The University of Chicago
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THE DOCTRINE OF NON-INTERVENTION WITH SLAVERY IN THE TERRITORIES

A DISSERTATION
SUBMITTED TO THE FACULTY
OF THE
(GRADUATE SCHOOL OF ARTS AND LITERATURE)
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY
(DEPARTMENT OF HISTORY)

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THE MAC C. CHAMBERLIN CO.
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CHAPTER I.

The Mexican War and The Wilmot Proviso.

From the time of the development of the Abolition movement until the beginning of the Civil War nearly three decades later, the American nation was agitated by the discussion of the slavery question. During the latter half of this period, beginning with the annexation of Texas in 1845, slavery was the dominant political issue. Over it the nation became sectionalized and the issue was resolved into a struggle between the two sections for political and industrial supremacy. The possession, first of the prospective Mexican acquisitions, later of the unorganized portion of the Louisiana Purchase, was the prize for which they strove,— the South to extend its system of slave labor to these regions, the North to restrain that system within existing limits and dedicate the future Territories and States to freedom.

The long contest was characterized by great intensity and ever increasing bitterness, with the single exception of the period of "finality" which followed the Compromise of 1850; then, indeed, it was temporarily lulled into an unquiet sleep,— a sleep rudely terminated by the introduction of Douglas's Nebraska Bill in 1854. Various efforts were made, at intervals throughout the course of the controversy, to settle it by postponement or compromise, and to some of these was due the origin and development of the constitutional doctrines and political policy which may be designated by the

[1] The different names by which the various forms of the Non-intervention doctrine were designated will be given and defined in the course of the study.

common name of Non-intervention.[1] To examine the character and trace the history of the political policy and the constitutional doctrines associated under this name, is the purpose of this study. Our first task will therefore be to set forth the conditions responsible for the origin of the Non-intervention policy,— the political environment which occasioned its birth. Our starting point must be the situation in National politics produced by the prospective acquisition of territory as a result of the Mexican War, and the consequent political struggle between the advocates and the opponents of slavery to extend that institution to, or to exclude it from, the new territory.

In order to orient ourselves properly in the situation it will be necessary to review briefly the political aspects of the contest with Mexico. The war was begun and conducted by a Democratic administration, and accordingly was regarded as a Democratic war. The measures of the administration, therefore, were nominally 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 both of justice and the Constitution. Before it began they denounced Polk's war policy as unjust and dishonorable.[1] But the clever tactics of the administration supporters in Congress, and the lack of moral backbone on the part of the Whig members, combined to force them, in spite of their opposition, to vote with their opponents for a declaration that the war had been caused by the aggression of Mexico. After Polk had pushed Taylor forward to the Rio Grande, a position where a conflict was inevitable, he sent his famous war message to Congress. This asserted that "war exists, and notwithstanding all our efforts to avoid it, exists by the act of Mexico herself."[2] The Democratic majority in Congress prefixed this assertion as a preamble to the bill appropriating supplies for the support of Taylor and the American army.[3] The maneuver put

[1] Schurz, *Henry Clay*, II, 287.
[2] Richardson, *Messages and Papers of the Presidents*, IV, 442.
[3] Act of May 11, 1846: *Globe*, 29 Cong. 1 Sess., 795.

the Whigs in a dilemma; on the one hand they must play into the hands of their opponents by voting in favor of the declaration that the war had been begun by act of Mexico; on the other they must incur the charge of refusing to support the American army in the face of the enemy. They bitterly resented the tactics that placed them in this predicament, but their desire for re-election proved stronger than their attachment to Whig principle. With the exception of two senators and fourteen representatives, all of them voted for the bill, with its preamble denounced by Clay, their great leader, as a "palpable falsehood."[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 to pose before the people as patriots and avoid the charge of attempting to cripple the government in the face of a foreign enemy. But at the same time they neglected no opportunity to belittle and discredit the war as an unrighteous, partisan enterprise.[2]

From the beginning of the war there was a determination on Polk's part that it should result in the acquisition of Mexican territory by the United States.[3] The opponents of the administration believed that the President had forced on the outbreak of hostilities with this express result in view.[4] We now know that the belief was justified and that this was one of four principal achievements, the accomplishment of which Polk had proposed to himself before his entrance upon the discharge of his executive duties.[5] But whatever miscon-

[1]Speech at Lexington, Ky., Nov. 13, 1847; printed in *National Era*, Dec. 2, 1847.

[2]Clay's Lexington speech of Nov. 13, 1847, which was regarded as his formal bid for the Presidential nomination at the hands of the Whigs, furnishes one illustration of this attitude. After enlarging upon the evils attendant upon a state of war, he proceeds to inquire as to the cause of the present one; in answer he demonstrates that the responsibility for it lies with the administration. He then proceeds to show that the action of the Whigs in opposing this war is not to be compared with the Federalist opposition to the War of 1812, since that war was a righteous one on the part of the United States, while the present war is one of iniquitous aggression. ("This is no war of defence, but one unnecessary and of offensive aggression. It is Mexico that is defending her firesides, castles and her altars, not we . . ."—From Clay's speech, printed in the *National Era*. Dec. 2, 1847.) He then shows that the Whigs are to be blamed, if at all, "for having lent too ready a facility" to the prosecution of the war, and for having voted for the war bill "with a palpable falsehood stamped upon its face," the reference being to the preamble, which declared in effect that the war was due to the aggression of Mexico.

[3]"The Treaty of Gaudalupe Hidalgo," *Am. Hist., Rev., X.* 319. Reeves, *American Diplomacy Under Tyler and Polk*. Chap. XI.

[4]Schurz, *Henry Clay*, II. 290.

[5]Schouler, *Historical Briefs*, 139 sq.

ception as to the real cause of the war there may have been at the time of its declaration,— whether it existed "by act of Mexico," as Polk and Congress united in asserting, or was "actuated by a spirit of rapacity and an inordinate desire for territorial aggrandizement," as Clay and the Whigs contended.[1]—Polk's message to Congress on the 8th of August, 1846, left no longer any doubt of the intention of the administration to acquire Mexican territory as its result. In this message the President asserted his desire for a peace just and honorable to both parties. The chief obstacle to this, he said, would be the adjustment of a satisfactory boundary; in the determination of this "we ought to pay a fair equivalent for any cessions that may be made by Mexico."[2] He therefore asked Congress for an appropriation of $2,000,000, to be used at his discretion in negotiating a treaty of peace. In these terms was broached the project of the "Two-million Bill," which was to precipitate a contest famous in our Congressional annals.

This appropriation project was the result of no sudden resolve on the part of the administration. Its inception in Polk's mind antedates by two months the outbreak of the war, and by almost five months the sending of his message to Congress.[3] The scheme had been submitted to the consideration of the Cabinet on March 28. On that date Polk stated to his advisers that he apprehended the greatest obstacle to the conclusion of a treaty of boundary such as Slidell, his envoy then in Mexico, had been instructed to procure,[4] would be the want of authority to make a prompt payment of money at the time of signing it. The government of Paredes was a military one, dependent on the support of the army under his command. It was known that this army was badly fed and clothed; that it was unpaid, and "might and probably would soon desert him." If, therefore,

[1] Schurz, *Henry Clay*, II, 290. For similar disapproval by Clay of the preamble to this war bill, see his Lexington speech, No. 13, 1847, printed in the *National Era*, Dec. 2, 1847.

[2] *Globe*, 29 Cong. 1 Sess., 1211.

[3] Polk's *Diary*, March 25, 1846.

[4] This account of the proceedings in the Cabinet is taken from the Diary of March 28. The instructions to Slidell are indicated here; they are also stated in the article by Jesse S. Reeves on "The Treaty of Guadalupe Hidalgo," in *Am. Hist. Rev.*, X, 311.

our minister could be authorized, upon the *signing* (the emphasis is Polk's own), of a treaty to pay down a half million or a million dollars, Paredes would thus be enabled to support his army and so maintain himself in power until the treaty could be ratified and the subsequent installments that might be stipulated could be paid by the United States. Thus, Polk was persuaded, the prompt payment of such a sum would probably induce Paredes to make a treaty "which he would not otherwise venture to make." In these views the Cabinet seemed to concur.[1]

The question at once arose how an appropriation could be obtained from Congress without the disclosure of its object to the public and to foreign governments.[2] Buchanan, the Secretary of State, deemed this impracticable, but it was finally agreed by the Cabinet that Polk should consult Benton, Cass, and such other leading senators as he saw fit, upon the practicability of getting the appropriation quietly through the Senate. In case this were done it was thought the House would pass it also.[3] The result of these interviews was that those consulted approved of the scheme and of Polk's suggestion that it would be best for the Senate to consider it in executive session first and then pass it in open house without debate.[4] But the project was fated to meet with disappointment. Benton, Cass, and Allen all thought that the President should take Calhoun into his confidence in the matter.[5] They reasoned that his consent would go far toward securing unanimous action by the Senate. If he should disapprove no harm would have been done, since in that case his opposition would have to be encountered in any event. Calhoun agreed, when Polk explained the project to

[1]Polk had a further argument of the same purport. It was that the Mexican people would oppose any cession of territory, and no government would dare to make such unless assured of the support of the army; backed by this, it might safely defy public sentiment. The *sine qua non* of the army's allegiance was regular financial support. Since, in the event, contemplated the Mexican people would not supply this, the advance payment by the United States would be necessary to enable the government to weather the storm.

[2]This object was to procure a cession of New Mexico and California, if possible all north of latitude 32 degrees—from the Passo on the Del Norte—and west to the Pacific Ocean; or if this could not be obtained, then the next best boundary possible.—

[3]Polk's *Diary*, March 28, 1846.

[4]*Ibid.*

[5]*Ibid.*, March 30, 1846.

him, that it was a meritorious one; but he objected that "with the greatest care to prevent it, the object of the appropriation would become public and he apprehended would embarrass the settlement of the Oregon question." He "was much disposed to dwell on that subject," and in the end refused to acquiesce in the plan. It was, therefore, on the advice of Allen, laid aside for the present.[1]

Polk had expected and desired only a little war.[2] His desire for peace became stronger, therefore, the longer the war continued, and in mid-summer the appropriation project was revived. Between July 25th and August 1st Polk had conferences with various senators concerning it.[3] We must pause to notice one of these, for in the light of the prolonged and bitter agitation over the Wilmot Proviso, it possesses a peculiar significance. On the advice of Cass, Polk conferred with Archer, a prominent Whig. To him the President stated that *he wanted no party question out of it;* he would rather drop the plan than have Congress make it such. Archer's reply was that he would confer with other Whig senators and then report to Polk.[4]

The next day the President laid the plan before his Cabinet, stating again his desire for secrecy; if it approved he would send a message to the Senate in executive session, the object of this course being that if that body withheld its approval the matter need not be made public; but if it approved with anything like unanimity, a bill could be put through it "with little or no debate." After full discussion the Cabinet advised the sending of such a message, and Buchanan was requested to draft it.[5]

The message was accordingly sent to the Senate in executive session the morning of August 4th.[6] On the 6th that body passed two resolutions approving of Polk's recommendations.[7] The project seemed to be faring most prosperously.

[1] Polk's *Diary*, March 30, and April 3, 1846.
[2] "The Treaty of Quadalupe Hidalgo," *Am. Hist. Rev.*, X, 310; also Reeves, *American Diplomacy Under Tyler and Polk.*
[3] Polk's *Diary*, July 26 to August 1, 1846.
[4] *Ibid*, July 31, 1846.
[5] *Ibid*, August 1.
[6] *Ibid*, August 4.
[7] *Ibid*, August 7.

But the best laid plans often miscarry and disaster to this one was already looming up. The question of party responsibility for the project arose. Polk was informed by several senators, he records on August 7th, that the Senate expected he would now send in a confidential message to both Houses requesting the appropriation. To state it briefly, the issue that had arisen was this; the Whigs objected to making the appropriation unless Polk would first take the responsibility of recommending it. Polk professes to have believed that by his first message to the Senate he had already assumed this. He rails at the stand taken by the Whigs; to send a confidential message to the House of Representatives,— a thing that had not been done for twenty years,— would be a "perfect farce" and in the end would result in greater publicity than would a message submitted in the ordinary way in open session. During the forenoon of the 8th, he learned that the Whigs were still standing their ground. It was now Saturday, and the session was to expire at noon on Monday. There was no time to be lost if he would secure the appropriation. After a conference with Buchanan a message was immediately prepared and sent in to both Houses about 12 o'clock.[1] That evening a bill was passed by the House in accordance with the President's wishes, but to it was tacked the famous Wilmot Proviso.[2] The bill came to the Senate on Monday about half an hour before the time set for adjournment.[3] Here a motion was made to strike out the Proviso; whereupon John Davis, of Massachusetts, obtained the floor and talked until the Senate adjourned, and thus the Bill and Proviso both were lost.

It has been necessary to relate at length the circumstances connected with the origin of the message of August 8th, 1846, because thereby important light is thrown upon several points relating to our study. We see why it was that the message was not sent in until the last day but one of the session; how Polk with blind fatuity thought to put through his project unopposed; and how he pursued his plans with no

[1] Polk's *Diary*, August 8, 1846.
[2] *Globe*, 29 Cong. 1 Sess., 1217.
[3] *Ibid*, 1220-21.

apparent realization that they were leading straight to a political explosion over the slavery question that would endanger the life of his party and his country. It was charged by the Whigs at the time that the message had been deliberately withheld by Polk in order that the gag might be applied under the plea of necessity, and the appropriation railroaded through without discussion. What we have seen proves that this accusation was unfounded. Polk did desire the appropriation to go through quietly, and, in the House, without debate; but his original design provided for perfect freedom of discussion by the Senate in executive session; and his diary makes it clear that the reason the message of August 8th was not sent to Congress earlier was that not until the forenoon of that day did Polk have any intention of sending such a message at all.

What is to be thought of his expectation that the project would go through in executive session, and of his complaints over the Whig demand that he publicly assume responsibility for it? If his diary did not breathe the tone of sincerity it would be difficult to believe that the complaints confided to it were entirely free from guile. We can wonder at his short-sightedness, but our sympathy in this matter must lie with the Whigs. Months after this they were still writhing under the incubus of the "lying preamble" of the War-bill of May 11th, into the approval of which they had been ruthlessly dragooned. Yet Polk broached his "two-million" project with a child-like faith that it would be quietly acquiesced in, and he sincerely felt aggrieved when the Whigs required him publicly to assume the responsibility for the appropriation he desired.

But if we wonder at this lack of political sophistication, how much greater must be our surprise to learn that Polk proceeded calmly on the course that evoked the Wilmot Proviso, without even the shadow of a realization that the result he was working for had any bearing on the sectional issue of slavery — without any premonition that it might occur to some congressman, when called upon to provide for the acquisition of territory, to raise the question to which sec-

tion of the country the gain was to accrue. The evidence that such was the case is largely negative in character, but it is conclusive nevertheless. In the diary there is no hint of such a contingency until after it had actually occurred. Then Polk views the Proviso as a "mischievous and foolish amendment" and naively remarks, "What connection *slavery* had to do with making peace with Mexico, it is difficult to conceive."[1] He can only account for it on the theory that its movers are actuated by mere factiousness and that they take this method of avenging their disappointment over his disposal of the patronage.

We have traced the origin and have seen the object of the administration project that evoked from Northern congressmen the Wilmot Proviso. This measure, falling on the administration like a bolt from the blue, tended for a time to fuse the people of North and South, irrespective of party lines, into compact groups, on the basis respectively of advocacy of or opposition to the Proviso. To the origin of this measure and the situation produced by it in national politics in the year following its introduction our attention must now be directed.

The President's message of August 9th was regarded by Congress and the country as a clear avowal of the intention of the administration, in making peace, to acquire territory from Mexico. This avowal was received throughout the country with varying feelings of approbation or alarm.[2] In spite of Polk's indignant protests that the Two-million measure had no possible connection with slavery,[3] the question of national expansion could not be considered on its own merits alone; it was inextricably involved with that of the future status of the prospective acquisition with respect to the peculiar institution. Upon this issue two great sectional groups were formed, the one determined to prevent the extension of slavery through any act of the national government, the other to protect its interests from national interference.

[1] Polk's *Diary*, August 8, 1846.
[2] Garrison, *Westward Extension*, 254.
[3] *Diary*, Aug. 8, 1846; Jan. 4, 1847.

Thus the submission to Congress of Polk's request for an appropriation looking to the acquisition of territory, fired the train already laid for a political explosion. When, on the day Polk's message was received, McKay of North Carolina introduced into the House a bill carrying the appropriation asked for, White of New York said he could not sanction it unless it were amended so as to exclude forever the possibility of extending the institution of slavery over the territory.[1] Winthrop of Massachusetts followed, denouncing the administration for placing its opponents in a false position whichever way they voted. White and Winthrop were Northerners and Whigs and their opposition therefore occasioned no particular surprise. But the action of David Wilmot, which followed immediately upon that of White and Winthrop, presented a different aspect. He was a Democrat from Pennsylvania and hitherto had stood well with the administration and the South.[2] But now he broke his political leading strings, and heedless of the desire of the administration, moved, as a proviso to the appropriation that was in process of being granted, that slavery should forever be excluded from the territory that was to be acquired by it.[3]

Such was the famous Wilmot Proviso, and such the circumstances which evoked it. It is commonly stated by historians that Wilmot was not the real author of the measure to which his name has been given, but that he merely acted as the mouthpiece of the author, who was Jacob Brinkerhoff, of Ohio.[4]. This is a matter of minor importance, the role played by the Proviso after its introduction constituting its claim to a place in history; yet the question of its authorship is interesting nevertheless; and since there is evidence, hitherto overlooked or ignored, which renders its ascription to Brinkerhoff improbable, it will be well to consider the question.

[1]The proceedings are in *Globe*, 29 Cong. 1 Sess., 1213-18.

[2]Wilson, *Slave Power*, II, 16.

[3]*Globe*, 29 Cong. 1 Sess., 1213-18. Divested of the portion which had only a temporary application, the Proviso was as follows: "Provided, that neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted."

[4]Wilson, *Slave Power*, II, 16, Von Holst, III, 287; Garrison, *Westward Extension*, 255; Johnston-Woodburn, II, 85. Schouler is an exception, ascribing the Proviso to Wilmot; he, however, gives no reasons for his decision.

The customary explanation of the origin and authorship of the Proviso is in substance as follows: That it was conceived by Jacob Brinkerhoff, who for reasons of expediency desired to keep its parentage concealed. He had opposed the annexation of Texas and had sought to exclude slavery from the western and northwestern portions of that region. Now he perceived an opportunity of renewing the proposal with reference to the prospective acquisition from Mexico; but being in bad odor with the Democratic majority because of his previous action in connection with Texas, he desired to have his present measure introduced by some Democrat who stood well with the administration. For this service Wilmot was selected as the most suitable man, owing to the fact that by his recent course on the Tariff issue he had won the especial regard of the leaders of his party. This account is taken from Henry Wilson's *Slave Power;*[1] Wilson gives no authority for his story, having gotten it presumably through his contemporary acquaintance with the political life of that period. It is a plausible narrative, and in its support may be cited the fact that the belief was more or less prevalent in 1847 that Brinkerhoff was the actual author of the Proviso.[2] He himself made no such claim at the time, while Wilmot assumed the responsibility of the authorship from the first. Later in life, however, Brinkerhoff claimed the honor, and on his death is said to have left to his family what purported to be the original Proviso, accompanied by an account of its origin.[3]

This evidence would, if unopposed, ordinarily be deemed sufficient to establish Brinkerhoff's claim, and it is usually accepted without question. But unfortunately for

[1]The above account is taken substantially from Garrison, *Westward Extension*, 255-56; he, in turn, drew upon Wilson for it (Vol. II, p. 16). See also Von Holst, III, 287; and Smith, *Political History of Slavery*, I, 84.

[2]In a speech in Congress, Feb. 8, 1847, Strong, of New York, alluded to the story that Brinkerhoff was the real author of the Proviso, and that he had published a card to his constituents to that effect during the autumn of 1846. Brinkerhoff two days later said in answer to this, that any effort to arouse envy in his heart over the fact that the Proviso bore the name of Wilmot would be despised by him. He was glad it was called the Wilmot Proviso, though in truth neither of them deserved the credit; it ought to be called the Jefferson Proviso. *Globe*, 29 Cong. 2 Sess., 377.

[3]Smith, *Political History of Slavery*, I, 84.

its acceptance, there exists another account, directly subversive of it. It was put forward by Wilmot himself in 1847, is straightforward, detailed, and explicit, and the circumstances of its delivery are such as to make the probability of its correctness seem very certain. It is to the effect that on the day Polk's appropriation message was sent to Congress (Aug. 8, 1846), it was made the subject of conversation at dinner between Wilmot, Owen of Indiana, Dunlap of Maine, and Yost of Pennsylvania. Wilmot remarked that it was clear the President's message looked to the acquisition of territory, and that if McKay should bring in a bill in accordance with the message, he (Wilmot) intended to move an amendment to the effect that the exclusion of slavery from the territory to be acquired should be made a condition of granting the appropriation. Owen objected to this, saying that he would speak against it. Yost and Hamlin urged Wilmot to persevere in his intention. After dinner conversation was had with other Democrats, among them Brinkerhoff, Grover, and Hamlin. The result of this further consultation was an agreement to confer with Northern Democrats and if the measure met with their approval that it should be pressed. The upshot was that the desired approval was elicited, and therefore when the bill was called up in the House at the evening session, several men collected to agree upon the form and terms of the proposed amendment. Among them were Rathbun, King, and Grover of New York, Hamlin of Maine, Thompson and Wilmot of Pennsylvania, and Brinkerhoff of Ohio. Some engaged in drafting an amendment, Wilmot among the number; several were submitted and all of them were subjected to more or less alteration at the hands of those standing around and taking part in the business. After various drafts had been drawn and altered, the language in which the amendment was offered was finally agreed upon.[1]

Such is the evidence on both sides of the question. In coming to a decision upon it primary importance must be

[1]This account was given by Wilmot in a speech at Tioga, Pa., Sept. 21, 1847. It was printed in the *National Era*, October 21, 1847.

attached to the testimony of the two principals, Wilmot and Brinkerhoff: that of others, the story of Henry Wilson included, being second-hand evidence, cannot overcome the testimony of the principals unless the reasons for its superiority are clearly apparent. To sum up then, we know that there was a belief abroad at the time that Brinkerhoff was the man really responsible for the Proviso. This we know from Strong's speech[1] and so much and no more is established by Henry Wilson. As between Wilmot and Brinkerhoff, the latter steadily refused to accept the mantle of authorship which it was attempted at various times to put upon him; late in life he did claim it and left to his family a statement of his claim together with what purported to be the original Proviso.[2] On the other hand, Wilmot took the responsibility of the measure from the first, when the avowal required the exercise of great political courage and independence. He told his story of the origin of the Proviso within a year; told it so minutely and explicitly that the only possible alternative to its acceptance is to conclude that it was a deliberate and laborious falsification. If Wilmot's sturdy character were not enough to preclude this conclusion, there are still objections to it that seem insuperable. Any one of the many men he names might have exposed the fraud; some of them, in particular Thompson, had turned against the Proviso in the meantime, and Owen had opposed it from the first.[3] It is impossible to believe, had there been any falsification by Wilmot, that these men would not have exposed it. It remains to consider in how far the claims of Wilmot and Brinkerhoff are incompatible. In some of the details they do not necessarily conflict; Wilmot does not claim sole credit for the Proviso, and he admits that Brinkerhoff had a share in it; thus we might easily believe that the latter left the original Proviso to his children, provided we overlook the fact that according to Wilmot several originals were drawn up and all more or less altered. But on

[1] Speech of Feb. 8, 1847.

[2] This document was deposited in the Library of Congress whence it was stolen fifteen or twenty years ago (statement of Mr. Spofford in letter of W. C. Ford to the writer). See Smith, *Political History of Slavery*, I, 84, for reference to it. Howe's *History of Ohio*, to which he there refers, is of no authority whatever on the subject.

[3] *National Era*, October 21, 1847.

the main issue, as to who was the original author of the idea, the conflict between the two accounts is irreconcilable; and on the basis of the evidence we have, there can be no hestitation in rejecting Brinkerhoff's claim to its authorship and accepting that of Wilmot.[1]

To return to the fortunes of the Proviso. It appeared in the House without previous warning, and the entire debate upon it was limited to two hours;[2] There was little time for reflection, therefore, and the leaders had no opportunity to collect their forces or drum their followers into line on the measure. We must look then to an analysis of the votes, rather than to the discussion itself, for information as to how the measure was received by the House. Such an analysis reveals several important facts. The House adopted the Proviso as an amendment to the appropriation bill, by a vote of 83 to 64. Thereupon a curious thing occurred. The original promoters of the bill, now that it was amended, turned against it, while those who had been its opponents hitherto, became its advocates.[3] This was revealed by the effort, which was promptly made, to lay the bill on the table and thus kill the whole matter. This was defeated, the vote standing 78 for to 94 against. Among the 78 were but four free-state representatives. That is, the vote was almost strictly sectional.[4] Another thing — the total representation to which the slave states were entitled at this time was ninety; seventy-four slave-state votes are here recorded against the Proviso. Allowing for vacancies and absences and for the three who voted with the North, it is evident that the South mustered almost its whole voting strength against the Proviso on the occasion of its first appearance. This effectually refutes the statement that but little opposition was made to the Proviso at first, and that little by Southern Democrats.[5] Of the twenty-four Southern Whigs, members of this Congress, eighteen were present and voted on this question, and

[1]It is not intended to convey the impression that there was any dispute between Wilmot and Brinkerhoff on this point. I refer simply to the conflicting accounts of the event which each put forward, Wilmot in 1847, Brinkerhoff long afterward.

[2]*Globe*, 29 Cong. 1 Sess., 1211-18.

[3]Polk's *Diary*, Aug. 10; Niles' *Register*, LXX, 374, and *National Era*, Jan. 21, 1847; and compare vote in *Globe*, 1217-18.

[4]Douglas and three others voted in the affirmative, while Benton and two Kentucky Representatives voted in the negative.

[5]e. g. see Johnston-Woodburn, II, 85.

sixteen of these voted with their erstwhile opponents, the Democrats, in favor of tabling the Proviso. The Southern men were quiet perforce, because the gag rule had been applied before the subject of the Proviso was introduced; but their votes are eloquent of their attitude toward the measure from the start. The final test of strength came with the vote on the engrossment; this was the crucial question and it carried by a vote of 85 to 79. The question now recurring on the passage of the bill, the opposition abated somewhat and it passed, 87 votes against 64. On all these votes McKay, who as a faithful mouth-piece of the administration had introduced the bill, either opposed it or abstained from voting. The clear-cut division between the sections in these votes, the first, perhaps, in the history of the government,[1] was ominous of future strife and the dissolution of political parties. The Apple of Discord had been thrown.

The vicissitudes of the appropriation bill after its passage by the House on the evening of August 8th are interesting and instructive. It was to go to the Senate on Monday. The intervening Sunday was spent by the administration leaders in devising a plan whereby the appropriation could be secured without its obnoxious accompaniment. A scheme was hit upon by the conferees of the two Houses on disagreeing bills, whereby the House bill was to be stifled altogether and the appropriation secured by adding it as an amendment to the civil appropriation bill.[2] This plan was devised by a joint committee of six members of whom four were Democrats, and five came from slave states.[3] These facts did not tend to commend it to the Whigs and the Northern congressmen when the plan became noised about on Monday morning. Such a storm of opposition to the proposed action arose as to convince its advocates that persistence in it would cause the failure of the general appropriation for the support of the government, and accordingly McKay announced that it had been abandoned.[4] The gen-

[1]Baltimore *American*, in Niles' *Register*, LXX, 374.

[2]The details of this project are drawn from the Baltimore *American* and the *National Intelligencer*, copied in Niles' LXXI, 373-374. The substance of it is fully confirmed by McKay himself, *Globe*, 29 Cong., 1 Sess., 1222.

[3]Benton, Lewis, and Johnson for the Senate; Severance, McKay, and Boyd for the House. Severance for Maine was the only free-state representative on the two committees.

[4]Niles' *Register*, LXX, 374.

eral appropriation bill was then passed by the House without further debate.

In the Senate the House bill of Saturday evening came up but a few minutes before twelve o'clock on Monday.[1] Here, Lewis of Alabama, one of the conferees concerned in the intrigue of Sunday, doubtless informed by now of the failure of that scheme in the House, moved to strike out the Proviso.[2] John Davis of Massachusetts now obtained recognition and proceded to execute his much berated feat of outtalking the session, by which means the taking of a vote was rendered impossible. Various opinions have been expressed as to the probable result if such a vote had been taken. Polk believed there was but little doubt the Proviso would have been stricken out had time permitted, and that the House would have concurred in this. He accordingly termed Davis's action "a disreputable expedient of speaking against time," and called down on his head the execrations of his country for the protraction of the war.[3] Curiously enough, he had no word of reproof for Wilmot, but this perhaps may be explained as due to his belief that but for Davis he would have procured the appropriation with the Proviso stricken off. Henry Wilson expresses the opinion that, contrary to Brinkerhoff's assertion, there was no chance for the Proviso to pass the Senate.[4]. Probably this is correct; but it seems certain likewise, from the temper of the House on Monday and its determination to refuse to pass the general appropriation bill rather than let the Proviso be juggled out of existence, that Polk's belief that it would have concurred in the Senate's action of lopping the Proviso off the bill was entirely unfounded. Months of bitter debate, and of the application of pressure by the administration, must ensue before the House could be brought to abandon the Proviso.

Leaving the discussion of what might have been, we

[1]Niles' *Register*, LXX, 374, says twenty minutes; Polk, *Diary*, Aug. 10, says thirty to forty minutes.

[2]*Globe*, 29 Cong., 1 Sess., 1220.

[3]*Diary*, August 10, 1846.

[4]Wilson, *Slave Power*, II, 17.

must continue to follow the fortunes of the Proviso. When Congress re-assembled in December (1846) the reasons still existing which had prompted the President's first request for an appropriation to assist him in his peace negotiations, he renewed the recommendation in his annual message.[1] Nothing was done in the matter by Congress until well into the winter.[2] Finally it was taken up and a bill introduced into the Senate carrying the sum of three million dollars in place of the two million of the preceding session.[3] February 8th, a similar bill was taken up in the House.[4] The discussion over the Wilmot Proviso was renewed in connection with these bills, which occupied the attention of Congress to such an extent that Von Holst has termed this "The Session of the Three-Million Bill and the Wilmot Proviso."[5] Out of the ferment of the long debate arose the idea of the policy of Non-intervention by Congress with the subject of slavery in the Territories, as a solution of the issue. The story of the evolution of this idea, of its development by slow degrees, will occupy our attention in a succeeding chapter.

[1] Richardson, *Messages and Papers*, IV, 495.
[2] January 5 Polk complains in his *Diary* that five weeks of the session have gone by, and yet the Democrats have passed none of his measures for the prosecution of the war.
[3] January 19, 1847; *Globe*, 29 Cong., 2 Sess., 204-05.
[4] *Ibid*, 352.
[5] *Constitutional History*, III. Chapter XI.

CHAPTER II.

The Democratic Party in 1847: Southern Radicalism and Northern Trimming.

The account of the origin of the Wilmot Proviso contained in the preceding chapter has been designed as an introduction to the general political situation at the beginning of the year 1847. The few months immediately following are full of importance for the subject of Non-intervention; for out of the bitter travail of the struggle over the Three-Million bill and the alignment of forces for the coming Presidential campaign, were born the two doctrines associated respectively with the names of John C. Calhoun and Lewis Cass. The one was clear cut as crystal, the other ambiguous in expression and hazy as to its application, yet under the mask of a common name these doctrines concealed a radical difference of thought and purpose and thus made it possible for the Democratic party to conceal its internal differences and prolong its life for yet a dozen years. The circumstances governing their birth were influential in determining their character, and therefore will repay our careful study.

The war was to result, it had become evident, in an acquisition of territory. The extreme Northern demand with respect to this, promptly put forward, was embodied in the Wilmot Proviso: the territory to be acquired should be devoted to freedom. Pro-slavery sympathizers were at first inclined to compromise and offered to divide the region on the line of 36°30′. This proffer being rejected by the Anti-slavery party, which insisted on the Wilmot Proviso, they then put forward as a counter-blast to its demands the proposition that slavery had a constitutional right of way into all territory belonging to the United States, a right which no agency whatever was competent to nullify. These were the two extreme positions taken. Both were adopted in the first instance by Democrats, the former by Wilmot, Brinker-

hoff, and their associates, the latter by Calhoun and his disciples. Between these two extremes which were threatening the destruction of the party there was evolved during the months of 1847 the Cass doctrine of Non-intervention, adopted later by Douglas and re-named by him Popular Sovereignty. This soon became the "touch-stone of Democracy."[1] The Wilmot group was read out of the party, the integrity of which was preserved for the time being under the shibboleth of Non-intervention, a term which, as we shall see, included ideas almost antipodal in character.

Thus much by way of a bird's-eye view of the period beginning with 1847, the events of which it will now be necessary to take up in considerable detail. The early winter saw a sad state of confusion and discord within the ranks of the Democratic party. Though it had a strong majority in the House and a safe one in the Senate, Polk frequently complained to the pages of his diary that his measures were neglected and that the administration was in a practical minority in Congress because of the "factiousness in the party ranks."[2] Thus, on January 5 Polk records: "The distracted state of the Democratic party was the subject of conversation and regret [in the Cabinet meeting, that day]. The truth is there is no concert or harmony of action among the Democratic members. . . . The slavery question has been introduced into the House of Representatives by Mr. Preston King of New York, and is a fire-brand in that body."

The query at once arises as to the reason for this state of discord. Polk could see in it nothing but a mass of factiousness and of selfish ambition. He thought that those Democrats who disagreed with him were actuated either by Presidential aspirations or by motives of revenge because of disappointment over his bestowal of the patronage.[3] But it can be said without hesitancy that Polk's diagnosis of the situation hit upon a symptom merely and not upon the under-

[1]Johnston-Woodburn, II, 87.

[2]Polk's *Diary*, January 4, 5, 9, 12, *et passim*. On Jan. 4 he wrote: "The slavery question is opening a fearful and most important aspect. The movement of Mr. King's today, if persevered in, will be attended with terrible consequences to the country and cannot fail to destroy the Democratic party if it does not ultimately threaten the Union itself."

[3]On Jan. 4 he complains that the Democrats are "scrabbling" over the next Presidential nomination prospects, while the "Federalists" are "united and delighted." In deep despondency he concludes: "I will do my duty and leave the rest to God and my country."

lying cause of the trouble. It seems clear that throughout all this period he failed to appreciate the real cause of the party discord, which lay in the fact that the prospective acquisition of territory must accrue, politically speaking, not to the nation as a whole but to one or other of the sections into which it was divided. Polk did not see that the firebrand was thrown by himself rather than by Preston King, and that its date was not January 4, 1847, but the 8th of the preceding August, when he sent his Two-Million message to Congress.[1] On that day, as has been seen, the Democratic party was for the first time cleft in twain, the line of cleavage being that which separated the slave states from the free. It is doubtless true that the factiousness and the Presidential ambitions of which Polk complains existed, but they were incidental circumstances in the situation, rather than its leading cause.

The rock of discord round which the factional currents surged was the question of the extension of slavery to the new territory,—or, in the concrete form in which it presented itself, the question of the Wilmot Proviso. On January 4 Preston King, a Democratic Representative from New York, asked the consent of the House to the introduction of a Two-Million bill. The substance of its second section was a re-statement of the slavery exclusion clause of the Wilmot Proviso. The desired permission was denied by the close vote of 89 to 88.[2] The next day, however, King, by way of explanation of his action, delivered a speech on the subject, deemed at the time of great political significance. It was supposed, and freely stated, that it had been prepared at Albany by the partisans of Silas Wright, and was, therefore, an expression of the Wright branch of the Northern Democracy as to its future attitude upon the issue of slavery-extension.[3] This belief was justified. It was given out authoritatively a few months later that though Wright did not "instigate" King, yet the step the latter had taken met his entire approv-

[1] Von Holst, III, 301, gives a good exposition of the inevitableness of a domestic contest consequent on any addition of territory to the Union during this period.

[2] *Globe*, 29 Cong. 2 Sess., 105, in *House Journal*, page 129, this vote is given as 90 to 87.

[3] Niles' *Register*, LXXI, 316; *National Era*, Jan. 7, 1847; Globe, 29 Cong., 2 Sess, 114.

al, and he was in entire accord with King's cause.[1] The speech of King had been written out in advance, and, delivered deliberately, was listened to with deep interest and was widely copied because of the authority it was believed to have.[2] Polk had already recorded in his diary the night before his belief that, if persevered in, King's movement would be "attended with terrible consequences, and cannot fail to destroy the Democratic party." Further, he sent for his Attorney-General, who promised to expostulate with the refractory New York Democrats on their course of procedure. The next day, as has been seen the "distracted state of the Democratic party in Congress" was brought before the Cabinet, where it was "the subject of conversation and regret."

What had King said to occasion such a tempest? He had asserted his belief in the necessity of the war and his approval of its vigorous prosecution. But since he deemed the acquisition of territory to be now inevitable, he demanded the recognition of the principle which would exclude slavery from it. He disclaimed any connection with Abolitionism; the Federal government had nothing to do with slavery in the states. But the enactment of the Wilmot Proviso was necessary because the character of the population of the territory determines the character of the institutions of the state. Let the territory be denied to slavery and a free state will be formed; but if the territory has a slave population of only one-fourth or one-fifth of the whole number it will be a slave state. Since free labor shuns the proximity of slave labor, the crucial question is that of the *territorial* status. He closed by announcing his intention to continue to urge the bill upon the House.[3]

Southern men in general were at this time willing to settle the territorial dispute on the basis of the extension of the Missouri Compromise line to the Pacific.[4] This was the settlement of the question favored by the administration as early as January 5, though Polk inclined to await the course events would take before committing himself; on January 16, after deliberate discussion, the Cabinet unanimously agreed

[1] New York *Evening Post*, in *National Era*, May 27, 1847.
[2] *National Era*, Jan. 7, 1847.
[3] *Globe*, 29 Cong., 2 Sess, 114.
[4] Speech of Hilliard, Jan. 5, *ibid* 118; of Dargin, Jan. 7, *ibid* 135. Both assume to speak for the South. See also Grover's speech, *ibid*, 138.

that the line of 36°30′ ought to be extended to any territory that might be acquired from Mexico.[1] On this point Polk and Calhoun were for once in entire accord, and Southern men generally united in a stand on this issue.

Calhoun held, however, that in politics as in war the safest plan of defence was to force the fighting on the frontier.[2] Accordingly the Southern congressmen did not wait to meet the issue of slavery extension in connection with the Three-Million bill and the Wilmot Proviso; instead they precipitated a conflict over the bill for the territorial organization of Oregon. Bills for this purpose had been introduced in both houses on December 23 preceding.[3] The House bill came up for consideration January 11[4]. Being interrogated as to its provisions with respect to slavery, Douglas, who had the bill in charge, answered that slavery was excluded by the 12th section of the bill which guaranteed to the inhabitants all the rights and privileges, and subjected them to all the prohibitions, of the Ordinance of 1787. Southern men could have no hope of planting slavery in Oregon,[5] but Oregon could be made to serve as well as any other territory to force the recognition of the extension of the Missouri Compromise line.[6] Accordingly Calhoun influenced one of the Representatives from his state, Burt, to move an amendment to the 12th section of the Oregon bill recognizing, in these words, the extension of the Missouri Compromise line: "Inasmuch as the whole of said territory lies north of 36° 30′ north latitude, known as the line of the Missouri Compromise."[7] On January 15, this "Burt amendment," as it came to be known, was rejected by a vote of 113 to 82.[8] The negative votes were all given by free-state men; the 82 affirmative votes comprised 76 from the slave, and 6 from the free states.[9]

The principle of the Wilmot Proviso was now passed, so far as the House was concerned. The North with but

[1] Polk's *Diary*, Jan. 5, 16, 1847.
[2] Calhoun's letter, printed in Benton, *Thirty Years' View*, II, 698.
[3] *House Journal*, 29 Cong., 2 Sess., 88; *Senate Journal*, 29 Cong., 2 Sess., 66.
[4] *House Journal, ibid*, 162.
[5] See on this Burt's speech, *Globe*, 29 Cong., 2 Sess., 196.
[6] That this was the purpose of Southern men was fairly avowed at different times during the debate.
[7] *Globe*, 29 Cong., 2 Sess., 170.
[8] *Globe*, 29 Cong., 2 Sess., 187; the *House Journal*, 173, gives the vote as 114-82.
[9] Analyzed in *National Era*, Jan. 1, 1847. Eleven Whigs and seventeen Democrats in all were absent when the vote was taken. It is clear then that the vote was almost purely sectional and that party lines were almost entirely disregarded.

six dissenting votes had rejected the Southern overture of a settlement of the issue between them on the basis of the extension of the Missouri Compromise line. The House bill was sent to the Senate January 18, where instead of being referred to the Committee on Territories in regular order, it was referred to the Committee on the Judiciary.[1] Benton is authority for the statement that this course was due to the influence of Calhoun, who desired it because of the composition of the Judiciary Committee.[2] Certain it is that the bill was reported back with the anti-slavery clause stricken out. The members of the Judiciary Committee were all Southerners[3] and, according to Benton, acted merely at the dictation of Calhoun.[4] No action was taken on the bill till the last day of the session when, objection being made to the amendments, Westcott, who was responsible for them, moved to lay the bill on the table, which was done.[5] Thus the struggle over Oregon Territory was ended until another Congressional session should arrive.

A few weeks after the passage by the House of the Oregon Territorial bill, as related above, the Wilmot Proviso was again brought before Congress. In the House a measure which came to be known as the "Three-Million Bill," had been introduced; it was designed to provide the President with the appropriation which he had requested of Congress the preceding session for the purpose of enabling him to make peace with Mexico; but the sum it was now proposed to put at his disposal had been increased from two to three million dollars. To this bill, Hamlin, on February 15, proposed to add the slavery exclusion clause of the King bill to which the name of the Wilmot Proviso had now been extended.[6] Douglas tried to substitute for this the extension of the Missouri Compromise line, but this was rejected by the House, 109 to 82.[7] Hamlin's amendment

[1] *Senate Journal*, 29 Cong., 2 Sess., 110.

[2] Letter in New Orleans *Mercury*, March, 1847; copied in *Natioanl Era*, May 13, 1847.

[3] Berrien, of Georgia; Ashley, of Arkansas; Westtcott, of Florida—Albany *Evening Atlas*, in *National Era*, May 27, 1847.

[4] In New Orleans *Mercury, supra:* "Upon the record the Judiciary Committee of the Senate is the author of that amendment, but not so the fact! The Committee is only mid-wife to it. Its author is the same mind that generated the fire-brand resolutions . . . of which the amendment is the legislative derivation."

[5] *Globe*, 29 Cong., 2 Sess., 571.

[6] *Globe*, 29 Cong., 2 Sess., 424.

[7] *Ibid.*

was then adopted by a vote of 115 to 106, and then the bill was passed, 115 to 105.[1] The affirmative vote on the adoption of the Proviso comprised 114 free and 1 slave state votes (the latter, Houston of Delaware). The negative vote was made up of 88 slave state and 18 free state votes[2]; this is significant for it shows that though the Northern Congressmen for the most part still voted for the Proviso, yet the desertion of it by them had begun. We will have occasion to refer to this movement again.

We come now directly to the promulgation of what may be termed the Calhoun brand of Non-intervention.[3] The South had declared as with one voice that there must be no enactment of the Wilmot Proviso, come what might.[4] It had then proposed the extension of the Missouri Compromise line as a settlement in which it would acquiesce, and by the votes on Burt's amendment to the Oregon bill and on Douglas's amendment to the Three-Million bill, the North had decisively rejected it. More than this, it had asserted its determination to be content with nothing short of the Wilmot Proviso. Unless the South intended to submit it must make a stand in a new position. But submission was far from the Southern mind, and such a position, with the radical Calhoun faction in the van, the South quickly assumed.

The first appearance of the doctrine now put forward, like the origin of many another movement of public opinion, cannot be ascribed to any one individual, nor to any definite moment of time. It seems to have been instinctively framed in the minds of Southern men as their ultimate position of safety against the Wilmot Proviso program of the North. The attitude of Southern Congressmen on the question of slavery-exclusion, in the early part of the session of 1847, was illogical and inconsistent. While advocating the extension of the Missouri Compromise line, and proclaiming

[1] *Globe*, 29 Cong., 2 Sess., 425. The *House Journal* (29 Cong., 2 Sess., 349), gives the last vote as 115 to 106, the same as the first.

[2] Analyzed in *National Era*, Feb. 25, 1847.

[3] By this I do not mean to assert that Calhoun was its author necessarily; it was a general movement of Southern men, of which he was the acknowledged leader.

[4] In Congress the threats of a dissolution of the Union if the North persisted in passing the Proviso, were so frequent during this session that Northern men soon began to hold them up to ridicule. See *Globe*, 29 Cong., 2 Sess., *passim*.

it to the North as their ultimatum,[1] they were at the same time asserting this doctrine of no power in Congress over the subject of slavery in the territories. The inconsistency of this was ridiculed by Grover as early as January 7 (1847), and it appears from an explanation made by Chapman of Alabama at this time that many Southern men had held the doctrine of the lack of power in Congress over slavery in the territories, at least as early as the preceding year.[2] But if this were so, Grover pertinently inquired, what became of the Missouri Compromise? If Congress had no power over the subject, what power had it to enact this? Following Grover the doctrine was proclaimed by Leake of Virginia, a week later, in a fire-eating speech.[3] The Burt amendment had just been rejected, and Leake, who was "a young man, very solemn and very threatening,"[4] took occasion to express his disgust with all compromises in general, and with the action of the Northern representatives in particular; in the course of his philippic he enunciated the doctrine that slavery was a matter of municipal regulation with which the National government had no concern. The argument was repeated by Strong of New York a few days later,[5] and other instances of its enunciation at this time might doubtless be cited. The significance of these examples is that they are indicative of the attitude the South would assume upon the rejection of the Missouri Compromise extension; they show the drift of thought at the head of which, on the final rejection of that measure, Calhoun put himself, and to which he looked for support for the platform which he proceeded to promulgate.

Calhoun declared the era of compromises closed[6] and drew up a series of resolutions to embody his views of the rights of the South. His close follower and able lieutenant,

[1] For example, see Leake's speech on the Burt amendment to the Oregon bill, *Globe*, 29 Cong., 2 Sess., *App.* 111.

[2] *Globe*, 29 Cong., 2 Sess., 138.

[3] *Globe*, 29 Cong., 2 Sess., *App.* 311.

[4] *National Era*, Jan. 21, 1847.

[5] On Feb. 8; *Globe*, 29 Cong., 2 Sess., 321.

[6] "I see my way in the Constitution. I cannot in a compromise. A compromise is but an act of Congress. It may be over-ruled at any time. It gives us no security. But the Constitution is stable. It is a rock. On it we can stand. It is a firm and stable ground on which we can better stand in opposition to fanaticism, than on the shifting sands of compromise. Let us be done with compromises. Let us go back and stand on the Constitution!"—*Works*, IV, 347.

Robert B. Rhett, had already in the debate on the Burt amendment (January 15) announced the new position of the Calhoun faction, in a close constitutional argument. This speech and Calhoun's resolutions of February 19, taken together, constitute the first formal enunciation of the doctrine of Non-intervention.

Rhett drew his inspiration from the example of Calhoun, his leader. His arguments were taken, according to a recent investigator, from that state-rights arsenal which had been so generously stocked by the Virginia opponents of John Marshall, during their struggle of a dozen years or more.[1] His argument on the Burt amendment was based on the assertion that slaves are property merely, coupled with the doctrine of State Sovereignty and the compact theory of government.[2] To prove the inability of Congress to exclude slavery from the territories, he reasoned thus: Sovereignty resides not in the Federal government, nor indeed in any government, but in the people of the states. This is proven by the fact that they possess the amending power, and further, by the definition of treason — it can be committed only against the *United States*.[3] Any territory that may be acquired must belong to the sovereignty of the country acquiring it. Accordingly the territories belong to the United States, and this is declared in the Constitution. The states are tenants in common or joint co-sovereigns over them. As such they have agreed in their common compact, the Constitution, that their agent, the general government, shall make "needful rules and regulations" for their common property, the territories; but the states have retained unimpaired their sovereignty over this property; it exists within the territories as within the states themselves. No conflict can arise between the states, however, because they have conceded to the common agent the power to make rules and regulations for the territories that are to be binding on all. "The only effect of this reserved sovereignty is that it secures to each state the right to enter the territories, with her citizens, and settle and occupy them with their property

[1] Dodd, "Chief Justice Marshall and Virginia," *Am. Hist. Rev.*, July, 1907, p. 783.
[2] The speech is given in *Globe*, 29 Cong., 2 Sess., *App.* 244.
[3] That is, "the States of the Union united."—*Ibid.*

—with whatever is recognized as property by each state. The ingress of the citizen is the ingress of his sovereign, who is bound to protect him in his settlement. He is not responsible to any of the co-sovereigns for the nature of his property. That is an affair between him and his state."

Calhoun's resolutions, promulgated in the Senate after the defeat of Douglas's proposal of the extension of the Missouri Compromise line a month later, embody essentially the same argument as that contained in Rhett's speech, but in the form of a summary.[1] Their essential propositions were as follows: The territories of the United States belong to the several states and are held by them as their joint property. Congress is the joint agent of the states; as such it can pass no law "directly or indirectly impairing the equal rights of any of the states in any of the territories, acquired or to be acquired." Any law which would directly or by its effects deprive citizens of any of the states from establishing themselves with their property in the territories, would have this effect; it would, therefore, be a violation of the Constitution and of the rights of the states from which such citizens emigrated. Finally, 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.

Six decades have elapsed since Calhoun and Rhett laid down the interpretation of the Constitution contained in the foregoing arguments. Owing to the course of events during this period the interpretation of the nature of our government, accepted by statesmen and students alike, has become antipodal to the one for which they strove. The Civil War has rendered any refutation of the argument of the Calhoun school an academic occupation. It has settled forever the question of the location of sovereignty under our governmental system, which furnished the theme for so many heated debates in the period in which this study lies. Our present interest in the Calhoun doctrine therefore, is chiefly an historical one — to observe what it was and what part it played in the political arena of the time, rather than to prove or disprove its constitutional validity. To this task then our further attention must be directed.

[1] *Works*, IV, 348.

What purpose did Calhoun have in view in the introduction of these resolutions? Benton,— though not an unprejudiced critic of the great apostle of slavery,— has shown pretty conclusively that they were designed to serve as a platform around which to rally a Southern pro-slavery party.[1] At a large mass-meeting of the citizens of Charleston, held in honor of Calhoun's home-coming, March 9, 1847, he delivered a speech which revealed his desire to break through the bonds of political parties and form a Southern party of his own.[2] He described the situation in the North, as he saw it, with respect to the slavery issue, and outlined the measures he deemed necessary to meet it. He showed the baneful influence of the elections, especially the Presidential election, on the fidelity of Southern politicians to the cause of slavery. He indicated accurately enough that the Northern politicians, in their anxiety to capture the votes of both sections, would stifle the slavery issue,— would attempt to capture the "abolition" vote without losing that of the people of the slave-holding states.[3] The chief danger to the South, he thought, would lie in its entering into a national convention where its delegates could be coerced into supporting a candidate acceptable to the "abolitionists." He therefore warned his section against entering on such a course, and closed with a stirring appeal to Southerners to waive all partisan differences and make the safety of slavery their sole platform and party issue.[4]

Thus did Calhoun promulgate publicly his policy of "forcing the issue" on the North. Privately, as we shall see, he entertained and advocated even more radical opinions. Did this movement aim at the dissolution of the

[1] *Thirty Years' View*, II, 698 *sq.* This is confirmed by the Southern newspapers of the period and by Calhoun's own works.

[2] *Works*, IV, 382-397.

[3] I use "abolition" here in the sense in which it was more commonly used by Southern men at this time, to include the opponents of slavery in general. Thus Leake designated the opponents of the Burt amendment as "abolitionists."—*Globe*, 29 Cong., 2 Sess., *App.* 111.

[4] "Henceforward let all party distinction among us cease . . . Let us profit by the example of the abolition party . . . As they make the destruction of our domestic institution the paramount question, so let us make, on our part, its safety the paramount question; let us regard every man as of our party who stands up in its defense; and everyone as against us who does not, until aggression ceases. It is thus and thus only that we can defend our rights, maintain our honor, ensure our safety and command respect. The opposite course, which would merge them in the temporary and mercenary struggles of the day, would inevitably degrade and ruin us."—*Works*, IV, 394.

Union at this time? The leader himself professed to disclaim this much-threatened purpose.[1] Yet a man who deliberately sets a certain force in motion cannot, by shutting his eyes to its logical result, escape the responsibility therefor. And we must notice that even Calhoun's denials of an intention to dissolve the Union were all based on one condition — the maintenance of the political equality of the two sections.[2] That he preferred the continuance of the Union on the basis of the terms of his ultimatum, is probably true, as he claimed. That he desired its duration on other terms, the logical sequence of his words and actions tends to disprove. To be sure he believed the North would, if met with a united front by the South, accede to its terms. But in the event of its refusal he would lead on his section in the path his relentless logic blazed, be the consequences what they might. If further evidence were needed it is not lacking. In the same speech with which he introduced his resolutions on slavery extension[3] he contemplated the policy to be pursued, in case the theories set forth in them were rejected by the Senate. Disclaiming to speak authoritatively as to the policy the slave states would adopt, he gave as his own opinion that there should be no submission.[4] In private he advocated a policy still more extreme and convulsive. He would regard any compromise, or even the defeat of the Proviso, as very unfortunate, unless "the danger" were met "in its full length and breadth."[5]

How was this to be done without resorting to the dissolution of the Union? In answer Calhoun deliberately proposed his policy of "retaliation," which was a deduction from his view of the Constitution as being a compact be-

[1]"Far be it from us to desire to be forced on our own resources for protection. Our object is to preserve the Union of these States *if it can be done consistently with our rights, safely, and perfect equality with other members of the Union.*"—Speech at Charleston, March 9, 1847; *Works,* IV, 395.

[2]*Ibid;* "Sir, the day that the balance between the two sections of the country . . . is destroyed, is a day that will not be far removed from political revolution, anarchy, civil war, and widespread disaster. . . . But if this scheme (the prevention of the extension of slavery) should be carried out; if we are to be reduced to a handful— . . . woe, woe, I say, to this Union."—Speech on introduction of his resolutions, Feb. 19, 1847, *Works,* IV, 343. See also his Charleston speech, March 9, 1847, *ibid,* 395.

[3]Feb. 19, 1847—*Works,* IV, 339 *sq.*

[4]"I say for one I would rather meet any extremity upon earth than give up one inch of our equality—one inch of what belongs to us as members of this great Republic. . . . The surrender of life is nothing to sinking down into acknowledged inferiority."—*Ibid,* 348.

[5]Letter printed in Benton, *Thirty Years' View,* II, 698.

tween the slavery and anti-slavery sections of the country. He reasoned that since the non-slaveholding states had refused to carry out some of the stipulations made in favor of the South, the slave states were freed from their obligations to the North, and might select such of them as seemed most fit to make their non-observance a club with which to beat the North into submission.[1] This policy was to be inaugurated with the closure of Southern ports to Northern ships. Into such illogical depths could the great Southerner's devotion to logic lead him. The absurdity of calling this a constitutional remedy has been well shown by Benton, who points out that it violated the Constitution in the very matter that had immediately occasioned the creation of that instrument.[2] Calhoun thought the only obstacle to the successful operation of his plan was that it would require the co-operation of all the South Atlantic states, to get which he advocated the calling of a Southern convention.[3] If the leader could, while disclaiming any desire to dissolve the Union, advocate such measures, what was likely to be the nature of the designs harbored in the minds of his enthusiastic followers? That they did actually look forward to ultimate dis-union is certain, if the language habitually used signifies aught; and a vivid picture of the visions of a great Southern empire based on slavery, of which the ultra pro-slavery men were dreaming in the summer of 1847, has been drawn for us by General Brinkerhoff.[4]

If such were the hopes and aims of the Calhoun ultras in 1847, it becomes important for our study of the situation which Non-intervention essayed to cope with to examine how widely they were accepted in the South, and what was their power to influence the course of political events. The

[1] Benton, *Thirty Years' View*, II, 698.

[2] *Ibid.*

[3] "Let that be called, and let it adopt measures to bring about the co-operation, and I would underwrite for the rest."—*Ibid*, II, 700. Benton was a zealous political hater of Calhoun, and his opinion of the latter's motives is therefore not to be blindly accepted. The foregoing, however, is not based upon Benton's opinion, but is the expression of conclusions drawn from an independent examination of Calhoun's own words. The fact that they harmonize with Benton's opinions, as intimated in the discussion, and that he was prejudiced against Calhoun, in no wise affects their validity.

[4] "They had a magnificent dream of empire, which, in brief, contemplated the use of the government of the United States, so long as they could control it, for the acquisition of slave territory, and this included not only Texas and California, but all between them, and then in addition the island of Cuba. This scheme included also, somewhere in the future, the acquisition of Mexico and Central America, with the Gulf of Mexico as an inland sea of the mighty oligarchy which was to come."—Brinkerhoff, *Recollections of a Lifetime*, 41-42.

answer to this inquiry is important, for the situation developed within the Democratic party as a result of this movement, explains the course of politics in that party from this time till the election of 1848. Calhoun's Charleston speech of March 9, outlined the immediate program — to shun political conventions and unite all the friends of slavery in one party, whose only basis of association was to be the safety of their "domestic institutions." [1] It also, as we have seen, traced with Calhoun's usual keenness and political foresight, the influence of the disturbing factors of the Presidential election on the sectional issue, and the course that the Northern political leaders would take. It is not possible at this date to speak with statistical exactitude, but it is clear that the Calhoun movement gathered force with surprising swiftness. Probably this may be accounted for by the fact that the Southern mind had been prepared by the long debate in Congress during the session just closed on the subject of slavery extension.[2] At a mass-meeting at Columbia, South Carolina, March 15, 1847, in honor of Senator Butler's home-coming, Democracy was openly flouted, and Butler, who was himself a Democrat, stated that if the South relied on it as developed by the New York school of Democracy, she "depended upon a broken reed that would wound the hand that rested upon it." [3] The Charleston *Mercury* followed up these movements for the organization of a Southern political party by a savage attack on the Washington *Union*, the official organ of the administration, because of its supposed luke-warmness in the cause of slavery and its placing party success above the safety of the peculiar institution.[4] At the same time, a Northern Democratic journal, the New York *Evening Post*, was assailing the *Union* for its pro-slavery policy. Whereupon the editor of that much-maligned journal congratulated himself, as did Franklin in the Albany Convention, that he had attained the happy medium, the line of compromise on which the fathers stood.[5]

[1] *Works*, IV, 394.
[2] The session of the Three-million bill and the Wilmot Proviso.
[3] *National Era*, April 1, 1847. He denounced the Democratic party as "utterly devoid of political decency or political honesty, and thanked God he had severed himself from it forever."—Columbia *Chronicle*, in *National Era*, May 6, 1847.
[4] *National Era*, April 1, 1847.
[5] Washington *Union*, printed in *National Era*, April 1, 1847.

The editor of the *Union,* however, must have forgotten the fate of Franklin's program. As it fell between two stools, so with the Washington *Union;* its position was spurned with contempt by the Democrats of both sections. In the South the Democratic advocates of the new all-Southern party began to make overtures to the Whigs to sink their long-standing differences over such questions as the tariff and internal improvements, and unite on some Presidential candidate, perhaps on Taylor, who would be "sound" on the slavery question.[1] The response of the Whigs to these overtures was immediate and gratifying.[2] At a pro-slavery meeting held at Lowndes, South Carolina, April 14, a series of resolutions was adopted; they embody the position taken by the South in general at this time or during the few succeeding months. They assert that Congress has no power to pass any law affecting, "mediately or immediately," the institution of slavery; that "as members of any party" they "will not vote for any man for President or Vice-President who has not, previous to election, pledged himself to oppose the passage of any law by Congress on the subject of slavery and, if elected President, to exercise the veto power against any such law, however it may be expressed": finally, "on the subject-matter of these resolutions, among ourselves we know no party distinctions, and never will know any — that we will be either all Democrats or all Whigs or neither."[3]

Further description could not exhibit the stand of the pro-slavery party under Calhoun's leadership better than is done in these resolutions. To quote all the evidences of approval of this policy, would mean the citation of most of the Southern newspapers, and of the names of most Southern public men. We therefore refer to but a few. It is upheld at length by the Governor of Mississippi, in an official letter to the Governor of Virginia.[4] It is advocated by the Alabama State Convention in a series of resolutions. These, and the common utterances of the newspapers are all to the same effect,— that political fellowship with the North must be

[1] Charleston *Mercury* and Wytheville (Va.) *Republican,* in *National Era,* April 15, 1847.
[2] Richmond *Whig,* in *National Era,* April 15, 1847.
[3] Printed in *National Era,* May 20, 1847.
[4] April 15, 1847. Printed in *National Era,* May 20.

sundered unless the Southern ultimatum is complied with. Such was the program adopted by the Southern radicals during the first half of the year 1847. What answer would be made by the North to the ultimatum thus thrust upon it?

Benton complained that this radical movement acted as the second blade of a pair of shears, whose first blade had already been forged by the Abolitionists; and that the agitation of the latter was innocuous until supplemented by the counter-agitation of the Southern radicals, set in motion by Calhoun. Accordingly Benton demonstrated, to his own satisfaction at least, that Calhoun, to whom he was bitterly opposed, was responsible for the agitation of the slavery question.[1] The measure of truth contained in this assertion is undoubtedly exaggerated; yet Benton's metpahor was happily chosen. For while the Calhoun movement of 1847 was gaining headway, the great bulk of the population of the North, and especially of the Northern Democracy, with which party our subject is chiefly concerned, remained firmly attached to the principle of slavery-repression expressed in the Wilmot Proviso.

It will be recalled that when the Proviso was first proposed in Congress, in August, 1846, it received the almost unanimous support of the Northern Representatives. This support was continued, for the most part, throughout the short session of 1846-47, but with defections ever increasing. When, on February 15, the Proviso was passed by the House, 114 Northern men voted for it and 18 against it.[2] When, at the close of the session, the Senate Three-Million bill came to the House without the Wilmot Proviso, the latter chamber, in Committee of the Whole, added the Proviso to the bill by a vote of 90 to 80,[3] but in the open session enough of the previous supporters of the bill fell away to cause its defeat by a fairly close vote.[4] A motion by Wilmot to lay the bill on the table, made with the object of defeating it, since the Proviso was not to accompany it, was lost, 87 to 114, and the Three-Million appropriation was then finally passed by a vote of 115 to 82.[5] Thus was the Proviso lost,

[1] *Thirty Years' View*, II, 695.
[2] Analyzed in *National Era*, February 25, 1847.
[3] *Globe*, 29 Cong., 2 Sess., 573.
[4] *House Journal*, 29 Cong., 2 Sess., 501; the vote was 102 to 97.
[5] *Ibid*, 502-505.

so far as this session was concerned. The votes taken upon it have a twofold significance. They show that the great mass of the Northern Representatives steadfastly continued to support it until the session closed; but they also show an increasing defection from the Proviso on the part of the Northern men, a defection large enough toward the last to cause the defeat of the measure. But this movement can be accounted for largely on other grounds than that of changed convictions.[1]

Whatever defections might occur in the ranks of their representatives at Washington, the great mass of the Northern people stood firm in their support of the Proviso until the very eve of the national conventions in the following year. The keynote of the stand of the Northern Democrats against slavery had been sounded in that speech by Preston King on January 4, 1847, which had caused so much trouble and worry to Polk and his official advisers. The New York *Tribune* had hailed this speech as indicative of a new stand by the Northern Democrats against the domination of their Southern colleagues,[2] and other leading newspapers had viewed it in the same light. This significance, seen in King's speech, was due to the belief that it had been inspired by Silas Wright, the idol of the dominant faction of the New York Democracy and a promising Presidential possibility in 1848; in May it was announced authoritatively that this belief was justified — that Wright, though not responsible for King's speech, was in entire accord with it.[3] Grover, a colleague of King, in a speech on January 5, elaborating the latter's position, professed to speak for "all north of Mason and Dixon's line," and his utterances were reiterated by many voices, "yes; all the free states."[4] On the same day the Chicago *Democrat,* a leading party paper of the Northwest, argued for the Proviso, concluding, it "should not be the scarecrow of the South any longer."[5] Throughout the summer and autumn this feeling was dominant at the North.

[1] It was freely charged at the time that the manipulation of the patronage at the disposal of the Executive was an important factor in the conversion of these Northern men who abandoned the Proviso.

[2] New York *Tribune,* Jan. 11, 1847.

[3] New York *Evening Post,* in *National Era,* May 27, 1847.

[4] *National Era,* Jan. 14, 1847.

[5] Chicago *Daily Democrat,* Jan. 7, 1847.

In far-western Iowa both of the Democratic candidates for Congress were strong advocates of the Proviso. The Chicago *Democrat* commented with approval on the stand taken by the Iowa candidates, and urged the people everywhere to exact pledges from the politicians in this matter.[1] If the scope of our study permitted, columns might be quoted from Democratic papers all over the Northern States, expressive of similar sentiments,[2] but the subject must be dismissed with the generalization that during 1847 and the early part of 1848 the almost universal attitude in the North was one of advocacy of the Proviso.

It was the frequent lament of Northern men in this period that whenever a sectional issue arose, their representatives habitually yielded to Southern threats or Southern persuasion: so in the present contest signs were not lacking to indicate which side would yield first when the political issue should become acute. For while the Southern people under Calhoun's leadership were making the protection of slavery their sole rule of political action, the cry of the Northern politicians and party organs was that the unity and success of the party should be the paramount goal toward which they should strive. Thus they announced publicly to their Southern opponents that they would forego their demands if only they were sufficiently opposed and threatened. The first result of such an attitude was, of course, to fortify the belief of Southern men, born of long experience, that when the test should be made the North would submit to their ultimatum.

The student of the political life of this period will find it hard to believe that a lower plane of political ideals has ever in our history been occupied by leading parties, than that reached by the Whigs and Democrats in this Presidential campaign. They vied with each other in a rivalry to go before the country, each with a platform and nominee that would the more completely conceal the issue in which the

[1] "We are glad to see this great and paramount measure of the Democratic party over-riding all other questions in Iowa. It looks as though men were fighting for principles rather than offices, and we hope all the candidates will be pledged in this matter. . . . If the people will only take hold of this matter in good earnest and exact pledges, politicians will soon be right." July 14, 1847.

[2] See *National Era*, May 27, July 8, July 29, Sept. 16 and Sept. 23, for extensive citations from representative Northern Democratic newspapers.

nation was chiefly interested, and the more completely befuddle the people as to where the party really stood on that issue. Of the two, the Whig party reached the lowest depth of abnegation of principle, by putting forward its nominee as its sole declaration of principle and policy — and he a man who had never voted in his life and of whose attitude about all that could be learned was that he would follow the policy of the earlier Presidents.[1] The party met, four years later, perhaps the most crushing defeat ever encountered by a great political party in our history; and within six years it met the death which, by its action in this campaign of 1848, it had so richly merited. But for the present we mention these things only because of the light they throw on the attitude taken by the Northern Democratic leaders, that the success of the party was the *summum bonum* to which all else should be subordinated.

Many of the partisan papers most emphatic in their support of the Proviso were at the same time fervently appealing to Democrats of both sections to waive their differences and unite their votes in order to save the party. The course of the Chicago *Democrat* may be cited as an illustration of the attitude of which we are speaking. It was an early advocate of the Proviso, but almost as soon as that measure began to threaten a party schism the *Democrat* began its appeals for unity. Let Democrats, North and South, it urged, overlook their differences on the Proviso and unite their votes to save the Party. What virtue there may be in a party that avowedly stands for no principle, or rather avows its willingness to admit everything to its ranks for the sole purpose of attaining success at the polls, it is not easy to see. Yet this organ, with no higher aim in view, made fervent appeals to the party loyalty of the Democrats, in whose hands alone, it considered, the country's continued existence could be assured. It mattered not what opinions one might hold or what policies he might advocate; if only he would consent to label himself a Democrat and vote for the nominees who bore that party label, this organ of public

[1]The naive lucidity of this pronouncement will best be appreciated if one tries for a moment to plot the probable course of a President who should seek to follow out at the same time the policies of John Adams and Thomas Jefferson!

opinion would be content. As a typical example of this unblushing worship of the spoils of office, we may note the editorial appeal of January 4, 1847. It holds before its party followers the example of the Whigs, who always get together on an election whatever differences of belief may exist among them, as worthy of all emulation. Therefore, let Southern Democrats tolerate the opinions of their Northern brethren on the Wilmot Proviso. "No one wishes to drive the South, and events are proving every day that the North cannot be driven. Toleration, a little more toleration of honest Northern opinions, is all that the North asks of the South, to ensure perfect union and a complete victory in 1848." It is entirely plain that the "complete victory in 1848" is the one great desideratum before which all else must give way.

"The North cannot be driven"— these were brave words; yet this same organ was pursuing, and for months to come continued to pursue, a two-faced, hypocritical policy with respect to the slavery question and the Wilmot Proviso. On the one hand, it continued for many months its advocacy of resistance by the Northern Demorats to the demands of the Southern section of the party concerning the Proviso. Six months after it had hurled at the South the defiance we have quoted, it commended the Iowa Democrats for their support of the "great and paramount issue of the Democratic Party:" this description of the Wilmot Proviso was painted, it should be noted, not by the Iowa Democrats, but by the Chicago *Democrat* itself. At the same time[1] it urged Northern people generally to exact from their nominees a pledge to support the Proviso. Only thus did it feel that the wishes of the Northern voters could be safeguarded against betrayal at the hands of their representatives.

Yet all the while the *Democrat* was flying at its editorial masthead the banner, "For President, the nominee of the Baltimore Convention;" and it did valiant service during these months in preparing its readers for the Doughface surrender that was to take place. The cry was taken up that the Proviso should not be made a party test; that though

[1]July 14, 1847.

the *Democrat* believed in its wisdom, many able members of the party did not; therefore let all Democrats, for the sake of party harmony, agree to waive the question. But the Southern Democrats had already made the Proviso a party test, and for the Northern members of the party to say, under these circumstances, that they would not insist upon it was simply to give notice in advance to their Southern brethren of their willingness to submit, at the proper time, to the conditions prescribed in the latter's ultimatum.

Such was the specious argument dinned into the ears of Northern voters to prepare them for the desertion of the Proviso. Yet the laudation of that "great and paramount issue of the Democratic Party" was still continued. As late as March, 1848, under the caption "52-2, the Great Change," the *Democrat* recited exultingly that though Cass in his Nicholson letter had said a great change had taken place in the public mind as to the power of Congress to prohibit slavery in the territories, yet since the reception of that letter in Michigan, Cass's own State, the Democratic House of Representatives had registered by a vote of 52 to 2, its approval of the Wilmot Proviso; and that the convention that nominated Cass for the Presidency did not endorse his Nicholson letter. The editorial concluded, however, with the argument already indicated, that the Proviso should not be made a party question, "as many of the ablest Democrats oppose it," and it would support Cass for the Presidency if he should get the party nomination.[1] A month later it described with approval an enthusiastic Democratic mass-meeting at Chicago which had "but one object and was animated by but one feeling—opposition to slavery-extension." Whenever "dough-face" was mentioned a "spontaneous outburst of indignation" greeted it; but when the "abiding determination of the Northern Democracy was insisted on" the "cheering was enthusiastic and overpowering."[2]

A few weeks after this the Baltimore convention was held; there the Wilmot Proviso was ignored, more or less calmly, and the Doughface program was overwhelmingly tri-

[1] Chicago *Daily Democrat*, March 4, 1848.
[2] *Ibid*, April 3, 1848.

umphant. The *Democrat* then, true to its promise, silently dropped its former opinions favorable to the Proviso and gave its unqualified support to Cass and the Baltimore platform. When taken to task by a rival journal for its inconsistency in deserting the Proviso it gravely rebuked its accuser with simulated indignation; his charges were utterly absurd and insincere, for did he not well know that it had for months been floating the banner "for President the nominee of the Baltimore Convention?" Whatever may be our views as to the merits of the sectional contest we are following, we must turn with a sense of nausea from such political depravity and abnegation of principle; while we leave our study of Calhoun, however much we may disagree with him, with the feeling of respect which sincerity always commands.

We have followed thus fully the course of the Chicago *Democrat* not because of any pre-eminence possessed by it over other Northern Democratic organs, but because it furnishes as convenient an example as any of that attitude in the North, among the politicians especially, that gave opportunity and encouragement for the evolution of the next and most important type of the Non-intervention dogma, fostered by Northern men like Cass and Dickinson. The *Democrat* is a typical example of the newspaper Dough-face of the period; just as men like D. S. Dickinson are examples of the politician Dough-face. For, though the Northern people seem not to have perceived it, the Dough-face was not a "Northern man with Southern principles;" he was rather a party man with one paramount principle, and that — success at the polls! It was not the Dough-faces themselves who were primarily responsible for this desertion of "Northern principles." It was rather the Northern people who manifested their willingness to submit to betrayal. When an Illinois State Democratic Convention would deprecate the agitation of "abstract questions," the Wilmot Proviso being obviously the agitation referred to, and at the same time pledge in advance its authoritative support of the platform and nominee of the Baltimore Convention, whatever might be their character, as was done in the spring of 1848;[1] when the

[1]Reported in Chicago *Daily Democrat*, May 4, 1848.

official representatives of the party in Michigan would condemn Cass, by a vote of 52 to 2, on the chief issue for which he stood, and at the same time propose him for the Presidency; when all this time the Southern Democrats were repeating as their ultimatum no support to any man, whatever his party label, who was not a sworn opponent of the Wilmot Proviso: under such circumstances, the Dough-faces were not solely to blame if they forgot "the abiding determination of the Northern Democracy" for the sake of party unity and the hope of party success.

We have here the key to the course of the Democratic party in 1847 and 1848. As in other electoral campaigns before and since, the various aspirants for the Presidential mantle began to groom themselves for the race two years or more in advance. As early as March, 1846, Polk and Bancroft had noticed a change in Buchanan's position on the Oregon question, and they had agreed in attributing it to his aspirations to the Presidency. It was the fashion then for the candidate for the party nomination to make his bid for the honor in a letter which, ostensibly addressed to some friend or constituent, was in reality a statement, for the use of his party, of the writer's position on such political issues as he saw fit to discuss. Of such epistles during this campaign Cass's Nicholson letter has acquired a fame far exceeding any of the others, but in 1848 it is fairly debatable whether Buchanan's "Harvest Home" letter was not more prominent; the Cass letter, it is clear, was only one of a series and possessed no claim to uniqueness or to distinction over the others of similar purpose.

When the Wilmot Proviso question was re-opened by Preston King in January, 1847, the Cabinet immediately took counsel upon the party situation thus developed and Buchanan was eager to commit the administration to the program of advocacy of the extension of the Missouri Compromise.[2] Polk, however, preferred to await developments before committing himself to the policy of the administration. But on January 16, after full discussion, the members of the Cabinet expressed themselves unanimously in favor of the extension of the Missouri Compromise line. This decision

[1] Polk's *Diary*, March 23, 1846. [2] Polk's *Diary*, January 5, 1847.

was not, of course, immediately made public; but during the summer observers of the political situation in the Democratic party began to suspect that Buchanan was the destined heir-apparent of the administration influence.[1] On August 25, 1847, in a public letter to the Democracy of Berks County, Pennsylvania, he made his public bid for the Presidential nomination of his party.

In this letter[2] Buchanan showed his appreciation of the paramount issue before the country by devoting himself to the one question of slavery in the new territories. After the usual enconiums on the "compromises" and "time-honored principles" of the Constitution, which leave the question of slavery to the control of the states wherein it exists, he came to the point of the pending question of slavery in the territories. He advocated the same spirit of mutual concession that had animated the preceding generation when it made the Missouri Compromise; and, finally, the belief was expressed that the harmony of the states and even the security of the Union required the extension of the line of the Missouri Compromise of 1820 over any territory that might be acquired from Mexico.

Thus did Buchanan, who was the first of the Democratic aspirants to take the field, pre-empt for himself the position of chief advocate of the Missouri Compromise-extension policy. That his letter was deemed of great importance is shown by the space accorded it in the press; in the South it was quite generally received with favor, while Northern papers were less disposed to give it their approval. But the Washington *Union*, the administration organ, featured it prominently and threw round it whatever fostering protection that organ was capable of exerting.[3] Buchanan's early disclosure of his hand, however, was attended by obvious disadvantages. The period of time intervening before the National Convention should meet was so long that a change of public sentiment might occur to alter the entire political situation. His early appearance, also, made it possible for his rivals, in their subsequent debates, to outbid him for the

[1] *National Era*, Sept. 9, 1847.
[2] Printed in *National Era*, Sept. 9, 1847.
[3] *National Era*, Sept. 30, 1847; see issues of Sept. 23 and 30 for copious citations from papers North and South on the "Buchanan movement."

votes of the delegates to the convention. A combination of these two contingencies was what actually occurred. We pass over the numerous letters of Taylor on the subject of his political attitude, the total result of whose explanations was only to leave the country as completely in ignorance as to what he really stood for as though he had written none at all.[1] We pass over, also, the pronouncement of Clay, Taylor's principal rival, contained in a speech delivered at Lexington, Kentucky, November 13 (1847), since our study is concerned only incidentally with the fortunes of the Whig party. We may omit, with mere mention only, the letter of October 20, in which Van Buren coyly intimated to the public his willingness to be coerced into making the race for the Presidency once more under the auspices of the Democratic party. All these are important as indicating the direction the political wind was blowing, but none of them have any direct bearing on the subject of Non-intervention. It was left to Lewis Cass to perfect a theory for the disposal of the territorial issue, which so ingeniously straddled the gap between the two sections of his party and so neatly pocketed the slavery issue that was threatening the party life, that it gained him the coveted Presidential nomination at the hands of the Baltimore Convention. This doctrine Cass called Non-intervention; by Douglas, who later adopted it, it was given its better-known name of Popular Sovereignty. Cass simply appropriated the name of the policy advocated by Calhoun, though Calhoun himself was one of the first to hold the new doctrine up to ridicule. The story of its origin and the part it played in the election of 1848, will next demand our attention.

[1]The *National Era*, June 22, 1848, prints some dozen letters purporting to have been written by Taylor during the preceding thirteen months explanatory of his political views.

CHAPTER III.

Lewis Cass and the Election of 1848.

In any discussion of the election of 1848 from the point of view of the Democratic party, the attention must be devoted mainly to three topics: these are, first, the attitude of the Southern Democrats with respect to the territorial issue and the Wilmot Proviso; second, the opposing stand taken by the Northern Democrats upon the same issue; third, the Compromise movement the leadership of which was gained by Lewis Cass. The last succeeded in crowding the extremists in either wing of the party out of the political arena for a time and in marshalling the Democratic cohorts in the electoral contest under its banner. Two of these topics have been dealt with in the preceding chapter. It remains to trace the third, the trimming movement whose origin is usually associated with the name of Lewis Cass.

The origin of the doctrine of Non-intervention with slavery in the territories which constituted the essence of this movement can be traced with a considerable degree of definiteness. Cass shaped it and made it his own, and more than any other man he deserves the credit of its authorship. But like most great movements of popular opinion it did not spring full armed from the brain of any one man. Various elements were employed by Cass in its fashioning, but it was pre-eminently the child of the specific political situation that had arisen in the ranks of the Democratic party as the result of the controversy over the territorial issue in 1846 and 1847.

The first appearance of the idea that Congress possessed no power to legislate on the subject of slavery in the Territories seems to antedate the period with which our study begins. Certainly this doctrine was held by many Southern men at the time of the first appearance of the Proviso in 1846.[1] It is certain, too, from Grover's speech of January 7, 1847, that it was being asserted by many Southern Representatives at that time.[2] From this as a starting point the Cass doctrine was, as we shall see, evolved by slow degrees. Von Holst ascribes to S. F. Leake, whose speech on the Burt amendment to the Oregon bill we have already had occasion to notice,[3] the credit for an early statement of the principle of Squatter Sovereignty,[4] but this ascription seems to be based on a misconception of Leake's actual position. On casual reading, his speeches seem to give some color to Von Holst's statement but a more careful examination discloses that what Leake had in mind was not Squatter Sovereignty at all, but the ordinary doctrine prevalent among Southern politicians, at least since August, 1846, of the lack of power in Congress to legislate upon slavery in the Territories. If this be so, Leake deserves no credit for the authorship of the squatter sovereignty idea; as well ascribe it to Wick, Chapman, Seddon, or to many another Southern politician. In his speech of January 15, on the Burt amendment to the Oregon bill, by way of contrasting the opposite lines of conduct which he regarded the North and South had pursued with respect to the subject of slavery, Leake had said, "We have just the same right to make the existence of slavery the 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

[1] Wick explained his action and votes of August 8, 1846, in the House on the ground that they had been determined by his adherence to this doctrine. See also explanation of Chapman, *Globe*, 29 Cong., 2 Sess., 137.

[2] Globe, 29 Cong., 2 Sess., 138.

[3] *Supra*, Chap. II.

[4] *Constitutional History*, III, 353. Garrison, *Westward Extension*, 300, and Channing and Hart, *Guide to American History*, by their references imply the same thing.

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."[1] But these words do not contain any statement as to *when* the people of the territories were to "arrange" the matter, and the whole context of the speech makes it plain that Leake had no idea of their possessing the power of decision while the period of territorial probation still continued. Further than this, a month later he interrupted the debate in the House to give what he considered to be the true position of the South on the question of slavery in the territories.[2] "They disclaim," he said, "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. . . . That is a question to be left to the people of this territory, and with which this government cannot interfere."

This is the statement cited by Von Holst as enunciating the principle of Squatter Sovereignty. But "any territory" is not the same thing as "a territory" in the political sense and Leake had expressly asserted the existence of "rights of slave property" there. If he entertained this belief his words cannot have been intended to favor Squatter Sovereignty. What he must have meant was that the people of the territories should settle the slavery question for themselves when about to enter upon statehood. However, this was in no sense a belief in Squatter Sovereignty, but only the doctrine ordinarily advocated at this time by the followers of Calhoun and by Southern politicians in general.

Nevertheless, denying, as we do, any pre-eminence of credit to Leake, we have here in his statements the germ which was to develop into the famous Cass-Douglas doctrine of Territorial Sovereignty. About the same time as Leake, on February 8, C. J. Ingersoll of Pennsylvania, speaking in opposition to the Proviso, advocated the policy of waiting until the people of the territories should meet to frame their state constitution when they were to be allowed to decide

[1] *Globe*, 29 Cong., 2 Sess., *App.*, 111 *sq.*
[2] *Globe*, 29 Cong., 2 Sess., 444.

the slavery question as they should see fit.[1] There is no advance here upon the doctrine held by Leake; but the speech is worth noting because of its clear formulation of the idea of the lack of power in Congress over slavery in the territories.

Wilmot took up this proposition of Ingersoll's the same day. He was satisfied with it, he said. All he asked was the neutrality of the government on the question. By "neutrality" as he understood it, the government was to prohibit slavery in the territories as long as they retained the territorial status. Upon entering statehood they were to be free to decide for freedom or slavery and he would not make a decision in favor of the latter alternative the ground of opposition to their admission. On this last point he was in entire accord with Rhett, Leake, and Calhoun. But their attitude as to the *territorial* status of slavery was exactly opposite, Wilmot holding that while the territories remained under Federal control and guardianship, their free character should be sacredly preserved.[2]

In this difference as to the practical effect of Non-intervention, lay the essence of the whole dispute over the extension of slavery to the territories. If the Southern program was to be adopted, and slavery was to be installed in a territory, the advocates of freedom would find the dice loaded against them when the question should come up for permanent decision upon leaving the territorial status. On the other hand if Wilmot's interpretation of the effect of Non-intervention by the Federal government were to prevail and if slavery should be excluded from the territory, it would be settled entirely by non-slaveholders, who would have no disposition to establish slavery when framing the constitution for the state they were creating. Preston King grasped this fact, and at the very outset of the struggle, in his speech of January 5, 1847, in refuting the charge that the Proviso was an abstraction, he had stated it so forcibly and logically, in a few simple sentences, that all the succeeding months of debate did not suffice to overthrow his argument. He

[1] *Globe*, 29 Cong., 2 Sess., 352, and *App.* 317.
[2] *Globe*, 29 Cong., 2 Sess., 354.

showed conclusively that the character of the territorial population would determine the character of the state when the time should come for that territory to be erected into a state.[1]

Taken in connection with these facts, the statement of Wilmot that he was satisfied with Ingersoll's policy, and asked only for the neutrality of the government, has a peculiar significance. It fore-shadows what was to be a prominent characteristic of the doctrine of Cass and Douglas, and a source of deception and mischief throughout its entire career. I refer, of course, to the double meaning attached to the word "neutrality." Wilmot was satisfied with "neutrality" and at the same time the Southern politicians were shouting for "neutrality." Yet as to the practical effect of the policies they advocated, the two parties were as widely separated as the poles themselves. Each party's conception of the term was modified by its view of the constitutional status of slavery under our government. The policy that Wilmot named "neutrality" was this: that the Federal government should keep the territories, while under its charge as pupils to be trained for statehood, free from the contaminating presence of slavery, but when the territory should be ready for statehood its inhabitants should be free to decide for themselves whether or no slavery should be permitted in the new state; the Federal government should neither attempt to influence the decision nor decline to admit the state into the Union because of the choice its inhabitants had made. The southern men who advocated "neutrality" meant that the territory should be open to slavery as freely as to any other species of property; but they agreed with Wilmot that upon entering statehood the people of the territory should be allowed to permit or to exclude slavery as they chose. It will be seen that the admission of slavery to the territory, or its exclusion therefrom, was the crucial issue involved; but that on this issue the opinions of Wilmot and Cobb were diametrically opposed.

The term "neutrality" was soon dropped for "Non-intervention," but the difference of interpretation which

[1] See *supra.*, Chap. II.

existed in the old term was carried over into the new one and there became the cause of important results in our political history. This matter will recur again and again in the course of our study because it was of the essential nature of Non-intervention that radically different theories and policies should exist under the cover of a common name; and that the deception thus engendered as to the character of the doctrine could not be eradicated except at the cost of its usefulness as a party policy.

On February 9, the day after Wilmot had spoken, Howell Cobb of Georgia replied to him. He severely arraigned Wilmot's conception of neutrality and went on to develop at considerable length the proposition that the slavery question should be decided by the inhabitants of the territories after the latter had been thrown open to the two sections of the country to indulge in a formal contest of immigration and settlement. 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 become slave states, but only that the slave-holders might be free to enter those 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 government should be formed, the South would acquiesce in the decision.[1]

There is in Cobb's speech a perceptible advance toward the idea of a decision of the slavery question by the people of the region immediately affected by the decision. It is true that Cobb's position is essentially the same as that held by Ingersoll; the advance consists in the manner of defending that position. The idea of a peaceable contest between the rival sections for supremacy in the territory south of the Missouri Compromise line is brought forward prominently and expressed in striking terms. Cobb does not advocate any theoretical right of the territorial population to sovereignty; in conceding to the North the exclusion of slavery from the territory north of the line of 36° 30′ he admits by implication the absence of any such right. But he

[1] *Globe*, 29 Cong., 2 Sess., 360-63.

does advocate, as an expedient course to pursue, the deferring of the slavery question in the territory south of that line to the decision of the settlers. The power of decision during the continuance of the territorial status is expressly withheld by Cobb; the territories as such are to be open to slavery. But the idea of local determination of the issue, after the people of the country have been invited to a contest for sectional supremacy, with the prospect of a free or slave state according as the decision goes, is expressly advocated.[1] To this extent it is just such a contest as was actually enacted in the succeeding decade on the plains of Kansas. But it differs from the Kansas contest in this, that the struggle there was for territorial supremacy and for control of the territorial government; here the idea of a decision of the slavery issue while the territorial status persisted, which was bound up in the doctrine of Popular Sovereignty, was entirely lacking. However, but one more step in the evolution of the idea of Federal neutrality was required to reach it — the addition of the idea of pushing back the point of time when the local decision should be made into the territorial status; the foundation for Cass's doctrine was clearly laid.

At this point in the evolution of the doctrine it becomes associated with the name of Cass and a transition must now be made in order to trace out Cass's position and his connection with Non-intervention. Cass had been for long years Governor of the Territory of Michigan, then, Secretary of War under Jackson, next, Minister to France, an aspirant to the Democratic Presidential nomination in 1844, and now he was one of Michigan's two representatives in the Senate. He had been a life-long Democrat, one of the straightest of the sect, and was at this time one of the leading supporters

[1] "Is the gentleman [Wilmot] 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 institution under which they shall live? . . . You [the North] have much greater strength; your population far exceeds ours . . . you say 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 section are so dead to every principle 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. . . . We are willing to acquiesce in the decision of the matter that shall thus be made."

of the administration in the upper house of Congress. He occupied a position of great influence in his party, and as the unpopularity of Polk and his consequent ineligibility as party standard-bearer in another campaign became evident, Cass's prospects of gaining that coveted honor were regarded as most promising.[1]

Since the introduction of the Wilmot Proviso in Congress, Cass's attitude upon the territorial issue had undergone a series of rapid changes. When the Proviso first appeared, in August, 1846, like most Northern men he was in favor of it, and expressed his regret that the loquacity of John Davis in the Senate had denied him the opportunity of casting his vote for it.[2] But during the discussion of the Three-Million bill in the following session, as the contest over the Wilmot Proviso went on, Cass was among the earliest of those Northern men who ceased to give it his support. He based his action on the ground of the inexpediency of all attempts to clog any war-bill or resolution with the Proviso; but if the naked proposition to exclude slavery from any specific territory newly acquired, should be presented, it was reported that he would support it.[3] A few weeks later, on the day that Calhoun presented in the Senate his resolutions on slavery in the territories (Feb. 19) Cass wrote to a friend that the Proviso would not pass the Senate. Its passage would mean "death to the war — death to all hopes of getting an acre of territory — death to the administration, and death to the Democratic party." He did not doubt that it had originated with proper feelings. But things had come to such a pass that its adoption would produce these effects.[4] Thus, at this time, the ground of his opposition to the Proviso was simply the belief that its passage would entail the refusal of the Southern members in Congress to support the prosecution of the war. Already then, contemporaneous with the very announcement of the Calhoun program, Cass was beginning to trim his sails before the Southern tempest. Calhoun's reckoning had not been unfounded. On March 1, as the session of Congress

[1] Polk's *Diary*, Dec. 23, 1846, and McLaughlin, *Lewis Cass*, 231, *et passim*.
[2] *Globe*, 29 Cong., 2 Sess., 551; and 31 Cong., 1 Sess., 398.
[3] *National Era*, Jan. 21, 1847, copied from the *Ohio Statesman*.
[4] Printed in *National Era*, Sept. 28, 1848.

was about to close, Cass came out in open opposition to the Proviso, giving an elaborate statement of reasons for his determination to vote against it.[1] These reasons may fairly be assumed to cover the entire ground of his opposition to the Proviso at this time. Like his letter of February 17, they dealt mainly with the disastrous effect upon the prosecution of the war, which he believed would result from the enactment of the Proviso. They may be summed up in one reason — a belief in its *inexpediency*. They make no mention of opposition upon constitutional grounds, and according to Cass himself, in his vindication in 1850 of his political consistency, he at this time entertained no such objection.[2]

It was now the end of the session, March, 1847. Polk's administration was at its meridian point, and the date of the national conventions was only a year ahead. Politicians were already laying their plans for the coming campaign, and Cass, as one of the foremost men in the Democratic party, occupied a position of peculiar political importance. Any opinions he might express would necessarily have a bearing on the political situation within his party, and in particular upon his own personal fortunes. To say that he considered his actions with reference to their probable effect upon his candidacy for the nomination does not necessarily imply anything of discredit. Ambition is not in itself dishonorable and any practical statesman and politician in a situation similar to that of Cass would properly give heed to such considerations. Discredit would enter in only when, in such circumstances, he sacrificed his principles to a desire to promote his political prospects. Unfortunately for Cass his course of action in his evolution from advocacy of the Wilmot Proviso to the promulgation of the Nicholson letter, was such as to give widespread currency to the belief that he deliberately sacrificed his convictions to his desire to gain the Presidency. Von Holst's comment on this point sums up the unfavorable view of his course.[3] But on the other hand it should be said in Cass's defense that if he

[1] *Globe*, 29 Cong., 2 Sess., 549-50.

[2] Speech, Feb. 27, 1850. *Globe*, 31 Cong., 1 Sess., 398.

[3] "The other side could hardly be blamed for thinking that such transformations of ugly caterpillars into gorgeous butterflies had some connection with the desire of finding grace in the eyes of the South. But even if it was all done with the desire to save the country, it was assuredly hard to change one's skin so often in so short a time."—*Constitutional History*, III, 324.

had acted only from sincerest conviction it would have been impossible, occupying the position in his party which he did hold at this time, for him to have convinced those who were disposed to be suspicious of his motives that his course was not governed solely by his desire for the Presidency. Another thing must be noticed in this connection; that is, the prevalence of the practice of mud-slinging at this time. American political life has never been entirely free from this practice, but in our day its more offensive features have been practically banished from Presidential contests. So completely has the public sentiment changed that indulgence in gross personal detraction of a candidate would now be certain to react as a boomerang against its authors. In 1848, however, no charge was too gross or improbable to bring against a Presidential nominee. If one's opinion of the candidates were to be formed from a perusal of the partisan press alone, he would conclude that everyone who ventured in those days to aspire to the Presidency was a fitter candidate for the penitentiary. It is necessary to mention these things because in our study of Non-intervention much will appear that might be regarded as unfavorable to Cass; and it is but fair to present the difficulties attendant upon his position.

If the Wilmot Proviso was impracticable and inexpedient what policy was to be adopted with reference to the territorial issue? If the Democratic party was to triumph in the coming election it must avert the threatened schism that was already opening between its adherents in the two sections of the country; how could this be done? If Cass was to be the choice of his party to make the race for the Presidency he must present some policy that would have for it an attractiveness and availability superior to the programs put forth by Buchanan and the other Presidential aspirants. What plan would be best calculated to produce this result? All these are phases of the problem that confronted Cass in the summer of 1847. Above all it was clear that the party breach must be closed unless the Democrats were to meet with overwhelming defeat in the election. Cass was devoted to his party and he sincerely loved the Union; thus it may well have seemed to him that the Democrat who

should restore harmony to the party would be performing a praiseworthy act, one worthy of the highest reward in its power to bestow; and reasoning thus he must have reflected also that no one was better qualified than he to perform this act and to reap the reward.

The consideration of Cass's sincerity in his changes of policy, of the extent to which he was guided by motives of altruism or in how far his course was dictated by considerations of self-interest must be reserved for later discussion. The question of immediate interest is not that of motive but rather what was actually done. It is certain, both from Cass's own account and from corroborative evidence, that after the close of the session of Congress he set himself to devise a policy upon which all Democrats could unite and thus save the party in the coming election.[1] Wisely he endeavored to adapt for his purpose elements already existing in the political situation, rather than to give currency to some new invention. The Calhoun movement for Non-intervention and the utterances of Southern men like Cobb on the one hand, on the other the growing faction in the North composed of men who, like Cass himself, had for various reasons come to believe in the inexpediency of the Proviso — these furnished the suggestions for his plan. To the foregoing he had contributed the idea of pushing backward into the territorial status the point of time when the local decision of the slavery issue might be made. The document which announced his new policy to the country was unquestionably a plea for local determination of the slavery issue. Seemingly too, it was a plea for *territorial* determination of that issue, and thus it was commonly understood in the North. Thus too, it has been understood by historians of the period. But it was cleverly drawn to accommodate itself to the views of the people of both sections upon the constitutional status of slavery, making it possible for the inhabitants of both to give it their support. Cass gave to this policy the name Non-intervention and announced it to the country in the famous Nicholson letter.

Ostensibly the Nicholson letter was written to answer the question where Cass stood upon the subjects of the acquisition of Mexican territory and of the Wilmot Proviso. In

[1] *Globe*, 31 Cong., 1 Sess., 398.

reality it was a political platform, designed to furnish a basis broad enough for both sections of the party to stand upon, and offered in the hope that it would win for its author the party nomination for the Presidency. It was Cass's bid for that office and was regarded by the public in this light just as Buchanan's "Harvest Home" letter and Clay's speech at Lexington had been so regarded. According to Cass's own account, contained in his vindication in 1850, upon perceiving the stubborn resistance of the South to the Wilmot Proviso he became convinced of its perniciousness and inutility. As yet he had no doubt of its constitutionality; but feeling that the Union was in danger he made a closer examination of the Constitution with reference to the whole matter. The result was the conviction that that instrument granted no authority to Congress to legislate for the people of the territories, and consequently that it had no power to pass the Wilmot Proviso. But distrustful of reliance on his own reasoning alone he had conferred with Judge McLean of the Supreme Court on the subject, when to his surprise he learned that the latter had already published an article maintaining the same conclusion which had just been reached by Cass. Perusal of this article ripened his doubts into convictions, and he then took the ground that the Proviso was unconstitutional.[1] But before committing himself to publicity on his new territorial doctrine he sought the advice of prominent Democrats, especially of the South and the Northwest, submitting the letter to them for their sanction.[2] Finally it was given out under date of December 24, 1847, and published in the press a few days later.

The first topic treated in the Nicholson letter, that of the acquisition of territory from Mexico, may be passed over in silence as foreign to our study. On the subject of the Wilmot Proviso Cass professed to believe that a great change had been going on in the public mind, as there had been, he confessed, in his own, and that the principle involved in the Proviso should be kept out of the national legislature and left to the people in their respective local governments.

[1] *Globe*, 31 Cong., 1 Sess., 398.
[2] Statements of Davis and Douglas, *Globe*, 36 Cong., 1 Sess., 1940; and *App.*, 312.

Proceeding to a discussion of the theory of our government with respect to sovereignty he said that it pre-supposes that the various members of the Confederacy have reserved to themselves all matters relating to what may be termed their internal policy. They are sovereign within their boundaries, except when they have surrendered to the general government a portion of their rights in order to give effect to the objects of the Union. 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 prohibit or establish 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 Federal government ill-defined. The only grant of 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. "Territory" is here classed with property and treated as such; and the object was evidently to enable the general government, as a property-holder,— which from necessity it must be,— to manage, preserve, and dispose of such property as it might possess, and which authority is essential almost to its being. "But the lives and persons of our citizens with the vast variety of objects connected with them, cannot be controlled by an authority which is merely called into existence for the purpose of making rules and regulations for the disposition and management of property."

In connection with the Northwest 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 should not 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." Then follows the argument, refuted by King a year in advance,[1] that since the people of the Territory can regulate their domestic institutions as they please upon admission to statehood, it is not worth while, during the temporary condition of their territorial status, "to call into existence a doubtful and invidious authority . . . whose limitation whatever it may be, will be rapidly approaching its termination."

The whole long argument was summed up in these words: "Briefly then, I am opposed to the exercise of any jurisdiction by Congress over this matter; and I am in favor of leaving to the people of any territory which may be hereafter acquired, the right to regulate it for themselves, under the general principles of the Constitution. Because I do not see in the Constitution any grant of the requisite power to Congress; and I am not disposed to extend a doubtful precedent beyond its necessity,— the establishment of territorial governments when needed,— leaving to the inhabitants all the rights compatible with the relations they bear to the Confederation." Other grounds for opposition to the Proviso were given, all based on the argument of a belief in its inexpediency. The letter closed with the appeal,—"Leave to the people who will be affected by this question, to adjust it upon their own responsibility and in their own manner, and we shall render another tribute to the original principles of our government and furnish another guarantee for its permanence and prosperity."

This letter is perhaps the most important single document connected with the history of the subject of Non-intervention. Owing to the course of political events, it

[1] See Chap. II, *supra*.

attained in the succeeding period of a dozen years an importance which its author had little dreamed of when he gave it out for publication. During this time it was looked upon as marking the origin of the doctrine of Non-intervention in the Squatter Sovereignty sense, the invention of which was ascribed to Cass.[1] This credit was, as we have seen, not undeserved by Cass. The idea of deferring the decision of the issue of slavery in the territories to the inhabitants thereof upon their admission to statehood was common political property in the winter of 1847. Cass had taken up this principle of local option and given it a further development by urging that Congress had no power to govern the territories, and that the determination of their local affairs properly belonged to them alone. This idea though by no means original with Cass was made into a practical political doctrine, backed by a clever constitutional argument and shaped to meet the existing necessities of the party. Cass was one of the first to perceive that the stubborn opposition of the South to the Proviso would cause it to be deserted as impracticable by a growing party in the North. He put himself at the head of this movement and guided it towards the doctrine of the sovereignty of the territories over their domestic affairs, a compromise policy standing mid-way between the policies advocated by the Calhoun party on the one hand and the Proviso party on the other.

The letter was couched in such terms that a two-fold interpretation of its vital portion — the statement of the author's position upon the question of slavery in the territories — was rendered inevitable. Accordingly, in the political campaign of the following year it was variously interpreted by Democratic politicians to suit the views of that section of the country to which they happened to be appealing. Whether or not Cass framed it with this result in view, its phrases could not have been more skillfully chosen to produce it. The outward tenor of the letter is well calculated to create the impression which Cass in later years always asserted he had intended to produce — that is of an argument in

[1] e. g., see debate in Senate, June 3, 1850; and *Globe*, 36 Cong., 1 Sess., *App.*, 301-302.

favor of territorial or Squatter Sovereignty.[1] There was much of the idle phrasing in which the makers of political platforms delight, calculated to create a general impression as to the doctrine advocated by the author while tying him to nothing definite. Such, for example, was the argument that under the Constitution Congress possessed no power of control over slavery within the states. Not even Garrison would deny this. The Farewell Address, too, one of the favorite subjects of laudation by political orators of this period, was forced into service by Cass.

These, however, were phrases of no material importance one way or another. The statements which were of chief significance were those responsible for the ambiguity as to Cass's position. They have already been quoted, but their importance is such that they will bear repetition — "I am in favor of leaving to the people of any territory which may be hereafter acquired, the *right to regulate it* [*slavery*] *for themselves, under the general principles of the Constitution,*" and, "I am not disposed to extend a doubtful precedent beyond its necessity,— the establishment of territorial governments when needed,— *leaving to the inhabitants all the rights compatible with the relations they bear to the Confederation.*" These words furnished the basis for the interpretation of the letter put upon it by the Southern Democrats, and were the occasion of many a bitter debate. As late as 1860 in that last fierce debate in the Senate before the dissolution of the Democratic party, which was then the sole remaining bond of association between the North and the South, Douglas and Davis were wrangling over what had been meant by Non-intervention in 1848; and these sentences are the tiny fountain to which the origin of the whole torrent of dispute can be traced. They effectually nullified all that had been said in the remainder of the letter in favor of territorial sovereignty, and so far from its being an explanation of Cass's position on the territorial issue, made of it an absolute enigma. The real question involved was,

[1] I use these terms as synonymous, meaning by both the doctrine that the people of a territory, during the duration of the territorial status properly possessed the power to exclude or to establish slavery as they wished. The Calhoun reductio-ad-absurdum definition was never seriously advocated by any one.

"What policy do you stand for with reference to slavery in the territories? Cass's answer did nothing but beg it; if he make possible the adherence of pro-slavery and anti-slavery announced any policy at all it was one indefinite enough to men alike. In order to understand how this was, we have only to recall the debate between Ingersoll, Leake, Cobb, and Wilmot as to the meaning of Congressional neutrality. Cass in effect declared only for neutrality; all of these men had done as much. But Cass had stopped here, while they had gone on to define what they meant by neutrality. As has been shown, the view held by Ingersoll, Leake, and Cobb, had been diametrically opposed to that of Wilmot. That is, in reality the question at issue between the Northern and Southern Democrats, was one of Constitutional interpretation. The former held that Congress possessed the power, which it was its duty to exercise, of excluding slavery from the territories as such; the latter held that slavery had a Constitutional right of entrance to the territories until they should throw off that status and be admitted to state-hood. Cass's letter does not take any position upon this Constitutional question, as Cobb and Wilmot had done — it does not throw any light upon the effect of leaving the inhabitants all the rights compatible with their relations to the Confederation "under the general principles of the Constitution"; it ignores the fact that a fierce argument was then raging over the question *what* status these "principles" established as to slavery in the territories. Yet because this dispute has long been settled and the interpretation for which the Southern men strove has faded from men's minds, they have come to ignore the two-fold interpretation to which the letter was open, and to see in it only a clear-cut statement of the doctrine of territorial sovereignty. But it is a well-established canon of historical criticism that a document should be interpreted in the light of the conditions under which it originated and the mode of thought of the period to which it belongs. Applying this test to the Nicholson letter we see that the only policy it positively enunciated was the purely negative one of non-action by Congress in the matter of the slavery question in the territories. At this point it

left the contending parties to wrangle over the question of Constitutional interpretation as they would, while it included them all under the broad mantle of Democracy.

The real ambiguity of the situation produced by the Nicholson letter is seen more clearly in the course of D. S. Dickinson than it is in that of Cass himself. Dickinson was a Senator from New York, belonging to the Hunker faction of the Democratic party in that state. He was Cass's closest political adviser and lieutenant in the election of 1848,[1] and he followed his chief closely in all the latter's changes of attitude upon the territorial issue — sometimes in his eagerness he even ran ahead of his leader for a time. His statements lacked the adroitness which is noticeable in the Nicholson letter, and he was free from that restraint upon a free expression of his opinions entailed upon Cass by his Presidential aspirations. The course pursued by Dickinson was such that he richly merited the title of Dough-face, which Cass was able to repel with a fair degree of success.[2] On March 1, 1847, the same day on which Cass spoke in opposition to the Proviso, Dickinson also made an address. In it he reviewed the familiar topic of the responsibility for the war, and expressed a belief in the inadvisability of passing the Proviso.[3] Further, he explained his position on the slavery question, for the express reason that his "views upon it should be fully understood." He expressed the opinion that the great mass of Northern people, while entertaining no intention to interfere with slavery where it was, or to trench upon the compromises of the Constitution, yet believed that the institution was local and domestic; that it was subject to the control of the states alone and that Federal legislation could little influence it. Since it was, however, the institution of a local sovereignty, they denied that such sovereignty or its people could justly claim the right to regard it as transitory, and to erect it in the territories of the United States, without the authority of Congress: and "they believe that Congress may prohibit its introduction into the territories while they remain such";

[1] "The especial friend, the right bower of General Cass in that great contest."— Statement of Douglas, *Globe*, 36 Cong., 1 Sess., *App.*, 302.

[2] Cass's vindication of his political consistency, February 20, 1850, has already been mentioned; *Globe*, 31 Cong., 1 Sess., 398.

[3] *Globe*, 29 Cong., 2 Sess., *App.*, 444.

furthermore, that such prohibition, by giving the territories a free population would tend to "promote the general welfare and secure the blessings of liberty to ourselves and to posterity."

There is here no hint of a lack of power in Congress to legislate for the territories, no hint of any sovereignty of the territorial population. On the contrary the jurisdiction of Congress is expressly affirmed. But Dickinson continued to keep close to his leader throughout the latter's political evolution in the summer of 1847, and he even preceded Cass by a few days in the public enunciation of the Squatter Sovereignty doctrine. On December 14, while the Nicholson letter was still in private circulation among the Democratic leaders,[1] he introduced in the Senate two resolutions embodying the new doctrine in unequivocal terms.[2] The second of these declared that in organizing territorial governments the principles of self-government upon which our federative system rests will be best promoted, and the true meaning and spirit of the Constitution best observed, by leaving all questions of domestic policy in the territories to the legislatures chosen by the people inhabiting them. So important did Dickinson consider these resolutions that he secured the postponement of their discussion until after the holiday recess in order that a full Senate might be present.[3]

They were taken up January 12, 1848. In the interval since their introduction, a month before, the Nicholson letter had appeared, and the speech now made by Dickinson in support of his resolutions covered much the same ground as that document had covered. But on the subject of the sovereignty of the territories Dickinson was far more radical than Cass. He argued for the doctrine both from the standpoint of constitutionality and of expediency, advocating views that would today be characterized as sheer absurdity.[4] Whatever power the Constitution may have granted to Con-

[1]Douglas' statement: *Globe*, 36 Cong., 1 Sess., *App.*, 302.
[2]*Globe*, 30 Cong., 1 Sess., 21.
[3]*Globe*, 30 Cong., 1 Sess., 27.
[4]According to Benton, the impression made upon the auditors of Dickinson was not different. "It [Dickinson's doctrine] was received as nonsense, as the essence of nonsense, as the quintessence of nonsense, as the five times distilled essence of political nonsensicality."—*Globe*, 33 Cong., 1 Sess., *App.*, 559.

gress, he said, that instrument could not take from 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 and abolish or reconstruct 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 argued that if a form of government were proposed by the Federal government and adopted or acquiesced in by the people of the territory, they might afterwards alter or abolish it at pleasure: "for in all that appertains to their domestic condition they have the same sovereign rights as the people of a state."

No explanation was vouchsafed by Dickinson as to the reasons for this amazing change of front since his speech of the preceding March. Then he had voiced the "one opinion" of the great mass of the Northern people, that Congress could and ought to prohibit the introduction of slavery into the territories; now the people of a territory have, "in all that appertains to their domestic concerns the same sovereign rights as the people of a state," and they may, even "alter or abolish at pleasure" the territorial government provided for them by Congress. Dickinson had made a thoroughgoing statement of the doctrine of territorial sovereignty and his frankness in this would deserve our commendation were it not for the numerous evidences of an utter lack of sincerity in his course. As he presented it Benton can hardly be blamed for calling Territorial Sovereignty "a monstrosity."[1]

Thus far we have gleaned from our examination of Dickinson's course an unequivocal statement of the doctrine of territorial or Squatter Sovereignty. Our further examination will serve to show the hollowness of the pretense that the Nicholson letter enunciated any definite, intelligible policy.

[1] *Globe*, 33 Cong., 1 Sess., *App.*, 559.

The penalty incurred by Dickinson for having thrust himself into the foreground as champion of the new doctrine was that for a time Southern men in Congress concentrated a fire of adverse criticism against him, or rather against the doctrine contained in his resolutions and speech.[1] As a result of this criticism, convinced that his former reading of the political barometer must be subjected to correction, to avert the anger of the Southern politicians he consented to a retraction. In collaboration with Foote of Mississippi he fixed up the following amendment to be added to the second of his resolutions of December 14: "In subordination to the Federal Constitution and reserved rights of the states and people."[2]

Just as Dickinson had in January deserted the position taken by him in his speech of the preceding March, so now he assumed an attitude which completely stultified his January speech. Could he have forgotten in February that in his January speech in support of these self-same resolutions he had asserted that "the principles declared by these resolutions are older and stronger than written laws and paper constitutions?" Then why subordinate them now to the Federal Constitution? But we need not speculate further on the significance of the amendment; it was simply an attempt by Dickinson to trim his sails to the new breeze from the South which his resolutions, coming in conjunction with the Nicholson letter had provoked. Its Southern authorship proves that it was designed to curry favor with pro-slavery men. The result of its addition was that the amended resolution simply begged the territorial question it assumed to take a stand upon, just as Cass had done in the Nicholson letter. Yulee saw this at once and objected that the amendment did not meet the point really at issue. No one proposed to violate or over-ride the Constitution; the issue was over its *interpretation*, and the rights of the

[1] See speech of Yulee, *Globe*, 30 Cong., 1 Sess., *App.*, 302, of Bagby, *ibid*, 241, 261, and *App.*, 691; of Rhett, *ibid*, *App.*, 656.

[2] *Globe*, 30 Cong., 1 Sess., 773, and *App.*, 306. The whole resolution now read: "Resolved, That in organizing a territorial government for territory belonging to the United States, the principles of self-government upon which our federative system rests will be best promoted, the true spirit and meaning of the Constituiton be observed, and the Confederacy strengthened, by leaving all questions concerning the domestic policy therein to the Legislature chosen by the people thereof; in subordination to the Federal Constitution and reserved rights of the States and people."

Southern people under it, to carry slavery into the territories; the amendment did nothing to explain this.[1] We have followed the political gyrations of Dickinson not because of any inherent importance attaching to them, but because of the light they throw on the Nicholson letter. The letter and the amended resolution of Dickinson were now in practical concord; and the deceptive ambiguity of the latter was also bound up in the former. The opinion of the resolution expressed by Yulee and Bagby was just as applicable to the letter, a fact which the passage of time was to demonstrate.

Additional light upon the Nicholson letter and the character of the doctrine promulgated therein may be gained from an examination of the question, much-mooted at the time, of Cass's sincerity in his changes of attitude upon the territorial question and of the correct interpretation of his letter. The latter point only need concern us, but its discussion will necessitate a review of Cass's political course during the period involved. To put the matter plainly, did the Nicholson letter commit Cass, and thereby his party which adopted him as its leader, to the Squatter Sovereignty interpretation of Non-intervention, or to the neutrality of the Southern Democrats typified in the position of such men as Howell Cobb? Or did it dodge the issue altogether? The writer is convinced that the last was the case, and further that the evidence is sufficient to prove that Cass designedly left his real views an enigma until after the election of 1848.

There is no doubt that many of the Democratic leaders, North and South, knew in 1848 that Cass himself put upon his letter the Squatter Sovereignty interpretation.[2] But his private opinion loses all significance in view of the fact that the Nicholson letter became, by tacit consent, the platform of the party upon the territorial issue; then it ceased to stand

[1] "The effect of the amendment would be only to declare that the local legislature must legislate under the Constitution, leaving wholly undetermined the material point, what are the rights of the people of the Southern States under the Constitution in respect to the use of the territory."—Yulee, *Globe*, 30 Cong., 1 Sess., *App.*, 306. Bagby said of the amendment: "It is ambiguous, not explicit enough, and it leaves the true position to deduction and inference."—*Globe*, 30 Cong., 1 Sess., 773.

[2] In his speech in 1850, Cass appealed to the Southern members of the Senate to say whether they had not so understood his own position in 1848, and they answered in the affirmative.—*Globe*, 31 Cong., 1 Sess., 399.

as merely an expression of Cass's opinions. The Democratic party did not adopt these, but rather it adopted the Nicholson letter. And since this was equally liable to two interpretations, any Democrat who belonged to the party in 1848, had the same authority as Cass himself to say later what the Nicholson letter had meant — the authority in each case being equal to the importance and influence of the individual in the party; and after the election, Cass's authority and importance as a Democrat was not greater than that of many other members of the party.

During the discussions in Congress over the Compromise legislation of 1850, the meaning of Non-intervention in 1848, and in connection therewith the meaning of the Nicholson letter, was reviewed in debate. So many interpretations of the letter were given and so many charges made that Cass, who was now an open advocate of Squatter Sovereignty,[1] had changed his position since the Nicholson letter, that he felt impelled to vindicate his course. He maintained, in his explanation, that in the Nicholson letter he had laid down four principles, to which he still adhered, and that if anyone had heretofore misunderstood him as to these he had not Cass, but himself, to blame for it.[2] This statement implies in its author either an unusually faulty memory or a great lack of candor. If he had forgotten that he was himself responsible for the confusion in 1848 as to his attitude on the territorial issue, he might easily have refreshed his memory from existing records. The truth is that he had been more than once requested point blank, both before and after the Baltimore Convention, to make his position on this issue clear beyond dispute, and that to all of these requests he had returned a steady refusal.

The recital of two such occurrences will suffice for our purpose. A few days before the Baltimore Convention, one of the Florida delegates to that body wrote to Cass stating that the Nicholson letter was not explicit enough for the South, and requesting an answer, therefore, to these questions for the guidance of Southern men in the event of certain possible contingencies arising in the Convention:

[1] I use the term as it has been heretofore defined.
[2] *Globe*, 31 Cong., 1 Sess., 398-99.

First, Did Cass still adhere to the position laid down in that letter? Second, If so, does that letter mean that the inhabitants of a territory, before forming their State governments, have the right to establish or prohibit slavery as they deem most consistent with their local policy? Third, and that the policy so expressed is the paramount law during the period of territorial probation, changeable only by the people of the territory upon the formation of their state government, or under such legislative sanction as they may direct?[1] It will be seen that the design of these interrogatories was to force Cass to disclose his real position on the territorial issue; and that the second of them is in effect the same as the famous question propounded by Lincoln to Douglas in 1858 which elicited from the latter the Freeport Doctrine.[2] Douglas was in such a position that he could not evade Lincoln's question, and the answer he made to it put a period to the usefulness of the Popular Sovereignty doctrine and sounded the death-knell of the Democratic party. The explanation of Cass's successful escape from the question which occasioned the political ruin of Douglas lies in their different circumstances when the query was propounded to them. Douglas was compelled to make some answer, while Cass gave none at all. He simply referred his questioner to his Nicholson letter, blandly ignoring the fact that this was the very document about which the latter was seeking an explanation.[3]

A more notable refusal to declare his real position was made by Cass shortly after his nomination and while the electoral campaign was at its height. On his return home from Baltimore, a Democratic mass-meeting was held at Cleveland to welcome him as he passed through that city. Judge Wood, the chairman of the meeting, on introducing Cass to the audience stated that it was being represented by their opponents that, among other things, his administration would be favorable to the extension of slavery; in closing he

[1] Savannah *Republican*, printed in Chicago *Daily Democrat*, Oct. 4, 1848.

[2] "Can the people of a United States territory, against the wish of any citizen of the United States, exclude slavery from its limits prior to the formation of a State Constitution?"—Lincoln's *Works*, I, 308.

[3] "I had supposed that my sentiments on the subject to which you refer were fully understood by my Southern friends; but as you seem to desire information I enclose you my Nicholson letter, *which contains all that I have to say on the subject*."—Savannah *Republican*, printed in Chicago *Daily Democrat*, Oct. 4, 1848.

invited Cass to declare his sentiments, saying that the audience had assembled for the purpose of hearing them. This Cass bluntly declined to do, referring the audience to his general reputation, and to the letter in which he had accepted the Presidential nomination, which he declared to be the close of his political professions.[1]

To those who have read thus far in this study it will scarcely be necessary to explain how it was that Cass was free to avow his opinions in 1850, when as Presidential candidate he had persistently refused to do so. In the answer to this lies epitomized the character and purpose of the Cass-Douglas Non-intervention, Popular Sovereignty doctrine of availability, designed to screen from view the internal discord in the Democratic party and so to postpone its disruption. The Northern and the Southern Democrats held views upon the territorial issue so divergent that no platform could be frankly proposed on which both would consent to stand. Therefore resort was had to ambiguity; they were to be brought into seeming harmony by the adoption of a platform which could be construed with equal facility to suit the views of either. The gap that yawned between the two sections of the party in 1847 was not closed by Cass's doctrine; it was concealed for the time being, but this was only a postponement of the day of reckoning. It was this availability that gave to Non-intervention its usefulness as a party policy; resolve its ambiguity and its usefulness would disappear. Cass, as the Presidential candidate, could not do this, but in 1850, freed from the incubus of a Presidential campaign, he could declare his real opinion.

Though we have centered our criticism on Cass, it would be unfair to leave the impression that he was less frank or more time-serving than other politicians of the period. If the public did not enjoy being humbugged by its political leaders, it was at any rate, remarkably complaisant under the process. The course of both the great parties in 1848 was determined by their desire to dodge most

[1] "Sir, the noise and confusion which pervades this assembly will prevent my being heard on the important topics to which you call my attention. . . . I hope you have all read the letter which I addressed to the Democratic National Convention. *I declare that to be the close of my political professions.*"— Cleveland *Herald*, in *National Era*, June 29, 1848.

effectually the one great issue before the country,— that of slavery in the territories. If ever in our political history one issue has stood out pre-eminent above all others, it was this one in 1848. Yet so skillfully was it dodged by the two great parties that this election is justly described as a contest without an issue,— a mere eddy in the historical current, in which force and direction was temporarily lost.[1] The Whig party met sharp and speedy retribution for its course in this election; by its abnegation of all political principles, in the nomination, without a platform, of a man who stood for no political principle or policy — who had never even cast a vote in his life, his sole claim upon public consideration being based on his military record — it voluntarily surrendered the only reason which a political party has for existing; accordingly though the glamour of Taylor's name carried it to temporary triumph, within a quadrennium it melted into insignificance, and before a second had elapsed it had been replaced by a new party, possessed in abundant measure of the principle and sincerity so fatally lacking in the old. The retribution which the Democratic party merited none the less, was postponed for a few years through the device of the Cass-Douglas doctrine. But when this would serve no longer, the disaster which came to the Democrats was scarcely less overwhelming than the ruin the Whigs had met.

We have thus traced the origin and examined the character of Cass's doctrine, put forward by him as a workable compromise platform for his party in the election of 1848; it still remains to observe the actual part played by this program in the electoral campaign. From the introduction of the Proviso in August, 1846, to the close of 1847, the dispute within the Democratic party appeared irremediable. The Northern Democrats persisted in their demand for the passage of the Wilmot Proviso, antecedent to the acquisition of territory; the Southern branch of the party reiterated the cry of no political fellowship with the North unless the Proviso be abjured. The outlook seemed black for both the great political parties, and within six months

[1]Garrison, *Westward Extension*, 284.

of the assembling of the National Democratic Convention it was being confidently predicted that neither party would be able to agree on a candidate, and that the Democratic feud over the Proviso would break up any convention that might be held.[1] At the time of the publication of the Nicholson letter at the close of 1847 the discordant condition of the party is thus described: some of the Democrats were trying to forget their own divisions in discussing those of the Whigs; some to discover a device by which they might save at once their party and their own consistency; while some were preparing themselves for the defense of principle whatever might become of party. The Southern Democracy was united and determined to reject every candidate who adhered even in thought to the Wilmot Proviso; while the Washington *Union,* the mouth-piece of the administration and the compromise group of politicians whom it represented, was urging the Buchanan compromise on the Northern Democrats and, with the aid of official influences, producing dis-union among them.[2]

It may well be asked how it came about, after all the defiant threats which the two divisions of the party had hurled back and forth, that they did finally get together on the platform of the Baltimore Convention and agree upon Cass and Butler as the party leaders. The answer is that as the crisis approached the volume of threats began to diminish, until only an occasional snarl was to be heard. The desire of the masses for party unity, and, more important, the influence of the party organization wielded by politicians thirsting for the spoils of office, were now beginning to tell. The working of this influence is exemplified in the course of the Chicago *Democrat.* Its action in proclaiming weeks in advance its adherence to the nominee and platform of the Baltimore Convention is typical of a strong trend of feeling which was sedulously fostered by the partisan press and leaders during the early months of 1848. As usual in the long sectional contest the Northern Democrats were more willing than the Southern to bind themselves to

[1]Washington Cor. New York *Journal of Commerce,* in Niles' *Register,* November 13, 1847.
[2]*National Era,* Dec. 30, 1847.

support the action of the Baltimore Convention, but in both sections the movement spread widely. In spite of the efforts of the radicals of either section to commit their delegates to a program expressive of their views, the Convention met with the desire for harmony and unity overwhelmingly in the ascendant and with a large proportion of the delegates instructed in advance to adhere to whatever course it might adopt.

The Baltimore Convention met on the fourth Monday in May, 1848. The reasons that determined a choice of this date throw a flood of light on the discordant conditions under which the party was laboring. It had been desired to hold the Democratic Convention after that of the Whigs because of the tactical advantage that was supposed to accrue to the party that made its appeal to the public after its opponent's hand had been shown. But it was decided that this could not be done this time; because of the discord in the party it must show its hand before a false one could be assigned to it. The eyes of the whole party would then "be turned toward the rising sun," in the contemplation of which, it was hoped, all previous animosity would be forgotten.[1]

When the balloting for the head of the ticket began it was seen that Cass was far in the lead, Buchanan and Woodbury being his only competitors who were at all formidable. On the fourth ballot he received the requisite two-thirds majority and with it the nomination.[2] The Nicholson letter had done its work, and its author was now designated by his party as its choice for the Presidency. The report of the platform committee revealed the fact that the party engineers had decided to ignore completely the issue of slavery in the territories. The portion of the platform which dealt with the subject of slavery was taken bodily from the platform of 1840; obviously it could not have been written with any reference to the territorial issue, since this had originated after that time.[3] It declared that

[1] Washington letter, Jan. 26, in Chicago *Daily Democrat*, Feb. 11, 1848.
[2] Niles' *Register*, LXXIV, 328.
[3] See McKee, *National Conventions and Platforms*, for the platforms of 1840 and of 1848.

Congress had no power to interfere with slavery in the several states, concluding its long and somewhat obscure sentence with the assertion "that all efforts of the abolitionists or others made to induce Congress to interfere with questions of slavery, or to take incipient steps in relation thereto, are calculated to lead to the most alarming and dangerous consequences; and that all such efforts . . . ought not to be countenanced by any friend of our political institutions."[1] Though the priority of its origin makes it obvious that this resolution was written with no reference to the territorial issue, it is equally obvious that the form of the resolution made it possible for campaign orators to twist it into a declaration in favor of Non-intervention for the territories as well as for the states. Aside from this declaration the position of the party on the territorial issue must be inferred from the sentiments of the nominee, which it put forward simultaneously with this declaration of principles. But we have seen that these sentiments were completely masked in the Nicholson letter and that Cass resolutely foiled all attempts to elucidate them. Such was the policy which he presented to the public.

The Northern extremists in the Convention had been completely silenced, but there was a small group of Southern radicals who were not so easily muzzled. This group was led by William L. Yancey, and their efforts to secure from the Convention a condemnation of the Squatter Sovereignty interpretation of Non-intervention and the Nicholson letter, throw additional light upon the duplicity of the Democratic policy. The Florida and the Alabama delegates were under instructions not to support any candidate who was not unalterably opposed to the principle of the Wilmot Proviso. But even this was not radical enough to suit Yancey. In the Alabama State Convention he had unsuccessfully endeavored to have the delegates to the National Convention instructed to oppose the nomination of any candidate who should not have avowed his opposition to both Federal and territorial restriction of slavery; that is, to any candidate who

[1]Niles' *Register*, LXXIV, 329.

was not an open opponent of Territorial Sovereignty.[1] This effort had met with defeat in the Convention of his own state, but nothing daunted, Yancey made a determined effort to force the same program on the Baltimore Convention.

He gave notice of his purpose by opposing the proposition to proceed with the nomination of candidates before the adoption of a declaration of principles. The sentiment of the Convention in favor of harmony and conservatism was shown in the overwhelming vote by which Yancey's proposal was rejected.[2] His next move was, as member of the committee on resolutions, to bring in a minority report carrying an amendment to the slavery plank of the platform, since known as the "Yancey Resolution."[3]

In the speech with which he introduced his report, Yancey said that he agreed with the platform submitted to the Convention, as far as it went, but he believed a fuller statement of the constitutional rights of slavery in the territories was essential, if the Democratic party was not to alienate the support of the South and so lose the election. His report gave as the reason for dissenting from the platform reported by the majority, that the success of the party would depend solely upon the truth or untruth of the principles avowed by the Convention and by its nominee. The nominee was understood to entertain the opinion that Congress could not interfere with slavery in the states or territories, but that the people of the territory had the sole right to exclude slavery therein. The majority of the platform committee had adopted this principle only so far as applicable to the states, refusing to express any opinion upon what was "the most exciting and important political topic now before the country," leaving the views of the party to be inferred from the opinions of its nominee. The minority regarded this concealment of opinion as unworthy of the Democratic

[1]The Florida and Alabama delegates to the Baltimore convention were instructed to oppose the nomination of anyone who was not "explicit in the renunciation of all claims to Federal interference in the territories;" Yancey's attempt had been to secure the instruction of the Alabama delegation "to oppose also the nomination of any persons who should not unequivocally avow themselves to be opposed to either of the forms of restricting slavery . . . and one of which forms—that of popular interference—was admitted to be possessed by the settlers of a territory, by Mr. Buchanan and others."—Reports copied in *National Era*, May 18, 1848.

[2]The vote was 232 to 21.—Niles' *Register*, LXXIV. 327.

[3]*Ibid*, 348.

party. The country was intensely interested in the territorial issue and therefore the party should assume a positive attitude upon it. If it should refuse to meet the issue made upon the slave-holding states by the North, and should permit the expressed views of the nominee to stand impliedly as the opinion of the Convention, it would in effect pronounce against the Southern view of the rights of slavery in the territories. To obviate such a construction and assure the country that the party recognized the rights of slaveholders to carry their slaves into the territories, the following amendment was proposed to be added to the slavery plank of the platform: "That the doctrine of Non-interference with the rights of property of any portion of the people of this Confederation, be it in the states or in the territories, by any other than the parties interested in them, is the true Republican doctrine recognized by this body."

The purpose of this, the "Yancey Resolution" has frequently been misapprehended, and Yancey's course has been described as an attempt to commit the party to the doctrine of Squatter Sovereignty.[1] The confusion as to the meaning of the Resolution is not surprising, for in spite of Yancey's appeals for a frank and candid platform, it would puzzle the cleverest lawyer to explain the purport of the amendment he proposed to add to it, if it be separated from the report and speech accompanying it. The minority report makes it clear that Yancey's object in offering the resolution was to put the party on record as distinctly repudiating the doctrine of Territorial Sovereignty and committing it to a declaration in favor of the constitutional rights of slavery in the territories. If it be asked why he did not state his purpose in intelligible form the answer must be that even Yancey was not free from the spirit, then dominant in political circles, of subordinating party candor to party success; that even he with all his radicalism would resort to ambiguous phrases

[1]Garrison, *Westward Extension*, 277, says of its rejection: "If the party was to adopt the principle of Squatter Sovereignty, it must be at some other time or in some other form," and Macdonald, *Select Documents*, 378, says: "The doctrine of Squatter Sovereignty embodied in this resolution now began to be urged in opposition to the Wilmot Proviso."

to gain an end which he could not hope to attain openly.[1] The resolution was rejected by the decisive vote of 216 to 36. This does not signify either that Yancey's doctrine was not acceptable to the Southern delegates, or that the Committee rejected it because of any preference for Squatter Sovereignty, the doctrine against which it was aimed. It signifies merely the determination of the party representatives not to abandon the friendly cover they had found, to face the territorial issue in the open.

It might safely be assumed from our knowledge of human nature, and of the methods of conducting the game of party politics that the meaning of the Democratic policy of Non-intervention would be expounded in as many different ways throughout the country as there were varieties of opinion on the slavery question. That such was precisely the case is proved by the press and by the Congressional debates of the period. Hardly was the campaign well under way when the Northern Democrats in Congress were asserting that the party was committed by its platform to Non-intervention, and by its choice of Cass, to the principle of Squatter Sovereignty, which they saw in the Nicholson letter. Southern Democrats on the contrary vociferated that Cass was pledged against the Wilmost Proviso, and that the only reasonable interpretation of the Nicholson letter was that he believed a territory could exercise sovereignty over slavery within its boundaries only when about to enter upon statehood; and they reviled the Whigs for the two-faced attitude of *their* candidate upon the territorial question.[2] The materials for the manufacture of campaign thunder were almost embarrassingly abundant, and campaign orators of either party employed them diligently in the manufacture of philippics upon the opposite party's deceitful course, seemingly unconscious all the time that they were tarring them-

[1] Douglas in 1860 explained that the resolution was intended by Yancey to mean that nobody but the owner of slave property could interfere with slave-holding; this interpretation seems as reasonable as any.

[2] e. g., speech of Bocock, *Globe*, 30 Cong., 1 Sess., *App.*, 735; of Venable, *ibid*, 653; of Featherston, *ibid*, 764; of Crisfield, *ibid*, 731. Featherston argued from the Nicholson letter that Cass's position was that the territories could exercise no sovereignty over slavery. He admitted that this was an inference, since "his opinion was not asked by Mr. Nicholson on this question." The debate between Featherston and Lahm, of Ohio, on this point is highly illuminative as to the adaptiveness of Cass's letter to suit the views of people of both sections of the country.

selves with the stick which they used to blacken their opponents.

Meanwhile a battle was waging in the press, North and South, over the question of what the attitude of the opposing candidates really was on the territorial issue. The Northern Democratic papers would publish articles demonstrating that the election of Cass would insure the restriction of slavery to its existing limits whereupon the Southern Whig press would employ these as campaign powder against the Democratic party in that section. In like manner the journals of the Southern Democrats and the Northern Whigs played into each other's hands.[1] The former represented throughout the campaign that Cass was pledged to veto any measure containing the principle of the Wilmot Proviso. This assertion was based on their interpretation of the Nicholson letter, and especially on that clause which advocated the policy of permitting the territorial legislatures to act "under the general principles of the Constitution."[2] The Northern Democratic journals, by the same process,— of deduction and inference from the Nicholson letter,— reached and proclaimed a directly opposite view.[3] This point need not be pursued farther, for evidence enough has been presented to show that the success of either party would decide nothing as to the question of slavery in the territories ;and that, in the event of Democratic success, there was no agreement upon the status in which that question would be placed by their boasted doctrine of Non-intervention.

Taylor won the election, having a majority over Cass of 36 electoral and 140,000 popular votes.[4] The result, however, connot be regarded as an expression of the popular will upon either the subject of Non-intervention or of Squatter Sovereignty. Both of these had been brought prominently before the people, but so thoroughly had the parties concealed their position upon the territorial issue and

[1] See editorial, *National Era,* June 29, 1848.

[2] e. g., see Niles' *Register,* LXXIV, 57; address of Democratic Cass Convention of East Florida, in *National Era,* August 10, 1848; also citations from Southern papers in *Era,* same date; address of Virginia Democratic State Central Committee, in *Era,* August 31, 1848, and citations from Southern papers, in *Era,* October 12, 1848.

[3] See citations in *National Era,* above dates especially August 10.

[4] McKee, *Conventions and Platforms,* 71, 72.

so many factors had entered into the election, that no conclusions as to the popularity of these doctrines with the people in 1848 can be safely drawn. Nor is it necessary to attempt to do so; our object is merely to show what Non-intervention was and what part it was made to play in the electoral campaign. The immediate factor that determined the result of the election was the Barnburner defection and the resultant schism of the Democratic party in New York. This was due in part to the dissatisfaction of the New York Democrats with the attitude of the party on the territorial issue, but in part also to causes entirely foreign to the slavery question. The efforts of the Whig and the Democratic parties to dodge the territorial issue in this campaign, had met with complete success.

CHAPTER IV.

The Territorial Issue in the Compromise of 1850.

The contest for the Presidency was decided in the Autumn of 1848, but meanwhile a struggle was being waged in Congress which was destined to continue for two years longer. It began over the organization of a territorial government for Oregon, 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, terminating on next to the last day of the latter session, August 12, 1848, in a victory for the opponents of slavery extension. The act then passed 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 many of the early arguments upon Territorial Sovereignty which have been recounted in the preceding chapters occurred. In the early part of the Oregon debates the organization of the Mexican cession was not immediately involved, but the Treaty of Guadalupe Hidalgo, February 2, 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 by this new question.[2]

The inability of the friends of the Wilmot Proviso to secure its enactment had been demonstrated by repeated trials, and the efforts of the radical Southern party to force its views upon Congress had likewise been unavailing. If

[1] *U. S. Statutes at Large*, IX, 323. For details of the passage of the act, see *Globe*, 30 Cong, 1 Sess., 1078, and preceding.

[2] Until the treaty of peace was made, the territory involved in the session was either under Mexican control or (after its occupation) under the control of the United States army. After the treaty of peace this region was left without any legal government and this fact made the provision by Congress of some form of government a matter of immediate necessity.

this condition were to continue the only alternative policy possible must be some sort of compromise. What form this should take was then the question to be decided. The Democratic party had, during the recent electoral campaign, made Non-intervention its shibboleth, the precise effect of that policy upon the status of slavery in the territory being left undefined. Non-intervention accorded, too, with the interests of the politicians and with the preference of an ever-growing class of people, especially in the North, who were weary of the whole territorial dispute and desirous of seeing it settled.

To such persons the policy of Cass as expounded in the North,— the doctrine of Squatter or Territorial Sovereignty,—with its specious promises of transforming the whole sectional issue into a purely local question to be settled by the people of each new locality in their own way, appealed with great attractiveness. But the Southern radicals would have none of it unless the danger of an early decision adverse to their section were obviated by postponing the moment for local decision until the territory should become a state, till which time slavery should have free entry.[1] Here lay the rub; the Southern program assumed as settled, the question at issue,— that of the *territorial* status. For as Preston King had pointed out at the very outset of the discussion over the Wilmot Proviso, this was the important question, since the character of the territorial population would determinte the character of the state. If the policy of Territorial Sovereignty had been fairly applied it might have obviated the necessity of a national decision of the question; but it never was so applied, and, in the nature of things, it could not be, owing to defects in the doctrine and to stubborn facts in the situation of which the doctrine took no account.

In July, 1848, the Senate made a great effort to settle the whole territorial dispute by what has become known as the Clayton Compromise. Oregon was to be coupled with California and New Mexico, and territorial governments to be provided for all three, in one act on the basis of a

[1] Yulee's speech, *Globe*, 30 Cong., 1 Sess., *App.*, 302; Rhett's speech, *ibid*, 656.

compromise bargain which, it was hoped, would prove acceptable to the two sections. This bill passed the Senate but was rejected by the House, and the following month Congress adjourned, having organized Oregon Territory, as above related, on the basis of slavery extension.[1]

With the passing of the election of 1848, the conditions involved in the situation of the Democratic party in the campaign, which had given to Territorial 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 attractiveness the doctrine possessed as a solution of the problem 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 1848-49 was almost taken up 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 progress can be traced more accurately. It was put to a direct vote on February 27, 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 passing, 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 conditions and needs demanded.[2] Murphy of New York now proposed an amendment to Sawyer's motion expressly affirming the principle of Territorial Sovereignty over local affairs.[3] This amendment was rejected by a vote not recorded, as was also an amendment by Green of Missouri, intended to express

[1] For the Clayton Compromise, see *Globe,* 30 Cong., 1 Sess., 927-28, 950, *sq.*

[2] *Globe,* 30 Cong., 2 Sess., 605-7.

[3] "But nothing in this Act contained shall be held to deprive the people of the territory of a free and exclusive power of legislation in their territorial legislature . . . in all cases of taxation and internal polity. . . ."

more perfectly the idea of the sovereignty of the territory. The vote was taken on Sawyer's motion to strike out the restrictions of the Ordinance of 1787; it was lost by a vote of 115 to 88. It cannot be assumed that the 88 affirmative votes were all in favor of Territorial Sovereignty, for the amendment did not contain a positive statement of this; it was worded so as to strike out the restriction against slavery, and the affirmative votes would include those of the pro-slavery men who were opposed to the Cass-Dickinson doctrine as well as those who favored. Nevertheless the whole debate shows that the doctrine had a considerable body of supporters in the House. But that the advocates of slavery restriction possessed throughout the session a safe majority is shown by various votes during the discussion of the bill. The section applying the Ordinance of 1787 to California was retained unmodified, and the bill passed the House on February 27, by a vote of 126 to 87.[1]

In the Senate Non-intervention appeared in a new guise. Douglas tried to avoid the slavery issue altogether by setting up at once the entire Mexican cession as the single state of California.[2] The citizens would then, of course, be at liberty to settle the slavery question to suit themselves. Palfrey, in a speech February 26, characterized this scheme as amounting to the same thing as the doctrine of Cass and Dickinson.[3] In so far as a decision of the issue by the community directly affected was concerned, it did; but it differed in this that the present plan solved the territorial question simply by obviating the territorial status altogether; and further in that Douglas propounded no theory, but struck in a bold, direct way at the end he desired to secure — the organization of a government and the avoidance of a Congressional decision of the issue in dispute. The bill dragged on until late in the session, but Douglas could not secure a vote upon it.[4] The

[1] *Globe*, 30 Cong., 2 Sess., 609.
[2] *Ibid*, 21.
[3] *Globe*, 30 Cong., 2 Sess., *App.*, 314.
[4] Feb. 17, Douglas gave notice that he would 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.—*Globe*, 30 Cong., 2 Sess., 552 *sq.*

House bill, too, died in the Senate, and the 30th Congress expired without having made any advance toward a solution of the question of slavery in the Mexican cession.

The necessity for 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 advocates of the Wilmot Proviso 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 territory affected, 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 policy which, according to Benton's account, had been greeted, on its first exposition by Dickinson two years before, as the "five times distilled essence of political non-sensicality" should be proposed and supported as it was in this session, shows that the idea of Territorial Sovereignty was gaining a foothold in the public mind.[1] As yet it was competing for public favor with the two radical policies, the Wilmot Proviso and the Calhoun doctrine of Constitutional extension of slavery. Whenever the adherents of 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, precipitated, as will be shown, by the course of events in California.

The 31st Congress assembled December 3, 1849, to face the territorial problem which its predecessor had left unsolved. But in the intervening months changes had taken place which materially altered the situation. It 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.[2] As soon as it had become evident that no government would be given them by the 30th Congress, the people, encouraged by

[1]Benton, in describing the political situation at the time of which we are speaking—December, 1849—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*, II, 725.

[2]Rhodes, *History of the United States*, I, Chap. II.

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 rather what course to pursue toward the government already organized. Taylor recommended that California 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 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; 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 was likely to go, 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 slave-holder, had made no effort to influence the action of the Californians in respect to slavery; they had shown no disposition to favor it, and with entire harmony had drawn up a constitution excluding the institution from the state.[2] New Mexico seemed likely to follow the example of California; and thus the President's policy, 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 them-

[1]Taylor's Message to Congress, *Globe*, 31 Cong., 1 Sess., 71.
[2]Rhodes, 1, 113.

selves. 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 which resulted in the celebrated Compromise of 1850. 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 the North and 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] On January 29, he announced his plan to the Senate in a series of resolutions covering the whole slavery question.[2] We are interested in the Compromise of 1850, however, only in so far as it is related to our subject of Non-intervention and we need consider, therefore, only the first two resolutions, which dealt with the territory acquired from Mexico.

The first provided for the admission of California, upon her application, with no restriction upon the introduction or the exclusion of slavery. It may here 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 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 discussion, but there was no real expectation of establishing slavery there. So far as Non-intervention was concerned

[1]Letter to his son, Jan. 2, 1850, quoted in Von Holst, III, 484.
[2]*Globe*, 31 Cong., I Sess., 244.
[3]Rhodes, I, 115.

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.

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."[1] This could afford little satisfaction to the pro-slavery adherents. It is stated by Schurz that Clay himself was personally in favor of the Wilmot Proviso.[2] But he believed that existing 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.[3] 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 establish.[4]

It was non-intervention in the literal sense of the term, but it was not likely to find favor with Southern men. Clay's plan gave no power of decision to the territorial legislature, and thus far it was satisfactory to them; it likewise restrained Congress from intervention in any form. It followed then, if Clay's reasoning on the validity of the Mexican law was sound, that his plan would exclude slavery as effectually as would the Wilmot Proviso itself. Most

[1] Resolutions, in *Globe*, 31 Cong., 1 Sess., 246.
[2] Schurz, *Henry Clay*, II, 323-324.
[3] Speech, Feb. 5, 1850, *Globe*, 31 Cong., 1 Sess., *App.*, 115.
[4] *Ibid.*

Southern men, following where Calhoun lead, denied the validity of the Mexican law, claiming that it was superseded by the guarantees of the Constitution in favor of slavery. But whichever of these views might ultimately prevail, for the present the bare condition of uncertainty would act as an effectual check on the introduction of slavery. The "peculiar institution" was peculiarly susceptible to hostile environment, and owners would not, in any appreciable numbers, carry their slaves into the debatable land where a lawsuit over their ownership was certainly in store and the resultant loss of the slaves was possible.

The debate over the resolutions went on for nearly three months; on April 18 they were referred, along with some other territorial bills that had been introduced, to a select committee of thirteen members elected by the Senate. Clay was chosen as its chairman, and for the rest there were three Democrats and three Whigs from each section, after the model of the Clayton Compromise committee of the preceding Congress.[1] The Committee of Thirteen, as it came to be known, presented its report May 8.[2] It consisted of a long argument followed by several bills. Among the latter were two providing territorial governments for New Mexico and Utah, without the Wilmot Proviso, and with the provision that the territorial legislatures should pass no law upon the subject of African slavery. This embodied the principle of Clay's resolution of January 29, and would leave the determination of the status of slavery under the territorial governments to the decision of the Supreme Court. The argument accompanying these provisions is important. It asserted that there had never been any occasion for the Wilmot Proviso, and that it had been "the fruitful source of distraction and agitation." In order, it continued, to avoid for all future time the agitations produced by the sectional conflict of opinion on the slavery question, the true principle which ought to regulate the action of Congress in framing territorial governments for each newly-acquired domain, is to refrain from all legislation on the subject in

[1] *Globe*, 31 Cong., 1 Sess., 770-781.
[2] *Ibid*, 944.

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 29. That had asserted the "inexpediency,"—based on the premises that slavery did not exist in the new territory and was not likely to be introduced there,—of any Congressional legislation on the subject; thus it was admitted that slavery was at present excluded from the territories and by implication that Congress possessed the power to legislate for or against the institution, an implication to which great exception had been taken by Southern Senators. Now, in the committee's report, a "true principle" is laid down, to be employed in "all future time" in the organization of territorial governments for "newly-acquired" domains, and this principle is the abstention of Congress from all interference in the matter of slavery in the territories.

The question at once arose, in what condition did this "principle" and the bills accompanying it place slavery during the continuance of the territorial status? Clay desired to leave this unanswered, but the opponents of the Compromise would not have it so. This program like the resolution of January 29, like the Clayton Compromise of 1848, simply left the Constitutional disagreement open, to be referred by means of a suit, to the Supreme Court. It was another instance of a settlement that purposely shunned the chief issue involved. This objection was raised by Soulé of Louisiana, who charged that the bill in its vital point was the subject of opposite interpretations by those who were about to vote upon it.[1] This charge was repeated by others[2] and Clay could only answer that the meaning of the section

[1] "We all know that we do not understand this 11th section 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*, 31, Cong., 1 Sess., *App.*, 631.

[2] Chase said: "I shall vote against the amendment because it is nugatory. No result will be attained whether we adopt or reject it. It is in keeping, however, with the general character of the provision in regard to slavery. Nothing is settled by it. The question in dispute is merely shifted from Congress to the Administration and the Courts. The bill . . . will settle nothing and effect nothing beyond throwing the question of slavery into the arena of public discussion and party strife,"—*Globe*, 31 Cong., 1 Sess., 1146.

could not be defined by the Senate because they were unable to agree upon what was the existing law of the territory regarding slavery; to shape the bill so as to answer the requirements of either the Northern or the Southern interpretation of this question would insure its defeat; that question must be left to the arbitrament of the courts. Clay's reasoning as to the effect a clear declaration would have on the fate of the bill was undoubtedly correct. Yet it was at the same time a confession of the inherent viciousness and deception of the policy the Compromise party was pursuing; a confession that men of antagonistic views were being induced to vote for a measure whose effect was problematical, the only inducement to its support being the hope of each party that the problem would ultimately be resolved in its favor. Such legislation, as Benton had aptly said of the Clayton Compromise, enacted not a law but a law suit. Its advocates excused it on the plea that in any event the Supreme Court would have the final voice as to the status of slavery in the Mexican acquisition and would annul any legislation which it deemed to be in controversion of the Constitution; this being so, why should Congress not leave the matter entirely open and let the Courts decide it in the first place? The answer to this is, of course, that Congress is subject to the same judicial supervision in all its legislation, whatever its nature or subject-matter. The fact that the Courts will ultimately pass upon the constitutionality of its legislative acts does not relieve Congress of the duty imposed upon it by the Constitution. The Constitution and the laws made in pursuance thereof are the supreme law of the land: and it is the province of Congress to determine policies and enact legislation which it believes to be in accordance with the Constitution. The fact that its action may be declared invalid by the courts does not justify it in shunning its proper responsibility and framing legislation of a political nature in such a way that its effect is designedly left to the courts to determine. This shunning by Congress of its function of determining national issues is the great indictment which the student must bring against the essential part of the Non-intervention policy.

The report of the Committee of Thirteen approximated more closely the doctrine of Non-intervention than did Clay's resolution of January 29. That had asserted that under the existing circumstances Congressional inaction was "expedient"; now it was to be indoctrinated, as a rule to be followed in the organization of all further acquisitions of territory; but thus far the advance toward Congressional Non-intervention inclined more toward the Calhoun type than it did toward Territorial Sovereignty, for the territorial legislatures were expressly prohibited from exercising any power whatever over the subject.[1]

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 insure the admission of slavery to the territories by an amendment giving to the territorial legislature power to pass laws for its protection.[2] 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 al-

[1] After an argument to the effect that the Wilmot Proviso, as applied to the territories in question, is a mere abstraction, the report proceeds: "Totally destitute as it is [the Proviso] of any practical import, it has, nevertheless, had the pernicious effect to excite serious, if not alarming, consequences. It is high time that the wounds which it has inflicted should be healed up and closed and that, to avoid, in all future time, the agitation which must be produced by the conflict of opinion on the slavery question, existing as this institution does, in some states and prohibited in others—the true principle which ought to regulate the action of Congress, in forming territorial governments for newly-acquired domain is to refrain from all legislation on the subject in the territory, acquired, so long as it retains the territorial form of government, leaving it to the people of such territory, *when they have attained to a condition which entitles them to admission as a State*, to decide for themselves the question of the allowance or prohibition of domestic slavery.

[2] Stephens, *War Between the States*, II, 213.

tered by Congress. This, too, was rejected, 32 to 23.[1] The failure of these efforts demonstrated the correctness of Clay's assertion that to clear up its ambiguity would mean the defeat of the bill.[2] The struggle of the three preceding years had shown that neither North nor South was able to gain its point in Congress, the Northern preponderance in the House being steadily nullified by the Southern party in the Senate. Clay recognized this and would transfer the question from Congress to the Supreme Court. The adoption either of Baldwin's amendment or of Davis's proposal would have nullified Clay's plan in this respect and destroyed the compromise character of his measure, so far as the territorial question was concerned. The rejection of both showed that neither radical wing could carry its point against the combined opposition of the opposing radical party and the adherents of the Compromise measures.

On June 15 Soulé proposed an amendment which guaranteed to the inhabitants of the territories the right 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."[3] Professor Hart asserts that this was a tacit permission to hold slaves while the country should remain a territory,[4] but the assertion seems scarcely justified by the facts in the case. Soulé undoubtedly hoped that the Calhoun doctrine of the Constitutional status of slavery in the territories would prevail; if it should, a pro-slavery population would probably settle in them, and he meant to provide that when they asked for admission into the Union as slave states it should not be denied them because of their recognition of slavery. The provision in itself did not

[1] *Globe*, 31 Cong., 1 Sess., 1146-1148.
[2] *Ibid*, 1155.
[3] *Globe*, 31 Cong., 1 Sess., 1239, and *App.*, 902.
[4] *Essentials of American History*, 375.

affect the territorial status of slavery one way or another. Soulé himself explained his amendment by saying that its object was to put into the bill itself a declaration in favor of the principle of Non-intervention, meaning by this non-intervention of the Calhoun type, which had been advocated in the select committee's report. The South 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 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 measure 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. But 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 insure its passage. Only twelve votes were given against it, and thirty-eight in its favor, which shows that the principle of

[1] Debate, in *Globe*, 31 Cong., 1 Sess., *App.*, 902-912.
[2] *Ibid*, and Stephens, *War Between the States*, II, 218.
[3] Stephens, II, 220-221.

Non-intervention as the basis of compromise on the territorial issue was gaining in public favor.[1]

The Utah bill passed the Senate on August 1,[2] but in the final debate on July 30 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."[3] On July 30, Norris of New Hampshire proposed, in an amendment, to strike out these words from the bill.[4] 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. The amendment was passed and the words were struck out, but to what extent this purpose was actually accomplished will appear as we proceed.

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 resolutions on January 29, 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

[1]No attempt is here made to indicate the exact significance of non-intervention for the simple reason that there was no agreement upon this point among those who supported this amendment.

[2]*Globe*, 31 Cong., 1 Sess., 1504.

[3]*Globe*, 31 Cong., 1 Sess., *App.*, 1467 and 1470.

[4]*Ibid*, 1463. The portion of the territorial bill which is under discussion consisted of (1) a complete grant of legislative power to the new territorial government; but (2) this was qualified by certain specific restrictions; one of these prohibited, as explained above, the passage of any law "in respect to African slavery;" this was then changed to the form "establishing or prohibiting African slavery," for the reasons indicated above. The bill now contained a general grant of legislative power to the territorial legislature, qualified by this specific restriction, leaving out of consideration one or two others not germane to our subject. Norris's proposal was to strike the restriction on the territorial legislature from "establishing or prohibiting African slavery" from the bill. This would have the effect of giving to the territorial legislature all the legislative powers over slavery that Congress was constitutionally competent to grant. Waiving constitutional objections, it would establish Territorial Sovereignty. In any event it clearly provided for Congressional non-intervention in the literal sense, leaving undetermined the conflicting contentions as to what was the actual constitutional status of slavery in the territory created. That must be decided at some future time.

question. In the report of the Committee of Thirteen 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 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 effectually 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.

Norris was a Senator of no particular prominence, a friend of the compromise measures. Years afterward it was asserted by Douglas that his amendment originated with Clay, who communicated it to Douglas, and he in turn intrusted it to Norris for introduction.[2] This statement rests on Douglas's authority alone,[3] but it contains no inherent improbability. Certain it is that Clay argued for the amendment on the ground that it would cause the bill to approximate more closely the principle of Non-intervention.[4] It

[1] Debate, *Globe*, 31 Cong., 1 Sess., *App.*, 1463-1473, especially speeches of Berrien and J. Davis.

[2] Debate with Davis, 1860, *Globe*, 36 Cong., 1 Sess., *App.*, 306.

[3] Both Clay and Norris were dead in 1860 and there was therefore no check upon the assertion.

[4] *Globe*, 31 Cong., 1 Sess., *App.*, 1465.

was a return to complete Non-intervention, unaccompanied this time by the premises concerning the validity of the Mexican laws against slavery, so obnoxious to the South, which had been contained in Clay's resolution of January 29. Since then the change made in the clauses of the bill affecting slavery had all been inspired by pro-slavery advocates. From Clay's declaration that slavery did not exist in the territories and his justification of Non-intervention on the score of the improbability of its introduction, the ground had been shifted by the successive changes that have been described until now it was made possible for the territorial legislature, while it could neither establish nor prohibit slavery, to pass, if it chose, protective legislation for the institution, whose introduction there the Southern men relied on their interpretation of the Constitution to accomplish. Now the proposal was made to drop the clause forbidding the prohibition or establishment of slavery by the territorial legislature. The result of this change, so far as slavery was concerned, would be simply to delegate to the territorial legislature all the power which Congress was itself competent to exercise over the subject, the extent of this power being undefined and subject to vigorous dispute. The amendment was discussed in this light and with this understanding it was passed, after a long and spirited debate. Its adoption caused the section of the bill conveying the legislative grant to read,—"the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act.[1]

Such was the final disposition made by the Compromise of 1850 of the issue of slavery in the territories. So much confusion has existed since as to what that disposition really was, so many incorrect or misleading statements are met with concerning it, that it will be well for us to consider it carefully. Deferring for the present the issue raised by Douglas in 1854 as to whether or not the framers of the Adjustment of 1850 intended to repeal the Missouri Com-

[1] Prohibitions against the passage of laws interfering with the primary disposal of the soil, and on one or two other matters, remained; but none of these have any bearing on our subject.

promise, and confining our attention to the Utah and New Mexico Territorial bills, let us ask what was the status provided by Congress for slavery in the new territories? The answer must be evident to all who have read thus far; no determinate status was provided at all. In accordance with Clay's program, Congress dodged all positive decision of the matter. In passing the territorial bills it tacitly adopted the policy of Non-intervention so far as Utah and New Mexico were concerned without any definition of the status in which slavery would be left thereby. In this, as Clay had rightly pointed out, consisted the virtue of the territorial compromise. To say then what was the precise disposition made of slavery in the territories in question is an impossibility, for none was made. We can, however, state the arguments of the various parties, and the alternative conditions which it was possible to be established by a decision of the question by an authoritative tribunal. First, let us assume that the property argument of the Southern leaders was sound,— that slavery had a Constitutional right of entry to the territories; evidently then Congress could not exclude it, nor could it empower the territorial legislature to do so; evidently also the Mexican laws excluding it became invalid from the moment of the acquisition of the territory by the United States. On this assumption Utah and New Mexico were open to slavery; they were opened to it, however, not by the compromise of 1850, but by the Constitution, which equally opened every other territory to slavery. Secondly, assume for the moment that the Mexican laws against slavery remained in force as contended by Clay, Douglas, and others, until repealed by some positive enactment; evidently Congress was competent to repeal them, and as it had delegated to the territorial legislatures all the power possessed by itself, they might repeal them. Until such action, however, Utah and New Mexico would stand closed to slavery. These questions remained open for future judicial decision. Until that should come the territorial legislatures could dispose of slavery as they saw fit. That is, returning to our starting point, Congress abnegated its function of legislative decision of the issue involved; it

gave to the territories it created all legislative power "consistent with the Constitution," and carefully refrained from saying what the extent of this power was.

It is, then, misleading, to say the least, to represent that by the Compromise of 1850 slavery was "permitted by Federal action" in Utah and New Mexico.[1] If by this it is meant to say that slavery was given any positive entrance there it is absolutely incorrect; if it is intended to convey the idea that Congress simply refrained from positively prohibiting slavery, would it not be equally correct to represent that freedom was "permitted by Federal action?" Either statement would be equally permissible and equally misleading. in the Territorial Acts of 1850 the only thing which was clearly established was that Congress refrained from a decision of the slavery issue. This was Non-intervention in the literal meaning of the term. It was not the Squatter Sovereignty of Dickinson any more than it was the Non-intervention of Jefferson Davis and John C. Calhoun. The adoption of either would have necessitated the assumption by Congress of a position on the Constitutional question. It was the Non-intervention of the Nicholson letter in almost the very words and with all the ambiguity of that document.[2] Because of this fact, because Congress assumed no position on the Constitutional question involved, it was possible in after years for men to give the most opposite expositions of the principle on which the territorial issue was settled in 1850, according as they interpreted the Constitution with respect to slavery.

[1]Smith, *Parties and Slavery,* in *American Nation* series, Map, 6-7.

[2]The pertinent phrases of the Nicholson letter were that the slavery issue should be left to the decision of the people of the territories "under the general principles of the Constitution," and that they should have "all the rights compatible with the relations they bear to the Confederation;" of the Utah and New Mexico bills, that the legislative power should embrace "all rightful subjects of legislation consistent with the Constitution of the United States."

CHAPTER V.

The Kansas-Nebraska Bill the Indoctrination of Popular Sovereignty

With the adoption of the Compromise of 1850 there ensued a lull in the discussion of the slavery question in politics. The country had wearied of the long dispute which had continued without cessation since the summer of 1846, and the usual reaction that follows upon every period of storm and stress set in. It does not fall within the limits of this study to trace the cause of this or to discuss the politics of the country during the interim, except so far as it may serve to throw light upon our subject. It is sufficient to say that 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 for the most part seemed well satisfied with this arrangement. The Fugitive Slave Law was an element of discord in the situation, but both parties, in their platforms of 1852, proclaimed 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 and unexpected termination. While it lasted there was no discussion, and consequently no development of Non-intervention. With the exception of one incident, the period from the adoption of the Compromise of 1850 to the early

[1] Stanwood, *History of the Presidency*, Chap. XIX.

days of 1854, when the Kansas-Nebraska struggle brought Non-intervention again into the political lime-light, may be passed over in silence. In 1854 Non-intervention was made the pretext for the repeal of the Missouri Compromise. Douglas, who was the author and promoter of the Nebraska bill, professed to believe that in the organization of the territories of Utah and New Mexico in 1850 Congress had adopted the principle of Non-intervention and local determination of the slavery question; and this not only for the specific territories whose organization was then being accomplished, but as the policy to be employed in the organization of all territorial governments in the the future. Douglas therefore professed to apply this principle to the organization of the Nebraska country for which a territorial government was now being demanded. But the Nebraska country was a part of the Louisiana purchase, lying north of the line of 36° 30′ and subject to the slavery restriction contained in the Missouri Compromise of 1820. Douglas's proposal and action consequently threw the country at once into an uproar. In the contest that ensued, the policy of Non-intervention attained a far greater prominence than in any political struggle hitherto; in this and the following years it attained its final development, and as a practical policy ran its baneful course in Kansas and in our National political life.

Such, in brief, is the outline of the situation leading up to the introduction of the Nebraska bill, the original passage of which we are to consider in the following pages.

In the year previous to 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 Com-

[1] *Globe*, 32 Cong., 2 Sess., 475.

promise restriction made this necessary. The debate in both House and Senate shows that this was assumed as a matter of course; that there was no reason for a discussion over slavery in connection with the new territory, because the matter was looked upon as settled. The debate in the House on the bill occupies eleven pages of the record.[1] The only serious objection made to it was that it would violate the treaty rights of the Indian tribes in the territory. 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 into the bill, to which Giddings replied it was unnecessary, as the territory was all north of the line of 36 degrees and 30 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 then 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.[2] 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 10 by a vote of 98 to 43 and was then sent to the Senate.[3] Douglas was anxious to secure its passage, and made various attempts to induce the Senate to consider it,[4] but without success until the closing hours of the session. Then it was taken up. The only reference in the debate to the slavery

[1] *Globe*, 32 Cong., 2 Sess., 543-565.
[2] *Ibid*, 543.
[3] *Globe*, 32 Cong., 2 Sess., 565.
[4] *Ibid*, 581, 658, 1020.

question was in a speech made by Atchison of Missouri.[1] 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.[2] Douglas argued for the passage of the measure, and found no fault with the disposition it made 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.[3]

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 14, 1853, by Dodge of Iowa. It was immediately given the first and second readings and referred to the Committee on Territories.[4] It happened,—not entirely without design according to the shrewd guess of Horace Greeley[5]—that the composition of this committee was such that Douglas, its chairman, completely dominated it and could propose whatever legislation he desired.[6] Dodge's bill was a literal copy of the bill which the House had passed and Douglas had urged upon the Senate in the spring of 1853. But now he took a different course. On January 4 he returned the bill to the Senate variously amended and accompanied by a special report.[7] The chief change in the bill from our point of view, consisted of adding the amend-

[1] *Ibid,* 1111-1117.

[2] "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."

[3] *Globe,* ibid, 1117.

[4] *Globe,* 33 Cong., 1 Sess., 44.

[5] New York *Tribune,* Dec. 16, 1853; see also for fuller treatment of the influences seething around the Nebraska territory partition, Johnson *Douglas,* 220-29.

[6] New York *Tribune,* Dec. 16, 1853, and Rhodes, I, 425.

[7] *Globe,* 33 Cong., 1 Sess., 115.

ment which Soulé had made to the Utah and New Mexico bills, providing that when the territory should be ready for statehood it should be admitted either with or without slavery as the constitution drawn up by the people might direct.

The report explained the reason for the introduction of this provision.[1] In substance it stated that the validity of the Missouri Compromise restriction was a disputed question; that since this was the case, the committee did not undertake to decide it, but fell back upon the "principles and spirit" of the Compromise of 1850. This course was justified by the statement that the committee believed such action would conform to the settled policy of the government, and further that the Nebraska country was now occupying the same relative position to the slavery question as did New Mexico and Utah when those territories were organized. In the former case it had been a disputed point as to what was the real status of slavery already existent in the territories in question. Now there was a similar question in Nebraska, the validity of the Missouri Compromise restriction, and the constitutional rights of slavery there being in dispute. The report then stated, correctly enough, how Congress had handled the situation in 1850. It had "deemed it wise and prudent to refrain from deciding the matters in controversy . . . either by affirming or repealing the Mexican laws, or by an act declaratory of the true intent of the Constitution and the extent of the protection afforded by it to slave property in the territories;" so now the committee would not "recommend a departure from the course pursued on that memorable occasion, either by affirming or repealing the eighth section of the Missouri Act, or by any act declaratory of the meaning of the Constitution in respect to the legal points in dispute." It was professed, therefore, that the accompanying bill for the organization of Nebraska adhered strictly to the principles, and adopted literally the phrasing, of the pertinent clauses of the Utah and New Mexico bills. After pointing out the provisions of those bills that had a bearing upon the slavery question,

[1] *Senate Reports*, 33 Cong., 1 Sess., Vol. I, No. 15.

the report concluded with a summary statement of the basic propositions affirmed by the Territorial Compromise of 1850. One of these was an affirmation of the principle of Territorial Sovereignty.[1] This was a glaring contradiction of the account that had just been given in the report, of the action of Congress in 1850. The bill, however, as first printed, was a literal copy of the Utah and New Mexico acts.[2] The points material for us to notice here are that it contained the Soulé amendment, and a grant of legislative power identical with that found in those acts. The net result of bill and report together was to create perfect confusion as to what would be the status of slavery in the territory about to be organized. In one place the report stated that, following the example set by Douglas in 1850, it refrained from any declaration as to the validity of the Missouri Compromise, or the proper interpretation to be put upon the Constitution; in another it asserted that Congress in that year had established Territorial Sovereignty. Thus, the Missouri Compromise was undermined; but the bill, confining itself to the cautious wording of the Utah and New Mexico bills, was exactly as indefinite as they so far as any positive determination of the territorial status of slavery was concerned.

On January 10, three days after the first publication of Douglas's bill in the Washington *Sentinel,* it reappeared in that journal with an additional section appended to it.[3] It was explained that this had been omitted before because of an oversight of the clerk who copied the bill; it became known, therefore, as the 21st, or "clerical error section."[4] With one exception, which we need not stop to notice, the new addition was a copy of the statement of "principles"

[1] "That all questions pertaining to slavery in the territories, and in the new states to be formed therefrom, are to be left to the decision of the people residing therein, by their appropriate representatives, to be chosen by them for that purpose."

[2] *Globe,* 33 Cong., 1 Sess., *App.,* 135.

[3] *Globe,* 33 Cong., 1 Sess., *App.,* 135.

[4] *Ibid.*

contained in the committee report of January 4.[1] It stated that in order to avoid all misconstruction, the true intent and meaning of the act, so far as slavery was concerned, was declared to be to carry into operation the principles established by the compromise measures of 1850; these were, first, that all questions pertaining to slavery in the territories were to be left to the decision of the people residing therein, through their appropriate representatives; second, cases involving title to slaves were to be adjudicated by the local courts with right of appeal to the Supreme Court; third, the Constitutional provisions concerning fugitive slaves were to be executed in organized territories the same as in the states.

The effect upon the bill, of this new section, is clear; it completely repudiated the committee report of January 4, in which the desire to conform to the compromise measures of 1850 had been made the sole pretext for opening the question of the validity of the Missouri Compromise. By this section the committee was made to cut loose from the guarded neutrality of Congress in 1850, and put into the bill a declaration of the status of slavery under the Utah and New Mexico bills, and accordingly under the Nebraska bill itself; this was, as Chase rightly said, in direct contradiction to the reasoning of the report.[2] It is, of course, impossible to say what stand the Supreme Court would have taken upon the constitutionality of the bill so worded, but if the 21st section had any meaning whatever it meant that repeal of the Missouri prohibition and the unequivocal establishment of Squatter Sovereignty.

It will be well to examine here, before pursuing farther the progress of Douglas's bill, the pretext for his course, the "spirit and principles" of the Compromise of 1850. Had Congress in fact at that time laid down its treatment of the territorial issue in the organization of Utah and New Mexico as a model to be followed in organizing all future territorial governments? Had it by those acts repealed or even

[1] The section is printed in Von Holst, IV, 298.

[2] "It is a singular fact that this 21st section is entirely out of harmony with the Committee's report. It undertakes to determine the effect of the provision in the Utah and New Mexico bills. . . . This provision, in effect, repealed the Missouri prohibition, which the Committee, in their report, declared ought not to be done." *Globe*, 33 Cong, 1 Sess, 135.

"superseded" the Missouri Compromise restriction in the Louisiana purchase? Did Douglas himself believe these things had been done or intended? A negative answer must be given to all these questions. They were thoroughly discussed during the debate on the Kansas-Nebraska bill and the untenability of Douglas's claims 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 Soulé'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] 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's whole argument rested on the *intention* of the Congress of 1850, this is important; it is inconceivable that the Soulé 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 upon Soulé'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 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 insure its passage. It is important therefore to know whether Webster thought he

[1] *Globe*, 31 Cong., 1 Sess., 945.
[2] Stephens: *War between the States*, II, 218-220.

was deciding the repeal of the Missouri Compromise along with the fate of the pending question. He said that he did not see much practical utility in the amendment (an altogether impossible statement if he had thought the repeal of the Missouri Compromise was involved), yet he would support it on the ground of consistency. "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 hereafter. All this rests on the most thorough conviction, that, under the law of nature, there never can be slavery in these territories."[1]

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 that group of men who, without abating their hostility to the extension of slavery, withdrew their support 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.[2] It is therefore inconceivable to suppose that Webster and other Northern conservatives would have voted for the amendments of Soulé and Norris, and the Utah and New Mexico bills, 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's argument concerning the "principles" established by the Compromise of 1850. 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

[1] *Globe*, 31 Cong., 1 Sess., 1229.
[2] See his seventh of March speech.

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 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 heretofore passed by Congress prohibiting African slavery in any territory lying west of the Missisippi 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 unceremoniously. The conclusion is that the House did *not* so understand the measure.

Finally, it can be shown that not even Douglas himself had looked upon the Compromise measures as repealing or superseding the Missouri restriction. As he was the author of the Utah and New Mexico bills there can be no escape from the conclusion that he, above all others, knew what was intended by them.[3] In his great speech at Chicago, October 23, 1850, in defense of the Compromise measures, he had declared the territorial bills to be silent upon the subject of slavery, except for the provision that when admitted into the Union as States, each should decide the question of slavery for itself; and that neither party had gained or lost anything so far as the slavery issue was con-

[1] *Globe*, 31 Cong., 1 Sess., 1736.

[2] *Ibid*, 1772.

[3] "The first three of these measures—California, Utah, and New Mexico,— I prepared with my own hands . . . in the precise shape in which they now stand on the Statute book, with one or two unimportant amendments for which I also voted." Speech at Chicago, Oct. 23, 1850; Sheahan, *Life of Douglas*, 169.

cerned.[1] The year before, as we have seen, he had been satisfied to organize the Nebraska country without touching upon the subject of slavery at all, the supposition being that by the Missouri restriction, the status of the territory with respect to it was already settled. Even in the report of January 4, he had asserted that Congress in 1850 had refrained from deciding in any way the matter at issue in the territorial dispute.

What then were the motives that impelled Douglas to adopt his present course? In the ten months that had elapsed since the adjournment of Congress in the preceding March, there had been no apparent change in the political situation to demand any change of policy in the organization of a territorial government for Nebraska. Yet he deliberately reopened the controversy over slavery in the territories; he brought out from its four-year period of desuetude the doctrine which was coupled with the name of Cass, and in the face of a storm of popular opposition, substituted it for the Missouri Compromise. This course of action must have been dictated by powerful motives,—to what extent were they personal to Douglas, and how far were they the product of the political situation that confronted him?

It has been demonstrated conclusively, as far as motives are capable of demonstration, that the prime consideration with Douglas was a personal desire for his own political advancement;[2] that he realized that there was no hope of his attaining the Presidency, unless he could gain the support of the South; that to this end he adopted the plan of undermining the Missouri Compromise restriction and giving that section a chance at least in the Nebraska country by substituting for it his policy of Popular Sovereignty,—this he did not dare to do openly and frankly and so he set about obtaining it by devious methods. There is no reason to question the conclusions of Rhodes and Von Holst on this point, and they have left little to be added in their support. It is possible, however, to point out another motive, contributory to the foregoing and somewhat more creditable to Douglas, and to this I wish to call attention.

[1] *Ibid.*
[2] Notably by Rhodes, I, 424-432.

Douglas, though a New-Englander by birth, was a thorough child of the Western frontier by choice and by disposition. In Congress he had for years made the Western territory the object of his especial care and interest. In 1853 he reminded the Senate that he had been laboring eight years to secure the territorial organization of Nebraska.[1] During all this time his efforts had been in vain, and one of the principal reasons for his failure was the disinclination of the South to see a free territory organized. This feeling is well expressed in the speech of Atchison which we have already examined.[2] Since that time there had been no apparent change in the political situation, but this may well have seemed to Douglas to furnish the best of reasons for changing his tactics in regard to Nebraska. He had tried the old plan for eight years without success,—was it not time, therefore, to adopt some other?

If he reasoned thus, the next question for Douglas to consider was what course he should substitute for the one he was about to discard. He possessed no power of devising new policies. Every prominent idea of his political career originated with others and was simply appropriated by Douglas and adapted to his own use. At this practice he was very clever, and to it he resorted in the early winter of 1853-4. The people of Northwestern Missouri were strongly opposed to the organization of a free territory across the river from them. Their mouth-piece in Congress was Senator Atchison who was a resident of this part of the state. In the preceding spring he had abated temporarily his opposition to the organization of Nebraska as a free territory; this he afterward explained had been due to the solicitation of a colleague. However that may be, in the summer of 1853 he had returned to his old position; in a speech at Fayette in November he stated that he would vote for the organization of Nebraska if the Missouri Com-

[1] *Globe*: 32 Cong, 2 Sess, 1117.

[2] *Ibid*, 1113.

promise were not applied to it but if it were he "would resign before he would vote for it, and thus wantonly do violence to the sacred interests of his state."[2] This speech was widely commented on and could not, it seems probable, have escaped the attention of Douglas. Here then a cue was provided him. He would secure the organization of the territory, while at the same time he would gain the favor of the South, and incidentally promote his chances for the Presidency by removing the Missouri prohibition. But to do this openly would cost the favor of the North and so make him unavailable to his party as its standard-bearer. All the elements in this situation invited a policy of subtle scheming and ambiguous phrasing of his actions. No one who has studied him carefully can believe that his course was rendered less inviting to him thereby. Douglas probably more than any other prominent politician in American history, took delight in political scheming; in so clothing his utterances that they could be made to support whatever policy might at any time seem desirable. The situation then, in December, 1853, afforded a field for the exercise of the peculiar type of political talent wherein he excelled, and every element in it conspired to induce him to enter upon a course the ultimate results of which it is probable he utterly failed to foresee.

The addition of the 21st section, the appearance of which on January 10 has already been described, made the bill express in a fairly definite and unequivocal manner the principle of Territorial Sovereignty; that is, the bill now contained within itself an interpretation of the mass of equivocation and verbiage that had been heaped up; and this interpretation definitely committed the control of slavery to the people during the territorial status.[3] Events soon showed that it was too definite to hold the support of the Southern Senators; we must now see in what manner it was gotten rid of by the promoters of the bill.

[2] *Ibid.*

[3] "All questions pertaining to slavery in the territories . . . are to be left to the decision of the people residing therein through their appropriate representatives."

It was easy for Douglas to unite the Northern Democrats in the Senate and the Southern Senators irrespective of party upon the repeal of the Missouri Compromise; but it was found to be impossible for the supporters of the repeal to agree upon what should be the status of slavery succeeding it. It was the old story of a difference of opinion as to the Constitutional rights of slavery. Douglas now suffered from his devious methods. He himself desired to establish the principle of Territorial Sovereignty, and, subject to the qualifications we have noted, his bill of January 10 gave expression to this desire. But he speedily found that in re-opening the slavery issue, he had started a rolling stone which it was beyond his power to stop. The Southern Senators demanded an explicit repeal of the Missouri restriction and a recognition of their views of the Constitutional rights of slavery in the territories. To this the Northern Democrats refused to assent. The Democratic Senators met repeatedly in party caucus in the effort to adjust their differences of opinion and agree upon a common course of action.[1] The former proved impossible of attainment; but the latter was realized through following the precedent set by the Clayton Compromise and by the Adjustment measures of 1850. Just as on those occasions, so now, it was agreed to frame the bill in such shape that both Northern and Southern men could support it without giving up their respective views as to the actual status which would be accorded to slavery by it, and the extent of the power of the territorial legislature over that institution. The advocates of the Constitutional extension of slavery over the territories on the one hand, the supporters of the doctrine of Territorial Sovereignty on the other, agreed to pass a bill with the understanding that their differences of opinion as to the effect it would have were to be adjudicated by the Courts; when so settled, all were to abide by the decision.[2]

[1] *Globe*: 36 Cong. 1 Sess, 1966.
[2] *Ibid;* and 33 Cong, 1 Sess, *App*, 224 and 421.

It is evident that the bill as published January 10 would not meet the requirements of this program. Six days later therefore, when Dixon of Kentucky gave notice that when it should be taken up again he would propose an amendment directly repealing the Missouri Compromise restriction, the idea was hailed as an inspiration of genius.[1] It would have the effect of clarifying the bill — of expressing the real meaning of the action that had already been taken — yet, according to Dixon, Douglas at first opposed it.[2] However, upon consideration he decided to accept the idea and to 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 outstrip him in making overtures to the South, for fear his Presidential calculations might be thus upset.[3] He himself ascribed his action to a conviction that Dixon was right and the Missouri compromise ought to be repealed in vindication of the true principles of the Constitution.[4] With our knowledge of the entire situation, and especially of the disputes in the Democratic caucus we may be permitted to refuse credence to this explanation; but whatever the reason the fact is clear that Douglas did adopt the repeal,— haltingly at first it is true,— as a part of his bill, and that at the same time he designed a further and more surprising transformation of it.

It was important to the success of Douglas's bill to gain for it the support of the administration. Thus far the latter had exhibited an attitude of coy modesty, and on January 20, the Washington *Union,* its acknowledged organ, had contained an editorial condemning Dixon's amendment.[5] But on the following day (Saturday, the 21st) the Committees on Territories of the two Houses succeeded in agreeing on the form of a bill that would admit an interpretation

[1] Dixon: *The Missouri Compromise,* 443-44.
[2] *Ibid.*
[3] Nicolay and Hay, 1, 345; Von Holst, IV, 316-17; Rhodes, I, 436.
[4] Dixon, *The Missouri Compromise,* 447.
[5] Quoted in Von Holst, IV, 311.

consonant with the views of Southern men.[1] In other words, it is plain that they agreed on this day to carry into effect the terms of the recent caucus bargain. On Sunday morning Douglas, Breckenridge, and others, were admitted to a conference with the President through the instrumentality of Jefferson Davis, and succeeded in convincing him that he should give his support to the measure in the new form it was about to take.[2] On the following day, January 23, therefore, 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 them, which he wished to substitute for the one before the Senate.[3] The changes that demand attention are three in number. First, in place of one territory, two were now to be created; the region lying between 37° and 40° north latitude was to be called Kansas; while the remainder of the original Nebraska country stretching from 40° to 49° north latitude and westward to the summit of the Rockies, was to constitute the territory of Nebraska. In the second place, that section of the old bill which extended the Constitution and lays of the United States over the territory, was amended by the addition of a proviso designed to announce the repeal of the Missouri Compromise restriction; it was to be accomplished by excepting the restriction from the general extension of the laws of the United States over the territory, on the ground that it had been superseded by the principles of the legislation of 1850.[4] Finally, the "clerical error" section of January 10 now made its disappearance from the political arena, its exit being as sudden as its entrance had been unusual.

The first of these changes need not concern us; the second has already been discussed; the third, however, demands some attention. The disappearance of the 21st

[1] Davis, *Rise and Fall of the Confederate Government*, I, 27-28; Wilson; *Slave Power*, II, 382.

[2] Davis, *Ibid.*

[3] *Globe*, 33 Cong, 1 Sess, 221-22.

[4] "Except the eighth section of the Act preparatory to the admission of Missouri into the Union, approved March 6, 1820, which was superseded by the principles of the legislation of 1850, commonly called the Compromise measures, and is hereby declared inoperative."

section must have been due to the desire of the promoters of the bill to make it conform to the requirements of the caucus bargain. The "clerical error" had stamped upon the bill, in direct contravention of the reasoning of the report of January 4, a Squatter Sovereignty interpretation. The South could be satisfied with this no more than with the Missouri Compromise. The Caucus bargain had therefore been made, by which it was agreed to so frame the bill as to leave the question of the territorial status of slavery under it open for future judicial decision; and the Territorial Committees of the two Houses had, on January 21, agreed upon a bill which would produce this ambiguous result. The "clerical error" must therefore give up its short lease of life, being "superseded" by the new program.

If Douglas had any definite political convictions at all, a belief in the principle of Popular Sovereignty[1] was certainly one of them,— more than this, it was his favorite one, the one in which his chief political capital was invested. Yet he now calmly omitted from the new bill the section he had drawn up but two weeks before to embody it, without even mentioning the omission to the Senate. More than this, it is plain that he deliberately tried to deceive all who were unaware of the manipulations that were being carried on behind the scenes. In explaining to the Senate the metamorphosis which the bill had undergone in the hands of the Committee, he described briefly the bill of January 10, and in so doing he read the "clerical error" section entire. He then proceeded to describe the division of the territory effected by the new bill; he read the clause which declared the Missouri restriction superseded, and closed his report with the statement that these changes were the only ones of any importance the bill had undergone.[2] The student of the career of Douglas can scarcely doubt that this was a clever attempt to conceal from those who were ignorant of the caucus agreement, the design the execution of which now necessitated the omission of the clerical error. If any

[1] I use the term here as elsewhere in this study, in the unperverted sense of Territorial Sovereignty.

[2] "There are other amendments that do not materially affect the principle of the bill."—Globe, *Ibid.*

lingering doubt should remain, an examination of the bill, in the form it now stood, bearing in mind the nature and purpose of the Caucus agreement, must certainly dispel it. The clauses of the bill pertinent to the slavery issue were now a literal copy of the Utah and New Mexico bills, except that the present bill contained in addition the declaration nullifying the Missouri restriction. This change then, had been accomplished by the omission of the clerical error of January 10; from a clear interpretation, on the basis of Territorial Sovereignty, the bill was now reduced to a condition as nebulous and uncertain, so far as the status of slavery under it was concerned, as that which obtained in the Utah and New Mexico bills. And yet Douglas, the apostle of Popular Sovereignty, could bring himself to tell the Senate that the omission did not "materially affect the principle of the bill."

That the pro-slavery Senators viewed the changes made as producing the effect we have here represented, was speedily evident. On the following day Dixon announced that the bill, in the form it had now reached, met his entire approval. Yet Douglas was still professing to establish by it the principle of Popular Sovereignty. That Dixon was no dissenter from the Southern view of the rights of slavery is shown by all his utterances — specifically by his statement that in a question where slavery was involved he "knew no Whiggery and no Democracy."[1] The agreement of Dixon and Douglas, then, shows that the bill now met the requirements of the caucus program agreed upon by its promoters. In the form it was now cast it made clear that the Missouri restriction was repealed, but left all else indefinite and uncertain; each supporter of the bill could now expound the territorial status of slavery under it according to his constitutional doctrines until the courts should decide the question of the extent of authority possessed by the territorial legislature under the bill and the Constitution; it would then be the duty of the disappointed section of the party to acquiesce in their decision.

The same day that Dixon made known his satisfaction

[1]Dixon was a Whig; the statement is in *Globe*, 33 Cong, 1 Sess, 240.

with 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."[1] The appeal was signed by two Senators and four Representatives, but its importance was out of all proportion to these insignificant numbers. Its stirring statements roused the people of the North to a realization of the importance of the proposed repeal of the Missouri Compromise and a perfect storm of agitation and protest swept over that section, increasing in intensity as the debate continued.[2] In the South an opposite attitude was taken by the people. At first they regarded the Nebraska Bill as a gift of the Greeks, but as time went on "they flew to it as moths to the candle."[3] In the Senate the debate was fought out principally over the constitutionality of the Missouri Compromise, and the proper interpretation of the measures of 1850. There was no doubt at all of the passage of the bill in this House, but the course of the debate forced Douglas to make a final change in it.

The few Senators who opposed the bill had much the best of the argument as to the meaning and intent of the measures of 1850 and whether those measures had abrogated the Missouri Compromise. Just as Douglas had been forced by Dixon to incorporate in the bill an open declaration that that Compromise was no longer in force, so now his opponents drove him from the claim that this was because it had been superseded by the "principles" of the Compromise of 1850.[4] He turned again to the alteration of the bill so as to make it meet the objections brought against it. On February 7 he brought in an amendment which proposed to substitute for the clause "which was superseded by the principles of the legislation of 1850, commonly called the Compromise measures, and is hereby declared inoperative," the following: "which being inconsistent with the principles of Non-intervention by Congress with slavery in

[1] Printed in *Globe*, 33 Cong, 1 Sess, 281.
[2] Rhodes: I, 462-69.
[3] *Ibid*, 470.
[4] *Globe*, 33 Cong, 1 Sess, 338-45.

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 restriction, which had prevented such friends of Non-intervention as Cass and Stuart, his colleague, from supporting the bill, was given up.[2] But the new amendment did not stop with this; it contained in addition an interpretation of the bill to which it was appended. It proved to be the veritable ghost of the departed "clerical error" section — the ghost, as we shall see, of the principle of Squatter Sovereignty,— returned to haunt the bill; it was to haunt the Democratic party henceforth, like an avenging nemesis, until as the ultimate result of its equivocation it should go down in utter ruin in 1860-61. The interpretation appended to the repeal was as follows: "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 only to the Constitution of the United States." This "stump speech," as Benton designated it, at once attained wide celebrity; during the following years it was the subject of more frequent reference probably than even the Farewell Address. It will be with us to the end of our study, and therefore it merits careful examination. Comparing it with the "clerical error" section of January 10, it is seen that the phraseology is very similar and that the only material change from the former lies in the final clause, "subject only to the Constitution of the United States."

The origin of this clause we have seen in the Nicholson letter; the words are not literally those used by Cass, but in substance the phrase is the same. We have seen that in 1848 they enabled the slave-holding section of the Democracy to vote for Cass under the belief that they did not conflict with the Southern view of the right of slavery to enter the terri-

[1] *Globe*, 33 Cong, 1 Sess, 353.
[2] For Cass's attitude see *Ibid*, 343-45.

tories.[1] We have seen the part played by the same phrase — cast in the form "consistent with the Constitution"— in the Territorial Acts of 1850. Since it had such a history and possessed such a significance, this history and this significance must be taken into account in establishing the motive for its introduction into the Nebraska bill. Douglas explained, when introducing the stump speech on February 7, that it had been agreed upon by the friends of the bill as meeting their approbation.[2] The friends of the bill included most of the Northern Democrats, and practically all the Southern Senators, irrespective of party. If, therefore, the latter approved the amendment it could not be that they believed its effect would be to establish Squatter Sovereignty; and since it differed from the "clerical error" section only in the concluding phrase, "subject only to the Constitution of the United States," it follows that this was the salt that savored the bill to their taste, and the absence of which had caused the rejection of the "clerical error." This was pointed out by Chase, though he was unaware of the knowledge we now possess of the proceedings of the Democratic caucus. He showed that the phrase was unnecessary because every act of Congress or of a territorial legislature is subject to the Constitution as a matter of course. The phrase must have been inserted then, he argued, for the purpose of giving color to the Constitutional doctrine contended for by Southern men, and the practical result of the bill would therefore be to refer a new controversy to the country.[3]

The argument was unanswerable, because, as Douglas and his associates knew, though Chase did not, it described what they in party caucus had actually agreed upon. Douglas could not try to controvert it, therefore, but he did parry

[1] Jefferson Davis said that the question what was the true construction of the Nicholson letter entered into the canvass of the Southern States; that because he gave it the Squatter Sovereignty interpretation which Cass later put upon it, he was "well-nigh crucified" by the Democracy of Mississippi, and that the motive for his construction of the letter was attributed to his relationship to Taylor. (He was Taylor's son-in-law, but was opposed to his election.) *Globe*, 36 Cong, 1 Sess, *App*, 456.

[2] *Globe*, 33 Cong, 1 Sess, 352-53.

[3] *Globe*, 33 Cong, 1 Sess, *App*, 135 and 280.

it as best he could by asking if Chase was unwilling to be bound by the limitations of the Constitution, and by protesting that whether the phrase were included in the bill or not, the effect would be the same; that the amendment had no other effect than to give to the people of the territories all the power Congress was competent to confer; and that he was tired of being lectured about the "indirectness" of the bill.[1]

Two years later, however, he gave his whole case away. Trumbull, the Republican Senator from Illinois, had proposed an amendment to a pending measure declaring that the intention of the "stump speech" in the Kansas-Nebraska bill had been to give the people of Kansas through their territorial legislature full power to exclude, or admit and regulate, slavery. Speaking on this amendment, Douglas stated that his opinion had always been that the extent of the power of the people of a territory to exclude slavery, was a judicial question; if the Constitution carried slavery there, then "no power on earth" could prevent it; whatever might be the decision of the court on this point, it would not have influenced his vote upon the Nebraska bill. It was a legal question, which had been referred by the bill to the courts.[2] Thus the fact which we have demonstrated from an examination of the course of events, that the Kansas-Nebraska legislation left the territorial status of slavery entirely unsettled, is here confirmed by the testimony of Douglas himself. The territorial bills of 1854 no more established definitely the principle of Popular Sovereignty than had those of 1850.

That this was the case was admitted even by the

[1] *Globe*, 33 Cong, 1 Sess, 287.

[2] "My opinion" [as to the power of the Territorial legislature to exclude slavery] "has been well known to the Senate for years. It has been repeated over and over again. He" [Trumbull] "tried the other day, as those associated with him on the stump used to do two years ago, and last year, to ascertain what were my opinions on this point" [i. e., on the "stump speech" portion] "in the Nebraska bill. I told them it was a judicial question. My answer then was, and now is, that if the Constitution carries slavery there, let it go, and no power on earth can take it away. But if the Constitution does not carry it there, no power but the people can. Whatever may be the true decision of that Constitutional point, it would not have affected my vote for or against the Nebraska bill. I should have supported it as readily if I thought the decision would be one way as the other. If my colleague will examine my speeches he will find that declaration. He will also find that I stated I would not discuss the legal question, for that by the bill we referred it to the Courts." *Globe*, 34 Cong, 1 Sess, 796-799.

friends of the bill, during the debates on its passage. There were Northern men like Cass and Stuart who were sincere believers in the principle of Territorial Sovereignty. Southern men for the most part utterly repudiated that doctrine. As Cass correctly stated on February 15, behind the bill stood another question — the question whether by virtue of the Constitution there was a motive power in slavery under which slaves could be taken into any territory as soon as it was annexed to the United States.[1] Butler, while denying utterly the Cass doctrine that a territorial legislature possessed any more power over slavery than Congress, was willing to vote for the bill. He would agree to leave it under the Constitution to be decided by the law tribunals of the country.[2] Hunter argued in the same strain; there was a difference of opinion, he said, among the friends of the measure as to the extent of the limits imposed by the Constitution upon the territorial legislatures; but happily the bill was so framed that it could be maintained alike by believers in Squatter Sovereignty and the Constitutional motary power of slavery. It gave the legislatures power on all rightful subjects of legislation consistent with the Constitution; and the courts would decide in case of dispute whether they were exercising powers not consistent with that instrument. He regarded the bill as based on the same principle as the Clayton compromise, the best that had been offered on the subject of slavery.[3] Douglas's explanation to Trumbull in 1856 was correct, though he was incorrect in saying that in 1854 he had been frank enough to avow it. The bill was passed by an alliance of Southern and Northern men of opposing Constitutional opinions and with divergent views as to how the Constitutional issue it referred to the future would finally be decided; the part of the bill that made it possible for such a coalition to unite in its passage consisted in the clause under discussion "subject to the Constitution of

[1] *Globe*, 33 Cong., 1 Sess., 423.
[2] *Ibid.*
[3] *Ibid, App*, 224.

the United States"; and there can be no doubt that to serve this end was the purpose of its introduction.

With the amendment of February 7, the bill reached its final form so far as the subject of Non-intervention is concerned. It is true the Badger proviso was added and other minor changes were made, but the distinctive feature of the bill was contained in the amendment of February 7 and this received no further alteration. An effort was made by Chase to clear up its equivocation by adding to the clause "subject only to the Constitution of the United States" the words, "under which the people of the territory through their appropriate representatives, may, if they see fit, prohibit the existence of slavery therein."[1] He explained the object of his amendment to be to test the sense of the Senate as to whether the territorial legislature could exclude slavery if it so desired. But this, as we know, was the very question which the two wings of the Democratic party had in caucus agreed to leave unanswered. The amendment was of course rejected, after an acrimonious debate, the only result of which was to bring out more clearly than before the wide divergence of opinion among the supporters of the bill. Opposition to the bill in the Senate was confined to the Northern Whigs and a few scattering votes. The alliance of Northern Democrats, and Southern Senators of all parties, was overwhelming. The bill passed the Upper House on the morning of March 4, by a vote of 37 to 14. The majority comprised 14 Free-state Democrats, 14 Slave-state Democrats, and 9 Slave-state Whigs. The minority comprised 2 Slave-state Senators, and 12 from the free states; the latter included 6 Whigs, 4 Independent Democrats, and the two Free-Soilers. Thus of the total representation of 29 Slave-state Senators, 23 voted for the bill, 2 more would have done so if present (Toombs and Mallory) and but two voted against it. The solid South had become a reality for all practical purposes. Aonther significant feature of the vote is that it marks the break-up of

[1] *Globe*, 33 Cong, 1 Sess, 421-23.

the Whig party in the Senate. The rupture which both parties had been striving, since 1847, to avert, had at last overtaken one of them.

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 work of the House was confined to acquiescence in what the Senate had done. Perhaps it would be more correct to say that Douglas took the lead. He was the main-spring of the action on the bill in the Senate, and in the House also he had complete control. The administration influence assured him the command of a majority in the House, and Richardson, Chairman of the Committee on Territories, was his special friend and political lieutenant and now acted under his direction.[1] For this reason the contest in the House was not waged upon the form of the bill but rather over the question of its passage.

Although it had passed in the Senate by an overwhelming majority the struggle in the House was unusually severe. The reason for the more strenuous opposition here 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, being closer to the people, was more susceptible to this opinion than the Senate, and the Northern Democratic Representatives could not view the rising storm with as much complacency as did their colleagues in the Upper House. Many of them who would, if forced to face the issue, vote for the bill in spite of the evidences of the public opinion of their section, because they feared to oppose an administration measure, preferred to avoid the troublesome alternative altogether

[1] Nicolay and Hay, I, 337.

[2] Thus 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*, 33 Cong, 1 Sess, 702. For a full account of the uprising see Rhodes, I, 477 sq.

if they could. Therefore, when the bill first came before the House, March 21, instead of its being referred to the Committee on Territories, as Richardson and Douglas desired, it was sent to the Committee of the Whole by a vote of 110 to 95.[1] As the Committee of the Whole had more business before it than could possibly be disposed of during the session, this action was regarded by the friends of the bill as "killing it by indirection."[2] Some of its opponents thought this meant its failure for the entire session.[3] But Douglas was not so easily defeated. He had the administration behind him and under the influence of party discipline and by the aid of a free use of official patronage, a safe majority in favor of the bill was obtained.[4] The details of the party struggle that now ensued throw no additional light upon our subject of Non-intervention and may be passed over in silence. The House passed the bill May 22, by a majority of thirteen votes, just as it had come from the Senate, except for one change not pertinent to this discussion. The Senate concurred in the change, and May 30 the bill received the President's signature and became a law.

With the close of the Nebraska struggle the various forms of the doctrine of Non-intervention attained their final development. The story of that development is bound up as we have seen with four great political struggles: with the contest over the Wilmot Proviso, the Election of 1848, the Compromise of 1850, and lastly over the Nebraska Bill. The difference between the positions occupied by the doctrine in the Nebraska legislation of 1854 and in the territorial bills of 1850 is obvious. Concerning the theory involved there was no difference; the Popular Sovereignty of Douglas in 1854 was in effect the same thing as the Non-intervention of Cass in 1850; and the Non-intervention which the Southern leaders saw in the Nebraska Bill was the same as they had contended for in 1850. But considering Non-intervention as

[1] *Globe*, 33 Cong, 1 Sess, 701-703.
[2] Richardson's words in denouncing the action of the House.
[3] Rhodes, II, 431.
[4] Von Holst, IV, 432.

a political policy, there is a marked difference between the legislation of 1854 and that of 1850. The Utah and New Mexico bills were parts of a series of measures all of which were regarded as constituting one bargain between the North and the South. Non-intervention then, was adopted as the most expedient means of settling a specific dispute; it was accepted as a compromise, the only one attainable, and without reference to the Constitutional theory involved. In 1854, however, Douglas made the Constitutional theory of Congressional Non-intervention and Territorial Sovereignty the sole excuse for the Nebraska legislation. True, as we have seen, the bill did not establish the unequivocal principle of Popular Sovereignty. But the Nation was more or less successfully tricked into believing that it did; the "principle" was the justification put forward for the repeal of the Missouri Compromise, and consequently the doctrine was placed before the country more prominently than ever before. Douglas and his associates professed in 1854 to consummate what the Committee of Thirteen in 1850 had proposed in its report on Clay's Resolutions,— that is, to lay down Non-intervention as the principle of Territorial organization to be followed in all future time. In 1850, in short, Non-intervention was adopted as best meeting the requirements of a specific situation; in 1854 it was pretended to have been established as a general rule of action. The final step in the development of the policy was its re-christening. In his final summing up of the debate on the Kansas-Nebraska Bill, just before the vote was taken in the Senate, Douglas gave to it the happily chosen name of Popular Sovereignty, and for the remainder of our study it will not be inappropriate to refer to it under this name.

CHAPTER VI.

The Constitutional Aspect of Non-intervention, and the Resolution of Its Ambiguity.

In this chapter it is proposed to review the Constitutional arguments put forward in behalf of the various types of Non-intervention whose origin has been traced in the preceding chapters; to add such observations by way of criticism and comment as may seem appropriate; and finally to carry on the history of the doctrine to the climax toward which all its previous career had tended — the resolution of its ambiguity in the Dred Scot decision.

In the second chapter of this study it was shown that Non-intervention, both as a constitutional theory and as a political policy, originated in the South with Calhoun as its leading apostle. Whatever may be thought of the constitutional merits of his doctrine, Non-intervention, as propounded by Calhoun, was clear cut and explicit. He framed it to subserve sectional ends rather than the interests of a political party. In this lay the reason for the clearness of his doctrine as contrasted with that of Cass; the latter fashioned his to promote the interests of party harmony; Calhoun distinctly disclaimed any connection with party politics as such, and his followers took up the cry; they would know no Whiggery and no Democracy, and would write as their entire platform, devotion to the interests of slavery. The doctrine of Non-intervention as first framed by them was designed to satisfy all the conditions requisite to the protection of slavery, and to secure its entrance into the new territory. As the conditions of the territorial problem varied

they shifted their ground to meet the changed situation. This is the key to the explanation of the course of the Southern extremists from the time of the introduction of Calhoun's resolutions in February, 1847, until the promulgation of those of Jefferson Davis, his successor, in May, 1860.

The doctrine put forward by Calhoun and Rhett in the winter of 1847, then, was designed to meet, and did meet, the issue that was being made by the North at that time. That issue was, of course, the Wilmot Proviso. We have already examined the constitutional argument which Calhoun and his followers opposed;[1] it consisted, in a word, of a demonstration of the inability of Congress to impose such a restriction as was contained in the Proviso. This was sufficient for the present; but when the Mexican cession had been acquired, and the contention was raised that the laws which had abolished slavery there continued in force until repealed by positive legislation on the part of the United States, new ground had to be taken by the pro-slavery party. It was done skillfully enough by advancing the claim that the extension of the Constitution operated of its own motion to open the territory to slavery. It was absurd, the Southern men contended, to ascribe to the laws of a conquered country a validity not possessed by an act of Congress itself; as soon as the acquisition was made, any laws inconsistent with the principles of the Constitution, ceased to operate. Here the doctrine rested for several years. Northern and Southern Democrats continued to hold their respective constitutional views, and the Compromise of 1850 purposely left the issue open to decision at some future time. Finally in 1854, as we have seen, an arrangement was made looking to the ultimate termination of the difference. Such in brief outline is the history of the Calhoun type of Non-intervention down to the passage of the Nebraska Bill.

The Free-Soil doctrine was no less clear and explicit. It held that Congress *did* have complete control over slavery in the territories,[2] that our government was dedicated to

[1] Chapter II preceding.

[2] This was ascribed to various Constitutional sources, the one most frequently cited being the clause "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."

freedom. Congress, therefore, had "no more authority to make a slave than to make a king." On the contrary, it was in duty bound to preserve the territories under its control to freedom.[1] This doctrine had been termed "neutrality" by Wilmot, but it is evident that this did not mean Congressional neutrality for the *territory*, but only for the incoming state when its constitution should be drawn up. At this point the two extremes of Non-intervention doctrine met. Calhoun radicals and Wilmot Provisoists alike conceded the freedom of the people of the incoming *state* to establish or to exclude slavery. The entire issue was over its *territorial* status.

Though the two extreme doctrines typified in Calhoun and Wilmot were of directly opposite import, the meaning of Non-intervention was as clear as the words of earnest men of radical temperament could make it. But with the framing of Cass's doctrine ambiguity and confusion entered in. Fashioned in the interests of party harmony, it could not be stated with clearness, else the reason for its existence would be nullified. But our present purpose is to consider it in another aspect,— as a theory of constitutional interpretation. However much Cass may have refrained from revealing his sentiments in 1848, he did undoubtedly believe in the right of the territories as such to exercise full control over slavery, excluding it or not as they should see fit. Let us see what was the basis of this opinion.

The argument is simply an elaboration, minus its ambiguity, of that contained in the Nicholson letter of December, 1847. It started with a demonstration of the assertion that no positive warrant can be found in the Constitution for the exercise by Congress of legislative control over the people of the territories. The framers of the Constitution left it silent upon the subject of the governmental relation

[1]Chase's argument for the free character of the Territories was as follows: The Constitution nowhere recognizes the idea of a right of property in men; it everywhere refers to slaves as persons and the National government is given no authority to establish or continue slavery. On the contrary it is expressly provided that "no person . . . shall be deprived of life, liberty, or property, without due process of law." This prohibition was intended as a comprehensive guarantee of personal freedom; and taken in connection with the entire Constitution establishes the absence of all intention on the part of the founders of the government to afford any protection to slavery outside of state limits. *Globe*, 33 Cong., 1 Sess., *App.*, 138.

between the territories and the general government. Whatever power Congress may exercise over them is merely assumed; the only justification of this assumption must lie in moral necessity. The extent of the power of Congress then is limited to the establishment of social order,— that is, to the organization of a government. Even in exercising this power Congress must rely on the people for justification; if supported by them it is safe; if not, it and the measures must fall together. Any exercise of power not necessarily involved in the establishment of a temporary government,— and in this category Cass put the regulation of all domestic affairs and internal interests, including slavery, of course,— belongs to the people of the territory as a matter of right. Where do they get this right to legislate for themselves? Cass answered, "from Almighty God; from the same Omnipotent and beneficent Being who gave us our rights." It is not granted by Congress; it is inherent in the people. Congress does, it is true, grant them the opportunity of exercising it, of bringing it into practical operation. But this done, they possess it with no other limitations than those arising out of the Constitution and of their relations to the United States. Their powers of legislation embrace all the subjects belonging to the social conditions.[1]

This doctrine Cass succeeded in presenting with a surprising amount of plausibility. It will be seen that it is essentially an argument for the principle of local autonomy. If it had been advanced on the ground of expediency rather than of constitutional right, its logic would have been far greater. To men into whose ears had been dinned for years, slavery arguments pro and con, there was something captivating about a policy that promised to settle the whole vexed question for all time to come by the simple expedient of leaving it alone, so far as the national government was concerned; of leaving it to the inhabitants of the territory to settle, the same as they settled their other domestic relations. It was cleverly urged, too, on the ground that it gave expression to the great principle of American political life — the right and the ability of the people to govern themselves.

[1] The most elaborate statement of Cass's doctrine is contained in his speech of January 21-22, 1850; *Globe*, 31 Cong., 1 Sess., *App.*, 58-74.

It was identified by its advocates, with the principle for which the Revolutionary Fathers fought, and its opponents were represented as men of the same type as Lord North and George the Third, and their doctrines as identical with those which actuated the contemporary reactionary governments of Europe.[2] Finally, in its favor lay the fact that it happily expressed the spirit of the frontier — that the frontiersmen were entirely capable of "settling their own affairs in their own way" without any paternal oversight on the part of the general government. Thus the doctrine of Territorial, or Squatter Sovereignty was accepted by thousands, especially in the North and Northwest, as the easiest and most appropriate solution of the slavery issue in the territories.[1]

But when the policy was applied in Kansas, a ghastly failure resulted; never were fair hopes blasted with greater disappointment than were the expectations of Cass and his followers in the Kansas experiment. There were several obvious reasons for this result. In the first place it must be noticed that if, as Cass complained, his opponents went to the extreme of holding that the territories were to be governed only in the interests of the nation, without regard to the welfare of the territorial population, his policy erred as greatly in the other direction. It utterly ignored the fact that the nation had an interest in shaping the character of the society of the future states, no less than did their inhabitants; that, since the territories were destined to become members of the Union on a basis of equality with the existing states, the latter were vitally interested in securing a conformity in character between the social and political institutions of the former and their own. Secondly, the nation was now divided into two opposing sections on the slavery issue; these sections,— possessing each its own industrial and social system, its own habits of thought upon moral and political questions even, with an intense feeling

[2]Dickinson's Senate speech, January 12, 1848; Douglas's article in *Harper's Magazine*, September, 1859; Cass's speech of January 21-22, 1850; *et passim*. On one occasion Douglas carried its origin back to the Garden of Eden.—Sheahan, *Life of Douglas*, 267.

[1]For a fuller development of this point see "The Genesis of Popular Sovereignty" by Allen Johnson, in *Iowa Journal of History and Politics*, Vol. III, No. 1.

of antagonism between the two systems,— were engaged in a struggle for supremacy in the nation. To the desire for industrial and political leadership was added, on the one side the belief that victory would result in checking a great moral and religious abomination, subjection to which would be entailed upon it by defeat; on the other side, the conviction that its sacred rights were being ruthlessly assailed out of mere lust for political domination, a lust that appeared all the more odious because cloaked, as they believed, under a hypocritical mark of morality and religion. Under such circumstances and with such feelings the contest was being waged. The contestants could not view with indifference the acquisition of territory which must certainly accrue to one or the other of them, to the consequent augmentation of its strength. They could not fail, when such territory was being settled preparatory to admission to state-hood, to feel an interest in the shaping of its institutions with respect to the vital issue between them; nor fail to endeavor to throw around the nascent political society such conditions as would shape its institutions on the model of their own, and so gain its adherence, when it should become a full-fledged state, in the sectional struggle. In short, this was pre-eminently a question for *national* decision; and even though the constitutional argument for Cass's doctrine were faultless, it would have been indefensible from the standpoint of statesmanship; and it was nothing short of political blindness to expect that it could be fairly applied.

In general, Cass's doctrine failed in this, that though put forward as the solution of a specific problem, it did not reckon with the most vital factors and conditions pertinent to that problem. One of these has just been discussed, its failure to consider the national and sectional interests involved. But more specifically it was lacking in definiteness; the point at issue was the territorial status; when was the power of local determination to begin to operate? Calhoun reduced Cass's doctrine to absurdity by answering with the first Squatter. Cass repudiated such a construction, of course. But he never could be brought to any more definite answer than to say it should begin with the institution of a

local government.[1] But Congress institutes this government; until it does so the national domain is under its absolute control; and Congress was swayed by sectional considerations. Would not the party in control there so time the establishment of the territorial government as to best promote its sectional interests? Douglas, on this point, took the same ground as Cass; whether the number requisite for the establishment of a local government were fixed at fifteen or twenty thousand was immaterial, he said; this was for Congress to decide. But the fact that a local government was deemed necessary implied that the persons under it constituted a people with the right to determine its own local concerns.[2] But on this hypothesis what logical reason could there be for denying to Congress administrative control of the territory until the population should be sufficient to qualify it for statehood? Thus the territorial question might be evaded altogether. The supposition stated may be extreme, but it is evident that here was a flaw in the doctrine. Ridicule as he would the question how many persons were required to constitute a people, Cass could not find any satisfactory answer for it, for the simple reason that his doctrine evaded the main issue in dispute. It failed to answer the disputed question as to the extent of the authority which Congress could constitutionally exercise over the territories,— whether it was limited to the control and disposal of the *land* as such, or whether it included the general powers of governing the territorial population.

Another defect of the doctrine of Territorial Sovereignty was the inconsistency and narrowness of its application. The Non-intervention it essayed to establish was everywhere adulterated with intervention of the most decided type. In the Nebraska Bill there was governmental interference and control at almost every point. As Chase pointed out, it was a mockery to call it Non-intervention. Cass, however, disclaimed responsibility for such provisions. He was willing to let the territorial population elect its Governor,

[1] Speech of January 21-22, 1850; *Globe*, 31 Cong., 1 Sess., *App.*, 58-74.
[2] Douglas's *Harper's Magazine* article, September, 1859.

and, presumably, its other officials.[1] The Nebraska Bill actually omitted the restriction,— applied to every other territorial government in our history,— that the acts of the legislature should be submitted to Congress for its approval or rejection. Even then the bill was but a travesty upon the principle it professed to embody. But since Cass disclaimed the responsibility for the limitations upon the application of the principle, they cannot with fairness be charged against his doctrine. But this escape only leads it into another dilemma; for a fair statement of the possibilities of a free application of the doctrine, is at once its complete condemnation; grant to the territory that freedom from control which the theory logically required and wherein would it differ from a sovereign state? And what becomes of the theory of the territorial period as being a time of probation and preparation for statehood? If this were to be done away with, why not do away with the territorial status altogether? Clearly the doctrine proved too much.

To take up its possibilities from another point of view— The essence of the doctrine was that the territorial population should be "perfectly free to form their own institutions in their own way." In reality those who used this phrase so glibly did so with immediate reference only to the institution of slavery. But there are other domestic institutions. It is true, as Cass and Douglas were so fond of stating, that Congress did not undertake to regulate the relations of husband and wife, or parent and child; but there was never any necessity for doing so, until the establishment of polygamy in Utah. And when, in that case, the necessity arose, Congress *did* resort to just such interference. Under Cass's doctrine the territory would be free to establish white slavery, or polyandry, or child-marriage, or any other social abomination, and the nation of which it was to become a component member could not interfere. Probably Cass did not contemplate such applications of his doctrine; but the doctrine readily lent itself to them, and it is not Cass himself, but his doctrine, that we are criticising. That the sup-

[1] *Globe*, 33 Cong., 1 Sess., *App.*, 270.

positions we have presented are no impossible perversions of it is proved by the fact that such a man as Robert Toombs, in his enthusiasm for it, could advocate in the Senate the perfect right of the territories to establish some of the very things we have indicated.[1]

Was local autonomy then, with respect to slavery, an impossible policy under any consideration? Obviously it was not; but it is equally obvious that for its successful application, conditions far different than those under which Cass brought it forward were essential. He based it on constitutional right; as such it was an absurdity. But if it had been based on expediency,— if there had been general agreement as to the constitutional rights of the parties involved,— the North, the South, and the territorial population,— if with a definite understanding that the national government had entire control of the territories, it had been decided as a matter of expediency to defer the slavery issue to local option, the plan might conceivably have worked satisfactorily. But on these assumptions it would have ceased to be Territorial Sovereignty; and it is, of course, no justification for a policy put forward under given conditions, to cope with a given situation, to show that under essentially different conditions it might have met with success.

Such was the doctrine whose adoption as the permanent territorial policy of the country Douglas sought to secure. After he took up its active championship, he identified it so closely with his own political personality that an exposition of it as set forth by him must be intertwined with some account of his political career.

It is not possible to assign any precise date for Douglas's conversion to Non-intervention. He himself, during the debate on the Soulé amendment, on June 17, 1850, made a statement on this point, but like so many of his assertions, the records tend to belie it. He asserted his belief in the

[1] "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." Quoted in Trent, *Southern Statesmen of the Old Regime*, 234.

constitutional doctrine that the people of a territory about to come into the Union had a right to be received with any domestic regulation they might see fit to make, so long as they did not violate the Constitution. He further stated that he had always held, not this opinion merely, but also that the people should be allowed to settle such questions while under the territorial status as well. Any vote he had ever recorded in opposition to this principle he claimed had been given under the influence of instructions and was therefore not his own.[1]

The only thing that can be said of these statements is that they were untrue. In spite of his explicit declaration of a steady faith in Non-intervention, the records show that his course had been far from consistent with it. In 1845, to go back a few years, he had secured the insertion in the joint resolution for the annexation of Texas, of a clause extending the restriction of the Missouri Compromise to any states that might be formed out of Texas north of 36° 30'.[2] A month later (February, 1845), in a speech on the admission of Florida and Iowa, he had touched upon the nature of the territorial status, likening it to the minority of the individual. As a father can bind his child during this period, so Congress can control the territories.[3] It is obvious then that he had not yet conceived the idea of a lack of power in Congress to govern and control the territories.

In 1847 Douglas advocated the extension of the Missouri Compromise line to the Pacific, introducing, during the debate on the Oregon bill, an amendment to that effect; it was, as we already know, rejected, and Oregon was organ-

[1] *Globe*, 31 Cong., 1 Sess., *App.*, 911.

[2] *Globe*, 28 Cong., 2 Sess., 193.

[3] "The father may bind his son during his minority but the moment he attains his majority his fetters are severed, and he is free to regulate his own conduct. So with the territories; they are subject to the jurisdiction and control of Congress during their infancy,—their minority; but when they attain their majority, and obtain admission into the Union, they are free from all restraint. . . ." *Globe*, 28 Cong., 2 Sess., 284.

ized as a free territory.[1] He held to the same policy also during the Oregon debate of 1848, and a year later, on the eve of the Compromise struggle of 1850, he pronounced a eulogy on the Missouri Compromise which later, on account of his changed attitude toward it, attained wide notoriety. He declared it possessed an origin "akin to that of the Constitution of the United States," and that all the evidences of contemporary public opinion seemed to indicate that it "had become canonized in the hearts of the American people as a sacred thing, which no ruthless hand would be ever reckless enough to disturb." He further referred to his vote in 1848 for the extension of the Compromise line, to show that at that date the Constitutional right of Congress to legislate upon the subject of slavery in the territories was not virtually resisted, "if, indeed, it was seriously questioned."[1] We quote this in this connection not, of course, to show the state of public opinion upon the question of Congressional power over the territories, but as evidence of Douglas's own state of mind. Down to this time, October, 1849, his published speeches disprove utterly the statement he made eight months later that he had always believed in Non-intervention and territorial self-control, and had opposed them only under the stress of instructions from his state legislature.

But could not Douglas, like other men, urge the right to change his convictions on the territorial issue? Undoubtedly he could and our argument is not directed against this. Douglas did not claim, in 1850, to have changed his opinion; he simply tried to create the impression that he had always advocated the new faith, when as a matter of fact he was taking it up even now purely as a matter of expediency and was not yet a convert to it on Constitutional grounds. Only three months before, in his great two-days' speech of March 13 and 14 on the territorial question, he had based his opposition to the Wilmot Proviso on expediency alone; he had "no constitutional difficulties" on the subject.[2] And even

[1] *Globe*, 29 Cong., 2 Sess., 429.
[1] Speech, October 23, 1849, printed in Illinois *State Register*, November 8, 1849.
[2] "I have never differed with my constituency . . . except upon one solitary question (the Wilmot Proviso) and even on that I have no constitutional difficulties," *Globe*, 31 Cong., 1 Sess., *App.*, 373.

two months later than his declaration of June 17 in favor of Non-intervention, he explained his present opposition to the extension of the Missouri line on the same ground. If the situation were the same as in 1848 he would be glad, he said, to see the issue settled in this way; but he opposed it now solely because he was unwilling to change the boundaries of California, or to throw her back into the territorial status.[1]

It is plain then, judging Douglas out of his own mouth, that up to August, 1850, he had no settled constitutional convictions on the territorial issue. In addition to the inconsistent attitudes already cited by him upon the issue, it must be borne in mind also that he was the author, in this session, of the non-committal Utah and New Mexico bills. All this hedging about on the question of the power of Congress over the territories can be ascribed to but one or the other of two alternative motives: either he was actuated by motives of expediency or by pure demagoguery; the former seems the more probable, as well as the more charitable explanation to adopt.

In view of Douglas's course in 1854 it will be well to notice here what he believed in 1850 to have been the disposition made of the territorial issue in that year. In his speech on the territorial question, already alluded to,[2] he demonstrated, to his own satisfaction at least, that the Mexican laws against slavery would remain valid until positively repealed by some competent legislative tribunal.[3] In the passage of the territorial bills he advocated the Norris amendment, the effect of which was to delegate to the territorial legislature all the authority of Congress over slavery, leaving untouched the question of pre-existing status; and in his defense of the Adjustment measures made on his return home to Chicago, he stated that neither party had gained or lost anything as to slavery, for the territorial bills were silent on the question except for the Soulé amendment.[4] Thus, while his own opinion must have been that slavery

[1] Debate August 6, *ibid.*, 1519.
[2] March 13 and 14, 1850.
[3] *Globe*, 31 Cong., 1 Sess., *App.*, 372.
[4] Sheahan, *Life*, 168 sq.

was excluded by the Mexican laws until the territorial legislature should see fit to repeal them, no one knew better than he that Congress had found and left untouched a dispute on this point, and his statements in the Chicago speech prove that in 1850 he did not believe or assert that Congress had taken any stand with reference to this dispute; that he then believed the principle of the territorial bills, if such designation can be properly used, was Non-intervention in the literal sense of the term.

Notwithstanding the actions we have been tracing, Douglas was deemed in 1850 an advocate of Non-intervention. This appears frequently in the debates, and his own course on the Compromise measures was such as to put him before the country in this light. Our examination of his record does not of necessity controvert this; it merely establishes the fact that up to this time Douglas was shaping his policy from motives of expediency and that to this rather than to any constitutional conviction his advocacy of Non-intervention in 1850 must be ascribed. If, down to the fourteenth of March, he had no constitutional difficulty in voting for the Wilmot Proviso — the territorial bills having been reported by him to his Committee the preceding December[1] — there is no reason to suppose that he received any new light before the final passage of the measures.

When, then, did Douglas begin to believe in the constitutional doctrine of Territorial or Popular Sovereignty? To this the writer can give no definite answer. It is doubtful whether Douglas himself could have given one. It has been shown that he adopted the policy at first from expediency; it would not be strange if in his advocacy of it in 1854 and later he came insensibly to a belief in its constitutionality, and therefore in the lack of power in Congress to administer the internal affairs of the territories. In 1854, under circumstances which have been described in the preceding chapter, Douglas suddenly began to argue that in the territorial legislation of 1850 a principle of organization had been laid down for all future territories. In the defense of

[1]For Douglas's own account of the origin of the Utah and New Mexico bills and his share in them see Sheahan, 166.

this assertion during the course of the Nebraska legislation he became, as we have seen, an ardent advocate of Non-intervention; and while he skilfully withheld any definite statement of the particular type he stood for, he managed to create the impression that his doctrine was that of Territorial Sovereignty.

The great "principle" which was made to play so large a role in the Nebraska legislation was as elusive and requires as careful exposition as anything connected with the subject of Non-intervention. As urged by Douglas and the other advocates of the bill, if it was not a delusion and a trick, it was unquestionably the principle of territorial self-control or territorial sovereignty. The former Congressional policy of fixing the status of the new territory with respect to slavery was denounced by them as sectional in character, un-American and unconstitutional. The new principle was lauded as being constitutional, American and politic; politic because it would remove the slavery issue from the halls of Congress; American because it was the principle of self-government, referring to localities immediately concerned the determination of their own affairs and institutions. Douglas himself, in summing up the Nebraska debate, on March 3, 1854, described it as "the great fundamental principle of self-government" which was to leave the people of the territories "free to regulate their domestic concerns in their own way, subject only to the Constitution of the United States." It was only for the purpose of removing the legal obstacles to the enjoyment of this principle, he claimed, that the Missouri Compromise was being repealed.[1]

Thus the impression was sedulously diffused abroad that the bill would establish territorial control over slavery, entirely free from extraneous influences. That Douglas himself desired this in 1854, was attested by his bitterest enemies in 1860.[2] It was probably not his own free choice, but

[1] *Globe*, 31 Con., 1 Sess., *App.*, 326-27.

[2] That is, by his Southern Democratic opponents, in the Senate debates of May and June.

rather the necessities of the party situation, that led him to substitute for the unequivocal declaration in favor of Popular Sovereignty contained in the "clerical-error" section of January 10, the ambiguous circumlocution of the "stump-speech" clause of January 23. Yet the fact remains that this was done; and we know for what purpose the qualification "subject only to the Constitution of the United States" was put into the "principle" and what was its significance in the eyes of Southern Senators. Douglas continued to represent to the public that Territorial Sovereignty was the principle of the bill. But as the article for sale not infrequently fails to measure up to the representations of the salesman, so it was in this case. The dust thrown by Douglas and his supporters might obscure from the eyes of the general public the real nature of the enactment; but the Senate was well aware of it; and especially did the promoters of the bill realize the hollowness of the pretensions that its principle was unequivocally the principle of Territorial Sovereignty.

Neither in 1850, during the Compromise agitation, nor in 1854, while the Nebraska bill was being discussed, did Douglas put forward any formal constitutional defense of Popular Sovereignty. The reason for his failure to do so in 1850 is obvious from our examination of his political career; he was supporting Non-intervention from a belief in its expediency; he had not as yet erected it into a constitutional doctrine. And in 1854 a sufficient explanation is found in the necessities of the legislative situation under which he piloted the Nebraska Bill to its passage. They precluded his making any definite statement in favor of Territorial Sovereignty. During the years following 1854 the course of events in Kansas was such that the operation of Popular Sovereignty seemed to have intensified rather than removed the slavery issue from the halls of Congress. Pierce's administration assumed an attitude toward Kansas distinctly friendly to the Pro-slavery party, and Douglas valiantly supported it. But the violence and anarchy in the unhappy territory became such that Pierce, in January, 1856,

made it the subject of a special message to Congress.[1] In March, Douglas, as Chairman of the Committee on Territories, submitted a report on Kansas to the Senate, in which he enunciated with considerable detail his constitutional doctrine of the relation of Congress to the territories.[2] This report constitutes a landmark in the evolution of Douglas on the territorial issue.

The argument which sought to determine the constitutional extent of the powers of Congress with respect to the territories, was an adoption, with additions and with much elaboration, of the constitutional reasoning employed by Cass in the Nicholson letter. The same attitude was taken toward that clause of the Constitution giving to Congress power to dispose of, and make rules and regulations for, the territory and other property of the United States; the same arguments were employed to show that this had not been intended as a grant of governmental jurisdiction over territorial populations. But here the similarity ceases; Cass had contented himself, in the Nicholson letter, with the purely negative demonstration of the absence of constitutional warrant for Congressional jurisdiction over the territories; such warrant as it possessed he had grounded entirely on necessity and therefore he had declared that it must be limited to the demands of necessity. Thus his positive constitutional doctrine was a matter of pure assumption on the part of Congress. Douglas repudiated this reasoning from necessity. The Federal government is one of delegated and limited powers, he said; necessity might furnish satisfactory reasons for enlarging the Federal authority by amending the Constitution, but it could afford no excuse for the assumption of powers not delegated, and which by the tenth amendment had been expressly reserved to the states, or to the people. It was, therefore, necessary to find some positive warrant in the Constitution for the exercise of the power of organizing territorial governments.

This warrant he deduced by implication from the power to admit new states. *Section* three, *Article* four, of the

[1] Richardson, V, 352.
[2] Given in Cluskey, *Political Textbook*, 380-91.

Constitution grants this power to Congress; and *Section* eight, *Article* one, gives Congress authority to make all laws necessary and proper for the execution of the power specifically granted. Douglas argued that the organization of a territory was a necessary and proper means of enabling the people thereof to form their domestic institutions and establish a state government preparatory to admission into the Union. Thus the power of Congress to pass an act for the temporary government of a territory is clearly included in the constitutional provisions cited above. But this power, being incidental to the express grant, must be exercised in harmony with the nature and object of that grant. Since the right to institute a temporary government for a territory is derived from the grant of power to admit new states, the organic act of the territory must contain no provision or restriction that would impair the equality of the proposed state with the original states, or place any limitation on its sovereignty not imposed by the Constitution and binding on all the states alike. So far as the organization of a territory may be necessary and proper as a means of carrying into effect the provision of the Constitution for the admission of new states, and when exercised only with reference to that end, the power of Congress is clear and explicit; but beyond that point the authority cannot extend, for the reason that all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people. "In other words," the argument concludes, "the organic act of the territory must leave the people entirely free to form and regulate their domestic institutions and internal concerns in their own way, subject only to the Constitution of the United States, to the end that when they attain the requisite population and establish a state government . . . they may be admitted into the Union on an equal footing with the original states in all respects whatsoever."

This argument is typical of the methods employed by Douglas in his political and constitutional reasoning; it is a typical specimen of his ability at marshaling facts and twisting logic to support whatever aim he might have imme-

diately in view. The chief advantage of this mode of argument was that it enabled him either to win, or to retire in good order from, every forensic contest in which he engaged; its chief defect was that as his aims varied from time to time so did his arguments, and even, on occasion, from hour to hour. For this reason, consistency was never conspicuous among his political assets. Plausible as is the argument before us, it cannot withstand careful scrutiny. It leads on from one position to another with much skill; but the final conclusion is a glaring *non sequitur,* requiring only a statement by itself to make patent its absurdity. Because the states must stand on a basis of political equality, it follows, we are gravely told, that there can be no restrictions placed upon the power and freedom of the territories. As well argue, to use Douglas's own simile, that the imposition of parental restrictions upon a minor precludes his enjoyment of political rights on a basis of equality with his fellows when he attains his majority. The logical outcome of such a mode of reasoning would be to annihilate the distinction between the state and the territorial status. If Douglas had this distinction clearly in mind he chose frequently to disregard it; and much of his argument for Popular Sovereignty is based upon a skilful juggling of these two distinct political terms. This confusion is evident in his famous *Harper's Magazine* article of 1859[1] and it is seen further on in the very report of 1856, which we have been discussing.[2]

On occasion, however, Douglas could present, as clearly as any one, the true political status of the territories. In this same report of March 12, in another connection, he himself completely refutes the idea of any sovereignty inhering constitutionally in a territory. He argues that there is no parallel between the insurgent Free State party in Kansas and the parties involved in the Rhode Island troubles of the

[1] "The Dividing Line between Federal and State Authority," *Harper's Magazine,* September, 1859.

[2] e. g. "The Kansas-Nebraska Act was strenuously resisted by all persons who thought it a less evil to deprive the people of new *states and territories* of the right of state equality and self-government under the Constitution, than to allow them to decide the slavery question for themselves, as every *state* of the Union had done, and must retain the undeniable right to do, as long as the Constitution of the United States shall be maintained as the supreme law of the land." See too, in this connection, his argument on the illegality of the operations of the Emigrant Aid Society, (Cluskey, *ibid*) and the jumbling of the terms "state" and "territory" in the stump-speech clause of the Nebraska Bill.

Dorr rebellion. The parties to that contest assumed as fundamental truths that Rhode Island was a sovereign state in all that pertained to her internal affairs and that the right to change their organic law was an essential attribute of sovereignty. But the principles upon which that contest was concluded were not involved in the revolutionary struggle now going on in Kansas; for the reason that "the sovereignty of a territory remains in abeyance, suspended in the United States, in trust for the people, until they shall be admitted into the Union as a state." Until then they may enjoy only such rights of self-government as have been granted them in their organic law, passed by Congress in conformity with the provisions of the Constitution. Their rights and privileges "are all derived from the Constitution through the Act of Congress."

Thus Non-intervention was essentially an opportunist doctrine. As such the applications made of it varied to accord with the political bias of every politician who wielded it. The difficulties in its interpretation and application were primarily due, however, to an underlying one — that of the essential nature of our political and constitutional system, and of the relation existing between the individual states and the national government. Until this basic difference should be reconciled there would be no agreement upon the meaning or in the application of the doctrine of Non-intervention. In the period which our study has reached — the period of the Kansas experiment following the legislation of 1854 — the two important types of Non-intervention were those held by the successors of Calhoun, and by Douglas, the imitator, with variations, of Cass. In the territorial legislation of 1850 these two parties had compromised their differences by uniting upon the negative policy of Congressional non-interference simply, each group waiving insistence on the recognition of the positive portion of its doctrine. In 1854 they agreed to adopt Non-intervention as a general policy to be followed in the organization of territories; they further made definite provision for the decision of the Constitutional question underlying their differing interpretations of

the doctrine, and agreed to submit to the decision which should be made in accordance with this agreement.

Thus a definite period was put to the opportunist qualities of the doctrine. When the time contemplated in the agreement should arrive, either the Northern or the Southern wing of the Democratic party must abandon its pretensions, held since 1848 and under cover of which the harmony and unity of the party had been preserved. The moment came with the Dred Scot decision in 1857. As might have been foreseen, however, the exigencies of Douglas's political situation made it impossible for him to comply with the terms of the agreement of 1854. To do so would be to commit political suicide; and even if he had been willing to consent to this it is difficult to perceive what advantage would have accrued to the South thereby. Under the stress of the situation he did what might have been expected from the history of his political career. He escaped from his difficult situation under cover of a legal quibble, refusing to regard the Dred Scot case as an authoritative decision of the issues involved in the caucus bargain of 1854. This necessitated his adoption of the theory of unfriendly legislation, known as the Freeport doctrine, and his exposition of Popular Sovereignty underwent a certain amount of modification to accord with the changed circumstances of the situation which had been brought about by the Dred Scott decision. This attitude of Douglas, combined with the progress of events in Kansas, rendered him unavailable for the further service of the interests of the Pro-slavery party; this fact was signalized by his break with the administration over the question of the Lecompton Constitution. The Southern Democrats therefore made use of his adoption of the doctrine of unfriendly legislation and his consequent breach of the caucus bargain of 1854, as a pretext to read him out of the party. They now took, also, the step which was the logical sequence of their constitutional doctrine — they demanded that Congress afford them protection in the exercise of the right of holding slaves in the territories, which they believed, and the Supreme Court had decided, constitutionally belonged to them.

With this advance, the two sections of the Democratic party came to the parting of the ways. Non-intervention had outlived its usefulness. The logical result was the party schism of 1860, whose inception really dates from the breach between Douglas and the administration over Lecompton, in the autumn of 1857. The sequel to the party schism was the victory of the Republican party, and the supercession of the era of debate and compromise. The roar of the guns in Charleston harbor proclaimed that Non-intervention, along with every other compromise of the ante-bellum period, had become an obsolete issue. It had been at best but a make-shift. As such it had served its purpose for a decade; as such it was entirely fitting that it should pass off the political stage with the passing of the conditions which had made the attainment of that purpose desirable.

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