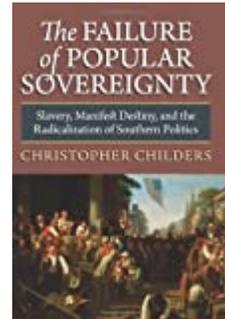




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Slavery as Sovereign

For historians, the concept of “popular sovereignty” has largely existed within the confines and context of the decade and a half before the firing on Fort Sumter. According to the simplest explanation, Senator Lewis Cass of Michigan, seeking to win support from northern and southern Democrats as he sought the nomination in the presidential election of 1848, devised “squatter sovereignty,” meaning that those who lived in territories should be able to vote on whether to permit slavery. Shortly thereafter, Senator Stephen Douglas of Illinois, ambitious for advancement himself, refined it into popular sovereignty and took the idea to its logical conclusion when his Kansas-Nebraska Act of 1854 sought to create two territorial governments, repealing the Missouri Compromise line of 1820 and creating, as he predicted, a “hell of a storm.” Ultimately, the U.S. Supreme Court rejected popular sovereignty in *Dred Scott v. Sandford* (1857), declaring that slavery could enter any territory, but neither Douglas and his supporters nor the newly formed Republican Party accepted that outcome. As the most eloquent opponent of popular sovereignty later said

in his second inaugural address, “And the war came.”

As Christopher Childers demonstrates in this thorough and thoughtful book, both popular sovereignty and controversy over its meaning are as old as the nation itself. *The Failure of Popular Sovereignty: Slavery, Manifest Destiny, and the Radicalization of Southern Politics* telegraphs part of its argument in its title. Not only did popular sovereignty fail, but it also had the opposite effect than its supporters intended. Rather than mollifying the South, it contributed to the region’s increasingly radical view of American politics and government, and to the radicalized approach to the role that southerners would play in national affairs. Its effects also shaped the slavery issue, and extended far beyond it, by raising two questions that proved interrelated: whether slavery could expand beyond existing states and into the territories, and what power the federal government could exercise over those territories and the institution of slavery.

Just as the question of whether slavery would move into western areas like California and Kansas shaped

the debate in the years leading up to the Civil War, the same question roiled the Confederation Congress before the writing of the Constitution. Thomas Jefferson's Ordinance of 1784 empowered citizens of territories to govern themselves and embodied his vision of a self-perpetuating republic, a blueprint for decentralized territorial administration that southerners would celebrate for years to come (p. 11). But, in a contradiction that seemed to characterize Jefferson or how we choose to read his words and views, he sought to prohibit slavery within those lands as of 1800. A congressional minority of southerners blocked that provision, to Jefferson's displeasure, and thereby set the tone for decades to come: the less populous South would defend its right to control its local institutions, specifically its peculiar institution.

The 1784 ordinance ultimately mattered less to this debate than the Northwest Ordinance of 1787. Jefferson apparently influenced Nathan Dane, the congressman from Massachusetts who wrote a similar clause banning slavery. This time, southerners voiced no objections, and Childers's explanation suggests how much the debate over slavery and territorial sovereignty would evolve—or devolve—in the next eighty-plus years: “Upper South leaders in particular, who held considerable sway in the debate over the ordinance, tended to support securing the expansion of slavery in areas where it already existed or would likely flourish, thereby ignoring areas like the Northwest Territory” (p. 14). But, as Childers notes, slavery in fact existed in the Old Northwest: some slaveholders had migrated there, and thus the Confederation Congress, the new U.S. government, and the area's residents themselves combined to create a degree of popular sovereignty even where it presumably did not exist. Thus, both Congress and the settlers in the territories and states carved out of the area struggled with the political, social, and legal ramifications of when, where, and whether slavery would be permitted there.

Originally, the idea of expanding slavery in the Southwest satisfied southerners, but that issue, too, proved politically fraught, at the local and national levels. Dividing the Louisiana Purchase meant dealing with existing settlers who wanted to determine their fate. Congress went along during the new Republic's first three decades, devising something akin to a policy of barring the expansion of slavery in the North and permitting a form of popular sovereignty in the South by allowing a local vote. When Illinois entered the Union in 1818 with hopes of changing its constitution after statehood to permit slavery, northerners signaled during the debate over admission that they would fight further expansion

of slavery not just in the Old Northwest, but across the North.

Thus, the subsequent debate over Missouri's admission, resulting from New Yorker James Tallmadge's amendment requiring an end to slavery in a territory where it already existed, crystallized several topics. As Childers points out, when Jefferson likened it to “a fire bell in the night,” he lent drama to the Missouri controversy; but it stretched the truth, “since the topic had been sometimes heatedly debated for more than three decades. Childers argues that “the cause for anxiety came not in the threat to slavery itself, but in the fact that the Tallmadge amendment violated the principle of state equality and blurred the lines of power between the states and the federal government” (p. 41). Also, the South wound up having to refute its previous position, which had accepted federal control over slavery in the territories, and thus moved toward a less nuanced view: slavery must be defended and protected at all costs. The lack of a two-party system at the time also may have contributed to the battle: old Federalists hoped to revitalize their party by effecting new alliances, and northern Jeffersonians, resenting the power of southerners within their coalition, joined in seeking to restrict slavery. Frightened southerners responded by objecting to this degree of congressional power over territorial affairs; that contradicted their previous position, which had permitted that interference, given that it had favored the South, but they and their northern allies made the telling point that measures like this one treated them as unequal partners. It seems not to be lost on Childers that the arguments raised during the Missouri crisis foreshadowed another debate over the extension of slavery that would end more violently.

Indeed, as Childers shows, moderates won the battle over Missouri but the radicals won the war for southern voters—and recalibrated the question of popular sovereignty. “Southern conservatives hearkened back to the principles of 1798—as embodied in the writings of Thomas Jefferson and James Madison—by insisting on states' rights and strict construction. But they also began advancing their correlate—the doctrine of territorial self-government—as another means of defense against rising antislavery sentiment,” Childers explains (p. 78). The years after the Missouri Compromise brought not only the rise of the second party system and a revitalized abolitionist movement, but also a comparatively little remembered controversy over slavery in Arkansas. Popular sovereignty lay at the heart of it: when and whether the citizens could protect slavery and how they would do so, either through Congress or the constitution they would

submit to Congress. The issue became part of party politics immediately, as the new Whig Party tended to oppose slavery in the territories but its northern and southern contingents remained divided about the issue. The Jacksonian Democrats, true to their name and their ideology of limited government, remained mostly content to leave it to the voters.

That John C. Calhoun remained aloof from, involved in, and a contributor to this combustible party system should be no surprise to historians of the era, but Childers puts Calhoun's thinking in the perspective of popular sovereignty. In the late 1830s, Calhoun unflinchingly asserted that Congress had no power to prohibit slavery in the territories. But who did possess the power to legislate on the issue? Childers asks (p. 92). Calhoun anticipated the *Dred Scott* decision by denying that Congress could empower a territory to do something in this case, end or bar slavery that it lacked the power to do itself. Nor, Calhoun said, could a territory do what Congress lacked the power to do. At the time, Calhoun's views struck even a substantial number of southerners as extreme, but, just over two decades later, they exemplified the southern approach to territorial sovereignty.

Given that Iowa, Florida, and Texas came up for debate in the 1840s, congressional debates over popular sovereignty proved more common and boisterous than most historians have suggested. These battles enabled Douglas to make a splash, sooner than many realize. Childers points out that Douglas started out by seeking a middle ground that both sections could accept. He made clear that he did not support all of the provisions of the constitutions of either Florida or Iowa. Determining the prudence of individual clauses within a prospective state's constitution, however, did not fall within the purview of Congress, Childers notes. Congress need only worry about whether a territory created a state constitution with a republican form of government which, as Childers states, meant that southerners had few reasons to object to Douglas's formulation, because the privilege of self-government applied only at the moment that a territory sought statehood and not a moment before, leaving slavery up to the territories (p. 99).

If the debates over those territories seemed involved, they paled in comparison with what the Mexican-American War wrought: the Wilmot Proviso. Previous attempts to prohibit slavery had focused almost exclusively on states entering the Union, not territorial acquisitions, Childers points out. Slaveholders had opposed previous efforts to proscribe slavery from incom-

ing states as an infringement on the right of a territory to draft its constitution and establish local institutions free from congressional intervention. The Wilmot Proviso not only renewed that conflict, but also extended it to the contested terrain of the territories (p. 103). David Wilmot's language owed a great deal to the Northwest Ordinance of 1787, when southerners went along, and Tallmadge's amendment designed to make Missouri a free state in 1819, when southerners found an acceptable compromise.

The third time proved not to be the charm. A Calhoun acolyte proposed a compromise allowing popular sovereignty and thus the possibility of slavery in the Mexican Cession because so much of it lay south of the Missouri Compromise line, whose constitutionality he continued to question and when his effort failed, Calhoun and other southerners insisted that it proved the North's unreasonableness and untrustworthiness. Calhoun made a perceptive observation regarding popular sovereignty that would haunt its southern supporters until the coming of the Civil War: the doctrine may have virtually guaranteed the expansion of slavery in the past, but it likely would result in the creation of free states in the future, Childers observes. Furthermore, he predicted that if the emerging northern interpretation of popular sovereignty that permitted territorial legislature to permit or prohibit slavery prevailed, antislavery Americans could take control of territorial governments and ban slavery before southerners could populate the territories (p. 115). Calhoun argued that slavery remained legal until and unless a territory barred it.

The Wilmot Proviso inspired the most sustained northern attempt to define territorial government and popular sovereignty, albeit mainly among presidential hopefuls courting southern voters. James Buchanan proposed sticking with the Missouri Compromise line because slavery, he judged, could never survive in the Mexican Cession. George Dallas, a fellow Pennsylvanian and James Polk's vice president, managed to be more pro-southern than Buchanan by advocating that the citizens of a territory make the decision for themselves. New York's Daniel Dickinson introduced resolutions contending that the federal government could do nothing to new territories or states that deprived them of equal footing with the original thirteen states but southerners such as Calhoun found that unacceptable because it enabled those additions to the Union to prohibit slavery if they wished.

Dickinson apparently had consulted his friend,

Michigan Democrat Cass, who planned to run for president in 1848, saw the southern distaste for the proposal, and fashioned one of his own. While Dickinson unequivocally affirmed that territorial legislatures could permit or prohibit slavery, Cass restored the ambiguity that gave popular sovereignty intersectional appeal by evading the question of when a territory could exercise its sovereignty (p. 137). Thus, Childers wryly observes, Cass advanced a carefully wrought and artfully vague argument that not only confused his contemporaries, but has [also] puzzled historians ever since by trying to adopt each section's argument (p. 138). Complicating matters, the question arose whether the Mexican residents of the newly acquired territory would vote; if so, their nation's history of banning slavery figured to checkmate southerners—an aspect of the racial divide that historians have understated and Childers delves into. Ultimately, Cass managed to persuade many northern and southern Democrats alike not to trust him, and lost the election to Whig Zachary Taylor.

Between the Mexican Cession and Douglas's introduction of the Kansas-Nebraska Act, though, southern feelings about popular sovereignty evolved. As Childers notes, it could give their section something it could not otherwise have: slavery in Kansas. But they paid a mighty price (p. 201). Although Douglas remained the driving force behind the Kansas-Nebraska Act, and his fellow Democratic senator David Rice Atchison of Missouri the driving force behind pushing the Illinoisan into repealing the Missouri Compromise in favor of popular sovereignty, southern Whigs also played a crucial role. They hoped to prove to their constituents that they could be trusted more than Democrats could be. Thus, Childers's study reminds us of the double-edged irony. Douglas cared less about whether slavery expanded than he did about organizing the Great Plains for the transcontinental railroad that he supported, and divided the Democratic Party by demanding fealty to his vision of popular sovereignty, which the southerners who supported him viewed differently. Southern Whigs had less interest in popular sovereignty than in their own partisan advancement and the spread of slavery. They went beyond Douglas when one of their number advocated going beyond popular sovereignty and allowing slavery to spread without any vote; in the process, they went beyond Douglas in not merely dividing their party, but destroying it.

In Kansas, all sides managed to destroy whatever credibility popular sovereignty might have had—if any, and if it deserved any. Would northerners and southerners follow the rules of popular sovereignty in Kansas?

More importantly, what were the rules? Childers asks. More than any other proponent of popular sovereignty, Stephen Douglas left the question open by giving credence to both interpretations—that territorial legislatures could prohibit slavery before statehood or only when a territory drafted a constitution and sought admission to the Union (p. 235). The events that turned the territory into Bleeding Kansas are well known, but as Childers points out, they did more than just foment the distrust that southerners felt for northerners, especially within the Democratic Party. They also prompted the regions to alter their view of popular sovereignty according to what suited their needs at the moment, and ultimately ended the South's willingness to accept popular sovereignty rather than federal protection for slavery in the territories.

Childers also provides a reminder of the centrality of popular sovereignty to the evolving party system of the 1850s. Led by Abraham Lincoln, who mocked Douglas's "pur-r-r-reat pur-r-r-inciple" of popular sovereignty, Republicans introduced a moral component by positing it as a human rights issue. [1] Know-Nothings tried to use the issue and failed. Democrats remained divided by region, and the *Dred Scott* decision did nothing to ease the divide. As Childers notes, With the Taney opinion, the Supreme Court defined popular sovereignty as the right of the people in a territory to determine the status of slavery when they drafted a constitution and asked for admission to the Union—and not a moment before. Territorial legislatures could presumably pass laws to regulate slavery, such as slave codes, but they could not prohibit slavery or restrict the right of a person to hold slaves as property within any territory (p. 255). Yet while Republicans dismissed the decisions, Democrats remained divided over *Dred Scott*'s meaning, and thus the meaning of popular sovereignty.

Childers ends with the election of 1860 and the coming of the Civil War, but in a different way than might be expected. During the secession winter, what had become a Republican Congress introduced bills to create three new territories, Colorado, Dakota, and Nevada. They contained the idea of popular sovereignty in its purest form by omitting all mention of slavery, presumably leaving the matter to the people of the territories (pp. 281-282). Both Douglas's supporters in the North and radical, moderate, and conservative southerners alike realized that slavery never would survive in any of these new territories. As Childers argues, southern secessionists believed that northerners had corrupted the principle of self-government in the states, in no small part because they had corrupted self-government in the territories (p.

282). At the same time, Republicans had no reason to include slavery in those bills because they would decide the territorial officials; patronage appointees would understandably be loyal to the party's conception of the issue. For southerners, the failure of popular sovereignty had been its inability to assure the spread of slavery, not their failure of vision, politically, economically, socially, and culturally. Thus, as Childers concludes, their Confederate constitution assured not that the citizens of new territories would decide whether to expand slavery, but that they would have slavery, whether or not they wanted it.

The food for thought that Childers offers is based not on new information, but on a new way to look at old information. That slavery had been heavily contested is

hardly news to historians, although Childers's examination of the early years of the Republic is an overdue reminder that the issue never went into hibernation. More important, he illuminates the discussion of slavery in the context of popular sovereignty, and thus in differing conceptions of a democratic Republic. How they thought about popular sovereignty alternately cooled and worsened a variety of controversies, related or not. Now most of those controversies are historiographic, and Childers has helped us look at them differently, and more wisely.

Note

[1]. David Herbert Donald, *Lincoln* (New York: Simon and Schuster, 1995), 233.

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