any particular surprise. But those of Wilmot, the following speaker, had a different significance. White had called upon the opposite side of the House,--the Democratic,--to propose such amendments as would prevent the acquisition of territory for the spreading of the institution of slavery. It is not likely that he himself expected that his request would be complied with; yet

(1) Cong. Globe: 29th Cong. 1st Sess. pages 1213 - 1217.

(2) (ibid)

this is what was now to happen.

Wilmot was a Democrat from Pennsylvania who stood well with the Administration and the South (1). He had supported the war thus far, as a necessary and proper one, in the belief that it was not to be a war of conquest (2). He did not oppose the acquisition of territory provided it were made on proper conditions; but, he announced himself as unalterably opposed to the extension of slavery to any acquisition that might be made. He therefore proposed as an amendment to McKay's appropriation bill his famous Proviso which was, in substance, that slavery and involuntary servitude, except in punishment of crime, should forever be prohibited in any territory that might be acquired. The amendment was adopted by a decisive majority, - eighty-three votes against sixty-four, - and the appropriation bill, as amended, being put to a vote, was adopted by a slightly larger majority, - eighty-seven against sixty-four (3).

The war had run but a few months, yet the territorial

(1) Henry Wilson: Rise and Fall of the Slave Power, Vol. II.
page 16.

(2) Statement in Cong. Globe: 29th Cong. 1st Sess. page 1214.

(3) (ibid, page 1214 and following)

question thus opened was to furnish food for debate for many years to come and threaten the existence of the Union. In this first skirmish in the House the party of slavery-restriction gained an easy victory, but it seems clear that the reason lay in the fact that the question raised took Congress by surprise. The President's message was received on Saturday August 8th. Congress was to adjourn at noon the following Monday. The message was taken up for consideration at the session Saturday evening and an attempt made by the Democratic majority to stifle debate and rail-road the appropriation through. The Whigs charged that the President had withheld his request until the very close of the session for the deliberate purpose of preventing debate upon it. This charge does not appear improbable or unjust. The Mexican situation had not transpired suddenly but was the result of gradual development of which the President was well informed. He must have had his proposal to Congress under consideration for some time and there is no apparent reason, other than the one given, for delaying it until the hurry of the closing hours of the session had begun. However this may be, the fact is clear that the Administration supporters in Congress desired to rush the appropriation through. Two hours were allowed for the entire debate and each speaker was limited

to ten minutes (1). Under these circumstances, Wilmot's amendment was proposed. It was passed so quickly that there was little time for the Democratic leaders to line up their followers against it. The amendment was proposed by a Democrat, who was himself an Administration man. Members, voted therefore according to their personal feeling on the slavery question rather than in obedience to party demands. Furthermore, there is evidence, which will soon appear, that the leaders themselves did not realize the importance of the Proviso.

The bill went to the Senate the following Monday, the last day of the session. When taken up for consideration Lewis of Alabama moved to amend it by striking out Wilmot's Proviso. Hereupon, John Davis of Massachusetts secured the floor and talked until the hour of adjournment, defeating thus both the bill and the Proviso. Here now is the proof that the effect the Proviso was to have was not realized by the supporters of the Administration at the time. It was not against Wilmot but against Davis that the Administration poured out its wrath over the defeat of the appropriation (2)

(1) Cong. Globe: 29th Cong. 1st Sess. pages 1212, 1213.

(2) Speech of Wilmot Feb. 8th, 1847 : Globe: 29th Cong. 2nd Sess. App. 314.

Later on, when the political bearing of the Proviso became manifest, the attack was shifted to its advocates where it properly belonged. The Davis affair was but an incident and had little effect on the course of events. Davis favored the Proviso and it was with no hostility to it that he talked it to death. It is not probable that the bill could have passed in any event, so near the end of the session, and Polk himself, rather than Davis, was responsible for its failure in not sending his message to the Senate sooner(1). The attempt had been made to execute a partisan maneuver,--to gain a desired appropriation without allowing opportunity for discussion. It had failed and the responsibility for the failure rests with its authors.

Congress adjourned until December and the President was left without the appropriation to assist him in negotiating terms of peace. The war was carried on in the ensuing months in a manner very satisfactory to the United States (2). More territory was over-run than even the war-party wished to retain, and the desire for peace was felt, not only by those who had opposed the war, but also by the Administration by which it had been begun. Polk tried to

(1) See Davis' Defense, Globe: 29th Cong. 2nd Sess. App. page 420

(2) Von Holst: Constitutional History of U.S. Vol III.
Chapter II.

get the Mexican government to enter upon negotiations for peace, but without success (1). The reasons which led him to ask for the appropriation at the close of the preceding session still existed when Congress met ~~again~~ in December, and, in his annual message, the President renewed his request. On January 19th a bill was introduced in the Senate similar in scope and purpose to the two-million bill of the last session, but appropriating this time the sum of three million dollars (2). The discussion over the Wilmot Proviso was resumed in connection with the three million bill. It occupied the attention of Congress to such an extent that Von Holst has named this the "Session of the Three-Million bill" (3).

During the long and warmly contested debate on the bill, the sentiment of members of Congress, as also of the people of the country, on the question of slavery in the prospective territory, underwent a process of crystallization and out of the uncertainty and confusion of opinion which for

(1) See "The Treaty of Guadalupe Hidalgo", American Historical Review, January 1905.

(2) Cong. Globe: 29th Cong. 2nd Sess. pages 204 and 205.

(3) Constitutional History of U.S. Vol. III, Chapter II.

a time prevailed, several distinct party groups were slowly evolved (1). Party distinctions were disregarded and sectional considerations became paramount. At first the people of the North were almost unanimously in favor of the Proviso; the South was united against it (2). The organization of the Oregon country was up for discussion at the same time and the Southern Congressmen generally were in favor of settling the dispute for both this and the prospective Mexican cession by extending the Missouri Compromise line to the Pacific. They attempted to have this adopted in the Oregon bill but it was rejected by the North, and when convinced that this decision was final the South gave it up. Calhoun, at whose instigation the proposal for the extension of the Missouri Compromise line had been made, (3) immediately took his stand on the proposition that the citizens of the slaveholding states had a constitutional right to carry their slaves, as property, into any and all territory belonging to the United States. He formulated his

(1) Henry Wilson's Rise and Fall of the Slave Power in America Vol.II.page 22.

(2) Von Holst : Constitutional History, Vol.III, pages 305-307.

(3) Statement of Calhoun, Globe : 29th Cong.2nd Sess.page 454.

position in a series of resolutions which he introduced in the Senate on the 19th of February and accompanied them by a speech (1). A party began to gather around him on ground as radical as that taken by the supporters of the Wilmot Proviso on the other side of the question. Between these two extremes a compromise party arose which took the position that Congress had no power to decide the question of the status of the institution of slavery in the Territories, and that it should be left to the people inhabiting them to allow or exclude slavery as they saw fit. This was the Doctrine of the Popular Sovereignty of the Territories whose origin must now be traced.

A consideration of the Origin of Popular Sovereignty leads at once to the realization that the investigation must be divided into two fields. The one deals with the appearance of the Doctrine as a political dogma. This is the aspect of Popular Sovereignty which it is the purpose of this study to treat. The other deals with those elements in the life of the people which were the underlying basis of the Doctrine and furnished the soil, as it were, from which the

(1) Cong. Globe: 29th Cong. 2nd Sess. pages 453 - 455.

political dogma sprang. This phase of the subject does not properly fall within the scope of this study, and it will be discussed only so far as is necessary to show clearly its relation, as a back-ground, to the Political Doctrine.

The opinion was formerly quite prevalent that the Constitution was a creation made to order,—that it sprang, a new invention, from the brains of the members of the Convention. This view has been discarded however and the belief of scholars now is that the Constitution is an expression of the political experience of the Colonies during a long period of time. So it is with the political Doctrine of Popular Sovereignty. It did not spring full-fledged from the brain of Douglass or any other man. Its appearance in the field of politics as a practical doctrine to be advocated and followed can be traced with considerable clearness. Even this will be shown to have been an evolution. But as thus evolved it was, like the Constitution, not a creation ^{made to order}, but, to a certain extent its elements were pre-existent in the National life. A recent writer on the subject thus ~~on~~ expresses this view:— "The tap-root from which Popular Sovereignty grew and flourished was the instinctive attachment of the Western American to local government; or, to put the matter conversely, his dislike of external authority.

Intense individualism, bold initiative, strong dislike of authority, elemental jealousy of the fruits of labor, and passionate attachment to the soil that has been cleared for a home, are qualities found in varying intensity among the Colonists from New Hampshire to Georgia"(1). He considers that Popular Sovereignty was an expression of this political habit of self-reliance and dependence upon local government which was a result of the conditions and exigencies of frontier life. And he endeavors to show that the Sovereignty of the people of the Territories had been clearly demonstrated in actual frontier life before it was suggested as a political doctrine in Congress. More will be said on this subject at a later point in the study. It is sufficient here to say that the existence of the political habit just described did bear this relation to the Origin of the political Doctrine; it was relied upon by the formulators of the Doctrine to gain for it support and acceptance. The Doctrine was produced to meet an existing situation. It was formulated partly from, and partly because of, this pre-existing element. From this the architects of the political Doctrine may have drawn the idea of the structure

(1) Prof. Allen Johnson, in Iowa Journal of Hist., Politics January 1905.

they erected. They certainly gave to it the form it received because from its likeness to this habit of mind of the Western people it would more readily gain acceptance.

As has been stated, the appearance of the Doctrine in politics can be shown with considerable definiteness. It is closely connected with the Doctrine of Congressional Non-intervention in the question of slavery in the Territories of which Calhoun was the exponent. The earliest indication of it which I have found occurs in January 1847. On the fifteenth of that month a bill for the establishment of a Territorial government for Oregon was on its passage in the House of Representatives (1). An amendment by Burt of South Carolina proposing to effect the extension of the Missouri Compromise line to the Pacific had just been defeated. At this juncture Mr. S. F. Leake of Virginia made a speech attacking the spirit, which he considered the North had shown, in not observing the provisions of previous compromises (2). He regarded the present defeat of Burt's amendment as a

(1) Cong. Globe: 29th Cong. 2nd Sess. page 187.

(2) Speech given in full in App. to Globe: 29th Cong. 2nd Sess. page 111 and following.

repudiation by the North of the Missouri Compromise, and as the annunciation of a decision to admit no more slaves *states* whether North or South of the line ^{of} 36 degrees, 30 minutes.

Contrasting the line of conduct that had been ~~pursued~~ by North and South on the subject of slavery he said:- "We (of the South) have just the same right to make the existence of slavery a condition of admission into the Union as the North has to make its non-existence. But we have never made such a question. 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. If the States have, upon their application for admission, a republican form of government that is all we can require".

These words seem to contain the essence of the Doctrine of the Popular Sovereignty of the Territories; but a ~~consideration~~ of the general attitude of Leake on the slavery question leads to the conclusion that what he had in mind was far different from the idea of Popular Sovereignty as it was later developed by Cass, Douglass, and others. A month after this, -Feb. 17th, -he interrupted the debate in the House to give what he considered the true position of the South on the question of slavery in the Territories. "They (Southern men) disclaim the authority or power of this

government to interfere to any extent whatever with the rights of slave property in any territory hereafter to be acquired"(1). By a comparison of these remarks with the speech of Jan.15th and taking into account other facts which are pertinent ,one is led to think that Leake was not entirely clear in his own mind as to his position. "It (slavery) is a matter which ought to be left to the people of the States and Territories to arrange for themselves"(Jan. 15th) and, "they disclaim the power of this government to interfere with the rights of slave property in any territory to be acquired"(Feb.17th). How can the first statement be reconciled with the second? If there are "rights of slave property" in a Territory how could the people of the Territory arrange the slavery question for themselves ? Other facts must be adduced by which to interpret these statements. Leake was a bitter opponent of the Wilmot Proviso, and one of the first of Southern Congressmen to threaten Dis-union if the North persisted in its attitude toward slavery (2). On January 15th too, Rhett of South Carolina had given the first exposition of what soon developed into the Calhoun Doctrine of Non-intervention and the property rights of slavery (3).

(1) Globe:29th Cong. 2nd Session,page 444.

(2) Globe:29th Cong.2nd Sess. App. page 113.

(3) " " " " " " " 244.

According to this Doctrine, the people of a Territory possessed the right to decide, in their constituent convention, the question of slavery but until then its existence in the Territory was guaranteed by the Constitution (1). These facts furnish the key to Leake's idea. Slavery had rights in the Territories yet the people of the Territories were to arrange the question for themselves. Evidently this could only mean in the constituent convention. If this reasoning be accepted, as I think it must, it follows that Leake did not hold the theory of Popular or Squatter Sovereignty as applied to the Territorial condition. Yet his statements are important because they furnish the starting-point in the evolution of that political Doctrine. The progress of this evolution will now be unfolded.

This starting-point of the Doctrine was humble enough; put forward in an ambiguous way by an obscure member of the House of Representatives; yet from it developed the political policy that occupied the Nation for a decade before the Civil War, and caused the downfall of its oldest political party.

On February 8th, C.J. Ingersoll of Pennsylvania, speaking against the Proviso, advocated waiting until the people of the Territories should meet to form their state

(1) Globe: 29th Cong. 2nd Session, pages 454 - 455.

constitution and then to let them decide the question of slavery (1). There is nothing new in this, but it is an advance in that it is a clearer formulation of what Leake seems to have had in mind.

Wilmot himself took up this proposition on the same day (2). He was satisfied with this he said. All he asked was the neutrality of the government on the question. And yet the gulf was wide between his position and that of Leake and Ingersoll. By neutrality, as Wilmot understood it, the government was to prohibit slavery in the Territories so long as they remained in the Territorial status. Upon entering Statehood they were to be free to decide the question and Wilmot would not oppose the admission of the State because of a decision in favor of slavery. Upon this point he was in agreement with Rhett, Leake, and Calhoun (3). But their attitude on the Territory was exactly opposite, one party advocating the rights of slaveholders to carry their slaves into the Territory, the other, that "while it is territory under our control and guardianship its free character shall be sacredly preserved" (4).

(1) Globe: 29th Cong. 2nd Sess. page 352, also App. to same p. 317.

(2) (ibid)

(3) See preceding references to speeches of these men.

(4) On Wilmot see Globe: 29th Cong. 2nd Sess. page 354, also App. 317.

In this difference lay the essence of the whole territorial dispute. If Wilmot's view were to prevail and slave owners could not take their slaves into the Territory it would be settled entirely by non-slaveholders and chiefly by anti-slavery men. There would then be no question in the constituent convention of introducing slavery; there would be no party among the people to desire it and the result would be a non-slaveholding State. On the other hand, the free admission of slavery would tend to prevent the immigration of anti-slavery settlers since slavery and free white labor were antagonistic. Under this policy the opposite result would be produced.

In view of these facts, the statement of Wilmot that he was satisfied and only asked for the neutrality of the government has a peculiar significance. It foreshadows what was to be a prominent characteristic of the Doctrine of Popular Sovereignty, and a source of deception and mischief throughout its entire career. I refer to the double meaning attaching to the word "neutrality". Wilmot said he was satisfied and only asked for governmental neutrality. Yet, as to the practical effect of "neutrality" the two parties were as far apart as the Poles. The term "neutrality" was soon dropped for that of "non-intervention" but the difference of interpretation which is seen in the old term was carried over into the new one and was the cause of important effects

in our political history.

On February 9th, the day after Wilmot had spoken, Howell Cobb of Georgia replied to him (1). He severely arraigned Wilmot's conception of neutrality and went on to develop at considerable length the proposition that the question of slavery should be decided by the inhabitants of the Territories after they had been thrown open to the two sections of the country to indulge in a formal contest of immigration and settlement. He claimed the South was fair in its demands, the North unreasonable. The South was willing to extend the Missouri Compromise line and allow the exclusion of slavery from the Territory north of it, while they did not insist that the States formed south of it should be slave States, but only that slaveholders might be free to enter the Territories along with settlers from other parts of the country. If then the North could send in enough settlers to exclude slavery when the State governments were formed the South would acquiesce in the decision (2).

(1) Globe: 29th Cong. 2nd Sess. pages 360 - 363.

(2) "The gentleman from Pennsylvania said that all the North asked was that this government should occupy a position of neutrality. What kind of neutrality? . . . Is the gentleman willing that the government should observe that spirit of neutrality which he professes to approve? Is he willing to trust the American people, the settlers upon this Territory, to determine for themselves the nature of the institutions under which they shall live,

There is in this speech a perceptible advance toward the idea of the Sovereignty of the Territories. It is true the position taken is essentially the same as that held by C.J.Ingersoll with which Wilmot had professed to be satisfied. The advance consists in the manner of defending that position. The idea of a peaceable contest between North and South for supremacy in the territory south of the Missouri Compromise line is brought forward prominently and expressed in striking terms. Cobb is not announcing any theoretical right

and the form of government to which they shall be subject? . .

. . You(the North) have much greater strength; your population far exceeds ours; you say that your people are more happy,prosperous,and enterprising than ours; that the South has lost her energy and enterprise; but yet you are not willing to enter the field of contest with them. If the people of my own Section are so dead to every principle of enterprise and industry,why is it that our Northern brethren are not willing to meet them in the fair and open field of contest where industry and enterprise shall decide? Throw open this Territory and let the weak,enervated South,as you call her,come forward and meet you in all your strength and the palm shall be yielded to the victor cheerfully. Sir,I speak the sentiments of the South; we are willing to acquiesce in the division of the matter which shall thus be made".

of the territorial population to Sovereignty such as Cass and Douglass later argued for. In conceding to the North the exclusion of slavery in the Territory north of the thirty-six thirty line, he admits by implication the absence of any such right. But he does advocate as an expedient course to pursue, the submission of the slavery question to the decision of the settlers in the territory south of that line. Not that the settlers are to decide the question while the territorial status remains, which was the essence of the Doctrine of Popular Sovereignty in its fully developed state. Cobb expressly withholds this power; the Territories as such, are to be open to slavery. But he does propose to invite the people of the two Sections to a contest, with the prospect of a free or a slave State, according as the decision goes, held up as the reward of victory. It was just such a contest that later took place in the settlement of Kansas. The idea of the Sovereignty of the Territory was still lacking, but it required only one more stage in the evolution to reach it.

An examination of the discussions in Congress, during the early months of 1847, over the Wilmot Proviso and the Oregon Territorial bill, establishes the fact that there was being developed a fairly well-defined drift of sentiment in favor of Congressional Non-intervention in the question of

slavery in the new Western Territory. It shows that the lead was taken by Southern men; that there was a difference of ideas as to details, a groping, as it were, after a Doctrine with which to combat the Wilmot Proviso and to defend the interests of slavery. With a considerable degree of unanimity these Southern politicians took up the idea of Congressional Non-intervention, though there was lack of agreement as to definition and to the basis of this policy, whether it rested upon Constitutional right or upon expediency. This condition of the political atmosphere at Washington must be fully comprehended ~~at~~ the next and final stage in the evolution of the Doctrine of Popular Sovereignty is to be understood. This was accomplished mainly by Lewis Cass, the reputed inventor of the Doctrine, and in discussing it a digression must be made.

The point of view must be shifted to Cass himself in order to bring out his connection with the Doctrine. Cass was a Senator from Michigan. He had been a life-long Democrat, and was now one of the leading supporters of the Administration in the Senate. He held a position of great influence in his party and as the unpopularity of Polk and his consequent ineligibility as party leader for another term became evident Cass was looked upon as the probable Presidential nominee for the election of 1848 (1).

(1) McLaughlin's Lewis Cass, page 231.

When the Wilmot Proviso first came up in August 1846, Cass, like most Northern politicians, was in favor of it and expressed his regret that John Davis' action in the Senate had denied him the opportunity of casting his vote for it (1). The next session of Congress was the one devoted to the Three-Million bill and, as the contest over the Wilmot Proviso went on some of the Northern men, Cass among others, ceased to give it their support. In 1850 Cass explained his change of attitude by saying that when the Proviso first came up he had favored it but had not made any close examination of the Constitutional power of Congress, nor did he realize the consequences that would result from the passage of the measure. But at the next session, seeing the effect it was to have on the South, he had opposed it (2). On the 3rd of February 1847, he wrote to a friend his conviction that the Proviso would not pass the Senate as it meant "death to all hopes of getting an acre of Territory, - death to the war and death to the Democratic party" (3). On March 1st, almost at the end of the session he came out in open opposition to the Proviso, giving six reasons for his determination to vote against it (4). These reasons which may be fairly assumed to

(1) Globe: 29th Cong. 2nd Sess. page 551 and 31st Cong. 1st Sess. page 398.

(2) Speech of Cass, Feb. 20th 1850, Globe: 31st Cong. 1st Sess. 398

(3) Quoted by Von Holst: Const. History, Vol. III, page 323.

(4) Globe: 29th Cong. 2nd Sess. pages 549 - 550.

cover, at this time, the entire grounds for Cass' opposition to the Proviso, dealt mainly with the disastrous effect which he believed its enactment would have upon the conduct of the war. They may be summed up in one reason,-- a belief in the inexpediency of the Proviso. They make no mention of opposition on Constitutional grounds, and Cass himself admitted in 1850 that he at that time had no such objection to make (1).

It was now the end of the session, March 1847. Polk's administration had reached its meridian point and the date of the succeeding Presidential conventions was only a year ahead. Politicians were already laying plans for the coming campaign and Cass, as the most prominent man in the Democratic party, occupied a position of peculiar importance. Any opinions he expressed necessarily had a bearing on the political situation of the Party, and in particular on Cass's own political fortunes. To say that he considered his actions with reference to their effect upon his candidacy for the nomination does not necessarily imply anything discreditable. Ambition is not in itself dishonorable, and any man, in Cass's situation would have been affected by considerations of this kind. But unfortunately for Cass his actions were such as to occasion the belief among his opponents that he deliberately sacrificed his convictions to his desire to gain the Presidency. The probabilities as to the truth or

(1) Speech of Feb. 20th 1850, Globe: 31st Cong. 1st Sess. page 398

falsity of this charge will appear as the narrative progresses. For the present it is necessary to continue the survey of Cass's political situation.

The Democratic party was at this time in a state of sad confusion and discord. The Wilmot Proviso had worked havoc in its ranks. Wilmot himself was a Democrat, and was followed at first by all the Northern members of the party, Cass among the rest. The Southern Democrats had opposed the Proviso and, during the winter of 1847, as has been seen, many of them had adopted the idea of Congressional Non-intervention. Calhoun, the apostle of slavery, and of the same political party as Wilmot and Cass, was leader of the most radical element of the Southern pro-slavery men, and was gathering increasing support. In short, ~~between~~ the supporters of the Proviso and the followers of Calhoun, the Democratic party was threatened with disruption. Some of the Northern Democrats had taken heed of the attitude of their Southern brethren as the stormy debate over the Proviso went on, and from motives of expediency, or, as their opponents charged, of cowardice, had joined the opposition to the Proviso. This element is well illustrated by Cass himself whose change of position has been described. These are the men who were derided as "dough faces" (1). Their numbers were sufficient toward the close of the session to cause the defeat of the Proviso (2).

(1) Cass's speech of Feb. 20th 1850 was ^{a reputation} of this charge.

(2) For votes on Wilmot Proviso see Gluskey: Political Text-book, page 615.

With the Presidential election approaching it was clear that the party breach must be closed unless the Democrats were to encounter disaster. To Cass who loved the Union (1) and was a zealous partisan it may well have seemed that the Democrat who restored harmony to his party and sealed up the widening breach between its Northern and Southern wings would perform a praise-worthy act,—an act indeed worthy of the highest reward that it could bestow. And along with this, reason and self-interest alike must have prompted the reflection that no one was in a better position than himself to perform this act, and incidentally to gain the reward.

It is impossible to say to what extent Cass's motives were unselfish and his action sincere. He was bitterly assailed at the time and evidence may be adduced both for and against his sincerity. However, the important point here is not what were his motives but rather what he did. It is certain that after the close of this session of Congress he set himself to devise a policy upon which all Democrats could unite (2) and thus save the party in the coming

(1) His speech of Feb. 20th 1850 is conclusive proof of this.

(2) "The public mind in the South became highly excited and the indications were full of danger and difficulty. I felt then (in the winter of 1847) as I do now, that the Union was the great object of every American and that there were few sacrifices which ought not to be made to preserve it. I was prepared to go as far as any man

election. He did not attempt to give currency to some new invention but adapted existing elements to his purpose. The problem was to construct a platform upon which both wings of the party could meet. The utterances of Southern men like Cobb, on the one hand, on the other the growing faction in the North which had deserted the Proviso, gave him the idea for his scheme. The result of his effort was the first formulation of the Doctrine of the Sovereignty of the Territories, and was announced to the country in the Nicholson letter.

Ostensibly the Nicholson letter was an answer to the question where Cass stood upon the subjects of the Wilmot Proviso (1) and the acquisition of Mexican Territory. In reality it was a political platform for the use of the Democratic party, designed as such, and given the form of a

ought to go to attain that object. In examining the Constitution with reference to the whole matter more narrowly than I had ever done before, I was startled by the conviction that no authority was granted in that instrument to Congress to legislate over the Territories" (Cass's speech of Feb. 20th 1850, Globe: 31st Cong. 1st Sess. page 398. Also, see Jefferson Davis' account of Cass's action, Globe: 36th Cong. 1st Sess. page 1940.

(1) Given in Oluskey: Political Text-book, page 422; also in Niles Register, Vol. 73, page 293.

letter only because that was a convenient way of giving it publicity (1) It bears date of December 24th, 1847, and was published a few days later. But it was in private circulation among leading members of the Democratic party for a considerable time before this (2) being submitted to them to receive their sanction before its publication (3). In taking up the contents of this letter the point of view shifts back again from Cass to Popular Sovereignty, or rather the two are blended in each other.

What may be termed the negative portion of the letter was an explanation of the attitude of Cass toward the Wilmot Proviso; it was that after the long discussion in Congress and by the press, he believed a change of opinion had taken place in the public mind, as in his own, and that it was becoming convinced that the question of slavery, involved in the Proviso, should be withdrawn from the National legislature and left to the people "in their respective local governments."

Discussing the theory of our government in respect to Sovereignty he said that it pre-supposes that the various members of the government have reserved to themselves all

(1) Statements of Douglass and Davis, in 1860, Globe: 36th Cong. 1st Sess. App. pages 301, 302.

(2) Douglass says "for days and weeks". (ibid)

(3) (ibid)

matters relating to what may be termed their internal police. Local institutions, whether they have reference to slavery or to any other relations, domestic or public, are left to local authority. Congress has no right to establish or prohibit slavery within the boundaries of a State; only the people of the State itself have any power over the subject.

The Territories differ from the States in various respects. "Some of their rights are inchoate and they do not possess the peculiar attributes of Sovereignty". The Constitution leaves their relation to the general government ill-defined. The only power given to Congress over them is in the phrase "to dispose of and make all needful rules and regulations respecting the Territory and other property of the United States". This, Cass argued, does not grant the power of unlimited legislation for the people of the Territories, but it is limited to the making of such regulations as may be necessary for the control and disposal of the Territorial lands viewed as property simply.

In connection with the North-west Territory, and other territory acquired since that time, circumstances arose which required the exercise of more enlarged powers of legislation than the limited grant of power in the Constitution provides for. This legislation can be justified, if at all, only on the

ground of existing necessity. But the principle of interference ought not to be carried beyond the necessary implication that produces it. "It should be limited to the creation of proper governments and to the necessary provision for their eventual admission into the Union; leaving in the meantime to the people inhabiting them to regulate their own internal concerns in their own way".

Other reasons were given for his opposition to the exercise by Congress of any jurisdiction over slavery in the Territories and he summed them all up under five heads. The first of these was the Constitutional objection that Congress did not possess the requisite power; the other four were based upon the inexpediency of Congressional restriction of slavery and its probable effect in producing a premature termination of the war. He believed the conviction that such a measure as Wilmot's Proviso would succeed, would lead to an immediate crippling of the Administration in its prosecution of the war, and he felt certain that no treaty of peace involving an acquisition of land would pass the Senate.

The importance of this letter in the history of the Doctrine of Popular Sovereignty is such that some further discussion of it is appropriate. During the succeeding period of a dozen years or so, it was frequently referred to as the Origin of Squatter Sovereignty or Non-intervention of which

Cass was called the inventor (1). To what extent this is true may be gathered from the foregoing discussion. It shows that the elements of the Doctrine were already in existence and it had even been foreshadowed in public debate. Cass took these fragmentary expressions and out of them produced a practicable, political doctrine, fashioned to meet the existing situation. He saw the drift of opinion away from the Proviso (2) and putting himself at its head led it toward the Doctrine of the Sovereignty of the Territories, which was middle ground between the position of the "Provisoists" and that of the followers of Calhoun (3).

The Nicholson letter was the first formal enunciation of the Doctrine of Popular Sovereignty, yet it contained little more than an outline of the Doctrine. It furnished the principal points; the detailed elaboration of the theory was yet to appear. Whether from accident or design the letter was couched in terms which made possible a two-fold interpretation of its vital portion,--Cass's position upon the question of slavery in the Territories,--so that in the political campaign of the following year it was interpreted by Democratic politicians to suit the views of the Section of the

(1) ^{See} ~~In~~ one example out of many, Jefferson Davis' speech of May 7th, 1860. Also, see Schouler: History of U.S. Vol. V. page 292. He says,--"Nothing was ever heard of this new dogma, that Congress had no power to exclude slavery from National territory until Cass's Nicholson letter of 1847."

(2) He tells us this in the Nicholson letter.

(3) For a somewhat similar view see McLaughlin's Lewis Cass.

country they were in. This will be discussed in another part of the study and is mentioned here only to show that the elaboration of the Doctrine was not yet completed.

It was carried out by Senator D.S. Dickinson of New York. He had closely followed Cass in his changes of attitude toward the Proviso. On March 1st 1847, the same day that Cass made his speech in opposition to the Proviso, Dickinson delivered a similar speech, expressing his belief in the inadvisability of the measure (1). Further, he announced his position on the slavery question for the express reason that his "views upon it might be fully understood". He considered the institution to be local and domestic; being so, its supporters had no right to erect it in the Territories without the authority of Congress; and Congress could, when it saw fit, prohibit it from being introduced into the Territories while they remain such.

There is here no hint of a lack of power on the part of Congress to legislate for the Territories, no hint of the Sovereignty of the people there. On the contrary the jurisdiction of Congress is expressly affirmed. But Dickinson was Cass's closest political friend (2) and not only followed him in the new Doctrine of the Sovereignty of the Territories

(1) Globe: 29th Cong. 2nd Sess. App. page 444.

(2) Douglass calls him "the especial friend, the right bower of General Cass in that great contest" (the campaign of 1848) Globe: 36th Cong. 1st Sess. App. page 302.

but for a time outran his leader, and was the first to make an ^{elaborate} exposition of the Doctrine.

On December 14th 1847, while the Nicholson letter was still in private circulation among the Democratic leaders (1) Dickinson introduced in the Senate two resolutions embodying the same Doctrine (2). The second is the one which deals with Popular Sovereignty. It declared, in substance, that in organizing Territorial governments, "the true spirit and meaning of the Constitution will be best **observed**" by leaving all questions of domestic policy to the legislature chosen by the people of the Territory. Dickinson considered his resolutions important, and requested that their discussion be deferred until after the holiday recess in order that a full Senate might be present (3).

They were taken up January 12th 1848. In the interval, since their introduction, the Nicholson letter had appeared, and Dickinson's speech in defense of his resolutions (4) covered much of the same ground; but on the subject of the Sovereignty of the Territories Dickinson was much more

(1) Statement of Douglass, May 15th 1860, -Globe as above.

(2) Globe: 30th Cong. 1st Sess. page 21.

(3) " " " " " " 27.

(4) " " " " " App. pages 86 -90.

radical than Cass had been. He discussed the Constitutional question involved with considerable detail and the propositions he advanced were extremely liberal in nature. Whatever power the Constitution may have granted to Congress, that instrument could not, he said, take from the people of the Territories, the right to prescribe their own domestic policy. The Republican theory teaches that Sovereignty resides with the people of a State, and not with its political organization. If this is true, it rests as well with the people of a Territory, in all that concerns their internal condition, as with the people of an organized State. If it is the right of a people, by virtue of their innate Sovereignty to alter or abolish, and re-construct their government, it is the right of the inhabitants of Territories, by virtue of the same inborn attribute, in all that appertains to their domestic concerns, to fashion one suited to their needs. He even asserted that if a form of government were proposed by the Federal government, and adopted and acquiesced in by the people of the Territory, "they may afterwards alter or abolish it at pleasure", for they have, "in all that appertains to their domestic condition, the same Sovereign rights as the people of a State".

In this speech Dickinson, in his new found zeal for Popular Sovereignty, over-shot the mark. The later supporters of the Doctrine did not often use such extreme arguments as these. But the difference was mainly one of the extent to

which the principles underlying it were reasoned out toward their logical conclusion.

In these utterances of Cass and Dickinson the first complete statement of the Doctrine is found. The question arises, to what extent should the one or the other be given credit for its paternity ?. Only an approximate answer can be given. The men were close political associates, and no doubt each was influenced by the other to some extent. Cass however, was more prominent and possessed much more influence in his party and in the country than did Dickinson. It is therefore probable that Dickinson followed Cass's lead, and this was the impression of the political contemporaries of the two men (1). The fact that in his speech he went beyond Cass's Nicholson letter, does not weaken this conclusion. Cass was the prospective Presidential candidate and must perforce be rather circumspect in his utterances. Dickinson was influenced by no such restriction. The question which one should be called the author of the Doctrine, need not be considered further. If this study has developed anything thus far, it is that neither properly deserves that term : Popular Sovereignty was a growth rather than an invention. Still it

(1) In the debates in Congress Cass is frequently referred to as the author of the Doctrine; for example by Douglass and Jefferson Davis.

seems certain that Cass had more to do with its development than any other one man. In the Spring of 1848 he was nominated by his party for the Presidency and the Nicholson letter remained the expression of his attitude on the burning question of slavery in the Territories. His nomination by the party was in a certain sense an endorsement of the Doctrine, and it gave to Cass's views an unusual prominence.

Men came to associate the Doctrine with his name and the share of others in its production was lost sight of. It has thus been shown that the idea of the Sovereignty of the people of the Territories over their domestic affairs and in particular over the institution of slavery, existed as an element in the life of the Western people. In the contest over the Wilmot Proviso this found expression, vague and indefinite at first, but gradually growing clearer, until finally under favoring circumstances it was taken up by leading Democrats, thrown into tangible, definite shape and put forward by them, as their leading political Doctrine in the approaching Presidential campaign.

.

CHAPTER II:-

POPULAR SOVEREIGNTY in the CAMPAIGN of 1848.

The early days of the year 1848 saw the doctrine of Territorial Sovereignty launched on the sea of politics under the auspices of Dickinson and Cass. These men were the first formally to advocate it as a rule of political action. Before it could become important as a factor in politics it must receive supporters. The party prominence of Cass as the probable Presidential nominee, and of Dickinson as the friend and mouth piece of Cass, were calculated to attract attention to their opinions and expressions. But precisely because of his political position Cass could not express himself with unequivocal clearness on the territorial question. Dickinson did however, and for this reason perhaps, his resolutions and speech were the mark for the fiercest of the attacks which were promptly made upon the new doctrine. The resolutions were at once taken up for discussion throughout the country and seem to have been quite generally opposed. As early as January 12th, in his speech in their defense, Dickinson alludes to this opposition. It was due to various motives and was indulged in by both pro-slavery and anti-slavery adherents. The Charleston Mercury, an able and

locally influential paper, declared that the effect of the resolutions would be to forever prohibit slavery in the acquired territory, and as guardian of the slave interests called for their rejection. Papers in other sections, opposed to slavery, saw in them not only the effect but the design to extend that institution (1).

Benton, in 1854, gave vigorous testimony concerning the reception the new doctrine met in the Senate. "It was received as nonsense, - as the ^{quint} essence of nonsense, as the five times distilled essence of political nonsensicality". (2) Benton was not qualified to give an entirely unbiased account, and his statement may be taken with some allowance for undue emphasis; but it is quite probable that it indicates the feeling at the time of most of the members of the Senate. For the idea, in addition to being new and, as a compromise, objectionable to all who had decided convictions on either side of the slavery question, was directly contrary to the practice employed by Congress in connection with Territorial governments since the Constitution went into operation.

The first extended discussion in Congress of Dickinson's doctrine was by Senator Yulee of Florida, February 14, 15, and 17. He argued that its adoption would have the

(1) From Dickinson's speech, Globe: 30th Cong. 1st Sess. page 89.

(2) Globe: 33rd Cong. ^{1st Sess.} App. page 559.

same practical effect in excluding slavery as would Wilmot's Proviso, the only difference being in the method of accomplishing that result (1). His own position was that Congress did not have the Constitutional power to exclude slavery, and therefore a Territory, being a creation of Congress, could have no such power. In the meantime it had become clear to Dickinson that his resolutions were too radical to win Southern support. And in conjunction with Foote of Mississippi he had fixed up an amendment to the second resolution asserting the Sovereignty of the Territories in domestic affairs, which he intended to offer as follows:- "in subordination to the Federal Constitution and the reserved rights of the States and people" (2).

It is impossible to make anything out of this amendment. Or rather it should be said that it lent itself to as

(1) "It (Dickinson's doctrine) resigns to the first few persons who chance to be upon acquired territory the whole disposition of the destiny of our territorial possessions Of course if the question were left to the inhabitants of the territory those who were transferred with it would fix its destiny as a non-slaveholding Territory by continuing the restriction and excluding the settlement of slaveholders". (From Yulee's speech, Globe: 30th Cong. 1st Sess. App. page 302.)

(2) (ibid), and Globe: 30th Cong. 1st Sess. page 773.

many interpretations as there were different views of the Constitutional rights of slavery. Yulee saw this at once and rightly objected that the amendment added nothing to the real point at issue. No one proposed, he said, to violate the Constitution. The dispute was concerning its interpretation and what rights the Southern people possessed, under it, to carry slavery into the Territories. The proposed amendment did not make this point any clearer. But the collaboration with Dickinson of Foote who was strongly pro-slavery in his views, ^{makes} ~~made~~ it appear probable that he purposely made the amendment ambiguous. He had gone too far on Jan. 12th and now, seeing the Southern opposition he had aroused by the radical statement of the new Doctrine, he attempted to modify it by the addition of this phrase which could be adapted to the views of either Section of the country, and so would be more acceptable to ultra pro-slavery men.

Another Senator who early opposed the theory of Cass and Dickinson was Bagby of Alabama. January 25th he introduced some resolutions embodying his views on the slavery dispute and two days later he added to these another expressly designed to antagonize Dickinson's Doctrine (1).

(1) Globe: 30th Cong. 1st Sess. pages 241 and 261.

He pronounced it "the most monstrous one ever advanced by any Statesman in the United States"(1). His own position was that slavery had a Constitutional right to enter the Territories, which neither Congress nor the inhabitants of the Territory could take away. Bagby's resolutions were post-poned from time to time, until on May 16th, he tried to have them put to a vote. But there was an evident reluctance to consider them, and after some discussion they were disposed of by being laid on the table by a vote of 24 to 9 (2). Their sole importance is that they throw light upon the attitude of the Senate toward the Cass-Dickinson doctrine. The vote on the question of tabling them cannot however be taken as more than a partial expression of opinion upon the Doctrine. It represents to a great extent the disinclination of the Senate to enter upon a discussion of an abstract question, for Bagby's resolutions were not intended to lead up to any practical legislation, but were only a declaration of principle.

June 1st, Rhett of South Carolina made an elaborate attack on the Doctrine (3). He believed its effect would be to restrict the expansion of slavery. It was false in principle and would ~~soon~~ prove unjust in operation; it was

(1) Globe: 30th Cong. 1st Sess. App. page 691.

(2) " " " " " page 772 - 773.

(3) " " " " " App. pages 656 - 660.

a political device designed to harass and circumvent the South and build up the Sectional aggrandizement of the North. He declared the Wilmot Proviso in Congress harmless in comparison with this, and in words that were to prove prophetic, pictured its effect upon the Territories (1).

Others entered the discussion both in the Senate and in the House. It is a noticeable fact that most of the opposition came from Southern men. Usually it was based upon Constitutional grounds, but this was coupled with the conviction that the application of Popular Sovereignty would result in the exclusion of slavery from the Territories. One cannot help reflecting that this conviction may in part account for the Constitutional objections that were urged. In the Senate Dickinson gained one lone ally in this Session, Underwood of Kentucky. He stated in 1850 that Dickinson

- (1) "Sir! this doctrine will convey contention and ill-blood amongst the settlers of our Territories where hitherto peace has prevailed". Globe: 30th Cong. 1st Session App. page 657.

and himself were in this Session the only advocates of Popular Sovereignty upon the floor of the Senate (1). But as yet (in 1848) his advocacy was based upon the ground of expediency. He distinctly asserted the power of Congress to legislate for the Territories (2). But he thought the only way to settle the angry dispute between North and South was to forego exercising this power leaving the question to the decision of the people of the Territory (3).

On the whole the doctrine was assailed much oftener than it was upheld in this Session of 1848; and among those who did not touch upon it in the debates it is probable that much the same attitude existed toward it. This would seem to indicate that it was making little progress toward acceptance by the people; but before this point is decided a broader survey of the campaign of 1848 in its relation to Popular Sovereignty must be taken. Political opinion and parties were in a state of confusion and the doctrine of Popular Sovereignty was so bound up with the general political situation that a survey of the whole and in particular

(1) The omission of Cass in this statement is due to the fact that after writing the Nicholson letter he maintained silence upon the Territorial question. No doubt it is for this reason that Underwood leaves him out of consideration in this statement. (Globe: 31st Cong. 1st Sess. page 904)

(2) Globe: 30th Cong. 1st Sess. page 1165.

(3) Globe: 30th Cong. 1st Sess. page 702. He was here discussing the Oregon bill. July 25th 1848, he advocated the principle of Popular Sovereignty for California and New Mexico also.

of the position of the Democratic party, is necessary to an understanding of the development of the Doctrine during this time.

It must be noticed first that the name "Popular Sovereignty" was not then in use. "Non-intervention" was the term used in 1848 to designate the policy Cass had proclaimed in the Nicholson letter; and "non-intervention" was used also to describe the doctrine of Calhoun. This use of the same term to designate radically different policies had an important bearing upon the political contest of that year and also upon the doctrine which is the subject of this study.

In the preceding chapter it has been pointed out that during the discussion of the Wilmot Proviso in the Session of 1847 Southern men opposed it with great unanimity but were not agreed upon the arguments to be made against it. At this time Calhoun constructed his doctrine of the Constitutional rights of slaveholders to hold their slaves in the Territories, and the lack of power in Congress to exercise any control over the subject. This was the theory of Non-intervention held by Calhoun and the radical pro-slavery men. It recognized no power anywhere to exclude slavery from a Territory until the people of that Territory should hold their constitutional convention, when they were free to admit slavery ~~to~~ or exclude it from the new State which was about to be created.

The old political parties found themselves in 1848 in a difficult situation. The all-absorbing political question of the time was the Wilmot Proviso; or conversely stated, the extension of slavery to the Western Territories. It divided the country on Sectional lines while each of the parties was National drawing support from all parts of the Union. The territorial dispute threatened for a time the disintegration of both. When the Proviso first came up party lines were ignored; the North supported it and the South opposed. But the approaching Presidential election made it imperative that the two wings of each political party should get together if the old organizations were to survive. Both succeeded in doing this, but the fact that each contained a Northern and a Southern faction with widely divergent views on the Territorial question, made it necessary that the party attitude toward it should not be clearly defined. An unequivocal stand either for or against the extension of slavery to the Territories would cause the defection of the opposite wing of the party. The unusual spectacle was therefore presented in 1848, of both the great political parties avoiding any clear declaration upon the question that had absorbed the National attention for nearly two years.

(1) The Democratic party made plain its opposition

(1) Stanwood: History of the Presidency.

to the Proviso, but what policy it favored with respect to the Territories was left in a state of ambiguity. Cass was made the standard bearer, and this indicated the acquiescence of the party in the doctrine of the Nicholson letter. But there was no agreement as to how the Nicholson letter should be interpreted. As a temporary device for enabling voters of widely differing opinions upon the slavery question to come together in ostensible union, it was excellent.

"Non-intervention" was the Shibboleth of the Democrats in this Presidential contest, and the term was broad enough to include alike Calhoun ultras and free soilers not insistent on the Proviso. An unprejudiced reading, at the present time, of the Nicholson letter, leaves the impression that the interpretation Cass later said he intended it should have is the correct one (1). But it is also easy to see how Southern men with their pre-conceived views as to the Constitutional rights of slavery might give it another interpretation and it was admirably adapted to the use of politicians, who, intent upon party success in the election, explained the doctrine of the Nicholson letter and "Non-intervention" according to the predilection of their auditors. In the North it was understood as giving the

(1) Cass in 1850 defined his position unequivocally in favor of Squatter or Popular Sovereignty.

Territorial legislatures complete power to control or prohibit slavery. In the South it was given the opposite meaning, more in accordance with the Calhoun type of Non-intervention.(1)

Yancey of Alabama, a member of the committee on resolutions in the Democratic National convention, made an effort to commit the Party in opposition to the Popular Sovereignty interpretation to which the Nicholson letter was open. He presented a minority report (2) declaring that the committee had adopted the principle of the nominee, that is, Non-interference, only so far as it applied to the States, thus refusing to express an opinion upon the most exciting and important political topic before the country, the policy to be pursued in the Territories (3).

(1) For example, argument of Featherston of Mississippi, June 26th 1848, Globe: 30th Cong. 1st Session, page 764.

Also Venable of North Carolina, June 1st 1848, ibid, page 653.

(2) Given in Globe: 36th Cong. 1st Session App. page 304.

(3) "The majority of the committee have only adopted this principle (that the people inhabiting a State or Territory have the exclusive right to exclude slavery therefrom) as far as applicable to the States, and have thus refused to express any opinion upon what is really the most important and exciting political topic now before the country".

Yancy protested against this shuffling of the issue (1) and he denounced the doctrine of the Sovereignty of the Territories in which he said Cass was understood to believe (2). He wished Non-interference but with the Calhoun view of the property rights of slavery pre-supposed. He therefore reported a cleverly worded resolution to this effect, and urged the convention to adopt it. It met with little favor however, and was rejected by a vote of 216 to 36 (3). The 36 affirmative votes were all from Southern States. The negative vote was made up of all the Northern delegates, 140 in number and the 76 remaining Southern delegates.

This report of Yancey and the vote upon it throw considerable light upon the spread of the doctrine of the Sovereignty of the Territories. It indicates first of all

- (1) "This course we conceive to be fundamentally wrong. It has ever been the pride of the Democracy that it has dealt frankly and honestly with the people. It has scorned to conceal its political opinions".
- (2) "If therefore you refuse to meet the issue, and permit the here-to-fore expressed opinions of your nominee to stand impliedly as the opinions of this convention you pronounce, in substance, against the political equality of the people; against the community of interest in the Territories which it is contended exists in the people; against the right of one half of the people of the Union to extend those institutions which the fathers of the Constitution recognized as fundamental in the framing of the articles of Union".
- (3) Authority for following is Stanwood: History of the Presidency, and Globe: 36th Cong. 1st Session App. page 304.

that the confusion of opinion in this campaign upon the meaning of "Non-interference" was willful and intentional upon the part of the party politicians; by a vote of six to one they refused to express themselves. The rejection of a declaration against the theory of Territorial Sovereignty does not, therefore, indicate that a majority of the convention were in favor of it; but it is an expression rather, of their determination to take no open stand upon the Territorial issue. The analysis of the vote furnishes added proof that the party leaders desired to dissemble. Yancey's resolutions embodied the extreme pro-slavery doctrine and the unanimous opposition of the Northern delegates was therefore quite natural. But of the Southern Representatives, usually so zealous in defense of slavery, less than one-third would now define their position by supporting the resolution.

Because of this determination of the party leaders not to take any open stand upon a Territorial policy it is now impossible to ascertain definitely the part played by Popular Sovereignty in the election or the amount of progress it made in 1848. The debates in Congress show that Southern men were quite generally opposed to it and the debates and recriminations indulged in by Democratic leaders during the following years show that the Southern Democrats supported Cass with the belief that they were promoting the

Calhoun doctrine of Non-interference (1).

It is not probable that the leaders were deceived as to the real opinion of Cass on the Territorial question; if any were, it was because they wished to leave the matter obscure, for the action of Yancey must have called their attention to his belief in the Sovereignty of the Territories over slavery. The confusion arose from the fact that the Party did not declare itself in favor of this Doctrine. While for campaign purposes politicians might and did argue that the nomination of Cass committed the party to his view of the Territorial question the argument was fallacious and certain to be put out of sight after the election was over. The nominee was not the party and the Southern Democrats could support Cass while at the same time they opposed Territorial Sovereignty. Whether the nominee was an advocate of Popular Sovereignty or not, the party was committed only to the Doctrine of Non-intervention, and Southerners could work for this leaving to the future the further definition of the meaning of the phrase.

Though the Doctrine of Popular Sovereignty became closely involved with the broader term, Non-intervention, and was regarded as a Democratic policy its influence was not

- (1) This statement is based on numerous speeches and debates among which the following may be cited,-- Jefferson Davis in Globe: 31st Cong. 1st Session page 1470.
Statement of Mason, *ibid*, page 1472.
Davis, 36th Cong. 1st Session App. page 456.

confined to that party. The Territorial issue tended to disintegrate both the existing political parties and in the North not only Democrats but also Whigs ceased to advocate the Wilmot Proviso as the contest over it proceeded. These men would naturally turn to the most available compromise and they found it the doctrine of Cass and Dickinson.

The Whigs won the election and Cass was defeated. This result cannot, however, be regarded in the light of a defeat for the Territorial doctrine he advocated. So many factors entered into the result and political issues were so beclouded that no conclusions can be drawn concerning it. But some general observations upon the position the Doctrine occupied at the close of the Presidential campaign can be made.

The prominence of Cass during the year had brought to the new doctrine a degree of attention that it could scarcely have received in any other way. It had been discussed pro and con with much zeal and earnestness (1). Its supporters were accused of being "dough-faces" whom desire

(1) "There was the project, so much extolled on one side, so much berated on the other in the late Presidential canvass, for allowing the inhabitants of the Territories themselves to settle the question". (Speech of Palfrey February 26th 1849, Globe: 30th Cong. 2nd Session App. page 314.)

for office had led to put forward this doctrine as a bid for Southern support (1). The logic of Calhoun and the invective of Benton had been turned against it. But all these things served to bring it more prominently before the country. The very bitterness of the assaults upon it is proof that it was gaining ground. For men do not become aroused over matters of no importance. It was a compromise measure and as such it was put before the country in 1848. But the country was not yet ready for compromises. The Sectional contest over California and New Mexico must go on until one or the other party won its point, or despairing of this, resort should be had to a compromise. The effect upon Popular Sovereignty of the Campaign of 1848 was to put it before the country ready for use when that time should come. It came two years later; meanwhile the territorial contest was continued in the efforts to organize territorial governments for California and New Mexico, which led up to and culminated in the Compromise of 1850.

(1) Histories of Schouler, Henry Wilson, and Von Holst, and speeches of the time in Congressional Globe.

.

CHAPTER III :-

The TERRITORIAL ISSUE in the COMPROMISE of 1850.

The contest in Congress over the organization of a Territorial government for Oregon began in August 1846, the same month that witnessed the introduction into politics of the Wilmot Proviso. It was continued throughout the Sessions of 1847 and 1848 and terminated on next to the last day of the latter Session, August 12th, in a victory for the opponents of slavery extension. The Act extended the provisions of the Ordinance of 1787 over the Territory, and slavery was thus excluded (1). It was during the discussion upon the various Oregon bills that much of the early arguments on Territorial Sovereignty occurred which have been recounted in the preceding chapters of this study. In the early part of the Oregon debates the organization of the Mexican cession was not practically involved, but the Treaty of Guadalupe Hidalgo February 2nd 1848 imposed upon Congress the necessity of providing governments for the territory acquired. In this way the latter part of the Oregon discussion was complicated

(1) United States Statutes at Large, Vol. IX page 323.

For details of passage of the Act, Globe: 30th Cong. 1st Session page 1078 and preceding.

by this new question (1).

The Clayton Compromise was an effort made by the Senate in July 1848 to settle the whole territorial dispute by coupling Oregon with California and New Mexico, and providing governments for all of them in one Act (2). This bill passed the Senate but was rejected in the House, and the next month Oregon Territory was organized and Congress adjourned.

With the election of 1848 the conditions involved in the situation of the Democratic Party in the campaign, which had given to Popular Sovereignty an immediate temporary importance, disappeared. But the territorial dispute still remained, the immediate center of interest having shifted to California and New Mexico. Whatever merit

- (1) The territory involved in the cession was under either Mexican control or (after its occupation) that of the United States army until peace was made. After the treaty of peace this country was left without a legal government and this made the provision of some government by Congress a matter of immediate necessity.
- (2) Globe: 30th Cong. 1st Session pages 927 -928 , 950 and following.

or attractiveness as a solution of the problem the Doctrine possessed, had not passed away with the election; it remained in the public mind and was urged upon Congress by its advocates, for adoption in the organization of these Territories.

The short Session of Congress of 1848 and 1849 was almost wholly occupied with this subject, but no measures were passed and no legislative results achieved. In the House the doctrine of Territorial Sovereignty found a few supporters and since it was no longer obscured by connection with the Presidential election its course can be seen now more clearly. It was put to a direct vote on February 27th when Sawyer of Ohio attempted to strike out from the California bill the section extending the Ordinance of 1787 over the Territory. In explanation of his motion Sawyer denied the power of Congress to prescribe what laws a Territorial legislature should pass or refrain from, provided only that they were republican in character; he believed the disposition of slavery and other domestic matters should be left to the decision of the people of the Territory who knew what their local needs and conditions demanded (1). Murphy of New York now proposed an amendment to Sawyer's motion

(1) Globe: 30th Cong. 2nd Session pages 605 - 607.

expressly affirming the principle of Territorial Sovereignty over local affairs (1). This amendment was rejected by a vote not recorded, as also was an amendment by Green of Missouri intended to express more perfectly the idea of the Sovereignty of the Territory. The vote was then taken on Sawyer's motion to strike out the restrictions of the Ordinance of 1787. It was rejected, 115 to 88. It would not be safe to assume that the 88 Affirmative voters were all in favor of Territorial Sovereignty for the amendment did not contain this in a positive form; it was worded so as to strike out the restriction against slavery, and the Affirmative votes no doubt included those pro-slavery men who were opponents of the Cass-Dickinson doctrine. Nevertheless the whole debate shows that the doctrine had a considerable body of supporters in the House. But the advocates of slavery restriction possessed throughout the Session a safe majority as shown by various votes during the discussion of the bill. The section applying the Ordinance of 1787 to California was

- (1) "But nothing in this Act contained shall be held to deprive the people of the Territory of the right which was declared by the Continental Congress of 1774 to belong to the English Colonies in North America by the immutable laws of nature, namely, a free and exclusive power of legislation in their Territorial legislature . . . in all cases of taxation and internal polity". . .

retained unmodified, and the bill passed the House February 27th, by a vote of 126 to 87 (1).

In the Senate Douglas tried to avoid the slavery question by setting up at once the entire Mexican cession in the single State of California the citizens of which would then be at liberty to settle their internal affairs to suit themselves (2). Palfrey in a speech February 28th characterized this scheme as amounting to the same thing as the doctrine of Cass and Dickinson (3). Practically it did, the principal difference being that Douglas said nothing of doctrine but looked only to the accomplishing of a specific end. The debate dragged on until late in the Session but Douglas could not secure a vote upon it (4). The House bill too died in the Senate and the 30th Congress expired without having made any advance toward a solution

(1) Globe: 30th Cong. 2nd Session page 609.

(2) (ibid) page 21.

(3) (ibid) Appendix page 314.

(4) February 17th he gave notice that he should on every succeeding day move that the Senate proceed to the consideration of his bill. The motion of Walker to extend the Constitution over the Territory gained from Mexico, proposed on the 19th, soon crowded Douglas's bill out of public attention and he seems to have let it drop without further effort to bring it to a vote. (Reference:- Globe: 30th Cong. 2nd Session pages 552 - 561 and following).

of the question of slavery in the Mexican cession. The necessity of some form of government for New Mexico and California was becoming every day more urgent, the inability of either slavery restrictionists or slavery extensionists to gain their end was becoming more apparent. The Wilmot

"Provisoists were dominant in the House but their efforts were nullified by the Senate. The plan of leaving the dispute over the status of slavery to the inhabitants of the Territories had met direct defeat in the House; in the indirect form proposed by Douglas it had failed in the Senate. Yet the fact that the plan which had been regarded two years before this as the ^{the} "five times distilled essence of political nonsensicality" according to Benton's account, should now be proposed and supported as it was in this Session shows that the idea of Territorial Sovereignty as a solution of the question of the extension of slavery to the Mexican cession was gaining a foothold in the public mind (1). As yet it was competing with the Wilmot Proviso and the doctrine of the Southern slavery extensionists for public favor. When-

(1) In describing the political situation in December 1849 Benton speaks of "the large party which denied the power of Congress to legislate upon the subject of slavery in the Territories". Then, referring to the Cass-Dickinson group, he says:—"Some of that class of politicians, and they were numerous and ardent, though of recent conception". (Thirty Years View, Vol. II. page 725.)

ever these two parties should despair of success and turn to compromising, the question would then be which compromise plan to adopt. This condition appeared at the next Session of Congress, hurried on, as will be shown, by the course of events in California.

The 31st Congress assembled December 3rd 1849 to face the Territorial problem which its predecessor had left unsolved. But in the intervening months several changes had taken place materially altering the situation. This was the year of the "forty-niner" and the great influx of gold hunters into California. Over 80,000 rushed in during this one year, -fortune hunters from every part of the world (1). As soon as it became evident that no government would be given them by the 30th Congress, the people, encouraged by President Taylor, proceeded to create for themselves a State government. For the 31st Congress the question was not one of organizing a Territorial government for California but that of what course to pursue toward the government already organized. Taylor recommended that it be admitted into the Union as a State and also that the same course be pursued with reference to New Mexico if, as he anticipated, her people

(1) Rhodes: History of the United States Vol. I Chapter II

should present themselves for admission (1). This plan of Taylor's was the same in principle as the proposition of Douglas the year before: the Sectional dispute was to be settled by leaving the decision of the slavery question to the inhabitants of the territory ceded by Mexico. So far the plan tallies with that of Territorial Sovereignty; but Taylor would rid the country of the interminable dispute over the status of territorial governments and the rights of slavery under them by the convenient method of omitting the territorial stage altogether. Let States be created at once, and as neither Section questioned the right of the people to shape their State constitution as they chose, subject to the Constitutional limitation of a Republican form of government, there could be no ground for further Sectional wrangling. Taylor's plan really begged the question under dispute, and it was not to be expected that the Section against which the decision went would willingly acquiesce in its adoption.

The effect of Taylor's policy and of the action of the people of California was to produce a crisis in the territorial contest. The South saw the Territories slipping from her grasp. Taylor, though himself a Louisiana slaveholder had made no effort to influence the action of the Californians

(1) Taylor's message to Congress, Globe: 31st Cong. 1st Session page 71.

in respect to slavery; they had shown no disposition to favor it, and had drawn up a Constitution excluding the institution from the State (1). New Mexico seemed likely to follow the example of California; and thus the policy of Taylor, whether intentional or not, was resulting in the exclusion of slavery from both Territories. The South seemed about to lose the prize for which she had struggled so long. If Congress should adopt the Administration policy she must submit to a crushing defeat. If this was not to be incurred her Congressmen must bestir themselves. The South could permit the territorial question to be delayed no longer. It must be settled now or all hope of securing the Mexican territory for slavery must be resigned. The effect therefore of Taylor's recommendations was to increase the existing excitement and precipitate a political crisis.

This was the cause of the political convulsion of 1850 which resulted in the celebrated Compromise of that year. The dispute between the Sections had come to include other elements than the controversy over the extension of slavery to the new territory. This was the most important point at issue, yet the others were scarcely less productive of irritation and hostility between North and

(1) Rhodes: History of the United States, Vol. I, page 113.

South. Henry Clay had returned to the Senate with this Congress and early in the Session he set himself the task of arranging "some comprehensive scheme of settling amicably the whole question in all its bearings" (1). January 29th he announced his plan to the Senate in a series of resolutions covering the whole slavery question (2). For this study however, the Compromise of 1850 is of interest only so far as it throws light upon the doctrine of Popular Sovereignty, and only the first two resolutions, which dealt with the territory acquired from Mexico, need be considered.

The first provided for the admission of California upon her application, with no restriction upon the introduction or the exclusion of slavery. It may be noticed that the ultimate admission of California as a free State was inevitable. Its people when framing their constitution had excluded slavery without even discussing the matter (3). In the face of this disposition there could be no hope of planting the institution there. The South realized this but intended

(1) Letter to his son January 2nd 1850 quoted in Von Holst's Constitutional History Vol. III page 484.

(2) Globe: 31st Cong. 1st Session pages 244 - 247.

(3) Rhodes: History of the United States Vol. I page 115.

to use California as a club in forcing the North to concede some of the other points at issue. The question of her admission played a large part in the Compromise discussions, but there was no further thought of establishing slavery there. So far as Popular Sovereignty was concerned the territorial question was narrowed to Utah and New Mexico; and over these the really vital point of the Compromise of 1850 was fought out (1).

Clay's second resolution is then, the one with which this study is chiefly concerned. It stated that "as slavery does not exist by law, and is not likely to be introduced" into the remaining territory of the Mexican cession, "it is inexpedient for Congress to provide by law either for its introduction into or exclusion from any part of the said territory; and that appropriate Territorial governments ought to be established by Congress in all of the said territory", excluding California, "without the adoption of any restriction or condition on the subject of slavery"(2). This could afford little satisfaction to the pro-slavery adherents. Clay himself was personally in favor of the Wilmot Proviso(3). But he believed that existing

(1) This is the view of A.H. Stephens: War between the States Vol. II pages 217 - 233.

(2) Resolutions in Globe 31st Cong. 1st Sess. page 246.

(3) Schurz' Henry Clay, Vol. II pages 323 - 324.

Mexican law already excluded slavery from the Cession, and that New Mexico and Utah, upon becoming States, would imitate the example of California in regard to it. He therefore reasoned that the North could afford to forego the enactment of the Wilmot Proviso(1). The South denied the validity of the Mexican laws excluding slavery, and this question Clay's plan would leave to the decision of the Supreme Court. To the South, he urged in favor of his plan that it required only the recognition of existing facts; if, under its operation, slavery were excluded from these Territories it would be due to these facts and not to adverse Congressional legislation; the South had all along contended for Non-intervention and this was what his plan would accomplish (2).

It was Non-intervention but not that variety desired by the South. Clay's scheme gave no power of decision to the Territorial legislature, and it bound Congress not to intervene. It followed that if his reasoning on the validity of the Mexican law were sound, his plan would exclude slavery as effectually as the Wilmot Proviso itself; whether it was sound or not, the fear of it would

(1) Speech of Clay , February 5th 1850, Globe: 31st Cong. 1st Session App. page 115.

(2) (ibid).

tend to produce the same result. For the institution of slavery was timid and slaves would not be carried thither by their owners with the certainty of a law-suit in store, and the possibility of its resulting in the loss of their property.

The debate over the resolutions went on for nearly three months; on April 18th they were referred, along with some other Territorial bills, to a select Committee of thirteen members, elected by the Senate. Clay was chosen Chairman, and for the rest there were three Democrats and three Whigs from each Section (1). On May 8th the report of this Committee of Thirteen was presented (2). It consisted of a long argument and several bills, and among the latter were two providing Territorial governments for New Mexico and Utah, without the Wilmot Proviso, and with the provision that the Territorial legislature should pass no law on the subject of African slavery. This embodied the principle of Clay's resolution of January 29th, and left the decision of the status of slavery under the Territorial Governments to be referred to the Supreme Court. The argument accompanying these provisions is important; it asserted that there had never been any occasion for the Wilmot Pro-

(1) RHODES: History of the United States Vol.I. page 171.

(2) Given in Globe: 31st Cong. 1st Session page 944.

viso, which had been "the fruitful source of distraction and agitation". In order, it continued, to avoid for all future time the agitations produced by the conflict of opinion on the slavery question, the true principle which ought to regulate the action of Congress in forming Territorial Governments for each newly acquired domain, is to refrain from all legislation on the subject in the Territory acquired so long as it retains its Territorial form of government, leaving to its inhabitants to decide for themselves, when ready for admission to Statehood, the question of domestic slavery.

This reasoning was a great softening down, in the interests of the South, of Clay's resolution of January 29th. That had asserted the "inexpediency" of Congressional legislation, thus admitting by implication the possession of the power to legislate. This report of the Committee of Thirteen lays down a "true principle" to be employed in "all future time" in the organization of Territorial governments for the "newly-acquired domains", that principle being Congressional Non-interference in the matter of slavery in the Territories.

The question at once arose in what condition did this doctrine and the bills place slavery, while the Territorial form of government lasted? Clay would gladly have left this unanswered, but there were those who would

not have it so. This doctrine like the resolution of January 29th, like the Clayton Compromise of 1848, simply left the Constitutional disagreement open to be referred to the Supreme Court. It was a settlement that did not settle. This objection was raised by Soule of Louisiana (1) who charged that the bill in its vital point was subject to opposite interpretations. Others renewed the charge (2) and Clay's answer was that the meaning of the section could not be defined by the Senate because they were unable to agree upon what was the existing law of the Territory regarding slavery; it must be left to the Supreme Court.(3) In comparison with Clay's arguments upon his resolution of January 29th, the report of the Committee of Thirteen showed an advance toward Congressional Non-intervention; then it was merely said to be "expedient"; now it was to be indoctrinated as a rule for the organization of all further

(1) "We all know that we do not understand this 11th section (of the Utah bill) alike. We know that its import in different minds amounts to absolute antagonism. If we are not deceiving one another we are deceiving our constituents". (Globe: 31st Cong. 1st Session App. page 631).

(2) Globe: 31st Cong. 1st Session page 1146.

(3) " " " " " " " 1155. The disagreement arose from the difference between the Northern and the Southern ways of interpreting the slavery clauses of the Constitution. (See note on next page).

acquisitions of territory. But this movement toward Non-intervention was no advance toward the Sovereignty of the Territories over slavery; the Territorial legislatures were expressly prohibited from exercising any power over the subject.

The debate began at once upon the first bill reported by the Committee, which contained provisions for the admission of California, for Territorial governments for New Mexico and Utah, and for settling the Texan boundary question. The real point at issue in the two Territorial bills was deemed to be the question of interpretation of the status of slavery which their passage would establish. Efforts were made by both pro-slavery and anti-slavery men to clear up the ambiguity by amendments resolving it in favor of their respective Sections. First, Jefferson Davis tried to make the admission of slavery to the Territories more certain by an

(See preceding footnote) The South under Calhoun's lead was now asserting that the new Territories were open to slavery by virtue of the self-extension of the Constitution which recognized slavery over them (BENTON'S Thirty Years' View Vol. II. page 713). The North denied this and claimed the old Mexican laws excluding slavery remained in force until repealed. The Committee of Thirteen proposed to tie the hands of Congress and the Territorial governments and retain the existing status. The difficulty was that no one knew what this was. This was the meaning of Soule's objection and of Clay's answer.

amendment giving to the Territorial legislature power to pass laws for its protection (1). This was rejected by a vote of 30 to 25. Then Baldwin of Connecticut endeavored to put the Northern view into the bill by an amendment declaring that the Mexican laws prohibiting slavery were to remain in force until altered by Congress(2). This too was rejected, 32 to 23. The failure of these efforts demonstrated the correctness of Clay's assertion that to clear up its ambiguity would be to defeat the bill (3). The struggle of the three preceding years had shown that neither North nor South was able to gain its point in Congress. Clay recognized this and would transfer the question from Congress to the Supreme Court. The adoption of Baldwin's amendment would have nullified Clay's plan in this respect and have defeated the plans of the South to extend slavery. Davis' proposal did not go as far in the other direction yet it was contrary to the spirit of Clay's plan; the rejection of both showed the correctness of his reasoning.

On June 15th Soule' proposed an amendment which guaranteed to the inhabitants of the Territories the right

(1) STEPHENS: War between the States, Vol. II. page 213.

(2) Globe: 31st Cong. 1st Session pages 1146 - 1148.

(3) " " " " " " page 1155.

to allow or prohibit slavery upon being admitted to Statehood. It was an addition to the first section of the Utah Territorial bill, and was as follows:--"And when the said Territory or any portion of the same shall be admitted as a State, it shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission"(1). This provision would have no bearing on the status of slavery as long as the Territorial form of government continued; but it would bind future Congresses, with whatever moral force the Compromise measures might possess, not to interfere in the question of slavery when the constitution for the new State was being drawn up. Soule explained that the object of the amendment was to put into the bill itself a declaration in favor of the principle of Non-intervention, which had been advocated in the report of the Select Committee. The South, he said, was satisfied with this principle, but unless it were put into the bill it would have no more force than the standing of the Committee gave it. He feared that when these Territories were ready for Statehood the North would follow the same course it had taken with Missouri and refuse them admission except as free States. His purpose in offering this amendment was to

(1) Globe: 31st Cong. 1st Session App. page 902.

put to a test in the Senate the question whether Northern men proposed to abide by the principle contained in the report of the Committee of Thirteen, and in good faith intended that the people of the Territories were to be free to decide the question of slavery as they saw fit, when they came to draw up their State constitutions (1).

This amendment forced on the Senate a crucial question. The Southern men made its acceptance their ultimatum (2). If it were rejected they declared they would have nothing more to do with Clay's Compromise; its acceptance would have no legal force in determining the action of future Congresses, but would have the moral influence of the Compromise measures. It became the test question, according to Stephens, upon the decision of which, the fate of the Compromise measures depended (3). The interest felt in the vote upon it was intense owing to the fact that several Northern Senators had given no indication concerning their attitude toward it. The speech of Webster just before the vote was taken, announcing his purpose to vote for it, was deemed by the friends of the amendment to assure its passage. Only twelve votes were given against it, and

(1) Debate in Globe: 31st Cong. 1st Sess. App. pages 902-912.

(2) (ibid), and Stephen's War between the States, Volume II. page 218.

(3) Stephen's War between the States, Vol II. pages 220 to 221.

thirty-eight in its favor, which shows that the principle of Non-intervention as the basis of Compromise was gaining in public favor.

The Utah bill passed the Senate on August 1st (1) but in the final debate on July 30th an important change had been made in the clause which referred to slavery. The clause in the bill as introduced by the Committee of Thirteen which prohibited the Territorial legislature from passing any law "in respect to African slavery" had been changed at the dictation of Southern Senators to the form "establishing or prohibiting African slavery"(2). July 30th Norris of New Hampshire proposed, in an amendment, to strike out these words from the bill (3). The intention of this amendment was to give to the Territorial legislature the power of controlling slavery in the Territory, and proposed a practical application of the Doctrine of Territorial Sovereignty. To what extent it actually accomplished this will soon appear.

The discussion of the changes made in the slavery clauses of the Territorial bills, from the time the Compromise discussion began with the introduction of Clay's

(1) Globe: 31st Cong. 1st Session page 1504.

(2) " " " " " " App. page 1467.

(3) " " " " " " page 1463.

resolutions on January 29th, until their final enactment into law, shows clearly that the Northern men were, on the whole, more anxious to reach an agreement than were the Southern men, and less disposed than the latter to insist upon the strict letter of their claims. Clay, in his resolutions took a position favorable, on the whole, to the Northern view of the Territorial question. In the report of the Select Committee this was receded from, and the bills brought in prohibited the Territorial legislature from passing any law "in respect to African slavery". At first sight there would seem to be a little practical difference between this clause and the one substituted for it at the instigation of Southern men, which read, "establishing or prohibiting African slavery". But the debate shows the reason for the change, and that the latter form was thought to be more favorable to the South than the former. Jefferson Davis and others argued that the effect of the first wording would be to exclude slavery as effectively as by the Wilmot Proviso. They believed that the right which they claimed to possess, of taking slaves into the Territories would be a barren one unless laws were passed to shield and protect the possession and use of such property. Slavery could not exist in the Territories without such protection and if the Territorial legislature were to be prohibited

from legislating upon the subject of slavery at all, it would be unable to protect the institution even if disposed to do so. To obviate this, Davis and others proposed and secured the substitution of the phrase "establishing or prohibiting African slavery". This would leave the legislature powerless, as before, to exclude slavery but would give it the power to pass, if it wished, the "police regulations" necessary for its existence (1). The fact that the Northern Senators acquiesced in these successive changes all intended to favor the Southern side of the controversy, shows plainly which party was making the concessions.

The proposal of Norris to strike out these words brought squarely before the Senate the question of giving the Territorial legislature the power to decide the slavery question. This was the basis on which it was debated and passed. Yet the act was stated in such a way that another interpretation was possible, and was later adopted by pro-slavery men. The adoption of the amendment caused the part of the Act which defined the power of the Territorial legislature to read:- "the legislative power of the Territory shall extend to all rightful subjects of legisla-

(1) Debate; Globe: 31st Cong. 1st Sess. App. pages 1463 to 1473, especially speeches of Berrien and J. Davis.

tion, consistent with the Constitution of the United States and the provisions of this Act". Southern men who believed the Constitution guaranteed the right to hold slaves in the Territories could consistently deny that this gave the Territorial legislature any power to exclude slavery; according to their view such a law would neither be "consistent with the Constitution" nor a "rightful subject of legislation".

The feeling of the Senate upon the subject of Popular Sovereignty is best brought out by an analysis of the debate and vote upon this amendment. Thirteen Senators took part in the debate, nine from Slave States and four from Free States. Of these six advocated the amendment and seven opposed it. Three of its advocates were from free States and three from slave States. Two of the Free-State men gave as their reason for their position that it was an application of the principle of Popular Sovereignty in which they believed. The other favored this particular application of the Doctrine, but failed to indicate whether or not he believed in the Doctrine as a general policy. The three Slave-State men who argued for the amendment were Clay, Foote and Pratt. Clay, who was really non-sectional in his sympathies argued that the amendment only carried out the principle of Non-intervention which was the essential feature of the Compromise. Pratt expressed a similar

opinion and further thought that this particular application of the principle would result favorably to the South. Foote thought the amendment unimportant. He would vote for it but deemed it of little moment whether the clause were stricken out or not.

Of the seven opponents of the amendment six were from slave States. Four of these took the ground that the people of the South had a Constitutional right to carry slavery into the Territories. Assuming this it followed that Congress could not give to a Territory the right to hinder them from doing so. They pronounced the Cass-Douglas Doctrine absurd. The two remaining Southern speakers opposed upon the ground that the application of the Doctrine would result in the exclusion of slavery. Ewing, the sole Northern man to oppose the proposition, did so because of circumstances connected with this particular case; he thought that this was not a question of giving self-government to a people. To sum up, of the thirteen speakers, four advocated the amendment because of the principle of Non-intervention or Territorial Sovereignty it contained; four opposed for exactly the same reason; two opposed because they feared the application of the principle in this case would result unfavorably to their Section; three had special reasons, aside from the principle involved,

for favoring or opposing the amendment.

The amendment carried easily enough, the vote being 32 to 20 (1). Analysis shows that nearly all the Northern Senators favored the measure, those from the four Border States were divided upon the question, and nearly all the Southern Senators opposed. In detail,--of the 32 affirmative votes, 24 were given by Senators from free States, 8 from slave States; but of these 8, five were from the Border States of Delaware, Kentucky, and Maryland, and only three from States farther South. Of the 20 negative votes, two were given by free State Senators, 18 by Senators from slave States; among these last were the 2 Senators from the Border State of Missouri.

The Doctrine of Popular Sovereignty, therefore, owed this, its first success in Congress, to the Northern and the Border States and the opposition to it was confined almost entirely to the South. The Norris amendment was proposed by a New Hampshire Senator and carried by Northern votes (2). It remains to consider the question to what

- (1) There is a discrepancy between the Globe and the Appendix upon this vote. The affirmative is given the same in both. The negative vote is given in the Globe as 19 and the list of names is slightly different. In the analysis I have followed the Appendix because it was published after the account in the Globe proper, and was intended to be a revised account.
- (2) Douglas said in 1860 that he prompted Norris to offer his amendment, and in turn it had been suggested to him by Clay. (Globe: 36th Cong. 1st Sess. App. page 306) Both Clay and Norris were dead then and there is no possible test of the reliability of the statement.

extent, in this vote upon it, the Senators were influenced by immediate interests and how far their votes indicate their attitude toward the Doctrine of Popular Sovereignty. The question is such that a definite, positive answer is impossible, but the evidence that can be adduced favors the belief that the votes upon this occasion were determined by considerations of the immediate sectional advantage or disadvantage which would result from the application of Popular Sovereignty in this particular case, and to a less extent by adherence or opposition to the Doctrine involved. The whole object of the struggle the South was making was to keep the Territories open to slavery until a sufficient time had elapsed for the institution to establish itself there; of the North, to keep them free while in the Territorial condition. The South contended all along that the question of slavery should be decided by the people of a Territory upon its admission to Statehood (1). But the ~~vital~~ point was the Territorial status of slavery. If it were excluded during this period the Territory would be settled entirely by non-slaveholders, and there would be no disposition to permit slavery in the new State; but if slavery were allowed to gain a secure foot-hold in the Territory, it would tend to be retained in the State. The

(1) This was the Southern position in the Missouri Compromise struggle.

immigration of slave-holders into a new country however, was a slower and more difficult undertaking than that of their free-State competitors. For these reasons the South wished the decision of the question post-poned until the slave-holders were given sufficient time to migrate and were thus allowed a voice in the decision. The complaint of the South over California was that it had been settled so quickly and the State government organized so soon that slavery had been given no chance. The same reasoning applied to Utah and New Mexico, and in the case of the latter there was an added reason why the South wanted to delay the decision:- New Mexico already contained a considerable population, strongly opposed to slavery. Southern men naturally reasoned that if the Territorial legislature were given the power to decide, it would exclude slavery at once, and the free-State destiny of New Mexico would be fixed; but if the Territory were left open to slavery until ready for Statehood the South would have an opportunity to enter, in the meantime, and establish a slave-State. This consideration must have had great influence in determining the Southern vote. On the other hand all these things were as patent to the North as to the South, and though Northern Senators forbore to mention in the debate the advantage

to their Section which would probably result from this particular application of the Doctrine of Popular Sovereignty, it must have been present in their minds as one of the motives which determined their votes. Probably every Senator's vote was determined by mixed motives,--Sectional interests combined with real convictions. Some, among whom Cass, Dickinson, and Underwood may be named, had long advocated the Doctrine of Territorial Sovereignty; some, like Douglas and Phelps, were more recent converts. Others had opposed it from the first on Constitutional grounds. Among these may be named Benton, Berrien, and Davis. The vote of such as these was no doubt consistent with their professed convictions. * Clay noticed it and expressed his astonishment thereat (1). It is this, that the South which had all along advocated the principle of Non-intervention, in this instance opposed it; while the North, the home of the Wilmot Proviso, now voted 24 to 2 in favor of this application of the principle. The reason for this almost complete reversal of position by the Senators of the two Sections was, it seems probable, that they were influenced by considerations of immediate interest and expediency,-- Non-intervention was here an advantage to the North, a disadvantage to the South.

**(omitted here) yet there is no other proof that immediate interest predominated over Constitutional convictions.*

- (1) This whole discussion is based on the debate over Norris's amendment, Globe: 36th Cong. 1st Sess. App. pages 1463 - 1473.

So far as further development or changes were concerned the contest which determined the Territorial Compromise of 1850 was now over. It was settled beyond question that no attempt was to be made by Congress to influence the action of the people with reference to slavery, when they should draw up their State constitution. But the question of the status of slavery under the Territorial government was not determined beyond question. The North believed that the Compromise adopted gave this question over to the people in their Territorial legislature, and this was certainly the impression of the Senate at the time the Norris amendment was debated and passed. At that time it was advocated on the one hand, and opposed on the other, on the basis of this interpretation of its effect. In the next decade however, pro-slavery men argued that the clauses "consistent with the Constitution" and "rightful subjects of legislation" precluded such an interpretation of the acts for Utah and New Mexico, and that they did not give to the Territorial legislature any power to exclude slavery.

When the Utah and New Mexico bills went to the House, the former which was first on the Calendar was referred to the Committee of the Whole without debate.(1) The New Mexico bill was joined to another of the Compromise

(1) Globe: 31st Cong. 1st Sess. page 1681.

measures,-that relating to the Texas boundary. The provisions concerning the powers of the Territorial legislature were exactly the same as in the Senate bill and in this form the House passed the measure after a violent Parliamentary struggle of three days duration by a vote of 108 to 97 (1). This vote throws little light upon the Doctrine of Popular Sovereignty. The great struggle had been fought out in the Senate. The House followed its lead and concurred in the Compromise it had arranged, though not without opposition. The conjunction of the bill for New Mexico with the one establishing the Texas boundary still farther obscured the Compromise principle contained in the Territorial bill. Owing to circumstances connected with an appropriation of \$10,000,000 for the redemption of Texas bonds, this portion of the bill over-shadowed in importance the part establishing the Territorial governments and it is impossible to draw any conclusion concerning the attitude of the House toward the Doctrine of Territorial Sovereignty, from its action upon this bill.

The discussion and vote, in the House upon the Utah bill however, gives considerable information concerning the attitude of the Representatives upon the Territorial

(1) Globe: 31st Cong. 1st Session page 1681.

question. Several of the amendments proposed are important. The Wilmot Proviso was moved and rejected by a majority of nine(1). An amendment of directly opposite import, legalizing slavery in the territory until the State government should be organized, was defeated by thirty majority. An attempt which was then made to strike out the Soule amendment was voted down by a majority of twenty-seven. A series of amendments designed to open the Territory to slavery were rejected in succession, the House manifesting its intention to permit no change to be made in the bill as it had been passed by the Senate. The effect of all the amendments offered would have been to alter the nature of the Compromise reached by the Senate, and so to destroy whatever had been thus far effected in the way of a settlement of the Territorial dispute, and this the House was not disposed to do. When the uselessness of offering amendments became apparent, the bill was put upon its passage and carried by a vote of 97 to 75.(3)

Thus the House concurred in the Compromise made by the Senate upon the Territorial question.

- (1) Globe: 31st Cong. 1st Sess. page 1772 and following.
- (2) This provided that when ready for Statehood the Territories should be admitted either with or without slavery as their State constitutions might direct.
- (3) Globe: 31st Cong. 1st Sess. pages 1772 - 1776.

What this was has already been discussed. So far as any agreement was reached at all, it was that the slavery question in Utah and New Mexico was to be left to the control of the people in their Territorial legislatures. It was the question of the control of slavery that had given birth to the Doctrine of Popular Sovereignty, and so far as this subject was concerned the Doctrine was adopted in the organization of these Territories. This statement is made with the limitation just mentioned "so far as there was any agreement at all". For in 1850, just as in 1848, and later in 1854, men failed to agree in reality because they failed to define the premises upon which the Compromise was based. There was no agreement concerning the effect the phrase "consistent with the Constitution" would have in limiting the power of the Territorial legislature. Southern men later denied that the Territorial Acts of 1850 gave the inhabitants of Utah and New Mexico any power to exclude slavery, while their Territorial status continued, while in the North, it was believed that the Territories possessed that power. But aside from this difference of opinion, which was equally existent and made far more prominent in connection with the Kansas-Nebraska Act, the Compromise reached in 1850 upon the question of the extension of the institution of slavery, was an application of the idea of Territorial Sovereignty.

.

CHAPTER IV :-

The KANSAS-NEBRASKA bill: the final DEVELOPMENT of POPULAR SOVEREIGNTY.

With the adoption of the Compromise of 1850 there came a lull in the discussion of the slavery question. The country had wearied of the long dispute and the usual re-action set in. The two great political parties professed to consider the slavery question forever settled and to regard the Compromise of 1850 as a "finality" and the people in general seemed well satisfied with this arrangement. The Fugitive Slave Law was an element of discord, but both parties, in their platforms of 1852 asserted their support of the Compromise measures, this law included, and pledged themselves to resist all further agitation on the subject of slavery (1). The "finality" lasted until January 1854 when by the action of Stephen A. Douglas it was brought to an abrupt termination. While it lasted there was no development and there seems to have been no discussion of Popular Sovereignty; there was no

(1) STANWOOD: History of the Presidency, Chapter XIX.

issue before the country to occasion it. With the exception of one incident, the period that elapsed from the adoption of the Compromise of 1850 until the early days of 1854, when the Kansas-Nebraska struggle brought Popular Sovereignty again into prominence, may be passed over in silence.

The importance to an account of the Doctrine of Popular Sovereignty, of the enactment of the Kansas-Nebraska Act is so great, that a full discussion of the circumstances connected with its passage is necessary. Douglas, who was its author and promoter, professed to believe that in the organization of the Territories of Utah and New Mexico in 1850, Congress had not only adopted the principle of Territorial or Popular Sovereignty for those specific Territories but had prescribed it as the policy to be employed in the organization of all Territorial governments in the future. He therefore proposed to apply this principle to the Nebraska country for which a Territorial government was being demanded. But the Nebraska country was a part of the Louisiana Purchase lying North of the line of thirty-six degrees and thirty minutes and subject to the slavery restriction contained in the Missouri Compromise. The action of Douglas at once threw the country into an uproar. In the contest that ensued the Doctrine of Popular Sovereignty

received a far greater prominence than had hitherto been given it, and attained its final development. An account of the Doctrine during this period involves a discussion of the passage of the Kansas-Nebraska bill, and this is the reason for including this Chapter in a Thesis on Popular Sovereignty.

In the year preceding the contest precipitated by Douglas in 1854, an effort had been made to organize the Territory of Nebraska. It is important, not in itself, but for the light it casts upon the events of the following year. In February 1853, Richardson of Illinois, Chairman of the House Committee on Territories, introduced a bill providing for the Territory of Nebraska (1). It made no reference to slavery and the supposition was that the Missouri Compromise restriction made this unnecessary. The debate in both House and Senate shows that it was assumed as a matter of course that there was no reason for a discussion over slavery in connection with the new Territory, the matter being looked upon as settled. The debate in the House on the bill occupies eleven pages of the records (2). The only serious objection made to it was that it would violate the treaty rights of the Indian tribes in the Territory.

(1) Globe: 32nd Cong. 2nd Session page 475.

(2) " " " " " " pages 543 - 565.

The only mention made of slavery was in a brief passage, evidently treated as a joke, between Joshua Giddings and Howe of Pennsylvania. Giddings had long been the leader in the House, of the opposition to slavery, and was now a member of the Committee on Territories. Howe asked him why the Ordinance of 1787 had not been put in the bill, to which Giddings replied that it was unnecessary as the Territory was all North of the line of thirty-six degrees and thirty minutes, and slavery was therefore excluded by the Missouri Compromise which he did not consider would receive any additional force from a re-enactment. Howe now asked if he did not remember a Compromise made since that time (the Compromise of 1850) to which Giddings answered that that did not affect the question (1). This is the entire substance of the incident. It seems plain that Howe was not serious in his inquiry; it is certain that he was not taken seriously by the House. In the brief time that passed, the reporter has noted "laughter" four times! No one objected to Giddings' last answer which is sufficient indication that the House agreed with him in his statement. The bill was passed February 10th by a vote of 98 to 43, and was sent to the Senate (2). Douglas was anxious

(1) Globe: 32nd Cong. 2nd Session page 543.

(2) " " " " " " " 565.

to secure its passage, and made various attempts to induce the Senate to consider it (1) but without success until the closing hours of the session. Then it was taken up. The only reference in the debate to the slavery question was in a speech made by Atchison of Missouri (2) It is important because of the light it sheds upon the attitude of Congress toward the Missouri Compromise. Atchison was a zealous pro-slavery man and he had hitherto opposed the organization of Nebraska Territory because of the existence of the Compromise restriction upon slavery. He now said he favored the passage of the bill. He had investigated the matter and found "no prospect, no hope of a repeal" of that restriction. He considered the passage of the Missouri Compromise the second great error in our political history, but he looked upon it as irremediable, and was willing to organize the Territory (3) Douglas argued for the passage of the measure and found no fault with its provisions concerning slavery. No one opposed it on this ground, but there were other objections to its passage and it was killed by carrying a motion to lay it on the table (4).

(1) Globe: 32nd Cong. 2nd Sess. pages 581 , 658 , 1020.

(2) For this debate, including Atchison's speech, see Globe: 32nd Cong. 2nd Sess. pages 1111 - 1117.

(3) "So far as that question (the repeal of the Missouri Compromise) is concerned we might as well agree to the organization of this Territory now as next year, or five or ten years hence".

(4) Globe: 32nd Cong. 2nd Sess. page 1117.

At the opening of the next session of Congress a new attempt was made to organize a government for Nebraska, a bill for that purpose being introduced in the Senate December 14th 1853 by Dodge of Iowa. It was at once read the first and second time and turned over to the Committee on Territories (1). It happened that the composition of this committee was such that Douglas, its Chairman, completely dominated it and could propose whatever legislation he desired (2). Dodge's bill was a literal copy of the one the House had passed and Douglas had urged the Senate to pass, in the preceding session. But now he took a different course. January 4th he returned the bill to the Senate variously amended and accompanied by a special report (3). The Soule amendment to the contents of the Utah and New Mexico bills of 1850 providing that when the Territory was ready for Statehood it should be admitted either with or without slavery as the constitution drawn up by the people might direct, had been put into the Nebraska bill.

The report explained the reason for the introduction of this provision (4). In substance it was

- (1) Globe: 33rd Cong. 1st Sess. page 44.
- (2) Rhodes: History of the U. S. Vol. I. page 425.
- (3) Globe: 33rd Cong. 1st Sess. page 115.
- (4) The report is given in Cluskey: Political Text-book, pages 368-371. It was revised Jan. 10th by the addition of a section containing the "principles" of the Compromise of 1850. It is the report so revised that is under discussion here. For comment on the change see Von Holst: Constitutional History, Vol. IV pages 298-299.

that the validity of the Missouri Compromise restriction was a disputed question; that, since this was true, the committee did not undertake to decide it but fell back upon the "principles" of the settlement of 1850. The report then explained what these principles were. The measures of 1850 were intended to have a more comprehensive and enduring effect than the mere adjustment of the difficulties connected with the Mexican cession. They were designed to furnish a method of settling slavery agitation in all time to come "by leaving the question to those immediately interested in it, the inhabitants of the Territories". That is, ~~the~~ committee claimed that Congress in 1850 had adopted Popular Sovereignty as a rule of action for the organization of all future Territories. If this were true it involved as a corollary that Congress in 1850 had repealed the Missouri Compromise. But the debate of the year before on the Nebraska bill, and especially Atchison's speech, shows that Congress then assumed its existence as a matter of course, and no one thought it had already been repealed.

The point was thoroughly discussed during the debate on the Kansas-Nebraska Act and the error of Douglas' claim was clearly shown. The idea was certainly advanced in 1850 that Congress should adopt the principle of Non-intervention as the policy to be observed in the organization of future Territorial governments. It was put

forward in the debate upon Soule's amendment but it was not enacted into law and was no part of the Compromise measures.

In the report of the Committee of Thirteen it was proposed to make Non-intervention the rule to be followed in organizing all newly-acquired territory (1). But no one in the Senate seems to have thought that it was to supersede the Missouri Compromise in the remainder of the unorganized territory in the Louisiana Purchase. It is inconceivable that in a discussion lasting from January to September, during which every phase of the Sectional dispute was gone over, a measure of the importance of the Missouri Compromise could have been intentionally repealed without being mentioned in debate. Since Douglas' whole argument rested on the intentions of the Congress of 1850 this is important; it is inconceivable that the Soule and Norris amendments could have received the Northern votes that were cast for them if the Senate had thought that their effect would be to unsettle the Missouri Compromise in territory whose status in respect to slavery was already fixed. For positive evidence there are the statements of Webster on this very point. Stephens describes the vote on Soule's amendment as the crucial point in the Compromise of 1850 (2). "Upon its rejection depended consequences which no human foresight could see or estimate". Under these circumstances

(1) Globe: 31st Cong. 1st Sess. page 495.

(2) Stephens: War between the States, Vol. II pages 218 - 220

Webster rose to speak upon "the most important question perhaps, which had ever been decided by an American Senate". He announced his purpose to support the amendment which was taken by its friends to mean its passage. It is important therefore to know whether Webster thought he was deciding the repeal of the Missouri Compromise along with the fate of the preceding question. He said that he did not see much practical utility in the amendment (an altogether impossible statement if the repeal of the Missouri Compromise had been involved), yet he would support it on the ground of consistency (1) "I do it exactly on the same grounds that I voted against the introduction of the (Wilmot) Proviso. And let it be remembered that I am now speaking of New Mexico and Utah, and other Territories acquired from Mexico, and of nothing else. I confine myself to these; and as to them I see no occasion of making a provision against slavery now, or to reserve to ourselves the right of making such provision here-after. All this rests on the most thorough conviction, that, under the laws of nature, there never can be slavery in these Territories".

Webster is perhaps the best representative of the spirit of conservatism which was springing up among the anti-slavery men of the North. He is the leader of

(1) Webster's speech is given in full in Globe: 31st Cong. 1st Session page 1229.

that group of men who, without abating their hostility to slavery or their opposition to its extension, withdrew from the Proviso because they believed there were other factors strong enough to exclude slavery from the Territories of the Mexican cession. Webster supported the Territorial measures of 1850 because he believed that Utah and New Mexico would become free States without the Proviso, and that the status in regard to all the other territory of the country was already fixed (1). It is therefore inconceivable to suppose that Webster and other Northern conservatives would have voted for the amendments of Soule and Norris if the repeal of the Missouri Compromise had been involved.

Turning from the Senate to the House conclusive proof is there found of the error of Douglas' argument concerning the "principles" established by the Compromise of 1850(2). In the debate upon the New Mexico bill, Daniel of North Carolina proposed as an amendment a direct repeal of the Missouri Compromise; that the Committee in charge of the bill introduce an additional section declaring that all acts of Congress prohibiting African slavery in any territory between the Mississippi and the Pacific should

(1) See his Seventh of March speech.

(2) The name of Douglas is here used to indicate the report of the Committee on Territories; Douglas dominated the Committee so completely that this is not misleading.

be null and void "so as to extend the principle of Non-intervention to said territory". The speaker of the House ruled the amendment out of order on the ground that it related to territory not embraced in the bill under consideration (1). Again, when the Utah bill was ~~put~~ upon its passage and the House was showing a determination to suffer no changes to be made in it, Meade of Virginia proposed "that all laws here-to-fore passed by Congress prohibiting African slavery in any territory lying West of the Mississippi river are hereby repealed". This too was ruled out of order; an appeal was taken, and the Chair was sustained without a division (2). It is certain that if the House had understood that the Senate bill was to supersede the Missouri Compromise these amendments would not have been offered. And if the House itself had had any intention of effecting this result, it would not have disposed of them so uncerimoniously. The conclusion is irresistible that the House did not so understand the measure.

It is equally clear that the existence of the Missouri Compromise went unquestioned up to the time Douglas' Committee made its report, on Dodge's bill. The dialogue of Howe and Giddings and the speech of

(1) Globe: 31st Cong. 1st Session page 1736.

(2) " " " " " " 1772.

Atchison the year before are proof of this. Not that its Constitutionality was unquestioned; a considerable party in the South had long denied this. But it remained for Douglas to discover that it was non-existent. By his action he re-opened the Sectional agitation which both political parties were pledged to oppose, and without the demand of either North or South plunged the country into a turmoil that ended only with the Civil War more than ten years later.

Just as the history of the Doctrine of Popular Sovereignty must include a discussion of the Kansas-Nebraska bill, so this in turn involves a consideration of the motives which governed its author. It would be difficult to name another important act of legislation in which the personality of the author played as large a part as in the case of Douglas and the Kansas-Nebraska Act. From the stand-point of an account of Popular Sovereignty the first thing to be noticed in connection with the Kansas-Nebraska legislation is the question why Douglas re-opened the Sectional controversy over the existence of slavery. The year before he had been satisfied to organize Nebraska Territory without touching upon the subject of slavery at all, the supposition being that its status was already settled by the Missouri Compromise restriction. In the nine months which had elapsed since that time there had been no apparent change in the political situation which called for any change of policy in the organization of a government

for the territory. Yet Douglas deliberately re-opened the Sectional controversy; he brought out from its four years retirement the doctrine with which Cass was identified and in the face of a storm of opposition substituted it for the Missouri Compromise. He must have been impelled to this course of action by powerful motives, and it is necessary to consider what they were, - to what extent they were personal to Douglas and how far he was influenced by other considerations.

According to Von Holst Douglas' action was due to an ordinary political intrigue which when once started he could not control (1). The Democratic party had won an over-whelming victory in 1852 but had "consumed all its powder" in doing so, and now for lack of an idea to hold it together, and because of dissensions that had been created by the distribution Pierce had made of the spoils of office it was in danger of going to pieces. At this juncture Douglas looked around for some question upon which to concentrate public attention and rally the Democrats to the support of the Party. He thought "some deep-reaching agitation" was necessary (2). While saving the Party he would at the same time advance his own claims upon it for the nomination for the Presidency in the next campaign (3). The reopening

(1) See Von Holst: Constitutional History Vol. IV page 213.

(2) (ibid) , quoted from Douglas.

(3) It is interesting to notice the similarity of Douglas' situation to that of Cass in 1847 when he produced the Nicholson letter.

of the slavery dispute in connection with Nebraska presented itself as the subject best suited to his purpose, and the report of January 4th was the first move in this political game. But Douglas had failed to foresee the consequences of his course and when the slavery agitation had once been re-opened he could not control it. These are the reasons advanced by Von Holst; but there is another way of looking at the matter and other motives equally probable can be pointed out.

Douglas had for years made the Western territory the object of his especial interest. The year before he had reminded the Senate that he had been laboring eight years to secure the organization of Nebraska (1). During all this time he had been unsuccessful and one reason for his failure was the disinclination of the South to see a free Territory organized. This is well expressed in the speech Atchison made the year before (2). It has just been stated that there had been no apparent change in the political situation since 1853. But this may have seemed to Douglas the very reason for changing his tactics in regard to Nebraska. He had tried the old plan for eight years without success. He may well have concluded it was time to adopt another.

(1) Globe: 32nd Cong. 2nd Session page 1117

(2) " " " " " " " 1113.

If it is granted that Douglas did reason thus, that he had come to the conclusion that the real cause of his failure to secure a government for Nebraska was the opposition of the South to another free Territory, his subsequent course is easy of explanation. Once he had made up his mind to disregard the Missouri Compromise there could be no question of the policy he would substitute for it. He had long believed in Cass's doctrine of the Sovereignty of the Territories (1). He was a thorough Westerner full of faith in the abilities and virtue of the common people of his Section, and he resented the idea that the vigorous Western settlers, even the squatters, were not as capable of self-government as the citizens of the "effeminate" Eastern States (2). In short the situation was such that everything urged him to take up the policy of Popular Sovereignty when once he had decided upon a change. The sole reason for a new policy at all was that the South would not consent to the organization of the Territory with the certainty that slavery was to be excluded (3). Here was a situation

- (1) It is difficult to discover just when Douglas adopted this. He advocated it in 1850 and then explained that any votes he had given not in accordance with it had been due to instructions and not to his own inclination. (See Globe: 31st Cong. 1st Session App. page 911). Jefferson Davis in 1860 called him "not the inventor but an early disciple of the doctrine".
- (2) See Burgess: Middle Period, pages 384 - 385.
- (3) The element of personal ambition is not taken into consideration here; it is considered in the following paragraph.

favorable to compromise. The favor of the South must be gained without losing the support of the North. Douglas' own inclinations favored Popular Sovereignty, and it had been demonstrated in 1850 that this form of compromise was more acceptable to the country than any other.

The motive of personal interest remains to be considered. This received the most emphasis at the hands of Douglas' contemporaries, and is given great weight by historians of the period. The consequences of a renewal of the Sectional controversy over slavery seem not to have been foreseen by Douglas. He had no moral convictions in regard to slavery and later professed to be profoundly indifferent whether it were "voted up or voted down". He was therefore totally incapable of realizing the opposition that would be roused in the North by his proposal to give it an even chance in Nebraska which the North considered pledged to Freedom. He remains today one of the best examples of the practical politician our country has developed. He was not, therefore, over-scrupulous about the methods he employed to gain a desired end. He wanted to get rid of the Missouri Compromise restriction and to accomplish this the tortuous course he pursued no doubt seemed to him justifiable enough. He was a recognized aspirant for the Presidency, with a considerable following in the North; but no one to whom the South was opposed could secure

the Democratic nomination and Douglas who was an ambitious man no doubt was influenced more or less by a desire to gain this support for himself. It is not the object in this study to attempt to assign a definite degree of importance to these different motives, but rather to indicate why it was that Popular Sovereignty was brought forth in 1854, and made the principle of the Kansas-Nebraska bill. The discussion shows that different reasons, partly selfish, partly due to other considerations, impelled Douglas to advocate a new policy toward Nebraska and that with this point reached everything favored the choice of Popular Sovereignty as the policy to be adopted.

The manner in which Douglas and his associates set about accomplishing the adoption of the principle of Popular Sovereignty was marked by a lack of candor and sincerity. The amendments and the report which the Committee on Territories announced to the Senate on January 4th and 10th have already been described. It was subsequently shown that back of this public announcement lay a secret bargain entered into by the Northern and the Southern wings of the Democratic party (1). The Territorial bill had been carefully considered not only by the Committee on Territories but repeated caucuses had been

(1) See Nicolay & Hay's Lincoln, Vol. I pages 343-344; also Senate debate of May 8th 1860, Globe: 36th Cong. 1st Session page 1966.

held be the Democratic leaders to discuss the party results likely to grow out of it. In these caucuses the Southern Senators united in asserting that under the Constitution the Territories were common property and there was "no power under heaven" that could exclude slavery until the people of the Territory should make a constitution and form a State. Douglas and his adherents denied this and claimed for the people the right under the Territorial government to exclude slavery if they so desired. After repeated conferences the difference was settled by the following bargain:- The bill was to be reported in a form which would delegate all the power of Congress over slavery to the people of the Territory; but the extent of the power thus delegated was to be left undefined by Congress, to be determined by the courts, and each faction agreed to abide by the decision. In this way a party rupture was to be avoided, and a clause was put into the bill designed to secure an early judicial decision (1). Apparently the politicians were then unaware that the Dred Scott case was already pending.

Matters stood in this ambiguous condition the bill a literal copy of the Territorial bills of 1850, modified by the section of January 10th explaining that its

(1) The authority for the foregoing is the debate of May 8th 1860, Globe: 36th Cong. 1st Session page 1966.

intent and meaning was to carry into effect the "principles" established by those bills (1), and back of all unknown to the public, the bargain agreed upon by the two wings of the Democratic party, - when on January 16th Dixon of Kentucky gave notice that when the bill should be taken up he would propose an amendment repealing the Missouri Compromise restriction (2). This was nothing more than a clear expression of the real meaning of the action that had already been taken, yet according to Dixon's story Douglas was not willing to acknowledge it and tried to dissuade him from offering the proposed amendment (3). However upon consideration he decided to accept the idea and adopt the proposition as his own. His critics assert that he was impelled to this by the consideration that he must not permit anyone else to out-strip him in making overtures to the South for fear his Presidential calculations might be thus upset (4). He himself ascribed his action to a conviction that Dixon was right and the Missouri Compromise ought to be repealed in vindication of the Constitution (5). Whatever the reason

- (1) For this additional section see Von Holst: Constitutional History, Vol. IV page 298.
- (2) Globe: 33rd Cong. 1st Session page 175.
- (3) Dixon's story is quoted in Nicolay & Hay's Lincoln Vol. I page 348.
- (4) See Nicolay & Hay's Lincoln, Vol. I page 345; Von Holst, Constitutional History, Vol. IV pages 316-317; and Rhodes: History of the United States Vol. I page 436.
- (5) Conversation with Dixon quoted in Nicolay & Hay.

the fact is clear that he did not adopt the Repeal as a part of his bill and it soon transpired that he was meditating other changes as well.

It was important to the success of Douglas' bill to gain for it the support of the Administration. On the 20th of January the "Union" the recognized organ of the Administration had contained an editorial condemning Dixon's amendment (1). Never-the-less, Douglas and other Democratic leaders succeeded during the two following days in convincing Pierce that he should support the measure as amended, and the President himself wrote out the part dealing with the abrogation of the Missouri Compromise (2). On the following day, January 23rd, Douglas reported to the Senate that the Committee on Territories desired to make a number of changes in the Nebraska bill, and had prepared a new bill embodying these, which he wished to substitute for the one then before the Senate (3). The changes that demand attention are two in number. First, in place of one Territory two were now provided for, the Southern to be called Kansas, the Northern Nebraska; second, the new bill declared that the slavery restriction of the Missouri

(1) Quoted by Von Holst: Constitutional History Vol. IV p 311.

(2) Jefferson Davis: Rise and Fall of the Confederate Government, Vol. I page 28. ; also Wilson: Rise and Fall of the Slave Power, Vol. II page 382.

(3) Cong. Globe: 33rd Cong. 1st Sess. page 221.

Compromise "was superseded by the principles of the legislation of 1850, commonly called the Compromise measures, and is hereby declared inoperative" (1).

The second of these propositions has already been discussed; the first only need be considered in this place. The reason for creating two Territories instead of one is not at first sight apparent. The one advanced by Douglas at the time was evidently a mere excuse. It was that the inhabitants of the Nebraska country had sent two "delegates",--without any legal standing whatever,--to Congress, to represent their interests, and these men had asked the Committee on Territories to divide the Nebraska country on the line of the 40th parallel (2). But the fact that the organization of the country into one Territory was being opposed on the ground that there were too few inhabitants to justify it, shows that this reason was absurd (3).

The motive assigned to Douglas by his opponents and his critics is that he made the change as a further concession to the South; It seemed likely that if the whole region were put into one Territory a majority of the settlers would favor the exclusion of slavery; while

- (1) Cong. Globe: 33rd Cong. 1st Session page 221.
- (2) "They are not legal delegates of course, but they have been sent here as agents". Douglas' explanation to the Senate, Globe: 33rd Cong. 1st Session page 221.
- (3) On the population of the Nebraska country at this time see Von Holst: Constitutional History Vol. IV page 320 and speech of Houston in the Senate, Globe: 33rd Cong. 1st Session App. page 205.

under the new plan it was expected that Kansas, bordering on the slave State of Missouri, would be occupied by pro-slavery settlers. Nebraska would be conceded to freedom by the South, but it would make a slave State of Kansas (1). The bearing the change has upon Popular Sovereignty is that it throws some light upon the question of Douglas' sincerity in his effort to establish the Doctrine. This is one of many evidences of the extent to which his course was influenced by his desire to keep the favor of the South.

The next day Dixon announced to the Senate that the bill as now stated met his entire approval. But it is not probable that he and Douglas held the same opinion as to what its effect would be. While professing to be in entire accord they were really at issue on the vital point of the measure. The difference lay in the way the two interpreted the Constitution; it has been seen already how the difference between the Northern and the Southern conceptions of the doctrine of Non-intervention was a cause of deception in the Democratic campaign of 1848; it is important to notice that the same difference existed in 1854. Dixon, though a Whig, "knew no Whiggism and no Democracy" in a question where slavery was

(1) For an elaboration of the view here indicated see Rhodes: History of the U. S. Volume I pages 439-440; also Von Holst: Constitutional History, Vol. IV page 323.

involved (1). The important thing about his views upon the Constitutional rights of slavery in the Territories is not that he as an individual held them, but that they are representative of the pro-slavery party at this time. The South supported Douglas's measure in 1854, but just as the Non-intervention of the Southern Democracy in 1848 was not the Non-intervention of Cass and Dickinson, so now the doctrine held by the Southern Senators was not the same thing as was the Popular Sovereignty of Douglas. This difference had much to do with the disastrous effects which followed upon the practical application of the Doctrine of Popular Sovereignty under the Kansas-Nebraska Act.

On the same day that Dixon announced his support of the bill, appeared the key-note of the opposition to it, the "Appeal of the Independent Democrats in Congress to the people of the United States" (2). The Independent Democrats were the extreme opponents in Congress of the policy of slavery expansion. The appeal was signed by two Senators and four Representatives but it had an importance out of all proportion to these insignificant numbers. It roused the people of the North to a realization of the importance of the proposed Repeal, and a perfect storm of agitation and protest swept over that Section,

(1) Statement of Dixon, Globe: 33rd Cong. 1st Sess. page 240.

(2) The Appeal is given in Globe: 33rd Cong. 1st Sess. pages 281-282.

increasing in intensity as the debate continued (1). In the South an opposite attitude was taken by the people. At first they looked upon the bill as a gift of the Greeks, but as time went on "they flew to it as moths to the candle" as one observer has stated it (2). The debate was carried on principally over the Constitutionality of the Missouri Compromise and the interpretation of the measures of 1850. There was no doubt at all that the Senate would pass the bill, and it is necessary to notice only the general course of the debate.

The few Senators who opposed the bill had much the best of the argument upon the meaning of the Compromise of 1850 and the question whether the Missouri Compromise had been abolished then. It has been seen how Dixon forced Douglas to incorporate in the bill an open declaration that the Missouri Compromise was no longer in force. So in turn his opponents drove him from the claim that it had been set aside by the Compromise measures of 1850 (3). He turned again to the alteration of the bill, so as to make it meet the objection brought against it. February 7th he brought in an amendment which proposed to strike out the clause

(1) Rhodes: History of the U. S. Volume I pages 462 - 469.

(2) (ibid) Vol. I page 470.

(3) Von Holst: Constitutional History, Vol. IV page 334.

"which (the Missouri Compromise) was superseded by the principles of the legislation of 1850, commonly called the Compromise measures, and is hereby declared inoperative" and to insert in its stead, "which being inconsistent with the principles of Non-intervention by Congress Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the Compromise measures is hereby declared inoperative and void"(1). In this way the fiction that the measures of 1850 had repealed the Missouri Compromise which had been so severely handled in debate, and which had prevented Cass from supporting the bill was removed (2).

The new amendment further contained an interpretation of the Act to which it was appended; "it being the true intent and meaning of this Act ^{not} to legislate slavery into any Territory or State nor to exclude it therefrom; but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject to the Constitution of the United States". This clause was subjected to bitter criticism by Benton and others (3). Ostensibly it was designed to render impossible

(1) Globe: 33rd Cong. 1st Sess. page 353.

(2) For Cass's attitude toward the bill see the Senate debate of February 6th. From this time on he supported the measure.

(3) Benton called it "a little stump speech injected into the belly of the bill".

any misinterpretation of the Act; 'this was Douglas' explanation of it. If he was sincere in this his intention was a creditable one and the clause did not deserve the harsh criticism directed against it. But there is good reason to doubt the sincerity of the explanation, and to think that it is simply the last evidence of the devious course which Douglas pursued through-out the discussion of the bill.

The cause of the suspicion is the concluding phrase, "subject only to the Constitution of the United States". Without this the clause would have accomplished its professed purpose of establishing beyond a doubt the fact that the Act was intended to give to the people of the Territories entire power over the subject of slavery. With this qualification the clause established nothing. No one knew better than Douglas the diversity of opinion that existed concerning the Constitutional powers of the Territories; no one knew better than he that the effect of this phrase would be to unsettle the very "principle" which the Act was supposed to establish, - the right of the inhabitants of the Territories to self-government in all local affairs. The question why he inserted the phrase in the bill leads back again to the question of his motives, whether he was influenced most by his devotion to the principle of

Territorial Sovereignty or by the desire to gain the Presidency. If the former motive had been uppermost it seems certain this phrase would have found no place in the bill. This whole clause declaring the intent of the Act appears like a cleverly-worded attempt to satisfy both North and South, permitting people of both Sections to support the bill while still retaining their diverse Constitutional opinions. The Democracy of the North were to be attracted by the declaration in favor of Territorial Sovereignty; the pro-slavery party to be retained by the restriction upon this power contained in the concluding phrase of the clause. In short it was in entire harmony with the caucus bargain that had been made, that the power of Congress over slavery in the Territories was to be delegated to their inhabitants but the extent of this power was to be left undefined.

The supporters of the bill were well aware of the division in their ranks on the question of the status in which slavery would be left under the governments the Act was to create. It was debated in the Senate between Cass, Butler, Brown and others (1). Clayton of Delaware who at first supported the bill, turned against it upon hearing Norris argue in favor of it on the ground that it was a triumph of the Doctrine of Territorial or Popular Sovereignty. The bearing of this difference upon the fortunes

(1) Globe: 33rd Cong. 1st Session page 422.

of the Doctrine of Popular Sovereignty is obvious; it was illustrated in the settlement of Kansas. If the South had accepted in good faith the policy of the Sovereignty of the Territory over the question of slavery, or if both Sections had agreed upon one interpretation of the Kansas-Nebraska Act, the history of the settlement of Kansas would have been far different. The fact that the Act was couched in terms admitting diverse interpretation was responsible for the failure of the policy to work successfully when given a practical application in Kansas.

The amendment introduced on February 7th is the final expression which the Doctrine of Popular Sovereignty was given in the Kansas-Nebraska bill. In this form it was enacted into law. An effort was made by Chase to remove the ambiguity occasioned by the clause "subject only to the Constitution of the United States"; he proposed to add to this, "under which the people of the Territory through their appropriate representatives may, if they see fit, prohibit the existence of slavery therein"(1). The purpose of this amendment, he explained, was to test the sense of the Senate upon the question whether the Territorial legislatures would exclude slavery if they so desired. This was the very question which the two wings of the Demo-

(1) Globe: 33rd Cong. 1st Session pages 421 - 423.

cratic party had in caucus agreed to leave unanswered; they could not, therefore, answer it now, and Chase's amendment was rejected by a vote of 36 to 10, not however, until the debate upon it had brought out clearly the wide divergence of opinion among the supporters of the bill (1).

The success of the bill in the Senate had been a foregone conclusion from the time the repeal of the Missouri Compromise was first proposed. This assurance was due to the fact that it was supported by the Democratic party, and by the South irrespective of party. The Southern Whigs allied themselves with the Democratic party and to oppose these there remained only the Northern Whigs, the Independent Democrats and the scattering votes. The vote on the bill was taken on the morning of March 5th at the close of a seventeen hour session, and resulted in its passage, 37 votes against 14.

The passage of the bill in the House can be treated with considerable brevity. Now, as in the Compromise of 1850, the Senate took the lead and determined the form of the Act, and the House did no more than acquiesce in what the Senate had done. Perhaps it would be more exact to say that Douglas took the lead. He was the main-spring of action on the bill in the Senate, and he had

(1) Globe: 33rd Cong. 1st Session page 519.

complete control of it in the House as well. Richardson, Chairman of the House Committee on Territories, was his special friend and political Lieutenant, and now acted under his directions (1). For this reason the contest in the House was not upon the form of the bill, as in the Senate, but upon the question of its passage.

Although the bill had passed the Senate by an over-whelming majority the contest in the House was unusually severe. The reason for the increased opposition is easily explained. The Repeal of the Missouri Compromise came upon the country as a complete surprise. Public opinion against the bill had been steadily rising in the North from the time its import was first made known by the Appeal of the Independent Democrats (2). The House is always more susceptible to public opinion than the Senate and the Northern Democratic Representatives could not view this rising storm with as much complacency as did the Northern Senators. Many of them who would, if forced to face the issue, vote for the bill in spite of the public

(1) Nicolay & Hay's Lincoln, Vol. I page 337.

(2) Upon the first appearance of the Senate bill in the House, Cutting said "since its introduction into Congress the North would seem to have taken up arms, and to have been excited into a sort of Civil insurrection".
Globe: 33rd Cong. 1st Session page 702.

opinion of their action, because they feared to oppose an Administration measure, preferred to avoid the troublesome alternative if they could. Therefore when the bill first came before the House, March 21st, instead of its being referred to the Committee on Territories as Richardson desired, it was sent to the Committee of the Whole, by a vote of 110 to 95 (1). As the Committee of the Whole already had more business before it than could possibly be disposed of during the session, this action was regarded as "killing the bill by indirection" (2).

Some of its opponents thought this meant failure for the entire session (3). But Douglas was not so easily defeated. He had the support of the Administration, and under the influence of party discipline and a free use of official patronage a safe majority in favor of the bill was obtained (4). The details of the Parliamentary struggle that now ensued, throw no light upon Popular Sovereignty, and may be passed over in silence. The House passed the bill May 22nd by a majority of thirteen votes, just as

(1) Globe: 33rd Cong. 1st Session page 701.

(2) The words quoted are Richardson's, used by him in denouncing the action of the House.

(3) Rhodes: History of the United States Vol. I page 431.

(4) Von Holst: Constitutional History, Vol. IV page 432.

it had come from the Senate except for one change unimportant in this discussion. The Senate concurred in the change and May 30th the bill received the President's signature and became a law.

The development of Popular Sovereignty was now completed; the remainder of its history is the story of the Doctrine in practical operation. The last step in the development was the christening of the Doctrine. In his final summing up of the debate on the Kansas-Nebraska bill, just before the vote was taken in the Senate. Douglas gave the name of Popular Sovereignty to the principle, the expression of which was the excuse for the existence of the bill. Until then the Doctrine had been variously designated as Non-intervention, Squatter Sovereignty, and Sovereignty of the Territories. The term as used in this paper has been with the meaning attached to it by Douglas at this time.

It has been stated in the preceding Chapter that Popular Sovereignty was adopted in the Compromise of 1850. It remains to point out the advance that was made in the legislature of 1854. Considering the theory involved there was none. The Popular Sovereignty of 1854 was the same Doctrine as the Squatter or Territorial Sovereignty of 1850. But considering the position the Doctrine occupied the legislation for Kansas and Nebraska shows a great ad-

vance over that for Utah and New Mexico. The Acts establishing the latter Territories were a part of the series of measures which were regarded as one bargain between the North and the South, and Popular Sovereignty was adopted as a settlement of a specific dispute. It was accepted because the experience of three years of controversy had shown that it was the only basis upon which an agreement between the Sections could be reached, rather than from Constitutional conviction. In 1854 the Constitutional principle received the emphasis; it was made the excuse for the Repeal of the Missouri Compromise, and the main argument in favor of the Kansas-Nebraska bill. In short in 1850 Popular Sovereignty was adopted as the most expedient method of settling a particular controversy; in 1854 the principle was consciously adopted by Congress, uninfluenced by any specific situation. That which the Committee of Thirteen in 1850 suggested in its report, the Congress of 1854 enacted in the Kansas-Nebraska bill.

There was an advance also in the scope of the application of the doctrine. Theoretically it required that the people of a Territory should have complete local autonomy. Until the debate on the Kansas-Nebraska bill no effort was made to apply it to any other subject than that of slavery. But during that debate the opponents of the measure taunted

Douglas with the inconsistency of such an application and he made an effort to meet the requirements ~~of~~ the Theory. It was impossible to do this, but as a result of the effort made the Territorial legislature of Kansas and Nebraska were relieved of the obligation to submit their acts to Congress for approval, a degree of independence enjoyed by no other Territorial legislature before or since that time.

Finally, the existence of the Missouri Compromise had an important bearing on Popular Sovereignty in 1854. Had it not been influenced by the desire to be rid of that restriction, the South would never have supported Douglas' measure; and it never did assent to his doctrine. The people of the North, especially of the Northeastern States viewed the Doctrine with detestation because it was employed as the means with which to repeal the Missouri Compromise, which they regarded as a violation of faith. Thus again, as in the Campaign of 1848, Popular Sovereignty was not judged on its own merits alone, but was confused with another issue; and the feeling aroused by the repeal of the Missouri Compromise was a factor in the failure of Popular Sovereignty when put to the test in Kansas.

.

CHAPTER V : -

Some considerations of POPULAR SOVEREIGNTY : The CONSTITUTIONAL THEORY and The POLITICAL POLICY.

There are two well-defined periods in the history of Popular Sovereignty. The first ends with the passage of the Kansas-Nebraska Act and is concerned with the Origin and development of the Doctrine; this has been traced in the preceding chapters. The second period extends from this point to the final disappearance of the Doctrine in the Presidential election of November 1860. This deals with the part which Popular Sovereignty as developed in the first period played in the political life of the country. Its share in the events of these momentous years will be made clearer if, before reciting them, the attention is turned to some considerations and criticisms of the Constitutional theory upon which the Doctrine was based, and some attempt is made to point out the reasons for its failure as a political policy.

An intelligent appreciation of the Doctrine requires that the causes of its Origin and the conditions for which it was brought forward as a remedy be steadily borne in mind.

It has already been shown (1) that in the dispute over the question of the extension of slavery to the territory acquired from Mexico, the people of the South in general claimed to possess the right to carry the institution thither, while the North contended that Congress could and should exclude it from the new acquisition. The dispute was not clean cut between the Sections but for a time, never-the-less, the people of the North and of the South were practically united on the issues named above. Then, between these directly opposite claims of the two Sections, the theory of Popular Sovereignty was evolved as a compromise. It must be judged, therefore, as a compromise measure, and this necessitates an examination of the claims of the two conflicting parties.

The contention of the Northern men found expression in the Wilmot Proviso. The advocates of this measure were all agreed in claiming for Congress possession of the Constitutional power necessary to carry it out, but they differed among themselves concerning the source from which it was derived. In 1850 Cass enumerated twelve different Constitutional sources which were being urged by various advocates of the Proviso as the basis of the power which

(1 Supra: CHAPTER I.

they claimed for Congress (1). The argument most frequently heard, especially in the early part of the discussion, was based on that part of Section 3 Article IV of the Constitution which reads, "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States". The issue between the two parties was upon the interpretation of the word "territory". The Wilmot Proviso party used it in the broad sense and looked upon this as a clear grant to Congress of general legislative control over the Territories, the institution of slavery included. The answer of the pro-slavery party and of the Popular Sovereignty party when it arose, was that by the word "territory" as here used the framers of the Constitution meant nothing more than the land viewed as property; the clause gave Congress power to make whatever rules were necessary for the enjoyment by the general government of its property right in the land of the public domain but they held that it meant nothing more. In support of this interpretation they pointed to the way "territory" is used in conjunction with "other property": the two terms must be used in the same sense. For additional evidence they referred to that part of the Constitution

(1) Globe: 31st Cong. 1st Session, page 60.

which gives Congress control over the seat of government. They argued that this clause would be superfluous if the framers of the Constitution had intended to give to the other the meaning the Wilmot Proviso party put upon it: and further they urged against the argument of the "Provisoists" that in the latter section, where there could be no doubt of the intention to confer upon Congress complete governmental control, the language used was different and much more effective than that contained in Section 3 of Article IV.

The decision of subsequent times has upheld the contention of the Proviso party concerning the power of Congress (1), and the interpretation of this clause of the Constitution. But at the time opponents of the Proviso assailed the argument with zeal and force, and as the discussion went on the Proviso men turned more and more to other arguments (2). Some found the power of Congress to govern the Territories in the clause which gives to it power to admit new States. The war and treaty-making powers were referred to by some. By still others the right of ownership was held to imply the power to govern. It is not necessary to enumerate farther. All of the variously-

(1) Willoughby: American Constitutional System.

(2) See speech of Cass, January 21st, 22nd, 1851. And in general the debates on the Proviso in the 29th and 30th Congresses.

constructed arguments lead to the same conclusion, the possession by Congress of the Constitutional power to exclude slavery from the Territories, and the desirability of exercising it in the present instance by the enactment of the Proviso.

When the dispute over the Mexican cession began, Southern men generally were in favor of dividing the territory between slavery and freedom by extending the Missouri Compromise line to the Pacific. They looked upon this as a fair way of settling the controversy and urged it upon Congress both in 1847 and in 1848 in connection with the bills for Oregon Territory. The action of Calhoun well illustrates this attitude. He was personally opposed to the Compromise line but for the sake of peace was willing to acquiesce in its extension, and had himself instigated Burt's amendment to the Oregon bill of 1847 which was designed to accomplish this (1). As the Wilmot Proviso party steadily rejected the plan Calhoun fell back upon what he considered the principles of the Constitution. He declared the era of compromises closed and drew up a series of resolutions to embody his views of the rights of the South. They are the

(1) Calhoun's speech, Globe: 29th Cong. 2nd Session page 454.

first authoritative formulation of the doctrine of Non-intervention(1). Rhett of South Carolina had already arrived at a similar position and announced it in a close Constitutional argument on the fifteenth of the preceding month (2). This speech and Calhoun's resolutions taken together clearly express the extreme position in opposition to the Wilmot Proviso which the South under Calhoun's leadership soon adopted.

It was based on the assertion that under the Constitution slaves are property merely, coupled with the Southern doctrine of States' Sovereignty and the compact theory of the government. Rhett's argument to prove the inability of Congress to exclude slavery from the Territories was as follows. The Territories belong to the United States which are tenants in common or co-sovereigns over them. The Constitution is a common compact between these sovereigns and Congress is the agent of the States. The States have given their agent power to make "needful rules and regulations for their common property, the Territories; but they have retained unimpaired their sovereignty over this property; it

(1) Resolutions and speech of Calhoun, in Globe: 29th Cong. 2nd Session pages 453 - 455 February 19th 1847.

(2) Globe: 29th Cong. 2nd Session App. page 244.

exists within the Territory as much as it does within the States themselves. No conflict can arise between the States, however, because they have conceded to the common agent the right to make rules and regulations which are to be binding on all. "The only effect of the reserved sovereignty is that it secures to each State the right to enter the Territories with her citizens and to settle and occupy them with their property, -with whatever is recognized as property by each State". From these premises the conclusion is drawn that for a portion of the States to set up their will over the Territories and through Congress or any other instrumentality to exclude any of the co-states from possessing and colonizing them would be to assert that sovereignty over them is not in all the States but in the excluding portion only; and if this may be asserted in respect to Territories it can be equally asserted in the States.

Calhoun's resolutions embodied the same argument expressed in the form of a summary. Their essential propositions were as follows. The Territories are the common property of the separate States which form the Union; Congress as the joint agent of the States can pass no law directly or indirectly impairing the equal rights of any of the States with regard to the Territories; a law that prevents the

citizens of certain States from establishing themselves with their property in the Territories would have this effect; no conditions can rightfully be attached to the admission of a State into the Union other than that it must have a republican form of government.

When first announced the position thus expressed was an extreme one, but Calhoun was not long in securing a party following (1). The formation of a party upon this platform was the answer of pro-slavery men to the Wilmot Proviso. The problem of Cass in the latter part of 1847 was to devise a policy around which it would be possible for men from both of these antagonistic parties to come together, and his solution was the doctrine, already foreshadowed, of the political sovereignty of the Territories in local and internal affairs, announced in the Nicholson letter. It was necessary to formulate with care a doctrine which was expected to gain the support of men of opposite opinions. A clear statement of Territorial Sovereignty would have had supporters among those who did not have strong convictions on the question of slavery or who feared the results of the violent dispute and were disposed to settle it by a compromise. But the number of these was insufficient to win the

(1) See Von Holst: Constitutional History Vol. III page 351.

Presidential election, and the condition of the Democratic party demanded something more than a clear statement of Territorial Sovereignty if its Northern and Southern wings were to be held together. It was useless to attempt to bring the Southern Democrats to renounce their claims concerning the Constitutional rights of slavery and sincerely accept a platform which could win success in the Northern States and so resort was had to ambiguity. The doctrine^{as} announced by Cass readily lent itself to different interpretations and was used to deceive from the start. It was termed "Non-intervention" and this was the name also by which Calhoun's doctrine was known. By this simple identity of names of two radically different doctrines it was represented with much effect during the Campaign that the Democratic party was united upon the territorial issue. But if the Nicholson letter had been an unequivocal formulation of the doctrine of Territorial determination of the question of slavery, the identity of names alone would not have sufficed to create the confusion that existed. Instead of a clear statement it was studiously ambiguous. The construction of Territorial Sovereignty which Cass put upon it in 1850 and ever after, now seems the most obvious one. But the letter nowhere says plainly that the Territories may exclude slavery if they so desire. The expression used is to "regulate" it, under the general principles of the Constitution". Accordingly we

find, toward the close of June of the Presidential year, a Southern Representative arguing on the floor of the House, that the Nicholson letter showed Cass to be an opponent of the doctrine that the people of a Territory ^{could} ~~can~~ exclude slavery (1). If members of Congress were thus at sea upon this the fundamental point of Cass's position it is certain that the mass of the Southern voters, to whom politics was an incident rather than a vocation, were confused.

However the real leaders of the party must have understood what position Cass occupied on the Territorial question; at least they were in large degree responsible for the studied ambiguity of the Nicholson letter. Before its publication it was submitted to them to ascertain whether they approved of it as an expression of the party creed (2) and it is impossible not to believe that in this private discussion the different interpretations to which it was subject were considered. Davis expressly states that he condemned the device of basing success in the campaign on an ambiguous platform, but without avail (3). The Whigs believed at the time that the ambiguity of Cass's position was what made it

(1) Featherston of Mississippi; Globe: 30th Cong. 1st Sess. App. page 765.

(2) Statements of Douglas and Davis, Globe: 36th Cong. 1st Sess. App. pages 301 - 302.

(3) (ibid).

most acceptable to the party, a belief which was not without justification. But aside from all confusion concerning the real attitude of the Democratic party in this Campaign, and when the true meaning of Cass's doctrine was fully understood, it gained increasing support until Congress adopted it in the Kansas-Nebraska bill. One main reason for this has already been indicated, the fact that it presented a basis of compromise between North and South. But there were reasons why this particular compromise was adopted in preference to all others, and these can best be shown by an examination of the Doctrine and ^{the} arguments of its supporters.

The one great argument for Popular Sovereignty repeated over and over again by Dickinson, Cass, and Douglas, was that it embodied the great principle of American political life,—that of self-government! This was an appeal well calculated to win support among those who were incapable of thinking things out for themselves or who did not take the trouble to do so. In order further to gain popular favor the principle of Popular Sovereignty was traced back to the Revolutionary period and identified with the principles which actuated the Colonists in their revolt against English rule. It was artfully represented that there was an historical connection between the attitude of the Colonists in the Revolutionary contest and the new policy now being advo-

cated (1). In this way a paternity certain to command respect was ascribed to the doctrine. Dickinson started this practice in his speech of January 1848, and it is evident from the frequency with which the argument was repeated that the leaders in the advocacy of Popular Sovereignty fully realized the strength it added to their Doctrine.

With even greater persistency it was argued that local self-government is the essence of American political life. The changes were repeatedly rung on the proposition that a people is better fitted to legislate for itself on all its domestic affairs through its own representative assembly, than is a distant legislature not directly acquainted with its needs or responsive to its censure or approval (2). As an abstract proposition this was undeniably true. Then from this as a premise the conclusion was drawn that the people of a Territory are entitled to the right of legislative control over their domestic affairs and institutions. Frequent appeal was made to the feeling, prevalent in the West, that the Western settler was as well qualified for

(1) See speech of Dickinson, January 12th 1848; Article of Douglas, Harper's Magazine September 1859, also various speeches of Cass in Globe.

(2) See Dickinson January 12th 1848; Cass, January 21st and 22nd 1850, both in Globe; Douglas, in Harper's Magazine September 1859.

self-government as the citizen of any other part of the country. The legislation passed by Congress for controlling distant Territories was denounced as despotic in principle and was compared with the despotism of the English Parliament against whose legislation the Colonies revolted.

All these arguments were attractive and calculated to win support, but they appealed to Western men with especial force because of their impatience of governmental control. From the time the Western movement began, the settler, partly because of his remoteness, partly on account of the difficulties of transportation and communication between his new home and the older centers of civilization, was dependent upon his own resources in most of the affairs of life. This was especially true in those matters affecting his material and economic condition; the frontier community was largely independent of the outside world. From the necessities of their mode of life the Westerners acquired the ability to look after themselves, and along with the ability came the disposition to do so. They carried this disposition into their political life, and because of it they were inclined to resent the interference of the general government in their affairs. Upon this state of mind the doctrine of Popular Sovereignty for the Territories, fortified by the skilful reasoning of its advocates fell with especial force. It was

accepted the more readily because it coincided with their previous inclinations. It is not surprising therefore that an analysis of the vote on the Kansas-Nebraska bill shows that that Act^{was} carried on by the South and the West against the opposition of the East (1). Among the several causes which furthered the spread of Popular Sovereignty this one was certainly not the least influential. The leaders and the politicians had to go farther and produce^a Constitutional basis for their doctrine. But the Constitutional argument does not suffice to account for its spread. The Senators who opposed the Kansas-Nebraska bill, had little trouble, though many times outnumbered by their opponents, in showing the Constitutional weakness of the Doctrine. It is these other elements of convenience and opportuneness which explain the growth of Popular Sovereignty.

Never-the-less, the Constitutional argument deserves attention. It is found first in the Nicholson letter andⁱⁿ Dickinson's speech of January 1848. Two years later,--January 21st and 22nd 1850,--Cass delivered in the Senate a long exposition of the Theory, which McLaughlin pronounces the most complete defense of Popular Sovereignty ever undertaken. Douglas merely adopted and defended the

(1) Analyzed by Burgess: "Middle Period".

Theory as he found it, the most important change he made being the new name he gave to it and by which it has since been known (1). Cass's argument was based on a strict construction of the Constitution (2). That instrument nowhere gives to Congress general legislative control of the Territories unless it be in the clause giving it power to make all needful rules and regulations for the territory and other property of the United States. Cass disposed of this clause by the argument that "territory" here is to be interpreted in the same sense as "other property", that is as land only. Nor, Cass argued, can the power to legislate for the government of the Territories be properly implied. The implied powers of Congress are confined to those things needful in carrying out the powers expressly granted it by the Constitution; they extend no farther; and general legislative control of a Territory cannot be shown to be necessary for carrying into effect any of the powers expressly granted. All the control exercised by Congress over the Territories since the government went into operation had been exerted, he said, "without the least color of Constitutional authority"(3). The only justification for it must

(1) Rhodes: Vol.I, page 477.

(2) Speech in Globe: 30th Cong.1st Sess.App. pages 58 - 74.

(3) Globe: 30th Cong.1st Sess.App.page 72. See also discussion of the Nicholson letter in CHAPTER I of this study.

be the plea of necessity,- the necessity for Congress to assume governmental control of the Territory in order to shield the people from social disorder or other grame peril. Cass admitted that such necessity had probably justified Congress in instituting Territorial governments, but he denied that it could go any farther. In going thus far it acted at the peril of disapproval by the people, who could call Congress to account if they did not agree with it upon the necessity of such action. But in practice, Cass was willing to admit, the conditions in a new Territory were almost always such that the necessity for initial control by Congress was present,- the people were not in position, unless some special crisis stirred them up, to put their local government in motion. And if Congress had stopped, in all cases, with the institution of Territorial government, its action would probably never have been questioned by the people.

The foregoing comprises what may be termed the negative portion of Cass's argument, the denial of the power in Congress to legislate for the Territories. The positive portion, the attribution of this right to the inhabitants of the Territories is very simple. It is that every people has an inherent right of self-government. This was the burden of the argument of Dickinson as well as that of Cass;

it was the "great principle" which was the feature of the Kansas-Nebraska bill, and the alleged reason for repealing the Missouri Compromise. Cass simply said that Sovereignty in the United States rests with the people; they have nowhere delegated to Congress the right to control the Territories; therefore it still rests with them. He did not hesitate to carry this line of reasoning to an extreme length, as the following quotation will show:—"And, we are asked, where did the people of the Territories get the right to legislate for themselves? They got it from Almighty God; from the same omnipotent and beneficent Being who gave us our rights, and who gave to our fathers the power and the will to assert and maintain them".

The doctrine thus enunciated had a considerable degree of plausibility, and those who advocated it indulged expectations concerning its practical beneficence which now appear extravagant in the light of the Kansas experiment. They thought it would altogether remove the slavery dispute from the field of politics and leave it to die a natural death. Mistaking effect for cause they believed that the Sectional contest over slavery was due to the attempts of Congress to legislate for the Territories, and that slavery agitation would die out if the subject of

slavery were removed from Congressional control. Dickinson said of the doctrine he was advocating,—"It would transfer from the halls of Congress the bootless Sectional struggles . . . It would leave local communities . . . free to consult their own interests . . . and to erect or prohibit such institutions as may not be repugnant to the principles of the Constitution. It would leave the Federal Government free to pursue its onward course,unembarassed by matters of Sectional moment . . . It would rele~~ve~~^{ve} the benevolent Statesman from the strife and irritation which now beset him and allow his energies to be devoted to the best interests of the Nation"(1). These expectations were not confined to Dickinson. They were repeatedly put forward by adherents of the Doctrine,and six years after this in the contest over the Kansas-Nebraska bill,its advocates imputed to the Independent Democrats as their chief motive for opposition to the bill the fear that its passage would deprive them of their vocation as agitators. The use of such a charge shows that those who made it believed the adoption of Popular Sovereignty would cause the disappearance of the slavery dispute(2).

These expectations were completely disappointed by

(1) Senate speech of January 12th 1848, Globe.

(2) For further evidence see Von Holst: Constitutional History, Vol.IV pages 374 - 375; quotes Douglas,Pettit, and Cass to this effect.

the results which followed upon the practical test made of the Doctrine in the settlement of Kansas. It was found that complete Congressional Non-intervention in the affairs of the Territory was impossible; and the degree which was attained was attended by a corresponding increased control by the Executive department. In their theorizing the expounders of the Doctrine had avoided certain considerations which in practice could not be disposed of in this way. One of these was the question when, in the settlement of a Territory, Popular Sovereignty should begin to operate. Southern men answered when the people of the Territory met in constituent convention to assume the Sovereignty of a State. This was the doctrine of Calhoun, and was soon adopted by practically all Southern men. It was Popular Sovereignty in the sense that it proposed not to refuse admission to Statehood because of the decision made by the people of the Territory at this time. But it expressly excluded Territorial Sovereignty which was the essence of the doctrine of Cass and Dickinson. For these men there was no answer to the question when the Doctrine should go into operation. Calhoun at once pressed their Theory to its extreme limit, which was that the first few settlers in a new Territory were endowed with the right of self-determination

of their local affairs and institutions and contemptuously dubbed the theory "Squatter Sovereignty" because under it, he said, the first squatter on the public domain would have the power to determine the character of the institutions of the future state. This was sheer absurdity and was of course never contemplated by Cass. But he could give no answer to the question without destroying his theory. In his great exposition and defense of the doctrine in 1850 (1) he disposed of the question, what constitutes a people, by saying that the great principles of free government were not to be proved by mathematical demonstration : he would not attempt to say how many individuals are necessary to constitute a people, nor how far apart they must be to make two peoples. He treated the questions as absurd and literally they were, yet they constituted a troublesome defect in the theory, and the answer Cass did give that they must be settled by an appeal to common sense did not obviate the difficulty. What he meant by this must have been that Congress should determine the matter and decide when there were inhabitants enough in a new Territory to exercise the powers of self-government. But Cass had carried out the theory of Territorial Sovereignty to such an extent that he could not say this without destroying it. If the inhabitants derived their

(1) Senate speech of January 21st, 22nd 1850, Globe.

right of self-control from God and the power of Congress was as limited as Cass contended it was, his doctrine of Constitutional necessity would be destroyed by admitting that Congress had any power even at first to govern the people of the Territory.

Aside from this difficulty in the realm of political theory, there was a very practical reason why the question could not be answered; it is found in the history of the Doctrine, recounted in the preceding chapters. Its whole reason for ^{its} existence was that it was an attempt to close, and where this was impossible, to ~~con~~ceal the gap between the views of Northern and Southern Democrats upon the Constitutional status of slavery in the Territories. To define this would destroy the usefulness of the Doctrine, - the South would instantly have rejected it and its career as a compromise measure would have ended abruptly. In 1854 the South did support the Doctrine, but here it was mixed up with the Missouri Compromise. Popular Sovereignty would give slavery a chance where, under the existing provision of the Missouri Compromise, it had absolutely none. So the cause of slavery would not be injured and might be helped by the adoption of Douglas's measure, and the South accepted it; but even under these circumstances the Southern men did not accept the Doctrine as it was held by Cass and Douglas. They forced Douglas to the caucus agreement that there was to be

no definition of the power conferred on the people of the Territory by the Kansas Nebraska Act, but the question was to be left to the decision of the Supreme Court. In 1859 when Douglas ~~had~~ broken with the leaders of the Southern wing of his party, he answered the question which had proved insurmountable as long as the pretense of harmony between the two wings of the party had been kept up. In his celebrated article in Harper's Magazine for September 1859 he said:- "This right (of Sovereignty) pertains to the people collectively as a law-abiding community, and not to the isolated individuals who may wander upon the public domain in violation of the law. It can only be exercised where there are inhabitants sufficient to constitute a government and capable of performing its various functions and duties- - a fact to be ascertained and determined by Congress. Whether the number shall be fixed at ten, fifteen, or twenty thousand inhabitants does not affect the principle".

This seems like a wise solution, and is probably what Cass was vaguely hinting at nine years before in his solution by an "appeal to common sense". But this solution now offered by Douglas was impossible in 1850 for the reasons which have been given, and it was equally impossible in 1854, as is shown by the existence of the caucus bargain

between Douglas and the Southern Democrats. Moreover this solution was incompatible with Cass's Constitutional reasoning for it distinctly recognized the power of Congress over the initial stage of the life of the Territory and left to its discretion to determine when Congressional control should be withdrawn. But if this solution could have been offered earlier and made a part of the Doctrine, it does not seem probable that it would have made it any more successful in practice. If this had been incorporated in the Kansas-Nebraska Act there would then have arisen the question whether Congress was to permit or prohibit the institution of slavery during the initial period while the Territory was under its control. Like Banquo's ghost this question would not down. Complete Congressional Non-interference was impossible, and partial control as here suggested, left all the difficulties for which Popular **Sovereignty** was presented as the solution.

Another reason why Popular Sovereignty failed in Kansas to realize the expectations of the theorists was that everything tended to invite the two Sections of the country to a contest for the possession of the Territory. The Theory pre-supposed that its settlement would be natural; that settlers would come in of their own accord and private interest without reference to the question of slavery. Then

at the proper time (which was left an undetermined factor in the situation) they would decide the slavery question according to their own local needs and desires, without reference to outside influences. This expectation was disappointed because it had failed to take into account the real nature of the slavery question. It was regarded as local when in reality it was intensely National. With the events of the past thirty years before them it seems strange that the promoters of Popular Sovereignty should not have realized this and foreseen that the Doctrine would break down at this point. With a rich Territory thrown open to settlement and the fact proclaimed that it was to be the prize of whichever Section should send the most inhabitants thither, it was not reasonable to expect a natural settlement of the country; or that in the decision of the question which was absorbing National attention the Sectional interests of North and South would be disregarded, and the question be decided solely with reference to local interests.

One general criticism remains to be made upon the impracticability of the Doctrine. It refers in particular to the Kansas-Nebraska bill but may be applied to the whole period of the existence of Popular Sovereignty. It is this, that while the Theory professed to establish the right of the people of a Territory to self-determination of all local concerns and internal polity, in reality it all

simmered down to the one subject of the institution of slavery. The principle of Popular Sovereignty was made the excuse for repealing the Missouri Compromise, but at the same time no effort was made to apply the principle further than to the one subject. The inconsistency of this is evident yet no effort was made by the friends of the Kansas-Nebraska bill to extend the Sovereignty of the people of the Territory to other subjects except as they were forced to it by the enemies of the measure. Late in the debate on the bill Chase proposed some amendments which tended to give the people of the Territory the complete self-control which adherence to the Theory demanded (1). Their effect would have been to give to the Territory the power of a State while at the same time it was outside the Union and not subject to the limitations which are imposed upon the States under our system of government. Chase was aware of the absurdity of this of course and he was equally aware that his amendments would be rejected by the friends of the Nebraska bill. Their only effect was to force from them, by the act of rejection, the confession that the bill could not be allowed to conform to the requirements of the principle it professed to vindicate. To do so would be to change entirely the status of the Territories had always held under

(1) Globe: 33rd Cong. 1st Session page 520.

our government. In the first place, Congress instituted the Territorial government and prescribed its form and organization. But a people could not exercise local Sovereignty when its government was imposed upon it by a power outside itself; when it could not amend this government in any way; when the chief officers under it were responsible not to the people they governed, but to the outside body by whom they were appointed. A people could not be said to be self-governing unless it chose its Executive officers. Yet Congress had always prescribed the Executive ~~offices~~ of the Territories and the President had filled them. And so it was with the Judiciary. Territorial judges had always been appointed by the President. Again, if the people were to be Sovereign it ought to control the Sessions of its legislature, its powers and duties.

Yet in the Kansas-Nebraska bill all these things were prescribed by Congress. The men who carried the Kansas-Nebraska bill were right in recognizing that these powers necessary to local Sovereignty could not be granted to the people of the Territory they were creating; yet this recognition was in itself an impressive refutation of the Constitutional reasoning by which it was sought to justify the doctrine of Popular Sovereignty, the "great principle" of the bill.

.

CHAPTER VI :-

POPULAR SOVEREIGNTY in KANSAS and in NATIONAL POLITICS:-

from the

KANSAS-NEBRASKA Act to the CIVIL WAR.

From the passage of the Kansas-Nebraska Act until the beginning of the Civil War, Popular Sovereignty was one of the most important factors in National Politics, and it is the purpose of this concluding Chapter to describe the part it played in our history during that period. The general impression of the country during the debate upon the Kansas-Nebraska bill was that the measure would operate in the interests of slavery, and that its passage would mean the loss to freedom of Kansas and perhaps of Nebraska (1). The anti-slavery men of the North were discouraged at the prospect. But Eli Thayer of Worcester, Massachusetts originated a plan by which he believed that under the principle of the Act Kansas could be made a free State. He proposed to accept the principle of Popular Sovereignty in its entirety and, by organized effort to pour into Kansas enough Northern settlers to out-number the pro-slavery men and fix

(1) Thayer: Kansas Crusade, Chapter I.

its status as a free State. He incorporated the Emigrant Aid Company before the Kansas-Nebraska bill had become a law, and succeeded in gaining the support of wealthy and influential men. Horace Greeley named it the Plan of Freedom and gave it the powerful support of his paper, the New York Tribune (1). As a result of the work of this Company and to a larger extent of the influences aroused by its example, thousands of Northern men moved into Kansas (2). The South, alarmed by this movement, made some effort to checkmate it. And now was enacted in reality that contest of the Sections which Cobb of Georgia had pictured in his speech in the House in 1847 (3).

But the South was hampered by the institution of slavery, and, as Thayer had reasoned, slave owners were reluctant to remove with their property into an unsettled Territory where it could be held, if at all, only with difficulty. It soon became evident that slavery had no chance of success in this contest of immigration, and other means were immediately resorted to. The Western section of Missouri, adjoining Kansas, was well settled and intensely pro-slavery in sentiment. Its answer to the Emigrant Aid

(1) Thayer: Kansas Crusade, page 47.

(2) (ibid) page 57 where he estimates the total number at 30,000.

(3) Globe: 29th Cong. 2nd Sess. page 360. Also Chap. I. of this study.

Company was the formation of Blue Lodges, secret societies for the purpose of extending slavery into Kansas. "Popular Sovereignty meant to them the right for Missourians to vote at the Territorial elections in furtherance of the design which had given rise to the Blue Lodges"(1). Their first action was to attempt to intimidate the first colony of New Englanders, recently arrived at Lawrence, into leaving the Territory; and further to prevent others from coming (2).

This proving unsuccessful, on the day of the first election in the Territory, November 29th 1854, over seventeen hundred Missourians crossed into Kansas and assisted the pro-slavery party there to carry the election (3). Thus did the Doctrine of Popular Sovereignty receive its first exemplification. Four months later, March 30th 1855, the election of members of the first Territorial legislature was to be held, and both parties appreciated the importance of gaining a majority in this body. The Missourians made a more vigorous effort than before. A census of the Territory taken in February showed a total population of 8600, of whom 2900 were voters. Yet 6300 ballots were cast at the March

(1) Quoted from RHODES, Volume II. page 79.

(2) Henry Wilson: Slave Power, Volume II. page 466.

(3) House of Representatives, 34th Cong. 1st Sess. Report No. 200, page 8.

election,nearly eighty per cent of these being given by Missourians who had crossed the river for this purpose (1). By these tactics a pro-slavery legislature was installed. The anti-slavery party attempted to induce the Governor to set aside the election on the ground of fraud,and order a new one held with suitable precautions against a repetition of the Missouri invasions (2). Failing in this it adopted another policy. Its adherents proposed to ignore entirely the Territorial legislature and Governor,and following the example of California,to construct a State at once without passing through the intermediate Territorial stage. In accordance with this plan a series of conventions were held and a delegate to Congress chosen. This was done a week after the pro-slavery party,aided by the Missourians,had elected one. On the same day that the latter chose their delegate, the Free-State men appointed delegates to a constituent convention to be held at Topeka. The convention met and did its work,and the resulting constitution was ratified at the polls by a vote of 1731 to 46,the entire proceeding being ignored by the pro-slavery party. This was on

(1) SPRING'S Kansas, pages 43 - 46.

(2) " " " " page 50.; SCHOULER: Vol.V. page 330 and following.

December 15th 1855. On January 5th following, the officers of the State government were elected and on March fourth, the new legislature met at Topeka and chose United States Senators. All of these acts were without the slightest legal standing and of this the Free-State party was well aware. The government thus created was only tentative but it served to keep the anti-slavery party together.

The Kansas-Nebraska Act had now been in operation two years and the net result of the regime of Popular Sovereignty was the creation of two rival governments in the Territory and of two parties so hostile that the adherents of each refused to live in harmony with the other or yield obedience to the wishes of the majority. The Territorial legislature, technically legal, had in reality been elected by fraud and the ballots of the Missourians; the Free-State government, technically revolutionary, was in reality more representative of the citizens of the Territory than was its rival; and between the two governments Civil War was impending. Congress must abandon Non-intervention for interference, and in doing this it must favor one side or the other; the Kansas trouble thus became a political issue and the Sectional dispute, instead of being banished from Congress and the country was carried on with redoubled

vigor. In Kansas actual conflict began with the efforts of the pro-slavery party to enforce the authority of the Territorial government over the Free-State faction. For a time a condition midway between Anarchy and Civil War prevailed. Towns were destroyed, skirmishes were fought, and violence was the order of the day. During this period the Free-State legislature was dispersed and the direction of the party fell into the hands of a Directory. This body organized a strong military force and made an agreement, in reality a treaty, with the Governor of the Territory, by the terms of which the latter virtually surrendered to the former. He followed this action by resigning his office and leaving the Territory. The period ended with a final invasion by a force of three thousand armed Missourians. Civil War in earnest was now about to begin. The President saw the political necessity of putting an end to the disorder, and appointed a strong Governor with authority to use the United States troops in preserving the peace. Geary, the new Governor, soon brought about a fair degree of order; but the judicious use of the regular army was the most potent factor in the result which was attained only by the abandonment of the policy of Federal Non-intervention (1). At Washington the Session of Congress closed with a dead-

(1) Drawn from SPRING'S Kansas;
SCHOULER: Volume V.
RHODES: Volume II.

lock between the two Houses on the Kansas question (1). As a result the army appropriation bill was not passed; the President at once called a special Session and after a contest the House submitted and withdrew the objectionable clauses.

• Having turned the attention from events in Kansas to the Kansas question at Washington, it is best to go back and trace the progress of events there from the passage of the Kansas-Nebraska Act. The House of Representatives which was elected upon the issue raised by that Act first met in December 1855. So many shades of political opinion were represented that in the Congressional Globe of this year no attempt is made to classify the members according to party. But in a two month's struggle over the choice of Speakers the

- (1) The Senate passed the Toombs bill providing for a new Territorial election and government to be instituted under the supervision of a Committee of five to be appointed by the President. The House replied with a bill admitting Kansas, under the Topeka Constitution and this the Senate rejected. The House then appended to the Army Appropriation bill a provision that the regular Army should not be used to enforce the laws of the Territorial legislature until Congress had determined whether it was a valid assembly, and that the President should use the Army to protect genuine settlers against armed violence from non-residents. The Senate refused to pass the bill with this provision and its failure necessitated an immediate extra Session. (See SCHOULER: Volume V. pages 347 - 348.

existence of three well-defined parties became apparent. No one of them proved able to elect its candidate and a day was set apart for a formal catechising of the three men as to their precise views upon the Kansas-Nebraska question (1). Richardson, the candidate of the Democrats, stood squarely upon the Doctrine of Popular Sovereignty as expounded by Douglas. Fuller, who was put forward by the National Americans, professed to hold the old Calhoun doctrine : that the Territories were common property in which neither Congress nor the Territorial legislature could establish or prohibit slavery, and that the question was to be settled when the State constitution was framed. Banks, the candidate of the new Republican party favored Congressional prohibition of slavery wherever such action was necessary to keep it out of the Territories; in regard to Kansas and Nebraska, the question of immediate importance, he desired the restoration of the Missouri Compromise prohibition. These three men not only typify the three main groups into which the House was divided but they represent also the principal policies which divided the people of the country,--the extreme Northern, the extreme Southern, and the middle policy of Popular Sovereignty. They also represent fairly well the

(1) This discussion is taken from RHODES: Vol.II. page 108.

position of the three political parties in the Presidential campaign of the following year. Only the Democratic party, with which Popular Sovereignty was allied, need be considered here. The South was beginning to see that nothing could be gained for slavery under that policy and the Southern wing of the party felt disposed to adopt one that was more pronounced (1). But the Northern Democrats were not disposed to depart from Popular Sovereignty : the National party convention therefore faced the old problem of framing a platform to which both wings of the party would subscribe. It was solved by the old plan of **studied** ambiguity concerning the attitude toward the question of slavery in the Territories (2). The "principles" of the Kansas-Nebraska Act were re-affirmed, and then a clause was adopted declaring that the basis of this legislation was Non-interference by Congress with slavery in the Territories. Nothing was said about the Territorial status of slavery but the declaration was made that the people of a Territory were rightfully entitled to admission to Statehood either with or without slavery "whenever the number of their inhabitants justifies it". Von Holst argues that this by impli-

(1) Von Holst: Vol.V. Chapter VII, for this discussion.

(2) Platform given in Stanwood: History of the Presidency, pages 266 - 270.

cation excluded the right of an earlier decision during the Territorial period (1). This interpretation is possible and no doubt was effectively used in the South during the Campaign. But the re-affirmation of the principle of the Kansas-Nebraska Act made it equally possible to interpret the party platform as upholding the doctrine of Territorial Sovereignty, and unquestionably this was the construction put upon it by the Northern Democrats. The divergence between the two branches of the party which had existed in 1848 and in 1854, was still manifest, and the platform of 1856 like the one of 1848 was non-committal on the most important question of the Campaign. On this platform Buchanan was elected President. He was a Pennsylvanian, nominated in deference to Northern sentiment which had been roused by recent events in Kansas. But the choice did nothing to clear up the uncertainty concerning the policy the Democratic party would pursue, for he hastened to put himself squarely on the platform, whatever that might be, and to sink his individuality in it. The Democratic triumph was not therefore, an unalloyed victory for Popular Sovereignty. It simply meant that the Northern Democrats favored the doctrine and the Southern members of the party consented once more to veil their real attitude under ambiguous declarations.

(1) Constitutional History, Volume V. page 343.

"The studied ambiguity of the Cincinnati platform made possible a last co-operation of North and South, in the face of carefully concealed mental reservations, to secure a Presidential victory"(1).

It was the last because events were forcing North and South into a more pronounced stand upon the slavery question, the one against the other in favor of the "institution". The policy that had served as a cloak to conceal the divergent factions of which the Democratic party was composed would perform that office no longer. The factions were moving apart and soon the cloak was to be rent asunder. The announcement which marks the beginning of this process was made by Buchanan in his inaugural address, March 4th 1857. He declared that the difference of opinion as to the point of time when the people of a Territory might decide the slavery question was of no practical importance. "The whole Territorial question being thus settled (by the election) upon the principle of Popular Sovereignty, everything of a practical nature has been decided". How an intelligent man could make such a statement in the face of the recent events in Kansas would have been incomprehensible except for the explanation that soon followed. This was

(1) Quoted from Nicolay and Hay , Volume II. page 40.

that it was a judicial question which legitimately belonged to the Supreme Court, "before whom it is now pending, and will, it is understood, be speedily and finally settled"(1).

The reference contained in this statement was to the Dred Scott case which had come before the Court in the Spring of 1856; the decision of the Court was made public two days after Buchanan's inaugural (2). The case had been the plea of a negro of Missouri for his freedom on the ground that he had been carried by his master to free soil in the State of Illinois and later into the Territory of Minnesota. In the decision the Court seized the opportunity offered by the case to pass upon the validity of the Missouri Compromise restriction of 1820 and the power of Congress to prohibit slavery in a Territory. It was just such a case as the Southern politicians had in mind when they made with Douglas the caucus bargain of 1854; and the decision of the Court was to their entire satisfaction. It cleared up the ambiguity of the Kansas-Nebraska Act by declaring that neither Congress nor a Territorial government could prohibit slavery in a Territory. The basis of

(1) Quoted by RHODES: Volume II. page 246.

(2) References for Dred Scott case:- CURTIS: Constitutional History, Volume II. pages 266 - 278.
RHODES: Volume II. pages 249 - 270.

this decision was the Constitutional clause ordaining that no person shall be deprived of life, liberty, or property without due process of law, which was held to cover property in slaves carried into the Territories. This was a fatal blow to the Doctrine of Popular Sovereignty, so far as the Territories were concerned. It granted all that the Southern men had claimed in the discussions of 1854, and they might fairly call upon Douglas to fulfill the terms of the caucus bargain. This he was apparently disposed to do although the decision was an unwelcome one to him and placed him in a difficult situation. His difficulty was recognized by the Republicans and the Southern Democrats. But since January 1856 he had been gaining in popularity with the Northern Democrats and they readily accepted the position to which he now led them (1). In a speech at Springfield, Illinois, June 12th 1857, he emphatically endorsed the Dred Scott decision, and declared that whoever resisted the decision of the Court struck a deadly blow at the whole republican system of government. He reconciled the decision with his own doctrine of Popular Sovereignty in a most ingenious way. While a master's right to his slave in a Territory "continues in full force under the guarantees of

(1) See RHODES: Volume II. page 264.

" Nicolay and Hay, Volume II. Chapter V.

the Constitution and cannot be divested or alienated by an act of Congress, it necessarily remains a barren and a worthless right, unless sustained, protected, and enforced by appropriate police regulations and local legislation, prescribing adequate remedies for its violation. These regulations and remedies must necessarily depend entirely upon the will and wishes of the people in the Territories, as they can only be prescribed by the local legislatures. Hence the great principle of Popular Sovereignty is sustained and firmly established by the authority of this decision".

This argument attracted no special attention at the time, and is given here only because of the importance it attained when, upon being repeated a year later in the course of the Lincoln-Douglas debates, it became known as the "Freeport Doctrine". The effect it then produced will presently appear; but in order to understand what followed the attention must be turned once more to the state of affairs in Kansas.

The Territorial legislature, ^{which} it will be remembered, ~~which was~~ completely pro-slavery, in the Spring of 1857, provided for the holding of a Constitutional convention at Leocompton and appointed June 15th for the election of delegates thereto. About this time the conservative element in the Free-State party began to consider the advisability of abandoning their policy of ignoring the

Territorial government, and attempting to capture the legislature by taking part in the election of members which was to be held in October. Buchanan's newly-appointed Governor, Walker, who arrived in Kansas in May, did what he could to encourage the Free-State men in taking this policy. Meanwhile the delegates to the constituent convention had been elected by the pro-slavery party, but the Governor pledged himself to secure honest elections and returns and that the constitution which was to be drawn up should be submitted to the people for ratification or rejection. Urged on by these promises and having discovered by taking a census of the Territory that they could probably carry the legislature, the Free-State party decided to take part in the election October fifth. The result, after the Governor had thrown out about three thousand votes of the pro-slavery party because of flagrantly fraudulent returns (1) was a decisive victory for the Free-State party. The constituent convention now met at Lecompton (October 19th) and drew up a constitution which was so radically pro-slavery and so grotesquely unfair that even some of the pro-slavery party refused to support it. Knowing the people of the Territory would make short work of it if they were given a chance, the convention then provided that only a single article was to be submitted

(1) Nicolay & Hay, Volume II, page 106. For the following discussion see SPRING: Kansas, Chapter X.

to them. The option given them was "constitution with slavery" or constitution without slavery" : but the provisions of the instrument were such that if the latter alternative were adopted there was no certainty that the institution would be done away with. The Free-State men regarded this submission of only a single article of the constitution as a fraud upon the principle of Popular Sovereignty and refused to vote upon it; the "constitution with slavery" was consequently carried. The Free-State men now demanded of Stanton, who was acting-Governor in Walker's absence, that he call an extra Session of the recently captured Territorial legislature so that it might provide for the submission of the entire constitution to popular ratification or rejection. Stanton complied and called the legislature to meet on December 7th. This body immediately resolved to submit the constitution in all its parts to the people, and appointed the date of January 4th which was the same day the convention had chosen for the election of State officers under the new government. On the day appointed over ten thousand votes were cast against the Lecompton Constitution. At the same time the Free-State party elected their candidates to the offices in the government created by it. At the election in December at which the "constitution with slavery" had been adopted, 6200 votes were cast

for the "constitution with slavery"; 2700 were afterward proved to have been fraudulent. Thus in whatever light the matter was viewed, the Free-State party had clearly demonstrated that an over-whelming majority of the voters of Kansas were opposed to the Lecompton Constitution.

The Lecompton Constitution had already become the dominant question of the new Congress which assembled at Washington in December. When the work of the convention that framed it became known the President determined to urge upon Congress the admission of Kansas under it. Buchanan had been nominated as a concession to the Northern Democrats who objected to Pierce and Douglas, the Southern favorites, because of their too close connection with the course of events in Kansas. But as has been pointed out, Buchanan's real attitude was unknown at the time; he was supposed to desire a Free State out of Kansas; but from the time of his election he acted with the South on the Territorial question. The position he took in favor of the Lecompton Constitution and his arguments in support of it were calculated to offend and alienate Northern sentiment. He did not desire re-election and was not moved by this, but for various reasons Douglas was : on the Lecompton question he broke with the Administration.

Douglas was an aspirant for the Presidency

in 1860, but of more immediate importance was the fact that his Senatorial term was nearly over and he must in the coming year control the State of Illinois if he was to retain his seat in the Senate. The extreme pro-slavery attitude which the Administration now took threatened to destroy his standing in his own State, which had chosen a Republican Governor in 1856 in preference to Richardson his own political Lieutenant. Entirely aside from this however, Douglas had another reason for objecting to the Lecompton Constitution. His whole political capital was involved in the Doctrine of Popular Sovereignty which he had championed so vigorously since 1854 that even able historians have believed he was its author (1). He had pledged himself to his constituents, the people of Illinois, that Popular Sovereignty should be carried out in Kansas. So that now stern necessity as well as the desire to see the doctrine he had championed vindicated forced him to protest against the Lecompton Constitution. Before the Session of Congress began he called upon Buchanan to discuss the course of the Administration in regard to the matter. During the interview he declared that he would denounce the President's message in open Senate if the latter persisted in

(1) For one example see G.T. Curtis: Constitutional History, Volume II. page 259.
For Douglas' political situation at this time see RHODES Volume II. pages 282 - 288; also Nicolay & Hay Vol. II. page 123; and Von Holst: Vol. VI. Chapter IV.

recommending the Lecompton Constitution. Buchanan warned him that no Democrat had ever yet differed from his party while it was in power without being crushed, but it did not affect Douglas' decision. When the message was read in the Senate a few days later he made a speech, if it can be designated as such, of one minute's duration, which Von Holst pronounces one of the most significant ever uttered in Congress. It consisted simply of the statement that he approved of the greater part of the message but "totally dissented" from all that could be construed as upholding the proceedings of the Lecompton Convention (1). This was the formal inauguration of the quarrel between Douglas and the Administration.

It soon passed into a contest between the Northern and Southern wings of the party, since the bulk of the Northern Democrats followed the lead of Douglas while the pro-slavery element in the party supported and controlled the Administration. The position Douglas assumed in the contest was a defense of a fair application of Popular Sovereignty in Kansas. He denounced the Lecompton Constitution as a fraud upon the principle of the Kansas-Nebraska bill. To the argument of Buchanan that the question of slavery or no slavery had been submitted to the people

(1) Von Holst: Constitutional History, Vol. VI. page 167.

and that this was all the principle of the Kansas-Nebraska Act required, Douglas replied that it called for local determination of all local institutions and not of slavery alone; and the election that had been held to determine this question was as unfair, he said, as was the election of Napoleon for first Consul when he was reputed to have told his soldiers they were perfectly free to vote as they pleased but if they voted against himself they would be instantly shot.

The Session of Congress was taken up with the Lecompton controversy..The Administration made a determined effort to have Kansas admitted under the Lecompton Constitution, but was foiled by the action of the House, although successful in the Senate. The House passed a bill, March 23rd, which provided that the Constitution be submitted to the voters of Kansas, and if ratified the State should be admitted without further ado. This action of the House was made possible by the concurrence of the Republicans. In supporting the bill they ~~offer~~-ruled, for the ~~sh~~ake of temporary advantage, their opposition to Popular Sovereignty which they had steadily denounced hitherto. The reason for this temporary change of front was the certainty that in this way the objectionable Lecompton Constitution would be disposed of. This particular bill of the House was rejected by the Senate, but under another, the celebrated English bill

which passed both Houses, the Lecompton Constitution was finally referred to the voters of Kansas in August 1858 when it was buried under an avalanche of votes.

For the remainder of the narrative of Popular Sovereignty, affairs in Kansas may be ignored. The center of interest is the political fortunes of Douglas and the Sectional contest within the ranks of the Democratic party. Buchanan's threat that Douglas would be crushed was not an idle one. So far as it lay in the President's power the influence of the Administration party was exerted against him. But many who were followers of the Administration were disgusted with the Lecompton Constitution and felt that in reality Douglas was in the right (1). At first the quarrel was in the nature of a breach between two factions in the Northern wing of the party with the Southern wing an ally of the Administration because their interests coincided. As long as this was true the party breach was not irreparable. The ability to hold together both its Northern and Southern wings was what had given the Democratic party its control over the country, and so long as this ability lasted the quarrel that had broken out might run its course without destroying the party.

Douglas went home to Illinois after the

(1) SPRING: Kansas, page 236; also Von Holst, Vol. VI. page 190.

"Lecompton" Session of Congress to take up the canvas for re-election to the Senate. He was now the most prominent man in the country, but the opposition to him was unusually powerful for several reasons. The people were following closely the course of events in Kansas, Buchanan exerted what influence he possessed through the patronage and otherwise to defeat him, and finally, his opponent was Abraham Lincoln. The striking feature of the contest was the series of joint debates between the two leaders, Lincoln and Douglas. The debates are of importance here because of the exposition of Popular Sovereignty, forced from Douglas by Lincoln, which had a lasting effect on the factional quarrel in the Democratic party.

At the meeting held at Freeport, Lincoln propounded to his opponent a series of questions concerning his attitude upon certain features of Territorial policy (1). The important question of the series was stated as follows:-- "Can the people of a United States Territory in any lawful way, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State constitution ?". To appreciate the dilemma in which Douglas was placed by this question it must be remembered

(1) Nicolay & Hay, Volume II. Chapter IX.

that he was attempting to reconcile two antagonistic groups. He must retain his influence over the people of Illinois, who were jealous of the extension of slavery, without at the same time destroying his chances for the Presidency in 1860 by alienating the favor of the people of the slave States. Lincoln's question tore off the veil of indefiniteness which had obscured Douglas' attitude up to the time of the Lecompton quarrel. If he should give an affirmative answer now he would intensify the party breach and the opposition of the Southern Democrats to his Presidential aspirations. By a negative answer he might be able to ward off the latter of these difficulties. But such an answer would be a confession that the policy upon which he had staked his political career and which he had led the Northern Democrats to adopt as their political creed was delusive and unconstitutional. No one perceived the significance of the question better than did its author, who declared that Douglas could not answer it without destroying his chances either for Senatorial re-election or for the Presidency. It involved the same point that had been postponed in 1854 by the caucus bargain agreeing to refer it to the Supreme Court and abide by whatever decision that body should make. The Court had given its decision in the Dred Scott case which Douglas had attempted, in his Springfield speech in 1857, to

harmonize with his view of Popular Sovereignty (1). Now in answer to Lincoln's question he revived the idea put forward in that speech the year before. But its repetition produced an effect very different from the result of its first expression. The Springfield speech had been given upon an unimportant occasion, before the Lecompton quarrel, and had attracted no particular attention. Now the debates were being followed by the Nation, and the Administration party was watching Douglas' every move.

The substance of the answer was that the people of a Territory could by lawful means exclude slavery prior to the formation of their State constitution. No matter how the Supreme Court should decide the abstract question whether or not slavery could, under the Constitution, go into a Territory, the people possessed the lawful means to introduce it or exclude it as they pleased for the reason that slavery could not exist an hour anywhere unless supported by local police regulations. "Those police regulations can only be established by the local legislature, and if the people are opposed to slavery they will elect Representatives to that body who will by unfriendly legislation effectually prevent the introduction of it into their

(1) Nicolay & Hay, Vol. II. pages 83 -84 , also 159 - 164.

midst. If, on the contrary, they are for it, their legislation will favor its extension. Hence, no matter what the decision of the Supreme Court may be upon that abstract question, still the right of the people to make a slave Territory or a free Territory is perfect and complete under the Nebraska bill". Lincoln exposed the weakness of this doctrine during the next debate. It was extensively discussed throughout the country, and to the Southern Democrats it gave mortal offense. Aside from the fact that it was destructive of their views of the property rights of slavery in the Territories, it was in effect a direct repudiation of the caucus bargain of 1854, made to meet this very issue. The Southern Democratic leaders now repudiated Douglas in earnest. His "Freeport Doctrine," so called from the place where the debate was held, marked the destruction of his Presidential aspirations so far as Southern Democrats could compass this. In answer to his doctrine of "unfriendly legislation" they put forward the claim that Congress must, by positive legislation, protect the slaveholder in his property rights in the Territories whenever the Territorial governments were unable or indisposed to do so. The Northern Democrats closed around Douglas as the Southern members of the party continued the war upon him. In this lies the significance

of the quarrel. It is not the political fate of Douglas personally that is of importance here, but the fact that through him the rupture of the Democratic party into its Northern and Southern wings was brought about.

When Congress convened in December 1858 the Democratic leaders in the Senate removed Douglas from the Chairmanship of the Committee on Territories which he had held during his entire Senatorial career (1). Except for this action the quarrel slumbered until near the close of the Session. February 23rd 1859 it blazed up anew in a fierce debate which was precipitated by Brown of Mississippi. He demanded ^{of} the Northern Senators whether they accepted the Freeport Doctrine, that a Territorial legislature might by non-action or unfriendly legislation rightfully exclude slavery (2). He wanted to know what they would do if such a condition arose; whether they would annul the unfriendly acts of the Territorial legislature and replace them with laws favorable to slavery. Douglas answered with a defense of his Freeport doctrine asserting that the Democratic party could not carry a single Northern State on such a platform as Brown demanded. The debate became general, one side being

(1) RHODES: Volume II. page 355.

(2) Nicolay & Hay, Vol. II. page 175; also RHODES: Vol. II. pages 355 - 360.

supported by Southern Democrats, the other by Northern members of the party who supported Douglas. From this time it was seen that the party breach was irrevocable. Predictions began to be made that there would be a split in the next Democratic National Convention, already appointed to meet at Charleston, and that the Northern wing of the party would either win the election or that through the division it would be thrown to the Republicans. An attempt was made by Green to gloss over the quarrel by assuming that so far the difference was only a matter of abstract theory. He thought the mere chance that the condition contemplated by the Freeport Doctrine might arise in the future was no reason for breaking up the party at this time. But this argument was immediately destroyed by the arrival of news from Kansas that the legislature had passed a law declaring slavery abolished (1). Not even this slender avenue of escape was left open.

The interval between the adjournment of this Congress and the assembling of the new one was employed by Douglas in strengthening his political hold upon the Northern Democrats. His most important act during this time was the publication in September of an exposition of his Territorial policy. This was the Harper's Magazine article

(1) Von Holst: Volume VI. page 352.

which has been frequently referred to in the course of this study. Meanwhile the Southern group led by Davis was advocating its newly extended doctrine of the necessity of positive Congressional protection of slavery in the Territories. While these political tendencies were developing time wore on and the Congress of 1859 and 60 convened. The absorbing political problem at the opening of the Presidential year was the question what action would be taken by the Democrats in the Charleston Convention. What the Republicans would do was plain. It was probable also that if the Democrats divided the Republicans would win the election. The question of interest therefore was whether the two wings of the Democratic party would succeed in standing together; and if so which branch would give up its position in deference to the arguments of the other.

When the Charleston Convention met the radical Southern element demanded that the party platform to be adopted should embody their extreme views on the Territorial question. These were, in brief, that slave owners possessed a Constitutional right to hold slaves in the Territories, and that it was the duty of the Federal Government to protect this right with all the departments of the Government whenever such protection was necessary (1).

(1) Stanwood: History of the Presidency, Chapter XXI; also for Charleston Convention, Von Holst Vol. VII. Chapter III.

The Douglas men favored a re-affirmation of the Cincinnati platform of 1856, the ambiguity of which had made it possible for both groups to support it at that time. The Convention adopted this by a vote of 165 to 138 whereupon a large number of the Southern delegates bolted. With the platform thus arranged to the satisfaction of the Douglas party the Convention turned to the nomination of a candidate. In the balloting Douglas far out-distanced all competitors but the existence of the two-thirds rule which was interpreted to mean two-thirds of all the delegates including those who had bolted, made his nomination impossible. After fifty-seven ballots had been taken without choosing a candidate, the Convention adjourned to meet at Baltimore in June.

Here the Douglas men had full control and a second bolt of Southern delegates occurred. Douglas was now nominated on a platform containing the same Territorial policy which the Democrats had professed in the preceding Presidential election. He made a vigorous canvas and was the first to break the precedent that a Presidential candidate ought not to agitate for his own election. This contest was the last in which Popular Sovereignty played a part. It had as opponents the Republican party, the Southern wing of the Democratic party, which had put a ticket in the field, and the Constitutional Union party, a

conservative group which made the Constitution its platform. Only the united Democratic party could have won from the Republicans and after the break in the Charleston and Baltimore conventions there was little hope for the success of Douglas and the policy for which he stood. The popular vote cast in the election shows that his followers were numerous in the Free States, but in nearly every case the Republicans were strong enough to obtain the electoral vote (1). Thus of the popular votes cast Douglas received over two-thirds as many as Lincoln, but of the electoral vote his share was insignificant, being only one fifteenth as large as the latter's. Never was there a Presidential election which furnished a more striking illustration of the possible divergence between the popular and the electoral vote. Measured by the popular vote the adherents of Douglas numbered 31 per cent of the voters of the country; his electoral vote was less than 4 per cent of the total. The candidate of the pro-slavery Democrats, with three-fifths of the popular vote of Douglas, received an electoral vote six times as large.

With this election, of November 1860, Popular Sovereignty disappeared as a political factor and

(1) Vote is given in Stanwood: History of the Presidency, Chapter XXI.

henceforth it existed only as a part of history. The triumph of the Republicans was followed by the ^Secession of the Southern States, and the institution of slavery, accompanied by the issues it had occasioned, was swallowed up in the Civil War. In taking leave of Popular Sovereignty a final estimate of the Doctrine seems appropriate. Viewed in the light of its entire history not much of commendation can be accorded to it. As a Constitutional theory it is today universally repudiated. As put forward by Cass it terminated in an absurdity in regard to the question when ^{should} it ^{begin} to operate, and Douglas' attempt to explain away the difficulty proved it to be impossible except at the price of destroying the basis of the Doctrine. The possibilities of the Theory when applied by a fearless reasoner were well illustrated by Robert Toombs, who argued in the Senate that it legalized polygamy in the Territories:- "When the people of Utah make their organic law for admission into the Union, they have a right to approximate as nearly as they please the domestic manners of the Patriarchs"(1). *no new paragraph intended here.*

And he further declared that if the Chinese should be brought under our flag he would be willing to extend the same liberal principle to them. This partic-

(1) TRENT: Southern Statesmen of the old Regime, page 234.

ular application of the Doctrine is interesting but the significance of it is best seen in the general rule which it involved, that the Nation should on principle deprive itself of all power to determine the future character of its institutions, and so the course of its future life. If the Theory had been unobjectionable in all other respects this alone would have been enough to condemn it. As a political policy Popular Sovereignty was a make-shift, designed to temporize with a question which the Nation was for a time unable to decide. If the opinion be held that it was desirable to postpone the decision as long as possible the Policy may be said to have been productive of good; for it seems probable that Popular Sovereignty was instrumental in placing the Civil war in the decade of the sixties rather than ten years earlier. But it was accomplished only by means of consistent deception and "agreeing to disagree"; and those who believe the postponement was desirable can scarcely commend the means employed to obtain it. As soon as the ambiguity of the policy was dispelled by the Dred Scott decision, its usefulness was destroyed. The Doctrine was the last, and perhaps the most interesting of the compromise policies which were the favorite method of settling Sectional disputes in the period from 1820 to 1860. It essayed to stay the conflict which men of the States-

manship of Seward and Lincoln declared to be irrepressible, and failed. If they were right its failure was inevitable and can not be held up as evidence of the weakness of the Doctrine. But it is also true that to obviate the conflict was the only excuse for its existence, and its failure to accomplish this is in itself ^{its} ~~a~~ condemnation. Historically, Popular Sovereignty is important because of the large share it occupied in the great Sectional controversy. The Constitutional question it essayed to settle, - the powers of Congress to govern a Territory or a people outside the Federal Union, still survives and has received added importance since the country entered upon its Colonial career.

.

010-100933224

378.7M71
XQ23

RECEIVED
JAN 17 1910. . —
UNIV. OF MO.

This thesis is never to leave this room.
Neither is it to be checked out overnight.